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June 18th, 2023

U.S. Forest Service, Black Hills National Forest
Attn: Bryan Karchut, Black Hills Forest Supervisor
Pactola Mineral Withdrawal
1019 N. 5th Street,
Custer, South Dakota 57730

BLM Montana/Dakotas State Office,
5001 Southgate Drive, Billings, Montana
59101

Submitted electronically at

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

RE: Comments on the Black Hills National Forest Service Proposed Pactola Mineral Withdrawal

Dear Supervisor Karchut:

I. Introduction and General Comments

The South Dakota Mineral Industries Association (SDMIA) appreciates the opportunity to provide comments on the proposed Pactola Reservoir – Rapid Creek Watershed Mineral Withdrawal announced on March 21, 2023 by the Department of Interior, Bureau of Land Management. On behalf of our membership, representing nearly 1,100 employees working in the Mineral Industries, mainly in the Black Hills, SDMIA offers the following comments. SDMIA strongly opposes the proposed withdrawal of 20,574 acres of National Forest System Lands in Pennington County, South Dakota, from settlement, sale, location, or entry under the public land laws; location and entry under the United States mining laws; and leasing under the mineral and geothermal leasing laws for 20 years, subject to valid existing rights, to protect the cultural and natural resources of the Pactola Reservoir—Rapid Creek Watershed, including municipal water for Rapid City and Ellsworth Air Force Base, from the adverse impacts of minerals exploration and development.

The South Dakota Mineral Industries Association's mission is to communicate, educate and advocate for the mineral industries in SD. We focus on informing the public about the mining life cycle, the mining industry, and how mining is beneficial to society and other industries. All of us depend on the mining industry everyday

simply by using our cell phones, laptops, automobiles, EVs, roads, even digital billboards need minerals supplied by the mining industry. Without mining, we would not have the buildings, transportation, and infrastructure that we take for granted. The Black Hills has produced many types of minerals important to our nation including the production of lithium critical to our success in WWI and WWII. The Black Hill continues to be an important resource for critical minerals moving forward.

As the U.S. focuses on the transition to a green economy, there is a new focus on where our minerals are mined and how many minerals are critical to U.S. national security, our energy supply, and our food supply. Many of the minerals needed for a green economy are currently mined in other countries including China, DR Congo, and Russia. Unlike the U.S., in other countries mines operate with limited/no regard for environmental protections, labor laws, or climate change and is just one of many reasons we work to inform the public about mining in SD and the U.S. Every time we turn-down an exploration project or close off public lands to mineral development, we simply force the production of those minerals on to countries where people do not have a voice to advocate for themselves.

The South Dakota Mineral Industries Association purpose is not to approve or disapprove of any specific projects proposed in the Black Hills or South Dakota. SDMIA is here to provide the facts and information related to what exploration activities entail, the difference between exploration and mining and what is involved to move an exploration project from exploration, into development, mining, and closure.

SDMIA's concerns on this proposed withdrawal are related to: (1) the process being used by the agencies that is different than past proposals; (2) the precedence that may be established for additional withdrawals within the Black Hills; (3) the lack of scientific basis for the proposed withdrawal; (4) the lack of science/data to support the area of the proposed withdrawal; and (5) any potential impacts to other projects or user groups.

II. Specific Comments

A. The USFS Must Articulate the Basis for the Proposed Withdrawal

1. The lack of a scientific basis for the proposed withdrawal is of great concern to the SDMIA. Although the stated reason is to “protect cultural and natural resources in the Pactola Reservoir – Rapid Creek Watershed, including drinking water for Rapid City and Ellsworth Air Force Base,” no plausible scenario is presented that establishes the link between exploration and mining in the Pactola watershed and harm to the downgradient cultural and natural resources. Until a realistic scenario for harm is developed, the proposed withdrawal appears to be arbitrary and capricious.

B. Environmental Impact Study

1. This withdrawal is completely redundant and unnecessary. There are existing regulations in place that assure that any activities within the watershed meet strict environmental standards. Existing regulations include the federal NEPA process as well as state permitting requirements for exploration and/or mining. The NEPA process

results in mitigation measures as recommended and approved by the U.S.F.S. and other consulted agencies. These mitigation measures are designed on a project-by-project basis and serve to minimize and prevent environmental impacts of exploration or mining projects.

2. SDMIA requests that a complete Environmental Impact Study (EIS) be completed over the entire withdrawal area for the proposed mineral withdrawal. The EIS should include detailed discussion on the affected environment for the following subject areas:
 - i. Land Use
 - ii. Geology/Mineral Potential Study
 - iii. Soils
 - iv. Surface Water Hydrology and Water Quality
 - v. Groundwater Hydrogeology and Water Quality
 - vi. Air Quality
 - vii. Climate Change
 - viii. Vegetation (including timber resources, grazing, and weeds)
 - ix. Wildlife
 - x. Cultural Resources
 - xi. Noise
 - xii. Socioeconomics
 - xiii. Transportation
 - xiv. Visual Quality/Landscape
 - xv. Recreation
3. The No Action impacts analysis should be segregated into multiple components or scenarios, including a scenario where 1) the current F3 exploration PO is approved, 2) other valid claims are drilled, 3) an underground mining operation commences, and 4) a surface mining operation commences. Members from the mining industry should be included in the process of defining these No Action scenarios.
4. Additional Alternatives should be explored to evaluate a significantly smaller withdrawal area where a direct surface water nexus immediately adjacent to Pactola and Rapid Creek exists.
5. The impacts analysis for water quality should provide documentation and peer reviewed studies proving potential impacts to water quality that can be directly tied to exploration drilling. Small simple spills that were cleaned up without impact, or non-hazardous spills, do not prove water quality impact.
6. The Affected Environment water quality review should thoroughly describe the current conditions and active threats and impacts to water quality, including but not limited to septic tanks, zebra mussels, stormwater runoff, and historic spills documented in the SD DANR database related to transportation or other events on USFS lands.
7. The Affected Environment geology should include an assessment of the geochemistry of all mineralized deposits within the withdrawal area to identify natural occurring heavy

metals and potential impacts from mineral exploration or mining, including but not limited to acid base accounting (ABA), net acid generation (NAG), synthetic precipitation leaching procedure (SPLP), and whole rock analysis. This analysis would be required to understand potential water quality impacts.

8. The impacts analysis for socioeconomics should provide quantitative values for positive and negative impacts that an exploration program or hypothetical mine could have.
 9. A major driving factor for the mineral withdrawal is “to protect the cultural and natural resources” of the sub watershed. The Affected Environment Cultural Resources study must include both a Level 1 records search and Level 3 field study where previous surveys have not been conducted or not conducted to current standards, to fully define the cultural resources within the entire withdrawal area. Such studies are not excessive because they are required for individual POs and if impacts of cultural resources are to be fully defined, these surveys need to be conducted.
- C. Clarification of Valid Existing Rights and Analyzing Mineral Claims with Unknown Validity
1. Please provide a clarification of the definition of 1) existing mineral rights, 2) BLM’s process to request a mineral validation study, and 3) a defined, budgeted cost to conduct a study within the 20,574-acre proposed withdrawal area.
 2. Claims that are being explored or maintained for future exploration have been described by the BLM as “claims of unknown validity.” Although not considered “valid” claims, these pre-discovery claims are nonetheless properly located claims that are active claims in good standing so long as the claimant has made the required annual filings and paid the annual Claims Maintenance Fee. Under Section 22 of the Mining Law, owners of these claims have a valid existing right to use and occupy their claims, subject to the CMF payment requirements in Sections 28f-k of the Mining Law and the environmental protection provisions in the applicable surface management regulations. (See the discussion of the Forest Service’s 36 CFR Subpart A and BLM’s 43 CFR Part 3809 regulations in Section III).
 3. The terms “valid claim” and “invalid claim” are often misused. Section 22 of the Mining Law clearly provides that it is not necessary to have a valid claim to have the right to enter upon and occupy lands open to location and conduct exploration and mineral development activities.
- D. Cost/Benefit to the US Taxpayers –Study current/all potential impacts on water quality
1. Recently, an EA was completed and provided a Finding of No Significant Impact related to mineral exploration and was paid for by the applicant. The proposed withdrawal study will focus on the exact same activity and proposes to also study a hypothetical mining scenario in the area. This will be a cost to the US taxpayers and for the agencies to provide a benefit and useful data to the US taxpayer, we recommend completing an

EIS and consider all current and any other potential water impacts in the entire Rapid Creek Watershed, including down gradient from Pactola Reservoir.

E. Black Hills National Forest Plan Revision

1. The USFS should clarify if there will be any changes to the Black Hills National Forest Plan as a result of the proposed mineral withdrawal. If so then SDMIA notes those changes must be made through a Forest Plan amendment, following appropriate NEPA.
2. Does the withdrawal acreage get subtracted from the proposed acres to withdrawal for cultural/watersheds as outlined in the recent draft Forest Plan assessments?

F. The Nation's Need for Minerals

1. This withdrawal is in complete opposition to the administration's stated goals for green energy transition and critical minerals supply lines from the DOE, DoD, and USGS/DOI. Removing large tracks of land from exploration and mining without understanding the resource potential will have detrimental effects on the US green energy transition and national security.
2. The findings in the IJA that "critical minerals are fundamental to the economy, competitiveness, and security of the United States" and that "the Federal permitting process has been identified as an impediment to mineral production and the mineral security of the United States" must result in constructive action to streamline permitting and eliminate permitting impediments.

G. Multiple Use on the Black Hills National Forest – Potential Impacts to User Groups

1. This withdrawal is government overreach and sets a dangerous precedent. This time the withdrawal impacts the mineral industry, but next time it could impact grazing, logging, National Forest homeowners, or recreation either by mineral withdrawal or another federal designation.
2. Past mineral withdrawals were developed by local Black Hill's National Forest Staff and would allow for the Black Hills National Forest Advisory Board to provide input from local user groups. This withdrawal came from the national level and the local advisory board was not given an opportunity to provide input.

III. Conclusions

Since 1970, Congress has consistently and repeatedly recognized that minerals and mining are essential to all facets of our economy, society, and national defense. For example, the MMPA (1970), the FLPMA (1976), the MMPRDA (1980), the Energy Act (2020), the IJA (2021), and most recently the IRA (2022) all direct the Executive Branch agencies to respond to the Nation's need for domestic minerals.


Unfortunately, these Congressional directives have gone largely unheeded as more lands continue to be withdrawn from mineral entry and permitting timelines, costs, and risks have become intolerable. Our risky reliance on imported minerals is a direct result of five decades of ignoring Congress' clear directives that minerals should be mined from public lands to help satisfy the Nation's need for minerals. Despite the urgent need to increase domestic mining and reduce our dependency on foreign minerals, today it can take 20 years or more to permit a mine.

The Departments of the Interior and Agriculture must start complying with the law; compliance is not discretionary. Through their land management agencies, BLM, and the Forest Service, these departments must reverse the trend of the last 50 years during which it has become increasingly difficult to access potentially mineralized public lands and to secure the necessary permits to explore for minerals and build mines.

For these reasons the SD Mineral Industries Association opposes this specific Administrative Mineral Withdrawal proposal and encourages the agency to complete a full Environmental Impact Statement to analyze all current/potential impacts.

Any future proposals should be conducted by the local Forest Service staff, follow the process, allow for input from the Black Hills National Forest Advisory Board and encourage communicating administrative actions with our federal, state, and local officials.

Respectfully submitted on behalf of the SD Mineral Industries Association,


Kwinn Neff
President/Managing Director


Elizabeth Sailer
Chair, Board of the Directors

cc: Governor Kristi Noem
Senator Mike Rounds
Senator John Thune
Representative Dusty Johnson
South Dakota Attorney General Marty Jackley
Pennington County Natural Resources Director Scott Guffey