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Submitted via: <https://cara.fs2c.usda.gov/Public/CommentInput?Project=283042>

July 20, 2026

Re: Grizzly Prescribed Burn Project # 283042

Dear Ranger Butler, Leader Bennett and Planner Swanson,

As part of our advocacy for sustainable use of public lands, Norbeck Society comments reflect a desire to support management approaches that recognize the imperative of protecting and enhancing the biocomplexity of forest ecosystems across the Black Hills National Forest. A vision for long-term sustainability of all aspects of the resources held in this land is paramount.

The Norbeck Society wishes to ensure that benefits flow perpetually to those who come after us. People in the future will rely on the graces of the Black Hills National Forest just as we do.

On the following pages, please find our comments regarding the Grizzly Prescribed Burn Project # 283042. Because of the unique status and disposition of the Norbeck Wildlife Preserve this project is receiving our closest scrutiny. We request that the comments on the following pages be included in the Forest Service Administrative project files.

As always, we appreciate the opportunity to provide input to the USFS about the management of the Black Hills National Forest.

Sincerely,

Mary Zimmerman, President

Shelly Deisch, Norbeck Society Member, Certified Wildlife Biologist ©

On behalf of the Norbeck Society
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cc: Shawn Cochran, Supervisor, BHNF; Jennifer Carpenter, Superintendent, MORU

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A. Introduction and Project Overview

The proposed Grizzly Prescribed Burn (Grizzly Project) is in Cooperation with Mount Rushmore National Memorial and DOI Wildland Fire Service. We appreciated the July 14th TEAMS presentation and this opportunity to publicly participate. This geographical area encompasses highly valued state and federal public lands as well as private lands and the communities in and around Keystone. The Black Hills National Forest (BHNF) has proposed the 2026 Grizzly Project (estimated 160 acres) to be treated within the Norbeck Wildlife Preserve (NWP) in the Hell Canyon Ranger District through Categorical Exclusion (CE) Authority: Section 40806 (f)(2) of the 2021 Infrastructure Investment and Jobs Act. All acronyms, references, projects, and court cases are discussed herein and are incorporated by reference into our comments.

We are very supportive *in concept* of the proposed vegetation treatment project, and we are grateful that BHNF has chosen this area to conduct treatments. We acknowledge the plethora of existing literature that discusses and discloses the effects of more than a century of widespread fire exclusion in the Black Hills, and the reality that fire exclusion has disrupted the region's historically frequent, low-intensity fire regime. Effects of fire exclusion include higher-than-Historical Range of Variability (HRV) fuel loading and unchecked pine regeneration; hardwood species and understories become stagnant or overtopped by ponderosa pine, and small-diameter, pine-choked riparian areas are not properly functioning systems. Establishment and spread of noxious and invasive weeds in the project area are also of concern. Unauthorized motorized use or excessive use during critical breeding and nesting seasons are not compatible with providing solitude for game animals and birds. In excess, none of these conditions are desirable breeding habitats for "game animals and birds" (Norbeck Organic Act 1920, 10th Circuit Court 2001, Continuing Education in Ecosystem Management Group (CEEM) 2006, the Norbeck Wildlife Project 2010).

Admittedly, this is a lengthy response for 160 treatment acres. However, we intend to emphasize that this project is within the *only* Congressional Wildlife Preserve within BHNF or any nearby Forest System Lands. It is a big deal, and we wish to lend our NWP knowledge to BHNF so that the project is procedurally designed, planned, and implemented in good faith, an example of sustainable forest practices, and is not an abuse of process.

Herein, what we object to is the process and procedure in which this proposed CE was created, as well as needing clarifications in some of the management treatments. Based on field recon, BHNF has already identified snags to be cut, which is pre-decisional. This project is significantly contrary to the NOA and Focus species' habitats. We will explain at great length and effort why the BHNF needs to better author and legally reinforce this project, and all future projects within the NWP under the legal auspices of the Norbeck Organic Act (NOA) as demanded by the 10th Circuit Court of Appeals (2001). Also, CE Authority may not be a legal fit, and a Supplemental Environmental Assessment may be merited.

The BHNF needs to integrate and implement the following factual legal tools as reviewed and affirmed by legal precedents: The NOA (1920), the 10th Circuit Court Decision (2001), and the 8th Circuit Court Decision (2011). The NWP simply cannot be managed like the rest of the BHNF because of its narrow statutory designation. After witnessing the remarkable planning with The Norbeck Wildlife Project (2010a, 2010b), we fully expect that the BHNF will manage the uses and resources within the NWP first and foremost according to the NOA and other legal authorities cited herein, followed by the 2006 BHNF Land and Resource Management Plan Phase II (Forest Plan) and eventual subsequent authorities.

B. The Norbeck Society's Standing and as an Interested Person

The Norbeck Society was founded in 2005 because of concerns about public abuse and harm caused to Botany Canyon on BHNF. In fact, our organization's namesake pays tribute to the visionary Peter Norbeck, former South Dakota (SD) Governor and U.S. Senator, who authored the 1920 NOA legislation which created the *special congressionally designated* NWP. Our expansive participation with BHNF since the Botany Canyon (outside of the NWP and in a different BHNF District) resolution includes participating in National Environmental Policy Act (NEPA) actions such as programmatic-level National Forest Management Act (NFMA) planning (i.e. Phase II Plan Amendment and Travel Management). We have also been integral in project-level proposals. Participation includes but is not limited to commenting on the NWP 2007 Focus Species List (Burns, Griebel, and Deisch) and the Norbeck Wildlife Preserve Project (2010b). We had seats on the Black Hills National Forest Advisory Board. We have been involved in many facets of dispersed, developed, and invested outdoor recreation, botany studies, Multiple Indicator Monitoring of streams and reference sites, timber harvests, vegetation treatments, prescribed fire, tree plantings, sensitive plants and Natural Research Area preservation, livestock grazing, public education, field trips, and as responsible users of the Forest. Our participation is well documented in BHNF project administrative records.

One of the Norbeck Society's long-term members, Shelly Deisch, is a co-author of this letter. She is a retired South Dakota Department of Game, Fish and Parks (SDGFP) senior wildlife biologist and in that capacity, functioned for 22 years as SDGFP's statewide liaison to all Forest Service (FS) Region 1 and Region 2 Forest and Grasslands Units within SD. She is a 1991 Certified Wildlife Biologist© The Wildlife Society, with a M.S. Degree in Wildlife and Fisheries Sciences and minor in Range Ecology and Management from SD State University. She is Denver Paralegal Institute-certified paralegal. After many local natural resource specialists' retirements and passings throughout the years, Shelly is likely today's remaining NWP historian and records-keeper for most NWP happenings pre-2022. Following is a list of Shelly's relevant experience related to the NWP:

- 2000: SDGFP filed as an Intervenor/friend of BHNF regarding the Sierra Club et al. appeal of the 1994-1995 Needles and Grizzly timber vegetation projects.

- 2001-2002: Assisted SDGFP Department Secretary and SD Attorneys with wording for the congressional direction to move the Needles and Grizzly timber sales forward (which were retitled as Needles II and Grizzly II projects) within the NWP.
- 2004-2006: Represented SDGFP as a governmental cooperator in the BHNF Forest Plan revision. Cooperator on the Peter Norbeck Scenic Byway Bur Oak enhancement.
- 2006-2007: Participated in the CEEM (2006) project which led to the development of and the BHNF/SDGFP co-authored document: "Focus Species List for the Norbeck Wildlife Preserve.
- 2005 – 2010: Cooperated with Hell Canyon District Biologists and secured funding from SDGFP and National Wild Turkey Federation for a prescribed fire and other treatments in Section 2 of the NWP (cooperative burn with Wind Cave National Park).
- 2008-2011: Lead SDGFP Wildlife Biologist and cooperative SD representative for The Norbeck Wildlife Project (2010a, 2010b) with Hell Canyon Ranger District. She and her colleagues provided the Hell Canyon ID Team pertinent and state agency expertise in wildlife and botanical species accounts, relevant peer-reviewed science, and habitat (food, water, shelter, space) needs for game animals and birds. With BHNF staff specialists, she assisted on BE/BAs, a supplemental wildlife specialist report (Wheeler and Burns 2010), design criteria (The Norbeck Wildlife Project Environmental Impact Statement (EIS) appendices), created timber marking guidelines, and planned vegetation and prescribed fire treatments with BHNF specialists. To comply with the 10th Circuit Court, both district- and forest-level wildlife and fisheries biologists were considered the lead navigators on the project with SDGFP biologists as co-navigators. To ensure the analyses were consistent with the 1920 NOA, BHNF and SD integrated relevant NWP Forest Plan directives and treated most Guidelines as Standards. She participated on the ID Team for all things NEPA. She assisted both SD and FS attorneys in the subsequent legal appeal by the Friends of the Norbeck (8th Circuit Court. 2011). Note that the Norbeck Society has never been affiliated with nor collaborated with the 8th Circuit Court Appellants Friends of the Norbeck.
- 2011 – 2022: Shelly and Hell Canyon District wildlife biologists secured funding from Rocky Mountain Elk Foundation. SDGFP hired contractors to conduct hardwood treatments within the NWP, among other projects. Coordinated with Custer State Park (a division of SDGFP) to work on shared NWP boundary vegetation treatments

C. History, Legal Authorities, and Supplemental Support to Meet the Norbeck Organic Act

1920: History of Norbeck Organic Act for Game Animals and Birds, and a Breeding Place Therefor

We take this opportunity to review some of the most critical moments and legal authorities in the NWP history that expressly direct its management and thus must be incorporated into the Grizzly Project proposal.

Why was the NOA so narrow in scope for “*game animals and birds and a breeding place therefor*” when today, most ecologists and biologists advocate for broader “species diversity”? The scope was narrow because by the turn of the previous century, many game and bird species were hunted to near extinction due to little to no hunting regulations (Burns, Griebel, and Deisch. 2007). Senator Norbeck acted quickly, and Congress established the specially designated area known today as the NWP, which offered a sanctuary for game animals and birds and their breeding habitats. Boundaries have changed over time. A fence was erected on some of the boundary to achieve solitude for game animals but is no longer maintained to stop animal movements. Wildlife preservation was the answer to wildlife management at this time in history (CEEM 2006 page 86).

Looking back to the early 1900's, the NOA was ambiguous in what wildlife species were considered game animals and birds. Which species should dictate management actions and human uses that could take place within the NWP? Looking at other special congressionally designated areas, CEEM and others found that, other than Wilderness Areas and Research Natural Areas (2006 Phase II Forest Plan Preface Page 14), Wildlife Preserves are not common on National Forests, which adds to the perplexing path and uncertainties that BHNF face to manage NWP. Adding to the complexities already mentioned, the NWP is NOT like the rest of BHNF. Excluding the Black Elk Wilderness, Custer State Park, and private lands within the NWP boundary, the NWP acreage is only about 1% of BHNF. This 1% is an exceptionally unique, highly valued, one-of-a-kind area. Adding to this exclusivity, its proximity to other high-value areas (Mount Rushmore, the Black Elk Wilderness, and Custer State Park) makes it even more valuable.

In summary, for over 100 years, the BHNF, SDGFP, Custer State Park, and Mount Rushmore National Memorial, and adjacent private landowners have worked together to plan projects within the NWP because of shared boundaries and because game animals and birds traverse those boundaries. For example, breeding habitats for bighorn sheep (*Ovis canadensis*), Rocky Mountain Elk (*Cervus canadensis*), and mountain goats (*Oreamnos americanus*) occur across different land ownerships. The Grizzly Project emphasizes the need for collaboration, and that collaboration should extend to relevant public input. Our concern is that a scoping letter serves as an exploration of public input; searching for resource issues not considered. The Norbeck Society is highlighting a significant resource issue not considered in this project, all the while appearing that this project is pushing the envelope on being pre-decisional.

2001: 10th Circuit Court of Appeals: NOA Supersedes NFMA

In the 1990s, BHNF planned two timber sales within the NWP called Needles and Grizzly (which became Needles II and Grizzly II). Several environmental groups exhausted their National Environmental Policy Act (NEPA) administrative remedies and filed a lawsuit in District Court. The Plaintiffs charged that BHNF failed to comply with administrative law, NEPA, and the NOA. The District Court ruled against the Plaintiffs, and Plaintiffs/Appellants appealed to the 10th Circuit Court, and its 2001 decision is cited below.

The 2001 Decision was and remains a case of first impression for the NWP, and until it is overturned, it has set a precedent in how the NWP will be managed. In its Decision, the 10th Circuit ruled that overall wildlife and diverse wildlife habitats recognized by the National Forest Management Act (NFMA) are **not** the guiding purposes of the NOA and that NFMA is **not** the lead authority in which to manage NWP. In other words, the narrow intent of NOA (game animals and birds and a breeding place therefor) cannot be diminished by other broadly defined laws; and **that management and human uses must be weighted in favor of the purpose of the NWP**. Further, the 10th Circuit stated that:

*“...preserves comprise less than .05 percent of the National Forest System....and that BHNH cannot “eviscerate a statute of specific effect.... Accordingly, we hold that the Norbeck Organic Act governs the management of the Norbeck Preserve, and management plans must comply with its specific mandate.....game animals and birds are the specially designated species and must be protected, not compromised, in a balancing of interests.... We find this record inadequate because the agency justified its plans against a standard that authorizes management practices that would not be authorized by the controlling Norbeck Act....**we hold that as a matter of law the NFMA is supplemental or subordinate to the specific mandate of the Norbeck Act.**”*

To be clear, human enjoyment, uses, and management within the NWP can and do, occur. The 10th Circuit Court recognized this:

“The Forest Service can continue to establish management plans under both the Norbeck Act and the NFMA, but the NFMA mandate must be supplemental and may not diminish (through balancing) the more specific mandate of the Norbeck Act.”

In effect, BHNH cannot apply the NFMA mandate (which includes Land and Resource Management Plans) to the Grizzly Prescribed Fire Project in a way that effectively abolishes the specific statutory mandates Congress established for NWP, even if reason and equity support a different conclusion (10th Circuit citation: *Tennessee Valley Auth. v. Hill*, 437 U.S. 153, 194 (1978)). The Court further stated that when the agency record is inadequate, the proper course, except in rare circumstances, is to “*remand to the agency for additional investigation or explanation.*” (10th Circuit citation: *Florida Power & Light Co. v. Lorion*, 470 U.S. 729, 744 (1985)). We are stating that the Grizzly Project CE Proposal is inadequate and support that herein.

2002: Public Law 107-206. Full Spectrum of Management Tools Including Prescribed Fire and Silvicultural Treatments in NWP for Needles and Grizzly

We briefly cite this public law (Public Law 107-206, and Title 1, Chapter 7, §706 (h)(i) (2002) to demonstrate that proper active management within the NWP has been upheld in Congress and the Courts since 2001. For years, certain publics felt that NWP should be managed as a pseudo-Wilderness Area. But Congress in 1920 did not legislate NWP as a designated Wilderness Area (Wilderness Act did not occur until 1964). A crescendo was reached with two appealed timber harvest projects in the mid-1990's; the Needles and Grizzly. While the lawsuits were moving

through the courts, Congress interjected and stated that with regards to only these two Decisions, BHNF "is authorized to use the full spectrum of management tools including prescribed fire and silvicultural treatments to benefit game animal and bird habitat in meeting the purposes of the Norbeck Organic Act." Suffice it to say, Congress authorized BHNF to move the two timber sales forward together with SDGFP and issued certain caveats to reword the vegetation treatments without triggering new NEPA. BHNF and SDGFP accomplished Congress' statute via the famous "Burns Carter Memo" and "Remarking Guidelines" for both sale areas now called Needles II and Grizzly II. We encourage the Grizzly Project ID Team to review these historic documents (and The Norbeck Wildlife Project 2010) to improve disclosure of project effects on NOA and to modify treatments as appropriate in order to better meet game animals and birds and breeding habitat mandates.

1983 – 2006: History of Forest Plans' Directives for the Norbeck Wildlife Preserve

What BHNF current staff may not be aware of is that the 2006 Phase II Forest Plan Amendment's Management Area (MA) Directives for the Norbeck Wildlife Preserve within the Plan are actually over 40 years old and most are from the very first Forest Plan of 1983! When BHNF revised the 1983 Forest Plan under NFMA, SDGFP was a cooperator and attended Planning Team meetings. BHNF did not significantly revise mandates for the NWP because BHNF decision makers and the Regional Forester did not want to open that can of worms and invite litigation because it dealt with future management of "the Norbeck". It should also be noted that during this plan revision effort, the 2001 10th Circuit Court decision regarding the NOA and NWP was summarily dismissed by the Forest Supervisor and Regional Forester as needing to be mentioned or at least referenced in the 2006 Forest Plan Amendment. This was contrary to many public assertions and will likely continue to haunt BHNF because of that deliberate omission, and future staff will not be aware of the NOA and 2001 10th Circuit Court case law. While outside the scope of this project, we add a placeholder that the next Forest Plan revision should incorporate the NOA, 2001 10th Circuit Court decision, and the 2007 Focus Species list until other legal mandates supersede.

In summary, both the 1983 and 2006 Forest Plans under NFMA kept management direction (goals, objectives, standards and guidelines, etc.) aimed at broad habitat diversity for wildlife species listed as Management Indicator Species, Emphasis Species, Species of Local Concern, and Region 2 Sensitive Species. While various species' lists have changed throughout the years, not many of the species were game animals and bird species which occupy, breed, and inhabit the NWP per NOA

2006 - 2007: CEEM Team and Focus Species List

By this time, the Forest Plan had been revised, or the ROD was close to being signed. The BHNF Forest Supervisor recognized the complexities in managing this special 1% of BHNF as the NWP, and the 2001 10th Circuit Court decision added another layer to planning and management. The Supervisor wanted outside advice, and the Continuing Education in Ecosystem Management Group (CEEM 2006) was invited to offer recommendations. The Norbeck Society was one of

many public participants. The Supervisor, his leadership staff, and most of the participants were very pleased with the outcome. While not a Forest Service decision document that is required to be followed or that can be appealed, BHNF wisely chose to use most of the CEEM suggestions and started the foundational work to move forward on eventual vegetation management. We recommend that the Grizzly Project ID Team review the final CEEM report found in The Norbeck Wildlife Project (2010) Administrative File.

CEEM (2006, pages 84-86) chose their 3rd recommendation:

“Re-emphasizing the Norbeck Organic Act: This management strategy would evaluate the NWP in the context of its current habitat value in the regional setting, and determine a list of game animals and birds to reflect these values.... to clarify the management direction and create an integrated landscape that is truly functioning as a wildlife preserve. With this option the FS and other responsible agencies have the opportunity to define the mandate of the Organic Act by determining the list of “game animals and birds”because The U.S. Tenth Circuit Court of Appeals ruled in 2001 that the NOA is the primary legislative mandate for the management of the Norbeck Wildlife Preserve”

BHNF and SDGFP wildlife biologists co-authored a list of 12 game animals and birds that best fit the native species expected to live and perpetuate within the NWP, and therefore, their breeding habitats. The list was publicly scoped by SDGFP because it was not a BHNF decision document tied to a specific action or project. This public involvement turned out to be in BHNF's favor with the 8th Circuit Court. Until it is revised, the Focus Species List (Burns, Griebel, and Deisch. 2007) and its intent to meet the NOA supersedes Forest Planning lists of Management Indicator Species, Species of Local Concern, Emphasis Species, and Region 2 Sensitive Species whether it satisfies current state and federal staff or not (implied in 10th Circuit Court. 2001; upheld in 8th Circuit Court. 2011). The 8th Circuit Court stated that the Focus Species list is the only document that differentiates Forest Plan (NFMA) species lists from NWP representative species and their breeding habitats (NOA). The 10th and 8th Circuit Courts have made it clear that until the BHNF creates a different list, using the Focus Species List is not up for debate at the project-level planning and implementation for all human actions within the boundaries of the NWP (Black Elk Wilderness excluded), which includes all Management Areas.

Following the NOA and both Circuit Courts' requirements does not mean other species do not matter. Of course they do. It is that all management and all human actions will first address and reflect maintaining, improving, or creating habitats for those 12 representative Focus Species and BHNF will justify, defend, and provide support towards that end.

2010 – 2011: 8th Circuit Court of Appeals Decision and The Norbeck Wildlife Project

BHNF and cooperator SDGFP designed the 2010 Norbeck Wildlife Project's purpose, need, goals, and objectives first and foremost around the NOA. Project design relied upon wildlife biologists as lead navigators regarding treatments for habitats for game animals and birds. The Project was tiered to the 2007 Focus Species List, and a supplemental wildlife report (Wheeler and Burns

2006) was the primary assessment followed by the traditional BE/BA. Secondly, BHNF integrated Forest Plan Management directives as tools. Design criteria were developed. Forest specialists were asked to help achieve the goals, which provided these experts to step outside their normal job tasks and get creative, without triggering Forest Plan violations. The formula was NOA first, NFMA second per the 10th Circuit Court. A final EIS and ROD were issued (The Norbeck Wildlife Project 2010a, 2010b).

True to history, a lawsuit ensued: Friends of the Norbeck et al. v. US Forest Service and Rick Cables, and State of South Dakota South Dakota Department of Game, Fish, and Parks as Intervenor(2011). We will refer to this case as “8th Circuit”.

Appellants alleged that the Norbeck Wildlife Project violated NEPA and NOA and that the Focus Species List should have had its own EIS. Upon dismissal at the District Court level, Appellants appealed to the 8th Circuit, which affirmed the lower court. Circuit Courts of Appeal review lower District Courts’ records and legal briefs to determine if there were mistakes in interpreting and applying federal agency administrative rules and laws. Circuit Court Decisions then set precedent, which in turn establishes legal standards for federal agencies to follow. So successful was the joint BHNF/SD State planning, public involvement, and informed decision-making, and SD State Intervenor in Court, that The Norbeck Wildlife Project survived legal challenges. The 8th Circuit ruled that The Norbeck Wildlife Project was not arbitrary, capricious, or contrary to the NOA or NEPA. The critical take-away message is that the 8th Circuit Court of Appeals recognized that the wildlife biologists’ Focus Species list and the District’s management around that list first and foremost, did in fact meet the NOA (10th Circuit Court) thanks to the cooperative effort between BHNF and SDGFP.

D. Need for Public Engagement Rather Than Public Distrust

For only about 1% of BHNF, the NWP has a long and tumultuous history among the BHNF, BHNF employees, SD State, public, interest groups, permit seekers, and resource extraction interests, to say the least! Consequences of management can lead to “*mistrust from internal personnel, external partners and interest groups*”. (CEEM 2006, pages 82-86). CEEM (page 89) recognized that “*active engagement of the interested stakeholders is needed ...Publics have strong connections to the Norbeck landscape because of its physical beauty, large tree-dominated forest structure and management history.*”

In fact, the Sierra Club of the Black Hills formed back in the 1970’s (pre-forest planning and pre-Wilderness Designation) when BHNF proposed to install a tramway to the top of the then-named Harney Peak. Many members of the public did not want to see a national forest and a sacred Lakota area turned into an amusement park. Dozens of lawsuits and tense public meetings have occurred over the years, all centered around 1% of BHNF. As BHNF and cooperating state agency personnel come and go over the years, what has remained solid is the public’s demand for management of NWP as the special congressionally designated preserve

that it is. In the past, it has been stated by federal and state employees that one could walk into a crowded room and loudly utter “NORBECK WILDLIFE PRESERVE” and an argument would ensue. We sincerely urge BHNF not to go back to the days of conflict among citizens, collaborators, and government administrators, or worse, as litigants.

E. Recommendations for the Grizzly Prescribed Burn Project

The Norbeck Society supports responsible and sustainable recreation within BHNF campground and day-use areas. We recognize the recreational, financial, and personal values tied to permitted seasonal recreational cabins. We also value the national symbolism of the Mt. Rushmore National Memorial sculpture and attendant public amenities. It is in the context of these above-mentioned matters that the Norbeck Society wants to make clear that we understand the need for active management to retain these values and to use appropriate mechanical, hand, and prescriptive tools to achieve conservation of 160 acres of the NWP. However, we reiterate that, as procedurally planned, we cannot support the Project as described because BHNF has designed this project by the programmatic 2006 Phase II Forest Plan Amendment (which is under NFMA). *NFMA is subordinate to the NOA (10th Circuit 2001).* BHNF has no other recourse currently than to follow this case law on this 1% of BHNF. Below we provide our reasons for objecting and offer additional information to strengthen the proposal to meet the NOA and still reduce fuel loads and create fire breaks necessary to protect against potential future wildfires.

F. Issue Identification

1. 1920 Norbeck Organic Act and Focus Species

The Circuit Court stated that some project proposal flaws “*might be so obvious that there is no need for a commentator to point them out specifically in order to preserve its ability to challenge a proposed action.*” In this vein, the Focus Species list was not even mentioned in the scoping notice. We believe it is in the best interest of BHNF and the public that we do point out flaws that can be remedied.

The proposed project only mentions that for Forest Plan MA 5.4A, the NWP is to be “*managed primarily to provide habitat for game animals and birds, while allowing limited human use consistent with wildlife habitat.*” Granted, this is Forest Plan language, but to meet NOA, the project did not define specifically state “game animals and birds.” Further, the project did not define “breeding habitat” for game animals and birds based on the Focus Species list. Nowhere in the project goals and objectives, wildlife BE/BA (omission of 9 of the 12 Focus Species should be remedied via analysis in a separate support assessment/evaluation. See Wheeler and Burns 2010)), or silvicultural and fire reports are there substantive links to how these ambitions will benefit first and foremost game animals and birds and their breeding habitats.

As it stands, BHNF is uncertain of the direct and indirect effects to 9 of the 12 Focus Species not mentioned in a supplemental wildlife report (3 species were discussed in the wildlife BE/BA):

Mountain goat, Rocky Mountain elk, white-tailed deer, Merriam's Turkey, and Mountain Bluebird, Golden-crowned Kinglet, Brown Creeper, Ruffed Grouse, and Song Sparrow. Snags that are habitat for cavity nesting/foraging species have been marked (pre-decisional) for removal. BHNF did not take a hard look and analyze what the treatments will actually do to those Focus Species and their breeding habitats. For Focus Species covered in the BE/BA such as American (Northern) Goshawk, we ask why the sponsored BHNF/SDGFP study of BHNF's own data was not referenced as relevant and local research (Bruggeman et al. 2023)?

2. 10th Circuit Court of Appeals 2001 Decision and Avoidance of Deleterious Impacts to NWP

The narrow focus on management for game animals and birds and their breeding habitats (Focus Species) has been asserted almost to nausea throughout this letter. The 10th Circuit ruled that although it may be painful, BHNF is to recognize and act on the fact that the NOA supersedes NFMA and general Forest Planning, regardless of what those actions are and regardless of the current uses within the NWP. Trying to find a pathway to avoid the NOA today is futile. The 10th Circuit stated:

"At present, however, as a matter of statutory interpretation, we hold that the anticipated deleterious effects cannot be answered by general reliance on the NFMA's broader mandate to protect overall diversity because the Norbeck Act's specially designated species (game animals and birds) might drop out in such a balancing of collective interests.....The law requires a more specific analysis.....The plain language of the Norbeck Act requires the protection of game animals and birds, not the overall protection of all plant and animal species. See Sundance Assocs., Inc. v. Reno, 139 F.3d 804, 808 (10th Cir. 1998) (holding that, notwithstanding other ambiguities, plain language of statute established a group possibly subject to its requirements)..... We restate that we are not impinging agency discretion by directing the Forest Service to reconsider its harvest plans in light of the narrow parameters established by the Norbeck Act. Our holding is premised simply on the fact that the Norbeck Act, unless modified by Congress, contains a special mandate that must be given full force."

This project needs to comply with the 10th Circuit of Appeals.

3. NEPA Requires Informed Publics and Decisions

The comments we provide stem from the request in a BHNF scoping letter dated June 15, 2026. As you know, we are an engaged local grassroots organization that is not averse to management actions, but rather supportive of sustainable and legal management. NEPA generally obligates federal agencies to consider the environmental impacts of their actions (i.e., through environmental review), and these are lacking in the Grizzly Project proposal. Publics and BHNF must be able to make informed and wise decisions, and as proposed, this project will not fulfill the requirements of the laws, including those cited herein. Citing from the 8th Circuit Court of Appeals (2011), TNS reminds the BHNF:

"NEPA's purpose is to ensure a fully informed and well-considered decision. See Vt. Yankee Nuclear Power Corp. v. Natural Res. Def. Council, Inc., 435 U.S. 519, 558 (1978), and

disclosure to the public that the agency has considered environmental concerns in its decision-making. Balt. Gas & Elec. Co. v. Natural Res. Def. Council, Inc., 462 U.S. 87, 97 (1983).....An agency "is not constrained by NEPA from deciding that other values outweigh the environmental costs" so long as "the adverse environmental effects of the proposed action are adequately identified and evaluated." Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 350 (1989)."

We are concerned about the following:

a. Scoping

Scoping is required for all Forest Service Proposed Actions, including those that would appear to be categorically excluded from further analysis and documentation in an EA or an EIS (§220.6. 36 CFR 220.4(e)(1)). The process of scoping is an integral part of environmental analysis. Scoping includes refining the Proposed Action (PA), determining the responsible official and lead and cooperating agencies, identifying preliminary issues, and identifying interested and affected persons. Effective scoping depends on all of the above as well as presenting a coherent proposal. The results of scoping are used to clarify public involvement methods, refine issues, select an interdisciplinary team, establish analysis criteria, and explore possible alternatives and their probable environmental effects. We are concerned that 1) we have shared a significant need by recognizing the unique nature of the Norbeck Wildlife Preserve, 2) we are concerned with what seems a self-imposed pressure to hurry to get this NEPA completed for a fall burn, and that elicits a red flag, and 3) there appears to be pre-decisional actions in place such as marking snags without the informed knowledge of a decision (although we recognize that the flagging can be undone).

b. Forest Plan Desired Conditions

Forest Service decisions are typically justified by showing how the PA helps move conditions toward forest plan desired conditions. It must be consistent with the governing Forest Plan. For National Forest System projects, the Purpose & Need (P&N) should be connected to:

- i. Applicable forest plan goals, objectives, standards, and desired conditions.
- ii. Statutory authorities such as the NFMA and other applicable laws and regulations.

c. We find that the scoping letter does not write a clear P&N, but rather lists goals and objectives. We find this inconsistent with the concepts of a clear P&N statement. A clear P&N leads to a clear PA.

4. Prescribed Fire Objectives and Goals Unclear and Must Meet the NOA First and BBNF Plan Second

Properly designed and implemented, the Norbeck Society advocates and relies on the science of fire ecology in the Black Hills ecosystems which formed under disturbances such as wildfire (Brown and Sieg 1996; Brown and Sieg 1999; Brown, Ryan, Andrews 2000). The cited studies encompass or are adjacent to the proposed Grizzly Project area and should be integrated into the planning of and reasoning for prescribed fire to benefit native Focus Species. Also, most of the old and dying bur oak (*Quercus macrocarpa*) galleries in the project area would benefit and

be rejuvenated through prescribed fire (Sieg and Wright 1996). Bur oak provides mast, forage, summer, winter, and security cover for big game species (Severson and Boldt 1978, Burns, Griebel, and Deisch 2007, Wheeler and Burns 2010, Phase II Forest Plan MA 5.4A-210).

a. Focus Species and NWP MAs 5.4A and 4.2B

There are no references back to Focus Species habitats and Forest Plan NWP MA direction. For example, on page 3 of the scoping notice, where did the “USFS Objectives” come from? How do these Objectives reconcile with the below-listed Forest Plan and MA directives to meet the NOA? If our identified issues were in the fire specialists’ report, we request a copy for review before a decision, as the public must be fully informed.

i. Forest Plan Objective 10-01 (pages I-35, I-36):

NEW. Manage for 50 to 75 percent moderate-to-low fire hazard in the wildland urban interface and reduce fire hazard within proximity of structures to current NFMA standards **except in Management Area (MA) 1.1 Black Elk Wilderness, MA 2.2 Research Natural Areas, MA 3.1 Botanical Areas, **MA 4.2B Peter Norbeck Scenic Byway, and MA 5.4A Norbeck Wildlife Preserve.***

ii. Forest Plan Directives for MAs within the NWP (page III-61):

*MA 5.4A Norbeck Wildlife Preserve. Manage the remainder of the Forest for 50 percent moderate-to-low fire hazard **except** in MA 1.1 Black Elk Wilderness, MA 2.2 Research Natural Areas, MA 3.1 Botanical Areas, MA 3.7 Late-successional Forest Landscapes, **MA 4.2B Peter Norbeck Scenic Byway, and MA 5.4A Norbeck Wildlife Preserve***

iii. MA Conflict

“If there is conflict between management of the Peter Norbeck Scenic Byway and the direction for Norbeck Wildlife Preserve (Management Area 5.4A and Appendix E), the latter will take precedence, based on the Congressional mandate for Norbeck”.

iv. Fire and Fuels 4.2B-4101. Standard:

**Manage fire and fuels through various methods to improve wildlife habitat and to protect the biological and scenic values of the area, but in the wildland-urban interface the priority will be fuel reduction.*

b. Fire Regime Condition Class (FRCC)

FRCC is a critical discussion, and yet no Condition Class (CC) is provided, other than to suggest that the Fire Regime (FR) is something to be maintained. The Black Hills exist within a mixed severity fire regime, and that cannot be changed. What is manageable by BHNF actions are changes to CCs. What is a critical disclosure is sharing what is site-specifically determined to be the current CCs and how the PA will change them? This is a “Need” in the PA.

c. Fuel Loading Lacks BHNF Site Specificity

An additional “Need” is identifying fuel loading, yet it appears that the BHNF proposal lacks its own site specificity, instead choosing to use or copy from the Mount Rushmore prescribed burning project. We suspect these values are not necessarily transferable. We would like to hear what the fuel loadings are for the BHNF portion and to again tie that into CC.

d. Goals Elicit Objectives

Technically, “Goals and “Objectives” are plan components within a Forest Plan, and for a site-specific analysis, the use of P&N is crucial. The NEPA is directed by the Forest Plan (and the NOA) and site-specific conditions toward developing a site-specific P&N. We would ask that this be remedied by writing a clear site-specific P&N.

e. Fuels Reports Requested and Clarifications Needed

Is there a fuel report that includes modeling runs? We ask because the scoping letter under USFS Objectives states:

“Reduce or otherwise treat all fuels on the ground so that, on 90% of typical fire-weather days, a fire would not generate an intensity of more than 300 BTUs per second per foot of fireline. This reduction in fuels also includes reducing fuels—within a three-year timeframe—that are created by management activities.”

There is a lot embedded in this statement that needs to be disclosed. We are trying to understand from the scoping notice language how this “objective” is attainable in what is suspected to be a CC3, with very little previous treatment. How does this PA and NEPA analysis fit with what appears to be a one-and-done approach? In addition, we are unclear what “within a three-year timeline” means.

Is there a fuels report that includes the criteria for “hazard rating?” We are really missing the explanation. For example, under the “USFS Objectives” section it states:

“Reduce the fire hazard rating by at least 25%, lowering it from 80% to approximately 55%, to meet the Forest Plan goal of maintaining a low-to-moderate hazard rating (50-75%).”

What are those criteria, and what is the “project area” defined as currently? Having the criteria helps to understand how a 25% reduction can be achieved.

f. “USFS Objectives” Need Clarification

Objectives state:

“Maintain the fire regime category at a rating of Fire Regime 1 (0-35 year frequency, low to mixed severity fire).”

This statement would be clearer if the status of condition class were included. By itself, “maintain” is not analogous to fire regime because a fire regime is what it is. You cannot maintain it. However, you can recognize its status by how deviated it has become from “normal” through disclosure of the CC. This is an additional necessary piece of information because we do know that multiple treatments are needed to return forested stands to what is deemed “normal” fire regime interval. We know at least 3 treatments are typically

needed, and up to as many as 7 or more may be required in some areas. Our field observation and the lack of widespread treatments in the area suggest that it is in CC3 and that there will need to be those 3+ treatments needed to move it to/toward “normal.” Will the silvicultural review and input be appended to include this information, or will the fuels report we have not seen include that info?

g. Joint Agency Effort

In the scoping letter, the Mount Rushmore Objectives are included, which seems to suggest that BHNF’s objectives are intertwined. This non-disclosure makes us ask why this project is not being done under a joint NEPA effort and why the public has not been procedurally informed.

h. Lack of Full Content

The scoping letter does not appear to pull in the full content of the PA and requires us to dig into other reports. If page limits are some administration-ordered criteria, then please just consider use of more maps with good legends.

5. Public Detriment by Proposed Grizzly Project

The public, including the Norbeck Society, needs reassurance that BHNF will not negate the NOA and 10th Circuit Court. We do not want the BHNF to unknowingly or knowingly bypass the legal practices already instituted by the BHNF in previous projects which followed the NOA and were upheld by the 8th Circuit Court. The correct and legal path has already been established; now BHNF needs to follow that path.

If the BHNF chooses to continue with this CE, we strongly feel that the foundational intent of NEPA (federal law) is being ignored. One major intent of proper NEPA is to clearly disclose resource effects and to disclose that to the decision-maker for them to make an informed decision. As this project sits with the given project information, this foundational action has not been met. This will cause harm to the public trust. And, by failing to analyze and disclose effects to game animals and birds and their breeding habitats, BHNF will not legally meet the Congressionally Designated direction for the NWP. Additional injury may be viable because BHNF did not cite back to or make a connection to its own previous success record of the Norbeck Wildlife Project EIS and ROD. The 8th Circuit Court stated:

“Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983) standard states that..... “the agency must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.” Id. (quotation omitted)”.

6. Categorical Exclusion Authority, Segmentation, Use of Section 40806, and Hard Look at Extraordinary Circumstances

The reason to use a CE is to circumvent more detailed environmental analysis so that a federal agency can act more quickly to achieve project implementation. However, unlawful segmentation occurs when an agency artificially divides a major federal action into smaller

components to avoid the application of NEPA to some of its segments. We read, heard on the Zoom call, and can visualize from our site visits that this project is intertwined with actions on the Mount Rushmore National Memorial, with the potential exception of the mastication work around the recreation residences. This appears to be a clear violation of NEPA, and the fundamental violation of segmentation is likely to occur with this project. There is nothing that precludes the district from conducting a joint decision with Mount Rushmore National Memorial, and in fact, that is what should occur here.

Also, we assert that use of CE authority alone may be insufficient because it could irreparably set up BHNH for NOA and NEPA procedural violations. Instead, BHNH likely needs to elevate its analysis and justification by using the requisite "hard look" via an Environmental Assessment (EA), and attendant proposed Finding of No Significant Impact (FONSI) that are objectionable by the public; or, a legal supplemental report that would legally satisfy NOA and NEPA. Proposed activities have already been previously analyzed or are nearly identical to the Grizzly Project other than geographical location in the Norbeck Wildlife Preserve project (2010), which was an EIS. We are not suggesting an EIS for 160 acres, but the CE Authority cited and scoping notice are likely legally inadequate to meet the NOA. We discuss the merits of that argument below.

Section 40806 CE authority of the Infrastructure Investment and Jobs Act (Pub. L. 117-58, 2021), allows management actions to establish linear fuel breaks on public and forest lands, which can be useful in fire spread and containment, as mentioned in the July 14, 2026 BHNH/Public TEAMS Meeting. The following was not mentioned in the meeting or the proposed project scoping notice :

Section 40806 (4): "NOTE: Applicability. Determination. Extraordinary circumstances.-- The Secretary concerned shall apply the extraordinary circumstances procedures under section 220.6 of title 36, Code of Federal Regulations (or a successor regulation), in determining whether to use a categorical exclusion under subsection (b)"

Without knowing if there is a "successor regulation", we rely on the current language of Title 36, Section 220.6, subsection (b)(1)(iii) is bolded below:

CFR Title 36: § 220.6, Categorical Exclusions

*(a) General. A proposed action may be categorically excluded from further analysis and documentation in an EIS or EA **only if there are no extraordinary circumstances related to the proposed action and if:***

- (1) The proposed action is within one of the categories established by the Secretary at 7 CFR part 1b.3; or*
- (2) The proposed action is within a category listed in § 220.6(d) and (e).*

(b) Resource conditions.

- (1) Resource conditions that should be considered in determining whether extraordinary circumstances related to a proposed action warrant further analysis and documentation in an EA or an EIS are:*

(iii) Congressionally designated areas, such as wilderness, wilderness study areas, or national recreation areas;

*(2) The mere presence of one or more of these resource conditions does not preclude use of a categorical exclusion (CE). **It is the existence of a cause-effect relationship between a proposed action and the potential effect on these resource conditions, and if such a relationship exists, the degree of the potential effect of a proposed action on these resource conditions that determines whether extraordinary circumstances exist.***

*(c) Scoping. If the responsible official determines, based on scoping, **that it is uncertain whether the proposed action may have a significant effect on the environment, prepare an EA.** If the responsible official determines, based on scoping, that the proposed action may have a significant environmental effect, prepare an EIS.*

We are struggling to reconcile the status of a scoping letter and its intent vs a pre-decisional determination to use a CE. The best we can decipher is that many “decisions” have been made, and this project is further down the road than this scoping letter lets on. Transparency would demand sharing the determination the District has made related to extraordinary circumstances so that we could review that determination and then to be able to include in our substantive comments.

In potentially meeting the above criteria of 36, Section 220.6, we assert:

- i. (b)(1)(iii): Congressionally designated areas do include the Norbeck Wildlife Preserve (NOA 1920).
- ii. We believe that Washington Office direction, from a person like Chris French, is arbitrary and capricious from the standpoint that all projects must follow this Secretarial Memo regardless of ground-based conditions, congressionally designated areas, other precedent-setting laws, and issues. As we lay out here, these conditions need to inform the choice of NEPA analysis.
- i. (b)(2): BHNF did not disclose a cause-effect relationship between the proposed Grizzly Prescribed Burn project and potential effects on the 9 of 12 Focus Species and their breeding habitats. Without knowing what relationship exists, the degree of the potential effects of the proposed project on the Focus Species and their breeding habitats is unknown and uncertain. Nine of the 12 Focus Species (75%) were not given a hard look for effects; beneficial, negative, or neutral; indirect or direct to the species and their breeding habitats (see discussion below on timing restrictions).
- ii. (c): At this point, there is uncertainty about what and how the proposed project will impact within the NPW, clearly based on the absence of following the NOA mandate. The responsible official appears to have made a preemptive pre-decision.

The responsible official may determine through scoping that it is still uncertain whether the PA may have a significant effect on the NWP environment for game animals, birds, and their breeding habitats; therefore, an EA is warranted.

Further, the 10th Circuit Court (2011):

“When the agency record is inadequate....the proper course, except in rare circumstances, is to remand to the agency for additional investigation or explanation.” Florida Power & Light Co. v. Lorion, 470 U.S. 729, 744 (1985). We find this record inadequate because the agency justified its plans against a standard that authorizes management practices that would not be authorized by the controlling Norbeck Act....we hold that as a matter of law the NFMA is supplemental or subordinate to the specific mandate of the Norbeck Act.

In summary, the Norbeck Society requests reassurance that the vetting processes for this project were not premature and inadequate as cited above. We kindly ask for reassurance through proper documentation that the rationale to use Section 40806 CE authority was thoroughly reviewed and ruled out “extraordinary circumstances”. Use of this CE may be construed as arbitrary or capricious, and there is no reason to go there with better procedural and analysis processes fully disclosed to the public.

7. Treat the NWP as Congressionally Designated and Meet Forest Plan Direction:

The proposal lists two NWP MAs within the project area, MAs 4.2B and 5.4A. However, as stated above, none of the Project’s purposes, goals, or objectives tier back to those directives. The Public and BHNf cannot be informed and reassured that BHNf is following the Forest Plan (and NOA).

- a. Timing restrictions within the Forest Plan must be addressed for Focus Species and breeding habitats:
“5.4A-3205 and Appendix E. In habitat critical to wildlife, as defined in the Norbeck EIS (7/89), the season of operations for vegetation treatment and other activities is limited to August through November vegetation treatment, road work and other activities requiring more than two weeks’ continual work and/or involving more than 300 acres. GUIDELINE”

Because NOA supersedes the Forest Plan, timing restrictions must be considered Standards that cannot be dismissed. By treating as a Standard (The Norbeck Wildlife Project 2010a, 2010b), BHNf will ensure breeding habitats for all 12 Focus Species are not impaired, disturbed, or eliminated in the project area. If the project area will cause negative impacts, what mitigations will be employed?

- b. Felling and or Removal of Snags. See recent photo below of marked snag in the project area. As already mentioned, we are concerned for the pre-decisional nature of this action. There are snags marked with orange flagging to be cut. We do

understand the risk that snags can pose, so we seek disclosure on snag removal as it relates to the habitat needs of Focus Species and others. We also recognize that the snags marked are the classic 20' break point that we find across the hills and that the life span of these snags is relatively long. Our preference would be thoughtful identification of significant human "hazards", and proof thereof, rather than a blanket approach as these snags provide critical habitat needs. Again, we are looking for critical and thoughtful disclosure in the respective NEPA analysis. In the analysis, we are looking for how snags will be retained for Focus Species Mountain Bluebird and any other snag-dependent Forest Plan species (MIS, R2SS, Emphasis, SOLC, etc.). Cutting of snags for any reason must be clearly discussed in the scoping notice because a snag is not just a snag. It is clear in the literature and for habitat needs that snags from death to decay provide specialized habitat (food, shelter) for various Focus and BHNF species as those trees' aging processes advance.



8. Temporary Road and Vehicle Trail Use Needs to be Addressed

We reference the Phase II Forest Plan (2006) and the use of roads within the NWP. Which actions will require either construction of new trails (which would trigger an EA at a minimum), reconstruction or improvement of existing roads/trails, or use of Administrative Roads which are gated to keep out public use? How will BHNF keep non-authorized motorized vehicles out of containment lines? We do not want any project travel corridors to become a more developed or used trail in the future. Administrative use is curtailed in the Forest Plan except for when necessary. How will employees/contractors/collaborators follow the Forest Plan? How will new vehicle tracks/trails be rehabilitated per the NOA for Focus Species and Forest Plan directives to restore soils and vegetation? To meet NOA, Guidelines should be treated as Standards.

5.4A – 9101: 12. (5.4A-9101) Manage road use to provide for habitat needs of wildlife and to maintain habitat effectiveness. Construct new local roads or reconstruct existing

local roads needed for management activities. Physically block and revegetate local roads between periods of use.

a. Minimize local road construction and reconstruction standards, i.e., 12-foot driving surface, 50-foot curve radius, with spot graveling only in deep, unstable soils.

GUIDELINE

9. Invasive and Noxious Weeds

Invasive exotic plants constitute 8 – 47% of the total flora of most States in the United States. There are approximately 4,500 exotic species in the United States that have established naturalized populations and at least 15% of these cause severe harm (Sieg, et al, 2010, p. 35). Executive Order 13112 is in place and states:

“do not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere unless, pursuant to guidelines that it has prescribed, the agency has determined and made public its determination that the benefits of such actions clearly outweigh the potential harm caused by invasive species; and that all feasible and prudent measures to minimize risk of harm will be taken in conjunction with the actions.”

During the July 14, 2026 TEAMS Meeting, it was mentioned that there is a population of St. John's Wort (*Hypericum perforatum*) near the summer recreation residences. This non-native weed is a state “regulated nonnative plant species” in Black Hills Area counties (<https://danr.sd.gov/Conservation/PlantIndustry/WeedPest/WeedandPestInfo/LocalNoxious/default.aspx>). Some sources indicate that it is of concern for livestock and game and bird ingestion and sun-sensitivity; hypericin can enter the bloodstream and can result in hair (fur) loss. It will also out-compete native plant species that are nutritional.

Although the scoping letter does not disclose this, the Silvicultural Review and Input under “Line Preparation” (page 3) states: “A skid steer may be used to push coarse woody debris 132’ (2 chains) interior from containment lines.” Further, it states a skid steer will be used “Within the identified unit masticate ponderosa pine 1’ in height up to 3.9” DBH to a variable density spacing of 14’ x 18’.” BHNF needs to address how this plant will be treated in and near the summer residences and ensure that project activities do not add to its spread via seed or create conditions for it to establish and spread.

G. Conclusion

The scoping notice for the Grizzly Project is premature, requires revision to meet the NOA, and a simple (and objectionable) EA may be the correct fit. We are here to assist in that endeavor. Unfortunately, we object to the proposal based on its insufficient planning (NFMA and NEPA) and state without hesitation that the proposal must be analyzed for full disclosure according to

the narrow purpose of the NOA, and then allow the public and the Norbeck Society to once again comment.

We have already asserted, and we want to be clear that we are not arguing that the PA may or may not be needed. Rather, it is the procedure and lack of citing back to authorities named herein that are not legal. As is, approval of the proposed project sets a dangerous precedent for BHNF to go off track from its current excellent record in managing NWP. There is no need to renew distrust in BHNF regarding the NWP.

Because the National Park Service, US Wildland Fire Service, and the BHNF recognize the needs and values to protect the National Memorial and BHNF recreational areas, so too the BHNF staff should find the legal and intrinsic values of the NWP by employing the special provisions required by law. To be clear, we do not suggest that there should be competing management goals between a National Memorial and a congressional Wildlife Preserve. Also, we do not imply that one public place outweighs the other in importance because their purposes, needs, creation, and ultimate public enjoyment are pertinent. Both designated areas have existed side-by-side for over a century and we believe that with the legally required management approaches and fire/thinning mitigation, existence can continue with the NWP.

The BHNF needs to integrate and implement the following factual legal tools as reviewed and affirmed by legal precedents: The NOA (1920), the 10th Circuit Court Decision (2001), and the 8th Circuit Court Decision (2011). The NWP simply cannot be managed like the rest of the BHNF because of its narrow statutory designation. After witnessing the remarkable planning with The Norbeck Wildlife Project (2010a, 2010b), we fully expect that the BHNF will manage the uses and resources within the NWP first and foremost according to the NOA and other legal authorities cited herein, followed by the 2006 BHNF Land and Resource Management Plan Phase II (Forest Plan) and eventual subsequent authorities.

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I. **Acronyms**

BHNF	Black Hills National Forest
CC	Condition Class
CE	Categorical Exclusion
CEEM	Continuing Education in Ecosystem Management Group
DOI	Department of Interior
EA	Environmental Assessment
EIS	Environmental Impact Statement
FONSI	Finding of No Significant Impact
FR	Fire Regime
FRCC	Fire Regime Condition Class
FS	Forest Service
HRV	Historical Range of Variability
MA	Management Area
MORU	Mount Rushmore National Memorial
NFMA	National Forest Management Act
NEPA	National Environmental Policy Act
NOA	Norbeck Organic Act
NWP	Norbeck Wildlife Preserve
P&N	Purpose and Need
ROD	Record of Decision
SD	South Dakota
SDGFP	South Dakota Game, Fish and Parks