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Electronic Submission:

Rob Hoelscher, District Ranger U.S Forest Service Hell Canyon District Office 1019 North 5th Street, Custer, SD 57730

Email: comments-rocky-mountain-black-hell-canyon@usda.gov

Re: Newark Exploration Drilling Project

District Ranger Hoelscher:

I write on behalf of the Yankton Sioux Tribe ("Tribe") to submit comments on the Draft Environmental Assessment ("EA") for the proposed Newark Exploration Drilling Project in the Black Hills National Forest ("Project"). The Tribe is a signatory to 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 that includes the sacred Pahá Sápa, the Black Hills. Under the Treaty, the United States government 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.

Though the United States has repeated violated the terms of the Laramie Treaty of 1868 with illegal takings of within the Pahá Sápa, the Yankton Sioux Tribe and the Greater Oceti Sakowin have not yielded their rightful claims. The claims of the Oceti Sakowin have been substantiated by the United States Supreme Court in their acknowledgement of the illegality of the United States' taking of the Pahá Sápa 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 Yankton Sioux Tribe and other tribes of the Oceti Sakowin have not accepted the compensation awarded for the Pahá Sápa, insisting to this day that the United States stole the Pahá Sápa.

The Yankton Sioux Tribe stands with the Oceti Sakowin, in opposition to all mineral exploration and mining in the Black Hills that would infringe on the terms and conditions of the Fort Laramie Treaty of 1868. Further, the 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.

F3 Gold, LLC ("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, land purchased by the Tribes to reintroduce buffalo and tribal practices to the Pahá Sápa. The Tribe is aware that the Forest Service is considering a proposal from F3 Gold. Any mining/exploration drilling in the sacred Pahá Sápa should have been addressed through government-to-government consultation between the Forest Service and the Tribes before any Draft EA was completed or circulated to the public for review.

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.

The Forest Service indicated in the Draft EA that it solicited government-to-government consultation in a mailing dated June 6, 2020. 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 Yankton Sioux 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 also 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.

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.

Jason Cooke
Vice Chair
Yankton Sioux Business Committee