



Land and Water Department
Phoenix Corporate Office
333 N. Central Ave
Phoenix, AZ 85004

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)**

Freeport McMoRan Inc. and Freeport-McMoRan Miami Inc. (collectively “Freeport”) file the following objections based on prior submitted formal substantive comments dated March 11, 2020, on the draft Tonto National Forest (“TNF”) Land Management Plan Revision (“Draft Plan”) and draft environmental impact statement (“DEIS”).¹ Information required pursuant to 36 C.F.R. § 219.54 (c) follows:

I. Objector Contact Information:

Freeport- McMoRan Inc.
Land and Water Department
Phoenix Corporate Office
Attn: Chris Franks
Telephone: 602-366-7348
Email: cfranks@fmi.com

II. Subject of Objection:

TNF Revised Land Management Plan (March 2022) (“Plan”) 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.

¹ References to prior submitted comments shall hereafter be referred to as “Freeport Comments.”

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

Substantive new content has been introduced in the Plan that was not presented in the Draft Plan, thereby not affording Freeport the opportunity to formally comment on it previously. Such content includes, but is not limited to, definitions that were added to clarify the intent for certain terminology (i.e., adequate engineering controls, groundwater dependent ecosystems, resiliency, significant disturbance, etc.); and critical plan components: Desired Conditions (i.e., CUH-DC-07, CUH-DC-08, SC-DC-05, DWMA-DC-11, etc.); Standards (i.e., GRZ-S-01, GRZ-S-09, CUH-S-01, MMAM-S-04, RMZ-S-03, IRAMA-S-02, SHRMA-S-03, etc.); Guidelines (i.e., SU-G-08, SC-G-03, WAT-G-14, RMZ-G-07, NTMA-G-05, LRMA-G-05, LRMA-G-06, etc.); and Management Approaches (i.e., SC-MA-04, ERU-MA-05, DWMA-MA-08, RWMA-MA-01, DWSRMA-MA-07, NTMA-MA-02, etc.). Several existing plan components were substantially modified to be considered new content, including but not limited to: RMZ-G-01, RMZ-MA-01, NTMA-G-03, NTMA-G-06, NTMA-MA-04, etc. Paragraphs of significant optional plan content were added, including but not limited to, the “Rangelands, Forage, and Grazing” section; the “Riparian Management Zones” section; the “Recommended Wilderness” section, etc. Even substituting new verbiage is problematic when the new language does not carry the same meaning or intent as that which it is replacing, (i.e., replacing “traditions” with “traditional land use,” etc.). Finally, regarding new substantive content, the verbiage “scenic integrity objective” is introduced and heavily utilized throughout the Plan, which appreciably impacts the interpretation and especially the application of numerous plan components.

Furthermore, much of the plan components are written in a way TNF authority exceeds or is inconsistent with applicable regulations, including but not limited to, establishing required plan components for the Arizona National Scenic Trail in advance of the required comprehensive plan² for the trail being developed with the full consultation of the Arizona Scenic Trail Advisory Council and other interested parties. At this juncture, the TNF’s Trail Coordinator Position has only recently been filled.³ The TNF has yet to successfully develop a comprehensive plan and thus this action is premature.

Lastly, the proposed plan content clearly indicates that its end goal is to achieve conditions “toward which management of the land and resources should be directed,⁴” and “are what drive the plan.”⁵ To that end, it is the objectives, standards, guidelines, and management approaches set out in the proposed plan that are written to achieve the desired conditions. As a result of this clear end goal, the desired conditions, just as all other components of the Plan, must be consistent with applicable regulations. If the desired condition is not consistent with applicable regulations, then it stands to reason that it is not possible for the remaining Plan components to be consistent. In order to assist the formation of the Plan, attention must be provided to all aspects of the process, not just the desired end goal of the USFS. In this effort the comments, objections, standards, and guidelines are essential to a Plan that is workable in equity, fairness, just, and reasonable. As the proposed Plan indicates, objections are “mileposts along the road toward desired conditions;⁶” standards and

² 12 USC §1244(e).

³ FEIS, Volume 3: Appendix A – Response to Comments, p.146, 2816-94. TNF. March 2022

⁴ 36 CFR §219.7(e)(1)(i).

⁵ Plan, p.12.

⁶ Id.

guidelines are “mandatory constraints on project and decision-making established to help achieve or maintain the desired conditions,”⁷ (notwithstanding that last except regarding “guidelines,” it is clear that “guidelines” differ in that they “provide flexibility”⁸); and management approaches “describe an approach or strategy to help achieve desired conditions.”⁹ We must assure that all aspects of this Plan allow it to be a tool that works with all involved stakeholders with an interest (historical, current, or future) in utilizing the forest in an equitable and reasonable manner to achieve its goals. This Plan should provide guidelines that reflect and include already existing laws and regulations that impact the purpose being accomplished in the Plan. It should further not impede the ability or already existing and compliant uses of the forest to achieve current political agendas.

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:

The objections below address these issues and are based on Freeport Comments, except where the issues are identified below as arising after the close of the formal comment period.

Freeport’s objections are as follows:

1. Adoption of the Objections filed by the Arizona Mining Association.

Freeport joins in and supports the objections to the Plan, FEIS, and DROD submitted by The Arizona Mining Association (“AMA”) (Attachment 1.). Freeport is one of the founding members of the AMA and is committed to the AMA’s mission to advocate sound public policies that promote a prospering, responsible and safe mining industry.

2. Additional Objections: In General.

Freeport Comments stated that the 2012 Land Management Planning Rule¹⁰ requires that the Forest Service revise forest land management plans to be consistent with the Multiple-Use Sustained-Yield Act of 1960 (“MUSYA”)¹¹; not affect “valid existing rights established by statute or legal instrument;”¹² and to “comply with all applicable laws and regulations....”¹³ However, portions of the Plan components still conflict with these requirements, particularly with respect to the standards and guidelines set forth in the Plan, which may impose a “constraint on project and activity decisionmaking”¹⁴ that prohibits activities otherwise permissible and protected under the MUSYA and other applicable laws.

⁷ Id.

⁸ Ibid., p.13.

⁹ FEIS, Vol. 3, p.5, 2816-84, 2816-95.

¹⁰ 36 CFR §219.

¹¹ 16 USC §§528-231.

¹² 36 CFR §219.1(d).

¹³ 36 CFR §219.1(f).

¹⁴ 36 CFR §219.7(e)(1)(iii) &(iv).

The Forest Service land management planning regulations also provide that “[t]he responsible official shall ensure that the planning process, plan components, and other plan content are within Forest Service authority, the inherent capability of the plan area, and the fiscal capability of the unit.” 36 C.F.R. § 219.1(g). It does not appear that these limiting factors were considered for each of the Plan components since several of the desired conditions, goals, and management approaches appear to have been derived without regards to the Tonto Forest’s legal authority or the fiscal capability of the forest unit.

In general, Freeport remains primarily concerned with four issues presented by the Plan: 1) the potential impacts the Plan components (objectives, standards, guidelines, etc.) may impose on its ability to explore and operate in the Tonto; 2) the precedent the Plan will set for other forest plans in mining areas; 3) the potential impacts to private property interests, including water rights, and operations in close proximity to the Tonto; and 4) the expanding scope of TNF’s asserted authority, especially over groundwater.

The Plan components of concern, and our specific objections/comments on these provisions, are presented below.

Ch.1, p.5, Distinctive Roles and Contributions, fourth paragraph:

Native American Tribes may also have an interest in natural, historical, cultural, and other resources of the Tonto National Forest, with an emphasis on restoration to pre-reservation conditions.

This sentence was modified by adding the new verbiage of “with an emphasis on restoration to pre-reservation conditions.” It is overly broad and leads to an application of analysis that cannot be accomplished without undue burdens and costs. This newly inserted language should be deleted.

Ch.1, p.7, Key Ecosystem Services, last paragraph:

These key ecosystem services are important in the broader landscape outside of the forest plan area and are influenced by the forest plan.

This sentence is a new addition to the Plan. The verbiage “broader landscape outside of the forest plan area” is concerning and overly broad and leads to an arbitrary and capricious interpretation or application. This new sentence should be deleted.

Ch.1, p.10, Ecological Sustainability, first paragraph, fn2:

There is a need for the revised forest plan to incorporate changes that help with the ecological sustainability of the forest. This would require desired conditions and other plan components that support ecosystem integrity and habitat diversity at multiple spatial scales. There is a need to incorporate plan components that increase ecosystem resiliency² to changing environmental conditions and stressors, including the impacts of exotic and invasive species.

²*Resiliency is the ability of an ecosystem and its component parts to absorb, or recover from the effects of disturbances through preservation, restoration, or improvement of its essential structures and functions and redundancy of ecological patterns across the landscape. In the*

context of climate change adaptation, strategies should Increase ecosystem resilience by minimizing the severity of climate change impacts, reducing the vulnerability, and/or increasing the adaptive capacity of ecosystem elements

This definition is a new addition to the Plan. As this definition is not provided in the regulations and is inconsistent with all the applicable regulations and permit requirements governing the mining and reclamation, this newly inserted definition and reference to the term should be removed.

Ch.1, p.10, Ecological Sustainability, fourth paragraph, fn3:

There is a need to develop plan components for the long-term health and sustainability of watersheds, including desired conditions that identify appropriate riparian characteristics (e.g., biodiversity, connectivity, water availability) to promote functionality and resiliency. This requires standards and guidelines that minimize ecological impacts of multiple uses in riparian areas and reduce pollutant runoff into streams. Plan components developed for watershed and riparian health should focus on the sustainable stewardship of groundwater and groundwater dependent ecosystems³ (e.g., springs, wetlands, riparian areas, and perennial waters) and their interconnections in order to ensure stream channels and floodplains are dynamic and resilient to disturbances.

³*Groundwater dependent ecosystems are communities of plants and animals whose extent and life processes are dependent on access to or discharge of groundwater and can include springs, wetlands, and perennial, intermittent or ephemeral streams.*

This definition is a new addition to the Plan. As this definition is not provided in the regulations and is inconsistent with all the applicable regulations and permit requirements governing the mining and reclamation, this newly inserted definition and reference to the term should be removed. The definition also is inaccurate because it suggests that groundwater dependent ecosystems can include ephemeral stream. Ephemeral surface features, such as ephemeral washes and other similar drainages, are defined by the USGS as “[a] stream or part of a stream that flows only in direct response to precipitation or snowmelt. Its channel is above the water table at all times.” See USGS National Water-Quality Assessment Project Glossary (<https://water.usgs.gov/nawqa/glos.html>). Other state and federal environmental agencies defined ephemeral waters similarly (see, e.g., Ariz. Admin Code R18-11-101(20) (defining “ephemeral water” as “a surface water that has a channel that is at all times above the water table and flows only in direct response to precipitation”). By definition and common understanding, ephemeral surface features are not groundwater dependent ecosystems. Rather, such features are the direct opposite of a groundwater dependent ecosystem.

Ch.1, p.13, Plan Components, Suitability of lands:

Identifying suitability of lands for a use in the plan indicates that the use may be appropriate but does not make a specific commitment to authorize that use. Final suitability determinations for specific authorizations occur at the project- or activity-level decision-making process. Generally, the lands on the national forest are suitable for all uses and management activities appropriate for national forests unless identified as not suitable.

These new sentences added within the paragraph are overly broad and leads to an application of a standard and process that is arbitrary, capricious, burdensome, and costly. Further it is inconsistent with applicable regulations. Therefore, these newly inserted sentences should be deleted.

Ch.1, p.13, Required Plan Content, first paragraph:

Priority watersheds: Every plan must identify watersheds that are impaired or at risk for priority maintenance or restoration. See the [Watershed and Water Resources](#) section in Chapter 2. Forestwide Plan Direction.

Freeport maintains its objection, as stated in the Freeport Comments, that the U.S. Forest Service (“USFS”) land management planning regulations provide in pertinent part that forest land management plans “[i]dentify watershed(s) that are a priority for maintenance or restoration.”¹⁵ There is no mention in the regulations of impaired or at-risk watersheds and the concept of impaired or at-risk watersheds should be removed from the Tonto Plan. Even in its response to Freeport Comments,¹⁶ the TNF refers to the Forest Service National Watershed Condition Framework, not regulation, for direction.

Ch.2, p.21, Forestwide Plan Direction, third paragraph:

Management of the Tonto National Forest involves many distinct resources that are integrated with each other. In this chapter each resource is presented in an individual section with management direction and associated plan content (narratives and management approaches). Socioeconomic resources (e.g., timber (forest products), grazing, cultural resources and traditional land uses, and recreation) are presented in the first half of this chapter.

Replacing “traditions” with “traditional land use” makes this statement new and without guided definition for application in a reasonable manner. The new verbiage should be deleted and “traditions” reinstated.

Ch.2, p.36, Special Uses (SU), SU-DC-01:

Recreational special uses enhance the outdoor experiences of Forest visitors and provide unique opportunities and services. Authorized activities will adhere to regulations that advocate for public safety and reduce impacts to ecological and cultural resources and other Forest users (e.g., carpooling reduces impacts to air quality and crowding at busy parking lots, interpretation and instruction provides protection to sensitive cultural resources and vegetation). Special use activities support the public’s need and demonstrated demands for specific recreation and commercial opportunities or services.

Replacing “provide” with “will adhere to regulations that advocate” makes this new and more restrictive. It leads to an arbitrary and capricious interpretation or application. The new verbiage should be deleted and “provide” reinstated.

Ch.2, p.36, Special Uses (SU), SU-DC-06:

Utility corridors and communications sites are sized to fit the intended use and obsolete or unused facilities are removed and rehabilitated.

¹⁵ 36 CFR §219.7(f)(i)

¹⁶ FEIS, Vol. 3, p.308, 2816-49.

Assuming the TNF replaced “not present on the landscape” with “removed and rehabilitated” in attempt to clarify this desired condition, it is still overly broad and leads to an arbitrary and capricious interpretation while not providing the direction and guidance needed to make the approach to the application of the plan content valuable in its effort. This desired condition should be reverted to that which was presented in the Draft Plan.

Ch.2, p.36, Special Uses (SU), SU-S-03:

Authorizations for utilities must incorporate an operating plan which describes means of access, requirements for road construction, reconstruction, and maintenance responsibilities and incorporates design elements to minimize resource damage (e.g., dust abatement, preventing the spread of invasive weeds) from these activities.

This standard was significantly modified by replacing “requirements” with the new verbiage of “operating plan which describes means of access...responsibilities and incorporates design elements to...from these activities.” As such, it is unclear if this standard is meant to impact “powerline facilities that are not subject to the mandatory reliability standards established by the Electric Reliability Organization and/or sold that sold less than or equal to 1,000,000 megawatt hours of electric energy”.¹⁷ This Standard should be reverted to the wording initially provided in the Draft Plan, as Freeport was not afforded the opportunity to comment on this newly introduced language.

Ch.2, p.36, Special Uses (SU), SU-G-01

Utilities should utilize existing facilities, roads, sites, and corridors unless new sites can provide better social and/or ecological resource benefits.

Freeport maintains its objections to this guideline on the basis that TNF did not sufficiently respond¹⁸ to Freeport Comments, which stated that this guideline’s reference to “better social, economic, and ecological benefits” is ambiguous. How would this be determined for utility corridors and communications sites? What are the factors relevant to making such evaluations? Would the applicant or TNF make these determinations? It is also not clear that this type of evaluation is authorized by the applicable special use permit regulations. This guideline should be deleted.

Ch.2, p.36, Special Uses (SU), SU-G-08

Proposals for special uses (e.g., apiaries) that may negatively impact public safety, native fish, wildlife, and plant species (especially at-risk species) should include design elements to mitigate such risks prior to authorization or not be authorized.

This guideline is new to the Plan; thus, Freeport was not afforded an opportunity to comment on it previously. This guideline should be deleted.

¹⁷ 36 CFR §251.56(h)

¹⁸ FEIS, Vol. 3, p.282, 2816-51.

Ch.2, p.38, Special Uses (SU), SU-MA-04

Consider using special use authorization terms and conditions as a means of protecting water dependent resources (refer to the Watersheds and Water Resources section) on the forest.

Freeport maintains its objection to this management approach, as the TNF did not sufficiently respond¹⁹ to Freeport Comments, which stated that it is not clear what “water dependent resources” means. Moreover, the terms and conditions that may be included in special use permits (“SUPs”) are specifically set forth in the applicable regulations.²⁰ TNF’s implementation of this management approach must be consistent with, and cannot conflict with, the applicable regulations, or state water rights. It is not clear that this use of SUPs is authorized. This management approach should be deleted.

Ch.2, p.39, Energy Production and Delivery (EG), EG-G-01:

New electrical distribution lines and smaller pipelines, or similar utility, should occur along or within existing road systems or other previously disturbed areas.

This guideline was substantially modified with the addition of the new verbiage “or similar utility...along or” which are overly broad and leads to an arbitrary, capricious, burdensome, and costly interpretation or application. Freeport objects to this new language as there was no opportunity afforded to previously comment.

Ch.2, p.39, Energy Production and Delivery (EG), EG-G-02:

Solar energy projects should give priority consideration to previously disturbed sites to prevent unnecessary environmental and scenic disturbances.

This guideline was substantially modified by replacing “disturbance to wildlife and vegetation” with the new verbiage “and scenic disturbances” which is overly broad and leads to an arbitrary and capricious interpretation or application. As there was not an opportunity afforded to previously comment on this ambiguous language, Freeport objects to this new language; and recommend that the guideline be reverted to its initial language.

Ch.2, p.39, Energy Production and Delivery (EG), EG-G-04:

New energy facilities and transmission corridors should avoid locations in areas identified as having a demonstrated high risk to at-risk species, cultural resources, or other resources.

Freeport objects to the addition of the verbiage “or other resources” to this guideline as it is overly broad and leads to an arbitrary and capricious interpretation or application; and there was no opportunity afforded to comment on it previously. The “or other resources” verbiage should be deleted.

Ch.2, p.39, Energy Production and Delivery (EG), EG-G-06:

New distribution lines and telephone lines should be buried, unless one or more of the following applies:

a. scenic integrity objectives of the area can be met using an overhead line;

¹⁹ FEIS,

²⁰ 36 CFR §251.56.

- b. burial is not feasible due to geologic hazard, unfavorable geologic conditions, or presence of cultural resources;*
- c. it would result in greater long-term site disturbance; or*
- d. it is not technically feasible.*

This guideline was substantively modified by replacing “electrical-utility lines of 33 kilovolts or less” with “distribution lines,” and “visual quality” with “scenic integrity” in subparagraph (a); and with the addition of “or presence of cultural resources” in subparagraph (b). Freeport objects to the modifications of this guideline on the basis that the new verbiage is not reasonably related to the expressed goals in the previous language and leads to an overly broad, arbitrary, capricious, burdensome, and costly interpretation or application; and there was no opportunity afforded previously to comment. Further, “scenic integrity objectives,” is not defined in regulations and is subjective to interpretation. These additions should be deleted, and this guidance returned to its initial wording as provided in the Draft Plan.

Ch.2, p.41, Rangelands, Forage, and Grazing (GRZ), third-sixth paragraphs:

Rangelands are divided into grazing units called allotments. Allotment boundaries often follow topographical features such as ridgelines or creeks, and may or may not be fenced entirely. Allotments are further subdivided into pastures, and most allotments follow some kind of rotational grazing system where livestock are moved through different pastures as the year progresses. Allotment and pasture boundaries are changed administratively as needed.

Nearly the entire Tonto National Forest is divided into grazing allotments; however, a few allotments are considered vacant (no current permittee) or closed (no longer authorized for permitted livestock grazing). Status of allotments are dynamic, so a list of open, vacant, and closed allotments is subject to change. At the time of plan implementation, the goldfield allotment is closed. Over the last decade, the Tonto National Forest has worked with partners and permittees to reduce grazing pressure on sensitive environments (e.g., critical areas, riparian area). Currently, the Tonto National Forest manages the rangeland resources to balance livestock numbers with forage capacity.

The Tonto uses an adaptive management strategy to manage the rangeland resources. Allotment management plans (AMP) are reviewed and revised as needed in conformance with National Environmental Policy Act (NEPA) and Rescissions Act of 1995 (Public Law 104-19) Section 504(a). In general, the Tonto manages grazing at conservative use levels. This grazing intensity (based on percent use of forage by weight) should provide for plant integrity, density, diversity, and regeneration over time. AMPs involving new or modified fences, corrals, salt locations, and artificial water sources are designed to make progress towards the desired conditions in the plan and promote healthy soil and watershed and riparian conditions, wildlife interactions, and wildlife movement.

Within the scope of the allotment grazing decisions, fine-tune adjustments are made annually through the annual operating instructions. Information from monitoring such as frequency plots, canopy cover, pace frequency transects, photo points, and allotment inspections inform appropriate adjustments. Grazing intensity in combination with other factors such as weather patterns, likelihood of plant regrowth, and previous years’ utilization levels, is used in

determinations. Authorized numbers may be adjusted up and down according to the grazing decision, implemented through the term grazing permit. The annual operating instructions may also adjust season of use, salt locations, and pasture rest periods.

Freeport Comments in regard to the last sentence of the third paragraph (the first paragraph excerpt above) stated that allotment and pasture boundary changes could potentially impact grazing or other multiple use operations. The Plan should state that stakeholder input will be obtained before boundary changes are made. The TNF's response²¹ that this comment falls "outside the scope of the forest plan" is in error according to the regulations.²²

Furthermore, in addition to the fifth and sixth paragraphs (third and fourth paragraph excerpts above) being entirely new content in the Plan, the second sentence of the fourth paragraph (the second paragraph excerpt above) has been significantly modified as well:

Initial sentence: "Status of allotments are dynamic, so a list of open, vacant, and closed allotments in this plan would not be useful"

Modified sentence: "Status of allotments are dynamic, so a list of open, vacant, and closed allotments is subject to change. At the time of plan implementation, the goldfield allotment is closed."

In addition to the TNF not sufficiently addressing Freeport Comments, Freeport further objects to the addition of these new paragraphs and modified language as there was no opportunity afforded to comment previously and they are not consistent with the applicable regulations.

Ch.2, p.42, Rangelands, Forage, and Grazing (GRZ), GRZ-S-01:

Livestock use in and around riparian areas will be evaluated on an allotment-specific basis. Design elements (e.g., deferment, herding, and fencing) will be implemented where needed.

This standard is new to the Plan. It contains possible interpretation or application that is overly burdensome, costly, arbitrary and without reason in relationship to the industry and application at hand. Further it is unclear whether this exceeds the TNF's regulatory authority. Freeport objects to this new standard as there was no opportunity afforded to comment on it previously. This Standard should be deleted.

Ch.2, p.43, Rangelands, Forage, and Grazing (GRZ), GRZ-G-09:

A stock and monitor approach²¹ incorporating best available science should be used when evaluating stocking rates in grazing decisions.

²¹ *The stock and monitor approach involves measuring the effects of actual stocking levels over time (either shortterm or long-term) on utilization and utilization patterns, composition of vegetation, vigor, soil cover, and other factors (including wildlife) to see if changes in stocking and/or management are needed (Smith et al. 2012).*

This guideline is new to the Plan. It contains verbiage that can lead to a costly and overly burdensome process and practice that is unrelated to the industry involved in the approaches and

²¹ FEIS, Vol. 3, p.178, 2816-52.

²² 36 CFR §222.2.

may further an arbitrary and capricious reasoning. Further, this is not consistent with applicable regulations. Freeport objects to this new standard as there was no opportunity afforded to comment on it previously. This Standard should be deleted.

Ch.2, p.44, Cultural and Historic Resources (CUH), second paragraph, fn22:

Many cultural resources²² are also considered traditionally significant to tribes associated with the lands in the plan area.

²² Chapter 2360.5 of the Forest Service Manual defines cultural resource as: “An object or definite location of human activity, occupation, or use identifiable through field survey, historical documentation, or oral evidence. Cultural resources are prehistoric, historic, archaeological, or architectural sites, structures, places, or objects and traditional cultural properties. In this chapter, cultural resources include the entire spectrum of resources for which the Heritage Program is responsible from artifacts to cultural landscapes without regard to eligibility for listing on the National Register of Historic Places.”

FEIS, Vol. 2 Glossary, p.263:

Cultural resources. The remains of sites, structures, or objects used by humans in the past, historic or prehistoric. More recently referred to as heritage resources.

The term “cultural resources” is not defined in the regulations; and, in fact, the TNF provides two different definitions for this term within the Plan itself. TNF adds the above referenced footnote 22 citing the definition found in the Forest Service Manual (“FSM”) (an internal guidance document); and it retains on the FEIS the definition provided in the DEIS, Volume 2 Glossary. The definitions need to be consistent with the applicable regulations. These definitions must conform and be changed.

Ch.2, p.44, Cultural and Historic Resources (CUH), fourth paragraph:

The conditions of cultural resources on the Tonto National Forest are most notably impacted by water/wind erosion, livestock grazing, mining and mineral related activities, recreation, construction, off-highway vehicle and other vehicular traffic, and vandalism.

The addition of “mining and mineral related activities” in this sentence is inappropriate, as these activities are strictly permitted and heavily regulated in accordance with all applicable laws and regulations. The TNF specifically addresses this fact under the Distinctive Roles and Contributions section in Chapter 1, page 6, third paragraph: “Many areas of the Tonto National Forest are highly mineralized, and the Forest Service has an important role in administering mineral exploration and extraction while minimizing surface resource impacts, consistent with mining regulations and policy.” This newly added verbiage of “mining and mineral related activities” should be deleted and the sentence returned to the form in which it was initially presented in the Draft Plan.

Ch.2, p.45, Cultural and Historic Resources (CUH), CUH-DC-07:

Cultural resources (including artifacts) are preserved in place.

This desired condition is new to the Plan. Its continued presence will lead to an overly burdensome and costly application of this segment of the Plan and likely to an arbitrary, capricious, and

unreasonable interpretation. Freeport objects to this new desired condition as there was no opportunity to comment on it previously. This new desired condition should be deleted.

Ch.2, p.45, Cultural and Historic Resources (CUH), CUH-DC-08:

The Forest has been inventoried for cultural properties at a level that meets current professional standards.

This desired condition is new to the Plan. Freeport objects to this new desired condition as there was no opportunity to officially comment previously. The existence of this condition will lead to overly burdensome and costly approaches to have this industry assess this item apparently in a vacuum. This new desired condition should be deleted.

Ch.2, p.49, Tribal Relations and Areas of Tribal Importance (TRB), TRB-G-02:

Tribal access to and availability of traditional medicinal plants and other botanical resources should be considered when authorizing commercial harvesting and special uses.

This guideline was substantively modified to include the verbiage of “access to and availability of” which is overly broad and ambiguous. It will lead to overly burdensome and costly exercises by industry to try to derive what the Plan is trying to achieve in any instance. Freeport objects to this new verbiage as there was no opportunity afforded to comment previously. This guideline should be reverted to the original wording presented in the Draft Plan.

Ch.2, p.55, Scenery (SC), first paragraph:

Scenic quality defines the region’s character and contributes to the quality of life and the positive experiences people seek on the Forest. In most National Forest settings, managing the scenery is important to protect the naturalness of the existing scenic character³⁴.

The addition of the verbiage “the quality of life and” in this sentence is overly broad and will lead to overly burdensome and costly exercises by the industry or other groups that tries to achieve some form of reasonable approach to accomplish what the Plan tries to point out. This verbiage should be deleted.

Ch.2, p.55, Scenery (SC), SC-DC-01:

The forest contains a variety of landscapes representing the desired scenic character³⁵ that contributes to visitors’ sense of place and connection with nature.

³⁵ *Desired scenic character descriptions can be found on the Tonto National Forest website under Scenery at:*
https://www.fs.usda.gov/detail/tonto/landmanagement/resourcemanagement/?cid=fsbdev3_0187
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This desired condition was modified to include the new verbiage “representing the desired scenic character.” Additionally, footnote 35 is new to the Plan and the link it provides does not redirect to a page providing “desired scenic character descriptions,” nor is there a “Scenery” section provided on the page to which this link opens. Finally, as webpage links, especially those maintained by a federal entity, is ever changing, webpage citations should not be provided in a

long-term document as a source for information needed to interpret the document's intent, guidance, etc. Furthermore, there is no doubt that the impacted industry or group that needs to comport with this new desired condition will be overly burdened, and it will be costly to try to comply with this effort. Freeport objects to this new verbiage and to the use of a webpage link and recommend that both be deleted.

Ch.2, p.55, Scenery (SC), SC-DC-05:

Scenery is managed for present and future generations, is resilient to changing conditions, and supports ecological, social, and economic sustainability on the forest and in surrounding communities.

This desired condition is new to the Plan, thus there was no opportunity afforded to comment on it previously. Further, it relies on a terms not defined in regulations, such as “resilient.” This desired condition should be deleted.

Ch.2, p.55, Scenery (SC), SC-G-01:

Management activities and newly constructed features (e.g., facilities and infrastructure) should minimize visual disturbances and be consistent with or move the area towards achieving scenic integrity objectives³⁶ (as defined in the Scenery Management System, or similar protocol).

³⁶ *Scenic integrity objectives are available on the Tonto National Forest website under Scenery at:*

https://www.fs.usda.gov/detail/tonto/landmanagement/resourcemanagement/?cid=fsbdev3_018770.

FEIS, Vol. 2, Glossary, p:278:

Scenic integrity objective. A desired level of excellence based on physical and sociological characteristics of an area. Refers to the degree of acceptable alterations to the valued attributes of the characteristic landscape. Objectives include very high, high, moderate, and low.

This guideline was modified to replace “visual quality objectives” with the newly introduced verbiage of “scenic integrity objectives,” which is overly broad and leads to an arbitrary and capricious interpretation or application. There is no unchanging or stable guidance in this regard for any area of the forest; and the industry or other impacted groups will indeed be overly burdened, and it will be costly to attempt to address an approach in this regard. Further, whereas one could surmise that visual quality objectives related to the National Ambient Air Quality Standards and the implications of regional haze, it is unclear as to what scenic integrity objectives are in relation to or what it even means. This term is not defined. Furthermore, the link provided in the newly added footnote 36 does not redirect to a page providing “scenic integrity objectives,” nor is there a “Scenery” section provided on the page to which this link opens. As webpage links, especially those maintained by a federal entity, is ever changing, webpage citations should not be provided in a long-term document as a source for information needed to interpret the document's intent, guidance, etc. Finally, the definition provided in the FEIS Glossary is additionally overly broad and leads to an arbitrary and capricious interpretation or application. However, Freeport did not previously comment on the overly broad definition provided for “scenic integrity objective” as this term was not used in the Draft Plan. Freeport objects to this term being introduced and utilized

extensively throughout the Plan as there was no opportunity afforded to comment on it previously. This guideline should be reverted to that which was presented in the Draft Plan.

Ch.2, p.55, Scenery (SC), SC-G-03:

Management activities that result in short-term impacts inconsistent with the scenic integrity objectives, as defined in the scenery management system or similar protocol, should achieve, or move the project towards, the scenic integrity objectives over the long-term³⁷

³⁷ *Short-term and long-term timeframes are determined during site-specific project planning and analysis.*

This guideline is new to the Plan. Additionally, it refers to “scenic integrity objections” which Freeport objects to per its objection to SC-G-01. It further ambiguously refers to this term “as being defined in the scenery management system or similar protocol.” The Scenery Management System²³ is an internal classification system, not a regulation. The definition of Scenery Management System as provided in the FEIS Glossary is additionally overly broad and leads to an arbitrary and capricious interpretation or application. Finally, upon further review of the Scenery Management System handbook²⁴ there still is not a distinct definition or clear understanding provided for “scenic integrity objections.” This Guideline should be deleted and the use of “scenic integrity objectives” should be deleted throughout the Plan.

Ch.2, p.55, Scenery (SC), SC-MA-02:

Consider setting priorities for rehabilitation of areas where existing scenic integrity is below the scenic integrity objective (as defined in the Scenery Management System, or similar protocol).

This management approach was substantively modified by adding the new verbiage “below the scenic integrity objective.” This language will increase regulatory oversight and cause multiple levels of agency administrative involvement and overly burdensome and costly compliance or attempts to comply. Freeport objects to the use of this new verbiage per the objections provided to SC-G-01 and SC-G-03. The new verbiage should be deleted, and the management approach reverted to that which was presented in the Draft Plan.

Ch.2, p.56, Scenery (SC), SC-MA-04:

Make the scenery management inventory and scenic integrity objective maps available to neighboring land management agencies, State agencies, communities, other partners, and the public for consideration in their projects and plans.

This management approach is new to the Plan. It does not give due consideration to where an entity is already subject to and authorized by another governing federal agency that such existing authorizations or amendments thereto would supersede any requirements indicated under the Plan—this will prevent ambiguity and missteps. Further, this relies on terminology that is not found in regulations. In addition to the objections stated to SC-G-01 and SC-G-03, Freeport objects

²³ <https://www.fs.usda.gov/detail/tonto/landmanagement/planning/?cid=stelprdb5412120>, last visited August 23, 2022.

²⁴ USFS, *Landscape Aesthetics: A Handbook for Scenery Management*, December 1995, https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5412126.pdf, last visited August 23, 2022.

to this new management approach as there was no opportunity afforded to comment previously. It should be deleted.

Ch.2, p.57, Mining, Minerals, and Abandoned Mines (MMAM), MMAM-DC-01:

Mining and mineral activities comply with law, regulation, and policy in the development of mineral resources. Minimize adverse environmental impacts to surface and groundwater resources, watershed and forest ecosystem health, wildlife and wildlife habitat, scenic character, and other desired conditions applicable to the area.

Freeport objects to this desired condition as the TNF's response²⁵ does not sufficiently address Freeport Comments, which stated that the inclusion of "surface and groundwater resources, watershed and ecosystem health, wildlife and wildlife habitat, scenic character and other desired conditions applicable to the area" is more expansive than the regulations that govern mining operations on the Tonto.²⁶ The applicable regulations refer repeatedly to the environmental impacts on "surface resources," and limiting impacts where "practical" or "feasible." This desired condition should be limited consistent with the applicable regulations.

Ch.2, p.57, Mining, Minerals, and Abandoned Mines (MMAM), MMAM-DC-02:

Reclaimed mining and mineral sites provide for public safety and the protection of forest resources. They possess a resilient forest ecosystem suitable to permanent post mining landform.

Freeport objects to this desired condition as the TNF's response²⁷ does not sufficiently address Freeport Comments, which stated that "resilient forest ecosystem" is not defined and its meaning is unclear, and not based on any regulatory requirement. Reclamation requirements are also specifically set forth in the Part 228 regulations²⁸. This desired condition should be deleted.

Ch.2, p.57, Mining, Minerals, and Abandoned Mines (MMAM), MMAM-DC-03:

Mineral materials on National Forest System lands are available to the public and to local, State, and Federal government agencies where reasonable protection of, or mitigation of effects on, other resources is assured, and where removal is not prohibited.

Freeport objects to this desired condition as the TNF's response²⁹ does not sufficiently address Freeport Comments, which stated that this statement is confusing and an inaccurate statement of the law. The Forest Service's Minerals regulations state: "the United States mining laws ... which confer a statutory right to enter upon the public lands to search for minerals, shall be conducted so as to minimize adverse environmental impacts on the National Forest System surface resources."³⁰ This desired condition should not conflict with applicable regulations.

²⁵ FEIS, Vol. 3, p.120, 2816-53.

²⁶ 36 CFR §228.

²⁷ FEIS, Vol. 3, p.121, 2816-54, 57.

²⁸ 36 CFR §228.8(g).

²⁹ FEIS, Vol. 3, p.122, 2816-55.

³⁰ 36 CFR §228.1.

Ch.2, p.58, Mining, Minerals, and Abandoned Mines (MMAM), MMAM-DC-05:

Abandoned mines disturbed by past mineral exploration and mine development have been returned to stable conditions and do not pose health, safety, or environmental hazards.

Freeport objects to this desired condition as the TNF's response³¹ does not sufficiently address Freeport Comments, which stated that "abandoned and inactive" should be defined as meaning facilities that are closed without plans of reactivation.

Ch.2, p.58, Mining, Minerals, and Abandoned Mines (MMAM), MMAM-S-02:

Required reclamation activities shall be designed to 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.

Freeport objects to this desired condition as the TNF's response³² does not sufficiently address Freeport Comments, which stated this standard is inconsistent with the mining law and applicable regulations, many existing Plans of Operations, and state reclamation standards. In addition, ERU is often not practical or feasible (as recognized in MMAM-G-03 of the Draft Plan now MMAM-MA-06 of the Plan). Also, "resilient post-mining ecosystems" is not defined and is not a regulatory requirement. This standard should be deleted.

Ch.2, p.58, Mining, Minerals, and Abandoned Mines (MMAM), MMAM-S-04:

A Notice of Intent³⁹ shall be submitted to the District Ranger from any person proposing to conduct geophysical investigations (e.g., induced polarization, gravity surveys, magnetic surveys, seismic investigations).

³⁹ A Notice of Intent for this standard is per 36 CFR 228.4(a)

This standard is new to the Plan. Freeport objects to the introduction of this new standard as there was no opportunity afforded to comment on it previously; and it is not consistent with the applicable regulations. This new standard should be deleted.

Ch.2, p.58, Mining, Minerals, and Abandoned Mines (MMAM), MMAM-G-03:

Placer mining should avoid damaging riparian vegetation, degrading water quality, and negatively impacting channel stability.

Freeport objects to this desired condition as the TNF's response³³ does not sufficiently address Freeport Comments, which stated that this guideline is confusing and an inaccurate statement of the law. The applicable regulations state: "the United States mining laws ... which confer a statutory right to enter upon the public lands to search for minerals, shall be conducted so as to minimize adverse environmental impacts on the National Forest System surface resources."³⁴ This guideline should not be inconsistent with the applicable regulations.

³¹ FEIS, Vol. 3, pp.119-120, 2816-56.

³² FEIS, Vol. 3, p.121, 2816-54, 57.

³³ FEIS, Vol. 3, p.121, 2816-59.

³⁴ 36 CFR §228.1.

Ch.2, p.58, Mining, Minerals, and Abandoned Mines (MMAM), MMAM-G-04:

Surface reclamation and revegetation plans for smaller scale mineral activities (e.g., drilling programs or smaller scale open pits), should plan for a natural species succession appropriate to the reclaimed landform and vegetative community for the identified Ecological Response Unit, to include identifying appropriate species to use in revegetation of disturbed areas.

Freeport objects to this guideline as the modification to it and the TNF's response³⁵ do not sufficiently address Freeport Comments, which stated that the reference to "natural species succession" is vague and not required by law and should be modified or deleted.

Ch.2, p.58, Mining, Minerals, and Abandoned Mines (MMAM), MMAM-G-06:

Abandoned mine features (e.g., adits, shafts, and stopes) should be closed⁴¹ when a feature poses a danger to the public. If the feature is determined to contain wildlife habitat (e.g., maternity roosts or hibernacula for bats) or contain cultural resources, gating should be considered. Installed gates should conform to bat-friendly standards and be designed in such a way to allow for the safe passage of wildlife.

⁴¹ *Closed abandoned mine features are features that have blocked openings (e.g., fences, warning signs, sealed mine openings with gates, expanding foam, or backfill) to prevent access and exposure to associated hazards that may include falls into openings, rotten timbers, toxic air, and forgotten explosives.*

Freeport objects to this guideline as the TNF's response³⁶ does not sufficiently address Freeport Comments, which stated that "abandoned" should be defined as meaning facilities that are closed without plans of reactivation. This guideline should be modified to include that distinction.

Ch.2, p.59, Mining, Minerals, and Abandoned Mines (MMAM), MMAM-MA-06:

Encourage reclamation of large-scale mine sites to convert to other productive uses (e.g., renewable energy production, agricultural, or recreational types of uses) where reclamation to the original Ecological Response Unit is impracticable due to impacts of the action.

Freeport objects to this management approach that is new to the Plan. Previously, this was MMAM-G-03 in the Draft Plan. Further, the TNF's response³⁷ does not sufficiently address Freeport Comments, which stated that the return of mine sites to other productive uses is not required by the applicable reclamation regulations.³⁸ This guideline (now management approach) should not be more stringent than or inconsistent with applicable regulations. This guideline (now management approach) should be deleted.

Ch.2, p.61, Roads (RD), RD-G-01:

New roads should not be constructed in areas designated as primitive in the recreation opportunity spectrum (ROS), or current protocol.

³⁵ FEIS, Vol. 3, pp.122, 2816-61.

³⁶ FEIS, Vol. 3, p.119, 2816-63.

³⁷ FEIS, Vol. 3, pp.121-122, 2816-60

³⁸ 36 CFR §228.8(g).

Freeport objects to this guideline as the TNF's response³⁹ does not sufficiently address Freeport Comments, which stated that this guideline does not give due consideration to mineral exploration and mining activities. Access to unpatented mining claims cannot be restricted under the 1872 Mining Law and applicable case law. This guideline should be limited to non-mining uses.

Ch.2, p.62, Roads (RD), RD-MA-02:

Prioritize decommissioning of roads or user created routes that impact flow regimes, are redundant routes, cause mass movement of soils and sediment, are built within the riparian management zone, or have substantial negative impacts to at-risk species.

The new verbiage of “user created routes” was added to this management approach which is overly broad and leads to an arbitrary and capricious interpretation or application. Furthermore, the TNF response⁴⁰ does not sufficiently address Freeport Comments, which stated that this management approach does not give due consideration to mineral exploration and mining activities. Access to unpatented mining claims cannot be restricted under the 1872 Mining Law and applicable case law. This guideline should be limited to non-mining uses.

Ch.2, p.66, Lands and Access (LA), LA-MA-02:

While addressing access problems on the Forest, seek cooperation of private landowners through acquiring easements.

The new verbiage of “through acquiring easements” added to this management approach is unnecessary and should be deleted. This was not provided previously for comment and leads the industry and other impacted groups to overly burdensome and costly approaches.

Ch.2, pp.99-102, Riparian Ecological Response Units (RERU):

The TNF response⁴¹ does not sufficiently address Freeport Comments, which stated in part that although there is a reference to mapping, no mapping was provided as part of the draft Plan for “riparian ecological response units” making it difficult to fully evaluate the impacts of this portion of the draft Plan and Plan. However, consistent with the USFS land management regulations,⁴² and the definition of “riparian area” under state law,⁴³ “riparian ecological response units” can only be

³⁹ FEIS, Vol. 3, p.254, 2816-67.

⁴⁰ FEIS, Vol. 3, pp.254-255, 2816-68.

⁴¹ FEIS, Vol. 3, pp.303-304, 2816-70.

⁴² 36 CFR §219.8(a)(3)(ii)) (stating that land management “[p]lans must establish width(s) for riparian management zones around all lakes, perennial and intermittent streams, and open water wetlands, within which the plan components required by paragraph (a)(3)(i) of this section [specifying certain factors to be considered for maintaining or restoring riparian values within the riparian management zones] will apply, giving special attention to land and vegetation for approximately 100 feet from the edges of all perennial streams and lakes”) (emphasis added).

⁴³ ARS §§37-1101(10) (addressing state claims to streambeds) & 45-101(7) (addressing water rights). In both of these statutes, “riparian area” is defined as “a geographically delineated area with distinct resource values, that is characterized by deep-rooted plant species that depend on having roots in the water table or its capillary zone and that occurs within or adjacent to a natural perennial or intermittent stream channel or within or adjacent to a lake, pond or marsh bed maintained primarily by natural water sources. Riparian area does not include areas in or adjacent to ephemeral stream channels, artificially created stockponds, man-made storage reservoirs constructed primarily for conservation or regulatory storage, municipal and industrial ponds or man-made water transportation, distribution, off-stream storage and collection systems.”

located in close proximity and contiguous to a lake, perennial and intermittent stream, or open water wetland. This should be specifically clarified in the Plan. If this is not clarified, or if TNF intends for this concept to apply to plant communities not located in close proximity to a lake, perennial and intermittent stream, or open water wetland, then this entire section should be removed because it attempts to impose riparian management requirements beyond the area envisioned to be subject to potential riparian management issues under the applicable regulations in violation of the limitations found in 36 CFR §219.1(g), one of which requires that plan components be within Forest Service legal authority.

Further, the Southwestern Region RMAP report⁴⁴ contains the following operational definition of “riparian area”:

Riparian areas are plant communities contiguous to and affected by surface and subsurface hydrologic features of perennial or intermittent lotic and lentic water bodies. Riparian areas have distinctively different vegetative species than adjacent areas; specifically, riparian mapping is conducted where riparian/wetland plant species are common. Where indicator plants may temporarily absent, riparian areas are identified by signs of fluvial processes and/or fluvial features created under the current flow and climatic regimes.

(Emphasis added). The same operational definition is found in the Southwestern Region Ecological Response Units of the Southwestern United States report,⁴⁵ along with an explanation that the definition is applicable to mapping of “riparian ecological response units.” Notably, the FEIS contains a definition of “riparian area” that tracks this operational definition.⁴⁶ If this section of the Plan is retained, the operational definition of “riparian area” should be included within the background to this section consistent with how “riparian area” is defined in the FEIS. Any attempt to support or suggest a broader definition of “riparian area” or “riparian ecological response units” is not consistent with Forest Service legal authority, its prior determinations of riparian areas within the Southwestern Region, or its discussion of “riparian area” in the FEIS. Additionally, to the extent that riparian area mapping relied upon by the Forest Service for the Tonto Forest does not conform to the operational definition of “riparian area”, such mapping should not be followed for purposes of the Plan.

Ch.2, p.74, Vegetation and Ecological Response Units (ERU), ERU-MA-05:

Work with partners and other experts in the field to proactively promote research and monitoring that will assist in the adaptive management related to climate change.

This management approach is new to the Plan; thus, Freeport was not afforded an opportunity to comment on it previously. This new management approach should be deleted.

⁴⁴ *RMAP Regional Riparian Mapping Project. Southwestern Region* at 4 (USDA Forest Service, 2013 (revised 2018)) (Triepke, Wahlberg, Cress, & Benton) (https://www.fs.usda.gov/r3/gis/gisdata/RMAP_Project_Report_AUG_2018.pdf).

⁴⁵ *Ecological Response Units of the Southwestern United State, Southwestern Region* at 113 (USDA Forest Service, 2014) (Wahlberg, Triepke, Robbie, Stringer, Vandendriesche, Muldavin, & Malusa).

⁴⁶ FEIS, Vol. 1, pp. 399 (“Riparian areas are plant communities contiguous to, and affected by, surface and subsurface hydrologic features of perennial or intermittent lotic and lentic water bodies (rivers, streams, lakes, or drainage ways”).

Ch.2, p.107, Watersheds and Water Resources (WAT), WAT-DC-02:

Surface water and groundwater quality, meets or exceeds applicable state water quality standards, fully supports designated beneficial uses, maintains or moves ecological conditions to low departure from reference conditions, and meets the needs of downstream water users.

The TNF's response⁴⁷ does not adequately address Freeport Comments, which stated that a simple statement that water quality on the Tonto will meet or exceed applicable state water quality standards is inappropriate and creates expectations that will not be achievable in every circumstance. Such a statement also is not consistent with the recognition in state and federal laws and regulations that there may be natural or human-caused conditions that will impact the ability of a water to meet applicable standards.⁴⁸ It is also unclear what is meant by "maintain or moves ecological conditions..." and "needs of downstream users." This desired condition should be deleted.

Ch.2, p.107, Watersheds and Water Resources (WAT), WAT-O-05:

Apply for state-based water rights for instream flow use for at least two streams threatened with dewatering, supporting highly valued resources (e.g., threatened or endangered species, species of conservation concern, river-based recreation) or containing unique qualities (e.g., a perennial stream in the Sonoran Desert) within each ten-year period.

While replacing the term "acquiring" with "apply for" is appropriate, the TNF's response⁴⁹ still does not sufficiently address Freeport Comments, which stated that acquiring state-based water rights as a means of protecting "highly valued resources" is misleading as the priority date of these new uses would be junior to most water users with older claims. This objective is also likely to involve TNF in ongoing water rights litigation, which should not be a desired objective. This objective was also included in the draft Groundwater Directive proposed by the Forest Service in 2014, and subsequently abandoned in the face of public opposition. For the same reasons that the draft Groundwater Directive was abandoned, this objective should be deleted.

Ch.2, p.108, Watersheds and Water Resources (WAT), WAT-S-02:

New authorizations for wells and pipelines on National Forest System lands shall only be considered where the water removed and/or transported by these facilities would not adversely impact springs, wetlands, riparian areas, surface flows, and other groundwater dependent ecosystems on National Forest System lands.

The modification to this standard and TNF's response⁵⁰ do not sufficiently address Freeport Comments, which stated that this standard is problematic for several reasons and should be deleted. It is not clear what "groundwater dependent ecosystems" means, notwithstanding the proposed definition in the Plan on page 10, footnote 3 (see also comments above on concerns with proposed definition of "groundwater dependent ecosystems"). It is also not clear what nexus a pipeline

⁴⁷ FEIS, Vol. 3, pp.315-316, 2816-71.

⁴⁸ 40 CFR §131.10(g); ARS §49-232(D); Ariz. Admin. Code (AAC) R18-11-104(H), R18-11-106, R18-11-118 & R18-11-119.

⁴⁹ FEIS, Vol. 3, p.307, 2816-72.

⁵⁰ FEIS, Vol. 3, p.315, 2816-73.

transporting water across TNF lands has to do with forest ecosystems where the pipeline water originates off TNF land. Moreover, the terms and conditions that may be included in special use permits or plans of operations are specifically set forth in the applicable regulations.⁵¹ TNF's implementation of this standard must be consistent with, and cannot conflict with, the applicable regulations. The applicable regulations do not prohibit any adverse impact to the environment, but rather require damage be minimized, often "to the extent practicable," or they require compliance with existing federal or state standards, which do not impose an absolute prohibition any adverse environmental impacts. This standard is also derived from the abandoned draft Groundwater Directive. For all of these reasons, we suggest deleting this standard.

Ch.2, p.108, Watersheds and Water Resources (WAT), WAT-S-04:

Activities in and around surface waters will use decontamination procedures that prevent the spread of detrimental parasites, pathogens (e.g., fungi, bacteria, protozoa), and invasive species.

This standard has been added to the Plan; thus, Freeport was not afforded an opportunity to comment on it previously. To place this extra onus on the industry and other impacted groups will be overly burdensome and costly. This new standard should be deleted.

Ch.2, p.108, Watersheds and Water Resources (WAT), WAT-G-01:

When existing groundwater wells on National Forest System lands are proposed for improvement that increase the amount of water pumped or deepen the well, adverse impacts to groundwater dependent ecosystems (e.g., wetlands, riparian areas, springs, streams, and fens) should be evaluated, and measures to eliminate, mitigate, or reduce impacts should be implemented.

The modification to this guideline and the TNF's response⁵² do not sufficiently address Freeport Comments, which stated that improvements to existing groundwater wells should not trigger any analysis of adverse impacts to "groundwater dependent ecosystems" or mitigation measures. Also, "groundwater dependent ecosystems" is unclear and could refer to all ecosystems. This guideline could result in the denial of an authorization to improve an existing groundwater well and could create an undue burden on necessary and simple improvements such as repairs, changes in well functions, or others. The evaluation of improvement proposals should be done according to existing laws and guidelines. This guideline is also derived from the abandoned draft Groundwater Directive. This guideline should be deleted.

Ch.2, p.108, Watersheds and Water Resources (WAT), WAT-G-03:

New wells on National Forest System lands and new pipelines across National Forest System lands should avoid adversely impacting nearby wells on adjoining private lands.

The response⁵³ provided by TNF does not address Freeport Comments, which stated that it is not clear what an evaluation under this guideline would entail. It is also not clear that TNF has authority to require this type of evaluation, and this guideline appears to exceed TNF's authority to regulate surface resources. This guideline is also derived from the abandoned draft Groundwater Directive. This guideline should be deleted.

⁵¹ 36 CFR §§228 & 251.

⁵² FEIS, Vol. 3, p.314, 2816-74.

⁵³ FEIS, Vol. 3, p.317, 2816-75.

Ch.2, p.109, Watersheds and Water Resources (WAT), WAT-G-06:

New or reconstructed roads and motorized routes, infrastructure, recreation sites, or similar constructed facilities should not be located within floodplains or within 300 feet of water resource features (e.g., perennial and intermittent streams, springs, wetlands, and riparian areas), except where necessary for stream crossings or to provide for resource protection to avoid the long-term adverse impacts associated with the occupancy and modification of floodplains and water resource features

The response⁵⁴ provided by TNF does not sufficiently address Freeport Comments, which stated that this guideline is unclear in several respects. How is “floodplain” defined? What is the basis of the 300-foot limit? What is a “water resource feature”? This guideline should clarify that it does not apply to the maintenance of existing roads, or reconstruction of permitted improvements that may need to be rebuilt due to damage, age, etc. Further, access to unpatented mining claims cannot be restricted under the 1872 Mining Law and applicable case law. This guideline should be limited to non-mining uses.

Ch.2, p.109, Watersheds and Water Resources (WAT), WAT-G-14:

Groundwater and surface water on National Forest System lands should be managed as one hydrologically connected system.

While this guideline is new to the Plan, it was previously presented in the Draft Plan as a management approach (WAT-MA-08). Unfortunately, this change and the response⁵⁵ provided by the TNF do not address Freeport Comments, which stated that this management approach (now guidance) reflects a policy statement included in the abandoned draft Groundwater Directive and should be deleted for the same reasons the Forest Service abandoned the draft Groundwater Directive.

Ch.2, p.109, Watersheds and Water Resources (WAT), WAT-MA-01:

Work with forest leadership and partners to identify priority watersheds, develop watershed restoration action plans as well as other restoration activities to leverage resources, and to implement and monitor projects that improve vegetative composition, reduce erosion, and/or otherwise improve watershed function.

This management approach was substantially modified to include the following new verbiage, “forest leadership and...identify priority watershed, develop watershed restoration action plans as well as other restoration activities...” This expands upon what was initially provided in the Draft Plan and contains verbiage that is overly broad and leads to an arbitrary and capricious interpretation or application. It should be reverted to reflect the management approach presented in the Draft Plan.

⁵⁴ FEIS, Vol. 3, pp.317-318, 2816-76.

⁵⁵ FEIS, Vol. 3, p.318, 2816-77.

Ch.2, pp.111-115, Riparian Areas, Seeps, Springs, Wetlands, and Riparian Management Zones (RMZs):

The TNF's response⁵⁶ does not sufficiently address Freeport Comments, which stated that this section includes references to ponds and ephemeral drainages. These references are not consistent with the definition of "riparian area" under state law,⁵⁷ USFS land management regulations specifying that riparian protection or management is limited to areas that border lakes, perennial or intermittent streams, or open water wetlands,⁵⁸ as well as USFS guidance.⁵⁹

There should be no suggestion or implication in the Plan that riparian areas extend into ephemeral drainages. Any suggestion that riparian areas and associated management protections extend into ephemeral streams or drainages is contrary to USFS land management planning regulations and USFS guidance as well as applicable state law. Further, the word "pond" should not be used when referring to potential southwestern riparian ecosystems. Use of this word, without appropriate qualification, suggests that riparian ecosystems and areas could be located in proximity to man-made stock ponds and other similar pond-like features that should not be considered as having the potential to create a riparian ecosystem requiring protection under the USFS land management planning regulations. This section should be revised to be consistent with applicable regulations.

Importantly, and as noted above in the objections to the "Riparian Ecological Response Unit" section of the Plan, the Southwestern Region RMAP report⁶⁰ contains the following operational definition of "riparian area":

Riparian areas are plant communities contiguous to and affected by surface and subsurface hydrologic features of perennial or intermittent lotic and lentic water bodies. Riparian areas have distinctively different vegetative species than adjacent areas; specifically, riparian mapping is conducted where riparian/wetland plant species are common. Where indicator plants may temporarily absent, riparian areas are identified by signs of fluvial processes and/or fluvial features created under the current flow and climatic regimes.

(Emphasis added). The same operational definition is found in the Southwestern Region Ecological Response Units of the Southwestern United States report,⁶¹ along with an explanation that the definition is applicable to mapping of "riparian ecological response units." Notably, the FEIS⁶² contains a definition of "riparian area" that tracks this operational definition. The TNF

⁵⁶ FEIS, Vol. 3, p.244, 2816-78.

⁵⁷ ARS §§37-1101(10) & 45-101(7).

⁵⁸ 36 CFR §219.8(a)(3)(ii).

⁵⁹ *RMAP Regional Riparian Mapping Project. Southwestern Region* at 4 (USDA Forest Service, 2013 (revised 2018)) (Triepke, Wahlberg, Cress, & Benton) (https://www.fs.usda.gov/r3/gis/gisdata/RMAP_Project_Report_AUG_2018.pdf); *Ecological Response Units of the Southwestern United State, Southwestern Region* at 113 (USDA Forest Service, 2014) (Wahlberg, Triepke, Robbie, Stringer, Vandendriesche, Muldavin, & Malusa).

⁶⁰ *RMAP Regional Riparian Mapping Project. Southwestern Region* at 4 (USDA Forest Service, 2013 (revised 2018)) (Triepke, Wahlberg, Cress, & Benton) (https://www.fs.usda.gov/r3/gis/gisdata/RMAP_Project_Report_AUG_2018.pdf).

⁶¹ *Ecological Response Units of the Southwestern United State, Southwestern Region* at 113 (USDA Forest Service, 2014) (Wahlberg, Triepke, Robbie, Stringer, Vandendriesche, Muldavin, & Malusa).

⁶² FEIS, Vol. 1, pp. 399 ("Riparian areas are plant communities contiguous to, and affected by, surface and

response to comments⁶³ also contains language clarifying that “riparian management zones” do not extend to “dry washes that only flow in direct response to a precipitation event and therefore do not support distinctive riparian plant communities described above.”

At the very least, the operational definition of “riparian area” for purposes of the Southwestern Region RMAP should be included within the background to this section consistent with how “riparian area” is defined in the FEIS and how ephemeral drainages are addressed in the TNF response to comments. Any attempt to support or suggest a broader definition of “riparian area” or “riparian ecological response units” is not consistent with USFS legal authority, its prior determinations of riparian areas within the Southwestern Region, or its discussion of “riparian areas” in the FEIS.

Ch.2, pp.112-113, Riparia Areas, Seeps, Spring, Wetlands, and Riparian Management Zones (RMZs), Riparian Management Zones:

The 2012 planning rule requires the forest plan to include plan components for riparian areas and establish riparian management zones (RMZ) around all lakes, perennial, and intermittent streams,⁶⁹ and open wetlands, within which the plan components in this section will apply, giving special attention to land and vegetation for approximately 100 feet from the edges of all perennial streams and lakes (36 CFR 219.8(a) (3)).

The first approximation of the riparian management zones will be based on riparian ecological response units (riparian ERUs).⁷⁰ The following are the riparian ecological response units on the forest that make up the riparian management zones: Arizona Alder-Willow, Arizona Walnut, Desert Willow, Fremont Cottonwood-Conifer, Fremont Cottonwood-Oak, Fremont Cottonwood / Shrub, Herbaceous, Narrowleaf Cottonwood / Shrub, Ponderosa Pine / Willow, and Sycamore – Fremont Cottonwood. Any updates to the riparian ecological response units or any new mapping effort based on the best available science should be incorporated as the first approximation of the riparian management zones.

The riparian management zones will be further modified through site-specific delineations during project level planning and implementation. Criteria that can be used to refine the riparian management zones include vegetation, fluvial geomorphology, hydrology, and downstream conditions. Vegetative indicators of riparian extent include species that: are adjacent to and influenced by stream-related processes, require consistent soil moisture, and are absent or rare in areas defined as uplands. Fluvial geomorphic indicators include break in slope, evidence of fluvial deposition, high water marks, and lack of upland soil formation. In the absence of vegetative or fluvial geomorphic indicators the hydrologic indicator of the 100-year recurrence interval flood may be used to indicate riparian extent. Finally, a riparian management zone can be modified to incorporate ephemeral channels with minimal or no riparian vegetation that support riparian vegetation downstream due to subsurface flow through the stream channel or adjacent alluvial sediments as described in FSH 1909.12 (23.11e).

subsurface hydrologic features of perennial or intermittent lotic and lentic water bodies (rivers, streams, lakes, or drainage ways”).

⁶³ FEIS, Vol 3, p. 236, 2970-479.

⁶⁹*Includes drier intermittent riparian areas often referred to as “xeroriparian” or “Sonoran riparian scrublands” best represented by the Desert Willow Riparian ecological response units.*

⁷⁰*See the Riparian ecological response units section for more information on what riparian ecological response units are and how they were derived/mapped.*

These paragraphs are essentially new to the Plan; thus, Freeport has not been afforded an opportunity to officially comment on them previously. They should be deleted; and absent deletion, will add to confusion, overly burdensome and costly assessment and an arbitrary and capricious approach to assessment and structure. In particular, Freeport objects to the suggestion that riparian management zones can be modified to incorporate ephemeral channels. Such a suggestion is contrary to the USGS land management planning regulations which specify that the extent of “riparian management zones” in Forest plans is focused on lakes, perennial and intermittent stream, and open water wetlands.⁶⁴ The suggestion also fails to track the operational definition of “riparian area” for purposes of the Southwestern Region RMAP, which specifies that “riparian area” is associated with perennial or intermittent lotic and lentic water bodies, not ephemeral. The reference to FSH 1909.12 (23.11e) in the response to comments⁶⁵ is not necessarily relevant because the reference to incorporating dry washes is limited to considerations that the USFS will make when establishing the widths of riparian management zones contiguous to lakes, perennial and intermittent streams, and open water wetlands.

Ch.2, p.113, Riparia Areas, Seeps, Spring, Wetlands, and Riparian Management Zones (RMZs), RMZ-DC-04:

Livestock grazing does not impact the long-term health of riparian vegetation. Vigor and diversity maintains or moves riparian vegetation as represented by Terrestrial Ecological Unit Inventory site potential and other suitable references to low departure from desired conditions for riparian vegetation types.

This desired condition was modified by replacing the term “herbivory” with “livestock grazing” which may be interpreted as being prohibitive and inconsistent with the MUYSA⁶⁶. This desired condition should be reverted to that which was presented in the Draft Plan.

Ch.2, p.113, Riparia Areas, Seeps, Spring, Wetlands, and Riparian Management Zones (RMZs), RMZ-O-01:

Complete active and passive restoration projects on at least 125 miles of streams every 10 years to improve the ecological integrity of perennial and intermittent riparian ecosystems rated as nonfunctioning and functioning-at-risk.⁷¹

⁷¹ *Both nonfunctioning and functioning-at-risk are synonyms from the Proper Functioning Condition assessment framework and terms “Nonfunctional” and “Functional-at-risk.” Nonfunctioning riparian areas are highly degraded, and do not provide adequate vegetation, landform, or woody material to dissipate stream energy associated with moderately high flows, and thus are not reducing erosion or providing ecosystem services such as improving water*

⁶⁴ 36 CFR § 219.8(a)(3)(ii).

⁶⁵ FEIS, Vol. 3, pp. 236-37, 2970-479 & p. 244, 2816-78.

⁶⁶ 16 USC §§528-231

quality. Functional-at-risk riparian areas are limited in functioning condition, however existing hydrological, vegetative, or geomorphic attributes make them susceptible to impairment.

This objective was significantly modified and footnote 71 is new to the Plan. However, these modification and the response⁶⁷ provided by the TNF do not sufficiently address Freeport Comments, which stated that the references to “restoring” habitat or riparian areas, or aquatic ecosystems, etc. are ambiguous. Does the TNF have guidance on this type of restoration? What point in time is used as the baseline/target? What data does TNF have to support this restoration concept? Also, while the TNF provides the definitions, per Freeport Comments, to “nonfunctioning and functioning at-risk” in the new footnote 71, Freeport was not afforded an opportunity to comment on the definitions previously. This objective should be deleted.

Ch.2, p.114, Riparia Areas, Seeps, Spring, Wetlands, and Riparian Management Zones (RMZs), RMZ-S-01:

All projects in riparian areas shall identify and delineate the riparian management zone.

The TNF response⁶⁸ does not address Freeport Comments, which asked who is responsible for this delineation? These costs should not be imposed on the applicant. This standard should be deleted.

Ch.2, p.114, Riparia Areas, Seeps, Spring, Wetlands, and Riparian Management Zones (RMZs), RMZ-S-03:

Projects within the riparian management zone that use herbicides or pesticides will establish application buffer areas based on project objectives, the size of the project area, characteristics of the chemicals to be used, and application methods.

This standard is new to the Plan; and as such, Freeport was not afforded an opportunity to officially comment on it previously. This new standard should be deleted.

Ch.2, p.114, Riparia Areas, Seeps, Spring, Wetlands, and Riparian Management Zones (RMZs), RMZ-G-01:

New spring developments and redeveloped springs (not including maintenance) should employ the strategies outlined in RMRS-GTR 405⁷⁴ or the best available science associated with spring development (USDA Forest Service 2020).

⁷⁴RMRS-GTR 405 is the 2020 Forest Service General Technical Report “Rangeland Water Developments at Springs: Best Practices for Design, Rehabilitation, and Restoration.”

This guideline and footnote 74 are new to the Plan; thus, Freeport was not afforded an opportunity to officially comment on it previously. This new guideline and footnote should be deleted.

⁶⁷ FEIS, Vol. 3, pp.245-246, 2816-79, 98.

⁶⁸ FEIS, Vol. 3, p.246, 2816-80.

Ch.2, p.114, Riparia Areas, Seeps, Spring, Wetlands, and Riparian Management Zones (RMZs), RMZ-G-07:

Project planning and activities affecting riparian and aquatic ecosystems should consider the desired conditions specified in the current Regional Riparian and Aquatic Ecosystem Strategy (USDA Forest Service 2019).

This guideline is new to the Plan; and as such, Freeport was not afforded an opportunity to officially comment previously on it. This new guideline should be deleted.

Ch.2, p.115, Riparia Areas, Seeps, Spring, Wetlands, and Riparian Management Zones (RMZs), RMZ-MA-07:

Consider both active and passive restoration techniques⁷⁶ to improve riparian conditions and encourage self-sustaining ecosystems.

⁷⁶Active restoration is where management actions (e.g., planting vegetation or bank stabilization or other physical actions) are taken to restore ecological conditions whereas passive restoration focuses on ceasing environmental stressors (e.g., reducing pressure from multiple uses to allow the system to recover on its own).

This management approach and footnote are essentially new to the Plan; thus, Freeport was not afforded the opportunity to comment on it previously. This new management approach and footnote should be deleted.

Ch.2, pp.126-129, Wildlife, Fish, and Plants (WFP):

The TNF response⁶⁹ does not sufficiently address Freeport Comments, which stated that the USFS land management planning regulations require the responsible USFS official to determine whether plan components to maintain or restore the ecological integrity of terrestrial and aquatic ecosystems and watersheds in the plan area will provide the ecological conditions necessary to “contribute to the recovery of federally listed threatened and endangered species, conserve proposed and candidate species, and maintain a viable population of each species of conservation concern within the plan area.”⁷⁰ If the responsible USFS official determines that the plan components addressing terrestrial and aquatic ecosystems and watersheds are insufficient to protect species, then species-specific plan components must be included in the plan, as long as such components are within the authority of the USFS.⁷¹ A “species of conservation concern is a species, other than federally recognized threatened, endangered, proposed, or candidate species, that is known to occur in the plan area and for which the regional forester has determined that the best available scientific information indicates substantial concern about the species’ capability to persist over the long-term in the plan area.”⁷²

It is not clear in the body of the Plan that species-specific plan components are necessary to be included in the Plan in accordance with the applicable regulations. If this determination cannot be

⁶⁹ FEIS, Vol. 3, pp.346-347, 2816-81 and p.291, 2816-82.

⁷⁰ 36 CFR §219.9(b)(1).

⁷¹ Id. §219.9(b)(1), (2).

⁷² Id. §219.9(c).

made, then any species-specific plan components, including guidelines and standards, should be removed from the Plan.

Further, while the draft Plan suggests that 53 species of conservation concern have been identified in the Tonto, it is not clear in the Plan how each of these species meet the regulatory definition of “species of conservation concern” including a determination that best available scientific information indicates substantial concern about each species’ capability to persist over the long-term in the plan area. This additional point should be clarified in the Plan and species removed from the species of conservation concern list that do not meet the regulatory definition.

Ch.2, p.127, Air Quality (AQ), AQ-MA-01:

Work with agencies, organizations, Tribes, and other entities to actively pursue actions designed to reduce the impacts of air pollutants from sources (e.g., smoke, road maintenance, and mining activities) within and outside the Forest.

In addition to the new verbiage of “(e.g., smoke, road maintenance, and mining activities)” being added to this management approach, the response⁷³ provided by TNF does not adequately address Freeport Comments, which stated that the Forest Service does not have the jurisdictional authority to pursue actions against sources outside the Forest. This management approach should be deleted.

Ch.2, p.127, Air Quality (AQ), AQ-MA-03:

Utilize best management practices to protect visibility and opacity standards on the Tonto National Forest, including Class I areas.

This management approach is new to the Plan; thus, Freeport was not afforded the opportunity to officially comment on it previously. It will lead to an arbitrary and capricious interpretation or application. This new management approach should be deleted.

Ch.3, Management Areas Plan Direction:

The response⁷⁴ provided by TNF does not sufficiently address Freeport Comments, which stated that understanding the challenging role of the TNF in “balancing conflicting resource needs and providing for comprehensive multi-use management” in its drafting of the Plan, we are concerned by the vast expansions being proposed to the various management areas. The Tonto currently has eight (8) designated wilderness areas encompassing 588,575⁷⁵ acres, and two (2) designated wild & scenic river segments of approximately 57.3⁷⁶ miles. The Plan identifies, at minimum, an additional 5 (previously 11) recommended wilderness areas encompassing another 106,411⁷⁷ (previously only 43,206⁷⁸) acres, and 19 (previously 20) eligible wild and scenic rivers segments totaling approximately 188⁷⁹ (previously 128⁸⁰) miles. Even though these expansions have yet to be officially designated, the Plan sets out standards and guidelines specific to these areas “until

⁷³ FEIS, Vol. 3, p.5, 2816-84, 2816-85.

⁷⁴ FEIS, Vol. 3, p.106, 2816-86.

⁷⁵ The Plan, pp.6 & 130

⁷⁶ The Plan, p.139.

⁷⁷ The Plan, p.136.

⁷⁸ The Draft Plan, p.173 at Appendix A, Figure A-2.

⁷⁹ The Plan, p.140.

⁸⁰ The Draft Plan, p.137.

such time as the area designated”⁸¹ or “until a suitability determination has been made whether or not to recommend them for inclusion...”⁸²

Furthermore, currently there are three statutorily designated management areas in the Tonto: wilderness areas, wild and scenic river, and national scenic trails. There are also four existing administratively designated management areas in the Tonto: inventoried roadless areas, national recreation trails, research natural areas, and significant caves. The Plan proposes to establish an additional six (two of which are new to the Plan) administratively designated management areas: Lakes and Rivers Management Area, Saguaro Wild Bill Burro Management Area, Salt River Horse Management Area, Apache Leap Special Management Area, proposed research natural areas, and recommended botanical areas.⁸³ The Plan components for these management areas are either in addition to or may differ from forestwide management by: “constraining an activity where forestwide direction does not; constraining an activity to a greater degree than forestwide direction; or providing for an exception to forestwide direction, when forestwide direction is in conflict with the management emphasis of the management area.”⁸⁴ Freeport is concerned that an overlay of all these designated, recommended and eligible areas and features of the forest encompass much of the forest and can greatly restrict other multi-use activities. Furthermore, much of these designations and/or acreage are new to the Plan; and as such, Freeport was not afforded an opportunity to officially comment previously on the new designations and acreage.

Ch.3, pp.132, Designated Wilderness (DWMA), DWMA-DC-05:

The environment within a wilderness is essentially unmodified. Actions and structures that manipulate the biophysical environment are rare or nonexistent. Natural occurring scenery dominates the landscape.

This desired condition was substantively modified by adding the new sentence “Actions and structures that manipulate the biophysical environment are rare or nonexistent.” What does this mean? This language will lead to an overly broad, arbitrary, and capricious interpretation or application. This new sentence should be deleted.

Ch.3, pp.132, Designated Wilderness (DWMA), DWMA-DC-11:

Cultural, historical, and geological features of value that are inherent to wilderness character are recognized as features of value to wilderness character.

This desired condition is new to the Plan. Freeport was not afforded an opportunity to comment on it previously. What does this mean? This language will lead to an overly broad, arbitrary, and capricious interpretation or application. This new desired condition should be deleted.

Ch.3., pp.143-144, Recommended Wilderness (RWMA)

These five recommended wilderness areas encompassing approximately 106,411⁸⁵ acres are essentially new to the Plan; and as such, Freeport was not afforded an opportunity to officially submit comments previously addressing these areas. While the Draft Plan recommended 11

⁸¹ The Plan, p.136.

⁸² The Plan, p.142.

⁸³ The Plan., p.129.

⁸⁴ Id.

⁸⁵ The Plan, p.136.

wilderness areas, albeit not very clearly, these only encompassed a total of 43,206⁸⁶ acres. In addition to the concerns Freeport Comments address regarding the Management Area Plan Direction; the addition of 63,205 acres of recommended wilderness areas new to the Plan is significant and concerning.

Ch.3, p.137, Recommended Wilderness (RWMA), RWMA-S-01:

New permanent or temporary roads, motorized trails, or mechanized trails for public access shall not be constructed or designated in a recommended wilderness area.

This standard was substantively modified by deleting “unless there are valid existing rights” from the end of the sentence. It is unclear why this verbiage would be removed. It needs to be re-inserted so that there is no mistake that this guarantee exists.

Ch.3, p.137, Recommended Wilderness (RWMA), RWMA-S-04:

Sales or extraction of mineral materials⁸³ shall not be permitted in recommended wilderness areas.

⁸³*Mineral materials/salable materials/common variety minerals, are synonymous terms for the same class of minerals that can be sold under a mineral material contract, and are common. These minerals are relatively low value per volume, for example: sand, gravel, cinders, common building stone, and flagstone.*

The response⁸⁷ provided by TNF does not adequately address Freeport Comments, which stated this standard should be deleted as it is contrary to the MUSYA which stipulates that “[n]othing herein shall be construed so as to affect the use or administration of the mineral resources of national forest lands or to affect the use or administration of Federal lands not within national forests;”⁸⁸ and the Wilderness Act of 1964 which states that “[n]othing in this chapter shall prevent within national forest wilderness areas any activity, including prospecting, for the purpose of gathering information about mineral or other resources, if such activity is carried on in a manner compatible with the preservation of the wilderness environment.”⁸⁹

Ch.3, p.138, Recommended Wilderness (RWMA), RWMA-G-10:

Management activities in recommended wilderness areas should meet scenic integrity objectives of high or very high in the long term, as defined in the Scenery Management System or similar protocol.

This guideline was substantively modified by replacing “visual quality” with “scenic integrity.” Freeport objects to this modification per the explanation provided in response to SC-G-01 and SC-G-03. This guideline should be reverted to that which was presented in the Draft Plan.

Ch.3, p.138, Recommended Wilderness (RWMA), RWMA-MA-01:

Work with partners and volunteer groups to manage and maintain wilderness characteristics in

⁸⁶ The Draft Plan, p.173 at Appendix A, Figure A-2.

⁸⁷ FESI, Vol. 3, p.212, 816-87.

⁸⁸ 16 USC §528.

⁸⁹ 16 USC §1133(d)(2)

recommended wilderness areas and to facilitate user support and reduce user conflicts.

This management approach is new to the Plan; thus, Freeport was not afforded an opportunity to officially comment on it previously. It is unclear what is meant by “reduce user conflicts” and has verbiage that is overly broad and leads to an arbitrary and capricious interpretation or application. This new management approach should be deleted.

Ch.3, p.139, Designated Wild and Scenic Rivers (DWSRMA), DWSRMA-DC-05:

Permitted uses within the river corridor maintain or enhance the river segment’s outstandingly remarkable values and are consistent with the river segment’s classification.

This desired condition was substantively modified by replacing “Domestic livestock grazing and constructed range improvements” with “permitted uses” and replacing “do not impact” with “maintain or enhance.” These modifications make this overly broad and subject to inconsistent and an arbitrary and capricious interpretation or application. This desired condition should be deleted or reverted to the manner in which it was initially stated in the Draft Plan.

Ch.3, p.139, Designated Wild and Scenic Rivers (DWSRMA), DWSRMA-S-02:

Sales or extraction of mineral materials shall not be authorized in wild and scenic rivers.

The response⁹⁰ provided by the TNF does not address Freeport Comments, which stated this standard should be deleted as it too conflicts with the MUSYA and with Wild and Scenic Rivers Act of 1968 which stipulates that “[n]othing in this chapter shall affect the applicability of the United States mining and mineral leasing laws within components of the national wild and scenic rivers system...”⁹¹

Ch.3, p.139, Designated Wild and Scenic Rivers (DWSRMA), DWSRMA-MA-07:

Encourage multijurisdictional coordination on the management and monitoring of conditions within the stream corridors of designated wild and scenic rivers where management actions upstream or downstream may have impacts.

This management approach is new to the Plan; thus, Freeport was not afforded an opportunity to comment on it previously. It will lead to overly burdensome and costly involvement by the involved industry or groups and likely lead to an arbitrary and capricious interpretation or application. This new management approach should be deleted.

Ch.3, p.141, Eligible Wild and Scenic Rivers (EWSRMA), first paragraph, fn 86:

The Tonto has 19 river segments with outstandingly remarkable values⁸⁶ totaling approximately 188 miles (table 18).

⁸⁶*A scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar river-related value that is unique, rare, or exemplary feature and is significant when compared with similar values from other rivers at a regional or national scale.*

⁹⁰ FEIS, Vol. 3, pp.35-37, 281-88.

⁹¹ 16 USC §§528 and 1280(a).

This sentence and footnote are new to the Plan. While the Draft Plan previously identified 20, as opposed to the now 19, eligible wild and scenic rivers segments, the Draft Plan attributed only 128⁹² miles to those segments, as opposed to the now 188 miles. Even though these expansions have yet to be officially designated, the Plan sets out standards and guidelines specific to these areas “until a suitability determination has been made whether or not to recommend them for inclusion...”⁹³ Freeport was not afforded an opportunity to officially comment previously on these new segments.

Ch.3, p.142, Eligible Wild and Scenic Rivers (EWSRMA), second paragraph, fn 87:

The Tonto National Forest may authorize projects and activities in eligible rivers or the surrounding river corridor⁸⁷ so long as they preserve the free-flowing⁸⁸ condition of the river, protect the outstandingly remarkable values that provide the basis of the river’s eligibility for inclusion in the system, and do not affect the classification of the river segment.

⁸⁷*The management corridor for eligible wild and scenic rivers includes National Forest System land generally encompassed within one-quarter mile of the river banks ordinary high water mark on either side of a river studied for eligibility or suitability that contains the river and its outstandingly remarkable values (FSM 1909.12, 80.5).*

Footnote 87 was significantly modified by replacing “geographic area” with “management corridor for eligible wild and scenic rivers includes National Forest System land” and inserting the additional new verbiage of “of the river banks ordinary high water mark” as well as the FSM citation. Freeport was not afforded an opportunity to officially comment previously on the implication this critical modification makes to the overall plan. Footnote 87 should be reverted to the wording presented in the Draft Plan.

Ch.3, p.143, Eligible Wild and Scenic Rivers (EWSRMA), EWSRMA-MA-03:

Encourage multijurisdictional coordination on the management and monitoring of conditions within the stream corridors of eligible wild and scenic rivers where management actions upstream or downstream may impact eligibility.

This management approach was substantially modified by adding the verbiage “encourage multijurisdictional coordination...where management actions upstream or downstream may impact eligibility.” This is overly broad and will lead to overly costly and burdensome involvement by industry or other involved groups and further accomplish to an arbitrary and capricious interpretation or application. This management approach should be reverted to that which was presented in the Draft Plan.

Ch.3, p.148, Designated and Recommended Research Natural Areas and Botanical Areas (RNBAMA), RNBAMA-S-01:

Sales or extraction of mineral materials shall not be authorized in designated or recommended research natural areas and botanical areas.

⁹² The Draft Plan, p.137.

⁹³ The Plan, p.142.

The TNF's response⁹⁴ does not adequately address Freeport Comments, which stated that this standard should be deleted for the reasons provided in our comment regarding RWMA-S-04. Freeport reasserts that this must be removed and that the TNF has no reasonable position in this approach.

Ch.3, p.150, Inventoried Roadless Areas (IRAMA), IRAMA-S-02:

A road shall not be constructed or reconstructed in an inventoried roadless area, unless the responsible official determines that a road is needed according to the circumstances allowed in the Roadless Rule.

This standard is new to the Plan. It will be applied in an overly broad, arbitrary, and capricious interpretation or application and be overly costly and burdensome in its approach. This new standard should be deleted.

Ch.3, p.151, Inventoried Roadless Areas (IRAMA), IRAMA-G-02:

Management activities should be consistent with the scenic integrity objectives, or similar protocol.

This guideline was substantively modified by replacing “visual quality” with “scenic integrity.” This guideline should be reverted to the initial wording as presented in the Draft Plan per the reasons provided in Freeport’s objections to SC-G-01 and SC-G-03.

Ch.3, p.152, National Trails (NTMA), paragraph 1:

The passage of the act created a system of national trails composed of national scenic, historic, and recreation trail intended to provide for a variety of outdoor recreation uses as well as the conservation of nationally significant scenic, historic, natural, or cultural qualities of a landscape.

This paragraph was modified by adding the new verbiage of “intended to provide for a variety of outdoor recreation uses as well as the conservation of nationally significant scenic, historic, natural, or cultural qualities of a landscape.” This will undoubtedly have an overly broad, arbitrary, capricious, costly, and burdensome interpretation or application. The new verbiage should be deleted.

Ch.3, p.153, National Trails (NTMA), NTMA-DC-06:

The Arizona National Scenic Trail and corridor are well-defined and provide high-quality, primitive hiking, mountain biking, equestrian opportunities, and other compatible nonmotorized trail activities. The significant scenic, natural, historic, and cultural resources within the trail’s corridor are conserved. The trail provides visitors with expansive views of the natural-appearing landscapes.

This desired condition was modified by adding the new verbiage of “and corridor.” This new language will be interpreted in a manner that is overly broad, arbitrary, capricious, burdensome, costly and lead to undue hardships on the impacted industry or groups. The new verbiage should be deleted.

⁹⁴ FEIS, Vol. 3, p.23, 2816-89.

Ch.3, p.153, National Trails (NTMA), NTMA-DC-07:

Scenery viewed from the Arizona National Scenic Trail is consistent with high or very high scenic integrity objectives. The foreground of the trail is natural-appearing.

The desired condition was significantly modified by adding the verbiage of “scenery viewed...is consistent with...or very high scenic integrity objectives.” This new verbiage is overly broad and leads to an arbitrary and capricious interpretation or application. Further, this use of “scenic integrity objectives” should not be utilized per our comments to SC-G-01 and SC-G-03. This desired condition should be reverted to that which was presented in the Draft Plan.

Ch.3, p.153, National Trails (NTMA), NTMA-S-01:

Designated national trails conform to their Trail Management Objectives (TMO) and shall be maintained to National Forest Service standards

This standard was modified by adding the verbiage of “conform to their Trail Management Objectives (TMO)”. What are TMO’s? Where do you find this TMO? What regulations authorize the use of TMO? There are a significant number of open-ended phrases left to the interpretations at the time of the issue being addressed. This new verbiage should be deleted.

Ch.3, p.153, National Trails (NTMA), NTMA-S-03:

Sales or extraction of mineral materials (e.g., limestone and gravel) shall not be authorized within the Arizona National Scenic Trail corridor

The response⁹⁵ provided by TNF does not adequately address Freeport Comments, which stated that this standard is contrary to the MUSYA, especially as it is unclear as to what constitutes the “trail corridor” area. The reference to “trail corridor” is concerning as it is not statutorily defined, and yet, is used by TNF to arbitrarily regulate activities on, near, adjacent to or even miles from the trail. Therefore, we recommend this standard be deleted.

Ch.3, p.153, National Trails (NTMA), NTMA-G-02:

To retain or enhance the purposes for which the national trail was designated, new or relocated trail segments should be located within the recreation opportunity spectrum and scenic integrity objectives consistent with or complementing the pre-existing condition.

This guideline was significantly modified by adding the verbiage of “enhance...purpose...the recreation opportunity spectrum and scenic integrity objectives consistent with or complementing the pre-existing condition.” It is overly broad, arbitrary, capricious, burdensome, and costly for the impacted industries or groups. Further, “scenic integrity objectives” should not be utilized pursuant to Freeport objections to SC-G-01 and SC-G-03. This guideline should be reverted to the original wording as presented in the Draft Plan.

Ch.3, p.153, National Trails (NTMA), NTMA-G-03:

Construction of new motorized routes should not intersect national trails located within primitive or semiprimitive nonmotorized recreation opportunity spectrum classes. Management activities should maintain public access to designated national trails.

⁹⁵ FEIS, Vol. 3, p.144, 2816-90, 93.

This guideline was substantively modified by adding the first sentence. It will lead to disparate impacts on various industry as well as ambiguous, and capricious implications and interpretations. The first sentence should be deleted.

Ch.3, p.153, National Trails (NTMA), NTMA-G-05:

Landings created for timber harvest or mechanical treatments should not be visible from national trails.

This guideline is essentially new to the Plan. It will lead to a disparate and inequitable impact on certain industry or involved groups and the application of the visibility standard will definitely be capricious and inconsistent. This new guideline should be deleted.

Ch.3, p.153, National Trails (NTMA), NTMA-G-06:

*Fences crossing national trails should be designed with gates and pass-throughs that accommodate multiple modes of nonmotorized traffic. Fences should be compatible with the scenic objectives of the area.*⁹¹

⁹¹ As defined in the Scenery Management System.

This guideline has been modified so extensively that its essentially new to the Plan. It is overly broad and leads to arbitrary and capricious interpretation or application. This essentially new guideline should be deleted.

Ch.3, p.154, National Trails (NTMA), NTMA-G-07:

Special use authorizations that affect national trails should include measures to avoid impacts to visual resources.

This guideline was substantively modified by replacing “restrictions and/or mitigative measures” with “measures to avoid.” This modification is inconsistent with applicable regulations. The guideline should be reverted to its original wording as presented in the Draft Plan.

Ch.3, p.154, National Trails (NTMA), NTMA-G-12:

To protect scenic integrity, special use authorizations for new communication sites, utility corridors, and renewable energy sites should be avoided. Where unavoidable, design elements should be implemented to maintain scenic integrity in the trail corridor and the values for which the Arizona National Scenic Trail was designated.

This guideline was substantively modified thereby making it a new guideline. The modifications to this guideline and the response⁹⁶ provided by TNF do not sufficiently address Freeport Comments, which essentially stated that this protection is excessive, arbitrary, and not authorized by law or regulation, and has been chosen by TNF without consultation with a Trail Advisory Council, as required by the National Trails System Act.⁹⁷ Proper process and procedure must be followed to have this, and any related process be viable. Further, “scenic integrity objectives” and

⁹⁶ FEIS, Vol. 3, pp.146-477, 2816-91.

⁹⁷ 16 USC §1244(d)

the replacement of “visual quality” with “scenic integrity” should not be utilized pursuant to Freeport objections to SC-G-01 and SC-G-03. This guideline should be deleted.

Ch.3, p.154, National Trails (NTMA), NTMA-MA-01, 05, & 06:

Work with volunteer groups, private and non-profit partners, local governments, and adjacent landowners to manage and maintain national trails for the purposes for which they were established.

Work with partners and volunteers to remove unauthorized structures and restore the trail to established trail management objectives.

Work with partners and volunteers to discourage unauthorized trail construction and reconstruction.

These three Management Approaches appear to be a variation of the NTMA-MA-05 presented in the Draft Plan, which stipulated “Encouraging trail partners and volunteers to assist in the planning, development, maintenance, and management of the trail, where appropriate and as consistent with the Arizona National Scenic Trail Comprehensive Plan.”

These modifications and the response⁹⁸ provided by TNF does not address Freeport Comments, which stated that the TNF has indicated that it is coordinating with the group leading the Arizona National Scenic Trail Comprehensive Management Plan. While this “group” ought to be the statutorily required Trail Advisory Council, the Forest Service has yet to appoint anyone to the Arizona National Scenic Trail Advisory Council. We are certainly very curious to know who this “group” is with which the TNF is coordinating to develop plan components regulating activities in and around the Arizona National Scenic Trail. Without proper consultation with the Arizona National Scenic Trail Advisory Council, which has yet to be appointed, the plan components stipulating to the visual qualities and management activities of the trail corridor are premature and arbitrary, especially as The Arizona National Scenic Trail Comprehensive Plan has yet to be properly developed with the Advisory Council’s input. These management approaches require the same compliance and administrative completeness.

Ch.3, p.154, National Trails (NTMA), NTMA-MA-02:

Maintain open and frequent communication with partners and address conflicts (user or management) as soon as possible.

This management approach is new to the Plan; thus, Freeport was not afforded an opportunity to officially comment on it previously. This management approach is overly broad and leads to an arbitrary and capricious interpretation or application. This new management approach should be deleted.

Ch.3, p.158, Lakes and Rivers Management Area (LRMA), LRMA-G-05:

Permitted livestock grazing should not be authorized in the Lakes and Rivers Management Area except where existing infrastructure or natural boundaries prevent livestock from accessing the rivers and lakes.

⁹⁸ FEIS, Vol. 3, p.146, 2816-94.

This guideline is new to the Plan; thus, Freeport was not afforded an opportunity to comment on it previously. This new guideline should be deleted.

Ch.3, p.158, Lakes and Rivers Management Area (LRMA), LRMA-G-06:

Permitted livestock should not be authorized to cross the Verde River except where necessary and authorized in allotment management plans.

This guideline is new to the Plan; thus, Freeport was not afforded an opportunity to comment on it previously. This new guideline should be deleted.

Ch.3, p.160, Salt River Horse Management Area (SRHMA), SHRMA-S-03:

Permitted livestock grazing shall not be authorized within the Salt River Horse Management Area.

This guideline is new to the Plan; thus, Freeport was not afforded an opportunity to comment on it previously. This new guideline should be deleted.

CONCLUSION

Freeport appreciates being afforded the opportunity to present its objections; and especially appreciates the TNF's consideration of these objections.

Please do not hesitate to contact me directly for questions or concerns regarding our objections.

A handwritten signature in blue ink, appearing to read "Francis R. McAllister Jr.", is positioned above the printed name.

Francis R. McAllister Jr.
Vice President, Liability Management and Land & Water
Freeport-McMoRan Inc.

Attachment 1:

The Arizona Mining Association's Objection to Tonto National Forest Revised Land Management Plan and Final Environmental Impact Statement (March 2022)



ARIZONA MINING ASSOCIATION
916 W Adams Street Suite 2
Phoenix AZ 85007
(602) 266-4416

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

Phoenix, AZ 85007

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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