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United States Department of the Interior  
FISH AND WILDLIFE SERVICE

UTAH FIELD OFFICE  
LINCOLN PLAZA  
145 EAST 1300 SOUTH, SUITE 404  
SALT LAKE CITY, UTAH 84115

007/013 Incoming

cc: Daron  
Paul  
Dave

In Reply Refer To

(CO/KS/NE/UT)

April 28, 2000

RECEIVED

MAY 02 2000

DIVISION OF  
OIL, GAS AND MINING

Mr. Darron Haddock, Permit Supervisor  
Utah Division Oil, Gas, and Mining  
1594 West North Temple, Suite 1210  
P.O. Box 145801  
Salt Lake City, Utah 84114-5801

RE: Section 7 Consultation on the Utah American Energy, Inc., Lila Canyon Mine  
application, ACT/007/013-SR98-1

Dear Mr. Haddock:

The U.S. Fish and Wildlife Service (Service) has reviewed your letters of April 3, 2000 and September 20, 1999. Potential impacts to proposed or listed species from mining activities have been previously addressed in the Service's September 24, 1996 Biological Opinion and Conference Report on Surface Coal Mining and Reclamation Operations under the Surface Coal Mining and Reclamation Act of 1977. As part of the terms and conditions of this BO, the regulatory authority must implement and require compliance with any species-specific protective measures developed by the Service field office and the regulatory authority. No species-specific protective measures are considered necessary for the subject project.

We concur with your "not likely to adversely affect" determination for the southwestern willow flycatcher, bald eagle, and listed plant species.

The project proposes to use about 21.3 acre-feet of water annually. Any water depletions from the Upper Colorado River Basin are considered to jeopardize the continued existence or adversely modify the critical habitat of the four Colorado River endangered fish species: Colorado pikeminnow, razorback sucker, bonytail chub, and humpback chub. However, depletions are addressed by existing inter-agency section 7 agreements. In 1998, the Department of the Interior, the states of Wyoming, Colorado, and Utah, and the Western Area Power Administration established the Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin (RIP). The purpose of the RIP is to recover listed species while providing for new water development in the Upper Colorado River Basin. In accordance with the RIP, the Service assesses impacts of projects that require section 7 consultation and determines how the RIP will serve as a reasonable and prudent alternative.

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For new depletions less than 100-acre feet, and intra-service agreement based on basin-wide cumulative depletions precludes the need for a depletion charge and the RIP recovery activities are considered to offset depletion impacts. Therefore, the depletion fee for this project is waived. It is important to note that the Service is required to consult on and keep track of all depletions, historic or new, of any magnitude. Therefore, UDOGM should report all water depletions to our office.

Should project plans change, or if additional information on the distribution of listed or proposed species becomes available, this determination may be reconsidered. Only a Federal agency can enter into formal Endangered Species Act section 7 consultation with the Service. A Federal agency may designate a non-Federal representative to conduct informal consultation or prepare a biological assessment by giving written notice to the Service of such a designation. The ultimate responsibility for compliance with ESA section 7, however, remains with the Federal agency.

As you are aware, the peregrine falcon was removed from the federal list of endangered and threatened species per Final Rule of August 25, 1999 (64 FR 46542). Protection is still provided for this species under authority of the Migratory Bird Treaty Act (16 U.S.C. 703-712) which makes it unlawful to take, kill, or possess migratory birds, their parts, nests, or eggs. When taking of migratory birds is determined by the applicant to be the only alternative, application for federal and state permits must be made through the appropriate authorities. For take of raptors, their nests, or eggs, Migratory Bird Permits must be obtained through the Service's Migratory Bird Permit Office in Denver at (303) 236-8145.

We recommend use of the *Utah Field Office Guidelines for Raptor Protection from Human and Land Use Disturbances* which were developed in part to provide consistent application of raptor protection measures statewide and provide full compliance with environmental laws regarding raptor protection. Raptor surveys and mitigation measures are provided in the Raptor Guidelines as recommendations to ensure that proposed projects will avoid adverse impacts to raptors, including the peregrine falcon.

We appreciate your interest in conserving endangered species and migratory birds. If further assistance is needed or you have any questions, please contact Laura Romin, at (801) 524-5001 extension 142.

Sincerely,



 Reed E. Harris  
Utah Field Supervisor

cc: Sandy Vana-Miller, Office of Surface Mining, 1999 Broadway, Suite 3320, Denver, CO 80202