



COLORADO

Colorado Water Conservation Board

Department of Natural Resources

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TO: Colorado Water Conservation Board Members

FROM: Jojo La, Endangered Species Policy Specialist
Interstate, Federal, and Water Information Section

DATE: January 27-28, 2020

AGENDA ITEM: 5. 2020 Species Conservation Trust Fund Eligibility List Approval

Introduction:

The Species Conservation Trust Fund (SCTF) was created in 1998, pursuant to [H.B. 98-1006](#) (codified in section 24-33-111, C.R.S. [2016]). 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 Colorado Parks and Wildlife (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 \$4 million from the SCTF for fiscal year 2020-2021, including up to \$2 million for the CWCB priorities outlined herein; and
- (2) Forward a statement of concurrence to the Colorado Parks and Wildlife Commission.



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 Year Funding:

The General Assembly passed [H.B.18-1338](#) to help stabilize funding for Severance Tax Operational Fund programs in anticipation of very low severance tax revenue in fiscal year (FY) 2018-19. As part of the stabilization package, the bill made several General Fund transfers to support high-priority Operational Fund grant programs, including a \$3 million transfer from the General Fund to the SCTF to guarantee funding for FY 2018-19 projects. These transfers essentially provided “gap year” funding for Operational Fund grant programs from an alternative source, which allowed DNR to move to an arrears distribution model starting in FY 2019-20.

Under the provisions of [S.B.19-016](#), Operational Fund grant programs now receive a single distribution of actual revenue, one year in arrears. Revenue is allowed to accumulate in the Operational Fund over the course of each fiscal year and distributions are made to grant programs in one lump sum based on year-end fund balance, instead of three forecast-based installments. With alternative funding in place for Operational Fund grant programs, DNR was able to hold severance tax revenue in the fund through FY 2018-19, and then make transfers to grant programs in August 2019 for use starting in FY 2019-20.

Due to stronger-than-anticipated severance tax revenue in FY 2018-19, the SCTF received a transfer of \$5 million—100% of the maximum authorized distribution—for FY 2019-20. [House Bill 19-1259](#) authorized \$3.9 million in SCTF projects to start in FY 2019-20, supported by \$3.3 million in severance tax and a transfer of \$600,000 from the CWCB Construction Fund. This leaves \$1.7 million of unobligated severance tax revenue in reserve for potential use during anticipated future downturns.



Fiscal Year 2020-21 Outlook:

Based on the December 2019 Legislative Council Staff revenue forecast, the Operational Fund is expected to accrue enough revenue during the current year to distribute \$2.8 million to the SCTF for projects in FY 2020-21, approximately 55% of the maximum distribution authorized in statute. However, severance tax continues to be one of the most volatile revenue streams in the state, so caution is warranted when evaluating the availability of funds for SCTF projects. The forecast notes that there is significant uncertainty in the price of oil and gas, which could result in either an increase or decrease of revenue compared to projections. It also anticipates that ad valorem property tax credits for oil and gas, earned two years prior, will disproportionately reduce severance tax revenues through FY 2020-21. As a result, DNR continues to recommend a conservative approach when evaluating the authorization of SCTF projects for the upcoming fiscal year. It is also important to keep a longer-term view of the severance tax environment in order to facilitate the strategic management of the SCTF to mitigate the impact of revenue volatility to the extent possible. If future economic forecasts exceed expectations or alternative funding becomes available, DNR will revisit the proposed projects list or hold excess revenue in reserve to offset reductions to future funding.

Given this history, DNR has encouraged CWCB and CPW to identify priorities for up to \$4 million of funding for FY 2020-21, as well as a plan for reduced funding if needed. CWCB staff proposes allocating \$2 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.

Fiscal Year 2020-2021 Recommended Projects:

CWCB staff recommends the following projects for FY 2020-21.

Project/Program	Request
1. Platte River Recovery Implementation Program	\$1,900,000
2. Selenium Management, Research, Monitoring, Evaluation, and Control	\$100,000
Total CWCB SCTF Request:	\$2,000,000

1. *Platte River Recovery Implementation Program: Up to \$1,900,000*

The Platte River Recovery Implementation Program is listed as the top priority in staff's recommendation. The Program allows for the development of water in the North and South Platte Basins, while supporting the recovery of four threatened and endangered species. The four target species that benefit from the Program include three endangered species (whooping crane, interior least tern, pallid sturgeon), and one threatened species (piping plover). While the management actions are concentrated in central Nebraska, a Biological Opinion provides Endangered Species Act compliance for existing



and certain new water-related activities upstream in the North Platte and South Platte River Basins.

The year 2019 marked the end of the Program's First Increment, an agreement covering the first 13-year period from 2007 to 2019. In late 2019, Colorado and the other Program partners extended the First Increment for another 13 years (2020-2032); the Program partners executed a Cooperative Agreement amendment, in which Colorado committed to provide \$24,900,000 over the next 13 years. At the same time, [H.R. 1865](#) passed in late December, which congressionally reauthorized the Program for a total of \$156 million.

This Program has accomplished more than a decade record of success and has provided remarkable benefits for Colorado through a programmatic approach to environmental permitting. This has decreased the regulatory burden for water users in the booming Front Range corridor and has contributed to the recovery of the target species. In fact, the U.S. Fish and Wildlife Service recently published in the [Federal Register](#) a proposal to delist the interior least tern.

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. Selenium Management, Research, Monitoring, Evaluation and Control: Up to \$100,000

Selenium is a naturally occurring element that can cause deleterious effects to fish reproduction. Increased selenium concentrations can occur when weathering and irrigation mobilize selenium through the soil and into waterways. Selenium levels are high in the Gunnison and Colorado River Basins, rivers that are designated critical habitat for the endangered Colorado pikeminnow, humpback chub, bonytail, and razorback sucker.

The Gunnison Basin Selenium Management Program is a required conservation measure identified in the Programmatic Biological Opinion (issued by the U.S. Fish and Wildlife Service, December 2009) as part of the Aspinall Unit National Environmental Policy Act evaluation (issued December 2010). The U.S. Fish and Wildlife Service determined that high selenium levels in the Uncompahgre and Gunnison Rivers are limiting the recovery of the Colorado River endangered fish species and that the Selenium Management Program is necessary for the continued existence of the species. The Program aims to improve fish habitat by reducing selenium loading from irrigation runoff in the Gunnison Basin. By meeting the targets set in the Program, water users maintain Endangered Species Act compliance, which provides regulatory certainty in continuing historical water uses.

Funds for selenium management will be directed to the Selenium Management Plan as well as for monitoring, research, evaluations, and implementation projects that help address selenium in the basins.

