

**BEFORE THE STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**IN THE MATTER OF DAKOTA ACCESS, LLC CONSOLIDATED APPLICATION
FOR AN AMENDED CERTIFICATE OF CORRIDOR COMPATIBILITY
AND AMENDED ROUTE PERMIT; DAKOTA ACCESS PIPELINE PUMP STATION -
EMMONS COUNTY SITING APPLICATION**

CASE. NO. PU-19-204 | OAH FILE. NO. 20190280

**PRE-FILED TESTIMONY OF JON EAGLE
ON BEHALF OF INTERVENOR STANDING ROCK SIOUX TRIBE**

November 1, 2019

1 **Q: Please state your name and describe your current job and professional**
2 **background.**

3 A: Hau Mitakuyepi, anpetu ki le, cante waste nape ciyuzapelo. Hehaka Ska le miyelo.
4 Hunkpapa hemaca na Canka Ohan Tiospaye ematahan, na Wangli Koyag Mani
5 Tiwahe ematahan. Hello my relatives, today I greet you with a good hearted
6 handshake. My Lakota name is White Elk. I am Hunkpapa and come from the
7 Sore Back extended family and am descendent of Walks Dressed in Eagle whom
8 our family gets our last name from.

9
10 My English name is Jon Eagle Sr. I am the Tribal Historic Preservation Officer
11 ("THPO") for the Standing Rock Sioux Tribe ("SRST"), and an enrolled member of
12 the Tribe. The Standing Rock THPO is a regulatory office that manages and
13 protects cultural resources, sacred areas, and sites within the exterior boundaries
14 of the Standing Rock Sioux Tribe to include the original boundaries of the Fort
15 Laramie Treaties of 1851 and 1868, and the aboriginal homelands of the Oceti
16 Sakonwin, also known as the Great Sioux Nation.

17
18 I have lived on or near the Standing Rock Reservation nearly my entire life. I
19 speak the Lakota language and am a fortunate and wealthy man. Not in terms of
20 material wealth but in terms of the people I have had in my life who made sure I
21 knew our Lakol Wicohan, Lakota way of life. I have thirty years of experience
22 working with children, families and communities and twenty-one years of

23 experience consulting with tribal, state and federal agencies. I am also a veteran
24 of the United States Army.

25

26 **Q: Who is the Standing Rock Sioux Tribe?**

27 A: The Standing Rock Sioux Tribe is a sovereign Indian nation recognized under
28 federal law and located in both North Dakota and South Dakota. We are a
29 member tribe of the Oceti Sakonwin, the Seven Council Fires. The Oceti
30 Sakonwin consists of the four Ospaye of the Isanti, Bdewakantuwon, Sisseton,
31 Wahpeton na Wahpekute, the two Osyape of the Wiciyena, Ihunktuwona na
32 Ihunktuwon, and the Teton which consists of the Hunkpapa, Itazipco, Mnikwoju,
33 Oohenumpa, Sihasapa, Sicangu na Oglala.

34

35 Those four words however, Standing Rock Sioux Tribe, does not accurately reflect
36 who we really are. That's who the United States Government says we are. At one
37 time in our history we referred to ourselves as Pte Oyate, Buffalo People.

38 Wherever the buffalo roamed, my ancestors left evidence of their existence on the
39 land. My ancestors followed the buffalo and the buffalo followed the stars. Our
40 cultural affiliation goes back to a place and time when only one people were here.

41

42 **Q: Can you briefly describe the historical context for the siting of the Dakota
43 Access pipeline where it crosses Lake Oahe.**

44

45 A: In 1851, The United States invited tribal nations from the Great Plains to convene
46 for a Treaty Council at the mouth of Horse Creek near Fort Laramie in present day
47 Wyoming. The resulting document is referred to as the Horse Creek Treaty of
48 1851.

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50 Article 3 of the Horse Creek Treaty reads: *In consideration of the rights and*
51 *privileges acknowledged in the preceding article, the United States bind*
52 *themselves to protect the aforesaid Indian nations against the commission of all*
53 *depredations by the people of the said United States, after the ratification of this*
54 *treaty.*

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56 The Dakota Access Pipeline crossing Mni Sose, also known as the Missouri River
57 was an act of depredation to the people of Standing Rock.

58

59 In 1868 another Treaty Council was held that resulted in the signing of the Fort
60 Laramie Treaty.

61

62 Article 2 of the Fort Laramie Treaty reads: *The United States agrees that the*
63 *following district of country, to wit, viz: commencing on the east bank of the*
64 *Missouri River where the forty-sixth parallel of north latitude crosses the same,*
65 *thence along low-water mark down said east bank to a point opposite where the*
66 *northern line of the State of Nebraska strikes the river, thence west across said*
67 *river, and along the northern line of Nebraska to the one hundred and fourth*

68 *degree of longitude west from Greenwich, thence north on said meridian to a point*
69 *where the forty-sixth parallel of north latitude intercepts the same, thence due east*
70 *along said parallel to the place of beginning; and in addition thereto, all existing*
71 *reservations on the east bank of said river shall be, and the same is, set apart for*
72 *the absolute and undisturbed use and occupation of the Indians herein named, and*
73 *for such other friendly tribes or individual Indians as from time to time they may be*
74 *willing, with the consent of the United States, to admit amongst them; and the*
75 *United States now solemnly agrees that no persons except those herein*
76 *designated and authorized so to do, and except such officers, agents, and*
77 *employees of the Government as may be authorized to enter upon Indian*
78 *reservations in discharge of duties enjoined by law, shall ever be permitted to pass*
79 *over, settle upon, or reside in the territory described in this article, or in such*
80 *territory as may be added to this reservation for the use of said Indians, and*
81 *henceforth they will and do hereby relinquish all claims or right in and to any*
82 *portion of the United States or Territories, except such as is embraced within the*
83 *limits aforesaid, and except as hereinafter provided.*

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85 The Great Sioux Reservation comprised of lands within the states of Wyoming,
86 South Dakota, North Dakota, and Nebraska, including the sacred Black Hills and
87 the life-giving Missouri River. Under article 11 of the 1868 Fort Laramie Treaty, the
88 Great Sioux Nation retained off-reservation hunting rights to a much larger area,
89 south to the Republican and Platte Rivers, and east to the Big Horn Mountains.
90 Under article 12, no cession of land would be valid unless approved by three-

91 fourths of the adult males. Nevertheless, the Congress unilaterally passed the Act
92 of February 28, 1877 (19 stat. 254), removing the Sacred Black Hills from the
93 Great Sioux Reservation. The United States never obtained the consent of three-
94 fourths of the Sioux, as required in article 12 of the 1868 Treaty. The U.S.
95 Supreme Court concluded that "A more ripe and rank case of dishonorable
96 dealings will never, in all probability, be found in our history." United States v.
97 Sioux Nation of Indians, 448 U.S. 371, 388 (1980).

98

99 In my humble opinion the Dakota Access Pipeline crossing Mni Sosi, also known
100 as the Missouri River is another act in a long list of treaty violations against the
101 Lakota, Dakota and Nakota People. DAPL not only crosses treaty territory, it also
102 crosses unresolved land claims of the Ihunktuwona, referred to as Docket 74A

103

104 In modern times, the federal government acted to take our lands and destroy our
105 way of life to benefit others. The 1944 Flood Control Act authorized the Pick-Sloan
106 program, a series of major dams, diversion works and irrigation along the Missouri
107 River. This program had a terrible impact on the Tribes along the River, including
108 Standing Rock. In 1958, Congress enacted the Oahe Taking Act, which took away
109 title to 56,000 acres of land on our Reservation. These were fertile, wooded
110 bottomlands – the best lands of the Reservation. This is where the people lived,
111 consistent with our traditions. But the government decided, without consulting with
112 the Tribe, that the Oahe Dam and Reservoir must go forward – despite its adverse
113 impacts on the Tribe. These 56,000 acres of Reservation land were permanently

114 flooded, requiring the forced relocation of 180 Tribal families from the protected
115 and fertile lowlands to the harsh and windswept uplands. This was a devastating
116 event in the life of the Tribe, causing vast economic and social hardship that
117 continues to this day. Every elder from our Reservation who lived through this
118 terrible event remembers the day the flood came. I have listened to many of these
119 elders tell their stories of how their families had to leave as the waters flooded their
120 homes forever. The pain of this loss is felt across the generations.

121

122 Throughout history, we have repeatedly seen the development of infrastructure
123 that benefits others, but at the expense of the Tribe. Railroads were built across
124 our lands, without regard to their impact on us. For generations, our people lived
125 in harmony with nature, relying extensively on hunting the buffalo – which were
126 plentiful on the plains. The transcontinental railroads led to the rapid and
127 intentional destruction of the buffalo – and by the end of the 19th century, the
128 buffalo were wiped out. And with the destruction of the buffalo, a major aspect of
129 our traditional way of life was fundamentally altered forever.

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131 In every era, when the United States responds to demands from those seeking to
132 advance particular economic interests – for gold in the Black Hills, for land for non-
133 Indian homesteaders on our Reservation, or for navigation or hydropower – it has
134 always been the Tribe that has borne the heavy burdens, through the loss of our
135 lands and harm to our way of life. In every case, the United States has ensured
136 that the interests of others are advanced, while the interests of the Tribe are

137 ignored. The siting of the Dakota Access Pipeline, which crossed treaty lands
138 stolen from us and puts our waters at risk of spills and leaks, is simply another
139 chapter in this story.

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141 **Q: Please describe the site of the pipeline crossing at the Missouri River.**

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

152

153 The area within and around the crossing site is considered sacred by many tribes.
154 At this site, traditional enemy tribes camped within sight of each other and never
155 fought because of the reverence they had for this Traditional Cultural Landscape.
156 Over the years, several Sun dances have occurred in the area because of the
157 sacred nature of the rivers and the land. The member tribes of the Oceti Sakonwin
158 have seven sacred rites given to us by the creator and the Sun dance is held to be
159 one of the most sacred.

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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.

177 **Q: Why are the waters of Lake Oahe important to the Tribe culturally?**

178 A: We are descendant of an ancient people who have creation stories that give us
179 cultural affiliation to the land, water and air going back to the beginning of time.
180 Our elders taught us that our creator gave us a land and gave us a language to
181 communicate with everything in creation. Water is considered to be sacred. Our
182 word for water is Mni Wiconi, or Water of life, because without water, there can be

183 no life. The rivers, creeks and streams of our ancestral lands were the highways of
184 our past. Our sacred places can be found along waterways.

185

186 My elders have taught me to have a deep reverence for the land. We do not look
187 at Unci Maka, Grandmother Earth, as a resource. We look at her as a living being
188 that provides for and nurtures us. In our language we have a saying, "Le makoce
189 kin teunkilapi sni, ki hehan un Lakotapi kte sni," which translates to, "When we no
190 longer cherish the land we will no longer be Lakota." The difference between
191 mainstream society and the original people of this land is that mainstream society
192 looks at the earth as a resource and our people engage with a living universe.

193

194 We still have people who go to the water to pray and make offerings so that all life
195 that is sustained by our river may live. People, horses, buffalo, deer, fish, birds, all
196 life is considered to be sacred and is dependent upon water. The same
197 percentage of water on Unci Maka, Grandmother Earth, is the same amount of
198 water that makes us who we are. We are that connected to our environment.

199

200 **Q: Why are you concerned about a leak or spill from the pipeline?**

201 A: My father told me that my grandparents would back a wagon up to the river and fill
202 rain barrels with water. He said they would take those barrels home and let the
203 sediment drift to the bottom then drink the water from the top. My generation drank
204 water from creeks and streams. We were told as long as it was moving it was safe
205 to drink. My children and grandchildren drink water from plastic bottles. That is

206 how fast our environment is deteriorating. A leak or spill from the pipeline in Lake
207 Oahe would be devastating to the Tribe. Imagine the most sacred place in your
208 life, whether it is a church or other house of worship, or a cemetery where your
209 parents are buried, or something else. Then imagine that it is desecrated and
210 destroyed, solely because someone was trying to make money.

211

212 **Q: What has been the effect of the operation of the pipeline on the Standing**
213 **Rock Sioux Tribe?**

214 A: Tribal members live every day under the risk of an oil spill that would harm the
215 waters that sustain our people, our economy, and our spiritual lives. An oil spill
216 would foul the water that we drink, that we rely upon for our Treaty protected,
217 subsistence hunting, fishing and traditional plant gathering, and that provides
218 irrigation for our farming and other economic ventures. The risks of leaks and
219 spills are placed squarely on the Tribe, as our Reservation is immediately
220 downstream from the crossing site at Lake Oahe.

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222 Throughout the course of our history, we have suffered trauma. This has taken
223 many forms – the devastating loss of lands, the destruction of the buffalo and our
224 way of life, the efforts by the federal government to take away our language and
225 culture, the impacts of poverty, and the ravages of racism. All of this has been
226 endured with great dignity by my people. We say, “Nahahci Lena Unkupelo!”
227 We’re still here. But over time this history takes a significant toll on our physical
228 and mental health. Many of the health challenges that we face today have been

229 linked, in significant scientific studies, to the historic traumas that we have faced.
230 The traumas of our ancestors are passed down across the generations and impact
231 us today.

232
233 While I am not a psychologist or social worker, I know many Tribal members, and I
234 understand how our history of trauma affects us and creates challenges for us
235 today. One of those challenges today involves the Dakota Access pipeline. Our
236 history tells us that the government does not listen to the voices of our people and
237 does not care about our rights or interests. Our Tribe has been subject to terrible
238 misdeeds and abuse at the hands of the federal government and this has been so
239 in Treaty times, at the time our lands were taken for the Oahe project, and up until
240 the present. This pattern of ignoring Tribal interests continued with respect to the
241 Dakota Access pipeline.

242

243 **Q: Does the Tribe support the expansion of the Dakota Access Pipeline's**
244 **capacity?**

245 A: No. My father told a story of a time that my grandparents rode in a wagon from
246 Wakpala, South Dakota to Bismarck, North Dakota. He said that he and his
247 brother followed them on horseback. He said that along the river bottom there was
248 an ancient pathway, and all day he saw people coming and going. It took my
249 grandparents two days to get to Bismarck and all along the way he said there were
250 people camped along the river bottom. He said that everything they needed was
251 on the river bottom and it was a happy time. When they passed camps the people

252 would welcome each other and share whatever they had with each other. He said
253 the canopy of the trees was like a great cathedral. As I write this the memory of
254 his story puts an image in my mind that unfortunately I will never see. He told me
255 this story only once and never spoke of it again.

256

257 The flooding of the river to create the hydroelectric dams had an adverse effect on
258 a traditional cultural landscape that caused a deep unresolved trauma to the
259 people who witnessed the original beauty of the river and the subsequent
260 destruction of a way of life. That federal action also created a disconnect between
261 the people of Standing Rock and their neighbors on the east side of the river. The
262 people of Standing Rock at one time had a great relationship with their neighbors.
263 I grew up listening to stories of my dad and his brothers breaking horses for area
264 ranchers who in turn bought them school clothes and shoes in the fall. My mother-
265 in-law told stories of traveling to Linton to attend Polka dances. Our elders told
266 stories of gatherings on the river bottom to share harvest, to exchange and trade
267 goods with one another. Those are stories that my generation never got to
268 experience because we were born after the flooding of the river. Once man
269 changes the land it is changed forever.

270

271 I have personally been to five countries and forty-eight of our states. I have seen
272 such beauty in my lifetime that only a poet could give word to the experience. As I
273 look around at the beauty that is the Dakotas, I think to myself, do we really want to
274 risk this? Do we really want to support the expansion of this pipeline and risk what

275 we have left? Because the company itself isn't from here, they don't have the same
276 connection to this land that those of us who were born and raised in the Dakotas
277 have. They're willing to take that risk, but are we?

278

279 **Q. Does this conclude your testimony?**

280 **A.** It does.