



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)

February 22, 2001

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

[Redacted signature area]
d/00/1/2001

RE: Section 7 Consultation on the Beaver Creek Tract, Lodestar Energy Inc., Horizon Mine,
C/007/020-SR00B

Dear Mr. Haddock:

The U.S. Fish and Wildlife Service (Service) has reviewed your letter of December 13, 2000. 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 "no effect" determination for the black footed ferret and bald eagle. However, we do not concur with your "no effect" determination for the razorback sucker, humpback chub, bonytail, and Colorado pikeminnow.

The project proposes continued annual water use of approximately 60 acre-feet. In addition, there could be disruption of surface and groundwater flows due to subsidence fractures. 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, 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.

For new depletions less than 100-acre feet, an intra-service agreement based on basin-wide cumulative depletions precludes the need for a depletion charge and the RIP recovery activities are considered adequate 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 depletion to our office. In addition, groundwater and surface water flows in the project area should be closely monitored. Any additional loss of water should be immediately reported to this 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.

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,



 Henry R. Maddux
Utah Field Supervisor

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

Colorado River Recovery Program, RO, Denver