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March 20, 2023

Frank Baum
Regional Forester
USFS Rocky Mountain Region
1617 Cole Blvd. Bldg. 17
Lakewood, CO 80401

RE: Hell Canyon Ranger District
F3 Gold Newark POP

Dear Mr. Baum:

I have been informed that I should provide to you my comments that have been filed with the Hell Canyon Ranger District in respect to the above-referenced matter. A hard copy is enclosed for your reference. It is my understanding that you will be involved in the administrative process of reviewing the application by F3 Gold and providing additional participation on behalf of the Forest Service. For that reason, I wanted to share some additional further comments with you and will also file them before the April 10 extended deadline for public comments if you think that is appropriate.

PROCEDURAL CONCERNS

This matter came to my attention on February 11, when I received the letter from District Ranger Rob Holescher. I then met with him in advance of the February 16 meeting.

The February 16 meeting was on short notice with many affected local and regional businesses and individuals uninformed and unaware of the pending application. It was my understanding, both in meeting with the District Ranger and the February 16 meeting, that the Forest Service, and the applicant, F3 Gold, would be in attendance and provide information in respect to facts and circumstances bearing on the application. Unfortunately, because of the overwhelming numbers of people in attendance at the February 16 meeting, it was simply impossible for the District Ranger to provide and share information with the general public that would inform the public and allow them to thereafter provide their comments.

District Ranger Hoelscher assured those in attendance on February 16 that there would be an extension of time for public comment, but he also assured us that there would be additional further meetings, I presume contemporaneous with the public comment period, so that we could learn from the Forest Service what considerations are important in a proper determination of how this application should be processed.

When I submitted my comments on March 8 to District Ranger Hoelscher, I asked him when the next meeting would be and whether or not the BLM and F3 Gold would be in attendance so that we could learn the major extent of the impact that this application, if granted, would have on the Black Hills National Forest and the community at large. He indicated no meeting had been set. The reason for this comment on procedural concerns is again, it looks like the cart has gotten before the horse and I and others affected have no ability to learn from the U.S. Forest Service, F3 Gold, or the BLM the process that F3 seeks to undertake. I would encourage you, if it is within your power, to change this circumstance so the public can be informed before a deadline for public comments expires. From my review of the applicable CFRs, that seems to be the way in which things should be proceeding, but we have no indication that is going to occur.

The comments that I have filed and that are enclosed speak to a number of different issues that are ~~pertinent to how this matter should move forward~~. In addition, perhaps I can highlight for you what I believe to be the three ~~extremely critical~~ circumstances that need attention ~~before any exploratory drilling is allowed to proceed in the Black Hills National Forest~~.

The three issues are:

- Drinking water;
- Tribal requests being respected; and
- The negative long-term impacts of exploratory drilling on the environment and the cumulative effect upon the tourist industry and the economy of all of South Dakota

The ~~administrative framework under which you historically have looked at these matters~~ do not include what I consider to be the essential endpoint that has to be achieved. A moratorium on exploratory drilling, whether it be in the Mystic Ranger District, the Hell Canyon Ranger District or, more appropriately, throughout the Black Hills National Forest, must receive appropriate attention and consideration. The F3 Gold is one of at least five exploratory mining limited liability companies that share a common address in Minneapolis, Minnesota. They do not have a historical track record of successful exploration in South Dakota or, to my knowledge, in any other location in this country or around the world. They have spent hundreds of thousands of dollars perhaps well in excess of \$1,000,000 simply updating the descriptions and filing of mining claims for a large part of the Black Hills National Forest, some suggesting in excess of 60,000 acres. The administrative framework under which you have worked in the past simply does not contemplate such large-scale exploratory mining activity.

As you know, nearly every gold mining operation in the country and throughout the world has given rise to long-lasting environmental damage, the principal concern of which is the quality of drinking water.

As you also know, in our country, just in the last 12 calendar months, we have three outstanding examples of how toxic spills, contamination and damage can have major negative impact. To refresh your recollection, I'll direct your attention to Flint, Michigan's drinking water problems, Camp Lejeune drinking water problems in the Carolinas and the train derailment with a toxic chemical spill in Ohio. The common feature of all three of those circumstances is severe environmental damage. We have the opportunity to have a moratorium put in place to prevent exploratory drilling and to have no degradation in our water quality and no degradation in the qualities throughout the Black Hills that make it a tourist destination for millions of Americans. This is a national issue and it deserves national attention.

I would be glad to review with you in person or by phone my comments and why this matter has to end and end presently and before we get on the slippery slope of damage to our environment and the wonderful Black Hills National Forest. I appreciate your thoughtful consideration of these comments and the filed comments that I previously provided.

Sincerely,



CHARLES T. PATTERSON

For the Firm

CTP/clm
Enclosure

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March 8, 2023

MARGARET M. PRAHL
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Via First Class Mail and

Email: comments-rocky-mountain-black-hills-hell-canyon@usda.gov

Rob Hoelscher, District Ranger

Black Hills National Forest

Hell Canyon Ranger District

1019 North 5th Street

Custer, SD 57730

RE: "Newark Exploration Drilling Project"

Dear Ranger Hoelscher:

I appreciate your willingness to meet with me on February 13, at your offices in Custer, South Dakota, for approximately 60 to 90 minutes. The purpose of my meeting with you was to follow up concerning a letter referencing File Code: 2810;1950 dated February 8, 2023, bearing your signature. That letter was addressed to no one in particular, but was mailed to me and received on February 11, 2023. It set forth that the Hell Canyon Ranger District invited me to a public meeting to occur on February 16, 2023, at the Custer High School, Commons Area. I am dictating parts of this letter prior to that meeting and setting forth comments that will be shared with you at that time, but I wanted written communication to you as well.

I was uninformed at our meeting regarding the process of an entity seeking to make exploration of the Black Hills National Forest for purposes of the discovery of gold. I was interested in understanding from you what reason or rationale there would be for declaring this activity within the scope of a "Categorical Exclusion." You shared with me that you would be the decision-maker on the question of whether or not a "Categorical Exclusion" might apply and it was your view then that a "Categorical Exclusion" should be considered. As I understood your comments at that time, it was your view that an environmental assessment was not required or necessary, principally because the applicant, F3 Gold, LLC, had funded an environmental assessment for an unrelated project or plan of operation in a different area of the Black Hills National Forest. That thinking is flawed and incorrect. An EIS is both necessary and required.

Since our meeting on February 13, I have worked diligently to try and inform myself of the history and circumstances important to this process so that public comments can be provided to you and you can make the correct and appropriate decision for which you have been given the authority.

I have attended the meeting on February 16 and provide these supplemental comments in this letter once that meeting has been completed.

PROCEDURAL CONCERNS

Procedurally, I did not believe there was an adequate period of time between your letter of February 8, 2023, that was apparently mailed to landowners within the vicinity and the meeting for public comments on February 16, 2023. Because of that unreasonably short period of time and limited information that had been provided to persons in a situation similar to myself, I believe it would be reasonable, and I would by this email, request that you provide an additional number of months from and after February 16 for additional public comments. I would also ask you to give consideration to making communications with the general public, both locally, regionally and nationally, concerning the intended Plan of Operations that is the subject matter of your February 8 letter.

After meeting with you on February 11, I received from a source, other than your office, correspondence of August 11, 2020, received by the Black Hills National Forest, your office in Custer, South Dakota, a letter from F3 Gold LLC, President Robert Bergmann, with an attached Plan of Operations from Mining Activities on National Forest System Lands.

I believe it is imperative that all affected persons and governmental entities be aware of that correspondence and the attachment because of the information that was shared with you on August 11, 2020. I will recite for you the importance of that information being made available to the public in a later portion of this letter, however, it is clear that at that earlier point in time F3 Gold LLC recited and agreed and I quote:

"It is understood that the USFS requires an Environmental Assessment (EA) for any exploration drilling project within the BHNF."

It goes without saying that any reasonable person including the Black Hills National Forest, yourself and F3 Gold LLC is not being candid with the public with the present effort to have a Plan of Operations that would be granted under a "Categorical Exclusion." It is simply wrong and incorrect procedurally, substantively and for a number of other reasons that will be hereinafter shared with you.

PERSONAL CONSIDERATIONS

We have lived in the Black Hills National Forest in excess of 20 years. I am a semi-retired attorney, together with my wife, who moved to the Black Hills and established our permanent residence. We live on a roadway described as [REDACTED] Our property consisting just shy of 20 acres has, as its central feature, the Upper French Creek running the length of our property.

When we moved to our property, [REDACTED] South Dakota, we established a home, resurrected a log cabin with 100 years of history and an additional separate residence. We have made a number of improvements that we take great pride in. At the time of construction, we dug a private well somewhat adjacent to Upper French Creek to a depth of approximately 366 feet. At that time and continuing, the flow rate for the well is 3 gallons per minute.

Because of the limited flow rate, we have never been able to have adequate water supply for irrigation of our lawn or for any water consumption apart from our personal needs. The marginal ability to have water for our residence would be negatively impacted by any of the F3 Gold contemplated exploratory drilling under any circumstances.

You should be aware that from our experience, the quality of our water today is quite acceptable, but it is influenced by seasonal weather changes that would indicate water is sourced for our use from locations in addition to and apart from any aquifers. We believe there is a substantial risk of damage and injury to our ability to maintain our residence if the F3 Gold LLC permit were granted. There is no margin for error because of our limited availability of water to be extracted from the underground sources.

Most importantly, from my legal training in excess of 40 years, I can assure you that the law does not favor private citizens being afforded a remedy because of a negative impact on water quality by seeking to make a claim against any reclamation bond. In essence, any surety bond or performance bond in an adequate amount, i.e., at least several million dollars, would provide no remedy to adversely affected adjoining landowners.

Quite apart from the negative impact of these contemplated operations upon accessibility of water for our personal use and quality of water for our personal use, between our home and the City of Custer, adjacent to Upper French Creek, are the municipal water wells that serve the needs of all Custer city residents. The withdrawal of substantial quantities of water from a municipal source as contemplated by the Plan of Operations may very well not only impact the quality of water, but lower the water table for those persons including the City of Custer that access and source their water from the Upper French Creek drainage. The substantial withdrawal of water for the drilling operations would, in and of itself, put us at substantial risk of adverse impact.

It appears that none of these concerns with regard to water are or would be addressed if you were to grant the Plan of Operations under a "Categorical Exclusion."

Please let me highlight additional important considerations from an environmental perspective. Upper French Creek, as it runs through our property on [REDACTED], has substantial aquatic life including rainbow trout and small fish. It supplies a source of substantial wildlife including birds and mammals of many species. Between our residence and the City of Custer, the exact location of where F3 Gold contemplates exploratory drilling on a continuous 24-hour basis for 12 months, is a significant herd of elk, considerable numbers of whitetail deer

and occasional documented presence of mule deer. In addition to elk being present, it is also an elk calving ground in the spring of the year. I know this from personal observation over the past 20 years and also have had the privilege of harvesting elk from the very location where F3 Gold contemplates exploratory drilling activities. I can assure you that the contemplated activities of F3 Gold at these locations will have a negative adverse impact on all wildlife including, but not limited to, elk, whitetail deer and mule deer. The damage and disruption will extend well beyond completion of their drilling activity and will perhaps provide permanent damage to their habitat and their ability to continue calving here, as they have for many, many years in the past.

We have documented the presence of mountain lions, bobcats, skunks and other mammals. All will be negatively impacted by F3 Gold operations. An EIS is warranted to determine whether any sufficient protections of this ecosystem can be developed to assure no permanent damage.

A review of 36 CFR Section 220.6 makes it clear this PO P from F3 Gold does not fit under any circumstances that would allow for a categorical exclusion. It is in a watershed that provides municipal water source for Custer residents. The plan would require requested activities, *i.e.*, drilling for a period of time well in excess of one year., it would require more than 5 acres of disturbance. It would create an unusual and enhanced risk of fire in the National Forest, in an area west of and in close proximity to the city of Custer. It will require the construction and or use of more than one mile of forest service roads. It will require granting many exceptions to existing rules that protect the forest, for one company that has already sought to do exploratory drilling in another area of the Black hills, when such exceptions are not warranted or in the best interest of the public.

The operation of exploratory drilling 24/7 for one year or more will create noise, dust, traffic congestion, accidents, rutting, ruined roads, negatively impacting both man and beast.

The cumulative negative effect of the requested categorical exclusion presently and in the future clearly does not favor granting of a categorical exclusion.

A review of 36 CFR 220.6(8) demonstrates on the face of the application and considering other earlier applications and existing facts and circumstances the proposed action of F3 Gold does not fit within the required criteria for granting a categorical exclusion.

The cumulative negative effect of granting permission for F3 Gold to do exploratory drilling on 39 sites in Custer County South Dakota can and should be documented thru a comprehensive EIS, for reasons that are, at this juncture, not recognized or appreciated by the BHNF. Tourism, the lifeblood of this National Forest, of Mount Rushmore, of Crazy Horse, of Jewell Cave, of Wind Cave, of Custer and all cities and towns in Western South Dakota, will be negatively impacted by operations of F3 Gold, if their request is granted by the Forest Service.

F3 Gold has thousands of mining permits recently recorded by the BLM for tens of thousands of acres of the BHNF. The precedent that would be set by allowing exploratory

drilling to proceed in the National Forest will be a public policy nightmare for the Forest Service. It will be a disaster for Tourism.

Without regulations or laws to vet the suitability of any business to conduct operations in the Black hills, the owner of the Black hills, the General Public, remains in the dark regarding the ownership, funding, history of regulatory compliance, financial stability of this company. All of this information and related information should be a necessary part of the evaluation.

There is a lack of coordination between state and federal agencies and nations regarding a proposal whose cumulative negative impact is and will be irreversible.

No one seriously would ever allow gold mining in the Black Hills again given the environmental damage inflicted on the State of South Dakota by earlier efforts. The EPA should have a role in how this first step, by a startup out-of-state foreign corporation we know nothing about, has as a plan of operations for flipping ownership of mining claims to others in the future.

The Forest Service Should Prepare an EIS

The District Ranger has suggested that he would grant a "Categorical Exclusion" from documentation in respect to the F3 Newark Exploration Plan of Operations. The District Ranger appears to suggest that it fits the categorical exclusion (CE) at 36 CFR 20.6(e)(8) ("CE 8"). The Forest Service has never properly adopted CE 8 and, therefore, cannot use it here because the agency has never programmatically analyzed the potential direct, indirect, and cumulative impacts of the category of actions contemplated by CE 8. In *Sierra Club v. Bosworth*, the Ninth Circuit held that an agency's decision to establish a category of actions that are excluded from full NEPA review can only be made with a full understanding of the significance of the impacts resulting from application of the category. 510 F.3d 1016, 1027 (9th Cir. 2007) ("The Forest Service must perform this impacts analysis prior to promulgation of the CE."). Specifically, the Forest Service in *Bosworth*, the Ninth Circuit, invalidated the Forest Service reliance on a categorical exclusion that was promulgated without a complete analysis of the cumulative and other impacts. The Court then enjoined projects approved pursuant to that categorical exclusion. *Id.* at 1026-30. The Court explained:

"Relying solely on a project level analysis is inadequate because it fails to consider impacts from past, present, or reasonably foreseeable Fuels CE projects which may be located in close proximity, in the same watershed and endangered species habitat."

Bosworth, 510 F.3d at 1027. The Court also noted that cumulative impacts analysis "is of critical importance in a situation such as here, where the categorical exclusion is nationwide in scope and has the potential to impact a large number of acres." *Id.* at 1028.

The Forest Service's use of CE 8 here is similarly flawed for a number of reasons. The agency has never performed a direct, indirect, or cumulative impacts analysis (or any of the required Endangered Species Act ("ESA") consultation and analysis) on Category 8 and the

related provisions in Chapter 30 of the Forest Service Handbook regarding extraordinary circumstances. Like *Bosworth*, the Black Hills National Forest, (BHNF) has never reviewed the significance factors required by NEPA in assisting whether its action (adopting a categorical exclusion and the extraordinary circumstances provision) may have significant impacts. Absent this review pursuant to NEPA and ESA, the Forest Service cannot rely on CE 8 and the related provisions in Chapter 30 for approval of the F3 Newark Exploration Drilling Project. Instead, the Forest Service must prepare an EIS for each project depending on whether or not significant effects are expected. This would also ensure that the combined cumulative effects of the past, present, or reasonably foreseeable impacts of the project are considered when taken with other agency actions with similar timing, location, or effects. These impacts include, but are not limited to:

- Road construction;
- Timber management;
- Mineral exploration and development;
- Livestock management;
- Travel management;
- Fire suppression and prevention;
- Noise and light abatement;
- Wildfire fire;
- Prescribed burns;
- Calving and habitat of native species; and
- Water surface and subsurface degradation and exhaustion.

In addition, the combined cumulative effects of all prospecting and mining operations in the vicinity must be disclosed in the environmental analysis. The F3 Newark Exploration Drilling Project is just one of many mining operations that have to be considered in the Black Hills National Forest, historically, currently and in the future.

Second, we are concerned that the project does not qualify for CE 8 based on the amount of road work and project duration, in which case it cannot be approved using the CE 8. CE 8 is limited to projects involving the construction or use of less than 1 mile of low standard road, with minimal repair of existing routes. Here, F3 Newark would use over 1 mile, of what the Forest Service would describe as roads and an unclassified route. Most importantly, I have walked these roads and they are not suitable for traffic of the quantity and intensity contemplated by this plan of operations. The nominal 12-foot width would not accommodate traffic patterns, especially when large construction vehicles are encountered headed the other way. It would take substantial repair and reconstruction of existing routes to facilitate the use of the heavy equipment, tractor/trailer units, etc. for which these routes have never been utilized. Historically, timber management within the Black Hills National Forest has involved only straight trucks with a pup trailer and even then, extraction of materials or operation upon limited roadways has been difficult, impossible and limited by seasonal weather and risk of fire. Many segments of the designated roads are simply inaccessible for the scope of operations contemplated by F3 Newark Exploration. Without knowing or disclosing these potential adverse impacts and their effects on

the forest, adjoining neighbors and the general public, the Forest Service cannot approve this project using CE 8.

CE 8 is also limited to short-term (1 year or less) minerals projects. The initial scoping document submitted by F3 Gold in 2020 suggested the duration of this project would be 5 years. The current application suggests 1 year; clearly, the scope of operations currently being considered cannot be accomplished within 1 calendar year under any circumstances. These conflicting statements make it unclear whether F3 Newark intends to complete the exploration project, including the proposed and current reclamation activities, within a single calendar year. We believe a fair reading of the scope of activities prevents it from being subject to a categorical exclusion Section 8 approval. The Forest Service must clarify and place enforceable limits on the project's duration. If there is any chance that any of the project's activities (including road work, drilling, reclamation, or any other authorized activities would occur more than a calendar year from its start date, the agency cannot use the CE 8 exemption to approve this project.

Third, even if the F3 Newark Exploration Drilling Project were to fit within CE 8, it still cannot be exempted from NEPA review through an EIS because of the presence of extraordinary circumstances. Numerous "extra ordinary circumstances are listed at 36 C.F.R. 220.6(a).

One extraordinary circumstance that precludes the use of CE 8 here is: "Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service sensitive species." 36 C.F.R. 220.6(b)(1)(i). There is a federally protected bat species on the property that is the subject of the exploration application.

A second extraordinary circumstance that precludes the use of CE 8 for this project is: "Flood plains, wetlands, or municipal watersheds" 36 C.F.R. 220.6(b)(1)(ii). The municipality of Custer, South Dakota, is a short distance downstream from the project area. In addition, the municipal wells providing water for the city of Custer are located adjacent to Upper French Creek and the project may have adverse effects on groundwater and surface water quality and flows.

Finally, whether or not a project fits within a CE and whether or not extraordinary circumstances are present: "If the responsible official determines, based on scoping, that it is uncertain whether the proposed action may have a significant effect on the environment, [they must] prepare an EA. If the responsible official determines, based on scoping, that the proposed action may have a significant environmental effect, [they must] prepare an EIS." 36 C.F.R. 220.6(c). Due to the issues already discussed above, plus the many environmental issues discussed throughout the rest of these comments below, there is at least uncertainty as to whether the F3 Newark Exploration "may" have any significant environmental effects, so the Forest Service must prepare an EIS.

Baseline Information on Water Quality and Quantity

Over the last decade, federal courts have repeatedly held that the Forest Service violates NEPA when it approves a mine exploration project like the F3 Newark Exploration application, without first gathering sufficient baseline groundwater hydrology information to take a “hard look” at the potential impacts drilling may have on groundwater and surface water. *Cascade Forest Conservancy v. Heppler*, No. 3:19-cv-00424-HZ, 2021 WL 641614, *17-20 (D. Oregon Feb. 15, 2021); *ICL v. U.S. Forest Serv.*, 429 F. Supp. 3d 719, 730-32 (D. Idaho 2019) (same when the Forest Service approved the 5-year Kilgore exploration project); *Gifford Pinchot Task Force v. Perez*, No. 03:13-cv-00810-HZ, 2014 WL 3019165, *25-33 (D. Or. July 3, 2014) ((Forest Service violated NEPA by failing to gather baseline groundwater data and by relying on monitoring during the project that only includes a portion of the exploration project site in approving Goat Mountain exploration)); *ICL v. U.S. Forest Serv.*, No. 1:11-cv-00341-EJL, 2012 WL 3758161, *14-17 (D. Idaho Aug. 29, 2012) (Forest Service violated NEPA by failing to gather baseline groundwater hydrology data necessary to understand potential impacts of drilling and improperly relied on post-approval monitoring in approving a 5-year CuMo exploration project).

Here too, the Forest Service must gather baseline groundwater hydrology information and use that information in the public NEPA process before it can approve the project. At a minimum, the Forest Service must sample surface and groundwater quality and quantity from multiple locations throughout and adjacent to the project site multiple times to establish an existing baseline. It must also survey for seeps, springs, and other hydrologic features throughout the site. The Forest Service must also locate existing mine features and any other potential sources of water contamination.

The Forest Service has a July 2020 guidance document, titled “Working Guide[:] Evaluating Groundwater Resources for Mineral Exploration Drilling” (hereinafter “*Working Guide*”). The preface to the *Working Guide* states: “Growing recognition of the ecological and socio-economic importance of groundwater and groundwater-related resources (springs and groundwater-supported wetlands and streams) has emphasized the need for the Forest Service to ensure adequate analysis of potential effects on groundwater from mineral exploration drilling. . .” The Forest Service created the *Working Guide* to provide guidance on how to gather baseline data and to evaluate the potential effects of mineral projects like the F3 Newark Exploration drilling application and should follow the direction in that document.

We believe that initiating water quality monitoring concurrently with exploration activities falls short of the standards necessary for a fully developed mine exploration plan, and we recommend that F3 Gold obtain 2-3 years of baseline data prior to drilling and exploration activities. We firmly believe that there is a need for groundwater quality monitoring efforts that have not been identified by F3 Gold or the Forest Service.

Mineralized areas often contain naturally occurring contaminants of concern such as arsenic. These contaminants may be securely bound within the surrounding rock matrix or may be leaching into groundwater. In previous mineral exploration projects, the Forest Service has

previously acknowledged that exploration drilling can affect groundwater resources. Aquifers can be vulnerable to degradation during and following exploration drilling in the following ways:

- Contamination through open boreholes by run-off water from the surface
- Separate aquifers could become interconnected through drillholes
- Cross-flow between aquifers may be induced by natural pressure differences or pressure differentials induced by pumping
- Contamination by certain types of drilling fluids

The pressure from a water column in deep drill holes may be sufficient pressure to cause hydraulic fracturing, especially with fractures already present in the rock. If water loss occurs in the lower part of the hole, it is unclear which aquifers it contaminates.

The Forest Service needs to assure us that there will be no changes or impacts to groundwater as a result of drilling operations and, as a result, there is a need for a groundwater baseline study. The Forest Service should require basic design features such as drill logs tracking the depth to bedrock, the water table and any losses in drilling fluid from bedrock fractures because of the assumption that proper well closing would eliminate contamination issues. The Forest Service also needs to address contamination that could occur during drilling operations and before the bore holes are sealed.

The Forest Service and operator need to establish baseline surface and groundwater quality sampling upgradient of, within, and downgradient of the project area. The Forest Service should describe the monitoring locations, the frequency of testing, the triggers for additional actions, and the protocols if these triggers are tripped. It is important to establish baseline water quality sampling well in advance of drilling operations and encompass both annual and seasonal variations. Groundwater could be mapped and sampled through an investigation of springs and seeps in the area.

Without baseline data, the impact to groundwater remains uncertain because there is no information as to the current conditions of the actual Project Area. Thus, it is impossible to know if the proposed exploration activities will impact water quality. "Without establishing the baseline conditions which exist ... before [a project] begins, there is simply no way to determine what effect the [project] will have on the environment and, consequently, no way to comply with NEPA." *Great Basin Resource Watch v. BLM*, 844 F.3d 1095, 1101 (9th Cir. 2016) (quoting *Half Moon Bay Fishermans' Mktg. Ass'n v. Carlucci*, 857 F.2d 505, 510 (9th Cir. 1988)).

Further, it would be dubious for the Forest Service to claim that the groundwater monitoring or baseline data is not needed because the geology at F3 Newark is "similar" to that at a nearby site, "Jenny Gulch". Similarities are no substitute for direct water quality data.

In May 2020, a federal court in Idaho vacated the Decision Notice and EA for the Kilgore Exploration Project on the Caribou-Targhee National Forest because--even though the Forest Service conducted thorough baseline groundwater studies and setup ongoing groundwater and

surface water monitoring for 85% of the project site--the Forest Service failed to do the same for the other 15% of the project area. *Idaho Conservation League v. U.S. Forest Service*, No. 1:18-cv-504-BLW, 2020 WL 2115436 (D. Idaho May 4, 2020). The Court held that the Forest Service failed to take a hard look at potential impacts to groundwater from drilling in violation of NEPA, and ruled that the Forest Service could not permit any exploration activities until this error was corrected on the 15% of the site. *Id.*

Ongoing Monitoring and Mitigation for Water Quality and Quantity

In addition to an adequate baseline before any project approval, the Forest Service must require a robust monitoring and mitigation plan to detect and correct any changes in water quality or quantity caused by F3 Newark Exploration Drilling.

A similar objection was raised to Newcrest Resources' Jarbidge Exploration Project in northern Nevada when the Forest Service released a draft decision authorizing the project in 2020. The Forest Service agreed to an objection resolution that included the following condition regarding groundwater monitoring (Jarbidge Objection Resolution Letter):

"Newcrest will be required to collect information on the background conditions of groundwater, including the presence and elevation of ground water in each drill hole. Background data collection methods could include the use of grouted piezometers, and groundwater sampling from within strategically located exploration drill holes where the water table is encountered. After the collection of background data in the first two operating seasons, Newcrest will develop a groundwater monitoring program outlining the location of groundwater monitor wells for installation during the third operating season. Monitoring groundwater sampling, and reporting will be coordinated with NDEP-BMRR and the Forest Service. If routine, scheduled monitoring detects abnormal deviation from background and the Forest Service determines that the deviation may be the result of project exploration activities, Newcrest will consult with NDEP-BMRR and the Forest Service to determine if and where additional groundwater monitoring and investigation is needed."

We request that the Forest Service require something similar of F3 Newark as a condition of this project. The Forest Service should follow the guidance found in their *Working Guide – Evaluating Groundwater Resources for Mineral Exploration Drilling*.

Water Quality

We are concerned about the potential for any drilling-affected water to runoff the site directly into nearby French Creek or other wetland areas including the Custer city watershed, during moderate to high precipitation events. The Plan of Operation should ensure that all water will be carefully managed. Spill clean up materials, firefighting gear, and a spill response plan need to be kept in all vehicles. In addition, an oil-absorbent boom should be available on site.

The Forest Service must ensure that the operator has obtained a sufficient reclamation bond to cover all reclamation costs associated with this project. Such a bond should include as designated intended beneficiaries, any private entities whose property may be adversely impacted by operations of F3 Newark Exploration Drilling.

Water Quantity and Proposed Water Withdrawal

The F3 Newark Exploration Drilling application indicates as much as 40,000 gallons per day water usage for drilling operations. It contemplates operation of four drilling rigs simultaneously 24 hours a day, 7 days a week. It is unclear whether or not this project proposal plans to use water as a dust suppressant on roads and around drilling operations. It remains unclear in the documents submitted if the 40,000 gallons of water per day for drilling operations includes the amount of anticipated water needed to suppress dust. If not, the project will require more than the stated 40,000 gallons per day, an amount that will have a negative impact on groundwater levels for the city wells for the city of Custer and other nearby impacted private property which secures their water from wells in the area.

Noise and Light Disturbance

The Forest Service should consider the impacts that artificial noise and lighting will have on the surrounding environment. This is particularly important given the proposed work schedule to operate 24 hours per day, 7 days per week. It is unclear whether or not such operations would be carried out for the 12 calendar months set forth in the application or whether such activities would extend more than 12 calendar months which, in fact, is quite likely. Please see and note the earlier application suggesting the drilling project would encompass up to 5 years, perhaps not including reclamation.

We request that the Forest Service implement noise and light-reducing features for all activities for every stage of this project. Examples of effective techniques that should be considered as part of this project include:

- Mufflers or sound control devices on all construction vehicles
- Scheduling noise-producing activities concurrently when possible
- Restrictions on hours of operations
- Installation of night shields on outside lights if work is to be performed at night
- Using amber or yellow lights to reduce light pollution impacts
- Monitoring light pole height to ensure light shields achieve maximum effectiveness and do not negate shield use due to excessive pole height
- Monitoring of the effectiveness of noise reduction measures

Wildlife

Impacts to wildlife need to be avoided, minimized and mitigated. We are concerned about displacement of wildlife due to noise, light, and an increase of human activity in the project area. The Forest Service should develop an alternative in which drilling is limited to day-light hours to reduce impacts to wildlife, not to mention adversely impacted adjoining friends and neighbors on private property that is in close proximity to the drilling site.

Cultural Resources

All Section 106 compliance work needs to be completed and documented prior to the advent of any ground disturbing activities, regardless of the project proponent intending on operating within disturbed areas. The Forest Service should be mindful that buried cultural resources can appear in road beds and cuts and are not limited to historic mining activities. I have walked much of the designated area in the Plan of Operations. There are numerous instances of historic mining activity which should be considered and evaluated prior to granting any permission to F3 Newark Exploration Drilling.

Seasonal Closure

It is unclear whether or not this Plan of Operations would be undertaken during “seasonal closure”. Historically, this area and many others in the southern Black Hills have been closed to vehicles, traffic and activities in the Forest Service from December 15 through May 15 of each calendar year. The “seasonal closure” was presumably to facilitate maintenance of the natural environment and an opportunity for rest and calving of the elk herd and other animals in the area. This is an important consideration.

Wildfire Risk and Prevention

The Black Hills National Forest has been the subject of extensive damage from unintended fires as recently as three years ago. Substantial acreages, thousands of acres, have been consumed by fires west of the intended drilling site from the Wyoming border to and approaching the city of Custer. In addition, there have been extensive fires resulting in extensive damage to the southern Black Hills in the area of Pringle, South Dakota. That most recent incident was caused by Forest Service activities in “blading” a forest service road. The risk of fire cannot be understated.

Noxious Weeds

There has been no provision indicated in the documentation of how and whether F3 Newark Exploration Drilling would prevent and control the spread of noxious weeds. Throughout the southern Black Hills and perhaps other locations, historic timber harvesting and slash piles have resulted in a proliferation of Canada thistle throughout the area. Disturbance and destruction of the natural surface that will result from the exploratory drilling activities will most certainly result in the proliferation of noxious weeds similar, but perhaps magnified, from the experience of timber harvesting and burning of slash piles.

Reclamation and Bonding

Little attention has been given to the necessity for a reclamation bond and procedures under which claims could be asserted in respect to the reclamation bond. Essential to reclamation procedures and payments for damages, a baseline pictorial video and photographs of all potentially affected areas should be undertaken presently. That will ensure that future promises by F3 Newark Exploration Drilling are adhered to and that the forest is brought back to its natural state, as nearly as possible, pre-exploratory drilling. The costs of this videography and

photography exercise should be borne by the applicant, F3 Gold. Such video and photographic baseline information should be available in addition to the baseline water quality and quantity studies that need to be undertaken before any exploratory drilling is allowed under any circumstances.

The reclamation bond should provide for a mechanism where negatively-affected individuals and businesses could assert a claim against the bond in addition to and apart from any claims that would necessarily be asserted by the U.S. Forest Service. An independent economist should be involved in the establishment of the terms of the reclamation bond and its amount.

Mitigation

The Forest Service and project proponent should consider a suite of mitigation measures designed to offset impacts of noise and light pollution, surface disturbance and wildlife displacement. The costs of this damage should be borne by the applicant. Such mitigation measures should include complete decommissioning of any unauthorized routes, and provision made for payment of continuous monitoring and treatment of noxious weeds in disturbed and adversely-affected areas, for a period of years after reclamation is complete.

The Elephant in the Room

There has been a good deal of discussion about this issue, but the elephant in the room - the cumulative negative effect of exploratory drilling for gold in the Black Hills - has not been addressed. The central point of discussion should be the cumulative effect the granting of permits for exploratory drilling in the Black Hills of South Dakota would have on the tourist industry and all associated negatively-impacted businesses, individuals and local residents.

The adversarial nature of this process is inconsistent with the forest being owned by the general public, not special interest mining organizations of perhaps foreign ownership. The 1872 Mining Law does not take precedence over common sense and protection of our national forest. The mission of the Forest Service is as follows:

“The mission of the Forest Service is to sustain the health, diversity, and productivity of the nation’s forests and grasslands to meet the needs of present and future generations (emphasis ours). The agency manages 193 million acres of public land, provides assistance to state and private landowners, and maintains the largest forestry research organization in the world. Forest Service lands contribute more than \$13 billion to the economy each year through visitors spending alone. Those same lands provide 20 percent of the nation’s clean water supply, a value estimated at \$27 billion per year.”

If the Black Hills National Forest has a more clear, powerful and understandable mission statement apart from that recited herein, it should be adhered to as we move forward in the process of considering the cumulative, negative impact of F3 Newark Exploration Drilling’s proposal. How many mining permits in the Black Hills has F3Gold obtained? Is it not true that the highest and best use of the Black Hills is meeting the recreational and tourism needs of

present and future generations? What will be the effect on the ability of the Black Hills to meet those needs if a vast number of mining claims are all subjected to 24 hour a day drilling? The scope and size of the potential exploration must be considered, not merely the 39 drill sites in this discrete proposal.

The Native American community and numerous tribes were present at the meeting in Custer, South Dakota, on February 16. They object to any exploratory drilling in the Black Hills. Just days prior to the February 16 meeting, the USDA Forest Service released an action plan to advance nation-to-nation relations. That release dated February 3, 2023, is attached. It should be adhered to and the position of the Native American tribes should be accepted.

Unless and until the Black Hills National Forest recognizes the importance of the Black Hills National Forest to future generations, and considers the impossibility of operating gold mines in this uniquely ecological mecca, then we are simply all wasting our time.

Conclusion

Embrace a more comprehensive understanding of how this process should move forward, provide for baseline data on all issues prior to approval of any Plan of Operations, all costs to be borne by the applicant and thereafter ensure that an environmental impact statement is performed by qualified, unbiased professionals. The end point should be and will be that Gold exploration should be prevented from moving forward in the Black Hills National Forest.

Very truly yours,


CHARLES T. PATTERSON

CTP/clm
Enc.

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USDA Forest Service Releases Action Plan to Advance Nation-to-Nation Relations

USDA Forest Service Releases Action Plan to Advance Nation-to-Nation Relations

Washington, February 3, 2023 - The U.S. Department of Agriculture's Forest Service today published an action plan that outlines steps the agency will take to advance tribal consultation and strengthen Nation-to-Nation relationships with federally recognized Tribes.

"Strengthening Tribal Consultations and Nation-to-Nation Relationships: A USDA Forest Service Action Plan" recognizes the role tribal governments play in decision-making about Forest Service-managed lands and waters through co-stewardship, consultation, capacity-building, and by other means.

"This is more than a document. This action plan solidifies a pivotal moment in our agency's history. The Forest Service manages millions of acres of lands, including ancestral homelands of American Indian and Alaska Native Tribal Nations. We acknowledge the tragic history involving the forced displacement of Indigenous People and recognize that upholding our federal trust and treaty responsibilities to Tribal Nations is a responsibility and an ongoing journey for our agency," said Forest Service Chief Randy Moore. "When we acknowledge this history and work to ensure our actions and investments are reflective of our commitment to a better future, we can build trust and repair relationships with Tribes."

"National forests and grasslands often include ancestral homelands that Tribes have stewarded for centuries. Indigenous Nations are a key partner in how we value, co-manage, and steward our Nation's grasslands and forests. Understanding the perspective and wisdom of Indigenous people gives us an opportunity to reflect on our policies, programs and practices, the real-life implications they have on Indigenous peoples and what role we can play in rectifying historical or ongoing issues. With this plan as a guide, Forest Service employees will begin to implement a new way of working that will build trust and create innovative opportunities with Tribal Nations."

The plan also emphasizes the agency's unique, shared responsibility to ensure that decisions relating to federal stewardship of lands, waters and wildlife include consideration of how to

safeguard the treaty rights and spiritual, subsistence and cultural interests of any federally recognized Tribe.

As part of this work, the Forest Service has renamed the State & Private Forestry deputy chief area to State, Private & Tribal Forestry to emphasize our commitment.

The action plan provides a framework for advancing existing laws, regulations and policies and is not intended to amend or establish new Forest Service policy or direction. Rather, the plan provides steps that can be implemented through existing programs and processes based on four focus areas:

- *Strengthen Relationships Between Indian Tribes and the USDA Forest Service.***
- *Fulfill Trust and Treaty Obligations.***
- *Enhance Co-Stewardship of the Nation's Forests and Grasslands.***
- *Advance Tribal Relations Within the USDA Forest Service.***

On our commitment to “Enhance Co-Stewardship of the Nation's Forests and Grasslands,” during the 2022 White House Tribal Nations Summit, Secretary of Agriculture Tom Vilsack and Under Secretary for Natural Resources and Environment Dr. Homer Wilkes underscored the progress the Forest Service is making in the implementation of the Joint Secretarial Order on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters (Order No. 3403), a policy framework to facilitate agreements with Tribes in the co-stewardship of federal lands and waters.

To date, the agency has signed 11 new agreements with 13 Tribes, involving eight National Forests, agreements that include a collective investment of approximately \$4.1 million in FY22. These co-stewardship agreements, along with 60 others involving 45 tribes in various stages of review, represent a Forest Service FY22 investment of approximately \$19.8 million in our shared commitment to advancing co-stewardship with tribes. The agreements also reflect an agency commitment to include consideration of how to safeguard the treaty, spiritual, subsistence, and cultural interests of any Indian Tribe by ensuring tribal governments play an integral role in decision-making related to the management of federal lands and waters through consultation, capacity-building, and other means consistent with applicable authority.

“The U.S. and Tribal Nations are working together to create more realistic and progressive relationships that honor and respect tribal sovereignty,” said Reed Robinson, director of the Forest Service Office of Tribal Relations.

“We are witnessing significant growth of American Indian & Alaska Native populations, cultural expression and ownership, and economic development. This moment is critical for Forest Service

employees to lead from where they are, to acknowledge, plan, take consequential actions, and step through the aperture of opportunity that, right now, is wider than any other time in history."

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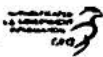
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Presidential Documents

Memorandum of January 21, 2009

Transparency and Open Government

Memorandum for the Heads of Executive Departments and Agencies

My Administration is committed to creating an unprecedented level of openness in Government. We will work together to ensure the public trust and establish a system of transparency, public participation, and collaboration. Openness will strengthen our democracy and promote efficiency and effectiveness in Government.

Government should be transparent. Transparency promotes accountability and provides information for citizens about what their Government is doing. Information maintained by the Federal Government is a national asset. My Administration will take appropriate action, consistent with law and policy, to disclose information rapidly in forms that the public can readily find and use. Executive departments and agencies should harness new technologies to put information about their operations and decisions online and readily available to the public. Executive departments and agencies should also solicit public feedback to identify information of greatest use to the public.

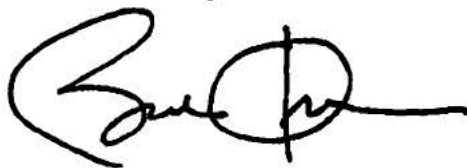
Government should be participatory. Public engagement enhances the Government's effectiveness and improves the quality of its decisions. Knowledge is widely dispersed in society, and public officials benefit from having access to that dispersed knowledge. Executive departments and agencies should offer Americans increased opportunities to participate in policy-making and to provide their Government with the benefits of their collective expertise and information. Executive departments and agencies should also solicit public input on how we can increase and improve opportunities for public participation in Government.

Government should be collaborative. Collaboration actively engages Americans in the work of their Government. Executive departments and agencies should use innovative tools, methods, and systems to cooperate among themselves, across all levels of Government, and with nonprofit organizations, businesses, and individuals in the private sector. Executive departments and agencies should solicit public feedback to assess and improve their level of collaboration and to identify new opportunities for cooperation.

I direct the Chief Technology Officer, in coordination with the Director of the Office of Management and Budget (OMB) and the Administrator of General Services, to coordinate the development by appropriate executive departments and agencies, within 120 days, of recommendations for an Open Government Directive, to be issued by the Director of OMB, that instructs executive departments and agencies to take specific actions implementing the principles set forth in this memorandum. The independent agencies should comply with the Open Government Directive.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

This memorandum shall be published in the *Federal Register*.



THE WHITE HOUSE,
Washington, January 21, 2009

[FR Doc. E9-1777

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U.S. DEPARTMENT OF AGRICULTURE

USDA Guidance Portal

Guidance documents come in a variety of formats, including interpretive memoranda, policy statements, manuals, bulletins, advisories, and more. Generally speaking, guidance documents lack the force and effect of law, unless expressly authorized by statute or incorporated into a contract. This guidance portal provides access to the guidance documents of the USDA's individual agencies.

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