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TO: Colorado Water Conservation Board

FROM: John W. Suthers
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Karen Kwon
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RE: Report of the Attorney General

FEDERAL & INTERSTATE MATTERS

1. **Rio Grande Basin**

Groundwater management: On October 24, State Engineer, Dick Wolfe and members of his staff met with the San Luis Valley Advisory Committee for Groundwater Use Rules. More than 100 people attended. Dick and his staff explained the most recent draft of the Water Division 3 Groundwater Use Rules and heard comments from many of the attendees. The most contentious issues were the length of the “phase-in” period for developing future subdistricts before being subject to the rules and whether subdistricts should be required to replace injurious stream depletions during this time, the length of time subdistricts will have to bring water levels in their aquifers to sustainable levels, and the boundaries of the current Response Areas in the RGDSS groundwater model. Dick and his staff will meet again with the Advisory Committee on December 12 to present an updated draft of the Rules and preliminary groundwater model results for regions of the San Luis Valley for which results have not yet been released.

Pressure to finalize Groundwater Use Rules and complete the remaining groundwater modeling for Water Division 3 remains intense. State Engineer, Dick Wolfe, has stated that he is planning to file Rules in the Division 3 Water Court before the end of April, 2014. The AG’s office is preparing for litigation regarding the rules with the expectation that some water users, perhaps not the major water districts, will inevitably challenge the rules.

Silvery Minnow: The Bureau of Reclamation is trying to work with the Rio Grande Compact Engineer Advisors for Colorado, New Mexico, and Texas to explore ways to promote spawning conditions for the Silvery Minnow, an endangered species. These talks are in the

preliminary stages and the Colorado representatives are focused on trying to identify ways to help the Silvery Minnow without impacting Compact rights and obligations.

Texas v. New Mexico and Colorado, No. 141 Original, United States Supreme Court:- Texas' Motion to File a Complaint with the Supreme Court is still pending as the U.S. Solicitor's Office has not yet filed a brief as requested by the Court.

2. Colorado River

Legal counsel regarding Colorado River matters - The Subunit continues to provide the Colorado Water Conservation Board, Division of Water Resources, Department of Natural Resources, and the Upper Colorado River Commission legal research, counsel, and/or advice on:

- Coordination with the seven Colorado River Basin States, Bureau of Reclamation, International Boundary and Water Commission and NGOs on implementation of Minute 319 to the US/Mexico Treaty;
- Coordination with the Upper Colorado River Commission and implementation of the Upper Colorado River Basin Compact;
- Counsel in diligence proceedings regarding water rights in the Animas-La Plata Project;
- Coordination with the seven Colorado River Basin States on next steps concerning the the Colorado River Basin Study;
- Colorado River Compact Compliance Study and the Colorado River Water Supply Availability Study;
- Coordination with the Basin States and counsel to CWCB regarding the Long-Term Experimental Management Program EIS process;
- Coordination and consultation on intrastate water rights administration within the Colorado River Basin; and
- Coordination and consultation with the Bureau of Reclamation and the seven Colorado River Basin states regarding Colorado River management under the Interim Guidelines.

Animas-La Plata Protocol: The Department of Law continues to work with Southwestern Water Conservation District and the State of New Mexico as to how water from the Animas-La Plata Project should be administered to New Mexico. The State Engineer has identified an administrative mechanism in the recently approved Protocol, but both parties assert the mechanism is problematic for different reasons. Although the State Engineer's Office and the Federal & Interstate Water Unit believe the mechanism identified in the Protocol is reasonable and supported by the record, we have indicated a willingness to meet with both parties and consider a different path going forward if it is mutually agreeable and supported by law.

Minute 319: This year the 7-States and federal governments in the U.S. and Mexico have worked to implement Minute 319, which was signed a year ago as a short-term collaborative

agreement to share risks and benefits on the River. The primary implementation element for this year has been preparing the Delivery Plan for the Environmental Pulse Flow. The Federal & Interstate Water Unit is actively involved in negotiating with the Federal Government and other parties to make sure the final Plan fits within the framework of Minute 319 and the 1944 Water Treaty.

Navajo Nation Litigation: The Federal & Interstate Water Unit moved to intervene in the *Navajo Nation v. Department of the Interior, et. al.* litigation involving water use in the Lower Basin. No party has objected to Colorado intervening in the case. Originally filed in 2003 and stayed pending settlement discussions, the case became active again in June 2013 when the parties could not reach a settlement. In June 2013, the Navajo amended the Complaint to include challenges to the 2007 Interim Guidelines for Lower Basin Shortage and Coordinated Operation of Lake Powell and Lake Mead. Colorado, as well as other Upper Basin States, rely on these Guidelines to provide clarity and much needed certainty in the availability of water in the Colorado River basin from year to year. The Federal Defendants and the Lower Basin Intervenor moved to dismiss on September 9 and 23rd respectively. Colorado joined these motions concurrently with the Motion to Intervene.

San Juan and Tres Rios Land and Resource Management Plan: The BLM and Forest Service recently issued a Final LRMP in Water Division 7 that raises potential concerns for the State regarding indirect bypass flows as well as suitability determinations under the Wild & Scenic Rivers Act. The Federal & Interstate Unit coordinated with the CWCB and Department of Natural Resources to file a protest to the final plan, and is prepared to file an appeal with the Forest Service if necessary. In the meantime, the team is talking to BLM and the Forest service to try to identify mutually agreeable solutions.

DEFENSE OF THE COLORADO RIVER SUBUNIT

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- Coordination with the seven Colorado River Basin States, Bureau of Reclamation, International Boundary and Water Commission and NGOs on implementation of Minute 319 to the US/Mexico Treaty;
- Coordination with the Upper Colorado River Commission and implementation of the Upper Colorado River Basin Compact;
- Counsel regarding development of an operating protocol for the Animas-La Plata Project
- Counsel in diligence proceedings regarding water rights in the Animas-La Plata Project;
- Counsel regarding Indian water rights claims and settlements;

- Coordination with the seven Colorado River Basin States on next steps concerning the Colorado River Basin Study;
- Colorado River Compact Compliance Study and the Colorado River Water Supply Availability Study;
- Coordination on the Water Bank Feasibility and Blue Mesa Water Banking;
- Coordination with the Basin States and counsel to CWCB regarding the Long-Term Experimental Management Program EIS process;
- Coordination and consultation on intrastate water rights administration within the Colorado River Basin; and
- Coordination and consultation with the Bureau of Reclamation and the seven Colorado River Basin states regarding Colorado River management under the Interim Guidelines.

3. Navajo Nation v. United States Department of Interior, et. al.

On June 3, 2013, the Navajo Nation filed a Motion for Leave to File Amended Complaint against the Department of the Interior, et. al. In the proposed amended motion, the Navajo claim that the federal government has failed to protect and pursue the rights of the Navajo to the Lower Colorado River in implementing and the 2001 Interim Surplus Guidelines, 2007 Interim Guidelines for Lower Basin Shortages and Coordinated Management of the Lake Powell and Lake Mead, Interstate Water Banking, Inadvertent Overrun Payback Policy, and contract with Arizona for release of Colorado River water. Responses to the motion have not yet been filed, and the motion is not yet at issue. The Subunit will actively monitor this action and move to intervene as appropriate.

WATER RIGHTS MATTERS

4. Application for ISF on San Miguel River, Case No. 11CW129, Water Division No. 4

In this Colorado Supreme Court appeal of the Division 4 Water Court's ruling in favor of the CWCB's instream flow appropriation on the San Miguel River, Farmers Water Development Company's Opening Brief is due November 8, 2013. The CWCB's Answer Brief will be due December 13, 2013.

5. Application of Suzanne Van Hall, et al, 11CW253, Division No. 1.

In this application to add points of diversion for water rights diverting from the North Fork of the South Platte River near Bailey, the CWCB negotiated for decree language that recognizes under section 37-92-102(3)(b) the Applicant's water uses that pre-date the CWCB's ISF water rights on Craig Creek. On November 5, 2013, the Division 1 Water Court approved the CWCB's stipulation with the Applicant. The stipulated decree will ensure that the Applicant does not expand its water rights and limits the Applicant's 102(3)(b) claim to those uses that existed prior to the appropriation of the Craig Creek ISF water right.