
**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE PETITION OF
TRANSCANADA KEYSTONE PIPELINE, LP
FOR ORDER ACCEPTING CERTIFICATION
OF PERMIT ISSUED IN DOCKET
HP09-001 TO CONSTRUCT THE
KEYSTONE XL PIPELINE

**YANKTON SIOUX TRIBE'S
RESPONSE TO KEYSTONE'S
MOTION TO RESTRICT
TESTIMONY OF YANKTON
SIOUX WITNESSES SPOTTED
EAGLE AND UN-NAMED
MEMBER OF THE B&C
COMMITTEE**

HP14-001

COMES NOW Yankton Sioux Tribe (“Yankton”), by and through Thomasina Real Bird and Jennifer S. Baker with Fredericks Peebles & Morgan LLP, and hereby responds to *Keystone’s Motion to Restrict Testimony of Yankton Sioux Witnesses Spotted Eagle and Un-named Member of the B&C Committee* (“*Motion*”) as follows:

1. Contrary to the assertion made by TransCanada Keystone Pipeline, LP (“Keystone”) in the *Motion*, Questions 24 through 29, 32, and 33 do not address aboriginal title and usufructuary rights. See relevant excerpts from *Prefiled Testimony of Faith Spotted Eagle*, attached hereto as **Exhibit A** (exhibits omitted). Yankton agrees with Keystone that the Public Utilities Commission (“Commission”) has prohibited testimony regarding aboriginal title and usufructuary rights. However, because the afore-numbered questions do not address aboriginal title or usufructuary rights, Keystone has presented no grounds to exclude Faith Spotted Eagle’s testimony in response to these questions.

2. Keystone has cited no valid basis for the Commission to strike the rebuttal testimony for Faith Spotted Eagle or Jason Cooke.

3. The rebuttal testimonies for Ms. Spotted Eagle and Mr. Cooke were filed in accordance with the Commission's deadline for pre-filed rebuttal testimony and comply with all applicable rules of procedure. ARSD 20:10:01:22.06 governs written testimony ordered by the Commission. The only requirements provided by the rule are that the written (or prefiled) testimony be served on all parties on the date prescribed by the Commission and that the front page show the docket number, docket name, and name of the witness. The testimonies of Ms. Spotted Eagle and Mr. Cooke meet these requirements. *See Prefiled Rebuttal Testimony of Faith Spotted Eagle*, attached hereto as **Exhibit B**, and *Prefiled Rebuttal Testimony of Member of the Yankton Sioux Tribe Business & Claims Committee*, attached hereto as **Exhibit C**.

4. Keystone cites no law, rule, or regulation to support its allegation that the rebuttal testimony is somehow deficient.

5. The rules of practice before the Commission do not prohibit a party from filing rebuttal testimony containing generalized statements. In fact, Keystone prompted Yankton to submit generalized rebuttal testimony due to the generalized nature of the direct testimony Keystone itself provided. Aside from irrelevant and inadmissible statements regarding the Findings of Fact and the Tracking Table of Changes (which are not at issue in this proceeding), the rebuttal testimony submitted by Keystone consists almost entirely of generalized statements that do not contain any statements of fact or foundation for any opinion. The sole basis on which Keystone's case relies, looking only to its prefiled direct testimony, is the unfounded opinion of its five direct witnesses that they know of no reason the permit should not be certified. Keystone provided nothing to which Yankton's rebuttal witnesses could respond because it provided nothing concrete that is relevant to this proceeding.

If Keystone wishes to meet its burden of proof, it will have to address each of the fifty conditions contained in the original permit. Because it has failed to do so in its pre-filed direct testimony, it is impossible for Yankton's rebuttal witnesses to specifically rebut Keystone's arguments through its rebuttal testimony. Yankton's rebuttal witnesses have therefore provided as much information as possible, given Keystone's generalized pre-filed direct testimony, and identified the subject areas about which they will provide testimony "as appropriate based on the testimony offered by the Applicant." See **Exhibit B**, response to Question 8; see also **Exhibit C**, response to Question 5.

6. As shown above, Keystone has cited no valid basis for its request to strike the portion of Ms. Spotted Eagle's prefiled direct testimony referenced herein or either Ms. Spotted Eagle's or Mr. Cooke's prefiled rebuttal testimony.

WHEREFORE, Yankton respectfully requests that the Commission deny Keystone's motion with respect to Questions 24 through 29, 32, and 33 of Faith Spotted Eagle's direct testimony and all of Faith Spotted Eagle's and Jason Cooke's rebuttal testimony.

Dated this 17th day of July, 2015.


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EXHIBIT A

PREFILED TESTIMONY
OF
FAITH SPOTTED EAGLE

Docket No. HP14-001

**IN THE MATTER OF THE APPLICATION OF TRANSCANADA KEYSTONE
PIPELINE, LP FOR ORDER ACCEPTING CERTIFICATION OF PERMIT ISSUED
IN DOCKET HP09-001 TO CONSTRUCT THE KEYSTONE XL PIPELINE**

1. Please state your name and you home address.

A. My name is Faith Spotted Eagle. My home address is Box 667, Lake Andes, SD, 57356.

2. Are you a member of the Yankton Sioux Tribe or any other tribe?

A. I am an enrolled member of the Yankton Sioux Tribe.

3. What is your occupation or what kinds of work do you do?

A. Private consultant in PTSD Counseling for veterans and veteran's organization; Trainer/facilitator in Historical Trauma for all populations; school certified counselor work in schools, Dakota Language teacher, Manager of Brave Heart Lodge in Lake Andes.

4. Please describe your educational background and professional experience.

A. I have an MA in Educational Psychology and Counseling from USD, Vermillion, SD. I have held professional positions as a teacher, counselor, principal, manager of Human Service Programs, Family and Individual therapist, Grantwriter and currently am Chair of the Ihanktonwan Treaty Committee.

5. Did you provide a copy of your resume?

A. I have attached a biography, it is Attachment A.

6. On whose behalf was this testimony prepared?

A. This testimony was prepared on behalf of the Yankton Sioux Tribe.

7. Do you currently hold any positions with the Yankton Sioux Tribe?

A. I am an elected official by the General Council to be on the Ihanktonwan Treaty Committee and serve as the Chair for that body.

8. Please state the purpose of your testimony in this proceeding.

A. The main objective of the Yankton Sioux Tribe through this testimony is to provide information to the South Dakota Public Utilities Commission that the Applicant does not continue to meet all conditions upon which the permit was issued including violations of treaties, socio-cultural threats, and threats to safe drinking water, in particular reference to the potential coming of man camps which presents a safety conference of an at risk population already threatened by violence.

9. Please describe the professional work you conduct in the areas of historic trauma, cultural violence, socio-cultural violence.

A. I am a facilitator/trainer for the Tucson, VA for the purpose of assisting staff and veterans recover from Post-Traumatic Stress Disorder; along with serving as a consultant recovering from historical trauma and oppression all across the US and Canada. Some of these communities are Ponca Nation in NE; Spirit Lake Community in ND; Crow Creek Community in SD; Eepay Band/Rancheria in California; Tsu tina Nation near Calgary, Canada, among many others. I work with communities in developing strategies to stop "girl on girl" aggression, relationship violence and sexual and physical violence. As a grandmother of Brave Heart

Society we are responsible for the safekeeping of the environment, the water, safe communities and sacred sites.

10. Through your work in these areas, have you specifically organized gatherings to discuss concerns related of “man camps” or “construction camps” and their effect on the well-being of the communities surrounding these camps?

A. Yes. In August of 2013, the Brave Heart Society and the Treaty Committee organized and hosted the only conference that I know of to mobilize allies against the coming of man camps via KXL PIPELINE. Out of this gathering, strategic directions were developed to stop this threat in order to keep our communities safe.

11. Would you describe who attending those gatherings?

A. Our conference was attended by the US Attorney's Office out of Sioux Falls, SD. In fact Brendan Johnson was one of our speakers. Other attendees were women's shelters combatting sexual and physical violence from SD and ND. Also attending were recovering persons from sex trafficking situations. Treaty Councils, Tribal Council Members, Nebraska Bold and NEAT also attended, which are comprised of landowners and farmers. Many grassroots organizations like Dakota Rural Action and many others attended.

12. What information would you like to convey to the South Dakota PUC as a result of those gatherings?

A. It is frightening to think that no fore planning has been done to even recognize what happens when man camps are plopped into rural communities where wide gaps exist in law enforcement further impinged upon by cross-jurisdictional problems between reservation and state areas which are long standing issues. The Bakken experience proves that even non Natives are at risk. Many tribes do not have tribal/state agreements in order to handle cross jurisdictional major crimes. Mr. Johnson stated he could do nothing in the way of prevention until a crime occurred. We will not sit and wait for crimes to occur with close to 1800 men coming to treaty and unceded territory.

13. What specific information did you learn about the increase in police resources needed to address the increased crime that results from the placement of man camps near communities?

A. At our conference we had speakers and specialists who spoke of the impact of man camps near rural communities, in addition to the Bakken Range. Some of the speakers were from the Williston area. We also work with recovering sex workers who have first-hand knowledge.

14. What would you like the South Dakota Public Utilities Commission to know regarding anticipated increase in crime?

A. The Commission should anticipate a surge in crime, especially violent crime, in the communities near the man camps and not deny the fact that the current national statistics regarding Native people indicate that 3 out of 5 Native women will be raped in their lifetimes. I myself am a sexual abuse survivor and know that story well. As members of border towns, we are no strangers to violence. I can give details of an attack.

15. Have you reviewed Figure 2.1.5-1 entitled “Proposed Temporary Construction Camps”, attached hereto as Attachment B?

A. Yes.

16. What does this document depict?

A. From my understanding, it depicts the proposed locations of the Applicant’s man camps in South Dakota and Montana.

17. Are there any proposed man camp location(s) near the Yankton Sioux Reservation?

A. Yes, according to Attachment B, there is one proposed man camp to be located in Southeastern Tripp County. This location is equi-distant between the Rosebud Sioux Reservation and the Yankton Sioux Reservation, however, it is closer to the Yankton Sioux Reservation when traveling by vehicle.

18. What is your specific experience with the inhabitants of these man camps?

A. Man camps are inhabited by young and single men who are suddenly away from their families, spouses, and have the financial means to use and abuse illicit drugs. The result is easy to predict and does not require any scientific analysis – these young men, unfortunately, increase the crime rates including violent crimes, sexual crimes, and drug-related crimes. It is common sense that these men will need recreational outlets and will seek these at nearby casinos, including ours.

19. Why does this scenario especially troublesome for you and the Yankton Sioux Reservation?

A. Because the Yankton Sioux Tribe’s Fort Randall Casino and Hotel will be the closest large-scale entertainment center that offers a large selection of gaming, evening entertainment, bar and restaurant, and hotel in one place. I strongly believe that there will be undesired consequences that negatively and directly impact the Tribe’s socio-cultural as well as surge violent crime rates on an already overburdened police force.

20. Do you have jurisdictional concerns related to this point?

A. Yes, the nature of a tribe’s criminal jurisdiction is that it does not have criminal jurisdiction over crimes committed by non-Indians against Indians on the reservation. Even with the Congress’ passage of the Violence Against Women Reauthorization that allowed for expanded jurisdiction in certain circumstances, the reality is that the Yankton Sioux Tribe has not implemented VAWA. Even assuming it had, VAWA still requires the non-Indian perpetrator to be in a domestic relationship and have a tie to the reservation for the tribe to exert jurisdiction over the non-Indian.

21. What is the source or sources of your drinking water?

A. Lake Andes is a community that gets our water from the Missouri River.

22. Do you participate in ceremonies that involve the use of water?

A. All of our ceremonies are partaken with the existence of water presence. Our community sundances and other ceremonies are adjacent to the Missouri River.

23. What is the source or sources of water for those ceremonies?

A. The Missouri River.

24. In addition to the work you have already described, what other work do you do?

A. I am a member of the Tribe's governing body, its General Council, which consists of all adult members of voting age. I am also the Chairperson of the Ihanktonwan Treaty Steering Committee, which is appointed by the General Council. I am also a member of the Elder group and the Head of a revived Traditional Society, the Brave Heart Society which watches over sacred sites and burial sites.

25. Can you please explain the nature and purpose of the Ihanktonwan Treaty Steering Committee?

A. To oversee the protection of all treaty lands from depredation, exploitation and enforce the reason for the treaty.

26. Please describe the treaty you are referencing.

A. The 1851 Treaty of Fort Laramie is a binding peace treaty signed among the Dakota, Nakota, and Lakota and the United States to establish peace and identify boundaries for land to be used exclusively by the tribes who are signatories to that treaty

27. Please take a look at this document (Attachment C). Can you identify this document?

A. Yes, that is a copy of the 1851 Fort Laramie Treaty.

28. I'd like to show you A MAP that was provided by Keystone (Figure 2.1.1-2, FSEIS) (Attachment D). This is a map from Keystone that shows the planned route of the proposed pipeline project. What can you tell me about this map (Attachment D), of the pipeline route, compared with the Ihanktonwan Treaty Territory as defined by the 1851 Fort Laramie Treaty?

A. The proposed pipeline route clearly cuts corner-to-corner through our Treaty Territory.

29. Has the Ihanktonwan Treaty Steering Committee ever addressed the possibility of this proposed project being constructed?

A. Yes, this project has been of great concern to us as a Treaty Committee.

30. Why was this a concern to the Treaty Committee?

A. Because as that map demonstrates, the pipeline would trespass right through Treaty Territory guaranteed by the Fort Laramie Treaty as well as additional lands beyond that area that are unceded lands, and we still retain a multitude of rights on those lands based on the treaty that are protected by federal law and that are vital to our cultural, spiritual, and physical survival.

31. Can you describe some of these rights for us?

A. Hunting, fishing, gather medicinal plants, use of the water, burial responsibilities, oversight of sacred sites based on five historical preservation laws of the US that recognize our aboriginal right to protect these pre historical properties.

32. To your knowledge, has the Ihanktonwan Treaty Steering Committee ever given its approval for the construction of the proposed project?

A. No, never.

33. To your knowledge, has the governing body of the Yankton Sioux Tribe ever consented to construction of the proposed project through Ihanktonwan Treaty Territory?

A. No, never.

34. Does this conclude your prefiled testimony?

A. I reserve the right to supplement my prefiled testimony as well as offer additional testimony during the hearing in this case.

EXHIBIT B

PREFILED REBUTTAL TESTIMONY
OF
FAITH SPOTTED EAGLE

Docket No. HP14-001

IN THE MATTER OF THE APPLICATION OF TRANSCANADA KEYSTONE PIPELINE, LP FOR
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CONSTRUCT THE KEYSTONE XL PIPELINE

1. Please state your name and you home address.

A. My name is Faith Spotted Eagle. My home address is Box 667, Lake Andes, SD, 57356.

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A. I am an enrolled member of the Yankton Sioux Tribe.

3. What is your occupation or what kinds of work do you do?

A. Private consultant in PTSD Counseling for veterans and veteran's organization; Trainer/facilitator in Historical Trauma for all populations; school certified counselor work in schools, Dakota Language teacher, Manager of Brave Heart Lodge in Lake Andes.

4. Please describe your educational background and professional experience.

A. I have an MA in Educational Psychology and Counseling from USD, Vermillion, SD. I have held professional positions as a teacher, counselor, principal, manager of Human Service Programs, Family and Individual therapist, Grantwriter and currently am Chair of the Ihanktonwan Treaty Committee.

5. Did you provide a copy of your resume?

A. I attached a biography as Attachment A to my prefiled direct testimony.

6. On whose behalf was this testimony prepared?

A. This testimony was prepared on behalf of the Yankton Sioux Tribe.

7. Do you currently hold any positions with the Yankton Sioux Tribe?

A. I am an official elected by the General Council to be on the Ihanktonwan Treaty Committee and serve as the Chair for that body.

8. Please state the purpose of your testimony in this proceeding.

A. The purpose of my testimony is to rebut any testimony in support of the Applicant's position because the Applicant cannot prove that it continues to meet all conditions upon which the permit was granted. I can provide testimony on subjects including the interactions between TransCanada and the Yankton Sioux Tribe, the Yankton Sioux Tribe's position on the proposed project, the Programmatic Agreements executed in conjunction with the Final Environmental Impact Statement and the Final Supplemental Environmental Impact Statement (attached to this prefiled testimony as Exhibits A and B, respectively), cultural resources and sacred sites, the governing treaties between the United States and the Yankton Sioux Tribe, and the threats posed by the proposed project to the Yankton Sioux Tribe and its Tribal members as appropriate based on the testimony offered by the Applicant. Based on my knowledge, the Applicant cannot meet the conditions of the original permit.

EXHIBIT C

PREFILED REBUTTAL TESTIMONY

OF

**MEMBER OF THE YANKTON SIOUX TRIBE BUSINESS & CLAIMS COMMITTEE
(CONSISTING OF ELECTED MEMBERS: ROBERT FLYING HAWK,
QUENTIN JB BRUGIER, JR., MONA WRIGHT, JUSTIN SONGHAWK,
LEO O'CONNER, JEAN ARCHAMBEAU, GLENFORD SAM SULLY, JASON COOKE,
AND EVERDALE SONG HAWK)**

Docket No. HP14-001

**IN THE MATTER OF THE APPLICATION OF TRANSCANADA KEYSTONE PIPELINE, LP FOR
ORDER ACCEPTING CERTIFICATION OF PERMIT ISSUED IN DOCKET HP09-001 TO
CONSTRUCT THE KEYSTONE XL PIPELINE**

1. Are you a member of the Yankton Sioux Tribe or any other tribe?

A. I am an enrolled member of the Yankton Sioux Tribe.

2. What is your occupation or what kinds of work do you do?

A. I am an elected member of the Yankton Sioux Tribe Business and Claims Committee.

3. On whose behalf was this testimony prepared?

A. This testimony was prepared on behalf of the Yankton Sioux Tribe.

4. Under what authority are you providing this testimony?

A. Pursuant to Article IV of the Amended Bylaws of the Yankton Sioux Tribal Business and Claims Committee, the Business and Claims Committee shall act as liaison between the Tribe and state governments.

5. Please state the purpose of your testimony in this proceeding.

A. The main objective of the Yankton Sioux Tribe through this testimony is to rebut the testimony provided by TransCanada and any other party providing testimony in support of TransCanada's position because TransCanada does not or cannot continue to meet all conditions upon which the permit was issued. I can provide testimony on subjects including the interactions between TransCanada and the Yankton Sioux Tribe, the status of the Tribe as a local unit of government (please see TransCanada's response to Interrogatory No. 11 of Exhibit A attached to this testimony), the position of the Yankton Sioux Tribe on the proposed Keystone XL pipeline, the Programmatic Agreements executed in conjunction with the Final Environmental Impact Statement and the Final Supplemental Environmental Impact Statement (attached to this prefiled testimony as Exhibits B and C, respectively), governing treaties between the United States and the Yankton Sioux Tribe, and the threats posed by the proposed project to the Yankton Sioux Tribe and its members as appropriate based on the testimony offered by TransCanada.

CERTIFICATE OF SERVICE

I certify that on this 17th day of July, 2015, a true and correct copy of **YANKTON SIOUX TRIBE'S RESPONSE TO KEYSTONE'S MOTION TO RESTRICT TESTIMONY OF YANKTON SIOUX WITNESSES SPOTTED EAGLE AND UN-NAMED MEMBER OF THE B&C COMMITTEE** was filed on the Public Utilities Commission of the State of South Dakota e-filing website. And also on this day, a true and accurate copy was sent via email to the following (or US Mail first-class postage prepaid where no email is given):

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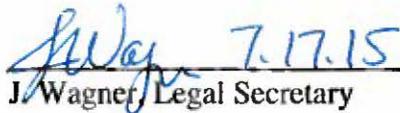
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