

PROJECT FILE

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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

In Reply Refer To

(CO/KS/NE/UT)

(6-RO-94-F-006(a)-UT19)

November 6, 1996

SIGNATURE

Mr. Gregory Reed
Office of Surface Mining
Reclamation and Enforcement
1999 Broadway, Suite 3320
Denver, Colorado 80202-5733

ACT/007/018 #3

RE: Formal Section 7 Consultation For the Alkali Creek Tract of the Soldier Canyon Mine

Dear Mr. Reed:

In accordance with section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), and the Interagency Cooperation Regulations (50 CFR 402), the Fish and Wildlife Service (Service) reviewed October 23, 1996 correspondence regarding the impacts of the remaining unpermitted portion of the Alkali Creek Tract, Federal coal lease UTU-69635 for the Soldier Canyon Mine, on endangered Colorado River fishes. The proposed action will cause an average annual depletion of 89.5 acre-feet to the Price River in the Upper Colorado River Basin. The Office of Surface Mining has determined that the operation of the remaining unpermitted portion of Soldier Canyon Mine will not effect the peregrine falcon, black-footed ferret, or the bald eagle, but may affect the Colorado squawfish and humpback chub. The Service concurs with this determination.

A Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin (Recovery Program) was initiated on January 22, 1988. The Recovery Program was intended to be the reasonable and prudent alternative to avoid jeopardy to the endangered fishes by depletions from the Upper Colorado River Basin.

In order to further define and clarify the process in the Recovery Program, a section 7 agreement was implemented on October 15, 1993, by the Recovery Program participants. Incorporated into this agreement is a Recovery Implementation Program Recovery Action Plan (Plan) which identifies actions currently believed to be required to recover the endangered fishes in the most expeditious manner.

Included in the Recovery Program was the requirement that a depletion fee would be paid to help support the Recovery Program. On March 9, 1995, the Service issued an intra-Service biological opinion determining that the depletion fee for depletions of 100 acre-feet or less are no longer required because the Recovery Program has made sufficient progress to be the reasonable and prudent alternative to avoid the likelihood of jeopardy to the endangered

fishes and to avoid destruction or adverse modification of their critical habitat by depletions of 100 acre-feet or less. Therefore, the depletion fee for this project is waived.

The Office of Surface Mining should condition their permit to retain jurisdiction in the event that the Recovery Program is unable to implement the Plan in a timely manner. In that case, as long as the lead Federal Agency has discretionary authority over the project, reinitiation of section 7 consultation may be required so that a new reasonable and prudent alternative can be developed by the Service.

This concludes consultation on this project. If you have additional questions please contact Janet Mizzi at (801/524-5001).

Sincerely,

Marilet A. Zablan

for Robert D. Williams
Assistant Field Supervisor

cc: Ecological Services, FWS, R6, Denver, CO

bcc: Project file
Reading file

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