



ROSEBUD SIOUX TRIBE

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August 22, 2022

The Honorable Joseph R. Biden
President of the United States
Attn: Daron Carreiro, Special Advisor
Director Paawee Rivera, Tribal Affairs
The White House
1600 Pennsylvania Ave., NW
Washington, DC. 20500

Hon. Deb Haaland
Secretary of the Interior
Attn: Heidi Todacheenie
ASIA Bryan Newland
1849 C Street, NW
Washington, DC 20240

Hon. Tom Vilsack
Secretary of Agriculture
Attn: Janie Hipp, General Counsel
Attn: Reed Robinson, USFS Tribal Liaison
1400 Independence Ave, SW
Washington, DC 20250

Re: Remove the Black Hills from the 1872 Mining Act. Stop USFS Jenny Gulch Permits

Dear President Biden, Secretary Vilsack and Secretary Haaland:

On behalf of the Rosebud Sioux Tribe, one of the Tribes of the Great Sioux Nation (Oceti Sakowin, Seven Council Fires, of the Lakota-Nakota-Dakota Oyate), I write to call upon you to withdraw the Black Hills National Forest from the 1872 Mining Act and to immediately stop the process of applying the Mining Act to applications in the Black Hills, including Jenny Gulch.

The Creator gave the breath of life to the first woman and first man, with life liberty, and a sacred duty to protect Grandmother Earth. Our Lakota-Nakota-Dakota Oyate gave our lives to protect our homelands. The United States of America entered into the 1868 Treaty affirming our original national territory, including the Black Hills. The Treaty was entered by mutual consent, so Natural Law (*see* Declaration of Independence, "the Laws of Nature and of Nature's God") and the Constitution prohibited America's unilateral abrogation of our Treaty.

The Black Hills are our sacred lands. Our Seven Council Fires of the Lakota-Nakota-Dakota Oyate entered into our 1851 Treaty and our 1868 Treaty with the United States of America to preserve the Black Hills. In the 1868 Treaty the Black Hills are reserved from our original national territory as our "permanent home" for the "absolute and undisturbed use" of the Great Sioux Nation.

The 1872 Mining Act allows any Americans (and USFS allows foreigners too) to claim minerals on the American “public domain” and claim ownership of the land where the minerals are located. America does not own the Black Hills. The Great Sioux Nation owns the Black Hills under the 1868 Treaty. The Black Hills are the original sacred lands of our Lakota-Nakota-Dakota Oyate. In *United States v. Sioux Nation of Indians*, 448 U.S. 371, 374—375, (1980), the Supreme Court explained:

For over a century now, the Sioux Nation has claimed that the United States unlawfully abrogated the Fort Laramie Treaty of April 29, 1868, 15 Stat. 635, in Art. II of which the United States pledged that the Great Sioux Reservation, including the Black Hills, would be “set apart for the absolute and undisturbed use and occupation of the Indians herein named.” *Id.* at 636. The Fort Laramie Treaty was concluded at the culmination of the Powder River War of 1866-1867, a series of military engagements in which the Sioux tribes, led by their great chief, Red Cloud, fought to protect the integrity of earlier-recognized treaty lands from the incursion of white settlers.

The Fort Laramie Treaty included several agreements central to the issues presented in this case. First, it established the Great Sioux Reservation, a tract of land bounded on the east by the Missouri River, on the south by the northern border of the State of Nebraska, on the north by the forty-sixth parallel of north latitude, and on the west by the one hundred and fourth meridian of west longitude, in addition to certain reservations already existing east of the Missouri. The United States “solemnly agree[d]” that no unauthorized persons “shall ever be permitted to pass over, settle upon, or reside in [*Great Sioux Nation*] territory.” *Ibid.* [Note: the word “this” was struck and the name “*Great Sioux Nation*” was inserted to better define the term “territory.”]

Having made the 1868 Treaty based upon mutual consent, in keeping with the Constitution’s Treaty Clause and the Organic Acts of the United States and having pledge Peace, America had no right or authority to unilaterally engage in War against the Great Sioux Nation to take our original homeland. That violated the Constitution and our Treaty. The Supreme Court said:

“A more ripe and rank case of dishonorable dealings will never, in all probability, be found in our history....”

448 U.S. at 390 (quoting Court of Claims). A cramped and limited claims process that did not provide equal protection of the laws to Indian nations cannot stand in the way of a fair resolution to remove America’s burden on our Great Sioux Nation title to the Black Hills. When Indian lands are not treated as our original nation territory, when our consent as Native Nations is not secured, when America conjures cramped and limited rules for 5th Amendment protections and seizes lands contrary to treaty, American law has no legitimacy. It is time to set things right on a nation-to-nation basis. Stop any pending Federal giveaways of our sacred homeland.

Under the Johnson Administration, DOI Secretary Udall froze oil development in Alaska in 1966 until Alaska Native rights were respected.¹ CIRI explained the effect of this decision:

¹ Stewart Udall said in a 1969 interview, “One of the other things that I took most satisfaction in the last two years, and again the President and his people gave me support right down the line on this – was in championing the cause of the Alaskan natives and their desire to have land in Alaska.”

A courageous decision more than forty years ago opened the way for Alaska Native people to fight for and win a settlement of their ancestral claims to land in Alaska. In 1966, U.S. Secretary of the Interior Stewart L. Udall froze the selection of lands in Alaska by the state until Alaska Native land claims could be resolved. By doing so, he created an unprecedented opportunity for the newly organized Alaska Native land claims movement to press for and eventually win passage of the Alaska Native Claims Settlement Act (ANCSA).

Today, President Biden and Secretary Haaland we call upon you to exercise the same courage that President Johnson and Secretary Udall did for Alaska in 1966.

The Great Sioux Nation owns title to the Black Hills, not the United States of America. Any other legal argument is neo-colonialism, which the Rosebud Sioux Tribe will not give countenance to in the 21st Century. America should withdraw the Black Hills from the Mining Act immediately by Executive action. Tell the U.S. Agencies no more sales or transfers of our Black Hills lands, no more mining permits on our sacred Black Hills land.

President Biden, with respect, we call upon you to meet on a nation-to-nation basis to address the Black Hills including removal of the Black Hills Forest from the mining Act.

Sincerely,

A handwritten signature in cursive script, appearing to read "Scott Herman".

President Scott Herman