

King Law Office
Margaret E. King

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March 4, 2023

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BHNF, ...

Rob Hoelscher, District Ranger
1019 North 5th Street
Custer, SD 57730

Dear Mr. Hoelscher,

Enclosed please find a copy of my first comment concerning the gold mine where F3 Gold LLC of Minneapolis, Minnesota, is proposing to begin exploratory drilling this spring.

It is my opinion that this exploratory drilling, if commenced without public comment and an Environmental Impact Statement, will be in violation of the law on several fronts: Federal Indian Law and Environmental Law to name two.

Sincerely,

[REDACTED]

Margaret E. King
Attorney at Law

Enc.

First Comment to U.S. Forest Service, Re: F3 Gold Mine

Fiduciary Duty of the U.S. Government to the Native American Tribes Pursuant to their Trust Relationship

The origins of the trust relationship between the United States of America and the Native American Tribes was discussed by the U.S. Supreme Court in the case, Cherokee Nation v. Georgia 30 U.S. (5 Pet.) 1, 8 L.Ed. 25 (1831). The opinion of the Court was written by Chief Justice, John Marshall.

Chief Justice Marshall coined the phrase, "Domestic Dependent Nations" to describe this relationship as follows, "Their relation to the United States resembles that of a ward to his guardian."

When all the opinions of the Justices were submitted it was established that a majority of the Court supported some degree of sovereignty for the Cherokee Nation.

Worcester v. Georgia, 31 U.S. (6 Pet.) 517, 8 L.Ed. 483 (1832) also found the Cherokee Nation to possess a degree of sovereignty. This case established the precedent for construing treaties in favor of the Tribes.

The Trust relationship, Tribal Sovereignty and construing treaties in favor of the tribes are strong and enduring principals of Federal Indian Law that continue to this day.

Seminole Nation v. United States, 316 U.S. 286, 62 S. Ct. 1049, 86 L.Ed. 1480 (1940), states that 43 Statute 133 expressly confers jurisdiction on the Court of Claims to adjudicate all "legal and equitable claims" resulting under treaty or statute.

Seminole found that the government has charged itself with moral obligations of the highest responsibility of trust. "Furthermore, this Court has recognized the distinctive obligation of trust incumbent upon the Government in its dealings with these dependent and sometimes exploited people. In carrying out its treaty obligations with the Indian tribes, the Government is something more than a mere contracting party."

Title 25 of the U.S. Code states that the undertakings with the Indians are to be liberally construed to the benefit of the Indians.

U.S. v Jicarilla Apache Nation, 564 U.S. 162 (2011) states that the trust obligations of the U.S. to the Indian Tribes are established and governed by statute rather than common law.

The Bureau of Indian affairs, on its website, www.BIA.gov currently reads, "Federal Indian Trust responsibility is one of the most important principles in Federal Indian Law. It is a legally enforceable fiduciary obligation on the part of the United States to protect Tribal Treaty Rights, land assets and resources.

Treaty of Fort Laramie with the Sioux, April 29, 1868, 15 Stat. 635. Sets the boundaries of the Great Sioux Nation at Article 2. The Black Hills, where F3 proposes their exploratory drilling, are included in these boundaries.

The U.S. Supreme Court case, United States v. Sioux Nation of Indians, 448 U.S. 371 (1980) held the Black Hills to have been unlawfully taken from the Great Sioux Nation. Therefore, the proposed exploratory drilling would be on unceded treaty land. The Sioux Nation has not taken any money for this stolen land. The Black Hills are not for sale.

Attached hereto as exhibit 'A' is a copy of the paper distributed by the Oglala Sioux Tribe at the February 16, 2023, meeting at Custer High School, where they publicly asked for Nation to Nation consultation with the United States government. This paper also lists several other laws that will potentially be broken if drilling proceeds without complying to these laws.

It is well known that harmful chemicals are used in the type of drilling and mining proposed by F3. These harmful chemicals can be reasonably foreseen to threaten the currently clean water in French Creek both at the site and downstream. This puts the inhabitants of Custer, the fish and wildlife in French and on French Creek, including in Custer State Park, and the inhabitants and visitors to the Indian Nations, on several Indian Reservations including, Pine Ridge, Rosebud and Cheyenne River at risk of poisoning and loss of our water sources. Ground water is also at risk of this contamination and most of us living in the area get our water from wells. Due the semiarid environment where this drilling is being proposed we are also in danger of losing our water and having our wells go dry because of the sheer amount of water that will be used to do the drilling.

Virtually all residents of this area and of the Indian Nations who were represented and who attended the February 16, 2023 meeting were opposed to this project moving forward.

There is solidarity in demanding an Environmental Impact Statement from most people who will be adversely affected by this proposed drilling.

Respectfully submitted,



Margaret E. King
Attorney at Law

**UGLALA SIOUX TRIBE TALKING POINTS ON F3
GOLD'S PROPOSED NEWARK EXPLORATION DRILLING PROJECT**

The Oglala Sioux Tribe has legitimate concerns that F3 Gold's proposed Newark Exploration Project may impact the Tribe's treaty rights to land, water, fish, wildlife, and other natural, cultural, and other resources in the Black Hills.

The Tribe has legitimate concerns that the proposed gold 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 with the Oglala Sioux Tribe. Consultation is required by federal law, including but not limited to Section 106 of the National Historic Preservation Act (NHPA), Executive Order 13007, and Executive Order 13175. Consultation must be carried out in accordance with tribal law, including OST Ordinance No. 11-10.

At a minimum, the Black Hills National Forest (BHNF) should:

- (1) conduct targeted site visits of the proposed exploration site with the cultural and natural resource experts of the Oglala Sioux Tribe; and
- (2) engage with the Tribe's cultural and natural resource experts on a meaningful survey of cultural and religious resources at and near the proposed exploration site; and
- (3) consult with the Oglala Tribal Council before, during and after the site visits and survey work.

The Tribe asks the BHNF to deny F3 Gold's request for a Categorical Exclusion (CE).

The Tribe asks the BHNF to prepare a formal Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA), not an Environmental Assessment (EA), considering the significant and cumulative impacts of the project.

The Tribe asks the BHNF to complete the historical and cultural survey required by the NHPA prior to issuance of an EIS.

The Tribe also asks the BHNF to complete all consultation with the Tribe prior to any further action on the project.

Exhibit 'A'