



COLORADO

Colorado Water Conservation Board

Department of Natural Resources

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TO: Colorado Water Conservation Board Members

FROM: Amy Ostdiek, Section Chief
Interstate, Federal, and Water Information Section

DATE: January 24-25, 2022

AGENDA ITEM: 22. 2022 Species Conservation Trust Fund Eligibility List Approval

Staff Recommendation:

Staff recommends that the Board:

(1) concur with the DNR Executive Director's proposed recommendations to the General Assembly to approve a total expenditure of up to \$6 million from the Species Conservation Trust Fund (SCTF) for FY 2022-23, including up to \$3 million for the Colorado Water Conservation Board (CWCB) priorities outlined herein; and

(2) forward a statement of concurrence to the Colorado Parks and Wildlife (CPW) Commission.

A final decision on the amount authorized for new projects in the 2022 legislation will be made following the March 2022 revenue forecast.

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 Colorado 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 Colorado General



Assembly for review and modifications as appropriate prior to the passage of the annual SCTF bill.

Statutory Requirements of the Species Conservation Trust Fund:

The Species Conservation Trust Fund 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:

[Senate Bill 21-281](#) made significant changes to the structure of the Severance Tax Operational Fund, starting in FY 2021-22, in a continued effort to stabilize funding for severance tax-supported programs. These changes included reprioritizing and/or refinancing former Natural Resources and Energy Grant Programs (grant programs; previously known as “Tier 2” programs¹) and eliminating proportional transfers that were contingent on available revenue and rarely made in full. Under the new Operational Fund structure, the SCTF will receive infusions of revenue via an annual appropriation of up to \$5 million starting in FY 2021-22. The SCTF is also prioritized for funding ahead of, and included in, the Operational Fund’s now-200% reserve requirement. Additionally, S.B. 21-281 included two transfers from the General Fund to the Operational Fund that were intended to ensure there was sufficient revenue to support the appropriations to SCTF and two other former grant programs in both FY 2021-22 and FY 2022-23.

Under the pre-S.B. 21-281 Operational Fund distribution structure, the SCTF and other Natural Resources and Energy Grant Programs were highly vulnerable to severance tax revenue volatility because they were prioritized to receive funding from any leftover

¹Former Natural Resources and Energy (“Tier 2”) Grant Programs include the Water Supply Reserve Fund, Soil Conservation District Grants, the Water Efficiency Grant Program, Species Conservation Trust Fund, Low-Income Energy Assistance Programs, Forestry Grants, and the Aquatic Nuisance Species Program. Senate Bill 21-281 reprioritized these programs within the Operational Fund, or refinanced them with other fund sources.



revenue after Core Programs obligations (formerly known as “Tier 1” Programs²) and the Core Program reserve requirement were met. The change in structure does not make SCTF completely immune to revenue volatility, but it reduces the SCTF’s exposure to a level that is more commensurate with Core Programs (formerly known as “Tier 1” programs).

It is important to note that the new appropriation structure implemented by S.B. 21-281 is simply an alternative transfer mechanism to move revenue from the Operational Fund to the Species Conservation Trust Fund. It does not authorize the expenditure of that revenue. Pursuant to Section 24-33-111 (3)(a), C.R.S., annual legislation is still required to secure legislative authorization of the species conservation eligibility list.

Due to the severe severance tax revenue shortfall that resulted from the collapse of oil prices in Spring 2020 and ongoing depressed demand from the pandemic, the Department of Natural Resources did not put forward SCTF legislation to authorize new project expenditures during the 2021 legislative session. Without any new spending and after taking into account interest earnings and other accounting adjustments, the SCTF is projected to have an unobligated reserve of \$2.5 million by the end of FY 2021-22 that can be used to support additional project expenditures beyond available annual severance tax revenue or retained for future severance tax revenue downturns.

Fiscal Year 2022-23 Outlook:

Barring another unexpected catastrophic downturn in the oil and gas commodity markets, SCTF funding for the next two fiscal years is largely independent of available severance tax revenue due to the pair of General Fund transfers included in S.B. 21-281. It also continues to mirror the “arrears” cadence that was in place for former Natural Resources and Energy Grant Programs:

Senate Bill 21-281 appropriated \$5 million to the SCTF in FY 2021-22, supported by a General Fund revenue transfer into the Operational Fund on June 30, 2021. This revenue is available for new projects to be authorized during the upcoming 2022 legislative session (FY 2022-23).

The Department’s FY 2022-23 budget request includes the continuation of the SB 21-281 appropriation for \$5 million to the SCTF, supported by the second transfer of General Fund revenue included in the bill. Pending approval of the requested SCTF appropriation by the legislature, this funding will be available for projects authorized during the 2023 legislative session (FY 2023-24).

²Core (“Tier 1”) Programs include the CO Oil and Gas Conservation Commission, the CO Geological Survey, the CO Avalanche Information Center, the Division of Reclamation, Mining, and Safety, the Colorado Water Conservation Board, and Colorado Parks and Wildlife (state parks operating and indirect cost recoveries for wildlife).



Based on the December 2021 Legislative Council Staff revenue forecast, severance tax revenue appears to be recovering from the FY 2020-21 downturn and stabilizing at around \$103 million per year through FY 2023-24. The forecast attributes this recovery to upward pressure from increasing oil and gas prices and an increase in collections resulting from the passage of [H.B. 21-1312](#), which restricts the oil and gas netback deduction to direct costs only and phases out severance tax credits and exemptions for coal production.

However, severance tax continues to be one of the most volatile revenue streams in the state and none of the recent legislation changes the fundamental boom-and-bust character of severance tax revenue collections. Although the near-term funding outlook for SCTF is more stable than usual due to the additional General Fund support in S.B. 21-281, the recent forecast also suggests that revenue may not be able to fully meet all Operational Fund obligations in the longer term. As a result, caution is still generally warranted when evaluating the availability of funds for SCTF projects and managing the SCTF reserve balance, and the Department continues to recommend a broadly conservative approach when evaluating severance tax obligations.

Given this history, DNR has encouraged CWCB and CPW to each identify priorities for up to \$3 million of funding for FY 2022-23, as well as a plan for reduced funding if needed. CWCB staff proposes allocating \$3 million of SCTF funding to the 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 2022-2023 Recommended Projects:

CWCB staff recommends the following projects for fiscal year 2022-23.

Project/Program	Request
1. Platte River Recovery Implementation Program	\$1,900,000
2. Upper Colorado River Endangered Fish Recovery Program and San Juan River Basin Recovery Implementation Program	\$800,000
3. Ruedi Reservoir Releases - 15-Mile Reach	\$250,000
4. Selenium Management, Research, Monitoring, Evaluation, and Control	\$50,000
Total CWCB SCTF Request:	\$3,000,000



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

The Platte River Recovery Implementation Program (Platte Recovery Program) is listed as the top priority in staff's recommendation. The Platte Recovery Program allows for the development of water in the North and South Platte Basins while supporting the recovery of threatened and endangered species. The target species that benefit from the Platte Recovery Program include two endangered species (whooping crane and pallid sturgeon), and one threatened species (piping plover). The Platte Recovery Program also provides benefits for the interior least tern that was delisted in early 2021. 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. Since the inception of the Platte Recovery Program, more than 213 total streamlined Section 7 consultations have occurred in Colorado.

The Platte Recovery Program operates in 13-year increments, currently in the First Increment extension (from 2020-2032). For the First Increment extension, the Platte Recovery Program partners are committed to provide \$156 million of cash and cash equivalent contributions. The Platte Recovery Program is cost-shared 50/50% by federal/non-federal partners and the Platte Recovery Program recognizes both cash and cash-equivalent contributions by the partners. Colorado's cash commitment is \$24.9 million, and its cash equivalent commitment is \$6.3 million (adjusted for inflation over time). To date, Colorado has appropriated \$7.9 million for the Platte Recovery Program's First Increment extension.

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

2. *Upper Colorado River Endangered Fish Recovery Program and San Juan River Basin Recovery Implementation Program: Up to \$800,000*

The Upper Colorado River Endangered Fish Recovery Program and San Juan River Basin Recovery Implementation Program (Colorado Recovery Programs) were established under cooperative agreements, signed by the Governor of Colorado, as multi-agency partnerships in 1988 and 1992. The goal of the Colorado Recovery Programs is to recover the threatened and endangered Colorado pikeminnow, bonytail, razorback sucker, and humpback chub while allowing water development to continue. The Colorado Recovery Programs provide Endangered Species Act compliance for more than 2,500 water projects in the Upper Colorado River basin.

The cooperative agreements and the authorizing congressional act are set to expire in September 2023. Partners are currently working to develop recommendations for the programs after the year 2023. Funding is needed for these programs to continue



conservation activities including implementing habitat improvements, augmenting flows under dry conditions, supporting populations with fish hatcheries, and managing 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.

3. *Ruedi Reservoir Releases to 15-Mile Reach: Up to \$250,000*

The 15-Mile Reach of the Colorado River provides critical habitat for four species of threatened and endangered fish: the Colorado pikeminnow, bonytail, humpback chub, and razorback sucker. It provides spawning habitat for these threatened and endangered fish species as well as high-quality habitat for adult fish. This reach is sensitive to water depletions because of its location downstream of several large diversions. The reach has experienced significant dewatering during the late summer months, and occasionally in early spring.

The CWCB over several years was able to expend \$481,945 from the SCTF to lease water from Ruedi Reservoir. This released water was used to supplement existing ISF water rights in the 15-Mile Reach to preserve and improve the natural environment, and to help meet, or reduce shortfalls to, the U.S. Fish and Wildlife Service's flow recommendations. When possible, the released water was also used for local hydropower production.

This funding would allow the CWCB to continue to lease water from Ruedi Reservoir for these purposes.

4. *Selenium Management, Research, Monitoring, Evaluation and Control: Up to \$50,000*

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 threatened and 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.

