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August 28, 2026

Wendy Schuyler, Project Manager
Black Hills National Forest, Supervisor's Office
1019 N 5th Street
Custer, SD 57730
Submitted via <https://cara.fs2c.usda.gov/Public/CommentInput?Project=291093>

Re: Scoping Comments — Bear Lodge Rare Earth Project / Bull Hill Mine, Bearlodge Ranger District, Black Hills National Forest (Project #291093; Notice of Intent, 91 Fed. Reg. 47803, July 29, 2026), and all connected, similar, and cumulative actions, including ore transport and processing at Upton, Wyoming

Dear Ms. Schuyler, Forest Supervisor, and Under Secretary Boren:

Prairie Hills Audubon Society (PHAS) is a nonprofit conservation organization incorporated in South Dakota, with members in western South Dakota and northeastern Wyoming who use and enjoy the Bearlodge Mountains of the Black Hills National Forest (BHNF) for birdwatching, nature study, photography, hiking, hunting, spiritual renewal, and other uses; PHAS's membership includes tribal members. PHAS has participated in BHNF planning and NEPA processes for decades, including as an appellant on the September 30, 1997 administrative appeal of the 1997 Forest Plan Revision (Appeal #97-13-00-0120), and PHAS submitted detailed scoping comments on this same project on April 30, 2014. Those 2014 comments are attached hereto in full as Attachment A and are incorporated herein; except where the project design has changed, every issue raised in them remains before the agency and must be addressed in the EIS. Per advice of counsel, PHAS attaches the documents it relies upon rather than citing internet addresses, so that they are physically part of the administrative record.

I. PROCESS: PHAS OBJECTS TO ELIMINATION OF THE DRAFT EIS AND OBJECTION PROCESS, AND EXPRESSLY PRESERVES ALL ISSUES ARISING FROM THE ANALYSIS THE PUBLIC HAS NOT BEEN PERMITTED TO SEE

The Notice of Intent states that the Forest Service will not publish a draft EIS for public comment and will not conduct an objection process, and that because the responsible official is the Under Secretary, project-level objection procedures under 36 CFR part 218 do not apply. PHAS understands that this reflects the Department's revised NEPA procedures at 7 CFR part 1b, adopted by interim final rule effective July 3, 2025, following rescission of the CEQ regulations. PHAS objects to the application of that approach to this project in the strongest terms, for the following reasons:

- The consequence is that this 30-day scoping period — conducted before the agency has disclosed its analysis, its alternatives, or the current Mine Plan of Operations in reviewable detail — is the only formal comment opportunity the public will ever receive on a roughly 22-year open-pit mine involving radioactive materials on National Forest System lands near Devils Tower National Monument;
- In 2014–2016 the Forest Service planned the normal sequence for this very project — scoping, a draft EIS with a 45-day comment period, a final EIS, a draft decision, and an objection period — and its completed 2016 Draft EIS was published January 15, 2016, then withdrawn only because the proponent suspended the project. The project has not become simpler; only the public's role has been reduced;

- The Department's procedures make additional comment opportunities discretionary, not forbidden. PHAS requests that the Forest Service exercise that discretion by publishing a draft EIS for public review and comment before any decision;
- The 2016 Draft EIS, its specialist reports, and the baseline data and administrative record from prior project #37875 must be posted immediately to the project #291093 web page. The Forest Environmental Coordinator has stated to PHAS (e-mail of Aug. 21, 2026, submitted with PHAS's transmittal) that the 2026 analysis is new and will not rely on the 2016 Draft EIS, and has declined PHAS's requests to post that document, the 2009 Sundance Exploration Project EA, or the NRC review documents for the Upton facility, or their URLs, on the project page. Discarding a completed EIS's data and analysis for this same deposit is itself a decision the EIS must explain; the agency cannot both disclaim its prior analysis and withhold it from the public that might use it. PHAS is therefore submitting these documents into the record itself;
- PHAS requests an extension of the comment period of at least 60 days and public open houses in Sundance and Upton, as the agency held in April 2014 and scheduled (then canceled) in January 2016;
- The FAST-41 permitting timetable (targeted completion by March 2028) coordinates schedules; by its own savings clause it does not diminish any obligation under NEPA or any other law, and it must not be used to truncate the hard look this project requires.

The governing procedures are themselves of doubtful validity and under active legal challenge. The Council on Environmental Quality rescinded the government-wide NEPA regulations by interim final rule, 90 Fed. Reg. 10,610 (Feb. 25, 2025), effective April 11, 2025, affirmed by final rule published January 8, 2026. USDA followed with an Interim Final Rule, 90 Fed. Reg. 29,632 (July 3, 2025), effective immediately, rescinding the Forest Service's NEPA regulations at 36 CFR part 220 and consolidating discretionary procedures at 7 CFR part 1b — eliminating the requirements to publish a draft EIS for public comment and to conduct public scoping on all proposed actions — and adopted the rule with minor changes as a final rule, 91 Fed. Reg. 17,062 (Apr. 3, 2026).

Those procedures are challenged in *Center for Biological Diversity and Sierra Club v. U.S. Department of Agriculture*, No. 3:26-cv-00866 (N.D. Cal., filed Jan. 28, 2026). PHAS adopts as its own position the allegations and arguments of the Complaint in that action, including that: (a) the rule was made immediately effective without advance notice and comment in violation of 5 U.S.C. § 553, and none of the claimed exceptions (procedural rule, interpretative rule, general statement of policy, or good cause) lawfully applies; (b) USDA provided no reasoned explanation for abandoning public-participation requirements in place, largely unchanged, since the 1970s, rendering the rule arbitrary and capricious under 5 U.S.C. § 706(2); (c) the elimination of public participation is contrary to NEPA's statutory mandates, 42 U.S.C. §§ 4331(a)–(b), 4332(2)(B); (d) it is inconsistent with Executive Order 11514 § 2(b), which remains in effect and requires the fullest practicable provision of timely public information and public hearings; and (e) Congress, including in the Fiscal Responsibility Act of 2023, has legislated on the settled premise that draft EISs are published for public comment.

A parallel challenge to the Department of the Interior's equivalent rule is pending as *Center for Biological Diversity and Sierra Club v. U.S. Department of the Interior*, No. 3:25-cv-10793 (N.D. Cal., filed Dec. 18, 2025). PHAS further notes the Forest Service has proposed to sharply curtail the part 218 objection procedures, 91 Fed. Reg. 5,387 (Feb. 6, 2026) — while this project has been structured, through designation of the Under Secretary as responsible official, to avoid objection procedures entirely. A copy of that Complaint is submitted with PHAS's attachments and incorporated herein. Should the procedures governing this review be vacated or revised in the pending litigation, PHAS requests that the Forest Service commit to circulating a draft EIS for this project for public comment.

Preservation of issues. PHAS is aware that under 42 U.S.C. § 4370m-6, judicial review of authorizations for this covered project may be limited to issues raised in sufficiently detailed comments, unless the agency did not provide a reasonable opportunity to comment on an issue. Because the Forest Service will

publish no draft EIS, the public has been afforded no opportunity to comment on the agency's analysis, its alternatives, its effects disclosures, or the detailed content of the Mine Plan of Operations. PHAS objects now, on the record, to any future contention that issues arising from analysis or project details not made available for public comment were waived. No such opportunity has been provided, and PHAS expressly preserves all such issues.

II. SCOPE: THE UPTON PROCESSING PLANT AND TAILINGS FACILITY, THE SECTION 16 WASTE-DISPOSAL INHOLDING, THE HAUL ROUTE, THE TRANSMISSION LINE, AND THE MULTI-DECADE EXPLORATION PROGRAM MUST BE ANALYZED AS PART OF THE WHOLE PROJECT

The agency's own 2014 Notice of Intent for this project expressly identified the hydrometallurgical processing plant and tailings storage facility at Upton — 45 miles from the mine on private land in Weston County — as a connected action to be analyzed in the EIS. The 2016 Draft EIS itself expressly designated the Upton Hydromet Plant a connected action and analyzed it as part of the project. The 2026 NOI now describes the project as the mine and NFS-land infrastructure only, with processing occurring on private land. The ore has not stopped going to Upton; only the agency's stated willingness to analyze Upton has stopped. The mine has no purpose without processing and the plant no feedstock without the mine. PHAS recognizes that courts afford agencies deference in setting the scope of their analyses, but a reversal of the agency's own prior connected-action determination for the identical project, without explanation, is the definition of arbitrary decision-making. NEPA itself, 42 U.S.C. § 4332(2)(C), requires analysis of the whole of the action; dividing one project into pieces to shrink its apparent impacts conceals rather than discloses.

Ownership boundaries within and around the project reinforce, rather than excuse, this obligation:

- At the mine, waste facilities are proposed on the former State of Wyoming school section (Section 16) acquired by the proponent through a land exchange — an inholding surrounded by and draining to NFS lands. The EIS must analyze all facilities on this inholding as part of the project regardless of surface ownership, and must disclose the history and terms of the exchange that placed the waste facility outside direct federal surface jurisdiction;
- At Upton, the proponent's own Plan of Operations Map A-1 (Feb. 27, 2014, attached as Attachment B) shows the permit boundary and tailings storage facility footprint directly adjoining National Grassland (USFS) sections of the Thunder Basin National Grassland on multiple sides. Waste from this project would sit fence-line to Forest Service system lands. The Medicine Bow-Routt National Forest / Thunder Basin National Grassland should be a cooperating agency, along with the Nuclear Regulatory Commission, Weston and Crook Counties, the City of Upton, the National Park Service (Devils Tower National Monument), and the Department of Defense (as custodian of Warren Peak radiological data, see Section IV);
- The Upton facility lies in the vicinity of the divide between the Belle Fourche River drainage and the Cheyenne River drainage. A facility near a divide can contaminate two river systems. The EIS must map precisely which drainages receive runoff, seepage, and windblown dust from the tailings facility, ponds, plant, and borrow areas, and analyze both basins accordingly (see Sections III and IV);
- The EIS must also analyze as part of the project: physical processing and all dust, water, and waste streams at the mine site; chemical processing at Upton, including the existing federally funded demonstration plant and any commercial-scale plant, its emissions, effluent, and tailings, and the radiological character of its waste streams; final disposition of all radioactive and thorium-bearing wastes and the agency with authority over each waste stream; the 40-plus-mile ore haul route (an estimated 13–17 round trips of ore semi-trucks per day in the 2014 project description, not counting worker and supply traffic); the transmission line, water pipeline, and dewatering infrastructure; and the continuing multi-decade exploration program, for which PHAS renews its 2014 request for periodic supplemental NEPA review.

If processing at Upton is excluded from this EIS, the Forest Service must disclose what NEPA analysis, by what agency, will ever examine it — or acknowledge that none will. The NRC authorized only the Upton demonstration plant, by Environmental Assessment and Finding of No Significant Impact (July 2023, Docket No. 040-38415, Source Material License SUA-1603), with consultation limited to the Wyoming Department of Environmental Quality and no public comment opportunity; no NRC license application for a commercial-scale plant is pending. No comprehensive NEPA analysis of commercial-scale processing of this mine's ore exists or is planned by any agency.

The agency's record on exploration transparency at this site is poor. Exploration north of Sundance by Newmont, Paso Rico, and Rare Element Resources preceded this mine proposal. In the 2009 Sundance Exploration Project EA process, exploration locations within the large project area — which included rare montane grasslands and a semi-primitive non-motorized area — were withheld from the public; PHAS's September 21, 2009 FOIA requests for the work plans, location maps, prior exploration NEPA records, and reclamation compliance reports were partially denied by the Regional Forester on November 6, 2009 under FOIA Exemptions 4 and (b)(9), and PHAS's 2009 administrative appeal of the EA decision was denied. The 2014 Plan of Operations proposed decades of continuing exploration governed by annual work plans likewise withheld from the public. The EIS must disclose the locations, footprints, and impacts of past exploration — including the roads bladed through montane grasslands — and of all reasonably foreseeable future exploration. Mineral confidentiality may protect assay results; it does not excuse concealing where ground disturbance will occur on public land. If the agency again withholds exploration locations, the public will have been given no opportunity to comment on those impacts, and no waiver of those issues can be asserted.

III. WATER RESOURCES

The NOI identifies hydrologic effects on stream channel morphology, in-stream flows, water quality standards, and beneficial uses as significant issues. The EIS must fully analyze and disclose:

- Beaver Creek headwaters. As previously designed, the waste rock facility would bury Allread Spring and Davis Spring and multiple upper tributaries of Beaver Creek, replacing natural headwater channels with rip-rap diversion ditches. The EIS must disclose the fate of these springs and channels under the current mine plan, quantify lost flows, and analyze alternatives that avoid burying headwater springs. Reclamation must restore natural-appearing, functioning stream channels — meandering, vegetated, with riparian soils and plantings — not permanent industrial rip-rap drains. The EIS must also disclose any beaver dams, beaver-occupied reaches, or potential beaver dam sites on Beaver Creek and other project-area streams that could be affected by burial, dewatering, or flow loss, and analyze impacts to beaver and the wetland complexes their dams sustain;
- Whitelaw Creek. The Forest Service has invested effort in rehabilitating Whitelaw Creek, just north of the Bull Hill mine site. The EIS must disclose impacts to Whitelaw Creek and to the fish and wildlife that use it — including flow depletion from pit dewatering, sedimentation, and dust deposition — and must protect the public's restoration investment in that stream;
- Pit dewatering and the pit lake. The pit will intersect groundwater and, after closure, fill with water expected to violate water quality standards. The 2016 Draft EIS disclosed predicted pit-lake exceedances of water quality standards, including for radium. The EIS must analyze pit-lake chemistry over time; hazards to migratory birds landing on a toxic lake, and to bats, wildlife, and livestock; partial or complete backfill alternatives; pit geometry alternatives that reduce lake toxicity; wildlife escape provisions if any pit lake is permitted, such as a circular descending roadway or ramped shoreline segments allowing animals that enter or fall into the pit to climb out; and a perpetual water-treatment bond funded so that interest alone pays for treatment in perpetuity;
- Drawdown and downstream depletion from dewatering and supply wells: effects on aquifers, springs, seeps, wetlands, stock ponds, and downstream users of Beaver Creek and the Belle Fourche River in Wyoming and South Dakota, and the seniority of water rights involved;

- Both receiving basins at Upton. Consistent with Section II, the EIS must characterize surface and groundwater pathways from the Upton facility toward both the Belle Fourche and Cheyenne River systems, including flow that crosses Thunder Basin National Grassland lands, and must analyze contamination scenarios (pond overtopping, liner failure, seepage, transport spills) for each pathway;
- Baseline adequacy. PHAS documented in 2014 that the Plan of Operations lacked baseline data on rare earth element and radionuclide concentrations in air, soil, surface water, and groundwater. The EIS must disclose all baseline monitoring (parameters, station locations, methods, years of record) at both sites, include speciation testing, and have monitoring locations reviewed by an independent hydrologist;
- Regulatory gaps. Wyoming lacks numeric standards for many rare earth elements and for thorium in surface and ground water. Where standards are absent, the Forest Service must impose its own protective requirements rather than promising compliance with standards that do not exist.

IV. RADIOACTIVE MATERIALS AND PUBLIC HEALTH

The NOI acknowledges the issue of exposure to radioactive or hazardous elements by breathing dust, eating meat, or drinking contaminated water. The Bear Lodge deposit is thorium-bearing, and the district's natural background radioactivity is elevated. PHAS understands from its communications with Timothy Pavék, environmental staff at Ellsworth Air Force Base, in connection with the former Warren Peak reactor discussed below, that natural background radiation in this area is substantially elevated — on the order of ten times typical background levels. PHAS holds the Air Force's monitoring history for the Warren Peak site, provided circa 2011, in hard copy and on disc, and can make it available to the agency on request; the Forest Service should also obtain this monitoring record directly from the Air Force. Elevated natural background is not a reason to dismiss project emissions; it means area residents, workers, livestock, and wildlife already carry an above-normal radiological load, onto which the project would add exposure from blasting, crushing, hauling, and storing thorium-bearing rock. The EIS must:

- Establish a rigorous pre-mining radiological baseline (air, soil, water, vegetation, and tissue of game animals and livestock) with fully disclosed methods, and expressly separate three components: natural background from the mineralized district; any legacy contribution from the former Warren Peak reactor; and future mine-caused increases. Without that separation, project contamination could hide behind natural background;
- Analyze radiological doses to workers, recreationists, residents, downwind and downstream communities, livestock, and wildlife from crushing and physical upgrading at the mine, wind-blown dust from waste rock, stockpiles, and haul roads, gamma exposure, and the processing plant and tailings at Upton — in both receiving basins. The Cheyenne River basin already bears radiological legacies and pressures, including historic uranium mining in the southern Black Hills and proposed in-situ uranium recovery on Cheyenne drainages; the EIS must analyze cumulative radiological loading on each basin, not the project in isolation;
- Disclose the area's radiological history as part of the baseline, including the small nuclear reactor that powered the Sundance Air Force Station on Warren Peak immediately south of Bull Hill in the 1960s, its reported leakage (which PHAS understands was minor and localized), its removal, and all Air Force survey and monitoring data for the site. The reactor site is documented in the 2009 Newmont Sundance Exploration Project EA, submitted into the record with PHAS's transmittal. The Department of Defense should be consulted and its Warren Peak radiological records obtained and disclosed;
- Disclose the many historic exploration pits and prospects across the district, their origin, and associated radiological or safety hazards, including any use of such workings by bats (see Section VI);

- Identify every agency with regulatory authority over each radioactive waste stream from mine through processing to final disposal — and every gap where no agency has authority.

V. AIR QUALITY AND HAUL-ROUTE DUST

Because chemical processing occurs at Upton, the mine site's principal emissions will be mechanical: blasting, crushing, screening, loading, and truck traffic — dust, including thorium-bearing dust. Area residents are already concerned about dust raised by trucks on Forest Service dirt roads. The EIS must analyze particulate emissions (TSP, PM10, PM2.5) and their radiological component at the pit, the physical upgrade plant, the waste facilities, stockpiles, and along the entire haul route; dust deposition on adjacent lands, gardens, stock ponds, hay meadows, and grazing allotments along the route; dust suppression measures and surfacing requirements for the full route, and the fate of dust-suppression chemicals in soil and water; responsibility and funding for road maintenance; blasting emissions and noise; and impacts on air quality related values and visibility at Devils Tower National Monument and other sensitive receptors. Sound studies should be conducted at Devils Tower and Inyan Kara.

VI. WILDLIFE, WITH PARTICULAR ATTENTION TO BATS

The Forest Plan framework to which this EIS would tier has an adjudicated history of inadequacy on species viability. On PHAS's appeal of the 1997 Forest Plan Revision (Appeal #97-13-00-0120, decided with #97-13-00-0085 and #97-13-00-0125 by Reviewing Officer James R. Furnish for the Chief, Oct. 12, 1999), the Chief's office remanded the Plan on species-viability grounds concerning sensitive species and Management Indicator Species, compelling the Phase I and Phase II Plan amendments. The EIS therefore cannot simply recite Plan compliance for wildlife; it must conduct current, project-specific analysis. The legal landscape has also changed fundamentally since 2016: the northern long-eared bat, merely proposed for listing when PHAS commented in 2014, is now listed as endangered, and the tricolored bat has been proposed for listing. The EIS and required Section 7 consultation must:

- Present current surveys of bat species, populations, roosts, and hibernacula in the Bearlodge Mountains — not decade-old data. In 2014 no winter hibernacula had been located in the Bearlodge; the agency must determine whether they exist, including bat use of historic adits and prospect pits, before destroying habitat;
- Analyze impacts of forest clearing, blasting, noise, lighting, and dust on the northern long-eared bat and tricolored bat, and adopt seasonal restrictions and protective design features;
- Require decontamination protocols so equipment and personnel from other mines and cave regions do not introduce white-nose syndrome or other pathogens;
- Consider, as a reclamation design feature and mitigation alternative, purposeful construction of secure, climate-controlled artificial bat hibernacula during the mine's earthmoving and at closure, as PHAS proposed in 2014. Engineered hibernacula can be gated against disturbance and — unlike natural caves — designed for temperature and humidity management and systematic white-nose syndrome monitoring and research. A rare earth mine that leaves behind functioning, monitored bat habitat would be a genuine conservation legacy;
- Fully analyze impacts to the other at-risk and sensitive species raised in PHAS's 2014 comments, including American dipper, black-backed woodpecker (and its burned and beetle-killed habitat, old growth, and large snags), Black Hills mountain snail, raptors, and migratory birds protected by the Migratory Bird Treaty Act — including birds at risk from the pit lake — and greater sage-grouse in the Upton area. The greater sage-grouse remains unlisted under the ESA not because of biological security but because congressional appropriations riders have barred the U.S. Fish and Wildlife Service from listing it; the EIS must analyze impacts to sage-grouse on their biological merits.

VII. MONTANE GRASSLANDS, RARE PLANT COMMUNITIES, AND SEMI-PRIMITIVE NON-MOTORIZED AREAS — INCLUDING REPAIR OF PAST EXPLORATION DAMAGE

The Black Hills montane grasslands are a rare plant community of limited extent, and multiple occurrences lie south of Bull Hill within the area affected by past exploration. During the earlier large exploration program, roads were bladed through several montane grasslands, scarifying soils and introducing invasive weeds along the road templates. PHAS asked in 2014 what recovery had occurred and whether the community can be repaired; the question was never answered because the process was suspended. The EIS must now: map all montane grassland occurrences in the project and exploration area; disclose the condition of every grassland crossed by exploration roads, including weed infestations; and require the proponent, as a condition of any approval, to restore previously damaged grasslands using appropriate local native seed and to fund long-term weed control and monitoring. New disturbance of montane grasslands should be prohibited in at least one action alternative. The same obligations apply to semi-primitive non-motorized (SPNM) areas affected by past exploration: the EIS must disclose the condition of any SPNM areas degraded by exploration roads, motorized intrusion, or weed introduction, and require repair and restoration of their non-motorized character as a condition of approval, with new degradation of SPNM areas prohibited in at least one alternative.

VIII. SCENERY: PHAS OBJECTS TO A FOREST PLAN AMENDMENT EXEMPTING THE PROJECT FROM SCENIC INTEGRITY STANDARDS

The NOI announces a project-specific Forest Plan amendment expected to exempt the project from the Plan's scenic integrity standards and guidelines. PHAS has contested the adequacy of the Plan's scenery framework since its adoption: PHAS authored the scenery section of the nine-party September 30, 1997 appeal of the Forest Plan Revision (Appeal #97-13-00-0120, appellants including the Standing Rock Sioux Tribe, Oglala Sioux Tribe, Sierra Club, The Wilderness Society, and others). Rather than applying even that framework, the agency now proposes to amend it away for a roughly 22-year industrial operation — through a process with no draft EIS and no administrative review of the amendment. The EIS must analyze visual impacts honestly against the existing standards: photo-realistic simulations of the pit, waste facilities (including those on the Section 16 inholding), plant, roads, and transmission line from key observation points — expressly including Devils Tower National Monument (Mato Tipila), Warren Peak lookout, Inyan Kara, and travel corridors — in foreground, middleground, and background, in daytime and at night (industrial lighting and sky-glow over a 22-year life, and effects on the night sky at Devils Tower), and after reclamation. Whether the mine's disturbance is visible from Devils Tower is a question the public has asked since 2014, and the agency's own prior analysis answered it in part: the 2016 Draft EIS disclosed nighttime visibility of the waste rock facility from Devils Tower National Monument, approximately 13 miles distant. The new EIS must update and disclose that analysis with formal viewshed and night-sky studies from the Monument, not assumption. The EIS should also disclose which key observation points the 2016 Draft EIS used, and whether Devils Tower was among them.

IX. TRIBAL, CULTURAL, AND HISTORIC RESOURCES

The Bearlodge Mountains lie within lands of profound cultural and spiritual importance to the Lakota and many other Tribal Nations, near Mato Tipila (Devils Tower) and Inyan Kara, and within the 1868 Fort Laramie Treaty lands whose disposition remains contested. The NOI itself identifies impacts to cultural sites important to Tribal Nations as an issue. The EIS must document government-to-government consultation with all affiliated Tribes; complete Class III cultural resource inventories of all areas of disturbance before alternatives are finalized, not after; analyze impacts to traditional cultural properties, sacred sites, and treaty interests; and address environmental justice. NHPA Section 106 compliance must be completed, not merely promised, before any decision.

X. RECLAMATION, BONDING, AND THE END OF THE MINE

The EIS must analyze reclamation as an enforceable design, not an aspiration: return of NFS lands to approximate original contours where feasible; replanting with trees and shrubs, not seed alone; restoration of buried or diverted stream channels to natural form and function; salvage and reuse of soil resources; and the artificial bat hibernacula described above. Bonding must be sized for actual third-party reclamation costs, including perpetual water treatment if a polluted pit lake is permitted, and must be reviewed periodically; the 2016 Draft EIS estimated closure costs for more protective alternatives in the

range of roughly \$106 million to \$426 million, and financial assurance must be commensurate with figures of that magnitude. The EIS must also analyze the realistic scenario PHAS raised in 2014 — intermittent operation, market collapse, or premature abandonment by a thinly capitalized proponent — a scenario this very project has already demonstrated once, when the proponent suspended it in 2016 for lack of funds. Interim reclamation obligations and financial assurance must protect the public if history repeats.

XI. SOCIOECONOMICS AND FISCAL IMPACTS

The EIS should disclose, alongside claimed jobs and investment: costs outsourced to taxpayers and ratepayers (road maintenance, emergency services, health care, agency permitting and monitoring costs and how they are reimbursed); effects on community character, housing, and schools in Sundance, Upton, and Crook and Weston Counties; the proportion of jobs going to local residents; the value of federal minerals extracted under the 1872 Mining Law without royalty to the Treasury; corporate ownership and control of the proponent — including its majority shareholder, General Atomics — and where profits flow; and whether products of the Upton plant will require further processing overseas, which bears directly on any claimed national-security purpose and need.

XII. ALTERNATIVES

A meaningful range of alternatives is the heart of the EIS — all the more so when the public will see no draft. The purpose and need must not be written so narrowly that only the proponent's plan can satisfy it. In addition to no action, the EIS must analyze in detail at least: (1) an environmentally protective alternative with a smaller footprint that avoids the Beaver Creek headwater springs and all montane grasslands, prohibits a polluted pit lake (through backfill or pit design), and imposes protective standards where State regulation is absent; (2) an alternative with enhanced monitoring, larger stormwater and containment structures, stronger bonding, and periodic supplemental NEPA review of the exploration program; and (3) reclamation-forward variations including the bat hibernacula. Design features developed through the NEPA analysis must be enforceable conditions of approval.

CONCLUSION

PHAS does not question the statutory rights conferred by the 1872 Mining Law, but the Forest Service's own regulations (36 CFR 228.8) require that operations minimize adverse impacts on surface resources, and NEPA requires an honest, complete, and public analysis before an irreversible commitment of this scale. The public was promised a draft EIS in 2016 and never received the chance to comment on it; it should not now be denied both the draft and the objection process. Please add PHAS to the mailing list for all notices and documents in this proceeding, post the complete 2016 record to the project web page, extend the comment period, and prepare the thorough EIS this project has always required.

Sincerely,



Nancy Hilding, President
Prairie Hills Audubon Society

Attachments and record documents (submitted with PHAS's transmittal letter and accompanying submissions of this date; each submitted in full and incorporated herein):

- E-mail of the Forest Environmental Coordinator to PHAS, August 21, 2026 (declining to post the 2016 Draft EIS, the Newmont EA, and the NRC documents on the project web page);

- PHAS Scoping Comments on the Bear Lodge Project, April 30, 2014;
- Rare Element Resources, Plan of Operations Map A-1, Upton Hydromet Facility (Feb. 27, 2014), and an area map showing Bull Hill, the Bearlodge Mountains, and Devils Tower National Monument;
- The 2016 Bear Lodge Project Draft Environmental Impact Statement, U.S. Forest Service, Black Hills National Forest (Project #37875);
- Newmont Mining Corporation Sundance Exploration Project Environmental Assessment (Feb. 2009);
- Rare Element Resources, Rare Earth Element Separation and Processing Demonstration Project Environmental Report (April 2022), submitted to the U.S. Nuclear Regulatory Commission in support of its source material license application for the Upton facility, and related NRC environmental review documents;
- Complaint for Declaratory and Injunctive Relief, Center for Biological Diversity and Sierra Club v. U.S. Department of Agriculture, No. 3:26-cv-00866 (N.D. Cal., filed Jan. 28, 2026).

Available on request from PHAS (retained in hard copy): the scenery section of Appeal #97-13-00-0120 of the 1997 BHNH Forest Plan Revision (filed Sept. 30, 1997; complete 338-page appeal retained by PHAS in hard copy), which PHAS will scan and provide as a subset of the appeal, provided on request if the agency cannot locate the appeal in its own records; and the Air Force radiological monitoring history for the Warren Peak site, which PHAS holds on CD and in hard copy and will provide as a copy of the CD on request — the agency should also obtain this record directly from the Air Force.