DRA & IEN

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE APPLICATION OF DAKOTA ACCESS, LLC FOR AN ENERGY FACILITY PERMIT TO CONSTRUCT DAKOTA ACCESS PIPELINE PROJECT	)	HP14-002

PREFILED REBUTTAL TESTIMONY
OF
LISA DEVILLE

ON BEHALF OF INDIGENOUS ENVIRONMENTAL NETWORK
AND DAKOTA RURAL ACTION

AUGUST 14, 2015

1. Please state your name and address for the record:

My name is Lisa Finley-DeVille, P.O. Box 501, Mandaree, ND 58757
Phone (701) 421-8020, email **lisadeville2013@gmail.com**

2. What is your occupation and educational background?

Currently I serve on the Vision West ND Project Consortium. I also serve on the MHA Nation Tomorrow Consortium. I serve on the Citizens for Change group. I assisted in creating grassroots group and vice president to Fort Berthold Protectors of Water and Earth Rights (POWER) and a member of the Dakota Resource Council (DRC). I have been nominated to the National Environmental Justice Advisory Council and the North Dakota 2015 Human Rights Award. I discovered my passion for helping the Mandan, Hidatsa, and Arikara Nation communities and its enrolled members in 1999 with housing by taken part in creating in Native American Country homeownership programs. It was through this work that I realized the impact the oil and gas development has taken on Mandaree and the other Mandan, Hidatsa, and Arikara communities.

I hold a Master of Management, a Master of Business Administration and a Bachelor of Science in Management from the University of Mary. I also hold a Bachelor of Science in Environmental Science, Associate of Arts in Business Administration/Accounting, an Associate of Applied Science in Information Management Specialist, an Associate of Science in Environmental Science, and an Associated of Science in Science from the Fort Berthold Community College.

3. Why are you making the personal effort to give your rebuttal testimony to the South Dakota PUC?

I am making the effort to testify because the testimony presented in support of the Dakota Access Pipeline paints too optimistic of a picture. I know this, because my community has been changed so drastically for the worse as a result of the oil and gas development in North Dakota.

The Bakken oil and gas development has brought severe environmental impacts and has changed our way of life. I am working to protect our water, land, air that is life but am also working to educate people about the harm that this oil and gas development has caused. The Dakota Access Pipeline could affect my land and community, and I know this first-hand from living in Mandaree and seeing all of the changes brought about by the oil and gas development in the Bakken region.

I am enrolled member of the Mandan, Hidatsa, and Arikara Nation also known as Three Affiliated Tribes on Fort Berthold Reservation. I have lived my whole life in Mandaree with my husband, five children and two grandbabies. My maternal grandparents are the late Julia (Charging-Mandan) White Eagle and the late Thomas White Eagle. My paternal grandparents are the late Evan & Louise (Black Hawk-Huber) Finley Sr.

We must create and enforce environmental laws. We need more research and studies. The pace of this oil and gas development is too fast. Dakota Access Pipeline is part of that. It takes about three months to extract the oil, destroying the land that Creator gave us millions of years ago. There is only one Earth and we need to protect it and our waters.

Our drinking water for our small rural tribal community, Mandaree, has already been contaminated by nearby toxic pipeline spills. There have been five major pipeline spills that have occurred in 2014 and 2015 that have polluted and damaged our lands and our drinking water.

- First, there was a one million gallon brine spill discovered July 8, 2014. There was never a proper clean up of the spill. Even now there is standing brine and dead vegetation. The soil has young crystals you can see in the sun. Arrow Pipeline, a subsidiary of Crestwood, took the dead vegetation shredded it and spread it over of area where the spill is. Near the standing brine a natural spring flows into Bear Den Bay that flows into Lake Sakakawea, our main source drinking water right next to it.

- Next, there was a 3,000-gallon pipeline spill, again of brine, near the XTO Energy Well Site. This is also a Crestwood pipeline, located near Independence East of Mandaree, ND. This spill was discovered August 22, 2014. Lake Sakakawea is located below the hill from this site. This brine is a by-product of the frocking taking place to get at the Bakken oil.

- Then in January 2015, another spill, this time three million gallon toxic oil and gas by product, also upstream from the Mandaree water intake system on the Missouri River flows into Lake Sakakawea, occurred.

- Also that month, a ruptured oil pipeline leaked up to 50,000 gallons of crude into the Yellowstone River in Montana contaminating the drinking water for the nearby town of Glendive. According to news reports, residents reported oozy-black liquid coming from their taps. The Yellowstone River flows into the Missouri River near Buford, North Dakota just upstream from Lake Sakakawea.

- Most recently, In May 2015, another 220,000-gallon brine spill occurred east of Mandaree killing the plants and contaminating the land.

This is what faces South Dakota unless the permitting process demands strict compliance with all environmental laws. I am making the effort to testify to share the experience of your neighboring Native communities, who have experienced the effects of oil and gas development.

4. Have you read the testimony of Tom Kirschenmann?

Yes, I have. I agree with Mr. Kirschenmann's statement that the construction of the Dakota Access pipeline triggers NEPA since three of the four USFWS sites along the Missouri River are Federal Aid acquired properties and according to him, "would require additional actions (NEPA driven) in order to grant any necessary easements that affect title."

I am rebutting other parts of Mr. Kirschenmann's testimony that this project can be sufficiently mitigated to protect the Native grasses, wetlands, endangered species and wildlife.

The Dakota Access Pipeline does not comply with Section 106 of the National Historic Preservation Act (NHPA) and the National Environmental Protection Act (NEPA) with regards to protecting our cultural resources, natural resources, and water. A full-blown NEPA environmental assessment must be completed in order for the pipeline to cross over the Missouri River and through sensitive USFWS lands.

There have already been several significant spills in the Great Plains region that have devastated the lands and water. The most recent spill was in the Yellowstone River, which is source of drinking water for the people of Glendive, MT. Many poisonous toxins also spilled into the river including benzene.

These toxins will get into the plants that provide many useful medicine/drugs. Some of these plants have been used by Native Americans as medicines for hundreds of years. Plants play the most important part in the cycle of nature. Without plants, there could be no life on Earth. They are the primary producers that sustain all other life forms. This is so because plants are the only organisms that can make their own food. Animals, incapable of making their own food, depend directly or indirectly on plants for their supply of food. All animals and the foods they eat can be traced back to plants.

Grasslands are important habitats for over 200 plant and animal species, including many that have become rare or extinct because of loss of this habitat. They are the natural habitat of and provide shelter, food and breeding grounds for--many species of wildlife and insects. Indigenous vegetation including shrubs and forbs, flowering herbaceous plants, as well as grasses help trap precipitation, regulating ground seepage, percolation and water supply filtration and replenishment. Further, grasslands reduce soil erosion caused by weather forces.

The oxygen we breathe comes from plants. Through photosynthesis, plants take energy from the sun, carbon dioxide from the air, and water and minerals from the soil. They then give off water and oxygen. Animals and other non-producers take part in this cycle through respiration. Respiration is the process where oxygen is used by organisms to release energy from food, and carbon dioxide is given off. The cycles of photosynthesis and respiration help maintain the earth's natural balance of oxygen, carbon dioxide, and water.

5. Do you consider federally recognized Tribes to be "local units of government?"

Yes, I do.

6. Does this conclude your prepared testimony?

Yes.

Dated this 14th nd Day of August 2015.

/s/Lisa DeVille

Lisa DeVille

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE APPLICATION OF DAKOTA ACCESS, LLC FOR AN ENERGY FACILITY PERMIT TO CONSTRUCT DAKOTA ACCESS PIPELINE PROJECT	)	HP14-002

PREFILED REBUTTAL TESTIMONY
OF
WASTE'WIN YOUNG, STANDING ROCK SIOUX TRIBE

ON BEHALF OF INDIGENOUS ENVIRONMENTAL NETWORK
AND DAKOTA RURAL ACTION

AUGUST 14, 2015

STANDING ROCK SIOUX TRIBE

TRIBAL HISTORIC PRESERVATION OFFICE

AFFIDAVIT OF WASTE' WIN YOUNG

Q. State your name and address for the record.

A. My name is Waste' Win Young. I reside at 950 Meadowlark Street in Fort Yates, North Dakota.

Q. What is your occupation?

A. I am the Tribal Historic Preservation Officer for the Standing Rock Sioux Tribe.

Q. Summarize your education and professional background.

A. I graduated from the University of North Dakota in 2001. I have a Bachelor's of Arts in English Language and Literature. I have a Bachelor's of Arts in American Indian Studies as well as a minor in psychology. I have worked in the Tribal Historic Preservation Office for the Standing Rock Sioux Tribe since 2003.

Q. Describe your duties as Director of the Tribal Historic Preservation Officer?

A. As the Tribal Historic Preservation Officer I manage the preservation of archeological and cultural resources of cultural, religious, and historical significance to the Standing Rock Sioux Tribe. I review archeological and cultural resource surveys for projects within the exterior boundaries of the SRST. After reviewing the report I base my decision on the "Determination of Effect", whether a project will have an adverse effect or not on the resources.

The Tribal Historic Preservation Officer also consults with agencies on projects off the reservation.

The National Historic Preservation Act ("NHPA") was passed in 1966, was an act to "Establish a Program for the Preservation of Additional Historic Properties throughout the Nation." In 1992 it was amended to include Tribal Nations. Subsequently it recognized the authority of tribes to establish "tribal historic preservation offices" and make determinations on projects that would impact their land, as well as cultural resources which may be located off reservation lands pursuant to section 101(d)(6)(B) of the National Historic Preservation Act.

The Tribal Historic Preservation Officer assists federal, state and tribal agencies in Section 106 identification efforts for sites of religious and historical importance to the Standing Rock Sioux Tribe.

Q. Is it challenging to protect cultural resources on and near the Standing Rock Reservation? Explain.

A. Yes. The National Historic Preservation Act and its implementing regulations require all agencies involved with federal approvals of projects to "gather information from any Indian tribe… to assist in identifying properties, including those located off tribal lands which may be of religious and cultural significance." 36 CFR §800.4(a)(4). The regulations provide a process for resolving conflicts over the

evaluation of identified sites and for resolving adverse impacts to them. 36 CFR §800.4(d); 800.5(c)(2); 800.6(b). The resolution to these issues, especially when they involve off-Reservation development projects sponsored by large corporations such as Energy Transfer, is complicated by the inordinate amount of political influence that the project beneficiaries exercise with federal and state agencies. Our cultural sites are vulnerable to impacts caused by development projects that promise jobs and profits for non-Indians. This is precisely the situation with the Dakota Access Pipeline.

Q. Describe the process that agencies normally follow under Section 106 of the National Historic Preservation Act?

A. Agencies are required to initiate the consultation process early on, and to fully include all eligible parties in the identification and evaluation of historic properties, as well as the determination of effects and proposed mitigation. The process should be straightforward and transparent.

Q. Describe the process that Army Corps of Engineers used under section 106 of the National Historic Preservation Act for the Dakota Access Pipeline?

A. The ACOE has not formally consulted with the Standing Rock Sioux Tribe for the Dakota Access Pipeline despite the SRST Tribal Historic Preservation Office's request to do so (please see SRST THPO letter).

The SRST was not afforded a meaningful opportunity to participate in identification efforts for historic properties along the Dakota Access Pipeline route. The SRST THPO met with Monica Howard (Energy Transfer) and Dean Sather (Merjent) regarding the opportunity for the tribe to conduct Identification efforts under the NHPA, especially on the Missouri River crossing. (Please see attached email).

Energy Transfer and Merjent archaeologists have not conducted proper identification in accordance with the NHPA. The email communication shows the the SRST THPO made a good faith effort to meet with the companies. Energy Transfers and Merjent gave us copies of the maps of the Missouri River crossing. Ms. Howard said she would follow up with us regarding participation in identification efforts but did not. It is apparent that there have not been adequate surveys with proper Tribal involvement.

Many historic properties of Lakota and Dakota origin are difficult for untrained persons to evaluate – the location of rocks, certain striations in rocks or rock formations – may point to ceremonial uses of sites that non-Lakotas and non-Dakotas may not understand. Moreover, the ACOE's role in the consultation and identification process has been unclear from the beginning. The level of expertise invoked in the 106 process has not been established even now.

For these reasons, the required processes for consultation and evaluation under NHPA Section 106 have not been followed by the ACOE or Dakota Access Pipeline.

Q. Did the ACOE cooperate with your office on cultural resources issues related to the Dakota Access Pipeline?

A. No.

Q. Is there anything else you would like to say to the Public Utilities Commission?

A. The Dakota Access pipeline (and other pipelines) will cross aboriginal and treaty territory that was exclusively set aside by the U S government for the Sioux Nation (Ft Laramie Treaties of 1851and 1868). The Sioux people were nomadic people and followed the buffalo. Our valuable cultural resources are located throughout the path of the Dakota Access Pipeline.

The NHPA process was followed. The ACOE never met with the SRST on NHPA Section 106 Consultation.

Waste' Win Young

Waste' Win Young

SRST THPO

North Standing Rock Avenue

Fort Yates, North Dakota

58538

SUBSCRIBED and SWORN to before me this 14 day of August, 2015.

Tamera Alkire

TAMERA ALKIRE
Notary Public
State of North Dakota
My Commission Expires Feb. 4, 2021

DRA & IEN 3

STANDING ROCK SIOUX TRIBE

TRIBAL HISTORIC PRESERVATION OFFICE

Administrative Service Center • North Standing Rock Avenue • Fort Yates, North Dakota 58538
PH: 701.854.2120 • FAX: 701.854.2138

Martha Chieply, Regulatory Chief
Omaha District
Army Corps of Engineers
1616 Capitol Avenue
Omaha, NE 68102-4901

April 8, 2015

Dear Ms. Chieply,

The Standing Rock Sioux Tribe- Tribal Historic Preservation Office (SRST THPO) is in receipt of your letter dated February 17, 2015. The SRST THPO office is interested in participating in formal consultation on the proposed Dakota Access Pipeline Project (DAPL). To date we have not received any specific comments or correspondence in reference to any of our concerns addressed in letter communications dated February 18th and February 25th, 2015.

Specific points that have not been addressed are:

The Standing Rock Sioux Tribe Tribal Historic Preservation Office is opposed to any geotechnical bore testing of any kind until mitigation is completed for site 32MO0001 (North Cannonball Site), an earth lodge village. Furthermore, we are opposed to any bore drilling until a full Class III Intensive Cultural survey can be done to determine the eligibility for the 9 unevaluated sites. Section 110K of the NHPA requires all sites to be evaluated. The THPO office is opposed to any work unless a full TCP survey is conducted on the area of potential effect. Our tribe has never surveyed this land and it has a specific historical and cultural resources relevance to our tribe. Thus our cultural resources are impacted directly by any type of bore drilling. In addition, the EA is outdated and since this is a potential crude oil pipeline there are different environmental impacts. The SRST is requesting that an Environmental Impact Assessment be completed. The SRST THPO is committed to participating in these efforts.

The SRST THPO recommends a full TCP and archaeological Class III Cultural Resource survey prior to any mitigation that would take place. I would also recommend 100% monitoring… if the pipeline gets built. I am of the opinion that there is a needed discussion with the NDSHPO.

> The SRST THPO does not concur with the "No Historic Properties Affected" determination for the DAPL soil bore testing project.

This quoted material is from a letter dated February 18, 2015 sent to Rick Harnois. Since then an additional piece of correspondence from our office sent on February 25, 2015 requests:

> That an Environmental Impact Statement (EIS) be completed. The SRST is committed to participating in these efforts…
>
> We look forward to future consultation prior to any survey work being completed. We also look forward to a primary role in any and all survey work and monitoring.

Since this last correspondence between our office and USACE we have learned:

1. That the bore testing has been completed;
2. That there is an ongoing attempt to do an Environmental Assessment (EA) prior to the geo testing results data being fully assessed;
3. That the bore pits are to be completed on private land in an attempt to avoid the Section 106 consultation process; and,
4. That there are questions arising as to the crossing under the Missouri River in two separate locations and that they are somehow outside of the jurisdictional boundaries of the USACE and the Section 106 NHPA processes and law.

As this consultation begins our office is aware of a delay in DAPL participating in bi-weekly conference calls with your office. To date our office has not had any contact with the Tribal Liaison Joel Ames. As we wait for the realignments from DAPL and the formal tribal consultation process to begin there is a need to clarify the proper sequencing of the Section 106 NHPA process. To date that process has been violated since our office has not received any direct correspondence in reference to our specific concerns.

To reiterate what has been discussed previously in correspondence:

1. There are cultural and historic resources that are at significant risk of being destroyed if this oil pipeline is allowed to pass through the traditional boundaries of the Oceti Sakowin. The most important of which are burials that are at high risk from any type of dredging of the river in the established Right Of Way (ROW).
2. There is no current EA for an oil pipeline. Therefore, the SRST THPO is requesting a full EIS on the pipeline ROW. The current ROW is only covered for a natural gas pipeline.
3. The water quality of the SRST is in direct risk of being contaminated by both of the potential dredging sites on the Missouri River and any of its tributaries that would be polluted. Furthermore, if DAPL is allowed to proceed there are significant risks for future oil spills that are well documented. In addition, the existing Northern Pipeline that currently has natural gas flowing through it is at risk of being damaged and potentially contaminating our water supply here on the reservation.

It is our contention that any construction on our sacred waterways are in direct violation of the Clean Water Act of (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act (33 U.S.C. 401 et seq.). That there has been a lack of response in reference to our request to participate in the boring process that took place already. That there has been an attempt to avoid the consultation process through placing the boring pits on private land and avoiding placing them on Corps land. Our request for a full EIS has also gone unanswered. In addition, any dredging or boring that would take place on or under the Missouri River would constitute the project work being completed through and on taken lands that are now managed by the USACE. These lands where potential dredging will take place contain the human remains of relatives of current SRST tribal members. The project area lands once belonged to the Oceti Sakowin. We still consider the taken lands to be our lands. Therefore we are opposed to any kind of oil pipeline construction through our ancestral lands.

That said we look forward to participation in a full tribal consultation process. The SRST THPO looks forward to the commencement of that process.

Sincerely,

WYoung

Waste Win Young
SRST THPO Director

DRA&IEN

STANDING ROCK SIOUX TRIBE

TRIBAL HISTORIC PRESERVATION OFFICE

Administrative Service Center • North Standing Rock Avenue • Fort Yates, North Dakota 58538
PH: 701.854.2120 • FAX: 701.854.2138

Richard Harnois
Army Corps of Engineers
Oahe Project
Powerhouse Road
Pierre, SD
57501-6174
RE: DAPL SOIL BORE TESTING PROJECT

February 18, 2015

Dear Rick,

This letter is in response to the DAPL soil bore testing project. The SRST THPO staff has reviewed the USDA soil maps. (As a side note, the Corp did not provide a map of the project area to us in the email that I am aware of even though the letter stated that there would one provided).

The soil maps indicate that there are potentially alluvial soils in both sites 32EM0019 and 32EM0021. The question would be how deep do the soils go? The shovel tests performed by UND did not go that deep. The site forms indicate that the sites are low density prehistoric sites. And also states that the integrity is poor. To what degree is the integrity poor? We need more explanation here please. We would like 32EM0019 to be reevaluated.

There is a potential for deeply buried materials.

We would like to look at 32EM0019 and 32EM0021 and see if they are both on the same landform or one large site. There is a need to do additional testing. If site 32EM0021 has buried soils, pottery and fire cracked rock this indicates a potentially significant settlement at that site location. We are concerned about any potential dredging that might take place due to the burials that are located in the ROW.

There is a chance that 32EM0019 and 32EM0021 are one large site and that the materials from the higher terrace washed down over time. It could have been a camp site at 32EM0019 and the material from the site was carried down to the lower area over time. This is one possibility. There would need to be extensive testing between both sites in order to determine whether they are two sites or one larger one. Either way there is a high potential for deeply buried materials although they didn't find any subsurface materials in the original shovel tests done by UND.

What year were these shovel tests completed by UND? There is a definite need to do testing between the sites and around 32EM0019. There is a need to see what is below a meter in depth.

Where exactly in the ROW will this new pipeline be built?

Again, although little to nothing was found in the first survey there is a need to test around the site if it is within the APE. Are there two sites? Or one? Tribal participation is needed on the Class III survey to define the sites better and to delineate the boundaries. Shovel probes are necessary to see if there is an alluvial terrace that has eroded down to the lower area. The site probably has no GPS point due to the fact that they did not have GPS data at that time probably. Ultimately, the geology is what is going to tell us if there is a high potential in this area for alluvial soils.

SRST oral traditions and historical records tell us of the occupations that were present along the east side of the river. There are documented Dakota, Cheyenne and Arikara camp sites, sacred sites and burials located within the direct path of the ROW. The significance of the island to the SRST tribe is paramount in any discussion of the potential work to be done. Soil degradation from the dredging of the Missouri River bed is going to disturb what is intact of the burial sites that exist within the corridor.

The Standing Rock Sioux Tribe-Tribal Historic Preservation Office is opposed to any geotechnical bore testing of any kind until mitigation is completed for site 32MO0001 (North Cannonball Site), an earth lodge village. Furthermore, we are opposed to any bore drilling until a full Class III Intensive Cultural survey can be done to determine the eligibility for the 9 unevaluated sites. Section 110 K of the NHPA requires all sites to be evaluated. The THPO office is opposed to any work unless a full TCP survey is conducted on the area of potential effect. Our tribe has never surveyed this land and it has a specific historical and cultural resources relevance to our tribe. Thus our cultural resources are impacted directly by any type of bore drilling. In addition, the EA is outdated and since this is a potential crude oil pipeline there are different environmental impacts. The SRST is requesting that an Environmental Impact Assessment be completed. The SRST THPO is committed to participating in these efforts.

The SRST THPO recommends a full TCP and archaeological Class III Cultural Resource survey prior to any mitigation that would take place. I would also recommend 100% monitoring by Makoce Wowapi during any and all work to be done both pre-assessment and during pipeline construction if the pipeline gets built. I am of the opinion that there is a needed discussion with the NDSHPO.

The SRST THPO does not concur with the "No Historic Properties Affected" determination for the DAPL soil bore testing project. If you have any questions please feel free to contact the SRST THPO at 701-854-2120.

Sincerely,

Waste'Win Young

SRST THPO

DRA EIEN 5

Waste'Win Young

From: Ames, Joel O NWO <Joel.O.Ames@usace.army.mil>
Sent: Monday, March 30, 2015 2:48 PM
To: Waste'Win Young
Cc: Steve Vance (CRST THPO); Stephanie Cournoyer; Dianne Desrosiers; Peter Capossela
Subject: RE: [EXTERNAL] (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Yes, we will be setting one up in the future. We are currently waiting on additional project information from DAPL.....Joel

-----Original Message-----
From: Waste'Win Young [mailto:wyoung@standingrock.org]
Sent: Monday, March 30, 2015 12:57 PM
To: Ames, Joel O NWO
Cc: Steve Vance (CRST THPO); Stephanie Cournoyer; Dianne Desrosiers; Peter Capossela
Subject: [EXTERNAL]

Hi Joel

Following up on a email I had sent regarding a meeting for Dakota Access Pipeline. Will the Corps will be holding a meeting with affected tribes?

Thank you,

Waste' Win Young

Classification: UNCLASSIFIED
Caveats: NONE

Waste'Win Young

From: Ames, Joel O NWO <Joel.O.Ames@usace.army.mil>
Sent: Wednesday, June 24, 2015 1:19 PM
To: Waste'Win Young
Subject: DAPL (UNCLASSIFIED)

Importance: High

Classification: UNCLASSIFIED
Caveats: NONE

Hello Waste',
How are you doing, hope all is well. When would be a good time to reach you regarding the DAPL 408 action? I know you are interested in having Consultation, I need to clarify a few items regarding that request. Look forward to speaking with you.....Joel

Tribal Liaison
USACE Omaha District
1616 Capitol Ave, Suite 9000
Omaha, NE 68102-4901
Voicemail (402) 995-2909
Fax (402) 995-2013
joel.o.ames@usace.army.mil

http://www.nwo.usace.army.mil/About/TribalNations.aspx

Facebook: www.facebook.com/OmahaUSACE
Google: www.glpl.us/OmahaUSACE
Twitter: www.twitter.com/OmahaUSACE

Classification: UNCLASSIFIED
Caveats: NONE

Waste'Win Young

From:	Waste'Win Young
Sent:	Thursday, November 13, 2014 11:05 AM
To:	Terence Clouthier; Tim Mentz Sr. (timmentzsr@gmail.com); Shauna Elk; wilsonmentz@gmail.com
Subject:	FW: DAPL ND and SD pipeline route
Attachments:	10-31.5 North Dakota Routing.kmz; 10-31.5 South Dakota Routing.kmz

Fyi!

From: Howard, Monica [mailto:Monica.Howard@energytransfer.com]
Sent: Thursday, November 13, 2014 10:18 AM
To: Waste'Win Young
Cc: Dean Sather; Joe Sedarski
Subject: DAPL ND and SD pipeline route

Ms. Waste Win Young,

I'd like to thank you again for meeting with Dean Sather and me the other week. I apologize for the delay in sending this to you, however we had some route tweaking and I wanted to be able to send you the most complete route. Attached is the route we will be filing with the PUC in ND and PSC in SD in December.

Please review this information and let us know if Standing Rock has any known sacred or documented sites along this route. We expect to use a general construction right of way of 150 wide along this route. We are currently performing biological and cultural surveys where landowners have granted permission (although we are done for this season and will try to resume in spring when the ground thaws and snow has melted).

With respect to the Lake Oahe drill and geotechnical sampling, we expect to have USACE survey permission in January and will likely conduct those samples in spring as well. We understand that you would like have tribal representation during these sampling events and we will communicate that schedule with you.

Please feel free to contact me for any questions or concerns.

Thank you,
Monica Howard
Director Environmental Services, Energy Transfer
Environmental Project Manager, Dakota Access Pipeline
713-898-8222 (c)
713-989-7186 (o)

Kelly Morgan

From:	Harnois, Richard D NWO <Richard.D.Harnois@usace.army.mil>
Sent:	Thursday, February 12, 2015 3:17 PM
To:	Waste'Win Young
Cc:	Kelly Morgan
Subject:	Dakota Access Geo-testing (UNCLASSIFIED)
Attachments:	DAPL PA Determination_BoreTests.pdf

Classification: UNCLASSIFIED
Caveats: NONE

Hi Waste'Win,

We are preparing a notice to proceed for geo-testing at the proposed Dakota Access Pipeline crossing location and I wanted to double check with you and make sure your office had no concerns or questions. Since it is right outside the SRST boundary, I do not want to assume anything.

For your reference, I have attached a copy of our determination letter which went out to your office and the normal PA circulation group late last December. As you may know, Terry and I discussed this early on, before he had to take leave. As I explained then, this testing is quite limited and will only serve to assist the applicant (and the Corps) in determining IF this location will be suitable for a pipeline crossing. As such, it is quite preliminary in nature and all of the heavy lifting will come later on, when the pipeline proper goes out for consultation.

I have sat on this one longer than I should have and am getting pressure to get it done. If you could shoot me an email back or give me a call and let me know one way or the other, I would really appreciate it. Tuesday will be my drop dead date and I will have to get an answer out before the end of the day.

Thanks for the help. If you get a chance, tell Terry I said hello.

Rick H.

Classification: UNCLASSIFIED
Caveats: NONE

STANDING ROCK SIOUX TRIBE

TRIBAL HISTORIC PRESERVATION OFFICE

Administrative Service Center • North Standing Rock Avenue • Fort Yates, North Dakota 58538
PH: 701.854.2120 • FAX: 701.854.2138

Martha Chieply/Aaron Sandine
Omaha District- Regulatory
Regulatory Branch
Army Corps of Engineers
1616 Capitol Avenue
Omaha, NE 68102-4901

February 25, 2015

Dear Ms. Chieply,

On February 12, 2015 the Standing Rock Sioux Tribe- Tribal Historic Preservation Office (SRST THPO) received an email from Richard Harnois (ACOE) regarding soil bore testing for the Dakota Access Pipeline Project (DAPL). In response the SRST THPO sent a letter dated February 18, 2015 to Mr. Richard Harnois regarding the proposed soil bore testing (please see attached). There are unresolved issues regarding the DAPL soil bore testing project. Please see the attached correspondence.

The Dakota Access Pipeline is proposed to cross the Missouri River just north of the Standing Rock Sioux Tribe at Cannonball Ranch. The previous easement for an existing pipeline was permitted based on the results of a Class III inventory that occurred prior to the establishment of the 1992 National Historic Preservation Act amendments--which established Tribal Historic Preservation Offices. Thus, there was no tribal involvement on surveys for this initial pipeline, nor did it include consultation with regional tribes who consider this project area and river crossing a historical and cultural property. SRST oral traditions and historical records tell us of the occupations that were present along the Missouri River. There are documented Dakota, Cheyenne, and Arikara camp sites, sacred sites and burials located within the direct path of the ROW. The SRST THPO asserts that any dredging of the river bottom or placement of pipe in the existing ROW will further disturb the integrity of the site.

The Cannonball Ranch is the crossing point for the Dakota Access Pipeline. The Cannonball Ranch is eligible for inclusion to the National Register of Historic Places. There are six burials of notable residents of Standing Rock, including the Galpins and Mrs. Van Solen located here.

There are nine unevaluated sites within the permitting area. Section 110(k) of the NHPA requires all sites to be evaluated. There is one site located here that is eligible for inclusion on the NRHP.

As was stated previously, tribal participation is needed on the Class III survey to define the sites accurately and to delineate the boundaries. SRST oral traditions and historical records tell us of occupations that were present along both sides of the river. There are documented Dakota, Cheyenne and Arikara camp sites and burials within the direct path of the proposed ROW. Site degradation and desecration from proposed dredging along the river bottom at the crossing point will impact the burial sites that exist within the corridor. Our cultural resources will be impacted directly by any kind of activity

be that soil bore testing, dredging, and (or) shovel probes on the land directly on the banks within the area of potential effect (APE).

The Environmental Assessment is outdated and since the DAPL is a proposed crude oil pipeline there will be different types of environmental impacts to historical and cultural properties that are significant to the Standing Rock Sioux Tribe.

The SRST THPO is requesting that an Environmental Impact Statement (EIS) be completed. The SRST is committed to participating in these efforts. The SRST THPO recommends a full TCP (Traditional Cultural Property) and archeological Class III Cultural Resource Survey be completed prior to any mitigation that would take place. I would recommend 100% monitoring by the SRST's preferred contractor, Makoche Wowapi during all and any work to be done pre-assessment and during pipeline construction if the pipeline gets built.

Thank you for contacting the SRST THPO. We look forward to future consultation *prior* to any survey work being completed. We also look forward to playing a primary role in any and all survey work and monitoring.

If you have any questions or comments please feel free to contact me at the SRST THPO at 701-854-2120.

Sincerely,

Waste Win Young

Standing Rock Sioux Tribe

Tribal Historic Preservation Officer

DRA & IEN

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
1616 CAPITOL AVENUE
OMAHA NE 68102-4901

February 17, 2015

Waste' Win Young
Standing Rock Sioux Tribe, THPO
PO Box D
Fort Yates, ND 58538

Dear Mr. Young,

The U.S. Army Corps of Engineers (USACE) is currently evaluating pre-construction notifications (PCN's) from Dakota Access Pipeline Project (DAPL) consultants for portions of the overall pipeline project that required submittal of a notification for work in waters of the United States, in accordance with Section 10 of the Rivers and Harbors Act (33 U.S.C. 401 et seq.) and Section 404 of the Clean Water Act (33 U.S.C. 1344). DAPL is an approximate 1,100-mile, 30-inch diameter, proposed crude oil pipeline, which would extend from the Bakken production area near Stanley, North Dakota through South Dakota and Iowa to a delivery point at Patoka, Illinois, thus affecting three Corps Districts (Omaha, Rock Island, St. Louis). To date, USACE has received 55-PCN's. The location of the PCN areas is enclosed.

The USACE permitting process is the only Federal action associated with the project and therefore USACE is solely responsible for conducting consultation with interested Tribes in accordance with Section 106 of the National Historic Preservation Act. The purpose of this letter is to initiate Section 106 consultation and review, determine your interest in consulting on this undertaking, and to gather information that will assist the Corps in identifying historic properties.

Please note the Corps is neither funding nor constructing the proposed pipeline and would have permitting authority over only a very small percentage of the overall 1,100-mile pipeline project. The majority of the work in association with construction of the pipeline will occur in uplands and not waters of the United States. Navigable waters crossings include the Missouri, James, Big Sioux, Des Moines, Mississippi, and Illinois rivers.

Our regulations define the extent of the federal action as the "permit area" (33 CFR Part 325, Appendix C). This definition requires some interpretation but generally for pipelines it includes waters of the U.S. and adjacent upland areas that are dependent on the location of the crossing. The project proponent is conducting Class III surveys for cultural resources along the route. Proper identification of all historic properties, including sites of religious and cultural significance, or traditional cultural properties (TCP), in the permit area is an essential element of those surveys.

Please let us know if you would like to consult on this undertaking and if you have any information that will assist us in identifying historic properties. We would like to know if you have any knowledge or concerns regarding cultural resources, sites of religious importance, or TCPs you would like the Corps to consider. The Corps will treat any information provided with the greatest confidentiality. We request your comments prior to **March 30, 2015**, to help facilitate a timely Section 106 review.

Enclosed you will find the current proposed alignment provided by the applicant. Additional information about the project can be obtained at http://www.energytransfer.com/ops_corp.aspx. If you are interested in participating in coordination for this proposed project, please contact Mr. Joel Ames, Tribal Liaison, by email at joel.o.ames@usace.army.mil or Ms. Devetta Hill, Field Support Section, at devetta.a.hill@usace.army.mil or by phone at (402) 995-2462.

Thank you for participating in this early consultation effort concerning the Dakota Access Pipeline Project. We look forward to future consultation after surveys are completed. Please contact me at Martha.S.Chieply@usace.army.mil or by calling (402) 995-2451 if you have any questions.

Sincerely,

Martha S. Chieply
Chief, Regulatory Branch
Operations Division

Enclosures

DRA & IEN [redacted]

BEFORE THE PUBLIC UTILITY COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN RE APPLICATION BY DAKOTA ACCESS, LLC FOR AN
ENERGY FACILITY PERMIT TO CONSTRUCT THE DAKOTA ACCESS PIPELINE

DOCKET NO. HP 14-002

PREFILED EXPERT REBUTTAL TESTIMONY
BY PETER CAPOSSELA, ATTORNEY AT LAW
ON BEHALF OF THE INDIGENOUS ENVIRONMENTAL NETWORK
AND DAKOTA RURAL ACTION

August 14, 2015

Q. State your name and occupation for the record.

A. My name is Peter Capossela, and I am a private practice attorney from Oregon. My business address is Post Office Box 10643 Eugene, Oregon 97440. My practice exclusively involves Tribal representation in disputes involving water and natural resources. For 20 years, I conducted Tribal general counsel work, but in recent years I have focused on water and natural resources. In addition to my work as a lawyer, I have written and taught at the college level on these issues.

Q. On whose behalf are you testifying?

A. I am testifying on behalf of the Indigenous Environmental Network, a nationwide non-profit organization which serves as a clearinghouse of information for the Indian Nations on important environmental issues affecting the Tribes, and Dakota Rural Action, a non-profit citizens group addressing quality of life issues in rural South Dakota. My testimony is presented as expert rebuttal testimony to the pre-filed testimony of Darren Kearney, Monica Howard and John H. Edwards.

Q. What is the basis of your expertise?

A. I received a B.A. in history from the University of Oregon in 1983, and a J.D. from the University of Oregon School of Law in 1988. Since that time, I have worked extensively on Tribal water claims in South Dakota and involving the Missouri River. My 2002 article entitled "Indian Reserved Water Rights in the Missouri River Basin," published by the *Great Plains Natural Resources Journal* (now called the *Sustainable Development Journal*) of the University of South Dakota School of Law, has been considered a seminal work on Tribal water claims in South Dakota. 6 *Great Plains Natural Res.* J. 131 (2002). My recent article "Impacts of the Army Corps of Engineers' Pick-Sloan Program on the Indian Tribes of the Missouri Basin," published by the *University of Oregon Journal of Environmental Law and Litigation*, includes an analysis of the impact that energy development has had on Indian water rights, on the Lakota and Dakota Reservations along the Missouri River in South Dakota. 30 *J.*

of Envt'l Law and Lit. 143 (2015). My forthcoming book entitled *The Land Along the River* is to be published by Mariah Press, Sioux Falls, S.D. It describes disputes over the title and management of Missouri River shoreline land in South Dakota, and how Tribal Treaty rights come into play.

I have served as a graduate advisor in the Environmental Studies Department at the Oglala Lakota College in Kyle, South Dakota, responsible for approving masters' theses. I have spoken as a presenter on Indian water rights and the Missouri River at numerous conferences, including events sponsored by the American Bar Association Natural Resources Section, U.S. Environmental Protection Agency, National Congress of American Indians and Native American Rights Fund.

I have also been invited by and testified to congressional and state legislative committees on these issues. I assisted with the drafting and enactment of two federal laws addressing the damage claims of Tribes arising from the Pick-Sloan Program dams on the Missouri River main stem. *See* Crow Creek Infrastructure Development Trust Fund of 1996 (110 Stat. 3026); Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act of 1992 (106 Stat. 4731). I have also been consulted on other bills that were introduced or co-sponsored in Congress by the South Dakota Congressional delegation, but which were not ultimately enacted. *E.g.* Pick-Sloan Tribal Commission Act, S. 3648, 111th Cong. (2010); Oglala Sioux Tribe and Angostura Irrigation District Compensation and Rehabilitation Act, S. 2489, 110th Cong. (2008).

My resume is attached.

Q. What documents have you reviewed in this docket?

A. I have reviewed the Executive Summary and Chapters 12-21 of the revised application and exhibits, and the pre-filed testimony of John H. Edwards and Monica Howard for Dakota Access, and Darren Kearney and Ryan Lidin on behalf of the Staff of the PUC. I have also reviewed the *Draft Sunoco Pipeline LP Facility Response Plan – Dakota Access Northern Response Zone*, most of the other pre-filed testimony, as well as informational materials on the Dakota Access Pipeline published by Dakota Access LLC. I re-read portions of the Army Corps of Engineers' *Missouri River Mainstem Reservoir System Master Water Control Manual* (2006), and the *Final Environmental Impact Statement, Missouri River Master Water Control Manual Review and Update* (2004).

Q. What is your purpose in testifying?

A Native Americans have been referred to as the "invisible minority." That is certainly the case with respect to the application and testimonies for the Dakota Access Pipeline. The lack of consideration of the proximity of the pipeline to the Standing Rock and Cheyenne River Indian Reservations and on their water supplies and fisheries, as well as the lack of consultation with Tribal cultural officers in the identification and protection of Native American cultural resources along the pipeline route in South Dakota, are significant omissions.

I testify on behalf of the Indigenous Environmental Network and Dakota Rural Action to urge the PUC to give thoughtful consideration to the risks posed by the Dakota Access Pipeline to the waters of the Missouri River that are subject to the water rights claims of the South Dakota Tribes. Tribal communities immediately downstream from the Missouri River crossing of the Dakota Access Pipeline rely on the Missouri as their source of drinking water supplies, fisheries, water use in ceremonies, irrigation and economic development. The potential risk to current water uses and potential liabilities for impairing the valuable Tribal water rights from a release of oil into Oahe Reservoir must be given due consideration by the PUC under its statutory mandate to consider "the health, safety and welfare of the inhabitants (and) the orderly development of the region." SDCL §§49-41B-22(3) & (4). This has not been done. It is a serious omission in the permitting process.

On pages 4-5 of his pre-filed testimony on behalf of the PUC staff, Darren Kearney states that that the revised application for the Dakota Access Pipeline, as supplemented by additional information that was requested, is complete. But there is minimal information or technical analysis about the spill risk in the Missouri River, which is crossed by Dakota Access approximately 15 miles upstream from the Standing Rock Reservation and approximately 30 river miles upstream from the South Dakota border. The information in the application is incomplete, because potential impacts of an oil spill to South Dakota communities downstream from the Dakota Access Pipeline Missouri River crossing have not been fully considered and evaluated. Many of these communities are located on the Standing Rock and Cheyenne River Reservations.

On pages 20-21 of her pre-filed testimony on behalf of Dakota Access LLC, Monica Howard tabulates significant waters in South Dakota affected by the Dakota Access Pipeline, and

omits the Missouri River. Similarly, on page 6 of his pre-filed testimony John Edwards omits reference to the Missouri River in his assessment of "impacts on hydrology." Chapter 17 of the revised application is captioned "Effect on Aquatic Ecosystems" yet entirely ignores these important considerations.

These omissions render the record incomplete. Without a more thorough analysis of the threat to the Missouri River in South Dakota – on both non-Indian and Indian communities whose livelihood depends on the Missouri – the record in this docket is insufficient for approval of the permit request.

Q. But the proposed Missouri River crossing is in North Dakota, approximately 25 river miles upstream from the South Dakota border. Can it really affect South Dakota waters?

A. We don't know – the risk analysis and worst case scenarios have not been performed. The problem is not that the risk to the Missouri River in South Dakota is too high; the problem is the risk has not been considered.

These issues must be evaluated by the PUC in determining the level of threat to the South Dakota environment and to public health and welfare. There must be spill estimates and risk analysis on potential harm to the Missouri River, in order to determine the risk. The potential environmental harm from a spill and the potential liabilities for impairing waters to which the Tribes have water rights have been ignored.

Under the Energy Conversion and Transmission Facilities Act, the criteria for approval of a permit by the PUC focuses on "***the threat*** of serious injury to the environment (or) the social and economic condition of the inhabitants… in the siting area." SDCL §49-41B-22(2) (emphasis added). The statutory obligation is to evaluate the threat from an oil and gas pipeline seeking a permit to cross South Dakota, without regard to the location of a potential release. If the most significant threat to the South Dakota environment and public health posed by an interstate pipeline is an upstream river crossing in North Dakota, that threat should reasonably be addressed in the permit proceeding for the South Dakota segment. The statute requires this.

The applicant has failed to present adequate information to enable the PUC to consider this threat. Mr. Kearney's opinion on the completeness of the revised application is undermined by this significant omission. The suggestion in Ms. Howard and Mr. Edwards' testimonies that

impacts on major surface waters are properly accounted for is erroneous. The record before the Commission is not sufficient to approve the Dakota Access Pipeline.

Q. What is your opinion on the magnitude of Tribal reserved water rights to the Missouri River?

A. A significant portion of the waters of the Missouri River are claimed by the Tribes. At the present time, the precise quantity of water to which the Tribes possess property rights is unknown.

Under the Winters Doctrine, when the Tribes reserved their Reservation lands in treaties and other agreements with the United States, they also reserved water for all reasonable beneficial uses on their Reservation lands. *Winters v. United States*, 207 U.S. 564, 576-577 (1908). Water was reserved by the Tribes for present and future needs. *Arizona v. California*, 373 U.S. 546, 600 (1963). For Tribes whose treaties indicate an intention for the Indians to take up agriculture, such as the Fort Laramie Treaty with the Sioux, one measure of the reserved right secures water for all "practicably irrigable acres" on the Reservation. *Id.*

Until there is an adjudication or water rights compact for any water basin, the precise measure of a Tribe's reserved water rights remains uncertain. Since "certainty" is an important objective underlying water law, in many states there has been longstanding litigation or negotiations to quantify Indian reserved water rights. For example, in Montana, the Northern Cheyenne and Crow Tribes have quantified their water rights to tributaries to the Missouri River through compacts with the state, which have been approved and funded by Congress. Northern Cheyenne Indian Reserved Water Rights Settlement Act of 1992, 106 Stat. 1186, as amended 108 Stat. 707; Crow Tribe Water Rights Settlement Act of 2010, 124 Stat. 3097. Alternatively, in Wyoming the state and Shoshone and Arapahoe Tribes of the Wind River Reservation engaged in decades-long litigation to define the Tribes' water rights. *In re Gen. Adjudication of All Rights to Use Water in the Big Horn River Sys.*, 753 P.2d 76 (Wyo. 1988).

In South Dakota, the state initiated a general stream adjudication in Hughes County Circuit Court for a determination of Indian reserved water rights and confirmation of state water rights in the Missouri Basin within the state. The case was dismissed without prejudice in 1980, due to challenges to state court jurisdiction and the prohibitive cost to the litigation. *In re the General Adjudication to all Rights to Use Water and Water Rights in the Missouri River System*,

294 N.W.2d 784 (S.D. 1980). So the precise amount of the Indian reserved water right to the Missouri River and its tributaries in South Dakota remains undefined.

The Energy Conversion and Transmission Facilities Act requires the PUC to ensure that "the proposed facility will not unduly interfere with the orderly development of the region with due consideration having been given to the views of governing bodies of affected local units of government." SDCL §49-41B-23(4). The approval of Dakota Access Pipeline prior to the resolution of Tribal water rights claims to the Missouri River in South Dakota does not constitute "orderly development" from the perspective of many Tribes.

Ultimately, the Tribal water claims to the Missouri River are significant. According to a 1979 study by the United Sioux Tribes of South Dakota, the irrigation water rights of 11 Sioux Tribes totals 13.5 million acre-feet to irrigate 2.9 million acres. United Sioux Tribes 1979, p. 3-2. That study is dated; however, there is little published data on future water plans for Tribes in the Missouri Basin, and the UST Study remains one of the few available sources.

USGS data indicates that the unregulated flow of the Missouri River is approximately 1 million acre-feet per month at Pierre, or approximately 12 million acre-feet annually. Thus, Tribal water claims may exceed the remaining natural flow of the Missouri River. When Tribal claims are perfected, all other water use to the Missouri River main stem may depend upon storage, or water marketing from the Tribes. This means that any impact on the Missouri River by a release from Dakota Access Pipeline would affect Tribal property rights and invoke liability in favor of the Tribes.

Q. What is your opinion on potential impact of the construction and operation of Dakota Access Pipeline on the waters of the South Dakota Tribes?

A. It is not possible to answer that question with the record before the PUC. That is why the permit for the Dakota Access Pipeline should be denied.

Q. Upon your information, what is the potential impact on Tribal waters?

A. The biggest concern is a release of oil into the Missouri River. Under normal circumstances, the Oahe Reservoir has significant capacity to disperse pollutants. It stores 19 million acre-feet when the multi-purpose pool is full. However, the manner in which the Army Corps of Engineers operates the Missouri River main stem dams causes significant water level

fluctuations in Oahe Reservoir. Under its *Master Manual*, the Corps operates the Oahe Dam exclusively for lower Missouri River navigation, intakes and flood control. Army Corps of Engineers 2006, p. VII-1. The amount of water released at the dam fluctuates significantly, with daily releases of 17,000 cfs between November 15-March 15, and daily releases of up to 35,000 cfs during the March 15-November 15 navigation season. *Id.*at pp. VII-10, 12.

Thus, the amount of stored water and reservoir elevations at Oahe Reservoir likewise experience huge fluctuations. The maximum pool level of the Oahe Reservoir is 1620 msl, and the base flood pool is 1607 msl. *Id.* at Plate II-41 (Exhibit B). The amount of water stored in the reservoir – and the capacity to disperse pollutants – likewise fluctuates dramatically. Attached as Exhibit C are the daily bulletins of the Corps of Engineers for the Oahe Reservoir. Today, on August 14, 2015, the level of Oahe Reservoir is 1613.1 msl (Exhibit C p. 1). Five months ago, on March 1, 2015, Oahe was at 1608 msl (Exhibit C p.2). Two years ago, on August 1, 2013, the reservoir level at Oahe was 1602.3, more than ten feet lower than today, and storing 2 million acre-feet less water in the reservoir. (Exhibit C, p.3).

The dispersal capacity of the reservoir varies significantly, so the risk from a major release will likewise vary. This requires more study.

Moreover, upon a release from Dakota Access Pipeline into the Missouri River, toxic constituents in the crude could settle in the sediments on the riverbed. The management of Missouri River water flows by the Corps of Engineers has significantly and permanently disrupted the patterns of erosion and sedimentation. The Missouri River crossing of the Dakota Access Pipeline is immediately upstream from the mouth of the Cannon Ball River. During periods of low water, the sediment at the confluence of the Cannon Ball and Missouri is scoured and deposited downstream.

On November 23, 2003, the deposition of such sediment downstream from the confluence silted over the Fort Yates water treatment plant on the Standing Rock Indian Reservation. The EPA issued a public health advisory and boil water order for three Standing Rock Reservation communities. The water system was inoperative for 10 days. Dialysis patients at the Fort Yates Public Health clinic were forced to travel to Bismarck for treatment during this time. *See Water Problems on the Standing Rock Indian Reservation, Hearing Before the S. Comm. on Indian Affairs*, 108th Cong. (2004).

The development of the Missouri River main stem dams by the Corps of Engineers under the Pick-Sloan program has already harmed the environment and public health on the Indian Reservations along the Missouri River. The Dakota Access Pipeline will exacerbate this. A release of oil could result in toxic constituents in the sediments and in fish tissue at Oahe Reservoir. This could impact drinking water intakes, public health, and the trophy walleye fishery on the Standing Rock and Cheyenne River Indian Reservations and in non-Indian communities along Lake Oahe.

Even without a release of oil, the Dakota Access Pipeline affects all communities in South Dakota, because the pace the oil development in the Williston Basin has put tremendous demand on the region's water resources. In order to secure water for the development of oil and gas, the Corps of Engineers is attempting to impose strict limits on future municipal and industrial (M & I) water depletions from the Missouri River main stem reservoirs. In August 2012, the Corps released Draft Environmental Assessments for "Surplus Water" for each of the main stem reservoirs in South Dakota. The reports identify limits to future municipal water uses from the Missouri River, totaling 172,917 acre-feet for all of South Dakota, including the Indian Reservations.http:www.nwo.usace.army.mil/missions/civilworks/planning/planningprojects.aspx (See Exhibit D). The draft reports give no consideration to Tribal reserved water rights, nor to the authority of the South Dakota Department of Environment and Natural Resources to implement South Dakota law to the Missouri River outside of the Reservations. For these reasons, the Tribes oppose the Surplus Water Reports, and Attorney General Jackley has publicly threatened to initiate legal action against the Corps of Engineers.

In any event, the pace of oil and gas development in the Bakken imposes demands on the waters of the Missouri Basin in a manner that jeopardizes the future water uses of all communities along the Missouri River in South Dakota. This testimony is presented on behalf of the Indigenous Environmental Network and Dakota Rural Action to highlight the risk to South Dakota communities and their water from the Dakota Access Pipeline. These risks may be significant, they fluctuate depending on conditions, and they have not been adequately evaluated. Accordingly, the permit should be denied.

Peter Capossela

Peter Capossela

DRAFT IEN

Peter Capossela, Esq.
Post Office Box 10643
Eugene, Oregon 97440
541/505-4883
pcapossela@nu-world.com

Introduction

Currently manage solo law firm (1992-present), focusing on federal Indian law, environmental law, and legislation. Previously worked as staff attorney at Nevada Legal Services Indian-Rural Office (1991-1992), and Standing Rock Sioux Tribe (1988-1991). Obtained law degree from University of Oregon School of Law in 1988.

Professional

Oregon State Bar (Indian Law Section).

Education

J.D., University of Oregon School of Law, May, 1988
B.A., University of Oregon, June, 1983

Experience

Private Law and Consulting Practice, Walterville, Sandy and Eugene Oregon (1992-present)

Engage in federal litigation, legislative advocacy in Congress and administrative advocacy in agency rulemakings and appeals.

Assist Indian Tribes on land use and jurisdiction, water rights, and the protection of cultural and environmental resources. Provide counsel to non-profit organizations on formation, governance, grants and operations.

Oglala Lakota College, Graduate Program, Environmental Studies, Kyle, S.D. (2007)

Supervised graduate seminar on Advanced Environmental Policy, and conducted review of final projects and dissertations for Masters of Science candidates in Environmental Studies.

Nevada Legal Services, Indian-Rural Office, Carson City, Nevada (1991-1992)

Staff attorney in legal services' office, representing low income clients on Indian law, Veterans benefits and housing issues.

Standing Rock Sioux Tribe, Fort Yates, North Dakota (1988-1991)

Staff attorney for Indian Tribe, responsible for legislation, Congressional appropriations, federal grants and contracts, and administrative appeals.

Multnomah County Legal Aid Service, Inc., Portland, Oregon (1986-1987)

Legal extern performing legislative advocacy in 1987 session of the Oregon legislature, in support of welfare reform and human services funding.

Selected Professional Accomplishments

- *Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers*, CV 00-1023 (D.S.D. 2000), injunctive relief from Corps of Engineers' water releases eroding burial site of the historical Chief Mad Bear, resulting in permanent protection of site.

- Legislative counsel for key provisions of the *Indian Land Leasing Act*, to provide for USDA debt relief to Indian Tribes. (Public Law 109-221, 120 Stat. 341, May 12, 2006).

- Legal counsel to a Tribal negotiating team for the enactment of the *Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act of 1992*, which compensated the Standing Rock Sioux Tribe $90.6 million for damages suffered upon construction of a flood control project. (Public Law 102-575, 106 Stat. 4730, October 30, 1992).

- Received *Certificate of Special Recognition* from the Administrator, Office of Federal Procurement Policy, for "Outstanding and innovative work under the Audit Alternative Dispute Resolution Program." (June 19, 2007). Awarded for role as legal counsel in the settlement of $13 million contract dispute before the federal Board of Civilian Contract Appeals.

Publications

Impacts of the Army Corps of Engineers' Pick-Sloan Program on the Indian Tribes of the Missouri River Basin, Journal of Environmental Law and Litigation, 30:143 (2015)

Indian Reserved Water Rights in the Missouri River Basin, Great Plains Natural Resources Journal, 6:131 (2002).

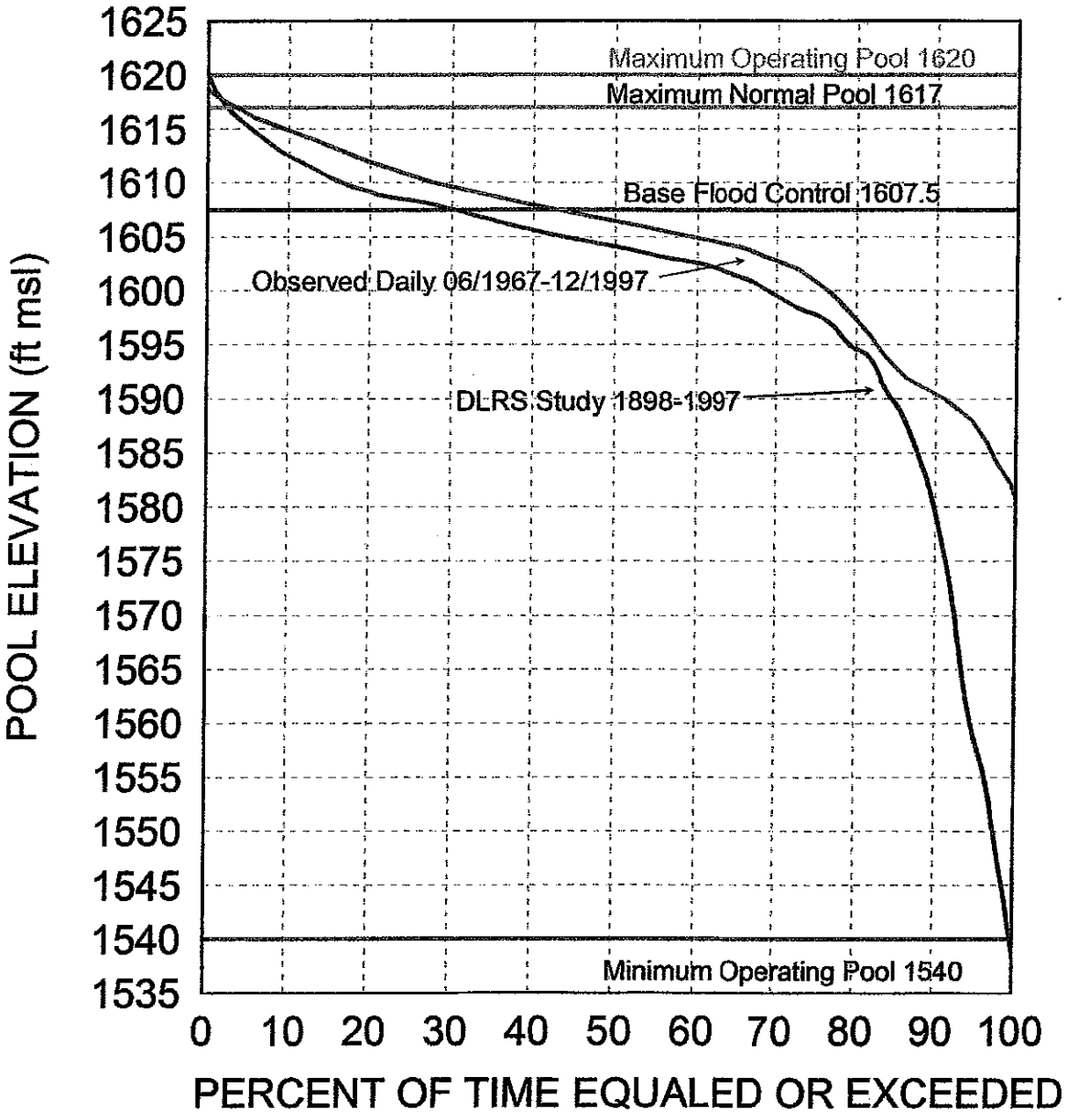
Professional Presentations

Presenter at numerous law and continuing education conferences on Native American rights, environmental justice and natural resources law and policy.

DRA & IEN

LAKE OAHE

POOL DURATION RELATIONSHIP



Missouri River Basin
Oahe Dam Pool Elevation Duration
U.S. ARMY ENGINEER DIVISION, NORTHWESTERN
CORPS OF ENGINEERS, OMAHA, NEBRASKA
March 2004

Plate II-41

Peter Capossela
Rebuttal Testimony
Exhibit B

014213

DRAFT IEN 60

US Army Corps of Engineers
BUILDING STRONG

Missouri River Mainstem Reservoirs
Surplus Water Reports
Summary

1. Water supply demand analysis

Reservoir	Existing Demand* (AF/Year)	Projected Demand	Total Demand	Equivalent Storage
Ft. Peck Lake	6,302	630	6,932	17,816
Lake Oahe	52,106	5,211	57,317	147,305
Lake Sharpe	56,607	5,661	62,268	160,028
Lake Francis Case	25,430	2,543	27,973	71,890
Lewis and Clark Lake	25,843	2,584	28,427	73,058

*Does not include specifically authorized Bureau of Reclamation Projects

2. Storage-yield analysis

- Dividing the carryover multiple use storage (39 million acre-feet) by the net yield (15.2 million acre-feet) results in a storage-yield ratio of 2.57.

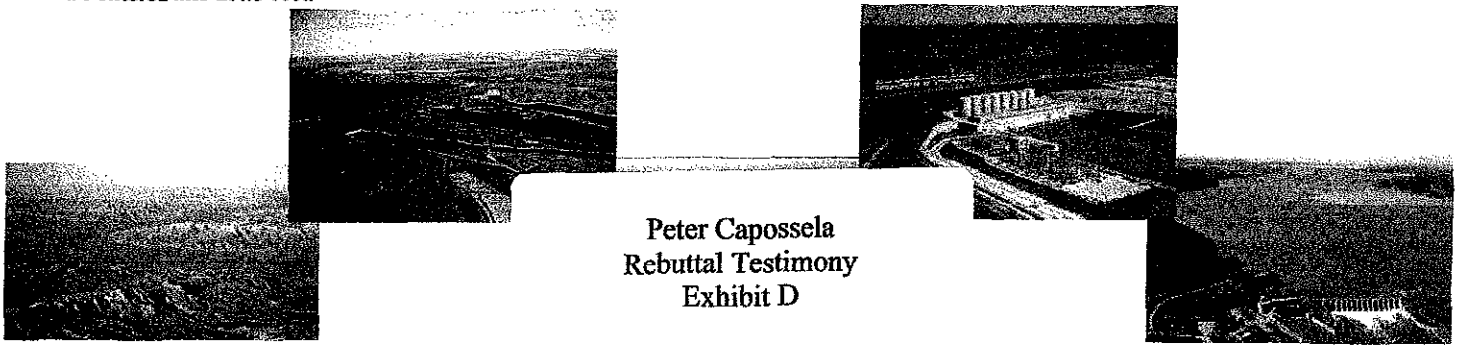
3. Analysis of alternatives to meet user demands

- Temporarily provide water from storage dedicated to other authorized purposes
- Utilize water from upstream and downstream source (Missouri free flowing segments)
- Groundwater withdrawal
- Other surface water sources
- Conservation/reuse

4. Cost/price for storage determination

Reservoir	Cost per AF of Yield**	Cost per AF of Storage
Ft. Peck Lake	$38.59	$15.02
Lake Oahe	$17.19	$6.69
Lake Sharpe	$36.65	$14.26
Lake Francis Case	$51.86	$20.18
Lewis and Clark Lake	$174.66	$67.96

**Pending completion of rule-making to establish a nationwide policy for surplus water uses under Section 6, surplus water agreements would be entered into at no cost.



Peter Capossela
Rebuttal Testimony
Exhibit D

DRA & IEN

US Army Corps of Engineers
Northwestern Division

U.S. Army Corps of Engineers
Missouri River Basin
Mainstem and Tributary Reservoir Bulletin

Project Data Date/Time: 3/1/15 12:00 AM — 03/01/15 11:12 PM

Project	Project Information				Current Data					Occupied Storage		
	Elevations (ft msl)		Storage (ac-ft)		Elevation (ft msl)	Dly Elev. Change	Storage (ac-ft)	Inflow (dsf)	Release (dsf)	MP (%)	FC (ac-ft)	FC (%)
	MP	FC	MP	FC								
MRR - Missouri River Mainstem Projects												
Fort Peck	2234.0	2250.0	14,788,340	18,462,840	2235.21		15,045,000	8,000	7,000	100.0	256660	1.4
Garrison	1837.5	1854.0	17,744,640	23,451,300	1838.81	-0.02	18,132,000	12,000	22,900	100.0	387360	1.7
Oahe	1607.5	1620.0	18,667,635	22,982,900	1608.17	-0.05	18,877,000	17,000	22,900	100.0	209365	0.9
Big Bend	1420.0	1423.0	1,631,474	1,810,414	1420.36	0.40	1,653,000	17,000	4,800	100.0	21526	1.2
Fort Randall	1350.0	1375.0	3,000,732	5,293,473	1349.71	0.13	2,978,000	20,000	16,000	99.2		
Gavins Point	1204.5	1210.0	295,406	428,033	1206.85	-0.04	347,000	18,000	19,000	100.0	51594	18.0
System Totals							57,032,000			100.0		5.7
NWO - USBR Section 7 Projects												
Tiber	2993.0	3012.5	925,649	1,328,723	2987.12	-0.05	824,509	200	599	89.1		
Clark Canyon	5546.1	5560.4	174,367	253,000	5532.24	0.07	109,465	176	31	62.8		
Canyon Ferry	3797.0	3800.0	1,891,888	1,992,977	M		M	M	M	4,930	100.0	#VALUE!
Boysen	4725.0	4732.2	741,594	892,000	4721.05	-0.04	667,141	565	931	90.0		
Buffalo Bill	5393.5	5393.5	646,565	644,000	5369.19	-0.04	462,288	223	366	71.5		
Yellowtail	3640.0	3657.0	1,020,573	1,278,396	3629.38	-0.03	905,703	2,820	2,957	88.7		
Jamestown	1431.0	1454.0	31,510	221,000	1429.55		27,282			86.6		
Heart Butte	2064.5	2094.5	67,142	214,000	2064.22	-0.14	66,221	113	345	98.6		
Keyhole	4099.3	4111.5	194,000	334,000	4097.58	-0.01	172,979	-44		89.2		
Pactola	4580.2	4621.5	55,972	99,000	4576.51	-0.04	52,865	35	52	94.4		
Shadehill	2272.0	2302.0	120,172	350,000	2268.45	-0.03	103,203	8	76	85.9		
Glendo	4635.0	4653.0	517,485	790,000	M	M	M	M	M	100.0	#VALUE!	###
NWO - USACE Tributary Projects												
Bowman-Haley	2754.8	2777.0	16,765	91,482	2752.43		13,794	41	41	73.5		
Pipestem	1442.5	1496.3	8,944	142,107	1442.04		7,977	11	11	89.2		
Chatfield	5432.0	5500.0	27,428	234,207	5431.97	-0.01	27,034	54	61	98.6		
Cherry Creek	5550.0	5612.1	12,805	133,634	5550.31	-0.04	12,823	20	M	100.0	18	0.0
Bear Creek	5558.0	5635.5	1,882	30,586	5558.50	-0.03	1,878	14	M	99.8		
Papio #11	1121.0	1142.0	3,054	16,907	1121.30		M			100.0	#VALUE!	###
Papio #16	1104.0	1121.0	1,211	4,782	1103.92		1,131			93.4		
Papio #18	1110.0	1128.2	2,916	10,512	1110.22		2,837	3	3	97.3		
Papio #20	1095.8	1113.1	2,569	8,611	1095.91		2,328			90.6		
NWK - Tributary Projects												
Bonny	3672.0	3710	41,340	170,160	M	M	M	M	M	100.0	#VALUE!	###
Swanson	2752.0	2773.0	112,285	246,291	M	M	M	M	M	100.0	#VALUE!	###
Enders	3112.3	3127.0	42,922	72,958	M	M	M	M	M	100.0	#VALUE!	###
Hugh Butler	2581.8	2604.9	36,225	85,089	M	M	M	M	M	100.0	#VALUE!	###
Harry Strunk	2366.1	2386.2	34,649	87,366	M	M	M	M	M	100.0	#VALUE!	###
Norton	2304.3	2331.4	34,509	133,739	M	M	M	M	M	100.0	#VALUE!	###
Harlan County	1946.0	1973.5	317,687	814,111	1932.76	0.04	166,488	M	M	52.4		
Lovewell	1582.6	1595.3	35,686	86,140	M	M	M	M	M	100.0	#VALUE!	###
Milford	1144.4	1176.2	388,816	1,145,526	1142.90		350,504	M	M	90.1		
NWK - Lower Kansas River Basin												
Cedar Bluff	2144.0	2166.0	172,451	364,342	M	M	M	M	M	100.0	#VALUE!	###
Kanopolis	1463.0	1508.0	49,470	418,935	1459.86	0.31	39,314	M	M	79.5		
Wilson	1516.0	1554.0	242,528	772,732	1507.72		169,872	M	M	70.0		
Kirwin	1729.3	1757.3	98,422	313,327	1715.55		42,696	M	M	43.4		
Webster	1892.5	1923.7	76,365	259,572	1871.00	0.01	18,936	M	M	24.8		
Waconda	1455.6	1488.3	219,420	942,408	1453.40	0.01	192,830	M	M	87.9		
Tuttle Creek	1075.0	1136.0	280,137	2,150,872	1076.35	-0.02	272,025	M	M	97.1		
Perry	891.5	920.6	200,004	722,486	891.69	-0.08	201,958	M	M	100.0	1954	0.4
Clinton	875.5	903.4	125,334	394,227	874.56	0.02	112,053	M	M	89.4		
NWK - Metro - Kansas City Area												
Blue Springs	802.0	820.3	10,888	26,557	802.27	0.02	11,085	M	M	100.0	197	1.0
Longview	891.0	909.0	22,134	46,944	889.89	0.01	21,164	M	M	95.6		
Smithville	864.2	876.2	141,744	243,538	862.49	0.01	129,908	M	M	91.6		
NWK - Chariton River Basin												
Rathbun	904.0	926.0	221,966	571,421	904.37	-0.04	225,632	M	M	100.0	3666	1.0
Long Branch	791.0	801.0	34,189	64,516	789.05	-0.04	29,711	M	M	86.9		
NWK - Osage River Basin												
Pomona	974.0	1003.0	64,208	240,331	972.06	0.01	48,134	M	M	75.0		
Melvern	1036.0	1057.0	152,051	360,258	1034.01	0.01	126,424	M	M	89.7		
Hillsdale	917.0	931.0						M	M	94.7		
Pomme de Terre	839.0	874.0						M	M	91.1		
Stockton	867.0	892.0						M	M	89.7		
Harry S. Truman	706.0	739.6	1,1					M	M	100.0	15920	0.4
Bagnell	660.0	665.0	1,9					M	M	100.0	#VALUE!	###

Peter Capossela
Rebuttal Testimony
Exhibit C

US Army Corps of Engineers
Northwestern Division

U.S. Army Corps of Engineers
Missouri River Basin
Daily River Bulletin

Bulletin Updated: 14Aug2015 07:13

STATION	Miles above Missouri R Mouth (1960)	Elev Datum (ft msl)	Flood Stage (feet)	Gage Reading (feet)	24-Hr Change (feet)	Estimated Discharge In/Out (cfs)	Actual Stor/Gen (KAF / Mwh)	24-Hr Precip (in)	Air Temp (deg F) Hi	Lo
Missouri River Mainstem Projects as of Midnight										
Fort Peck	1771.6			2235.9	0.0	M M	0 2537	0.00		
Garrison	1389.9			1843.6	0.0	M M	0 6312	0.00	94	67
Oahe	1072.3			1613.1	-0.1	M M	0 7719	0.00		
Big Bend	987.4			1420.1	-0.2	M M	0 3158	0.04	88	74
Fort Randall	880.0			1357.1	0.3	M M	0 5613	0.00	88	71
Gavins Point	811.1			1206.1	-0.1	M M	0 2402	0.00	88	69

M

System Storage	0 KAF
Storage Change	-61,034 KAF
Daily Generation	M Mwh

Selected Tributary Reservoirs as of Midnight										
Canyon Ferry	2252.8			3790.1	-0.2	1471 3887	1666	0.00		
Harry S Truman	175.1			708.0	-0.2	M M	1300 M	0.00		
Bagnell	81.7			M	-659.5	M M	0	0.00		
Selected River Gaging Stations as of 6:00 A.M.										
Yellowstone River										
Corwin Springs, MT	2113.0	5079.1	11	M	-2.3	M				
Livingston, MT	2063.0	4542.5	9.5	M	-2.6	M		M	M	M
Billings, MT	1928.0	3081.4	13.5	M	-3.1	M		M	M	M
Miles City, MT	1763.0	2330.2	13	M	0.0	M		M	M	M
Sidney, MT	1612.0	1881.3	19	M	-3.8	M				
Missouri River										
Virgelle, MT	2033.0	2507.5	17	M	-3.3	M				
Wolf Point, MT	1701.0	1958.6	23	M	-11.3	M		M	M	M
Culbertson, MT	1621.0	1883.4	19	M	-3.4	M				
Williston, ND	1553.0	1830.2	22	M	-15.5			M	M	M
Bismarck, ND	1315.0	1618.3	14.5	M	-5.2	M		M	M	M
Pierre, SD	1067.0	1414.3	13	M	-7.1			M	M	M
Yankton, SD	806.0	1139.7	20	M	-11.8	M		M	M	M
James River										
Scotland, SD	33.0	1168.5	13	M	-5.3	M				
Missouri River										
Ponca, NE	751.0	1080.0	20	M	-10.9					
Big Sioux River										
Akron, IA	54.0	1118.9	16	9.3	1.0	2230				
Missouri River										
Sioux City, IA	732.0	1057.0	30	12.4	0.2	30090		M	M	M
Decatur, NE	691.0	1010.0	35	20.8	0.0	29844				
Blair, NE	648.0	977.3	26.5	14.1	0.0					
Omaha, NE	616.0	948.2	29	14.7	-0.1	32764		M	M	M
Platte River										
Louisville, NE	17.0	1007.1	9	M	-3.2	M				
Missouri River										
Plattsmouth, NE	592.0	928.3	26	M	-15.8					
Nebraska City, NE	563.0	905.4	18	10.5	0.0	39462				
Brownville, NE	535.0	860.0	33	M	-26.7					
Rulo, NE	498.0	837.2	17	M	-10.3	M				
St. Joseph, MO	448.0	788.2	17	M	-9.8	M		M	M	M
Kansas River										
Wamego, KS	127.0	950.8	19	M	-5.5	M				
Lecompton, KS	65.0	821.8	17	M	-3.9	M				
Desoto, KS	30.0	753.8	26	M	-6.5	M				
Missouri River										
Kansas City, MO	366.0	706.4	32	M	-14.3	M		M	M	M
Napoleon, MO	329.0	680.2	17	M	-11.8					
Waverly, MO	293.0	646.0	20	M	-15.4	M				
Grand River										
Sumner, MO	41.0	631.3	26	M	-17.5	M				
Missouri River										
Glasgow, MO	226.0	586.1	25	M	-19.3					
Boonville, MO	197.0	565.4	21	M	-16.3	M				
Jefferson City, MO	144.0	520.1	23	M	-16.2					
Osage River										
St. Thomas, MO	35.0	525.7	23	M	-7.3	M				
Gasconade River										
Rich Fountain, MO	53.0	553.7	20	M	-5.8	M				
Missouri River										
Hermann, MO	98.0	481.6	21	M	-16.6	M				
St. Charles, MO	28.0	413.7	25	20.3	0.6			M	M	M
Mississippi River										
St. Louis, MO	1144.0	379.9	30	17.7	1.4	287000		M	M	M

M I S S O U R I R I V E R R E G I O N
D A I L Y R I V E R B U L L E T I N

14 AUG 2013

STATION		MILES ABOVE MO R. MOUTH (1960)	ELEV DATUM FEET MSL	FLOOD STAGE FEET	GAGE READ FEET	24 HR CHANGE FEET	EST DISCH CFS	STORE 1000 AC FT	24 HR PRECIP INCH	TEMP DEGR F HI	LO
MAIN STEM RESERVOIRS											
FORT PECK	POOL	1771.6			2225.8	-0.0	6000	13146	0.01	85	61
RES	TW						7900	2480	MWH		
GARRISON	POOL	1389.9			1835.4	-0.1	14000	17126	0.00	76	53
RES	TW						19200	5722	MWH		
OAHE	POOL	1072.3			1602.3	0.1	21000	17085	0.00		
RES	TW						17100	4955	MWH		
BIG BEND	POOL	987.4			1420.5	-0.1	18000	1650	0.00	77	61
RES	TW						20000	2368	MWH		
FORT RANDALL	POOL	880.0			1356.2	0.0	21000	3516	0.00	79	67
RES	TW						19800	4193	MWH		
GAVINS POINT	POOL	811.1			1206.3	0.0	21000	333	0.00	78	61
RES	TW						21000	1910	MWH		
					SYSTEM-STORAGE			52856			
					-CHANGE			-21			
					-GENERATION			21628	MWH		
SELECTED TRIBUTARY RESERVOIRS											
CANYON FERRY	POOL	2252.8			3786.8	-0.1	1270	1563			
RES	TW						3001				
HARRY S TRUMAN	POOL	175.1			713.2	0.1	30000	1659	0.00		
RES	TW						26865	2471	MWH		
BAGNELL	POOL	81.7			658.8	-0.2	28947	1861	0.00		
RES	TW						37182				
SELECTED RIVER GAGES											
YELLOWSTONE RIVER											
CORWIN SPRINGS		2113.0	5079.1	11	2.2	-0.0	1940				
LIVINGSTON,MT.		2063.0	4542.5	8					0.00	88	50
BILLINGS,MT.		1928.0	3081.4	13	2.6	-0.0	2600		0.00	86	62
MILES CITY,MT		1763.0	2330.2	13	3.0	-0.1	4950		0.00	83	61
SIDNEY,MT		1612.0	1881.3	19	3.8	0.0	3640				
MISSOURI RIVER											
VIRGELLE,MT.		2033.0	2507.5	17	3.0	-0.0	5040				
WOLF POINT,MT		1701.0	1968.6	23	11.2	0.2	8890		0.00	83	58
CULBERTSON,MT		1621.0	1883.4	19	3.4	-0.0	8030				
WILLISTON,N.D.		1553.0	1830.2	20					0.20	79	57
BISMARCK,N.D.		1315.0	1618.3	14	4.3	-0.0	18899		0.00	81	55
PIERRE,S.D.		1067.0	1414.3	13	6.3	-0.0			0.16	80	61
YANKTON,S.D.		806.0	1139.7	20	11.0	0.0	20983		0.00	77	54
JAMES RIVER											
SCOTLAND,S.D.		33.0	1168.5	13	7.3	-0.3	1540				
MISSOURI RIVER											
PONCA,NE.		751.0	1080.0	24	8.9	0.2					
BIG SIOUX RIVER											
AKRON,IA.		54.0	1118.9	16	6.7	-0.5	1110				
MISSOURI RIVER											
SIOUX CITY,IA.		732.0	1057.0	30	10.2	0.2	24141				
DECATUR,NE.		691.0	1010.0	35	19.3	0.2	24004				
BLAIR,NE.		648.0	977.3	26	11.3	0.0					
OMAHA,NE.		616.0	948.2	29	11.7	-0.1	24300		0.00	83	60
PLATTE RIVER											

LOUISVILLE,NE.	17.0	1007.1	9	2.9	0.1	3192			
MISSOURI RIVER									
PLATTSMOUTH,NE.	592.0	928.3	26	13.2	-0.2				
NEBRASKA CITY,N	563.0	905.4	18	7.5	-0.1	27200			
BROWNVILLE,NE.	535.0	860.0	33	23.0	0.0				
RULO,NE.	498.0	837.2	17	6.2	-0.1	28927			
ST. JOSEPH,MO.	448.0	788.2	17	5.0	-0.2	31500	0.01	82	59
KANSAS RIVER									
WAMEGO,KS.	127.0	950.8	19	7.3	-0.5	8000			
LECOMPTON,KS.	65.0	821.8	17	6.3	1.0	11200			
DESOTO,KS.	30.0	753.8	26	8.6	0.8	10400			
MISSOURI RIVER									
KANSAS CITY,MO.	366.0	706.4	32	9.7	-0.1	39800	0.00	81	63
NAPOLEON	329.0	680.2	17						
WAVERLY,MO.	293.0	646.0	20	10.4	-0.0	41037			
GRAND RIVER									
SUMNER,MO.	41.0	631.3	26	7.4	-0.1	238			
MISSOURI RIVER									
GLASGOW,MO.	226.0	586.5	25	10.9	-0.4				
BOONVILLE,MO.	197.0	565.4	21	7.1	-0.7	44247			
JEFFERSON CITY	144.0	520.2	23	7.1	-0.5				
OSAGE RIVER									
ST THOMAS	35.0	525.7	23	13.2	-0.4	34599			
GASCONADE RIVER									
RICH FOUNTAIN,M	53.0	553.7	20	10.1	-8.0	13300			
MISSOURI RIVER									
HERMANN,MO.	98.0	481.6	21	15.5	-0.9	124983			
ST CHARLES	28.0	413.5	25	19.5	-0.7		0.00	79	51
MISSISSIPPI RIVER									
ST. LOUIS,MO.	1144.0	379.9	30	11.2	-1.8	202996	0.00	80	57

MRR DAILY BULLETIN 14 AUG 2013

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DRA + IEN 13

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE APPLICATION OF DAKOTA ACCESS, LLC FOR AN ENERGY FACILITY PERMIT TO CONSTRUCT DAKOTA ACCESS PIPELINE PROJECT	)	HP14-002

PREFILED REBUTTAL TESTIMONY
OF
DALLAS GOLDTOOTH, INDIGENOUS ENVIRONMENTAL NETWORK

ON BEHALF OF INDIGENOUS ENVIRONMENTAL NETWORK
AND DAKOTA RURAL ACTION

AUGUST 14, 2015

1. Please state your name, address and occupation for the record:

A. My name is Dallas Goldtooth. My address is 38731 Res Hwy 1, Morton MN 56270.

2. Please state your position and area of responsibility with respect to the Dakota Access pipeline.

I am the Keystone XL and US Pipeline Campaign Organizer for the non-profit Indigenous Environmental Network. My responsibility is to raise awareness of the negative impacts fossil fuel development places upon frontline communities and to help those communities organize against such projects. Our organization is based in Bemidji, Minnesota but works regionally, nationally, and internationally to support the Rights of Mother Earth and the inherent sovereign rights of Indigenous Peoples fighting to protect their life-ways, lands, water, and sacred sites from ecological destruction.

3. Please state your professional qualifications and education:

I attended the University of California, Berkeley as an Ethnic Studies Major and Minor in Education. I was also a Dakota language apprentice with Dakota Wicohan, a language education consortium. As a campaign organizer for the Indigenous Environmental Network I have spent the past 4 years working with grassroots, spiritual, traditional, academic, scientific, and political leaders from across North America who are directly and indirectly involved in the fight against fossil fuel development and its adverse effects upon land, air, peoples and climate change. As the KXL Campaign Organizer I have received on-the-job experience in the dangers such pipeline transportation systems place upon the land, water and surrounding communities - and the tactics their sponsoring corporations use to influence counties, towns, landowners, and tribal nations to accept their projects. As the US Pipeline Campaign organizer I employ oil market analysis as a means to help support groups working to curb/respond to development.

4. What is the purpose of your rebuttal testimony?

I am providing rebuttal to Joey Mahmoud's pre-filed direct testimony. I am also testifying in disapproval of Dakota Access's request for a permit to construct, install, operate, and maintain the South Dakota portion of the Dakota Access Pipeline.

5. Have you read the testimony of Joey Mahmoud?

Yes, I have.

6. Do you agree with this testimony?

No, I do not.

7. If the answer is no, why not?

Mr. Mahmoud's testimony on the demand for the facility (Line 121) fails to address that although U.S. production of Bakken oil has been robust in the short term—a review of production data from the Bakken region indicates that production will not be sustainable in the long term. Updated market analysis shows that Bakken oil production will be far below the U.S. Department of Energy's Energy Information Administration's (EIA) projected forecast. The longevity of U.S. shale oil production at meaningful rates is highly questionable. There have been widespread lay-offs and jobs cut as companies cut back on production. In April, the number of drilling rigs in play declined by 760, the lowest number since December 2010. Certainly production will rise in the short term, but with the very likely peaking of the Bakken region (which provide 62% of current U.S. oil output) in the 2016-2017 timeframe, the ability for Dakota Access, LLC to maintain a high-level of committed shippers must be called into question.

8. Are you familiar with or have you read South Dakota 49-41B-22 regarding the applicant's burden of proof in obtaining a permit to construct an energy facility?

Yes.

9. Do you believe the proposed facility will comply with all applicable laws and rules?

No. It must consult with tribal nations whose land the facility is proposed to cross and abide by any laws or rulings applied by those nations.

10. Do you believe the facility will pose a threat of serious injury to the environment or to the social and economic condition of inhabitants or expected inhabitants in the siting area?

Yes. I believe that given the documented history of pipeline failures and their adverse negative effects, this project does pose a serious threat to the natural resources and peoples of South Dakota.

11. Do you believe the facility will substantially impair the health, safety or welfare of the inhabitants?

Yes. I believe that given the documented history of pipeline failures and their adverse negative effects, this project does pose a serious threat to the natural resources and peoples of South Dakota. This project will also create greater incentive for Bakken Oil extraction, which will in turn further impair the health, safety and/or welfare of South

Dakota, citizens.

12. Do you believe the facility will not unduly interfere with the orderly development of the region with due consideration having been given the views of governing bodies of affected local units of government.

No.

13. Do you consider federally recognized Tribes to be "local units of government?"

Yes.

14. Does this conclude your prepared testimony?

Yes

/s/ Dallas Goldtooth

Dallas Goldtooth, Indigenous Environmental Network
Keystone XL Campaign Organizer
Co-founder of The 1491s