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October 4, 2016

VIA CM/ECF

Mark Langer  
Clerk of the Court  
U.S. Court of Appeals for the D.C. Circuit  
333 Constitution Ave., N.W.  
Room 5205  
Washington, D.C. 20001

Re: *Standing Rock Tribe, et al. v. U.S. Army Corps of Engineers, et al.*, No. 16-5259  
Rule 28(j) Letter

Dear Mr. Langer:

Dakota Access was advised by North Dakota's Office of the Attorney General on October 3, 2016, that the attached report from the State Historical Society of North Dakota is a public record of the State. Dakota Access submits the report pursuant to Rule 28(j).

Plaintiff's motion alleges that the Dakota Access pipeline project is harming culturally significant sites near Lake Oahe. Dakota Access previously showed this was untrue: The relevant pipeline route runs adjacent to an existing natural gas pipeline; the University of North Dakota surveyed the gas pipeline route for cultural sites in conjunction with construction of that pipeline in the early 1980s, finding no cultural sites that would be harmed by the work; and more recent cultural surveys by professional archeologists between 2014 and 2015 confirmed, with the concurrence of the North Dakota State Historic Preservation Office, that no historic properties were present or would be affected by the pipeline. Plaintiff's Br., Attachment 11 at 214-18; Dakota Access Br., Attachment 4, ¶¶ 32-34.

These determinations have been recently validated by the State Historical Society. On September 21, 2016, seven archeologists from the State of North Dakota conducted a cultural resources survey of this area after it became safe again for investigators to return. They concluded that Plaintiffs' allegations have no merit. The State's archeologists discovered no cultural material in the pipeline corridor, and determined that the locations that Thomas Mentz alleges to be protectable lie outside that corridor. They also concluded, contrary to Plaintiffs' assertions, that no human remains or significant sites, inside or outside of the pipeline corridor, have been disturbed by pipeline construction. This is consistent with

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the fact that throughout the relevant area the existing gas pipeline runs parallel to (and just north of) the centerline for the Dakota Access pipeline.

These new findings also support the court's observation that the pipeline curves to avoid cultural sites. Op. at 36. The report thus confirms that the Corps's Section 106 process met Congress's goal of avoiding and mitigating harms when risks of harm were brought to the attention of the Corps and Dakota Access.

Respectfully submitted,

/s/ Miguel A. Estrada

Miguel A. Estrada

cc: Counsel of Record (via CM/ECF)