

OLENE S. WALKER
Governor

GAYLE F. McKEACHNIE
Lieutenant Governor

January 28, 2004

Mr. Larry Crist, Assistant Field Supervisor
U.S. Fish & Wildlife Service
2369 West Orton Circle
West Valley City, Utah 84119

Re: Recovery Program for Endangered Fish Species in the Upper Colorado River,
Outgoing File

Dear Mr. Crist:

I would like to thank the USFWS for the meeting in December 2003 to go over the "Recovery Program for Endangered Fish Species in the Upper Colorado River Basin" with Jerriann Ernstsens, a biologist on our staff.

The Recovery Program defines strategies to manage and recover four Colorado River Basin endangered fishes, while providing for new water development. The strategies include:

- Habitat management
- Habitat development and maintenance
- Stocking of native fish species
- Nonnative species and sport-fishing management
- Research, monitoring, and data management.

The Secretary of the Interior, the Governor of the State of Utah, and the Administrator for the Western Area Power Administration signed a cooperative agreement, in 1988, to implement the Recovery Program. This agreement stipulates that agencies will ensure their actions are not likely to jeopardize the four listed fish species. The USFWS will consult, under Section 7 of the Endangered Species Act, on proposed projects to determine possible impacts to the fish.

The Recovery Program originally included a one-time contribution intended to offset depletion impacts. In 1994, however, the USFWS determined that depletion fees are required only when depletions are equal or greater than 100 acre-feet per year.

Jerriann Ernstsens, a biologist staff member of the Division, was unclear how to effectively fulfill the cooperative agreement. One of her main questions was - "When should the Division request USFWS Section 7 consultation concerning the fish?" She prepared a list of processes and standards for the Division to follow that may provide greater consistency when evaluating actions taken by our agency. The USFWS provided informal comments about the list at the meeting. Jerriann incorporated your comments in the following list:

- Require all coal mine permittees to provide mass balance water consumption and contribution totals with:
 - Midterm reports if totals are missing from existing Mining and Reclamation Plans.
 - Amendments when projects include large surface disturbances.
 - Amendments when projects include possible impacts to ground water.
 - New Mining and Reclamation Plans.
- Require permittees to provide all mass balance equation-parameters described in the *Discussion paper: USFWS Windy Gap Process As It Applies To Existing Coal Mines In The Upper Colorado River Basin*.
- Request Section 7 consultations for plans or amendments that include mass balance water consumption or contribution totals that:
 - Consume equal or greater than 100 acre-feet per year.
 - Consume less than 100 acre-feet and projects are high profile.
- Require permittees to pay the one-time fee of approximately \$15.00 per acre-foot (fee changes with inflation) if USFWS concludes impact from a project.

The requirement for mass balance totals will provide a baseline for all coal mines. Requiring permittees to follow the *Discussion Paper* will provide a standardized procedure so all totals are comparable among the mines.

Although this memo concentrates on the Recovery Program for Endangered Fish Species in the Upper Colorado River Basin, the Division recognizes that a Section 7 consultation with the USFWS is comprehensive. This means that when the USFWS conducts a Section 7 consultation they evaluate for possible impacts to all T&E species.

The Division requests your comments of the listed processes and standards for the Division to follow concerning implementation of the Recovery Program for Endangered Fish Species in the Upper Colorado River Basin.

Thank you for your time.

Sincerely,

Pamela Grubaugh-Littig
Permit Supervisor