



April 11, 2022

Mr. Tony Papa
Deputy District Ranger
Bradshaw and Chino Valley Ranger Districts
Prescott National Forest
344 S. Cortez St.
Prescott, AZ 86303

Electronically submitted to: http://www.fs.fed.us/nepa/nepa_project_exp.php?project=61191

Re: Upper Verde River Wild and Scenic Suitability Study

Dear Mr. Papa,

The Arizona Game and Fish Department (Department) has reviewed the Wild and Scenic River Suitability Study for segments of the Upper Verde River in portions of the Prescott and Coconino National Forests, released on March 11, 2022. The Wild and Scenic Rivers Act of 1968 directs Federal agencies to consider potential wild and scenic rivers (WSRs) in their land and water planning processes. To fulfill this requirement, the U.S. Forest Service's (FS) 2012 Planning Rule requires the Prescott National Forest (PNF) to identify rivers that may be appropriate for inclusion in the National Wild and Scenic Rivers System (NWSRS). PNF staff previously conducted an eligibility study and determined preliminary classifications for the Upper Verde River in 2010. The Department understands the PNF is now preparing a WSR suitability study and environmental assessment due to a proposal from the Bureau of Reclamation (BOR), under regulatory authority for the river, to construct two fish barriers designed to protect threatened and endangered fish species within segments of the river previously established eligible for inclusion into the NWSRS. The WSR evaluation process has three phases: eligibility, preliminary classification, and suitability. The Department further acknowledges the suitability evaluation does not result in designation; it only results in a determination of a river's suitability for inclusion into the NWSRS, evaluated under the National Environmental Policy Act (NEPA). Congress has reserved the authority to make the final decision regarding all Wild and Scenic River designations.

Based on the determination that these fish barriers have the potential to impact the WSR eligibility of the river, the FS must conduct the suitability study under the requirements of the FS 2012 Planning Rule, FS Handbook 1909.12, chapter 80, section 83.32., and identified in the Nationwide Rivers Inventory (NRI) for recreational rivers flowing wholly or partially on FS lands. Four segments totaling 38.2 miles of the Upper Verde River west and north of Clarkdale, Arizona, and east of Chino Valley, Arizona were identified for designation, (*USFS Free Flow*

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Analysis March 2022. Table 1. Segments and Eligibility Classification of the Upper Verde River).

Under Title 17 of the Arizona Revised Statutes, the Department, by and through the Arizona Game and Fish Commission (Commission), has jurisdictional authority and public trust responsibilities to protect and conserve the State's fish and wildlife resources. In addition, the Department manages threatened and endangered species through authorities of Section 6 of the Endangered Species Act and the Department's 10(a)1(A) permit. It is the mission of the Department to conserve and protect Arizona's diverse fish and wildlife resources and manage for safe, compatible outdoor recreation opportunities for current and future generations. For your consideration, the Department provides the following comments based on the agency's statutory authorities, public trust responsibilities, and special expertise related to wildlife resources and recreation.

The proposed locations of the fish barriers were determined after BOR conducted an appraisal-level investigation of 10 potential fish barrier locations along the Upper Verde River. In consultation with the Department, the proposed fish barriers locations were based on biological, engineering, and construction considerations which included looking at the geology, hydrology, geomorphology, conceptual design, construction costs, and rights-of-way for the potential locations.

Department Management Actions

It is the Department's understanding the proposed fish barriers will be constructed within Segment 3, with an eligibility classification of scenic and containing the following Outstanding Remarkable Values (ORVs): cultural, scenic, fisheries, wildlife, recreation, and botanical, all based on the FS 2010 eligibility determination.

The Department has concerns with special land use designations potentially impacting wildlife management objectives, in particular fisheries-related projects. As a result of these special land use designations, the State has experienced a systematic loss of diverse recreational opportunities and an erosion of the Department's ability to proactively manage wildlife. The Department has experienced extensive and widespread project delays, elevated costs, increased man-hours, and legal challenges; all of which has resulted in decreased efficiency in the conservation and management of Arizona's wildlife resources.

The Department often needs to take management actions within WSR or NRI systems that may be complicated by this potential designation or management changes resulting from the recommendations. The Department anticipates challenges, complications, or obstruction of its ability to implement the following management activities including but not limited to:

- Barrier construction, equipment access, and structural repairs
- Periodic species management and monitoring including surveys, stocking, stream renovations using electrofishing equipment and gas-powered generators
- Non-native plant and fish removal utilizing nets or battery/gas-powered electrofishing equipment

- Emergency translocations and/or removal of fish and wildlife (ie. due to fire, etc) when necessary to conserve species of concern, retrieve dead animals for disease testing, retrieve sick or wounded animals, or to prevent transmission of diseases or parasites affecting wildlife and humans.
- Staging various equipment and vehicles for emergency response
- Fencing to protect wildlife habitats and/or restrict wildlife
- Fence removal and repair
- Introduction, supplementation, and/or translocations of native and/or naturalized species of fish and wildlife

Based on the Department's concern about special land use designations (i.e. Wild and Scenic Rivers and Wilderness), and potential impacts to the ability of the Department to effectively manage wildlife, the Department requests the Forest include the following key provisions for any WSR recommendation/designation being implemented:

- *Nothing in the WSR recommendations/designations shall affect the jurisdiction or responsibilities of the States with respect to fish and wildlife.*
- *The jurisdiction of the States over waters of any stream included in a national wild, scenic, or recreational river area shall be unaffected by the WSR recommendations/designations to the extent that such jurisdiction may be exercised without impairing the purposes of the Act or its administration.*
- *Nothing in the WSR recommendations/designations shall affect existing rights of any State, including the right of access, with respect to beds of navigable streams, tributaries, or rivers (or segments thereof) located in a national wild, scenic or recreational river area.*

Further, the Department requests that prior to the approval of any WSR designation, or implementation of management changes resulting from a WSR recommendation, the PNF first fully analyze the decision's impact on the Department's ability to fulfill its trust responsibility to manage the state's wildlife resources. Specifically, the Department requests PNF identify the potential economic impacts or conflicts with existing state plans to carry out wildlife management goals and objectives including: the Arizona Game and Fish Department's State Wildlife Action Plan; Wildlife 2030 Strategic Action Plan; and Verde River Watershed Fisheries Management Plan (2014).

Eligible River Segments Studied for Suitability: Segment 3

Of the eligible river segments studied for WSR suitability, segment 3 falls within a scenic categorization and houses two fish barrier site locations. Site 1 is located at Hell Point and site 2 is 1.1 miles above Sycamore Creek. Segment 3 runs from the APS power line and West-wide Energy Corridor to below the confluence of Sycamore Canyon and the Verde River. Both the Perkinsville Bridge and Sycamore Creek fall within this 19.8-mile segment. Based on language contained within United States Code, 16 USC Ch. 28: Wild and Scenic Rivers, **§1278. Restrictions on water resources projects**, this eligibility classification has the potential to eliminate or restrict fishery management projects, making it highly unlikely that any type of

water resource project affecting the outstanding remarkable values (ORV) of the river will be authorized.

Consideration of Recommendations

The Department offers the following suggestions in an attempt to solve the potential problem with fish barriers presented with WSR designation. These recommendations are generated to try and work closely with the FS on potential conflict resolution for fish barriers as they relate to wild and scenic designations and future allowable management actions. The Department believes consideration of these alternative actions could offer a less restrictive avenue for fisheries management objectives and allow for the development of the fish barrier sites. These fish barriers are needed to prevent upstream movement of nonnative fish species, whose recent establishment in the Gila River Basin is a key problem preventing conservation and recovery of the native fauna. The barriers would be built prior to the removal of nonnative fish and the re-establishment of listed and sensitive native aquatic species in the Upper Verde River.

1. FS Handbook, Chapter 80, Water Development states that to have a Scenic designation the river should be "free of impoundment". The utilization of fish barriers for fisheries recovery and management in Arizona is essential. The Department recommends moving forward with implementation of the two fish barriers at the proposed locations, and removing the two sites from the Scenic classification and the WSR designation entirely. Removing these two sites from the wild and scenic designation and the eligibility criteria would allow flexibility for future allowable wildlife management actions at the two identified sites.
2. Consideration should also be given to the creation of buffer zones, both upstream and downstream of the proposed fish barrier sites. Creating specific buffer zones within the WSR designation could eliminate those sections from the designation criteria and restrictions placed upon them. Buffer zones would allow management objectives for creating fish barriers to be carried out, and potential conflicts with WSR designations to be eliminated.
3. Additionally, consideration should be given to the creation of rights-of-way for accessing the fish barrier sites, pursuant to United States Code 16 USC Ch. 28: Wild and Scenic Rivers, Section §1284. Existing State jurisdiction and responsibilities. If the fish barriers are realized, future maintenance needs will be inevitable, and a right of way access would provide an avenue for access without restrictions to perform repairs on the structure and surrounding areas, if needed.
4. Based on the higher level of restrictions placed with a scenic classification, the Department recommends changing the classification at the two fish barrier locations to recreational.

Finally, the United States Fish and Wildlife Service (USFWS) and the BOR identified the Upper Verde River as a potential reach for a barrier in the 2008 biological opinion on impacts of Central

Arizona Project (CAP) water transfers to the Gila River Basin and its potential to spread nonnative aquatic species (USFWS 2008). The Land and Resource Management Plan 2012 (LRMP) for the PNF identified the need to provide desired habitat for native fish species. This includes partnering with the Department to address nonnative species control. The Department has identified the Upper Verde River for native fish management with an emphasis on native sport fishing in its Verde River Watershed Fisheries Management Plan (AZGFD 2014).

The Department appreciates the opportunity to review and submit comments for the suitability study and recommendations for the suitability determination. The Department looks forward to continuing to provide information on the WSR throughout the process. If you have any questions concerning this letter, please contact Dee Kephart, Habitat, Evaluation, and Lands Program Manager, Region III, at 928-263-8855, or by email dkephart@azgfd.gov.

Sincerely,



Luke Thompson
Habitat, Evaluation, and Lands Branch Chief

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Reference:

U.S. Fish and Wildlife Service. 2008. *Biological Opinion:reinitiated biological opinion on transportation and delivery of Central Arizona Project water to the Gila Riverbasin in Arizona and New Mexico and its potential to introduce and spread non-indigenous aquatic species.* Phoenix, Arizona. Ecological Services Office, 02-21-90-F-119, 02-21-91-F-406, 22410-2007F-0081, 162 p.