On July 3, 2025, 36 Code of Federal Regulations (CFR) 220 were finalized, rescinding the previous regulation and which modified the citations associated with certain categorical exclusions applicable to Forest Service actions. Specifically, the reference formerly cited as 36 CFR 220.6(e)(8) has been superseded and is now codified under 7 CFR 1b.4(d)(32). This change reflects the Department of Agriculture's consolidation of categorical exclusions and aligns Forest Service procedures with the broader USDA regulations governing environmental analysis and decision-making under the National Environmental Policy Act (NEPA). Importantly, while the citation has changed, the intent and scope of the categorical exclusion remain the same.

Issue Topic / Specialist Area: Tribal Concerns & Beliefs

Concern/Response: #1

Issue: Commenters assert that project proposal infringes upon lands the Tribes consider sacred. Commenters want to know if Tribal spiritual and religious beliefs are being adequately considered within the project proposal. Commenters state that the proposed project activities will have a disproportionate impact on Native communities in the area. Commenters also expressed concern that the "proposed exploration may cause environmental harms to the land, natural resources, and fish and wildlife in the Black Hills, including surface lands, subsurface structures, water, threatened and endangered species, and other natural resources" of sacred lands.

Many commenters are concerned about potential impacts to cultural sites, specifically impacts to Pe'Sla and the projects proximity to it, as well as potential infringement upon tribal lands. Some commenters are concerned that the proponent is not coordinating with tribes and tribal historical preservation offices (THPO); they request that the proponent/agency contact and work with tribes to identify cultural sites in the project area.

Response: The USDA Forest Service has fulfilled its tribal consultation responsibilities consistent with applicable legal and policy requirements. The proposed drilling exploration would not occur on Tribal Trust lands or private property. The Forest Service has conducted multiple government-to-government consultation meetings throughout 2025, including ten separate engagements with Tribal Government Representatives to discuss the proposed project.

Forest Service Archeologists reviewed the plan of operations and a cultural resource inventory report provided by HDR Inc., with a determination of "no historic properties effected" under Section 106 of the National Historic Preservation Act of 1966. A NEPA Tribal consultation invitation was mailed on January 28, 2025. Report copies and determination of effect for "A Level III Cultural Resources Survey of the Pete Lien and Sons

Rochford Exploration Project" were mailed under a cover letter dated September 16, 2025, and mailed September 17, 2025, to the SD SHPO and affiliated THPOs. The Northern Cheyenne THPO concurred with the determination of "No Historic Properties Affected" on September 19, 2025. The SD SHPO concurred with the Forest Service determination of "No Historic Properties Affected," November 6, 2025. During the project, the Forest Service has worked closely with tribal representatives through multiple engagement meetings to share and exchange information as well as review project details.

Issue Topic / Specialist Area: Tribal Treaty Rights

Concern/Response: #2

Issue: According to objectors, as per the 1868 Fort Laramie Treaty, lands where this project is being proposed do not belong to the United States. Moreover, the 1868 Fort Laramie Treaty requires for each individual signatory tribe to provide explicit consent to the proposed action before it can legally proceed. It would be a violation of the terms of the treaty for the proposed project to proceed prior to obtaining this explicit consent. Tribal Consultation alone is not sufficient and does not satisfy the terms of the treaty, only consent from all undersigned tribes on the 1868 Fort Laramie Treaty satisfies the terms of the treaty.

Response: As an agency, the USDA Forest Service is responsible for administering and managing all Federally owned lands within the National Forest System, including the Black Hills National Forest, according to the United States' statutory direction. Congress has not authorized the Forest Service to settle or address the lands claim issue of the Sioux Tribes. Only Congress has the authority to transfer ownership of the Black Hills National Forest to the Sioux Tribes. Further consideration of the Sioux nation's desire to return the lands is a matter of deliberation for Congress. Any potential impacts directly linked to treaty issues and land claims are beyond the scope of the Rochford Mineral Exploratory Drilling Project.

Issue Topic / Specialist Area: Tribal Consultation: Needed or Insufficient

Concern/Response: #3

Issue: Many commenters assert that there has not been meaningful tribal consultation on a government-to-government basis regarding the proposed action, and that this needs to happen before a decision is made by the responsible official.

Response: As previously stated, Forest Service district archaeologists reviewed the plan of operations and completed a cultural resource inventory report, resulting in a determination of "no historic properties affected" under Section 106 of the National Historic Preservation

Act. A Tribal Exploration consultation invitation was mailed on January 28, 2025, and a Cultural Resources invitation was mailed on September 17, 2025. Throughout the project, the Forest Service has coordinated closely with tribal representatives through multiple engagement meetings, inviting government-to-government consultation to share information, discuss concerns, and review project details.

The project is in compliance with Executive Order 13007, Indian Sacred Sites; Executive Order 13175 Consultation and Coordination with Indian Tribal Governments (and related Presidential Memorandums from 2004, 2009, and 2021); National Historic Preservation Act of 1966, as amended (16 USC 470 et seq.); Protection of Historic Properties 36 CFR 800; Native American Graves Protection and Repatriation Act of 1990 and 43 CFR 10; American Indian Religious Freedom Act of 1978; and USDA Departmental Regulation 1350-002 Tribal Consultation, Coordination and Collaboration.

Issue Topic / Specialist Area: NEPA: EIS Should Be Done

Concern/Response: #4

Issue: Commenters request that the Forest Service prepare a full Environmental Impact Statement (EIS) to assess the potential consequences of the proposed project. They argue that the scope and sensitivity of the project area warrant a comprehensive review. Commenters also express concern that a Categorical Exclusion would be insufficient and inappropriate given the scale of potential impacts.

Many commenters assert that a categorical exclusion is not appropriate for the proposed action. Some commenters state that there are aspects of the proposed action that disqualify it from fitting the category, including proximity to flood plains, wetlands, or municipal watersheds, research natural areas, American Indians and Alaska Native religious or cultural sites, and archaeological sites, or historic properties or areas. Some commenters assert that a categorical exclusion will not be able to sufficiently address the complexities of the proposed project and the sensitivity of ecosystems in the area.

Commenters also state that the proponent will try to develop a mine if they find graphite in the proposed project, and that this should be a reasonably foreseeable future action and analyzed under cumulative effects. Many commenters believe that the proposed action will have significant effects on the Rapid Creek watershed, aquifers and domestic wells, recreation & tourism, cultural heritage sites, and wildlife, with some commenters stating that the area of the proposed project contains suitable habitat for Northern long-earedbats, tricolored bats, Black Hills mountain snails, and Suckley's cuckoo bumblebees.

Response: Federal regulations identify certain actions that do not result in significant impacts to the human environment as categorical exclusions, meaning they may be

excluded from further analysis and documentation in an Environmental Assessment (EA) or Environmental Impact Statement (EIS). Per 7 CFR 1b.2(f), a proposed action may be categorically excluded only if no extraordinary circumstances related to the action are present and the action fits within one of several identified categories based on agency experience. Under 7 CFR 1b.4(d)(32), short-term (1 year or less) mineral, energy, or geophysical investigations, and their incidental support activities—including limited cross-country travel by vehicles and equipment and construction of less than 1 mile of low-standard road or minor repair of existing roads—qualify as categorically excluded. Pete Lien and Sons' proposed action meets this definition and therefore fits within a categorical exclusion.

7 CFR 1b. 4(d)(32) states "Examples include but are not limited to: (vii) Approving a plan for exploration which authorizes repair of an existing road and construction of 1/3 mile of temporary road; clearing vegetation from an acre of land for trenches, drill pads, or support facilities."

The Forest Service is requiring Pete Lien and Sons, Inc. to complete their proposed project within 12 months or less. This timing includes reclamation work. The identified overland travel routes use primarily existing NFS non-system roads or will be kept to old two-track roads from past timber sale activities whenever possible. These routes were purposely chosen to reduce the potential of new disturbance elsewhere. Site access off existing roads have been selected based on terrain and to minimize the removal of trees. Pete Lien and Sons's proposed action fits this definition of a categorical exclusion action.

Forest Service resource specialists such as wildlife biologists, hydrologists, fire and fuels managers, recreation managers were consulted and a review of the plan of operations was completed. No extraordinary circumstances were identified by the specialists.

The regulations indicate that if the Responsible Official determines the proposed action may potentially result in extraordinary circumstances, a categorical exclusion action may be elevated to an EA to assess those potential effects. The purpose of an EA is to assist in 'determining whether to prepare an environmental impact statement or a finding of no significant impact' (7 CFR 1b.5). The Responsible Official would determine whether the EA analysis shows that the project would have significant impacts. If the EA analysis shows that the project would not have significant impacts, this would be documented in a Finding of No Significant Impact at the time of decision. If the EA analysis determines the proposed action likely results in significant environmental impacts, the EA may be elevated to an EIS.

Issue Topic / Specialist Area: NEPA: Public Involvement (Comment Period Extension)

Concern/Response: #5

Issue: Commenters assert that the agency did not allow for sufficient public involvement. Commenters state that there was not sufficient time for the public to research, review, and comment on the project. Commenters have requested additional time to comment.

Response: The scoping period for this project was open for 37 calendar days. Current regulations do not prescribe a fixed scoping duration nor a scoping period for categorical exclusions. Scoping is at the Responsible Officials discretion.

The 37-day scoping period provided for this project exceeds the standard minimum and was designed to allow adequate time for interested parties, including Tribal governments, local communities, and the general public, to review the proposal and submit comments. The Forest Service also provided multiple avenues for comment submission, including online portals and written correspondence, in accordance with public participation requirements outlined in 36 CFR Part 218.

Issue Topic / Specialist Area: NEPA: Proposed Action – unclear, untrue

Concern/Response: #6

Issue: Commenters state that they believe aspects of the proposed action to be unclear and ask for further clarification, specifically regarding the location of the proposed drill pads, and mitigation measures that will be implemented. Other commenters believe the proposed action to be untrue; primarily that the project proponent will not complete the exploration within one year, and that rehabilitation of drill pads will not be done or will be inadequate.

Response: Pete Lien and Sons' Plan of Operations has been posted on the project website at: https://www.fs.usda.gov/r02/blackhills/projects/67838. The Forest Service sets the parameters and mitigation measures that Pete Lien and Sons (the proponent) must operate within. The proponent is required to comply with all environmental compliance requirements issued by the Forest Service and other permitting agencies. Reclamation requirements are governed by 36 CFR 228.8(g), which mandates that all disturbed areas be reclaimed to a condition that is consistent with Forest Service standards. A reclamation bond is required under 36 CFR 228.13 to ensure that reclamation is completed even if the operator fails to do so. The Forest Service Minerals Specialist will administer the Plan of Operations and monitor compliance. Additionally, the Forest Service will require site-specific erosion control, revegetation monitoring, and weed management plans to ensure rehabilitation is adequate and successful.

Issue Topic / Specialist Area: Water Resources

Concern/Response: #7

Issue: Commenters have an overall concern over water resources being impacted by this project. The most common concern is toxic runoff or general pollution entering the waters present within the proposed project area, and comments suggest negative impacts to the local waters, private wells, businesses, wildlife, and recreation & tourism. Commenters would like more transparency on how Pete Lien and Sons, Inc. assessed the area for potential surface impacts, as well as what plans are in place for monitoring potential impacts.

Response: The Forest Service has determined the risks of drilling causing contamination are non-existent or insignificant given the drilling methodology and geology.

The major bedrock aquifers in the Black Hills and surrounding area are the Deadwood, Madison, Minnelusa, Minnekahta, and Inyan Kara. None of these aquifers occur within the Rochford Mineral Exploratory Drilling Project area. The major aquifers are contained in the later sedimentary units that ring the crystalline core in which the Rochford Mineral Exploratory Drilling Project area is located.

The crystalline core generally has low permeability and, beyond the central exposed section, forms the lower confining unit for the sedimentary aquifers. The crystalline core and sedimentary aquifers are not hydraulically connected. Localized, noncontinuous aquifers occur within weathered and fractured rocks in the crystalline core. The extent and distribution of these aquifers are difficult to determine without drilling. These aquifers are generally unconfined and are recharged from precipitation and infiltration, though most of the precipitation that falls is lost to evapotranspiration and runoff (overland and stream flow).

The crystalline core contains groundwater only within rock fractures. As a result, depths to water and production rates may vary widely, even over relatively short distances. The aquifers are not continuous, and the connectivity between wells can be difficult to characterize. The aquifers in the crystalline core are much less productive than the surrounding sedimentary aquifers.

Drill sites will not be in streams and wetlands, and operations will be conducted to prevent pollutants or debris from entering streams and wetlands. Pete Lien and Sons will refrain from crossing all stream channels (ephemeral, intermittent, perennial) with motorized vehicles where a crossing doesn't already exist. No roads or fill/dredging activities will occur at these crossings.

The only hazardous substances proposed are petroleum products, oils, lubricants, and fuels. All substances listed are to be used on the equipment itself, not for drilling purposes. These substances are no different than any other substances used in vehicles and equipment used for timber sales, ATV/UTVs, or any other equipment used during forest.

The drill (or drills) will be small core or top-hammer percussion rigs mounted on tracks or a trailer. The drill holes will be approximately 3 inches in diameter and excavated to a maximum depth of up to 1000 feet, and at a 45-degree angle. The water required to flush the mineral rock cutting from the drill holes will be potable, and will be collected in a tank or infiltration gallery to be recycled. The drilling fluid and additives will be the same as those used in developing a drinking water well.

Drill sites and infiltration galleries are located a minimum of 300 feet from all perennial streams, and 200 feet from other riparian areas (ponds, lakes, reservoirs, and wetlands). If exceptions to these distances (increases or decreases) are required based on site conditions, Pete Lien and Sons will gain approval from the on-site USFS Representative in conjunction with USFS hydrology specialists.

Upon completion of the drill hole, there will be an effort to replace the drill cuttings down the drill hole. However, this is not always possible due to blockages stemming from several reasons. If all the cuttings cannot be placed back down the drill hole, there are several options available that comply with applicable State regulations that will be considered in consultation with appropriate SDDANR and USFS personnel.

As stated in the Plan of Operations, reclamation practices will follow South Dakota Codified Law (SDCL) 45-6C8, 45-6C-27 through 45-6C-29, 45-6C-31 through 45-6C-35, Administrative Rules of South Dakota (ARSD) 74:11:08 and USFS requirements.

Issue Topic / Specialist Area: Water: Impacts to Rapid Creek Watershed

Concern/Response: #8

Issue: Commenters are concerned about potential impacts to the Castle Creek and Rapid Creek Watershed, creeks, and tributaries. Commenters also expressed concerns about potential impacts to underground aquifers. They state their concerns would also affect Rapid City, Rapid Valley, the city of Box Elder, Ellsworth Air Force Base, residentials lands & wells, businesses, Tribal lands, and recreation and tourism in this area. Specific concerns that were used in comments include: the potential for contamination or cross-contamination of underground water sources, potential to pollute the Rapid Creek watershed in unwise and a danger to a fragile ecosystem, concern that drinking water is at risk, concern toxic drilling near important watersheds is in direct contrast with our duty to

protect the environment, concern of the potential harmful impacts to humans, livestock and wildlife.

Response: See above answer for Issue Topic/Specialist Area: Water Resources, Concern/Response # 7. No drilling sites, staging areas, or access paths are located within designated Water Influence Zones; as such, there is no potential for direct effects on surface water resources associated with these WIZ areas. Existing two-track trails either cross or parallel Lessering Draw and it's tributary (both ephemeral) and one existing FS road to be used for access crosses Sawbuck Draw (ephemeral); however, new environmental effects associated with these existing access roads are not anticipated. As mentioned above, existing access roads and temporary access roads would only be improved if needed to gain access to the site. Potential short-term indirect effects on surface water resources could occur from Project activities, including run-off and subsequent sedimentation; however, due to the distance of nearby surface waters from project activities, the magnitude (and likelihood) of short-term impacts are low.

The Project would implement applicable applicant-proposed minimization measures. including National Best Management Practices (BMPs; USFS 2012), Region 2 Watershed Conservation Practices (WCPs; USFS 2006b), and Forest Plan standards and guidelines (USFS 2006a) as outlined in Section 2.1.2 to address the potential effects on surface water.

This could include installation of silt fencing to minimize sedimentation; storage of all fuels and oils associated with Project activities in appropriate containers/tanks and in a secondary containment to mitigate or minimize any spill hazards; and ensuring crossing of ephemeral streams occurs in a manner that maintains stream integrity. Ongoing visual inspection of water used during the drilling operations would be conducted by USFS personnel to ensure proper capture and flow into the holding and settling tank circuit. Drill pads, staging areas and temporary overland trails would be reclaimed upon completion of all Project activities.

Issue Topic / Specialist Area: Spills, Leaks, and Hazardous Materials

Concern/Response: #9

Issue: Commenters are concerned about possible spills and leaks of chemicals, fuel, and other hazardous materials that are part of the mineral exploration process. Some commenters are additionally concerned about the use of water in the drilling process spreading pollution into the nearby environment and water resources.

Response: Hazardous substances are covered in Section G of the Plan of Operations, which consists of petroleum products, oils, lubricants, and fuels. All substances listed are to be used on the equipment itself, not for drilling purposes. These substances are no

different than any other substances used in vehicles and equipment used for timber sales, ATV/UTVs, or any other equipment used within a forest, and will be transported on an as-needed basis and stored and secured off-site in the approved lay down area. Appropriate containment procedures will be employed, such as containers and absorbent material for all hydraulic fluid, motor oil, and other hazardous materials. Absorbent material will be kept on hand at each site where petroleum products are being used or stored.

Water is required to flush the mineral rock cutting from the drill hole. The water to charge the hole initially will come from local, off-site sources, and will be stored in a tank or infiltration gallery for recirculation to reduce consumption. The drilling fluid and additives will be the same as those used in developing a drinking water well.

Issue Topic / Specialist Area: Mineral: Exploratory Drilling Will Lead to a Mine

Concern/Response: #10

Issue: Commenters state that the proposed Rochford Mineral Exploratory Drilling Project will lead to a mine, and that graphite mining is a threat to the ecosystem, water resources, human health, and sacred sites in proximity to the project area.

Response: The environmental effects associated with the proposed action are the focus of this analysis. The proponent's Plan of Operations only includes exploratory drilling—not mining. Any future mining proposal would require its own separate Plan of Operations and a new NEPA analysis. Likewise, any activities beyond what is defined in the current proposal would require additional review through the NEPA process before they could proceed.

Issue Topic / Specialist Area: Impacts to Forest

Concern/Response: # 11

Issue: Commenters express concern about impacts the proposed project may have on the forest, with several calling out the potential for deforestation. Some commenters specifically request an evaluation of potential negative impacts to old growth ponderosa pines in the area and mitigation measures to protect them.

Response: The identified overland travel routes for the proposed project are primarily existing NFS non-system roads or will be kept to old two-track roads from past timber sale activities whenever possible. Site access off existing roads has been selected based on terrain and to minimize the removal of trees. These routes were purposely chosen to reduce the potential of new disturbance elsewhere. Tree removal will be incidental (small quantities) and only related to road access and drill pad needs.

A Forest Service botanist has reviewed the plan of operations and has required mitigation measures to minimize impacts to vegetation.

Issue Topic / Specialist Area: Invasive Plants

Concern/Response: #12

Issue: Commenters are concerned about the risk of spreading invasive plants through the disturbance of the proposed action.

Response: A Forest Service botanist has reviewed the plan of operations and has required mitigation measures to minimize impacts to vegetation and to minimize the potential spread of noxious weeds.

Issue Topic / Specialist Area: Wildlife: Potential Impacts to Wildlife, General

Concern/Response: #13

Issue: Commenters are concerned that the continuous disturbance from the 12 to 24-hour operation will drive wildlife away from the area. Commenters also brought up concerns that potential impacts to water quality could harm wildlife.

Response: Exploratory drilling is not anticipated to have long-term detrimental effects to wildlife in the area. Wildlife are expected to avoid active drilling sites but reinhabit the area once drilling activities are done. Noise is expected to be similar to other activities in the area such as recreational motorized use. Specific design criteria were integrated into the Wildlife BA, ensuring consistency with Forest Plan direction and resource protection measures.

Issue Topic / Specialist Area: Rec: Impacts to Rec and Tourism

Concern/Response: #14

Issue: Many commenters are greatly concerned that the project will negatively impact the quality of recreation opportunities in the area, including, but not limited to, recreational use of local waterways and hiking trails. Commenters also assert that the project will negatively impact tourism in the area and, specifically, outdoor recreation tourism, which many hold is vital to the region's economy.

Response: A Forest Service recreation specialist reviewed the plan of operations, and it is not expected that the project would negatively affect recreation or tourism opportunities over the long term. The impact is similar to a logging operation being implemented and some recreational opportunities are impacted on a short-term basis but are expected to return to normal levels after the project concludes.

Issue Topic / Specialist Area: Air Quality

Concern/Response: #15

Issue: Commenters are concerned about dust from equipment and drilling activities impacting air quality in the surrounding area. Commenters cite other mining operations by project proponent as an example of impacts to air quality that the Rochford Mineral Exploratory Drilling Project may cause.

Response: Because the proposed action is short-term and limited in scope, vehicle use and associated dust impacts are expected to be minimal to none. This project does not authorize mining activities; it solely involves exploratory drilling.

Issue Topic / Specialist Area: Socecon: Noise, Light, and Infrastructure Impacts to Residents and Community

Concern/Response: #16

Issue: Commenters are concerned about the impacts of potential noise and light pollution as a result of the proposed action. Some commenters specifically expressed concern about the operating hours of the project and the potential for 24-hour operations. Some commenters also state that the infrastructure of the proposed action will be an eyesore and affect the scenic value of the area.

Response: The Rochford Mineral Exploratory Project does not propose any drill sites/pads within 500 feet of private residences. Pete Lien and Sons is required to do reclamation following implementation of their project. The reclamation plan can be found in their Plan of Operations.

Issue Topic / Specialist Area: Changing climate conditions

Concern/Response: #17

Issue: Commenters express concern that the proposed action will have detrimental effects on the environment and cause climate impacts.

Response: Access routes and pad locations were carefully selected in order to minimize new surface disturbance, which includes tree or brush removal. Access routes and pad locations are generally located in existing cleared areas or alongside existing roads. Reclamation plans will restore vegetation to pre-use conditions.

References:

USFS. 2012. National Best Management Practices for Water Quality Management on National Forest System Lands, Volume 1: National Core BMP Technical Guide.

USFS. 2006b. Forest Service Handbook. Denver, CO. FSH 2509.25- Watershed Conservation Practices Handbook.

USDA-Forest Service. 2006a. 1997 Revised Land and Resource Management Plan for the Black Hills National Forest, As Amended by the Phase II Amendment. US Department of Agriculture-Forest Service, Black Hills National Forest. Custer, South Dakota. March, 2006. Available at https://www.fs.usda.gov/detail/blackhills/landmanagement/planning/?cid=STELPRDB5112303