




United States Department of the Interior

FISH AND WILDLIFE SERVICE
Ecological Services
Nebraska Field Office
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MEMORANDUM

To: Dr. Jerry Kenny, Executive Director
Platte River Recovery Implementation Program

From: Matt Rabbe, U.S. Fish and Wildlife Service
Wildlife Biologist, Mountain-Prairie Region 

Date: February 8, 2011

Subject: USFWS reporting on 2010 'tiered' Platte Biological Opinions

The U.S. Fish and Wildlife Service (Service) committed, in the PRRIP Federal Depletion Plan, to provide an annual summary to the Governance Committee regarding Endangered Species Act (ESA) Section 7 consultations related to depletions that relied on the Platte River Recovery Implementation Program (Program). Attached is a summary of consultations completed for depletions relying on Program coverage during the fourth calendar year of the Program, January through December 2010, for distribution to the Governance Committee.

Tiered Biological Opinions

The Program's programmatic biological opinion was issued on June 16, 2006. As described in that opinion, subsequent Federal agency activities in the Program area having a federal nexus (both existing and certain new water-related activities) are able to proceed in a streamlined manner and "tier" from the programmatic biological opinion with regard to addressing their effects on federally-listed species and designated critical habitat in the central and lower Platte River.

The Program Document (page 21) states that "Such ESA compliance will continue beyond the first 13-years of the Program provided a subsequent Program increment or First Increment Program extension is adopted pursuant to ESA and NEPA compliance procedures, and, for a subsequent increment, the effects of water-related activities are to be covered under a programmatic biological opinion for that subsequent increment." Based on the above, each completed biological opinion that tiered from the programmatic biological opinion includes a statement that re-initiation of consultation will not be required at the end of the first increment.

Section 7 Consultation Website

The Service continues to maintain a website (www.fws.gov/platteriver) providing information to federal agencies and water-related project proponents regarding procedures for seeking ESA coverage for water-related activities through the Platte River Recovery Implementation Program. That site provides ‘Guidance Documents’ specific to each state, as well as a “template biological assessment” and other information relevant to pursuing a streamlined biological opinion.

Federal Depletion Offsetting Mechanisms and Agreements with the Three States

The PRRIP Federal Depletions Plan notes that:

“Each state has agreed to work with the DOI and cooperating federal agencies in the process of securing up to 350 acre-feet of water annually, if needed, to offset new federal depletions within the state in a manner consistent with the respective state’s Depletion Plan.”

Federal depletions associated with historic (pre-1997) federal water uses in the Platte River basin are considered automatically covered by the Program, consistent with the Program’s intent to cover historic uses and in recognition of the substantial federal monetary contributions being made toward First Increment implementation.

With regard to new federal water uses in the Platte River basin, the following progress was made in 2010:

Colorado: In 2010, MOA’s with individual federal agencies have been developed for new depletions with each interested respective federal agency. An MOA between the USFWS, the Federal Highway Administration and Central Federal Lands Highway Division was signed on September 24, 2010. MOA’s between BLM and the USFWS, as well as WAPA and the USFWS were both signed February 26th, 2010. These described how federal depletions will be handled consistent with Colorado’s depletions plan and the federal depletions MOA (completed in 2009).

Wyoming: The Service and WSEO have discussed developing an MOA or other written documentation to formalize and describe the parties’ common understanding about the criteria for recognizing a depletion as a ‘federal’, methods of tracking and reporting on those depletive activities, and potential alternatives for addressing new federal depletions consistent with Wyoming’s Depletion Plan. No formal documentation has been developed at this time.

Nebraska: Discussions have not yet been advanced with the State of Nebraska regarding potential mechanisms for addressing new federal depletions in that state consistent with the state’s Depletion Plan. There have not been any federal depletions to date in Nebraska (since program inception). We plan to engage in discussions in 2011.

Tiered-Consultation Activity in 2010

Nineteen consultations relying on the Platte River Recovery Implementation Program were completed in 2010. Of those, 14 were in Colorado, one in Nebraska, and four in Wyoming. Three federal depletions (all in Colorado) were addressed under the programmatic biological opinion. All 19 consultations are described in the attached table. They are grouped by state and ordered by date that the biological opinion was issued. The table provides information on:

- FWS's internal Service Tracking and Integrated Logging System (TAILS) number;
- Lead federal agency;
- County (where applicable);
- Project name;
- Project proponents/beneficiaries;
- Date that the biological opinion was issued;
- Category of the depletion (existing, new, or some combination thereof; and whether the depletion is 'federal' or 'non-federal');
- Estimated start year of the water use (if a new water-related activity);
- A summary of the corresponding water sources, uses, and depletions if estimated;
- The offsetting measure(s) used to address depletions.

The information presented in the table is condensed, summarized information; more complete information is provided in the corresponding biological opinion. The shaded rows in the attached table highlight the three Program 'federal depletion' consultations in 2010.

cc: Matt Hoobler, Wyoming State Engineer's Office
Mark Sattelberg, U.S. Fish and Wildlife Wyoming Field Supervisor
Nancy Warren, U.S.D.A. Forest Service
Sandy Vana-Miller, U.S. Fish and Wildlife Service, Colorado