Lakota People's Law Project is a project of Sacred Defense Fund, a nonprofit protecting the lands, waters and communities of Turtle Island.

# Pe'Sla Holds: Legal Analysis

How Tribal Nations Stopped a Mining Company in the Heart of the Black Hills and What It Means for the Next Fight

**Prepared by Lakota People's Law Project**

May 17, 2026

## The Ground Shifts

On May 5, 2026, United States District Judge Camela C. Theeler issued a Temporary Restraining Order halting all operations of the Rochford Mineral Exploratory Drilling Project in the Black Hills National Forest. Three days later, Pete Lien and Sons, Inc., the South Dakota limestone and aggregate company that held the mining claims, withdrew its Plan of Operations entirely.

The project is dead, at least in its current form. But the legal architecture that killed it is very much alive, and understanding how it was built tells us something important about where Indian Country's environmental litigation strategy stands in 2026.

This analysis examines what happened, why Pete Lien withdrew when it did, how durable this victory actually is, and what legal framework it offers to communities facing the next wave of extractive industry intrusion onto sacred lands and treaty territories.

## What Was Being Proposed, and Why It Mattered

Pete Lien and Sons is not a multinational mining conglomerate. It is a regional materials company headquartered in Rapid City. But in June 2024, it submitted a Plan of Operations to the U.S. Forest Service's Mystic Ranger District proposing to drill up to 18 boreholes, at depths up to 1,000 feet, across approximately three acres of federal land in the Black Hills near Rochford, South Dakota. The target mineral was graphite, which the federal government has designated a "critical mineral" essential to battery manufacturing and national security supply chains.

What Pete Lien and the Forest Service appeared not to fully reckon with, or chose to minimize, was where those drill pads, access routes, and staging areas would sit: within the cultural landscape of Pe'Sla.

Pe'Sla is a high mountain meadow and grassland in the heart of He Sapa, the Black Hills. It is not merely a place of cultural significance to the Lakota, Nakota, and Dakota peoples of the Great Sioux Nation. As the Department of the Interior acknowledged in 2016 when it took 2,022 acres into trust for

four tribes, "one of their most precious sacred sites... central to their existence." A study directed by Rosebud Sioux identified 484 traditional cultural properties, five historic sites, and three archaeological sites within Pe'Sla's boundaries. Several plaintiff tribes have since purchased an additional 612 acres within the Pe'Sla area. The Forest Service itself signed a 2024 Memorandum of Understanding with Great Sioux Nation tribes committing to co-stewardship of Black Hills National Forest lands within a two-mile radius of Pe'Sla.

The proposed drilling sites, access routes, and staging areas fell within that two-mile radius. Some were closer to tribally-purchased Pe'Sla lands than to anything else.

The Forest Service approved the project anyway, with a decision memo issued February 27, 2026, relying on the most minimal form of environmental review available under federal law.

## The Legal Architecture of the Win

The plaintiffs came at this from two directions simultaneously, and that coordination mattered enormously.

NDN Collective, Black Hills Clean Water Alliance, and Earthworks filed suit on April 27, 2026 (Case No. 5:26-cv-05035-CCT), moving immediately for a TRO. Three days later, on April 30, nine federally recognized tribes, the Cheyenne River Sioux Tribe, Crow Creek Sioux Tribe, Lower Brule Sioux Tribe, Oglala Sioux Tribe, Santee Sioux Tribe, Sisseton-Wahpeton Oyate, Spirit Lake Sioux Tribe, Standing Rock Sioux Tribe, and Yankton Sioux Tribe, filed their own companion suit (Case No. 5:26-cv-05051-CCT) and sought the same relief.

The court consolidated the matters, heard oral argument on May 4, and issued the TRO the following day.

### The Core Legal Argument: The One-Year Problem

The winning argument was not primarily about tribal sovereignty, treaty rights, or even the sacred character of Pe'Sla, though all of those were present in the complaints and briefing. The argument the court found decisive was narrower, more technical, and for that reason more portable: the Forest Service used the wrong tool.

The agency approved the project using what is known as a Categorical Exclusion under the National Environmental Policy Act, specifically CE-8, which permits minimal environmental review for "short-term (1 year or less) mineral, energy, or geophysical investigations and their incidental support activities." The idea is that genuinely brief, minor projects don't need the full-dress environmental analysis that larger undertakings require.

The problem is that this project was not going to be completed in a year, and the agency's own documents said so.

**The Decision Memo and Plan of Operations both required:**

- Annual field inspections of all drill sites for three years following drilling
- Noxious weed monitoring and treatment for two to three years post-disturbance
- Authorization for Pete Lien to "make modifications to the site" during the monitoring period if reclamation targets were not met, a ground-disturbing activity authorized to continue for years
- Retention of the reclamation bond for three years, until monitoring confirmed successful revegetation

The Forest Service's own mineral regulations define "operations" to include "all functions, work and activities in connection with prospecting, exploration, development, mining or processing of mineral resources." The Ninth Circuit had already held, in *Friends of the Inyo v. U.S. Forest Service* (2024), that "reclamation cannot be bifurcated from other mineral exploration efforts," meaning the Forest Service necessarily reviews exploration and reclamation as a single proposed project. A federal district court in Arizona had reached the same conclusion in 2015 in *Defenders of Wildlife v. U.S. Forest Service*, finding arbitrary and capricious exactly the kind of post-drilling monitoring-plus-modification regime that appeared in the Rochford decision memo.

The Forest Service tried to argue that the multi-year provisions merely reflected monitoring, not operations, and that any additional reclamation work beyond year one would require a new Plan of Operations (PO). Judge Theeler was not persuaded. The court found that the PO explicitly authorized site modifications during the three-year monitoring period, that no evidence in the record suggested such modifications would require new review, and that the *Friends of the Inyo* and *Defenders of Wildlife* analysis, while not binding in the Eighth Circuit, was directly on point and persuasive.

**Bottom line: the Forest Service certified this was a project that would be completed in a year, while simultaneously approving a plan that required three years of ongoing operations. That internal contradiction is what the court called arbitrary and capricious.**

## The Secondary Argument: Extraordinary Circumstances

The plaintiff tribes also pressed a second NEPA claim that the court did not need to reach but that remains alive in the underlying litigation: even where a CE technically applies, an agency cannot invoke one when "extraordinary circumstances" are present. Among the regulatory categories of extraordinary circumstances that trigger elevated review is the presence of "Native American and Alaska Native religious or cultural sites."

Pe'Sla is formally recognized as such a site by the federal government. The agency's own internal specialists conducted their review and found "no extraordinary circumstances," a finding the tribal plaintiffs argued was factually unsupportable given the DOI trust decision, the MOU, the documented traditional cultural properties, and the proximity of the drill sites to tribally-held sacred land.

This claim is well-preserved for the preliminary injunction hearing (scheduled for May 20-21, 2026) and for any merits review that follows. It is the stronger long-term argument from a Native rights perspective, and the harder one for the government to dismiss.

### The Tribal Claims Under NHPA

The nine-tribe complaint separately alleged violations of Section 106 of the National Historic Preservation Act, which requires federal agencies to consider the impact of their undertakings on

historic properties and to consult with affected tribes. The Forest Service had conducted a Level III cultural resources survey, obtained a "No Historic Properties Affected" determination, and secured concurrences from the Northern Cheyenne THPO and the South Dakota SHPO.

The tribal plaintiffs argued that this process was inadequate, that meaningful government-to-government consultation was refused despite repeated requests from tribal councils, that the survey methodology was insufficient for the cultural landscape at issue, and that the determination of "no effect" was factually wrong.

Multiple tribes documented specific, formal requests for consultation, including requests made to tribal councils by resolution, that the Forest Service effectively ignored, mailing letters and holding information-sharing meetings while declining to engage in true government-to-government deliberation. Whether the NHPA claim ultimately prevails depends on how the court characterizes the difference between consultation and notification, a distinction that has been litigated across Indian Country for decades.

### Treaty Rights: Present but Not Yet Tested

The complaints in both cases cite the Fort Laramie Treaty of 1868. The tribal plaintiffs did not ask the court to resolve the underlying treaty claim, the contested legal status of the Black Hills, but they preserved it, and they raised the important argument that treaty consultation requirements go beyond what NHPA's Section 106 demands.

The Forest Service's response to the treaty rights issue in the comment summary is telling: it essentially declined jurisdiction, saying that Congress, not the agency, has authority to address treaty land claims. That is legally accurate as far as it goes, but it sidesteps the question of whether treaty obligations affect what the agency must do before approving industrial activity on disputed treaty lands. That question remains unresolved.

## Why Did Pete Lien Withdraw?

The formal record does not include Pete Lien's explanation for pulling its Plan of Operations. Any explanation offered here is inference, but it is informed inference based on what the litigation record reveals about the company's position.

**The economics stopped working.** Pete Lien's project was exploratory: it had not confirmed economically recoverable graphite. The company had already invested in equipment mobilization and some initial drilling, but it had not committed to the full project. When the TRO issued, it faced a halt of indeterminate duration. The preliminary injunction hearing was set for May 20-21; even if the company prevailed there, the underlying litigation, with two separate complaints, a full administrative record review, and multiple legal theories, could take years to resolve. Against that timeline, an exploration project on unproven ground may simply have failed a basic cost-benefit analysis.

**The legal picture was worse than the company expected.** The TRO ruling was unusually clear. The court did not hem and haw about close questions of law. It found a "fair chance of success" on the merits based on the company's and agency's own documents. When a federal judge essentially says "your own paperwork defeats you," that is a signal about how the full litigation is likely to proceed.

**The reputational and political environment had shifted.** Whatever the Rochford project's graphite findings might eventually have been, Pete Lien would have spent years in litigation with nine sovereign tribal nations, multiple nonprofit organizations, and a national legal team from the Western Mining Action Project. The company's core business is limestone and aggregate in the Northern Plains, not graphite mining, not critical minerals. The reputational cost of being known as the company that drilled Pe'Sla was substantial, and growing.

**The bond was nominal but the symbolism was not.** The court required plaintiffs to post only $10,000 per case, a signal that the court viewed the harms on the tribal side as substantially outweighing the economic harm of delay. That signaling, in an era when "critical minerals" had been the government's trump card in public lands litigation, told the company something about how the court was weighing the overall case.

**Timing matters: ceremonies had already begun.** The motion papers established that traditional religious ceremonies at Pe'Sla were beginning May 2, 2026. The TRO was issued May 5. The company was in the position of having its equipment on the ground adjacent to active sacred ceremonies — a fact pattern that generates neither good press nor sympathetic judicial treatment. Withdrawal allowed it to exit before the full evidentiary record was developed and before media attention intensified.

## How Durable Is This Victory?

The honest answer is: more durable than a TRO usually is, less durable than a permanent legal settlement would be.

**What is secure:** Pete Lien's withdrawal effectively terminates this specific project under this specific plan of operations. The company cannot simply restart without a new plan, new NEPA review and, given the litigation record, the certainty of immediate and better-prepared legal challenge. The mining claims themselves remain on federal land, but unpatented mining claims on National Forest land do not confer an absolute right to mine; they confer a right to apply for a permit that the agency retains discretion to condition or deny.

**What is not secure:** The underlying legal vulnerabilities in the Forest Service's approach to Pe'Sla have not been resolved by a final court judgment. The agency could revise its decision memo, conduct a more robust environmental assessment (an EA rather than a CE), and reapprove the project in a form that addresses the one-year reclamation problem. A future applicant, or Pete Lien itself, years from now, could file a new plan that explicitly limits operations to twelve months. If the Forest Service does fuller NEPA review next time, the procedural claims become harder to win.

**The extraordinary circumstances argument is the long-term anchor.** If plaintiffs can establish, through merits litigation, that Pe'Sla constitutes an "extraordinary circumstance" categorically requiring elevated environmental review, that creates a more durable shield. A holding that any mineral exploration within the Pe'Sla cultural landscape requires at minimum an Environmental Assessment, and likely an Environmental Impact Statement, would substantially raise the cost and timeline of any future project.

**The NHPA consultation record also matters.** If the court ultimately holds that the Forest Service's government-to-government consultation was legally deficient, that creates a precedent requiring genuine tribal input, not just information-sharing, before future approvals in this area.

## What This Framework Offers to Other Fights

The Rochford case is not an isolated event. It is a data point in an emerging legal strategy that other communities can learn from and build on.

#### Lead with NEPA Procedural Arguments

The most portable lesson from this case is to scrutinize the category of environmental review the agency uses, not just the quality of the review. Categorical Exclusions are the weakest form of NEPA compliance, and they are increasingly being used for projects that don't qualify for them. The one-year limit in CE-8 is a hard textual constraint, and the *Friends of the Inyo* precedent, now strengthened by this court's adoption of its reasoning, gives challengers a powerful tool whenever reclamation extends beyond twelve months.

This matters beyond mineral exploration. CE abuse is pervasive across federal land management, and the framework of "does this project actually fit within the asserted categorical exclusion" is applicable everywhere.

### Use the Agency's Own Documents

The Forest Service defeated itself in the Rochford case. The Decision Memo and Plan of Operations contained the three-year monitoring and reclamation requirements that made CE-8 inapplicable. The scoping comment responses contained the agency's own admissions about project scope and duration. Plaintiffs did not have to prove the government's case — they just had to read it carefully.

In any future fight, the administrative record is the most valuable document in the case. Agencies frequently approve projects while maintaining internal contradictions between what they certify for NEPA purposes and what they require operators to do in the plan. Finding those contradictions is the work.

### Build the Two-Track Coalition

The dual-complaint structure here, nonprofits and tribal nations filing separately but litigating together, generated both complementary legal theories and political resonance. The nonprofit plaintiffs (NDN Collective, Earthworks, Black Hills Clean Water Alliance) could press NEPA arguments; the tribal nations pressed NHPA and treaty-adjacent arguments. Each track reinforced the other. Critically, the nine sovereign tribal nations suing in their own right added weight that no amount of organizational standing can replicate.

For future fights, this suggests: wherever tribal sovereignty is at stake, get the tribes into court as plaintiffs, not just as declarants or amici. Sovereign standing changes the character of the litigation.

### Document Sacred Site Use in Real Time

The declarations in this case established not just that Pe'Sla is historically sacred, but that specific, identified members of the plaintiff organizations had specific ceremonies planned at specific locations beginning May 2, 2026. That precision, this ceremony, this location, this date, is what transforms "harm to cultural significance" from a rhetorical claim into a legally cognizable injury. Courts are more comfortable with specific, documented harm than with generalized cultural loss.

Future fights should document sacred site use contemporaneously, with declarations that identify specific planned activities, specific individuals, and specific dates. The more concrete the harm, the harder it is to dismiss as speculative.

### The MOU Is a Weapon

The 2024 Memorandum of Understanding between the Forest Service and Great Sioux Nation tribes, in which the agency committed to co-stewardship within a two-mile radius of Pe'Sla, was a significant piece of the litigation record. It is not a legally binding land use restriction in the traditional sense, but it is an agency commitment that creates an internal inconsistency when the agency approves industrial activity within that radius without meaningful tribal input.

Wherever tribal nations have entered into MOUs, co-management agreements, or similar arrangements with federal land management agencies, those documents should be treated as litigation assets. They memorialize agency acknowledgments that can be used to show arbitrary and capricious conduct when the agency acts inconsistently with its own commitments.

### The "Critical Minerals" Defense Has Limits

The Forest Service and Pete Lien leaned heavily on the "critical minerals" designation of graphite, invoking national security, supply chain resilience, and energy independence. The court acknowledged the public interest in critical mineral development and declined to dismiss it. But the court held that NEPA's procedural requirements "apply to critical mineral projects just as they apply to any other federal undertakings" and that "the public interest in mineral development does not override the public interest in ensuring that development occurs only after lawful environmental review."

This is important. The critical minerals designation is real, and it will be invoked in future cases. But it is not a license to skip environmental review, and it does not automatically override sacred site and treaty interests. Courts have discretion in how they weigh the public interest factors, and the record in Pe'Sla, a confirmed sacred site, trust lands, an MOU, and a record of inadequate consultation, made the balancing question relatively straightforward. Future fights should be prepared to engage the critical minerals argument directly and specifically: what is the actual national security case for this specific deposit, in this specific location, extracted on this specific timeline? The vaguer the claim, the less it should weigh.

## The Larger Picture

Pe'Sla has held before, and it will need to hold again. The Black Hills contain some of the most geologically interesting terrain in the continental United States, and as the global demand for battery

metals, rare earths, and industrial minerals continues to grow, the pressure on public lands in this region will intensify. The Rochford project was a graphite exploration, but the same NEPA frameworks, the same categorical exclusion temptations, and the same inadequate consultation patterns will appear in the next proposal, and the one after that.

What the tribal nations and their allies built in this case was not just a legal victory for Pe'Sla. It was a documented, court-tested legal playbook. The one-year reclamation argument is now on the books in the Eighth Circuit's district courts. The extraordinary circumstances claim for a federally-recognized sacred site is preserved and ripe for development. The inadequacy of notification-as-consultation under NHPA is squarely raised. The MOU as a litigation asset is demonstrated.

The most important long-term investment is not winning the TRO, that is the short-term fight. The most important investment is establishing, through full merits litigation, that Pe'Sla constitutes an extraordinary circumstance that categorically bars CE-level review. If that holding comes, it changes the cost structure of every future project in this landscape. It is the difference between a speed bump and a wall.

Pete Lien withdrew. The legal framework that forced the withdrawal remains. Build on it.

---

*This analysis is based on publicly filed court documents in NDN Collective, et al. v. U.S. Forest Service, et al., Case No. 5:26-cv-5035-CCT (D.S.D.), and Cheyenne River Sioux Tribe, et al. v. U.S. Forest Service, et al., Case No. 5:26-cv-05051-CCT (D.S.D.), including the complaints, motions, memoranda in support and opposition, administrative comment summary and agency responses, and the Temporary Restraining Order issued May 5, 2026.*

*This analysis is educational and does not constitute legal advice.*