



COLORADO

**Colorado Water
Conservation Board**

Department of Natural Resources

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TO: Colorado Water Conservation Board Members

FROM: Kara Scheel, Endangered Species Recovery Program Manager
Interstate, Federal, and Water Information Section

DATE: January 23-24, 2023

AGENDA ITEM: 11. 2023 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 \$5 million from the Species Conservation Trust Fund (SCTF) for FY 2023-24, including up to \$2.25 million for the CWCB priorities outlined herein and \$0.5 million to renew funding for Endangered Species Act litigation support; and (2) forward a statement of concurrence to the CPW Commission.

Background:

The Species Conservation Trust Fund is supported by infusions of revenue from the Severance Tax Operational Fund (Operational Fund). Severance tax is a notoriously volatile revenue stream because it is primarily generated by oil and gas activity and the tax itself has structural characteristics that exaggerate the boom-and-bust cycles of the commodity markets. As a result, the amount of revenue allocated to the SCTF on an annual basis has historically been highly unstable and difficult to forecast with much certainty.

Senate Bill 21-281 made significant changes to the structure of the Severance Tax Operational Fund, starting in FY 2021-22, in an effort to stabilize funding for severance tax-supported programs including the SCTF. Under the new Operational Fund structure, annual funding for the SCTF is much more consistent, which makes project planning significantly easier. The SCTF is now authorized to receive infusions of revenue via an annual appropriation of up to \$5 million, approved each year by the General Assembly through the Long Bill. The SCTF is also protected by the 200% statutory reserve requirement for the Operational Fund. When the reserve is full, which it is currently, there is a sufficient balance in the Operational Fund to sustain programs through two full years without disruption in the event of a severe severance tax revenue downturn.

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 the required authorization of the species conservation project eligibility list.

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.

Fiscal Year 2023-24 Outlook:

The FY 2022-23 Long Bill (H.B. 22-1329) included an appropriation of \$5 million from the Severance Tax Operational Fund to the SCTF effective July 1, 2022. The revenue from this appropriation is now available in the SCTF and requires legislative authorization during the 2023 session for Commission- and Board- approved priorities and projects that will begin in FY 2023-24. Based on the December 2022 revenue forecasts from Legislative Council Staff and the Governor’s Office of State Planning and Budgeting, the Department anticipates that there will be sufficient severance tax revenue to support the SCTF at the \$5 million level through the forecast period (FY 2024-25) without requiring any of the funds currently held in the Operational Fund reserve. Accordingly, the Department’s budget request for FY 2023-24 includes a continuing appropriation of \$5 million in revenue for SCTF. If approved, the appropriated revenue will be available for species conservation projects that will be authorized in the annual SCTF legislation passed during the 2024 legislative session to begin in FY 2024-25.

Severance tax continues to be one of the most volatile revenue streams in the state, although recent legislative changes have attempted to smooth the impact of the boom-and-bust character of severance tax revenue collections. Although the near-term funding outlook for SCTF is now much more stable than in the past, some caution is still warranted when evaluating the availability of funds for SCTF projects and managing the SCTF reserve balance over time. As a result, the Department continues to recommend a broadly conservative approach when evaluating severance tax obligations in the longer term.

Given this history, DNR has encouraged CWCB and CPW to each identify priorities for up to \$2.25 million of funding for FY 2023-24, as well as a plan for reduced funding if needed. CWCB staff proposes allocating \$2.25 million of SCTF funding to the programs described below. Should less money be available, staff recommends that the Board authorize a



reduction as needed to the Upper Colorado River Endangered Fish Recovery Program and San Juan River Basin Recovery Implementation Program.

Fiscal Year 2023-2024 Recommended Projects:

CWCB staff recommends the following projects for fiscal year 2023-24.

Project/Program	Request
1. Upper Colorado River Endangered Fish Recovery Program and San Juan River Basin Recovery Implementation Program	\$2,200,000
2. Selenium Management, Research, Monitoring, Evaluation, and Control	\$50,000
Total CWCB SCTF Request:	\$2,250,000

1. Upper Colorado River Endangered Fish Recovery Program and San Juan River Basin Recovery Implementation Program: Up to \$2,200,000

The Upper Colorado River Endangered Fish Recovery Program and San Juan River Basin Recovery Implementation Program (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 Recovery Programs is to recover the threatened and endangered Colorado pikeminnow, bonytail, razorback sucker, and humpback chub. The 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 working diligently to reach agreement for funding and program activities after the year 2023. However, funding for improvement projects is greatly needed to ensure the success of these programs. Projects may include diversion rehabilitation to improve fish passage, augmenting flows under dry conditions, planning processes, habitat restoration, managing non-native fish, and other conservation measures as defined in the Programs’ respective recovery action plans.

2. 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.

