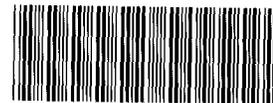


memorandum

Rocky Flats Office



000030274

DATE: MAR 05 1992

REPLY TO
ATTN OF: ERD:BKT:2541SUBJECT: Environmental Assessment for Standley Lake Diversion Project - Endangered Species Act
and Migratory Bird Treaty Act Compliance

TO: Thomas E. Lukow, Director, Waste Management and Environment Division

We have reviewed the August 2, 1991 version, of the Environmental Assessment for the Standley Lake Diversion Project and have concerns regarding both Endangered Species Act (ESA) and Migratory Bird Treaty Act (MBTA) compliance. Our concerns stem from the fact that this project is funded by DOE, and therefore, it is in DOE's interest that the project complies with all applicable laws. It is clearly stated that the U.S. Fish and Wildlife Service (FWS) has been contacted regarding this project. It is also clearly stated that the Ute ladies' tresses is a proposed species under the ESA and that potential habitat for this species exists along stretches of Woman Creek in the project area. However, since the publication of this Environmental Assessment, the Ute ladies' tresses has been elevated to a threatened species under the endangered species act.

Since the Ute ladies' tresses has been elevated from a proposed to a listed species, it is necessary to enter informal consultation with the FWS. In addition, DOE/RFO/ERD has received direction from FWS that presence/absence surveys for this particular plant species should be conducted only during the month of August. While the Environmental Assessment clearly states that habitat suitable for the Ute ladies' tresses exists in the project area, it is not indicated whether a presence/absence survey was conducted, when it was conducted and the individual who conducted the survey. DOE/RFO/ERD has learned that presence/absence surveys are to be conducted by an individual on the FWS list of experts on a particular species. If the presence/absence survey for the Ute ladies' tresses has been conducted in late July or August by a qualified expert on the FWS list, it should be so stated in the Environmental Assessment. If not, DOE/RFO/ERD recommends that this be done in August 1992, and the results of the presence/absence survey and FWS opinion regarding the survey be incorporated into the final EA.

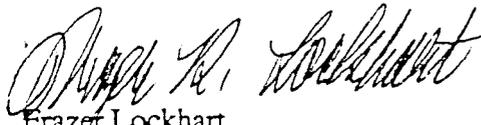
It is not stated in the Environmental Assessment whether consultation with the FWS regarding the MBTA has occurred. If it has, the results should be incorporated into the final Environmental Assessment. If not, DOE/RFO/ERD recommends that the consultation process be initiated. At a September 19, 1991 meeting with FWS regarding MBTA compliance, DOE/RFO/ERD was told to concentrate on migratory bird habitat with regard to project impact rather than all the migratory birds listed in 50CFR Part 10, Subpart B.

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However, they indicated the following as migratory birds of special concern: hawks, owls, eagles, peregrine falcons, ducks, geese and songbirds. Should the FWS agree that MBTA consultation is appropriate, the results of the consultation should be incorporated into the final Environmental Assessment.

As an additional note, a possibility exists that this project may fall under the Fish and Wildlife Coordination Act (FWCA). DOE/RFO/ERD recommends that FWS be contacted to determine if this is necessary for this project. If this consultation is necessary, the Colorado Division of Wildlife will need to be involved as the statute requires consultation with the State.

Questions or concerns regarding this memorandum should be directed to Bruce Thatcher of my staff.



Frazer Lockhart
Director
Environmental Restoration Division

cc:

R. Schassburger, ERD, RFO
B. Thatcher, ERD, RFO
P. Powell, ERD, RFO
G. Hill, EMB, RFO