

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

)	
)	HP14-002
IN THE MATTER OF THE)	
APPLICATION OF DAKOTA ACCESS,)	DRA AND IEN
LLC FOR AN ENERGY FACILITY)	REPLY BRIEF
PERMIT TO CONSTRUCT THE)	
DAKOTA ACCESS PIPELINE)	
)	

For its response to Applicants and PUC staff's post trial briefs, Dakota Rural Action and the Indigenous Environmental Network Rosebud state the following:

Compliance with Sec. 106 of the National Historic Preservation Act (NHPA):

The permit request for the Dakota Access Pipeline must be denied because DAPL acknowledged to the PUC that the cultural surveys failed to comply with the applicable requirements for Tribal participation in the identification and evaluation of historic properties in the DAPL cultural surveys. (“**I said they weren’t consulted for surveys.**” Tr. at 470, line 23 (emphasis added). See 16 U.S.C. §470h-2(a)(2)(e)(ii) (statutory requirement for Tribal consultation); 36 CFR §800.2(c)(2)(ii)(A) (regulatory requirement for Tribal consultation).

Alternative Route Analysis: Moreover, DAPL failed to introduce **any** evidence that it meets certain permit requirements, such as supplying a map and analysis of alternative pipeline routes, ARSD §20:10:22:12; and produced **insufficient** evidence on important potential environmental impacts, including water quality in the Missouri River near Tribal drinking water intakes at Standing Rock and Cheyenne River. ARSD §§20:10:22:15 (impacts on hydrology); 20:10:22:17 (impact on aquatic wildlife).

Mitigating Risks: These intakes serve drinking water to South Dakotans on the Standing Rock and Cheyenne River Reservations, but the record is devoid of threat assessment or mitigation. (Project shall “not substantially impair (public) health, safety or welfare; and not unduly interfere with the orderly development of the region.” SDCL §49-41B-22(3)). In order for the permit to issue, DAPL must

provide “employment estimates, and an assessment of the adequacy of local manpower to meet the labor requirements.” ARSD §20:10:22:24. It failed to do so, per the Staff Witness testimony of Dr. Michael Shelly. Tr. at 973-975.

Missouri River and HCAs: The Commission has the responsibility of ensuring that the proposed energy facility does not impair the people and lands of South Dakota. *Id.* While PUC staff maintains that the Commission is without the authority to regulate the pipeline outside of the state lines. “The Commission does not have the legal ability or procedures to enforce regulations outside its statutory jurisdiction.” Commission does the authority and **responsibility** to protect the people’s water that flows into the State but ensuring that it is not polluted by a spill from a pipeline that it does have the authority to permit. *Id.* DRA and IEN reiterate the importance of protecting the drinking water of the citizens of South Dakota and urge the Commission to deny the pipeline based on the threat it poses to the Missouri River and the other 129 water bodies it crosses in South Dakota.

Tribal rights must be recognized and protected: Dakota Rural Action and the Indigenous Environmental Network support the arguments of the Tribes regarding the environment, endangered species and wildlife impacts. We urge the Commission to honor these off and on reservation property rights.

Burden of Proof: Consequently, DAPL has failed to meet its burden of proof and the permit application must be denied. SDCL §49-41B-22. DAPL provided no argument and emphasized no evidence in its Post-hearing brief to overcome these failures. The record does not contain information that is required in order to grant the permit.

We urge the rejection of this pipeline permit in order to protect the lands, water and people of South Dakota.

DATED this 20th day of November, 2015,

/s/Kimberly Craven

Kimberly Craven, AZ BAR #23163
3560 Catalpa Way
Boulder, CO 80304
Telephone: 303.494.1974

Fax: 720.328.9411

Email: kimecraven@gmail.com

*Attorney for Dakota Rural Action &
Indigenous Environmental Network*