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First name: Hunter
Last name: Roberts
Organization: SD Department of Agriculture and Natural Resources
Title: Secretary
Comments: Dear Mr. Cochran:

Thank you for the opportunity to comment on the above referenced Environmental Assessment (EA) and Draft Finding of No Significant Impact. DANR continues to support the position that implementation of the proposed mineral exclusion would unduly hinder or preclude beneficial use of public lands, limit or prevent responsible development of domestic mineral supplies, and interfere with the state's right to regulate and appropriate water, without providing significant environmental protection or improvement. Please find our specific comments below.

Comments on the Finding of No Significant Impact:

The Pactola Reservoir-Rapid Creek Watershed Withdrawal EA is fundamentally biased. When considering potential socioeconomic impacts related to mineral withdrawal, USDA's "reasonably foreseeable scenario" for mineral development is very small: one USFS Plan of Operation for small scale exploration drilling, and one USFS Plan of Operation for a small scale gold or silver mine (Chapter 3, p. 30). USDA assumes that since there will be such a limited scope of mineral development , precluding such development would have a very limited economic impact. However, when considering potential water quality impacts, USDA works under the assumption that mineral development will occur on a much broader scale, creating vast potential for negative impacts. If USDA's "reasonably foreseeable scenario" is used to predict socioeconomic impacts, it should also be used to predict the potential scale of water quality impacts.

Even if extensive mineral exploration and development occur throughout the EA subject lands, the Rapid City municipal water supply, the Ellsworth Air Force Base water supply, and all of South Dakota's surface and groundwater resources would be carefully and adequately protected from potential impacts. This is because South Dakota's mining and environmental laws ensure mines are operated in a manner protective of South Dakota's valuable surface and groundwater resources. Mineral exploration and mining can be conducted in the proposed mineral exclusion area with no significant threat of impacts to local municipal water supplies. The exaggerated findings of potential negative water quality impacts outlined in the draft EA reflect the USDA's predisposition to favor one beneficial land use (recreation) at the expense of another beneficial land use (mineral development).

The proposed mineral exclusion does significantly impact the future economic health of the mineral development industry in South Dakota. Therefore, a finding of no significant impact is inappropriate - the USDA should perform a full Environmental Impact Statement (EIS) to adequately address the potential future economic impacts of the proposed mineral withdrawal. When performing the EIS, the USDA should work with the state of South Dakota to develop a better "reasonably foreseeable scenario" for both economic impacts and potential water quality impacts.

The Draft Mineral Potential Report for the Requested Pactola Reservoir-Rapid Creek Watershed Withdrawal is entirely inadequate and does not constitute a reasonable assessment of potential minerals development. The report states, "This investigation is based on detailed examination of peer-reviewed literature, records, and reports concerning the geology, mineral deposits, and historic minerals activity in the subject area." This statement it false. The USFS report catalogs several geological, geophysical, and geochemical factors that the USFS categorizes as "unknown"; yet there is extensive peer-reviewed literature and numerous published geologic reports outlining most or all the geologic information neglected by the USFS authors. The USFS needs to work with the state of South Dakota to develop a realistic, carefully researched Mineral Potential Report.

Comments on Proposed Withdrawal from Water Appropriation:

The Forest Service requested 20,574 acres of NFS lands be withdrawn from all forms of entry, appropriation, and disposal under the public land laws, mining laws, and mineral and geothermal leasing laws, subject to valid existing rights.

The "appropriation" of water to place to beneficial use, such as mining and geothermal uses included in the description, falls under the authority of the State of South Dakota, and is administered by the Department of Agriculture and Natural Resources. To the extent withdrawal of the Rapid Creek Watershed is intended to preclude any application to appropriate water within the watershed area, the State of South Dakota objects and will not recognize any withdrawal of the watershed which purports to prohibit the appropriate of water.

Appropriate of water is within the State's jurisdiction based on state law and as recognized in the McCarran Amendment which is referenced by the USDA, Forest Service in the "Report of the Federal Water Rights Task Force Created Pursuant to Section 389(D)(3) of P.L. 104-127".

State law pertaining to the state's authority regarding appropriation of water is, in part, as follows:

46-1-3. Water as property of the people - Appropriation of right to use. It is hereby declared that all water within the state is the property of the people of the state, but the right to the use of water may be acquired by appropriation as provided by law.

46-5-10. Appropriation of water - Application for permit required. Any person intending to acquire a right to beneficial use of water shall, before starting construction or placement of works for that purpose or before taking the water from any constructed works, make an application to the Water Management Board for a permit to appropriate water, in the form required by rules promulgated pursuant to chapter 1-26 by the board.

The State recognizes that appropriation of water within the watershed, whether closed or not, does not provide access to federal lands without authorization by the pertinent federal agency.

Thank you for the opportunity to provide comments.

Sincerely,

Hunter Roberts
Secretary