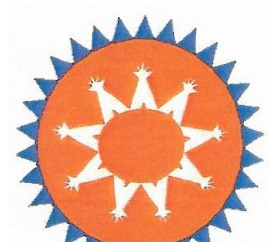




Oglala Sioux Tribe

P.O. Box 2070, Pine Ridge, S.D. 57770
Direct: 605-867-8487 - Cell Phone: 605-407-1231
Fax: 605-867-6076
E-mail: kevink@oglala.org



Office of the President
Kevin Killer

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 ("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 17, 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 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 – and still is – the Tribe's understanding that the government-to-government consultation process with BHNF would be – and will be – 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 ("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 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 *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 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 (“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 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, 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’ 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 Oglala 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 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 “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.

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,

A handwritten signature in black ink, appearing to read "Kevin Killer". The signature is written in a cursive, slightly stylized font.

Kevin Killer, President
Oglala Sioux Tribe

Enclosures:
Exhibits 1-7



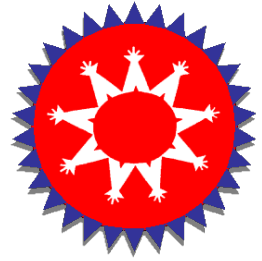
Oglala Sioux Tribe

PINE RIDGE INDIAN RESERVATION

P.O. Box #2070

Pine Ridge, South Dakota 57770

1(605) 867-5821 Ext. 8420 (O) / 1(605) 867-6076 (F)



Julian Bear Runner

January 17, 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 Oglala 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 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 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 Oglala 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”).

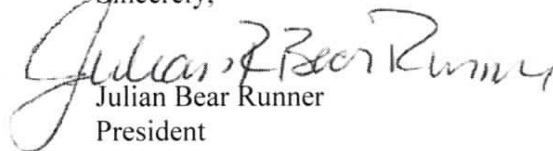
Formal Request for Government-to-Government Consultation

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 Oglala 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,



Julian Bear Runner
President



Oglala Sioux Tribe

P.O. Box 2070, Pine Ridge, S.D. 57770
Direct: 605-867-8487 - Cell Phone: 605-407-1231
Fax: 605-867-6076
E-mail: kevink@oglala.org

Office of the President
Kevin Killer

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 Oglala 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 Tribe believes the Draft 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 Finding of No Significant Impact ("FONSI"). The Tribe expresses its disappointment that the U.S. Forest Service would issue a Draft 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 Draft 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 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 *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 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 ("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 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.” As recently as August 30, 2021, and into September 2021, less than two weeks before the release of the Draft EA, Forest Service personnel acknowledged to Tribal officials that the agency seeks to initiate government to government consultation. While the Tribe appreciates the invitation from the Forest Service to begin consultation – and the Tribe intends to engage – the agency has done a disservice to the Tribe, the public, and itself by issuing a Draft EA before any substantive discussions have begun that could inform the agency’s environmental impact review.

The Oglala Sioux Tribe has, by ordinance, adopted laws and procedures governing government-to-government consultation with the United States. A copy of that ordinance—O.S.T. Ord. No. 11-10 (Jun. 7, 2011)—is attached hereto and incorporated by reference. Tribal law requires that government-to-government consultation occur in accordance with the process set forth in Ord. No. 11-10 on the Pine Ridge Indian Reservation at a Special Meeting of the Oglala Sioux Tribal Council. No such consultation has begun, despite the Tribe’s prior statement that it would entertain the U.S. Forest Service’s request for consultation on this proposed Project.

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 17, 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 Oglala Sioux Tribe. The Draft EA instead relies exclusively on a limited Level 1 “records search” and “targeted site visits”. The Draft 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 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 “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.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Killer". The signature is stylized with a large, sweeping "K" and a cursive "Killer".

Kevin Killer, President
Oglala Sioux Tribe

Enclosure:
O.S.T. Ord. No. 11-10 (Jun. 7, 2011)

ORDINANCE OF THE OGLALA SIOUX TRIBAL COUNCIL
OF THE OGLALA SIOUX TRIBE
(An Unincorporated Tribe)

ORDINANCE OF THE OGLALA SIOUX TRIBAL COUNCIL ESTABLISHING PROCEDURES FOR GOVERNMENT-TO-GOVERNMENT CONSULTATION BETWEEN THE OGLALA SIOUX TRIBE AND THE UNITED STATES GOVERNMENT, AND OTHER GOVERNMENTS.

WHEREAS, the Government-to-Government relationship between the Oglala Sioux Tribe was established in the United States Constitution, Article 6 (Supremacy Clause); the Treaty of July 2, 1825, United States-Oglala Band of Sioux Nation, 7 Stat. 252; Rev. Stat. § 2116, 25 U.S.C. § 177 (*codifying* section 12 of the Trade and Intercourse Act of June 30, 1834, ch. 161, 4 Stat. 730); the Treaty of September 17, 1851, United States-Teton Division of Sioux Nation, *et al.*, 11 Stat. 749; the Treaty of April 29, 1868, United States-Sioux Nation, 15 Stat. 635; Rev. Stat. § 2079, 25 U.S.C. § 71 (*codifying* the Act of March 3, 1871, ch. 120, § 1, 16 Stat. 566), the Indian Reorganization Act of June 18, 1934, ch. 476, 48 Stat. 984, 25 U.S.C. § 461 *et seq.*, the Indian Self-Determination and Education Assistance Act of January 4, 1975, P.L. 93-638, 88 Stat. 2203, 25 U.S.C. § 450, *et seq.*, and other Congressional enactments, and

WHEREAS, the 1851 Treaty recognized title in the Oglala Band to 60 million acres of territory currently in the States of North Dakota, South Dakota, Nebraska, Montana and Wyoming for the Oglala Sioux Tribe and other Sioux tribes, and

WHEREAS, a permanent homeland was established within the 1851 Treaty territory for the "absolute and undisturbed use and occupation" of the Oglala Sioux Band and other Sioux bands, which homeland has been referred to as the "Great Sioux Reservation" and comprises substantially all of present day South Dakota west of the east bank of the Missouri River, and

WHEREAS, the Indian Claims Commission also found that the Oglala Band and other Sioux bands held aboriginal (non-treaty) title to 14 million acres east of the Missouri River in the States of North Dakota and South Dakota, and

WHEREAS, uncontested encroachments on the 1851 Treaty territory by the United States and its citizens resulted in the Powder River War of 1866-1868 between the United States and the Oglala band and other bands of Sioux Indians. as a result of which, peace was concluded between the United States and the Oglala Band and other Sioux bands by treaty on April 29, 1868, 15 Stat. 635 ("1868 Fort Laramie Treaty," which treaty was duly ratified by the United States on February 16, 1869 and proclaimed by the President on February 24, 1869, and

WHEREAS, the 1868 Treaty provided for a mutual demobilization of the United States and Oglala Band and other Sioux bands without terms of surrender on either side, and as a result thereof, the Oglala Band and other Sioux bands were never militarily conquered by the United States, and the Oglala Band has abided by the 1868 Treaty and resided on its reservation in accordance of the terms of the treaty since 1868, except for incidences in Montana in 1876 where the Oglala Band and other Sioux bands were legally exercising its 1868 Treaty, Article 11, hunting rights and yet had to defend themselves from attack by the United States Cavalry in violation of Articles 1 and 11 of the 1868 Treaty, and

WHEREAS, subsequent to ratification of the 1868 Treaty, no aboriginal or treaty territory of the Oglala Band was ever acquired by the United States in accordance with 25 U.S.C. § 177 or Article 12 of the 1868 Treaty, and all acquisitions of Oglala Band's territory was either confiscated by the United States or acquired with the requisite consent of the Band, and

WHEREAS, the "Oglala Band" reorganized in 1936 as the "Oglala Sioux Tribe of the Pine Ridge Indian Reservation" under Section 16 of the 1934 Indian Reorganization Act of June 18, 1934, ch. 576, 48 Stat. 987, 25 U.S.C. § 476, by adopting a constitution and bylaws approved by the Secretary of the Interior, and presently enjoys all of the rights and privileges guaranteed under its existing treaties with the United States in accordance with 25 U.S.C. § 478b

WHEREAS, as a result of its unique government-to-government relationship with the United States, and because the Oglala Band (now Oglala Sioux Tribe) is one of the few militarily unconquered Sioux tribes in the United States and all of its territory now in the possession of the United States was acquired without its consent, the Oglala Sioux Tribe still possesses very strong aboriginal rights within all the territory that comprised its aboriginal homeland, and as a result thereof, the Tribe has both a domestic and international rights to government-to-government consultations with the United States on the formulation of federal policies, or on all federal actions or undertakings that adversely affect its aboriginal and treaty territories, and

WHEREAS, the Executive Branch of the united States Government has recognized the right of government-to-government consultations with Indian Tribes in:

- a. President Clinton's Memorandum of April 29, 1994, which, among other things, directed agencies to:

- (i) "ensure that the department or agency operates within a government-to-government relationship with Federally-recognized Tribal government,"
 - (ii) "consult, to the greatest extent practicable ad to the extent permitted by law with Tribal governments prior to taking actions that affect Federally recognized tribes, to be open and candid so that all interested parties may evaluate for themselves the potential impact of relevant proposals," and
 - (iii) "assess the impacts of Federal government plans, projects, programs, and activities on tribal trust resources to assure that Tribal government rights and concerns are considered during the development of such plans, projects, and activities."
- b. President Clinton's Executive Order No. 13084 of May 19, 1998, which directed federal agencies to respect tribal self-government and sovereignty, tribal rights, and tribal responsibilities whenever they develop policies "significantly affecting Indian tribal governments,"
- c. President Clinton's Executive Order No. 13175 of November 6, 2000, which directed all federal agencies to establish consultation and collaboration with tribal officials in the development of federal policies that have tribal implications, and
- d. President Barak Obama Memorandum of November 5, 2009, to the heads of the Executive Department and federal agencies to submit plans of actions that the agencies will take to implement the policies and directives of President Clinton's Executive Order 13175,

and

WHEREAS, Congress has also mandated government-to-government consultation with Indian tribes, which have been implemented in statutes, orders, regulations, rules, policies, manuals, protocols and guidance, most of which are described in a document issued by the White House- Indian Affairs Executive Working Group (WH-IAEWG), dated January, 2009, and entitled "List of Federal Tribal Consultation Statutes, Orders, Regulations, rules, Policies, Manuals, protocols and guidance," and

WHEREAS, the Oglala Sioux Tribe has never enacted legislation (ordinances) establishing procedures for government-to-government consultation between the Tribe and the United States, and believes that such procedures are necessary to establish a clear process for documenting the nature and results of consultations between the Tribe and the United States and its agencies, now

THEREFORE BE IT ORDAINED, that the following sections relating to government-to-government consultations are hereby adopted for the Oglala Sioux Tribe.

Section 1. Title. This ordinance shall be known and referred to as the Oglala Sioux Tribe Consultation and Coordination Ordinance of 2001.

Section 2. Definitions. The following words and phrases used in this Election Code shall have the following meanings:

"Consultation" and/or "government-to-government" consultation shall mean the formal process of cooperation, negotiation, and mutual decision making between the Oglala Sioux Tribe and the United States Government, and other governments. It is the process through which sovereign governments develop a common understanding of technical and legal issues and use this understanding to formulate mutually agreeable decisions.

Section 3. Scope. This ordinance is intended to extend to:

- a. All of the aboriginal homeland of the Oglala Sioux Tribe, including, the 60 million acre territory Sioux territory described in Article 5 of the 1851 Ft. Laramie Treaty; the territory and the expanded hunting rights territory described in Articles 2, 11 and 16 of the 1868 Ft. Laramie Treaty;
- b. All of the aboriginal title (non-treaty) Sioux territory comprising 14 million acres located east of the Missouri River in the present states of North Dakota and South Dakota; and
- c. All undertakings and actions that adversely affect the Oglala Sioux Tribe's aboriginal, treaty or statutorily recognized rights and interests within its aboriginal and treaty recognized territories.

Section 4. Purpose. The primary purpose and intent of this ordinance is to:

- a. Establish a clear process for documenting the nature and results of government-to-government consultations between the Oglala Sioux Tribe and Federal Government and its agencies;
- b. Provide a consistent, orderly process to government-to-government consultation to make and ensure that government-to-government consultations are meaningful and effective, and
- c. Be applicable, to the fullest extent possible, for documenting the nature and results of government-to-government consultations between the Oglala Sioux Tribe and other Indian tribes, inter-tribal organizations and state governments and agencies.

Section 5. Authority. This ordinance is adopted pursuant to the Oglala Sioux Tribe's inherent sovereignty and Article IV, Section 1 (a) of the Amended Constitution of the Oglala Sioux Tribe, which empowers the Tribal Council "(a) To negotiate with the Federal, State, and local governments, on behalf of the tribe, and to advise and consult with representatives of the Interior Department on all activities of the Department that may affect the Pine Ridge Indian Reservation."

Section 6. Principles and guidelines. All government-to-government consultations between the Oglala Sioux Tribe and the Federal Government, and State or other tribal governments, shall be conducted with the Oglala Sioux Tribe under the following principles and guidelines:

- a. The Oglala Sioux Tribe is a sovereign government with attendant powers;
- b. All treaties between the Oglala Sioux Tribe and the United States must be honored and enforced to the fullest extent possible;
- c. The Oglala Sioux Tribe has never been militarily conquered by the United States, and has existed in a peaceful relationship with the United States since 1868, pursuant to Article I of the 1868 Ft. Laramie Treaty; and

- d. The Oglala Sioux Tribe and its territories are not possessions of the United States.

Section 7. Procedures. All consultation between the Oglala Sioux Tribe and the Federal Government, and State or other tribal governments, must:

WHEN CONSULTATION IS REQUESTED BY
THE FEDERAL GOVERNMENT OR OTHER GOVERNMENTS

- a. Occur through a formal meeting with the Oglala Sioux Tribal Council. Neither the Executive Committee nor any Executive Committee member or staff member of the Tribe shall be authorized to engage in government-to-government consultations with any government or governmental agency;
- b. Accomplish the goals and objectives described in Section 8.
- c. Be initiated by serving a formal written request for government-to-government consultation with the Secretary of the Oglala Sioux Tribe. The request for consultation should describe the impending, proposed project or activity that may or may not affect the Oglala Sioux Tribe's interests in its aboriginal or treaty territory and/or rights or interests therein. This include the Tribes aboriginal and treaty territory both within and outside the exterior boundaries of the Pine Ridge Indian Reservation;
- d. It shall be the duty of the Tribal Secretary to immediately notify all members of the Executive Committee and Tribal Council of each request for consultation;
- e. Upon receipt of a request for consultation, the Tribal President, or council members under established procedures, shall call a special council meeting for the purpose of responding to the request for consultation. The Tribal Council shall:
 - (i) Request by resolution a policy-level meeting, initiating government-to-government consultations;

- (ii) Authorize the Tribe's technical staff (and when appropriate the Tribe's attorneys) to meet with the responding government's technical staff to discern and define the issues that are subject to the request for consultation including how the proposed governmental undertaking or activity affects the tribe's aboriginal, treaty, statutory or other interests;
- (iii) Schedule a special council meeting in which the Tribe's technical staff (and when appropriate the Tribe's attorneys) can fully brief the Tribal council on the issues that are subject to consultation, with recommendations and opinions;
- (iv) Schedule a follow-up special council meeting in which the Tribe through the Tribal council shall engage in formal government-to-government consultation based on the recommendations and opinions of its staff (and attorneys); and
- (v) Pass a resolution fully articulating the Tribe's formal decision, which decision shall be consistent with the provisions of this ordinance.

WHEN CONSULTATION IS REQUESTED BY THE OGLALA SIOUX TRIBE

- a. Be initiated by passing a tribal council resolution requesting government -to-government consultation, which resolution shall be executed and sent by the Tribal President to appropriate official of the Federal Government or tribal or state government with which consultation is desired;
- b. Follow the procedure described in Subsections 7.e. (i) through (v) above; and
- c. Accomplish the same objectives described in Section 8.

Section 8. Objectives. All government-to-government consultations should ensure the following results:

- a. Tribal officers and officials proceed in a dignified, orderly manner, keeping in mind that the Oglala Sioux Tribe is engaging in the consultations as a sovereign government that maintains government-to-government relations with the United States Government and other governments. Tribal officials engaging in consultation should dress in appropriate attire during the consultation proceedings, and conduct themselves in a professional, dignified, and diplomatic manner;
- b. Tribal officers and officials fully understand the issues to be discussed prior to engaging in and consultation proceeding; this includes an understanding of tribal history, federal treaties and federal statutes, regulations and rules, that will be discussed at each consultation;
- c. Ensure that the Tribe's interest are fully protected, including interests in all tracts of land located within the Tribe's aboriginal and treaty territories, and interests therein, as well as tribal cultural resources, human remains, and any other tribal patrimony;
- d. Ensure compliance with federal treaties, statutes, regulations and rules and tribal policies (e.g., policy that the Black Hills Are Not For Sale and tribal land claims must include restoration of federally held lands to the Tribe);

Section 9. Documentation. Following any governmental-to-government consultation between the Oglala Sioux Tribe and the Federal government, or other governments, the Tribal Council shall:

- a. Achieve a bi-lateral decision between the Tribe and the United States, or other government;
- b. Adopt a resolution documenting the nature and results of the consultation and bilateral decision;
- c. Direct the Tribal Secretary to file a copy of the resolution and all backup documentation with the Tribal Records Department.

Section 10. Representations. Neither the Federal Government nor any agency thereof, nor any other government, shall legitimately represent to any other government or governmental entity, nor to any third party, that they have consulted with the Oglala Sioux Tribe unless they fully comply with the terms and conditions of this ordinance.

Section 11. Effective Date. This ordinance shall become effective immediately.

Section 12. Repeal of inconsistent ordinances. All previously enacted ordinances are hereby repealed to the extent that they are inconsistent with this ordinance.

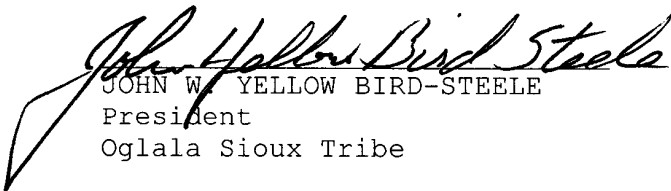
C-E-R-T-I-F-I-C-A-T-I-O-N

I, as undersigned Secretary of the Oglala Sioux Tribal Council of the Oglala Sioux Tribe, hereby certify that this Ordinance was adopted by a vote of: 13 For; 1 Against; 0 Abstain; and 0 Not Voting, during a SPECIAL SESSION held on the 7th day of JUNE, 2011.



RHONDA J. TWO EAGLE
Secretary
Oglala Sioux Tribe

A-T-T-E-S-T:



JOHN W. YELLOW BIRD-STEELE
President
Oglala Sioux Tribe

From: Steven Gunn sjgunn37@gmail.com
Subject: Jenny Gulch Exploratory Drilling Project - Statement of President Killer
Date: January 28, 2022 at 3:32 PM
To: heatherdawn.thompson@usda.gov
Cc: Kevin Killer kevink@ogla.org



Good afternoon Office of Tribal Relations Director Thompson:

Oglala Sioux Tribal President Kevin Killer has asked me to send this prepared statement to you concerning the proposed Jenny Gulch Exploration Project in the Black Hills National Forest. This afternoon, the Tribe is engaging in its first consultation meeting with the Forest Service on this project. The Tribe urges the Forest Service to engage in an on-going consultation process with the Tribe, as outlined in President Killer's statement. Today's meeting is a good start, but it is not enough.

The Tribe believes it is imperative that the Forest Service - and by extension the Department of Agriculture - protect the Tribe's treaty and reserved rights and other similar rights to natural and cultural resources in the Black Hills and protect sacred sites, including the Black Hills and Pe Sla, and consider ways in which the Oglala Sioux Tribe and other Indian tribes may engage in meaningful co-stewardship of lands and waters in the Black Hills National Forest, including lands and waters affected by the proposed project. The interagency memoranda and joint secretarial order referenced in President Killer's statement affirm the Department's commitment to engage in early and meaningful consultation with the Tribe on these matters. Early, meaningful consultation is required by law.

The Tribe believes that the Draft Environmental Statement for the Jenny Gulch Exploration Project -- issued in September 2021 before any discussion with the Tribe -- was prepared prematurely and without meaningful consultation with the Oglala Sioux Tribe and other tribes. As a result, the Draft EA's consideration of impacts on cultural and religious resources, the environment, and natural resources is inadequate and cannot form the basis for a lawful Finding of No Significant Impact.

We look forward to working with you on this important project.

Thank you.

Steven J. Gunn
Special Counsel to the Oglala Sioux Tribe
P.O. Box 16084
St. Louis, MO 63105
Telephone: (314) 920-9129
Facsimile: (800) 520-8341
Email: sjgunn37@gmail.com; sjgunn@wulaw.wustl.edu



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**INITIAL GOVERNMENT-TO-GOVERNMENT CONSULTATION
BETWEEN THE OGLALA SIOUX TRIBE
AND THE BLACK HILLS NATIONAL FOREST
CONCERNING THE PROPOSED
JENNY GULCH EXPLORATION DRILLING PROJECT**

Prairie Wind Casino
Pine Ridge Indian Reservation
January 28, 2022

**PREPARED STATEMENT OF
TRIBAL PRESIDENT KEVIN KILLER**

1. Introduction

The Oglala Sioux Tribe is opposed to any mineral exploration activity in the Black Hills National Forest that would infringe on our rights under the Fort Laramie Treaties of 1851 and 1868 and other Federal laws, including the National Historic Preservation Act (“NHPA”) and the National Environmental Policy Act (“NEPA”).

Specifically, and without limitation, the Tribe is opposed to any exploration or development of minerals in the Black Hills that would:

- Harm our sacred Black Hills, including the sacred site known as *Pe’ Sla*, and our traditional, cultural, and religious use of those lands; or
- Harm archeological, historical, cultural, and sacred sites in the Black Hills; or
- Harm the land, water, natural resources, and fish and wildlife in the Black Hills.

2. The Draft Environmental Assessment Should Be Withdrawn

The Draft Environmental Assessment (“EA”) for the Jenny Gulch Exploratory Drilling Project should be withdrawn because it was prepared without adequate consultation with the Oglala Sioux Tribe and our sister *Lakota*, *Dakota*, and *Nakota* tribes of the Great Sioux Nation. Such consultation is required by Executive Orders 13007 and 13175 and by NEPA, NHPA, and the Department of Agriculture’s own trust responsibilities and regulations.

The Oglala Sioux Tribe requested formal government-to-government consultation with the Forest Service in January 2020. Over two years have passed. 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.” We appreciate the difficulties caused by the COVID-19 pandemic, but the Forest Service should have waited until it could engage in meaningful consultation with tribes before issuing a Draft EA.

In August and September of 2021, just weeks before the Draft EA was released, Forest Service personnel acknowledged to Oglala Sioux Tribe officials that the Forest Service sought to initiate government-to-government consultation. The Tribe has accepted that request. But, by then it was

too late. The Forest Service issued its Draft EA in September 2021 without completing meaningful and good faith consultation with the Tribe. The consultation would have informed the agency's environmental impact review. The lack of meaningful consultation is evident in the Draft EA's lack of understanding or analysis of cultural and religious impacts anticipated from the Project.

The Draft 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 Finding of No Significant Impact ("FONSI"). The Oglala Sioux Tribe joins in the comments and objections raised by the Black Hills Clean Water Alliance, the Standing Rock Elders Preservation Council, and others.

The Tribe requests the U.S. Forest Service suspend all action on this Project until it has satisfied its legal obligations to the Tribe.

3. The Black Hills Are Sacred and Must Be Protected

The Tribe is a signatory to the Fort Laramie Treaties of 1851 and 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, including the sacred Black Hills, referred to as *Pahá Sápa* in *Lakota*. The United States promised that this territory would be "set apart for the absolute and undisturbed use and occupation of the Indians herein named."

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 Supreme Court acknowledged the illegality of the United States' taking of the Black Hills in the case of *U.S. v. Sioux Nation* (1980). The Supreme Court held that the Sioux Nation was entitled to compensation for the taking of the Black Hills. The Oglala Sioux Tribe and other tribes of the Sioux Nation have not accepted that compensation, 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 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.

4. The Project Would Have Significant Impacts on the Tribe's Treaty Rights

The Oglala Sioux Tribe has treaty rights to land, water, fish, wildlife, and other natural, cultural, and other resources in the Black Hills, and the proposed Project would impact those rights. For example, past mineral exploration and mining in the Black Hills have resulted in significant contamination of water resources in the Black Hills. Among other things, contamination of the

water in the Black Hills would infringe on our reserved, unextinguished right to fish in the Black Hills.

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.

5. The Project Would Have Significant Impacts on Sacred Sites

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.

6. The Project Would Have Significant Impacts on Cultural and Religious Resources

The proposed Jenny Gulch Exploration Drilling Project would involve exploration 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 Project 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*.

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.

Pe' Sla is a sacred religious site and must be preserved in its natural condition. Pollution of the surface or groundwater at *Pe' Sla* would make it unholy. These significant issues are not addressed in the Draft EA.

Before the Draft EA was issued, the Tribe submitted comments, dated January 17, 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 Oglala Sioux Tribe.

The Draft EA instead relies exclusively on a limited Level 1 “records search” and “targeted site visits.” The Draft 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.

The November 2021 Joint Secretarial Order specifically states that: “The Department [of Agriculture] will consider Tribal expertise and/or Indigenous knowledge as part of Federal decision making relating to Federal lands, particularly concerning management of resources subject to reserved Tribal treaty rights and subsistence uses.” The Forest Service must honor this commitment. This requires more than a limited Level 1 “records search.”

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 “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.

These issues should have been addressed through government-to-government consultation – and full compliance with federal law, including Section 106 of NHPA as well as Executive Orders 13007 and 13175 – before any Draft EA was completed or circulated for public review.

7. The Project Would Have Significant Impacts on the Environment

The Tribe has legitimate concerns that the proposed exploration may cause environmental harms to the land, water, 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 Finding of No Significant Impact. The Tribe believes the proposed Project would result in significant impacts to the land, water, fish, wildlife, and natural resources in the Black Hills.

8. Specific Action Steps

The Oglala Sioux Tribe requests that the Forest Service:

- A. Immediately suspend all work on this Project until all NEPA, NHPA, and government-to-government consultation has occurred. A single meeting today will not suffice.
- B. Perform targeted site visits of the proposed exploration site with the Tribe and its cultural and natural resource experts.
- C. Perform a comprehensive survey of cultural and religious resources at and near the proposed exploration sites with the Tribe and its cultural and natural resource experts.
- D. Meet again with Tribal Council following the site visits and survey work.
- E. Consider ways in which the Forest Service, the Oglala Sioux Tribe, and our sister Sioux tribes can engage in meaningful co-stewardship of lands and waters in the Black Hills National Forest.

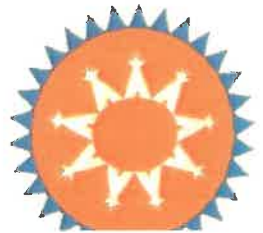
The Agriculture Department's regulations on government-to-government consultation recognize that consultation must be meaningful and, in many cases, that requires multiple consultation meetings as part of a process. This is one of those cases.

Ultimately, the Tribe believes that the Forest Service should – and will – make a finding of significant impacts and prepare a Draft Environmental Impact Statement for public and tribal review. But, even if it does not do that, the Forest Service should, at a minimum, issue a new Environmental Assessment based on the targeted site visits and other work outlined above.



Oglala Sioux Tribe

P.O. Box 2070, Pine Ridge, S.D. 57770
Direct: 605-867-8487 - Cell Phone: 605-407-1231
Fax: 605-867-6076
E-mail: kevink@oglala.org



Office of the President
Kevin Killer

May 20, 2022

Via Electronic Mail

Jeffrey Tomac, Forest Supervisor
Tamra Brennan, Tribal Relations Specialist
Black Hills National Forest
1019 N. 5th Street
Custer, SD 57730
Email: SM.FS.r2_bkf_webin@usda.gov; Jeffrey.tomac@usda.gov; tamra.brennan@usda.gov

Re: F3 Gold Jenny Gulch Exploration Project

Dear Forest Supervisor Tomac and Tribal Relations Specialist Brennan:

I write on behalf of the Oglala Sioux Tribe ("Tribe") to renew our request that the Black Hills National Forest perform targeted site visits of the proposed exploration site of the F3 Gold Jenny Gulch Exploration Project with the Tribe and its cultural and natural resource experts. I ask that you coordinate those visits with our Special Counsel, Steven J. Gunn, who can be contacted at (314) 920-9129 and sjgunn37@gmail.com.

I also renew the Tribe's requests that the Forest Service perform a comprehensive survey of cultural and religious resources at and near the proposed exploration sites with the Tribe and its cultural and natural resource experts, and then meet again with the Oglala Sioux Tribal Council following the site visits and survey work.

Finally, I ask that the Forest Service consider ways in which the Forest Service, the Oglala Sioux Tribe, and our sister Sioux tribes can engage in meaningful co-stewardship of lands and waters in the Black Hills National Forest.

We look forward to hearing from you to coordinate the site visits, survey work, and consultation with the Tribal Council.

Sincerely,

Kevin Killer, President
Oglala Sioux Tribe



Via Online Objection Submittal Portal:

<https://cara.fs2c.usda.gov/Public//CommentInput?Project=57428>

August 22, 2022

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

RE: OBJECTION to the
Jenny Gulch Gold Exploration Project
Final Environmental Assessment (EA), Draft Decision Notice (DN)
and Finding of No Significant Impact (FONSI)

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

INTRODUCTION

Pursuant to 36 CFR Part 218, on behalf of Black Hills Clean Water Alliance (BHCWA, Alliance, or Objector) on behalf of its adversely impacted members files this Objection to the EA, Draft DN and FONSI issued by Jim Gubbels District Ranger, Mystic Ranger District, Black Hills National Forest for the Jenny Gulch Gold Exploration Project (Project) on or about July 8, 2022. See <https://www.fs.usda.gov/project/?project=57428>.

BHCWA previously filed scoping comments and comments on the Draft Environmental Assessment on or about February 5, 2020 and October 22, 2021, respectively and has fully participated in the Forest Service's (USFS) review of the Project. Pursuant to 36 CFR 218.8, BHCWA states that the following content of this Objection demonstrates the connections between the February 5, 2020 and October 22, 2021 comments (or "previous comments") for all issues raised herein, unless the issue or statement in the Draft EA arose or was made after the opportunity for comment on the Draft EA closed, as detailed herein. Pursuant to the Administrative Procedure Act, 5 U.S.C. §553-706, and USFS requirements, the agency must provide a detailed response to each of the issues/objections raised in this Objection.

BHCWA was founded in 2009 with a mission to stop current and prevent future radioactive and destructive mining in the Black Hills region to protect our valuable resources – especially our water – for future generations. The Alliance is a diverse collection of citizens concerned about the

health, environmental, and economic impacts that irresponsible mining projects would have on our communities, people, economy, and natural resources.

As shown in more detail below, the USFS's review contained in the EA contains numerous legal and factual errors and as such should be revised in order to comply with federal law. In addition, any USFS plan to continue its review of the PoO must comply with federal law as detailed herein. At a minimum, an Environmental Impact Statement ("EIS") must be prepared, due to the potential for significant impacts from the Project alone, and especially when viewed with its cumulative impacts from other and/or related activities as well as connected actions. Whether the agency decides to revise the EA first, or directly prepare an EIS, the requirements noted herein must be met for either document. If the former, at a minimum, a revised Draft EA must be prepared, subject to full public comment.

As detailed herein, and as noted in the February 5, 2020 and October 22, 2021 comments, the Project would violate numerous federal and state mining, public lands, environmental, wildlife, historic/cultural preservation and related laws, regulations, and policies. As such, the USFS cannot approve the proposed Plan of Operations (PoO), as amended by any of the action alternatives. These laws (with their implementing regulations and policies) include, but are not limited to: the National Environmental Policy Act (NEPA), the National Forest Management Act (NFMA), Forest Service Organic Act of 1897 (Organic Act), the 1872 Mining Law, the Surface Resources Act of 1955, the Mining and Minerals Policy Act of 1970, the National Historic Preservation Act (NHPA), and Presidential Executive Orders related to wildlife, wetlands, and other resources potentially affected by the Project.

The remedy for these violations is for the USFS to not issue any Final DN that would authorize approval of any PoO for any action alternative reviewed in the EA (i.e., the USFS must deny/reject any such PoO), that does not fully comply with each and every law, regulation, policy, and Executive Order noted herein. The EA and Draft DN should be remanded back to the Mystic Ranger District with instructions to correct all errors noted herein before the USFS can consider approving any operations.

For the reasons articulated herein, and in the previous comments, the EA is substantially inadequate and violates NEPA. The EA and Draft DN fail to take the requisite "hard look" at the Project. The EA is fundamentally flawed because of inaccurate and incomplete information that runs throughout the EA and presents an imbalanced analysis of the effects of the proposed Project. Critical and explanatory data, methodologies, and analysis are simply not provided; this failure goes to the heart of NEPA's requirements regarding full and transparent disclosure of issues so that the public can credibly comment on the proposal. As such, the remedy for these inadequacies is for the USFS to prepare and publish a revised Draft EA, or more appropriately a Draft EIS for public and agency comment.

Among other inadequacies noted herein, the EA fails to properly review all direct, indirect, and cumulative impacts (as well as connected actions), fails to properly review all reasonable alternatives, fails to conduct the required baseline analysis (and defers consideration of critical information until after the NEPA process is concluded), fails to conduct the proper mitigation analysis (including the effectiveness of all mitigation measures), presents significant new issues for which the public did not have the proper opportunity to comment upon before the close of the

comment period on the Draft EA, and fails to adequately respond to public comments (including the comments of BHCWA), against the requirements of NEPA and the other laws noted herein.

The Agency Must Prepare an Environmental Impact Statement

The USFS determined early on, as early as before even receiving any scoping comments, that only an Environmental Assessment (EA) would be prepared for the Project. However, as discussed in comments, when considered along with the cumulative impacts from all past, present, and reasonably foreseeable future projects in the region, including other exploration, mining, grazing, recreation, energy development, roads, etc., the impacts are significant and require an Environmental Impact Statement (EIS). The agency must conduct its NEPA review and subject that review to public comment in an EIS, including impacts to air quality, ground and surface water quantity and quality, recreation, cultural/religious resources, wildlife, transportation/traffic, scenic and visual resources.

“[W]here ‘several actions have a cumulative ... environmental effect, this consequence must be considered in an EIS.’ City of Tenakee Springs v. Clough, 915 F.2d 1308, 1312 (9th Cir. 1990).” Neighbors of Cuddy Mountain v. U.S. Forest Service, 137 F.3d 1372, 1378 (9th Cir. 1998). “[I]f the cumulative impact of a given project and other planned projects is significant, an applicant cannot simply prepare an EA for its project, issue a FONSI, and ignore the overall impact of the project.” Kern v. U.S. Bureau of Land Management, 284 F.3d 1062, 1076 (9th Cir. 2002).

“An agency cannot avoid its statutory responsibilities under NEPA merely by asserting that an activity it wishes to pursue will have an insignificant effect on the environment. The agency must supply a convincing statement of reasons why potential effects are insignificant.” Public Service Co. of Colorado v. Andrus, 825 F.Supp. 1483, 1496 (D. Idaho 1993) *citing* The Steamboaters v. FERC, 759 F.2d 1383, 1393 (9th Cir. 1985).

“[T]o prevail on the claim that the federal agencies were required to prepare an EIS, the plaintiffs need not demonstrate that significant effects will occur. A showing that there are ‘substantial questions whether a project may have a significant effect’ on the environment is sufficient.” Anderson v. Evans, 371 F.3d 475, 488 (9th Cir. 2004). *See also* Western Land Exchange Project v. BLM, 315 F.Supp.2d 1068, 1087 (D. Nev. 2004) (same).

The agency cannot avoid preparing an EIS by making conclusory assertions that an activity will have only an insignificant impact on the environment. *See* Alaska Ctr. for Env’t v. United States Forest Serv., 189 F.3d 851, 859 (9th Cir. 1999). If an agency, such as the USFS, opts not to prepare an EIS, it must put forth a “convincing statement of reasons” that explain why the project will impact the environment no more than insignificantly. Blue Mountains Biodiversity Project v. Blackwood, 161 F.3d 1208, 1212 (9th Cir.1998).

In considering the severity of the potential environmental impact, a reviewing agency may consider up to ten factors that help inform the “significance” of a project, such as the unique characteristics of the geographic area, including proximity to an ecologically sensitive area; whether the action bears some relationship to other actions with individually insignificant but cumulatively significant impacts; the level of uncertainty of the risk and to what degree it involves unique or unknown risks; and whether the action

threatens violation of an environmental law. (Citations omitted). We have held that one of these factors may be sufficient to require preparation of an EIS in appropriate circumstances. See Nat'l Parks & Conservation Ass'n v. Babbitt, 241 F.3d 722, 731 (9th Cir. 2001).

Ocean Advocates v. U.S. Army Corps of Engineers, 402 F.3d 846, 864-65 (9th Cir. 2005)(EA and FONSI inadequate when agency fails to prepare adequate cumulative impacts analysis) (emphasis omitted).

In this case, as discussed herein, “substantial questions” exist as to whether the impacts from the Project will be significant. The drilling activities are proposed in close proximity to areas used extensively by the public as described herein and in public comments submitted relating to this Project. In addition, when viewed in combination with other mineral exploration and development proposals in the area, the impacts rise to the level of significance. As discussed below in the cumulative impacts discussion, these other proposals were not evaluated in the EA for cumulative impacts, rendering any FONSI determination unsupportable on the existing administrative record. See EA at p. 19 (Section 4.1); *infra* at pp. 5-11.

As to water quality, the EA fails to discuss in any depth or provide any surface water baseline water quality data from which to make a determination of significance of impacts, and similarly, for groundwater, merely references another study that purports to contain groundwater quality data. See EA at 29-30 (Section 3.7.1.1); see also EA Soils, Geology, and Hydrology Technical Report at p. 24 (Section 3.2.1.4 (surface water quality)); EA Soils, Geology, and Hydrology Technical Report at p. 28 (Section 3.2.2.2 (groundwater quality)). For groundwater, the EA concedes that the agency lacks any information as to the aquifers in the northern area of the Project and that the aquifers in the southern end of the Project area have been assessed as highly vulnerable. See EA Soils, Geology, and Hydrology Technical Report at 28 (Section 3.2.2.2). Despite this lack of information and stark warnings, without reproducing or discussing this data, the EA fails to provide the requisite analysis of impacts to surface or groundwater that would or could result from transportation to and from and development of drill sites, extensive drilling into local aquifers, or surface drill cutting waste disposal on the ground surface as proposed by the Project. See EA at pp. 32-34 (Sections 3.7.3 and 3.7.4). Regarding surface water impacts, the EA concedes that impacts from run-off and sedimentation would occur, but fails to quantify or describe these impacts in any detail and ultimately, simply asserts without data or analysis that impacts to surface waters will be non-existent. EA at p. 34 (Section 3.7.4.1). For mitigation/minimization of impacts, the EA asserts that winter construction would occur “the extent practicable” and that if “conditions at the time of construction render” access across surface waters “unusable” the access “would be shifted to alternate locations...” EA at p. 34 (Section 3.7.4.1). However, no discussion is provided as to who makes these determinations or what conditions may trigger such changes – rendered them unenforceable as a practical matter. This type of unquantified and conclusory impact and mitigation analysis violates NEPA and cannot sustain a FONSI.

The EA and Draft DN fail to provide the required detail to justify a FONSI with respect to impacts to cultural resources. As discussed herein, the EA and Draft EA refer to the agency eliminating impacts to cultural resources by moving roads and drill hole locations, but provide

no detail or description of which roads or drill sites have been adjusted or, most importantly, how that eliminates the impacts. See EA at p. 25 (section 3.4.4)(“ Under Alternative C, Project access routes and drill pads have been shifted to avoid potential effects to cultural resources features. Under Alternative C, there are also no anticipated long-term visual impacts to historic structures from the Project.”). The same problem presents itself in the Draft DN, which purports to have eliminated any impacts to cultural resources, but provides no detail as to where the referenced changes occurred or how a basis for how the agency analysis of impacts was altered by these changes. See Draft DN at p. 11 (Section 2.2.3); p. 14 (Table 2-2); p. 17 (Section 3.3).

The agency relies repeatedly on proposed mitigation measures to bring the level of impacts from the project below the level of significance so as to justify a proposed FONSI, but fails to assess the effectiveness of that proposed mitigation or provide the necessary detail to explain how and whether that mitigation will even be employed. For instance, as discussed immediately above, the agency states it that some drill hole locations have been moved to reduce the impacts on cultural resources, but provides only vague descriptions. This is particularly problematic for the impacts to the Pe’ Sla cultural site, an issue repeatedly raised in comments but not discussed in any detail in the EA – indeed, not even specifically mentioned in the EA at all. For impacts to big horn sheep, while the agency’s selected alternative does provide a seasonal lambing restriction on drilling on three of the forty-seven approved drill pads, for the others the proposed mitigation relies on implementing restrictions only “should lambing be observed.” EA at p. 13 (Table 2-1); see also EA Appendix D Wildlife and Fisheries Biological Assessment/Biological Evaluation and Technical Report p. 26 (Table 4-2). However, there is no explanation as to how this determination will be made or by whom – and importantly, what training or expertise will be required by workers at the site to enable them to assess or make this determination. The last reference in the EA Appendix D references “USFS staff” observations, but no explanation of who or when the agency intends to have its own personnel with expertise present on site. This lack of detail or planning renders the mitigation all but useless in practical effect. The same problem applies to the cultural resources impacts mitigation that relies on drilling personnel to halt drilling upon discovery of cultural resources during drilling activities. See EA at p. 25 (Section 3.4.4). There is no indication as to how the workers at the site will be trained or how any of the required expertise necessary to identify such cultural resources will be brought to bear – as the range of potential cultural resources is very broad, from natural formations such as stones or rocks to remnants of habitation to human remains. The EA provides no detail as to how these resources will be effectively identified or who will do so in the field during busy drilling and excavation activities.

As such, the agency must prepare an EIS.

The Agency Must Fully Analyze All Direct, Indirect, and Cumulative Impacts

The Forest Service must fully review the impacts from all “past, present, and reasonably foreseeable future actions.” These are the “cumulative effect/impacts” under NEPA. To comply with NEPA, the Forest Service must consider all direct, indirect, and cumulative environmental impacts of the proposed action. 40 CFR §§ 1502.16, 1508.8, 1508.25(c). Direct effects are caused by the action and occur at the same time and place as the proposed project. 40 CFR § 1508.8(a). Indirect effects are caused by the action and are later in time or farther removed in

distance, but are still reasonably foreseeable. 40 CFR § 1508.8(b). Both types of impacts include “effects on natural resources and on the components, structures, and functioning of affected ecosystems,” as well as “aesthetic, historic, cultural, economic, social or health [effects].” Id. Cumulative effects are defined as:

[T]he impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.

Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

40 CFR § 1508.7.

In a cumulative impact analysis, an agency must take a “hard look” at all actions.

An EA’s analysis of cumulative impacts must give a sufficiently detailed catalogue of past, present, and future projects, and provide adequate analysis about how these projects, and differences between the projects, are thought to have impacted the environment. “Without such information, neither the courts nor the public ... can be assured that the [agency] provided the hard look that it is required to provide.” Te-Moak Tribe of Western Shoshone v. U.S. Dept. of Interior, 608 F.3d 592, 603 (9th Cir. 2010) (rejecting EA for mineral exploration that had failed to include detailed analysis of impacts from nearby proposed mining operations).

A cumulative impact analysis must provide a “useful analysis” that includes a detailed and quantified evaluation of cumulative impacts to allow for informed decision-making and public disclosure. Kern v. U.S. Bureau of Land Management, 284 F.3d 1062, 1066 (9th Cir. 2002); Ocean Advocates v. U.S. Army Corps of Engineers, 361 F.3d 1108 1118 (9th Cir. 2004).

The NEPA requirement to analyze cumulative impacts prevents agencies from undertaking a piecemeal review of environmental impacts. Earth Island Institute v. U.S. Forest Service, 351 F.3d 1291, 1306-07 (9th Cir. 2003).

The NEPA obligation to consider cumulative impacts extends to all “past,” “present,” and “reasonably foreseeable” future projects. Blue Mountains, 161 F.3d at 1214-15; Kern, 284 F.3d at 1076; Hall v. Norton, 266 F.3d 969, 978 (9th Cir. 2001) (finding cumulative analysis on land exchange for one development failed to consider impacts from other developments potentially subject to land exchanges); Great Basin Mine Watch v. Hankins, 456 F.3d 955, 971-974 (9th Cir. 2006)(requiring “mine-specific ... cumulative data,” a “quantified assessment of their [other projects] combined environmental impacts,” and “objective quantification of the impacts” from other existing and proposed mining operations in the region).

NEPA regulations also require that the EIS obtain the missing “quantitative assessment” information:

When an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement and there is incomplete or

unavailable information, the agency shall always make clear that such information is lacking. If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement. If the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not known, the agency shall include within the environmental impact statement: (1) a statement that such information is incomplete or unavailable; (2) a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment; (3) a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment, and (4) the agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community. For the purposes of this section, "reasonably foreseeable" includes impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason.

40 CFR § 1502.22.

"If there is 'essential' information at the plan- or site-specific development and production stage, [the agency] will be required to perform the analysis under § 1502.22(b)." Native Village of Point Hope v. Jewell, --- F.3d ---, 2014 WL 223716, *7 (9th Cir. 2014). Here, the adverse impacts from the Project when added to other past, present or reasonably foreseeable future actions are clearly essential to the USFS' determination (and duty to ensure) that the Project complies with all legal requirements and minimizes all adverse environmental impacts.

"[W]hen the nature of the effect is reasonably foreseeable but its extent is not, we think that the agency may not simply ignore the effect. The CEQ has devised a specific procedure for 'evaluating reasonably foreseeable significant adverse effects on the human environment' when 'there is incomplete or unavailable information.' 40 C.F.R. § 1502.22." Mid States Coalition for Progress v. Surface Transportation Board, 345 F.3d 520, 549-550 (8th Cir. 2003)(emphasis in original). The USFS's failure to obtain this information, or make the necessary showings under § 1502.22, for all direct, indirect and cumulative impacts thus violates NEPA.

An EIS that is prepared must fully review all reasonable alternatives, provide for mitigation and an analysis of the effectiveness of all mitigation measures, review all direct, indirect, and cumulative impacts, and fully analyze all baseline conditions of the potentially affected environment, among other NEPA requirements.

NEPA's statutory framework discussed above, as well as USFS's own regulatory policies enumerated in the Forest Service Handbook (FSH), Section 1909.15 *et seq.*, require the agency to consider potentially significant environmental effects, including cumulative impacts. If the proposed action may have a significant effect, USFS must prepare an EIS. As provided in the FSH:

If the responsible official determines, based on scoping, that it is uncertain whether the proposed action may have a significant effect on the environment, prepare an EA. If the responsible official determines, based on scoping, that the proposed action may have a significant environmental effect, prepare an EIS. (36 C.F.R. 220.6(c))

FSH 1909.5, Section 31.3.

Scoping is required for all Forest Service proposed actions, including those that would appear to be categorically excluded [...]. Scoping is important to discover information that could point to the need for an EA or EIS versus a CE. Scoping is the means to identify the presence or absence of any extraordinary circumstances that would warrant further documentation in an EA or EIS.

Scoping should also reveal any past, present, or reasonably foreseeable future actions with the potential to create uncertainty over the significance of cumulative effects.

Id. (emphasis added). See Sierra Club v. United States, 255 F. Supp. 2d 1177, 1182 (D. Colo. 2002) (“In determining whether an action requires an EA or EIS or is categorically excluded, federal agencies must not only review the direct impacts of the action, but also analyze indirect and cumulative impacts.”) (citing 40 C.F.R. §§ 1508.7, 1508.8)).

As the federal courts have held:

Our cases firmly establish that a cumulative effects analysis “must be more than perfunctory; it must provide a useful analysis of the cumulative impacts of past, present, and future projects.” Klamath–Siskiyou, 387 F.3d at 994 (emphasis added) (quoting Ocean Advocates v. U.S. Army Corps of Eng'rs, 361 F.3d 1108, 1128 (9th Cir.2004)). To this end, we have recently noted two critical features of a cumulative effects analysis. First, it must not only describe related projects but also enumerate the environmental effects of those projects. See Lands Council v. Powell, 395 F.3d 1019, 1028 (9th Cir.2005) (holding a cumulative effects analysis violated NEPA because it failed to provide “adequate data of the time, place, and scale” and did not explain in detail “how different project plans and harvest methods affected the environment”). Second, it must consider the interaction of multiple activities and cannot focus exclusively on the environmental impacts of an individual project. See Klamath–Siskiyou, 387 F.3d at 996 (finding a cumulative effects analysis inadequate when “it only considers the effects of the very project at issue” and does not “take into account the combined effects that can be expected as a result of undertaking” multiple projects).

Oregon Natural Resources Council Fund v. Brong, 492 F.3d 1120, 1133 (9th Cir. 2007). Note that the requirement for a full cumulative impacts analysis is required in an EA, as well as in an EIS. See Te-Moak Tribe of Western Shoshone, 608 F.3d 592, 603 (9th Cir. 2010) (rejecting EA for mineral exploration that had failed to include detailed analysis of impacts from nearby proposed mining operations).

The immediate area of the Project includes Pactola Reservoir and Rapid Creek, which supply water for domestic, municipal, and agricultural use. These waters are also sources for wildlife and provide the setting for extensive recreation activities. The Project area also includes other National Forest lands and resources used extensively by the public for myriad purposes, including hiking, biking, water-based recreation, fishing, and other pursuits. Immediately upstream, there is exploratory drilling occurring, as well as at least one former mine site.

The EA fails to disclose and analyze the potential impacts to these water supplies and these uses. The EA provides only a broad range of the depth of each of the proposed drill holes. For instance, the EA states only that “Drill holes would range from 500 to 6,000 feet in depth dependent on the results of each hole. Although depths up to 6,000 feet would be authorized, very few holes are planned to extend to this depth; most holes would be drilled to a depth of approximately 1,000 feet.” EA at p. 3. Compounding this problem is the lack of information related to the aquifers that may be impacted by this drilling. The EA states that “[l]ocalized, non continuous aquifers occur within weathered and fractured rocks in the crystalline core. The extent and distribution of these aquifers are difficult to determine without drilling. These aquifers are generally unconfined and are recharged from precipitation and infiltration, though most of the precipitation that falls is lost to evapotranspiration and runoff (overland and stream flow). Domestic water supply wells have been drilled into crystalline aquifer(s) in the Project area (Figure 3-3 and Figure 3-4).” EA Appendix E Soils, Geology, and Hydrology Technical Report at p. 27-28. This admitted lack of information renders the EA impacts review flawed. Without more specific information as to the location of aquifers or the depth of specific drill holes in specific areas, neither the agency nor the public are able to effectively predict and analyze the impacts to groundwater and drinking water supplies from the proposed drilling. The agency must disclose with more precision the details of the proposal in order to adequately assess the potential impacts and to allow the public a meaningful opportunity to provide effective comments.

As referred to herein and as the Forest Service is aware, several other mineral exploration projects have been proposed in the area that will contribute to cumulative impacts. For instance, the Mineral Mountain Resources Rochfort Project (see Attachment 8) and Bloody Gulch Project (see Attachment 9) must be addressed in addition to the four other projects/companies the Forest Service has confirmed at a recent National Forest Advisory Board meeting are seeking to apply for exploration permits. No reference to any additional mineral exploration or prior mining is mentioned in the EA cumulative impacts analysis section. See EA at pp. 39-40 (Section 3.10.1). The attached maps document the fact that at least 10 separate mineral exploration companies have staked mining claims in the Black Hills in areas that could result in cumulative impacts with proposed Project. See Attachment 1 (August 2022 updated map of Mineral and Land Records System Active Mining Claims) and Attachment 2 (Mining claim map).

At minimum, the EA must address the Solitario Zinc exploration drilling proposal. See Attachment 3 (scoping notice). While this project is proposed in the Northern Hills Ranger District, there are cumulative impacts associated with it, particularly with regard to cultural

resources, surface and groundwater resources, recreation, and wildlife, among others. As the USFS has been made aware through its interactions with the Tribal governments, the Black Hills is a highly culturally significant landscape, such that mineral exploration and development proposals such as the Solitario Zinc proposal and the others referenced herein have cumulative impacts with the Jenny Gulch Project. The EA fails to make any reference to this ongoing project. Also relevant to the USFS cumulative impacts analysis but wholly unaddressed in the EA is the Dakota Territory Resources Exploration Drilling proposal. See Attachment 4 Dakota Territory Resources Drilling NOI. While this project is not a USFS project, as made clear herein, the USFS cumulative impacts analysis must assess impacts regardless of what agency is considering the project – federal or non-federal. Similarly, the DTRC notice of intent to conduct exploration for gold and associated minerals must also be considered in any legally-compliant cumulative impacts analysis. See Attachment 5 DTRC Notice of Intent. Further, the United Lithium and the IRIS metals projects were recently proposed in the same area as the Jenny Gulch Project and must be assessed in the cumulative impacts analysis. See Attachment 10 and Attachment 11. In addition to these proposed mineral projects, existing mining operations also have cumulative impacts associated with the Jenny Gulch Project – particularly with respect to cultural resources, wildlife, water resources, and recreation, among others. The Coeur Wharf Mine expansion approved just this year is such a project that must be taken into consideration by the USFS in its cumulative impacts analysis. See Attachment 6 Wharf Mine Expansion article. This 1480 acre-mine has been in place for years and must be included in the USFS EA analysis. Lastly, the Gilt Edge Mine Superfund site was improperly omitted from the USFS cumulative impacts analysis of all past, present, and future actions. See Attachment 7 EPA webpage on Gilt Edge Superfund Site. This contamination site has similar cumulative impacts to the other projects given its long-term problematic history in the Black Hills.

Overall, the cumulative impacts analysis left out a multitude of past, present, and reasonably foreseeable actions that must be accounted for in the EA and factored in to whether a FONSI is appropriate or not. Absent such an analysis, the EA does not comply with NEPA.

Importantly, the agency must disclose and provide a detailed review of the impacts to cultural and historic resources in the area. The agency purports to have conducted a Class I cultural resources survey that identified previous cultural resources surveys identifying 25 previously recorded cultural resources located in the project area. EA at p. 24 (Section 3.4.1). However, no information is provided on who conducted these surveys or whether those persons possessed the necessary relevant cultural expertise, where the surveys were conducted, for which projects they were conducted, when they were conducted, what methodologies were used, or any other information. This information is necessary for the agency to accurately assess the results of these surveys and would not need to disclose any sensitive information about the cultural resources themselves.

This information was only provided for the first time in the Final EA. As such the public never had the opportunity to review this information. The agency should have initiated these reviews before seeking public comment, as the information produced from these surveys are necessary for the public and the Tribes to have the legally-required opportunity to participate in the agency's analysis and decision. This fact again necessitates that a draft NEPA document be produced and

circulated for public review and comment once all relevant information has been disclosed.

Given the lack of information on the purported surveys in the project area, there is insufficient basis for the agency to claim that the Project area has been surveyed for cultural resources by a competent and trained surveyor with a complex understanding of the Indigenous peoples of the area. As the agency is no doubt aware, the Black Hills – including the Project area – are subject to treaties and have been occupied since time immemorial by the Lakota and others. These parties must be involved in a cultural resources survey in order to effectively identify and evaluate cultural and historic resources.

The EA references a 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 committed to by Black Hills National Forest Supervisor Jeff Tomac at that meeting. This information as to any follow-up site visits, any results or information gathered from any such site visits, is 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 (Reynolds Prairie), 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 USFS Must Fully Analyze All Baseline Conditions

The Forest Service is required to “describe the environment of the areas to be affected or created by the alternatives under consideration.” 40 C.F.R. § 1502.15. The establishment of the baseline conditions of the affected environment is a fundamental requirement of the NEPA process.

“NEPA clearly requires that consideration of environmental impacts of proposed projects take place before [a final decision] is made.” LaFlamme v. FERC, 842 F.2d 1063, 1071 (9th Cir. 1988). Once a project begins, the “pre-project environment” becomes a thing of the past, thereby making evaluation of the project's effect on pre-project resources impossible. Id. Without establishing the baseline conditions which exist in the vicinity “... before [the project] begins, there is simply no way to determine what effect the proposed [project] will have on the environment and, consequently, no way to comply with NEPA.” Half Moon Bay Fisherman's Mark't Ass'n v. Carlucci, 857 F.2d 505, 510 (9th Cir. 1988).

“In analyzing the affected environment, NEPA requires the agency to set forth the baseline conditions.” Western Watersheds Project v. BLM, 552 F.Supp.2d 1113, 1126 (D. Nev. 2008). “The concept of a baseline against which to compare predictions of the effects of the proposed action and reasonable alternatives is critical to the NEPA process.” Council of Environmental Quality, Considering Cumulative Effects under the National Environmental Policy Act (May 11, 1999).

Such baseline information and analysis must be part of the NEPA analysis and be subject to public review and comment. The lack of an adequate baseline analysis fatally flaws a NEPA document. Given the lack of public information from the Plan of Operations or EA, there is insufficient detail to satisfy NEPA’s requirements for public review of the baseline.

Here, the EA fails to demonstrate that the Forest Service has obtained and evaluated sufficient baseline information and subjected that baseline information and analysis to public review and comment. As to water quality, the EA fails to discuss in any depth or provide any surface water baseline water quality data from which to make a determination of significance of impacts, and similarly, for groundwater, merely references another study that purports to contain groundwater quality data, but this information is not reproduced or discussed in any detail. See EA at pp. 29-30 (Section 3.7.1.1); see also EA Soils, Geology, and Hydrology Technical Report at p. 24 (Section 3.2.1.4 (surface water quality)); EA Soils, Geology, and Hydrology Technical Report at p. 28 (Section 3.2.2.2 (groundwater quality)).

“NEPA requires that the agency provide the data on which it bases its environmental analysis. Such analyses must occur before the proposed action is approved, not afterward.” Northern Plains v. Surf. Transp. Brd., 668 F.3d 1067, 1083 (9th Cir 2011) (concluding that an agency’s “plans to conduct surveys and studies as part of its post-approval mitigation measures,” in the absence of baseline data, indicate failure to take the requisite “hard look” at environmental impacts).

The EA also provides no baseline data on cultural resources. The document purports to have conducted a Class I cultural resources survey that identified previous cultural resources surveys identifying 25 previously recorded cultural resources located in the project area. EA at p. 24 (Section 3.4.1). However, no information is provided on who conducted these surveys or whether those persons possessed the necessary relevant cultural expertise, where the surveys were conducted, for which projects they were conducted, when they were conducted, what methodologies were used, or any other information. This information is necessary as baseline information for the agency to accurately assess the results of these surveys and would not need to disclose any sensitive information about the cultural resources themselves.

The baseline requirement applies not only to ground and surface waters, but any potentially affected resource such as air quality, recreation, cultural/religious/historical, soils, and wildlife.

The Agency Must Include an Adequate Mitigation Plan Under NEPA

Under NEPA, the agency must have an adequate mitigation plan to minimize or eliminate all potential significant project impacts in order to make a rational finding of no significant impacts.

NEPA requires the agency to: (1) “include appropriate mitigation measures not already included in the proposed action or alternatives,” 40 CFR § 1502.14(f); and (2) “include discussions of: . . . Means to mitigate adverse environmental impacts (if not already covered under 1502.14(f)).” 40 CFR § 1502.16(h). NEPA regulations define “mitigation” as a way to avoid, minimize, rectify, or compensate for the impact of a potentially harmful action. 40 C.F.R. §§1508.20(a)-(e). “[O]mission of a reasonably complete discussion of possible mitigation measures would undermine the ‘action-forcing’ function of NEPA. Without such a discussion, neither the agency nor other interested groups and individuals can properly evaluate the severity of the adverse effects.” Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 353 (1989).

NEPA requires that the agency discuss mitigation measures, with “sufficient detail to ensure that environmental consequences have been fairly evaluated.” Methow Valley, 490 U.S. at 352, 109 S.Ct. 1835.

An essential component of a reasonably complete mitigation discussion is an assessment of whether the proposed mitigation measures can be effective. Compare Neighbors of Cuddy Mountain v. U.S. Forest Service, 137 F.3d 1372, 1381 (9th Cir.1998) (disapproving an EIS that lacked such an assessment) with Okanogan Highlands Alliance v. Williams, 236 F.3d 468, 477 (9th Cir. 2000) (upholding an EIS where “[e]ach mitigating process was evaluated separately and given an effectiveness rating”).

The Supreme Court has required a mitigation discussion precisely for the purpose of evaluating whether anticipated environmental impacts can be avoided. Methow Valley, 490 U.S. at 351–52, 109 S.Ct. 1835 (citing 42 U.S.C. § 4332(C)(ii)).

A mitigation discussion without at least some evaluation of effectiveness is useless in making that determination. South Fork Band Council v. Dept. of Interior, 588 F.3d 718, 727 (9th Cir. 2009) (rejecting EIS for failure to conduct adequate review of mitigation and mitigation effectiveness in mine EIS).

“The comments submitted by [plaintiff] also call into question the efficacy of the mitigation measures and rely on several scientific studies. In the face of such concerns, it is difficult for this Court to see how the [agency’s] reliance on mitigation is supported by substantial evidence in the record.” Wyoming Outdoor Council v. U.S. Army Corps of Eng’rs, 351 F. Supp. 2d 1232, 1251 n. 8 (D. Wyo. 2005). See also Dine Citizens v. Klein, 747 F.Supp.2d 1234, 1258-59 (D. Colo. 2010) (finding “lack of detail as the nature of the mitigation measures” precluded “meaningful judicial review”).

In this case, many of the mitigation proposals relied upon do not contain sufficient detail as require by NEPA. The proposed mitigation plans for impacts to cultural resources, big horn sheep, water impacts from heavy equipment crossing sensitive water resources (WIZ) all lack the necessary detail. For surface water, the EA states only that an alternative drilling location will be found “if seasonal conditions indicate the WIZ is impassible without causing considerable damage to soils, wetlands, and other resources.” EA at p. 15 (Section 2.3). However, no detail on the locations and no description of how this determination is to be made or what constitutes

“considerable” damage, except that decisions will be made “in coordination” with USFS personnel. This utter lack of specificity is not compliant with NEPA’s mitigation requirements.

For impacts to big horn sheep, while the agency’s selected alternative does provide a seasonal lambing restriction on drilling on three of the forty-seven approved drill pads, for the others the proposed mitigation relies on implementing restrictions only “should lambing be observed.” EA at p. 13 (Table 2-1); see also EA Appendix D Wildlife and Fisheries Biological Assessment/Biological Evaluation and Technical Report p. 26 (Table 4-2). However, there is no explanation as to how this determination will be made or by whom – and importantly, what training or expertise will be required by workers at the site to enable them to assess or make this determination. The last reference in the EA Appendix D references “USFS staff” observations, but no explanation of who or when the agency intends to have its own personnel with expertise present on site. This lack of detail or planning renders the mitigation all but useless in practical effect.

The same problem applies to the cultural resources impacts mitigation that relies on drilling personnel to halt drilling upon discovery of cultural resources during drilling activities. See EA at p. 25 (Section 3.4.4). There is no indication as to how the workers at the site will be trained or how any of the required expertise necessary to identify such cultural resources will be brought to bear – as the range of potential cultural resources is very broad, from natural formations such as stones or rocks to remnants of habitation to human remains. The EA provides no detail as to how these resources will be effectively identified or who will do so in the field during busy drilling and excavation activities.

The Agency Must Fully Review All Reasonable Alternatives

NEPA requires the agency to “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources.” 42 U.S.C. § 4332(E); 40 CFR § 1508.9(b).

It must “rigorously explore and objectively evaluate all reasonable alternatives” to the proposed action. City of Tenakee Springs v. Clough, 915 F.2d 1308, 1310 (9th Cir. 1990). The alternatives analysis is considered the heart of a NEPA analysis. 40 C.F.R. § 1502.14.

The alternatives analysis should present the environmental impacts in comparative form, thus sharply defining important issues and providing the public and the decisionmaker with a clear basis for choice. Id.

The lead agency must “rigorously explore and objectively evaluate all reasonable alternatives” including alternatives that are “not within the [lead agency’s] jurisdiction.” Id.

Even if a NEPA document leads to a FONSI, it is essential for the agency to consider all reasonable alternatives to the proposed action. A leading federal court EA/alternatives decision states:

NEPA requires that federal agencies consider alternatives to recommended actions

whenever those actions “involve[] unresolved conflicts concerning alternative uses of available resources.” 42 U.S.C. § 4332(2)(E) (1982). The goal of the statute is to ensure “that federal agencies infuse in project planning a thorough consideration of environmental values.” The consideration of alternatives requirement furthers that goal by guaranteeing that agency decisionmakers “[have] before [them] and take [] into proper account all possible approaches to a particular project (including total abandonment of the project) which would alter the environmental impact and the cost-benefit balance.” NEPA’s requirement that alternatives be studied, developed, and described both guides the substance of environmental decisionmaking and provides evidence that the mandated decisionmaking process has actually taken place. Informed and meaningful consideration of alternatives--including the no action alternative-- is thus an integral part of the statutory scheme.

Moreover, consideration of alternatives is critical to the goals of NEPA even where a proposed action does not trigger the EIS process. This is reflected in the structure of the statute: while an EIS must also include alternatives to the proposed action, 42 U.S.C. § 4332(2)(C)(iii) (1982), the consideration of alternatives requirement is contained in a separate subsection of the statute and therefore constitutes an independent requirement. See id. § 4332(2)(E). The language and effect of the two subsections also indicate that the consideration of alternatives requirement is of wider scope than the EIS requirement. The former applies whenever an action involves conflicts, while the latter does not come into play unless the action will have significant environmental effects. An EIS is required where there has been an irretrievable commitment of resources; but unresolved conflicts as to the proper use of available resources may exist well before that point. Thus, the consideration of alternatives requirement is both independent of, and broader than, the EIS requirement.

Bob Marshall Alliance v. Hodel, 852 F.2d 1223, 1228-1229 (9th Cir. 1988).

“While a federal agency need not consider all possible alternatives for a given action in preparing an EA, it must consider a range of alternatives that covers the full spectrum of possibilities.” Ayers v. Espy, 873 F.Supp. 455, 473 (D. Colo. 1994).

The EA and Draft DN review only two meaningful alternatives: the company’s proposal (Alternative B) and the agency’s version of the same with a few additional mitigation measures included (Alternative C). The agency did not address the following reasonable alternatives that were presented to it in BHCWA’s comments on the project: (1) access to drill holes without the construction or reconstruction/improvement of new or improved roads; (2) reduction in the amount, scope, number of holes, and impact of each drill pad; (3) additional timing restrictions to protect wildlife and area residents; (4) preclusion of any impact to cultural/religious/historical resources; (5) a phased approach to allow for sufficient information on ground water and surface water baseline conditions and impacts to be assessed and considered prior to additional drilling; (6) requiring aboveground tanks to contain drilling fluids and rock cutting instead of allowing land application; (7) the Forest Service should be notified before a drill hole is to be plugged to allow sufficient time to inspect the plugging while in progress; (8) improving and straightening roads before allowing water trucks in the area; (9) providing access gates to allow access only to

workers who have cleared a background check and drug tests; (10) forbidding operations within at least 24 hours of a snowfall or ice event due to the dangerous roads into the area.

Despite the reasonableness of these alternatives and that they were all specifically raised in comments submitted by BHCWA, the EA does not address them in any meaningful way, in violation of NEPA.

The Forest Service Must Minimize All Adverse Impacts from the Project

On the National Forests, the Organic Act requires the Forest Service “to regulate their occupancy and use and to preserve the forests thereon from destruction.” 16 U.S.C. § 551. “[P]ersons entering the national forests for the purpose of exploiting mineral resources must comply with the rules and regulations covering such national forests.” Clouser v. Espy, 42 F.3d 1522, 1529 (9th Cir. 1994).

The USFS mining regulations require that “all [mining] operations shall be conducted so as, where feasible, to minimize adverse environmental impacts on National Forest resources.” 36 C.F.R. § 228.8. In addition, the operator must fully describe “measures to be taken to meet the requirements for environmental protection in § 228.8.” 36 C.F.R. 228.4(c)(3). “Although the Forest Service cannot categorically deny a reasonable plan of operations, it can reject an unreasonable plan and prohibit mining activity until it has evaluated the plan and imposed mitigation measures.” Siskiyou Regional Education Project v. Rose, 87 F. Supp. 2d 1074, 1086 (D. Or. 1999), citing Baker v. U.S. Dept. of Agriculture, 928 F.Supp. 1513, 1518 (D. Idaho 1996). “This court does not believe the law supports the Forest Service’s concession of authority to miners under the General Mining Act in derogation of environmental laws and regulations.” Hells Canyon Preservation Council v. Haines, 2006 WL 2252554, at *6 (D. Or. 2006)(finding violation of Organic Act in Forest Service’s failure to minimize adverse impacts to streams).

In addition to ensuring compliance with all applicable environmental standards under the 36 CFR Part 228 regulations, the USFS has a mandatory duty to require “all practicable measures to maintain and protect fisheries and wildlife habitat which may be affected by the operations” under 36 CFR § 228.8(e)). See Rock Creek Alliance v. Forest Service, 703 F.Supp.2d 1152, 1170 (D. Montana 2010) (Forest Service violated Organic Act and 228 regulations by failing to protect water quality and fisheries in approving mining PoO).

Importantly, a simple and generalized reduction of impacts does not equate to the strict requirements for minimization of impacts and protection of resources. The Forest Service’s duty to minimize impacts is not met simply by somewhat reducing those impacts. Trout Unlimited v. U.S. Dep’t. of Agriculture, 320 F.Supp.2d 1090, 1110 (D. Colo. 2004). In interpreting the Federal Land Policy and Management Act (FLPMA)’s duty on the agency to “minimize damage to ... fish and wildlife habitat and otherwise protect the environment,” 43 U.S.C. § 1765(a), the court specifically stated the agency’s finding that mitigation measures would “reasonably protect” fisheries and habitat failed to meet its duty to “minimize” impacts. *Id.* In this case, the exploration occurs in the Rapid Creek watershed. Rapid Creek is a world-class trout fishery.

The agency must demonstrate that all feasible means have been required to minimize all adverse impacts to all potentially affected resources. For example, the Ninth Circuit Court of Appeals recently held that the Forest Service had the authority to strictly limit mining claimants' vehicular access to mining claims. Public Lands for the People v. U.S. Dept. of Agriculture, 697 F.3d 1192 (9th Cir. 2012). As held by the court:

The Secretary of Agriculture has the right to restrict motorized access to specified areas of the national forests, including mining claims. [Clouser v. Espy, 42 F.3d at 1530 (citing 16 U.S.C. § 551)] (means of access “may be regulated by the Forest Service”). More specifically, we have upheld Forest Service decisions restricting the holders of mining claims to the use of pack animals or other non-motorized means to access their claims. Id. at 1536-38. Relatedly, we have rejected the contention that conduct “reasonably incident[al]” to mining could not be regulated. United States v. Doremus, 888 F.2d 630, 632-33 (9th Cir. 1989). Our precedent thus confirms that the Forest Service has ample authority to restrict motor vehicle use within the ENF [El Dorado National Forest].

Id. at 1197.

Thus, in this case, in order to minimize all adverse impacts, the agency must consider, among other restrictions to protect wildlife and the environment, limit project activities to existing roads and upgrade those roads. Exploration-related traffic would present an undue risk on Silver City Road, given how narrow and winding the road is. Further, in the summer, the road receives a high level of traffic. Similarly, Rochford Road presents serious transportation risks, evidenced by the Mineral Mountain Resources vehicle that recently slid off the road into Rapid Creek. Transportation of fuels and any other drilling or other chemicals must be tightly controlled to prevent contamination. As noted herein, the agency must fully consider such limitations as reasonable alternative(s) under NEPA. Additionally, to reduce cumulative impacts to wildlife species that are sensitive to light, noise, and other human activities incidental to mineral exploration, the USFS should consider the timing of the project in relation to other adjacent or nearby mineral projects and consider imposing timing restrictions so that these multiple projects in the same general area occur sequentially rather than at the same time. The same is true for other affected resources such as ground water, surface water, and air quality.

The Agency Must Comply with the National Historic Preservation Act (NHPA) and Other Requirements to Protect Cultural, Historic, and Native American Interests and Resources.

The USFS must comply with the NHPA and requirements regarding cultural, historic, and Native American interests and resources. Due to the likelihood that cultural and religious sites and resources will be adversely affected, it would be a violation of the NHPA and other laws (and NEPA as noted above) to approve the projects without the required review of, and protection of, cultural/historical resources.

[T]he fundamental purpose of the NHPA is to ensure the preservation of historical resources. See 16 U.S.C. § 470a(d)(1)(A) (requiring the Secretary to “promulgate regulations to assist Indian tribes in preserving their particular historic properties” and “to encourage coordination ... in historic preservation planning and in the identification,

evaluation, protection, and interpretation of historic properties”); see also Nat’l Indian Youth Council v. Watt, 664 F.2d 220, 226 (10th Cir.1981) (“The purpose of the National Historic Preservation Act (NHPA), is the preservation of historic resources.”). Early consultation with tribes is encouraged by the regulations “to ensure that all types of historic properties and all public interests in such properties are given due consideration....” 16 U.S.C. § 470a(d)(1)(A).

Te-Moak Tribe of Western Shoshone v. U.S. Department of the Interior, 608 F.3d 592, 609 (9th Cir. 2010).

Under the NHPA, a federal agency must make a reasonable and good faith effort to identify historic properties, 36 C.F.R. § 800.4(b); determine whether identified properties are eligible for listing on the National Register based on criteria in 36 C.F.R. § 60.4; assess the effects of the undertaking on any eligible historic properties found, 36 C.F.R. §§ 800.4(c), 800.5, 800.9(a); determine whether the effect will be adverse, 36 C.F.R. §§ 800.5(c), 800.9(b); and avoid or mitigate any adverse effects, 36 C.F.R. §§ 800.8[c], 800.9(c). The [federal agency] must confer with the State Historic Preservation Officer (“SHPO”) and seek the approval of the Advisory Council on Historic Preservation (“Council”).

Muckleshoot Indian Tribe v. U.S. Forest Service, 177 F.3d 800, 805 (9th Cir. 1999). See also 36 CFR § 800.8(c)(1)(v)(agency must “[d]evelop in consultation with identified consulting parties alternatives and proposed measures that might avoid, minimize or mitigate any adverse effects of the undertaking on historic properties and describe them in the EA.”)

The Advisory Council on Historic Preservation (“ACHP”), the independent federal agency created by Congress to implement and enforce the NHPA, has exclusive authority to determine the methods for compliance with the NHPA’s requirements. See National Center for Preservation Law v. Landrieu, 496 F. Supp. 716, 742 (D.S.C.), *aff’d per curiam*, 635 F.2d 324 (4th Cir. 1980). The ACHP’s regulations “govern the implementation of Section 106,” not only for the Council itself, but for all other federal agencies. *Id.* See National Trust for Historic Preservation v. U.S. Army Corps of Eng’rs, 552 F. Supp. 784, 790-91 (S.D. Ohio 1982).

NHPA § 106 (“Section 106”) requires federal agencies, prior to approving any “undertaking,” such as approval of the Project at issue here, to “take into account the effect of the undertaking on any district, site, building, structure or object that is included in or eligible for inclusion in the National Register.” 16 U.S.C. § 470(f). Section 106 applies to properties already listed in the National Register, as well as those properties that may be eligible for listing. See Pueblo of Sandia v. United States, 50 F.3d 856, 859 (10th Cir. 1995). Section 106 provides a mechanism by which governmental agencies may play an important role in “preserving, restoring, and maintaining the historic and cultural foundations of the nation.” 16 U.S.C. § 470.

If an undertaking is the type that “may affect” an eligible site, the agency must make a reasonable and good faith effort to seek information from consulting parties, other members of the public, and Native American tribes to identify historic properties in the area of potential effect. See 36 CFR § 800.4(d)(2). See also Pueblo of Sandia, 50 F.3d at 859-863 (agency failed

to make reasonable and good faith effort to identify historic properties). Consultation “must be ‘initiated early in the undertaking’s planning’, so that a broad range of alternatives may be considered during the planning process for the undertaking.” Pit River Tribe v. U.S. Forest Service, 469 F.3d 768, 787 (9th Cir. 2006).

The NHPA also requires that federal agencies consult with any “Indian tribe ... that attaches religious and cultural significance” to the sites. 16 U.S.C. § 470(a)(d)(6)(B). Consultation must provide the tribe “a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate its views on the undertaking’s effects on such properties, and participate in the resolution of adverse effects.” 36 CFR § 800.2(c)(2)(ii). “The agency official **shall ensure that the section 106 process is initiated early in the undertaking’s planning**, so that a broad range of alternatives may be considered during the planning process for the undertaking.” 36 CFR § 800.1(c) (emphasis added).

The NHPA requires that consultation with Indian tribes “recognize the government-to-government relationship between the Federal Government and Indian tribes.” 36 CFR § 800.2(c)(2)(ii)(C). See also Presidential Executive Memorandum entitled “Government- to-Government Relations with Native American Tribal Governments” (April 29, 1994), 59 Fed. Reg. 22951, and Presidential Executive Order 13007, “Indian Sacred Sites” (May 24, 1996), 61 Fed. Reg. 26771.

The USFS must also protect archeological and grave resources, Sacred Sites and Native American religious and cultural uses pursuant to the above laws and requirements as well as: (1) the American Indian Religious Freedom Act (AIFRA), 42 U.S.C. 1996 et seq.; (2) the Archaeological Resources Protection Act (ARPA), 16 U.S.C. 470aa-mm ; and (3) the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001 et seq.

In this case, the USFS has not completed the required NHPA consultations, either with the public or with the relevant Tribes. BHCWA’s previous comments informed the agency that the Project area must be subject to a culturally-relevant and competent cultural resources survey, and the public and Tribes must be given an opportunity to participate and comment on the identification, evaluation, and protection of the cultural resources at the site. The agency purports to have conducted a Class I cultural resources survey that identified previous cultural resources surveys identifying 25 previously recorded cultural resources located in the project area. EA at p. 24 (Section 3.4.1). However, no information is provided on who conducted these surveys or whether those persons possessed the necessary relevant cultural expertise, where the surveys were conducted, for which projects they were conducted, when they were conducted, what methodologies were used, or any other information. This information is necessary for the agency to accurately assess the results of these surveys and would not need to disclose any sensitive information about the cultural resources themselves.

This information was only provided for the first time in the Final EA. As such the public never had the opportunity to review this information. The agency should have initiated these reviews before seeking public comment, as the information produced from these surveys are necessary for the public and the Tribes to have the legally-required opportunity to participate in the agency’s

analysis and decision. This fact again necessitates that a draft NEPA document be produced and circulated for public review and comment once all relevant information has been disclosed.

With regard to consultation efforts, the EA references a government to government consultation held with the Oglala Sioux Tribe on January 28, 2022. EA at 42 (Section 4.4). However, no detail of any kind is presented. The agency failed to disclose or analyze the fact that at that meeting, the Black Hills National Forest 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 Tribal Council following the site visit (or visits) and survey work. Thus, the Tribe's consultation process with BHNF was to be ongoing. No information was provided as to any follow-up site visits, any results or information gathered from any such site visits, or how or whether the agency ever made good on its express commitment to consult again with the Oglala Sioux Tribal Council. Absent this information, the agency's responsibilities with regard to this project under both NEPA and the NHPA fall short of the legal requirements.

CONCLUSION

In conclusion, as detailed above and in previous comments submitted by the Objector, the EA and Draft DN/FONSI fail to fully comply with numerous federal and state laws, regulations, policies, and other requirements. As such, the USFS must vacate and remand both documents and order the correction of all errors noted herein. The USFS cannot approve any of the action alternatives described in the EA, or any action alternative at all that the applicant may propose, unless and until all laws, etc., noted herein are satisfied. Please direct all communications regarding this Objection to the undersigned attorneys.

/s/ Lillas Jarding

Lillas Jarding
Black Hills Clean Water Alliance
P.O. Box 591
Rapid City, SD 57709

RESOLUTION OF THE OGLALA SIOUX TRIBAL COUNCIL
OF THE OGLALA SIOUX TRIBE
(An Unincorporated Tribe)

RESOLUTION OF THE OGLALA SIOUX TRIBAL COUNCIL OF THE OGLALA SIOUX TRIBE OPPOSING THE UNITED STATES FOREST SERVICE (USFS) ENVIRONMENTAL ASSESSMENT AND DRAFT DECISION NOTICE AND FINDING OF NO SIGNIFICANT IMPACT FOR THE JENNY GULCH GOLD EXPLORATION DRILLING PROJECT.

WHEREAS, the Oglala Sioux Tribe adopted its Constitution and By-Laws by referendum vote on December 14, 1935, in accordance with Section 16 of the Indian Reorganization Act of 1934 (25 U.S.C. § 5123) and under Article III of the Oglala Sioux Tribe Constitution, the Oglala Sioux Tribal Council is the governing body of the Oglala Sioux Tribe, and

WHEREAS, pursuant to the Constitution and By-Laws of the Oglala Sioux Tribe, the Oglala Sioux Tribal Council exercises legislative powers to enact and promulgate resolutions and ordinances, and

WHEREAS, Article IV, Sections 1(f), 1(k), 1(m), 1(w) empower the Tribal Council to manage the economic affairs of the Tribe, protect and preserve the property of the Tribe, adopt laws governing the conduct of persons on the Pine Ridge Indian Reservation, and adopt laws protecting and promoting the health and general welfare of the Oglala Sioux Tribe and its membership, and

WHEREAS, the United States Forest Service (USFS) prepared its Environmental Assessment (EA) and draft decision notice and finding of no significant impact (DN/FONSI) for the Jenny Gulch Gold Exploration Drilling project (Proposed Project) and published legal notice of same in the Rapid City Journal on July 8, 2022, and

WHEREAS, the Oglala Sioux Tribe is adamantly opposed to the Proposed Project and has stated its opposition to the USFS numerous times, including, but not limited to, on January 17, 2020 (when the Tribe requested government-to-government consultation with the USFS on the Proposed Project), on October 22, 2021 (when the Tribe submitted comments to the USFS on the Draft EA, and on January 28, 2022 (during a government-to-government consultation with the USFS on the Proposed Project), and

WHEREAS, the Oglala Sioux Tribe's position has been and remains that without limitation the Tribe is opposed to any exploration or development of minerals in the Black Hills that would:

- Harm our sacred Black Hills, including the sacred site known as *Pe' Sla*, and our traditional, cultural, and religious use of those lands; or

- Harm archeological, historical, cultural, and sacred sites in the Black Hills; or
- Harm the land, water, natural resources, and fish and wildlife in the Black Hills, and

WHEREAS, the USFS prepared its draft EA on the Proposed Project without completing meaningful and good faith consultation with the Oglala Sioux Tribe, and

WHEREAS, while the Tribe asked for additional consultation with the USFS during and after its January 28, 2022 meeting with the USFS and any site visits of the proposed exploration site with the Tribe and its cultural and natural resource experts, the USFS published its EA and DN/FONSI without conducting the necessary further consultation with the Tribe despite the fact that such consultation would have informed the USFS's environmental impact review and educated the USFS about the analysis needed regarding the Proposed Project's impact on our treaty rights, our cultural and religious resources and practices, and the environment, and

WHEREAS, the Proposed Project would have significant impacts on our Treaty rights; cultural and religious resources; and the environment; now


THEREFORE BE IT RESOLVED, that the Tribal Council of the Oglala Sioux Tribe opposes the United States Forest Service's Environmental Assessment and draft decision notice and finding of no significant impact for the Jenny Gulch Gold Exploration Drilling project, and

BE IT FURTHER RESOLVED, that the Tribal Council of the Oglala Sioux Tribe authorizes and directs the President of the Oglala Sioux Tribe to develop comments to oppose the United States Environmental Assessment and draft decision notice and finding of no significant impact for the Jenny Gulch Gold Exploration Drilling project and to submit them prior to the comment deadline.


C-E-R-T-I-F-I-C-A-T-I-O-N

I, as undersigned secretary of the Oglala Sioux Tribal Council of the Oglala Sioux Tribe, hereby certify that this Resolution was enacted by a vote of: 17 For; 0 Against; 0 Abstain; 0 Not Voting; during a REGULAR SESSION held on the 27TH day of JULY 2022.

RESOLUTION NO. 22-118
Page Three


STACY L. TWO LANCE
Secretary
Oglala Sioux Tribe

A-T-T-E-S-T:


ALICIA MOUSSEAU
Vice-President
Oglala Sioux Tribe

RECEIVED

JUL 29 2022

BUREAU OF INDIAN AFFAIRS
OFFICE OF THE SUPERINTENDENT

August 22, 2022

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

Re: Objection to the Environmental Assessment for the Jenny Gulch Gold Exploration Project

In July 2022, the Forest Service, acting through Jim Gubbels, District Ranger of the Mystic Ranger District of the Black Hills National Forest, released a Decision Notice, Environmental Assessment (EA), and Finding of No Significant Impact (FONSI) for the Jenny Gulch Exploration Drilling Project (Project). I am a citizen of the Oglala Sioux Tribe. My Tribe submitted written comments on the project in January 2020 and October 2021 and expressed objections to the Project during an initial tribal consultation in January 2022. The Tribe submitted its comments on my behalf and on behalf of all other tribal citizens. My objections are based on the Tribe's comments and objections and on new information provided by the Forest Service.

The Black Hills are sacred to our people. We know them as "the heart of everything that is." The Forest Service has failed to comply with the law and has failed to consider the environmental and cultural impacts of the Project under the National Environmental Policy Act.

The Project threatens the health of the Pactola Reservoir and other waters in the area. These threats to the watershed directly threaten our treaty rights to land, water, fish, wildlife, and other natural and cultural resources in the Black Hills.

The Forest Service has failed to address the Project's effects on our sacred Black Hills. The Project would drill almost four dozen holes into the Black Hills. This will desecrate the Black Hills. It may also result in devastating open pit mining for gold in the Black Hills that would expose the area to ever more exploitation and development projects. Both scenarios threaten our spiritual and cultural connection with a place that for us is sacred and priceless regardless of its mineral worth. The Black Hills are sacred for their history, ecosystem, environment, spiritual and cultural offerings and aesthetics. The forest breathes life into the world. We must protect the Earth's lungs. The Black Hills are our birthplace. We must protect Mother Earth.

The Forest Service has not complied with the Tribal consultation requirements of the National Historic Preservation Act and the National Environmental Policy Act. The Forest Service must make a reasonable and good faith effort to consult with Tribes *before* the approval of an Environmental Assessment, FONSI, or permit. The Forest Service met with the Tribal Council in January, but it agreed to consult with the Tribal Council again after site visits and it has not done so.

The Forest Service has failed to consider a site of religious and cultural significance to us, has utilized improper and invalid means for tribal consultation, and has failed to timely complete its legal responsibilities prior to the release of the Decision Notice and Final Environmental Assessment.

We ask the Forest Service to withdraw its Draft Decision Notice and Finding of No Significant Impact for the Jenny Gulch Exploration Drilling Project. The Forest Service should protect our sacred Black Hills not facilitate the desecration of them.

Names:

Tina Carter	Robert Jones	Chelsea Marshall
Chastity Bear Killer	Rebecca Sallans	Brandon RedShirt
Randy Witt	Chelsea Sallans	Angela Clifford
Kristina Looks Twice	Charles Sallans	Beverly Pipeonhead
Robert Red Eagle	Karen St. John	Myranda pourier
Terran Mills	Zariah Twiss	Maricruz Ramirez
Vigil Red Cloud	Shelby Wilson	Valerie Clack
Brooke Bettelyoun	Jacquelyn Myers	Jarron bighorn
Robbie Ghost Bear	Jeneen Mary Tobacco	Chris Jones
Margaret Iron Cloud	Vanessa Tibbitts	Pierre Digue
Roberta woman dress shoulders	Tahnee Salamun	Tiara Young
Starlette Jumping Eagle	Nichole Cottier	Ron Kills Warrior
Shanda poor bear	Tiffany Lamont	Jessica Begeman
Karen Red Star	Christina Janis	Dionca Wounded Head-Higgins
Gwedolyn R. Young Bear	Jaimie Her Many Horses	Duane R Ross Jr
Jennifer B. waln	Sandra Fire Lightning MSS	Jason Ashley
Leslie Little	Robyn Crow	Richard Apple
Angel white face	Audrey Borchers	Camille Mesteth
Robert twiss	Anne Marie Niethold	Asa steele
Alexandria OldHorse	Wakinyan Luta Forney	Stephanie Peneaux
Asay Oldhorse	Henrietta Janis	Dylan iron crow
Arlene Morrison	Dustin Evans	Darian chasing hawk
Kayla Cross	Vienna Janis	Tayvon apple
Winnifred Stevenson	Lori Lindaman	Antonio Hernandez
Dwight Simmons	Marion Rowland	Karen Hall
SunShynne Catches	Erica Yellow Hair	Ellen WhiteFace
Dustin Baxter	Nanon Vigen	Russel H Zephier
Gloria Martin	Jennifer Spotted Horse	Jason Jake Little
Stacy Richards	Mark Ross	Sara Hand
Cecilia Antonelli	Wiwokiya King	Maioha Kingi
Miguel Zertuche	Myrna Hornbeck	Michelle Trepanier
Joey Hill	Sarah Mischnick	Hail G. Iron Cloud-Baird
Shea VanKeuren	Gentry Ribitsch	Amelia Tallman
Shaina Johnson	Janice Roman	Athena Little
Carly Shangreau	Carmen Harrington	Michael Dunne
Jesse Big Crow	Kara Desmond	Paloma Maité
Celeste M. Hockings	Tracy Charging Crow	Dylan T Brewer Sr
Kiahna Standing Bear	Haley Hernandez	Ashlynn Kindschy
Illiana Andrade	Stephanie Crow	Suzanne Kite
Caroline Stroppel	Eleanor Ferguson	Stephen Barrett
Thomas Zephier	Phillip Ironshell	Melanie Hawkins
Zane Quick Bear	Kristin Weston	Melanie Hawkins
Roberta Ecoffey	Derek Broken Rope	Christopher McDonald
Elaine Yellow Horse	Jennifer Richardson	Matthew F Carney III
Hugo diaz	Alice Jack-Leftwich	Taylor Gunhammer
Ashley strong	Destiny Leftwich	Angel Ghost
Kathleen Eagle Elk	Charlotte Aquino	Gretchen Hopley
Charlee Brewer	Karezma Whiting	Jackson Ten Fingers

Denise Giago
Christopher Blackbird
Antoinette Rodriguez
Tawny Rodriguez
Thalia Rodriguez
Christian Rodriguez
Christopher Rodriguez
Felix Rodriguez
Chelsea Randall
Olivia Kurz
Henry Red Cloud
Adriana young
Norma Thunder Hawk
Anais Thunder Hawk
Rona Thunder Hawk
Vincent Thunder Hawk
Sultan Thunder Hawk
Danielle Truman
Aisha Thunder Hawk
Cyndi Middletent
Selena Tobacco
Paulina M. Fast Wolf
Marlon Kelly
Joseph Cournoyer
Chase Baird-Iron Cloud
Kyle White
Katherine Janis
Marina Hawkins
Juan Quintanilla
Derek Pourier
Mark Weston
Bryan Monge Serrano
Neve Redhair
Shaylene Richard
Peppermint Twiss
Letoy Fackelman
Reimundo Balderas
Amandeline Ecoffey
Destiny Big Crow
Danielle Arpan
Richinda
Kimberly Pumpkin Seed
Destrie Brewer
Rebecca Chief Eagle
Tyanna Slow Bear
Dominic Slow Bear
Tkiya Slow Bear
Kaleb Slow Bear

Sandra Hill
Tasheena Goings
Candy Mayo
Hector Ortiz
Misty Swallow
Janyce Trask
Henry Red Cloud
Shai Bruce
Nicolette Ward
Lachaylynn Azure-Fast Horse
Allexis Thomas
Ohinya Prue
Jacob Neyhart
Noble Neyhart
Masina Hawkins
Maliah Weston
Shavaun Martin
Carolee petrillo
Nancy M. Kile
Wendy Baxter
Salena Ghostbear
Jimi LaPointe
Amina GhostDog
SissyJo ThreeStars Collins
Rachel black elk
Tanya Yellow Hawk
Crystal Fast Wolf
Susan Drawdy
Cedric Good House Jr
Trish Sitting Holy
Tracy Sitting Holy
Dawn Black Bull
Calista Cottier
Marissa Around Him
Ingrid One Feather
Indika Dreamer
Connie Lopez
Gloria Wounded Foot
Jennifer Evan
Angela Red Cloud
Mary Two Lance
Catherine Jeffries
Laura Brewer
Robin Her Many Horses
Edwina Tobacco
Paul Bravo
Rebecca Antelap
Donna Eagle Bull

Charlize Pourier
Veronica Brewer
Deanna Janis
Ed Catgrass
Tanya Janis
Angeline Richards
Fern Tuttle
Elizabeth Swallow
Shianne Dillon
Danielle White Face
Darrell Standing Solider Jr
Danielle WhirlWind Horse
Chase Metcalf
Jeannelle Twiss
Alex Red Star
Leota Red Hawk
Stephanie Crow
Arlen Brewer
Marilyn Wounded Head
Tamera Ten Fingers
Jamie White
Leilani Long Soldiers
Audrey Lakota
Kaidi Condon
Toni Fast Wolf
Marla Thunder Bull
Melanie Kills Small
Tia Two Bulls
Melvina Winters
Jacky Dreamer
Heather Patton
Lloyd Looks Twice
Anson Red Star
Terra Garnier
Grace Ann Byrd
Maxine Broken Nose
Brenda New Holy
Trina Andrews
Saige Hill
Patty Chief
Antoinette Wounded Head
Bret Brockel
Ireen Hummingbird
Kyra Poor Bear
Loretta Red Feather
Elaine Locke
Colin Thunder Hawk
Julie Mitchell

Lolita Sna Mani
Geri White Magpie
Barbara Ness
Tyler Rowland
Melissa Blacksmith
Tyra Red Cloud
Leslie Trueblood
Violet Fasthorse
Kyana Running Hawk
Bernadine
Dale Garnier
Whitney Kindle
Bette Red Cloud

Lola Gangone
Patrick Brewer
Frank Gangone
Lindsey Brown
Pamela Brown
Robert Roubideaux
Reginald Black Elk III
Alicia Mousseau
Audrey Jumping Eagle
Delores Jumping Eagle
Sierra Waters
Katana Rooks
Eula Yellow Boy
Harriet twiss
Brendan Runninghorse
Annalissee stover
Candace Lemay
Jo Lemay
Douglas Cross
Simona C. Hollowhorn
Deandra Mills
Carl Eagle Elk
Loretta Malo
Cody Cepledez
Faith Richard
Cecile Poor Bear
Elaine MatoTamaHeen
Geraldine Wilson
Clonie Around Him
Shepanie Jenson
Lavonne Cottier
Lola Martinez
Craig Dillon
Deidra Demeter
Julie Cottier

Earl Richards
Marlys Robinson
Lacy Ladeaux
Promise High Bull
Jennifer Shangreaux
Cayla Red Feather
Ivato Ruff
JoAnn Flye
Lola Da Bray
Mary Poor Thunder
Mitzy Briggs
Marilyn Standing Bear
Shaina Johnson
Christina Crazy
Thunder
Tierra Baird