



Enterprise Board, Economic Development Board, the Tribal Ranch Board as well as the Law and Order Subcommittee. In addition I am a regional director for the Inter-Tribal Buffalo Council.

4. Please state the position of the Rosebud Sioux tribe with respect to an infringement of treaty rights upon the Treaty Territory of the Rosebud Sioux Tribe.

Answer: The Keystone XL pipeline will be a Gross violation of Article 16 and Article 11 of the Treaty of 1868. Although the land ownership has changed, the nature of the treaty stipulations was never removed or abrogated by Congress and they remain as part of the land like an encumbrance or you might equate it with a conservation easement. Until the easement has been removed it stays with the land. Our treaty-reserved rights carry with the land where today counties sit. Article 16 gives the Rosebud Sioux the right to say who passes through the territory. The Rosebud Sioux is supremely opposed to the Keystone XL pipeline passing through the territory and also endangering our Mni Wiconi Waterline. The entire Mni Wiconi waterline supply "system" is held in trust for four tribes by the United States as part of their trust responsibility. Thus if the State approves a permit for the Keystone XL pipeline they will be in violation of Article 6 of the U.S. Constitution which states the "Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding. Therefore, allowing this pipeline to cross even though the Rosebud Sioux Tribe opposes it being built here will place South Dakota in violation of Article 6 of the United States constitution. We therefore as a Tribe, as a Sovereign Tribal Government oppose the Keystone XL pipeline.

5. Are you aware of any reason that Keystone cannot continue to meet the condition on which the permit was granted by the Commission?

Answer: Yes, there is an easement negotiated by the United States for the Tribes as part of their trust responsibility to provide safe drinking water to the tribes. This easement agreement for the Oglala Sioux Rural Water Supply System was amended to add the Rosebud Sioux Tribe, the Lyman-Jones Rural Water system, the Cheyenne River Sioux Tribe and the Lower Brule Sioux Tribe to the Oglala Sioux Tribe as beneficiaries of the water line. The entire system is held in trust for the Tribes by the United States. The wording in the agreement signed by the grantors in the State of South Dakota stipulates that the ground above and surrounding the easement for the Oglala Sioux Rural Water Supply System cannot be disturbed without permission from the Oglala Sioux Rural Water Supply System and the United States. The Rosebud Sioux Tribe does not give permission and I am aware of other members of the Great Sioux Tribe who have passed



resolutions opposing the disturbing of ground around, under, or on top of the Oglala Sioux Rural Water Supply System. We call it the Mni Wiconi water line. This easement agreement and the entire water system was created and is supported by Public Law 100-516. Since the Rosebud Sioux Tribe has not approved of the disturbance of ground in the Oglala Sioux Rural Water Supply System easement agreement, this Keystone XL permit cannot be granted. If TransCanada has truly conducted meaningful consultation this would have been revealed to them and the Department of State.

Also if the State of South Dakota would have consulted with tribes as part of South Dakota Codified Law 1-54-6, then in their consultation with the Bureau of Indian Affairs, the state of South Dakota would have learned of the Federal recognition of the Rosebud Sioux Tribe's opposition to the Keystone XL pipeline crossing their territory and crossing the Mni Wiconi waterline easement. Further, if the State of South Dakota would have consulted with the Rosebud Sioux Tribe in accordance with South Dakota Codified Law 1-54-5, then the State of South Dakota would have found directly that the Rosebud Sioux Tribe is opposed to the Keystone XL pipeline and South Dakota would have complied with its own "policy" of consulting with tribal governments. For these reasons, the pipeline should not be approved because in addition to the Federal Government not negotiating with tribes in accordance with Section 106, National Historic Preservation Act, the State of South Dakota did not negotiate with tribes in accordance with South Dakota Codified Law, and TransCanada did not meaningfully consult with the Rosebud Sioux Tribe in accordance with the Treaty of 1868 stipulations which have never been abrogated.

Additionally, a cultural effigy has been discovered along the route on a cultural survey conducted by the Rosebud Sioux Tribal Historic Preservation Office in late 2014. This effigy deserves protection and is eligible for registry as a Tribal Cultural Property and a National Landmark.

6. Has the Tribal Council been made aware of the results of the cultural survey conducted by TransCanada?

Answer: Yes, I believe that the survey was published in the FSEIS and it indicated that a tribe conducted the survey on Rosebud territory and in several political precincts of the Rosebud Sioux Tribe. For those reasons, the Rosebud Sioux Tribe is the "appropriate Tribe" for purposes of the consultation as part of the Section 106 of the National Historic Preservation Act. If this permit is granted by South Dakota, it will be in violation of a Federal Law. It is understood that South Dakota does not have jurisdiction over those actions; however, it is also understood that you cannot violate the Tribe sitting in the middle of the process by allowing the permit to proceed. If for instance, at a later time, the United States determined that the cultural survey conducted by TransCanada from a moving vehicle was insufficient and that no U.S. Permit should proceed, then any



previously approved permit from South Dakota would not meet the stipulations of the first amended permit condition to obey all laws and regulations. This would place South Dakota and TransCanada in violation of a theoretically approved permit. This permit now, being approved before the Federal process is premature and should not be allowed.

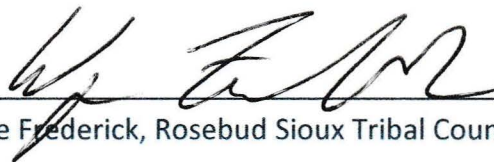
7. Has the Rosebud Sioux Tribal Government through its Tribal Historic Preservation Office been consulted about an unanticipated discoveries plan by TransCanada?

Answer: No they have not been meaningfully consulted. Publishing a plan or an environmental impact statement does not amount to meaningful consultation with a government. When the United States consults with the Rosebud Sioux Tribe there is meaningful dialogue. Our Tribal Historic Preservation Office is a Federally recognized office and deserves to be part of any unanticipated discovery plan for any project taken on traditional territory of the Rosebud Sioux Tribe. We have four housing areas off the reservation which sit on Trust land and are still under the jurisdiction of the Rosebud Sioux Tribal government which are in areas of impact from the Keystone XL pipeline. Those tribal housing areas are Ideal, Winner, Milk's Camp, and Bonesteel. These are traditional tribal living areas and as a result they have many sites to be protected. Many of our tribal burial sites were protected by secrecy because of the looting that took place in historic times and even continues today. As a result, many sites are known only by families and even the Tribal Historic Preservation Office may not know until they ask where these sites are. Our people are very protective of our sites and so they will more willingly give information to our tribal archaeology department staff rather than a foreign corporation's staff. We use specialized techniques that cannot be done from a moving vehicle in conducting a cultural survey. The result is that since TransCanada did not coordinate and continues not to coordinate with the Rosebud Sioux Tribe by not including the Rosebud Sioux Tribal Government's Tribal Historic Preservation Office as part of the unanticipated discoveries plan, they could disturb significant burial and cultural sites and areas. If the Tribe is not included as part of this process, again, this places the South Dakota Public Utilities Commission and TransCanada in violation of Article 1 of the 50 Amended Permit Conditions.

8. Does this conclude your pre-filed direct testimony?

Answer: yes.

Dated this 2<sup>nd</sup> day of April, 2015.



Wayne Frederick, Rosebud Sioux Tribal Council Member