

Appendix O

U.S. Fish and Wildlife Concurrence



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Ecological Services
764 Horizon Drive, Building B
Grand Junction, Colorado 81506-3946

IN REPLY REFER TO:
ES/CO:BLM/CANM
TAILS 65413-20080-I-0166

August 4, 2008



Memorandum

To: Manager, Bureau of Land Management, Canyon of the Ancients National Monument, Dolores, Colorado

From: *for* Western Colorado Supervisor, Fish and Wildlife Service, Ecological Services, Grand Junction, Colorado
Don S. Galt

Subject: Canyon of the Ancients National Monument Biological Assessment for the Proposed Resource Management Plan and Environmental Impact Statement

The Fish and Wildlife Service reviewed your June 26, 2008, biological assessment (BA) for the subject project. The Canyon of the Ancients National Monument (CANM) is located west of Cortez and south of Dove Creek, Colorado, in Dolores and Montezuma counties and constitutes approximately 166,000 acres.

The Fish and Wildlife Service concurs with your "may affect, not likely to adversely affect" determinations for the Mexican spotted owl (*Strix occidentalis lucida*), southwestern willow flycatcher (*Empidonax traillii extimus*), and the yellow-billed cuckoo (*Coccyzus americanus*). None of these have been located in the CANM in previous surveys but suitable habitat exists. Our concurrence is based on the project description that includes the following stipulations: no surface occupancy; no ground disturbance; timing stipulations; riparian management considerations; recreational, grazing, and oil and gas leasing management; plans for surveys; and subsequent project specific consultation as necessary.

No concurrence is necessary for other species discussed in the BA for which a "no effect" determination was reached. If the Service can be of further assistance, please contact Terry Ireland at the letterhead address or (970) 243-2778, extension 16.

Pc: BLM/Dolores Public Lands Office, Durango (Kathy Nickell)

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764 Horizon Drive, Building B
Grand Junction, Colorado 81506-3946

IN REPLY REFER TO:
ES/GJ-6-CO-08-F-002
TAILS 65413-2008-F-0145

November 21, 2008

Memorandum

To: Manager, Bureau of Land Management, Dolores Public Lands Office, Dolores, Colorado

From: Acting Western Colorado Supervisor, U.S. Fish and Wildlife Service, Ecological Services, Grand Junction, Colorado *Ron S. Giddatt*

Subject: Programmatic Biological Opinion for Water Depletions Associated with BLM's Fluid Mineral Program and Other Actions Authorized by BLM on Public Lands within the San Juan River Basin in Colorado.

In accordance with section 7 of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 et seq.), and the Interagency Cooperation Regulations (50 CFR 402), this transmits the U.S. Fish and Wildlife Service's (Service) final biological opinion (BO) for impacts to federally listed threatened and endangered species for water depletions associated with Bureau of Land Management's (BLM) Fluid Mineral Program and other actions authorized by BLM on Public Lands within the San Juan River basin in Colorado. This BO has been reviewed by and prepared in cooperation with our Albuquerque, New Mexico, Ecological Services Field Office in Region 2 of the Service.

This BO is in response to your June 18, 2008, correspondence requesting initiation of consultation for the subject project. The Service concurs that the proposed project may adversely affect the Colorado pikeminnow (*Ptychocheilus lucius*) and razorback sucker (*Xyrauchen texanus*) and their designated critical habitat on the San Juan River.

Consultation History

A Recovery Implementation Program for Endangered Fish Species in the San Juan River Basin was initiated on November 1, 1992. The Recovery Program was intended to be the reasonable and prudent alternative to avoid jeopardy and provide recovery to the endangered fishes by depletions from the San Juan River. The Recovery Program developed flow recommendations for the San Juan River (Holden 1999) that mimic the natural hydrograph of the river by operating Navajo Dam according to specific criteria. On January 5, 2006, the Service issued a final BO on the operation of Navajo Reservoir to meet the flow recommendations. Water depleting projects that were in existence prior to November 1, 1992, are considered to be historic depletions. Those projects that were in existence on or after this date are considered new projects, even if they have

According to Service policy, as stated in the Endangered Species Consultation Handbook (Handbook) (USFWS 1998), some detectable measure of effect should be provided, such as the relative occurrence of the species or a surrogate species in the local community, or amount of habitat used by the species, to serve as a measure for take. Take also may be expressed as a change in habitat characteristics affecting the species, such as water quality or flow (Handbook, pages 4-47 to 4-48). Because estimating the number of individuals of the listed fishes that could be taken by the water depletions addressed in this BO is difficult for the reasons stated above, we have developed a surrogate measure to estimate the amount of anticipate take to listed fish in the form of harm. The surrogate we are using is the reduction of water that would occur from the proposed action. We exempt all take in the form of harm that would occur from the removal of 370 acre-feet of water per year. Water depletions above the amount addressed in this BO would exceed the anticipated level of incidental take and are not exempt from the prohibitions of section 9 of the Act.

The implementation of the Recovery Program is intended to minimize impacts of water depletions and, therefore, actions implemented by the Recovery Program serve as reasonable and prudent measures for minimizing the take that results from the 370 acre-feet of water depletion. Any amount of water withdrawal above this level would exceed the anticipated level of incidental take.

REINITIATION NOTICE

This concludes formal consultation on the proposed Project. As provided in 50 CFR § 402.16, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been retained (or is authorized by law) and if: 1) the amount or extent of incidental take is exceeded, 2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion, 3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered in this opinion, or 4) a new species is listed or critical habitat designated that may be affected by the action.

The SJRRIP is expected to result in a positive population response for the Colorado pikeminnow and razorback sucker in the San Juan River. If a positive population response for both species is not realized, as measured by the criteria developed by the Bureau of Reclamation dated July 6, 2001, this would be considered new information that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion. Therefore, reinitiation of section 7 consultation would be required for all projects dependent on the Recovery Program, including the Project. If reinitiation is required, the Service will follow the procedures regarding reinitiation of consultation pursuant to the "Principles for Conducting Endangered Species Act Section 7 Consultations on Water Development and Water Management Activities Affecting Endangered Fish Species in the San Juan River Basin."

Thank you for your cooperation in the formulation of this opinion and your interest in conserving endangered species.

The letter in its entirety
is located in the administrative
record.

