

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

IN THE MATTER OF THE
APPLICATION OF DAKOTA
ACCESS, LLC FOR AN ENERGY
FACILITY PERMIT TO CONSTRUCT
DAKOTA ACCESS PIPELINE
PROJECT

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HP14-002

PREFILED REBUTTAL TESTIMONY
OF
WASTE'WIN YOUNG, STANDING ROCK SIOUX TRIBE
ON BEHALF OF INDIGENOUS ENVIRONMENTAL NETWORK
AND DAKOTA RURAL ACTION

AUGUST 14, 2015

STANDING ROCK SIOUX TRIBE
TRIBAL HISTORIC PRESERVATION OFFICE
AFFIDAVIT OF WASTE' WIN YOUNG

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 manage the preservation of archeological and cultural resources of cultural, religious, and historical significance to the Standing Rock Sioux Tribe. 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.

The Tribal Historic Preservation Officer also consults 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.

The Tribal Historic Preservation Officer assists federal, state and tribal agencies in Section 106 identification efforts for sites of religious and historical importance to the Standing Rock Sioux Tribe.

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 Energy Transfer, 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 Dakota Access 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 Army Corps of Engineers used under section 106 of the National Historic Preservation Act for the Dakota Access Pipeline?

A. The ACOE has not formally consulted with the Standing Rock Sioux Tribe for the Dakota Access Pipeline despite the SRST Tribal Historic Preservation Office's request to do so (please see SRST THPO letter).

The SRST was not afforded a meaningful opportunity to participate in identification efforts for historic properties along the Dakota Access Pipeline route. The SRST THPO met with Monica Howard (Energy Transfer) and Dean Sather (Merjent) regarding the opportunity for the tribe to conduct Identification efforts under the NHPA, especially on the Missouri River crossing. (Please see attached email).

Energy Transfer and Merjent archaeologists have not conducted proper identification in accordance with the NHPA. The email communication shows the the SRST THPO made a good faith effort to meet with the companies. Energy Transfers and Merjent gave us copies of the maps of the Missouri River crossing. Ms. Howard said she would follow up with us regarding participation in identification efforts but did not. It is apparent that there have not been adequate surveys with proper Tribal involvement.

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, the ACOE'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.

For these reasons, the required processes for consultation and evaluation under NHPA Section 106 have not been followed by the ACOE or Dakota Access Pipeline.

Q. Did the ACOE cooperate with your office on cultural resources issues related to the Dakota Access Pipeline?

A. No.

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

A. The Dakota Access 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 Dakota Access Pipeline.

The NHPA process was followed. The ACOE never met with the SRST on NHPA Section 106 Consultation.

Waste' Win Young

Waste' Win Young

SRST THPO

North Standing Rock Avenue

Fort Yates, North Dakota

58538

SUBSCRIBED and SWORN to before me this 14 day of August, 2015.

Tamera Alkire

