



COLORADO

Colorado Water Conservation Board

Department of Natural Resources

1313 Sherman Street, Room 721
Denver, CO 80203

TO: Colorado Water Conservation Board Members

FROM: Ted Kowalski
Meg Dickey-Griffith

DATE: May 21, 2015

SUBJECT: Agenda Item 22a, Interstate, Federal & Water Information Section
Litigation Account, Annual Report to the General Assembly

Background

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 (l) 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)." In addition, Section 121(2.5) states "the Board, in conjunction with the attorney general, shall report annually to senate agriculture, natural resources, and energy committee and the house of representatives agriculture, natural resources, and energy committee on any litigation that involves the use of moneys from the litigation fund created in paragraph (a) of this subsection (2.5)."

Attached to this memo is a draft of the 2015 Annual Report on the litigation fund created pursuant to Sec. 37-161-121(2.5)

Staff Recommendation

The Staff recommends that the Board:

Approve the attached report for submittal to the General Assembly.





COLORADO

Colorado Water Conservation Board

Department of Natural Resources

1313 Sherman Street, Room 721
Denver, CO 80203

TO: Senate Agriculture, Natural Resources, and Energy Committee
House of Representatives Agriculture, Livestock, and Natural Resources Committee

FROM: Colorado Water Conservation Board in consultation with the Office of the Attorney General

DATE: May 21, 2015

SUBJECT: **Annual Report on any litigation that involved the use of moneys from the litigation fund created pursuant to Sec. 37-161-121(2.5)**

Background

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 (l) 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)." In addition, Section 121(2.5) states "the Board, in conjunction with the attorney general, shall report annually to senate agriculture, natural resources, and energy committee and the house of representatives agriculture, natural resources, and energy committee on any litigation that involves the use of moneys from the litigation fund created in paragraph (a) of this subsection (2.5)." This document serves as this year's annual report.

Status of the Litigation Fund

Within the last year, there has been one request from the Attorney General's office containing expenditure requests for the Defense of the Colorado River Unit and for litigation activities associated with the Republican River litigation, the Rio Grande litigation, and the Arkansas litigation. This request authorized up to: 1) \$100,000 for Arkansas River interstate litigation needs; 2) up to \$870,000 for Defense of the Colorado River expenses; 3) up to \$420,000 for work related to the Republican River litigation; 4) up to \$250,000 for litigation associated with the Rio Grande River. The total amount of authorizations was up to \$1,640,000. The total amount of funds available above these authorizations is approximately \$1,057,000.



On July 1, 2014, the litigation account received \$1,200,000 in funds from the Construction Fund, pursuant to HB 14-1333. In addition, the litigation account will receive \$200,000 on July 1, 2015. Thus, the litigation account is appropriately funded to meet our currently anticipated interstate litigation needs through June 30, 2016, however, it may be appropriate to allocate additional funds to the litigation fund next year. Attached to this report are: 1) copies of the board memo authorizing the use of litigation funds; 2) the letter from the Attorney General requesting the use of litigation funds; and, 3) the minutes from the Board meeting where an authorization occurred.

Attachments.

STATE OF COLORADO

Colorado Water Conservation Board

Department of Natural Resources

1313 Sherman Street, Room 721
Denver, Colorado 80203
Phone: (303) 866-3441
Fax: (303) 866-4474
www.cwcb.state.co.us



TO: Colorado Water Conservation Board Members

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

DATE: May 7, 2014

SUBJECT: **Agenda Item 12, Part 1, May 22-23, 2014 Board Meeting
Interstate, Federal, and Water Information Section
Litigation Account**

John W. Hickenlooper
Governor

Mike King
DNR Executive Director

James Eklund
CWCB Director

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 CWCB has received a letter from Attorney General Suthers, attached, regarding the use of the litigation fund.

The Attorney General requests a total of \$170,000 of new authorizations to adequately defend, in negotiations, litigation, and other processes the State’s apportionments under the Compacts for FY15. The requested expenditure will be used for the Defense of the Colorado River Unit within the Department of Law. The letter also requests reauthorization by the Board for use of funds that have been previously been approved by the Board, but that have not been fully expended. These reauthorizations by the Board are not statutorily required, but the Attorney General has asked for the Board to take this specific action to reauthorize the availability of funds for interstate litigation activities associated with the Republican River litigation, the Rio Grande litigation, the Arkansas River litigation, and the Defense of the Colorado River work. Further information is included in the Attorney General’s letter, attached.

The tasks outlined above are essential to allowing the Office of the Attorney General, State Engineer, and CWCB to prepare for and participate in ongoing and future negotiations and litigation with the goal to defend Colorado’s rights, as provided by the compacts. This request also provides that the CWCB Director, in consultation with the State Engineer, and 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) Authorize expenditure of \$170,000 for the Defense of the Colorado River from the Litigation Fund for FY15, and reauthorize the expenditure of \$700,000 from FY 14 for related activities.
- 2) Reauthorize the expenditure of \$100,000 for FY15 from FY14 to support technical work on Rule 10 Irrigation Plans.
- 3) Reauthorize the expenditure of \$140,000 for FY15, in addition to the total amount expended in FY14, not to exceed the original authorization of \$420,000 for litigation work related to the Republican River litigation.
- 4) Reauthorize the expenditure of \$200,000, in addition to the total amount expended in FY14, not to exceed the original authorization of \$250,000 for litigation work related to the Rio Grande River litigation
- 5) Direct the CWCB Director and Staff to expend these funds consistent with the request by the Office of the Attorney General, and;
- 6) 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.



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

Ralph L. Carr
Colorado Judicial Center
1300 Broadway, 10th Floor
Denver, Colorado 80203
Phone (720) 508-6000

May 7, 2014

Request for Expenditure from Litigation Fund for FY15
for Federal and Interstate Water Unit Legal Expenses

Dear Board Members:

Section 37-60-121(2.5)(a)(III), C.R.S., authorizes the Colorado Water Conservation Board (CWCB) 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 you to approve the expenditure of specific funds from your Litigation Fund for Fiscal Year 15 (FY15) to continue our efforts to effectively protect, Colorado's interests in the Arkansas, Colorado, Republican and Rio Grande River Basins. I believe these expenditures, as itemized below, are necessary to participate fully in all processes, including negotiation and litigation, where Colorado's interests in these interstate rivers could be affected.

Previous years' funding requests for work to defend and protect Colorado's interests in these river basins were based on our then-current "best estimates" of the work required in the upcoming year. Because such work is heavily dependent on court decisions and case and project management practices beyond the control of the attorneys, it is difficult to accurately project the timing of anticipated litigation costs for the entire year. As a result, certain funds authorized for expenditure in a basin in a given year are not always fully expended by the close of that year. This is the case for the Arkansas, Republican, and Rio Grande River Basins this year as it is anticipated that the funds you authorized for Fiscal Year 14 (FY14) will not be fully expended by June 30, 2014.

In fact, the authorizations this letter seeks for FY15 do not exceed the unexpended funds authorized in FY14 for any basin except the Colorado River. Nonetheless, for accounting clarity we zero out the remaining FY14 authorizations and make new requests for each basin for the funds needed in FY15. Below is a discrete funding authorization request for each basin for FY15. Attached to this letter is a summary table of the basins which reflects the FY14 authorization, actual expenditures through March 31, 2014, projected expenditures through June 30, 2014, and the funding request for FY15.

Request for approval of expenditure for the Arkansas River Basin.

In 2012, the Board approved a request for expenditure of \$100,000 from the Litigation Fund for FY 13 and FY 14 to protect Colorado's surface water irrigation uses under the Arkansas River Compact. Specifically, the funds were directed to provide legal and 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. Although hydrology and legal disputes regarding operation of the Rule 10 plans delayed this work, it is now under contract and ready to be implemented. I request the Board authorize the expenditure for this basin of \$95,038.50 for FY 15.

Request for approval of expenditure for the Colorado River Basin.

The Colorado River remains the only river basin originating in Colorado that is not over appropriated in some parts of the basin. Colorado continues to be embroiled in basin planning investigations, processes under the National Environmental Policy Act and Endangered Species Act, 7-State and federal negotiations for coordinated reservoir operations, international discussions, and litigation to defend and protect its allocations of water in the Colorado River system. Such investigations, negotiations, processes and litigation have been and remain critical to allowing Colorado to achieve the optimum use of this resource for present and future generations and to minimize costly litigation. These ongoing activities require sound legal analysis and detailed technical information to inform decision making.

In May 2013, the Board approved \$300,000 for legal staff from the Department of Law ("DOL") and \$200,000 for expert consulting work. Subsequently, the Board approved \$50,000 for additional DOL legal work and \$150,000 for modeling support for CWCB and DOL to coordinate new work on the Environmental Impact Statement for reoperation of Glen Canyon Dam and to inform ongoing legal positions regarding compact administration. Board approvals for FY14 totaled \$700,000, while actual expenditures by end of FY14 are estimated to be a little over half that amount. For FY15, I estimate the need to expend \$300,000 for DOL legal staff and \$200,000 for expert consulting/modeling work. I request the Board authorize the expenditure for this basin of \$500,000 for FY15.

Request for approval of expenditure for the Republican River Basin.

In May 2013, the Board approved requests for expenditure of \$420,000 from the Litigation Fund to "continue to defend Colorado's use and allocation of water under the Republican River Compact. These funds were used for outside consultant fees, discovery expenses, briefing costs, negotiation meetings, travel and other expenses related to participating in three arbitrations invoked by Nebraska, two potential arbitrations by Colorado on the Colorado Compliance Pipeline and Bonny Reservoir Proposals, and continuing litigation before the U.S. Supreme Court. For FY15, the hiring of expert consultants and continuing case work is necessary. I request the Board authorize the expenditure for this basin of \$145,000 for FY 15.

Request for approval of expenditure for the Rio Grande Basin.

In January 2013, the Board approved a request for expenditure of \$250,000 after Texas filed suit against New Mexico and named Colorado as a defendant in an original action with the U.S. Supreme Court. The funds were earmarked for retaining outside consultants with expertise in groundwater, hydrogeology, and Rio Grande administration, funding a percentage of any Special Master fees, and providing for travel and operating expenses associated with Rio Grande litigation. Although the original action was delayed while the Court waited for an opinion from the U.S. Solicitor's office, the parties recently filed briefs on Motions to Dismiss. It is impossible to anticipate whether and to what extent the Court will deny any Motion to Dismiss and appoint a Special Master during FY 15. To be prepared, Colorado anticipates entering into contracts with expert consultants, participating in settlement negotiations, and funding a portion of any Special Master expenses incurred. I estimate these costs to total \$140,000 for FY 15.

Concurrently, I anticipate funds necessary to defend Colorado and its officials against potential suit from WildEarth Guardians. In its recent notice of intent to sue, WEG asserted that the Executive Director of the Department of Natural Resources and the State Engineer are violating the Endangered Species Act in their administration of the Rio Grande Basin. Specifically, WEG asserts administrative actions in Colorado are jeopardizing the endangered silvery minnow and southwestern willow flycatcher in the middle Rio Grande of New Mexico. I estimate an additional \$50,000 will be needed to adequately defend Colorado's interests in the Rio Grande should this suit be filed. I request the Board authorize the expenditure for this basin of \$190,000 for FY 15.

The efforts highlighted above are essential to support my office, the CWCB, the Department of Natural Resources, and Colorado's Compact Commissioners in ongoing negotiations, investigations and litigation to protect Colorado's rights to and interests in interstate streams and rivers. I, therefore, request and recommend that CWCB authorize the above-identified expenditures for FY15.

I further recommend that the CWCB's authorizations allow the funds to be used in FY16 if not expended in FY15, and 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

**Federal and Interstate Water Unit
Litigation Fund Expenditures
Current and Projected (FY14 & FY15)**

Project by Basin	Authorization FY14	Expenses Incurred Through 03/14	Estimated Expenses 04/14-06/14	Available Funds End FY14	Funding Needs FY15	Difference
Arkansas River						
Contracting	\$25,000.00	\$4,961.50	\$0.00	\$20,038.50	\$20,038.50	
Irr Imp Plan Work	\$75,000.00	\$0.00	\$0.00	\$75,000.00	\$75,000.00	
Arkansas River Total	\$100,000.00	\$4,961.50	\$0.00	\$95,038.50	\$95,038.50	\$0.00
Colorado River						
Personnel	\$300,000.00	\$207,261.72	\$75,000.00	\$17,738.28	\$300,000.00	
Operating	\$30,000.00	\$22,873.16	\$7,000.00	\$126.84		
Travel	\$20,000.00	\$14,225.79	\$5,700.00	\$74.21		
Contracting	\$350,000.00	\$24,962.84	\$10,000.00	\$315,037.16	\$200,000.00	
Colorado River Total	\$700,000.00	\$269,323.51	\$97,700.00	\$332,976.49	\$500,000.00	-\$167,023.51
Republican River						
Operating	\$40,000.00	\$21,647.24	\$7,215.75	\$11,137.01	\$ 15,000.00	
Travel	\$20,000.00	\$4,500.38	\$0.00	\$15,499.62	\$ 10,000.00	
Contracting	\$130,000.00	\$74,496.77	\$5,000.00	\$50,503.23	\$ 120,000.00	
Arbitrations	\$230,000.00	\$75,811.53	\$2,000.00	\$152,188.47	\$ -	
Republican River Total	\$420,000.00	\$176,455.92	\$14,215.75	\$229,328.33	\$145,000.00	\$84,328.33
Rio Grande						
TX v. NM and CO						
Contracting	\$250,000.00	\$46,202.00	\$5,000	\$198,798.00	\$70,000.00	
Operating					\$8,000.00	
Travel					\$12,000.00	
Special Master					\$50,000.00	
WildEarth Guardians					\$50,000.00	
Rio Grande Total	\$250,000.00	\$46,202.00	\$5,000.00	\$198,798.00	\$190,000.00	\$8,798.00

work was made by Travis Smith, which was seconded by Alan Hamel. The motion was approved unanimously (9-0).

11. Upper Colorado River Commission (UCRC) Update

Interstate, Federal, and Water Information Section

Action: Presentation by Board member John McClow and staff member Ted Kowalski. This was an informational item only. No Board action was required.

12. Litigation Account Request

Interstate, Federal, and Water Information Section

Action: Presentation by staff member Ted Kowalski. A motion to approve the first staff recommendation was made by Travis Smith, which was seconded by Diane Hoppe. The motion was approved unanimously (9-0). The motion was approved the second staff recommendation was made by Alan Hamal, which was seconded by Ty Wattenberg. The motion was approved unanimously (9-0).

First Staff Recommendation: The staff recommends that the Board: 1) Authorize expenditure of \$170,000 for the Defense of the Colorado River from the Litigation Fund for FY15, and reauthorize the expenditure of \$700,000 from FY14 for related activities; 2) Reauthorize the expenditure of \$100,000 for FY15 from FY14 to support technical work on Rule 10 Irrigation Plans; 3) Reauthorize the expenditure of \$140,000 for FY15, in addition to the total amount expended in FY14, not to exceed the original authorization of \$420,000 for litigation work related to the Republican River litigation; 4) Reauthorize the expenditure of \$200,000, in addition to the total amount expended in FY14, not to exceed the original authorization of \$250,000 litigation work related to the Rio Grande River Litigation; 5) Direct the CWCB Director and Staff to expend these funds consistent with the request by the Office of the Attorney General, and; 6) 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).

First Staff Recommendation: The staff and the Department of Natural Resources recommend that the CWCB authorize the Staff to forward the report (with appropriate formatting on the new letterhead) to the appropriate committees.

13. Attorney General's Report, Legal Briefing and Executive Session

Action: Presentation by Karen Kwon. This was an informational item only. No Board action was required.

14. Executive Session

Action: Under the Colorado Open Meetings Act, C.R.S. Section 24-6-402(3)(a)(II), a motion was made by Diane Hoppe for the Board to go into executive session for the discussion of agenda items 14.a. through 14.f. The motion was seconded by Alan Hamel. The motion was approved unanimously (9-0).

- a. Colorado River Issues and Legal Questions
- b. Aspinall Unit Operations and Legal Questions
- c. Animas-La Plata Litigation
- d. Rio Grande River Litigation
- e. Republican River Litigation
- f. Water Transfers Litigation (Catskill Mountains TU v. US EPA)



COLORADO

Colorado Water Conservation Board

Department of Natural Resources

1313 Sherman Street, Room 721
Denver, CO 80203

TO: Colorado Water Conservation Board Members

FROM: Ted Kowalski
Meg Dickey-Griffith

DATE: May 21, 2015

SUBJECT: Agenda Item 22b, Interstate, Federal & Water Information Section
Litigation Account, Requests for Authorization

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 CWCB has received a letter from Attorney General Suthers, attached, regarding the use of the litigation fund.

The Attorney General requests a total of \$1,000,534 of new authorizations to adequately defend, in negotiations, litigation, and other processes the State's apportionments under the Compacts for FY16. The requested expenditures will be used for the interstate litigation activities associated with the Republican River litigation, the Rio Grande litigation, the Arkansas River litigation, and the Defense of the Colorado River work. Further information is included in the Attorney General's letter, attached.

The tasks outlined above are essential to allowing the Office of the Attorney General, State Engineer, and CWCB to prepare for and participate in ongoing and future negotiations and litigation with the goal to defend Colorado's rights, as provided by the compacts. This request also provides that the CWCB Director, in consultation with the State Engineer, and 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) Authorize expenditure of \$55,034 for FY 16 for the Arkansas River Basin,
- 2) Authorize expenditures of \$500,000 for FY 16 for Colorado River Basin,
- 3) Authorize expenditure of \$85,000 for FY16 for litigation work related to the Republican River litigation.
- 4) Authorize \$310,500 for FY 16 for litigation work related to the Rio Grande River and \$50,000 related to the potential suit from WildEarth Guardians,
- 5) Direct the CWCB Director and Staff to expend these funds consistent with the request by the Office of the Attorney General, and;
- 6) 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.



CYNTHIA H. COFFMAN
Attorney General

DAVID C. BLAKE
Chief Deputy Attorney General

MELANIE J. SNYDER
Chief of Staff

FREDERICK R. YARGER
Solicitor General



STATE OF COLORADO
DEPARTMENT OF LAW

RALPH L. CARR
COLORADO JUDICIAL CENTER
1300 Broadway, 10th Floor
Denver, Colorado 80203
Phone (720) 508-6000

Office of the Attorney General

May 6, 2015

Request for Expenditure from Litigation Fund for FY16
for Federal and Interstate Water Unit Legal Expenses

Dear Board Members:

Section 37-60-121(2.5)(a)(III), C.R.S., authorizes the Colorado Water Conservation Board (CWCB) 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 you to approve the expenditure of specific funds from your Litigation Fund for Fiscal Year 16 (FY16) to continue our efforts to effectively protect Colorado's interests in the Arkansas, Colorado, Republican and Rio Grande River Basins. I believe these expenditures, as itemized below, are necessary to participate fully in all processes, including negotiation and litigation, where Colorado's interests in these interstate rivers could be affected.

Previous years' funding requests for work to defend and protect Colorado's interests in these river basins were based on our then-current "best estimates" of the work required in the upcoming year. Because such work is heavily dependent on court decisions and case and project management practices beyond the control of the attorneys, it is difficult to accurately project the timing of litigation related costs for the entire year. As a result, certain funds authorized for expenditure in a basin in a given year are not always fully expended by the close of that year. This is the case for the Arkansas, Colorado, Republican, and Rio Grande River Basins this year as it is anticipated that the funds you authorized for Fiscal Year 15 (FY15) will not be fully expended by June 30, 2016.

For accounting clarity we zero out the remaining FY15 authorizations and make new requests for each basin for the funds needed in FY16. Below is a discrete funding authorization request for each basin for FY16. Attached to this letter is a summary table of the basins which reflects the FY15 authorization, actual expenditures through March 31, 2015, *estimated* expenditures through June 30, 2015, and the funding request for FY16. As the table shows, the authorizations this letter seeks for FY16 do not exceed the unexpended funds authorized in FY15 for either the Arkansas or Republican River Basins. Moreover, the funding requests for the Rio Grande and Colorado River Basins are partially offset by the unexpended funds authorized for those basins in FY15.

Request for approval of expenditure for the Arkansas River Basin.

In 2014, the Board approved a request for expenditure of \$90,000 from the Litigation Fund for Fiscal Year 15 to protect Colorado's surface water irrigation uses under the Arkansas River Compact. Specifically, the funds were directed to provide legal and 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. Although hydrology and legal disputes over operation of the Rule 10 plans delayed this work, it is now under contract and in the process of being implemented. I request the Board authorize the expenditure for this basin of \$55,034.00 for FY 16 to complete this work.

Request for approval of expenditure for the Colorado River Basin.

The Colorado River remains the only river basin originating in Colorado that is not over appropriated in some parts of the basin. Colorado continues to be embroiled in basin planning investigations, processes under the National Environmental Policy Act and Endangered Species Act, 7-State and federal negotiations for coordinated reservoir operations, international discussions, and litigation to defend and protect its allocations of water in the Colorado River system. Such investigations, negotiations, processes and litigation have been and remain critical to allowing Colorado to achieve the optimum use of this resource for present and future generations and to minimize costly litigation. These ongoing activities require sound legal analysis and detailed technical knowledge to inform decision making.

In May 2014, the Board approved \$300,000 for legal staff from the Department of Law ("DOL") and \$200,000 for expert consulting work to coordinate ongoing efforts on the Environmental Impact Statement for 20 year reoperation of Glen Canyon Dam, and to inform ongoing legal positions regarding compact administration and interstate negotiations. Actual expenditures for DOL legal staff are estimated to be approximately \$315,000 and operating costs and contract expenditures are estimated at to be closer to \$115,000. For FY15, I estimate the need to expend \$325,000 for DOL legal staff and \$175,000 for operating costs, expert consulting/modeling work, and the State's portion of mediation costs in the Animas-La Plata proceedings. I request the Board authorize the expenditure for this basin of \$510,000 for FY16.

Request for approval of expenditure for the Republican River Basin.

In May 2014, the Board approved requests for expenditure of \$145,000 from the Litigation Fund to "continue to defend Colorado's use and allocation of water under the Republican River Compact." These funds paid for outside consultant fees, briefing costs, negotiation meetings, travel and other expenses related to preparing for and participating in U.S. Supreme Court arguments, compact meetings, and ongoing settlement negotiations with Kansas and Nebraska regarding future operation of, among other things, the Colorado Compliance Pipeline as well as administration of the South Fork consistent with the Compact.

For FY16, continued case work and work of expert consultants in negotiations with Nebraska and Kansas will be necessary. Moreover, funds for additional travel expenses over and above that contemplated for ongoing interstate discussions may

also be necessary in FY16 depending on whether the *Hutton Trust Foundation v. Wolfe, et. al*, 15CW3018 proves to implicate the State's interests in management and administration of the Republican River Basin. To pay for these efforts, I request the Board authorize the expenditure for this basin of \$85,000 for FY 16.

Request for approval of expenditure for the Rio Grande Basin.

In May 2014, the Board approved a request for expenditure of \$140,000 for retaining expert consultants, funding a percentage of any Special Master fees, and providing for travel and operating expenses associated with Rio Grande litigation among Texas, New Mexico, Colorado and the United States. Although progress on this original action was delayed while the Court appointed a Special Master, work on the case is expected to increase now that oral arguments on pending motions have been scheduled and litigation preparation is starting to get in full swing. For the upcoming year, I anticipate the need for travel/operating costs to prepare briefs and attend arguments before the Special Master, provide a portion of the funding for the Special Master expenses, and participate in any settlement negotiations among the parties. Moreover, to be prepared, Colorado has entered into contracts with certain expert consultants and anticipates more in the upcoming year to retain expertise in groundwater, hydrogeology, Rio Grande administration, and agricultural engineering. I estimate these costs to total \$310,500 for FY 16.

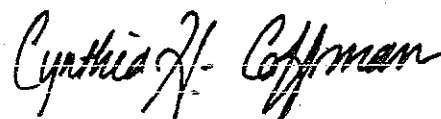
The Board also authorized expenditure of \$50,000 to defend the State and its officials against potential suit from WildEarth Guardians. Despite filing a notice of intent, WEG did not file suit against the Executive Director of the Department of Natural Resources or the State Engineer for allegedly violating the Endangered Species Act in their administration of the Rio Grande Basin. Therefore, I do not anticipate the need to authorize expenditure of funds for this matter at this time.

The efforts highlighted above are essential to support my office, the CWCB, the Department of Natural Resources, and Colorado's Compact Commissioners in ongoing negotiations, investigations and litigation to protect Colorado's rights to and interests in interstate streams and rivers. I, therefore, request and recommend that CWCB authorize the above-identified expenditures for FY16.

I further recommend that the CWCB's authorizations allow the funds to be used in FY17 if not expended in FY16, and 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,

A handwritten signature in black ink that reads "Cynthia H. Coffman". The signature is written in a cursive, flowing style.

CYNTHIA H. COFFMAN
Colorado Attorney General

**Federal and Interstate Water Unit
Litigation Fund Expenditures
Current and Projected (FY15 & FY16)**

Project by Basin	Authorization FY14	Expenses Incurred Through 04/15	Estimated Expenses 04/15-06/15	Available Funds End FY15	Funding Needs FY165	Difference
Arkansas River						
Contracting	\$15,000.00			\$15,000.00		
Irr Imp Plan Work	\$75,000.00	\$13,466.00	\$6,500.00	\$55,034.00	\$55,034.00	
<i>Arkansas River Total</i>	<i>\$90,000.00</i>	<i>\$13,466.00</i>	<i>\$6,500.00</i>	<i>\$70,034.00</i>	<i>\$55,034.00</i>	<i>\$15,000.00</i>
Colorado River						
Personnel	\$300,000.00	\$242,584.54	\$68,050.00	-\$10,634.54	\$325,000.00	
Operating	\$5,000.00	\$3,179.43	\$1,060.00	\$760.57	\$5,000.00	
Travel	\$20,000.00	\$10,907.34	\$5,000.00	\$4,092.66	\$20,000.00	
Contracting	\$175,000.00	\$48,047.83	\$59,500.00	\$67,452.17	\$160,000.00	
<i>Colorado River Total</i>	<i>\$500,000.00</i>	<i>\$304,719.14</i>	<i>\$133,610.00</i>	<i>\$61,670.86</i>	<i>\$510,000.00</i>	<i>-\$448,329.14</i>
Republican River						
Operating	\$15,000.00	\$526.78	\$175.59	\$14,297.63	\$2,000.00	
Travel	\$10,000.00	\$3,881.50	\$1,000.00	\$5,118.50	\$8,000.00	
Contracting	\$120,000.00	\$30,260.29	\$24,739.71	\$65,000.00	\$75,000.00	
<i>Republican River Total</i>	<i>\$145,000.00</i>	<i>\$34,668.57</i>	<i>\$25,915.30</i>	<i>\$84,416.13</i>	<i>\$85,000.00</i>	<i>-\$583.87</i>
Rio Grande						
TX v. NM and CO						
Contracting	\$70,000.00	\$0.00	\$10,000	\$60,000.00	\$265,500.00	
Operating	\$8,000.00	\$0.00	\$0	\$8,000.00	\$5,000.00	
Travel	\$12,000.00	\$0.00	\$0	\$12,000.00	\$10,000.00	
Special Master	\$50,000.00	\$0.00	\$0	\$50,000.00	\$30,000.00	
WildEarth Guardians	\$50,000.00	\$0.00	\$0	\$50,000.00		
<i>Rio Grande Total</i>	<i>\$190,000.00</i>	<i>\$0.00</i>	<i>\$10,000.00</i>	<i>\$180,000.00</i>	<i>\$310,500.00</i>	<i>-\$130,500.00</i>
TOTALS				\$396,120.99	\$960,534.00	\$564,413.01