

1 Tracey Zephier (SD Bar #3058)
2 408 Knollwood Drive
3 Rapid City, SD 57701
4 (605) 791-3999
5 tracey@ndncollective.org

6 Bruce Ellison (SD Bar # 462)
7 P.O. Box 2508
8 Rapid City, SD 57709
9 (605) 858-1850
10 Bruce.Ellison4@gmail.com

11 Roger Flynn (CO Bar #21078) *Pro Hac Vice Application To Be Filed*
12 Jeffrey C. Parsons (CO Bar #30210) *Pro Hac Vice Application To Be Filed*
13 WESTERN MINING ACTION PROJECT
14 P.O. Box 349, 440 Main St., #2
15 Lyons, CO 80540
16 (303) 823-5738
17 roger@wmaplaw.org
18 jeff@wmaplaw.org

19 *Attorneys for Plaintiffs*

20 UNITED STATES DISTRICT COURT
21 DISTRICT OF SOUTH DAKOTA

22 _____
23 NDN COLLECTIVE; BLACK HILLS CLEAN)
24 WATER ALLIANCE; EARTHWORKS,)
25)
26 Plaintiffs,)

27 v.)

28 UNITED STATES FOREST SERVICE;)
29 U.S. DEPARTMENT OF AGRICULTURE;)
30 JAMES GUBBELS, District Ranger,)
31)
32 Defendants.)
33 _____

Case No.:

COMPLAINT FOR VACATUR,
EQUITABLE, DECLARATORY
AND INJUNCTIVE RELIEF

34 **INTRODUCTION**

35 1. Plaintiffs NDN Collective (NDN), Black Hills Clean Water Alliance
36 (BHCWA), and Earthworks, file this suit for vacatur, and equitable, declaratory and injunctive
37 relief under the Administrative Procedure Act (APA), 5 U.S.C. §§701-706, the National
38

1 Environmental Policy Act (NEPA), 42 U.S.C. §§4321 *et. seq.*, and their implementing
2 regulations and policies, challenging the decisions of the United States Department of
3 Agriculture’s Forest Service (USFS) to approve the Rochford Exploration Drilling Project
4 (Project or project), a large mineral exploration drilling project on USFS-managed public lands
5 directly affecting Pe’Sla, a recognized Native American sacred site and place of ceremony.

6 2. Pe’Sla is sacred to the Lakota, who have visited the site for countless
7 generations. It is actively utilized for prayer, ceremony, and cultural activities. Pe’Sla is
8 recognized as an Indigenous sacred site by various Tribes, the federal government, State of South
9 Dakota, and Pennington County.

10 3. Despite the overwhelming evidence submitted to the agency by Plaintiffs and
11 numerous Native American Tribes that the Project would directly and significantly affect Pe’Sla,
12 the U.S. Forest Service “categorically excluded” the Project from the proper environmental,
13 public, and cultural resources review required by NEPA.

14 4. Despite the significant adverse impacts to Pe’Sla, water, and other important
15 public resources resulting from the drilling project, the USFS purported to comply with NEPA
16 via a cursory “Categorical Exclusion” (CE), which severely limited public and agency review of
17 the Project. By relying on a CE where “extraordinary circumstances”—significant impacts to
18 recognized Native American sacred sites—were present, the USFS violated NEPA.

19 5. The agency also violated NEPA by relying on a CE that on its face does not
20 apply to this Project. The CE the agency relied upon is for “Short-term (1 year or less) mineral,
21 energy, or geophysical investigations and their incidental support activities that may require
22 cross-country travel by vehicles and equipment, construction of less than 1 mile of low standard
23 road, or use and minor repair of existing roads.” 36 C.F.R. §220.6(e)(8)(“CE-8”)(repromulgated
24 in July 2025 at 7 C.F.R. §7.1.b.4(d)(32)). Yet the approved mineral operations, by the agency’s
25 own admission, will last more than one year, as the required reclamation of the exploration
26 impacts will last up to three years, if not longer, after completion of the initial drilling activities.

27 6. The Defendant USFS approved the drilling project via a Decision Memo
28 (Decision) issued by USFS Mystic District Ranger James Gubbels on February 27, 2026.

1 community goals of, among other things, protecting and defending their land, air, water and the
2 planet.

3 13. Representatives of NDN Collective and their relatives regularly use and enjoy
4 Pe'Sla, the project site, and adjacent public lands for cultural and religious practices.
5 Representatives of NDN and their relatives intend on continuing to use and value the lands at,
6 and affected by, the project during the rest of 2026 and in future years. These uses will be
7 immediately, irreparably, and significantly harmed by the project.

8 14. Plaintiff Black Hills Clean Water Action (BHCWA) is a non-profit organization
9 whose mission is to protect and restore watersheds of the Black Hills through education, public
10 policy initiatives and legal advocacy. BHCWA staff and members regularly use and enjoy the
11 public lands and their wildlife, cultural and natural resources for health, recreational, scientific,
12 spiritual, educational, aesthetic, and other purposes, at the project's site. The project would be
13 located in and have effects on lands and waters where BHCWA staff and members have
14 enjoyed—and intend to continue enjoying in the coming months and in the future—camping,
15 hiking, photographing natural beauty, appreciating the natural environment, clean water, and
16 wildlife in the area. These uses will be immediately, irreparably, and significantly harmed by the
17 projects and related operations.

18 15. Plaintiff EARTHWORKS is a national non-profit organization dedicated to
19 protecting communities and the environment against the adverse effects of hard rock mining,
20 while seeking sustainable solutions. Earthworks members regularly use and enjoy the public
21 lands and their wildlife, cultural and natural resources for health, recreational, scientific,
22 spiritual, educational, aesthetic, and other purposes, at and around the project's site, and have
23 definite plans to continue these uses in the near future. These uses will be immediately,
24 irreparably, and significantly harmed by the projects and related operations.

25 16. In addition to the immediate and irreparable harm to the lands and waters used by
26 Plaintiffs and their members, caused by the Project (both the drilling aspect and the
27 reclamation/restoration aspects of the Project) and USFS' approval of the Project, Plaintiffs, and
28 their members, have been, and are being, irreparably harmed by USFS' failure to conduct a

1 proper NEPA analysis and to fully involve the public, and Plaintiffs, and their members, in the
2 required NEPA process. Without the public process required by law, the USFS’ action is not
3 fully-informed and overlooks serious cultural and environmental impacts that would have been
4 brought to light had the agency completed the required process, including fully soliciting public
5 input and considering in detail environmental impacts and alternatives.

6 17. Defendant U.S. Forest Service (USFS) is an agency of the Defendant United
7 States Department of Agriculture. The USFS has oversight responsibility for the federal lands
8 affected by the Project.

9 18. Defendant James Gubbels, the District Ranger for the USFS Mystic Ranger
10 District, is the Authorized Officer for the challenged Decision, project approvals, and related
11 federal actions. He is sued in his official capacity.

12 **THE ROCHFORD EXPLORATION PROJECT**

13 19. On June 11, 2024, the USFS received a proposed Plan of Operations (PoO) for the
14 Project—a proposal to conduct drilling, road building, reclamation, and other operations on
15 public lands in the Black Hills near Rochford, South Dakota. *See* USFS Decision Memo (DM)
16 (2-27-26) at 1. After internal review, with no public input, on April 9, 2025, the USFS issued a
17 “scoping notification letter” to a limited set of “interested parties” (and posting on its website)
18 seeking public input on the proposed project. DM at 22.

19 20. “A total of 2,226 scoping comments were received on the project.” DM at 22.

20 21. With no further public review, the agency issued the DM on February 27, 2026.
21 As approved by the DM, the project will result in “drilling boreholes at up to 18 proposed sites
22 on NFS lands. Each drill site would be approximately 30 feet x 50 feet, or 0.034 acre in size.
23 There would be one borehole at each site. ... The maximum depth of each borehole would be
24 1,000.” DM at 3. “Additionally, there would be two 0.15-acre laydown/staging areas used to
25 store core boxes, hose, spare parts, water storage tanks, and site portable sanitation facilities.”
26 DM at 3.

1 22. “Access to drill sites would rely on existing National Forest System roads (NFS)
2 or temporary access routes and overland two-track routes wherever feasible, specifically NFS
3 roads 190 and 125 for northern sites and NFS road 132 for southern sites. To reach pads from
4 those roads, the proponent would implement approximately 5,050 feet of temporary overland
5 access route improvements.” DM at 3.

6 23. A draft of the Project application submitted to the Forest Service proposed access
7 route improvements totaling approximately 9,500 feet. Upon information and belief, the Forest
8 Service worked with PLS and/or advised PLS to reduce the extent of the road development in
9 order to attempt to fit the Project within the terms of a categorical exclusion under the agency’s
10 National Environmental Policy Act regulations.

11 24. “Upon completion of drilling, all temporary access routes would be restored to
12 pre-project conditions or as near as practicable, including recontouring, surface scarification,
13 redistribution of salvaged topsoil and woody debris, and reseeded with a certified weed free
14 seed mix approved by the Forest Service.” DM at 3.

15 25. “Drilling would be supplied with water from an approved municipal or industrial
16 source trucked to the site. Water would be recirculated during drilling through either in-ground
17 infiltration galleries (excavated trenches typically 2–4 feet deep, approximately 24 inches wide,
18 up to 20 feet long) or above-ground sump systems (double-tank or double-crib systems lined
19 with oil-impermeable fabric), which allow cuttings and fines to settle and clarified water to be
20 returned to the drill.” DM at 3.

21 26. “Project equipment will include one to three track or trailer mounted drill rigs; a
22 water truck; pickup support vehicles; all terrain/utility vehicles; and, on an as needed basis, a
23 compact track loader or backhoe for infiltration galleries and minor pad grading, and a small
24 dozer or skid steer for access maintenance and reclamation.” DM at 4.

25 27. “Drilling operations are expected to occur over less than one year from initiation,
26 with work typically conducted on two 12-hour shifts (up to 24-hour operations if needed to meet
27 schedule and subject to any timing restrictions). The maximum potential surface disturbance for
28 the updated plan comprises approximately .6 acres for drill pads, approximately 1.8 acres for

1 new temporary overland access routes (5,050 feet at 15 feet wide), and approximately 0.3 acre
2 for laydown areas, for a combined estimate of less than 3 acres.” DM at 4.

3 28. “All disturbed areas will be reclaimed concurrently where practicable and
4 immediately following completion of use at each site. Operations will adhere to seasonal
5 constraints and resource protection measures identified during the NEPA review and Section 7
6 consultation (e.g., restrictions near mapped bat hibernacula and potential bat maternity roost
7 habitat), as well as Forest Service locatable minerals regulations (36 C.F.R. 228, Subpart A), the
8 Black Hills National Forest Plan standards and guidelines, and applicable state and federal water
9 quality and noxious weed management requirements.” DM at 4.

10 29. The DM states that: “All sites will be reclaimed following drilling activities.
11 Project activities, including reclamation, will take one year or less.” DM at 4.

12 30. That is factually and legally erroneous. This ignores the Project plan itself and
13 what is actually approved in the DM. The Project Plan of Operations (PoO), approved in the
14 DM, acknowledges that reclamation will not be completed for at least 3 years, as ongoing
15 monitoring, and potential “modifications to the site” would occur on a yearly basis. DM at 17.

16 31. “PLS will commit to annual field inspections of drill sites and the lay-down area
17 in conjunction with USFS and SD DANR staff (whenever possible) to cover areas used and
18 occupied by PLS under this Plan of Operations to monitor for reclamation effectiveness and
19 noxious weed infestations for 3 years.” PoO at 14. “Field inspection information will be
20 compiled at the end of each field season and provided to the USFS.” PoO at 14.

21 32. “If the above reclamation efforts do not meet the established criteria required for
22 bond release, PLS will collaborate with the USFS representative and make modifications to the
23 site, incorporating such changes and additional procedures as may be expected to provide
24 reclamation to the stated standard.” PoO at 14.

25 33. The DM further acknowledges that operations, including the required
26 reclamation, will continue for at least 3 years:

27 PLS will commit to annual field inspections of drill sites and the lay-down area in
28 conjunction with Forest Service and SD DANR staff (whenever possible) to cover areas

1 used and occupied by PLS under this PO to monitor for reclamation effectiveness and
2 noxious weed infestations for 3 years. Such field inspections will be documented with
3 photographs or written descriptions. Field inspection information will be compiled at the
end of each field season and provided to the Forest Service.

4 If the above reclamation efforts do not meet the established criteria required for bond
5 release, PLS will collaborate with a Forest Service representative and **make modifications**
6 **to the site, incorporating such changes and additional procedures as may be expected**
7 **to provide reclamation to the stated standard.**

8 DM at 17 (emphasis added).

9 34. In addition, the Forest Service will not release the required reclamation bond until
10 PLS has demonstrated that these reclamation requirements and standards have been met – after
the 3 year “monitoring” and site “modifications” have been completed.

11 35. As the agency admitted: “Remaining reclamation bond will be held in order to
12 monitor onsite and off-site damage to the environment and forest surface resources for three
13 years to ensure proper revegetation and weed control.” DM at 17.

14 36. The PoO stated the same requirements:

15 **Reclamation Bond Release**

16 Release of the reclamation bonds for a specific drill site will be requested when:

- 17 1) Monitoring indicates that reclamation measures have effectively prevented or controlled
onsite and off-site damage to the environment and forest surface resources for three years
and such prevention is expected to continue.
- 18 2) Re-vegetation at reclaimed areas is adequate. Re-vegetation will be deemed adequate
when:
 - 19 a. Species composition is like that of adjacent areas; and
 - 20 b. The vegetative crown cover is 60 to 75 percent of the existing percent vegetative crown
cover of adjacent areas not disturbed by operations authorized by this Plan.

21 PoO at 14.

22 **THE PROJECT’S SIGNIFICANT IMPACTS TO PE’S LA AND PUBLIC LANDS**

23 37. The Project will result in significant harm to Pe’S la and the public lands at and
24 around the site, including the roads, drill sites, and support facilities.

25 38. Pe’S la includes a unique high mountain meadow and forests in the Black Hills
26 and a sacred site to which Lakota people return ceremonially on an annual basis or other times of
27 the year.

1 39. Indeed, due to the outstanding cultural values, and ongoing religious uses of
2 Pe'Sla, the Unites States, through the Department of Interior in 2014, has taken "approximately
3 2,022.66 acres of land known as the Pe'Sla Property (Pe'Sla, Property) in trust for the benefit of
4 four Tribes (Tribes)," signifying its importance and value to Native American Tribes. Assistant
5 Secretary - Indian Affairs, State of South Dakota v. Great Plains Regional Director Bureau of
6 Indian Affairs, Pe'Sla Property (2,022.66 acres) Decision, December 2, 2016, at p. 1. Available
7 at: <https://turtletalk.blog/wp-content/uploads/2016/12/signed-decision-pe-sla.pdf> (viewed March
8 12, 2026).

9 40. "Specifically, the Property trust comprises an undivided 51.2 percent interest for
10 the Rosebud Sioux Tribe, an undivided 29.9 percent interest for the Shakopee Mdewakanton
11 Sioux Community, an undivided 12 percent interest for the Standing Rock Sioux Tribe, and an
12 undivided 6.9 percent interest for the Crow Creek Sioux Tribe (collectively Tribes)." *Id.* at 1.

13 41. The government affirmed this decision in a formal decision from the Assistant
14 Secretary of Interior, Indian Affairs, in the December 2016 decision:

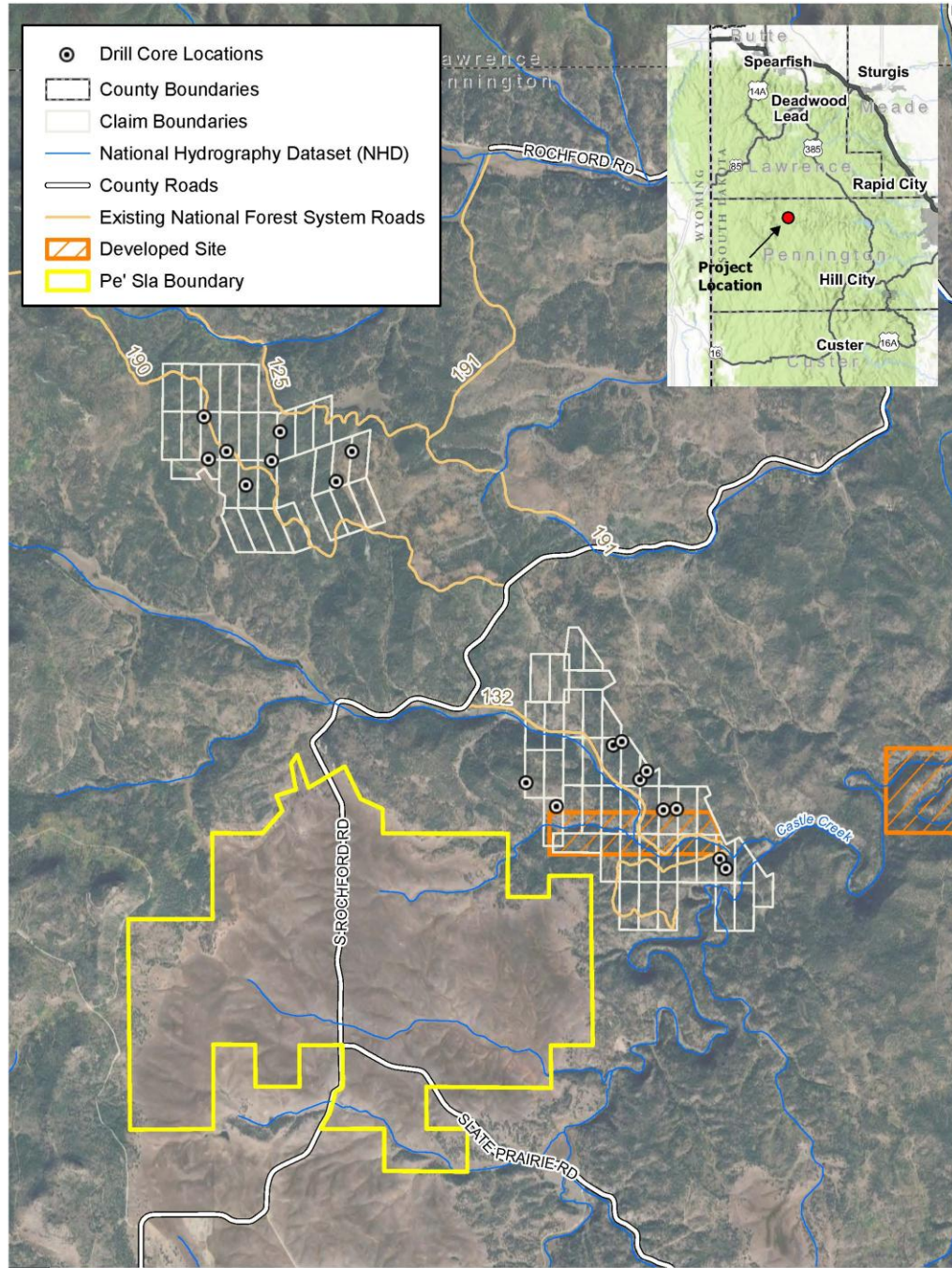
15 The land is located within the historical territory of the Great Sioux Nation. The Tribes
16 explain that Pe'Sla is "innately tied" to their creation and existence. Their application
17 explains that Pe'Sla is one of their "most precious sacred sites . . . in the heart of
18 everything that is, in the middle of the place where [they] originate from, and is central"
19 to their existence. A study of the Property directed by Rosebud and performed by a group
20 of Lakota, Dakota, and Nakota has identified 484 traditional cultural properties, 5 historic
21 sites, 3 archeological sites, and 4 disturbed cultural sites within Pe'Sla.

22 *Id.* at 4.

23 42. The Department rejected the State of South Dakota's challenge to the Interior
24 Department's compliance with agency authorities in taking these lands into trust, but notably:
25 "The State does not challenge the religious and cultural significance of Pe'Sla." *Id.* at 1.

26 43. According to the company's PoO, Figure 1, primary access to the proposed drill
27 site will be along Rochford Road and South Rochford Road. The transport of industrial
28 equipment along this primary access route will increase traffic, dust, noise, risk of wildfire, risk
of hazardous materials spills, risk of wildlife impacts/fatalities and increased disruption of the
cultural and ceremonial activities associated with the Pe'Sla site.

1 44. In addition, as shown in the map provided by the USFS, a number of the mining
 2 claims and the proposed drilling locations are in close proximity to Pe'Sla.



PROJECT LOCATION
 Figure 1

ROCHFORD MINERAL EXPLORATION PROJECT

1 45. The Pe'Sla area, including both the prairie and the more forested lands nearby, are
2 ecologically unique and include important surface water resources. The area is underlain by the
3 undifferentiated igneous and metamorphic rocks known as the Precambrian core or the crystalline
4 core of the Black Hills. The U.S. Geological Survey describes this area and its subsurface as the
5 oldest rocks in the Black Hills, ranging from 1.7 to about 2.5 billion years old. Ground water is
6 found in erratic, mostly unstudied fractures that may be contained or may be joined with water in
7 other fractures. This creates a very unpredictable drilling environment.

8 46. The surface water in the area forms North Castle Creek and Castle Creek. The
9 latter is downstream from Deerfield Reservoir in this area. These flow into upper Rapid Creek
10 nearby, and then into Pactola Reservoir and on to Rapid City. The area and the Reservoir provide
11 municipal and drinking water for Rapid City, Ellsworth Air Force Base, and communities and
12 reservation lands down the Cheyenne River to the Missouri River. Rapid Creek provides all water
13 supplies for Rapid City, which in turn supplies the water for the Air Force Base. This water either
14 directly flows at the surface into Rapid City's water plants, or it flows through the bottom of the
15 creek underground into rock layers that become the aquifers from which Rapid City also draws
16 water.

17 47. Pe'Sla is a high-elevation grassland located in the heart of He Sapa (Black Hills).
18 It is an important home to an ecologically significant landscape characterized by unique
19 assemblages of native plant species, serving as a critical habitat refuge within an otherwise
20 fragmented landscape. The disturbance inherent in the proposed drilling at or immediately
21 adjacent to this sensitive area poses serious and potentially permanent ecological risks.

22 48. Grasslands are home to an abundance of life, including an incredible diversity of
23 native grasses, wildflowers, pollinators, birds, mammals and other species adapted to the long-
24 standing environmental and soil conditions of the area. They provide critical ecosystem services
25 such as water filtration, carbon sequestration, and habitat connectivity for wildlife. Despite their
26 ecological richness and vital functions, grasslands are highly vulnerable to human activity and
27 have experienced severe global decline.

28 49. Pe'Sla represents a remnant of a once more extensive high-elevation mixed-grass
prairie grassland ecosystem. The habitat it represents, Black Hills Montane Grassland (BHMG),

1 sustains an endangered plant community endemic to the Black Hills of western South Dakota and
2 northeastern Wyoming. These rare types of prairie ecosystem depend on intact soil-plant
3 relationships and minimal surface disruption. Even small-scale human impacts can have long-
4 lasting consequences. This type of habitat is now rare in the Black Hills and is globally unique.
5 It is an ancestral lineage of grassland communities, now sparsely scattered as diminishing islands
6 within a Ponderosa pine ocean.
7

8 **STATUTORY AND REGULATORY BACKGROUND:**
9 **THE NATIONAL ENVIRONMENTAL POLICY ACT**

10 50. “The purposes of this Act [NEPA] are: To declare a national policy which will
11 encourage productive and enjoyable harmony between man and his environment; to promote
12 efforts which will prevent or eliminate damage to the environment and biosphere and stimulate
13 the health and welfare of man; to enrich the understanding of the ecological systems and natural
14 resources important to the Nation.” 42 U.S.C. §4321.

15 51. “In NEPA, Congress recognized the ‘profound impact’ of human activities,
16 including ‘resource exploration,’ on the environment and declared a national policy ‘to create
17 and maintain conditions under which man and nature can exist in productive harmony.’ 42
18 U.S.C. §4331(a).” *Center for Biological Diversity v. U.S. Dept. of the Interior*, 623 F.3d 633, 642
19 (9th Cir. 2010). “Section 101 of NEPA declares a broad national commitment to protecting and
20 promoting environmental quality.” *Robertson v. Methow Valley Citizens Council*, 109 S.Ct.
21 1835, 1844 (1989).
22

23 52. NEPA has “twin aims.” First, it requires federal agencies “to consider every
24 significant aspect of the environmental impact of a proposed action. Second, it ensures that the
25 agency will inform the public that it has indeed considered environmental concerns in its
26
27
28

1 decision-making process.” *Kern v. BLM*, 284 F.3d 1062, 1066 (9th Cir. 2002), quoting *Baltimore*
2 *Gas & Electric Co. v. Natural Res. Def. Council*, 462 U.S. 87, 97 (1983).

3 53. NEPA mandates “all agencies of the Federal Government” to perform certain
4 procedures. 42 U.S.C. §4332(2).

5 54. For “major Federal actions significantly affecting the quality of the human
6 environment, a detailed statement by the responsible official on—
7

- 8 (i) reasonably foreseeable environmental effects of the proposed agency action;
- 9 (ii) any reasonably foreseeable adverse environmental effects which cannot be avoided
10 should the proposal be implemented;
- 11 (iii) a reasonable range of alternatives to the proposed agency action, including an
12 analysis of any negative environmental impacts of not implementing the proposed
13 agency action in the case of a no action alternative, that are technically and
14 economically feasible, and meet the purpose and need of the proposal;
- 15 (iv) the relationship between local short-term uses of man’s environment and the
16 maintenance and enhancement of long-term productivity; and
- 17 (v) any irreversible and irretrievable commitments of Federal resources which would be
18 involved in the proposed agency action should it be implemented.

19 42 U.S.C. §4332(2)(C). The “detailed statement” is known as an “Environmental Impact
20 Statement” or “EIS.”

21 55. The agencies must: “ensure the professional integrity, including scientific
22 integrity, of the discussion and analysis in an environmental document,” 42 U.S.C. §4332(2)(D);
23 make use of reliable data and resources in carrying out this Act, §4332(2)(E); and “study,
24 develop, and describe technically and economically feasible alternatives.” §4332(2)(F).

25 “An agency shall issue an environmental impact statement with respect to a proposed agency
26 action requiring an environmental document that has a reasonably foreseeable significant effect
27 on the quality of the human environment.” §4336(b)(1).

28 56. “An agency shall prepare an environmental assessment [EA] with respect to a
proposed agency action that does not have a reasonably foreseeable significant effect on the
quality of the human environment, or if the significance of such effect is unknown.” §4336(b)(2).

1 57. “If substantial questions are raised regarding whether the proposed action may
2 have a significant effect upon the human environment, a decision not to prepare an EIS is
3 unreasonable.” *Save the Yaak Comm. v. Block*, 840 F.2d 714, 717 (9th Cir. 1988).

4 58. An EA is not required if “the agency finds that the proposed agency action is
5 excluded pursuant to one of the agency’s categorical exclusions.” §4336(b)(2).

6 59. Under the Forest Service NEPA regulations for categorical exclusions,
7 “A proposed action may be categorically excluded from further analysis and documentation in an
8 EIS or EA only if there are no extraordinary circumstances related to the proposed action and if:
9 (1) The proposed action is within one of the categories established by the Secretary at 7 C.F.R.
10 part 1b.3; or (2) The proposed action is within a category listed in § 220.6(d) and (e).” 36 C.F.R.
11 §220.6 Categorical exclusions.

12 60. In the DM, the agency utilized Category 220.6(e)(8), which is limited to “[s]hort-
13 term (1 year or less) mineral, energy, or geophysical investigations and their incidental support
14 activities” as a type of action potentially appropriate for a categorical exclusion from further
15 NEPA analysis. 36 C.F.R. §220.6(e)(8).

16 61. As stated in the agency’s response to comments posting for the project: “On July
17 3, 2025, 36 Code of Federal Regulations (C.F.R.) 220 were finalized, rescinding the previous
18 regulation and which modified the citations associated with certain categorical exclusions
19 applicable to Forest Service actions. Specifically, the reference formerly cited as 36 C.F.R.
20 220.6(e)(8) has been superseded and is now codified under 7 C.F.R. 1b.4(d)(32). This change
21 reflects the Department of Agriculture’s consolidation of categorical exclusions and aligns Forest
22 Service procedures with the broader USDA regulations governing environmental analysis and
23 decision-making under the National Environmental Policy Act (NEPA).” Response to comments
24 at 1.

25 62. Because the agency began its review of the project under the previous CE
26 regulations and policies, they control the agency’s review and govern this case. *See Ctr. for*
27 *Biological Diversity v. Bureau of Land Mgmt.*, 141 F.4th 976, 994 & n.5 (9th Cir. 2025)
28 (applying 2019 NEPA regulations to NEPA process initiated before 2020 amendments).

1 63. The relied-upon CE for mineral exploration is the same under the current or
2 previous rules. “Importantly, while the citation has changed, the intent and scope of the
3 categorical exclusion remain the same.” Response to comments at 1.

4 64. The USFS’s categorical exclusion regulations require “scoping” prior to the use
5 of a categorical exclusion. See 36 C.F.R. §220.6(c)(determination of potential for significant
6 effects must be “based on scoping”).

7 65. Scoping is required for all Forest Service proposed actions, including those that
8 would appear to be categorically excluded from further analysis and documentation in an EA or
9 an EIS (§ 220.6). 36 C.F.R. §220.4(e).

10 66. “Scoping is important to discover information that could point to the need for an
11 EA or EIS versus a CE. Scoping is the means to identify the presence or absence of any
12 extraordinary circumstances that would warrant further documentation in an EA or EIS. Scoping
13 should also reveal any past, present, or reasonably foreseeable future actions with the potential to
14 create uncertainty over the significance of cumulative effects.” Forest Service NEPA Handbook
15 (FSH), FSH §1909.15, Chapter 31.3.

16 67. Accordingly, only where the potential effects of a proposed action are certain to
17 be insignificant, and scoping does not reveal otherwise or raise uncertainty, may USFS invoke a
18 categorical exclusion. The determination of the significance of the potential effects requires
19 USFS to consider the direct, indirect, and cumulative effects and impacts of past, present, and
20 reasonably foreseeable future actions. *See* FSH 1909.15, Chapter 31.3.

21 68. In addition, where “extraordinary circumstances” are present and may be affected,
22 an agency may not invoke a categorical exclusion and USFS should prepare an EA or EIS
23 instead. 36 C.F.R. §220.6(a) and (b).

24 69. USFS has developed criteria specifying resource conditions that must be
25 considered in determining whether “extraordinary circumstances” related to a proposed action
26 make the use of a categorical exclusion inappropriate and whether the proposed action warrants
27 further analysis in an EA or EIS. 36 C.F.R. §220.6(a) and (b); Forest Service Handbook
28 §1909.15, Chapter 31.2.

1 70. For this case, the critical “extraordinary circumstances” that must be considered
2 by USFS before using a categorical exclusion include, but are not limited to, consideration of the
3 impacts to “American Indians and Alaska Native religious or cultural sites.” 36 C.F.R.
4 §220.6(b)(1)(vi). Similarly, the new CE rules states that “The resources to screen for in the
5 potentially affected environment when considering extraordinary circumstances may include, but
6 are not limited to: sites ... of historic... significance, as designated by Federal, Tribal, State,
7 or local governments, or property eligible for listing on the National Register of Historic Places.”
8 7 C.F.R. §7.1b.3(f)(1)(vii).

9 71. Pe’Sla is a site to which the “extraordinary circumstances” requirements apply.

10 **The Project Operations Will Not Be Completed Within the Required One Year, and Thus**
11 **Do Not Qualify for the Asserted Categorical Exclusion**

12 72. To avoid full public and NEPA review, the agency relied upon CE-8 for “Short-
13 term (1 year or less) mineral, energy, or geophysical investigations and their incidental support
14 activities that may require cross-country travel by vehicles and equipment, construction of less
15 than 1 mile of low standard road, or use and minor repair of existing roads.” 36 C.F.R.
16 §220.6(e)(8) (“CE-8”)(repromulgated in July 2025 at 7 C.F.R. §7.1.b.4(d)(32)).

17 73. But based on the company’s proposal, as approved by the agency, project
18 operations will not be completed within the required one-year, and will take at least another three
19 years to complete.

20 74. Under USFS mineral regulations, the required reclamation of the impacts from the
21 exploration are considered part of the mineral exploration “operations” proposed by PLS. 36
22 C.F.R. §228.3(a). All aspects of the Project, including monitoring and reclamation, are
23 considered part of the authorized “operations.” The regulations define “operations” as “[a]ll
24 functions, work and activities in connection with prospecting, exploration, development, mining
25 or processing of mineral resources and all uses reasonably incident thereto.” 36 C.F.R. §228.3.

26 75. Under these regulations, the agency can only approve activities that can be
27 reclaimed. In detailing the reclamation requirements, the regulation specifically includes
28

1 rehabilitation/restoration of public lands as part of reclamation component of a mineral
2 exploration plan:

3 [O]perator shall, where practicable, reclaim the surface disturbed in operations by
4 taking such measures as will prevent or control onsite and off-site damage to the
environment and forest surface resources including:

- 5 (1) Control of erosion and landslides;
6 (2) Control of water runoff;
7 (3) Isolation, removal or control of toxic materials;
8 **(4) Reshaping and revegetation of disturbed areas**, where reasonably
practicable; and
9 (5) Rehabilitation of fisheries and wildlife habitat.

36 C.F.R. §228.8(g)(emphasis added).

10 76. As detailed in the USFS's Anatomy of a Mine regulatory guidance report,
11 reclamation is a critical and required component of a mineral exploration plan:

12 Satisfactory reclamation should emphasize three major objectives:

- 13 1. The productivity of the reclaimed land should at least equal that of the premine surface.
This does not necessarily mean that the site must be restored to an approximation of its
14 original condition, or that surface uses after mining will be the same as those existing prior
to mining. For example, an area used for marginal grazing prior to mining may be changed
15 to a useful and attractive recreational complex, or perhaps in another case to a housing area.
16 2. Satisfactory reclamation should leave the mined area in a condition that will not
contribute to environmental degradation either in the form of air- or water-borne materials,
or from chemical pollution.
17 3. The reclaimed area should be esthetically acceptable and it should be safe for the uses
18 intended.

19 "Anatomy of a Mine, From Prospect to Production," USDA Forest Service, General Technical
20 Report INT-GTR-35, Revised February 1995, at 68-69.

21 https://www.fs.usda.gov/geology/includes/minerals/anatomy_mine.pdf (viewed March 12, 2026)

22 77. PLS admits that the required reclamation will not be completed within the
23 required one-year limit: "PLS will commit to annual field inspections of drill sites and the lay-
24 down area in conjunction with USFS and SD DANR staff (whenever possible) to cover areas
25 used and occupied by PLS under this Plan of Operations to monitor for reclamation effectiveness
26 and noxious weed infestations for 3 years. Such field inspections will be documented with
27 photographs or written descriptions. Field inspection information will be compiled at the end of
28 each field season and provided to the USFS." PLS PoO at 14.

1 78. “If the above reclamation efforts do not meet the established criteria required for
2 bond release, PLS will collaborate with the USFS representative and make modifications to the
3 site, incorporating such changes and additional procedures as may be expected to provide
4 reclamation to the stated standard.” PoO at 14.

5 79. PLS further acknowledges that the required revegetation can only occur in the
6 proper season, which could result in work done after the one-year limit. “Re-vegetation will be
7 accomplished as soon as possible; however, will be performed in the proper season in
8 accordance with accepted agricultural and reforestation practices identified in consultation with
9 USFS personnel on a site-specific basis.” PoO at 14.

10 80. The USFS Decision also admits that the required reclamation will not be
11 completed within the one-year limit: “All areas of ground disturbance would be monitored for
12 noxious weeds and **treated for two to three years post-disturbance** following Forest Service
13 standards for treatment methods.” DM at 11 (emphasis added).

14 81. In addition, under USFS mining regulations, PSL is required to submit a
15 “reclamation cost estimate/financial assurance” (or bond). 36 C.F.R. §228.13.

16 82. PLS admits that it will not request release of the reclamation bond until three
17 years of monitoring and reclamation is completed:

18 Release of the reclamation bonds for a specific drill site will be requested when:
19 Monitoring indicates that reclamation measures have effectively prevented or controlled
20 onsite and off-site damage to the environment and forest surface resources for three years
and such prevention is expected to continue.

21 PoO at 14.

22 83. Thus, whether or not drilling may finish in one year, Project operations “in
23 connection with” and “reasonably incident” to the actual exploration (as defined in 36 C.F.R.
24 §228.3(a)) will not be completed until up to three years or more after drilling is completed. As
25 such, the Project operations, taken as a whole as mandated by the agency regulations, does not
26 meet the “1 year or less” requirement of the CE utilized by the agency here.

27 84. This same USFS assertion in the DM was held illegal in *Defenders of Wildlife v.*
28 *U.S. Forest Service*, Order, 4:14-cv-02446-RM (D. Ariz., 2015). On very similar facts, the

1 federal court held that since monitoring of reclamation success would last three years, and that
2 reclamation based on that monitoring “may be required during the three-year monitoring period”
3 – the situation here – the agency could not use the “short-term” mineral exploration category for
4 a proposed mineral exploration project.

5 85. “Defendants argue that this three-year monitoring period should not be considered
6 part of the project’s duration because all ground-disturbing project activities will be completed
7 before the monitoring period begins; however, the Decision Memorandum anticipates that
8 additional ground disturbing reclamation activities may be required during the three-year
9 monitoring period. USFS’s determination that the project can be completed in one year or less is
10 unsupported by the record.” *Defenders*, Order at 8.

11 86. Here, in an attempt to avoid the one-year limit, the DM asserts that “If project
12 activities must extend beyond that time, additional environmental analysis would be necessary.”
13 DM at 4.

14 87. Yet that attempt to fit the project under the one-year limit was squarely rejected
15 by the court in *Defenders*. “USFS argues that, if additional reclamation work is required during
16 the three-year monitoring period, the additional reclamation work would be reviewed under
17 NEPA. However, the reclamation work is already contemplated in and authorized by the
18 Decision Memorandum, with no indication in the record that the already-approved reclamation
19 design features would require a new Plan of Operations or further review and approval.” Order at
20 8, n.5.

21 88. “Therefore, USFS’s approval of the project using the categorical exclusion for
22 short-term mineral explorations pursuant to 36 C.F.R. §220.6(e)(8) was arbitrary and
23 capricious.” Order at 8.

24 89. Similarly, in a more recent case, in vacating the Forest Service’s attempt to avoid
25 the one-year limit in CE-8 by designating the post-drilling reclamation as a separate project, the
26 Ninth Circuit confirmed that the post-drilling reclamation monitoring and potential work are part
27 of project “operations,” and must be counted in determining whether the project can be
28 completed within the one-year limit in 36 C.F.R. §220.6(e)(8).

1
2 Forest Service’s mineral regulations, which establish that **reclamation cannot be**
3 **bifurcated from other mineral exploration efforts**. Specifically, the mineral regulations
4 govern mineral exploration “operations.” 36 C.F.R. pt. 228.3(a). Operations encompass
5 “[a]ll functions, work, and activities in connection with” mineral exploration. § 228.3(a).
6 This definition necessarily includes reclamation because mineral operations are required
7 under § 228.8 to meet certain environmental protection procedures, including revegetation
8 and wildlife habitat rehabilitation. § 228.8(g). In fact, operators must submit a “proposed
9 plan of operations” to the Forest Service that describes “measures to be taken to meet the
10 requirements for environmental protection in § 228.8,” § 228.4(c)(3), and the Forest
11 Service must then review the plan’s environmental impact, §§ 228.4(a)(4), (b), 228.5(a)–
12 (b). The Forest Service thus necessarily reviews mineral exploration and reclamation as a
13 single proposed project.

14 *Friends of the Inyo v. U.S. Forest Service*, 103 F.4th 543, 552 (9th Cir. 2024)(emphasis added).

15 90. Thus, because the mandated and required reclamation operations in this case –
16 essentially the same as in *Defenders* and *Friends of the Inyo* – will last beyond one year, the
17 project does not qualify for the relied-upon CE category and the agency’s decisions violate
18 NEPA and its implementing regulations.

19 **The Project’s Significant Impacts to Pe’Sla Are an “Extraordinary Circumstance” Which**
20 **Disqualifies the Application of a Categorical Exclusion**

21 91. Where “extraordinary circumstances” are present and may be significantly
22 affected, an agency may not invoke a categorical exclusion and USFS must prepare an EA or
23 EIS instead. 36 C.F.R. §220.6(a) and (b)(previous CE rules); 7 C.F.R. §1b.3(f)(new CE rules).

24 92. For this case, the critical “extraordinary circumstances” that must be considered
25 by USFS before using a categorical exclusion include, but are not limited to, consideration of the
26 impacts to “American Indians and Alaska Native religious or cultural sites.” 36 C.F.R.
27 §220.6(b)(1)(vi). Similarly, the new CE rules states that “The resources to screen for in the
28 potentially affected environment when considering extraordinary circumstances may include, but
are not limited to sites ... of historic... significance, as designated by Federal, Tribal, State,
or local governments, or property eligible for listing on the National Register of Historic
Places.” 7 C.F.R. §1b.3(f)(1)(vii).

93. Despite the voluminous submittals by Plaintiffs, as well as numerous Tribal
governments, detailing the significant impacts from the Project to Pe’Sla, the USFS based its CE

1 on its unsupported statement that “There are no known Native American or Alaska Native
2 religious or cultural sites within the project area.” DM at 20.

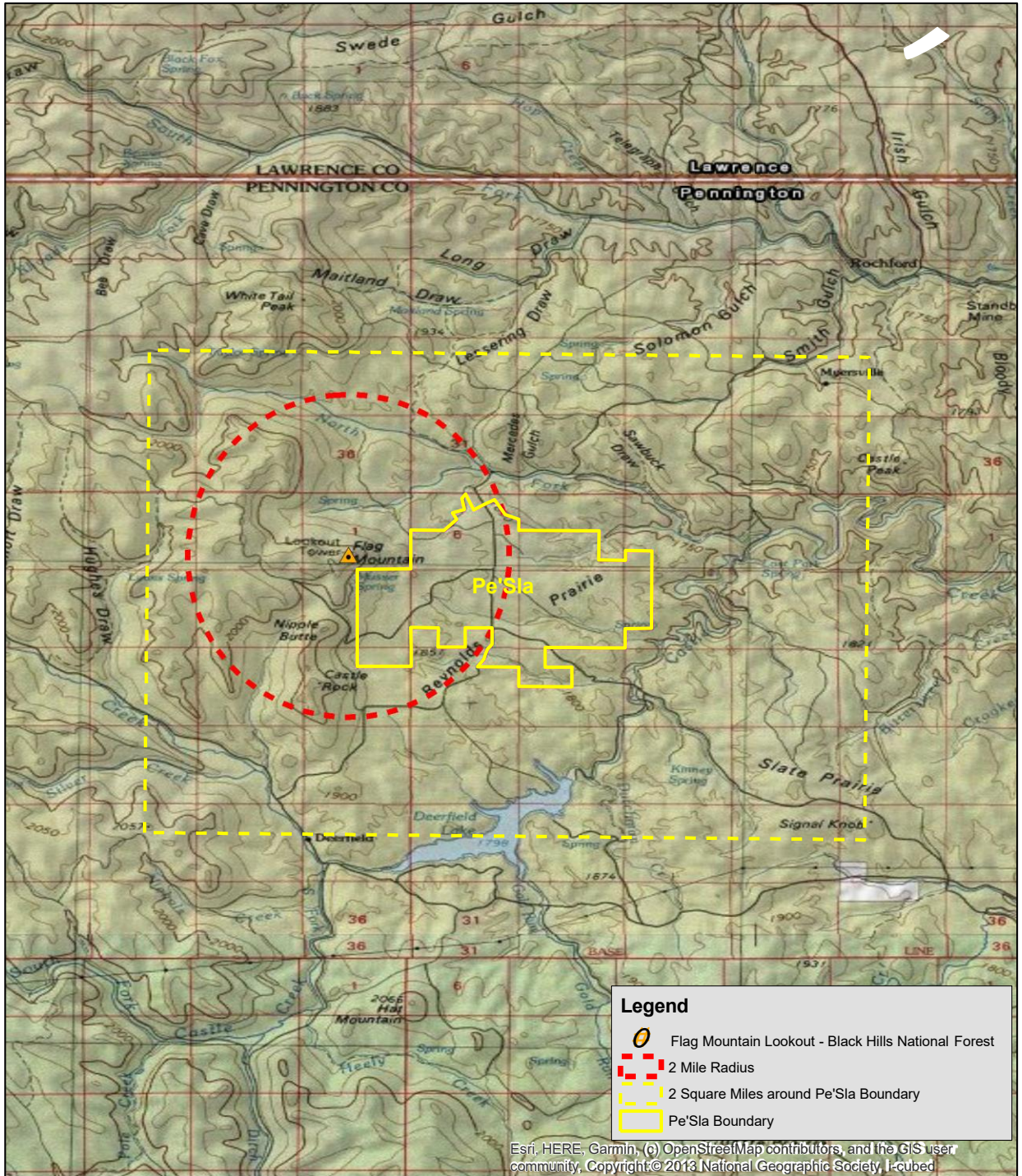
3 94. As detailed above, this is wrong as a factual matter, as the project will
4 adversely and significantly affect Pe’Sla, its uses by Plaintiffs, Tribal members, and the
5 public.

6 95. The agency’s refusal to consider the impacts to Pe’Sla also contradicts the
7 Forest Service’s commitment to the Tribes to protect these lands, including a 2-mile wide
8 radius of Pe-Sla.

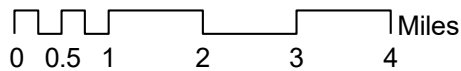
9 96. In a 2024 binding Memorandum of Understanding (“MOU”) between the
10 Forest Service and the various Tribes of the Great Sioux Nation, the agency committed
11 to: “Co-stewardship of Black Hills National Forest lands, including lands within 2-mile
12 radius of Flag Mountain and Pe’Sla Tribal Trust lands, see Appendix A map, and Black
13 Elk Wilderness.” MEMORANDUM OF UNDERSTANDING Between GREAT SIOUX
14 NATION TRIBES: CHEYENNE RIVER SIOUX TRIBE, CROW CREEK SIOUX
15 TRIBE, FLANDREAU SANTEE SIOUX TRIBE, LOWER BRULE SIOUX TRIBE,
16 OGLALA SIOUX TRIBE, ROSEBUD SIOUX TRIBE, SANTEE SIOUX TRIBE OF
17 NEBRASKA, SISSETON-WAHPETON OYATE, STANDING ROCK SIOUX TRIBE,
18 SPIRIT LAKE SIOUX TRIBE, AND YANKTON SIOUX TRIBE
19 And The USDA, FOREST SERVICE ROCKY MOUNTAIN REGION
20 BLACK HILLS NATIONAL FOREST (MOU), at p. 6.

Pe'Sla Boundary and Flag Mountain

Black Hills National Forest in South Dakota



Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community, Copyright © 2013 National Geographic Society, I-cubed



1 97. The project is proposed within the 2-mile radius of Flag Mountain and Pe'Sla
2 Tribal Trust lands identified in the aforementioned Memorandum of Understanding.

3 98. In any event, the test for whether there may be "extraordinary circumstances" is
4 not limited to the actual project footprint, as USFS maintains. Rather, "When applying
5 categorical exclusions, USDA subcomponents [USFS] **shall consider relevant resources in the**
6 **potentially affected environment for which an extraordinary circumstance may exist** that
7 would require the action to instead be documented in an environmental assessment (when there
8 is uncertainty regarding the degree of effect) or an environmental impact statement (if it is
9 determined there is a reasonably foreseeable significant impact)." 7 C.F.R. §1b.3(f)(emphasis
10 added).

11 99. Here, in determining that there were no "extraordinary circumstances," the agency
12 failed to analyze the project's impacts to the "potentially affected environment," which
13 necessarily includes impacts to Pe'Sla and associated lands, resources, and uses.

14 100. The agency's failure to evaluate uses of Pe'Sla, and the impacts to Pe'Sla,
15 occurred despite the commitment in the MOU, among other commitments, that "Forest Service
16 Interdisciplinary Teams shall seek input from designated Tribal indigenous ecological
17 knowledge holders and THPOs during analysis and planning processes for land management
18 activities." MOU at 5, ¶ IV.E.

19 101. Further, the agency's self-imposed limit of its "extraordinary circumstances"
20 analysis to just the "project area," and not the project's access routes/activities, ignores the
21 agency's mining regulations which consider all access roads as part of the project "operations."
22 36 C.F.R. §228.3(a)(defining "operations" as "including roads and other means of access.").

23 102. Thus, USFS's failure to consider the impacts to Pe'Sla outside of the limited
24 "project area" renders its Decision arbitrary and capricious and not in compliance with NEPA
25 and its implementing regulations.

1 **CLAIMS FOR RELIEF**

2 **First Claim For Relief**

3 **(Violation of NEPA and APA)**

4 **Improper Reliance on CE Category for “Short-term (1 year or less)”
Mineral Exploration Operations**

5 103. Plaintiffs re-allege and incorporate the allegations in all preceding paragraphs by
6 reference.

7 104. In issuing the Decision and approving the exploration project, USFS
8 inappropriately and illegally relied on a categorical exclusion applying to “short-term (1 year of
9 less) mineral, energy, or geophysical investigations and their incidental support activities,” 36
10 C.F.R. §220.6(e)(8); 7 C.F.R. §1b.4(d)(32), to exclude the exploration project from further
11 NEPA review. The Project’s drilling, road construction, reclamation, monitoring and mitigation,
12 and all incidental support activities will take more than one year to complete, rendering the use
13 of the “short term” mineral exploration CE inapplicable.

14 105. USFS’s actions, including its decision not to prepare at least an EA is unsupported
15 by the record and violates NEPA and its implementing regulations and policies and are arbitrary,
16 capricious, not in accordance with law, and without observance of the procedures required by
17 law, within the meaning of the APA, 5 U.S.C. §706. USFS’ violation of law prejudices and
18 adversely affects Plaintiffs’ rights and interests.

19 **Second Claim For Relief**

20 **(Violation of NEPA and APA)**

21 **The Project’s Impacts to Pe’Sla Are an “Extraordinary Circumstance”
22 Precluding Use of a Categorical Exclusion**

23 106. Plaintiffs re-allege and incorporate the allegations in all preceding paragraphs by
24 reference.

25 107. The Project’s significant effects to Pe-Sla represent an “extraordinary
26 circumstance,” precluding the use of a CE for the Project. The agency’s decision is unsupported
27 by the record and violates NEPA and its implementing regulations and policy and are arbitrary,
28 capricious, not in accordance with law, and without observance of the procedures required by

1 law, within the meaning of the APA, 5 U.S.C. §706. USFS' violation of law prejudices and
2 adversely affects Plaintiffs' rights and interests.

3
4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs respectfully request that this Court:

6 A. Declare that USFS violated the APA, NEPA, and their implementing regulations
7 and policies in issuing its Decision Memo and Project approvals.

8 B. Reverse, set aside, and vacate USFS's Decision Memo and authorization of the
9 Project.

10 C. Enjoin Defendants, their agents, servants, employees, and all others acting in
11 concert with them, or subject to their authority or control, from proceeding with any aspect of the
12 projects, pending full compliance with the requirements of law.

13 D. Award Plaintiffs their reasonable attorney's fees and costs incurred in this action
14 pursuant to the Equal Access to Justice Act, 28 U.S.C. §2412, or other provisions of law.

15 E. Grant Plaintiffs such injunctive and additional relief as the Court deems just and
16 equitable or as Plaintiffs may hereinafter request.

17
18 Respectfully submitted this 1st day of April 2026,

19 /s/ Tracey Zephier

20 Tracey Zephier (SD Bar #3058)
21 408 Knollwood Drive
22 Rapid City, SD 57701
23 (605) 791-3999
tracey@ndncollective.org

24 Bruce Ellison (SD Bar # 462)
25 P.O. Box 2508
26 Rapid City, SD 57709
Bruce.Ellison4@gmail.com

27 Roger Flynn (CO Bar #21078) *Pro Hac Vice Application To Be Filed*
28 Jeffrey C. Parsons (CO Bar #30210) *Pro Hac Vice Application To Be Filed*

1 WESTERN MINING ACTION PROJECT
2 P.O. Box 349, 440 Main St., #2
3 Lyons, CO 80540
4 (303) 823-5738
5 roger@wmaplaw.org
6 jeff@wmaplaw.org

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
Attorneys for Plaintiffs

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

NDN Collective; Black Hills Clean Water Alliance; Earthworks

(b) County of Residence of First Listed Plaintiff Pennington
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Tracey Zephier (SD Bar #3058), 408 Knollwood Drive
Rapid City, SD 57701, (605) 791-3999

DEFENDANTS

U.S. Forest Service; U.S. Department of Agriculture; James Gubbels, District Ranger

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input checked="" type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
National Environmental Policy Act, 42 USC 4321, et seq; Administrative Procedure Act, 5 USC 701, et seq.
Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE _____ SIGNATURE OF ATTORNEY OF RECORD _____

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____