

**DEPARTMENT OF LAW
FY 2016-17 JOINT BUDGET COMMITTEE HEARING AGENDA**

**Thursday, November 19, 2015
9:00 am – 11:00 am**

9:00-9:20 INTRODUCTIONS AND OPENING COMMENTS

9:20-9:30 REQUEST R1 – SAFE2TELL SOFTWARE

[Background Information: The Department's FY 2016-17 budget request includes an increase of \$60,000 General Fund to support a new contract for anonymous tip reporting software utilized by the Safe2Tell Program. Because the contract took effect July 1, 2015, the request also anticipates a FY 2015-16 supplemental request for an increase of \$62,500 General Fund to cover the cost of the software in the current year.]

- 1. Please discuss the benefit of the new Safe2Tell reporting software. For example, does the software currently include a mobile application (“app”) for reporting purposes? Was the new software associated with the discovery of potential issues in Canon City?**

Response: The new Safe2Tell reporting software, P3 Tips Global Intelligence by Anderson Software, has elevated the ability of Safe2Tell staff, dispatchers, school officials, and law enforcement to distribute and receive immediate information of threats, safety concerns, and potentially violent or harmful situations in a timely, efficient manner.

The new P3 tips system is more robust than the previous system and facilitates improved communication among responders, including schools and law enforcement, documenting the action taken on each and every tip through timestamping capabilities, two-way dialogue functionality, and improved disposition reporting and in-progress notes. The new system allows for Safe2Tell to track outcomes and trends, as well as monitor receipt of and responses to every tip. The P3 system also includes functionality for responders to receive text messages and email alerts of new Safe2Tell tips. This reduces the potential lag in response time compared to the previous system.

Users of the P3 system, schools officials and law enforcement, now have the capability to login to P3 tips to view the tip, provide information about their response, and view other responses from their dedicated school and law enforcement teams. System users are also able to see the past tips that have been assigned to their user login, all of which are new features not found in the previous tip reporting platform. Information on the P3 system is protected information under the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act (HIPPA).

The P3 system includes the ability to receive anonymous reports via mobile app which are quickly distributed through the system to school and law enforcement teams statewide. A person posting a report can easily upload screenshots of social media posts, photos, and videos with their concerns. This provides law enforcement and school officials with the necessary

evidence to further proceed with their investigations.

With this new communication method for receiving reports, Safe2Tell successfully launched the mobile app in August 2015. Since the launch, the Safe2Tell mobile app is now the most widely used method for reporting concerns to Safe2Tell, overtaking the popularity of web reports and calls.

The original report of sexting in Canon City was received by Safe2Tell dispatchers and was distributed to Canon City school officials and law enforcement through the new P3 system. Monitoring progress and response by all recipients on this original tip, and subsequent tips, can now be conducted directly in the P3 system.

2. Please provide an update on the implementation of the office reorganization requested and approved through the FY 2015-16 budget process, including the creation of the Office of Community Engagement, the movement of Safe2Tell into the newly created Office of Community Engagement, and the creation of new positions in the Attorney General's office.

Response: The Director of the Office of Community Engagement (OCE) started work one month into this fiscal year. This position is responsible for the OCE efforts, as well as supervising the 4.0 Safe2Tell employees. The second position, associated with the OCE, a Program Assistant, is scheduled to start work in December.

The director of OCE has been establishing collaborative relationships with various organizations and groups related to the following:

i. Consumer Protection Outreach and Engagement

Current priorities:

- a. Working with AARP's Elder Watch program to expand outreach and education about fraud to seniors in rural and frontier areas of the state.
- b. Working with Boys & Girls Clubs across the state to enhance Digital Citizenship, including Safe Surfing on the Internet and protection of private information that could be used for fraud.
- c. Coordinating with Colorado State University Extension to explore strategies for implementing financial literacy education in rural and frontier regions of the state.
- d. Working on outreach and education to Spanish speaking populations regarding fraud.
- e. Coordinating on outreach and education regarding military personnel and veterans on fraud issues.
- f. Coordinating with staff of the Department of Regulatory Agencies on consumer protection outreach and education.

ii. Domestic Violence and Sexual Assault Prevention

Current priorities:

- a. Coordination of statewide domestic violence prevention efforts.

- b. Exploring a statewide domestic violence/sexual assault prevention campaign.
- c. Exploring expansion of domestic violence fatality review beyond the Denver metro area.

iii. Safe Communities Safe School

Current Priorities:

- a. Managing tips reported by students through Safe2Tell Colorado. The new Safe2Tell app for mobile devices has become the preferred means of tip reporting.
- b. Training of law enforcement and School Resource Officers, and using Internet technology to enhancing training opportunities.
- c. Collaborating with the University of Colorado's Center for the Study and Prevention of Violence on a federal grant for implementing Safe Communities Safe School approach in 32 middle schools across the state.
- d. Collaborating with Safe2Tell National, a recently formed non-profit organization, on expansion of the Safe2Tell approach in other states. Inquiries have come from the States of Nevada, Oregon, Minnesota, and Wyoming.

iv. Substance Abuse Prevention and Intervention

Current priorities:

- a. Connecting with community-based organizations and community coalitions on the use of the Take Meds Seriously campaign materials to educating residents about the safe use, safe storage, and safe disposal of prescription drugs.
- b. Providing leadership on the State Substance Abuse Trend and Response Task Force to review data and trends of substance use/abuse in Colorado and to formulate responses for prevention, interdiction, and treatment. Current areas of focus include:
 - Implementing strategies to identify and assist drug-endangered children.
 - Coordination of statewide prescription drug abuse prevention efforts in partnership with the Colorado Consortium for Prescription Drug Abuse Prevention.
 - Collaborating with Rise Above Colorado on teen prescription drug abuse prevention in six regions of Colorado.
 - Addressing strategies to mitigate the increase of heroin use in Colorado and improve treatment modalities for opioid dependence, including increase the use of naloxone by law enforcement and first responders, law enforcement interdiction, and medication assisted treatment for opioid dependence.
 - Preparing the Annual Report of the Substance Abuse Trend and Response Task Force for the legislature.

v. Anti-Human Trafficking

Current Priorities:

- a. Participation on the Colorado Human Trafficking Council, which is generating recommendations for the legislature.

- b. Identifying issues related to labor trafficking in Colorado and exploring strategies to address the issues.

vi. Native American Tribal Liaison

The OCE is the department lead on coordinating relations between the Department of Law and the two Ute Tribes in Colorado. The department was recently accepted as an Ex Officio member of the Colorado Commission of Indian Affairs in order to formalize communication and coordination with Tribal leaders and to coordinate with other state departments on areas of shared interest for assisting tribes.

9:30-9:40 REQUEST R2 – CARR BUILDING ADDITIONAL LEASED SPACE

[Background Information: The Department's FY 2016-17 budget request includes an increase of \$113,406 total funds (including \$31,535 General Fund) to support additional leased space in the Ralph L. Carr Colorado Judicial Center. Because the Department occupied the additional space starting July 1, 2015, the request also anticipates a FY 2015-16 supplemental request for an increase of \$91,878 total funds (including \$25,446 General Fund) to cover the cost of the additional space in the current year.]

3. Please discuss the Department's current and anticipated needs for leased space within the Carr Center based on your anticipated growth in the Department's staff.

Response: As articulated in the request for the additional lease space, the DOL has grown by roughly 10%, since January 2013. The DOL budget request includes an Accounting Technician III and an additional Senior Attorney position to support multijurisdictional prosecutions. These two positions would require utilizing some of the current available cubicle and office space on the 10th and 9th floors respectively.

The 0.5 FTE associated with the CO River request and the 1.0 Compliance Investigator would not require the use of additional space. The CO River request is to increase a current 0.5 Assistant Attorney General working in this group to 1.0 FTE. The Compliance Investigator would use the space currently utilized by a temporary employee.

The DOL annually assesses program delivery with resource needs, including FTE. In the near term, the DOL is not expecting any significant increase in FTE associated with DOL program delivery. However, the DOL is assessing Consumer Protection and Special Prosecution resources and program efforts to determine if any requests for FTE will be warranted over the next few budget cycles.

Roughly 32 of the 47 FTE increase since FY 13 have been through the workload and policy changes addressed in special bills, sponsored by members of the Legislature. The DOL works closely with Legislative Council Staff to document the assumptions associated with new legislation and the calculated resource needs based on the assumptions to appropriately fulfill legislative intent. The DOL is not in a position to estimate additional FTE associated with future Legislative Sessions.

....

9:40-9:55 REQUEST R3 – SENIOR AAG SPECIAL PROSECUTION

[Background Information: The Department's FY 2016-17 budget request includes an increase of \$163,243 General Fund and 0.9 FTE (annualizing to \$163,295 General Fund and 1.0 FTE in subsequent years) to add a senior assistant attorney general to the Special Prosecutions Unit to focus specifically on multi-jurisdictional drug trafficking cases.]

- 4. The Department's request and the JBC Staff briefing discuss the increasing use and complexity of wiretap investigations as one of the drivers increasing the drug trafficking prosecution workload. The request and the JBC Staff briefing mention the prevalence of disposable cell phones ("burners") as one factor driving up the number of wiretap applications (and therefore workload in the Department).**
- a. Please provide additional detail on when and why the Department needs permission on each new cell phone vs. getting a warrant for an individual that could apply to multiple phone numbers.**
 - b. Would a statutory change be necessary or helpful to reduce the need for redundant applications related to a single individual or group? If so, could the General Assembly make the change through state law? Please explain.**
 - c. Does a similar dynamic exist for computers and I.P. addresses? How does the Department handle surveillance for computers?**

Response:

4a. Under both the state and federal wiretap laws, law enforcement officers must obtain judicial authorization to install a wiretap interception device on each new cell phone. This means that the officers must create a new application justifying the need to intercept each new target telephone. In addition, the current state and federal wiretap laws already allow for the application for a "roving wiretap" which enables the officers to get authorization to intercept a target individual, rather than a particular target telephone. However, in order to establish the requisite level of probable cause to justify an application for an individual, the officers must establish that the individual is utilizing multiple cellular telephones to expressly thwart any potential law enforcement investigation. To establish this heightened level of probable cause, officers must make reasonable attempts to intercept the target individuals cell phones first. Typically an individual has to burn through approximately fifteen phones before a roving wiretap would be considered. In the last twelve months the Attorney General's Office has been involved in two roving wiretaps. In those two cases both suspects had burned through over 20 phones each prior to the roving wiretap being sought.

It should be noted that under both federal and state law, wiretap investigations must be "approved" and "supervised" by an attorney. This is different than most investigations, which are conducted independently of the prosecutor. This legal requirement is one of

the reasons wiretap investigations are time intensive and why an additional attorney is needed.

4b. A statutory change is not possible in order to reduce the need for redundant applications. The federal wiretap statute sets a minimum threshold level of requirements that must be met in order to conduct any wiretap interception. While state wiretap statutes can be more protective of an individual's privacy rights, a state wiretap statute cannot be less protective of an individual's privacy rights than the federal wiretap statute. Therefore, a state wiretap statute cannot "relax" the standards which have been set in place by the federal wiretap statute.

4c. Computers and IP addresses are equivalent to a cellular telephone number. In order to intercept communications from a computer or IP address, the same wiretap application process must be completed. Surveillance of computers and internet applications are accomplished in virtually the same manner as interception of a cellular telephone.

5. The Department has mentioned an increase in multi-state cases related to marijuana, potentially associated with the legalization of marijuana in Colorado.

- a. **Please explain what is happening and the potential relationship to legalization.**
- b. **Would the Marijuana Tax Cash Fund be an appropriate funding source for the multi-state work associated with marijuana enforcement?**
- c. **Is there an interstate compact associated with drug trafficking and marijuana prosecution? If so, would such a compact provide a potential model for cyber crime enforcement and prosecution? Please explain.**

Response:

5a. As with anything having to do with marijuana, we are at the forefront of any future changes and we can look nowhere else for predictive indicators. However we have already seen an increase in marijuana distribution from Colorado to other states as evidenced by recent federal prosecutions and our Operation Golden Gopher investigation, which involved the transportation of marijuana from Colorado to Minnesota. We have also heard this anecdotally from law enforcement in other states. It is easier to grow large amounts of marijuana in Colorado without law enforcement intervention, which also makes it cheaper to grow. Individuals from out of state realize this. Since there is minimal worry about the legal ramifications of growing marijuana, they only have to worry about the delivery of the product. The profit margin available to these sellers is immense, which makes it financially worth any risk they may take.

5b. The Marijuana Tax Cash Fund is a potential source of funding for marijuana enforcement work. However, while the statute states that funds may be expended for

law enforcement, it is not clear if that includes prosecution. Sect. 39-28.8-501, C.R.S. would have to be amended to clarify that such an expenditure would be allowed.

5c. There is no interstate compact regarding drug trafficking and marijuana prosecution. The DEA operates on an interstate level as they have the jurisdiction to do so. Local law enforcement operates on a cooperative level based upon their common mission. Local law enforcement also combines their resources to operate task forces for drug operations however those are intra state. The same could be said on the prosecution level. The federal government operates under a common scheme for cases that fall within their jurisdiction. State prosecutors cooperate when possible, subject to their jurisdictional limitations. The same situation exists for cyber crime enforcement.

9:55-10:05 REQUEST R4 – CONSUMER PROTECTION COMPLIANCE INVESTIGATOR

[Background Information: The Department's FY 2016-17 budget request includes an increase of \$92,891 custodial cash funds spending authority and 1.0 FTE (annualizing to \$82,894 and 1.0 FTE in subsequent years) to add another consumer protection compliance investigator supporting the Consumer Fraud Unit and the Antitrust, Tobacco and Consumer Protection Unit.]

6. The request cites an increasing workload on consumer protection issues (including an increasing number of consumer complaints) as justification for the additional position. Why is the workload increasing? That is, what is driving the increasing number of complaints?

Response: While it is difficult to ascertain the specific reasons for increasing complaint volume, the DOL believes the steady increase in complaint volume can be attributed in-part due to the following:

- Population Increase:
 - o According to a recent US Census Bureau report, Colorado's population increased by almost 240,000 residents between April 1, 2010 and July 1, 2013. That ranks Colorado as the 4th in the U.S. for growth rate by state, with a 4.76% population increase. Additionally, the Colorado Office of Economic Development and International Trade has compiled a variety of state rankings that consistently places Colorado in the top ten in many categories, including 2nd best state to start a business and 3rd best state for economic climate.
- Consumer Fraud Outreach Efforts:
 - o Development and implementation of a dedicated consumer fraud web site: www.StopFraudColorado.gov.

§ StopFraudColorado.gov was been developed to support our mission of protecting consumers and businesses from deceptive and unscrupulous business practices.

§ This site is comprised of information reflecting a wide variety of scams reported to our office by consumers, businesses, local, state, and federal agencies, along with numerous other law enforcement officials throughout our communities. While the site is not exhaustive, it can be utilized as an educational and reporting tool for the purposes of identifying, preventing, and reporting fraudulent activity throughout Colorado.

§ From November 9th 2014 – November 15th 2015, the site has garnered 82,107 visitors with 215,518 pages views.

- o Additional outreach activities include; social media support, creation and distribution of fraud alerts and quarterly fraud awareness bulletins to tens-of-thousands of consumers throughout Colorado, fraud publication development and distribution (totaling 21,000 units distributed in CY 2014), participation in statewide events and fraud presentations along with regular and ongoing networking with local, state, federal agencies, and military organizations.

· Consumer Protection Cases:

- o As consumer protection cases are pursued, publicity surrounding those cases results in increased awareness of potentially fraudulent activity and often leads to the filing of additional reports and inquires related to those specific matters, including but not limited to; charity and non-profit organizations, foreclosure law firms, for-profit-colleges, home services providers, mortgage servicers, and national satellite television and radio providers.

10:05-10:15 REQUESTS R5 – ACCOUNTING TECHNICIAN III AND BR1 – P.O.S.T. MARIJUANA REDUCTION

[Background Information: The Department's FY 2016-17 budget request includes the following changes: (1) R5 requests an increase of \$73,127 reappropriated funds from indirect cost recoveries and 1.0 FTE (annualizing to \$63,130 reappropriated funds and 1.0 FTE in subsequent years) to add an accountant technician III to the Administration section based on an increasing accounting workload; and (2) BR1 requests a decrease of \$418,000 cash funds from the Marijuana Tax Cash Fund appropriated to the Peace Officers Standards and Training (P.O.S.T.) Board for marijuana training and development grants.]

- 7. The request mentions increasing accounting workload associated with the P.O.S.T. Board marijuana training grants as one of the factors requiring additional accounting staff.**
- a. Please provide additional detail on the marijuana training grants and how they impact the accounting workload. For example, are state staff providing the training or do the grants support local training efforts? How many grants has the Department provided, to whom, and for what purpose?**
 - b. Please provide a brief description of the various uses of Marijuana Tax Cash Fund moneys within the Department of Law, including detail of how the training grants function?**
 - c. Request BR1 seeks to reduce funding for the P.O.S.T. Board training grants. However, others have indicated a need and capacity for *additional* training dollars. Please explain why the P.O.S.T. Board does or does not need the \$418,000 that request BR1 would reduce in FY 2016-17.**

Response:

7a. The DOL is requesting an additional Accounting Technician III to accommodate the general expansion of the DOL and program delivery, including, in part, POST marijuana grant dollars. POST Marijuana expenses include contract trainers specializing in DRE, ARIDE, and Marijuana 101 expertise in Colorado. Additional costs paid for travel for attendees, hotel stays for participants and trainers, training materials and other associated training expenses including:

- ARIDE training (24 classes)
- Marijuana 101 curriculum development and training
- Oral fluid testing devices (Colorado State Patrol)
- Drug Recognition Expert (DRE) Training
- DRE Training Equipment
- Standard Field Sobriety (SFST) Training
- Purchase of Acadis On-Line Learning Module

The POST Board used 28 individuals and/or companies to provide training during FY 15. The DOL affected a contract with each trainer, specifically articulating the expected deliverables and the costs associated with each deliverable. Many of these trainers conducted numerous trainings across the state.

Any vendor contracted with, in the state system, typically is paid on a reimbursement basis, meaning they will incur costs within the deliverables expected of them, within the contract, demonstrate actual costs incurred, including their hourly rate, through receipts and invoices, and request payment with the backup documentation. In approving

payments, the DOL checks the costs against the contract and ensures appropriate documentation. This due diligence requires significant analysis and review by accounting staff and is only one piece of the workload associated with the Accounting Technician III Decision Item Request.

7b.

- Introduction to Marijuana for Law Enforcement
- Introduction to Marijuana for Law Enforcement – Train the Trainer
- Introduction to Marijuana for School Resource Officers
- Standard Field Sobriety Tests (SFSTs) – Operator Course
- Standard Field Sobriety Tests (SFSTs) – Instructor Course
- Advanced Roadside Impaired Driver Enforcement Training (ARIDE)
- Drug Recognition Expert (DRE) – Operator Course
- Drug Recognition Expert (DRE) – Instructor Course
- Drug Recognition Expert (DRE) – Annual update course
- Purchase of on an on-line learning module system

7c. In approximately July, 2015, the Marijuana Working Group approached P.O.S.T. and explained how they proposed to reduce the \$1.168 million appropriation for FY16 to \$996,977.00. The P.O.S.T. Director and staff reviewed the current expenditures and projected future expenses and calculated that P.O.S.T. would need \$750,00.00 to fulfill its mission and provide the necessary training to law enforcement. Currently that money may be used exclusively for law enforcement training. The DOL has assessed statewide training needs in this area and believes the \$418K reduction is appropriate and will continue to allow the DOL to meet statewide training needs.

10:15-10:30 OTHER QUESTIONS

8. Request NP2 – Colorado River 0.5 FTE seeks an increase of \$64,314 cash funds from the Colorado Water Conservation Board (CWCB) Litigation Fund to support an additional 0.5 attorney FTE focused on the defense of the Colorado River Compact. The request cites an increasing workload as justification for the increase. Please provide additional detail on the current and anticipated changes in workload related to the Colorado River. What issues are coming up?

Response: The Defense of the Colorado River Subunit is currently comprised of 2 FTE Attorneys and 1 FTE Legal Assistant. Since its inception in 2006, the Subunit has focused its efforts on both negotiation and litigation of interstate and intrastate matters involving the Colorado River. As a result of the Colorado River Basin's extended drought and increasing competition for Colorado River water, the demands on the Subunit to assist its client agencies in protecting the State's entitlements to and authorities over the Colorado River have increased

significantly. On the negotiation front, the Subunit represents and counsels the Colorado Water Conservation Board, Colorado Compact Commissioner, and Upper Colorado River Commission in discussions among the 7-Colorado River Basin States, federal government and primary water user interests regarding:

- (a) Compact compliance;
- (b) Treaty discussions with Mexico;
- (c) Reservoir operations at facilities authorized by the Colorado River Storage Project Act (including Flaming Gorge, the Aspinall Unit, Navajo, and Lake Powell) as well as at Lake Mead;
- (d) Drought Contingency Planning for the Upper Basin and for the entire Colorado River Basin;
- (e) Pilot programs for assessing the feasibility of demand management; and
- (f) Environmental compliance decisions under the National Environmental Policy Act and Endangered Species Act, among others.

From a litigation standpoint, the Subunit currently:

- (a) Represents the Colorado Water Conservation Board and Division of Water Resources in the Animas-La Plata Diligence proceeding in Colorado Water Court. This case involves consideration of Indian reserved water rights, interstate compacts, intrastate water administration, ESA compliance, and operation of federal projects consistent with state water law for the benefit of state, tribal, interstate, and individual Colorado water users.
- (b) Represents Colorado and the Upper Colorado River Basin in the Navajo Nation v. Secretary of the Interior et. al. litigation. Relevant to Colorado, this litigation implicates Records of Decision that inform operation of Lake Powell and Lake Mead. The CWCB intervened in the matter, along with a number of other water users, to protect an interest in preserving operation of the Lake Powell and Lake Mead through the 2007 Interim Operating Guidelines. The case is currently pending before the 9th Circuit Court of Appeals.
- (c) Continues to focus on preparing for the possibility of interstate compact litigation at some point in the future. To this end, the Subunit has developed, and currently maintains a database of documents that relate to the development, implementation or interpretation of the Colorado River Compact or the Upper Basin Compact. It also researches and prepares memoranda to strategize legal positions and processes that may be implicated in the event of such litigation.

Finally, the Subunit also continues to advise the CWCB, Division of Water Resources, and Upper Colorado River Commission regarding administration and ongoing studies being conducted in Colorado River. These studies currently include studies conducted at the Colorado River Basin, Upper Basin, and State levels.

9. The JBC Staff briefing document lists the investigation and prosecution of Medicaid provider fraud and patient abuse among the Department's criminal enforcement responsibilities. Please provide additional detail on the Department's role with respect to patient abuse, including the potential impact of recent changes in mandatory reporting requirements as well as other policy changes that the Department feels warrant discussion.

Response: Pursuant to its Federal mandate, the Medicaid Fraud Control Unit (MFCU) is directed to investigate and prosecute provider fraud in the Medicaid program. It is also directed to investigate and prosecute instances of abuse/neglect which occur in facilities which receive Medicaid funds. This policy decision was made years ago, as there were concerns that abuse/neglect was not being investigated/prosecuted by local authorities.

Over the intervening years, much has changed for the better. Currently in Colorado many of the District Attorneys have special units addressing the specific issue of abuse/neglect of vulnerable persons, and they, with their local law enforcement partners, now vigorously pursue these allegations. In specific instances where assistance is requested, the MFCU assigns investigators/prosecutors to a case. As the DOL has secondary jurisdiction as Special Deputy District attorneys, the DOL only enter a case with the permission of the elected District Attorney for that jurisdiction. The DOL has assisted in cases in locations across Colorado, but participation is much less than years ago as local authorities have become much more active and vigorous in this area.

The anticipated impact of the recent changes in mandatory reporting will only be positive, as these requirements will further assist in bringing to light potential crimes on vulnerable populations.

10. The Department has expressed an interest in potential legislation associated with the Natural Resource Damage Trustees. Please discuss the Department's proposal.

Response: Legislative Proposal – Authorize expenditure of funds to pursue claims for damage to State's natural resources arising under the federal Oil Pollution Act of 1990 (OPA).

On November 4, 2015, the Natural Resource Trustees (DOL, DNR, and CDPHE) unanimously approved pursuing a change to the OPA. As instructed by the Trustees, agency liaisons are available to brief members of the Committee in more depth on this concept.

Summary of Proposal and Rationale – There is currently no mechanism to fund the work of CDPHE's Hazardous Materials and Waste Management Division (HMWMD) or the Attorney General's Office (AGO) to identify, quantify, and pursue civil claims for impacts to the state's natural resources arising from oil and gas pollution under the Oil Pollution Act of 1990 (OPA). This proposal would create such a funding mechanism by authorizing pursuit of OPA claims from funds in the Hazardous Substances Response Fund established in 25-16-104.6, C.R.S.

Under current law, tipping fees collected from solid waste disposal operations under the Solid

Waste User Fee statute are deposited in the HSRF. Funds in the HSRF may only be spent in pursuit of claims for damage to the state's natural resources arising under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) – not those arising from injuries to natural resources caused by oil or gas pollution. In addition, current law does not address where to hold money recovered by the State for claims arising under OPA. The natural resource damage portion of all settlements recovered by the State have traditionally been pursuant to CERCLA and have been deposited in the Natural Resource Damage Recovery Fund (NRDRF) established in 25-16-104.7(1). When the NRDRF was established in 1985, OPA did not yet exist.

Key Changes – Add OPA to the list of statutes for which HMWMD can spend HSRF funds to pursue claims for damages to the State's natural resource or to reimburse the DOL for same. Thus, the words "or OPA" would be added every time the following statutory provisions refer to the "federal act." The affected provisions are in sections 25-16-102, 25-16-103, 25-16-104.5, 25-16-104.6 and 25-16-104.7, C.R.S.

There is minimal fiscal or job impact and no additional fees would be imposed. A dedicated funding source could result in more clean-ups of sites polluted by oil and gas operations, resulting in more projects.

Without a funding stream, the State would be much less likely to pursue claims for damages to natural resources arising from oil and gas operations. Recent such cases include the Parachute Creek leak and the West Creek spill. On West Creek, a Groendyke Transportation tanker truck overturned, released 8,000 gallons of petroleum products into the stream, and burned 3/4 mile of stream and killed several hundred fish. Between 2008 and 2012, there were 40 tanker truck spills, including 13 where cargo spills included petroleum, produced water, and other pollutants.

11. Please discuss the impact of the recently enacted felony DUI legislation on the Peace Officers Standards and Training Board's (P.O.S.T.) training efforts related to impaired driving. For example, has the bill created additional training requirements?

Response: Concerning the recently passed felony DUI bill, there will be more training requirements created for law enforcement. The majority of additional expenses relating to this new bill will most likely be the responsibility of Colorado District Attorneys Council. P.O.S.T. has partnered with CDAC to assist with curriculum creation and instruction. P.O.S.T. anticipated the additional training needs resulting from the felony DUI bill and planned for those additional expenses in its funding request for FY16.

10:30-11:00 PENDING LEGAL CASES INVOLVING OR AFFECTING THE STATE

12. Please discuss the status of the cases covered in the draft report to the State Controller regarding litigation involving the State, as well as any other legal matters that the Attorney General believes warrant the Committee's attention.

Response: Please see description of each case beginning on page 20. If the Committee

members would like additional information on any of these cases, the DOL requests that the discussion occur in Executive Session.

13. Please provide an update on the status of the ongoing Tobacco Master Settlement litigation.

Response: Due to the current litigation status, the DOL requests that this discussion occur in Executive Session.

ADDENDUM: OTHER QUESTIONS FOR WHICH SOLELY WRITTEN RESPONSES ARE REQUESTED

QUESTIONS COMMON TO ALL DEPARTMENTS

1. Provide a list of any legislation that the Department has: (a) not implemented or (b) partially implemented. Explain why the Department has not implemented or has only partially implemented the legislation on this list.

Response: The DOL has implemented all legislation that directly impacts the program responsibilities of this agency. Additionally, the DOL is working with all client agencies on analysis of statutes impacting client agency efforts, any rule promulgation support associated, and guidance for implementation.

During the FY 15 Legislative Session, the HB 15-1063 Prohibited Communications Concerning Patents, broadened the Department of Law's Consumer Protection efforts.

The DOL has taken the following measures to implement this statute:

- 1 FTE - Patent Attorney hired Fall 2015
- Additional processes in development and expected to go live on or around December 1st, 2015:
 - Patent Assertion Fraud Hotline: 720-508-6891
 - Patent Assertion Fraud Email: Patent.Fraud@coag.gov
 - Digital Support:
 - Development of patent assertion fraud articles to explain the newly passed legislation
 - Development of a dedicated patent assertion fraud complaint form
 - Social Media content development for the business community relating to patent assertion fraud

Once these measures are implemented, the DOL will coordinate with the Office of Community Engagement to develop an outreach plan to connect with business and inform them of the new legislation. We will also develop a trifold handout containing similar information to that on the website, i.e., explaining patent assertion fraud and the new legislation.

2. Please provide a detailed description of all program hotlines administered by the Department, including:

- a. The purpose of the hotline;
- b. Number of FTE allocated to the hotline;
- c. The line item through which the hotline is funded; and
- d. All outcome data used to determine the effectiveness of the hotline.

Response:

2a. Hotline Description and Purpose: The Colorado Consumer Line (CCL) was established by the Colorado Attorney General's Office to better serve Colorado consumers in connecting with agencies relating to consumer fraud concerns. Through the hotline, consumers can connect to the Colorado and Federal No-Call lists to report fraudulent or unwanted telephone calls, contact AARP ElderWatch for assistance with elder issues, reach the Better Business Bureau for detailed business reviews, contact the Mortgage Foreclosure Hotline to assist with foreclosure concerns, receive consumer fraud case updates, and reach a live English/Spanish representative of the Attorney General's Office, including the Consumer Credit Unit (Collection Agency Regulation, Debt Management, and the Uniform Consumer Credit Code/lender regulation) and the Consumer Protection Section for information and guidance in reporting fraud to the Attorney General.

2b. FTE Allocation: 1.0 FTE

2c. Funding Allocation: Fund 1460

2d. Consumer Fraud Calls: CY – 2014: 14,467, including 191 Spanish calls

Addition Call Transfers through the hotline CY - 2014:

Colorado State No-Call	2,744
Federal Do Not Call List	1,793
Better Business Bureau	1,116
AARP ElderWatch	407

For web traffic, statistics include of a 12 month snapshot of StopFraudColorado.gov as the site was soft launched essentially one year ago. Unfortunately the old web site statistics are not easily transferable or comparable as our old site is extremely fragmented and difficult to navigate.

Web Traffic	Nov. 16 2014 - Nov. 15 2015
Total Sessions/Visitors	82,107
Page views	215,518

3. Please provide an inventory of the Department's programs in order of effectiveness, including the following:
- a. Name of the program;
 - b. Performance metrics used to evaluate each program's effectiveness; and
 - c. Identification of metrics that are deemed evidence-base and by which means this determination has been established.

Response: Please see information at the end of this document, starting on page 35.

4. Describe the Department's experience with the implementation of the new CORE accounting system.
- a. How has the implementation improved business processes in the Department?
 - b. What challenges has the Department experienced since implementation and how have they been resolved (i.e. training, processes, reports, payroll)?
 - c. What impact have these challenges had on the Department's access to funding streams?
 - d. How has the implementation of CORE affected staff workload?
 - e. Do you anticipate that CORE implementation will result in the need for a permanent increase in staff? If so, indicate whether the Department is requesting additional funding for FY 2016-17 to address it. If a permanent staff increase is needed and the Department is NOT requesting additional funding for FY 2016-17 for it, how will the Department pay for the new staff?

Response:

- a. Billing for the Department of Law's legal services became a less manual process under CORE. The DOL has interfaced client billing information from ProLaw to CORE so that bills are auto-generated each month, which was a slight reduction in monthly data entry for accounting staff.
- b. Statewide, payroll processing continues to be unsuccessfully implemented in CORE.

This is exceptionally concerning as it has the most tangible impact to our ability to do business. While employees continue to receive paychecks (processed by a subsidiary system) and cash continues to go out the door, federally-funded agencies have been unable to draw federal funds and replenish the cash expense statewide. State agencies cannot draw federal funds without reporting from the official book of State expenditures, CORE. This should be extremely worrisome to the State for those agencies that are largely federally-funded (Health Care Policy and Financing, Human Services, Public Health & Environment Natural Resources). In addition to the inability to draw cash, programs

are operating without real totals in available budgets or expenditures, putting agencies at risk in effectively managing their appropriations, thereby increasing the possibility for overexpenditures.

- c. The lack of payroll data in CORE has impacted our ability to draw funds for our federal program. As of this date, DOL has not been issued sanctions, decreases to funding, or penalties by the federal government.
- d. While CORE seems a more robust system than COFRS in some aspects and therefore affords increased functionality, that increased functionality comes at the cost of more complexity in processing. Any perceived efficiencies that may have been gained in moving to a more modern system have been mostly offset by this increased complexity. The majority of accounting staff are well passed learning curve issues from a day-to-day processing perspective, yet documents take longer to both enter and review for approval. The actual review process is far less efficient in CORE for a variety of reasons (e.g., inability to print a document as you see it on the screen, the sheer number of mouse-clicks that must occur for a thorough on-screen review, or the time it takes to analyze the available reporting for review purposes). Additionally, there are fewer preventive controls built into CORE in certain areas (i.e., automated data controls to prevent certain data entry errors) so staff must rely more on detective controls through their review. Any way the review occurs, workload for staff in review/approval roles have been negatively impacted.
- e. During FY15, the department did anticipate an ongoing increase in workload (due to the issues discussed in 4(d) above), and permanently reallocated resources internally to accommodate. The department is not currently seeking additional staff or funding due to CORE issues.

5. If the Department receives federal funds of any type, please provide a detailed description of any federal sanctions for state activities of which the Department is already aware. In addition, please provide a detailed description of any sanctions that MAY be issued against the Department by the federal government during FFY 2015-16.

Response: The DOL has only one annual federal award, the Medicaid Fraud Control Unit Grant. The final reporting for Federal Fiscal Year 2015 is not due until December 31, 2015. The DOL anticipates that all CORE payroll issues will be resolved by that time and all required reporting will be accomplished within appropriate timeframes, thereby meeting all the grant requirements.

6. Does the Department have any outstanding high priority recommendations as identified in the "Annual Report of Audit Recommendations Not Fully Implemented" that was

published by the State Auditor's Office and dated October 2015 (link below)? What is the Department doing to resolve the outstanding high priority recommendations?

[http://www.leg.state.co.us/OSA/coauditor1.nsf/All/4735187E6B48EDF087257ED0007FE8CA/\\$FILE/1542S%20Annual%20Report.%20Status%20of%20Outstanding%20Audit%20Recommendations,%20As%20of%20June%2030,%202015.%20Informational%20Report.%20October%202015.pdf](http://www.leg.state.co.us/OSA/coauditor1.nsf/All/4735187E6B48EDF087257ED0007FE8CA/$FILE/1542S%20Annual%20Report.%20Status%20of%20Outstanding%20Audit%20Recommendations,%20As%20of%20June%2030,%202015.%20Informational%20Report.%20October%202015.pdf)

Response: Per the State Auditor's October 2015 report: "Between July 1, 2009 and June 30, 2014, the Department of Law (Department) agreed or partially agreed to implement 13 audit recommendations. All of these recommendations were from performance and/or information technology (IT) audit reports. As of June 30, 2015, the Department reports that it has no outstanding performance and/or IT audit recommendations. In our 2014 *Annual Report of Audit Recommendations Not Fully Implemented*, the Department also had no outstanding audit recommendations."

7. Is the department spending money on public awareness campaigns related to marijuana? How is the department working with other departments to coordinate the campaigns?

Response: The DOL is currently not spending any money on public awareness campaigns related to marijuana. However, the DOL did contract with the Governor's Office to assist in developing a prevention and public awareness campaign to address Colorado's issues with prescription drugs (opioids) and under-age marijuana use. This contract was for \$2M from the Consumer Protection Custodial Fund and the costs were incurred over FY 13 and FY 14.

QUESTIONS SPECIFIC TO THE DEPARTMENT OF LAW

8. How much attorney time and expenses (a) have been incurred and (b) will be incurred as a result of the Attorney General's participation in the following three lawsuits:

a. Wyoming v. Department of Interior, Case No. 15-CV-43 (D. Wyo. 2015) (Bureau of Land Management Fracking Rules);

Response: Expenditure of taxpayer dollars to participate in this proceeding is minimal. We have partnered with 3 other states to bring this action and we work in cooperation with our state colleagues to provide input as appropriate on pleadings and legal research; the bulk of the legal work is done by the lead states named in the caption. Any costs incurred in that supportive role are within existing resources and performed by attorneys in the Office of the Attorney General. No time is billed to any client agency. The costs incurred on these matters are similar to those incurred when the Attorney General participates in legal matters as amicus curiae on behalf of the State.

b. North Dakota v. EPA, Case No. 15-CV-59 (D. N. Dak. 2015) (Clean Water Rules); and;

Response: Expenditure of taxpayer dollars to participate in this proceeding is minimal. We have partnered with 13 other states to bring this action and we work in cooperation with our state colleagues to provide input as appropriate on pleadings and legal research; the bulk of the legal work is done by the lead states named in the caption. Any costs incurred in that supportive role are within existing resources and performed by attorneys in the Office of the Attorney General. No time is billed to any client agency. The costs incurred on these matters are similar to those incurred when the Attorney General participates in legal matters as amicus curiae on behalf of the State.

c. West Virginia v. EPA, Case No. 15-1363 (D.C. Cir. 2015) (Clean Power Plan)?

Response: Expenditure of taxpayer dollars to participate in this proceeding is minimal. We have partnered with 25 other states to bring this action and we work in cooperation with our state colleagues to provide input as appropriate on pleadings and legal research; the bulk of the legal work is done by the lead states named in the caption. Any costs incurred in that supportive role are within existing resources and performed by attorneys in the Office of the Attorney General. No time is billed to any client agency. The costs incurred on these matters are similar to those incurred when the Attorney General participates in legal matters as amicus curiae on behalf of the State.

9. How much money has your office collected in fee revenue from the Department of Public Health and Environment for legal counsel on:

a. Development of state response, materials, and preparation on state implementation of the Clean Power Plan; and

Response:

Attorneys spent approximately 270 hours from January 1, 2015 to date which earned approximately \$27,000 in revenue.

b. Development of state response, materials, and preparation on state implementation of revised rules for complying with federal clean water rules (WOTUS)?

Response: Attorneys billed 34 hours from January 1, 2015 to date which earned approximately \$3,400 in revenue.

10. How much money has your office collected in fee revenue from the Department of Natural Resources and the Colorado Oil and Gas Conservation Commission for legal counsel on:

a. Development of state response, materials, and preparation of state implementation on fracking rules from the Bureau of Land Management?

Response: Attorneys spent approximately 15 hours from January 1, 2015 to date which earned approximately \$1,500 in revenue.

DRAFT CONTROLLERS REPORT (Pending Litigation)

1. Nature of the litigation.

a. The proceedings.

HOSPITAL PROVIDER FEE CASE.

Challenge to the hospital provider fee asserting the fee is a tax that is subject to TABOR's requirement that a public vote be taken before it is levied or increased.

TABOR Foundation v. Colorado Department of Health Care Policy and Financing, et al.; Denver District Court, 2015CV32305.

b. The claims asserted.

Challenge to the hospital provider fee asserting the fee is a tax that is subject to TABOR's requirement that a public vote be taken before it is levied or increased. Plaintiffs challenge the fee imposed in Fiscal Years 2011, 2012, and 2013 and seek a refund of all revenue collected, kept, or spent unconstitutionally, plus interest.

c. The amount of monetary or other damages sought.

Estimated to be in excess of \$2.65 billion, plus 10% annual simple interest.

d. Whether or not the potential damages are covered by insurance and if so, to what extent.

No.

e. The objectives sought by the plaintiff other than monetary damages.

To enjoin the Department from collecting the hospital provider fee until such time as voters approve those taxes.

2. The progress of the case to date.

The Complaint was filed on June 26, 2015. The Department filed a motion to dismiss on September 2, 2015. Plaintiffs filed a response and the DOL replied on

October 16, 2015.

3. How management is responding or intends to respond to the litigation.

Management has instructed counsel to proceed with defending this action.

4. Your evaluation of the likelihood of an unfavorable outcome.

The likelihood of an unfavorable outcome is uncertain.

5. An estimate as to the amount or range of potential loss.

The estimated range of potential loss is in excess of \$2.65 billion, plus 10% annual simple interest.

1. Nature of the litigation.

a. The proceedings.

REPUBLICAN RIVER COMPACT CASE.

Kansas v. Nebraska and Colorado, United States Supreme Court case no. 22O126 ORG.

b. The claims asserted.

The United States Supreme Court accepted a suit against Nebraska for violating the Republican River Compact by consuming more water than allowed under the Compact. Nebraska previously indicated that if it lost, it might pursue a claim against Colorado for contribution.

Kansas initially reserved the right to seek relief against Colorado for its violations of the Compact. After two years of litigation before a Special Master of the United States Supreme Court, neither Kansas nor Nebraska offered any evidence to prove Colorado had violated the Compact. Final closing briefs were submitted August 30, 2013, and a draft and final Report of the Special Master were issued in January and November 2013, respectively.

c. The amount of monetary or other damages sought.

Neither Kansas nor Nebraska ever stated a specific dollar amount against Colorado. In his final report, the Special Master recommended the Supreme Court award Kansas \$5.5 million for Nebraska's past violations and no damages against Colorado. The States filed briefs with the Supreme Court on exceptions with the Special Master's Recommendations. The Supreme Court has scheduled argument on these exceptions to occur in October 2014.

d. Whether or not the potential damages are covered by insurance and if so, to what extent.

No.

e. The objectives sought by the plaintiff other than monetary or other damages.

In addition to damages, Kansas sought the imposition of a river master for the Republican River. Kansas also sought injunctive relief to require Nebraska to reduce its consumptive use of water and come into compliance. In his final report, the Special Master denied these requests.

2. The progress of the case to date.

In May 2010, Kansas filed a Motion for Leave to File Petition and Brief in Support in Kansas v. Nebraska and Colorado, No. 126, Original, requesting the Court accept its petition against Nebraska. The Court accepted the petition and appointed a Special Master to oversee the case. Nebraska filed counter-claims against Kansas on various non-monetary issues. Neither Kansas nor Nebraska filed a monetary claim against Colorado or presented any evidence to support such a claim. Discovery concluded in August 2012 and trial took place in Portland, Maine from August 13 to 23, 2012. Subsequently, the Special Master requested additional evidence related to Nebraska and Colorado's request to change the model and accounting procedures used to calculate the States' use of water under the Compact. A hearing was held in August 2013. The Special Master subsequently issued his final Report of the Special Master on November 5, 2013.

In the Report, the Special Master recommends Nebraska be required to pay Kansas \$5.5 million for violating the Republican River Compact in 2005. This award is intended to cover the full amount of Kansas' loss plus an additional \$1.8 million to disgorge Nebraska of gains that exceed Kansas' loss as a result of the

compact violation. The Supreme Court identified a briefing schedule for the states to identify any exceptions they may take with the Special Master's Report. Colorado filed a brief taking exception based on existing Supreme Court decisions that Nebraska should be disgorged of gains in addition to payment of Kansas' losses. Both Nebraska and Kansas filed a series of exceptions to the Special Masters Report in addition to this issue. The Court heard oral argument on these exceptions on October 14, 2014. The Court issued a final ruling regarding the entire litigation in March 2015. The Court adopted the Special Master's Report in totum and, relevant to Colorado, clarified the unique circumstances under which limited disgorgement of Nebraska's gains was appropriate. Given this clarification, Colorado has a strong argument as to why disgorgement of profits in any future suit potentially brought by Kansas for actions that have already occurred is not appropriate. Following issuance of the U.S. Supreme Court's decision in January 2015, this case is complete.

3. How management is responding or intends to respond to the litigation.

Regarding the recent litigation, the States attempted to negotiate a settlement. After that failed, Colorado defended its interests in the case.

Regarding the potential for future litigation against Colorado (see #4 below), the State has tried to reach consensus with Kansas and/or Nebraska prior to any suit being filed. Because such negotiations initially proved unsuccessful, we invoked non-binding arbitration pursuant to the Final Settlement Stipulation. Following the outcome of that arbitration, the parties agreed to negotiate a resolution to the extent possible. To that end, Kansas agreed to allow Colorado to run the Compact Compliance Pipeline to further compact compliance for Water Years 2014 and 2015. Moreover, upon demonstration of Colorado's good faith efforts to support Kansas' use of Harlan County reservoir in Nebraska and work to address concerns on the South Fork of the Republican River Basin, Kansas has committed to work to provide approvals for operation of the Compact Compliance Pipeline through Water Year 2016. If such efforts do not ultimately prove successful now or in the future, we will vigorously defend any claims that may be asserted against the State.

4. Your evaluation of the likelihood of an unfavorable outcome.

The likelihood of an unfavorable ruling against Colorado in the event a future lawsuit is uncertain. The United States Supreme Court's decision in the recent litigation will likely form the basis of a claim against Colorado by either Kansas or Nebraska in the future. The numbers accepted by all three states show that

Colorado has consumed more water than is permitted under the Compact in the early 2000s. The amount of Colorado's overuse is approximately the same as the amount as was Nebraska's.

It seems unlikely that Nebraska would seek contribution damages against Colorado. Nebraska and Colorado are working closely together to approve plans for both states to comply with the Compact (see#3). At this time, it is not anticipated that Kansas will seek damages from Colorado in a future action. By all estimations, the \$5.5 million award recommended by the Court in the recent action against Nebraska is much less than Kansas was expecting. Moreover, the cost of litigation for Kansas was expensive. For these reasons, Kansas has recently demonstrated greater interests and efforts to negotiate resolutions to the extent they deem practicable. So far, that has proven beneficial for Colorado. Whether this approach and outcome continues into the future remains to be seen. If Kansas does eventually pursue claims and seek damages against Colorado, the amount of damages will likely be similar to the \$5 million the Court awarded against Nebraska.

5. An estimate as to the amount or range of potential loss.

Colorado's liability for past over-consumption is estimated to potentially be in the \$1 million to \$6 million range.

1. Nature of the litigation.

a. The proceedings.

RIO GRANDE COMPACT CASE.

Texas v. New Mexico and Colorado, United States Supreme Court case no. 220141 ORG.

b. The claims asserted.

Texas filed suit with the U.S. Supreme Court against New Mexico for alleged violation of the Rio Grande Compact. Texas asserts that New Mexico's groundwater pumping denies Texas access to its full entitlement under the Rio Grande Compact. Following briefing by the U.S. Solicitor, and a motion to Intervene filed by the United States Department of Justice, the Supreme Court accepted suit against New Mexico for violating the Rio Grande Compact by consuming more water than allowed under the

Compact. Although no claims at this time are asserted against the State of Colorado, the State is named as a defendant because it is a signatory to the Compact. Both Texas and New Mexico have indicated that they do not want to drag Colorado into the litigation any more than necessary, but neither of those states nor the United States is willing at this time to stipulate to limitations in the case to protect Colorado's interests.

c. The amount of monetary or other damages sought.

No dollar amount has been stated against Colorado. Depending on how the Court interprets the Rio Grande Compact and applied groundwater pumping to Compact administration, either Texas or New Mexico or both may seek damages against Colorado at some point in the future. In what amount and on what basis, however, is unknown.

d. Whether or not the potential damages are covered by insurance and if so, to what extent.

No.

e. The objectives sought by the plaintiff other than monetary or other damages.

In addition to damages, Texas seeks a specific interpretation of the Rio Grande Compact that potentially benefits its interests at the expense of Upper Compacting States and the authority of the Rio Grande Commission. Texas also seeks injunctive relief to require New Mexico to reduce its groundwater pumping and inform ongoing adjudications in New Mexico state court and the U.S. District Court of New Mexico.

2. The progress of the case to date.

This case was filed in January 2013 and was accepted by the U.S. Supreme Court and invited New Mexico to file a Motion to Dismiss on January 27, 2014. The Court subsequently granted the United States' Motion to Intervene on March 31, 2014. Briefing on New Mexico's Motion to Dismiss has been completed. The parties are currently awaiting further action by the Special Master appointed to manage and hear the case. Due to the unlimited timeline and extended timeframe associated with interstate litigation, this case is expected to last several years.

3. How management is responding or intends to respond to the litigation.

The State is actively involved in trying to mediate a resolution between Texas and New Mexico. If those efforts fail, the State will vigorously defend its interests in the interpretation and application of the Rio Grande Compact.

4. Your evaluation of the likelihood of an unfavorable outcome.

Since no claims are asserted against Colorado, the likelihood of a directly unfavorable ruling against Colorado is remote. An ultimate decision by the U.S. Supreme Court may, however, affect Colorado's interests in application and interpretation of the Rio Grande Compact, and form the basis of future claims against the States. What such claims would be and who they would be asserted against cannot be determined at this time.

5. An estimate as to the amount or range of potential loss.

At this time, the State anticipates no liability for Colorado. Depending on how the case develops, however, a liability for the State could arise. Although such liability is tenuous, it is not completely impossible. Nonetheless, what that future liability could be and how much it would equate to cannot be determined at this time.

1. Nature of the litigation.

a. The proceedings.

LOWER NORTH FORK FIRE CASE.

American Family Insurance, et al. v. State of Colorado, et al., Jefferson County District Court case no. 12CV2550; Court of Appeals case nos. 2014CA950, 2014CA968

b. The claims asserted.

On March 22, 2012, the Colorado State Forest Service (CFSF) conducted a prescribed burn on property owned by the Denver Water Board to mitigate wildfire potential near the town of Foxton, southeast of Conifer, in Jefferson County. The prescribed burn was done pursuant to a contract with the Denver Water Board and according to a program of forest management by the CFSF intended to thin forests and reduce fuel buildup that contributes to wildfire danger. The prescribed burn was complete by the end of the day. Four days later powerful winds ignited embers and the

fire grew rapidly in size and intensity. Before the fire was brought under control, approximately 26 homes were damaged or destroyed, and three persons were killed when their homes burned, in what became known as the Lower North Fork fire (LNFF).

In response to the LNFF, the General Assembly passed HB 12-1283 and HB 12-1361. The legislation shifted fire mitigation and control functions of CFSF to the Department of Public Safety, along with all liabilities for prescribed fires accrued as of July 1, 2012, and retroactively waived the State's sovereign immunity for negligence claims arising from prescribed fires.

On July 2, 2012, a group of five insurance companies brought suit to recover amounts paid or to be paid on claims of their insured's for damage resulting from the LNFF. The plaintiff insurance companies asserted claims under new provisions of the Colorado Governmental Immunity Act (CGIA) and also claims for inverse condemnation and "takings" under Article II, section 15 of the Colorado Constitution.

c. The amount of monetary or other damages sought.

Estimates of damages to homes and property in the Lower North Fork wildfire exceed \$68 million. In addition, three persons died in fires that engulfed their homes. It is still unknown how the amount of damages sought by the five plaintiff insurance companies. Not all insurers with policies in effect in the LNFF burn area have joined in this lawsuit, however all insurers affected by the fire are believed to be contemplating joining this lawsuit or initiating their own lawsuits to assert inverse condemnation claims. In addition, we have interpleaded the maximum liability under the CGIA in the court, \$600,000, and we are joining all who file notices of claims as respondents to the interpleader action. Claims have been asserted for the full amount of damages suffered in the fire.

While damages under the CGIA are limited to \$600,000 per occurrence, if insurance companies and individual home and business owners in the area successfully plead claims for inverse condemnation and "takings," or if they successfully plead claims under 42 U.S.C. § 1983, liability on their claims will be unlimited.

d. Whether or not the potential damages are covered by insurance and if so, to what extent.

Liability under new provisions of the CGIA for negligence in conducting a controlled fire are limited to \$600,000 and are covered by the Risk Management Fund. That amount has been reserved in the Fund and interpleaded in the court action. Claims for inverse condemnation and "takings" under Article II, section 15 of the Colorado Constitution are not limited and are not covered by insurance or by the Risk Management Fund. In addition, if inverse condemnation claims are successful, awards could include attorney's fees and costs of litigation. Fees awarded in inverse condemnation cases are not covered by Risk Management or any insurance policy. In the 2013 session of the General Assembly, \$2.8 million was appropriated to cover claims then being adjusted through the Claims Board in the process established in C.R.S. § 24-10-114(5)(b). Payments to property owners in excess of \$2.8 million was approved by the Claims Board, and the full amount of the appropriation has been distributed to eleven property owners as of the date of this report. Additional appropriations will be sought when the General Assembly convenes in January.

e. The objectives sought by the plaintiff other than monetary or other damages.

Some plaintiffs have brought claims for declaratory judgment that the caps on damages in the CGIA are unconstitutional. These claims are subject to motions to dismiss, and we do not believe that there is any serious danger that damages caps will be invalidated.

2. The progress of the case to date.

The complaint in this case was filed and served on July 2, 2012. The state filed an Answer to the original Complaint, interpleading the cap amount of \$600,000 among plaintiffs and others whose notices of claims had been received as of that date. A stay of proceedings was obtained from the court to permit the notice period to expire before litigation got underway. Meanwhile, between the date of the fire and September 25th the Department of Law received more than 100 notices of claims for property damage and wrongful death resulting from the fire. On October 9th an Amended Complaint was filed by the original insurance company plaintiffs, and we simultaneously responded to the Amended Complaint with an interpleader of all those who had filed claims within the claim notice period. Property owners and interpleaded insurers did not have their complaints all on file until March of 2013. On April 23, 2013, we filed motions to dismiss all non-CGIA claims, including claims under "inverse condemnation" theories, civil rights theories under 42 U.S.C. § 1983, and theories of willful and wanton

conduct. Plaintiffs only recently filed their responses to the motions to dismiss, and we are preparing replies in support of our motions to dismiss.

Meanwhile, damages determinations have been referred to a panel of special masters from Judicial Arbiter Group. Plaintiffs will be presenting damages claims to JAG in September and October, and we will have 60 days to respond. JAG will conduct short evidentiary hearings and make binding determinations of damages.

September 2014 Update: The motions to dismiss all non-CGIA claims, including claims asserted by insurers under theories of inverse condemnation, were granted. All but four insurers had dismissed claims originally asserted under common law negligence theories, and they rely solely on inverse condemnation for their recovery.

All property owners have been compensated under special appropriations passed by the General Assembly during the 2014 legislative session. Total compensation paid to property owners is \$24,917,673.81. We will be filing stipulated motions to dismiss all property owner claims, and the litigation of property owner claims will be terminated.

Meanwhile, all insurers except GEICO have appealed the order dismissing inverse condemnation claims. The appeals are consolidated before the Colorado Court of Appeals, and briefing before that court has begun. The Court ruled in favor of the State on September 24, 2015. Petition for certiorari was filed November 4, 2015.

3. How management is responding or intends to respond to the litigation.

On behalf of the Colorado Department of Public Safety, we did not dispute claims of negligence under the newly-adopted waiver of the State's immunity in C.R.S. § 24-10-106.1. We did vigorously defend against claims asserted under all other theories of liability, and our motions to dismiss those claims were successful. Following hearings on damages before Special Masters, Judge Hall in the district court entered "judgments" for the purposes of presentation of claims to the Claims Board and the General Assembly. The Claims Board adopted a policy of compromising the claims to be consistent with its recommendations for payment to property owners who had entered settlements, but the General Assembly passed measures to pay the Special Masters' awards in full, including amounts awarded for non-economic damages.

We may yet be drawn into litigation with property owners who previously settled their claims to reopen those claims and pay them consistent with the General

Assembly's treatment of non-settling property owners.

We will continue to vigorously defend against insurers claims under inverse condemnation theories. In our view, the four insurers whose negligence claims remain pending will be entitled to share the \$600,000 fund in the registry of the court, created upon commencement of the interpleader.

4. Your evaluation of the likelihood of an unfavorable outcome.

Litigation with property owners has concluded, and the payments to them, totaling \$24,917,673.81, establishes the limit of our liability on those claims. We believe it is very unlikely that settling property owners will succeed in reopening litigation for the purpose of presenting claims for additional compensation to the General Assembly. The \$600,000 held in the court's registry will be paid out to four of the remaining insurance company plaintiffs. We are confident of our legal position with respect to inverse condemnation theories presented by all insurers, but the likelihood that orders dismissing those claims will be overturned on appeal is uncertain.

5. An estimate as to the amount or range of potential loss.

In addition to amounts that have been paid by special appropriations, \$600,000 will be paid to insurers from the fund held in the court's registry. There has as yet been no discovery into the insurer plaintiff claims, and the total amount of claims paid by insurers, which would represent the ceiling on the State's potential liability, is unknown. It is thought to be in the low tens of millions.

1. Nature of the litigation.

a. The proceedings.

AGILENT TAX CASE.

Agilent Technologies, Inc. v. Department of Revenue, Denver District Court case no. 2014CV393.

b. The claims asserted.

The taxpayers seek to challenge the Department of Revenue's (DOR) Notice of Final Determination regarding the payment of income tax, penalties and interest.

c. The amount of monetary or other damages sought.

The total amount of tax, interest and penalty assessed by the Notice of Final Determination was \$7,602,259.00 (tax), \$4,831,071.00 (interest through August 20, 2013) and \$912,271.00 (penalty), resulting in a total amount assessed of \$13,345,601.00.

d. Whether or not the potential damages are covered by insurance and if so, to what extent.

No.

e. The objectives sought by the plaintiff other than monetary or other damages.

The taxpayers seek to reverse DOR's assessment.

2. The progress of the cases to date.

The taxpayer filed their appeal of the Department's Notice of Final Determination to Denver District Court on June 5, 2014. DOR answered. The parties filed cross motions for determination of a question of law as well as cross motions for summary judgment. This matter has been set for a four-day trial commencing on December 7, 2015.

3. How management is responding or intends to respond to the litigation.

DOR is vigorously defending its position.

4. Your evaluation of the likelihood of an unfavorable outcome.

The likelihood of an unfavorable outcome is uncertain. The issues in this case are novel issues in Colorado. Authorities across the country are split on many of the controlling issues.

5. An estimate as to the amount or range of potential loss.

The amount at issue is \$13,345,601.00. The taxpayer has paid this tax pending the outcome of the proceedings. In the event of a loss the State would pay interest on this amount in the form of a refund of the amount at issue plus statutory interest.

1. Nature of the litigation.

a. The proceedings.

ORACLE TAX CASE.

Oracle Corp. & Subsidiaries v. Department of Revenue, Denver District Court case no. 2015CV31175.

b. The claims asserted.

The taxpayers seek to challenge the Department of Revenue's (DOR) Notice of Final Determination regarding the payment of income tax, penalties and interest.

c. The amount of monetary or other damages sought.

The total amount of tax, interest and penalty assessed by the Notice of Final Determination was \$8,489,864 (tax), \$10,794,467 (interest through March 31, 2015) and \$1,164,271 (penalty), resulting in a total amount assessed of \$20,448,602. The taxpayer has also alleged that if the DOR's assessment is reversed, that it is also owed \$1,794,756 in tax overpayment.

d. Whether or not the potential damages are covered by insurance and if so, to what extent.

No.

e. The objectives sought by the plaintiff other than monetary or other damages.

The taxpayers seek to reverse DOR's assessment.

2. The progress of the case to date.

The taxpayer filed their appeal of the Department's Notice of Final Determination to Denver District Court on April 1, 2015. DOR answered. The parties are now engaged in discovery. This matter has been set for a four-day trial commencing on February 16, 2016.

3. How management is responding or intends to respond to the litigation.

DOR is vigorously defending its position.

4. Your evaluation of the likelihood of an unfavorable outcome.

The likelihood of an unfavorable outcome is uncertain. The issues in this case are novel issues in Colorado. Authorities across the country are split on many of the controlling issues.

5. An estimate as to the amount or range of potential loss.

The amount assessed by the Department's Final Determination is \$20,448,602. The taxpayer has paid this tax pending the outcome of the proceedings. The taxpayer has also alleged that it has overpaid tax in the amount of \$1,794,756 (although the Department disputes part of this overpayment). In the event of a loss the State would pay interest on these amounts in the form of a refund of the amounts plus statutory interest.

1. Nature of the litigation.

a. The proceedings.

SOS USE OF BUSINESS FEES FOR ELECTIONS CASE

Challenge under TABOR to the Department of State's use of fees collected for business regulation to support the elections division.

National Federation of Independent Businesses v. Williams, Denver District Court Case No. 2014CV34803

b. The claims asserted.

The NFIB contends that §§ 24-21-104 and 24-21-104.5, C.R.S. violate TABOR. These provisions allocate fees collected by the Business and Licensing Division to a cash fund, and authorize appropriations from that cash fund to the Department of State's Elections Division and to counties to support election functions.

c. The amount of monetary or other damages sought.

Plaintiffs seek a refund of allegedly unconstitutionally collected registration

fees, and the imposition of penalties, interest, fees, and costs in accordance with Colo. Const. art. X, § 1. The complaint does not seek a precise monetary award; our estimate of exposure is approximately \$20 million.

d. Whether or not the potential damages are covered by insurance and if so, to what extent.

No coverage applies.

e. The objectives sought by the plaintiff other than monetary damages.

A declaration that the appropriation mechanism in §§ 24-21-104 and 24-21-104.5 is unconstitutional.

2. The progress of the case to date.

The parties have filed cross-motions for summary judgment in Denver District Court. Argument on those motions is set for September 11, 2015. On November 3, 2015, the Court issued an order granting summary judgment for the state.

Effective Department of Law Programs:

Criminal Investigation, Prosecution, and Enforcement: The Attorney General's criminal justice efforts are focused in multiple areas: 1) Workers' Compensation Fraud, 2) Medicaid Fraud, 3) Environmental Crimes, 4) Gang Prosecutions, 5) Foreign Prosecutions 6) Financial Fraud, including Insurance Fraud and Securities Fraud, 7) Complex Crimes, and 8) the Violent Crimes Assistance Team (VCAT). The Criminal Justice Section is also involved in several outreach programs associated with mitigating gang activity, preventing school violence, and responding to child abductions. Although the caseload potential for this Section vastly exceeds the current resources, the success of this Section is extremely impressive.

Consumer Protection: Given the fact that the AG's Consumer Protection Section is small but has very broad jurisdiction (Consumer Protection Act, Antitrust Act, Charitable Solicitation Act and more than a dozen other statutes) the section is successful in selecting appropriate cases for investigation and enforcement. This program also regulates consumer lending, debt collection, and debt settlement companies and engages in extensive enforcement against licensed entities. In addition, this program conducts important consumer outreach through partnerships with various non-profit organizations and through publication and dissemination of consumer alerts, educational brochures, a stand-alone consumer protection website (stopfraudcolorado.gov) and a quarterly newsletter.

Representation of Client Agencies (Including Water and CERCLA): The Attorney General by statute is the legal counsel and advisor of each department, division, board, bureau and agency of state government other than the legislative branch (§ 24-31-101 C.R.S.). The Department represents the various clients efficiently and effectively. The key to this success is retaining quality employees by providing competitive attorney compensation and benefits package and a dynamic work environment.

Representation of State's Water Interests: These units protect the State's interests in the waters of interstate rivers, with respect to both interstate water allocation and federal environmental requirements. The Unit also works with state water users to protect the state's interests in the timely and reasonable resolution of federal claims for water rights, including reserved water rights and claims for in-stream flows.

The CERCLA Litigation Unit handles the legal work for seriously contaminated sites – known as Superfund sites – most of which are being cleaned up under consent decrees by those who contaminated them. The Unit works to recover the state's costs for overseeing these cleanups from the responsible parties to the greatest extent possible. The Unit represents CDPHE to ensure cleanup work progresses in a timely fashion and is completed.

In addition, the Unit advocates on behalf of the State Natural Resources Trustees to recover damages for injuries to natural resources caused by releases of hazardous substances. The Trustees are the Executive Directors of CDPHE and DNR, and the Attorney General. The Unit serves the Trustees by assisting with the identification of injuries and negotiating or litigating to

recover damages. Once recovered, the Unit assists the Trustees to determine how to allocate the recovered funds to restore or replace the injured natural resources (i.e., ground water, wildlife habitat, and fish populations).

The Criminal Appeals Section represents the prosecution when defendants challenge their felony convictions before state and federal appellate courts.

For the most part, the Division responds to appeals that are brought on behalf of convicted criminals, and thus has no control over the size of its incoming caseload. Most of the cases handled by the Appellate Division are in the Colorado Court of Appeals; the rest are in the Colorado Supreme Court and the federal district and appellate courts. For each case, an Appellate Division attorney must review the trial court record and the brief filed by the defense, do legal research into the defendant's claims, and file a response.

The Office of Community Engagement (OCE) is charged with building relationships with partner organizations regarding domestic violence prevention, consumer protection outreach and education, safe communities and safe schools, and anti-human trafficking, to best connect information and DOL program delivery with community efforts in order to maximize public safety and consumer protection.

The Consumer Credit Unit license, inspects, and generally enforces seven state laws relating to consumer credit and debt collections.

The P.O.S.T. Board is statutorily responsible for the approval, inspection, and regulation of all basic and reserve peace officer training academy programs: to include the development of the basic, reserve peace officer, refresher academy curriculums program curriculums; instruction methodology training programs; skills training programs (arrest control tactics, firearms, and law enforcement driving) and skills instructor programs. The Board's responsibilities also include enforcement of statutes and rules related to peace officer academy enrollment; ensuring peace officer applicants are not convicted criminals; reviewing variance applications; and taking timely revocation action against any certified peace officer convicted of a felony or certain misdemeanors. P.O.S.T. is required to establish the standards for the renewal of expired Colorado peace officer certificates.

The DOL measures effectiveness and program delivery through a variety of means, please see measures below:

Representation of Client Agencies. The Attorney General by statute is the legal counsel and advisor of each department, division, board, bureau, institution of higher education and agency of state government other than the legislative branch and University of Colorado (§ 24-31-101 C.R.S.). The Department represents the various clients efficiently and effectively. The key to this success is retaining quality employees by providing competitive attorney compensation and benefits package and a dynamic work environment.

Performance Measure		Actual FY 13	Actual FY 14	Actual FY 15	Estimate FY 16	Request FY 17	FY 18
Provide quality legal counsel and representation to client agencies as measured by annual client survey as satisfied or very satisfied with counsel.	Target	95%	95%	95%	95%	95%	95%
	Actual	97.78%	95.36%	96.56%	NA	NA	NA

Criminal Enforcement and Prosecution. The Attorney General's trial prosecution efforts (in addition to the litigation that is conducted by our dedicated Financial Fraud and Medicaid Fraud Units) are focused in multiple areas: 1) Complex Crimes, 2) Environmental Crimes, 3) Gang Prosecution, 4) Prosecution Assistance, 5) Auto Theft and 6) the Violent Crime Assistance Team (VCAT).

Complex and/or multi-jurisdictional securities fraud investigations and prosecutions

Performance Measure		FY 13 Actual	FY 14 Actual	FY 15 Actual	FY 16 Year to Date	FY 17 Request	FY 18
Restitution Ordered	Estimate	\$5,000,000	\$5,000,000	\$5,000,000	\$5,000,000	\$5,000,000	\$5,000,000
	Actual	\$4,283,094	\$7,113,232	\$3,020,538	NA	NA	NA

Complex and/or multi-jurisdictional Insurance fraud investigations and prosecutions

Performance Measure		FY 13 Actual	FY 14 Actual	FY 15 Actual	FY 16 Estimate	FY 17 Request	FY 18
Restitution Collected Per Court Order	Estimate	\$450,000	\$450,000	\$250,000	\$300,000	\$300,000	\$300,000
	Actual	\$3,162,077	\$275,912	\$576,017	NA	NA	NA

Medicaid Fraud Unit

Performance Measure		FY 13 Actual	FY 14 Actual	FY 15 Actual	FY 16 Estimate	FY 17 Request	FY 18
Fines, Costs , Restitution Recovered	Estimate	\$3,500,000	\$3,500,000	\$3,500,000	\$4,000,000	\$4,000,000	\$4,000,000
	Actual	\$16,250,429	\$9,441,306	\$5,298,867	NA	NA	NA

Consumer Protection

Objective: Given the fact that the AG's Consumer Protection Section is small but has very broad jurisdiction (Consumer Protection Act, Antitrust Act, Charitable Solicitation Act, and approximately a dozen other statutes) the Section does a very good job of selecting appropriate cases for investigation and enforcement, as well as providing consumer outreach to vulnerable groups, most notable the elderly. The measures below are newly implemented. The DOL will have actual data after FY 16.

Performance Measure		Actual FY 14	Actual FY 15	Estimate FY 16	Request FY 17	FY 18
Resolve 75% of consumer protection investigations within one year through settlement, litigation, or closure	Target	75%	75%	60%	75%	75%
	Actual	NA	NA	NA	NA	NA

Performance Measure		Actual FY 14	Actual FY 15	Estimate FY 16	Request FY 17	FY 18
Resolve 75% of loan modification/foreclosure complaints within one year	Target	75%	75%	75%	75%	75%
	Actual	NA	NA	NA	NA	NA

Performance Measure		Actual FY 14	Actual FY 15	Estimate FY 16	Request FY 17	FY 18
Take initial action on 80% of actionable no-call complaints within 30 days after receiving a third complaint against a telemarketer within a month	Target	80%	80%	80%	80%	75%
	Actual	NA	NA	NA	NA	NA

Consumer Credit

Objective: Ensure efficient operations to benefit providers and consumers and to ensure compliance with debt management laws.

Performance Measure		FY 14 Actual	FY 15 Actual	FY 16 Estimate	FY 17 Request	FY 18
Investigate and resolve 80% of complaints within 60 days or less	Target	90%/80%	90%/80%	90%/80%	90%/80%	90%/80%
UCCC	Actual	NA	97%	90%	90%	90%
Debt Management	Actual	NA	90%	90%	90%	90%
Debt Collection	Actual	NA	82%	80%	80%	80%

Criminal Appeals (formerly Appellate):

Performance Measure		Actual FY 13	Actual FY 14	Actual FY 15	FY 16 Estimate	FY 17 Request	FY 18
Percentage of cases with a successful outcome on appeal	Target	90%	90%	90%	90%	90%	90%
	Actual	91.0%	91.3%	89.6%	90%	90%	90%

Evaluation of Prior Year Performance: The Criminal Appeals Section has met its goal of preserving at least 90% of the convictions challenged on appeal. Additionally, at the end of FY 2013, the appellate backlog stood at 564 cases. At the end of FY 2014, that number was 272, a reduction of 292 cases. By June 30, 2015, the backlog was down to 168 cases.

Program	Workload Measure	FY 13 Actual	FY 14 Actual	FY 15 Actual
Appellate	Incoming Cases	1,018	911	952
Appellate	Oral Arguments	110	124	134

Criminal Appeals	Backlog	564	272	168
Insurance Fraud	Investigations Opened	116	126	198
Insurance Fraud	Criminal Cases Filed	28	36	53
Securities Fraud	Criminal Cases Opened	18	12	9
Securities Fraud	Criminal Cases Filed	10	6	4
Special Prosecution Complex Crimes	Total Cases Investigated	102	107	150
Special Prosecution Complex Crimes	Total New Cases Filed	88	87	113
Special Prosecution Auto Theft	Total Cases Investigated	3	3	0
Special Prosecution Auto Theft	Total Trials	1	1	3
Special Prosecution Environmental Crimes	New investigations opened	28	30	9
Special Prosecution Environmental Crimes	New cases filed	14	6	0
Special Prosecution VCAT	Assistance (Special Deputy)	7	16	20
Special Prosecution VCAT	Assistance (Investigation)	12	29	39
Special Prosecution VCAT	Consultations	85/ 15 Judicial Districts	86/17 Judicial Districts	147/ 19 Judicial Districts
Medicaid Fraud Unit	Criminal Cases Opened	47	31	45
Medicaid Fraud Unit	Civil Cases Opened	103	108	109
Medicaid Fraud Unit	Criminal Cases Filed	15	5	4
Medicaid Fraud Unit	Cases Closed (Civil and Criminal)	115	131	137
UCCC	New Licenses Issued	95	92	68
UCCC	License Total	735	742	728
UCCC	New Registrations Issued (Debt Mgt)	4	2	1
UCCC	Debt Mgt Total Registration	48	45	46
UCCC	Compliance Examinations	296	371	481
Debt Collection	New Licenses Issued	126	94	99
Debt Collection	Total Licenses Issued	805	789	741
POST	Revocations?	949	931	983
POST	Certified Peace Officers?	38	31	33
Safe2Tell	Tips	2,272	3,178	3,467
Consumer Protection/Antitrust	Deceptive Trade Investigations, Sue or Settlements	27	55	57
Consumer Protection/Antitrust	Consumer Complaint Intake	7,119	7,690	7,785

**DEPARTMENT OF LAW
FY 2016-17 JOINT BUDGET COMMITTEE HEARING AGENDA**

**Thursday, November 19, 2015
9:00 am – 11:00 am**

9:00-9:20 INTRODUCTIONS AND OPENING COMMENTS

9:20-9:30 REQUEST R1 – SAFE2TELL SOFTWARE

[Background Information: The Department's FY 2016-17 budget request includes an increase of \$60,000 General Fund in FY 2016-17 to support a new contract for anonymous tip reporting software utilized by the Safe2Tell Program. Because the contract took effect July 1, 2015, the request also anticipates a FY 2015-16 supplemental request for an increase of \$62,500 General Fund to cover the cost of the software in the current year.]

1. Please discuss the benefit of the new Safe2Tell reporting software. For example, does the software currently include a mobile application ("app") for reporting purposes? Was the new software associated with the discovery of potential issues in Canon City?
2. Please provide an update on the implementation of the office reorganization requested and approved through the FY 2015-16 budget process, including the creation of the Office of Community Engagement, the movement of Safe2Tell into the newly created Office of Community Engagement, and the creation of new positions in the Attorney General's office.

9:30-9:40 REQUEST R2 – CARR BUILDING ADDITIONAL LEASED SPACE

[Background Information: The Department's FY 2016-17 budget request includes an increase of \$113,406 total funds (including \$31,535 General Fund) to support additional leased space in the Ralph L. Carr Colorado Judicial Center. Because the Department occupied the additional space starting July 1, 2015, the request also anticipates a FY 2015-16 supplemental request for an increase of \$91,878 total funds (including \$25,446 General Fund) to cover the cost of the additional space in the current year.]

3. Please discuss the Department's current and anticipated needs for leased space within the Carr Center based on anticipated growth of the Department's staff.

9:40-9:55 REQUEST R3 – SENIOR AAG SPECIAL PROSECUTION

[Background Information: The Department's FY 2016-17 budget request includes an increase of \$163,243 General Fund and 0.9 FTE (annualizing to \$163,295 General Fund and 1.0 FTE in subsequent years) to add a senior assistant attorney general to the Special Prosecutions Unit to focus specifically on multi-jurisdictional drug trafficking cases.]

4. The Department's request and the JBC Staff briefing discuss the increasing use and complexity of wiretap investigations as one of the drivers increasing the drug trafficking prosecution workload. The request and the JBC Staff briefing mention the prevalence of

disposable cell phones (“burners”) as one factor driving up the number of wiretap applications (and therefore workload).

- a. Please provide additional detail on when and why the Department needs permission on each cell phone vs. getting a warrant for the individual that could apply to multiple phone numbers.
 - b. Would a statutory change be necessary or helpful to reduce the need for redundant applications related to a single individual or group? If so, could the General Assembly make the change through state law? Please explain.
 - c. Does a similar dynamic exist for computers and IP addresses? How does the Department handle surveillance for computers?
5. The Department has mentioned an increase in multi-state cases related to marijuana, potentially associated with the legalization of marijuana in Colorado.
- a. Please explain what is happening and the potential relationship to legalization.
 - b. Would the Marijuana Tax Cash Fund be an appropriate funding source for the multi-state work associated with marijuana enforcement?
 - c. Is there an interstate compact associated with drug trafficking and marijuana prosecution? If so, would such a compact provide a potential model for cyber crime enforcement and prosecution? Please explain.

9:55-10:05 REQUEST R4 – CONSUMER PROTECTION COMPLIANCE INVESTIGATOR

[Background Information: The Department’s FY 2016-17 budget request includes an increase of \$92,891 custodial cash funds spending authority and 1.0 FTE (annualizing to \$82,894 and 1.0 FTE in subsequent years) to add another consumer protection compliance investigator supporting the Consumer Fraud Unit and the Antitrust, Tobacco and Consumer Protection Unit.]

6. The request cites an increasing workload on consumer protection issues (including an increasing number of consumer complaints) as justification for the additional position. Why is the workload increasing? That is, what is driving the increasing number of complaints?

10:05-10:15 REQUESTS R5 – ACCOUNTING TECHNICIAN III AND BR1 – P.O.S.T. MARIJUANA REDUCTION

[Background Information: The Department’s FY 2016-17 budget request includes the following changes: (1) an increase of \$73,127 reappropriated funds from indirect cost recoveries and 1.0 FTE (annualizing to \$63,130 reappropriated funds and 1.0 FTE in subsequent years) to add an accountant technician III to the Administration section based on an increasing accounting workload; and (2) a decrease of \$418,000 cash funds from the Marijuana Tax Cash Fund appropriated to the Peace Officers Standards and Training (P.O.S.T.) Board for marijuana training and development grants.]

7. The request mentions increasing accounting workload associated with the P.O.S.T. Board marijuana training grants as one of the factors requiring additional accounting staff.
 - a. Please provide additional detail on the marijuana training grants and how they impact the accounting workload. For example, are state staff providing the training or do the grants support local training efforts? How many grants has the Department provided, to whom, and for what purpose?
 - b. Please provide a brief description of the various uses of Marijuana Tax Cash Fund moneys within the Department of law, including detail on how the training grants function.
 - c. Request BR1 seeks to reduce funding for the P.O.S.T. Board training effort. However, others have indicated a need and capacity for *additional* training dollars. Please explain why the P.O.S.T. Board does or does not need the \$418,000 that request BR1 would reduce in FY 2016-17.

10:15-10:30 OTHER QUESTIONS

8. Request NP2 – Colorado River 0.5 FTE seeks an increase of \$64,314 cash funds from the Colorado Water Conservation Board (CWCB) Litigation Fund to support an additional 0.5 attorney FTE focused on the defense of the Colorado River Compact. The request cites an increasing workload as justification for the increase. Please provide additional detail on the current and anticipated changes in workload related to the Colorado River. What issues are coming up?
9. The JBC Staff briefing document lists the investigation and prosecution of Medicaid provider fraud and patient abuse among the Department's criminal enforcement responsibilities. Please provide additional detail on the Department's role with respect to patient abuse, including the potential impact of recent changes in mandatory reporting requirements as well as other policy changes that the Department feels warrant discussion.
10. The Department has expressed an interest in potential legislation associated with the Natural Resource Damage Trustees. Please discuss the Department's proposal.
11. Please discuss the impact of the recently enacted felony DUI legislation on the Peace Officers Standards and Training (P.O.S.T.) Board's training efforts related to impaired driving. For example, has the bill created additional training requirements?

10:30-11:00 PENDING LEGAL CASES INVOLVING OR AFFECTING THE STATE

12. Please discuss the status of the cases covered in the draft report to the State Controller regarding litigation involving the State, as well as any other legal matters that the Attorney General believes warrant the Committee's attention.
13. Please provide an update on the status of the ongoing Tobacco Master Settlement litigation.

ADDENDUM: OTHER QUESTIONS FOR WHICH SOLELY WRITTEN RESPONSES ARE REQUESTED

QUESTIONS COMMON TO ALL DEPARTMENTS

1. Provide a list of any legislation that the Department has: (a) not implemented or (b) partially implemented. Explain why the Department has not implemented or has only partially implemented the legislation on this list.
2. Please provide a detailed description of all program hotlines administered by the Department, including:
 - a. The purpose of the hotline;
 - b. Number of FTE allocated to the hotline;
 - c. The line item through which the hotline is funded; and
 - d. All outcome data used to determine the effectiveness of the hotline.
3. Please provide an inventory of the Department's programs in order of effectiveness, including the following:
 - a. Name of the program;
 - b. Performance metrics used to evaluate each program's effectiveness; and
 - c. Identification of metrics that are deemed evidence-base and by which means this determination has been established.
4. Describe the Department's experience with the implementation of the new CORE accounting system.
 - a. How has the implementation improved business processes in the Department?
 - b. What challenges has the Department experienced since implementation and how have they been resolved (i.e. training, processes, reports, payroll)?
 - c. What impact have these challenges had on the Department's access to funding streams?
 - d. How has the implementation of CORE affected staff workload?
 - e. Do you anticipate that CORE implementation will result in the need for a permanent increase in staff? If so, indicate whether the Department is requesting additional funding for FY 2016-17 to address it. If a permanent staff increase is needed and the Department

is NOT requesting additional funding for FY 2016-17 for it, how will the Department pay for the new staff?

5. If the Department receives federal funds of any type, please provide a detailed description of any federal sanctions for state activities of which the Department is already aware. In addition, please provide a detailed description of any sanctions that MAY be issued against the Department by the federal government during FFY 2015-16.
6. Does the Department have any outstanding high priority recommendations as identified in the "Annual Report of Audit Recommendations Not Fully Implemented" that was published by the State Auditor's Office and dated October 2015 (link below)? What is the Department doing to resolve the outstanding high priority recommendations?

[http://www.leg.state.co.us/OSA/coauditor1.nsf/All/4735187E6B48EDF087257ED0007FE8CA/\\$FILE/1542S%20Annual%20Report.%20Status%20of%20Outstanding%20Audit%20Recommendations,%20As%20of%20June%2030,%202015.%20Informational%20Report.%20October%202015.pdf](http://www.leg.state.co.us/OSA/coauditor1.nsf/All/4735187E6B48EDF087257ED0007FE8CA/$FILE/1542S%20Annual%20Report.%20Status%20of%20Outstanding%20Audit%20Recommendations,%20As%20of%20June%2030,%202015.%20Informational%20Report.%20October%202015.pdf)

7. Is the department spending money on public awareness campaigns related to marijuana? How is the department working with other departments to coordinate the campaigns?

QUESTIONS SPECIFIC TO THE DEPARTMENT OF LAW

8. How much attorney time and expenses (a) have been incurred and (b) will be incurred as a result of the Attorney General's participation in the following three lawsuits:
 - a. Wyoming v. Department of Interior, Case No. 15-CV-43 (D. Wyo. 2015) (Bureau of Land Management Fracking Rules);
 - b. North Dakota v. EPA, Case No. 15-CV-59 (D. N. Dak. 2015) (Clean Water Rules); and
 - c. West Virginia v. EPA, Case No. 15-1363 (D.C. Cir. 2015) (Clean Power Plan)?
9. How much money has your office collected in fee revenue from the Department of Public Health and Environment for legal counsel on:
 - a. Development of state response, materials, and preparation on state implementation of the Clean Power Plan; and
 - b. Development of state response, materials, and preparation on state implementation of revised rules for complying with federal clean water rules (WOTUS)?
10. How much money has your office collected in fee revenue from the Department of Natural Resources and the Colorado Oil and Gas Conservation Commission for legal counsel on:
 - a. Development of state response, materials, and preparation of state implementation on fracking rules from the Bureau of Land Management?