



COLORADO

**Colorado Water
Conservation Board**

Department of Natural Resources

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Jared Polis, Governor

Dan Gibbs, DNR Executive Director

Lauren Ris, CWCB Director

TO: Colorado Water Conservation Board Members

FROM: Chris Sturm, Watershed and Flood Protection Section

DATE: September 20 & 21, 2023 Board Meeting

AGENDA ITEM: Agenda Item 16, Northern Colorado Water Conservancy District, Fish and Wildlife Resources Fund Application

Staff Recommendation

Staff recommends a Fish and Wildlife Resources Fund (FWRP) Grant to the Northern Colorado Water Conservancy District of up to \$782,516 to cover construction costs associated with the Eastman Park Wetland Mitigation Project (Project).

Introduction:

In an application submitted August 1, 2023 the Northern Colorado Water Conservancy District requested the CWCB to consider a grant from the Fish and Wildlife Resources Fund pursuant to C.R.S. Section 37.60-122.2 and Grant Type A of the May 2023 FWRP Grant Guidelines (both attached). Grant Type A, or New Projects, are defined in the guidelines as “Grants for design plans, engineering, and construction projects to: (1) address impacts from the construction of water diversion, delivery, and storage facilities that require a permit license, or other approval from the United States;...”.

Background:

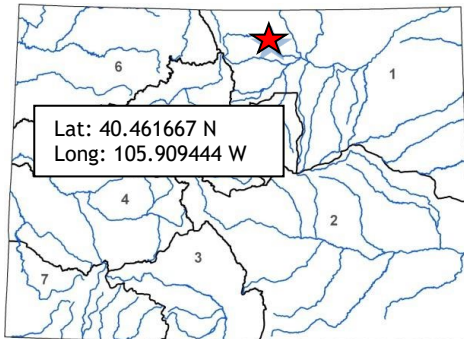
The applicant is requesting \$1,057,000 for construction costs associated with the Project. The applicant is pursuing the project as part of its state required mitigation efforts for the Northern Integrated Supply Project (NISP) in the Cache la Poudre River (Poudre) watershed. NISP has a state approved [Fish and Wildlife Mitigation and Enhancement Plan](#) (Plan) which identifies the Project as a location for mitigation. The Project is located on the Poudre River near the town of Windsor. The Plan was recommended by the Colorado Parks and Wildlife Commission on 9/7/2017 and approved by the CWCB on 9/20/2017.

The Project will establish new riparian wetlands, enhance existing wetlands, and develop new cottonwood regeneration areas. It will also enhance recreational areas onsite. Staff is recommending a reduced funding amount because the budget includes FWRP funding for a boardwalk and river access. Staff does not believe these to be project elements that align with the FWRP. Staff also believes that the applicant will be able to absorb the costs associated with the recreational enhancements.





Fish and Wildlife Resources Fund Application



LOCATION	
County/Countries:	Weld
Drainage Basin:	South Platte River

DETAILS	
Total Project Cost:	\$2,114,000
Fish and Wildlife Resources Fund Grant Request:	\$1,057,000
Recommended amount:	\$782,516
Other CWCB Funding:	\$0
Other Funding Amount:	\$0
Applicant Match:	\$1,057,000
Project Type:	Construction
Project Category:	New Project, Mitigation
Measurable Result:	Mitigation associated with a State approved Fish and Wildlife Mitigation and Enhancement Plan

The Eastman Park Wetland Mitigation Project is a joint effort between Northern Water (NISP Enterprise) and the Town of Windsor. Northern Water is pursuing the project as a part of its state required mitigation efforts for the Northern Integrated Supply Project (NISP). NISP has a state approved Fish and Wildlife Mitigation and Enhancement Plan (FWMEP) which identified Eastman Park as a location for wetland mitigation. Northern Water and Windsor have worked together to develop a comprehensive project on and within Windsor's property at Eastman Park. This is documented in a May 2021 IGA between the parties.

The overall project will include:

- (1) Mitigation Sites: the establishment of new riparian wetlands, the enhancement of existing wetlands, and the development of cottonwood regeneration areas, which shall be collectively referred to as the "Mitigation Sites."
- (2) Park Enhancement Sites: the creation of new trail systems, the completion of landscaping and associated grading, the installation of a native materials playscape, and the design and installation of an irrigation system, which shall be collectively referred to as the "Park Enhancement Sites."

The Mitigation Sites work is the project portion associated with this grant application.

Funding Recommendation:

Staff recommends a Fish and Wildlife Resources Fund (FWRP) Grant to the Northern Colorado Water Conservancy District of up to \$782,516 to cover construction costs associated with the Eastman Park Wetland Mitigation Project (Project).

Staff is recommending a reduced funding amount because the budget includes FWRP funding for a boardwalk and river access. Staff does not believe these to be project elements that align with the FWRP. Staff also believes that the applicant will be able to absorb the costs associated with the recreational enhancements.



Colorado Water Conservation Board

Fish and Wildlife Resources Fund Grant Application

Water Project Summary

Name of Applicant	Northern Integrated Supply Project Water Activity Enterprise, (Northern Colorado Water Conservancy District)	
Name of Water Project	Eastman Park Wetland Mitigation Project (aka Eastman Park River Experience Phase 2)	
CWP Grant Request Amount		\$ 1,057,000
Other Funding Sources _____		\$
Applicant Funding Contribution		\$ 1,057,000
Total Project Cost		\$ 2,114,000

Applicant & Grantee Information

Name of Grantee(s): Northern Integrated Supply Project Water Activity Enterprise (Northern Colorado Water Conservancy District)	
Mailing Address:	220 Water Ave. Berthoud, CO 80513
FEIN:	84-000204
Organization Contact:	Carl Brouwer
Position/Title:	NISP Program Manager
Email:	cbrouwer@northernwater.org
Phone	(970) 622-2298
Grant Management Contact: Jonathan Hernandez	
Position/Title:	Senior Project Manager
Email:	jhernandez@northernwater.org
Phone:	(970) 622-2283, cell: (970) 617-9337
Name of Applicant (if different than grantee)	Same as above
Mailing Address	
Position/Title	
Email	
Phone	



Description of Grantee/Applicant

Provide a brief description of the grantee's organization:

Northern Colorado Water Conservancy District (Northern Water) is a public agency created in 1937 to contract with the U.S. Bureau of Reclamation (Reclamation) in the construction and operation of the Colorado-Big Thompson (C-BT) Project.

Northern Water's mission is to provide water resources management, project operations and conservation services for project beneficiaries. Its vision is to be a leader in ensuring a secure water future for Northern Colorado by collecting and delivering water, protecting and conserving water supplies, planning and implementing new water supply projects, cultivating operational and organizational excellence and maintaining and strengthening relationships.

Northern Water owns the Northern Integrated Supply Project Water Activity Enterprise (NISP Enterprise), a government-owned business within the meaning of Article X, Section 20 of the Colorado Constitution. The NISP Enterprise was created in 2003 and is a collaborative effort to develop new water supplies along with a storage and distribution system that will supply water to 15 participants located in Northern Water boundaries.

Type of Eligible Entity (check one)

<input type="checkbox"/>	Public (Government): Municipalities, enterprises, counties, and State of Colorado agencies. Federal agencies are encouraged to work with local entities. Federal agencies are eligible, but only if they can make a compelling case for why a local partner cannot be the grant recipient.
<input checked="" type="checkbox"/>	Public (Districts): Authorities, Title 32/special districts (conservancy, conservation, and irrigation districts), and water activity enterprises.
<input type="checkbox"/>	Private Incorporated: Mutual ditch companies, homeowners associations, corporations.
<input type="checkbox"/>	Private Individuals, Partnerships, and Sole Proprietors: Private parties may be eligible for funding.
<input type="checkbox"/>	Non-governmental organizations (NGO): Organization that is not part of the government and is non-profit in nature.
<input type="checkbox"/>	Covered Entity: As defined in Section 37-60-126 Colorado Revised Statutes .

Location of Water Project

Please provide the general county and coordinates of the proposed project below in **decimal degrees**.

The Applicant shall also provide, in Exhibit C, a site map if applicable.

County/Countries	Weld
Latitude	40.461667 N
Longitude	105.909444 W



Water Project Overview

The Eastman Park Wetland Mitigation Project is a joint effort between Northern Water (NISP Enterprise) and the Town of Windsor. Northern Water is pursuing the project as a part of its state required mitigation efforts for the Northern Integrated Supply Project (NISP). NISP has a state approved Fish and Wildlife Mitigation and Enhancement Plan (FWMEP) which identified Eastman Park as a location for wetland mitigation. Northern Water and Windsor have worked together to develop a comprehensive project on and within Windsor's property at Eastman Park. This is documented in an May 2021 IGA between the parties

The overall project will include:

- (1) Mitigation Sites: the establishment of new riparian wetlands, the enhancement of existing wetlands, and the development of cottonwood regeneration areas, which shall be collectively referred to as the "Mitigation Sites."
- (2) Park Enhancement Sites: the creation of new trail systems, the completion of landscaping and associated grading, the installation of a native materials playscape, and the design and installation of an irrigation system, which shall be collectively referred to as the "Park Enhancement Sites."

The Mitigation Sites portion of work is the project for the purpose of this grant.

Grant Justification

The Fish and Wildlife Resources Fund was established in 1987 to help mitigate impacts on fish and wildlife resources. Pursuant to the May 2023 Fish and Wildlife Resources Fund Grant Program's Grant Guidelines the following are justifications for this grant:

Grant Type: New Project. Construction of the Eastman Park Wetland Mitigation Project is to address impacts from the construction of NISP, a water diversion, delivery, and storage facilities that require a permit license, or other approval from the United States.

Eligible Applicant: The NISP Enterprise, owned by Northern Water, will be the operator for the water facility for which mitigation and enhancement are needed.

Eligible Project and Activities: This Mitigation Grant is to reduce, minimize, or avoid undesirable impacts on fish and wildlife resources caused by the NISP as outlined in the State Fish and Wildlife Mitigation and Enhancement Plan (FWMEP). This Colorado Parks and Wildlife Commission recommended that the FWMEP become the official state position regarding fish and wildlife mitigation for NISP on 9/7/2017 and the Colorado Water Conservation Board adopted the FWMEP on 9/20/2017.

Taxpayer Bill of Rights

The Taxpayer Bill of Rights (TABOR) may limit the amount of grant money an entity can receive. Please describe any relevant TABOR issues that may affect your application.

Receiving CWCB grants may carry the potential for the NISP Enterprise to fall out of TABOR Enterprise status for the fiscal year in which funds are received. Northern Water is aware of this potential and does not anticipate adverse impacts should that occur.



Colorado Water Conservation Board

Exhibit A

Statement Of Work

Date:	August 1, 2023
Name of Grantee:	Northern Integrated Supply Project Water Activity Enterprise, (Northern Colorado Water Conservancy District)
Name of Water Project:	Eastman Park Wetland Mitigation Project
Funding Source:	Northern Integrated Supply Project Water Activity Enterprise, (Northern Colorado Water Conservancy District)
Water Project Overview:	
<p>The Work includes construction of a new public park and a new wetland mitigation area located in the Town of Windsor. The project site is bordered by the Poudre River on the northwest, 7th street on the south and east, and Laku Lake Road on the west. CWCB Grant funding is being sought for the Wetland Mitigation portion of the project.</p> <p>Wetland Mitigation: Construction activities associated with wetland mitigation includes construction and establishment of a wetland mitigation area through grading; site preparation; planting and seeding native wetland, riparian, and upland plants; providing temporary irrigation for successful native plant establishment; and constructing a boardwalk, and other improvements as indicated in the drawings.</p> <p>Park Site: Construction activities associated with the park site includes clearing and grubbing, removal of existing parking and trails, installation of new parking, driveways, trails, boulder river access areas, a playground, shelter, boulders, site furnishings, landscaping, irrigation, and other improvements</p>	
Project Objectives:	
<p>Riparian and wetlands vegetation improvements at Eastman Park will directly mitigate impacts on riparian vegetation resources, impacts of reduced peak flows, and effects on water temperature in this reach of the Poudre River associated with the Northern Integrated Supply Project. This project site (on the south bank of the Poudre River) was chosen in part because vegetation improvements here can provide shading of the river channel to reduce water temperatures during low-flow summer time conditions. Additional information on this project and its objectives can be found in section 5.3.1.3 of the NISP Fish and Wildlife Mitigation and Enhancement Plan.</p>	



Tasks
Task 1 –Wetland Mitigation
Description of Task:
Construction activities associated with wetland mitigation includes construction and establishment of a wetland mitigation area through grading; site preparation; planting and seeding native wetland, riparian, and upland plants; providing temporary irrigation for successful native plant establishment; and constructing a boardwalk, and other improvements as indicated in the drawings.
Method/Procedure:
Northern Water, acting by and through its NISP Water Activity Enterprise, entered into a funding IGA with the Town of Windsor to provide construction funds for the wetland mitigation portion of the Eastman Park River Experience Phase 2. Windsor is the owner of the project and will be the contracting entity. Windsor will manage and oversee construction and ensure that the construction proceeds in accordance with the final designs. NISP Enterprise will have the right to monitor and inspect the construction progress to ensure that construction satisfies all requirements imposed under its 404 Permit obligations, the FWMEP, and the 2008 Mitigation Rule. Windsor has issued a public invitation to bid on the project and set bid opening date of August 23, 2023. The selected Contractor will be responsible for means and method of construction and for obtaining all applicable construction related permits.
Deliverable:
Final Construction Report and As-Built Drawings

Budget and Schedule
This Statement of Work shall be accompanied by a combined Budget and Schedule that reflects the Tasks identified in the Statement of Work and shall be submitted to CWCB in excel format.



Reporting Requirements

Progress Reports: The applicant shall provide the CWCB a progress report every 6 months, beginning from the date of issuance of a purchase order, or the execution of a contract. The progress report shall describe the status of the tasks identified in the statement of work, including a description of any major issues that have occurred and any corrective action taken to address these issues.

Final Report: At completion of the project, the applicant shall provide the CWCB a Final Report on the applicant's letterhead that:

- Summarizes the project and how the project was completed.
- Describes any obstacles encountered, and how these obstacles were overcome.
- Confirms that all matching commitments have been fulfilled.
- Includes photographs, summaries of meetings and engineering reports/designs.

The CWCB will pay out the last 10% of the budget when the Final Report is completed to the satisfaction of CWCB staff. Once the Final Report has been accepted, and final payment has been issued, the purchase order or grant will be closed without any further payment.

Payment

Payment will be made based on actual expenditures and must include invoices for all work completed. The request for payment must include a description of the work accomplished by task, an estimate of the percent completion for individual tasks and the entire Project in relation to the percentage of budget spent, identification of any major issues, and proposed or implemented corrective actions.

Costs incurred prior to the effective date of this contract are not reimbursable. The last 10% of the entire grant will be paid out when the final deliverable has been received. All products, data and information developed as a result of this contract must be provided to CWCB in hard copy and electronic format as part of the project documentation.

Performance Measures

Performance measures for this contract shall include the following:

(a) Performance standards and evaluation: Grantee will produce detailed deliverables for each task as specified. Grantee shall maintain receipts for all project expenses and documentation of the minimum in-kind contributions (if applicable) per the budget in Exhibit B. The CWCB will pay out the last 10% of the budget when the Final Report is completed to the satisfaction of CWCB staff. Once the Final Report has been accepted, and final payment has been issued, the purchase order or grant will be closed without any further payment.

(b) Accountability: Full documentation of project progress must be submitted with each invoice for reimbursement. Grantee must confirm that all grant conditions have been complied with on each invoice. In addition, Progress Reports must be submitted at least once every 6 months. A Final Report must be submitted and approved before final project payment.

(c) Monitoring Requirements: Grantee is responsible for ongoing monitoring of project progress per Exhibit A. Progress shall be detailed in each invoice and in each Progress Report, as detailed above. Additional inspections or field consultations will be arranged as may be necessary.

(d) Noncompliance Resolution: Payment will be withheld if grantee is not current on all grant conditions. Flagrant disregard for grant conditions will result in a stop work order and cancellation of the Grant Agreement.



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Fish and Wildlife Resources Fund - Detailed Budget Estimate

Fair and Reasonable Estimate

Prepared Date: August 1, 2023

Name of Applicant: NISP Enterprise, Northern Colorado Water Conservancy District

Name of Water Project: Eastman Park Wetland Mitigation Project

EXAMPLE C: Construction

Task 1 - Wetland Mitigation

Demolition	Unit	Est. Qty.	Unit Cost	Item Cost	CWCB	Match
Clearing and Grubbing	AC	12	\$ 3,000	\$ 36,000	\$ 18,000.00	\$ 18,000.00
Remove Tree	EA	53	\$ 750	\$ 39,750	\$ 19,875.00	\$ 19,875.00
			Subtotal	\$ 75,750	\$ 37,875.00	\$ 37,875.00
Earthwork	Unit	Est. Qty.	Unit Cost	Item Cost	CWCB	Match
Topsoil Strip, Stockpile and Replace (4")	CY	6,453	\$ 10	\$ 64,530	\$ 32,265.00	\$ 32,265.00
Unclassified Excavation	CY	15,050	\$ 5.24	\$ 78,862	\$ 39,431.00	\$ 39,431.00
Fine Grading	SF	163,400	\$ 0.20	\$ 32,680	\$ 16,340.00	\$ 16,340.00
			Subtotal	\$ 176,072	\$ 88,036.00	\$ 88,036.00
Erosion Control	Unit	Est. Qty.	Unit Cost	Item Cost	CWCB	Match
Erosion control, Nedia Koir Wrap 1000; 120sy/roll	EA	47	\$ 415	\$ 19,505	\$ 9,752.50	\$ 9,752.50
Erosion control, Profile ProMatrix EFM; 50# Bag	EA	23	\$ 37	\$ 851	\$ 425.50	\$ 425.50
Erosion Control Management	LS	1	\$ 5,000	\$ 5,000	\$ 2,500.00	\$ 2,500.00
Sediment Control Log (SCL)	LF	1,265	\$ 5	\$ 6,325	\$ 3,162.50	\$ 3,162.50
Vehicle Tracking Control (VTC)	EA	1	\$ 1,500	\$ 1,500	\$ 750.00	\$ 750.00
Stabilized Staging Area	LS	1	\$ 2,000	\$ 2,000	\$ 1,000.00	\$ 1,000.00
			Subtotal	\$ 35,181	\$ 17,591	\$ 17,591
Boardwalk	Unit	Est. Qty.	Unit Cost	Item Cost	CWCB	Match
Boardwalk Trail (including abutments, beams, decking, toe rail, and required hardware)	SF	3,516	\$ 85	\$ 298,860	\$ 149,430.00	\$ 149,430.00
Boardwalk Overlooks (including footings, beams, decking, toe rail, and required hardware)	SF	735	\$ 85	\$ 62,475	\$ 31,237.50	\$ 31,237.50
			Subtotal	\$ 361,335	\$ 180,667.50	\$ 180,667.50
River Access 2 (@ North End of Boardwalk)	Unit	Est. Qty.	Unit Cost	Item Cost	CWCB	Match

River access boulders	TON	58	\$	300	\$	17,400	\$	8,700.00	\$	8,700.00	
Rip-rap type VL	CY	19	\$	110	\$	2,090	\$	1,045.00	\$	1,045.00	
Rip-rap type M	CY	25	\$	110	\$	2,750	\$	1,375.00	\$	1,375.00	
Class A Bedding Material	CY	12	\$	90	\$	1,080	\$	540.00	\$	540.00	
3/4" Crushed Stone Fill between boulders	TON	1	\$	130	\$	130	\$	65.00	\$	65.00	
KoirWrap 1200 and ProMatrix EFM (at River Access 2)	SY	1,100	\$	7.25	\$	7,975	\$	3,987.50	\$	3,987.50	
Dewatering	LS	1	\$	20,000	\$	20,000	\$	10,000.00	\$	10,000.00	
					Subtotal	\$	51,425	\$	25,712.50	\$	25,712.50

Landscape Restoration, Irrigation	Unit	Est. Qty.	Unit Cost	Item Cost	CWCB		Match
Fertilizer, Richlawn Soil Works 4-6-2 with Biochar, Mycorrhizae and Hummate, 50lb bag	EA	676	\$ 31	\$ 20,956	\$ 10,478.00	\$ 10,478.00	
Soil Amendment, Guar, 50lb bag	EA	11	\$ 100	\$ 1,100	\$ 550.00	\$ 550.00	
Soil Amendment, Green Biotic Earth, 50lb bag	EA	1,268	\$ 34	\$ 43,112	\$ 21,556.00	\$ 21,556.00	
Soil Amendment, Sulphur, 50lb bag	EA	69	\$ 20	\$ 1,380	\$ 690.00	\$ 690.00	
Soil Amendment, Lot 125, 5gal bucket	EA	40	\$ 86	\$ 3,440	\$ 1,720.00	\$ 1,720.00	
Native Seed	AC	2	\$ 2,200	\$ 3,894	\$ 1,947.00	\$ 1,947.00	
Wetland Seed	AC	11	\$ 3,700	\$ 39,590	\$ 19,795.00	\$ 19,795.00	
Deciduous Trees, 1.5" caliber	EA	85	\$ 200	\$ 17,000	\$ 8,500.00	\$ 8,500.00	
Deep Rooted Containers D60	EA	3,100	\$ 5.30	\$ 16,430	\$ 8,215.00	\$ 8,215.00	
Tree Cuttings and Willow Stakes	EA	1,750	\$ 10	\$ 17,500	\$ 8,750.00	\$ 8,750.00	
Plugs	EA	4,800	\$ 1.60	\$ 7,680	\$ 3,840.00	\$ 3,840.00	
Wetland Sod	MATT	150	\$ 247	\$ 37,050	\$ 18,525.00	\$ 18,525.00	
Supplementary Temporary Irrigation for Wetland	SF	435,600	\$ 1	\$ 435,600	\$ 217,800.00	\$ 217,800.00	
Piezometers	EA	8	\$ 1,400	\$ 11,200	\$ 5,600.00	\$ 5,600.00	
Prairie Dog Management	LS	1	\$ 10,000	\$ 10,000	\$ 5,000.00	\$ 5,000.00	
Wetland Landscape Maintenance - Year 1	LS	1	\$ 125,000	\$ 125,000	\$ 62,500.00	\$ 62,500.00	
Wetland Landscape Maintenance - Year 2	LS	1	\$ 87,500	\$ 87,500	\$ 43,750.00	\$ 43,750.00	
			Subtotal	\$ 878,432	\$ 439,216.00	\$ 439,216.00	
BASE TOTAL				\$ 1,578,195	\$ 789,098	\$ 789,098	

Construction Other	Unit	Est. Qty.	Unit Cost	Item Cost	CWCB		Match
General Conditions and Mobilization	LS	1	10% of Base	\$ 157,820	\$ 78,910.00	\$ 78,910.00	
Construction Staking	LS	1	3% of Base	\$ 47,346	\$ 23,673.00	\$ 23,673.00	
Construction Traffic Control	LS	1	\$ 15,000	\$ 15,000	\$ 7,500.00	\$ 7,500.00	
Contingency	LS	1	20% of Base	\$ 315,639	\$ 157,819.50	\$ 157,819.50	
				Subtotal	\$ 535,805	\$ 267,902.50	\$ 267,902.50
				BASE TOTAL	\$ 2,114,000	\$ 1,057,000	\$ 1,057,000



COLORADO

**Colorado Water
Conservation Board**

Department of Natural Resources

FISH AND WILDLIFE RESOURCES FUND GRANT PROGRAM

Grant Guidelines

May 2023

INTRODUCTION

The Fish and Wildlife Resources Fund was established in 1987 and is authorized by § 37-60-122.2, CRS. Pursuant to this statute, which is attached at the end of these guidelines, the state is responsible for fish and wildlife resources found in and around state waters which are affected by the construction, operation, or maintenance of water diversion, delivery, or storage facilities. Fish and wildlife resources are a matter of statewide concern and impacts on such resources should be mitigated by the project applicants in a reasonable manner. Fish and wildlife resources that are affected by the construction, operation, or maintenance of water diversion, delivery, or storage facilities should be mitigated to the extent, and in a manner, that is economically reasonable and maintains a balance between the development of the state's water resources and the protection of the state's fish and wildlife resources. §37-60-122.2(1)(a), C.R.S.

Given the statewide importance of fish and wildlife resources, the legislature has made funds available to mitigate impacts on fish and wildlife resources. The Colorado Water Conservation Board is vested with the authority to grant money for mitigation, enhancement, and species recovery projects consistent with § 37-60-122.2, C.R.S.

GRANT TYPES

**A. Applications pursuant to subsections 2-4 of section 37-60-122.2, C.R.S.
(referred to hereafter as “New Projects”)**

Grants for design plans, engineering, and construction projects to: (1) address impacts from the construction of water diversion, delivery, and storage facilities that require a permit license, or other approval from the United States; and (2) respond to needs of declining native species and to those species protected under the federal “Endangered Species Act of 1973,” 16 U.S.C. sec. 1531, et seq., as amended, in a manner that will carry out the state water policy.

B. Applications pursuant to subsection 5 of section 37-60-122.2, C.R.S. (referred to hereafter as “Existing Projects”)

Grants for the appropriation or acquisition of instream flow water rights and river restoration construction projects to mitigate the effects of the construction, operation, and maintenance of existing water diversion, delivery, and storage facilities.

Fish and Wildlife Resources Fund allocations will be made for both New Projects and Existing Projects in the order that applications are received and approved.

The CWCB will manage the Fish and Wildlife Resources Fund in a manner that, over time, distributes grants evenly between east and west slope applicants.

GRANT REQUIREMENTS

A. GRANTS FOR NEW PROJECTS PURSUANT TO § 37-60-122.2 (2)-(4)

Eligible Applicants

Eligible parties for all grants for New Projects are limited to the operators of the water facility for which mitigation and enhancement are needed. Eligible parties for Species Recovery Grants include established non-profit organizations, watershed coalitions, local governments, conservation and water conservancy districts, and Colorado's tribal governments. Federal agencies and private landowners are not eligible to receive Species Recovery Grant funds; however, projects may be conducted on private, state, or federal lands with appropriate permissions and under the sponsorship of an eligible entity. Local governments that do not participate in the National Flood Insurance Program will not be eligible for funding.

Eligible projects and activities

Applications for grants from the Fish and Wildlife Resources Fund for New Projects will be accepted in the following categories:

1. Mitigation Grants to reduce, minimize, or avoid undesirable impacts on fish and wildlife resources caused by the New Project as outlined in the official state recommendation, i.e., the State Fish and Wildlife Mitigation Plan (Mitigation Plan).
2. Enhancement Grants to improve the habitat of fish and wildlife resources beyond existing conditions in the vicinity of the New Project.
3. Species Recovery Grants for the purpose of responding to needs of declining native species and to those species protected under the federal "Endangered Species Act of 1973", 16 U.S.C. sec. 1531, et seq., as amended, in a manner that will carry out the state water policy.

Funding Restrictions and Requirements

Mitigation Grants:

The Board shall make Mitigation Grants only if the applicant funds mitigation costs for the first 5 percent of the project's design, engineering, and physical construction costs (construction costs). The Board shall make Mitigation Grants for the costs of mitigation for the impacts to fish and wildlife resources from the construction, operation, or maintenance of water diversion, delivery, and storage facilities up to an additional 5 percent of a project's construction costs. Mitigation Grant disbursements shall not exceed 70 percent of the amount of the grant during any fiscal year. Mitigation grants shall be made only for recommendations in the Mitigation Plan. The Board does not intend to make Mitigation Grants for mitigation required outside of the Mitigation Plan. Mitigation should not include that already required by a Federal Record of Decision, County 1041 permit, or other permitting entity. The Mitigation Plan may be adopted as part of a Federal Record of Decision or other permit. Mitigation Grants shall only be awarded for a project after that project has received a permit, license, or other approval from the United States and/or other permitting entities.

- **Matching Fund Requirement**
Mitigation Grants shall not exceed 50% of the total mitigation project cost.

Enhancement Grants:

The Board shall consider applications for Enhancement Grants after receiving a recommendation from the Colorado Parks and Wildlife Commission ("CPW"). The Board may award an Enhancement Grant with the concurrence of CPW. Enhancement Grant costs will be shared equally by the CWCB and CPW.

- **Matching Fund Requirement**
Enhancement Grants shall not exceed 50% of the total enhancement project cost.

Species Recovery Grants:

The Board shall consider applications for Species Recovery Grants when funding is not available from the Native Species Conservation Trust Fund.

- **Matching Fund Requirements**
Species Recovery Grants shall not exceed 50% of the total project cost. The balance of the project costs can be paid through a combination of in-kind and cash match, but no more than half of the match may be in the form of in-kind services.

- **Cash Match**

For Species Recovery Grants, a cash match is an actual expenditure paid directly with cash funds from the grantee to a vendor. Examples are supplies, services, and necessary equipment purchase or rental.

- **In-Kind Match**

For Species Recovery Grants, an in-kind match is materials, services, and labor provided by grantee to perform all or part of the approved project scope of work,

including necessary project administration. This can include standard direct and indirect personnel fringe benefits. Volunteer services provided at no cost to the applicant by firms or individuals consistent with the approved scope of work will be valued for in-kind match at local prevailing wage rates. Project-specific land acquisition or access agreement costs may also be claimed as in-kind contributions and credited against the minimum requirement. Costs that CANNOT be considered include general organization operating costs such as utilities, operating supplies and services, amortized costs or rental costs for buildings and equipment used for the general operation of the organization, and general property and liability insurance costs; nor will overhead percent charges to cover such items be allowed. These business expenses are NOT reimbursable costs and may not be claimed as matching contributions.

The CWCB may, in any year, approve Enhancement Grant and Species Conservation Grants that the Board deems worthy of funding through the Fish and Wildlife Resources Fund. Mitigation Grants shall be funded and will take precedence over Enhancement Grants and Species Recovery Grants.

The project applicant must have completed a fully executed funding contract with the CWCB within 6 months of the grant authorization by the CWCB or the Board will consider de-authorization of the grant.

Deadlines

The CWCB will accept applications on a rolling basis.

Application Process

Interested parties are required to discuss potential applications with CWCB staff prior to submitting an application.

The grant application must be submitted through the grant portal, which is linked from the CWCB website. Applicants will be prompted to submit the following items to the portal:

- Statement of Work
- Engineer's estimate of probable cost for construction projects over \$100,000
- State Fish and Wildlife Mitigation Plan
- Budget (Excel)
- Schedule
- Maps (if applicable)
- Letters of Commitment (matching funds)
- Photos or drawings
- Enhancement Plan

Evaluation Criteria

Each application will be reviewed for conformity with the goals and objectives of the Fish and Wildlife Resources statute, 37-60-122.2, Colorado's Water Plan, and the appropriate Basin Implementation Plan(s). Grant applications for Mitigation Grants shall be funded if approved and the funds are available, and Enhancement Grants and Species Recovery Grants will be considered after existing Mitigation Grant requests are considered.

In addition, the Board will consider and CWCB staff will evaluate and recommend to the Board Mitigation, Enhancement, or Species Recovery Grant applications based on the following:

- Soundness of the project design, work plan, or plan of study.
- The need for the proposed project.
- Project benefits, considered on a state-wide and local basis.
- Organizational capacity, and whether the applicant and others working on the project have the skill, capacity, and history of achievements for the project to be successful.
- The need for financial assistance.
- Participation open to all affected stakeholders.

Recognizing that future needs and responses to those needs cannot be predicted with certainty, the Colorado Water Conservation Board reserves the right to recommend for funding any design plan, engineering, or construction project that it determines would: (1) address the fish and wildlife impacts from the construction of water diversion, delivery, and storage facilities that require a permit, license, or other approval from the United States; or (2) respond to needs of declining native species and to those species protected under the federal "Endangered Species Act of 1973", 16 U.S.C. sec. 1531, et seq., as amended, in a manner that will carry out the state water policy.

Documents Required for Contract Execution:

- Insurance Certificate of Liability (Government entities excluded)
- Secretary of State - Certificate of Good Standing
- W-9
- Electronic Funds Transfer (preferred)

The CWCB's review and approval process will include the following steps:

- CWCB staff will determine if the required documentation has been submitted. The application will be accepted once all documents have been received.
- CWCB staff and a committee of subject matter experts will evaluate the application based on the criteria described in this document and notify the CWCB

Board members representing the corresponding basin. CPW staff will also be notified.

- CWCB staff will notify the applicant of staff's recommendation and of the date and time when the Board will consider the application. While CWCB staff has primary responsibility for presenting the recommendation to the Board, the applicant is welcome to attend the meeting to address the Board and may offer comments during the opportunity for public comment.
- Upon Board approval of the applicant's request, funding can only be used on project components that begin after a grant contract is executed by the office of the state controller.
- The grant contracting estimate is 45 days from the receipt of the signed grant contract from the grantee.

Grant Administration

Progress Reports: The applicant shall provide the CWCB progress reports every 6 months, beginning from the date of issuance of a purchase order, or the execution of a contract. The progress report shall describe the status of the tasks identified in the statement of work, including a description of any major issues that have occurred and any corrective action taken to address these issues. The CWCB may withhold reimbursement until satisfactory progress reports have been submitted.

Final Report:

At completion of the project, the applicant shall provide the CWCB a Final Report that:

- Summarizes the project and how the project was completed.
- Describes any obstacles encountered, and how these obstacles were overcome.
- Confirms that all matching commitments have been fulfilled.
- Includes photographs, summaries of meetings, final expenses, and engineering reports/designs.

The CWCB will withhold disbursement of the last 10% of the budget until the Final Report is completed to the satisfaction of CWCB staff. Once the Final Report has been accepted, and final payment has been issued, the purchase order or grant will be closed without any further payment.

Payments:

Payment will be based on actual expenditures invoices by the grantee.

B. GRANTS FOR EXISTING PROJECTS PURSUANT TO § 37-60-122.2(5)

Eligible Applicants

All applicants must be mitigating impacts to fish and wildlife resources as a result of the construction, operation, or maintenance of existing water diversion, delivery, or storage facilities pursuant to section 37-60-122.2 C.R.S.

Eligible parties are limited to the CWCB and the operators of the water facility for which mitigation is needed.

Eligible applicants include operators of existing water diversion, delivery, or existing storage facility projects and the CWCB.

Local governments that do not participate in the National Flood Insurance Program will not be eligible for funding.

Eligible projects and activities

Applications for mitigation grants from the Fish and Wildlife Resources Fund for existing projects will be accepted for the following types of projects:

1. The appropriation of water rights to preserve, or the acquisition of water rights to preserve or improve, the natural environment to a reasonable degree to mitigate the impact of an existing water facility. All acquisitions and appropriations must be in compliance with the Rules Concerning the Colorado Instream Flow and Natural Lake Level Program, 2 CCR 408-2 and state water law.
2. River restoration feasibility studies and construction projects that are designed to directly mitigate or significantly improve the environmental impacts of existing water facilities.
3. An appropriate combination of river restoration and water rights acquisition or appropriation.

Restrictions on Funding

The CWCB may, in any year, approve grants to fund any project in the above categories that the Board deems worthy of funding through the Fish and Wildlife Resources Fund.

The project applicant must have completed a fully executed funding contract with the CWCB within 6 months of the grant authorization by the CWCB or the Board will consider de-authorization of the grant.

Matching Fund Requirements

Existing Project Grants shall not exceed 50% of the total project cost. The balance of the project costs can be paid through a combination of in-kind and cash match, but no more than half of the match may be in the form of in-kind services.

● Cash Match

A cash match is an actual expenditure paid directly with cash funds from the grantee to a vendor. Examples are supplies, services, and necessary equipment purchase or rental.

● In-Kind Match

An in-kind match is materials, services, and labor provided by grantee to perform all or part of the approved project scope of work, including necessary project administration. This can include standard direct and indirect personnel fringe benefits. Volunteer services provided at no cost to the applicant by firms or individuals consistent with the approved scope of work will be valued for in-kind match at local prevailing wage rates. Project-specific land acquisition or access agreement costs may also be claimed as in-kind contributions and credited against the minimum requirement. Costs that CANNOT be considered include general organization operating costs such as utilities, operating supplies and services, amortized costs or rental costs for buildings and equipment used for the general operation of the organization, and general property and liability insurance costs; nor will overhead percent charges to cover such items be allowed. These business expenses are NOT reimbursable costs and may not be claimed as matching contributions.

Deadlines

The CWCB will accept applications on a rolling basis.

Application Process

Interested parties are required to discuss potential applications with CWCB staff prior to submitting an application.

The grant application must be submitted through the grant portal, which is linked from the CWCB website. Applicants will be prompted to submit the following items to the portal:

- Statement of Work
- Engineer's estimate of probable cost for construction projects over \$100,000
- Budget (Excel)
- Schedule
- Maps (if applicable)
- Letters of Commitment (matching funds)
- Photos or drawings

Evaluation Criteria

Each application will be reviewed for conformity with the goals and objectives of the Fish and Wildlife Resources statute, 37-60-122.2, Colorado's Water Plan, and the appropriate Basin Implementation Plan(s). Grant applications will be considered only in the following two categories:

1. The appropriation or acquisition of water rights for the purpose of preserving or improving the natural environment to a reasonable degree to mitigate the impact of an existing water facility.
2. River restoration feasibility studies and construction projects that are designed to directly mitigate or significantly improve the environmental impacts of existing water facilities.

The Board will consider and CWCB staff will evaluate and recommend to the Board grant applications for appropriation or acquisition of water rights to be held by the Board based on the following project types:

- Instream flow water rights that facilitate the resolution of federal water rights issues.
- Instream flow water rights that assist in the recovery of threatened or endangered wildlife species or the conservation of existing wildlife species within riparian ecosystems.

The Board will consider and CWCB staff will evaluate and recommend to the Board grant applications for appropriation or acquisition of water rights and river restoration feasibility studies and construction projects based on the following:

- Soundness of the project design, work plan or plan of study.
- The need for the proposed project.
- Project benefits, considered on a state-wide and local basis.
- Organizational capacity, and whether the applicant and others working on the project have the skill, capacity, and history of achievements for this project to be successful.
- The need for financial assistance.
- Participation open to all affected stakeholders.

Recognizing that future needs and responses to those needs cannot be predicted with certainty, the Colorado Water Conservation Board reserves the right to recommend for funding any instream flow acquisition, river restoration construction project, or study that it determines would mitigate the effects of an existing water supply facility and furthers the purposes of the Fish and Wildlife Resources Fund.

Documents Required for Contract Execution:

- Insurance Certificate of Liability (Government entities excluded)
- Secretary of State - Certificate of Good Standing
- W-9
- Electronic Funds Transfer (preferred)

The CWCB's review and approval process will include the following steps:

- CWCB staff will determine if the required documentation has been submitted. The application will be accepted once all documents have been received.
- CWCB staff and a committee of subject matter experts will evaluate the application based on the criteria described in this document and notify the CWCB Board members representing the corresponding basin.
- Applications will be posted on the CWCB website 30 days after the application deadline. Staff will present the applications to the Board, provide an opportunity

- for public comment, and make a recommendation to the Board for full funding, partial funding, or denial of funding.
- CWCB staff will notify the applicant of staff's recommendation and of the date and time when the Board will consider the application. While CWCB staff has primary responsibility for presenting the recommendation to the Board, the applicant is welcome to attend the meeting to address the Board and may offer comments during the opportunity for public comment.
 - Upon Board approval of the applicant's request, funding can only be used on project components that begin after a grant contract is executed by the office of the state controller.
 - The grant contracting estimate is 45 days from the receipt of the signed grant contract from the grantee

Grant Administration

Progress Reports: The applicant shall provide the CWCB progress reports every 6 months, beginning from the date of issuance of a purchase order, or the execution of a contract. The progress report shall describe the status of the tasks identified in the statement of work, including a description of any major issues that have occurred and any corrective action taken to address these issues. The CWCB may withhold reimbursement until satisfactory progress reports have been submitted.

Final Report:

At completion of the project, the applicant shall provide the CWCB a Final Report that:

- Summarizes the project and how the project was completed.
- Describes any obstacles encountered, and how these obstacles were overcome.
- Confirms that all matching commitments have been fulfilled.
- Includes photographs, summaries of meetings, final expenses, and engineering reports/designs.

The CWCB will withhold disbursement of the last 10% of the budget until the Final Report is completed to the satisfaction of CWCB staff. Once the Final Report has been accepted, and final payment has been issued, the purchase order or grant will be closed without any further payment.

Payments:

Payment will be based on actual expenditures invoices by the grantee.

37-60-122.2. Fish and wildlife resources - legislative declaration - fish and wildlife resources fund - authorization.

(1) (a) The general assembly hereby recognizes the responsibility of the state for fish and wildlife resources found in and around state waters which are affected by the construction, operation, or maintenance of water diversion, delivery, or storage facilities. The general assembly hereby declares that such fish and wildlife resources are a matter of statewide concern and that impacts on such resources should be mitigated by the project applicants in a reasonable manner. It is the intent of the general assembly that fish and wildlife resources that are affected by the construction, operation, or maintenance of water diversion, delivery, or storage facilities should be mitigated to the extent, and in a manner, that is economically reasonable and maintains a balance between the development of the state's water resources and the protection of the state's fish and wildlife resources.

(b) Except as provided in this paragraph (b), the applicant for any water diversion, delivery, or storage facility which requires an application for a permit, license, or other approval from the United States shall inform the Colorado water conservation board, wildlife commission, and division of wildlife of its application and submit a mitigation proposal pursuant to this section. Exempted from such requirement are the Animas-La Plata project, the Two Forks dam and reservoir project, and the Homestake water project for which definite plan reports and final environmental impact statements have been approved or which are awaiting approval of the same, applicants for site specific dredge and fill permits for operations not requiring construction of a reservoir, and applicants for section 404 federal nationwide permits. If an applicant that is subject to the provisions of this section and the commission agree upon a mitigation plan for the facility, the commission shall forward such agreement to the Colorado water conservation board, and the board shall adopt such agreement at its next meeting as the official state position on the mitigation actions required of the applicant. In all cases the commission shall proceed expeditiously and, no later than sixty days from the applicant's notice, unless extended in writing by the applicant, make its evaluation regarding the probable impact of the proposed facility on fish and wildlife resources and their habitat and to make its recommendation regarding such reasonable mitigation actions as may be needed.

(c) The commission's evaluation and proposed mitigation recommendation shall be transmitted to the Colorado water conservation board. The board within sixty days, unless extended in writing by the applicant, shall either affirm the mitigation recommendation of the commission as the official state position or shall make modifications or additions thereto supported by a memorandum that sets out the basis for any changes made. Whenever modifications or additions are made by the board in the commission's mitigation recommendation, the governor, within sixty days, shall affirm or modify the mitigation recommendation which shall then be the official state position with respect to mitigation. The official state position, established pursuant to this subsection (1) shall be communicated to each federal, state, or other governmental agency from which the applicant must obtain a permit, license, or other approval.

(2) (a) Moneys transferred to the fish and wildlife resources fund pursuant to the provisions of section 37-60-121 (6) are hereby continuously appropriated to the Colorado water conservation board for the purpose of making grants pursuant to this subsection (2) and for offsetting the direct and indirect costs of the board for administering the grants. The interest earned from the investment of the moneys in the fund shall be credited to the fund.

(b) To the extent that the cost of implementing the mitigation recommendation made pursuant to subsection (1) of this section exceeds five percent of the costs of a water diversion, delivery, or storage facility, the board shall, upon the application of the applicant, make a mitigation grant to the applicant. The amount of the grant shall be sufficient to pay for the mitigation recommendation as determined by this section to the extent required above the applicant's five percent share. Any additional enhancement shall be at the discretion and within the means of the board. Under no circumstance shall the total amount of the grant exceed five percent of the construction costs of the project, or be disbursed in installments that exceed seventy percent of the amount of the grant during any fiscal year. Any mitigation cost in excess of ten percent of the construction costs of a project shall be borne by the applicant.

(c) An applicant may apply for an enhancement grant by submitting to the commission and the board an enhancement proposal for enhancing fish and wildlife resources over and above the levels existing without such facilities. The commission shall submit its recommendations on the proposal to the board for its consideration. The board, with the concurrence of the commission, may award a grant for fish and wildlife enhancement. Any such enhancement grant will be shared equally by the Colorado water conservation board's fish and wildlife resources fund and the division of wildlife's wildlife cash funds and other funds available to the division.

(d) For the purpose of this subsection (2), construction costs means the best estimate of the physical construction costs as fixed by the Colorado water conservation board as of the date of the grant application. Costs should be limited to design, engineering and physical construction and will not include the costs of planning, financing, and environmental documentation, mitigation costs, legal expenses, site acquisition or water rights.

(e) Species recovery grants from the fish and wildlife resources fund may be made for the purpose of responding to needs of declining native species and to those species protected under the federal "Endangered Species Act of 1973", 16 U.S.C. sec. 1531, et seq., as amended, in a manner that will carry out the state water policy.

(f) (Deleted by amendment, L. 2001, p. 692, § 28, effective May 30, 2001.)

(3) Decisions relating to the official state mitigation position made pursuant to paragraph (c) of subsection (1) of this section shall not be subject to judicial review.

(4) The board shall distribute mitigation and enhancement grants reasonably and equitably among water basins toward the end that those projects sponsored by beneficiaries east of the continental divide receive fifty percent of the money granted and those projects sponsored by beneficiaries west of the continental divide receive fifty percent of the money granted under this section.

(5) The general assembly hereby recognizes the role instream flows and river restoration projects play in mitigating the effects of the construction, operation, and maintenance of water diversion, delivery, and storage facilities. Therefore, the Colorado water conservation board and the operators of existing water diversion, delivery, or storage facilities projects are hereby authorized to apply directly to the board for moneys for projects to carry out the purposes of this section. The board is authorized to grant such moneys if it finds that such projects will further the purposes of this section.

Source: L. 87: Entire section added, p. 1297, § 5, effective July 13. **L. 97:** (1)(a) and (2)(a) amended and (2)(e) added, p. 1600, § 1, effective June 4. **L. 98:** (2)(f) added, p. 1004, § 5, effective May 27. **L. 99:** (2)(a) amended, p. 628, § 36, effective August 4. **L. 2001:** (2)(a), (2)(c), (2)(e), and (2)(f) amended, p. 692, § 28, effective May 30. **L. 2002:** (5) added, p. 456, § 28, effective May 23.