



UNDER SECRETARY OF THE ARMY  
WASHINGTON

August 28, 2020

Ethan P. Davis  
Acting Assistant Attorney General  
Civil Division  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001

Re: *North Dakota v. United States*, No. 1:19-cv-150 (D.N.D. Jul. 18, 2019)

Dear Mr. Davis:

This letter expresses my views regarding whether the United States should consider settlement discussions with the State of North Dakota with respect to *North Dakota v. United States*, No. 1:19-cv 150 (D.N.D. Jul. 18, 2019). This case involves protests over the construction of the Dakota Access Pipeline, which occurred in 2016 and 2017 resulting in significant damage to Federal, state, local, and personal property.

On July 23, 2018, the State of North Dakota submitted a Notice of Federal Tort Claim to the U.S. Army Corps of Engineers seeking reimbursement from the United States for expenses incurred responding to the protests. Nearly a year later, on July 18, 2019, North Dakota filed a Federal Tort Claims Act civil complaint in U.S. District Court asserting state-law claims for public nuisance, negligence, negligence under a "Good Samaritan" theory of liability, gross negligence, and civil trespass. I have been informed that no discussions were undertaken to seek settlement of this case during this time frame.

On September 17, 2019, the United States filed a motion to dismiss for lack of subject matter jurisdiction. On August 19, 2020, Judge Traynor denied, in part, the United States' motion to dismiss. Only one of the five claims asserted (i.e., Negligence – "Good Samaritan") was dismissed. I understand that no settlement discussions were undertaken during this time frame. To avoid protracted and costly litigation, particularly in light of the harm that occurred in this case, I request that you consider engaging in settlement discussions with North Dakota to determine whether a reasonable resolution is within reach.

If you have any questions, please feel free to call me at (703) 695-2947. My point of contact for this action is Colonel Jeff Bovarnick at [jeff.a.bovarnick.mil@mail.mil](mailto:jeff.a.bovarnick.mil@mail.mil).

Sincerely,

A handwritten signature in black ink, appearing to read "J. McPherson", is written over the typed name.

James E. McPherson