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Submitted via <https://cara.fs2c.usda.gov/Public/CommentInput?project=NP-3479>

June 20, 2023

U.S. Department of Agriculture
Black Hills National Forest
1019 North Fifth Street
Custer, South Dakota 57730

RE: Great Plains Tribal Water Alliance - Comments on Withdrawal of Rapid Creek Watershed
(88 Fed. Reg. 17007, March 21, 2023)

To the Forest Service:

I serve as Chairman of the Board of Directors of the Great Plains Tribal Water Alliance, Inc. I write to comment on the Notice of Application for Withdrawal of the Rapid Creek Watershed from the provisions of the 1872 General Mining Act and related laws.

The Board of Directors of the Tribal Water Alliance is comprised of the Standing Rock Sioux, Rosebud Sioux, Oglala Sioux, Flandreau Santee, Lower Brule and Cheyenne River Sioux Tribes. We are chartered for the purposes of protecting the water rights of the Great Plains Tribes, reserved in our Treaties with the United States, and for advising the Great Plains Tribal Chairman's Association on policies affecting water. Our work applies to protection of the waters of the sacred Black Hills, which is our Treaty land under the 1868 Fort Laramie Treaty.

The Great Plains Tribal Water Alliance supports the proposed withdrawal of the Rapid Creek watershed from mining activities under the 1872 General Mining Act. The withdrawal should be for a period of not less than 20 years. We look forward to working with the Black Hills National Forest on the implementation of the withdrawal and the protection of the Rapid Creek watershed.

This is a historically and culturally significant area for the Lakota Nation. The fast-moving water polished stones, which were gathered for use as tools for grinding and milling roots and dried fruits. Lakota camps dotted the middle and lower segments of Rapid Creek hundreds of years before non-Indian emigrants came to our land. The watershed to be withdrawn contains a wealth of historic properties and traditional cultural properties, and they should be surveyed in close consultation with the Tribes and Tribal Historic Preservation officers.

Indigenous ecological knowledge should instruct the decision-making and management of the Black Hills National Forest, including the proposed withdrawal. The Lakota Nation protected this sacred land for centuries, and our movements were designed to protect artesian springs and other vulnerable resources.

This is celebrated today, as 150 Lakota youth are presently engaged in the annual Lakota Sacred Hoop 500-mile Run Around the Black Hills. This annual event is an important athletic and cultural tradition, and it celebrates the boundary that the Lakota established to protect the natural resources of this sacred land. <https://www.ritualinmotion.org/sacred-hoop-500-mile-run/>. The “race track” is an important part of Lakota oral tradition, and it reflects our indigenous traditional ecological knowledge to properly manage the forest. The Black Hills National Forest has generally ignored our traditional knowledge in making decisions on mining permits and forest management in the Black Hills, and the land and water have been polluted by mining tailings and other degradation.

Nevertheless, the Council on Environmental Quality has issued *Guidance for Federal Departments and Agencies on Indigenous Knowledge* (November 30, 2022). See <https://www.whitehouse.gov/wp-content/uploads/2022/12/OSTP-CEQ-IK-Guidance.pdf>. This Guidance applies to all federal agencies, including the Forest Service. It explains:

The Federal Government recognizes the valuable contributions of the Indigenous Knowledge that Tribal Nations and Indigenous Peoples have gained and passed down from generation to generation and the critical importance of ensuring that Federal departments and agencies (give proper) consideration and inclusion of Indigenous Knowledge... in Federal research, policies and decision making... and the need for consent of and honest engagement with Tribal Nations...

Moreover, Executive Order 14072 on *Strengthening the Nation’s Forests, Communities, and Local Economies* requires the Black Hills National Forest to integrate Indigenous Traditional Ecological Knowledge in making decisions under the 1872 Mining Act. 87 Fed. Reg. 24851-24852 (April 27, 2022). Clearly, the proposed withdrawal of the Rapid Creek watershed is permissible in light of Lakota traditional knowledge as applied to Rapid Creek.

The Forest Service and Bureau of Land Management should consider further withdrawals. While Rapid Creek serves as the drinking water supply for Rapid City, other waters such as the Cheyenne River are reserved for the Pine Ridge and Cheyenne River Reservations. The Cheyenne River presently fails to attain applicable water quality standards. The South Dakota Department

of Agriculture and Natural Resources 2022 *Integrated Report for Surface Water Quality Assessment* states on page 59:

[T]he upper Cheyenne River often exceeds irrigation water quality standards for specific conductance and sodium absorption ratio. Most segments of the Cheyenne River are nonsupporting for E.coli bacteria and TSS.... Reaches within and below Rapid City to the Cheyenne River continue to display poor water quality... Four (river reaches) did not ... meet with quality standards for mercury in fish.

https://danr.sd.gov/OfficeOfWater/SurfaceWaterQuality/docs/DANR_2022_IR_approved.pdf

Moreover, high levels of radionuclides have been detected in the delta of Angostura Reservoir, upstream from the Pine Ridge and Cheyenne River Reservations. Sharma et al., *Stream Sediment Geochemistry of the Upper Cheyenne River Watershed within the Abandoned Uranium Mining Region of the Southern Black Hills, South Dakota, USA*, Environ. Earth Sci. (2016) 75:823. The authors from the South Dakota School of Mines and Technology found “These tailings are a continued source of radiological elements, while the close proximity of these tailings to the Cheyenne River may promote the contaminant migration into the southern Black Hills watersheds.”

As stated above, the Great Plains Tribal Water Alliance supports the proposed withdrawal of the Rapid Creek watershed from the 1872 General Mining Act. Nevertheless, the same magnitude of effort behind the proposed withdrawal of Rapid Creek, in order to protect the water supply for Rapid City, must be conferred upon Tribal waters in the Cheyenne River. The Forest Service should consider withdrawals from the 1872 Mining Act for the tributaries to the degraded Cheyenne River, including the Spring Creek, Battle Creek, French Creek, Lame Johnny Creek, Fall River, Red Canyon Creek, and Beaver Creek, as well as Deadwood Creek, Box Elder Creek, Whitewood Creek and Spearfish Creek.

Moving forward, there should be improved consultation by the Black Hills National Forest with the signatory Tribes of the 1868 Fort Laramie Treaty. The forest is Treaty land, necessitating Tribal consultation for all management actions affecting the resources of the Black Hills.

The contemporary framework for Nation-to-Nation consultation by administrative agencies in the United States is prescribed in Executive Order 13175 on *Consultation and Coordination with Indian Tribal Governments*, as re-affirmed by President Biden’s *Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships* (January 26, 2021). E.O. 13175 states:

The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, tribal trust resources, and Indian treaty and other rights.

Agencies shall respect Indian tribal self-government and sovereignty, **honor treaty rights** and other rights... (and) ensure meaningful and timely input by tribal officials... 65 Fed. Reg. 67250 (emphasis added).

The Black Hills National Forest has failed to comply with these requirements in making past decisions under the 1872 Mining Act. The Tribal collaborations established for the withdrawal of the Rapid Creek watershed should be continued for all future management decisions under the Mining Act. It should include future withdrawals in order to protect the Cheyenne River and other sacred waters of the Black Hills.

Sincerely,

Doug Crow Ghost

Errol "Doug" Crow Ghost, Chairman
Board of Directors

Enclosure: Resolution of the Board of Directors in Support of Withdrawal of Rapid Creek Watershed



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Syed Huq, RST
Member

Robert "Bob" Walters, CRST
Member

RESOLUTION

RESOLUTION OF THE GREAT PLAINS TRIBAL WATER ALLIANCE, INC. SUPPORTING THE WITHDRAWAL OF THE RAPID CREEK WATERSHED FROM THE MINING LAWS AND MINERAL LEASING LAWS OF THE UNITED STATES AS A FIRST STEP TOWARD ENHANCED PROTECTION AGAINST DSTRUCTIVE MINING IN THE SACRED HE SAPA

WHEREAS, the Great Plains Tribal Water Alliance, Inc. is a coalition of Indian Nations working to preserve and enhance the prior, paramount, and superior reserved water rights of the Missouri River under Aboriginal title and the 1851 Fort Laramie Treaty and the 1868 Fort Laramie Treaty; and

WHEREAS, the Great Plains Tribal Water Alliance, Inc. is an advisory body of the Great Plains Tribal Chairmen's Association and provides technical support to the association in the areas of water, energy, and other natural resources issues; and

WHEREAS, as its sacred obligation, the Great Plains Tribal Water Alliance provides technical and policy recommendations for the protection of all water resources for the next seven generations; and

WHEREAS, as signatories to the 1851 Fort Laramie Treaty and the 1868 Fort Laramie Treaty, the Indian nations of the Great Plains Tribal Water Alliance, Inc. possess Treaty rights to the sacred *He Sapa*, and, historically, the U.S. Forest Service and Bureau of Land Management have violated our Treaty rights in the administration of the General Mining Act of 1872 (30 U.S.C. §§22-42), the Mineral Leasing Act of 1920 (30 U.S.C. §181) and related mineral leasing laws; and

WHEREAS, the Great Plains Tribal Water Alliance, Inc. has opposed environmentally destructive projects in the sacred *He Sapa*, including the proposed Dewey Burdock in situ uranium mine, the proposed F3 Jenny Gulch gold mining exploration in the

Rapid Creek watershed, and the proposed F 3 Reward gold mining exploration project; and

WHEREAS, the U.S. Forest Service has filed an application with the Bureau of Land Management to withdraw 20,574 acres of land in the Rapid Creek watershed from the General Mining Act, the Mineral Leasing Act and related mineral leasing laws for a period of 20 years (88 Fed. Reg. 17006, March 21, 2023); and

WHEREAS, the proposed withdrawal is a good first step by the Forest Service and Bureau of Land Management for the enhanced protection of land, water, cultural resources and fish and wildlife in the *He Sapa*; and

WHEREAS, the Great Plains Tribal Water Alliance presented this Resolution at the Oceti Sakowin Oyate Treaty Conference on May 17, 2023 and it was adopted unanimously; and

WHEREAS, the Great Plains Tribal Water Alliance presented this Resolution at the Great Plains Tribal Chairman's Association meeting on May 22, 2023, and it was adopted unanimously.

THEREFORE BE IT RESOLVED, that the Great Plains Tribal Water Alliance, Inc. hereby supports the withdrawal of 20,574 acres of land in the Rapid Creek watershed from the General Mining Act of 1872 (30 U.S.C. §§22-42), the Mineral Leasing Act of 1920 (30 U.S.C. §181) and related mineral leasing laws.

BE IT FURTHER RESOLVED, that proposed withdrawal is consistent with the obligations of the United States under the 1851 Fort Laramie Treaty and the 1868 Fort Laramie Treaty.

BE IT FURTHER RESOLVED, that proposed withdrawal will have a significant beneficial impact on the environment, including land, water, cultural resources and fish and wildlife.

BE IT FURTHER RESOLVED, that the Great Plains Tribal Water Alliance, Inc. calls upon the U.S. Forest Service and the Bureau of Land Management to consult with the Lakota and Dakota Nation to properly identify traditional cultural properties in the Rapid Creek watershed and the Black Hills National Forest.

BE IT FURTHER RESOLVED, that the Great Plains Tribal Water Alliance, Inc. calls upon the U.S. Forest Service and the Bureau of Land Management to give due consideration to further withdrawals of *He Sapa* lands from federal mining and mineral leasing laws.

CERTIFICATION

This is to certify that the above Resolution No. 23-001 was duly passed by the Board of Directors of the Great Plains Tribal Water Alliance, Inc., in its meeting on this 14th day of June, 2022, by a vote of 3-0-1. The said resolution was adopted pursuant to authority vested in the Alliance. A quorum was present.

ATTEST:



Errol "Doug" Crow Ghost, Chairman



Elizabeth Wakeman, Secretary