

STATE OF COLORADO

Colorado Water Conservation Board

Department of Natural Resources

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John W. Hickenlooper
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TO: Colorado Water Conservation Board Members

FROM: Ted Kowalski, Chief
Interstate, Federal, and Water Information Section

DATE: November 8, 2013

SUBJECT: **Agenda Item 27e, November 19-20, 2013 Board Meeting**
Finance – Construction Fund Non-Reimbursable Investment – En-Bloc
Litigation Fund Refresh

Introduction

Staff is requesting from the CWCB Non-Reimbursable Investment Program an appropriation of \$1,200,000 for the restoration of the Litigation Fund cash balance. Section 37-60-121(2.5) 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 rivers...” Paragraph (b) of section 121(2.5) provides: “pursuant to the spending authority set forth in paragraph (a) of this subsection (2.5), moneys may be expended from the litigation fund at the discretion of the board if (I) with respect to litigation, the Colorado Attorney General requests that the Board authorize the expenditure of moneys in a specified amount not to exceed the balance of the fund for the costs of litigation associated with one or more specifically identified lawsuits meeting the criteria set forth in paragraph (a) of this subsection (2.5).”

The Interstate, Federal, and Water Information Section works closely with the Office of the Attorney General in monitoring ongoing processes on interstate streams, in conjunction with our federal and state partners in water management. Negotiations on the Colorado River, implementation of Minutes to the Mexican Treaty, and ongoing litigation regarding the Rio Grande Compact are some of the issues that command the attention and time of CWCB staff and the Attorneys General. As is necessary, a refresh of the litigation fund will be requested, as funds are available, and the ongoing processes require more work and incur costs. These funds will be used in preparation for litigation, or to reach solutions while avoiding litigation of these important issues.

To expend these funds once they have been properly appropriated, CWCB staff will prepare a memo and presentation for the Board, with accompanying letter from the Attorney General. These items provide more detail about the request, such as the river basin in question, and a specific value for the request, appropriate for the issues at hand.

Staff Recommendation

Staff recommends that the Board approve this request for the General Assembly to authorize this project and appropriate \$1,200,000 from the Construction Fund to the Department of Natural Resources for allocation to CWCB for the restoration of the Litigation Fund cash balance to ensure necessary participation of the Office of the Attorney General with CWCB for the benefit of the State of Colorado.

**CWCB Water Project Non-Reimbursable Investment Program
Project Data Sheet**

Sponsor: Colorado Water Conservation Board	Location: Statewide
Project Name: Litigation Fund Refresh	Project Type: Litigation
Drainage Basin: All Colorado River Basins	Water Source: Various
Total Project Cost: Refresh up to \$4 million	Funding Source: Construction Fund
CWCB NRI: \$1.2 million	Type of Grantee: State Agency

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To expend these funds once they have been properly appropriated, CWCB staff will prepare a memo and presentation to the Board, with accompanying letter from the Attorney General. These requests provide more detail about the particulars of the request, such as the river basin in question, and a specific value for the request, appropriate for the issues at hand.

The Interstate, Federal, and Water Information Section requests that the litigation fund be refreshed up to \$4 million, to ensure necessary participation by the State of Colorado in these ongoing processes, in conjunction with the Office of the Attorney General.