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Dean A. Gould,
Forest Supervisor,
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comments-pacificsouthwest-Sierra@fs.fed.us
Via fax (559) 294-4809

Subject: Try Me Mining Project

Dear Mr. Gould,

Thank you for the opportunity to comment on the Try Me Mining Project. The Try Me Mining Project **was published in the Federal Register on June 22, 2017**. We are concerned about the project for many reasons, as described below.

Must Meet All Clean Water Act and Related Requirements

Approval of the Plan of Operation (PoO,) cannot be given without the applicant/operator's submittal of the Clean Water Act Section 401 Certification that establishes that the project will comply with all state and federal water quality standards. The federal courts have struck down Forest Service mining approvals that were not accompanied by the required 401 Certification. Hells Canyon Preservation Council v. Haines, 2006 WL 2252554 (D. Or. 2006).

The Forest Service cannot approve the operation without complying with all water quality and CWA requirements. Unless the settling pond is lined with an impervious liner (which the agency rejects), the pond is hydrologically connected with local waters. Thus, the operator must obtain an NPDES permit for the discharge of water pollutants into the settling pond. Potential pollutants include sediment, temperature, bacteria, heavy metals, fuels, solvents and other chemicals.

The agency must provide a baseline as to the current water quality of the waters.

NEPA regulations require a federal agency to analyze the affected environment. 40 CFR §1502.15. ... In analyzing the affected environment, NEPA requires the agency to set forth the baseline conditions. Half Moon Bay Fisherman's Mktg. Ass'n v. Carlucci, 857 F.2d 505, 510 (9th Cir. 1988). Without establishing the baseline conditions, there is no way to determine what effect the proposed action will have on the environment and, consequently, no way to comply with NEPA. Id.

Western Watersheds Project v. BLM, 552 F.Supp.2d 1113, 1126-27 (D. Nev. 2008).

Sediment loading into area waters from this and cumulative activities in the area must be considered. Unusually high sediment releases from a mining operation in a tributary stream could exacerbate the sediment conditions during natural precipitation events and could create fisheries impairment to not only fish but also to aquatic invertebrates during peak flow conditions and until the sand is removed from the river system.

There are many examples in Sierra National Forest where BMPs have failed dramatically to prevent sediment buildup, which has completely overwhelmed the natural capacity of the stream to transport sediment and destroyed the fisheries habitat that naturally existed. In order to meet its NFMA, CWA, Organic Act and Part 228 duties, the use of petroleum products in Riparian Conservation Areas, should not be allowed.

The Plan Must Meet Requirements of the Forest Plan and NFMA

The NFMA requires all site-specific actions authorized by the Forest Service to be consistent with Forest Plan standards and guidelines. Friends of Se. Future v. Morrison, 153 F.3d 1059, 1068 n.4 (9th Cir. 1998). Forest Service approval of a mining Plan of Operations requires compliance with the Forest Plan standards and guidelines. Hells Canyon Preservation Council v. Haines, 2006 WL 2252554 (D. Or. 2006)(vacating and remanding Forest Approval of Mining Plans of Operation for violation of Forest Plan Standards and Guidelines). *See also* Siskiyou Regional Education Project v. Rose, 87 F.Supp.2d 1074, 1085, 1088 (D. Or. 1999).

The Plan Must Contain Adequate Mitigation Analysis

To comply with NEPA, the Plan must thoroughly discuss and analyze mitigation measures and the effectiveness of mitigation measures (and their impacts).

The Plan Must Examine All Cumulative Impacts

To comply with NEPA, the Plan must discuss the Project's cumulative impacts—the impacts on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.

The Plan must Analyze All Reasonable Alternatives

The Plan must discuss all reasonable action alternatives (the proposed project with some mitigation measures), and the no-action alternative to comply with NEPA.

The Plan must Comply with the USFS' Species Protection Requirements

The Plan must adequately ascertain and analyze the current status and therefore the impacts to, critical wildlife species to comply with NEPA and the NFMA.

Additional Issue

The Forest Service must consult with the U.S. Environmental Protection Agency as a matter of course. The Forest Service must consider and analyze the impacts to public health and safety of the

implementation of the PoO project, where carcinogenic particulates could become airborne in areas where potential naturally occurring asbestos exists in the project area.

Thank you for considering these issues of great concern which are discussed in this comment letter. Please keep me and the following organizations and persons, by and for whom this comment letter is written, listed below, on the contact list for all stages of this project and for all actions in your district. Each of the following organizations and persons listed below would also like a copy of all further documents on this project. Please schedule a public field trip for the public to view the proposed project area. Thank you for your time in this regard.

Respectfully Submitted,

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And for and by the following organizations and individuals:

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