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TRIBAL COUNCIL MEMBERS

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Robert "Bob" Walters
Randall "RJ" Lawrence
Derek Bartlett

DISTRICT 6
Tuffy Thompson
Ronald Rousseau

August 22, 2022

Via Online Objection Submittal Portal

Black Hills National Forest Supervisor's Office
Attn: Objection Reviewing Officer
1019 North 5th Street
Custer, SD 57730

**Re: OBJECTION OF THE CHEYENNE RIVER SIOUX TRIBE
TO THE JENNY GULCH EXPLORATION PROJECT
FINAL ENVIRONMENTAL ASSESSMENT (EA),
DRAFT DECISION NOTICE (DN), AND
FINDING OF NO SIGNIFICANT IMPACT (FONSI)**

**Responsible Official: James Gubbels, District Ranger,
Mystic Ranger District, Black Hills National Forest**

To Whom It May Concern:

Pursuant to 36 C.F.R. Part 218, the Cheyenne River Sioux Tribe ("Tribe") files this Objection to the Final Environmental Assessment ("EA"), Draft Decision Notice ("DN"), and Finding of No Significant Impact ("FONSI") issued by James Gubbels District Ranger, Mystic Ranger District, Black Hills National Forest, for the F3 Gold, LLC, Jenny Gulch Exploration Drilling Project in the Black Hills National Forest ("Project") on or about July 8, 2022. See <https://www.fs.usda.gov/project/?project=57428>.

The Tribe previously filed scoping comments on or about January 16, 2020, which are attached hereto as **Exhibit 1**, and comments on the Draft Environmental Assessment ("EA") on or about October 22, 2021, which comments are attached hereto as **Exhibit 2**.

The Tribe is opposed to any activity in the Black Hills that would infringe on our rights under the Fort Laramie Treaty of 1868 and other federal laws, including the National Historic Preservation Act (“NHPA”) and the National Environmental Policy Act (“NEPA”). The Tribe believes the EA is inadequate, does not contain the legally-required analysis of impacts from the Project, particularly to cultural and religious resources, and cannot form the basis for a lawful FONSI. The Tribe expresses its disappointment that the U.S. Forest Service would issue a Final EA without having completed the meaningful and good faith consultation with the Tribe that is required by the NHPA, other laws, and the agency’s trust responsibilities. This lack of meaningful consultation is evident in the EA’s dearth of understanding or analysis of cultural and religious impacts anticipated from the Project. The Tribe requests the U.S. Forest Service suspend all action on this Project until it has satisfied its legal obligations to the Tribe.

The Tribe is a signatory to the Fort Laramie Treaty of 1868 and a constituent tribe of the Great Sioux Nation. In the Fort Laramie Treaty of 1868, the Sioux Nation reserved to itself the territory known as the Great Sioux Reservation, a tract of land including the sacred Black Hills, referred to as *Pahá Sápa* in our *Lakota* language. The United States promised that this territory would be “set apart for the absolute and undisturbed use and occupation of the Indians herein named.” *See* Fort Laramie Treaty of 1868, art. II.

The United States broke its promise in 1877, when it enacted the Act of February 28, 1877, taking the Black Hills and other lands from the Great Sioux Nation. The United States Supreme Court acknowledged the illegality of the United States’ taking of the Black Hills in the case of *U.S. v. Sioux Nation* (1980). In that case, the Supreme Court held that the Great Sioux Nation was entitled to compensation for the taking of the Black Hills. The Cheyenne River Sioux Tribe and other tribes of the Great Sioux Nation have not accepted the compensation awarded for the Black Hills, insisting to this day that the United States stole the Black Hills and that it should return the Black Hills.

The Black Hills are sacred to our people. In our *Lakota* language, we refer to the Black Hills as *Pahá Sápa* and we consider them “the heart of everything that is.” The Tribe is committed, now and forever, to protecting the Black Hills and preserving our claim to our sacred lands. To that end, several of our Sioux Tribes recently purchased the sacred lands known as *Pe’ Sla* in the heart of the Black Hills. The United States approved an application made by the Tribes to take our sacred *Pe’ Sla* lands into trust. The Tribes intend to keep the lands in their original and natural state, reintroducing buffalo and other natural species, and preserving the area for traditional cultural and religious ceremonies.

The tribes of the Great Sioux Nation have called upon the United States to return federal lands in the Black Hills, yet for over 40 years, the United States has not acted to provide justice for the Great Sioux Nation in the Black Hills. The Cheyenne River Sioux Tribe is opposed to all mineral exploration and mining in the Black Hills that would infringe on our rights under the Fort Laramie Treaty of 1868 and other federal laws, the Cheyenne River Sioux Tribe asserts that the United States should recognize that the Black Hills are not within the scope of the General Mining Law of 1872 and remove the Black Hills from all federal mining and mineral leasing laws. The Cheyenne River Sioux Tribe has treaty rights to land, water, fish, wildlife, and other natural, cultural, and other resources in the Black Hills.

On August 20, 2022, the Tribe sent a letter to President Biden, Agriculture Secretary Vilsack, and Interior Secretary Haaland calling upon the United States to remove the Black Hills from the General Mining Law of 1872. A copy of that letter is attached hereto as **Exhibit 3**.

In derogation of our rights, much of the land in and around the Black Hills is now managed by the Forest Service as the Black Hills National Forest. The Tribe is aware that the Forest Service is considering a proposal to allow F3 Gold, LLC (“F3 Gold”) to explore for gold and other minerals from lands near *Pe’ Sla* in the Black Hills. F3 Gold wants to engage in exploratory drilling on up to forty-seven (47) drilling pads north of Silver City. Silver City is close to *Pe’ Sla*.

The Tribe has legitimate concerns that the proposed mineral exploration would interfere with our Treaty rights and our use of our sacred *Pe' Sla* and other lands in the Black Hills. The Project would involve construction of up to forty-seven (47) drilling pads. It would involve the use of trucks and other vehicles to haul materials to and from drill sites, the use of construction equipment, and on-site staging or storage of vehicles, equipment, material, and fuel.

These and other activities could create substantial and unreasonable noise and disturbance for surrounding lands, including *Pe' Sla*. These issues should have been addressed through government-to-government consultation between the Forest Service and the Tribe before any EA was completed or circulated to the public for review.

The EA references the government-to-government consultation held with the Oglala Sioux Tribe on January 28, 2022. EA at p. 42 (Section 4.4). However, no detail of any kind is presented. The agency failed to disclose or analyze any follow up site visits and additional survey work that were promised by Black Hills National Forest Supervisor Jeff Tomac at the January 28, 2022 meeting. The follow-up site visits and the results or information gathered from such site visits are critical in the assessment of impacts to cultural resources. Absent this information, the agency's responsibilities with regard to this project fall short of the legal requirements under NEPA.

Additionally, impacts to *Pe' Sla*, which contains significant sacred, ceremonial, and historic qualities and resources, must be assessed. Despite the repeated reference to this area in the comments submitted to the agency, neither the EA nor the Draft DN make any specific mention of the area. Without this specific discussion, the EA and Draft DN lack sufficient information to demonstrate a proper analysis as to whether the character and use of this site could be significantly impacted by the proposed operation, even if indirectly. Operations proposed during the Project may have significant adverse effects on the use and character of the cultural, spiritual and religious area. The USFS must consider the obvious adverse impacts to the cultural resources, the certain adverse impacts to the cultural and religious uses of the area, including *Pe' Sla*, along with impacts to the users of this religious area from the noise, visual intrusions, and other direct adverse effects must be addressed.

The Tribe has legitimate concerns that the proposed exploration would cause irreparable harm to archeological, historical, cultural, and sacred sites and areas present in and around the proposed Project area. These issues should be addressed through government-to-government consultation and full compliance with federal law, including Section 106 of NHPA as well as Executive Order No. 13007 on Indian Sacred Sites and Executive Order No. 13175.

Agriculture Secretary Vilsack signed the Biden Administration's November 2021 Memorandum of Understanding Regarding Interagency Coordination and Collaboration for the Protection of Tribal Treaty and Reserved Rights. That MOU affirmed the USDA's "commitment to protect tribal treaty rights, reserved rights and similar tribal rights to natural and cultural resources" and "to demonstrate that commitment through early consideration of treaty and reserved rights in agency decision-making." The Forest Service must honor these commitments.

Further, Secretary Vilsack signed the November 2021 Joint Secretarial Order on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters. The order encourages the Department of Agriculture to "make agreements with Indian Tribes to collaborate in the co-stewardship of Federal lands and waters under the Departments' jurisdiction." The order states that the Department of Agriculture "will engage affected Indian Tribes in meaningful consultation at the earliest phases of planning and decision-making relating to the management of Federal lands to ensure that Tribes can shape the direction of management," and "will collaborate with Indian Tribes to ensure that Tribal governments play an integral role in decision making related to the management of Federal lands and waters through consultation, capacity building, and other means." The Forest Service must honor these commitments.

Agriculture Secretary Vilsack signed the Biden Administration’s November 2021 Memorandum of Understanding Regarding Interagency Coordination and Collaboration for the Protection of Indigenous Sacred Sites. That MOU affirmed the USDA’s “commitment to improve the protection of ... Indigenous sacred sites” and “to demonstrate their commitment through the early consideration of the protection and access to Indigenous sacred sites in agency decision-making.” The Black Hills and *Pe’ Sla* are sacred sites. The Forest Service must work with the Tribe – through early and meaningful consultation – to protect these sacred sites.

The Tribe has legitimate concerns that the proposed exploration may cause environmental harms to the land, natural resources, and fish and wildlife in the Black Hills, including surface lands, subsurface structures, water, threatened and endangered species, and other natural resources. These issues should be addressed through government-to-government consultation and detailed environmental analysis under NEPA, including a comprehensive Environmental Impact Statement (“EIS”). The Tribe opposes a FONSI. The Tribe believes the proposed Project would result in significant impacts to the land, water, fish, wildlife, and natural resources in the Black Hills. The Tribe shares and joins in the concerns and objections raised by the Black Hills Clean Water Alliance. Those concerns have not been adequately addressed by the Forest Service.

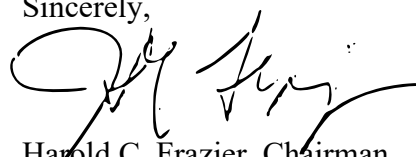
The Tribe believes the proposed Project would have significant impacts on its cultural resources as well as its religious and cultural practices in the Black Hills and at *Pe’ Sla*. Without government-to-government consultation with the Tribe, there is no way the Forest Service can adequately assess the significance of cultural resource impacts, let alone make a finding that the proposed Project would have no significant impacts on such cultural resources and on the cultural and religious practices at and around the site.

The Tribe previously submitted comments on the direct, indirect, and cumulative impacts the proposed Project would have on cultural and religious resources at the proposed exploration sites, at *Pe’ Sla* and religious and cultural practices at *Pe’ Sla*. Yet there is no analysis in the EA on the impacts on *Pe’ Sla* and no competent analysis of any impacts to cultural, historical, and religious resources of the Cheyenne River Sioux Tribe. The EA instead relies exclusively on a limited Level 1 “records search” and “targeted site visits.” The EA does not indicate what records were reviewed, who selected those records, or that any “targeted site visits” were performed by individuals qualified to identify and review impacts to *Lakota* religious and cultural resources. Had the Forest Service engaged in the required government-to-government consultation with the Cheyenne River Sioux Tribe and had the Forest Service complied with NHPA requirement that consultation begin as early as possible in the process, the agency would know that a scientifically competent survey is required, and that a simple record search and unspecified “targeted site visits” are inadequate. It would also be aware of the tremendous religious and cultural resource impacts of this proposed Project—impacts both within and beyond the four corners of the Project site.

Given the lack of the required meaningful and good faith consultation by the Forest Service prior to completion of the EA, the Tribe requests the agency immediately suspend all work on this Project until all NHPA and government-to-government consultation has occurred. At that time, the agency should prepare a Draft EIS for public and tribal review and comment.

We look forward to working with you on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Harold C. Frazier', written over a horizontal line.

Harold C. Frazier, Chairman
Cheyenne River Sioux Tribe

Enclosures:
Exhibits 1-3

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Mark J. Knight

DISTRICT 5
Ryman LeBeau
Robert "Bob" Walters
Randel J. "RJ" Lawrence
Derek Bartlett

DISTRICT 6
Tuffy Thompson
Wade Tater Ward

January 16, 2020

Via Electronic Mail

Mark E. Van Every, Forest Supervisor
Forest Service
Black Hills National Forest
U.S. Department of Agriculture
1019 N. 5th Street
Custer, SD 57730
Email: mvanevery@fs.fed.us; comments-rocky-mountain-black-hills-mystic@usda.gov

Re: F3 Jenny Gulch Exploration Project

Dear Forest Supervisor Van Every:

I write on behalf of the Cheyenne River Sioux Tribe ("Tribe") to submit comments on the proposed F3 Gold, LLC, Jenny Gulch Exploration Drilling Project in the Black Hills National Forest ("Project"). The Tribe is also opposed any activity in the Black Hills that would infringe on our rights under the Fort Laramie Treaty of 1868 and other Federal laws, including the National Historic Preservation Act ("NHPA") and the National Environmental Policy Act ("NEPA"). The Tribe requests formal government-to-government consultation with the Forest Service in the U.S. Department of Agriculture concerning the proposed mineral exploration and development in the Black Hills National Forest. The Tribe asserts that such consultation is required by Executive Order No. 13007 on Indian Sacred Sites and Executive Order No. 13175 on Consultation and Coordination with Indian Tribal Governments.

Background

The Tribe is a signatory to the Fort Laramie Treaty of 1868 and a constituent tribe of the Sioux Nation. In the Fort Laramie Treaty of 1868, the Sioux Nation reserved to itself the territory known as the Great Sioux Reservation, a tract of land including the sacred Black Hills, referred to as *Pahá Sápa* in our *Lakota* language. The United States promised that this territory would be “set apart for the absolute and undisturbed use and occupation of the Indians herein named.” See Fort Laramie Treaty of 1868, art. II.

The United States broke its promise in 1877, when it enacted the Act of February 28, 1877, taking the Black Hills and other lands from the Sioux Nation. The United States Supreme Court acknowledged the illegality of the United States’ taking of the Black Hills in the case of *U.S. v. Sioux Nation* (1980). In that case, the Supreme Court held that the Sioux Nation was entitled to compensation for the taking of the Black Hills. The Cheyenne River Sioux Tribe and other tribes of the Sioux Nation have not accepted the compensation awarded for the Black Hills, insisting to this day that the United States stole the Black Hills and that it should return the Black Hills.

The Black Hills are sacred to our people. In our *Lakota* language, we refer to the Black Hills as *Pahá Sápa* and we consider them “the heart of everything that is.” The Tribe is committed, now and forever, to protecting the Black Hills and preserving our claim to our sacred lands. To that end, several of our Sioux Tribes recently purchased the sacred lands known as *Pe’ Sla* in the heart of the Black Hills. The United States approved an application made by the Tribes to take our sacred *Pe’ Sla* lands into trust. The Tribes intend to keep the lands in their original and natural state, reintroducing buffalo and other natural species, and preserving the area for traditional cultural and religious ceremonies.

Proposed Exploration Project

In derogation of our rights, much of the land in and around the Black Hills is now managed by the Forest Service as the Black Hills National Forest. The Tribe is aware that the Forest Service is considering a proposal to allow F3 Gold, LLC (“F3 Gold”) to explore for gold and other minerals from lands near *Pe’ Sla* in the Black Hills. F3 Gold wants to engage in exploratory drilling in up to forty-two (42) locations north of Silver City. Silver City is close to *Pe’ Sla*.

The Tribe has legitimate concerns that the proposed mineral exploration would interfere with our use of our sacred *Pe’ Sla* lands in the Black Hills. The Project would involve construction of up to forty-two (42) drilling sites. It may involve the use of trucks and other vehicles to haul materials to and from drill sites, the use of construction equipment, and on-site staging or storage of vehicles, equipment, material, and fuel. These and other activities could create substantial and unreasonable noise and disturbance for surrounding lands, including *Pe’ Sla*. These issues should be addressed through government-to-government consultation between the Forest Service and the Tribe.

The Tribe also has legitimate concerns that the proposed exploration would cause irreparable harm to archeological, historical, cultural, and sacred sites and areas present in and around the proposed Project area. These issues should be addressed through government-to-government consultation and full compliance with Federal law, including Section 106 of NHPA.

The Tribe has legitimate concerns that the proposed exploration may cause environmental harms to the land, natural resources, and fish and wildlife in the Black Hills, including surface lands, subsurface structures, water, threatened and endangered species, and other natural resources. These issues should be addressed through government-to-government consultation and detailed environmental analysis under NEPA, including a comprehensive Environmental Impact Statement (“EIS”).

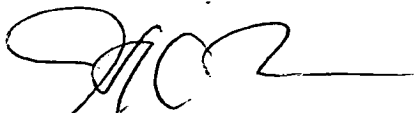
Formal Request for Government-to-Government Consultation

The Tribe is opposed to any exploration or development of minerals in the Black Hills that would harm our sacred *Pahá Sápa*, including our sacred *Pe’ Sla*, and our traditional cultural and religious use of those lands. We are opposed to any exploration or development of minerals in the Black Hills that would harm archeological, historical, cultural, and sacred sites in the Black Hills or that would harm the land, natural resources, and fish and wildlife in the Black Hills.

The Cheyenne River Sioux Tribe hereby requests formal government-to-government consultation with the Forest Service in the U.S. Department of Agriculture concerning the proposed F3 Gold, LLC, Jenny Gulch Exploration Drilling Project in the Black Hills National Forest. Such consultation is required by Executive Order No. 13007 on Indian Sacred Sites and Executive Order No. 13175 on Consultation and Coordination with Indian Tribal Governments.

We look forward to working with you on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'HCF', with a long horizontal line extending to the right.

Harold C. Frazier
Chairman

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Ronald Rousseau

October 22, 2021

Via Electronic Mail

James Gubbels, District Ranger
 U.S. Forest Service
 Mystic Ranger District Office
 8221 Mount Rushmore Road
 Rapid City, SD 57702
 Email: comments-rocky-mountain-black-hills-mystic@usda.gov

Re: F3 Jenny Gulch Exploration Project

Dear District Ranger Gubbels:

I write on behalf of the Cheyenne River Sioux Tribe ("Tribe") to submit comments on the Draft Environmental Assessment ("EA") for the proposed F3 Gold, LLC, Jenny Gulch Exploration Drilling Project in the Black Hills National Forest ("Project"). The Tribe is opposed to any activity in the Black Hills that would infringe on our rights under the Fort Laramie Treaty of 1868 and other federal laws, including the National Historic Preservation Act ("NHPA") and the National Environmental Policy Act ("NEPA"). The Draft EA is inadequate; it does not contained the legally-required assessment of all direct, indirect, and cumulative impacts from the Project; and it cannot form the basis of a lawful Finding of No Significant Impact ("FONSI"). Tribe repeats its request for formal government-to-government consultation with the Forest Service concerning the Project and its impacts on the environment, land, water, fish, wildlife, natural resources, cultural resources, and traditional, religious, and cultural practices in the Black Hills. The Forest Service should suspend all further action on this Project until it has engaged in formal government-to-government consultation with the Tribe.

The blue represents the thunderclouds above the world where live the thunder birds who control the four winds. The rainbow is for the Cheyenne River Sioux people who are keepers of the Most Sacred Calf Pipe, a gift from the White Buffalo Calf Maiden. The eagle feathers at the edges of the rim of the world represent the spotted eagle who is the protector of all Lakota. The two pipes fused together are for unity. One pipe is for the Lakota, the other for all the other Indian Nations. The yellow hoops represent the Sacred Hoop, which shall not be broken. The Sacred Calf Pipe Bundle in red represents Wakan Tanka – The Great Mystery. All the colors of the Lakota are visible. The red, yellow, black and white represent the four major races. The blue is for heaven and the green for Mother Earth.

The Tribe is a signatory to the Fort Laramie Treaty of 1868 and a constituent tribe of the Great Sioux Nation. In the Fort Laramie Treaty of 1868, the Sioux Nation reserved to itself the territory known as the Great Sioux Reservation, a tract of land including the sacred Black Hills, referred to as *Pahá Sápa* in our *Lakota* language. The United States promised that this territory would be “set apart for the absolute and undisturbed use and occupation of the Indians herein named.” See Fort Laramie Treaty of 1868, art. II.

The United States broke its promise in 1877, when it enacted the Act of February 28, 1877, taking the Black Hills and other lands from the Great Sioux Nation. The United States Supreme Court acknowledged the illegality of the United States’ taking of the Black Hills in the case of *U.S. v. Sioux Nation* (1980). In that case, the Supreme Court held that the Great Sioux Nation was entitled to compensation for the taking of the Black Hills. The Cheyenne River Sioux Tribe and other tribes of the Great Sioux Nation have not accepted the compensation awarded for the Black Hills, insisting to this day that the United States stole the Black Hills and that it should return the Black Hills.

The Black Hills are sacred to our people. In our *Lakota* language, we refer to the Black Hills as *Pahá Sápa* and we consider them “the heart of everything that is.” The Tribe is committed, now and forever, to protecting the Black Hills and preserving our claim to our sacred lands. To that end, several of our Sioux Tribes recently purchased the sacred lands known as *Pe’ Sla* in the heart of the Black Hills. The United States approved an application made by the Tribes to take our sacred *Pe’ Sla* lands into trust. The Tribes intend to keep the lands in their original and natural state, reintroducing buffalo and other natural species, and preserving the area for traditional cultural and religious ceremonies.

The tribes of the Great Sioux Nation have called upon the United States to return federal lands in the Black Hills, yet for over 40 years, the United States has not acted to provide justice for the Great Sioux Nation in the Black Hills. The Cheyenne River Sioux Tribe is opposed to all mineral exploration and mining in the Black Hills that would infringe on our rights under the Fort Laramie Treaty of 1868 and other federal laws, and the Cheyenne River Sioux Tribe asserts that the United States should recognize that the Black Hills are not within the scope of the General Mining Law of 1872 and remove the Black Hills from all federal mining and mineral leasing laws. The Cheyenne River Sioux Tribe has treaty rights to land, water, fish, wildlife, and other natural, cultural, and other resources in the Black Hills.

In derogation of our rights, much of the land in and around the Black Hills is now managed by the Forest Service as the Black Hills National Forest. The Tribe is aware that the Forest Service is considering a proposal to allow F3 Gold, LLC (“F3 Gold”) to explore for gold and other minerals from lands near *Pe’ Sla* in the Black Hills. F3 Gold wants to engage in exploratory drilling on up to forty-seven (47) drilling pads north of Silver City. Silver City is close to *Pe’ Sla*.

The Tribe has legitimate concerns that the proposed mineral exploration would interfere with our Treaty rights and our use of our sacred *Pe’ Sla* and other lands in the Black Hills. The Project would involve construction of up to forty-seven (47) drilling pads. It would involve the use of trucks and other vehicles to haul materials to and from drill sites, the use of construction equipment, and on-site staging or storage of vehicles, equipment, material, and fuel.

These and other activities could create substantial and unreasonable noise and disturbance for surrounding lands, including *Pe’ Sla*. These issues should have been addressed through government-to-government consultation between the Forest Service and the Tribe before any Draft EA was completed or circulated to the public for review.

The blue represents the thunderclouds above the world where live the thunder birds who control the four winds. The rainbow is for the Cheyenne River Sioux people who are keepers of the Most Sacred Calf Pipe, a gift from the White Buffalo Calf Maiden. The eagle feathers at the edges of the rim of the world represent the spotted eagle who is the protector of all Lakota. The two pipes fused together are for unity. One pipe is for the Lakota, the other for all the other Indian Nations. The yellow hoops represent the Sacred Hoop, which shall not be broken. The Sacred Calf Pipe Bundle in red represents Wakan Tanka – The Great Mystery. All the colors of the Lakota are visible. The red, yellow, black and white represent the four major races. The blue is for heaven and the green for Mother Earth.

The Forest Service indicated in the Draft EA that it solicited government-to-government consultation in a mailing dated June 6, 2020. The Tribe indicated its desire to participate in such consultation in a letter dated January 17, 2020, but to date no such consultation has taken place. The Draft EA states that, “due to the Covid-19 pandemic and associated shutdowns, government to government consultation was not possible for most of 2020 and early 2021.” The Forest Service should not have issued a Draft EA before engaging in meaningful consultations with the Cheyenne River Sioux Tribe and other federally-recognized Indian tribes.

The Tribe has legitimate concerns that the proposed exploration would cause irreparable harm to archeological, historical, cultural, and sacred sites and areas present in and around the proposed Project area. These issues should be addressed through government-to-government consultation and full compliance with federal law, including Section 106 of NHPA as well as Executive Order No. 13007 on Indian Sacred Sites and Executive Order No. 13175.

The Tribe has legitimate concerns that the proposed exploration may cause environmental harms to the land, natural resources, and fish and wildlife in the Black Hills, including surface lands, subsurface structures, water, threatened and endangered species, and other natural resources. These issues should be addressed through government-to-government consultation and detailed environmental analysis under NEPA, including a comprehensive Environmental Impact Statement (“EIS”). The Tribe opposes a FONSI. The Tribe believes the proposed Project would result in significant impacts to the land, water, fish, wildlife, and natural resources in the Black Hills. The Tribe shares and joins in the concerns raised by the Black Hills Clean Water Alliance. Those concerns have not been adequately addressed by the Forest Service.

The Tribe believes the proposed Project would have significant impacts on its cultural resources as well as its religious and cultural practices in the Black Hills and at *Pe’ Sla*. Without government-to-government consultation with the Tribe, there is no way the Forest Service can adequately assess the significance of cultural resource impacts, let alone make a finding that the proposed Project would have no significant impacts on such cultural resources and on the cultural and religious practices at and around the site.

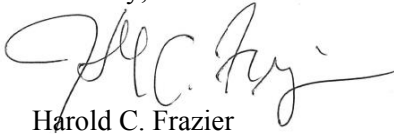
The Tribe previously submitted comments, dated January 16, 2021, on the direct, indirect, and cumulative impacts the proposed Project would have on cultural and religious resources at the proposed exploration sites, at *Pe’ Sla* and religious and cultural practices at *Pe’ Sla*. Yet there is no analysis in the Draft EA on the impacts on *Pe’ Sla* and no competent analysis of any impacts to cultural, historical, and religious resources of the Cheyenne River Sioux Tribe. The EA instead relies exclusively on a limited Level 1 “records search” and “targeted site visits”. The EA does not indicate what records were reviewed, who selected those records, or that any “targeted site visits” were performed by individuals qualified to identify and review impacts to *Lakota* religious and cultural resources. Had the Forest Service engaged in the required government-to-government consultation with the Cheyenne River Sioux Tribe and had the Forest Service complied with NHPA requirement that consultation begin as early as possible in the process, the agency would know that a scientifically competent survey is required, and that a simple record search and unspecified “targeted site visits” are inadequate. It would also be aware of the tremendous religious and cultural resource impacts of this proposed Project—impacts both within and beyond the four corners of the Project site.

Given the lack of the required meaningful and good faith consultation by the Forest Service to date, the Tribe requests the agency immediately suspend all work on this Project until all NHPA and government-to-government consultation has occurred. At that time, the agency should prepare a Draft EIS for public and tribal review and comment.

We look forward to working with you on this matter.

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Sincerely,

A handwritten signature in black ink, appearing to read "H.C. Frazier". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Harold C. Frazier
Chairman
Cheyenne River Sioux Tribe

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CHAIRMAN
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EvAnn White Feather

TREASURER
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August 20, 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: Black Hills of South Dakota: Immediate Removal from Mining Act

Dear President Biden, Secretary Vilsack and Secretary Haaland:

On behalf of the Cheyenne River 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.

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. Having entered the Treaty by mutual consent, Natural Law (reflected in the Declaration of Independence) and the Constitution prohibited America's unilateral abrogation of our Treaty.

EXHIBIT 3

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. In the 1868 Treaty, America pledged that “war shall forever cease” between the United States of America and the Great Sioux Nation. Then at the Battle of the Rosebud and Battle of the Little Big Horn in 1876, President Grant sent General Crook and Custer to attack us in our treaty protected unceded Indian territory. A ten year-old Lakota boy was the first person killed by the Seventh Cavalry. Lakota women and children were killed when Major Reno and his troops opened fire on our village without warning. Crook and Custer lost.

Upon losing those battles, America sent more Armies to attack our people and kill our leaders. In Montana, Lame Deer is named for our *Mnicoujou* leader, who the Cavalry shot and killed with his sons while he was on our lands hunting for food. After he surrendered to save his Lakota people, Crazy Horse was stabbed in the back while the Army was trying to illegally arrest him and send him to exile in Dry Tortugas without notice or hearing.

Later, Sitting Bull was killed in a joint operation by the BIA and the Cavalry to silence his voice because he opposed America’s 1889 theft of 9 million acres of land from the Great Sioux Reservation for pennies per acre. The Secretary of the Interior starved our Lakota people after this theft, and our *Mnicoujou* Chief Big Foot, also named Spotted Elk, and 350 of our Lakota were disarmed and then massacred by the 7th Cavalry at Wounded Knee. Babies were shot on their mother’s backs. Little boys were called out from cover, “come out, you’re safe” and then shot. The 7th Cavalry’s revenge for Custer—killing our innocent children.

The 1872 Mining Act allows any Americans to claim minerals on the “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 pledged 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 violated the 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 President Johnson's Administration, Stewart Udall froze oil development in Alaska in 1966 until there was respect for Alaska Native rights.¹ Upon Udall's passing, CIRI, explained the effect of this decision:

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 simply neo-colonialism, which the Great Sioux Nation will not give countenance to in the 21st Century. America should withdraw the Black Hills from the Mining Act immediately by Executive Proclamation. 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 and removal of the Black Hills Forest from the mining Act.

Sincerely,



Chairman Harold C. Frazier

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."