

**DECISION NOTICE  
AND  
FINDING OF NO SIGNIFICANT IMPACT  
FOR  
NATIVE FISH RESTORATION IN FOSSIL CREEK  
  
U.S. FOREST SERVICE  
COCONINO AND TONTO NATIONAL FORESTS  
  
GILA AND YAVAPAI COUNTIES, ARIZONA**

**Action and Its Purpose**

This decision notice summarizes my decision to implement actions proposed in the Final Environmental Assessment (EA) for native fish restoration in Fossil Creek, located along a portion of the border between the Coconino and Tonto National Forests in Arizona. The purpose of the actions is to enhance and protect the native fish community and their habitat within 9.5 miles of Fossil Creek below Fossil Springs diversion dam by constructing a fish barrier within the Mazatzal Wilderness; salvaging (capture and temporary holding) a portion of native fishes for restocking; eradicating non-native fishes through the application of antimycin A (Fintrol®) in four contiguous stream reaches; protecting habitat to maintain options for future repatriation of fish species extirpated from the Verde basin; and integrating public information and education into the project components.

The existing native fish species to be enhanced and protected, thus helping to avoid the need to list them as threatened or endangered under the Endangered Species Act (ESA), are headwater chub (*Gila nigra*), roundtail chub (*Gila robusta*), speckled dace (*Rhinichthys osculus*), longfin dace (*Agosia chrysogaster*), Sonora sucker (*Catostomus insignis*), and desert sucker (*Pantosteus clarki*). The razorback sucker (*Xyrauchen texanus*) was stocked into Fossil Creek above Irving Dam in 1988, and may also be encountered during restoration actions. The non-native fish known to occur in Fossil Creek include invasive green sunfish (*Lepomis cyanellus*), yellow bullhead (*Ameiurus natalis*), flathead catfish (*Pylodictis olivaris*), and smallmouth bass (*Micropterus dolomieu*).

The laws, regulations, and policies applicable to this decision include the National Forest Management Act (NFMA), the Endangered Species Act (ESA), the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), the Clean Water Act (CWA), the Wild and Scenic Rivers Act, the Wilderness Act, and other legal mandates. This project is a result of cooperation and collaboration with the Bureau of Reclamation (BOR), Arizona Game and Fish Department (AGFD), and USDI Fish and Wildlife Service (USFWS). The actions will also help meet Executive Order 13112 regarding the prevention and control of invasive species.

This decision helps implement the standards and guidelines of the Coconino National Forest Land and Resource Management Plan (USDA 1987, as amended); specifically, the

standards that require: use of the best available resource data and technical expertise to identify habitat objectives for federally listed, sensitive, and unlisted species (page 64); consultation and cooperation with AGFD (page 65-12); improve threatened and endangered (T&E) and sensitive species habitat (page 66); and improve fisheries habitat by constructing barriers as appropriate and based on environmental analysis (page 175). This decision helps implement the standards and guidelines of the Tonto National Forest Land and Resource Management Plan (USDA 1985, as amended), specifically, the standards to manage warm water streams to support Gila sucker and longfin dace (page 41); to cooperate and consult with AGFD, USFWS, state universities, professional societies, and various conservation organizations regarding proposals and programs concerned with management of wildlife habitat (page 42); to maximize coordination with USFWS regarding Federal T&E animal species and their habitats (page 42); to maximize coordination with AGFD regarding state listed species and their habitats (page 42); and to manage the Mazatzal Wilderness as established in the Wilderness Implementation Plan (USDA Forest Service 1994), which includes those portions of the wilderness within the Coconino National Forest (Coconino National Forest Plan, page 104).

### **Decision and Rationale**

It is Forest Service policy (FSM 2100) that pesticide use in designated wilderness areas occurs only when necessary to restore significant values within the wilderness, and to base actual use on analyses of effectiveness, specificity, environmental impacts, economic efficiency, and human exposure. As the Deciding Officer, I am responsible for reviewing and approving or disapproving all proposed pesticide uses on National Forest System wilderness lands in the Southwestern Region. Authority for approval of pesticide application in wilderness cannot be delegated. The decision to construct a barrier in wilderness to control non-native fish is also reserved to the Regional Forester. The decision for non-emergency use of a helicopter and motorized equipment in wilderness is also reserved to me as the Regional Forester or to a Deputy Regional Forester.

Based on the results of the analysis documented in the Environmental Assessment (EA) and project record, it is my decision to implement the Proposed Action (Wilderness) alternative as described in the EA in Chapter 2.3, with minor modifications which do not change or affect the analysis of impacts. These modifications are to include expansion of the allowed period of motorized equipment and helicopter use to include weekends (see specific activity 3); based on final hydrological analysis, two additional cubic yards of concrete material to be used at two bedrock slots on the left bank (see specific activity 2); campfires in wilderness will not be allowed; and dead fish will not be buried but will be disposed of by general dispersal on-site or hauled off-site.

I am selecting the alternative for construction of a fish barrier in the Wilderness based on several factors.

- In weighing competing/conflicting wilderness values at stake, in this case I am favoring restoration of ecological functionality over limited temporal and spatial intrusions in wilderness associated with building a permanent structure.
- Rarity of values was also a significant consideration. Arizona ranks as the number one state in the United States for the percentage of native fish species at

risk (Stein 2002). Since there are very few opportunities for restoration, the additional 2.8 miles of native fish habitat within the Mazatzal Wilderness provided by the Wilderness barrier alternative is disproportionately important. Reintroduction and perpetuation of native fishes within wilderness helps restore natural conditions and will allow for reintroduction of threatened and endangered fishes which are likely to have previously occupied the 2.8 miles within wilderness.

- Finally, the probability of achieving the fish restoration objective is significantly greater with the Wilderness barrier alternative because of the reduced probability of introduction of nonnative species if the barrier is located in an area that does not attract recreational use that could lead to “lifting” nonnative species over the barrier.

In addition, this alternative also helps to protect 0.2 mile of federally-designated Critical Habitat for spikedace (*Meda fuldiga*) and loach minnow (*Tiaroga cobitis*), which are listed as Threatened species under the ESA. A Minimum Tools Analysis (included as Appendix I of the Final Environmental Assessment) was prepared to determine which tools would have the least impact to the wilderness resource. Implementation of the Proposed Action (Wilderness) alternative encompasses the following specific activities:

1. Construction of a barrier consisting of three reinforced concrete plugs within three existing bedrock slots and a ten-foot concrete apron in the channel of Fossil Creek within the Mazatzal Wilderness 4.5 miles upstream from the confluence with the Verde River. The barrier will be textured and colored to blend into the surrounding environment.
2. Construction of a gabion in a side channel approximately 100 feet east of the low flow channel. Water flows through this side channel during infrequent high floods (in excess of a 5-year recurrence interval). A gabion has the ability to shift in response to a moving foundation that is likely at this site (since the site is not bedrock constrained), unlike a concrete structure which could crack and potentially fail. Based on final hydrological analysis two bedrock slots between the gabion and wetted channel will be filled with 2 cubic yards of concrete to prevent flow except for events in excess of a 50 year occurrence interval. This material will also be textured and colored to blend into the surrounding environment.
3. Use of a helicopter to long-line equipment, material, and supplies from Stehr Lake staging site to the job site within designated wilderness. Long-lining of concrete will incur contact with the ground, which is considered to be a “landing.” Use of motorized equipment and the helicopter within designated wilderness was originally recommended to be restricted to weekdays. Upon further consideration of actions that would lead to a reduction in the time of wilderness intrusion and expedite construction, use of the motorized equipment and helicopter will be allowed during the weekend. A site will be identified within the Wilderness that will accommodate the landing of aircraft; however, actual landing of aircraft is

- only to occur in emergency situations. The preparation of this back-up site will require limited brush clearing (EA at page 22). Final Bureau of Reclamation air operations plans will be documented as part of the project construction permit and approved by the responsible Forest Service official.
4. Construction crews will be required to hike a flagged route into the job site to minimize pedestrian traffic impacts on soils, cultural resources and wilderness. Crew members will be required to go through "Leave No Trace" training before working or camping in the Wilderness. The trail will be rehabilitated following completion of the construction.
  5. Using a combination of electroshocking, nets, and angling, as many native fishes as possible would be captured alive, placed in livecars (small-mesh holding nets), and collected by designated stream reach. A helicopter will transport the fishes to a series of holding tanks located at the Irving facility site. Fish from one section of stream will be separated in holding tanks. Captured fish would be tended and held until at least two days beyond antimycin treatment, then released by helicopter long-line operation into the same general vicinity as their capture. Final Bureau of Reclamation air operations planning for the fish renovation will be documented in an overall project operation permit and approved by the responsible Forest Service official.
  6. Antimycin will be applied to the stream by a combination of drip stations, backpack sprayers and sand formulation in the designated reaches under the supervision of certified pesticide applicators. The amount of antimycin to be applied will be calculated through stream discharge measurements, with an inert dye used to help determine residence time and mixing potential. The target concentration is 20 ppb, except where yellow bullheads occur (the lower reaches), where a higher concentration will be required. Laboratory and field bioassays will determine the upper concentration needed to kill yellow bullhead, which is expected to be between 20-200 ppb. To ensure effectiveness, a second treatment of each reach will occur within 1- 7 days after the initial treatment, followed by a third treatment if live fish are observed during or after the second treatment.
  7. Potassium permanganate will be used to neutralize the antimycin. A drip station will be set up at the bottom of each reach, with a back-up drip station set up further downstream to ensure complete neutralization. Potassium permanganate will be applied at a concentration of 2-4 ppb and field bioassays will be conducted to produce the appropriate concentration of potassium permanganate with constant oversight of the neutralization station by qualified personnel.
  8. Temporary signage will be placed at public access sites along Fossil Creek prior to and during renovation to explain the project and list public precautions.
  9. Five stock tanks that drain into Fossil Creek within the Coconino NF will also be treated with piscicides to remove nonnative fishes. Stock tank renovations will be

coordinated with USFWS, AGFD, the permittees and the Forest Service to minimize and/or avoid impacts to wildlife and livestock.

10. Permanent signs will be placed outside wilderness at strategic points to inform the public about the native fishes of Fossil Creek and the other unique features of this stream system, such as the travertine geology. A sign plan will be developed jointly between the Coconino NF and the Tonto NF.
11. Post treatment and periodic monitoring in cooperation with BOR, AGFD, Northern Arizona University, and USFWS will determine the status of the native species, including macroinvertebrates and amphibians, and success of the treatment. No motorized equipment will be used in the wilderness in association with these actions after the barrier construction and the 2004 fish renovation.
12. Procedures and responsibility for monitoring and maintenance of the barrier will be documented in agreements and/or special use permits with the USDA Forest Service and the appropriate agencies. The permit for the structure will be issued by the Regional Forester and administered by the Tonto NF.
13. The introduction of additional fish species, native to the Verde River, may occur after appropriate agency consultation and documentation of appropriate procedures, including identification of donor populations and monitoring plans for such efforts.

### **Mitigation Measures**

- Public information and education materials describing the project's effects and benefits will be prepared.
- Standard dust abatement practices will be used to minimize generation of airborne particles.
- Sediment and erosion control measures will be established where appropriate to protect water quality and soils.
- Upland sites disturbed by project activities will be seeded with native vegetation.
- Archaeological surveys have been completed and documented for the wilderness alternative.
- An archaeologist and wilderness specialist will periodically monitor construction activities.
- Pedestrian access for crews will be marked with flagging to avoid impacts outside of authorized areas (i.e. cultural resource sites) and any trails that develop incidental to the project will be obliterated.
- Boundaries of the temporary contractor use areas at Stehr Lake will be delineated with flexible construction fence to avoid impacts outside authorized areas.
- Boundaries of the wilderness camping area will be designated with materials that are visually unobtrusive and minimize impacts to wilderness character.

- Crews will receive “Leave No Trace” training, including instruction on minimum camping techniques. Campfires will not be allowed within wilderness, to minimize impacts. Sanitation facilities will be provided for work crews.
- Construction will be allowed seven days a week if it will accelerate construction and completion of the barrier, thus reducing the impact on wilderness values.
- The concrete barrier and apron will be colored and textured to blend with surrounding rock. Such color and texturing will be approved by the Forest Service.
- Application of antimycin will be timed to minimize possible effects to leopard frogs.
- Strict adherence to the piscicide label is required for transportation, storage, mixing and personal protective equipment.
- Daily use records must be kept to document the use of the piscicide. This will be done by unit area, formulation, and application technique.
- Dead fish will be disposed of by general dispersal on-site or hauled off-site. I decided that these methods would have lesser impacts to the wilderness or other resources that could be of concern with ground disturbing activities associated with burying fish.

### **Public Involvement and Scoping**

The original scoping process was initiated by inclusion of the project on the Coconino National Forest’s Schedule of Proposed Actions (SOPA) in April 2002. Scoping information was mailed to 63 individuals, agencies and organizations on 25 April 2002. Seventeen respondents submitted written comments. The project was added to the Tonto National Forest’s SOPA in July 2003.

The public comments were generally supportive of the project. Several respondents requested analysis and disclosure of the effects of the proposed action on water quality, human health and safety; effects of renovation chemicals on non-target biota; specifics on application of the chemicals; specifics on salvage of native fishes; disclosure of barrier construction on sediment transport and stream dynamics; and disclosure of the importance of Fossil Creek to native fish restoration and recovery.

The *Draft Environmental Assessment for Native Fish Restoration in Fossil Creek*, which was prepared by the Bureau of Reclamation and the Forest Service (Coconino and Tonto National Forests) in cooperation with the United States Fish and Wildlife Service and the Arizona Game and Fish Department, was mailed to all interested persons, organizations, and agencies on 23 December 2003. Eleven comments were received by 28 January 2004, of which one was signed by four conservation groups (American Rivers, Sierra Club-Grand Canyon Chapter, Friends of Arizona Rivers, and the Center for Biological Diversity). The comments resulted in minor clarifications to the *Draft Environmental Assessment for Native Fish Restoration in Fossil Creek*. Responses to specific comments were also prepared as an appendix to the *Final Environmental Assessment for Native Fish Restoration in Fossil Creek*. The final document is being sent to all who commented on the Draft Environmental Assessment by 28 January 2004.

## **Issues**

Following initial scoping and interdisciplinary team analysis, significant issues were identified. None were identified from public scoping, but instead were identified internally by the Forest Service as follows:

- Effect of nonconforming uses in wilderness (i.e., a fish control barrier and the use of motorized equipment)
- Effect on Wild and Scenic River eligibility and classification
- Potential for non-native fishes to be reintroduced into the creek at some time after chemical renovation

## **Alternatives Considered**

The alternatives compared in detail included a No Action Alternative (2.2), a Proposed Action Wilderness Alternative (2.3), and a Non-wilderness Alternative (2.4). Additional alternatives and variations were considered in Chapter 2.1, but eliminated from detailed study. These were:

- A. Construction of the fish barrier closer in proximity to the confluence with the Verde River.
- B. Use of electrical barriers for preventing upstream fish movement.
- C. Use of nets, angling, and electrofishing to remove non-native fishes.
- D. Use of rotenone for chemical renovation.
- E. Renovation with antimycin without construction of a fish barrier.
- F. Construction of a fish barrier without chemical renovation.
- G. A wilderness alternative that was substantially motorized (Minimum Tools Alternative A).
- H. A wilderness alternative that used mules for transport of materials and equipment and allowed only handtools, such as rock drilling by double jacking and the mixing of concrete by hand (Minimum Tools Alternative B).

Although A would have best met the purpose and need to "... restore and allow a native fish assemblage to persist in as much of Fossil Creek as possible," it was not analyzed in detail because a barrier closer to the Verde River would have had substantial impacts on the Mazatzal Wilderness and the Wild and Scenic Verde River, and did not meet siting criteria for effective barrier construction (i.e., presence of a restricted bedrock channel). B and C were considered too expensive, ineffective, and impractical. D was not analyzed in detail because antimycin would fulfill project goals with fewer environmental and social consequences. E would be impractical and ineffective, since the effects of treatment would be negated by continued upstream incursion of nonnative fishes into most of Fossil Creek from the Verde River, and the opportunity to implement Mazatzal Wilderness Implementation Plan actions to re-establish federally-listed species and reduce impacts of non-indigenous species on natural ecological processes in the Mazatzal Wilderness would be foregone. F would protect the stream above the barrier from future incursion of nonnative aquatic species, but existing nonnative species above the barrier would continue to adversely affect native species. G was not considered further because it would not reduce impacts to wilderness values from motorized equipment. H was not advanced for detailed analysis because the mules create impacts from trailing and increase the risk of noxious weed spread, and the use of some of the required handtools is

not operationally feasible. Both use of mules and primitive handtools would also significantly lengthen the project time, increasing impacts to the Wilderness, and increasing the possibility that the project could not be implemented prior to return of full flows to Fossil Creek by 31 December 2004 when the Childs-Irving hydroelectric project is currently proposed to be decommissioned (Final Environmental Assessment for Surrender of License, Childs Irving Project, March 2004).

## **FINDING OF NO SIGNIFICANT IMPACT (FONSI)**

Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, and based upon the analysis presented within the attached Final Environmental Assessment on Native Fish Restoration in Fossil Creek, I have determined that proposed efforts to improve and restore a native fishery in Fossil Creek will not be a major Federal action significantly affecting the quality of the human environment. Thus, an environmental impact statement will not be prepared. I based my finding on the following:

**Context.** This project is a site-specific action that by itself does not make international, national, region-wide or statewide decisions. The Final Environmental Assessment (EA) describes potential impacts from construction of a fish barrier, stream renovation with the piscicide antimycin A, and restocking native fishes in Fossil Creek. The selected location for the barrier is within the Mazatzal Wilderness. The selected alternative, with modifications as described above, has the shortest duration of effects resulting from construction activities in the wilderness of any alternative considered. A minimum tool analysis was conducted to aid in the selection of the construction methods.

**Intensity.** The following discussion is organized around the ten intensity factors described in the National Environmental Policy Act (NEPA) regulations (40 CFR 1508.27) as it pertains to the context of building a fish barrier and renovation of the stream for native fish as described in the selected alternative.

### **1. Impacts that may be both beneficial and adverse.**

Direct, indirect, and cumulative effects of project activities on resources are discussed in the final EA (Chapter 3). Project activities will not significantly affect any resource.

### **2. The degree to which the proposed action affects public health or safety.**

Public safety issues consist mainly of possible public encounters with antimycin A. Direct ingestion of normal quantities of stream water during peak treatment would not affect humans and livestock, and there are no reports of negative effects to humans or wildlife from consuming dead fish produced by stream renovation. Antimycin degrades rapidly. During active treatment, there will be signing describing the activities to discourage human consumption of stream water or fish killed by the treatment. There will be no significant effects on public health and safety (Chapter 3.2.4).



**3. Unique characteristics of the geographic areas such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.**

There will be no significant effects on unique characteristics of the area. The project area does not contain park lands or prime farmlands. Wetlands are limited in extent and no adverse impacts to wetlands, or to ecologically critical areas, are associated with this proposed project.

The Forest Service has approved project implementation in the Mazatzal Wilderness subject to compliance with mitigation specified in the final EA (Chapter 2.5 and 3.6). Restoration of ecological functionality through barrier construction and piscicide application will have limited temporal and spatial intrusions on wilderness character.

The project will not affect Fossil Creek's eligibility as a future wild and scenic river. A Forest Service analysis concluded that barrier construction will have a negligible effect on overall function and free-flowing character of Fossil Creek and would protect and enhance 9.5 miles for fish and wildlife Outstandingly Remarkable Values (ORV) with no adverse impacts on other ORVs. If the fish barrier were to impound water in the long-term, the potentially eligible wild classification could be affected; however, anticipated effects are that sediment will fill in within a short period of time after construction, and no impoundment will be present. Therefore, wild classification may be appropriate when evaluated in a future suitability study. Project implementation will not affect the Verde Wild and Scenic River corridor into which Fossil Creek flows.

**4. The degree to which the effects on the quality of the human environment are likely to be highly controversial.**

There is no known controversy over project effects on the quality of the human environment, based on the analysis and public comments received. There is no scientific controversy regarding the effects of this project on the quality of the human environment (EA Section 1.7 and Chapter 3 including Section 3.2.4).

**5. The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.**

The effects analysis shows that the degree of possible effects on the human environment is not highly uncertain, nor are there unique or unknown risks involved (Chapter 3).

Antimycin A has been used for several decades for fisheries management, with hundreds of miles of stream treated in Arizona and New Mexico. Antimycin is registered by the EPA as a fish toxicant. When used within the label directions, antimycin does not pose a unique or unknown risk (Chapter 1.4, 3.2.4, Appendix E). Direct ingestion of normal quantities of stream water during peak treatment would not affect humans and livestock, and there are no reports of negative effects to humans or wildlife from consuming dead

fish produced by stream renovation. Antimycin will be applied under the supervision of certified piscicide applicators within the EPA label directions and the mitigation measures in the Final EA.

**6. The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.**

Barrier construction and piscicide use are activities that have been used to protect and enhance imperiled native fish communities in many locations in the Southwest (Chapter 1.4, Appendix C) and in other parts of the United States, such as California, Montana, Tennessee, and Utah. Future actions will be evaluated through the NEPA process and will stand on their own as to the environmental effects and project feasibility.

**7. Whether the action is related to other actions with individually insignificant but cumulatively significant impacts.**

Effects are discussed in Chapter 3 of the EA. The cumulative impacts are not significant (EA, Chapter 3, sections 3.2.2, 3.2.4, 3.2.6, 3.2.8, 3.2.10, 3.3.2, 3.4.2, 3.5.2, 3.6.2, 3.7.2, and 3.8.2).

**8. The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the national Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.**

The action will have no significant adverse effect on districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places.

The project will not cause the loss or destruction of significant scientific, cultural, or historic resources. Measures recommended in a Class III (intensive) archaeological inventory of the project area will be implemented by the Bureau of Reclamation to avoid impacts to cultural resources. Prehistoric and historic sites in the area will be located, marked, and then avoided prior to any ground disturbing activity. The analysis shows that a “no effect” would be the appropriate determination for Section 106 compliance if all mitigations are followed (Chapter 3 Section 3.3.2). The Forest Service submitted a no effect determination to the State Historic Preservation Office. The State Historic Preservation Office concurred with the no effect determination on December 10, 2003. The Project Record contains cultural resources clearance reports and concurrence from the State Historic Preservation Officer.

**9. The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.**

The project will have no adverse effects on threatened, endangered, candidate, or Forest Service listed sensitive species (Chapter 3 Section 3.2.7 and 3.2.8). A 2001 Biological Opinion was prepared by the USFWS for the Bureau of Reclamation's Central Arizona Project Biological Assessment regarding impacts to listed species and critical habitat from the barrier construction activities. A Biological Assessment prepared by the Bureau of Reclamation in 2002 concluded there will be no effect to federally listed species or adverse modification of designated critical habitat due to project activities associated with stream renovation.

**10. Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.**

The action will not violate Federal, State, or local laws or requirements for the protection of the environment.

Applicable laws and regulations were considered. Additional requirements are project consistency with the Coconino and Tonto National Forest Land and Resource Management Plans (LRMP's, 1987 and 1985 respectively, as amended). This project will help meet the goals, standards, and guidelines of the LRMPs for fish and wildlife. The project is located in Management Areas 1 and 2 (Coconino LRMP), and 4a and 4F (Tonto LRMP) and is consistent with the stated emphasis of the areas, except for the use of helicopters and the construction of a fish control structure, which are non-conforming uses analyzed in the EA. This project will not involve road construction, reconstruction, or road access changes within the project area on either the Coconino or Tonto National Forests.

Implementation of the selected alternative is consistent with applicable law, including but not limited to:

- ESA section 7 (documented in a 2001 Biological Opinion (BO) written for the Bureau of Reclamation for the Central Arizona Project, of which this project is one component of the BO for the Central Arizona Project).
- National Forest Management Act (NFMA) and its implementing regulations at 36 CFR 219.19 and 219.26 (population viability and biological diversity requirements).
- Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and its implementing regulations at 7 USC 136 (certification of individuals to use or supervise use of a restricted use pesticide).
- State of Arizona and Environmental Protection Agency (EPA) requirements for use of pesticides according to their label.
- The Wilderness Act (Public Law 88-577) which provides that wilderness be devoted to public purposes including conservation and scientific uses.

- Clean Water Act complies with Arizona State laws regarding natural resource protection, including but not limited to water quality.
- Executive Order 12898 (Environmental Justice) is complied with because implementation of the selected alternative is not anticipated to cause disproportionate adverse human health or environmental effects to minority or low-income populations.
- Clear Air Act is complied with because the selected action is not anticipated to cause disproportionate adverse human health or environmental effects to air quality.
- Executive Order 11990 (Protection of Wetlands) whose basic requirement is that a Federal agency avoid construction or management practices that would adversely affect wetlands unless that agency finds that (1) there is no practical alternative, and (2) the proposed action includes all practical measures to minimize harm to the wetlands. Executive Order 11990 directs all Federal agencies to minimize the destruction, loss, or degradation of wetlands, and preserve and enhance the natural beneficial of wetlands.
- Migratory Bird Treaty Act (MBTA) implementation is consistent with the selected alternative, as well as agency guidelines for conformance with the MBTA.

### **Administrative Review**

This decision is subject to administrative review pursuant to 36 CFR 215 or 36 CFR 251, Subpart C. Appeals may be filed under either 215 or 251, but not both. Appeal rights under 36 CFR 251 are only available to those who hold grazing permits, or other written authorizations to occupy and use National Forest System lands, that will be affected by implementation of the decisions to treat stock tanks. The appeal must be filed (regular mail, fax, email, hand-delivery, or express delivery) with the Appeal Deciding Officer.

Send appeals to:

Appeal Deciding Officer, USDA Forest Service, Stop 1104  
Ecosystem Management Coordination Staff  
1400 Independence Avenue, SW, Washington, DC 20250-1104 (regular mail).

Federal Express and hand-delivery address is:

USDA Forest Service, Ecosystem Management Coordination  
201 14<sup>th</sup> Street SW, 3<sup>rd</sup> Floor, Central Wing  
Washington, DC 20024

Telephone is 202-205-0895; and fax number is 202-205-1012.

The business hours for those submitting hand-delivered appeals are: 8:15 a.m. to 4:45 p.m. ET, Monday through Friday, excluding holidays. An electronic appeal must be

submitted in a format such as an email message, plain text (.txt), rich text format (.rtf), or Word (.doc) to [appeals-chief@fs.fed.us](mailto:appeals-chief@fs.fed.us). The appeal must have an identifiable name attached or verification of identity will be required. A scanned signature may serve as verification on electronic appeals. In cases where no identifiable name is attached to an electronic message, a verification of identity will be required.

Appeals, including attachments, must be filed within 45 days from the publication date of the notice in the *Arizona Republic*, the newspaper of record. The publication date in the *Arizona Republic* is the exclusive means of calculating the time to file an appeal. Those wishing to appeal this decision should not rely upon dates or timeframe information provided by any other source.

Individuals or organizations appealing under 36 CFR 215, who submitted substantive comments during the comment period specified in 36 CFR 215.6 may appeal the decision. The notice of appeal must meet the appeal content requirements at 36 CFR 215.14.

For appeals filed under 36 CFR 251, the notice of appeal must contain sufficient narrative evidence and argument to show why a decision should be reversed or changed and include the content specified at 36 CFR 251.90. A copy of the appeal also must be simultaneously sent to the Regional Forester at:

Regional Forester  
Southwestern Region  
333 Broadway Blvd. SE  
Albuquerque, NM 87102

### **Implementation Date**

If no appeals are filed within the 45-day time period implementation of the decision may occur on, but not before, five business days from the close of the appeal filing period established in the Notice of Decision in the *Arizona Republic*. If an appeal is filed, implementation may occur on, but not before, the 15<sup>th</sup> business day following the date of the last appeal disposition.

### **Information Contact**

For additional information concerning this decision or the Forest Service appeal process, contact Carl Taylor, Public Service Group Leader, 602-225-5230, Tonto National Forest, 2324 East McDowell Road, Phoenix, AZ 85006, or Amy Unthank, Regional Fisheries Program Manager, 505-842-3263, USDA Forest Service, Southwestern Region, 333 Broadway SE, Albuquerque, NM 87102.

*Decision Notice - Native Fish Restoration In Fossil Creek*

/s/ Abel M. Camarena for

---

HARV FORSGREN  
Regional Forester  
Southwestern Region

June 8, 2004

---

Date

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, or marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.