

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 TIM MENTZ, SR. IN SUPPORT OF MOTION FOR TEMPORARY
RESTRAINING ORDER**

1. I have previously filed two declarations in this matter that describe my qualifications and expertise. I provide this additional declaration to describe events that took place in the last 48 hours since the filing of my last declaration.

2. On Friday, September 2, 2016, I provided the Court with a declaration that described a number of important and unusual archaeological finds that I made, with my company, over a two mile stretch of land west of Highway 1806 near Cannon Ball, North Dakota, in and adjacent to the right of way for the Dakota Access pipeline (“DAPL”). It described numerous gravesites and culturally important stone features.

3. On the morning of Saturday, September 3, 2016, DAPL construction crews graded the entire corridor that was described in my declaration. I visited the site shortly after construction crews left for the day, at approximately 4 p.m. From where I stood along the road, I could see that a significant portion of the site we'd surveyed had been cleared. My son walked the length of the site and confirmed that the entire area that we had surveyed that week had been graded to a depth of more than a foot.

4. On the morning of Sunday, September 4, 2016, I requested permission of the landowner to return to the site to conduct a formal damage assessment. This time, permission was denied.

5. Even without a formal damage assessment, my conclusion from what I have been able to see is that any site that was in the pipeline corridor has been destroyed. Sites that are immediately adjacent the pipeline corridor are buried under berms of soil and vegetation that are as high as eight to ten feet. Anything under those berms is damaged if not destroyed. Portions of some sites out of the right of way may be undamaged but subject to additional harm if construction continues.

6. Shortly after completing the declaration on September 2, 2016, I contacted the State Historic Preservation Office to request that they visit the sites I'd found and confirm their significance. Because it was late in the day prior to a holiday weekend, no one was in the office and hence the SHPO did not confirm these sites before they were damaged or destroyed.

7. I note that normally grading a site like this for utilities or a highway would result in relatively shallow grading and berms on one side of the right of way of around two feet. Here, it appears that DAPL dug substantially deeper than normal, as I saw berms of 8 to 10 feet on both sides of the right of way. In my experience this is unusual.

8. Normally in a situation like this, the Tribe would seek an opportunity to look for human remains in these berms so that our relatives could be reburied. This is very important to us. We successfully fought for a change in state law that set up the North Dakota Tribal Reinternment Committee to rebury relatives that are disturbed by construction like this. In such a situation, the soil in the berms is spread out and screened for human remains. In my view, given the high concentration of gravesites in this area, there are likely human remains in the berms. These are not conventional burials six feet under ground—bodies were placed on or near the surface with rock cairns over them. That is why grading a foot or two feet is likely to disturb these sites. It is common for remains to be disturbed in this way, as it is all but impossible for the operator of a bulldozer, sitting high above the site, to see what is happening below.

9. The elders say that reburying can help deal with the loss and hurt of disturbing these graves. These are people whose graves are in some cases known about and who have family connections in Cannon Ball. We want an opportunity to rebury our relatives. We normally are given this opportunity if gravesites are disturbed.

10. I do not believe that the timing of this construction was an accident or coincidence. Based on my observations, the nearest area of construction in the right of way west of Highway 1806 is around 20 miles away. It appears that DAPL drove the bulldozers approximately 20 miles of uncleared right of way to access the precise area that we surveyed and described in my declaration. The work started very early in the morning and they were accompanied by private security with dogs and with a helicopter overhead, indicating that the work was planned with care and that controversy was expected.

11. It is generally known that DAPL's construction crews don't normally work on weekends. To the best of my knowledge, this work over a holiday weekend was unusual.

12. The pipeline route east of 1806 traverses around a mile or so to the Lake Oahe site. It has not been cleared or graded yet. The Tribe has not yet had an opportunity to survey this area for cultural artifacts and graves. Based on my experience in this area, I believe that there is a strong possibility that such sites are present in and adjacent to the pipeline right of way. There are a large number of graves in this area, some of which are known to families in the Cannon Ball community.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on September 4, 2016, at Fort Yates, North Dakota.



Tim Mentz, Sr.

CERTIFICATE OF SERVICE

I hereby certify that on September 4, 2016, I electronically filed the foregoing *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