



March 12, 2020

Tonto National Forest
Attn: Forest Planner
2324 E. McDowell Road
Phoenix, AZ 85006

RE: Comments on the Tonto National Forest Draft Land Management Plan

Arizona Sportsmen for Wildlife Conservation (AZSFWC) is a 501c-3 organization dedicated to wildlife conservation, habitat improvement, hunter recruitment and retention, as well as educating sportsmen and women on issues important to their passions. AZSFWC has 41 member, affiliate, and associate organizations representing in excess of 10,000 sportsmen and women who span the spectrum of hunting, angling, shooting and outdoor recreation groups and businesses across Arizona.

AZSFWC appreciates the opportunity to comment on the Draft Land Management Plan (DLMP) for the Tonto National Forest (Forest). The Forest provides a wealth of wildlife-oriented recreational opportunities for our members, along with tens of thousands of visitors from the nearby Phoenix metropolitan area. The revised DLMP will provide important direction for management of these public lands and their fish and wildlife populations, and dictate the quality of the visitor experience for years to come.

While AZSFWC appreciates the DLMP's focus on wildlife-associated recreation, we believe the document needs to be strengthened in several respects.

Desired Conditions

The DLMP must include a provision of reasonable motorized access and dispersed camping to support wildlife-associated recreation.

There is an uncertain relationship between the DLMP and Travel Management Planning (TMP) on the Forest. Specifically, the DLMP should be explicit that the Plan provides only general guidance for management of motorized access and that any and all future decisions would occur through the TMP process.

The DLMP contains an Objective for decommissioning 10 miles of road every 5 years. This mileage target may not be compatible with the TMP and should be removed.

Special Designations

AZSFWC comment on Tonto NF Draft Land Management Plan – 3-12-20
Arizona Sportsmen for Wildlife Conservation
PO Box 75731 New River, AZ 85087

There are already eight designated Wilderness areas totaling 589,300 acres on the Forest. We recommend you complete further analysis to determine the need to include the recommended wilderness areas, which effectively impose more restrictions on public land multiple uses across those landscapes. This includes considering the negative impact any new recommended wilderness areas will have on the legal obligations of our State wildlife managers and the many volunteer organizations that have and may provide millions of dollars towards habitat improvement and restoration projects across the Forest, including those areas selected as "recommended" wilderness.

The DLMP includes Recommended Wilderness and Wild and Scenic Rivers. These are of concern to our organization, as our experience on other Arizona national forests has been that such designations can reduce public access and opportunities for wildlife-associated recreation. AZSFWC does not support the Recommended Wilderness areas in Alternative B, which are of demonstrably high value to the hunting public (the Gun Creek area is of particular concern). These recommendations should be re-evaluated with consideration of values to the broader, affected public.

Special Designations can also prevent or constrain projects needed to maintain and enhance fish and wildlife populations. The DLMP offers general language to address this concern, but more specificity is needed.

The final the DLMP should include specific provisions allowing:

- a) in-stream barriers for re-establishment of native fish, including federally listed species,
- b) maintenance of existing water developments and other habitat improvements;
- c) aircraft access for management of fish, wildlife, and nonnative/undesirable species;
- d) administrative motorized access for the Arizona Game and Fish Department (AZGFD) and other agency partners.

Standards, Guidelines, or Management Approaches

AZSFWC has long been a proponent of multi-use on our national forest lands. This includes permitted livestock grazing on the Forest, when done in a manner that is sustainable and does not adversely affect other resources, particularly wildlife. To address that concern, the DLMP should include the following:

- a) identify, maintaining and improving wildlife habitat as a co-objective of range management,
- b) consider water availability for wildlife as well as livestock when planning new water developments or maintaining existing ones,
- c) ensure that fence designs are "wildlife-friendly" (per AZGFD specifications), and
- d) manage trailing routes for sheep and goats to prevent disease transmission to native wildlife.

The Guidelines for Recommended Wilderness Areas (RWAs) include a blanket prohibition on motorized access. However, several RWAs are bordered by open Forest system roads. In addition, motorized retrieval of legally-harvested elk and bear is allowed within a 1-mile corridor

(per Draft Tonto TMP Record of Decision). This Guideline must be revised to be consistent with the TMP ROD.

We recommend you take a closer look at the land areas considered for Recommended Research Natural Areas (RNA), including whether the management and information desired for a particular area under consideration would best guide management of the Forest. The Forest has been administered for over a century without these new RNA land designations, and because the primary purpose for RNA is non-manipulative research, observation and study, there are other areas on the Forest already designated to provide this type of research.

Further, we can only surmise by your considerations for new RNAs, the parallel management by the AZGFD was not considered. Creating additional restrictions on public lands must be carefully thought out and analyzed, particularly with a record of management on that landscape covering decades of data and observations by the Forest, local universities, and our State. Please do not consider Forest standards that create further landscape scale restrictions where those restrictions would not benefit or meet the full intent of National Forest System land management mandates.

We also recommend you take a harder look at all Forest standards to ensure they are applicable to the ecotypes, natural resources, and land uses for each management area. This includes considering outcomes and successes for established habitat improvement projects and how those activities and other management activities such as those provided by State wildlife managers and conservation groups such as the AZSFWC benefit ecological conditions. Forest standards must provide not only direction and guidance, but also flexibility that allows for sufficient analysis and outcomes at the individual project level. And, they must consider all public land uses, including public land motorized access.

Within the Forestwide Plan Direction and Management Areas Plan Direction there are statements made that lead to overly prescriptive and arbitrary standards under the assertion of adaptive flexibility. As you refine this DLMP, we recommend you ensure the standards are not contradictory to the leading concept for the DLMP to provide adaptive management and meet multiple use mandates.

The DLMP states the Forest should incorporate management approaches that prioritize native plant material development for revegetation, restoration, and rehabilitation to provide for the "conservation of ecosystem diversity and maintain healthy ecosystem functions". It states the DLMP should "emphasize landscape scale restoration efforts across the forest, and promote a diversity of seral states where appropriate, vegetation function, and species composition" (page 9).

However, within the DLMP, Wildlife, Fish, and Plants (WFP) section on page 114, the DLMP states the Mazatzal Mountains and Sierra Ancha Mountains have some of the highest concentration of endemic plant species in the State of Arizona. Yet, the Draft Environmental Impact Statement (DEIS) does not provide sufficient information to support this statement, or clarify if this status has been verified since the large fires that occurred on these mountain ranges in recent years.

Within Chapter 3 of the DEIS, Plants Affected Environment, there is discussion that lends itself to a less spectacular situation or condition for endemic species for the Sierra Ancha Mountains

showing 50% of the streams assessed in the cottonwood riparian ecological response unit rated as impaired, with another 33 percent rated as unstable. Current conditions show a substantial loss in surface roots indicating a potential loss in streambank stability.

We were unable to locate discussion in the DEIS to verify the status of uplands following recent large fires. This lack of updated conditions across the Forest hinders full review of the standards and guidelines for Forest Management. Interestingly, in the Fire and Fuels (FF) section on page 101 of the DLMP, there is a reference and link to the Vegetation and Ecological Response Units (ERU) section where additional DLMP direction is offered. However, the Desired Conditions, Standards, and Guidelines in both sections and the associated DEIS do not provide direction or foundational information to address how the Forest will manage outcomes and needs for rehabilitation following large fires that cause damage to resources, roads, and infrastructure, particularly fires that were intentionally burned and increased significantly in size on purpose and not naturally (based Forests records).

We recommend the Wildlife, Fish, and Plants section, the Fire and Fuels section; and the Vegetation and Ecological Response Units section, include standards and guidelines that address the needs for rehabilitation, post fire. While there is direction provided in the DLMP on rehabilitation for disbursed recreation areas, trails, roads, designated wilderness areas with unauthorized structures to be dismantled and areas impacted by human activity in wilderness (this clearly does not include intentional large fire damage), and scenic areas, there is no direction, standard, or guideline to address the management of landscape scale damage from areas burned due to intentional large fires, nor monitoring of the areas and direction for rehabilitation and restoration of infrastructures lost. This is important to include in the DLMP so there is accountability by Forest administrators and to meet the intent of the management and direction throughout the entire DLMP.

Salt River Horses

We have reviewed the DLMP, news articles and social media posts, Arizona State University web articles, and comments from various groups whose mission is to support the viability and sustainability of localized and migratory native wildlife who depend on the National Forest System lands within the Forest's Salt River watershed and nearby landscapes. Based on our review we have found that the Salt River horses within this watershed and thousands of surrounding acres have management guided by Arizona State law and an apparently dysfunctional collaborative group.

Their focus is an attempt to manage feral free roaming horses along the Salt River and 19,700 acres surrounding a portion of the Salt River for those feral animals. This large area is apparently managed exclusively for these feral animals by a group of people that may not have the knowledge or qualifications to provide appropriate management of the natural resources on that federal landscape. In addition, based on our understanding, these feral horses are not protected by the Wild Free-Roaming Horses and Burros Act of 1971, a federal law.

According to State records, Governor Ducey signed a law May 11, 2016 to protect these horses. This was after much public outcry of emotions from special interest groups to stop the Forest from managing those landscapes, which included removal of unauthorized horses. The Forest did not argue a stipulation agreement to stop any gathering of horses until an appropriate level of NEPA analysis was completed to guide the removal or management of the horses.

Based on the information we were able to review, it is important to reiterate that the feral horses in this area have not been recognized by federal law.

We understand hundreds of these feral horses are being fed by volunteers because there is no longer sufficient natural forage in the 19,700 acres to sustain them. One could conclude with relative certainty that the unmanaged feral horses have caused such a negative impact to the forest landscape within the National Forest System lands that hundreds of native wildlife are also being negatively impacted, and possibly Threatened, Endangered, or Proposed species under Section 7 of the Endangered Species Act are also being impacted.

We were not able to find any data on the status or condition of the native wildlife because we were unable to locate any level of NEPA analysis or Section 7 consultation for this action on federal lands. Does this action not constitute a federal nexus?

A review of the Forest records that are available do not demonstrate what the Forest administration has done to fulfill legal obligations to complete any level of NEPA analysis to address this significant action on federal lands. Further, we have not found any information in the DEIS or DLMP that provides any record of formal analysis to support the statements that are written in the DLMP as though some level of science was completed to verify the history and identification of the horses currently allowed to inhabit the Salt River area, that are apparently, without some level of science, protected by a State law, the Salt River Horse Act.

It is also clear there are significant and substantive issues with the individuals allowed to participate in a management group overseen by a state university rather the Federal agency mandated by law to manage the federal lands being impacted by this possible unlawful act by the State.

The DLMP and associated DEIS should provide or at least reference the documentation that allows the Forest to delegate legal authority to manage these federal lands - if this is even legal at this point.

Further, it is our understanding based on case law and Federal law that after a state has transferred authority over a tract of land creating a federal enclave, the state may no longer impose new state laws on these lands.

As summarized in case law, D.C. NO. CIV-09-00275-RHS-LFG, 8/10/2012:

Under a body of constitutional law applicable to federal enclaves, U.S. Const. art. I, § 8, cl. 17, state law that is adopted after the creation of the enclave generally does not apply on the enclave. A federal enclave is created when a state cedes jurisdiction over land within its borders to the federal government and Congress accepts that cession. These enclaves include numerous military bases, federal facilities, and even some national forests and parks. Federal enclave doctrine operates as a choice of law doctrine that dictates which law applies to causes of action arising on these lands. U.S. Const. art. I, § 8, cl. 17 (emphasis added).¹ Thus, when “the United States acquires with the ‘consent’ of the state legislature land within the borders of that State . . . the jurisdiction of the Federal Government becomes ‘exclusive.’” Paul v. United States, 371 U.S. 245, 264 (1963). “The power of Congress over federal enclaves that come within the scope of Art. I, § 8, cl. 17, is obviously the same as the power of Congress over the 1

The federal government may also create these enclaves by reserving jurisdiction when a state first enters the Union. *Kelly v. Lockheed Martin Services Group*, 25 F. Supp. 2d 1, 3 (D. Puerto Rico 1998). -4- District of Columbia” and “by its own weight, bars state regulation without specific congressional action.” *Id.* at 263. This exclusive jurisdiction is “legislative,” meaning the laws and statutes applied to these locations must be supplied by the federal government, not the states. *Pac. Coast Dairy v. Dep’t of Ag. of Cal.*, 318 U.S. 285, 294 (1943). “When Congress legislates with respect to the District of Columbia and federal enclaves it acts as a state government with all the powers of a state government,” and thus “Congress acts as a state government with total legislative, executive and judicial power.” *United States v. Jenkins*, 734 F.2d 1322, 1325–26 (9th Cir. 1983).

The DLMP states that the Salt River Horses are the responsibility of the Arizona Department of Agriculture. Yet, neither the DLMP nor DEIS provide any legal documentation or evidence of this delegated management of animals based on the lack of formal analysis or evidence, and are not identified under the federal Wild Free-Roaming Horses and Burros Act.

It is our understanding that simply because there have been attempts to develop a management plan, and notwithstanding a State Law applicable to these horses, legal obligations the Forest Service is bound by as Administrators of the Forest are not removed or eliminated by either action.

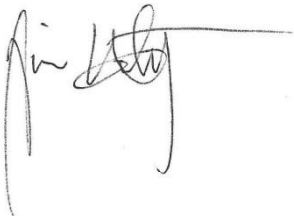
If we have misunderstood the law and above action, please let us know. Otherwise, we recommend you include in the DLMP and DEIS a different set of desired conditions, standards, guidelines, and management based on the legal mandates that govern the Salt River and surrounding federal lands on National Forest System lands.

2012 Planning Rule

Finally, per the 2012 Planning Rule, the DLMP must address species considered to be "At-Risk" or of "Conservation Concern." AZSFWC understands that AZGFD has provided the Forest with a list of Species of "Greatest Conservation Need" and "Significant Economic and Recreational Importance."

These species' prioritizations reflect comprehensive analysis by AZGFD and its partners, and must be included in the DLMP and associated analyses in DEIS.

In closing, we appreciate this revision to the DLMP and look forward to continued engagement in the planning process.

A handwritten signature in black ink, appearing to read 'Jim Unmacht', with a long horizontal line extending to the right.

Jim Unmacht
Executive Director