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United States Department of the Interior

FISH AND WILDLIFE SERVICE
FISH AND WILDLIFE ENHANCEMENT
UTAH STATE OFFICE
2078 ADMINISTRATION BUILDING
1745 WEST 1700 SOUTH
SALT LAKE CITY, UTAH 84104-5110



Handwritten notes:
ce L Braxton
S White
P G...
Tom Richards
DK Nielson

In Reply Refer To

(FWE)

December 22, 1992

RECEIVED

DEC 28 1992

DIVISION OF
OIL GAS & MINING

Dr. Dianne Nielson, Director
State of Utah
Division of Oil, Gas and Mining
355 W. North Temple
3 Triad Center, Suite 350
Salt Lake City, UT 84180-1203

Dear Dr. Nielson:

The U.S. Fish and Wildlife Service (Service) is hereby requesting that the Division of Oil, Gas and Mining (DOGM) refrain from issuing a permit to Sunnyside Cogeneration Associates until the issue of formal consultation for the project under Section 7 of the Endangered Species Act (Act) has been resolved. In a meeting between ourselves on December 18, 1992, you indicated that DOGM did not agree consultation was required for permit issuance. The Service does not concur and maintains that Section 7 consultation is necessary. As we indicated in our meeting we have requested that the Office of Surface Mining, the federal agency which has authorized DOGM's program, complete the consultation before a permit is issued (copy of letter attached).

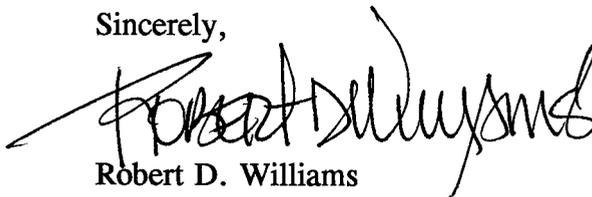
We would like to remind you that Utah's State Program, authorized through a cooperative agreement with OSM under the Surface Mining Control and Reclamation Act, contains language nearly identical to Section 7(a) of the Act and requires that before a permit application can be approved a written finding must be made that the action "would not affect the continued existence of any threatened or endangered species..." (R645-300-133.500). In this situation the Service's position is that the finding cannot be made until formal consultation has been completed and any Conservation Measures required in the Biological Opinion prepared by the Service have been incorporated into the permit for Sunnyside Cogeneration Associates.

We would also like to remind you that the Governor of Utah has signed the Memorandum of Understanding implementing the Upper Colorado River Endangered Fish Recovery Program, which binds the state to a "may affect" determination under the Act on the four endangered

fish species in the Colorado River any time a water depletion is involved in a project.

We would be glad to discuss this further with you at any time. If you have comments, please contact myself or Susan Linner, Fish and Wildlife Biologist, at (801) 975-3630.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert D. Williams". The signature is fluid and cursive, with a long horizontal stroke extending to the left.

Robert D. Williams
State Supervisor

Attachment

cc: Chief, Federal Lands Branch, Office of Surface Mining, Denver, CO