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April 2, 2021

Lt. General Scott A. Spellmon,
Commanding General
U.S. Army Corps of Engineers
441 G Street NW
Washington, DC 20314-1000

RE Request for Cooperating Agency Status and Immediate Consultation –
Dakota Access Pipeline

Dear General Spellmon:

The State of North Dakota is vitally concerned about the future of the Dakota Access Pipeline (“DAPL”), the construction and operation of which has been authorized by the U.S. Army Corps of Engineers (as well as other Federal agencies) for over four years. The Corps has also repeatedly defended DAPL for years as the safest and most environmentally friendly way to promote the public interest by transporting oil from North Dakota to distant refineries, safely generating many thousands of good paying jobs and contributing billions of dollars in tax revenues essential to the State of North Dakota.

The Corps, and any other Federal agency that may be involved in any major federal agency action that has the potential for the shut down or curtailment of DAPL must consult with North Dakota on a government-to-government basis in accordance with North Dakota’s sovereign status under the United States Constitution and laws of the United States, the National Environmental Policy Act (“NEPA”) and in recognition of the importance of the DAPL to North Dakota and its citizens.

At a minimum, as required by NEPA, the Corps must provide North Dakota with transparent, early, meaningful, substantive, and ongoing consultation with respect to any major federal action or decision that may alter the status quo operations of the DAPL (and there can be no doubt that a decision to shut down the DAPL would be a major federal agency action). Accordingly, the State of North Dakota requests:

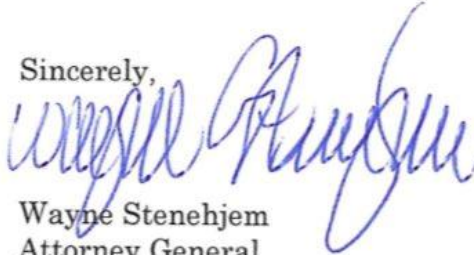
- (1) “cooperating agency” status pursuant to 40 C.F.R. § 1508.5 given the State’s unique sovereign interests and special expertise and considerations related to any major federal agency action for any potential shut down or curtailment of DAPL;

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- (2) conducting consultation through senior federal representatives who can speak or act on behalf of the appropriate Federal agencies, including the Corps;
- (3) participating in a transparent and direct non-public dialogue that allows North Dakota to provide input and be kept current on the decision-making process before any proposals are finalized;
- (4) providing robust information and documents (including non-final, non-public, draft, and supporting documents) about potential federal actions, including proposed actions or rules;
- (5) addressing or resolving North Dakota's issues, concerns, or other input unless precluded by law; and
- (6) documenting how North Dakota's concerns were resolved or why they were unable to be resolved in final decisions.

On behalf of our citizens and in the event such major federal agency action is contemplated, I look forward to a transparent, cooperative and productive consultation process with the Corps and other Federal agencies in this matter of great importance to our State.

Sincerely,



Wayne Stenehjem
Attorney General

cc: Governor Doug Burgum
Honorable Kevin Cramer
Honorable John Hoeven
Honorable Kelly Armstrong