



United States Department of the Interior
FISH AND WILDLIFE SERVICE

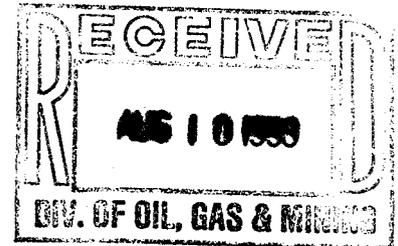
UTAH STATE OFFICE
 2060 ADMINISTRATION BUILDING
 1745 WEST 1700 SOUTH
 SALT LAKE CITY, UTAH 84104-5110

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 AMERICA

In Reply Refer To

August 6, 1993

James Carter, 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 Mr. Carter:

By letter dated December 22, 1993, the Fish and Wildlife Service (Service) requested that the Division of Oil, Gas and Mining (DOGM) not issue a permit to Sunnyside Cogeneration Associates until the issue of formal consultation for the project under Section 7 of the Endangered Species Act (Act) had been resolved. A permit was issued on February 4, 1993, before the consultation issue had been resolved. However, DOGM included a stipulation to the permit (Stipulation #16) that this issue be resolved to the Service's satisfaction.

In December the Service was requesting consultation on water depletions from the cogeneration plant, which DOGM maintained it had no authority over. While this office still believes that consultation should be required on the plant facility, we have not been able to obtain a solicitor's opinion on the subject. Rather than having this issue continue to be unresolved, we have decided to require consultation only on the portion of the facility which is included in DOGM's permit, that is the refuse area. In the Permit Application Package, under Section 728.310 it says "...a total of 32 acre-feet of water is needed for fugitive dust control per year. This amount of water will be totally evaporated."

This 32 acre-foot consumptive water use falls under the definition of a water depletion from the Upper Colorado River Basin, as defined in the Service's Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin (RIP) (U.S. Fish and Wildlife Service 1987). This water depletion requires a "may affect" determination for the four species of endangered Colorado River fish under Section 7 of the Endangered Species Act and a formal consultation with the Service.

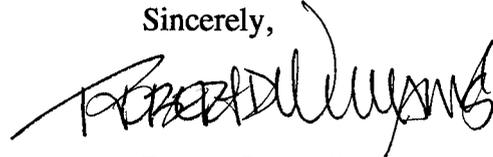
We therefore request that, to meet the requirements of the Endangered Species Act and Permit Stipulation #16, DOGM, or the Office of Surface Mining, enter into formal consultation with the Service. A Biological Assessment (BA) must be prepared and submitted to initiate consultation which details the source of the water, amount of the water depletion, and its effects on listed Colorado River fish species. Once the BA has been

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received the Service will prepare a Biological Opinion. When Sunnyside Cogeneration Associates has met any requirements of the Opinion, then the stipulation will be satisfied.

We would be glad to discuss this further with you. If you have comments or concerns, 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 written in a cursive style with a large, sweeping initial "R".

Robert D. Williams
State Supervisor

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