



South Dakota Chapter-The Wildlife Society
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Black Hills National Forest
Hell Canyon, Ranger District
Todd Butler, District Ranger
1019 North 5th Street
Custer, SD 57730

Submitted on July 15, 2026 to:

<https://cara.fs2c.usda.gov/Public/CommentInput?project=283042>

Grizzly Prescribed Burn Proposed Categorical Exclusion Project

Dear Ranger Butler and Planning Team,

The South Dakota Chapter of The Wildlife Society (TWS) submits comments on the project listed above. The South Dakota Chapter-TWS is comprised of 104 members and is an affiliate of the parent organization, The Wildlife Society, which is a professional organization for wildlife and environmental biologists, managers, ecologists, biometricians, law enforcement, scientists, and others who advocate for wildlife and trust resources through science and sound management. The South Dakota Chapter's mission and objectives are consistent with The Wildlife Society's:

- To develop and promote sound stewardship of wildlife resources and of the environment upon which wildlife and humans depend,
- To undertake an active role in preventing human-induced environmental degradation,
- To increase awareness and appreciation of wildlife values, and
- To seek the highest standards in all activities of the wildlife profession.

Our chapter is suited for commenting and we have a Public Lands Committee comprised of former federal and former and current state wildlife biologists and habitat/land managers. We have commented on various Forest Service planning and project proposals throughout South Dakota since the dawn of Forest Planning in the early 1980's. Our Chapter members are also current or retired wildlife specialists in careers listed above. The SD Chapter values our federal public lands and interact by providing position statements on various trust resource issues, we lend scientific assistance to federal agencies, and we work to ensure the lands are best managed according to Land and Resource Management Plans and other applicable laws. Our members personally use federal lands by wildlife watching botanical viewing, photographing, recreating, boating, hunting, and fishing.

Many of our members visit or live within the Black Hills of South Dakota. We are well acquainted with the complex land ownership in the greater project area: Custer State Park, Mt. Rushmore National Memorial, Black Hills National Forest, Black Elk Wilderness, private lands,

adjacent communities, and of course, the Norbeck Wildlife Preserve, which we call The Norbeck from here on. And, in that corner of the greater Black Hills, the habitats vary from pine forests, to meadows, to granite peaks, to riparian areas, to spruce, hardwood, and shrub lands, just to mention a few. Managing this complex is more than a challenge, which we appreciate.

SDTWS supports the use of well-planned and conducted prescribed burns to improve wildlife and big game habitat and to help create more resilient ecosystems for both wildlife and people. However, as it relates to The Norbeck within the project area, we are concerned that the project is not being designed with the original Congressional intent of The Norbeck Organic Act of 1920 (and subsequent litigation and judicial decisions) clearly in focus and of primary consideration.

SDTWS is deeply concerned about FS not citing in the proposal two critical legal authorities that provide the basic framework for FS management of The Norbeck. The fact that the Grizzly Project proposal lacks reference to the legal authority and exact language of Norbeck Organic Act of 1920 implies that the true language and intent has been short-changed in the proposal. We acknowledge that perhaps the legal citations appear and are discussed in agency specialist reports which we have not seen. What could have been in the proposal to inform the public more fully and accurately is that The Norbeck Organic Act of 1920 reads “for the protection of game animals and birds and as a breeding place therefor.” (16 U.S.C. § 675). Why does this small omission of “breeding place therefor” matter? The term “breeding place” in the Act is referring to the conservation and management of breeding and rearing habitat for game animals and bird species. In 2001, the Tenth Circuit Court established that The Norbeck is not “managed primarily to provide habitat for game animals and birds” as stated in the project proposal. Rather, the Court ruled that The Norbeck will be managed first and foremost, without exception, for game animals and birds and as a breeding place therefor. There is no mention in this proposal of breeding habitat, including use of timing restrictions for management activities within these areas (see Forest Plan Management Area Direction 5.4A and 5.4A-3205 and Appendix E). The timing limitation guideline in the Norbeck EIS (7/89) for season of operations for vegetation treatment and other related activities such as road work is limited to August through November, when the management activities in these habitats require more than two weeks of continual work and/or involve more than three hundred acres. Also, the Circuit Court did not eliminate the Peter Norbeck Scenic Byway as an area not having to follow the Norbeck Organic Act requirements. All FS acres which include The Norbeck, excluding the Black Elk Wilderness, fall under the auspices of The Norbeck Organic Act.

The current project proposal also refers to two areas within The Norbeck: Management Area 5.4A which states “Managed primarily to provide habitat for game animals and birds, while allowing limited human use consistent with wildlife needs.” These words are likely directly quoted from the Forest Plan. Then, language cited for Management Area 4.2B, the Peter Norbeck Scenic Byway again likely cites the Forest Plan. However, had the FS done its due diligence in looking at legal authorities, it would have been realized that both Management Area themes were written before the Tenth Circuit Court rendered its 2001 opinion on how the FS is legally required to manage The Norbeck. This judicial opinion came about well after the current Forest Plan and is the authority until another court rules differently. This case involved litigation by the local Sierra Club and other groups that sued to stop 1990’s timber sales in The Norbeck because they felt that any vegetation alterations were contrary to the purpose of The Norbeck. They did not prevail. The Circuit Court’s decision was a surprising outcome because it stated that the FS clearly could conduct vegetation management BUT the planning, analysis, and implementation had to first satisfy the Norbeck Organic Act’s “game animals and birds and a breeding place therefor” mandate. This was a surprise to both Appellants and Defendants

because the decision did not stop management, but it did not completely rule for the FS, either. The Court ruled that the Norbeck Organic Act specifically supersedes the Forest Plan (or NFMA) and cannot be diminished by only administering the Forest Plan within The Norbeck. (See Sierra Club-Black Hills Group, American Wildlands, Inc., and Friends of the Bow vs. Forest Service and Tom L. Thompson. 2001. 259 F.3d 1281. Tenth Circuit Court of Appeals). In other words, the Grizzly Project must from start to finish, develop, plan, and propose considerations for “game animals and birds and a breeding place therefor” first. Then the FS can also integrate management actions for Forest Plan species (such as Management Indicator Species) if those actions do not cancel or negate needs of “game animals and birds and a breeding place therefor.” In fact, the Tenth Circuits decision applies to all planned activities in the Norbeck such as fuel reduction, prescribed fire, and removal of timber regardless of Management Area. This means that the project’s treatment locations within recreational areas and near seasonal recreational homes must meet the Norbeck Organic Act mandate (not including Black Elk Wilderness).

Sometime between 2005 and 2007, the FS produced a “Focus Species” white paper which enumerated game animals and birds as sideboards for future management of The Norbeck. SDTWS commented on that paper and some of our members attended field trips for the subsequent 2010 Norbeck Wildlife Project EIS. The focus species list identified sensitive wildlife species that best represented the effects of management activities on game animals and birds and their breeding and rearing habitats. The Norbeck Wildlife Project was appealed and litigated, and the FS prevailed all the way to the Eighth Circuit Court *because* it had closely collaborated with the state wildlife agency, had a list of representative Focus species, and planned everything around that list to satisfy the Norbeck Organic Act first. Then Forest Plan directives were dove-tailed in to strengthen meeting the Norbeck Organic Act. This was finally proof that the FS had armored itself against accusations of violating the Norbeck Organic Act, that the timber and fire prescriptions were not inconsistent with the Norbeck Organic Act, and that “game animals and birds and a breeding place therefor” were accounted for in the Focus Species document (See Friends of the Norbeck, Native Ecosystems Council vs. US Forest Service and Rick Cables, and State of SD and SD Department of Game, Fish, and Parks. 2011. 661 F.3d 969. Eighth Circuit Court of Appeals). SDTWS recommends that these focal species and their habitats also need to be considered in developing the design criteria for this project.

We predict that the FS is setting itself up for even more unnecessary controversy and possible appeals and litigation over its management of The Norbeck. Conflicts will lead to delays and even prohibit the ability to manage fuels. If redrafted in a new proposal and analysis with the Norbeck Organic Act and related judicial direction at the forefront, conflicts can be completely avoided and there should not be serious doubts over the agency’s final decision. We ask why would the FS risk conflict and delay? Our goal is to lend suggestions to avoid more controversy. With proper analysis and documentation, the FS can move forward with management for an area we all enjoy, value, and still meet the primary objective of the Norbeck Organic Act.

SDTWS recommends that the project proposal be re-written and retrofitted for the reasons we state above. The FS has the tools to easily reference The Norbeck Wildlife Project that survived appeal. Therefore, we assume that there would be no need to completely start over with the Grizzly Project analysis from the ground up. SDTWS wants the FS to succeed in addressing needed actions along the Mt. Rushmore boundary and within valuable recreational areas. By doing the analysis and justifications as we suggest, the FS may find that some proposed actions may need to be adjusted. The FS may find that there may be additional

treatments to address the concerns as well as to benefit game animals and birds and directed in the Norbeck Organic Act and the 2010 judicial opinion.

In summary, as it stands, the Grizzly Proposal completely bypasses the critical tools the FS already must meet both the Norbeck Organic Act and Forest Planning for fuels, fuel breaks, thinning around recreational homes, and prescribed fire. As such, we cannot support this project as proposed because:

- Bypassing existing legal authority is simply illegal. Legal authorities must be listed and followed.
- Secondly, if the proposed project is signed as it currently exists through a Decision Memo, it sends incorrect and possibly illegal messages to future project planners that The Norbeck is not a special congressionally designated area and that analysis shortcuts can be taken.
- Third, we request you seek advice on how you can use the species evaluations and so forth in The Norbeck Wildlife Project because the ROD and EIS are only 16 years old. It is our professional opinion that the twelve representative Focus Species and their habitat (food, water, shelter, and space) needs have not changed during this time. Therefore, the FS has done due diligence to perpetuate the species. The FS can use its timber stand evaluations and vegetation databases to evaluate existing habitats within the project area (which should have already been done for this project).
- Publics must be fully informed to make relevant comments.
- The deciding FS authority must have complete information, and the project shows that relevant information has not been fully disclosed.
- The project mentions Management Areas 4.2B and 5.4A which are both within The Norbeck but does not reference relevant directives for those Management Areas and how they will meet the Norbeck Organic Act through design criteria, etc.
- Lastly, "game animals and birds and their breeding place therefor" cannot be irretrievably harmed or negatively impacted in such a way that interrupts their breeding, thus impacting perpetuity on the landscape. As proposed, the Grizzly Project cannot say with certainty (a requirement in use of CE authority) that harm will not come and a deeper analysis via an Environmental Assessment may be warranted.

We do not believe that the FS intends to be neglectful of legal authority or to reinforce a misconception that the Forest Plan is the end all within the Norbeck Wildlife Preserve. We urge you not to do that. A new proposal is needed and re-scoped for the public to know that the FS is in fact following the Norbeck Organic Act and is acting with integrity by employing the Focus Species list and following Circuit Courts' decisions. By doing so, the FS can say with certainty that project's main objective will benefit the game animals and birds and their breeding habitats therefor and protect resources as desired within the project proposal. Win-win.

Thank you for the opportunity to provide our knowledge and experiences,

Yours in Conservation,



William Severud, President: The South Dakota Chapter of The Wildlife Society

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