

STATE OF COLORADO

Colorado Water Conservation Board

Department of Natural Resources

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TO: Colorado Water Conservation Board Members

John W. Hickenlooper
Governor

FROM: Ted Kowalski
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DATE: January 16, 2013

SUBJECT: **Agenda Item 12, January 28-29, 2013 Board Meeting**
Interstate, Federal, and Water Information Section – Species Conservation
Trust Fund FY 13-14 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 Parks and Wildlife, the Executive Director of the Department of Natural Resources prepares a “species conservation eligibility list.” The list describes programs intended to accomplish the goals first articulated in HB 98-1006 (see “distribution of funds” section below for a brief description of these programs’ objectives) 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 (now Colorado Division of Parks and Wildlife) (“CPW”) 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 \$4,000,000 from the SCTF for FY 13-14 for the projects and programs outlined herein; and 2) forward a statement of concurrence to the CPW Commission.

Attachments

Additional Background – Species Conservation Trust Fund, FY 13-14

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 CPW 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

The unobligated balance in the SCTF is currently projected to be as much as \$4 million for Fiscal Year 2013-2014, though this amount is dependent upon actual severance tax receipts in the remaining months of Fiscal Year 2012-2013.

Severance Tax projections will be updated on March 20, 2013, at which time the Executive Director's office will make its final determination about the total amount of funds available for expenditure from the SCTF in FY 2013-2014. Since severance tax receipts are subject to some volatility due to fluctuating energy prices as well as variable local property tax rates and associated credits energy producers can apply toward state severance tax liability, it is possible that there could be less than \$4.0 million available to fund FY13-14 SCTF projects. Should less money be available for expenditure than current projections indicate, Staff recommends that the Board authorize reduction of FY 2013-14 contributions proportionally from the amounts described in more detail below, unless staff deems it necessary to reduce amounts based on prioritization, project need and the matching capacity of project partners.

This is the last year of funding currently authorized. Therefore this year's bill will include language to extend funding for an additional 3-4 years.

FY 2013-14 Recommended Programs

1. Selenium Management Program/Selenium Research, Monitoring, Evaluation and Control Activities : up to \$500,000

The Gunnison Basin Selenium Management Program (SMP) is a required conservation measure identified in the Programmatic Biological Opinion (PBO, issued by USFWS Dec. 4, 2009) as part of the Aspinall Unit NEPA evaluation (PFEIS, issued December 2010). The USFWS has determined that high selenium levels in the Uncompahgre and Gunnison Rivers are 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 jeopardy to the continued existence of those endangered species. By meeting the targets set in the SMP, critical historical water uses are protected and 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. 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 affected parties under

which they agree to develop the SMP to meet the PBO goals and assist in the recovery of the endangered fish.

The SMP Program Formulation Document (“SMP-PFD”) was transmitted from the U.S. Bureau of Reclamation on behalf of the SMP partners and beneficiaries to the USFWS on Jan. 3, 2012. It sets aggressive goals for selenium reductions in order to comply with the Endangered Species Act over the next 15 years. As outlined in the PBO and SMP-PFD, affected parties, including Reclamation, Basin water users and the State of Colorado must act together to achieve these goals. The 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 FY2013-14 will continue to be used to provide cost share support to CRBSCP projects, including studies and implementation, to cover the selenium-specific costs of those activities that are not eligible for other funding provided by the CRBSCP. It is anticipated that the SCTF funds will be leveraged at a ratio of 1:2 or better through this process. In addition, the SMP identifies 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. Specifically, the FY13-14 authorization requested herein will be used to support the following four activities:

- Canal lining demonstration using magnetic imaging to target leaking sections
- Implementation of USGS Science Plan recommendations
- Optimization Study of non-federal irrigation systems in Lower Gunnison Basin
- Technical assistance to irrigation system operators with application planning and preparation for CRBSCP grant programs

2. White River Management Plan: up to \$250,000

The U.S. Fish & Wildlife Service is working on establishing Flow Recommendations for the White River just beyond the Colorado-Utah state line as part of the Upper Colorado River Recovery Program. Flow recommendations will likely be published in the summer or fall of 2012. Participants in the Recovery Program will work with local water users and entities to create a management plan for the White River. The management plan would provide the basis for a programmatic biologic opinion (PBO) for the basin. A favorable PBO would provide existing water users and possibly some future water users some protection and streamlining for Endangered Species Act (ESA) issues within the basin. The White River basin is the only river basin in western Colorado that does not yet have a PBO.

Participants would like to hire consultants to assist with river basin modeling and with designing and drafting the management plan. The current cost estimate for the modeling, public meetings, and finalization of the management plan could be greater than \$250,000. Other participants may provide some funding, but there are no current commitments from the other participants at this time. The CWCB seeks up to \$250,000 to support this management plan process.

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

The CWCB staff is conducting a preliminary investigation of a potential water rights acquisition that would benefit Colorado River cutthroat trout habitat in the Yampa River Basin in Routt

County. Due to the preliminary nature of the negotiations on this potential transaction, staff needs to keep the details confidential at this point in time.

4. Fountain Creek Fish Passage Project: up to \$250,000

Last year, the Board authorized expenditure of up to \$500,000 to support fish passage associated with certain plains fishes (14 species are listed by the State of Colorado as threatened, endangered or of special concern) which depend upon stream systems connectivity. In order to prevent further decline and barriers to species recovery, habitat fragmentation must be reversed. Between Colorado Springs and Pueblo, over 20 diversions and other structures exist in Fountain Creek and its tributaries that transform continuous systems into a series of potentially compromised habitats due to fragmentation.

Many partners have participated in this project to date to complete fish monitoring, background studies and design for the OHDD fish passage in 2011, including Colorado Parks and Wildlife, U.S. Geological Survey, CWCW Water Supply Reserve Account, Colorado Springs Utilities, Colorado State University, Lower Arkansas Valley Conservancy District, and U.S. Army Corps of Engineers. The total cost of this project is currently estimated to be upwards of \$1.15 million. This request is for an additional \$250,000, with the balance expected to be obtained from matching contributions by project partners.

5. Colorado Parks and Wildlife Recommendation: up to \$2,500,000 to support CPW programs as described in the table directly below.

Native Terrestrial Wildlife	
Habitat Management and Propagation	\$10,000
Research, Monitoring and Evaluation	\$816,000
Native Aquatic Wildlife	
Habitat/Population Management and Propagation	\$500,000
Research, Monitoring and Evaluation	\$324,000
Wildlife Disease Management and Landscape Adaptation	\$350,000
Natural Areas- Rare Plant Conservation Program and Species Conservation on CPW Properties	<u>\$500,000</u>
TOTAL	\$2,500,000