

BEFORE THE PUBLIC UTILITY COMMISSION  
OF THE STATE OF SOUTH DAKOTA

IN RE APPLICATION BY TRANSCANADA KEYSTONE PIPELINE,  
LP FOR A PERMIT TO CONSTRUCT KEYSTONE XL PIPELINE

DOCKET NO. HP 001

PREFILED TESTIMONY BY PHYLLIS YOUNG  
TRIBAL COUNCIL REPRESENTATIVE  
STANDING ROCK SIOUX TRIBE

APRIL 2, 2015

Q. State your name and address for the record.

A. My name is Phyllis Young. I reside in Fort Yates, North Dakota on the Standing Rock Indian Reservation

Q. What is your occupation?

A. I serve as a Tribal Council representative on the Standing Rock Sioux Tribal Council. I have spent my career addressing housing needs on the Reservation as a longtime commissioner of the Standing Rock Housing Authority, and working for the protection of our natural resources, both within our Reservation and in the sacred Black Hills.

Q. Did you grow up on the Standing Rock Reservation?

A. Yes, as a child, I lived in the most beautiful place in the world, in the river bottom of the Missouri River, for my first ten years. I was free. I ate a healthy diet from the gardens we planted and the natural foods growing on the land. We drank water right from the Missouri River. It was pure then.

Q. Tell us a little bit about your childhood.

A. I am a child of Oahe. When I turned 10, the Oahe Dam inundated our homeland. One hundred and ninety-seven families on our Reservation were forced to move, in the middle of the winter in January, 1960. Our homes were never re-built or compensated for. For the first time, we knew hunger, and I experienced homelessness due to the development of the dams, in the national interest. Our lives were totally disrupted. The dam created welfare and took away our Tribal self-sufficiency. It created all of the social pathologies that result from removal from one's homeland.

Q. The Oahe Dam is a big energy project, but it is approximately 100 miles from the Standing Rock Reservation. Can an off-Reservation project have that much impact on the reservation?

A. The Oahe Dam is a federal project, and the government took 56,000 acres of our Reservation land pursuant to the Act of September 2, 1958 (Public Law 85-915), and

subsequently the Act of October 30, 1992 (Public Law 102-575). The Standing Rock Sioux Tribe was forced to sue the Corps of Engineers from illegally condemning Treaty-protected land, under the Fifth Amendment of the United States constitution. Our Tribe has always defended our Treaty rights, and we shall do so in light of the Treaty violations poised by the Keystone Pipeline.

The Standing Rock Sioux Tribe possesses Treaty rights that cannot be delegated to a corporation such as TransCanada. We also have aboriginal rights, and as a result all development projects must comply with the National Historic Preservation Act. We are concerned with the environment throughout what is now Western South Dakota, but which is our Treaty-protected land. The environment is not defined by artificial boundaries.

Q. Explain the Treaty rights of the Standing Rock Sioux Tribe.

A. The Standing Rock Sioux Tribe is comprised of constituent bands of the Great Sioux Nation. The Great Sioux Reservation was established in the Treaty of Fort Laramie of April 29, 1868, comprising the Missouri River and all of present-day South Dakota west of the Missouri. (15 Stat. 635). The pipeline route runs directly through our Treaty-protected lands. Consequently, I am also concerned with the potential environmental impacts in our Treaty territory and the effect on our Treaty rights.

Article 12 of the 1868 Fort Laramie Treaty prohibits any cession of Sioux Nation Treaty lands without % majority consent of the Sioux. (15 Stat. 638). Nevertheless, the clamor for gold in the Black Hills led Congress to enact the Act of February 28, 1877 (19 Stat. 254), which was an unconstitutional taking of over 7 million acres in the sacred Black Hills, from the Great Sioux Reservation. In response to land pressure for homesteaders, Congress subsequently passed the Act of March 2, 1889 (25 Stat. 888), which further reduced our land base and divided the Great Sioux Reservation into our present-day Reservation lands.

The Standing Rock Sioux Tribe and Great Sioux Nation have continuously asserted our Treaty rights to the Black Hills and 1868 Fort Laramie Treaty lands.. In 1975, the United States Court of Claims awarded the Sioux Nation \$108 million, including interest, for the unconstitutional taking of this land. (*United States v. Sioux Nation of Indians*, 518 F.2d 1298 (Ct. Cl. 1975)). The court declared that, "A more ripe and rank case of dishonorable dealings will never, in all probability, be found in our history." (*Id* at 1302). The Supreme Court

affirmed the Court of Claims ruling, but the Great Sioux Nation and Standing Rock Sioux Tribe have not accepted the monetary damages. ( *United States v. Sioux Nation of Indians*, 448 U.S. 371 (1980). Accordingly, we retain our claim to this land under the Fort Laramie Treaty.

There have been various proposals in Congress to resolve the Sioux Nation land claim. (E.g. 99th Cong., S. 1453, *Sioux Nation Black Hills Act*). We continue to pursue a just and honorable resolution to the Treaty violations of the United States. In fact, on May 4, 2012, the United Nations Special Rapporteur for the Rights of Indigenous Peoples, S. James Anaya, issued the following statement about the claim of the Great Sioux Nation and the Standing Rock Sioux Tribe, under the 1868 Fort Laramie Treaty:

The Black Hills in South Dakota... hold profound religious and cultural significance to the (Sioux Nation). During my visit, indigenous people reported to me that they have too little control over what happens in these places, and that activities carried out around them at times affront their values. It is important to note, in this regard, that securing the rights of indigenous people to their lands is of central importance to indigenous people's socio-economic development, self determination and cultural integrity.

Our land claim under the 1868 Fort Laramie Treaty is acknowledged at the United Nations. Our Treaty rights are the basis of our existence as a Tribal Nation. They are not a historical anomaly; they are valid existing legal claims under federal and international law. As the U.S. Supreme Court stated,

The Indian nations had always been considered as distinct, independent political communities, retaining their original rights, as the undisputed possessors of the soil, from time immemorial... The very term "nation" so generally applied to them, means "a people distinct from others." The constitution, by declaring treaties already made, as well as those to be made, the supreme law of the land, has adopted and sanctioned the previous treaties with the Indian nations, and consequently admits their rank among those powers who are capable of making treaties. The words "treaty" and "nation" are words of our language, selected in our diplomatic and legislative proceedings, by ourselves, having each a definite and well understood meaning. We have applied them to Indians, as we have applied them to other nations of the earth. They are applied to all in the same sense.

( *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 559-560 (1832)).

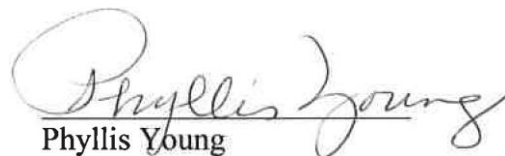
Under the Fort Laramie Treaty, we have the right to a healthy environment. Article 2 of the Treaty describes our ownership interest to the lands of the Great Sioux Reservation, as "set apart for the absolute and undisturbed use and occupation..." of the Great Sioux Nation. (15 Stat. 635). The revised route of the Keystone XL Pipeline would cross this land, for hundreds of miles. Under Article 11 of the Fort Laramie Treaty, "Should such roads or other works be constructed on the lands of their reservation, the Government will pay the tribe whatever amount of damage may be assessed by three disinterested commissioners to be appointed by the President for that purpose, one of said commissioners to be a chief or head man of the Tribe." (15 Stat. 638). Thus, under Article 11 of the Fort Laramie Treaty, we are entitled to have a seat at the table on decisions involving projects such as the Keystone XL Pipeline.

Q. Did the State Department consult with the Standing Rock Sioux Tribal government on the Keystone XL Pipeline?

A. No.

Q. Did TransCanada consult with the Standing Rock Sioux Tribal government on the Keystone XL Pipeline?

A. No. Instead, there were efforts to co-opt certain Tribal communities. I reference the TransCanada memorandum dated November 13, 2013, exhibiting disrespect to Tribal members of the Cheyenne River Sioux Tribe; and the TransCanada letter dated July 18, 2012, attempting to bribe the Ideal community on the Rosebud Reservation. TransCanada has never demonstrated any respect for the Indian Nations. That is why the PUC should deny certification of the permit for the Keystone XL Pipeline Project.

  
Phyllis Young

STATE OF NORTH DAKOTA )

SIoux COUNTY )

SUBSCRIBED and SWORN to before me  
this .....\_.

TAMERA ALKIRE  
Notary Public  
State of North Dakota  
My Commleelon Expire& Feb. 4, 2021

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NOTARY PUBLIC

My Commission Expires\_\_\_\_\_