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STATE OF COLORADO
DEPARTMENT OF LAW

January 18, 2019

TO: Colorado Water Conservation Board

FROM: Phil Weiser, Attorney General
Karen Kwon, First Assistant Attorney General
Jen Mele, First Assistant Attorney General

RE: Report of the Attorney General

It is my pleasure to introduce myself to the Colorado Water Conservation Board as your new Attorney General and as a nonvoting ex-officio member of this Board. I am excited to lead the team of dedicated lawyers who assist with your important work as we search for solutions to one of the most important and defining issues of our time: water availability in the West. Here in Colorado, we approach such challenges as opportunities for collaborative, creative, and solutions-oriented work on this issue. We need more of this Colorado way of problem solving in our nation.

As Attorney General, I look forward to participating actively on this Board. I am also pleased to introduce you to Amy Beatie, who I have appointed to serve on my leadership team as the Deputy Attorney General for Natural Resources and Environment. In that capacity, she will serve as the attorney for this Board. I know that she has worked closely with the Board in the past and is excited to work with you going forward.

Thank you for your important work. Please don't ever hesitate to reach out to Amy or me with any thoughts, concerns, or questions.

FEDERAL & INTERSTATE MATTERS

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

This suit focuses on claims regarding actions of Texas, the United States, New Mexico and the Republic of Mexico, and their alleged impacts on the Rio Grande Project water deliveries. The Project delivers water to southern New Mexico, west Texas and Mexico. The Parties have started discovery. This case is using extensive electronic discovery methods, with hundreds of gigabytes of documents being produced. The Special Master has ordered Colorado to pay part of the costs for the

electronic repository for database storage, but only half as much as the other Parties were requesting. This Special Master also expects the Parties to start the trial in the fall of 2020.

Colorado is participating as a signatory to the Rio Grande Compact, which is at issue in the case. The state has no claims asserted against it and is not asserting any claims at this time. Colorado reached an agreement with the other Parties that allows the state to avoid filing an answer or any counter claims in the suit. The agreement also permits Colorado to assert any defenses or claims later, should it find it necessary. This allows Colorado to avoid taking a position on issues until it has more information and can avoid expanding the scope of the suit.

Most currently, the Parties have begun taking depositions. The Unit has been present for the depositions, but has yet to have a need to participate directly. In late December, Texas and the United States also filed Motions to Strike or for Summary Judgement on New Mexico's counterclaims. Texas has also filed a Motion for Judicial Declaration on Confirmation of Previous Legal Issues Decided. The Unit is in the process of evaluating this latter motion to determine whether and to what extent the State will enter a response to protect its interests in the Rio Grande Compact and Compact law in general. Timing for briefing will be clarified as a result during an upcoming status conference.

2. Arkansas River Compact Administration

The Unit continues to coordinate with clients from the Division of Water Resources and the Colorado Water Conservation Board to address the main interstate issues pending in the Arkansas River basin: a permanent agreement for a source of water to maintain the permanent pool in John Martin Reservoir (JMR) and an agreement to create a new multi-user Colorado subaccount in JMR. The permanent pool agreement is almost across the finish line, while the multi-user subaccount has a long way to go.

The permanent fishery pool in JMR, managed by Colorado Parks and Wildlife (CPW), is authorized for up to 15,000 acre-feet. However, there is currently no dedicated source of water for the permanent pool (except for one small and very junior water right), forcing CPW to purchase water on the spot market to "fund" the pool. This leads to the problem that CPW can purchase water when it is abundant, but when the fishery really needs the permanent pool – in times of drought – there is little water available for purchase. Thus, CPW has been working with the Lower Arkansas Water Management Association (LAWMA) and Colorado and Kansas to firm up supply for the fishery. LAWMA would manage the accounting and provide the water via a management agreement between it and CPW, but the Arkansas River Compact Administration (ARCA) must approve the sources and method of filling the permanent pool.

The permanent pool has been receiving water from the Highland Canal the past two irrigation seasons, pursuant to one-year temporary agreements between Colorado and Kansas. We are currently working towards a more permanent agreement. The

matter was discussed and details clarified at ARCA's Annual Meeting in December. Since then, ARCA's Special Engineering Committee (and counsel) has been meeting to further refine possible provisions for a permanent agreement to be ready for signatures and approval in the upcoming month or two.

The second issue is related to exploring mechanisms to secure approval of a new Multi-Purpose Colorado account in JMR. Currently, the JMR Operating Plan has specific accounts for which many water users do not have access even though the reservoir almost always has excess capacity. This leads to the inefficient use of water resources. Given that storage capacity exists in JMR, Colorado is seeking Kansas' approval of a new account that could be utilized by those Colorado water users that do not currently have an account. The Unit is working with the Division of Water Resources to continue negotiations to obtain this approval.

In addition to the known agenda items at ARCA, the Unit is working with the Division of Water Resources and ARCA representatives for Colorado to address Reclamation's stance on performing a 10 year review of the Trinidad Project. Although required to perform a 10-year review, Reclamation announced in October that it might stop. After some discussions with Reclamation in November, its primary concern appears to be financial; there is too much time spent for too little result. Reclamation has proposed a process whereby Colorado and Kansas prepare the bulk of the report and agree on the data to be used in the report, and Reclamation will compile and evaluate that information and produce a 10-year review. Reclamation offered a proposed resolution for consideration at December ARCA meeting, but both Colorado and Kansas felt that would be too ambitious, primarily because the proposal does not offer any specifics or process for when Colorado and Kansas cannot agree on the report specifics or the data. Moreover, ARCA is but one signatory to the Trinidad Operating Principles. Instead, the states have offered a counterproposal, where all the parties work on an agreement – not an ARCA resolution – in early 2019, and when all other parties sign that agreement, ARCA can then adopt it through a resolution, whether by special meeting or at the 2019 Annual Meeting. This proposed agreement would provide for how Colorado and Kansas go through the process of preparing the report and data and would provide a process to follow if the states cannot agree. The Unit will continue to represent the Colorado representatives and DWR during this process.

3. Republican River Compact Negotiations

Following a significant dry period in the early 2000s, Kansas complained that both Colorado and Nebraska did not meet their compact obligations under the Republican River Compact. In 2016, Colorado secured settlement regarding compact administration going forward. Subsequently, in 2018, Colorado negotiated a settlement of claims of non-compliance between 2006 and 2013. This settlement was achieved without litigation or arbitration after multiple years of Kansas and Nebraska litigating their compact disputes. Colorado agreed to pay Nebraska \$4 million and Kansas \$2 million. Colorado recently made those payments. Colorado also appropriated and agreed to spend another \$2 million in the South Fork Republican River basin within Colorado for ongoing compact compliance purposes.

Colorado negotiated with Kansas and Nebraska to extend the deadline by which it must remove from irrigation 25,000 acres of land in the South Fork Republican River basin under the 2016 Resolution of the Republican River Compact Administration. Since 2016, Colorado has been unable to enroll land in the Conservation Reserve Enhancement Program because the Farm Services Agency refused to approve amendments to its contract with Colorado under the CREP Program. Those amendments have now been approved, but there was no assurance of funding CREP because the House and Senate had been unable to agree in a timely manner on the substance of a farm bill. The States, therefore, agreed to extend the deadlines under the 2016 Resolution by two years.

Colorado is also negotiating with the states on how to store water in Bonny Reservoir without violating the compact. To reduce consumptive use from evaporation, and thereby demonstrate compact compliance, Colorado ordered the federal government to drain the reservoir in 2010. The reservoir was one of a few recreational amenities for citizens of Northwest Kansas and Eastern Colorado. These citizens have since encouraged the states to explore ways to restore recreation. The Unit is involved in advising the State Engineer during these negotiations.

4. Republican River Compact Rules

The State Engineer filed the Proposed Republican River Compact Compliance Rules in Division 1 Water Court to help ensure continued administration of water consistent with the Republican River Compact (compact rules). The rules, if approved, would require all water users who are included in Colorado's Compact Accounting to participate in a plan to help the State maintain compact compliance. Most of the water users in the basin would be covered by the Republican River Water Conservation District's existing plan, which includes operating the Compact Compliance Pipeline. Those users who do not yet participate in the District's plan would be required to join that plan or create their own. The State Engineer revised the rules and statement of basis and purpose. He subsequently solicited comment on the draft rules document. The Unit has assessed the comments and coordinated with the Division of Water Resources on edits to draft rules before their filing with the Water Court on January 11, 2019.

5. Colorado River Drought Contingency Plans

The Colorado River Basin has experienced 19 years of drought. In light of this ongoing condition, the Colorado River Basin States and Department of the Interior have recognized a need to plan for drought contingencies that would help avoid or mitigate the uncertainties associated with fluctuating water supplies. Such plans require intra-state, interstate, regional, and state-to-federal coordination and agreements that involve a series of negotiations to reach consensus. The Unit has been working with the Colorado Compact Commissioner, Colorado Water Conservation Board, and Upper Colorado River Commission to explore and evaluate the options and terms of any drought contingency plan. In mid-September, the States' Principals and Commissioner of Reclamation met to confirm the status of

the draft plans and directed staff to proceed with performing public outreach and initiating processes for necessary approvals. Since then, the Unit has coordinated with the state representatives to prepare final review drafts of the planning documents for public distribution. It has also participated in a special meeting of the Colorado Water Conservation Board to walk through the terms of the documents, and been part of the public outreach efforts to help explain the purpose and need of the documents. These efforts included a 2 hour public webinar in which the documents were discussed and posted to the CWCB's website, numerous basin roundtable meetings in the Colorado River and Southwest Colorado basins, joint tribal sessions, and the Grand Valley Water Users' Association Seminar.

In addition to the Drought Contingency Planning documents, the 7-States' Principals and Department of the Interior agree that federal legislation essentially "blessing" the documents is appropriate. It appears that all parties but Arizona are in position to be able to agree to submit the Drought Contingency Planning documents as drafted to the Congressional delegation for approval. However, because Arizona still needs time to work out internal implementation agreements, the federal legislation has been delayed. At the Colorado River Water Users' Association conference in December, the Commissioner of Reclamation announced a deadline of January 31, 2019 for all parties to be ready and authorized to approve the documents. If that deadline cannot be met, then Reclamation will consider recommendations on actions it will take to protect critical reservoir elevations going forward. The Unit is working with the Colorado Commissioner and CWCB to ensure the appropriate measures are being taken to protect Colorado's interests throughout this process.

a. Upper Basin Drought Contingency Planning - Drought Reservoir Operations Agreement

The Unit continues to work in coordination with the CWCB and Upper Colorado River Commission to have an Upper Basin Drought Reservoir Operation Agreement finalized and ready to implement concurrently with a Lower Basin Drought Contingency Plan, and before risking critical elevations at Lake Powell. This Agreement establishes a process for the Department of the Interior and Commission to work together to utilize the Colorado River Storage Project's primary reservoirs (Glen Canyon Dam, Flaming Gorge, Aspinall Unit, and Navajo Reservoir) to maximize beneficial use of Colorado River water in the Upper Basin during drought emergencies. In fulfilling this purpose, the Agreement focuses on: (1) protecting target operations at Lake Powell, including hydropower production and compact compliance in the face of extended drought consistent with existing laws and regulations for each facility; and (2) preserving the Upper Colorado River Commissions' role to accomplish drought response in a manner that preserves collaborative relationships with federal agencies. Following discussion of the draft Agreement with Lower Colorado River Basin States and Department of the Interior as part of the joint efforts to develop Drought Contingency Plans, the Unit has coordinated with the Upper Colorado River Commission to clarify terms and identify processes that provide further assurance on how the system will be operated. The Upper Basin members have confirmed that the Lower Basin and

Reclamation accepted the edits to the draft Agreement. Since then, the draft document has been made available for public consideration and final review. The Unit has coordinated with state representatives on preparing responses to the public's frequently asked questions and addressing concerns as they arise. (See Drought Contingency Plan, *supra*). The CWCB has provided full support for the agreement and Colorado's Commissioner has coordinated with the Governor to obtain the necessary authority to approve the agreement on behalf of Colorado. At the Upper Colorado River Commission's annual meeting in December, the UCRC Commissioners unanimously supported approving the document as drafted if and when the other materials that comprise the drought contingency plan package are ready to be finalized as well.

b. Upper Basin Drought Contingency Plan - Exploring Demand Management Feasibility

Exploring demand management is the second element for consideration in the Upper Basin's Drought Contingency Planning. It is loosely defined as the temporary, conservation of Colorado River water to help ensure continued compliance under the Colorado River Compact. At its June 20, 2018 meeting, the Upper Colorado River Commission approved a Resolution directing staff to:

- i. Work with interested parties to adapt the existing [System Conservation Pilot Program], or develop new pilots, to investigate outstanding considerations related to demand management;
- ii. Work with interested parties and entities to explore other possible mechanisms or opportunities to investigate outstanding considerations related to demand management; and
- iii. Support intrastate efforts to explore demand management mechanisms and considerations within each of the Upper Division States.

Additionally, the 7-States agreed to consider securing dedicated storage for water created as part of a demand management program, should such program be finalized and made operational in the future. The Unit has been working with Colorado's Compact Commissioner as well as staff from the CWCB and Upper Colorado River Commission to draft the authorizations and agreements to further these directives. The Upper Basin members have confirmed that the Lower Basin and Reclamation do not object to the terms as drafted at this time. Since then, the draft document has been made available for public distribution and consideration and final review. The CWCB has expressly stated its support for the agreement and Colorado's Commissioner has secured governor approval to sign off on the agreement on behalf of Colorado. At the Upper Colorado River Commission's annual meeting in December, the UCRC Commissioners unanimously supported approving the document as drafted if and when the other materials that comprise the drought contingency plan package are ready to be finalized as well.

Concurrently, the Unit has been coordinating with CWCB staff to implement an intrastate demand management outreach program that focuses on informing interested stakeholders of current efforts within the Upper Basin and with the

Lower Basin to develop drought contingency plans, introducing the concept of demand management and its potential relevance in Colorado, and identifying concepts, issues and concerns that stakeholders may have with the demand management concept. Initial outreach began in March, has progressed through the summer, and continued through the fall and winter. The goal has been to utilize this and other information to inform any state position on the feasibility and terms of a demand management program in a manner that will provide more certainty in water uses on the Colorado River into the future and promote ongoing compact compliance consistent with the values and goals of Colorado. At the September 2018 Colorado Water Conservation Board meeting, the directors heard testimony from stakeholders interested in and concerned by the concept of demand management. Additionally, there has been a number of Basin Roundtable meetings and seminars in which stakeholders are expressing opinions and concerns on demand management and its potential impacts to their respective communities.

The CWCB conducted a Special Board Meeting on October 4 to consider the elements of the Drought Contingency Plans and determine related next steps for water policy considerations in Colorado. At that meeting, the Board directed staff to prepare a draft policy statement regarding the role of demand management going forward. The Unit worked with CWCB staff to prepare that statement which was discussed and unanimously approved at the November Board meeting. Various water user districts and entities have expressed support for demand management investigations going forward consistent with the policy, however, a couple have raised some reservations for the CWCB to consider going forward. The Unit has been coordinating with CWCB staff to continue outreach on the concept of demand management, and to outline a proposed work plan for feasibility investigations within Colorado consistent with Board direction and in conjunction with any investigations that may be undertaken by the Upper Colorado River Commission.

c. Lower Basin Drought Contingency Plan

The Lower Division States, primary water user entities, and Bureau of Reclamation have prepared a draft drought contingency plan for the Lower Colorado River Basin. The draft plan successfully includes California (along with Arizona and Nevada) in conserving additional water to benefit storage at Lake Mead. However, unlike the 2007 Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead, where water simply stays in Lake Mead for the benefit of the system, the plan incentivizes, through a number of complicated and technical provisions, the voluntary conservation of water to be stored for use in later years. Moreover, it cannot be implemented as currently described without Congressional approval that would override current reservoir operations and accounting procedures under the Law of the River. The Unit coordinated with the CWCB and Upper Colorado River Commission to evaluate the plan, and identify potential mechanisms to further protect the Upper Basin. The completion of the plan depends in part on consensus among the 7-Basin States and the Department of the Interior on both the Upper and Lower Basin contingency plans. The 7-States Principals confirmed in September that there are no major outstanding issues to negotiate between the Upper and Lower Basin regarding this

plan so long as the Upper Basin's elements of the Drought Contingency Plan can be approved and finalized. Nevada and California have secured sufficient approvals to move forward at this time, and the Upper Colorado River Commission formally entered its consent to proceed with the plan as part of the drought contingency planning package during its annual meeting in December. Arizona continues to work on securing the necessary approval before the January 31, 2019 deadline set by the Commissioner for the Bureau of Reclamation. (See Drought Contingency Plans, *supra*).

d. Colorado River Companion Agreement

In addition to the Upper and Lower Basin Drought Contingency Plans, the 7-States coordinating committee was tasked with mapping out the terms of an additional agreement that would set forth the relationship between the Upper and Lower Basins and Secretary in implementing and enforcing each other's drought contingency plans. The 7-State Principals considered this Agreement along with the rest of the DCP documents at the September meeting and confirmed that it was ready for public distribution. (See Drought Contingency Plans, *supra*).

6. Colorado River Basin ESA Compliance Programs

While federal legislation seeking extension of funding for the Upper Colorado River Fish Recovery Program through 2023 was introduced in the last legislative session, guidance in the President's FY19 budget and a directive from the Office of Management and Budget redirects approximately \$23 million in Colorado River Storage Project (CRSP) power revenues from the Western Area Power Administration to the Treasury rather than transferring these funds to the Bureau of Reclamation (Reclamation) to continue support for important basin-wide programs (i.e., San Juan Fish Recovery Program, Glen Canyon Dam Long-Term Experimental Management Program, Upper Colorado River Fish Recovery Program). The 7 Basin States submitted a letter the first week in July seeking rescission of this directive because, among other things, loss of funding for the basin-wide programs will create greater uncertainty in multiple federal CRSP reservoir dam operations, including the operation of Glen Canyon Dam. This, in turn, will create insecurity for over 2,000 municipal, industrial, and agricultural water suppliers in the basin and impacts 2,500 Reclamation projects upstream of Lake Powell. This is a matter of concern as the Colorado River Basin enters its nineteenth year of drought conditions, which have drawn down reservoir levels and created significant water management challenges for the years to come.

On September 21, 2018, the President signed H.R. 5895 into law. The bill provides full funding for the Recovery Implementation Programs for the immediate future. The Bureau of Reclamation has identified funding for the Glen Canyon Dam Adaptive Management Program (GCDAMP) for FY 19. The Unit continues to assist Upper Basin States through Upper Colorado River Commission and the Recovery Implementation Program (RIP) Management Committees to work for re-authorization of the RIPs and for a long-term funding solution for GCDAMP. The Congressional Budget Office recently issued a score for a proposed bill to re-

authorize the programs through 2023 that is favorable and does not require an offset. The Unit will continue to work as appropriate to help further this effort with the new Congress.

7. Lake Powell Pipeline

The Utah Board of Water Resources filed an application with the Federal Energy Regulatory Commission (FERC) in May 2016 to construct a pipeline from Lake Powell to Southwest Utah to develop an additional 100,000 AF of Utah's allotment under the Colorado River Compact and the Upper Colorado River Compact. There are potential impacts to the operation of the Project in relation to the named sources of water for the Project, the Law of the Colorado River, and Glen Canyon Dam operations as a result of the pipeline project. In January 2018, the CWCB approved filing a Motion to Intervene. However, also in January, FERC suspended the proceedings to decide a jurisdictional issue. On September 20, 2018, FERC issued an order denying Utah's Petition for Declaratory Order on Jurisdiction, limiting the scope of its review to the hydropower components of the project only. The Order granted Utah the option to amend the application. Also, it remains unclear if FERC will continue to serve as the lead agency for purposes of coordinating the EIS process. The Unit submitted the Motion to Intervene prior to the before the November 19, 2018 deadline, and will continue to coordinate with the CWCB to protect the State's interests concerning this project.

8. Aspinall Unit Operations

The Unit continues to coordinate with clients from the Division of Water Resources and the CWCB to engage the Bureau of Reclamation in discussions on how to operate the Aspinall Unit consistent with state water law and the Record of Decision. These discussions are ongoing.

9. Navajo Nation v. Department of the Interior, et al., D. Arizona, No. CV-03-507 PCT-GMS

The Navajo Nation filed suit against the Department of the Interior and several agencies in 2003 for failure to exercise the federal government's trust responsibilities and pursue quantification and protection of the Navajo Nation's reserved water rights in the Lower Colorado River Basin. Following the withdrawal of a failed settlement agreement among the Navajo and Arizona in 2012, the District Court of Arizona lifted the stay that had been applied to the litigation. The Navajo subsequently amended its complaint to include claims that challenged the 2007 Interim Guidelines for Lower Basin Shortages and Coordinated Operation of Lake Powell and Lake Mead. Because the Guidelines link operations at Lake Mead and Lake Powell, and thereby affect interests in Colorado and the Upper Colorado River Basin, the CWCB directed the Defense of the Colorado River Subunit at the Department of Law to move to intervene upon the Court deciding to accept the amended complaint. Colorado is the only upper division state to intervene. The Federal Defendants and Defendant Intervenor subsequently filed Motions to

Dismiss. Colorado joined the Federal Defendant and Defendant Intervenor Motions filed by Nevada and Arizona.

The court granted the motions to dismiss in the Summer of 2014, and the Navajo subsequently appealed to the 9th Circuit Court of Appeals. The parties completed briefing before the Circuit Court in the Spring of 2015 and the Court heard oral argument in February 2017. Colorado joined briefs filed by the Nevada and Arizona intervenors, similar to the approach at the district court level. Colorado also monitored, but did not directly participate in, the oral argument. The Circuit Court issued an opinion, affirming the district court's ruling with the exception of its holding regarding breach of trust claims asserted by the Navajo against the United States. It remanded the case in January 2018 for consideration of the breach of trust claims.

On April 13, the Navajo filed another Motion to Amend the complaint, and asserted new claims that appeared to relitigate issues that were settled in the prior proceedings. The U.S. Defendants opposed the motion to the extent it sought to argue issues other than the breach of trust claims remanded by the Circuit Court. Some Defendant Intervenor also opposed on grounds similar to those asserted in prior proceedings, including that the Navajo are attempting to obtain a quantification of a reserved water right through inappropriate forums. Colorado joined the Federal Defendant's response and refrained from involvement in reserved rights matters involving the Lower Basin. The Court heard oral argument on November 14. The Unit attended, but did not participate in, the hearing. On December 11, 2018, the District Court rejected the Navajo's Amended Complaint as plead, agreeing in general with the arguments asserted by Defendants and Defendant Intervenor. The Court invited the Navajo to file a different amended complaint if it could identify a more concrete claim. The Navajo filed its latest Motion for Leave to File an Amended Complaint on January 11. The U.S. Defendants and some Defendant Intervenor moved for a stay or extension of time in light of the government shutdown. On January 14, the court denied these motions. The Unit is coordinating with clients at CWCB and with Defendant Intervenor to understand the posture of the case as a result of this latest development.

10. Hill v. Warsewa, 18-cv-300069, Fremont County District Court, Colorado –

In this lawsuit, a fisherman attempted to adjudicate Colorado's sovereign rights in land without the State's consent. To gain wading access to one stretch of the Arkansas River, Plaintiff asked the Court to declare that the Arkansas was "navigable" at the time of Colorado's founding. Under Plaintiff's theory, this would have meant that portions of the riverbed currently under private ownership must be taken from their owners and declared "public land owned by the state of Colorado." If Plaintiff succeeded, it would have called into question private property rights dating back to 1876, and raised a host of serious legal considerations for the State to address.

Both the State and the landowner Defendants moved to dismiss the complaint for lack of standing and jurisdiction. In response to these motions, Plaintiff moved to remand the case to state court, claiming the Court must do so without ruling on Plaintiff's standing. Defendants, including the State, opposed remand and asked the Court to rule on the motions to dismiss. In the alternative to dismissal or remand, Plaintiff asked the federal court to certify to the Colorado Supreme Court the question of "the nature of the State's title in navigable river beds." The State opposed certification.

On January 8, 2019, the court granted the motions to dismiss and denied the motion for remand. It also denied the motion for certification as moot. At its base, the order found that "[Plaintiff], quite simply, lacks prudential standing to pursue this case in any forum." Specifically, the court found that Plaintiff does not own the land in question and does not contend he *should* own the land. Therefore, he fails to assert his own rights as required to establish prudential standing. Additionally, Plaintiff failed to show that his claim is more than a generalized grievance based on a desire for the general public to have access to the bed of the Arkansas River. As a result, the order of dismissal preserves the State's authority to determine on its own if and when to pursue policy initiatives related to property and ownership to riverbeds. As of January 17, Plaintiff filed an appeal in this case with the 10th Circuit Court of Appeals. The Unit is currently working on assessing appropriate legal strategies in response to this appeal.

INTRASTATE MATTERS

11. Application for Water Rights of Ellen F. Price Trust and Joseph B. Price Trust, Case No. 17CW3083, Water Division 4

Applicants filed an application to adjudicate absolute storage rights for ponds and absolute surface diversion rights for springs on their property near Telluride. Applicants also sought a related augmentation plan and exchange to replace the out-of-priority depletions from these structures. The CWCB, which has decreed instream flow rights on the San Miguel River, filed a statement of opposition primarily because some of the claimed appropriation dates for Applicants' structures dated to the 19th century. Based on these senior appropriation dates, if properly documented some of these structures could have qualified for protection from a CWCB call under section 37-92-102(3)(b), C.R.S. (2018). Applicants, however, did not pursue this claim. The CWCB and Applicants agreed on protective terms for the CWCB's instream flow water rights and the parties signed a stipulation, which the Court approved on December 20, 2018.

12. Concerning Application for Water Rights of Abundant Acres, LLC, Case No. 17CW3245, Water Division 5

On December 21, 2018, applicant, Abundant Acres, LLC, and the CWCB entered into a stipulation to resolve the issues in this case. The application in this case for a conditional water storage right and plan for augmentation including exchange had claimed a right for two ponds to fill and refill to the potential injury to the CWCB's

decreed instream flow water rights on the Roaring Fork River, Snowmass Creek, and Capitol Creek. Applicant and the CWCB successfully negotiated terms and conditions to protect the instream flow rights, including diversion limits, a clear description of the augmentation plan and removal of claims for freshening flows, and on December 21, 2018 the CWCB stipulated to entry of the decree. The CWCB will monitor the case until entry of the final decree.

13. Concerning Application for Water Rights of Town of Gypsum, Case No. 17CW3248, Water Division 5

The application in this case is for a junior water right, change of water rights, appropriative right of exchange, and plan for augmentation had the potential to cause injury to the CWCB's decreed instream flow water rights on the Eagle River, and Gypsum Creek. Applicant and the CWCB successfully negotiated terms and conditions to protect the instream flow rights, including terms to ensure no expansion of use of the changed right and a clear description of the augmentation plan, and on December 17, 2018 the CWCB stipulated to entry of the decree. The CWCB will monitor the case until entry of the final decree.

14. Concerning the Application for Colorado Water Conservation Board, Case No. 18CW3016, Water Division 3

On December 18, 2018, the CWCB filed an application for water rights to preserve the natural environment to a reasonable degree along approximately 3.71 miles of Prong Creek, a tributary to South Carnero Creek in Saguache County. The CWCB seeks 0.4 cfs from 9/1 through 4/30 and 4.2 cfs from 5/1 through 8/31. Statements of opposition are due February 28, 2019.

15. Concerning the Application for Colorado Water Conservation Board, Case No. 17CW3065, Water Division 2

On December 19, 2018, the Water Court for Water Division 2 entered a decree confirming the CWCB's water right to preserve the natural environment to a reasonable degree along approximately 4.52 miles of the Apishapa River, a tributary to the Arkansas River in Las Animas County. The decree approved 0.5 cfs from 9/1 through 4/30, 2.9 cfs from 5/1 through 6/30, and 1.1 cfs from 7/1 through 8/31. The CWCB resolved two statements of opposition to reach this decree.

16. Concerning the Application for Water Rights of Moonrise Enterprise, LLC, Case No. 16CW3097, Water Division 4

Applicant sought approval of conditional underground water rights for two wells; conditional storage rights for three ponds for a cumulative total of 15 acre-feet; and a plan for augmentation to replace out-of-priority depletions from the wells and evaporative losses from the ponds. The water rights will be used for irrigation of greenhouses at a facility located outside of Norwood, Colorado. The CWCB filed a statement of opposition to prevent injury to its instream flow water right on Naturita Creek. Applicant eventually agreed to terms and conditions in the decree

that sufficiently described the augmentation plan in a manner would protect the instream flow water right, and the CWCB consented to entry of the decree on November 29, 2018.

17. Joint Application for Approval of Proposed Protected Mitigation Releases Pursuant to C.R.S. §37-92-102(8) of Northern Colorado Water Conservancy District and the Colorado Water Conservation Board, Case No. 18CW3216, Water Division 1

On December 21, 2018 the applicants filed an application for approval of Protected Mitigation Releases pursuant to § 37-92-102(8) C.R.S. (2018), a new statute enacted in 2018. By this application the applicants seek to protect bypasses or releases from Glade Reservoir into the Cache la Poudre River in furtherance of Northern's § 37-60-122.2 C.R.S. fish and wildlife mitigation and enhancement plan and pursuant to the CWCB's acquisition program. Statements of opposition to the application are due February 28, 2019.