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Keith Rose
U.S. Fish & Wildlife Service
Ecological Services
764 Horizon Drive, Suite 227
Grand Junction, CO 81506

Re: Green River Canal Company - Fish Exclusion Device at Tusher Wash

Dear Keith:

The Green River Canal Company is ready and willing to move forward on the design and construction of the planned fish exclusion device on the Canal Company's raceway at Tusher Wash on the Green River just north of Green River City. Following the Court's ruling that verified that Mr. Thayne does not have a property right to utilize the Canal Company's facilities for anything other than diversion of 35 cfs of irrigation water, and up to 400 cfs to pump the irrigation water, the Canal Company has attempted to negotiate a resolution of outstanding issues which would allow continued generation of power and bring finalization to the controversy. However, these efforts to date have been unsuccessful.

While it was understandable, at least as a courtesy, not to not move forward on this project until the District Court ruled, the Court has ruled, and we see no reason for continued delay. Frankly, while the Canal Company believes that it should not be held liable for any taking of an endangered species in the diversion and conveyance facilities used by it and Mr. Thayne, it cannot tolerate continued potential liability for a "take" of an endangered species. The Canal Company owns the land where any device will be located. The Court has ruled that Mr. Thayne's rights are limited by contract to receive only a maximum of 435 cfs (up to 400 cfs to pump 35 cfs). No other party need consent to our proceeding with design and construction. The Canal Company is willing to negotiate with the Fish and Wildlife Service to not allow the raceway flows contemplated in the Agreement with Mr. Thayne to be exceeded in the future.

Mr. Thayne's indication of his desire to appeal this ruling should not and cannot be a basis for delay. In the event that Mr. Thayne proceeds with his planned appeal, that appeal and potential additional proceedings based on the appeal, will likely take several years. At that time, if Mr. Thayne is successful, an event we believe

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to be unlikely, Mr. Thayn could, at his own expense, expand the exclusion device to accommodate additional flow necessary for his power generation.

In sum, concurrence by Mr. Thayn or any party other than the Canal Company to move forward is not necessary. The potential liability which the Canal Company faces under the status quo demands that this project proceed with all possible diligence. We stand ready to meet with appropriate government officials to discuss the design of the device and a schedule for its construction.

In the event that the Fish and Wildlife Service determines not to move forward at this time, we would be most appreciate of a letter relieving the Canal Company from further liability for a "take" of an endangered species due to Mr. Thayn's use of the raceway.

I will look forward to your reply.

Yours truly,


J. Craig Smith

cc: Board of Directors, Green River Canal Co.
cc: Reed L. Martineau, Esq.
cc: Bob Norman
cc: Reed Harris
cc: Rich Valdez, Ph.D.
cc: Jack Barnett, P.E.