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STATE OF COLORADO
DEPARTMENT OF LAW

Office of the Attorney General

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TO: Colorado Water Conservation Board

FROM: Cynthia H. Coffman, Attorney General
Karen Kwon, First Assistant Attorney General
Susan Schneider, First Assistant Attorney General

RE: Report of the Attorney General

FEDERAL & INTERSTATE MATTERS

1. Rio Grande -Texas v. New Mexico and Colorado, No. 141 Original

The parties continue to await the Special Master's Ruling on New Mexico's Motion to Dismiss Texas' and the United States' complaints and Elephant Butte Irrigation District's (EBID) Motion to Intervene in the litigation. In the meantime, the Unit is evaluating the need for and options to filing an Answer and /or compulsory counterclaims. The Parties are also looking into to potential next steps.

2. Division 3 - Groundwater Use Rules

On September 23, 2015, State Engineer Dick Wolfe filed Rules Governing the Withdrawal of Groundwater in Water Division No. 3 (the Rio Grande Basin) and Establishing Criteria for the Beginning and End of the Irrigation Season in Water Division No. 3 for All Irrigation Water Rights in the water court for Water Division No. 3. The rules require well users to replace stream depletions caused by their wells that injure senior surface water rights. They also require well users to achieve and maintain sustainable water supplies in most of the aquifers of the San Luis Valley, an approach to groundwater management that is very rare worldwide and unprecedented in the arid West.

The Unit is preparing to defend the rules against any protests filed with the Court. All protests were due by December 31, 2015. Twenty-six protests have been filed so far, about half of which protests are actually pleadings in support of the rules. Protests follow the procedure for water court cases and the rules will be measured against special standards for rules adopted by the State Engineer, not the Colorado Administrative Procedures Act. Due to a quirk in the water court rules, this case will not become at issue without special action by the court. The Unit will circulate a draft motion this month to all parties that will begin to move the case forward. The motion would give the parties a few weeks to negotiate a proposed Case Management Order and set an initial status conference.

The Unit also continues to participate with representatives from the Division of Water Resources in working groups aimed at informing water users about administration under the groundwater rules. As part of the groundwater administration framework, subdistricts of the Rio Grande Water Conservation District will have the opportunity to develop Annual Replacement Plans approved by the State Engineer to help ensure the subdistricts have the water supplies and financial ability to meet their well users' obligations to owners of senior surface water rights. This is a novel approach to groundwater management that will require the cooperation of all groundwater users in the San Luis Valley. The RGWCD is currently progressing on establishing subdistricts, and the Water Division 3 office recently added a specialized position to coordinate the office's work (with the advice of the Unit) with the other subdistricts that may soon form.

3. Arkansas River Basin Generally

There continues to be a number of daily administrative matters that the Unit is involved in on the Arkansas River Basin to promote ongoing compact compliance. This includes, but is not limited to, counseling the Compact Commissioners in preparation and during the annual Arkansas River Compact meeting and working with the Division of Water Resources to address compact considerations that may be associated with Colorado Parks and Wildlife's efforts to obtain a permanent pool at John Martin Reservoir.

4. 05CW107-B - City of Lamar Exchange Case

The City of Lamar is seeking to exchange water from below John Martin Reservoir to Pueblo Reservoir, which is above John Martin. The Arkansas River Compact restricts the transfer/use of District 67 water rights (those below JMR) to above JMR without approval from the Arkansas River Compact Administration. Lamar asserts that they are not transferring District 67 water rights, because their sewage return flows are not District 67 water rights. If approved, Lamar's application could implicate compact concerns for Kansas that would potentially require State to State and ARCA negotiations. The Unit is involved in the case to the extent necessary to help the State avoid unnecessary compact implications.

5. Colorado's Compact Compliance Pipeline (CCP) and Bonny Reservoir Disputes (Republican River).

Colorado and Kansas have agreed to a plan to allow Colorado to operate its Compact Compliance Pipeline in 2016. The pipeline delivers water from groundwater wells to the Republican River to offset depletions from pumping other wells. Running the pipeline is crucial to Colorado's compliance with the Republican River Compact. As part of the agreement for operation in 2016, the States negotiated a long-term plan to evaluate streamflow in the Republican River and water use in the Republican River Basin. Colorado has also agreed to evaluate the benefits of further reducing groundwater pumping and surface water diversions in the basin. Colorado is working on the first phase of evaluation and will provide that to Kansas by the end of January.

6. Hutton v. Wolfe, et. al, 15CW3018

The Hutton Foundation seeks injunctive and declaratory relief against the Division of Water Resources, and Parks and Wildlife for administration of surface water (and lack of administration of groundwater) in the Republican River basin. The Foundation also claims that the inability to de-designate the Northern High Plains Designated Basin is unconstitutional and that the Groundwater Management Act, to the extent it is used to circumvent prevention of injury to surface water users, is also unconstitutional. The Court granted the Unit's motion to have the Foundation join all indispensable parties (all well owners in the designated Basin who would incur significant expense if they are forced to administer in priority with surface water rights). The Court granted the Foundation's request to allow service by publication.

Publication is now complete and the case is at issue. The Groundwater Commission and several Groundwater Management Districts have filed motions to intervene. The State Land Board, the Republican River Water Conservation District, and many other well owners have filed answers to the complaint. The large group of attorneys working on this case participated in a conference call on December 30. Based on that call, it is apparent that the litigation will be much more complex than the plaintiff initially expected.

Different attorneys in the Unit will continue to represent DWR and the Republican River Compact Commissioner's interests in this case. It will also represent the Groundwater Commission if intervention is granted.

7. Upper Colorado River Basin System Conservation Pilot Program

The Unit has facilitated completion of contracts and implementation of eight pilot projects for the Upper Basin System Conservation Pilot Program in 2015. The Unit is now coordinating round two of the pilot program for 2016 by hosting and facilitating meetings with funding entities and Upper Basin State representatives to develop recommendations for selection by the end of January 2016. The Unit will then be involved in contracting and negotiating provisions for implementation of the selected projects for 2016.

8. Extended Reservoir Operations

The Unit continues to spearhead talks with the Upper Basin States, Bureau of Reclamation, Western Area Power Authority, Fish and Wildlife Service and National Park Service on how to utilize storage from the Colorado River Storage Project's primary reservoirs (Flaming Gorge, Aspinall Unit, and Navajo Reservoir) to maintain minimum power pool at Lake Powell. The purpose of this exercise is to be ready and prepared to respond, if needed, to extended drought so as to protect key operations from Lake Powell, including hydropower production and compact compliance. The next meeting is scheduled for January 22nd.

9. Glen Canyon Dam Long-Term Experimental Management Plan - EIS

The Unit continues to work on consulting with the Department of the Interior on its plan to re-operate Glen Canyon Dam via adaptive management measures to protect and improve downstream resources (in the Grand Canyon) without compromising the compact operations and with the least amount of effects to hydropower generation. This has been,

and continues to be an extensive, ongoing effort that involves coordinating with seven Colorado River Basin states to present a united front in protecting key rights to Colorado River water under the Law of the River. A public Draft EIS will be promulgated in early January. The parties will provide comments and continue consultations in an effort to arrive at a document that is mutually agreeable to all parties. The Unit will work to protect the state's interests, through the CWCB, throughout this process.

10. Mexico Minute 32X Development

The United States, 7-Basin States and Mexico continue to identify and discuss elements to be included in an updated agreement to Minute 319 of the 1944 Water Treaty. The goal remains to finalize a new Minute by summer 2016. The Minute Negotiating Group representatives from the U.S., Basin States and Mexico continue to flesh out the framework for negotiations, and have identified work groups to staff and inform the negotiations on, among other things, salinity, environment, bi-national projects, and basin hydrology. The Unit continues to provide counsel to the Upper Basin representatives on legal matters as they arise.

WATER RIGHTS MATTERS

11. 2015 Instream Flow and Natural Lake Level Appropriations.

In December 2015, CWCB's counsel completed the water court application filings for the Board's 2015 appropriations to preserve the natural environment to a reasonable degree. The filings included 14 applications for instream flow water rights, including the contested instream flow water right for the Dolores River filed in Case No. 15CW3114, Water Division 4, and an application for four natural lake level water rights for the Spottlewold Lakes in Case No. 15CW3172, Water Division 1.

The ISF applications will protect minimum flows for more than 84 miles of stream segments with a 2015 priority. The Spottlewold Lakes natural lake level water rights will preserve water levels for small ponds located in a unique endangered shortgrass prairie habitat in the City of Fort Collins' Soapstone Prairie Natural Area near the border with Wyoming--an area close to the location where the City of Fort Collins re-introduced ten American bison in their native habitat in late 2015.

A table showing the name of each stream (and lake) appropriation, and the water court case number and water division, is provided below.

Case Name	Water Court Case No. – Water Division
Alkali Creek	15CW3079-4
Armstrong Creek	15CW3047-6
Brush Creek	15CW3048-6
East Douglas Creek (Upper)	15CW3045-6
East Douglas Creek (Lower)	15CW3049-6

Elkhead Creek	15CW3052-6
Graves Creek	15CW3157-1
Soldier Creek	15CW3051-6
Spottlewood Creek	15CW3167-1
Spottlewood Lakes	15CW3172-1
Timber Springs Gulch	15CW3111-5
Hubbard Creek	15CW3089-4
Schaefer Creek	15CW3102-4
Terror Creek (Lower & Upper)	15CW3101-4
Dolores River	15CW3111-4