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Organization: Oglala Sioux Tribe

Title: President

Comments: The Oglala Sioux Tribe objects to the Final Environmental Assessment ("EA"), Draft Decision Notice ("DN"), and Finding of No Significant Impact ("FONSI") issued by the Black Hills National Forest for the F3 Gold, LLC, Jenny Gulch Exploration Drilling Project in the Black Hills National Forest, and the written objections of the Oglala Sioux Tribe are attached to this submittal through the online objection portal.

Oglala Sioux Tribe

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 OGLALA 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 Oglala Sioux Tribe ([Idquo]Tribe[rdquo]) files this Objection to the Final Environmental Assessment ([Idquo]EA[rdquo]), Draft Decision Notice ([Idquo]DN[rdquo]), and Finding of No Significant Impact ([Idquo]FONSI[rdquo]) 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 ([Idquo]Project[rdquo]) 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 17, 2020, which are attached hereto as Exhibit 1, and comments on the Draft Environmental Assessment ([Idquo]EA[rdquo]) on or about October 22, 2021, which comments are attached hereto as Exhibit 2. The Tribe engaged in an initial government-to-government consultation with the BHNF on or about January 28, 2022. At the consultation meeting, the Tribe presented the position paper attached hereto as Exhibit 3. The Tribe also sent the paper to the Director of the Office of Tribal Relations in the United States Department of Agriculture. During the consultation on January 28, 2022, BHNF Supervisor Jeff Tomac agreed to: (1) conduct one or more targeted site visits of the proposed exploration site with the cultural and natural resource experts of the 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 again with the Oglala Tribal Council following the site visit (or visits) and survey work. Thus, it was [ndash] and still is [ndash] the Tribe's understanding that the government-to-government consultation process with BHNF would be [ndash] and will be [ndash] ongoing. The Tribe sent a follow-up letter to the BHNF on or about May 20, 2022, a copy of which is attached as Exhibit 4, in which the Tribe renewed its requests for targeted site visits of the proposed exploration site, a comprehensive survey of cultural and religious resources at and near the proposed exploration site, and additional consultation with the Oglala Sioux Tribal Council following the site visit (or visits) and survey work. In response to the Tribe's letter of May 20, 2022, the BHNF conducted a site visit with Tribal experts on or about June 30, 2022. However, the BHNF notified the Tribe before the site visit took place that the EA and Draft DN/FONSI were already scheduled for publication. The BHNF has not engaged in further government-to-government consultation with the Tribe, as per the January 28, 2022 commitment. 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 ([Idquo]NHPA[rdquo]) and the National Environmental Policy Act ([Idquo]NEPA[rdquo]). 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 Pah[acute] S[acute]pa in our Lakota language. The United States promised that this territory would be [ldquo]set apart for the absolute and undisturbed use and occupation of the Indians herein named.[rdquo] 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[rsquo] 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 Oglala 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 Pah[acute] S[acute]pa and we consider them [ldquo]the heart of everything that is.[rdquo] 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[rsquo] Sla in the heart of the Black Hills. The United States approved an application made by the Tribes to take our sacred Pe[rsquo] 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 Oglala 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 Oglala 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 Oglala 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 ([ldquo]F3 Gold[rdquo]) to explore for gold and other minerals from lands near Pe[rsquo] 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[rsquo] Sla. The Tribe has legitimate concerns that the proposed mineral exploration would interfere with our Treaty rights and our use of our sacred Pe[rsquo] 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[rsquo] 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 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[rsquo]s responsibilities with regard to this project fall short of the legal requirements under NEPA. Additionally, impacts to Pe[rsquo] 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[rsquo] 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[rsquo]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[rsquo]s [ldquo]commitment to protect tribal treaty rights, reserved rights and similar tribal rights to natural and cultural resources[rdquo] and [ldquo]to demonstrate that commitment through early consideration of treaty and reserved rights in agency decision-making.[rdquo] 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 [ldquo]make agreements with Indian Tribes to collaborate in the co-stewardship of Federal lands and waters under the Departments[rsquo] jurisdiction.[rdquo] The order states that the Department of Agriculture [ldquo]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,[rdquo] and [ldquo]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.[rdquo] The Forest Service must honor these commitments. Agriculture Secretary Vilsack signed the Biden Administration[rsquo]s November 2021 Memorandum of Understanding Regarding Interagency Coordination and Collaboration for the Protection of Indigenous Sacred Sites. That MOU affirmed the USDA[rsquo]s [ldquo]commitment to improve the protection of [hellip] Indigenous sacred sites[rdquo] and [ldquo]to demonstrate their commitment through the early consideration of the protection and access to Indigenous sacred sites in agency decision-making.[rdquo] The Black Hills and Pe[rsquo] Sla are sacred sites. The Forest Service must work with the Tribe [ndash] through early and meaningful consultation [ndash] 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 ([ldquo]EIS[rdquo]). 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, attached hereto as Exhibit 5. 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[rsquo] 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[rsquo] Sla and religious and cultural practices at Pe[rsquo] Sla. Yet there is no analysis in the EA on the impacts on Pe[rsquo] Sla and no competent analysis of any impacts to cultural, historical, and religious resources of the Oglala Sioux Tribe. The EA instead relies exclusively on a limited level 1 [ldquo]records search[rdquo] and [ldquo]targeted site visits.[rdquo] The EA does not indicate what records were reviewed, who selected those records, or that any [ldquo]targeted site visits[rdquo] 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 Oglala 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 [ldquo]targeted site visits[rdquo] are inadequate. It would also be aware of the tremendous religious and cultural resource impacts of this proposed

Project[mdash]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. A Tribal Council Resolution authorizing this submission is attached as Exhibit 6. Over 350 constituents of the Oglala Sioux Tribe have also expressed their objections to the EA and Draft DN/FONSI and joint their letter is attached hereto as Exhibit 7. We look forward to working with you on this matter. Sincerely, Kevin Killer, President Oglala Sioux Tribe [Enclosures: Exhibits 1-7 See pgs 7-56 of pdf]