

0002



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



In Reply Refer To

(FWE)

December 22, 1992

MEMORANDUM

TO: Chief, Federal Lands Branch, Office of Surface Mining, Denver, Colorado

FROM: State Supervisor, Fish and Wildlife Enhancement, Salt Lake City, Utah

SUBJECT: Request for initiation of formal Section 7 consultation for the Sunnyside Cogeneration Project, Carbon County, Utah

The U.S. Fish and Wildlife Service (Service) hereby requests that the Office of Surface Mining (OSM) enter into a formal consultation, as detailed under Section 7 of the Endangered Species Act (Act), for the above-referenced project. Section 7(a) of the Act requires that "Each federal agency shall insure that any action authorized, funded or carried out by such agency is not likely to jeopardize the continued existence of any endangered species or threatened species...." The Service has determined that the proposed action, including the interdependent action of the operation of the cogeneration facility, will cause a depletion of water from the upper Colorado River basin. Therefore, under the Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin (RIP) (U.S. Fish and Wildlife Service 1987) the action "may affect" the four listed endangered fish species in the Colorado River system.

Since the action "may affect" listed species, OSM should prepare a Biological Assessment (BA) evaluating all effects of the action, including direct, indirect, and cumulative effects, and submit it, along with any other relevant information used to evaluate project effects to the State Supervisor, at the address shown above. The BA should include the source and amount of all water being used during all aspects of the project, as well as any anticipated return flows, and a determination of the net average annual depletion for the project.

OSM has delegated the regulatory authority for issuance of a permit for this action to the State of Utah, Division of Oil, Gas and Mining through a cooperative agreement. The state, as a designated non-federal representative of OSM, may prepare the BA. However, conversations with Dianne Nielson, Director of the Division of Oil, Gas and Mining, indicate that the state does not see a need to go through the consultation process. Therefore, OSM, which has the ultimate responsibility as the federal agency authorizing the state's program, must ensure that Section 7 compliance is met before a permit for the project is issued. Section 7(d) of the Endangered Species Act, as amended, underscores the requirement that

the Federal agency or the applicant shall not make any irreversible or irretrievable commitment of resources during the consultation period which, in effect, would deny the formulation or implementation of reasonable and prudent alternatives regarding their actions on any endangered or threatened species.

It should also be noted that the Governor of Utah has signed a Memorandum of Understanding implementing the RIP and therefore Utah is bound by the "may affect" determination for water depletions.

We have requested by separate letter (copied to you) that the state not issue the permit for this action until consultation has been completed. We would request that OSM ensure that no action is taken until this issue is resolved. We also request that OSM notify the Service in writing of a schedule for submittal of the BA as soon as possible. If OSM does not feel that consultation is required, we would like to be notified of the reasons, in writing, as soon as possible so that an opinion can be requested from an Interior Department solicitor.

If you have any questions please contact myself or Susan Linner, Fish and Wildlife Biologist at (801) 975-3630.

A handwritten signature in black ink, appearing to read "Robert D. Williams". The signature is written in a cursive style with a long, sweeping underline that extends to the left and then curves back under the name.