State of
North Dakota
Office of the Governor

Jack Dalrymple
Governor

November 14, 2016 **(Amended November 28, 2016)**

Regional Freedom of Information Officer
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

Dear FOIA Officer:

This is a formal request for documents, made pursuant to the Freedom of Information Act ("FOIA"), 5 U S.C. § 522, as amended, and the implementing regulations of the U.S. **Environmental Protection Agency, Region 8 (EPA)**

Further, for reasons detailed in this letter, we respectfully request on behalf of the State of North Dakota (State):

1. Expedited processing of this FOIA request; and,

2. A waiver of all associated fees.

The State requests copies of all of the following records:

1. Any records referring to or containing communications or information about the Special Use Permit application made by the Standing Rock Sioux Tribe or any other entity or individual that would allow the Standing Rock Sioux Tribe to enter, use and be present on Federal lands near the Cannonball River and Lake Oahe in North Dakota (to include the application mentioned in Corps press release 20160916-002 posted September 16, 2016), including but not limited to any records that refer to or contain communications or information about any applications for the Special Use Permit (including any copies of the applications), the review of any such applications, and the granting of the application (including any copies of the draft and final permits), or any portion of the application, for a Special Use Permit (including any records referring to or containing communications or information about any portion of such applications that were not granted or upon which no action has as yet been taken).

2. Any records referring to or containing communications or information about what is known as the Sacred Stones camp located on Federal lands near the Cannonball River and Lake Oahe in North Dakota.

3. Any records referring to or containing communications or information about what are known as the Oceti Sakowin (or Seven Council Fires) camp, the Red Warrior camp, or the "Overflow" camp, located on Federal lands near the Cannonball River and Lake Oahe in North Dakota.

4. Any records referring to or containing communications or information about any person or organization that is with or without authorization, camping, residing, seeking access to, or being present on, Federal lands near the Cannonball River and Lake Oahe, in North Dakota in 2016.

5. Any records referring to or containing communications or information about any unauthorized structures constructed on or moved to Federal lands near the Cannonball River and Lake Oahe, in North Dakota in 2016.

6. Any records referring to or containing communications or information about any authorized or unauthorized roads constructed on Federal lands near the Cannonball River and Lake Oahe, in North Dakota in 2016.

7. Any records referring to or containing communications or information about any environmental impacts caused by or associated with any authorized or unauthorized activity on Federal lands near the Cannonball River and Lake Oahe, in North Dakota in 2016.

8. Any records referring to or containing communications or information about any criminal acts, littering, disposal of waste, generation or disposal of sewage, sanitary or public health conditions, or pollution on Federal lands near the Cannonball River and Lake Oahe, in North Dakota in 2016, or the discharge of any pollutants from such lands into the waters of the U.S. or North Dakota.

This FOIA request is not meant to be exclusive of any other documents which, though not specifically requested, would have a reasonable relationship to the subject matter of this request. Specifically, this FOIA request includes all applicable documents that have ever been within EPA's custody or control, whether such documents exist in agency "working," investigative, retired, electronic mail, or other files, currently or at any other time.

For purposes of this request, "records" mean paper or electronically created and stored documents, electronic mail and communications, information, memoranda, letters, reports, drafts (including drafts of records containing comments or edits), records of communications, telephone message records, calendars, agendas, meeting sign-in sheets, presentations, handwritten or typed notes, facsimile transmissions, transcripts or recordings (audio or visual) of meetings, tapes and all other types of records in the possession, control, or custody of the EPA or contractors working for the EPA.

For any documents or portions of documents for which the EPA asserts specific exemption(s) from the requirements of the FOIA, please provide an index itemizing and describing the documents or portions of documents withheld. The index should provide a detailed justification for claiming a particular exemption that explains why each such exemption applies to the document or portion of a document withheld. Specifically, for all records responsive to these requests that are not produced based on an asserted exemption from disclosure, please prepare a privilege and/or exemption log describing, at a minimum:

1. The type of record withheld;

2. The date(s) of the creation of the record;

3. The subject of the record;

4. The identity of the author and all recipients of the records; and

5. A detailed description of the basis upon which the EPA is withholding the record (e.g., the claim of privilege, FOIA exemption, etc.).

In the event that a copy of any of the requested records is denied, please note that the FOIA provides that if only portions of a requested file are exempted from release, the remainder must still be released. The State therefore requests that we be provided with all non-exempt portions which are reasonably segregable. Specifically, to the extent any responsive documents are withheld based upon a claim of privilege or other exemption from disclosure, please produce redacted copies of all non-privileged or non-

exempt factual material contained within such documents. The State further requests that the EPA describes any deleted/redacted material in detail and specifies the statutory basis for the denial as well as the EPA's reasons for believing that the alleged statutory justification applies to the deletion/redaction.

Additionally. in the case of any unreleased requested documents, please separately state the EPA's reasons for not invoking the EPA's discretionary powers to release the requested documents in the public interest. Such statements from the EPA will be helpful in deciding whether to appeal an adverse determination, and in formulating arguments in case an appeal is undertaken. The EPA's written justification might also help to avoid unnecessary litigation. The State reserves its right to appeal the withholding or deletion of any information and expect that the EPA will list the office and address where such an appeal may be sent.

Expedited Processing Request: The State respectfully requests expedited processing of this FOIA request due to what appear to be steadily worsening public health and sanitary conditions on the Federal lands that are the subject of this request. It is the duty of both the EPA. and North Dakota to protect public health and safety, and this information is necessary to properly fulfill those duties.

In any event, please provide the above records within twenty (20) business days of receipt of this FOIA Request. 5 U.S.C. § 552(a)(6)(A)(i). If it appears that it may not be possible to provide all of the records by the statutorily mandated deadline, please provide the responsive records that are available as soon as possible on a rolling basis (i.e., do not withhold responsive records past the deadline while searching for additional records), and please contact Assistant Attorney General Joseph Bialke at the North Dakota Attorney General's office at 701-328-3640 promptly regarding any scheduling issues.

If the EPA requires any additional time beyond this statutorily prescribed period, the EPA should immediately contact Joseph Bialke at the address noted below to request an extension.

Fee Waiver Request: Please note that 5 U.S.C. § 552(a)(4)(A)(iv)(II) requires that the EPA provides the first 100 copies to the State at no charge. However, the State respectfully requests a waiver of all fees under 5 U.S.C. § 552(a)(4)(A)(iii), as justified below.

The information the State seeks and requests is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Federal government and the information sought is not primarily in the State's commercial interest.

In order to help the **EPA** determine the State's status in relation to any assessment and/or waiver of fees associated with this request, please be aware that the North Dakota Attorney General is the chief legal counsel and advisor to state government in North Dakota. The Attorney General represents and defends the interests of the State (and, therefore, the people) of North Dakota in civil and criminal actions. The Attorney General may take legal action to protect the State's rights, defend the actions of State officials, and ensure public order. However, the information requested is not requested to support or advance any private litigation or to provide private legal advice. North Dakota state law prohibits the Attorney General and his staff from providing legal advice to, or representing, members of the public.

Additionally, the Attorney General is a member of numerous boards and commissions, including the Board of University and School Lands and Industrial Commission (which oversees all State-owned industries), and Judicial Council and Pardon Advisory Board. The information requested may be pertinent to the responsibilities and obligations of these other North Dakota state agencies.

Additionally, this FOIA request concerns the past and ongoing operations or activities of the Federal government. The requested documents are associated with the **EPA's** decision-making processes and the implementation of significant agency policy decisions, affecting North Dakota public order, as well as its citizens and property owners.

Accordingly, the State requests that the **EPA** waive any applicable fees since disclosure meets the statutory standard for waiver of fees in that it is clearly "in the public interest because furnishing the information can be considered as primarily benefiting the general public," 5 U.S.C. § 552(a)(4)(A). In this regard, the Office of Attorney General reiterates that it has no intention of using the information disclosed for financial gain.

This FOIA request is being made on behalf of the State of North Dakota, for no commercial purpose, and to obtain information about the operations of government and to significantly contribute to the public interest in such operations, and thus qualifies for a waiver of any fees and costs the **EPA** may incur in responding to this request.

Accordingly, the State meets the criteria for a fee waiver. However, if for some reason, the **EPA** denies this fee waiver request, while reserving its right to immediately appeal such a **EPA** decision, the State is willing to pay $10.00 (ten dollars) to cover costs of document search and duplication.

If the **EPA** has any questions or requires any clarification about this FOIA request, please contact the following North Dakota Office of Attorney General Point of Contact (POC): Joseph Bialke.

Please send all the documents responsive to this request to Joseph Bialke at:

Joseph Bialke
Assistant Attorney General
Office of Attorney General
600 East Boulevard Avenue, Dept. 125
Bismarck, ND 58505-0040
(701) 328-2210
ndag@nd.gov

Please let us know if you have any questions or if we may provide you any additional information.

Thank you in advance, and we look forward to hearing from you in the near future.

Sincerely,

Jack Dalrymple
Governor

Wayne Stenehjem
Attorney General