



COLORADO

**Colorado Water
Conservation Board**

Department of Natural Resources

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TO: Colorado Water Conservation Board Members

FROM: Carlee Brown
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DATE: January 28, 2019

AGENDA ITEM: 17. 2019 Species Conservation Trust Fund Eligibility List Approval

Introduction

The Species Conservation Trust Fund (SCTF) was created in 1998, pursuant to HB98-1006 (codified at section 24-33-111, C.R.S. [2014]). The General Assembly set forth that the fund would be used to preserve or improve the natural environment of species that have been listed as threatened or endangered under state or federal law, or are candidate species or are likely to become candidate species.

Each year, the Executive Director of the Department of Natural Resources (DNR) prepares a species conservation eligibility list (SCEL) after consultation with the CWCB and its Director, and the CPW Commission and its Director. The SCEL identifies programs (and associated costs) that are eligible for funding from the SCTF. Once finalized with the Board and the Commission, the SCEL is sent to the General Assembly for review and modifications as appropriate prior to the passage of the annual SCTF bill.

Staff Recommendation

Staff recommends, contingent upon available revenues, that the Board: (1) concur with the DNR Executive Director's proposed recommendations to the General Assembly to approve an expenditure of up to \$6 million from the SCTF for FY 19-20, including \$3 million for the CWCB priorities outlined herein; and (2) forward a statement of concurrence to the CPW Commission.

Staff additionally recommends that the Board authorize up to \$600,000 from the Construction Fund to ensure that one year's worth of Colorado's anticipated financial commitment to the Platte River Recovery Implementation Program is met in the coming fiscal year.



Statutory Requirements of the Species Conservation Trust Fund

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 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

DNR projects that a total of \$3.2 million to be available for SCTF projects in FY 19-20, contingent on the approval of the General Assembly. CWCB is likely to receive \$1,546,000 of SCTF revenues (with the remainder directed to CPW projects and ESA-related legal expenses).

Severance tax revenues were lower than average in FY 17-18 and FY 18-19 due to a combination of routine severance tax refunds and a new round of severance tax deductions and refunds that followed the Colorado Supreme Court’s ruling in *BP America*. The General Assembly recognized the value of SCTF projects by allocating General Fund dollars to provide continued support.¹ The 2018 bill required, however, that FY18-19 severance tax revenues first repay the General Fund for last year’s transfer. DNR expects that this requirement will be met by the end of FY18-19.

Given this history, DNR has encouraged CWCB and CPW to identify priorities for up to \$6 million of funding for FY 19-20, as well as a plan for reduced funding if needed. CWCB staff proposes allocating \$3 million of SCTF funding to the two programs described below. Should less money be available, staff recommends that the Board authorize proportional reduction of recommended funding, unless staff deems it necessary to reduce amounts based on prioritization, need, or the matching capacity of program partners.

The Platte River Recovery Implementation Program is listed as the top priority in staff’s recommendation below. Colorado and other Program partners are pursuing an Extension of the Program’s First Increment this year. One component of the Program’s proposed Extension is a long-term funding commitment from the State of Colorado as described below. In an effort to meet stay on track for Colorado’s anticipated commitment, staff additionally recommends that the Board authorize up to \$600,000 from the Construction Fund to ensure that one year’s worth of Colorado’s financial commitment under the Extension—\$1.9 million—is reserved for the Program.

¹ SB17-259 provided \$4.1 million of General Fund dollars to the SCTF for FY17-18.
HB18-1338 provided \$3 million of General Fund dollars to the SCTF for FY 18-19.



FY 2019-20 Recommended Projects

CWCB staff recommends the following projects for FY 19-20.

Total Request:	Up to \$3,000,000
Anticipated allocation under current forecast:	Up to \$1,546,000
1. <i>Platte River Recovery Implementation Program:</i>	Up to \$2,600,000
<i>Anticipated allocation under current forecast:</i>	<i>Up to \$1,340,000</i>
<i>Allocation if back-filled by Construction Fund:</i>	<i>Up to \$1,940,000</i>

The Platte River Recovery Implementation Program provides Endangered Species Act (ESA) compliance for certain Colorado water user projects through a programmatic approach to management of land and water resources on the Platte River in Nebraska. The four target species that benefit from the Program include three endangered species (the whooping crane, the interior least tern, and the pallid sturgeon), and one threatened species (the piping plover). While the management actions are concentrated in Central Nebraska, a Biological Opinion provides ESA compliance for existing and certain new water-related activities upstream in the North Platte and South Platte River basins. This provides a significant benefit to Colorado and its water users, in addition to the four target species.

The Program is nearing a turning point as its First Increment, an agreement covering the 13-year period from 2007 to 2019, is drawing to a close. Colorado and the other Program partners are seeking to extend the First Increment for another 13 years (2020-2032). This involves receiving congressional authorization and an ongoing funding commitment. Colorado's financial obligations for the Increment Extension, if passed, will total \$24,900,000 over 13 years.

By devoting a substantial portion of this year's SCTF funds to the Program, Colorado will demonstrate its commitment to ensuring that the First Increment Extension is a success.

2. <i>Colorado River Basin Native Fish Recovery Programs:</i>	Up to \$400,000
<i>Anticipated allocation under current forecast:</i>	<i>Up to \$206,000</i>

Four endangered fish species native to the Colorado River Basin—the humpback chub, razorback sucker, Colorado pikeminnow, and bonytail—are found in the Upper Colorado River Basin and San Juan River Basin in Colorado. CWCB actively participates in two recovery programs designed to conserve these species: the Upper Colorado River Endangered Fish Recovery Program (targeting all four species) and the San Juan River Recovery Implementation Program (targeting the razorback sucker and Colorado pikeminnow only).

The recovery programs include state, federal, tribal, environmental and local partners in collaborative efforts to meet the needs of the fish. In addition to helping recover species, the programs also provide ESA compliance for 2,500 water projects across the Upper Colorado River Basin—half of which are in Colorado. The recovery programs



achieve fish conservation by implementing habitat improvements, augmenting flows under dry conditions, supporting populations with fish hatcheries, and removing non-native fish.

These funds will support conservation measures for the endangered fish through the two recovery programs. Projects may include non-native fish control, development of the White River Management Plan, habitat restoration, and other conservation measures as defined in the Programs' respective recovery action plans.

