



STATE OF SOUTH DAKOTA

# OFFICE OF THE GOVERNOR

KRISTI NOEM | GOVERNOR

February 26, 2020

The Honorable John Thune  
511 Dirksen Senate Office Bldg  
Washington, D.C. 20510

Dear Senator Thune,

I am writing to ask for our Congressional delegation's assistance in introducing legislation to authorize the sale of certain parcels of U.S. Forest Service property within the Gilt Edge Mine Superfund Site to the State of South Dakota. The parcels consist of 266 acres of U.S. Forest Service property in Lawrence County within the boundary of the Superfund Site as shown on the attached map.

The Brohm Mining Company went bankrupt and left the site in 1999. The site was listed as an EPA Superfund Site in 2000 under the federal Comprehensive Environmental Response, Compensation and Liability Act 42 U.S.C. Act §§ 9601 (CERCLA). Pursuant to CERCLA, the state must provide a 10 percent match of EPA's cleanup costs at the Gilt Edge Mine Superfund Site and will be responsible for 100 percent of the costs to collect and treat the acid mine drainage on site after EPA completes its cleanup actions.

CERCLA also requires the State of South Dakota to assure to EPA that any institutional controls implemented as part of the cleanup are reliable and will remain in place. Thus, EPA and the state must work together to develop Institutional Controls (ICs) to protect the cleanup actions put in place. The EPA defines ICs as "non-engineered instruments, such as administrative and legal controls, that help to minimize the potential for exposure to contamination and/or protect the integrity of a response action." (EPA OSWER 9355.0-89, December 2012)

To maintain the cleanup measures that have been implemented on this site and to meet the assurances required under CERCLA, the state has worked to acquire ownership and control of the property within the Superfund boundary. Since 2001 the state has acquired approximately 972 acres from responsible parties, private purchases, and some small tract federal purchases. The remaining approximately 90 acres of private property within the boundary of the Superfund site can be managed with traditional ICs such as easements, zoning, covenants and restrictions, state legal restrictions, and other tools in cooperation with the EPA.

A major remaining issue is how to deal with 266 acres of U.S. Forest Service property located within the Superfund boundary. The state does not have the authority to put institutional controls in place on

federal property. As such, a purchase of the property is the easiest and most efficient way for the state to meet its CERCLA assurance requirements to secure, manage, and protect the Gilt Edge Mine Superfund site.

To accomplish these goals, I met with Black Hills Forest Supervisor Mark Van Every earlier this year. Since that meeting, state officials have had continued conversations with the EPA and the U.S. Forest Service about this topic and to ensure a transparent process presented this proposal at a Black Hills National Forest Advisory Board Meeting. This preliminary coordination with the federal agencies has resulted in a consensus in using the Custer County Airport legislation you successfully passed last year (H.R. 382 of the 116<sup>th</sup> Congress) as a template. Attached is a draft piece of legislation titled the Gilt Edge Mine Conveyance Act that is modeled after that previous legislation. It authorizes a sale of the land to the State of South Dakota for the appraised price with the proceeds to be deposited in the fund established under Public Law 90-171 (commonly known as the "Sisk Act") (16 U.S.C. 484a). The funds are then appropriated for the Forest Service to purchase inholdings within the Black Hills National Forest.

Based on our preliminary meetings, the Forest Service and the State of South Dakota would both benefit from this land purchase within the Gilt Edge Mine Superfund site and we are both willing and ready to assist you with the necessary information for drafting and introducing appropriate legislation.

For additional information please have your staff reach out to the Secretary of the Department of Environment and Natural Resources, Hunter Roberts at 605-773-5559 or [hunter.roberts@state.sd.us](mailto:hunter.roberts@state.sd.us). I look forward to working with you on this important matter for our state.

Sincerely,



Kristi Noem  
Governor

Enclosure

cc: Congressman Johnson  
Senator Mike Rounds  
Chief Vicki Christiansen, US Forest Service