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September 6, 2022

Via CARA, U.S. Mail and Email to: SM.FS.TontoPlan@USDA.gov
USDA-Forest Service Southwest Region
ATTN: Objection Reviewing Officer
333 Broadway Blvd SE
Albuquerque, NM 87102

Re: Objection to Tonto National Forest Revised Land Management Plan and Final Environmental Impact Statement (March, 2022)

The Arizona Mining Association ("AMA") files the following objections based on prior submitted formal substantive comments dated March 12, 2020, on the draft Tonto National Forest ("TNF") Land Management Plan Revision and draft environmental impact statement.¹ Information required pursuant to 36 C.F.R. § 219.54(c) follows:

I. Objector Contact Information:

Arizona Mining Association

916 W. Adams St., Ste. 2

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Attn: Steve Trussell, Executive Director

Telephone: 602-266-4416

Email: Steve@azmining.org

II. Subject of Objection: TNF Revised Land Management Plan (March 2022) ("LMP") and related final environmental impact statement ("FEIS") and draft record of decision ("DROD").

III. Name and Title of Responsible Official: Neil Bosworth, TNF Forest Supervisor.

IV. Statement of the Issues and Applicable Parts of Revision to Which the Objection Applies:

TNF has added substantial new content to the LMP that was not presented in the Draft Plan. Therefore, this is AMA's first opportunity to formally comment on this new content. The new content includes, but is not limited to,

¹ References to prior submitted comments shall hereafter be referred to as AMA Comments (2020).

definitions that were added to clarify the intent for certain terminology (i.e., adequate engineering controls, groundwater dependent ecosystems, resiliency, significant disturbance, etc.); and new or modified plan components (e.g. SC-DC-05, MMAM-S-04, SU-G-08, SC-G-03, WAT-G-14, NTMA-G-03, etc.). The new term “scenic integrity objective” is also new and heavily utilized throughout the Plan, which significantly impacts the interpretation and application of numerous LMP components.

Finally, many LMP components are still written in a manner in which TNF authority exceeds or is inconsistent with applicable regulations, including but not limited to, establishing required plan components for the Arizona National Scenic Trail as opposed to establishing them in a Comprehensive Plan.

The objections below specify the issues and parts of the Plan to which each objection applies.

V. Statement Explaining Objection, Suggestion for Improvement, Inconsistencies with Law, Regulation or Policy and Links Between Prior Substantive Formal Comments and/or Issues Arising After Opportunities for Formal Comment: See relevant content set forth below.

The AMA submitted comments on the draft LMP focused on: (i) inclusion of plan elements that provide for social and economic sustainability; (ii) plan components being consistent with the applicable surface use regulations for mining locatable minerals (36 C.F.R. Pt. 228, Subpt. A) and (iii) recognition of the “inherent capability” of areas of the TNF to avoid “one size fits all” plan components that fail to promote the contribution of mining to the local, regional and national economy.

1. Social and Economic Sustainability

a. Plan Components

AMA discussed the beneficial economic impact of mining in its comments on the draft LMP and those benefits include quality jobs and labor income significantly impacting GDP. The LMP acknowledges the need for the revised forest plan to incorporate changes that help with social, cultural and economic sustainability for the TNF, but only discusses select multiple uses (e.g., recreation, tourism, timber and grazing) and excludes mining.² The situation continues with a recognition of the need to develop plan components for these key ecosystem services and notes that such components should include water for consumption, water for recreation, habitat for hunting, fishing and cultural heritage.³ Again, mining is excluded. In all likelihood, the contribution of mining eclipses the contribution to local economies of all of those other multiple uses combined, yet the plan includes no components that support or encourage mineral exploration or development and no reason was provided by the TNF for so doing in its response to comments.⁴

A prime section of the LMP for the development of such plan components would be in the Mining Minerals, and Abandoned Minerals (MMAM) section.⁵ Remarkably, however, not a single desired condition, objective, standard,

² LMP at pg. 10.

³ *Id.* at pg. 11.

⁴ See e.g., Vol. 3, Appendix A, pg. 109.

⁵ LMP at pgs. 57 to 60.

guideline or management approach (with the exclusion of promoting rock hounding) was adopted. Instead, all the plan components were designed to regulate or limit locatable minerals and mineral material development.

Another section where the TNF could have adopted plan components to support exploration and mineral development is in the Roads section.⁶ Once again, not a single plan component recognized the necessity of roads for exploration and mineral development in order to promote economic contribution. Instead, the adopted guidelines prohibit new roads in favor of the primitive recreation opportunity spectrum (RD-G-01), and mandate new roads be located outside of expansive and undefined riparian management areas (“RMZs”) (RD-G-05) and the closure of roads if geologic hazards or hazard trees exist (RD-G-08) and requires avoidance of new roads where high “mass wasting” potential occurs (RD-G-11).

Suggestion for improvement: (i) revise the LMP to include recognition of mining as an important contributor to economic sustainability; (ii) develop at least one desired condition, objective, standard or guideline that promotes exploration and/or development; and (iii) exclude roads constructed for exploration and mining from the Roads guidelines mentioned above.

b. Rejection of Development of Minerals Management Area

The lack of plan components that support exploration and mineral development is precisely why the AMA and its members companies encouraged the TNF to develop a Minerals Management Area in the Globe-Miami mining district. The TNF summarily rejected this proposal on the basis that Alternative D already considered “fewer restrictions on land uses, including mining and minerals” and that “minerals might be discovered outside any defined area.”⁷ A review of the TNF’s justification reveals less than a thin veneer of substance for the proffered justification.

First, the TNF acknowledged in the FEIS that most of the direction that effects locatable minerals activities comes from existing law, regulation and policy and that fact “was unchanged across all alternatives considered.”⁸ In addition, with respect to locatable minerals, the TNF acknowledged that most of the potential for, and interest in, locatable mineral deposits exists in the Globe-Miami and Superior mining districts and that future development proposals are probable in that area.⁹ Further, the TNF stated that the effects of the plan components to locatable and saleable minerals were essentially ‘common to all alternatives’ and admitted that the only difference in Alternative D relative to other alternatives was to make saleable (common variety) minerals more available.¹⁰ This is further evidence the TNF gave short shrift to the economic and social benefits of mining, contrary to the requirements of the planning regulations.

Suggestion for improvement: revise the LMP to adopt a Minerals Management Area to ensure economic and social sustainability plan content is included as required by 36 C.F.R. § 219.10. It is notable that there are 11 separate types of management areas in the LMP and not one of them is focused on economic sustainability or non-conservation oriented multiple uses.

⁶ LMP at pg. 60.

⁷ Vol. 3, App. A, at pg. 120.

⁸ FEIS at pg. 249.

⁹ FEIS at pg. 248.

¹⁰ FEIS at pg. 251.

2. Mining, Minerals, and Abandoned Mine Plan Components Are Not Consistent with Applicable Regulations

a. Desired Conditions¹¹ Are Inconsistent with Applicable Regulation

MMAM-DC-01 and 02 are inconsistent with applicable locatable minerals regulation and the TNF disregarded member company concerns on the basis that the law did not “need to be repeated” and claimed that the applicable legal standards were being “emphasized” in MMAM DC-01¹² and that MMAM DC-02 was merely an “aspiration” or a “vision” of what the plan area should look like.¹³ To the contrary, any adopted desired conditions must be consistent with existing law, regulation and policy, management of the land and resources cannot be directed in a manner to the contrary.

Suggestion for improvement: See Attachment 1.

b. Standards MMAM-S-02 and MMAM-S-04 are Inconsistent with Applicable Regulation

Standards are mandatory constraints on project and activity decision-making and deviation requires a plan amendment.¹⁴ As such, it is particularly important that standards reflect applicable regulatory requirements. MMAM-S-02 is contrary to existing locatable minerals regulations, but in the FEIS, the TNF stated that the “standard reflects that the management of this requires is already decided by existing, law, regulation, and policy [but] [b]ased on experience, it needs to be taken further.”¹⁵ Unfortunately, that is not a sufficient justification to require standards of conduct for reclamation that do not comport with existing regulation.

Suggestion for improvement: See Attachment 1.

c. Guideline MMAM-G-04 and Management Approaches MMAM-MA-01 and MMAM-MA-06 are Inconsistent with Applicable Regulations

Regulatory requirements for reclamation are found in 36 CFR §228.8 (g), and do not include the “natural species succession” requirements added by this guideline, the phased introduction of species, or require the use of adaptive management principles. Reclamation is required “where practicable” and not for any particular post-mining land use. The LMP components should not be inconsistent with, or add requirements to, applicable regulations.

Suggestion for improvement: delete MMAM-G-04, MMAM-MA-01 and MMAM-MA-06.

3. Failure to Recognize Inherent Capability of Mineralized Areas

a. Arizona National Scenic Trail

¹¹ Desired conditions are descriptions of specific, social, economic, and/or other ecological characteristics of the plan area, or a portion of the plan area, toward which management of the land and resources should be directed (36 C.F.R. § 219.7 (e)(1)(i)).

¹² Vol. 3, App. A at pg. 124.

¹³ Vol. 3, App. A at pg. 250.

¹⁴ 36 C.F.R. § 219 (e)(1)(iii).

¹⁵ Vol. 3, Appendix A at pgs. 125-126.

One prime example of the one-size-fits-all approach is the Arizona National Scenic Trail ("ANST") management area provisions. The proposed ANST traverses over 192 miles of the Globe Ranger District, which is the largest mineralized district in the TNF having multiple historic and active mines. Plan components prohibiting activities in the ANST such as NTMA-S-03, NTMA-G-10 and NTMA-G-12 are extremely problematic for mineral exploration and development.

Further, because a comprehensive plan for the management of the ANST has yet to be formally developed, the TNF LMP cannot define the ANST as "*approximately .5 miles from the centerline of the trail*" thereby establishing a trail corridor within which standards and guidelines prohibit certain activities.¹⁶ In fact, all decisions relevant to the acquisition, management, development and use of the trail must be established in a comprehensive National Scenic Trail Plan, not via the LMP.¹⁷ The LMP cannot supplant applicable federal law.

In order to determine any trail right-of-way, the National Trails System Act requires a collaborative process which includes the creation and participation of a trail advisory council. In fact, 16 U.S.C. § 1244(e) requires:

"the responsible Secretary *shall*, after full consultation with affected Federal Land managing agencies, the Governors of the affected States, the relevant *advisory council established pursuant to subsection (d)* . . . submit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, *a comprehensive plan for acquisition, management, development, and use of the trail. . .*"

A trail advisory council, according to statute, must include one or more members appointed to represent private organizations including corporate and individual landowners, and land users that have an established and recognized interest in the trail. Further, under 16 U.S.C. § 1244(d), "the appropriate Secretary *shall consult with [the Advisory] council* . . . with respect to matters relating to the trail, *including the selection of the rights-of-way. . .*" (emphasis added).

In addition to the coordination obligations set forth in the National Trails System Act, Section 6 of NFMA requires land management planning to be "coordinated with the land and resource management planning processes of State and local governments and other Federal agencies" (16 U.S.C. 1604 (a)). Further, insofar as it pertains to the requirement to coordinate Forest Service management with State and local governments, the 2012 Planning Rule requires:

Coordination with other public planning efforts. (1) The responsible official shall coordinate land management planning with the equivalent and related planning efforts of federally recognized Indian Tribes, Alaska Native Corporations, other Federal agencies, and State and local governments.¹⁸

We note the absence of required coordination efforts as to the objectionable ANST management prescriptions, particularly as to consideration of the impacts on future development of intervening state land administered by the Arizona State Land Department and as to the effect on Gila County economic and energy development objectives.¹⁹

¹⁶ TNF LMP at pg. 152.

¹⁷ 16 U.S.C. § 1244(e).

¹⁸ 36 C.F.R. 219(4)(b).

¹⁹ We acknowledge the TNF's coordination efforts set forth in the FEIS, Vol. 4-Appendix C subject to the exceptions identified above.

Accordingly, the LMP description of the ANST corridor, the standard adopted as NTMA-S-03 and the guidelines adopted as NTMA-G-10 and NTMA-G-12 are inconsistent with federal law. It is not sufficient to leave these guidelines in place simply because there is some potential for flexibility in departure from the guideline in the future, as indicated by the TNF in its response to comments.²⁰

Suggestions for improvement: (i) remove NTMA-S-03, NTMA-G-10 and NTMA-G-12; and (ii) relocate NTMA-MA-07 (following the trail comprehensive plan once adopted) from a management approach to a standard.²¹

b. Scenic Values

New provisions include SC-DC-05, SC-G-03 and SC-MA-04. The new desired condition and guideline fail to consider the inherent capability of certain areas, such as historic and current mining areas, where scenic integrity objectives may be inappropriate. The regulations applicable to mining operations address “scenic values” and require certain measures “to the extent practicable.”²²

Suggestions for improvement: remove SC-DC-05 and SC-G-03.

c. Roads

RD-G-01, RD-MA-02, WAT-G-06 and RWMA-S-01 are contrary to law with respect to mining, as they fail to recognize that access to mining claims cannot be restricted. The LMP components should not be contrary to law with respect to mining.

Suggestions for improvement: These plan components should be changed to exclude access to mining claims protected under the 1872 Mining Law.

4. New Components/Issues

a. MMAM-S-04: The LMP includes a highly objectionable brand new standard (requiring a Notice of Intent (“NOI”) be submitted for all proposed geophysical investigations). AMA did not have an opportunity to comment on this standard previously, because it was not included in the draft LMP. Therefore, AMA lodges its’ objection now based on the fact that new MMAM-S-04 is totally contrary to existing Forest Service regulation and policy.

Specifically, the Forest Service regulations provide a list of when NOIs are not required.²³ For example, NOIs are not needed for:

- “Operations which will be limited to the use of vehicles on existing public roads or roads used and maintained for National Forest System purposes”;

²⁰ See FEIS, Vol. 3, Appendix A at pg. 150.

²¹ See 36 C.F.R. § 219.7(e)(1)(iii) (a standard is a mandatory constraint on project and activity decisionmaking, established to help achieve or maintain the desired condition or conditions, to avoid or mitigate undesirable effects, or to meet applicable legal requirements).

²² 36 C.F.R. 228.8(d).

²³ 36 C.F.R. § 228.4 (a)(1).

- “prospecting and sampling which *will not cause* significant surface resource disturbance and will not involve removal of more than a reasonable amount of mineral deposit for analysis and study . . .”; or
- “Operations which will not involve the use of mechanized earthmoving equipment, such as bulldozers or back-hoes, or the cutting of trees, unless those operations otherwise might cause an significant disturbance of surface resources.”

Clearly geophysical investigations can be conducted in accord with the regulations above, not causing significant surface resource disturbance (“SSRD”), and not requiring NOI submittal. It is not legally permissible for the TNF to unilaterally deem all methods of geophysical investigation to require NOI submittal (particularly as a LMP standard without engaging in required rule making procedures). Determinations of SSRD occur initially on an operator-by-operator, case-by-case basis which is spelled out in existing Forest Service regulation²⁴ and policy.²⁵ In fact, the trigger for a NOI is the operator’s reasonable uncertainty as to the significance of the potential effects of the proposed operations. Where there is no question, an operator’s reasonable certainty is the relevant threshold. Where an operator makes a reasoned conclusion that operations will not cause SSRD, no NOI is required. In fact, District Ranger determinations of SSRD only become relevant when there is some question as to whether or not SSRD may result from proposed operations thus requiring plan of operations submittal. The District Ranger authority is mis-cited in the LMP as a justification to require NOIs for all geophysical work and should likewise be removed.²⁶

Suggestion for improvement: Remove MMAM-S-04 as none of these are consistent with applicable Forest Service regulation and policy. With respect to MMAM-S-04, if the Forest Service desires to make all geophysical exploration subject to NOI submittal, it must adopt a rule pursuant to proper notice and comment proceedings and may not do so via the adoption of a forest plan standard that is wholly inconsistent with existing agency regulations and policy.

b. WAT-G-14

Groundwater and surface water that are not connected should not be managed as one hydrologically connected system.

Suggestions for improvement: Clarify that this guideline applies only where the surface water and groundwater systems at issue have been shown to be hydrologically connected.

c. SC-G-03, SC-DC-05

These new components conflict with the Part 228 regulations applicable to mining operations, which address “scenic values” and impose specific requirements “to the extent practicable.” The regulations recognize that mining may have an impact on scenic values, whereas these plan components do not.

²⁴ See 70 FR 32713 (June 6, 2005).

²⁵ See FSM 2800 (Minerals and Geology), Chapter 2810 (Mining Claims), Section 2817.1 (Notice of Intent to Operate) and USFS Flow Chart on SSRD Determinations at https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5356906.pdf.

²⁶ LMP at pg. 58 (footnote 38).

Suggestions for improvement: Clarify that these components do not apply to mining operations subject to the Part 228 regulations.

d. NTMA-G-03

The new restriction on roads crossing national trails is contrary to law with respect to mining, as it fails to recognize that access to mining claims cannot be restricted. The LMP components should not be contrary to law with respect to mining.

Suggestions for improvement: This plan components should be changed to exclude access to mining claims protected under the 1872 Mining Law.

e. SU-G-08

This new guideline conflicts with the special use permit regulations (26 CFR 251) which allow for terms and conditions that:

Minimize damage to scenic and esthetic values and fish and wildlife habitat and otherwise protect the environment;

Require compliance with applicable air and water quality standards established by or pursuant to applicable Federal or State law; and

Require compliance with State standards for public health and safety, environmental protection, and siting, construction, operation, and maintenance if those standards are more stringent than applicable Federal standards. "minimize damage to scenic and aesthetic values and fish and wildlife habitat and otherwise protect the environment."²⁷

The regulations do not prioritize "at-risk species," or require "design elements" prior to authorization.

Suggestions for improvement: This plan component should be deleted.

In addition to the comments presented herein, please note that the AMA joins in and supports the objections to the LMP, FEIS, and DROD submitted by its member companies as well. The AMA appreciates the opportunity to present these objections and the TNF's consideration thereof, as well as those submitted from our member companies.

Sincerely,



Steve Trussell, Executive Director

²⁷ 36 C.F.R. § 251.56(a)(1)(i).

Attachment 1

Mining, Minerals, and Abandoned Mines (MMAM)	
Minerals – Desired Conditions MMAM-DC-01	<p>Proposed Changes: Mining and Mineral Activities comply with law, regulation, and policy in the development of minerals. Minimize adverse environmental impacts, <u>where feasible</u>, to surface and groundwater resources <u>which includes air quality, water quality, watershed and forest ecosystem health, fisheries</u> wildlife and wildlife habitat, scenic <u>values</u> character, <u>roads, solid wastes</u> and <u>reclamation</u>. other desired conditions applicable to the area.</p> <p>Why: This will make MMAM-DC- 01 consistent with 36 C.F.R. § 228.8. Under 36 C.F.R. § 228.8, “[a]ll operations shall be conducted so as, <i>where feasible</i>, to minimize adverse environmental impacts on National Forest <i>surface resources</i>.” (emphasis added). The listed <i>surface resources</i> in § 228.8 include air quality, water quality, solid wastes, scenic values, fisheries and wildlife habitat, roads, and reclamation.</p>
MMAM-DC-02	<p>Proposed Changes: Reclaimed mining and mineral sites provides for public safety and the protection <u>prevention or control of damage to</u> of forest <u>surface</u> resources. They possess a resilient forest ecosystem suitable to permanent post mining landform.</p> <p>Why: This will make MMAM-DC 02 consistent with 36 C.F.R. § 228.8(g). There is no statutory or regulatory mandate requiring reclaimed sites to “possess a resilient forest ecosystem suitable to permanent post mining landform.”</p> <p>In fact, 36 C.F.R. § 228.8 requires “[u]pon exhaustion of the mineral deposit or at the earliest practicable time during operations, or within 1 year of the conclusion of operations, unless a longer time is allowed by the authorized officer, operator shall, where practicable, reclaim the surface disturbed in operations by taking such measures as will prevent or control onsite and off-site damage to the environment and forest surface resources including: (1) control of erosion and landslides; (2) control of water runoff; (3) isolation, removal or control of toxic materials; (4) reshaping and revegetation of disturbed areas, where reasonably practicable; and (5) rehabilitation of fisheries and wildlife habitat.”</p>
Minerals - Standards MMAM-S-02	<p>Proposed Changes: Required reclamation activities, <u>where practicable</u>, shall be designed to <u>prevent or control onsite or off-site damage to the environment and forest surface resource</u>. establish resilient post mining ecosystems consistent with the pre-disturbance ecological response unit or to an ecological response unit identified as achievable to the post-mining landscape condition.</p> <p>Why: The use of the term “restore” is inconsistent with 36 C.F.R. § 228.8(g) which states “[u]pon exhaustion of the mineral deposit or at the earliest practicable time during operations, or within 1 year of the conclusion of operations, unless a longer time is allowed by the authorized officer, operator shall, <i>where practicable</i>, <i>reclaim the surface disturbed in operations by taking such measures as will prevent or control onsite and off-site damage to the environment and forest surface resources</i>.” Standards should be made to align with existing regulations.</p>

	<p>Focus should be on best management practices that control onsite or offsite environmental damage.</p> <p>The impossibility of historic mining districts to meet the standard as drafted could result in required plan amendments for all project-level decisions if not modified.</p>
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