

**U.S. DEPARTMENT OF AGRICULTURE  
FOREST SERVICE**

**SPECIAL USE PERMIT**

**Authority: ORGANIC ADMINISTRATION ACT June 4, 1897**

**ARIZONA GAME AND FISH DEPARTMENT** (hereinafter "the holder") is authorized to use or occupy National Forest System lands in the **TONTO NATIONAL FOREST** of the National Forest System, subject to the terms and conditions of this special use permit (the permit).

**This permit covers 20000 acres or 31.25 miles in the**

**GILA AND SALT RIVER MERIDIAN ,**

T. 2 N., R. 9 E., Sec. 3, 4, 5, 8, 9, 10,  
T. 3 N., R. 8 E., Sec. 25-28, 33-36,  
T. 3 N., R. 9 E., Sec. 25, 26, 33, 34, 35,  
T. 3 N., R. 10 E., Sec. 15, 16, 20-26,  
T. 3 N., R. 11 E., Sec. 2, 3, 10, 11, 15-17, 20-22, 28-30,  
T. 4 N., R. 11 E., Sec. 1, 2, 12, 13,  
T. 4 N., R. 12 E., Sec. 4-27,  
T. 4 N., R. 13 E., Sec. 17-23, 25-36  
T. 5 N., R. 7 E., Sec. 3, 4,  
T. 5 N., R. 11 E., Sec. 17, 20-23, 25-28, 34, 35, 36,  
T. 5 N., R. 12 E., Sec. 31,  
T. 6 N., R. 7 E., Sec. 3-5, 9-11, 13-15, 21-23, 26-28, 33, 34,  
T. 7 N., R. 7 E Sec. 29, 32, 33,

("the permit area"), as shown on the map attached as Appendix A. This permit issued for the purpose of:

**A cooperative effort between angler groups, Tonto National Forest, Arizona Game and Fish Department to construct and install natural and artificial fish habitat structures to increase fish habitat in the five Tonto National Forest lakes per the following appendices.**

**Appendix A – Map (located within Appendix C)**

**Appendix B - Operating Plan (Updated every 5 years or less as needed)**

**Appendix C - Lake Habitat Enhancement Plans (Updated as projects are planned)**

**Appendix D - Memorandum of Understanding between AZ Game & Fish and Forest Service**

## **TERMS AND CONDITIONS**

### **I. GENERAL TERMS**

A. **AUTHORITY**. This permit is issued pursuant to **ORGANIC ADMINISTRATION ACT** June 4, 1897 and 36 CFR Part 251, Subpart B, as amended, and is subject to their provisions.

B. **AUTHORIZED OFFICER**. The authorized officer is the Forest or Grassland Supervisor or a subordinate officer with delegated authority.

C. **TERM**. This permit shall expire at midnight on **12/31/2037, 20 years** from the date of issuance.

D. **RENEWAL**. This permit is not renewable. Prior to expiration of this permit, the holder may apply for a new permit that would renew the use and occupancy authorized by this permit. Applications for a new permit must be submitted at least 6 months prior to expiration of this permit. Renewal of the use and occupancy authorized by this permit shall be at the sole discretion of the authorized officer. At a minimum, before renewing the use and occupancy authorized by this permit, the authorized officer shall require that (1) the use and occupancy to be authorized by the new permit is consistent with the standards and guidelines in the applicable land management plan; (2) the type of use and occupancy to be authorized by the new permit is the same as the type of use and occupancy authorized by this permit; and (3) the holder is in compliance with all the terms of this permit. The authorized officer may prescribe new terms and conditions when a new permit is issued.

E. **AMENDMENT**. This permit may be amended in whole or in part by the Forest Service when, at the discretion of the authorized officer, such action is deemed necessary or desirable to incorporate new terms that may be required by law, regulation, directive, the applicable forest land and resource management plan, or projects and activities implementing a land management plan pursuant to 36 CFR Part 215.

### **F. COMPLIANCE WITH LAWS, REGULATIONS, AND OTHER LEGAL REQUIREMENTS.**

In exercising the rights and privileges granted by this permit, the holder shall comply with all present and future federal laws and regulations and all present and future state, county, and municipal laws, regulations, and other legal requirements that apply to the permit area, to the extent they do not conflict with federal law, regulation, or policy. The Forest Service assumes no responsibility for enforcing laws, regulations, and other legal requirements that fall under the jurisdiction of other governmental entities.

G. **NON-EXCLUSIVE USE**. The use or occupancy authorized by this permit is not exclusive. The Forest Service reserves the right of access to the permit area, including a continuing right of physical entry to the permit area for inspection, monitoring, or any other purpose consistent with any right or obligation of the United States under any law or regulation. The Forest Service reserves the right to allow others to use the permit area in any way that is not inconsistent with the holder's rights and privileges under this permit, after consultation with all parties involved. Except for any restrictions that the holder and the authorized officer agree are necessary to protect the installation and operation of authorized temporary improvements, the lands and waters covered by this permit shall remain open to the public for all lawful purposes.

H. **ASSIGNABILITY**. This permit is not assignable or transferable.

I. **CONVEYANCE OF LANDS COVERED BY THIS PERMIT**. The authorized officer shall give the holder at least 90 days prior written notice of any pending conveyance of the lands covered by this permit. With the holder's consent, the Forest Service may convey the lands covered by this permit without reserving the right-of-way granted by this permit. If the holder does not consent to conveyance without reservation of the right-of-way, the Forest Service may convey the lands covered by this permit

only if the lands are subject to the right-of-way granted by this permit.

## **II. IMPROVEMENTS**

**A. LIMITATIONS ON USE.** Nothing in this permit gives or implies permission to build or maintain any structure or facility or to conduct any activity, unless specifically authorized by this permit. Any use not specifically authorized by this permit must be proposed in accordance with 36 CFR 251.54. Approval of such a proposal through issuance of a new permit or permit amendment is at the sole discretion of the authorized officer.

**B. PLANS.** All plans for development, layout, construction, reconstruction, or alteration of improvements in the permit area, as well as revisions to those plans must be prepared by a professional engineer, architect, landscape architect, or other qualified professional based on federal employment standards acceptable to the authorized officer. These plans and plan revisions must have written approval from the authorized officer before they are implemented. The authorized officer may require the holder to furnish as-built plans, maps, or surveys upon completion of the work.

**C. CONSTRUCTION.** Any construction authorized by this permit shall commence by **01/01/2017** and shall be completed by **12/31/2037**.

## **III. OPERATIONS.**

**A. PERIOD OF USE.** Use or occupancy of the permit area shall be exercised at least 365 days each year.

**B. CONDITION OF OPERATIONS.** The holder shall maintain the authorized improvements and permit area to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the authorized officer and consistent with other provisions of this permit. Standards are subject to periodic change by the authorized officer when deemed necessary to meet statutory, regulatory, or policy requirements or to protect national forest resources. The holder shall comply with inspection requirements deemed appropriate by the authorized officer.

**C. INSPECTION BY THE FOREST SERVICE.** The Forest Service shall monitor the holder's operations and reserves the right to inspect the permit area and transmission facilities at any time for compliance with the terms of this permit. The holder's obligations under this permit are not contingent upon any duty of the Forest Service to inspect the permit area or transmission facilities. A failure by the Forest Service or other governmental officials to inspect is not a justification for noncompliance with any of the terms and conditions of this permit.

## **IV. RIGHTS AND LIABILITIES**

**A. LEGAL EFFECT OF THE PERMIT.** This permit, which is revocable and terminable, is not a contract or a lease, but rather a federal license. The benefits and requirements conferred by this authorization are reviewable solely under the procedures set forth in 36 CFR 251, Subpart C and 5 U.S.C. 704. This permit does not constitute a contract for purposes of the Contract Disputes Act, 41 U.S.C. 601. The permit is not real property, does not convey any interest in real property, and may not be used as collateral for a loan.

**B. VALID OUTSTANDING RIGHTS.** This permit is subject to all valid outstanding rights. Valid outstanding rights include those derived under mining and mineral leasing laws of the United States. The United States is not liable to the holder for the exercise of any such right.

**C. ABSENCE OF THIRD-PARTY BENEFICIARY RIGHTS.** The parties to this permit do not intend to confer any rights on any third party as a beneficiary under this permit.

**D. SERVICES NOT PROVIDED.** This permit does not provide for the furnishing of road or trail maintenance, water, fire protection, search and rescue, or any other such service by a government agency, utility, association, or individual.

**E. RISK OF LOSS.** The holder assumes all risk of loss associated with use or occupancy of the permit area, including but not limited to theft, vandalism, fire and any fire-fighting activities (including prescribed burns), avalanches, rising waters, winds, falling limbs or trees, and other forces of nature. If authorized temporary improvements in the permit area are destroyed or substantially damaged, the authorized officer shall conduct an analysis to determine whether the improvements can be safely occupied in the future and whether rebuilding should be allowed. If rebuilding is not allowed, the permit shall terminate.

**F. DAMAGE TO UNITED STATES PROPERTY.** The holder has an affirmative duty to protect from damage the land, property, and other interests of the United States. Damage includes but is not limited to fire suppression costs, damage to government-owned improvements covered by this permit, and all costs and damages associated with or resulting from the release or threatened release of a hazardous material occurring during or as a result of activities of the holder or the holder's heirs, assigns, agents, employees, contractors, or lessees on, or related to, the lands, property, and other interests covered by this permit. For purposes of clause IV.F and section V, "hazardous material" shall mean (a) any hazardous substance under section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (c) any petroleum product or its derivative, including fuel oil, and waste oils; and (d) any hazardous substance, extremely hazardous substance, toxic substance, hazardous waste, ignitable, reactive or corrosive materials, pollutant, contaminant, element, compound, mixture, solution or substance that may pose a present or potential hazard to human health or the environment under any applicable environmental laws.

1. The holder shall avoid damaging or contaminating the environment, including but not limited to the soil, vegetation (such as trees, shrubs, and grass), surface water, and groundwater, during the holder's use or occupancy of the permit area. If the environment or any government property covered by this permit becomes damaged during the holder's use or occupancy of the permit area, the holder shall immediately repair the damage or replace the damaged items to the satisfaction of the authorized officer and at no expense to the United States.

2. Subject only to the limits on the holder's liability under the State Tort Claims Act, the holder shall be liable for all injury, loss, or damage, including fire suppression, prevention and control of the spread of invasive species, or other costs in connection with rehabilitation or restoration of natural resources associated with the use or occupancy authorized by this permit. Compensation shall include but not be limited to the value of resources damaged or destroyed, the costs of restoration, cleanup, or other mitigation, fire suppression or other types of abatement costs, and all administrative, legal (including attorney's fees), and other costs. Such costs may be deducted from a performance bond required under clause IV.I.

3. The holder shall be liable for damage caused by use of the holder or the holder's heirs, assigns, agents, employees, contractors, or lessees to all roads and trails of the United States that are open to public use to the same extent as provided under clause IV.F.1, except that liability shall not include reasonable and ordinary wear and tear.

**G. HEALTH, SAFETY, AND ENVIRONMENTAL PROTECTION.** The holder shall promptly abate as completely as possible and in compliance with all applicable laws and regulations any activity or condition arising out of or relating to the authorized use or occupancy that causes or threatens to cause a hazard to public health or the safety of the holder's employees or agents or harm to the environment

(including areas of vegetation or timber, fish or other wildlife populations, their habitats, or any other natural resources). The holder shall prevent impacts to the environment and cultural resources by implementing actions identified in the operating plan to prevent establishment and spread of invasive species. The holder shall immediately notify the authorized officer of all serious accidents that occur in connection with such activities. The responsibility to protect the health and safety of all persons affected by the use or occupancy authorized by this permit is solely that of the holder. The Forest Service has no duty under the terms of this permit to inspect the permit area or operations and activities of the holder for hazardous conditions or compliance with health and safety standards.

**H. INDEMNIFICATION OF THE UNITED STATES.** Subject only to the limits on the holder's liability under the State Tort Claims Act, the holder shall indemnify, defend, and hold harmless the United States for any costs, damages, claims, liabilities, and judgments arising from past, present, and future acts or omissions of the holder in connection with the use or occupancy authorized by this permit. This indemnification provision includes but is not limited to acts and omissions of the holder or the holder's heirs, assigns, agents, employees, contractors, or lessees in connection with the use or occupancy authorized by this permit which result in (1) violations of any laws and regulations which are now or which may in the future become applicable, and including but not limited to those environmental laws listed in clause V.A of this permit; (2) judgments, claims, demands, penalties, or fees assessed against the United States; (3) costs, expenses, and damages incurred by the United States; or (4) the release or threatened release of any solid waste, hazardous waste, hazardous materials, pollutant, contaminant, oil in any form, or petroleum product into the environment. The authorized officer may prescribe terms that allow the holder to replace, repair, restore, or otherwise undertake necessary curative actions to mitigate damages in addition to or as an alternative to monetary indemnification.

**I. BONDING.** The authorized officer may require the holder to furnish a surety bond or other security for any of the obligations imposed by the terms and conditions of this permit or any applicable law, regulation, or order.

**K. INSURANCE.** The authorized officer has determined through a risk assessment that the potential liability of the United States for property damage and personal injury or death arising from the holder's use and occupancy authorized by this permit is \$500,000 per incident and \$500,000 in the aggregate. The holder shall self-insure or maintain commercial general liability combined single limit procured insurance (CGL insurance) covering property damage and personal injury or death for \$500,000 per incident and \$500,000 in the aggregate. The CGL insurance shall be written on a standard industry occurrence form or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contractors, personal and advertising injury, and liability assumed under an insured contract (including tort liability of another party assumed in a business contract). Specifically, the coverage under the self-insurance or CGL insurance shall extend to property damage and personal injury or death arising from the holder's activities under the permit, including use and occupancy of National Forest System lands and the construction, maintenance, and operation of the structures, facilities, or equipment authorized by the permit. The United States shall be named as an additional insured under the self-insurance or CGL insurance. The self-insurance or CGL insurance shall specify that the Forest Service shall be given 30 days prior written notice of cancellation or any modification of the CGL insurance. The holder shall pay the premiums for the CGL insurance.

1. Notwithstanding clauses IV.H and IV.K of this permit, any limitation on the holder's liability under State law, including but not limited to the holder's sovereign immunity and State Tort Claims Act, not be construed in any way to impinge upon the ability of the United States to recover under the CGL insurance. Nothing in this clause precludes the holder or the insurer from asserting any defense that may be available to the holder, including sovereign immunity, in an action brought against the holder by a third party.

## V. RESOURCE PROTECTION

**A. COMPLIANCE WITH ENVIRONMENTAL LAWS.** The holder shall in connection with the use or occupancy authorized by this permit comply with all applicable federal, state, and local environmental laws and regulations, including but not limited to those established pursuant to the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq., the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., the Oil Pollution Act, as amended, 33 U.S.C. 2701 et seq., the Clean Air Act, as amended, 42 U.S.C. 7401 et seq., CERCLA, as amended, 42 U.S.C. 9601 et seq., the Toxic Substances Control Act, as amended, 15 U.S.C. 2601 et seq., the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. 136 et seq., and the Safe Drinking Water Act, as amended, 42 U.S.C. 300f et seq.

**B. VANDALISM.** The holder shall take reasonable measures to prevent and discourage vandalism and disorderly conduct and when necessary shall contact the appropriate law enforcement officer.

**C. PESTICIDE USE.** Pesticides may not be used outside of buildings to control undesirable woody and herbaceous vegetation (including aquatic plants), insects, rodents, fish, and other pests and weeds without prior written approval from the authorized officer. A request for approval of planned uses of pesticides shall be submitted annually by the holder on the due date established by the authorized officer. The report shall cover a 12-month period of planned use beginning 3 months after the reporting date. Information essential for review shall be provided in the form specified. Exceptions to this schedule may be allowed, subject to emergency request and approval, only when unexpected outbreaks of pests or weeds require control measures that were not anticipated at the time an annual report was submitted. Only those materials registered by the U.S. Environmental Protection Agency for the specific purpose planned shall be considered for use on National Forest System lands. Label instructions and all applicable laws and regulations shall be strictly followed in the application of pesticides and disposal of excess materials and containers.

**D. ARCHAEOLOGICAL-PALEONTOLOGICAL DISCOVERIES.** The holder shall immediately notify the authorized officer of all antiquities or other objects of historic or scientific interest, including but not limited to historic or prehistoric ruins, fossils, or artifacts discovered in connection with the use and occupancy authorized by this permit. The holder shall leave these discoveries intact and in place until directed otherwise by the authorized officer. Protective and mitigative measures specified by the authorized officer shall be the responsibility of the holder.

**E. NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION.** In accordance with 25 U.S.C. 3002(d) and 43 CFR 10.4, if the holder inadvertently discovers human remains, funerary objects, sacred objects, or objects of cultural patrimony on National Forest System lands, the holder shall immediately cease work in the area of the discovery and shall make a reasonable effort to protect and secure the items. The holder shall immediately notify the authorized officer by telephone of the discovery and shall follow up with written confirmation of the discovery. The activity that resulted in the inadvertent discovery may not resume until 30 days after the authorized officer certifies receipt of the written confirmation, if resumption of the activity is otherwise lawful, or at any time if a binding written agreement has been executed between the Forest Service and the affiliated Indian tribes that adopts a recovery plan for the human remains and objects.

**F. PROTECTION OF HABITAT OF THREATENED, ENDANGERED, AND SENSITIVE SPECIES.** The location of sites within the permit area needing special measures for protection of plants or animals listed as threatened or endangered under the Endangered Species Act (ESA) of 1973, 16 U.S.C. 1531 et seq., as amended, or identified as sensitive or otherwise requiring special protection by the Regional Forester under Forest Service Manual (FSM) 2670, pursuant to consultation conducted under

section 7 of the ESA, may be shown on the ground or on a separate map. The map shall be attached to this permit as an appendix. The holder shall take any protective and mitigative measures specified by the authorized officer. If protective and mitigative measures prove inadequate, if other sites within the permit area containing threatened, endangered, or sensitive species or species otherwise requiring special protection are discovered, or if new species are listed as threatened or endangered under the ESA or identified as sensitive or otherwise requiring special protection by the Regional Forester under the FSM, the authorized officer may specify additional protective and mitigative measures. Discovery of these sites by the holder or the Forest Service shall be promptly reported to the other party.

**G. CONSENT TO STORE HAZARDOUS MATERIALS.** The holder shall not store any hazardous materials at the site without prior written approval from the authorized officer. This approval shall not be unreasonably withheld. If the authorized officer provides approval, this permit shall include, or in the case of approval provided after this permit is issued, shall be amended to include specific terms addressing the storage of hazardous materials, including the specific type of materials to be stored, the volume, the type of storage, and a spill plan. Such terms shall be proposed by the holder and are subject to approval by the authorized officer.

#### **H. CLEANUP AND REMEDIATION**

1. The holder shall immediately notify all appropriate response authorities, including the National Response Center and the authorized officer or the authorized officer's designated representative, of any oil discharge or of the release of a hazardous material in the permit area in an amount greater than or equal to its reportable quantity, in accordance with 33 CFR Part 153, Subpart B, and 40 CFR Part 302. For the purposes of this requirement, "oil" is as defined by section 311(a)(1) of the Clean Water Act, 33 U.S.C. 1321(a)(1). The holder shall immediately notify the authorized officer or the authorized officer's designated representative of any release or threatened release of any hazardous material in or near the permit area which may be harmful to public health or welfare or which may adversely affect natural resources on federal lands.

2. Except with respect to any federally permitted release as that term is defined under Section 101(10) of CERCLA, 42 U.S.C. 9601(10), the holder shall clean up or otherwise remediate any release, threat of release, or discharge of hazardous materials that occurs either in the permit area or in connection with the holder's activities in the permit area, regardless of whether those activities are authorized under this permit. The holder shall perform cleanup or remediation immediately upon discovery of the release, threat of release, or discharge of hazardous materials. The holder shall perform the cleanup or remediation to the satisfaction of the authorized officer and at no expense to the United States. Upon revocation or termination of this permit, the holder shall deliver the site to the Forest Service free and clear of contamination.

**I. CERTIFICATION UPON REVOCATION OR TERMINATION.** If the holder uses or stores hazardous materials at the site, upon revocation or termination of this permit the holder shall provide the Forest Service with a report certified by a professional or professionals acceptable to the Forest Service that the permit area is uncontaminated by the presence of hazardous materials and that there has not been a release or discharge of hazardous materials upon the permit area, into surface water at or near the permit area, or into groundwater below the permit area during the term of the permit. This certification requirement may be waived by the authorized officer when the Forest Service determines that the risks posed by the hazardous material are minimal. If a release or discharge has occurred, the professional or professionals shall document and certify that the release or discharge has been fully remediated and that the permit area is in compliance with all federal, state, and local laws and regulations.

#### **VI. LAND USE FEE AND ACCOUNTING ISSUES**

**A. LAND USE FEES.** The use or occupancy authorized by this permit is exempt from a land use fee or TON1103

the land use fee has been waived in full pursuant to 36 CFR 251.57 and Forest Service Handbook 2709.11, Chapter 30.

## **VII. REVOCATION, SUSPENSION, AND TERMINATION**

**A. REVOCATION AND SUSPENSION**. The authorized officer may revoke or suspend this permit in whole or in part:

1. For noncompliance with federal, state, or local law.
2. For noncompliance with the terms of this permit.
3. For abandonment or other failure of the holder to exercise the privileges granted.
4. With the consent of the holder.
5. For specific and compelling reasons in the public interest.

Prior to revocation or suspension, other than immediate suspension under clause VII.B, the authorized officer shall give the holder written notice of the grounds for revocation or suspension. In the case of revocation or suspension based on clause VII.A.1, 2, or 3, the authorized officer shall give the holder a reasonable time, typically not to exceed 90 days, to cure any noncompliance.

**B. APPEALS AND REMEDIES**. Written decisions by the authorized officer relating to administration of this permit are subject to administrative appeal pursuant to 36 CFR Part 214 as amended. Revocation or suspension of this permit shall not give rise to any claim for damages by the holder against the Forest Service.

**C. TERMINATION**. This permit shall terminate when by its terms a fixed or agreed upon condition, event, or time occurs without any action by the authorized officer. Examples include but are not limited to expiration of the permit by its terms on a specified date and termination upon change of control of the business entity. Termination of this permit shall not require notice, a decision document, or any environmental analysis or other documentation. Termination of this permit is not subject to administrative appeal and shall not give rise to any claim for damages by the holder against the Forest Service.

**E. RIGHTS AND RESPONSIBILITIES UPON REVOCATION OR TERMINATION WITHOUT RENEWAL**. Upon revocation or termination of this permit without renewal of the authorized use, the holder shall remove all structures and improvements, except those owned by the United States, within a reasonable period prescribed by the authorized officer and shall restore the site to the satisfaction of the authorized officer. If the holder fails to remove all structures and improvements within the prescribed period, they shall become the property of the United States and may be sold, destroyed, or otherwise disposed of without any liability to the United States. However, the holder shall remain liable for all costs associated with their removal, including costs of sale and impoundment, cleanup, and restoration of the site.

## **VIII. MISCELLANEOUS PROVISIONS**

**A. MEMBERS OF CONGRESS**. No member of or delegate to Congress or resident commissioner shall benefit from this permit either directly or indirectly, except to the extent the authorized use provides a general benefit to a corporation.



**B. CURRENT ADDRESSES.** The holder and the Forest Service shall keep each other informed of current mailing addresses, including those necessary for billing and payment of land use fees.

**C. SUPERIOR CLAUSES.** If there is a conflict between any of the preceding printed clauses and any of the following clauses, the preceding printed clauses shall control.

**D. CULTURAL RESOURCES PROTECTION (D001RO).** The holder, contractor, or lessee shall be responsible for the protection from damage of all identified cultural resources within the area which may be affected by their actions. In addition, the holder, contractor, or lessee shall be liable for all damage or injury to the identified cultural resources caused by their actions. The holder, contractor, or lessee shall immediately notify the agency Project Administrator if any damage occurs to any cultural resource and immediately halt work in the area in which damage has occurred until approval to proceed has been granted by the Project Administrator after consultation with the Forest Archeologist. All provisions of the Region 3 Cultural Resources Damage Assessment Handbook are incorporated by reference herein.

**E. NATIVE AMERICAN GRAVE PROTECTION AND REPATRIATION ACT (X003RO).** Pursuant to the Native American Grave Protection and Repatriation Act (NAGPRA) 25 USC 3002(d); 43 CFR Part 10.4, if any human remains, funerary objects, sacred objects, or objects of cultural patrimony are discovered during the course of ground disturbing activity, the holder will immediately cease activity in the area of the discovery and will make a reasonable effort to protect the remains and objects. The holder will provide immediate telephone notification of the discovery to the Forest Service, and will follow up with written confirmation to the authorized officer. The holder will not resume the activity that resulted in the discovery until the authorized officer gives written approval. Approval to resume the activity, if otherwise lawful, will be given thirty (30) days after certification by the authorized officer of the holder's written confirmation of the discovery, or at any time that a written binding agreement is executed between the Forest Service and the affiliated tribes adopting a recovery plan for the remains and objects.

**F. NONDISCRIMINATION (B-1).**

1. The holder and its employees shall not discriminate against any person on the basis of race, color, sex (in educational activities), national origin, age, or disability or by curtailing or refusing to furnish accommodations, facilities, services, or use privileges offered to the public generally. In addition, the holder and its employees shall comply with the provisions of Title VI of the Civil Rights Act of 1964 as amended, Section 504 of the Rehabilitation Act of 1973, as amended, Title IX of the Education Amendments of 1972, as amended, and the Age Discrimination Act of 1975, as amended.

2. The holder shall include and require compliance with the above nondiscrimination provisions in any third-party agreement made with respect to the operations authorized under this permit.

3. The Forest Service shall furnish signs setting forth this policy of nondiscrimination. These signs shall be conspicuously displayed at the public entrance to the premises and at other exterior or interior locations, as directed by the Forest Service.

4. The Forest Service shall have the right to enforce the foregoing nondiscrimination provisions by suit for specific performance or by any other available remedy under the laws of the United States or the State in which the violation occurs.

**G. EQUAL ACCESS TO FEDERAL PROGRAMS (B-2).**

In addition to the above nondiscrimination policy, the holder agrees to insure that its programs and activities are open to the general public on an equal basis and without regard to any non-merit factor.



## APPENDIX B

### OPERATING PLAN Tonto National Forest Lakes Fish Habitat Project

#### Habitat Placement Guidelines and Hazard Marking of placed Habitat

For all Lakes, locations will be selected based on:

- Lack of natural fish habitat
- At least 500 feet away from the end of all boat ramps
- At least half a mile (following the water line) from a dam
- No concrete fish ball structures will be placed in an area with a slope less than 10% without being marked when water levels place the top of structures 6 feet or less under the surface 100 feet or more from shore.
- All other structures will be placed without concern to slope because they are flexible plastic and PVC structures.
- Main navigational areas and points that boaters are likely to cut across will be avoided to reduce the risk of creating a boating hazard. Main Navigational areas and points will be determined by AGFD in consultation with the Tonto National Forest and reflected in the habitat enhancement plans.

#### *Roosevelt Lake*

- We will not place habitat northwest of a line drawn from Rock Creek point to the west point of Salt Gulch cove in the Tonto Creek arm of the lake (Figure 1.).
- We will not place habitat southeast of a line drawn from Grapevine Point to the east point of Schell Cove in the Salt River arm of the lake. (Figure 2).

#### *Apache Lake*

- We will not place habitat upstream of the unnamed wash running into Apache Lake from the northwest in the NW  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  of Sec. 25 in T4N R11 E.
- Structures placed at common beaches, camping areas, and swimming areas will be placed at a minimum depth of 6 feet under the lowest surface elevation recorded in the last 10 years.

#### *Canyon Lake*

- Structures placed at easily accessible beaches, camping areas, and swimming areas will be placed at a minimum depth of 6 feet under the lowest surface elevation recorded in the last 10 years.
- No structures will be placed past 6 mile (a quarter mile past Blue Tank Cove)

#### *Saguaro Lake*

- Structures placed at easily accessible beaches, camping areas, and swimming areas will be placed at a minimum depth of 6 feet under the lowest surface elevation recorded in the last 10 years.
- No structures will be placed upstream of Richards Rock/ the no wake buoys leading into the Eagle area.

#### *Bartlett Lake*

- No structures will be placed upstream of Crappie Cove/Bass Flats

