

# STATE OF COLORADO

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## Colorado Water Conservation Board

### Department of Natural Resources

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TO: Colorado Water Conservation Board Members

FROM: Jennifer Gimbel, CWCB Director  
Ted Kowalski, Chief, Interstate, Federal, and Water  
Information Section  
Steve Miller, Interstate, Federal, and Water Information  
Section

*[Handwritten signature: S. Miller]*

John W. Hickenlooper  
Governor

Mike King  
DNR Executive Director

Jennifer L. Gimbel  
CWCB Director

DATE: March 20, 2012

SUBJECT: **Agenda Item 24c, March 20-21, 2012 Board Meeting**  
Interstate, Federal, and Water Information Section: Request for Utilization of  
Litigation Account – Arkansas River

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### Introduction

In a letter dated March 9, 2012, copy attached, Attorney General John Suthers has requested the use of up to \$100,000 from the Board's Litigation Account to provide technical assistance to improve implementation of the State Engineer's Compact Rules Governing Improvement to Surface Water Irrigation Systems in the Arkansas River Basin in Colorado ("Irrigation Improvement Rules").

### Staff Recommendation

The Staff recommends that the Board:

- 1) Approve the expenditure of up to \$100,000 from the Litigation Account to provide technical support for implementation of the Irrigation Improvement Rules; and
- 2) direct the CWCB Director and Staff to expend these funds consistent with the request by the Office of the Attorney General; and
- 3) direct the CWCB Director, CWCB Staff, and Office of the Attorney General to comply with the annual reporting requirements as specifically provided for in Section 37-60-121(2.5).

### Background

Section 37-60-121(2.5) of the Colorado Revised Statutes provides that the Colorado Water Conservation Board is authorized "to expend, pursuant to continuous appropriation and subject to

the requirements of paragraph (b) of this subsection (2.5), a total sum not to exceed the balance of the litigation fund, which is created, for the purpose of engaging in litigation... to defend and protect Colorado's allocations of water in interstate streams and waters; and to ensure the maximum beneficial use of water for present and future generations by addressing important questions of federal law..."

The Irrigation Improvement Rules are required to prevent material depletions to usable Stateline flows that might otherwise be caused by improvements or modernization of surface water irrigation systems, such as the installation of sprinkler systems to replace flood and furrow irrigation methods or lining of canals. Such depletions are prohibited by Article IV.D. of the Arkansas River Compact, which states:

This compact is not intended to impede or prevent future beneficial development of the Arkansas river basin in Colorado and Kansas by federal or state agencies, by private enterprise, or by combinations thereof, which may involve construction of dams, reservoirs and other works for the purposes of water utilization and control, as well as the **improved or prolonged functioning of existing works**: Provided, that the waters of the Arkansas river, as defined in Article III, **shall not be materially depleted in usable quantity or availability for use to the water users** in Colorado and Kansas under this compact by such future development or construction. (emphasis added).

Previously, the Board's Construction Fund provided \$250,000 of technical support services to the Lower Arkansas Valley Water Conservancy District through the 2009 Projects Bill to facilitate their development and operation of a Rule 10 Compliance Plan under the Improvement Rules. Those funds were utilized for legal and technical consultant services to file and operate a plan for the initial year of the rules in 2011 and have been fully expended. Based on the experience gained in 2011 and certain operational difficulties during that extremely dry year, it has been determined that refinement and enhancement of the administrative tools and models used to calculate and account for depletions are needed. The funds sought by the Attorney General will be used by the CWCB, in consultation with the Div. 2 Engineer, the Attorney General's Office, and the LAVWCD to develop those tools. The CWCB will in particular rely on the expertise of our staff currently developing the Arkansas Decision Support System in conducting this work.



**JOHN W. SUTHERS**  
Attorney General

**CYNTHIA H. COFFMAN**  
Chief Deputy Attorney General

**DANIEL D. DOMENICO**  
Solicitor General

**STATE OF COLORADO**  
**DEPARTMENT OF LAW**

**OFFICE OF THE ATTORNEY GENERAL**

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March 9, 2012

Request for Expenditure from Litigation Fund  
for Protection of Colorado's Allocations in the Arkansas River

Dear Board Members:

By this letter, I am requesting the expenditure of up to \$100,000 from the Board's Litigation Fund under section 37-60-121(2.5)(a)(III), C.R.S. That section authorizes the Board to expend money from the Litigation Fund at the request of the Attorney General for the costs to defend and protect Colorado's allocations of water in interstate streams and rivers. This request is for protection of Colorado's surface water irrigation uses under the Arkansas River Compact ("Compact"). It will fund technical assistance for Rule 10 Plans under the State Engineer's Compact Rules Governing Improvements to Surface Water Irrigation Systems in the Arkansas River Basin in Colorado ("Irrigation Improvement Rules").

The Irrigation Improvement Rules became effective January 1, 2011. Rule 10 authorizes Compact Compliance Plans (hereafter "Rule 10 Plans"), under which irrigators may operate sprinklers and other irrigation system improvements that have potential to reduce historical return flows and seepage in a group plan that assures compliance with Article IV-D of the Compact. The Lower Arkansas Valley Water Conservancy District ("LAVWCD") designed and operated the first Rule 10 Plan in 2011-12. During that time, the LAVWCD and Colorado Division of Water Resources ("DWR") identified needs for further technical development for future years' plans. These needs include creating automated data uploading capability for the monthly accounting spreadsheets; interfacing with existing State tools for user-supplied data; accounting for use of additional sources of maintenance flows, including the subject surface water rights; and providing further detail regarding the time, amount and location of maintenance flow releases and deliveries.


The estimated cost of developing these tools in cooperation with the DWR Division 2 Office is \$100,000. The CWCB plans to amend an existing grant contract for related work to add these tasks, using the funds requested herein, for expenditure in FY 13. I further recommend that the CWCB's authorization allow the funds to be used in FY14 if not expended in FY13.

The requested funds will assist with ensuring Colorado's continued Compact compliance while maximizing the State's use of its allocation, and are a necessary and appropriate use of the CWCB's Litigation Fund.

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Thank you for your consideration.

Sincerely,



JOHN W. SUTHERS  
Colorado Attorney General