



EARTHJUSTICE

October 4, 2016

VIA CM/ECF

Mark Langer
Clerk of the Court
United States Court of Appeals for the D.C. Circuit
333 Constitution Avenue, NW
Room 5205
Washington, D.C. 20001

Re: *Standing Rock Sioux Tribe v. Army Corps of Engineers*, No. 16-5259
Response to 28(j) Letter

Dear Mr. Langer:

Plaintiff-Appellant Standing Rock Sioux Tribe submits this letter pursuant to Rule 28(j) responding to the 28(j) letter submitted today by Appellee Dakota Access and attaching the Second Declaration of Jon Eagle, Sr. (Oct. 4, 2016).

The State Historical Society memorandum submitted by Dakota Access describes a site visit conducted at the request of a Law Enforcement Task Force investigating Dakota Access's bulldozing of the pipeline corridor identified in the September 2, 2016 Declaration of Tim Mentz, Sr. That declaration documented sacred burial grounds and ceremonial sites on lands adjacent to and crossing into the pipeline corridor.

Dakota Access overstates the import of the memorandum. The survey reports that no human remains or cultural materials were found *after* Dakota Access had bulldozed the area. It says nothing about whether the sites identified by Mr. Mentz were destroyed by Dakota Access the day after Mr. Mentz's findings were filed with the district court.¹

The Tribe submits the Second Eagle Declaration, which substantiates that sacred sites were destroyed by the bulldozing on September 3, 2016. Mr. Eagle recounts a meeting he attended to discuss the preliminary findings embodied in the State Historical Society

¹ Dakota Access cites to a statement in the district court opinion at 36 that the pipeline seemed to be routed around cultural sites, but nothing in the record addresses the particular sites that Mr. Mentz identified. The maps cited by the district court were neither authenticated nor tied to these specific sites. ECF No. 34 (Response to TRO at 6-8).

United States Court of Appeals for the D.C. Circuit
October 4, 2016
Page 2

memorandum. Mr. Eagle compared the archaeologists' maps and photographs to the report produced by Mr. Mentz and showed that documented portions of the sacred sites, including burial cairns, were no longer there. *Id.* ¶¶ 7-9. Mr. Eagle asked to be included in the investigation and to visit the other areas in the pipeline corridor that have not yet been bulldozed, and he was contacted after the meeting about joining the State Historical Preservation Officer in surveying the area. *Id.* ¶¶ 11-13.

Respectfully submitted,



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Attachment

cc: All Parties via CM/ECF

No. 16-5259

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

Standing Rock Sioux Tribe, *Plaintiff-Appellant*
Cheyenne River Sioux Tribe, *Intervenor-Plaintiff*

v.

U.S. Army Corps of Engineers, *Defendant-Appellee*
Dakota Access, LLC, *Intervenor- Defendant-Appellee*

On Appeal from the United States District Court for the District of Columbia
(No. : 1:16-cv-01534-JEB)

Declaration of Jon Eagle, Sr.

1. My name is Jon Eagle Sr. I am the Tribal Historic Preservation Officer (“THPO”) for the Standing Rock Sioux Tribe (“SRST”), and an enrolled member of the Tribe. I previously submitted a declaration dated August 4, 2016, that was filed in this case.

2. On September 2, the Tribe provided to the Court vitally important documentation regarding a number of sacred sites, including stone features and burials, along a two mile stretch in the pipeline’s path. This information was contained in a Declaration from Tim Mentz, Sr. The following day Dakota Access sent construction crews to that specific place, and bulldozed the entire area. This terrible and intentional action was taken without consulting with Tribal or State historic preservation officials. I wrote to the North Dakota State Historic Preservation Office on

September 7, 2016, requesting a stop work order to address this situation and to preserve cultural resources along this area of the Dakota Access pipeline.

3. The Tribe has particular expertise in the identification and protection of sites that are important to the Tribe's own culture. For this reason, it is important for the State's Chief Archaeologist to consult with the Tribal Historic Preservation Office and to conduct a joint comprehensive review on the ground before making any determination. A review that is undertaken without Tribal participation is not adequate to protect Tribal cultural resources.

4. I am familiar with the Memo dated September 22, 2016 signed by Paul R. Picha, Chief Archeologist for the State Historical Society of North Dakota. This memo was the subject of discussion at a meeting held on Monday September 26, 2016 which I attended.

5. The meeting held on September 26, 2016 was to discuss the result of a site visit that had been done by archeologists from the State Historical Society on September 21, 2016 of a portion of the Dakota Access pipeline west of Highway 1806 that had been bulldozed by Dakota Access on September 3. Present at this meeting were: Kyle Kirchmeier, the Sheriff for Morton County North Dakota; Paul R. Picha, the Chief Archeologist, State Historical Society; and Fern Swenson, Deputy SHPO for the State Historical Society. Also present was Scott Davis, the Director of the North Dakota Indian Affairs Commission, a cabinet level position in the office of the Governor; as well as the Colonel of the North Dakota Highway Patrol; two Special Investigators from the Bureau of Indian Affairs; and two investigators from the North Dakota Criminal Division.

6. At that meeting Mr. Picha and Ms. Swenson presented their preliminary findings of their September 21 walkthrough. Most significantly, while the walkthrough was to address the destruction of sites that are significant to the Tribe, neither I nor any other official or representative from the Standing Rock Sioux Tribe was invited or allowed to participate in the walkthrough that the state's archeologists had done on September 21 of the area. While Tribal cultural resources experts know what is significant to the Tribe, others often do not. This is why meaningful participation by the Tribe is so important in matters concerning the potential destruction of sacred sites.

7. At the September 26 meeting Mr. Picha and Ms. Swenson had maps and photographs of the area they reviewed. They presented these and expressed a preliminary view that human remains or cultural resources were not found in the area bulldozed on September 3.

8. In the presence of this group of state and federal officials, I reviewed the state archeologist's maps and photographs of the area, and then compared those to the information in the surveys and report that had been prepared by Mr. Mentz. By doing this comparison for the sites that had been identified by Mr. Mentz, I was able to show the state and federal officials that substantial portions of a stone feature and sacred site identified by Tim Mentz on September 2, were gone – either damaged or destroyed by the bulldozing and grading done by Dakota Access on September 3. The comparison made clear that portions of the sacred site, including burial cairn that Mr. Mentz identified, were gone. The State officials did not dispute this at the meeting.

They seemed concerned that their initial findings had not reflected the sites that I pointed out to them at the meeting.

9. Mr. Picha said that they found no human remains. I asked whether they had taken apart the berms created by the bulldozing, and Mr. Picha said they had not. I asked how he could state that there were no human remains without examining the berms.

10. During the discussion, I also encouraged the State's archeologists to overlay the maps of the location of the Dakota Access pipeline corridor with the maps of the corridor for the Northern Border gas pipeline. Although there is GIS data on the locations for both, the state archeologists had not, in their review, actually used the GIS data to compare the locations of the various corridors. I asked them to do this. I also asked them to overlay the maps from Northern Border and DAPL with the maps prepared by Tim Mentz and his company Makoce Wowapi.

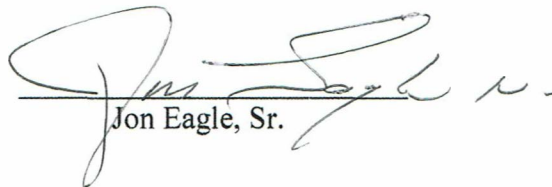
11. During the meeting, I also advised the state and federal officials that there are still undisturbed areas – west of 1806 extending to Highway 6. I stated that it was important for the THPO, and the SHPO, to visit this area and to make sure that before any construction continues, all culturally significant sites are identified and that steps are taken to avoid them.

12. At the conclusion of the September 26 meeting, the state officials said that the State's investigation will continue. They further indicated that the Tribe, through the THPO's office, needs to be involved and brought to the area to participate in a cultural resource survey of it. After that meeting, Scott Davis, the Director of the North Dakota Indian Affairs Commission,

contacted me and informed me that they were working to make arrangements so that I can join the SHPO to survey this area.

13. Based on the meeting on September 26, I was informed that the Mr. Picha's Memo dated September 22, is not the State's final position on the matter.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed this 4th day of October 2016 at Fort Yates, North Dakota.



Jon Eagle, Sr.