

STATE OF COLORADO

Colorado Water Conservation Board

Department of Natural Resources

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TO: Colorado Water Conservation Board Members

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DATE: January 14, 2011

SUBJECT: **Agenda Item 28, January 24-26, 2011 Board Meeting**
Stream & Lake Protection and Interstate & Federal Sections – Endangered
Species Conservation Trust Fund FY 11-12 Funding Recommendations

Background

The Native Species Conservation Trust Fund (SCTF) was created in 1998, pursuant to HB98-1006. Each year, after consulting with the CWCB and its director, the Colorado Wildlife Commission and the director of the Colorado Division of Wildlife, the Executive Director of the Department of Natural Resources must prepare a “species conservation eligibility list.” The list must describe programs and associated costs eligible for funding.

The “species conservation eligibility list” (“SCEL”) is then sent to the General Assembly for review and modification as appropriate prior to the passage of the annual SCTF bill. After its initial creation, the General Assembly expanded the SCTF to cover studies and programs within the Division of Wildlife and State Parks dedicated to recovering species listed as threatened and endangered under state law; recovering and protecting federal candidate species; conducting scientific studies related to the listing or delisting of any species; and evaluating genetic, habitat and declining species baseline data.

Staff Recommendation

Staff recommends, contingent upon appropriations, that the Board: 1) concur with the DNR Executive Director’s proposed recommendation to the General Assembly to approve an expenditure of up to \$7,000,000 from the SCTF for FY 11-12; and 2) forward a statement of concurrence to the Colorado Wildlife Commission.

Attachments

Additional Background – Species Conservation Trust Fund, FY 11-12

Distribution of Funds

The Act requires that funding be distributed for the following purposes:

1. Cooperative agreements, recovery programs, and other programs that are designed to meet obligations arising under the federal "Endangered Species Act of 1973" and that provide regulatory certainty.
2. Studies and programs established or approved by the CDOW and the Executive Director of the DNR regarding:
 - (a) Species placed on the state endangered or threatened list;
 - (b) Candidate species, in order to assist in the recovery or protection of the species to avoid listing of the species; and,
 - (c) Scientific research relating to listing or delisting any species.

Current SCTF Balance and related Considerations

As of January, 2011, the unobligated balance in the SCTF is projected to be approximately \$3 million for Fiscal Year 2011-2012. In addition, by operation of statute, an additional \$4 million will be transferred into the fund from the Severance Tax Operational Account and will be available for expenditure at the beginning of FY 2011-12. Finally, there also may be additional funds resulting from accrued interest and statutorily approved reversions of unspent SCTF funds originally appropriated prior to 2007. However, sufficient uncertainty currently surrounds the availability and amount of these funds that the FY 2011-12 SCEL is not dependent upon their availability. Therefore, the projected balance in the SCTF available for expenditure in FY 2011-12 is currently estimated to be \$7 million. Severance Tax projections will be updated in March.

Given the prospect of some volatility in these projections, there may be less than \$7 million available to fund FY11-12 projects. Should less money be available for expenditure than current projections indicate, Staff recommends that the FY 2011-12 contributions to the Platte River Recovery Endangered Species Act Recovery Implementation Program be reduced by a commensurate amount.

FY 2011-10 Recommended Programs

1. Platte River Recovery Implementation Program (Program or PRRIP): up to \$2,000,000

The PRRIP was initiated in January 2007, and was authorized by Congress in May 2008. The Program serves as the "reasonable and prudent alternative" under the Endangered Species Act for water use and development in Colorado in the North and South Platte River basins, while promoting the conservation and recovery of downstream endangered bird and fish species. As of November 30, 2010, federal funding appropriations for the program were \$22,300,000.

Colorado's cost share contribution for the first program increment (13 years) is estimated to be \$24,000,000 (in 2005 dollars), or approximately \$1.85 million per year. Early appropriation of this obligation has been important because many of the activities of the Program occur in the beginning of the Program. For example, land acquisition is expected to be completed within the first five years of the Program, at an estimated cost of \$23,000,000. The land acquisition program operates under a "willing seller, willing buyer" concept; therefore, the program must be able to act on short notice when an opportunity arises. To date, the Program has been purchasing land at an extraordinarily fast pace. In addition, many of the monitoring and research activities will require substantial capital and operating expenditures in the first few years.

In addition, appropriation of Colorado's full funding meets with prudent fiscal management practices. Wyoming has already appropriated its entire \$6,000,000 cost share obligation. Any funds dedicated to the Program now, will allow Colorado to be able to offset the inflationary adjustments as required under the authorizing legislation and under the Program agreement. Colorado has dedicated approximately \$23 million to this Program to date. With the request for \$2 million this year, we anticipate that Colorado may need one additional contribution of \$1 million next year. However, because of the inflationary adjustments indicated above, there still remains a chance that a small amount of additional appropriation may be needed to close out Colorado's cash obligation to the Program for the first increment. As we approach the end of the first increment, we will be more informed as to whether an additional appropriation will be needed in the future.

2. 10825 Water: \$1,000,000 – (\$500,000 cost share for the West Slope-Ruedi Reservoir, \$500,000 cost share for the East Slope)

The Upper Colorado River Endangered Fish Recovery Program Agreement was signed in 1988 by the Department of the Interior, Utah, Wyoming, Colorado, and the Western Area Power Administration. This Program also includes other environmental, power, and water user interests. The Program is committed to recovering four species of endangered fish (Humpback Chub, Colorado Pikeminnow, Razorback Sucker, and Bonytail) while water use and development is allowed to occur to meet human needs. This Program has a long history of success and has been heralded as a "model" program to address ESA requirements in a programmatic manner. The State of Colorado has provided cash to meet the State's cost share requirements. However, there are water obligations as well.

The East Slope and West Slope water providers in the Upper Colorado Basin, as Program partners, have agreed to permanently supply 10,825 acre-feet of water per year ("10825 Water") to assist with the recovery of the endangered fish. The 10825 Water is supplied to the "15-Mile Reach" of the Colorado River near Grand Junction, typically during the late summer and early fall. During this time of year the stream flow of the Colorado River within the 15-Mile Reach is substantially impacted by upstream water diversions, and the 10825 Water is intended to benefit the endangered fish. In the past year, the East Slope and West Slope water providers have agreed on a strategy to provide the 10825 Water. This strategy provides that 50% of the 10825 Water will be provided from Ruedi Reservoir and 50% of the 10825 Water will be provided from Lake Granby. The costs of acquiring the 10825 Water is substantial (estimated to be more than \$17 million), and the water users are providing the majority of the funds needed to supply this 10825 Water. The State's contribution of approximately \$1 million will allow the water providers' strategy to provide the 10825 Water to succeed. This State contribution will be allocated in equal parts to split equally between the East Slope and the West Slope water contributions.

3. Selenium Research, Monitoring and Evaluation: \$500,000

The Gunnison Basin Selenium Management Program (SMP) is required as one of the reasonable and prudent alternatives identified in the Programmatic Biological Opinion (PBO, issued Dec. 4, 2009) for the Aspinall Unit NEPA evaluation (DEIS, issued Feb. 13, 2009). The USFWS has determined that high selenium levels in the Uncompahgre and Gunnison Rivers is limiting the recovery of several Colorado River endangered fish species and that a SMP is necessary to avoid a finding that basin water operations are causing take of those endangered species. By meeting

the targets set in the SMP Basin water users are provided regulatory certainty that continued operation of their water projects will not be found to be in violation of the Endangered Species Act. The SMP is described in the US Bureau of Reclamation's Biological Assessment (BA) which is part of the Aspinall DEIS, and sets a goal of reducing selenium concentrations at the downstream end of the Gunnison River, below the confluence with the Uncompahgre, by approximately 50% over the next decade. As outlined in the BA, effected parties, including Reclamation, Basin water users and the State of Colorado must act together to achieve this reduction in selenium levels. Pursuant to that mandate the CWCB on behalf of the State of Colorado, on October 15, 2010 entered into a Memorandum of Understanding (MOU) with Reclamation and the other effected parties under which they agree to develop a specific selenium reduction plan designed to meet the PBO goals and thereby assist in the recovery of the endangered fish. It is expected that a primary selenium control measure will be accelerated implementation of irrigation system improvements through the existing Colorado River Basin Salinity Control Program (CRBSCP), however that program is prohibited from spending any additional funds on the incremental costs associated with selenium control. The SCTF appropriation sought for FY2011-12 and future years will be used to provide cost share support to CRBSCP projects, both studies and on the ground implementation, to cover the selenium specific costs of those activities not eligible for salinity funding. It is anticipated that the SCTF funds will be leveraged at a ratio of 1:3 or better through this process. In addition, the selenium reduction plan currently under development may identify other opportunities for the CWCB to assist Basin water users in meeting the selenium reduction targets and/or determining the effectiveness of selenium control as a component of endangered fish species recovery. In future years SCTF appropriations for the Gunnison SMP may be used for those purposes as well.

4. Instream Flow Water Rights Acquisition: \$500,000

The CWCB staff is in the process of evaluating an acquisition of water rights for instream flow use on Williams Creek, tributary to Fountain Creek. The resulting instream flow water right would preserve and/or improve the natural environment supporting the Arkansas darter to a reasonable degree. The Arkansas darter is listed as threatened in Colorado and is a candidate for protection under the federal Endangered Species Act

Colorado Division of Wildlife Recommendation: \$2,000,000 to support DOW programs as described in the attached spreadsheet.

Colorado State Parks Recommendation: \$500,000 to support Natural Areas and Parks programs as described in the attached spreadsheet.

Species Conservation Trust Fund -- Project Eligibility List, FY 11-12

Agency	Program	Activity	FY 11-12
CWCB			
	Platte River Recovery Implementation Program	FY 09-10 obligation	2,500,000.00
	Upper Colorado River Fish Recovery Program	"10825" Water Purchase	1,000,000.00
		Gunnison Basin selenium research, monitoring and evaluation	500,000.00
	Instream flow rights acquisition	Williams Creek / Arkansas darter habitat	500,000.00
	CWCB subtotals		4,500,000.00
DOW			
	Native grouse conservation (Gunnison sage grouse, Greater sage grouse, Columbian Sharptail, Lesser prairie chicken)	<i>Population Management</i> (GuSG captive breeding program, wild bird survival program)	105,000.00
		<i>Habitat Management</i> (e.g., pinyon-juniper removal to restore sagebrush; native seed nursery/distribution warehouse; revegetation; weed control; cost-share to USDA grouse conservation programs; CCAA enrollment)	400,000.00
		<i>Research, Monitoring and Evaluation</i> (e.g., research-related grouse lek monitoring; habitat condition and treatment evaluation)	500,000.00
	Native fish conservation	<i>Habitat and Population Management</i> (e.g., translocation of fish species; population augmentation; stream habitat restoration including tamarisk control; native cutthroat	300,000.00
		<i>Research, Monitoring, and Evaluation</i> (effectiveness of fish passage mitigation and recharge systems; impact of endocrine disrupters; evaluation of current sampling protocols, inventory for bluehead sucker, flannelmouth sucker, roundtail chub)	260,000.00
	Wildlife disease management	<i>Research on plague management</i> to benefit burrowing owls, black-footed ferrets, mountain plovers, 3 species of prairie dogs; white-nose bat syndrome detection, prevention and control, etc.	410,000.00
	Wildlife climate adaptation	<i>Coordinate adaptive wildlife management research</i> and actions to address climate change; cost-share development of predictive climate models for wildlife and habitat.	25,000.00
	DOW Subtotals		2,000,000.00
Parks			
	Rare species inventory and protection within designated Natural Areas	<i>Inventory and protect</i> endangered plants and rare wildlife within designated Natural Areas	300,000.00
	Rare species inventory and protection within State Parks	<i>Inventory and protect</i> endangered plants and rare wildlife within existing State Parks	200,000.00
	State Parks Subtotals		500,000.00
TOTALS			7,000,000.00