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First name: Suzanne Iudicello

Last name: Martley

Organization: Black Hills Group Sierra Club

Title: Executive Comm&#39;ee Member

Comments: The Black Hills Group Sierra Club provided its comments and criticism of the Draft Environmental Assessment in October 2021. We object to the pre-decisional Finding of No Significant Impact of the F3 Gold Jenny Gulch exploration project in the Environmental Assessment.

Our objections are based on issues we raised in comments, and information that has been published since the comment deadline. Our references are to U.S. Government documents and publications, any additional sources have been uploaded.

1. Circumstances have changed since the F3 application for an exploration permit in 2018, most importantly the effects of climate on the forest, on water, and the public resources that require healthy forests and sufficient quantity and quality of water.

1a) Western South Dakota is in a drought. Drought conditions have expanded across South Dakota, with 72% of the state in Moderate Drought, 42% in Severe Drought and 11% in Extreme Drought.

<https://www.weather.gov/abr/DroughtWorseningAcrossSouthDakota> (last accessed Aug. 22, 2022)

1b) Rapid City draws water from Pactola Reservoir, which is filled by Rapid Creek, during the summer. Although the city relies on aquifers at other times of the year, Rapid Creek is the surface water source for those aquifers. (EA at Section 3.7)

1c) The policies and measures within the Forest Plan, upon which parts of the environmental assessment were based, are 16 years out of date. Revision of that document is already under way. [86 Fed. Reg. 57408-57409 (Oct. 15, 2021)]; <https://www.fs.usda.gov/detail/blackhills/landmanagement/planning/?cid=FSEPRD955187> (last accessed Aug. 22, 2022)

1d) Water, aquatic resources, hydrology, and climate effects are major topics under consideration in the Plan review. (Black Hills National Forest [BHNF]} Webinar with Sierra Club July 28, 2022, Forest Plan Revision Draft Assessments)

1e) Identification of potential wilderness areas, possible areas to be developed for recreation, and nominations of other management measures that might be nominated during this process. Exploration drilling could preclude opportunities for these nominations if the presence of gold is found.

1f) The full NEPA process will occur for the plan revision, beginning in early 2023. The Sierra Club objects to locking in a permit when regulatory, policy, and planning may undergo change in response to changing conditions on the forest.

2. The preparation of the Draft EA relied on regulations that were promulgated by the prior administration and that are being repealed and revised. Phase 1 was published before the release of the preliminary decision. [87 Fed. Reg. 23453 (April 20, 2022)]

2a) The Biden Administration issued an executive order in 2021 requesting agencies to review their NEPA procedures and regulations. A CEQ review resulted in efforts to ensure that the NEPA process "enables meaningful public participation, advances environmental justice, respects Tribal sovereignty, protects our Nation's resources, and promotes better environmental and community outcomes." [87 Fed. Reg. 23453 (April 20, 2022)]

2b) The first general revisions to CEQ regulations were published in the Federal Register on April 20, 2022, prior to issuance of the F3 Gold Jenny Gulch permit decision.

3. Among criticisms of how the Trump NEPA rules had been interpreted was one that is related to the Jenny Gulch preliminary decision. In rolling back the 2018 change the Phase 1 rulemaking noted it appeared to restrict agency discretion to meet its own statutory authority and other factors, while focusing mainly on what the applicant's goals were. A revision was made to correct the implication "that an agency's authority is only relevant when the proposed action is for an authorization, such as a permit or license, is incorrect because an agency's statutory authority for its action is always a relevant consideration for developing a purpose and need statement irrespective of whether the proposed action is an authorization." [87 Fed. Reg. 23457 (April 20, 2022)] The preliminary decision relies heavily on the interpretation that the Forest Service must consider only the applicant's

rights under the 1872 Mining Act, and that all other considerations are irrelevant. "Finally, the goals of the applicant are an important, but not determinative, factor in developing a purpose and need statement. . .including helping to identify reasonable alternatives." [87 Fed. Reg. 23458 (April 20, 2022)]

3a) The choice to produce only an EA Preliminary Decision on this project runs afoul of NEPA's most important requirement: alternatives. Hundreds of commenters asked for a full DEIS that would examine the direct, indirect, and cumulative impacts that are reasonably foreseeable. [Draft EA Comments and Responses, Appendix I (July 2022)] Instead they were presented with the permit applicant's goals, a "No Action" alternative, and at the end, a negotiated third alternative that met more of the applicant's goals, a few Forest Plan goals, and fewer of the resource users' and public's goals. [Draft Decision Notice, pp. 5-14, (July 2022)]

4. There was insufficient tribal consultation and engagement of tribal officials at every stage: scoping, commenting, consultation. This shortcoming was pointed out numerous times throughout the process. More recently the Great Plains Tribal Chairman's Association pointed out to the Secretary of Agriculture that consultation is not enough. The approval of a permit on the BHNF requires consent, according to their July 15, 2022 letter (file uploaded): "You have failed to obtain our consent in violation of Articles 2 and 16 of the 1868 Fort Laramie Treaty." The Black Hills Group Sierra Club supports the Chairman Frasier's challenge to this permit, in keeping with national Sierra Club policy on acknowledgement and return of indigenous lands. We respectfully defer to the expertise and agency of the tribal governments to be the primary voice on this issue.

Thank you for the opportunity to comment. We look forward to a fuller, more forward-looking approach to gold exploration in the Rapid Creek Watershed, rather than the 19th Century view of public resources.