
**Species Conservation Trust Fund
2008 Annual Report
to the
Colorado General Assembly**

**February 28, 2008
Colorado Department of Natural Resources**

EXECUTIVE SUMMARY

The Colorado General Assembly created the Species Conservation Trust Fund ("SCTF") in 1998 through HB 98-1006. This legislation provides ongoing funding to implement cooperative agreements, recovery programs, and other programs designed to meet Colorado's obligations under the Endangered Species Act (ESA). The Fund also is intended to promote conservation practices designed to conserve species currently listed as threatened or endangered under state law, recover or protect candidate species in order to avoid the need to list those species under the ESA, and improve the scientific understanding governing federal or state species listing and delisting.

Initially funded at the \$10 million level in 1998 upon its creation, the Fund has been capitalized three times since then, in 2000, 2006, and 2007.

HB 98-1006 also directed the Executive Director of the Colorado Department of Natural Resources to prepare an annual report to the General Assembly on the progress and status of activities undertaken to conserve and recover Colorado's native species, as well as activities that may be required in the future. This report covers activity for 2007 and funding proposals for 2008.

The Executive Director of the Department of Natural Resources has reviewed the proposed 2008 species conservation projects discussed in this report. The Director has also consulted with the Wildlife Commission, the Director of the Division of Wildlife, the Colorado Water Conservation Board and its Director, and all have agreed that the expenditures contained in this report are warranted and should be contained within this year's list of eligible species. Accordingly, the Executive Director recommends that the General Assembly adopt the expenditures as outlined in this year's Species Conservation Trust Fund legislation.

Cooperative Program/ Species Conservation Effort	Recommended FY '08- '09 SCTF Expenditures	Colorado's estimated share of total long- term cost	Estimated total long- term cost
Platte River Recovery Program	\$7,585,000	\$24,000,000 (plus interest)	\$317,000,000 – Total Program Cost
Natural Areas Program	\$240,000	Estimates not yet available	Estimates not yet available
DOW – Wildlife Research	\$60,000	\$2,615,000	Estimates not yet available
DOW – Grouse Conservation	\$2,758,886	\$6,859,114	Estimates not yet available
DOW - Fish Conservation	\$520,000	\$ 640,000	Estimates not yet available
CWCB – Instream Flow Protection	\$500,000	Estimates not yet available	Estimates not yet available

INTRODUCTION

Colorado has long been recognized as a state innovative in its approach to problem solving by means of creative solutions. In 1998 the General Assembly recognized the mounting costs of the state's participation in the Colorado and San Juan Endangered Fish Recovery Implementation Programs and the impending costs associating with the Platte River Recovery Program, which was still in the negotiation stage.

The General Assembly therefore created the Native Species Conservation Trust Fund with primary emphasis aimed at funding Colorado's participation in cooperative agreements and recovery programs which are in place to meet obligations under the Endangered Species Act and which can provide regulatory certainty. But the General Assembly did not stop there, expanding the Trust Fund to cover studies and programs within the Colorado Division of Wildlife dedicated to species listed as threatened and endangered by the State of Colorado, recovery and protection of federal candidate species, scientific studies related to the listing or delisting of any species, and the scientific evaluation of genetic data, habitat evaluation and declining species baseline data.

The purpose of the Trust Fund has been to afford Colorado the flexibility to address species conservation and recovery issues with the necessary funds to promote species recovery, engage in scientific study, and enhance habitat for federally listed, state listed, or state species of concern. It has also given the State the flexibility to plan into the future and undertake some of the long-term recovery efforts necessitated by the sometimes long-term conservation and recovery needs of some species and habitats.

Although there has been some fluctuation in the funding over the past ten years since the Trust Fund was created, the General Assembly, to date, has been able to direct \$25 million toward species conservation, recovery, research, and greater state participation in recovery programs.

THE FEDERAL ENDANGERED SPECIES ACT IN COLORADO

Some of Colorado's native species have declined to the point where they could become extinct. As a result, they have been added to the list of threatened and endangered species pursuant to the federal Endangered Species Act (ESA). The ESA is the most powerful environmental protection law in the world, mandating protections on species and habitats in the face of ever-growing number and intensity of threats.

Colorado is currently home to fifteen federally listed animal species and thirteen plant species, all varying between threatened and endangered status. Other species are

being proposed for listing either on the initiative of the U.S. Fish and Wildlife Service (Service) or driven by lawsuit.

EMERGING ISSUES IN COLORADO

Colorado's economy continues to drive population growth in the state, along with ongoing demands on all of the State's natural resources, to create a precarious circumstance for many of the native species of our state.

Threats to species have taken many forms over the last few years:

- Growth, associated changes in land use, and expanded energy development have forced elimination or outright destruction of habitat, calling into question management practices of old and forcing new ways to implement conservation measures.
- Recreational demands continue to increase throughout the state, and the consequence is ever increasing demands on species and their habitats.
- Climate change continues to play out in Colorado both in the species and habitat response and in the legal processes mandated by the Endangered Species Act.
- Numerous lawsuits seeking the federal listing of various species add demands on Colorado's resource agencies in the event of a listing.

Energy Development

National trends have played out in Colorado such that new threats to native species continue to emerge in Colorado. These trends are playing out both in the natural resource arena and in courts of law. As the country continues to demand greater oil and gas supplies, exploration and drilling in Colorado has expanded accordingly. From 1999 to 2006, oil and gas drilling permits in Colorado increased from 1010 to 5904. Much of the new exploration is located in sensitive habitat for grouse and other sage-steppe habitat species. The Colorado Division of Wildlife has responded with extensive conservation plans for both the Gunnison and the Greater Sage Grouse. Both plans outline many of the proposed grouse conservation projects described later in this report.

Colorado is also proposing new regulations for oil and gas drilling and associated impacts in accordance with legislation passed by the Colorado General Assembly in 2007. Governor Ritter signed HB 07-1298 and HB 07-1341 into law in May 2007, requiring the Colorado Oil and Gas Commission to establish standards for minimizing adverse impacts to wildlife resources from oil and gas activities and to adopt rules to protect the health, safety, and welfare of the general public in the conduct of oil and gas operations, respectively. In accordance with timelines established in the legislation, the

Commission will be adopting rules to implement these bills in July 2008. In November 2007, the Commission released an initial, pre-draft, proposal intended to inform and facilitate initial public comment on the rulemaking. In December 2007, 27 organizations and over 100 individuals submitted comments on the Commission's initial proposal. The Oil and Gas Commission held public meetings in early 2008 in each of the five oil-producing regions of the state to explain the initial proposal to those most affected by it, to inform attendees how they can participate in the rulemaking process, and to solicit further comment. Over 1,700 people attended these public meetings and over 150 individuals offered public testimony. Comments from the public meetings covered a broad spectrum of issues both substantive and procedure. The Commission will review written comments and testimony and consider it in drafting proposed rules.

The Commission intends to publish proposed rules implementing HB 07-1298 and HB 07-1341 in the *Colorado Register* in the spring of 2008. This will initiate the formal rulemaking process, which will include further opportunities for the public to provide comments as well as a formal hearing before the Oil and Gas Conservation Commission. The Commission proposes to adopt final rules in late June, 2008. As directed by the Governor and the General Assembly, the Commission will seek to implement these pieces of legislation in a way that preserves energy production while also protecting Colorado's wildlife, air and water quality, communities, and quality of life.

Growth Demands

Demands on Colorado's landscape and habitat continued throughout 2007. The annual estimate of development on private land is 90,000 acres per year. While Colorado is also a leader in the nation for preserving landscapes, pressures continue to mount on species habitat throughout the state.

For instance, in 2007, the U.S. Fish and Wildlife Service proposed a rule to keep the Preble's Meadow Jumping Mouse listed in Colorado while delisting the same subspecies in Wyoming. The primary reason for keeping the mouse listed in Colorado was due to the continued growth pressures in the mouse's Front Range riparian habitat, wherein the Service stated:

While protections of the Act have avoided, minimized, and helped to compensate for direct human land-use impacts to occupied Preble's meadow jumping mouse habitat, secondary impacts to riparian habitats have likely diminished the areas that are capable of sustaining Preble's populations. Given the projected future growth rates in Colorado, and absent protections associated with Federal activities and listing under the Act, we believe that threats posed by human development activities would rise dramatically following delisting.

The Preble's Mouse stands as only one example of the profound impact growth is having on Colorado's native species. Growth, agricultural land conversion, and urban development, and the subsequent destruction of habitat, has been prominent amongst a myriad of threats to species such as the Greater and Gunnison Sage Grouse, and Gunnison's Prairie Dog,

Climate Change

Climate change is a factor which must be considered for any species' status assessment. While much of America has been watching the ongoing assessment of the polar bear as the "test case" for consideration of climate change as a component in the listing of species, courts have already required that climate change be required in conducting inter-agency consultations under Section 7 of the Endangered Species Act.

The U.S. District Court for the Eastern District of California upheld a challenge to the biological opinion for the delta smelt, issued by the U.S. Fish and Wildlife Service following consultation under section 7 of the Endangered Species Act (ESA) for the Central Valley and State Water Projects, which divert water from the Sacramento-San Joaquin Delta to central and southern California. *Natural Resources Defense Council v. Kempthorne*, No. 05-1207 (E.D. Cal. May 25, 2007). The Court ordered the Service to undertake a full analysis of climate change in its consultation process to determine how climate change affects water availability to the smelt. This case was a bellwether for analyzing climate change as a component of ESA listings and corresponding federal consultations required by the Act.

In a situation much closer to Colorado, the Service received a petition in October, 2007, to list the pika due to climate change in its alpine tundra habitat throughout the West, including Colorado. Specific to the pika, the petition cited rising temperatures from global warming as a threat to pikas by shortening the period available for them to gather food, thus changing the types of plants in the meadows where they forage, shrinking the area of their foraging habitat, reducing insulating snow pack during winter, and causing death by overheating.

According to petitioners, climate change is heating the lower reaches of pika habitat higher into the mountains, jeopardizing the species' survival. In the Great Basin mountains, researchers have found that the range of the pika is retreating upslope at an accelerating pace. The petition states that a third of documented populations in the Great Basin have become extinct in the last century, and climate experts predict temperatures in the western United States in this century will continue to increase as they have in the past century. The increase in temperature is predicted to significantly affect pikas living at lower elevations and lower latitudes of the West.

Litigation/Petitions affecting Colorado species

In the federal district in Colorado, as well as other federal courts throughout the nation, various suits are pending which involve Colorado native species:

- In the U.S. District Court in Idaho, a challenge brought against the Service for declining to list the **Greater Sage Grouse** in 2005 rendered a decision that the Service initiate a new review. The Court found that sage grouse populations have been in significant decline for decades; that their habitat is being subjected to accelerating threats from invasive weeds, fires, energy development, and livestock grazing; and that about one-half of the original area occupied by sage-grouse is no longer capable of supporting sage-grouse on a year-round basis. The Court entered an order approving a stipulation upon remand, providing for a new finding on potential listing of the sage grouse by May, 2009. However, the U.S. Fish and Wildlife Service believes they have a statutory obligation to make their finding by December, 2008.
- A case filed on November 14, 2006, in the District Court for the District of Columbia seeks to have the U.S. Fish and Wildlife Service list and designate critical habitat for the **Gunnison Sage Grouse**. Litigants are awaiting the Court's ruling on Plaintiff's motion for an emergency listing of the species with a request for the Court to remand the Service's 2006 determination that the species did not warrant listing. The remand would require the Service to enter into another 12 month finding to determine, once again, if the species is warranted for listing.
- As a result of a lawsuit filed to list the **Gunnison's Prairie Dog**, the U.S. Fish and Wildlife Service ruled for a dual listing status on the species on January 30, 2008. The "montane" range of the species, located in central and south-central Colorado and Northern New Mexico, has been deemed warranted for listing but precluded due to higher priority species listing obligations by the Service. The remaining "prairie" portion of the range of the species (the remainder of New Mexico, Utah, and Arizona) has been deemed not warranted for listing.
- Numerous environmental organizations have filed a petition to list the **Black-tailed Prairie Dog** in 2007. The U.S. Fish and Wildlife Service will likely make a finding on that petition in September, 2008.

2007 FUNDING PRIORITIES

Platte River

In 2007, the South Platte Program to recover the endangered and threatened Whooping Crane, Least Tern, Piping Plover, and Pallid Sturgeon has made significant progress. The Governance Committee hired an Executive Director, Jerry Kenny, who

started in July 2007. Today the Executive Director's Office is nearly fully staffed. The Governance Committee has hired contractors to solve the "choke point" water management issue and is in the process of obtaining insurance. Other Requests for Proposals for implementing work are proceeding. In addition, the Governance Committee has begun to implement the Adaptive Management Plan.

Species response and recovery would not be expected to be immediate; however, 2007 did see some improvements. Whooping cranes that reached Texas increased for the fifth year in a row (to 261 cranes from 237 in the previous year). In addition, some restoration work occurred on an island at the Audubon Society Rowe Wildlife Sanctuary, and 2 pairs of piping plovers and 10 pairs of least terns used the restored island this year.

Sage species, Shortgrass Prairie Species, Plains Fishes

Since 2006, the General Assembly has dedicated \$400,000 annually to conservation and recovery projects in the sage-steppe ecosystem, the shortgrass prairie ecosystem and to general conservation projects for minnow species found on Colorado's eastern plains.

Gunnison Sage Grouse, Ongoing Projects: The Colorado Division of Wildlife continues with Gunnison Sage Grouse projects including conducting population inventories (lek counts), surveying for new populations, assessing and securing habitat, translocations, cooperative projects with landowners and local working groups to protect grouse populations and habitat, enrolling lands in the Candidate Conservation Agreements with Assurances (CCAA) program, and research and conservation planning.

Greater Sage Grouse, Ongoing Projects: As with the Gunnison Sage Grouse, DOW is also engaged in conducting lek counts; undertaking research on habitat and population management techniques; assessing, securing, and treating habitat; translocating birds; and assisting local working groups with conservation planning.

Grassland Ecosystem/Mountain Plover: DOW continues its efforts to protect and enhance mountain plover populations and other grassland species, by partnering with the U.S. Fish and Wildlife Service and private landowners to minimize mountain plover impacts by agricultural practices on cultivated lands. DOW is also providing input on specifications of grassland restoration methods used in other government programs, providing research and development of conservation actions for grassland-dependent species, and implementing grassland a grassland conservation plan through monitoring, research, and individual management agreements and acquisitions.

Eastern Plains Fishes, Ongoing Projects: Processes underway include the development and finalization of recovery goals and criteria; stocking; protection and reclamation of suitable river and stream habitats; artificial propagation and rearing of fish; evaluation of stocking into new habitats; habitat restoration through riparian, stream channel, water

quality and hydrologic regime considerations and research into limiting factors; and monitoring health of wild populations.

Southwestern Willow Flycatcher Habitat Conservation Planning

In 2007 the General Assembly provided SCTF funding for the ongoing work of developing and implementing a Habitat Conservation Plan (HCP) for the Southwestern Willow Flycatcher in Colorado's San Luis Valley. Project proponents continue to work through the Rio Grande Water Conservation District, all of the Counties in the Valley and with the U.S. Fish and Wildlife Service to finalize the planning process and implement the actual Plan. The HCP will provide Endangered Species Act coverage to agricultural and water uses undertaken by private citizens and governmental entities until the Willow Flycatcher is recovered.

CONCLUSION

Since 1998, Colorado has enjoyed tremendous success by concentrating conservation measures and financial resources toward species conservation driven more by state efforts and less and less by the dictates of the federal Endangered Species Act. The Species Conservation Trust Fund has been a big part of that success.

By emphasizing conservation and recovery at the State level, Colorado is able to craft recovery solutions more quickly and more precisely, clearly fitting the research or project implementation needs of species in a timely fashion.

Credit is due to the Colorado General Assembly for the foresight to create the Species Conservation Trust Fund in the late 1990's and to prioritize and fund the projects of greatest importance as recognized by the Colorado Division of Wildlife, the Colorado Water Conservation Board, the Department of Natural Resources, and the hundreds of conservation partners throughout the State of Colorado.