# CHAPTER 4 - AGENCIES AND PERSONS CONSULTED

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## List of Agencies and Persons Contacted

Advisory Council on Historic Preservation
Animal Defense League of Arizona
Arizona Department of Environmental Quality
Arizona Department of Health Services (Office of Environmental Health)
Arizona Bass Federation
Arizona Flycasters Club
Arizona Game and Fish Department
Arizona Outdoor News, Payson, AZ
Arizona Public Service Company
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Arizona Riparian Council
Arizona State Historic Preservation Office
Arizona State University (Dr. Paul Marsh)
Arizona Wilderness Coalition

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Northern Audubon Society (Frank Brandt, Herb Henderson)
Old Pueblo Trout Unlimited (Gilbert Castillo)
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Payson Roundup, Payson, AZ
Pine-Strawberry Archeological and Historical Society
Prescott Bassmasters
Prescott Flycasters
Red Creek Ranch
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Rim Country Museum
Rocky Mountain Research Station (John Rinne, Steve Overby)
Salt River Project
Sierra Club (Sandy Bahr)
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The Verde Independent, Cottonwood, AZ
U.S. Army Corps of Engineers
University of Arizona (Bonnie Colby)
Jim Walters, Tempe, AZ
Yavapai-Apache Nation (Christopher Coder, Vincent Randall)

# CHAPTER 5 - RELATED ENVIRONMENTAL LAWS/DIRECTIVES

The following is a list of Federal laws, Executive Orders, and other directives that apply to the action alternatives discussed in this EA:

National Environmental Policy Act of 1969, as amended (NEPA) - This law requires Federal agencies to evaluate the potential environmental consequences of major Federal actions. An action becomes "federalized" when it is implemented, wholly or partially funded, or requires authorization by a Federal agency. The intent of NEPA is to promote consideration of environmental impacts in the planning and decision-making process prior to project implementation. NEPA also encourages full public disclosure of the proposed action, accompanying alternatives, potential environmental effects, and mitigation.

This EA was prepared in accordance with the requirements of NEPA. Public scoping included listing the action in the Coconino and Tonto National Forest's Schedule of Proposed Actions, and distribution of scoping information to 63 entities on April 25, 2002.

The draft EA was mailed to more than 90 addressees on December 23, 2003, for 30-day public comment. In addition, a public notice was published in the Arizona Republic, and news releases were sent to other news media regarding availability of the draft EA. The draft EA was also available on the Coconino National Forest NEPA website and at specified offices of the Coconino and Tonto National Forests.

Fish and Wildlife Coordination Act of 1934, as amended (FWCA) - The FWCA provides a procedural framework for the consideration of fish and wildlife conservation measures in Federal water resource development projects. Coordination with the FWS and State wildlife management agencies are required on all Federal water development projects.

The proposed project is the result of ESA Section 7(a)(2) consultation between Reclamation and FWS. Coordination among Reclamation, FWS, and AGFD has been ongoing since the project's inception. The FWS concluded that the current level of coordination among the agencies is sufficient to meet any regulatory needs required by the FWCA.

Endangered Species Act of 1973, as amended (ESA) - The ESA provides protection for plants and animals that are currently in danger of extinction (endangered) and those that may become so in the foreseeable future (threatened). Section 7 of this law requires Federal agencies to ensure that their activities do not jeopardize the continued existence of threatened or endangered species or adversely modify designated critical habitat.

Construction of a fish barrier in Fossil Creek is a required measure of the 2001 CAP biological opinion. The possible effects to proposed and listed species and critical habitat resulting from project implementation were examined in a Biological Assessment prepared by Reclamation and submitted to the FWS on October 24, 2002. The biological assessment concluded with a no effect determination.

Migratory Bird Treaty Act of 1918, as amended (MBTA) – The MBTA is the domestic law that implements the United States' commitment to the protection of shared migratory bird resources. The MBTA prohibits the take, possession, import, export, transport, selling or purchase of any migratory bird, their eggs, parts or nests.

Implementation of this project will not violate provisions of the MBTA

Clean Air Act of 1963, as amended (CAA) - The CAA requires that any Federal entity engaged in an activity that may result in the discharge of air pollutants must comply with all applicable air pollution control laws and regulations (Federal, State, or local). It also directs the attainment and maintenance of National Ambient Air Quality Standards (NAAQS) for six different criteria pollutants, including carbon monoxide, ozone, particulate matter, sulfur oxides, oxides of nitrogen, and lead.

Air quality in the project area is in attainment of NAAQS. Short-term construction emissions associated with the proposed action would have localized and minor effects on air quality in the Mazatzal Wilderness Class I airshed. Construction outside the Wilderness would not affect the Class I airshed.

Clean Water Act of 1977, as amended (CWA) - The CWA strives to restore and maintain the chemical, physical, and biological integrity of the nation's waters by controlling discharge of pollutants. The basic means to achieve the goals of the CWA is through a system of water quality standards, discharge limitations, and permits. Section 404 of the CWA identifies conditions under which a permit is required for actions that result in placement of fill or dredged material into waters of the United States. In addition, a 401 water quality certification and 402 National Pollutant Discharge Elimination System (NDPES) permit are required for activities that discharge pollutants to waters of the U.S. The EPA has delegated responsibility to administer water quality certification and NPDES programs in Arizona to ADEQ.

The discharge of dredged and fill material resulting from construction of the barrier requires a CWA Section 404 permit from the COE. Reclamation submitted an application to the COE for 404 permit coverage of all barriers that will be constructed pursuant to the 2001 CAP biological opinion. Reclamation received a 404 permit for these barriers, including the Fossil Creek project, on October 30, 2003. All special conditions of the 404 permit would be implemented.

Reclamation received Section 401 water quality certification of the project from ADEQ on June 24, 2003. Coverage under the Section 402 Arizona Pollutant Discharge Elimination System General Permit for construction activities would be obtained prior to construction.

National Historic Preservation Act of 1966, as amended (NHPA) - Federally-funded undertakings that have the potential to affect historic properties are subject to Section 106 of the NHPA. Under this act, Federal agencies are responsible for the identification, management, and nomination to the National Register of Historic Places of cultural resources that would be affected by Federal actions. Consultation with the Advisory Council on Historic Preservation and the State Historic Preservation Office (SHPO) (or Tribal Historic Preservation Office) is required when a Federal action may affect cultural resources on, or eligible for inclusion on, the National Register.

Cultural resource surveys of the area of potential effect were conducted by Reclamation and the Forest Service in accordance with NHPA Section 106. Consultation with the SHPO regarding affects to historic properties was completed by the Forest Service in 2003. No areas of traditional cultural importance or areas of specific tribal concern are known in the project area based on consultation with Native American Indian groups and Forest research into tribal uses of the Forest. Mitigation for project effects is listed in Section 2.5. The SHPO concurred with a no effect determination on December 10, 2003.

Wild and Scenic Rivers Act of 1968, as amended (WSRA) – The WSRA designated the initial components of a National Wild and Scenic Rivers System, and established a procedure for selecting additional rivers possessing outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values and preserving them in a free-flowing condition. Free-flowing is defined by the WSRA as: ". . . any river or section of a river . . . existing or flowing in natural condition without impoundment, diversion, straightening, rip-rapping, or other modification of the waterway. The existence, however, of low dams, diversion works, and other minor structures at the time any river is proposed for inclusion in the national wild and scenic river system shall not automatically bar its consideration for such inclusion; Provided, That this shall not be construed to authorize, intend, or encourage future construction of such structures. . . ."

Although Fossil Creek has not been formally proposed for inclusion in the national wild and scenic rivers system, future designation is being considered. Reclamation and the Forest Service believe the project would not preclude wild and scenic river status for Fossil Creek. The proposed fish barrier represents a minor structure that would have minimal and highly localized effects on stream dynamics, but would not substantially impede free flowing characteristics that are essential for wild and scenic river designation.

Wilderness Act of 1964 as amended – This Act is intended to preserve the primeval character of Federal lands designated by Congress as wilderness. The Act defines wilderness as an area of Federal land that "generally appears to have been affected

primarily by the forces of natures, with the imprint of man's work substantially unnoticeable." Operation of motorized vehicles, motorized equipment, aircraft landings, and construction of permanent facilities are prohibited unless authorized by the Secretary of Agriculture or delegated authority. Congress designated the Mazatzal Wilderness as part of the National Wilderness Preservation System on September 3, 1964. The Arizona Wilderness Act of 1984 added land to the Wilderness Area.

In the absence of the proposed action, wilderness values for natural processes and functions would decline as a direct result of the displacement of native fishes by nonnative fishes. Without protection against future incursion and dominance by nonnative species, the opportunity to successfully restore listed native fishes in this portion of the Mazatzal Wilderness would not be achieved. Based on prior precedent, projects involving barriers and piscicide use are accepted activities to protect native fish communities within areas designated under the Wilderness Act. The proposed action would require approval by the Regional Forester, because it would entail chemical treatments, operation of mechanized equipment, and construction of a nonconforming structure in Wilderness.

National Forest Management Act of 1976, as amended (NFMA) – NFMA requires the Forest Service, acting on behalf of the Secretary of Agriculture, to assess forest lands and develop resource management plans based on multiple-use, sustained yield principles for each unit of the National Forest System. The statute also requires the Forest Service to provide for the biological diversity of national forests consistent with overall multiple-use objectives of the planning area and to maintain viable populations in the planning area.

The project is consistent with the NFMA and Forest Service policy to maintain viable populations of native fishes and work toward recovery of federally-listed species.

Resource Conservation and Recovery Act, as amended (RCRA) - RCRA establishes thresholds and protocols for managing and disposing of solid waste. Solid wastes that exhibit the characteristic of hazardous waste, or are listed by regulation as hazardous waste, are subject to strict accumulation, treatment, storage, and disposal controls.

The project is not expected to generate hazardous waste as defined and regulated under RCRA. To minimize the possible impact of hazardous materials (petroleum, oil, and lubricants) used during construction, all equipment would be periodically inspected for leaks. Any significant leaks would be promptly corrected. Nonhazardous solid waste would be disposed of in accordance with State and Federal regulations at an EPA-approved landfill. Spills and disposal of contaminated media would be managed in accordance with State and Federal requirements.

Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA) – FIFRA requires all persons who apply pesticides classified as restricted use be certified or that they work under the direct supervision of a certified applicator. Aquatic applicators must demonstrate a practical knowledge of the secondary effects that can be caused by improper application rates, incorrect formulations, and faulty application of restricted

pesticides. Applicators must have a practical knowledge concerning potential effects on plants, birds, beneficial insects and other organisms that may be present in aquatic environments.

Piscicides have been used by fisheries managers in National Forests for stream and lake renovation projects since the 1930s. The U.S. Department of Agriculture Policy Regulation 9500-4 provides broad policy direction for fish and wildlife management in National Forests, including use of piscicides. Antimycin A is registered under the product name Fintrol, which is approved for use on Forest Service lands. Application of Antimycin A in Fossil Creek would be under the direction of a certified applicator in accordance with a Forest Service approved Safety Plan. The applicator would be charged with ensuring that all label and safety requirements are are met. Piscicide applications would be consistent with relevant requirements of FIFRA.

Executive Order 11988 (Floodplain Management) - This Presidential directive encourages Federal agencies to avoid, where practicable alternatives exist, the short- and long-term adverse impacts associated with floodplain development. Federal agencies are required to reduce the risk of flood loss, minimize the impacts of floods on human safety, health and welfare, and restore and preserve the natural and beneficial values served by floodplains in carrying out agency responsibility.

The project is necessary for the protection of the existing native fish community and potential recovery of listed species. Because the nature of the project requires minor construction in an active channel, no practicable alternative exists. Floodplain effects would be highly localized and minor.

Executive Order 11990 (Wetlands) - This Order directs Federal agencies, in carrying out their land management responsibilities, to take action that will minimize the destruction, loss, or degradation of wetlands, and take action to preserve and enhance the natural and beneficial values of wetlands.

The project would not affect wetlands.

Executive Order 12898 (Environmental Justice) - This Order directs Federal agencies to identify and address, as appropriate, disproportionately high and adverse human health and environmental effects of their programs, policies, and activities on minority and low-income populations.

The project area encompasses uninhabited National Forest land and a minor portion of a private inholding. No impact on low income or minority populations as defined by EO 12898 would result.

Indian Trust Assets (ITAs) ITAs are legal interests in assets held in trust by the U.S. Government for Indian tribes or individual Indians. Assets are anything owned that has monetary values. Assets can be real property, physical assets, or intangible property rights. Common examples of ITAs include lands, minerals, water rights, hunting rights, other natural resources, money, or claims.

The project would affect National Forest System land and one private (non-Indian) inholding. No ITAs would be affected.

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