

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

**DECLARATION OF JON EAGLE, SR. IN SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

I. QUALIFICATIONS AND RELEVANT EXPERTISE

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. The Standing Rock Sioux Tribe is located in both the States of North Dakota and South Dakota and is home to the Hunkpapa and Sicasu bands of Lakota Oyate and the Ihunktuwona and Pabaksa bands of the Dakota Oyate. We are a member tribe of the Oceti Sakonwin, also known as the Great Sioux Nation. I was appointed by the SRST Council to serve in this capacity on February 8th, 2016.

2. The SRST/THPO office is authorized by the National Historic Preservation Act,

1992 amendments, to include the Native American Graves Protection And Repatriation Act, Archaeological Resources Protection Act, Antiquities Act of 1906 and the Standing Rock Sioux Tribes Cultural Resource Code, Title XXXII. The SRST/THPO is a regulatory office that manages and protects cultural resources, sacred areas, and sites within the exterior boundaries of the Standing Rock Sioux Tribe to include the original boundaries of the Fort Laramie Treaties of 1851 and 1868, and the aboriginal homelands of the Oceti Sakonwin.

3. I have twenty-six years of experience working with children, families and communities and seventeen years of experience consulting with tribal, state and federal agencies. After studying Sociology at Fort Lewis College, in Durango, Colorado, I returned home to Sitting Bull College where I finished a Bachelor of Science Degree in General Studies. I have two years of experience working with the SRST/Elders Preservation Council to identify and evaluate Stone Features, stone cairns, and stone effigies. Since my appointment I have attended the Advisory Council on Historic Preservation, National Historic Preservation Act, Section 106 Essentials and Advanced training in Denver, Colorado.

4. I am a descendant of the Oceti Sakonwin and come from the Hunkpapa Oyate. I speak the Lakota language and am considered to be knowledgeable of our cultural and spiritual laws, oral history, and sacred knowledge and have been asked by my people to serve in the traditional leadership of our people.

5. I was born in Minneapolis, MN and returned to Standing Rock with my parents at the age of 2 and have lived here since then, only leaving to serve in the United States Army and to attend college. I have dedicated over twenty six years of my life to helping my people.

6. In 2014, the Cheyenne River Sioux Tribe honored our relationship with the Buffalo Nation. It was at this traditional gathering that I heard Tim Mentz of Makoce Wowapi,

LLC., talk of stone features. During his presentation he showed a drawing of a site in North Dakota that his company found while conducting Class III Cultural Surveys near Williston, North Dakota. The site was of religious and cultural significance to the Oceti Sakonwin. He told us that the day after his company had identified and evaluated the site, an official from a federal agency told the land owner what was found. The next day, the land owner went through the site with a bulldozer and destroyed the site.

7. It's hard to put into words how this news made me feel. The only way I can describe it is by saying it hurt. A deep, spiritual hurt that someone would have a total disregard for who my ancestors were and the connection to who we are as a people today. We will never have the opportunity to go back there and see what our ancestors left for us. It is gone forever. It was at this point in my life that I became aware of not only what my ancestors left on the land for their grandchildren, I also became aware of the destruction of sites of religious and cultural significance to the Oceti Sakowin in the name of development. This incident is what motivated me to apply for the position of the Standing Rock Sioux Tribe, Tribal Historic Preservation Officer.

8. Upon assuming the duties of SRST/THPO, I immediately became immersed in Historic Preservation and have since consulted with several State and Federal Agencies, all of which were fulfilling their responsibilities to the Section 106 Process. I have read and became familiar with correspondence to the United States Army Corps of Engineers by my predecessor, Ms. Waste Win Young., and the Chairman of the SRST, Dave Archambault II. It was after reading those letters that it became clear that the Section 106 Process being implemented by the Corps was fundamentally flawed. I have also reviewed and am familiar with the draft and final Environmental Assessment and the cultural surveys prepared by DAPL.

9. As keepers of sacred knowledge, we have a responsibility to the next seven generations to ensure that they have good land, clean water, and clean air. The Draft EA made no mention of the people of Standing Rock who would be directly affected should the pipeline leak. Energy Transfer like any other pipeline assures that they are safe and yet we hear almost weekly of a pipeline that has leaked. The recent leak of Keystone 1 near Freeman, South Dakota clearly demonstrates the potential for a manmade disaster. Like the proposed Dakota Access Pipeline, Keystone 1 had safety measure in place to alert pipeline officials of a leak, and yet over 16,000 gallons of oil leaked without their knowledge. It was a farmer who noticed the sheen from the oil in a ditch.

10. It's not a matter of if; it's a matter of when that pipeline will leak. It won't be my generation that will have to deal with the manmade disaster when it occurs, it will be my children or my grandchildren. They are the future of our people and as such are not expendable.

II. THE LAKE OAHE SITE

11. The confluence of the Cannon Ball River and the Missouri River is a site of religious and cultural significance to the Oceti Sakonwin. The Cannon Ball River was known to my ancestors as Inyan Wakan Kagapi Wakpa (River Where the Sacred Stones Are Made), and the Missouri River was known as Mni Sose (Turbulent Water). The force of those two rivers coming together formed perfectly round stones once considered sacred to the Mandan, Arikara, Cheyenne and the member tribes of the Oceti Sakonwin. When the Corps dredged and altered the course of the Cannon Ball River the river, that undertaking had an adverse effect at the confluence and the rivers quit making the sacred stones. We will never again see this phenomenon again.

12. The area within and around the horizontal directional drilling site, where the pipeline is going to cross the Missouri River, is considered sacred by many tribes to include the

Mandan, Arikara, Cheyenne and Dakota. At this site, traditional enemy tribes camped within sight of each other and never fought because of the reverence they had for this Traditional Cultural Landscape. Over the years, several Sun dances have occurred in the area because of the sacred nature of the rivers and the land. The member tribes of the Oceti Sakonwin have seven sacred rites given to us by the creator and the Sundance is held to be one of the most sacred.

13. Three site visits occurred at the Historic Cannon Ball Ranch in connection with the DAPL proposal, which currently owns the land where the horizontal directional drilling (“HDD”) on the west side of Lake Oahe would take place. The first visit was attended by my staff and I only, the second visit the Standing Rock Sioux Tribal Chairman escorted Colonel John Henderson, Commander of the Omaha District Army Corps to the ranch, and the third visit was with archeologists from the Corps and my office. During the visit with the USACE archeologist, the SRST/THPO Section 106 Coordinator, LaDonna Brave Bull Allard, shared the rich history of this area by pointing out village sites of the Mandan, Arikara, Cheyenne and Ihunktuwana. We described how these tribes who camped peacefully within view of one another were traditional enemies, but because of their reverence for this sacred place there were no wars fought or blood spilt on the land. This site was also a historic place of commerce where the tribes would gather during times of peace to trade with one another.

14. Evidence of their existence is still on the ground. While walking through an Arikara Village site, Dr. Kelly Morgan, SRST/THPO Archeologist, pointed out places where moles had pushed the dirt to the surface. In this mole dirt, we found pottery shards, pieces of bone, flint and tools used for scraping hides and cutting. Both Dr. Morgan and Ms. Allard pointed out that many of the sites we were witnessing had not previously been recorded. During our visit I asked the opinion of Rick Harnois, USACE Archeologist if the sites that were pointed

out to his staff were previously known at which point he told me no, they were not recorded. I also asked if they should be recorded, and he said yes. I then asked him his opinion on what was happening with DAPL and he said what was going on is wrong. However, none of what was spoken about at the site made it into his determination of, “No Historic Properties Subject to Affect.”

15. Also in the area is a sacred stone where our ancestors went to pray and ask for guidance. As a Lakota, I have been fortunate enough to have traveled to this area with elders who are no longer with us, to pray and leave offerings, asking for good direction, strength and protection on behalf of our people. In an interview conducted in the late 1800’s by Colonel A.B. Welch, a warrior spoke of the sacredness of the area, “It was there when we came across the Missouri. I think it had been an Arikara stone. I think they found it first. They put things there, too. No one would strike an enemy around that place. Everyone was safe there. There were always many presents there. There were weapons and things to eat and valuable cloth on sticks. There were buffalo heads there, too, for meat to come around. It is very holy. It is there yet. I do not want to talk much about it.” A.B. Welch Collection. The site of this stone is confidential and protected by this office. It must be noted that this is a place of prayer that is still in use today. A place where people indigenous of this continent continue to go for good direction, strength, and protection for the coming year. The HDD drilling, staging of equipment and construction will have an adverse effect on the audio, visual, and atmospheric elements of a Traditional Cultural Landscape and a site of religious and cultural significance to the Oceti Sakonwin.

16. During our visit to the site, we noticed several undocumented stone features and rock cairns that need further study. The knowledge required to identify and evaluate stone

features, stone cairns, effigies, etc., lies within the cultural and spiritual protocols of the Oceti Sakonwin. It relates to our creation stories and star knowledge which has been passed down from generation to generation. As a Lakota who has been taught by my elders, I can tell when the first day of winter, spring, summer and fall are just by looking at the stars. I can also tell when my ancestors visited the sacred places by the orientation of the stone features in relationship to star constellations. We have a belief that what happens above happens below and what happens below happens above. Archeologists lack the cultural awareness and sensitivities to identify sites of religious and cultural significance to tribes. Only the tribes themselves have that ability.

17. We believe that along the entire 1,100 route of the pipeline, there is great potential for eligible sites. After reading the surveys prepared by DAPL, it is apparent to me that the archeologist involved do not have the knowledge or cultural sensitivity to be identifying and or evaluating sites that are significant to the tribes. For example, in Williams County in North Dakota, survey crews identified a cairn and an associated rock feature on the top of a narrowing, rolling ridge above Beaver Creek in the Missouri River drainage system. Site 32WI1744 was declared, "Not Eligible," and recommended that no further work be done. The archeological report stated: "The proposed Dakota Access centerline crosses the site from west to east and passes roughly 30 ft. (9 m) south of the deflated cairn (F1) and 130 ft. (40 m) north of the rock feature. ROW blading and pipeline installation have the potential to impact the site by destroying F1. Because site 32WI1744 is recommended not eligible for listing in the [National Register,] no further work is required."

18. We disagree with this assessment. It is clear that the archeologists involved aren't aware of what they are looking at because if they knew that the deflated cairn was potentially a

burial and the associated rock feature is a site of religious and cultural significance to the tribes, they'd know that by allowing the pipeline to go through this site this action will have an adverse effect on this site. The Standing Rock Sioux Tribe, Tribal Historic Preservation Office maintains our belief that there is a strong potential for adverse effects to site of religious and cultural significance to the tribes along the entire pipeline route.

19. In DAPL's cultural surveys, in many places the consultants identify a stone circle, or cairn, that they propose to "mitigate" pipeline construction impacts by fencing, signage and a 50 foot buffer. The assumption is that through this mitigation adverse effects to the site are avoided. The assumption is wrong. These are sacred sites. The attributes which make them sacred include the environment around them, and the context in which these sit. The regulations defining adverse effects include "Change of the character of the property's use or of physical features within the property's setting that contribute to its historic significance" and "introduction of visual, atmospheric or audible elements that diminish the integrity of the property's significant historic features." A chain link fence and major industrial construction just 50 feet way—15 paces for a person of my size—would cause adverse effects to sacred sites. That's why it is important to include Tribes in not just the determination of the historic significance of sites, but a determination of adverse effects. Due to the Corps flawed process we have never been gotten pass the first step of the 106 process, much less had the opportunity to identify sites of religious and cultural significance to the tribes, not to mention never being invited to the table to assess or resolve adverse effects.

20. My elders have taught me to have a deep reverence for the land. We have a saying in our language, "Le makoce kin teunkilapi sni ki, hehan un Lakotapi kte sni." When translated this means, "When we no longer cherish the land, we will no longer be Lakota." We

refer to the earth as Unci Maka, or grandmother earth, and are taught that she nourishes and nurtures everything that we need to thrive as a people. We are taught that everything has a nagi, or spirit. Nagi can also be translated to mean the spiritual essence of everything in creation as we believe that everything has a spirit.

21. On the land are cultural and spiritual laws that acknowledge the spiritual essence of everything in creation. At one time we only took what we needed. Whether it was wild turnips, choke cherries, deer, buffalo or traditional medicines, we always acknowledge the life and the sacrifice. These cultural and spiritual laws hold true to sacred sites, stone features, cairns, effigies, as there are laws that govern how we enter these sites.

22. The construction of the pipeline at the crossing of the Missouri River will have an adverse effect on the Traditional Cultural Landscape of the area. This is a site of religious and cultural significance to the people of Standing Rock that is still in use. Our people still travel to these sacred areas for prayer. Pipeline construction at this site will adversely affect culturally significant and sacred sites, either by destroying them outright, or by fencing them off in the immediate vicinity of industrial operations. This harms the Tribe, and harms me personally.

23. DAPL has a plan for dealing with “inadvertent discoveries” during pipeline construction. But if pipeline archaeologists can’t recognize important cultural sites, how can pipeline construction workers recognize them? It is not a substitute for proper consultation and identification. Similarly, the Army Corps has included a provision for including Tribal monitors at PCN sites. Of course, the Army Corps only imposes this requirement on a tiny area around HDD entry and exist sites, and not the pipeline to and from such sites. This requirement is of limited value. Full cultural surveys take time. We cannot walk in front of the bulldozers, on the company’s rushed schedule, and be expected to ensure the protection of these sites.

III. SACRED AND HISTORIC SITES ELSEWHERE ON THE PIPELINE ROUTE

24. Wherever the buffalo roamed, my ancestors left evidence of their existence on the land. Mainstream society refers to them as nomadic but I don't believe this to be true, because to say a people were nomadic is to say that they wandered around aimlessly. My ancestors followed the buffalo and the buffalo followed the stars. They traveled as far west as Wyoming and Montana, as far north as the Canadian bush country, as far east as the Great Lakes, and as far south as Kansas. This territory was the aboriginal homelands of the Oceti Sakonwin.

25. Water is considered to be sacred. In our language we say, Mni Wiconi, or Water of Life, because without water there can be no life. For nine months our mothers carry us in water. We are primarily made up of water. Water is sacred to our people. We still have people who go to the water to pray and make offerings so that all life that is sustained by our rivers may live. People, deer, cattle, fish, birds, all life is considered to be sacred and is dependent upon the water from the Missouri River. The water ways of this nation were highways of their times as my ancestors traveled from lake to lake, river to river, stream to stream. Stone features, burial cairns and effigies can be found near water on the hill tops, along ridges, hills sides and drainages. In my experience, it is likely to find such features near water.

26. Protection of stone features is very important to the Standing Rock Sioux Tribe. On July 2, 2014 the Standing Rock Sioux Tribe passed resolution number 378-14, which reads as follows:

NOW THEREFORE BE IT RESOLVED, the four (4) bands on the Standing Rock Reservation who are members of the original structure of Oceti Sakonwin claim all stone feature sites, our identified burial/places, stone alignments and effigies, our sacred landscapes and drainages that are connected to these sacred areas and sites, regardless of location, within our original homelands of Oceti Sakonwin: and

BE IT FURTHER RESOLVED, that wherever the buffalo roam and left its evidence of occupation, use and bone material is considered Oceti Sakonwin

homelands as we are considered the Buffalo Nation or people and that is where you will find our sacred areas, burials, stone effigies and stone alignments of our star knowledge and sacred stone feature sites that only member band so the original Oceti Sakonwin can claim.

27. We have prophecies that one day man was going to go too far and when that happened the animals were going to show their sacred color. This would be a signal for the grandchildren to go back to these sacred places of prayer and ask for guidance. We believe we are in this time of prophesy with the birth of a white buffalo calf in Jamestown, North Dakota and sighting of white deer, elk, moose within the aboriginal homelands of the Oceti Sakonwin.

28. Within our way of life, there are people who have the responsibility of keeping the oral histories and sacred knowledge of our people. This knowledge comes with strict laws on who, when, where and why these teachings are shared. The creation stories and star knowledge can only be told after the first day of winter and can no longer be told after the first day of spring. The fact that as a THPO, I will be asked to share cultural and spiritual laws out of context in an attempt to protect what is sacred to me will cause me, my children, grandchildren and those not yet born irreparable harm as these stories are not written down but have been passed down generation to generation. It is the keeping of this knowledge that helps us to protect sacred sites.

29. As a member of the Oceti Sakonwin it is imperative that we control our own narrative. My greatest concern is that non-Tribal archeologists are going to write down our stories, and cultural and spiritual laws, and assume they now have the abilities to identify and evaluate sites of religious and cultural significance to the tribes. They do not have that ability. I am in no way giving anyone the right to tell our stories or share our sacred knowledge.

30. Water was considered sacred by my ancestors, they referred to water as Mni Wiconi, or Water of Life, because without water there can be no life. The water ways of this country were the highways of the past. My ancestors traveled from lake to lake, river to river,

steam to stream. It was at these sacred bodies of water that men stood in stone circles for four days, with no food or water, crying for a vision to guide their people. It wasn't the exposure to the elements or the hunger that was life threatening, it was the lack of water that was the greatest sacrifice and test for these men. These stone features can be found on ridges and drainages around water ways.

31. A large portion of the pipeline will cross private lands that our office do not have access to. This office was never afforded the opportunity to consult with the Corps or DAPL in the development of the draft EA, nor were we afforded the opportunity to assist in identifying sites of religious and cultural significance to our people.

32. In Iowa, a tribal cultural surveyor, Makoce Wowapi, LLC., was conducting Class III Cultural Surveys on behalf of the Upper Sioux THPO from Minnesota and found a site of religious and cultural significance to our tribe in the pipeline route. At the request of the Upper Sioux THPO, we traveled to Iowa to assist in identifying and evaluating the find. We were met by the Flandreau Sioux Tribe THPO, Upper Sioux THPO, elders, spiritual leaders, as well as archeologists from the State of Iowa, USACE, Iowa Division of Natural Resources and the Iowa SHPO.

33. Much to their credit, the non-Tribal archeologists waited while we took our elders and spiritual leaders to the site. After identifying and evaluating the site, a ceremony was held and a long discussion was held by our elders and spiritual leaders. In the end it was decided that I as the Standing Rock THPO was to share with the archeologist what was found and to escort them to the site so they could see for themselves.

34. After introductions, I told the archeologist that I was aware of the practice in the field to discredit stone features as glacial uplift. I told them that I was going to share cultural and

spiritual teachings with them in an attempt to help them to see the error of their ways. I began by asking them where in their life do they see cycles. They spoke of sunrise to sunset, the changing of the seasons, birth to death, at which point I told them if all you see with are your eyes you will always be limited in what you perceive in this world, but, if you learn to see with your heart you will be able to acknowledge your relationship to everything in creation, going all the way out to the universe.

35. We were standing in a stand of trees and I pointed out that we were inhaling oxygen and exhaling carbon dioxide. I told them that the trees were exhaling oxygen and inhaling carbon dioxide. As we were standing there a light rain began to fall. I reminded them that water evaporates into the atmosphere and comes back as rain. I told them that this same sacred motion goes all the way out into the universe. The earth and planets revolve around the sun and the stars move in a circle as is evident by the known spiral galaxies. I told them this is just a glimpse into what we call, Cangleska Wakan, or the Sacred Hoop of Life, and then I showed them the site drawings at which point both the Iowa State Archeologist and Iowa SHPO both declared the site eligible for the National Registry as a site of religious and cultural significance to the tribes.

36. The site drawing showed a stone circle with rock cairns set in the four directions. I explained to them that this was a place where a warrior stood and fasted in prayer. It was also one of the hardest places to fast because it was set on a hill side as opposed to a flat surface, which would have caused this man great discomfort as he stood there in prayer for four days with no food or water. The rock cairns marked burials where men who were associated with this walk of life were buried.

37. We then escorted them to the site itself at which point the archeologist pointed out

that they were aware of previous surveys and this site was never recorded. We pointed out that while conducting the surveys, the archeologist would have had to have literally walked right over the site. We told them this is why it was so important to identify tribes as consulting parties to the section 106 process as only the tribes had the ability to identify sites of religious and cultural significance.

38. Sara Childers, Upper Sioux THPO shared with this office a site map of a site identified by DAPL as 30BE0029. The site map clearly shows that the Dakota Access Pipeline will go straight through burial mounds and stone features without any consideration to how the tribes view sites such as this, which again, are sites of religious and cultural significance to the tribes. This site is a Traditional Cultural Landscape and must be avoided. It's not just the individual sites; it's the entire landscape that is considered sacred.

39. Of great concern to our office is the number of sites that are recorded as ineligible or unevaluated in the 2015 Cultural Resource Report prepared by DAPL's consultants. It is imperative that federal agencies when initiating section 106 consultations identify tribes as consulting parties to assist with identifying the Areas of Potential Affect and to identify sites of religious and cultural significance to the tribes. Non-tribal archeologists do not have the ability to properly assess sites they list as ineligible and/or unevaluated. By doing so, important sites lack federal protection, and development is allowed to cause irreparable harm to these sites. Without tribal participation in consultation we will continue to see adverse effects on sites.

40. Based on the above, it is my personal and professional opinion that DAPL will very likely destroy sites that are of great religious cultural significance to the Tribe. Some of the sites are identified but deemed ineligible for protection by people who are not competent to make that decision. Other sites remain undiscovered because there's never been any Tribal survey.

DAPL is a linear, 1,100 mile pipeline that will cross waters of U.S. Corps and Civil Works projects in North Dakota, South Dakota, Iowa and Illinois. The landscape it crosses is rich in historic significance. Wherever we look for closely for these sites, we find them in abundance, especially near water. We have already seen the inadequacies of DAPL's private cultural surveys. We have already seen examples of important religious sites that were completely ignored by DAPL in the pipeline's path.

IV. THE TRIBE AND TRIBAL MEMBERS WILL BE IRREPARABLY HARMED BY PIPELINE CONSTRUCTION

41. As a veteran of the United States Army, it had long been a wish of mine to visit Arlington National Cemetery. In 1998, my wish came true. One of first things I noticed while entering this hallowed ground were the hushed tones of the people as they walked through the cemetery. I knew it was because here lay the men and women who fell in defense of this nation. It is with this same reverence that we, the descendants of the Oceti Sakonwin enter the sites where our ancestors fell in defense of our country. An elder once told me that our ancestors knew four hardships in life; to hear an orphan cry, to lose a child, to lose your mother, and to not know where a warrior fell. All across the aboriginal homelands of the Oceti Sakonwin are stone cairns that mark such places, and are considered to be sites of religious and cultural significance to our tribe. To me, and to members of the Tribe, destruction of or disrespect to these sites feels just like it would feel to me if a pipeline was dug through the middle of Arlington National Cemetery, turning over gravestones and displacing graves. Mainstream society would not tolerate the desecration of Arlington National Cemetery. But this is what DAPL is doing in the traditional lands of the Oceti Sankowin.

42. By way of comparison, recent events in the world show a total lack of appreciation and respect by ISIS for ancient sites in the Middle East. Every time they destroy an

ancient site we lose a part of our collective history, that once destroyed is gone forever. It's not just happening in the Middle East, it's happening right here in America in the name of development, or in the name of the national interest. Every time a site of religious and cultural significance to the tribes is destroyed, this causes irreparable harm to me, my children, grandchildren and those not yet born. Once it is gone, it is gone forever.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on August 3, 2016, at Fort Yates, North Dakota.


Jon Eagle, Sr.

CERTIFICATE OF SERVICE

I hereby certify that on August 4, 2016, I electronically filed the foregoing *Declaration of Jon Eagle, Sr. In Support of Motion For Preliminary Injunction* with the Clerk of the Court using the CM/ECF system.

I further certify that on August 4, 2016, true and correct copies were served on the following, via the method indicated:

Via Federal Express overnight delivery:

Office of the Attorney for the District of
Columbia
441 Fourth Street NW
Washington, DC 20001

U.S. Army Corps of Engineers
441 G Street NW
Washington, DC 20314-1000

U.S. Attorney's Office
Attn: Civil Process Clerk
555 Fourth Street NW
Washington, DC 20530

Office of the Attorney General
1350 Pennsylvania Avenue NW, Suite 409
Washington, DC 20004

Courtesy copies via email to counsel Dakota Access Pipeline and U.S. Department of Justice Environment and Natural Resources Division.

/s/ Jan E. Hasselman

Jan E. Hasselman