



Water Protector Legal Collective

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October 28, 2024

Via Electronic Submission

Shawn Cochran,
Forest Supervisor,
Black Hills National Forest
United States Forest Service
1019 N. 5th Street
Custer, SD 57730

Elysia Retzlaff
Withdrawal Project Manager
Rocky Mountain Regional Office
elysia.retzlaf@usda.gov

Re: Support for Pactola Reservoir-Rapid Creek Watershed Withdrawal

Dear Forest Supervisor Cochran and Ms. Retzlaff:

On behalf of the Water Protector Legal Collective (“WPLC”)—an Indigenous-led nonprofit organization that works throughout the United States and internationally, in defense of the rights of Indigenous Peoples, the Earth, Water, and climate justice movements—we submit these comments in support of the proposed Pactola Reservoir-Rapid Creek Watershed mineral withdrawal and the U.S. Forest Service’s proposed Alternative A: The Proposed Action (Withdrawal).

We commend the U.S. Forest Service for proposing withdrawal and recognizing that protecting H̄e Sapa (Black Hills) and the water is an important endeavor, and we ask this withdrawal proposal be expedited to the Department of Interior Secretary Deb Haaland.

Consistent with our public comment supporting the mineral withdrawal in June 2023, WPLC is in support of Alternative A – Withdrawal and urges the Forest Service and Department of Interior to approve the mineral withdrawal for the entirety of 20,574 acres of National Forest System to protect the area from mining, leasing, geothermal leasing, or any other kind of mineral extraction for the maximum allowable time of twenty years, with renewal at the end of those twenty years.

As Alternative A states, if approved, the withdrawal “would prohibit the sale or exchange of federal lands and minerals in the withdrawal application area and close those federal lands and minerals to mineral entry and leasing. No new mining claims could be located and no new mineral or geothermal leases could be issued... Non-federal lands and minerals would not be subject to the withdrawal.” This is an important starting point to protecting the Black Hills, which have already suffered greatly from extensive historical impacts of mining and other development. A mineral withdrawal is an effective mechanism to curb the desecration of the Black Hills and protect the area from the impacts of mining exploration and other forms of development.

As the USFS also recognizes, the Black Hills are considered sacred and the traditional homelands of the Oceti Šakowiŋ (Great Sioux Nation), Cheyenne, Arapaho, Arikara, Hidatsa, Mandan, and Crow tribes. This area including the lands of the withdrawal application include numerous sacred sites and places of cultural importance that qualify for protection under federal laws and regulations, in addition to places that are home to important geographic places, areas visited by Tribes for medicine, ceremony, gathering foods, teaching traditions and connecting with the water.

The 1868 Treaty of Fort Laramie designated the Ĥe Sápa (Black Hills) as “unceded Indian Territory” for the exclusive use of the Oceti Šakowiŋ “for as long as the grass shall grow and the rivers will flow.” When gold was found in the Black Hills, the United States reneged on the agreement and re-drew the boundaries of the treaty. In 1980, the Supreme Court of the United States recognized that the 1877 act of Congress by which the United States unilaterally abrogated the Fort Laramie Treaty of 1868 and wrested control of the Black Hills, was a violation of and an unconstitutional “taking” under the Fifth Amendment. 448 U.S. 371 (1980). In other words, the Supreme Court found that the Black Hills is stolen land. The 1980 decision represented the culmination of more than sixty years of litigation and lobbying in which the Oceti Šakowiŋ sought remedy for broken treaty promises.

Although the proposed withdrawal only covers a small portion of treaty lands of the Oceti Šakowiŋ, the withdrawal would help protect the cultural and historical resources in that area—which rests on stolen, unceded treaty lands. Mining activity in the proposed withdrawal area would undeniably once more threaten cultural resources in the Black Hills and the rights of Indigenous Peoples and Nations that call Ĥe Sápa home. The proposed withdrawal is a step forward towards compliance with federal laws and applicable international standards including under as the Native American Graves Protection and Repatriation Act of 1990 and the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the United Nations General Assembly in 2007 and recognized by the U.S. State Department as having both moral and political force.

Past mining has impacted the Rapid Creek watershed already through acid mine drainage, spills of toxic fluids including cyanide, ANFO solution, hydraulic fluid, diesel fuel, and antifreeze. The watershed cannot afford to be impacted again. See “Upper Rapid Creek Watershed Assessment” by Dr. Scott Kenner, Scott Miller, A.J. Silva, and Charles Tinant, November 2004; see also “Tanks, Spills, and Environmental Events,” Northern Black Hills Gold Operation Spills Data from South Dakota Department of Agriculture and Natural Resources.

In recent years there has been a renewed and heightened interest in mineral exploration. Since July 2022, nine mineral related proposals have been listed on the BKNF public webpage and published on the Schedule of Proposed Actions. Of those proposals, six are for exploratory drilling which would have an adverse impact on the Black Hills, land, water, sacred sites and traditional cultural properties. Rapid City, South Dakota derives its water supply from the Rapid Creek Watershed and connected aquifers. Due to this, there is widespread community opposition to gold exploration and mining in the Rapid Creek Watershed. Resolution 2020-011, February 3, 2020. The proposed withdrawal will guard against this.

Given the importance of the watershed in providing drinking water and the importance of the area to nearby Tribes or Tribes with ancestral ties to the area, the Pactola Reservoir-Rapid Creek Watershed is an area that must be protected.

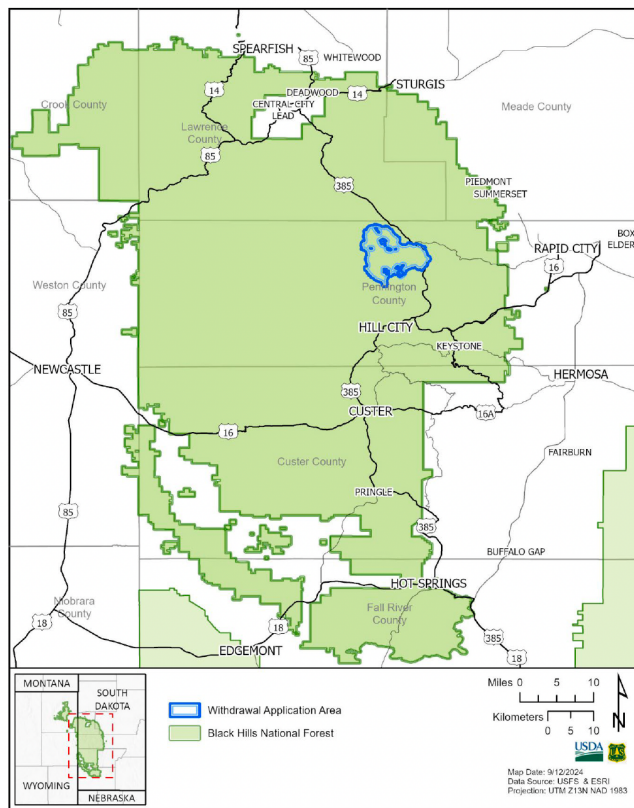


Figure 1. Withdrawal application area

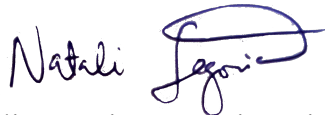
Finally, as seen in the USFS withdrawal area, this is still only 10% of the Upper Rapid Creek Watershed and less than 20% of the Black Hills. The USFS notes in its Draft EA and FONSI that the Secretary of Interior retains discretion to withdraw all or a subset of those lands, but a broader boundary “would require initiating a new withdrawal application.” We recommend future expansion of this area to include the entire watershed.

As noted in June 2023 public comment submitted by the Black Hills Clean Water Alliance, adequate protection of cultural resources “requires expansion of the proposed withdrawal to the broader Black Hills, as 248,000 acres of the Black Hills – or 20% of the total – were under active mining claims as of April 26, 2023.”

An Environmental Assessment to protect the Black Hills would also be welcome in the future.

In conclusion, WPLC strongly supports the proposed withdrawal and urges the Secretary to move forward with the protection of the Pactola Reservoir-Rapid Creek Watershed for the longest permissible withdrawal period of 20 years

Sincerely,

A handwritten signature in blue ink that reads "Natali Segovia". The signature is written in a cursive style with a large, looping initial "N".

Natali Segovia, Executive Director & Senior Attorney
Water Protector Legal Collective
Mni Wiconi. Water is Life.