

PLATTE RIVER RECOVERY IMPLEMENTATION PROGRAM -SUMMARY-

AND

SOUTH PLATTE WATER RELATED ACTIVITIES PROGRAM -2023 ANNUAL REPORT-



Interior Least Tern



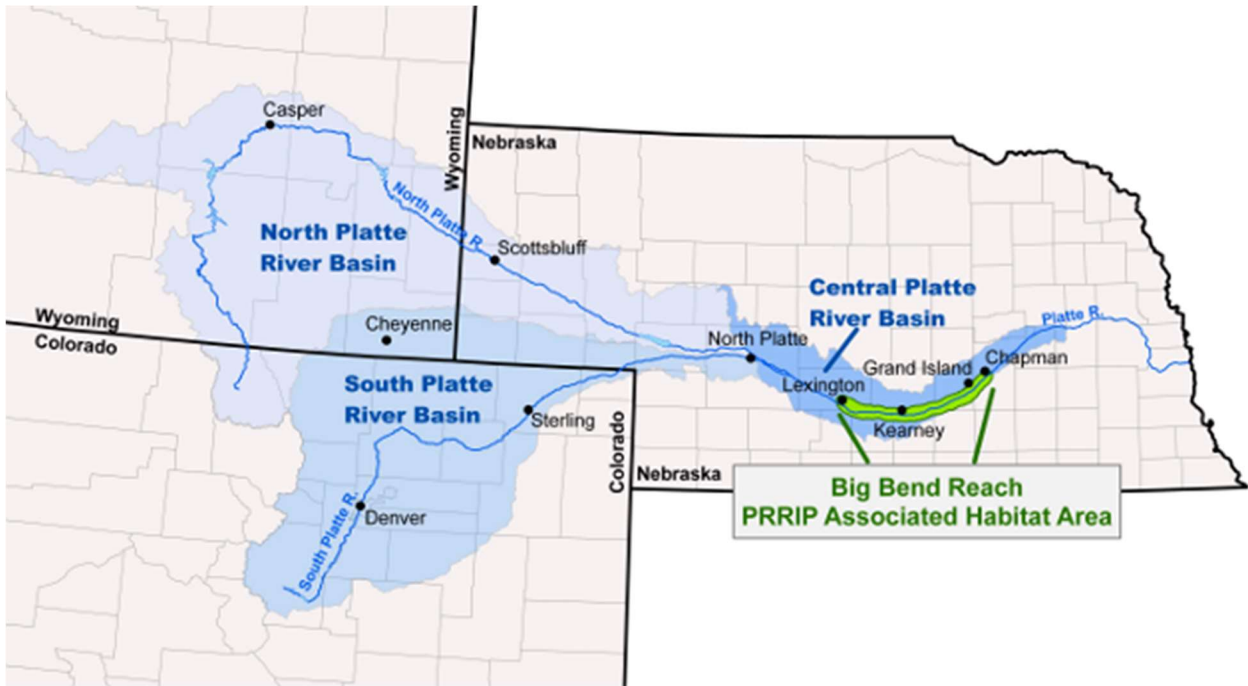
Whooping Crane



Piping Plover



Pallid Sturgeon



Why the Platte River Program is Needed by Colorado

The Platte River Recovery Implementation Program (“Program”) is designed to resolve conflicts between water use and endangered species protection in the Platte River basin. Resolution of these conflicts is critical to the continued use and development of water supplies to meet the needs of Colorado's South Platte Basin.

Background

Water-related projects that are authorized, funded, or carried out by a federal agency may require consultation with the U.S. Fish and Wildlife Service (FWS) under the Endangered Species Act (ESA). Federal agencies are required by Section 7(a)(2) of the ESA to insure that those actions are not likely to jeopardize listed species or adversely modify their designated critical habitat. Construction, operation, and maintenance of water projects in the Platte River basin routinely require a Clean Water Act Section 404 permit from the U.S. Army Corps of Engineers. This includes routine projects such as pipeline crossings of jurisdictional waters and repair or rehabilitation of conveyance structures, which activities are frequently covered by nationwide permits. Many water storage or conveyance facilities located on national forest lands require special use permits issued by the U.S. Forest Service. Federal action may also be present through the receipt of federal funding under certain agricultural assistance programs. The Bureau of Reclamation and Corps of Engineers also own major water collection, distribution and storage facilities that provide water to numerous ditch companies and municipalities or are used for flood control purposes in Colorado. These types of activities are all subject to Section 7 of the ESA.

The FWS believes that the Platte River resource is in a state of jeopardy, and that actions resulting in water depletions to the Platte River will continue the deterioration of the endangered species' habitat. The federally listed species at issue historically included the whooping crane, interior least tern, piping plover and pallid sturgeon. The tern was removed from the list of threatened and endangered species in 2021. Prior to the Program, the FWS issued "jeopardy" biological opinions for virtually all water-depletive projects in the Platte River basin starting in the late 1970s, citing either new or continued water depletions as contributing factors in jeopardizing the existence of these species and adversely affecting designated critical habitat. Notable examples include the biological opinions issued in 1994 for the renewal of Forest Service special use authorizations for six existing agricultural and municipal water facilities along Colorado's Front Range. The 1994 opinions concluded that, absent offsetting measures, each of those existing water facilities would cause jeopardy to the listed species and adversely modify Platte River designated critical habitat in central Nebraska. The average annual depletion associated with one of those long-standing projects was 0.64 acre feet.

Under the jeopardy standard applied by the FWS, individual water projects undergoing ESA consultation must avoid or fully offset all project depletions to FWS instream flow recommendations for the Platte River in the same amount, timing, duration, and frequency in

which they occur. Land acquisition and sediment augmentation may also be required components of mitigation for federal authorizations that do not have the benefit of a recovery program. Fulfillment of these requirements may, for some projects, simply not be possible. For many others, these requirements have delayed permitting and compromised water yield and cost-effectiveness of the projects.

What the Program Does

The States of Colorado, Nebraska, and Wyoming and the U. S. Department of the Interior entered into the 13-year first increment of a comprehensive basin-wide Program effective January 1, 2007 to address habitat needs of the endangered species in the central and lower Platte River basin. This cooperative basin-wide approach is an equitable and effective means to resolve conflicts and provide greater certainty that the Platte River will continue as a reliable water source for both wildlife and the many people who reside and use water in the basin. The commitment of resources to the Program to preserve and enhance the habitat of the species allows water use and development activities in each of the three states to continue, in compliance with the ESA and in accordance with state water law and entitlements under interstate compacts and decrees.

The Program commits lands, water, and management of those resources toward helping address the habitat needs of the species. As a first increment water goal, the Program committed to reduce basin-wide shortages by an average of 130,000 to 150,000 acre feet per year in lieu of the FWS requirement to replace 417,000 acre feet of shortages to the FWS "target flows." The Program also committed to obtain land, or interests in land, in an amount of 10,000 acres in the central Platte River. This water and land is to be managed under the Program on behalf of the species and will constitute the mitigation needed to offset the impact of existing water projects on the Platte River species and habitat. ESA compliance for future water related activities is afforded under the respective state plans to mitigate the effects of new water development.

While Colorado was in good standing with its state-specific commitments as we neared the conclusion of the first increment in 2019, the Program overall was modestly short of meeting the first increment water objective. The Governance Committee determined that a 13-year extension of the first increment was needed to provide additional time to complete and operate Program water projects and to conduct monitoring and research to determine the best use of Program water and provide a sound base upon which to structure a second increment. In 2018, the Bureau of Reclamation completed NEPA compliance on this proposed extension, and the FWS issued a supplemental biological opinion confirming continued ESA coverage for water related activities in the Platte River basin based on the extension. In December 2019, the Secretary of the Interior and signatory states formally amended the Cooperative Agreement for the Program to extend the first increment through 2032. This extension also received Congressional authorization in December 2019.

A Program Document Addendum outlines activities to be implemented and associated federal and state funding contributions during the 2020-2032 time frame. The extension does not change the Program's original objectives, milestones, or implementation framework. It reflects the commitment to achieve the minimum water milestone of 130,000 acre-feet in annual reductions to target flows, but specifies that the Program (1) will invest the resources to achieve at least 120,000 acre-feet as quickly as possible during the extension; (2) will invest in the science necessary to determine if an additional 10,000 acre-feet is justified; and (3) will achieve that additional 10,000 acre-feet if justified by the science. In addition, the Addendum commits to acquire an interest in at least 1,500 acres of additional habitat lands with the intent of establishing a new habitat complex, and commits to implement channel conveyance improvements at the North Platte "choke point" aimed toward achieving a 3,000 cfs or greater conveyance capacity while remaining below flood stage.

For Colorado, the Program is designed to provide regulatory compliance under the ESA for both existing and prospective new water uses within the South Platte River basin.¹ This compliance is needed for water providers to meet the water supply needs of the urban, agricultural, and industrial sectors of this rapidly changing and growing part of the state. The Program:

- Provides an alternative to the requirement that historic and future water related activities in Colorado replace individual depletions on a one-for-one basis in amount and in timing at the Colorado-Nebraska state line.
- Provides streamlined ESA Section 7 compliance procedures and regulatory predictability for existing and future water related activities in Colorado. Project owners and operators who choose to rely on the Program will know their requirements prior to ESA consultation.
- Avoids the potential for prohibited "take" of listed species under ESA Section 9 for water-related activities covered by the Program.
- Satisfies Colorado's water-related mitigation requirements through the Tamarack Plan, which utilizes managed groundwater recharge from existing and future recharge wells and ditches located in the lower reaches of the South Platte River in Colorado to re-time river flows from periods exceeding flow targets to periods short of target flows. The Tamarack Plan also obtains annually, by payment, recharge accretion credits not needed by local well augmentation plans during free-river periods. Water re-timing for the Tamarack Plan is limited to water that physically and legally exceeds existing and future water demands in Colorado (i.e. water that would normally flow out of the state) and is further limited to water that is in excess to target flows in the Program habitat in Nebraska. This water is first diverted for an initial beneficial use within Colorado; some of the unused return flows from this diverted water subsequently reach the river in times that benefit the Platte species.

¹ The Program is also designed to address ESA compliance for existing and new water uses occurring within defined consumptive use baseline allowances in the North Platte basin of Colorado.

- Provides potential benefits addressing two other issues important to the lower South Platte River in Colorado. The higher return flows produced in areas of the South Platte River as a result of the managed groundwater recharge for the Program also benefit Colorado's Minnow Species of Concern. Additionally, the Tamarack Plan puts water in the South Platte River at times when it is not needed or cannot be utilized to reduce target flow shortages. This "new" water supply enhances the effectiveness of augmentation plans and provides water for new uses within Colorado.
- Reduces pressure toward permanent dry up of agricultural lands along the lower South Platte for the benefit of federally listed species in Nebraska.
- Encourages development of improved science on the central Platte River through an adaptive management plan and integrated monitoring/research plan designed to test competing hypotheses of the Program's participants concerning species and habitat needs.

Benefits of a Programmatic Approach

Individual water users will need to decide whether to rely on the Program for purposes of ESA compliance for their water-related projects in the Platte River basin. The circumstances surrounding each project will inform the decision whether to participate under the Program or pursue stand-alone ESA consultation and project-specific mitigation. The requirements in the vast majority of stand-alone Section 7 consultations conducted independent of a Program have, to date, entailed time intensive negotiations and mitigation requiring that water users replace individual project depletions on a one-for-one basis. In contrast, under the programmatic approach toward Platte ESA compliance: (1) individual projects are asked to contribute money, not water, to address their depletive impacts on the target species; (2) individual projects rely on the Program's offsetting measures as their means to avoid jeopardy to the species and adverse modification of critical habitat under Section 7; (3) programmatic offsetting measures serve to avoid any prohibited "take" of target species for all federal nexus and non-nexus individual water activities participating under the Program; and (4) individual projects can take advantage of streamlined procedures for documenting ESA compliance.

Commitments and Costs under the Program

Colorado's responsibilities under the Program comprise 20% of the total Program budget in cash and cash-equivalent contributions. While all states address the impact of new water related activities pursuant to their respective Future Depletions Plans, Colorado is contributing less water (10,000 acre feet out of the 130,000 to 150,000 annual acre foot shortage reduction) and more money (\$24 million + inflation for the first increment; \$24.9 million + inflation during the extension) relative to the other states. Under the Program, Colorado and its water users are required to:

1. Develop the capability under the Tamarack Plan to provide an average of 10,000 acre feet annually based on historic hydrology of shortage reduction to the FWS target. Colorado is meeting this requirement;
2. Re-time water in Colorado to avoid net increased shortages to target flows in the habitat pursuant to Colorado's Plan for Future Depletions. Colorado is in compliance with this requirement - attached is the Colorado Annual Review provided to and approved by the Program;
3. Participate in the business and operational activities of the Program; and
4. Provide the required cash and cash equivalent contributions to the Program to fund Program activities such as acquiring additional land and water, performing monitoring and research, and conducting Program operation and maintenance activities. The Colorado Legislature funded the full monetary commitment for the first increment and has funded an initial amount toward its financial contribution for the extension.

Role of the South Platte Water Related Activities Program, Inc. (SPWRAP)

The South Platte Water Related Activities Program, Inc. (SPWRAP), a Colorado nonprofit corporation, has been formed by Colorado water user participants under the Program to assist the State in fulfillment of various Program responsibilities including accounting and reporting requirements, obtaining interests in facilities, water rights and/or recharge credits, and assisting with the State's cash contributions to the Program, if necessary. In addition to the State of Colorado delegate, Colorado water users also have representation on the Program Governance Committee and advisory committees through membership in SPWRAP.

Membership in SPWRAP is the exclusive means by which individual Colorado water users may participate in the Platte River Program, and thereby be afforded the benefits and certainty of ESA compliance for their projects provided by the Program while avoiding stand-alone project mitigation requirements during Section 7 consultation. A certification of membership in SPWRAP is a prerequisite for water users to rely on the Program for purposes of ESA compliance. The river depletions about which FWS is concerned are both the depletions that have been occurring for decades, as well as the compounding effect of future depletions. Because of that and the fact that the costs of the Program began in 2007, fairness requires that all water users in the basin pay their fair share. As a result, water users who delay becoming members are required to pay assessments for all prior years, plus compounded interest, at the time they do join.

Websites:

South Platte Water Related Activities Program – <http://www.cospwrap.org>

Platte River Recovery Implementation Program - <http://www.platteriverprogram.org>

SPWRAP 2022 Administration/Membership Report

2023 Officers and Directors

Following are the directors and officers who have graciously offered their time and talents to **SPWRAP** during 2023.

Kim Hutton (Class I) - Director, President
Vacant (Class M) - Director, Vice President
Kyle Whitaker (Class W) - Director, Treasurer
Daniel Gallen (Class M) - Director, Secretary
Jason Marks (Class M) - Director

Ryan Van Pelt (Class M) - Director
Leah Hubbard (Class M) - Director
Michael Bollinger (Class A) - Director

Rich Belt – Executive Director

Inquiries about SPWRAP

SPWRAP continues to field a variety of inquiries about membership in SPWRAP. Many of these inquiries are related to federal permitting requirements associated with U.S. Army Corps of Engineers Section 404 permits and how membership in SPWRAP supports ESA compliance under the larger basin-wide Program. In 2015, SPWRAP worked closely with the BLM to create membership classes for oil & gas development in both the South Platte and North Platte basins (Class I-2 and I-3) associated with the BLM's Application for Permit to Drill (APDs) approval process.

Membership Certificates

SPWRAP is committed to providing Membership Certificates in a timely manner to members once we have received full payment for the assessed annual fee and any required back assessments. Members will need to complete and submit the appropriate member class data on the SPWRAP membership portal, which can be found at the SPWRAP website linked above.

In 2023, SPWRAP issued 43 Class M (Municipal); 11 Class A (Agricultural); 4 Class W (Water Conservancy & Water Conservation Districts); 14 Class I (Industrial); and 3 Class X (Miscellaneous) memberships for a total of 75 active members. Municipal members continue to account for the majority of SPWRAP memberships and assessment amounts.

Funding

Funding through memberships in 2023 met our anticipated goals and we anticipate that our 2024 assessment will be similar to maintain SPWRAP's activities in support of ESA compliance under the Program.

2024 Assessments

The deadline for payment of 2024 assessments is **March 1, 2024**.

If annual membership is not renewed/paid by May 1st then your membership in SPWRAP will lapse. In order to re-join SPWRAP your entity will be required to pay all unpaid back assessments plus 4% interest (compounded annually).

Please submit the appropriate assessment to:

SPWRAP
% Lower South Platte
Water Conservancy District
615 South 10th Avenue
Sterling, CO 80751-3426

Entities that join SPWRAP for the first time in 2024, or in subsequent years, are required to pay back assessments to the beginning of 2007. Please contact Rich Belt at cospwrap@gmail.com if you need help determining the back assessments or have other questions.

Coordination with the U.S. Fish & Wildlife Service on SPWRAP Membership

It is SPWRAP's policy to not provide a formal list of membership to the USFWS. However, SPWRAP will confirm the current status of specific members who are relying on Program participation for ESA compliance if the USFWS requests such confirmation.

2024 SPWRAP Meeting Schedule:

- 1) February 15th, 2024 (LSPWCD NEW OFFICE in Sterling)
- 2) April 18th, 2024 LOCATION TBD
- 3) July 18th, 2024
- 4) October 17th, 2024

1) All SPWRAP meetings will be at Northern Water in Berthoud at 9am unless otherwise noted or changed by the board of directors.