

Case No. 1:16-cv-1534-JEB

ATTACHMENT 1

Case No. 1:16-cv-1534-JEB

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STANDING ROCK SIOUX TRIBE,

Plaintiff,

v.

U.S. ARMY CORPS OF ENGINEERS,

Defendant.

Case No. 1:16-cv-1534-JEB

**SUPPLEMENTAL DECLARATION OF TIM MENTZ, SR. IN SUPPORT OF MOTION
FOR PRELIMINARY INJUNCTION**

I, Tim Mentz, Sr., declare as follows:

1. I have previously submitted a declaration to this Court that includes my qualifications and background. In that declaration, I expressed an opinion that the construction of the pipeline would very likely, if not certainly, destroy sites of significant cultural and historic value to the Standing Rock and other tribes. This declaration provides additional information to support that opinion.

2. On August 28, 2016, I received an unsolicited phone call from Mr. Dave Meyer, the individual who owns the land immediately to the north of the Standing Rock reservation on either side of Route 1806, which is the area on the west side of Lake Oahe and has been a focus of the dispute between the Tribe and DAPL. Mr. Meyer owns 8,000 acres, and uses it primarily to graze buffalo. Mr. Meyer wanted to discuss a cultural survey of his land by my company.

Mr. Meyer stated that he was concerned about the potential destruction of culturally important sites and hoped to facilitate efforts to mitigate or avoid harm to important sites from the pipeline, and maintain a record of them for his family. Mr. Meyer stated that he didn't know what a cultural site or burial looked like, and wanted to know where these sites are located so he could understand how he should manage his land.

3. Mr. Meyer told me that he controlled the land outside the pipeline corridor and could give permission to anyone he wanted to enter his land. He did grant that permission to me and my co-workers as long as we did not enter into the corridor itself. He directed us to an area of his property on the west side of Highway 1806 through which the pipeline corridor traversed that was not being grazed by buffalo at the time, and invited us to survey it. The area is approximately 1.75 miles away from the proposed Lake Oahe crossing. No construction equipment was in sight. He stated that we could enter the pipeline corridor itself as long as he accompanied us, and indicated that he wanted to do that in the near future once we'd familiarized ourselves with the area.

4. At 2:30pm on that day, I followed Mr. Meyer's instructions to an area adjacent to the pipeline corridor to the west of Highway 1806. The pipeline right-of-way was clearly visible as it was staked out and had been mowed and cleared of large vegetation. The day was clear and visibility was very high along the route. We immediately observed a number of stone features in the pipeline route plainly visible from the edge of the corridor. I am very confident that this site, located within the center of the corridor, includes burials because the site contained rock cairns which are commonly used to mark burials. Two cairns were plainly visible and a possible third one existed above the cut area. I then noticed to the east twenty meters of this area a prairie dog town and multiple stone rings visible at that distance. Since prairie dogs eat all vegetation to the

soil, these stone features were very visible and very distinct. (I discussed the importance of these kinds of features in my first declaration.) The stone rings were also directly in the cleared pipeline corridor.

5. Because we found significant stone features in just a short amount of time during a casual reconnaissance, we concluded this visit so that we could return with a survey team to conduct a full Class III cultural survey of the site. My initial impression was that we had seen sites of significant cultural importance and that the site needed greater scrutiny. The landowner had told me during the August 28 phone call that he would allow us to survey the pipeline corridor itself, which was permitted as long as he was with us. I felt that surveying the pipeline corridor (rather than standing outside of it and looking in) would be useful to further classify and evaluate the sites that we could see from the corridor's edge. However, when we talked subsequently, Mr. Meyer changed his mind and would not accompany us into the corridor. As a result, we continued the Class III survey work on the edge of the pipeline corridor, looking into it but not entering the corridor itself.

6. On August 30 and 31, and September 1, 2016, we completed a Class III survey along the south side of the DAPL corridor over a length of approximately two miles and a width of 150 feet. In this area, we found a significant number of stone features (82) and archeological sites, including at least 27 burials. Some of these sites are immediately adjacent the DAPL corridor. Many others visibly extended from outside the corridor (where we had direct access) to inside the corridor (where we did not). Because the rock was so visible inside the corridor, we were able to get useful drawings of many sites that extended into the corridor. Other maps depict numerous sites adjacent to, and in, the pipeline corridor. Note that a site can refer to either a single stone feature such as a rock cairn or ring, or a complex of multiple features covering a

much greater area.

7. In addition to a large number of cairns, burials, and stone rings, the survey found five sites of very great cultural and historic significance. These stone feature sites are very rare to find and are located within the corridor or adjacent to the corridor by as little as a foot. Based on my extensive experience evaluating sites on the National Register of Historic Places, it is my opinion that each of these sites unquestionably meets the criteria for inclusion in the National Register. The Hunkpapa and Cuthead Bands are specific to the Standing Rock Sioux Tribe and its members still reside in the area and remember these stone feature site locations. This area contains site types of different leadership that is highly concentrated in one area, which makes this cultural landscape very unique and limited in data recordation. These types of areas are very unusual and hard to find in the type of density that we observed here.

8. I have included with this declaration the following Exhibits. Exhibit 1 is a map that my company created, under my oversight, of the pipeline corridor west of HWY 1806 that marks the sites we have found inside and outside of DAPL corridor. Exhibit 2 is a copy of a map of the land under Dave Meyer's ownership that he gave to me on August 29, 2016. Exhibit 3 includes the tables referencing a Feature ID, diameter in meters, stone count, grave, sodden rock, generational (if used by more than one person), and UTM locational data, and hand drawings depicting the layout of the stone features relative to the pipeline corridor from our survey work on August 30. Exhibit 4 includes the same material from the day of August 31. This is material that is typically provided as part of any competent archaeological survey, and was prepared by my company under my supervision.

9. I will briefly describe some of the very unique site types below but before I do, I want to explain that the fact that some of these sites are not immediately in the pipeline corridor

does not mean that they are safe from damage or destruction. I have observed pipeline construction many times. Construction impacts are rarely if ever limited to the 150 foot construction corridor. There is major heavy equipment travelling outside the construction corridor and other activities like stringing and welding of pipe. That is why cultural surveys on pipeline routes are always 400 feet. Fencing or other measures can help protect sites from this kind of damage but we did not see any fencing around any of these sites.

10. *Iyokaptan Tanka* (Big Dipper): This stone feature, which is a physical depiction of a constellation across a large area, is very rare to find within the Great Plains and within Oceti Sakowin homelands. This is only the third time I have seen one identified and recorded during my lifetime. I know how much importance the Elders and spiritual advisors place on this star constellation, this constellation was a measuring stick for leadership, who fasted or vision quested in the “cup” of the Big Dipper to make the ultimate commitment to the people. This is the last level to attain as a Chief and very few Chiefs made it to the seventh level in leadership, as I have been told. Only a Chief or *Itancha* can stand in the cup of the Dipper. But to find a grave attached to the cup signifies the importance of this leader and this site. This means that there is a very important leader buried here, what the Elders would say of him as “he was beyond reproach.” **This is one of the most significant archeological finds in North Dakota in many years.** When we were pushed onto reservations we brought this knowledge with us but had to leave these special places behind. This site can be identified as F11 through F13 (many important sites contain multiple features, which are numbered separately) on the hand map in Exhibit 3. It is approximately 75 feet from the edge of the pipeline corridor.

11. *Chante Tinza Wapaha* (Strong Heart Society Staff): This site extends into the DAPL pipeline corridor. This site is a clear indicator of the Hunkpapa Strong Heart Society.

The Strong Heart rattle or coup stick is in the center of the site hooking the stone ring and the half ring together. The other features are evidence that others had followed a similar spiritual path and completed their spiritual walk of life. This indicates that a pledge was made between two Strong Heart members sharing their vision quest that had a similar purpose to be sealed with prayer when using the coup stick in battle. This site also contains one grave. The Strong Heart Society was an elite warrior society where only the best and bravest warriors were members coming from the Hunkpapa band and this is where one would make that step to be a society member. These sites are spread out in our homelands but very few of these sites have been identified and recorded by Tribes. This is a very significant and important site and today because the landowner offered to provide access for our people of Standing Rock to use these sites, we have a place close to home that can fulfill this void we can use. This is true of all of the sites here but this one is unique to Hunkpapa band people and hence even more important. This site can be identified as F1 through F6 on the map in Exhibit 3. Portions of this site are directly in the pipeline corridor and would be destroyed by pipeline construction.

12. *Mato Wapiya* (Bear Medicine Healer): This is a stone effigy of a bear along this ridge line a few feet from the DAPL corridor. This bear effigy was connected to the Strong Heart society members. To find evidence of where the Bear Medicine man's presence or fasting area connected to a society is very unusual, but we know they are out there, as evidenced here. We only have great stories of these types of men; the deeds they accomplish during times when healing needed to occur. The gift of this type of healer was profound to the extent that other bands shared these medicine men, but to find his site where he received his gift of healing is very extraordinary. We have only found one other location of this type of site in the Great Plains in my 35 years of cultural resource study. This site is immediately adjacent to the DAPL corridor

line and adverse impacts to this site are likely. It can be identified as site KM5F in Exhibit 4.

13. *Itancha* (Chiefs Dreaming Pair with Staffs): This is another important and unusual stone feature that falls outside the pipeline corridor by as little as one foot. The leadership of a Chief was determined by his people. He displayed the seven sacred virtues required to fulfill a position within the leadership ranking of the society. This site is very important as this type of site brings Chiefs and society leaders together, to fast together for unifying their bands or bringing a consolidation of people for protection and making of relatives. There would be no unity if the leaders didn't get along but this site belongs to two bands within Oceti Sakowin, and there is oral history to this site still remembered by members of the Standing Rock Sioux Tribe. This site can be identified at as sites TM4F through TM10F in Exhibit 4.

14. Grave and Stone Arc: This site is within the DAPL corridor with the Arc and burial, meaning they will be destroyed if construction proceeds. The Arc represents the handle of the Iyokaptan Tanka or Big Dipper. Only a Naca' or society leader can stand in the handle of the dipper and he carries a straight lance. As reported above the Big Dipper is near these two stone features and is connected. This is a very important site to the Standing Rock Sioux Tribe. It can be identified as sites TM16F through TM 18F in Exhibit 5.

15. Each of these sites carries great historic, religious, and cultural importance to the people of Standing Rock, other tribes of the Oceti Sakowin, and me personally. Unless DAPL is stopped from clearing and grading the corridor, all of these features, and all of the graves and other significant stone features of our spiritual ways, that are in the corridor will be damaged or destroyed. They are irreplaceable to our Lakota/Dakota people.

16. The area that I surveyed was extremely dense in stone features, which is quite unusual. There are 27 graves or cairns that we located, 16 stone rings, and 19 effigies, among

other features. This concentration of stone features is very unusual and reveals that this was a culturally very important place for the Tribe's ancestors.

17. I have previously reviewed the Class II/III archaeological survey prepared by DAPL's consultants for this area. To the best of my knowledge, none of the sites identified herein were found in that survey. This is consistent with my experience elsewhere, in which we have found important cultural sites in areas that were previously surveyed by DAPL's consultants but not found by them at PCN locations in South Dakota and Iowa. To me this highlights the importance of tribal consultation. As with the other sites we have found, the DAPL consultants would have had to literally walk directly over some of these features. However, reviewing DAPL's survey work, it appears that they did not independently survey this area but relied on a 1985 survey.

18. I have previously testified about the cultural and historic importance of the area around the Cannon Ball River drainage near the Missouri River. The area around the mouth of the Cannon Ball River was very important because prior to the establishment of the reservation in 1873, it was a gathering area for numerous tribes. Numerous sacred sites were located there and were known by the tribes as a very holy place or "*wakan*" and no warfare or spilling of blood occurred there. Warring bands or enemies never created conflict with each other as a spiritual presence was there and all who came knew and felt it. All came to pray at this site having no fear of war or bloodshed. It is not at all surprising to me that there are many important cultural sites in this area, which is why the Tribe has worked so hard to seek to protect it.

19. In the early 1960's, the Corps of Engineers flooded the lowlands along the Missouri River in this area for the Oahe dam and reservoir project. Prior to the flooding, as a young boy I would ride or walk alongside a horse-drawn wagon owned by my uncle, who took

my grandmother to Fort Rice which was located approximately 13 miles north of the mouth of the Cannon Ball along the Missouri River. A grocery store was located there and most people traveled there as it had a train depot station there. We would stop and our grandmother, who was born in 1891, had us go to the nearby hills to the west not far from the old wagon trail and take food to the spirits of our relatives. These hills are near the HDD entry where DAPL plans on inserting the pipeline to go east under the Missouri River. Numerous burials of an old warrior society and chiefs are buried there up on top and near the bottom of the hills and it was custom to stop and feed their spirits with *wasna* (a pounded beef jerky mixed with tallow) and also give water to the spirits. This is where the Dakota Access pipeline is proposed to go. It grieves me today to remember how respectful we were then, and how we as young adults were required not to talk or make any loud noise in respect to the society leaders buried there when offering them food, when now this area will be destroyed. Since childhood I have been aware of many buried in this area stretching north and northwest of one of DAPL's proposed access roads including the west side of Highway 1806 and including the area up past the proposed pipeline corridor.

20. The mouth of the Cannon Ball River also has a significant role in establishing the relationship between the federal government and the Oceti Sakonwin. The area is where tribal leaders and members gathered to discuss the proposed Treaty of 1851, a very important Treaty. This is where they took council and was said to have had tens of thousands of Lakota and Dakota relatives. Land areas within the 1851 Treaty area are still important to the Oceti Sakonwin.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on September 2, 2016, at Fort Yates, North Dakota.



Tim Mentz, Sr.

CERTIFICATE OF SERVICE

I hereby certify that on September 2, 2016, I electronically filed the foregoing *Second Declaration of Tim Mentz, Sr. In Support of Motion for Preliminary Injunction* with the Clerk of the Court using the CM/ECF system, which will send notification of this filing to the attorneys of record and all registered participants.

/s/ Jan E. Hasselman

Jan E. Hasselman