

# STATE OF COLORADO

## OFFICE OF THE EXECUTIVE DIRECTOR

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COLORADO



DEPARTMENT OF  
NATURAL  
RESOURCES

Bill Ritter, Jr.  
Governor

Harris D. Sherman  
Executive Director

May 1, 2009

Dear Members of the Colorado General Assembly:

On behalf of the Colorado Wildlife Commission, the Colorado Water Conservation Board, the Colorado Parks Board, and the agencies for which these entities set policy (Water Conservation Board, Division of Wildlife, Division of Parks and Outdoor Recreation), I am pleased to submit the attached Annual Report concerning the Species Conservation Trust Fund. This report is provided to you in accordance with C.R.S. 24-33-111.

Should you have questions or need additional information regarding the State of Colorado's management and conservation of threatened and endangered species, please contact me at 303-866-3311 ext. 8666 or at [doug.robotham@state.co.us](mailto:doug.robotham@state.co.us).

Sincerely,

Douglas M. Robotham  
Assistant Director for Lands

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**Species Conservation Trust Fund**

**2009 Annual Report  
to the  
Colorado General Assembly**

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**May 1, 2009**

**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 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 four times since then, in 2000, 2006, 2007, and 2008.

HB 98-1006 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 2008 and funding proposals for 2009.

The Executive Director of the Department of Natural Resources has reviewed the proposed 2009 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 '09-'10 SCTF Expenditures	Colorado's estimated share of total long- term cost	Estimated total long- term cost
Platte River Recovery Program	\$4,000,000	\$24,000,000 (plus interest since 2005 -- currently estimated to be approximately \$26 million)	\$317,000,000 -- Total Program Cost for first increment (13 years).
Upper Colorado River Fish Recovery Program	\$500,000	\$2,000,000	Estimates not yet available
Instream Flow Protection	\$500,000	Estimates not yet available	Estimates not yet available
Grouse Conservation	\$1,536,070	Estimates not yet available	Estimates not yet available
Native Fish Conservation	\$982,000	Estimates not yet available	Estimates not yet available
Wildlife research	\$500,000	Estimates not yet available	Estimates not yet available
Species protection on State Parks and Natural Areas	360,000	Estimates not yet available	Estimates not yet available.

## **INTRODUCTION**

Colorado has long been recognized as a state innovative and creative in its approach to developing practical solutions to the challenges posed by management and conservation of rare, declining and designated endangered species. One such solution is the Species Conservation Trust Fund (SCTF). In 1998 the Colorado 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 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. The General Assembly expanded the Trust Fund to cover other studies and programs undertaken by Colorado agencies dedicated to better understanding and addressing the needs of 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 SCTF has afforded Colorado the flexibility to promote species conservation and recovery, engage in scientific study, and enhance habitat for federally listed species, state listed species, federal candidate species and 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 annual funding over the past ten years since the Trust Fund was created, the General Assembly, to date, has been able to direct approximately \$35 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 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 (USFWS), independent petition or driven by lawsuit.

## **KEY 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, creating a precarious situation for a number 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 caused reduction or outright destruction of habitat.
- Recreational demands continue to increase throughout the state, with one consequence being an 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.
- Invasive species threaten the long-term survival of species of concern in terrestrial and aquatic habitats.
- Numerous lawsuits seeking the federal listing of various species add demands on Colorado's resource agencies whose resources are already stretched thinly.

### **Energy Development**

National trends have played out in Colorado such that new threats to native species continue to emerge in Colorado. These trends are occurring 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 2007, oil and gas drilling permits in Colorado increased from 1010 to 6368. In 2008, the COGCC granted 8027 permits, which was 7% greater than projected and represented a 26% increase from 2007. Much of the new exploration is occurring in sage-steppe habitats, which support sensitive species such as grouse. The CDOW 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. In addition, new rules have been adopted by the Colorado Oil and Gas Conservation Commission, which require greater consideration of environmental and wildlife impacts when considering new permit applications.

### **Growth Demands**

Demands on Colorado's landscape and habitat continued throughout 2008. According to researchers at Colorado State University's Natural Resource Ecology Laboratory, approximately 90,000 acres of privately owned land are converted from natural or agricultural land uses to other more intensive forms of land use each year. Thus, while Colorado is a leader in the nation in

preserving natural and agricultural lands, pressures due to growth and development continue to mount on species and their habitats throughout the state.

For instance, in July 2008, the U.S. Fish and Wildlife Service (USFWS) ruled to keep the Preble's Meadow Jumping Mouse listed in Colorado while delisting the same subspecies in Wyoming using the "significant portion of the range" criterion as justification. 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. The USFWS 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. 72 FR 63012.

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 has been considered in some species' status assessments such as Rio Grande cutthroat trout. In 73 FR 27900, USFWS found listing the Rio Grande cutthroat trout is warranted but precluded, and assigned a federal candidate listing priority number of 9 to this species. In the assessment, USFWS concluded, "every aspect of climate change we examined will likely have a negative effect on Rio Grande cutthroat trout. Rio Grande cutthroat trout populations are currently surviving with multiple stressors. Adding the effects of climate change on these populations may exacerbate the existing threats and stressors on the species." CDOW opposed this application of potential climate change impacts in the threats analysis.

In another situation close to Colorado, the USFWS received a petition in October, 2007, to list the pika due to climate change in its alpine tundra habitat throughout the West, including Colorado. 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 warming the lower-elevation pika habitats 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:

- 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 USFWS 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 (ED. Cal. May 25, 2007). The Court ordered the USFWS 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. The effects of this decision continued to be felt in California in 2008. In 2009, the California entities that rely on this water project are expecting to be operating under a 15% water supply—that is these entities will see 85% reductions in water supply from this project! With court decisions having such dramatic effects, it only strengthens our resolve that Colorado should continue to support programmatic approaches that prevent the listing of, and facilitate the recovery of threatened and endangered species.
- In the U.S. District Court in Idaho, a challenge brought against the USFWS for declining to list the **Greater sage-grouse** in 2005 rendered a decision that the USFWS 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 has delayed that decision until the summer of 2009.
- A case filed on November 14, 2006, in the District Court for the District of Columbia seeks to have the USFWS list and designate critical habitat for the **Gunnison Sage-grouse**. Plaintiff moved for an emergency listing of the species with a request for the Court to remand the USFWS 2006 determination that the species did not warrant listing. In response, the USFWS has announced its intention 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 USFWS ruled for a “warranted but precluded finding on the species on February 5, 2008 using the “significant portion of the range” criterion. 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 USFWS. 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 organizations filed a petition to list the **Black-tailed Prairie Dog** in 2007. The USFWS found in December 2008 that the petition provided substantial scientific information that listing may be warranted and is conducting a status assessment.
- In the past five years, organizations and individuals have pursued both litigation and petitions to list 24 plant species in Colorado, including the **Parachute penstemon**, the **DeBeque phacelia** and the **Pagosa skyrocket**. These three species are currently federal candidates for listing, and the U.S. Fish and Wildlife Service is compiling listing packages for these plants that will likely be released in April of 2009.

## **2009 FUNDING PRIORITIES**

### **Platte River**

In 2008, the South Platte Program to recover the endangered and threatened Whooping Crane, Least Tern, Piping Plover, and Pallid Sturgeon made significant progress. The Governance Committee hired an Executive Director, Jerry Kenny, who started in July 2007. Today the Executive Director's Office is fully staffed. In 2008, the United States Congress passed authorizing legislation that President Bush signed into law. The Governance Committee acquired approximately 4000 acres of the 10,000 acre goal, and the Program has begun restoration efforts. Many Requests for Proposals for implementing work have been processed and several others are proceeding. In addition, the Governance Committee has begun to implement the Adaptive Management Plan. This April, the Program hopes to operate a pulse flow and study the effects on the downstream habitat and river morphology. This pulse flow experiment will be vital towards advancing the goals of the Program.

Species response and recovery would not be expected to be immediate; however, 2008 did see some additional improvements. Whooping cranes that reached Texas increased for the fifth year in a row (to 270 cranes from 261 in the previous year). In addition, some restoration work occurred on an island at the Audubon Society Rowe Wildlife Sanctuary in 2007, and 2 pairs of piping plovers and 10 pairs of least terns used the restored island in that year. Continued funding of this Program is vital to Colorado.

### **Upper Colorado River Endangered Fish Recovery Program: Selenium Reduction for the Gunnison Basin**

The USFWS has designated critical habitat on the Gunnison River for the Colorado River Endangered Fish beginning at Delta, Colorado and extending downstream to the confluence of the Gunnison River with the Colorado River. The USFWS, working in concert with the Upper Colorado Recovery Implementation Program (UCRIP), has also developed flow



recommendations for the Gunnison River. Pursuant to the UCRIP – Recovery Action Plan (RIPRAP) the US Bureau of Reclamation (USBR) is undertaking a NEPA process to evaluate alternative operations of the Aspinall Unit to attempt to satisfy the flow recommendations to the extent possible within the authorizing legislation for the Aspinall Unit. In addition to this NEPA process USBR, the State and Gunnison Basin water users are supportive of obtaining a Programmatic Biological Opinion (PBO) for all water uses in the Gunnison Basin under both Section 7 and Section 9 of the ESA. However, the USFWS has unequivocally stated that a basinwide Selenium Reduction Program must be part of any PBO. The State, water users and Reclamation have been working to develop such a selenium reduction program benefiting the endangered fish and the \$500,000 request here will be used to the maximum extent possible to leverage other available funding to meet the requirements of the USFWS for a Selenium Reduction Program.

### **Instream Flow Protection: \$500,000**

The statute authorizing the Species Conservation Trust Fund, C.R.S 24-33-111, was amended in 2008 to include a new subsection directing the General Assembly to appropriate up to \$500,000 from the fund for purposes of acquiring water for instream flows. In 2008, work has been initiated to lay the groundwork to acquire water that contributes to the protection of instream flows for the listed species within the 15-mile Reach. As such, the money will be used in FY 09-10 to meet in part the water acquisitions needs for the 10825 obligation in the 15-Mile Reach Preferred Biological Opinion.

### **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 state-listed fish species found on Colorado's eastern plains.

- Gunnison Sage-grouse, Ongoing Projects: The CDOW continues with conservation 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, CDOW 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: CDOW continues its efforts to protect and enhance mountain plover populations by researching survival and recruitment of

fledgling birds, and by partnering with private landowners to minimize mountain plover impacts by voluntary nest clearing on cultivated lands. CDOW is also providing input on specifications of grassland restoration methods used in other government programs, and implementing a grassland conservation plan through monitoring occupied acreage of black-tailed prairie dog colonies and swift fox abundance, and research on burrowing owls. CDOW has also initiated research on plague. Plague is one of the most significant mortality factors affecting prairie dog population size. Evaluating methods to manage plague will ultimately benefit a variety of species of concern associated with prairie dog colonies (e.g., burrowing owls, black-footed ferrets).

- Eastern Plains Fishes, Ongoing Projects: Activities underway include the development and finalization of recovery goals and criteria for state listed species; protection and reclamation of river and stream habitats; artificial propagation, rearing and stocking of state-listed fish species into suitable habitats; 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.

### **Rare and Endangered Plant Protection on State Parks and Natural Areas**

In 2008, the General Assembly provided SCTF funding for the protection and inventory of rare and endangered species on State Parks and Natural Areas, with a particular focus on rare plant protection. With this funding, the Division of Parks and Outdoor Recreation brought in over 50% match funding and initiated several protection, inventory and research projects aimed at protecting federally listed and candidate species and gathering information on plant species of concern to avoid a need for listing. Through partnerships with the BLM, the CDOW, private landowners, Colorado State University and the Denver Botanic Gardens, the Division has initiated 20 projects in FY 08-09 that address protection, inventory or research needs for six federally-listed plant species, two federal candidate species and over 60 of the most imperiled plant species in Colorado that may be considered for listing. These projects address such conservation needs as: direct habitat protection; comprehensive surveys of rare plant distributions; scientific evaluation of genetic data; coordination of monitoring to provide baseline data for declining species; and research into the effects of increasing energy development.

In coming months, projects funded in 2008 will continue to be implemented to address the conservation needs of the rarest plant species in Colorado. The requested 2009 funding will allow the Division to see these projects through to completion as well as assure that listed and imperiled plants continue to be addressed in statewide conservation efforts.

## **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.