

# 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

John W. Hickenlooper  
Governor

FROM: Ted Kowalski

Mike King  
DNR Executive Director

DATE: January 16, 2014

James Eklund  
CWCB Director

SUBJECT: **Agenda Item 7, January 27-28, 2014 Board Meeting  
Interstate, Federal and Water Information Section – Litigation Account  
Request**

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### Introduction

The 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 CWCB has received a letter from Attorney General Suthers, attached, regarding the use of the litigation fund. The Attorney General requests that \$200,000 be authorized for legal and technical work associated with additional modeling related to Colorado River operations. These tasks are outlined in greater detail in the letter from Attorney General Suthers. These tasks are essential to allowing the Office of the Attorney General and CWCB to prepare for, and participate in, ongoing and future negotiations and potential litigation with the goal to defend Colorado’s rights related to the Colorado River, as provided by the compacts and the law of the river. These requests also provide that the CWCB authorize these funds to be used in Fiscal Year 2015 if not expended in Fiscal Year 2014, and that the CWCB Director, in consultation with the staff of the Department of Law, “allocate these funds between the activities based on actual costs and litigation necessities.”

### Staff Recommendation

The Staff recommends that the Board:

- 1) approve the expenditure of \$200,000 from the Litigation Fund;
- 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).

Attachment (Letter from Attorney General Suthers).

Interstate Compact Compliance • Watershed Protection • Flood Planning & Mitigation • Stream & Lake Protection  
Water Project Loans & Grants • Water Modeling • Conservation & Drought Planning • Water Supply Planning



**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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January 17, 2014

**Additional FY14 Request for Expenditure from Litigation Fund  
to Protect Colorado's Allocations in the Colorado River**

Dear Board Members:

Section 37-60-121(2.5)(a)(III), C.R.S., authorizes the Colorado Water Conservation Board to expend money from its 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. Pursuant to that authorization, I request by this letter the expenditure from the Litigation Fund of \$200,000 to protect the State's equitable allocations of the Colorado River under the Colorado River Compact and the Upper Colorado River Compact over the next fiscal year. The CWCB's staff and I believe that this expenditure is necessary in FY14 to continue to adequately defend the State's apportionments under the Compacts.

The Colorado River remains the only river basin originating in Colorado that is not over-appropriated in some parts of the basin. Colorado is involved in negotiations, processes under the National Environmental Policy Act and Endangered Species Act, basin investigations, and litigation to defend and protect its water allocations in the Colorado River system. These activities have been, and remain, critical to allowing Colorado to achieve the optimum use of this resource for present and future generations and minimize costly litigation. Furtherance of these ongoing activities requires sound legal analysis and detailed technical information to inform our decision-making.

The CWCB originally approved \$300,000 for DOL legal work and \$200,000 for expert technical work on Colorado River matters for FY 14. Since that time, work in addition to that initially contemplated has proven necessary. The requested \$200,000 will cover this additional work by the DOL legal staff and technical experts. Specifically, planning among the 7-Basin States regarding contingency operations in the Colorado River Basin and extra efforts to collaborate with the Department of the Interior on the Environmental Impact Statement for the Long-Term Experimental Management Plan and concurrently prepare for litigation depending on the positions of other stakeholders or the Federal Government has required additional travel and work hours of DOL legal staff to satisfy all of the meeting requirements and to perform the substantive legal analyses necessary to protect Colorado's interests. Second, DOL requires additional

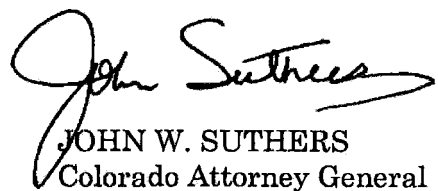
expert modeling and analysis that will inform legal and technical positions on how the State should best position itself to obtain benefits and fulfill obligations consistent with the Colorado River Compact and Law of the River.

These tasks are essential to allowing my office and the CWCB to continue to prepare for and participate in ongoing and future negotiations and litigation with the goal to defend Colorado's equitable apportionment to the Colorado River, as provided by the Compacts, now and into the future.

I therefore request and recommend that the CWCB authorize the expenditure of \$200,000 from the Litigation Fund to fund \$50,000 in additional legal work and \$150,000 in additional expert technical work for FY14. Finally, I recommend that the CWCB's authorization for this FY14 request allow the Board Director, in consultation with the State Engineer and my staff, to allocate funds between these activities based on actual costs and litigation necessities.

Thank you for your consideration.

Sincerely,



JOHN W. SUTHERS  
Colorado Attorney General