

**In the United States Court of Appeals
for the Eighth Circuit**

Governor Kristi Noem, in her official capacity as the Governor of South
Dakota; South Dakota,

Plaintiffs – Appellants,

v.

Deb Haaland, in her official capacity as United States Secretary of the Interior;
Shannon A. Estenoz, in her official capacity as Principal Deputy Assistant
Secretary of the Interior for Fish and Wildlife and Parks; Shawn Bengé, in his
official capacity as acting Director and Deputy Director of Operations of the
National Park Service; Herbert Frost, in his official capacity as National Park
Service Director of the Midwest Region,

Defendants – Appellees,

Steve Vance; Cheyenne River Sioux Tribe,

Intervenor Defendants – Appellees.

**On Appeal from the United States District Court for
the District of South Dakota, No. 3:21-cv-3009-RAL**

ADDENDUM FOR INTERVENOR DEFENDANTS - APPELLEES

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TABLE OF CONTENTS

Declaration of Tribal Historical Preservation Officer Steve Vance in Support of Cheyenne River Sioux Tribe's Motion to Intervene, May 13, 2021	Addendum 001
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**Declaration of Tribal Historical Preservation
Officer Steve Vance in Support of Cheyenne River
Sioux Tribe's Motion to Intervene
dated May 13, 2021**

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION**

**GOVERNOR KRISTI NOEM, in her
Official Capacity as the Governor of South
Dakota, et al.,**

CIV: 3:21-cv-03009

Plaintiffs,

v.

**DEB HAALAND, in her Official capacity as
United States Secretary of the Interior, et
al.,**

Defendants.

**DECLARATION OF TRIBAL HISTORICAL PRESERVATION OFFICER STEVE
VANCE IN SUPPORT OF CHEYENNE RIVER SIOUX TRIBE'S
MOTION TO INTERVENE**

1. My name is Steve Vance. I am an enrolled member of the Cheyenne River Sioux Tribe, and I am the duly appointed Tribal Historic Preservation Officer (“THPO”). In addition to my years of previous service to the Tribe, I have served as the THPO for the last eleven years. I have significant knowledge of the Cheyenne River Sioux Tribe’s oral history, cultural and spiritual laws, and historic documentation.

2. When appointed by the Tribe, I was honored to serve as the Tribe’s THPO because it is critical for the Cheyenne River Sioux Tribe to participate in its own preservation and protection. Tribal Historical Preservation Officers are regulatory officers who manage and protect cultural resources, sacred sites, and other historical sites within the exterior boundaries of the Cheyenne River Reservation. Historical preservation is essential to telling our own story and maintaining our cultural identity.

3. This job is also fulfilling because it helps me protect the traditional Lakota lifestyle that I practice alongside many others on our Reservation. I have spent the vast majority of my life speaking Lakota and being immersed in Lakota cultural practices and knowledge.

4. Historic Preservation was once under the purview of the State of South Dakota, but in the early 1990s, the Cheyenne River Sioux Tribe was one of few tribes to assume what was traditionally the state historic preservation officer position. The Cheyenne River Sioux Tribe assumed all functions of the Historic Preservation Office and now fulfills all compliance measures of such office.

5. The THPO is authorized by the National Historic Preservation Act 1992 amendments to include the Native American Graves Protection and Repatriation Act, Archaeological Resources Protection Act, and Antiquities Act of 1906.

6. The THPO is essentially a regulatory Officer that manages and protects cultural resources, sacred areas, and sites both within the exterior boundaries of the Cheyenne River Sioux Tribe's Reservation and within the original treaty lands of the Oceti Sakowin (Great Sioux Nation) and its related peoples as memorialized in the Fort Laramie Treaties of 1851 and 1868 because historic preservation is essential to maintaining our spiritual and cultural identity as a Tribe.

7. As the THPO, my job is not only to preserve culturally important historical sites, but also to preserve our culture and make a better life for the next generation. Historical preservation should at least provide for future generations what the Elders left for us if not more.

The Black Hills and the Lakota People of Cheyenne River

8. As recognized by the Supreme Court of the United States in their 1980 decision *Sioux Nation v. United States*, the Black Hills were stolen from the Sioux Nations by the United

States Government in 1877 through the “sell or starve” act, which leveraged the lives of our tribal members against our leaders in order to force an invalid sale of the Black Hills. *See* 448 U.S. 371.

9. The Cheyenne River Sioux Tribe and its people have been present on the land currently known as the Cheyenne River Reservation since before the creation of the United States of America and their presence spans into time immemorial.

10. Prior to the American Government forcing us to take reservations, the Lakota bands of the Cheyenne River Sioux Tribe had no boundary to their territory. The bands were hunters that traveled over their ancestral homelands.

11. The Ft. Laramie Treaty of 1851 between the United States and the Great Sioux Nation reserved a portion of the Sioux historic homelands for the Tribes to keep, and the Cheyenne River Reservation is included in that area. Montana, Wyoming, Nebraska, North and South Dakota are also within the bounds of the 1851 Treaty.

12. The Ft. Laramie Treaty of 1868 explicitly reserved certain rights such as hunting and fishing, along with other rights.

13. The Sioux Agreement Act of 1889 set the current reservation boundary lines within the borders of South Dakota.

14. The Black Hills are within the extant boundaries of the Great Sioux Nation as defined by the 1851 and 1868 Treaties of Fort Laramie and the Cheyenne River Sioux Tribe has preserved rights to trust and sacred sites held there.

15. In 2018, the South Dakota Senate “recogniz[ed] and honor[ed] the importance and validity of the 1868 Treaty of Fort Laramie” in Senate Resolution 1, to commemorate the 150th anniversary of its signing.

Previous and Ongoing Tribal Resistance to Fireworks in Black Hills

16. I have openly opposed the renewed performance of the fireworks display at Mount Rushmore because of the threats they pose to our sacred sites, Traditional Cultural Properties, and trust lands located in the Black Hills.

17. For instance, there is an existing trust property we use for an important annual ceremony that belongs jointly to several Tribes, including the Cheyenne River Sioux Tribe, within 50 miles of Mount Rushmore, that would be in danger if a wildfire were to break out.

18. Because of the National Park Service's 2020 consultation with Cheyenne River Sioux Tribe and other Tribes about the firework event last year, a joint team comprised of thirteen (13) Tribes are finalizing a report that identifies about 100 **additional** Traditional Cultural Properties, or TCPs, belonging to our people located within the Black Hills. The team has completed the physical survey of sites, and we are now working on drafting the Survey report in Section 106 consultation with the NPS.

19. This Survey (report) is mentioned explicitly in the DOI/NPS letter denying the permit as one of the reasons for the denial.

20. TCPs are properties that are eligible for inclusion in the National Register of Historic Places based on their association with the cultural practices, traditions, beliefs, lifeways, arts, crafts, or social institutions of a living community.

21. These additional hundred or so TCPs add onto the already lengthy list of TCPs, sacred sites, and trust properties in the Black Hills belonging to the Cheyenne River Sioux Tribe and other Tribes.

22. I shared my comments prior to the 2020 event with the Acting Superintendent of Mount Rushmore, at which time I expressed my opinion as THPO for the Tribe that using

fireworks on sacred land in Treaty Territory was egregious because of the grief it inflicts upon us as a people. The event itself is also offensive because of the history of the presidents depicted on the statute and their killing of Natives.

23. Beyond those concerns, the same safety issues that caused the fireworks display to be discontinued persist today, as I reminded them in 2020. Those concerns include the risk of wildfire; threat of water contamination; and inability of the NPS to evacuate that area safely in case of fire in large crowd situations.

24. All of the Tribes present at the 2020 meeting with the Acting Superintendent opposed the 2020 event. Nevertheless, the permit was still granted.

25. The State of South Dakota did not ever consult with the Cheyenne River Sioux Tribe's Historic Preservation Office regarding the event last year. To my knowledge, they did not consult with our Tribe at all.

Cultural and Religious Importance of the Black Hills for the Tribe

26. The Black Hills in their entirety are sacred to the Lakota people as the nexus of our origin (including the bands who reside on Cheyenne River), which is reflected in the Lakota name for the Black Hills—*Ħe Sápa*—which holds the meaning “the heart of everything that is.”

27. Long before being defaced by the sculpture called Mount Rushmore, the mountain was already a sacred site to us. We call this mountain the “Six Grandfathers” in Lakota because of the six faces already present in the mountainside prior to the presently existing sculpture.

28. Furthermore, the Lakota people of the Cheyenne River Reservation still use the Black Hills extensively for a broad range of religious and ceremonial practices in a large number of locations (see previous section), including some of our most important ceremonies. Some of those sites are located near Mount Rushmore. Such uses have been extensively (and

inappropriately) documented by academics and researchers over the last couple of centuries, and those descriptions will not be reiterated here out of respect for our traditional ways and people, who were often deprived of meaningful consent or control over their knowledge in those situations.

29. We also gather plants that we use for medicinal, ceremonial and religious practices within the Black Hills, and these plants would be destroyed—and could be wiped out completely—by a wildfire event.


30. Many of these plants do not exist anywhere else, and their complete loss would be a devastating and irreversible loss to our traditional ceremonial, religious, and medicinal practices.

31. The Tribe gets lodge (tipestola, often incorrectly referred to as “tipi”) poles from the Black Hills pines, and we have few other sources of those poles. A wildfire would devastate this resource.

32. The fireworks themselves will have the immediate impact of interrupting anyone who is using one of the sacred sites for ceremony or prayer during the duration of the event. The summer months are an active time in our ceremonial practices, and there is a high likelihood that traditional people will be disrupted in their practices by this event.

33. Beyond being literally interrupted, the fact that this event could be forced upon us in our sacred lands despite our clear opposition to the event traumatizes us as a people and inflicts grief upon us. To us, allowing this event to occur again is a colonial attack on one of our most sacred places.

34. In conclusion, allowing fireworks displays at Mount Rushmore creates an actual, extreme threat to the religious, ceremonial, and medicinal practices of the traditional Lakota people of the Cheyenne River Sioux Tribe.


/s/
Steve Vance, THPO
Cheyenne River Sioux Tribe

Appellate Case: 21-2542 Page: 10 Date Filed: 09/27/2021 Entry ID: 5081096