

STATE OF COLORADO

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DEPARTMENT OF
NATURAL
RESOURCES

March 3, 2003

Bill Owens
Governor
Greg E. Walcher
Executive Director

Dear Members of the Colorado General Assembly:

On behalf of the Department of Natural Resources, I am pleased to provide you a copy of the Native Species Conservation Trust Fund Annual Report for 2002. The report provides a progress report for ongoing projects this year.

Colorado has become a national leader in its efforts on behalf of threatened and endangered species recovery. Our goal is to continue to provide the best available science to prevent listings under the Federal Endangered Species Act, or, if a species has already been listed, to provide that same science to promote species recovery, downlisting and delisting. In this way, we protect the state's valuable wildlife and plant resources and forgo the regulatory intrusion brought to bear by the federal Endangered Species Act.

Colorado will continue to place emphasis on property rights, collaboration, voluntary action and constructive partnerships. As you will see in this report, the State has worked closely with various federal agencies, other states and units of local government to affect species recovery. This Department is also spearheading an interdepartmental management team to effectively address threatened and endangered species issues throughout state government.

Please do not hesitate to contact Mary Marchun, our Assistant Director for Legislative Affairs; Tom Blickensderfer, our Endangered Species Program Director; or me if we can answer any questions. Thank you for your interest in these complex issues.

Sincerely,

Greg E. Walcher,
Executive Director

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NATIVE SPECIES CONSERVATION TRUST FUND A SHORT HISTORY

The General Assembly created the Native Species Conservation Trust Fund ("the Fund") in 1998 upon passage of HB98-1006. The bill appropriated \$10 million into the Fund from several state water funds and the General Fund. Two years later, the General Assembly passed HB 00-1429, which added an additional \$5 million to the Fund from the Severance Tax Operating Fund.

HB98-1006 outlines the structure and administration of the Fund. The statute directs the Executive Director of the Colorado Department of Natural Resources (DNR) to annually prepare a Species Conservation Eligibility List describing programs eligible to receive money from the Fund. This list is prepared after consulting with the Colorado Water Conservation Board and its director, the Colorado Wildlife Commission, the director of the Colorado Division of Wildlife, and the stakeholder group consisting of the various parties most closely affected by endangered species conservation and recovery.

HB98-1006 also directs the Executive Director to annually provide a report to the General Assembly on the progress and status of activities undertaken to recover Colorado's native species, as well as activities that may be required in the future. This year's report is organized into two sections reflecting the major purposes for which expenditures from the Fund are authorized:

- Expenditures from the Fund for purposes of implementing cooperative agreements, recovery programs, and other programs designed to meet obligations arising under the federal Endangered Species Act and to provide a stable and predictable regulatory environment for Colorado's citizens;
- Expenditures from the Fund for studies and programs designed to conserve species currently listed as threatened and endangered species under state law; recover or protect candidate species in order to avoid the need to list these species under federal law; and improve scientific understanding that governs decisions on adding or removing species from either the state or federal endangered species lists.

THE FEDERAL ENDANGERED SPECIES ACT: HOW DO WE BEST DEAL WITH IT IN COLORADO?

Congress passed the Endangered Species Act (ESA) in 1973 with the best of intentions to promote species conservation. Yet as time has progressed, the Act as implemented has been fraught with litigation and used more for regulatory interference instead of species conservation and recovery.

To date, 1262 species nationwide are listed as threatened or endangered (517 animal species and 745 plant species) while only 37 have actually been delisted, **13 due to actual recovery of the species!** Because of the press of court rulings on species listing decisions, the federal Fish and Wildlife Service has had to prioritize species listing over recovery and delisting, which is a curious turn of events for an agency dedicated to species preservation and recovery.

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 ESA. When extinction is imminent, listing on the Endangered Species List is a proper course of action.

The ESA is the most powerful environmental protection law in the world due to the extensive regulatory authority it confers upon the U. S. Fish and Wildlife Service. Use of this authority has generated considerable controversy around the United States, because of concerns that federal-level decisions would take private property without just compensation, or unacceptably limit state and local land use and natural resource management rights and prerogatives.

Recognizing the importance of endangered species issues to Coloradans, Governor Bill Owens issued Executive Order D01199 to create an Interdepartmental Management Team on Endangered Species. Headquartered at the Colorado Department of Natural Resources, the Management Team coordinates endangered species issues with the Departments of Transportation, Agriculture, Public Health and Environment and the Division of Wildlife so that the state can efficiently and effectively deal with these important issues.

The State of Colorado, in collaboration with local governments, private citizens, businesses, and community groups, intends to work with all of these groups to protect wildlife and plant species before ESA listing is required. **The core of the state's effort is based on the belief that the state has the research capabilities and serves as the repository of the best available science affecting species propagation and recovery, and that the state Division of Wildlife has exceedingly more "on-the-ground" knowledge and familiarity with the processes and science necessary to sustain species in the wild.**

The Colorado Department of Natural Resources, through the Division of Wildlife, will commit significant resources and use the best available science to actually recover and delist threatened and endangered species. The state will place emphasis on property rights, collaboration, voluntary action and constructive partnerships. However, Colorado will aggressively challenge unwarranted petitions to list species so that maximum resources are spent on species truly in need of protection. In this way, the state's valuable wildlife and plant resources will be protected while allowing for a minimum intrusion from federal regulations.

PAST SUCCESSES

1) The Upper Colorado Endangered Fish Recovery Program: Since 1988, the State of Colorado, along with the States of Utah, Wyoming and New Mexico, has been a signatory to and heavily invested in the Upper Colorado Endangered Fish Recovery Program, which is dedicated to the recovery of the four endangered native fish in the Colorado River: the Colorado Pikeminnow, the Razorback Sucker, the Humpback Chub and the Bonytail. As the years have passed, this Program has become a model interstate cooperation for a very extensive effort to recover endangered fish in the Upper Colorado River drainage. However, it became very clear to state leaders recently that, while the program had appropriate infrastructure and governance, it lacked the roadmap necessary to achieve recovery of the four fish. Fortunately, **the U.S. Fish and Wildlife Service issued succinct, achievable recovery goals for the program in August of 2002, due in large part to the urging and insistence of the State of Colorado. We now have that roadmap telling us how these fish can be recovered, downlisted and delisted.** The program is significant for numerous other reasons, but perhaps the most compelling is that **the program currently serves as the "regulatory bypass" for 707 individual water projects, representing 1,719,273 acre-feet of water use or diversions in the Upper Colorado Basin. Without this program, each one of those water projects would have to enter into a complex permitting process with the federal government to deal with issues related to these endangered fish. Needless to say, such an individual requirement would greatly complicate and slow down the processes for any water use on the River.**

2) Black-Tailed Prairie Dog: In 1998, the National Wildlife Federation filed a petition with the U.S. Fish and Wildlife Service to list the Black-Tailed Prairie Dog as threatened, based on an alleged 93,000 acres of occupied habitat throughout Colorado. The Fish and Wildlife Service has deferred that petition, placing it in the "warranted, but precluded" category for potential listing, meaning that the Service found some justification in listing the species based on NWF's numbers, but had higher listing priorities to deal with before undertaking a listing decision on the prairie dog. In the meantime, **throughout 2001 and 2002, the Colorado Division of Wildlife undertook aerial surveys to determine the exact acreage occupied by Black-Tailed Prairie Dogs, and the survey concluded that 636,000 acres in eastern Colorado are occupied**

by the species. This data is now serves as the standard for the Endangered Species Act as the "best available science" while the Fish and Wildlife Service continues to monitor the status of the species. The ultimate goal is that the species be dropped from the "warranted but precluded" status and delisted completely in the eleven-state range of the species.

3) Gunnison Sage Grouse: The Gunnison Sage Grouse has been determined to be a candidate species for listing by U.S. Fish and Wildlife Service due to small and widely dispersed populations of this recently determined subspecies on Colorado's Western Slope. **The DOW Species Conservation Section has done an extraordinary job in making all of their science on Gunnison Sage Grouse available to the U.S. Fish and Wildlife Service in order to prevent federal listing of this species. To date, the Service has worked closely with the DOW to put together conservation strategies for the species, enhance habitat, recruit landowner participation for conservation strategies and put together a "Candidate Conservation Agreement" to protect this species throughout the Western Slope. To date, and largely due to the participation of the Colorado Division of Wildlife, the species remains a candidate and has not been formally listed under the Endangered Species Act.**

4) Preble's Meadow Jumping Mouse: Over the last three years, Colorado's General Assembly has invested heavily in implementing Habitat Conservation Plans (HCPs) along Colorado's Front Range as a regulatory mechanism to deal with this species which exists in a variety of populated areas. Expenditures have been used for scientific, technical and legal assistance to counties as they prepare their plans, for habitat acquisition through easements and some outright purchases. **These Habitat Conservation Plans, once in place, will give counties the ability to carry forward with their planning processes, road and bridge construction and maintenance, and to assist with county planning while accommodating, preserving and ultimately recovering the mouse.**

5) Greenback Cutthroat Trout: Species Conservation Trust monies have been used to affect recovery of various cutthroat species throughout Colorado. **The Greenback is close to being delisted based on current recovery goals, save some hybridization issues with the Yellowstone Cutthroat Trout, which still need to be resolved.**

SUMMARY OF EXPENDITURES, 2002-2003 (HJR 02-1038)

Colorado aggressively funded numerous projects in the current fiscal year directed at our ongoing mission of species recovery and prevention of listing. The state achieved numerous successes that are highlighted below in the project descriptions:

Cooperative Agreements, Recovery Programs, and ongoing programs under the Federal Endangered Species Act

- 1) **San Juan and Upper Colorado River Endangered Fish Recovery Program** (\$1.56 million capital): This appropriation reflects Colorado's ongoing commitment to these two recovery programs, which are dedicated to recovery of the four endangered fish in the Upper Colorado Basin in the four states of Colorado, Wyoming, Utah and New Mexico, in partnership with the federal government. This particular appropriation funded numerous projects to assist both recovery programs, and included such items as fish ladders, habitat restoration, native fish propagation, non-native fish control and growout ponds for hatchery-raised fish.
- 2) **Platte River Basin Recovery Program** (\$170,000 capital; \$80,000 operating): Colorado has joined with Wyoming, Nebraska and the federal government to attempt recovery of four endangered species whose habitat is in and around the Platte River: the piping plover, the lesser tern, the whooping crane, and the pallid sturgeon. Capital expenditures were dedicated to the design and construction of water management facilities, including pumps, for uses such as Colorado's participation in the Three State Cooperative Agreement and for the benefit of state-listed species of concern in the Platte (brassy minnow, suckermouth minnow and plains topminnow), and for flexibility in water-rights administration. Operations dollars have been used to verify design criteria for water management and to assess monitoring and tracking of developed water.
- 3) **Preble's Meadow Jumping Mouse: County Habitat Conservation Planning Process** (\$80,000 operating): Colorado has aggressively funded various projects to assist Front Range counties with biological, technical and legal assistance as they author and implement Habitat Conservation Plans which allow ongoing land use while species conservation strategies are implemented.

Programs internal to Colorado: Federally Listed Species, Species-at-risk

- 1) **Prairie Grassland Species** (\$55,000 operating): These dollars have helped complete the development of conservation strategies for the Mountain Plover, Burrowing Owl, Black-Tailed Prairie Dog and the Ferruginous Hawk.
- 2) **Gunnison Sage Grouse** (\$360,000 operating) This allocation covered a variety of expenditures studying grouse mortality and survival rates, population estimates, population stabilization, habitat improvement, and putting together a conservation plan.
- 3) **Colorado River Cutthroat Trout Population** (\$210,000 operating): Monies have been directed to establish new stream and lake populations, increase stream miles where populations are established, assess populations for whirling disease, and research into factors which limit populations.

- 4) **Greenback Cutthroat Trout Conservation** (\$145,000 operating): Included a whirling disease study and an inventory of restored populations to confirm population size, distribution and characteristics to assess against recovery goals
- 5) **Boreal Toad Conservation** (\$150,000 operating): Completes a two-year study to locate additional populations, monitor known breeding sites, and sample and test three populations for the presence of Chytrid fungus.
- 6) **Prairie Dog Study – Western Slope** (\$125,000 operating): Monies to be expended to conduct population studies of the Gunnison's and White-Tailed Prairie Dogs. Five environmental groups (Center for Native Ecosystems, Biodiversity Conservation Alliance, South Utah Wilderness Alliance, American Lands Alliance and Forest Guardians) have filed a petition to list the species. While the petition is under review, the Division of Wildlife is surveying the population to provide a baseline and to offer it as the "best available science," which is the standard under the Endangered Species Act.

CONCLUSION

Colorado is recognized nationwide as a leader in species conservation efforts, inasmuch as the State has taken the spirit of the Endangered Species Act and focused on it at the state level with state resources. It is an initiative that works, accomplishing the work of species conservation with the biology, dollars and expertise closest to the species in question. Species conservation is an initiative that works particularly well at the state level, allowing for the flexibility and ability to respond rapidly to critical and sometimes very complex biological decisions. These efforts are particularly effective in light of the cumbersome and litigious nature that has overwhelmed the worthwhile mission of the federal Endangered Species Act.

Unfortunately, like all sectors in state government, the state's species conservation effort funded by the Native Species Conservation Trust Fund faces a fiscal challenge. Four million dollars has been shifted from the Fund toward balancing the state's General Fund for this current fiscal year ('02-'03), putting an obvious strain on the Fund and the projects it supports. Yet the cost-effectiveness gained by lessening the regulatory burden for all sectors, while still promoting species conservation and recovery, is evident in the efforts put forward by the Division of Wildlife, the Water Conservation Board and all of the interstate efforts dedicated to species conservation based on the legal requirements of the ESA, but resulting from state-based initiative.