



COLORADO
**Colorado Water
Conservation Board**
Department of Natural Resources

1313 Sherman Street
Denver, CO 80203

P (303) 866-3441
F (303) 866-4474

Jared Polis, Governor

Dan Gibbs, DNR Executive Director

Rebecca Mitchell, CWCB Director

TO: Colorado Water Conservation Board Members

FROM: Chris Sturm, Stream Restoration Coordinator
Watershed and Flood Protection Section

DATE: November 20-21, 2019 Board Meeting

ITEM: 12b(1). 2020 Projects Bill
Non-Reimbursable Project Investments—Fish and Wildlife Resources Fund—Refresh

The Fish and Wildlife Resources Fund (Fish and Wildlife Mitigation Fund) was established by the legislature in 1987 to help mitigate the impacts to fish and wildlife resources that are affected by the construction, operation, or maintenance of water diversion, delivery, or storage facilities, pursuant to C.R.S. Section 37-60-122.2 and Financial Policy 15 and 20 (attached). The statute was amended in 2002 to recognize the role of instream flows in mitigating impacts and authorized the Colorado Water Conservation Board as well as sponsors of existing facilities to use these funds. The purpose of the Financial Policies (15 and 20) is for the consideration and approval of Fish and Wildlife Resources Fund grant applications pursuant to sub-sections 2-5 of 37-60-122.2, C.R.S.

The Board accepts applications throughout the year for grants from this Fund for design plans, engineering, and construction projects to: (1) address impacts from construction of water diversion, delivery, and storage facilities that require a permit, license, or other approvals, and (2) respond to the needs of declining native species and to the species protected under federal law.

Staff Recommendation

Staff recommends the Board's approval to authorize a transfer of \$1,000,000 from the Construction Fund to the Fish and Wildlife Resources Fund.





The Fish and Wildlife Resources Fund (Fish and Wildlife Mitigation Fund) was established by the legislature in 1987 to help mitigate the impacts to fish and wildlife resources that are affected by the construction, operation, or maintenance of water diversion, delivery, or storage facilities, pursuant to C.R.S. Section 37-60-122.2 and Financial Policy 15 and 20. The statute was amended in 2002 to recognize the role instream flows in mitigating impacts, and authorized the Colorado Water Conservation Board as well as sponsors of existing facilities to use these funds. The purpose of the Financial Policies (15 and 20) is for the consideration and approval of Fish and Wildlife Resources Fund grant applications pursuant to sub-sections 2-5 of 37-60-122.2, C.R.S.

P R O J E C T D E T A I L S	
<i>Project Cost:</i>	\$1 million
<i>NRI Funding Request:</i>	\$1 million
<i>Funding Source:</i>	Construction Fund
<i>Project Type:</i>	Mitigation Grants
<i>Type of Grantee:</i>	Varies

L O C A T I O N	
<i>Benefits:</i>	Statewide
<i>Water Source:</i>	Various
<i>Drainage Basin:</i>	All Basins

The following projects have received approval for use of these funds over the years:

- 2008: \$30,000: Rio Blanco River Restoration Phase III, Lower Blanco Property Owners Association
- 2009: \$132,000: Rio Blanco River Restoration Phase IV, Lower Blanco Property Owners Association
- 2009: \$70,000: Clear Springs Ranch Fish Passage, Colorado Springs Utilities
- 2010: \$560,000: Reconstruction of the Hartland Diversion Dam, Painted Sky R C and D Council
- 2011: \$75,000: Upper South Platte Diversion Reconstruction Project, Coalition for the Upper South Platte
- 2012: \$50,000: Stream Mitigation Banking Protocols, Colorado State University
- 2014: \$100,000: Platte River Enhancement Phase II, South Suburban Park and Recreation District
- 2015: \$50,000: Stream Mitigation Protocol and Aquatic Habitat Mapping, Colorado State University
- 2017: \$450,000: South Platte Flood Hazard Mitigation, Urban Drainage and Flood Control District
- 2017: \$814,270: Chatfield Reservoir Mitigation Company, Plum Creek Restoration
- 2017: \$550,000: Buckhorn Valley Metropolitan District, Abrams Creek Ditch Lining Project

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.

POLICY NUMBER: 15

SUBJECT: **CONSIDERATION AND APPROVAL OF FISH AND WILDLIFE RESOURCES FUND APPLICATIONS FOR INSTREAM FLOWS AND RIVER RESTORATION PROJECTS.**

EFFECTIVE DATE: September 12, 2002

POLICY: The Colorado Water Conservation Board (CWCB) will accept applications throughout the year for grants from the Fish and Wildlife Resources Fund 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 water diversion, delivery, and storage facilities.

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

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 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. In order to protect the long-term integrity of the Fish and Wildlife Resources Fund, instream flow and river restoration projects mitigating the impacts of existing water supply facilities will be limited to 40% of the Fish and Wildlife Resources Fund balance as of July 1, 2002.

The project applicant must have completed a fully executed funding contract with the CWCB within 2 years of the grant authorization by the CWCB, or the Board will consider de-authorization of the grant.

PURPOSE: To establish an approval process for instream flow and river restoration construction project grants from the Fish and Wildlife Resources Fund.

APPLICABILITY: This policy and procedure applies to applications for instream flow or river restoration construction project grants from the Fish and Wildlife Resources Fund.

PROCEDURE: Prior to a Board meeting, the CWCB staff will prepare for the Board's consideration a summary of the technical, financial, and institutional characteristics of each proposed instream flow water right appropriation or acquisition, river restoration feasibility study or construction project. Each application will be reviewed for conformity with the goals and

objectives of the CWCB Strategic Plan. 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 assist in the administration of compact-entitled waters, or address problems relating to compact-entitled waters,
- Instream flow water rights that facilitate the resolution of federal water rights issues, and
- 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 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,
- The need for financial assistance.
- Financial, technical, or administrative participation or coordination by all affected local governments.

NOTE:

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.

Approved by the CWCB
September 12, 2002
Agenda Item #16a

POLICY NUMBER: 20

SUBJECT: **CONSIDERATION AND APPROVAL OF FISH AND WILDLIFE RESOURCES FUND GRANT APPLICATIONS PURSUANT TO SUBSECTIONS 2-4 OF SECTION 37-60-122.2, C.R.S.**

EFFECTIVE DATE: May 17, 2011

POLICY: The Colorado Water Conservation Board (CWCB) will accept applications throughout the year for grants from the Fish and Wildlife Resources Fund 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.

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

1. Mitigation Grants to reduce, minimize, or avoid undesirable impacts on fish and wildlife resources 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 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.

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. If so, the Board shall fund only those components of the adopted Mitigation Plan that are not included as part of the permitting entity mitigation requirement. 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.

The Board shall consider applications for Enhancement Grants after receiving a recommendation from the Wildlife Commission. The Board may award an Enhancement Grant with the concurrence of the Wildlife Commission.

Enhancement Grant costs will be shared equally by the CWCB and the Division of Wildlife.

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

The CWCB may, in any year, approve Enhancement 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 and Species Recovery Grants. 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.

In the event that funds in the Fish and Wildlife Resources Fund are insufficient to fully fund a Mitigation Grant request, the applicant will receive disbursements of the grant as the General Assembly allocates such money for such purposes. The CWCB may determine that full funding is not available based on the number of Mitigation Grant applications and the distribution between east and west slope applicants.

Fish and Wildlife Resources Fund allocations will be made for both Board Policies 15 and 20 in the order that applications are received and approved.

The project applicant must have completed a fully executed funding contract with the CWCB within 2 years of the grant authorization by the CWCB or the Board will consider de-authorization of the grant.

PURPOSE: To establish an approval process for grants from the Fish and Wildlife Resources Fund.

APPLICABILITY: This policy and procedure applies to applications for grants from the Fish and Wildlife Resources Fund.

PROCEDURE: Prior to a Board meeting, the CWCB staff will prepare for the Board's consideration a summary of the technical, financial, and institutional characteristics of each proposed design plan or construction project. Each application will be reviewed for conformity with the goals and objectives of the CWCB Strategic Plan. Grant applications for Mitigation Grants shall be funded if the funds are available, and Enhancement and Species Recovery Grants will be considered after Mitigation Grants are fully funded.

The Board will consider and CWCB staff will evaluate and recommend to the Board Enhancement and Species Recovery Grant applications based on the following:

- Soundness of the project design, work plan or plan of study;
- Promotion of the goals and objectives of the Board's Strategic Plan;
- The need for the proposed project;
- The need for financial assistance; and
- Financial, technical, or administrative participation or coordination by all affected local governmental or other entities (in-kind or cost-share funding).

NOTE: 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.

Approved by the CWCB
Date May 17, 2011
Agenda Item 10