

**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 WASTE' WIN YOUNG
TRIBAL HISTORIC PRESERVATION OFFICER
STANDING ROCK SIOUX TRIBE**

APRIL 2, 2015

**Motion for Reconsideration - Young
Exhibit A**

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 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. I also consult 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.

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 TransCanada, 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 Keystone XL 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 State Department used under section 106 of the National Historic Preservation Act for the Keystone XL Pipeline?

A. The State Department sent a boilerplate letter to our office that did not establish a meaningful process for the participation of my office in the NHPA Section 106 process. The agency attempted to combine historic preservation consultation (SHPO's and THPO's) required under Section 106 of the NHPA with Tribal government consultation required under Executive Order 13175 and SDCL §1-54-5. Consequently, my office was not given the opportunity to participate in a well-defined process for identifying and evaluating historic properties. The

process established for the requisite consultation was akin to getting one's flu shots at the DMV – different functions were combined and as a result neither consultation process was properly conducted. The consultation process has been exaggerated and mischaracterized by the State Department and by TransCanada – in violation of both federal and state law.

The SRST was not afforded a meaningful opportunity to participate in identification efforts for historic properties along the Keystone XL Pipeline route. Keystone XL and other pipelines have the potential to damage (through construction or failure of equipment) and destroy cultural resources that have not been identified through pedestrian surveys.

This has real world consequences. The limited number of historic properties identified in current surveys illustrates the failure of TransCanada's archaeologists to conduct proper identification in accordance with the NHPA. The State Department Final Supplemental Environmental Impact Statement was not available when the Final Order was entered granting TransCanada a permit on June 29, 2010. Now that this information has been released, it is apparent that there have not been adequate surveys with proper Tribal involvement.

In fact, my office requested additional information on sites 24MC0480; 24VL1900; 24VL1905; 24VL1911 and VL1928 – the status of which remains unresolved at this late date.

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, TransCanada'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.

There are no specific mitigation provisions. The provisions of the Programmatic Agreement (“PA”) are too general. I have not signed it on behalf of the Standing Rock Sioux Tribe. Accordingly, an alternative process of resolving disputes over adverse effects and undiscovered historic properties must be put in place. But it has not been. In the absence of a process involving my office as an alternative to the PA, the project remains out of compliance with the NHPA.

For these reasons, the required processes for consultation and evaluation under NHPA Section 106 have not been followed by the State Department or TransCanada. As a result, the 2014 Final Supplemental Impact Statement fails to provide a sufficient basis for approval of a Presidential Permit for the Keystone XL Pipeline.

Q. Did TransCanada cooperate with your office on cultural resources issues related to the Keystone XL Pipeline?

A. No.

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

A. The Keystone XL 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 1851 and 1868). The Sioux people were nomadic people and followed the buffalo. Our valuable cultural resources are located throughout the path of the Keystone XL Pipeline. Yet the proper procedures to make the requisite determinations have not been followed. The Keystone XL Pipeline is unable to continue to comply with Amended Condition number 43 in the Amended Conditions to the Final Order in HP 09-001. The petition to certify should be denied.

Waste'Wir Young

SUBSCRIBED and SWORN
to before me this ___ day of
April, 2015.

