



# United States Department of the Interior

## FISH AND WILDLIFE SERVICE Mountain-Prairie Region



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November 1, 2024

### Memorandum

To: Colorado, Utah, and Wyoming Field Office Supervisors  
Upper Colorado River Endangered Fish Recovery Program Director

From: Assistant Regional Director, Ecological Services, Region 6

Subject: Revised Consultation Guidance for De minimis Water Depletions in the Upper Colorado River Basin

In coordination with the Upper Colorado River Endangered Fish Recovery Program (Recovery Program), we have updated the de minimis depletion threshold for which consultations are required for the threatened humpback chub (*Gila cypha*), and the endangered razorback sucker, (*Xyrauchen texanus*), Colorado pikeminnow (*Ptychocheilus lucius*), and bonytail (*Gila elegans*). We have determined that water-related activities in the Upper Colorado River basin resulting in less than 10.0 acre-foot per year of new depletions have no effect on the four ESA listed Colorado River fish species or their designated critical habitat as listed under the Endangered Species Act of 1973, as amended (ESA) (16 U.S.C. 1531 et seq.). Thus, depletions up to 10.0 acre-feet per year do not require ESA section 7 consultation with the U.S. Fish and Wildlife Service (Service). While no section 7 consultation is needed, the Service requests Federal agencies notify the Upper Colorado Fishes Coordinator of depletions between 0.1 and 10 acre-feet per year with the approximate location of the project (e.g., reference to the most proximate surface water or tributary), the water use (e.g., agricultural, oil and gas, energy), and the timing of and depletion amount. Receiving these notifications will allow us to confirm our assumptions about the new de minimis guidance and may be used to inform future guidance. These data will also be included in the annual Recovery Program report to Congress and will be available to the public through Recovery Program reports and website.

This memorandum serves as a revision of our determination from August 11, 2009, in which we relayed that water depletions resulting in less than 0.1 acre-foot per year did not require consultation with the Service. The determination to raise the de minimis threshold to 10.0 acre-feet per year is based on a review of depletions over the last 36 years, the best available science, and sufficient progress to date of the Recovery Program.

Over the last 60 years, flows in the Upper Colorado River averaged 6.99 million acre-feet per year, as derived from the “unregulated flow into Lake Powell” (Colorado River Basin Forecast Center

2024), while the average variation in flows over the last 10 years is 2.93 million acre-feet per year, which means the annual variation (i.e., “noise” in the system) is about 42 percent of the average total annual flow. A more conservative (e.g., higher flow) reconstruction of annual flow of the Colorado River at Lees Ferry, Arizona (which reflects conditions in the entire Upper Colorado River basin) between 1905 and 1995 (the driest model) gave a long-term mean of 14.3 million acre-feet per year, and an average variation of 9.95 million acre-feet per year, or 69 percent of the average total flow (Woodhouse et al. 2006). This reconstruction explained over 70 percent of the variance in gage records. Due to the high variability in flows between years, loss of a small amount of flow to minor depletions is negligible to the four ESA listed Colorado River fish species and their critical habitat.

Since 1988, we have completed 175 consultations for depletions between 0.1 and 10.0 acre-feet per year, totaling 473.15 acre-feet. In aggregate, these depletions averaged 2.9 acre-feet per year. The total of 473.15 acre-feet represents 0.007 percent of the reconstructed, long-term mean annual flow (6.99 million acre-feet), and represents 0.003 percent of the average annual unregulated flow into Lake Powell (14.3 million acre-feet). The 175 consultations for new depletions less than 10.0 acre-feet represent 8 percent of all new depletion projects since 1988. The variation in annual river flows among years (hundreds of thousands or even millions of acre-feet per year) overwhelms any impact these small depletions might have by several orders of magnitude. Furthermore, 473.15 acre-feet is equivalent to about 0.65 cubic feet per second per year, basin wide. When compared to all flows in the Upper Colorado River basin, the aggregate of depletions less than 10.0 acre-feet per year (for example, a stock pond located on federal land) have had no effect on the four ESA listed Colorado River fish species and their designated critical habitat.

A revised de minimis value of 10.0 acre-feet per year represents one thousandth of the average annual variation in volume over the past 10 years. We have no reason to believe the number of depletions up to 10.0 acre-feet per year will substantially increase in the future; therefore, these small depletions will continue to have no effect into the future. Based on efforts of the Recovery Program and the best available science, the Service downlisted humpback chub from endangered to threatened (86 FR 57588; October 18, 2021) and proposed downlisting razorback sucker from endangered to threatened (86 FR 35728; July 7, 2021). The most recent sufficient progress memo (2023) concluded that the Recovery Program is making sufficient progress to continue avoiding the likelihood of jeopardy resulting from depletion impacts of new projects that have an annual depletion of up to 4,500 acre-feet/year. Depletions projects exceeding 100 acre-feet/year will continue to assess a depletion fee, and projects exceeding 4,500 acre-feet/year will require additional recovery actions to be determined by the Service.

For projects involving small tributaries, the Service requests federal agencies consult with their local state wildlife agencies about the presence of sensitive species.

As described in our prior guidance from August 11, 2009, detention basins designed to detain runoff for less than 72 hours, and temporary withdrawals of water outside of critical habitat (e.g., for hydrostatic pipeline testing) that return all the water to the same drainage basin within 30 days are considered to have no effect and do not require consultation.

These thresholds were established to minimize the time and effort expended by us, by project proponents, and by lead Federal agencies in the review of projects that are not expected, either

individually or collectively, to have any effect on the endangered fish species, or the success or failure of the Recovery Program.

Consultation on water-related activities depleting more than 10.0 acre-foot per year will comply with the section 7 agreement, as implemented by the Recovery Program participants beginning in 1993, and the Recovery Action Plan that serves as conservation measures to minimize adverse effects to listed species or critical habitat.

If you have any questions, please contact Kate Lunz, Upper Colorado River Fishes Coordinator, at [kathleen\\_lunz@fws.gov](mailto:kathleen_lunz@fws.gov).

#### References Cited

Colorado River Basin Forecast Center. 2024.

[https://www.cbrfc.noaa.gov/wsup/graph/espgraph\\_hc.html?id=GLDA3&year=2024](https://www.cbrfc.noaa.gov/wsup/graph/espgraph_hc.html?id=GLDA3&year=2024). Accessed July 7, 2024.

Woodhouse, C.A., S.T. Gray, and D.M. Meko. 2006. Updated streamflow reconstructions for the Upper Colorado River Basin. *Water Resources Research* 42, W05415, doi:10.1029/2005/WR004455.