

Water Depletion Information and Decision Tree 2024

The following information clarifies the process for water depletion consultations for states within the Upper Colorado Basin (Utah, Colorado, and Wyoming). Specifically, this decision tree should be used to differentiate historic and new water depletions, determine section 7 consultation requirements, and identify required depletion fees. Please answer the following questions for your project to arrive at an understanding of your project's impacts.

1. Is the depletion 10.0 acre feet or less?

- If less than 10.0 acre feet, **no consultation is necessary.**
- If the depletion is greater than 10.0 acre feet, go to #2

2. Is the depletion historic?

- If the entire water source was perfected (i.e. put into use) prior to 1988, then it is considered historic and **formal consultation is not necessary.** However, if new permitting is occurring that facilitates the continued use of the depletion, formal consultation may be necessary. Please contact our office for project by project analysis.
- If the water source was permitted prior to 1988 but the total amount was not put into use, then the unused portion would be considered a new depletion and **formal consultation would be necessary.** For example, a municipality has a water right of several thousand acre feet which was permitted prior to 1988, but did not fully utilize their water right and later sells a portion of their water to a developer. The amount sold was not previously perfected and would be a new depletion to the system.
- If the entire water source was perfected prior to 1988 but now there will be a change in use (i.e. going from agriculture to oil and gas development), this would be considered a new depletion and **formal consultation would be necessary.**
 - The conditions above are supported by the following citation:
In order to further define and clarify the process in the Recovery Program, a section 7 agreement was implemented on October 15, 1993, by the Recovery Program participants. The agreement describes the framework for conducting Section 7 consultations on depletion impacts related to new projects (as defined in Section 4.1.5 a. of the [Recovery Implementation Program (RIP)]) and impacts associated with historic projects in the Upper Colorado River Basin. The RIP is intended to offset both the direct and depletion impacts of historic projects occurring prior to January 22, 1988 (the date when the Cooperative Agreement for the RIP was executed) if such offsets are needed to recover the fishes. Under certain circumstances, historic projects may be subject to consultation under Section 7 of the ESA. An increase in depletions from a historic project occurring after January 22, 1988, will be subject to the depletion charge.

Attachment 2

- If the depletion is not historic, go to #3.

3. Is the depletion 100-acre feet or less?

- If less than 100 acre feet, **Formal consultation is required. However, the depletion fee for this project is waived.**
 - The conditions above are supported by the following citation:
Included in the Recovery Program was the requirement that a depletion fee would be paid to help support the Recovery Program. On July 8, 1997, the Service issued an intra-Service biological opinion determining that the depletion fee for depletions of 100 acre-feet or less are no longer required because the Recovery Program has made sufficient progress to be the reasonable and prudent alternative to avoid the likelihood of jeopardy to the endangered fishes and to avoid destruction or adverse modification of their critical habitat by depletions of 100 acre-feet or less.
- If more than 100-acre feet, **Formal consultation is required and a depletion fee must be paid.**
 - This fee is a one-time fee paid for the maximum annual water depletion associated with a project. In fiscal year 2025 (October 2024 to September 2025), this fee is \$27.22 per acre-foot. This amount is adjusted annually to correspond with economic inflation, as measured by the consumer price index. Please contact our office for the current rate.
- If more than 4,500 acre feet, **Formal consultation is required, a depletion fee must be paid, and additional RIPRAP actions may be necessary.** The need for additional RIPRAP actions will be determined during the formal consultation process.

Water Depletion Decision Tree

