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Comments: I'm writing to formally object to the Forest Service's Draft Decision and Finding of No Significant Impact for F3 Gold's Jenny Gulch gold mining project, and to identify several shortcomings with the Environmental Assessment of this proposal.

Plenty of my comments from scoping in 2020 and on the Draft EA in 2021 still apply, so I will begin by reiterating a few ongoing and general issues with the Forest Service's decision.

Once again: nothing further in this process should take place before a meaningful nation-to-nation consultation process occurs with ALL tribal nations with connections to the Black Hills. Sending an initial consultation letter, unfortunately for the Forest Service, does not fulfill the commitments made by the federal government through the National Historic Preservation Act, the 1978 American Indian Religious Freedom Act, Executive Orders 12898 (Federal Actions to Address Environmental Justice), 13007 (Indian Sacred Sites), and 13175 (Consultation and Coordination with Indian Tribal Governments), and other relevant federal laws. The Forest Service is bound to uphold these commitments.

Within the scoping comments and responses, found within Appendix H of the Environmental Assessment, evidence can be found of at least six (6) federally recognized tribal nations registering serious concerns with this proposed project. Free, prior, and informed consent, per the United Nations Declaration on the Rights of Indigenous Peoples, has not been granted, and therefore this proposal is in violation of the sovereignty of Indigenous peoples who have lived in relation with these lands since time immemorial.

The Black Hills are sacred to Dakota, Lakota, and Nakota peoples (Oceti Sakowin), as well as other Indigenous peoples with treaty-protected and ancestral connections to this place. In 1980, the US Supreme Court acknowledged the theft of the Black Hills in violation of the 1868 Fort Laramie Treaty, which was grounded in recognition of Indigenous sovereign inherent rights to these lands. The Black Hills fall within treaty-protected lands.

Relevant US legislation/Executive Orders to this matter include:

- Antiquities Act (1906)
- National Park Service Organic Act (1916)
- Historic Sites Act (1935)
- Wilderness Act (1964)
- National Historic Preservation Act (1966)
- National Environmental Policy Act (1970)
- Protection and Enhancement of the Cultural Environment: Executive Order 11593 (1971)
- Endangered Species Act (1973)
- American Indian Religious Freedom Act (1978)
- Archaeological Resources Protection Act (1979)
- Abandoned Shipwreck Act (1987)
- National Register Bulletin 38: Guidelines for Evaluating and Documenting Traditional Cultural Properties (1990)
- Native American Graves and Repatriation Act (1990)
- Indian Sacred Sites: Executive Order 13007 (1996)

Relevant treaties/case law to this matter include:

- Treaty of July 5, 1825 with the Sioune and Oglala Tribes (1825)
- Fort Laramie Treaty (1851)

- Fort Laramie Treaty (1868)
- United States v. Sioux Nation of Indians (1980) (Docket 74, proving the theft/illegal taking of the Black Hills in violation of the 1868 Fort Laramie Treaty.)
- Lyng v. Northwest Indian Cemetery Protective Association (1988) (Triggered amendment of the National Historic Preservation Act, making sacred sites eligible for treatment as historic sites and requiring consultation with Tribes prior to disruption of sacred sites.)
- City of Albuquerque v. Browner (1993) (EPA win against the City of Albuquerque, affirming that Isleta Pueblo residents have the right to clean river water for the purposes of farming and religious ceremony.)
- Bear Lodge Multiple Use Association v. Babbitt (1999) (Upheld climbing ban at Bear Lodge during the month of June.)
- Washington State Department of Licensing v. Cougar Den, Inc. (2019) (Affirming that the 1855 treaty between the United States and the Yakama Nation forbids the State of Washington to impose a fuel tax on Yakama Nation members.)
- Herrera v. Wyoming (2019) (Affirming that the Crow Tribe's hunting rights, as established in the 1868 treaty between the United States and the Crow Tribe, in exchange for lands comprising most of what is currently Montana and Wyoming, did not expire upon the establishment of the State of Wyoming.)
- McGirt v. Oklahoma (2020) (Affirming that land in northeastern Oklahoma reserved for the Creek Nation since the 19th century remains "Indian Country").

Below are some specific objections to details within the EA and Draft Decision Notice:

- 1) The EA states, "Drilling activities in the vicinity of Sunnyside Gulch Road could be restricted from April 15 - August 31 to avoid disturbance during the bighorn sheep lambing season should lambing be observed." This is entirely inadequate and illogical. Comments from Game, Fish, and Parks make clear that if loud, disruptive drill trucks and earth-moving equipment enter the vicinity of the bighorn sheep area, let alone begin working, it will already be too late. Lambing and habitat use will already be interrupted. In fact, Stan Michals from GFP stated in his scoping comments that "pedestrian interactions cause bighorn sheep to abandon preferred lambing habitat." Allowing work to proceed until lambing is observed is plainly ignoring GFP advice. The District Ranger's imposed restriction for only six weeks from May 1 to June 15 is entirely inadequate when GFP have required 4.5 months.
- 2) The EA states, "An overall determination of no adverse effect to historic properties has been made for Alternative C. THPOs were forwarded a copy of the cultural resources report on July 2, 2021, with a request for comments on the determination of effect. The cultural resources report was provided to SHPO on August 2, 2021, with a request for concurrence. Concurrence with this determination is currently pending from the SHPO and regional THPOs." No final decision should be taken until concurrence with the determination of no adverse effect to cultural resources is secured from all THPOs.
- 3) The EA states that consultation occurred with Crow Creek Sioux Tribe on Jan. 27, 2022, Oglala Sioux Tribe on Jan. 28, 2022, and Three Affiliated Tribes (MHA Nation) on Feb. 22, 2022. Oglala Sioux Tribe has issued a letter clarifying that the Tribe registered its objections to the project in an *initial* consultation meeting in January; in other words, what the Forest Service considers to be adequate consultation, the Tribe considers to be simply an initial meeting. This is inconsistent with the requirements laid out in the National Historic Preservation Act and other federal law and policy relevant to matters of consultation.
- 4) Part of Appendix H reads: "For the Draft EA, an intensive heritage resource inventory of all areas to be disturbed was conducted. The report was submitted to SHPO (August 2, 2021) and THPO (July 2, 2021) offices for review and comment. A letter dated September 18, 2021, was received from the SHPO concurring with our recommendation." The State Historic Preservation Officer lacks the knowledge and expertise to protect cultural resources and sacred sites in the Jenny Gulch area. Prioritizing the SHPO over Tribal Historic Preservation Officers (THPOs) for relevant tribes is not only in violation of federal law (National Historic Preservation Act), but also ensures that resources in this area will not be protected. The process to evaluate the proposed project area

for its cultural and spiritual relevance must not just involve tribes; the process must be driven by tribes. Indigenous people must be in charge of evaluating the significance of their own sacred lands. Non-Native people, including SHPO, do not have the knowledge necessary to do this successfully.

5) There are significant water quality concerns associated with this proposed project, and the Forest Service is not taking these threats seriously. The EA clearly describes the potential for acid rock drainage in several places, including on p. 16: "The presence of sulfide minerals in the bedrock suggests that the rock is potentially acid-generating," p. 28: "The pH values are lower than other regional aquifers due to the absence of significant carbonate minerals in the igneous and metamorphic rocks that comprise the crystalline core," p. 31: "The arsenic in water samples is most likely from weathering of sulfide minerals (either natural or accelerated by historical mining activities), particularly within faulted and mineralized zones," and p. 33: "The introduction of oxygenated water into mineralized zones could lead to mobilization of acidity and/or metals, including arsenic, iron, and manganese." The EA also states, "Potential short-term indirect effects on surface water resources could occur from Project activities, including run-off and subsequent sedimentation of nearby surface waters. The new temporary overland trails would cross several WIZ areas; these crossings primarily occur along the edges of the WIZ (Figure 3-2). One exception to this is the overland trail crossing of an intermittent and protected section of Jenny Gulch and the WIZ associated with it (Figure 3-2). The new temporary overland trails would also cross several ephemeral streams (Figure 3-2)." According to the EA, there are 28 springs and 3 fens within the Project Area. Particularly given catastrophes resulting from acid rock drainage at Richmond Hill and Gilt Edge, it is shocking the Forest Service isn't taking this threat more seriously.

6) The EA states: "The downhole activity (drilling, drilling fluid, abandonment, etc.) is essentially the same as if a residential well were being constructed or abandoned. The only difference is that a core would be extracted from the hole for analysis." The EA also states that F3's proposed drill holes would range from 500 to 6,000 feet deep. Out of curiosity, I looked up the depth of a domestic well in that area. I'm attaching to my comments the well completion report of John Knutson's well, which lies within Section 30, Township 2N, Range 5E-within the southernmost chunk of private land which is excluded from the project area, generally to the west of Sunnyside Gulch Rd. I downloaded this report from the DANR website: <https://apps.sd.gov/nr68welllogs/>. John Knutson's well is drilled to 85 feet, which makes it very different in scale from what F3 is proposing. It is totally misleading to suggest that a handful of domestic water wells under 100 feet in depth are the same as 47 drill pads, each with 1-4 holes drilled up to 6,000 feet in depth. Also, the difference of core extraction is significant-especially given the potential for acid generation, as described above.

7) Relatedly, the cumulative impacts sections of the EA are entirely inadequate. Cumulative impacts of this project must be fully and meaningfully considered, with attention to: the mining history of the Black Hills and broader region, including Superfund sites and ongoing (inadequate) cleanup efforts and contamination, particularly contamination specific to acid mine drainage; the history of the theft of Indigenous lands and systematic disenfranchisement of and violence toward Indigenous peoples in this region; the potential impacts to Rapid City and Box Elder's water supply (as a Rapid City resident, I am concerned about this); and other potential impacts. Specifically, if the Forest Service is considering "Past, Present, and Reasonably Foreseeable Actions," the very real possibility of exploratory drilling leading to a full-blown mining operation must be considered. Mining is a reasonably foreseeable action. Exploratory drilling would have no purpose and would not occur if not for the promise of mining in the future. And if mining is reasonably foreseeable, the generation of acid is also reasonably foreseeable.

8) The District Ranger bases his finding of no significant impact using the ten factors identified in 40 CFR 1508.27(b). A few of these factors are particularly revealing and relevant to this proposal, which I discuss below:

- "The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks." The District Ranger writes: "The effects on the human environment are not highly uncertain, and are unlikely to involve unique or unknown risks. The Project is not unlike others or similar well drilling activities

that have been conducted in the BHNH or elsewhere." Especially given the rock's potential to generate acid, the risks involved are actually known. Ironically, the District Ranger is correct to note that the risks involved with this project are not unlike others in the Black Hills-the unfortunate truth is that the result of similar projects has been perpetual acid generation.

- "The degree to which the action may establish precedent for future actions with significant effects or represents a decision in principle about a future consideration." The District Ranger writes: "The Selected Alternative is not likely to establish a precedent for future actions with significant effects. The action does not represent a decision in principle about future considerations. Similar projects conducted in the future would be independent of this decision and would be evaluated and disclosed as required by NEPA for the significance of the effects of those specific actions." Again, unfortunately, the Forest Service's green-lighting of this exploration project has the very real potential to lead to large-scale mining in the Rapid Creek watershed, which has the very real potential for catastrophic acid mine drainage. These potential future actions must be considered meaningfully.

- "Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts." The District Ranger writes: "The other past, present, and reasonably foreseeable future actions considered in the determination of cumulative impacts in this environmental analysis are discussed in Section 3.10 of the EA. The cumulative impacts of the Selected Alternative, considered with other past, present, and reasonably foreseeable actions are not significant." This factor is particularly ironic, given that the proposal at hand is a gold exploration project, and exploratory drilling is artificially disconnected from the extremely realistic potential future impact of large-scale gold mining in the region. This disconnection features prominently in mining industry propaganda, and it unfortunately appears all over the EA as well. If "significance cannot be avoided by terming an action temporary or by breaking it down into small component parts," then the possibility of a project equivalent to Richmond Hill or Gilt Edge MUST be considered as part of the environmental analysis. This is not an unreasonable leap.

- "The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources." The District Ranger writes: "The potential effects on cultural resources have been considered in this analysis. No adverse effects are anticipated. An intensive heritage resource inventory of all areas that could be disturbed by the Project was conducted. The report was submitted to SHPO on August 2, 2021 and to THPO offices on July 2, 2021 for review and comment. SHPO concurred with the recommendation of no adverse effects for the Selected Alternative because it relocates access and drill pad features to avoid cultural resources." As stated above, *SHPO is not qualified* to determine whether or not the Selected Alternative results in no adverse impacts for cultural resources.

This proposed gold drilling project violates Indigenous sovereignty, threatens precious Black Hills water (more specifically the Rapid Creek watershed, which supplies Rapid City's water) with the possibility of acid rock drainage, and would disrupt the lifecycles of bighorn sheep as well as other species dependent on the Black Hills. The EA and Draft Decision Notice unfortunately contain several seriously misleading claims and represent the Forest Service's irresponsibly inadequate consideration of the environmental and cultural risks posed by F3's plans. I strongly oppose this project, I object to the Forest Service's Finding of No Significant Impact and several components of the EA, and I urge the Forest Service to proceed with Alternative A (No Action).