

**DEPARTMENT OF LAW
FY 2010-11 JOINT BUDGET COMMITTEE HEARING AGENDA**

**Tuesday, November 17, 2009
1:30 pm – 3:30 pm**

1:30-1:50 INTRODUCTIONS AND OPENING COMMENTS

1:50-2:00 WATER CASES

1. How much does the Department spend in total on water cases and related matters, including amounts spent through the Legal Services to State Agencies program?

In FY09, the Department provided legal services to various divisions and units within the Department of Natural Resources for water cases totaling \$1,214,471 which represents approximately 16,113 legal service hours. Some of the clients in the Department of Natural Resources include the State Engineer and the Colorado Water Conservation Board. In addition to the Legal Services to State Agencies program, the Department also has incurred expenditures to related water cases that are appropriated directly to the Department of Law:

- Federal Interstate Water Unit - \$549,737 with 5.5 FTE.
- Defense of the Colorado River Compact - \$426,699 with 4.0 FTE.
- Defense of the Republican River Compact - \$141,218 with zero FTE.
- Consultant Expense - \$92,590 with zero FTE.

2:00-2:15 DECISION ITEMS

Decision Items 1 and 2, Additional FTE and spending authority for the Consumer Credit Units

2. What legal issues are potentially involved when the state takes an internet payday lender to court?

The usual legal issue is whether the state has jurisdiction over the actions of unlicensed internet payday lenders that are located out of state with no physical presence here. The lenders state that the loans are subject to their home state's law (or any other state they choose). The Colorado Uniform Consumer Credit Code states that lenders that solicit loans in this state by any means and make loans to Colorado residents are subject to Colorado law. These lenders knowingly make loans to Colorado residents and have sufficient minimum contacts in the state, including depositing and withdrawing funds into Colorado bank accounts, soliciting loan renewals, and collection calls.

3. JBC staff mentioned a case involving more than 10,000 borrowers (the Security Finance Corporation of Colorado case). Please provide details on this case.

This case was filed in Denver District Court in July 2008 and involves a licensed small installment lender that makes loans of \$1,000 or less, usually due in about 6 months. The lawsuit covers the period from 2004 to 2008. The Department alleged unconscionable lending, including failure to adequately underwrite a consumer's ability to repay, inflating and falsifying budgets, and utilizing undocumented third-party contributions to bolster borrower income and reduce expenses. There are about 24,000 borrowers, but the Department believes the court will allow us to prove our case based upon a sample of about 1,500 borrowers. At an average of about 6-7 loans per borrower that equates to about 10,000 separate loans.

All UCCC cases involve a large number of borrowers. When a violation is discovered, it is usually systemic and involves hundreds or thousands of consumers and loans. Whether the problem is an overcharge, repossessions without a right to cure default, or unconscionability, the practice is recurrent and the investigation and resolution of the matter is document intensive. Although many cases settle, this will still involve reviewing hundreds of files to ensure the settlement requirements were met. For this reason, the Department believes converting the current legal assistant position from .5 to 1.0 FTE is essential.

2:15-3:00 OPTIONS FOR REDUCING GENERAL FUND APPROPRIATIONS

Increased Fees for the Insurance Fraud Unit

4. JBC Staff has recommended that the Committee consider

- a. Sponsoring legislation to increase the \$425 fee imposed by Section 10-3-207 (1) (e), C.R.S., to a level that will produce enough revenue to cover all the costs of operating the unit, including indirect costs and Pots allocations, or**
- b. Reducing the Insurance Fraud Unit's appropriation to a level consistent with the revenue raised by the \$425 fee, i.e. to a level that will allow the \$425 fee to cover all costs of operating the unit, including Pots and indirect costs.**

What is the Department's opinion regarding the feasibility and desirability of these two funding alternatives?

The Unit is currently comprised of 7.5 FTE positions which break down to two prosecutors, four criminal investigators a paralegal and half of an administrative assistant. Cases investigated and prosecuted by the Unit include insurance agent fraud; claimant fraud; bail bondsman violations; workers compensation fraud and false claims of casualty and property loss.

In the past couple of years, the unit has been able to pursue some bigger cases and investigations. One includes a group of criminals who make false claims about car accidents

and also submit false invoices for work not performed. Another large case involves fraudulent medical billing at a chiropractic clinic. In both instances, it is believed that the fraud has been going on for years. While the investigations are still pending, it is anticipated that these prosecutions should have a deterrent effect in demonstrating that the Unit has the capabilities to catch and prosecute organized fraud, which did not happen before the Unit expanded.

If the Unit's appropriation is reduced to match existing revenues at the \$425 fee level, it would result in the loss of approximately 2.5 FTE. Then larger cases may be too voluminous for the unit to handle, or the Unit would have to ignore the smaller cases that it has traditionally prosecuted. For these reasons the Department would support a JBC bill raising the fee to \$575 which the Department believes should sufficiently fund the unit for the next three years.

5. If the Department believes the insurance fee should be increased, what is the appropriate level for the fee?

The Department believes that the fee should be set at \$575. This will provide sufficient revenues to fund the Insurance Fraud unit for the next three to four years.

6. As an alternative to a fee set in statute, the fee could be automatically adjusted so that the revenue it produces covers the cost of operating the insurance fraud unit. If the Department believes the fee should be increased, what is its opinion of this alternative?

The Department supports the concept of adjusting fees to match program expenditures without the need for legislation. In the next few weeks the Department intends to discuss ways that fees could be adjusted on an annual basis with the Division of Insurance and JBC staff. It is quite unusual for a prosecutor to set fees to cover the cost of prosecution and therefore creates a situation with which the Department is not comfortable.

Increased Fees for the Securities Fraud Unit

7. JBC Staff has recommended that the Committee consider refinancing the General Fund appropriation to the Securities Fraud Unit with an increased transfer from the Division of Securities Cash Fund. What is the Department's opinion regarding the feasibility and desirability of this funding alternative, bearing in mind that it will increase fees for those regulated by DORA's Division of Securities?

While the Department would prefer that all prosecutorial activities be General Funded, the reality is that cash funds pay for a portion of prosecution expenses. That being said the Department believes that the following statute (11-51-603.5(2) C.R.S.) enables the General Assembly to fund the Department of Law's Security Fraud prosecution unit from the Division of Securities Cash fund. The two investigator positions that are funded from the General Fund are vital to the prosecution of securities fraud. About 1/2 of all securities fraud cases handled by the unit are referred from District Attorneys offices or the public as opposed to

referrals from the Division of Securities. Without the Department's own investigators, prosecution of these cases would not be possible.

Tipping Fees for the CERCLA Unit

- 8. JBC Staff has recommended that the Committee consider introducing a bill similar to S.B. 03-280 that would increase solid waste disposal fees (“tipping fees”) by 3¢ to pay for the Department's CERCLA work. Staff further recommends that this increase be permanent. What is the Department’s opinion regarding the feasibility and desirability of such a bill?**

This Unit handles the legal work for ten 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 works with CDPHE to ensure cleanup work progresses at these sites as required.

In addition, the Unit recovers Natural Resources Damages (sometimes called NRDs) on behalf of the State's Natural Resource Trustees to compensate for injuries caused by hazardous substances to the State's natural resources. Once recovered, the Unit assists the Trustees in determining how to allocate the NRDs funds to restore or replace the injured natural resources such as ground water, wildlife habitat, and fish populations.

Without this unit:

- (1) There will not be resources to oversee selection and implementation of restoration projects at Rocky Mountain Arsenal (\$27 million settlement), California Gulch (\$21 million settlement), or other sites. Pending and future NRD settlements will be barred due to the statute of limitations. Time-sensitive restoration opportunities, such as acquisition of lands facing development pressures, would be lost.
- (2) DOL will not be able to provide legal advice regarding the continuing cleanup at California Gulch, Rocky Mountain Arsenal or other superfund sites. Continued representation of the state in the nation-wide ASARCO bankruptcy matter would be jeopardized, where tens of millions of dollars in NRDs and remedial action funds for Colorado are at stake.
- (3) Colorado's Natural Resources Trustees would have difficulty identifying and assessing additional sites where the State's natural resources have been damaged. The Unit is currently negotiating with responsible parties at two damages sites and anticipates significant recoveries. Several more sites are in the preliminary assessment stage. Ending this unit would cease not only current activities but future damages recoveries as well.

Medicaid Fraud

9. What would be the impact of increasing the size of the Medicaid Fraud Unit? Would recoveries increase?

The Department believes recoveries would increase if the size of the MFCU was increased. Having more personnel would permit the unit to detect and investigate more fraud. At our current size, we are not able to detect all of the fraud that is being perpetrated against the Medicaid system. However, the monetary recoveries reportable by the MFCU would not necessarily make up directly for the expense of added personnel for three reasons:

- As a criminal prosecution unit, the MFCU's monetary collections in state cases are typically limited to money paid in criminal restitution. Frequently, criminal defendants are unable to repay the state for the losses caused by their crimes, or are put on payment plans that return pennies on the dollar. Therefore, while the MFCU might be able to file more cases based on more fraud investigation, and might be able to get restitution orders that match the added expense, collections would likely not be equivalent.¹
- The majority of the MFCU's recoveries are from interstate litigation that is typically brought by many states jointly against pharmaceutical or device manufacturers for wrongdoing that is nationwide or involves many states. The addition of personnel to the MFCU would not directly influence the number of interstate cases that ultimately result in recovery for the State.
- Although MFCU investigators often identify substantial overpayments that are referred to the Department of Health Care Policy and Financing (HCPF) for recovery, the MFCU does not take credit for the amount of these referrals if they result from cases that were originally sent to the MFCU from HCPF for further review.

Still, the addition of personnel to the MFCU would add value for the State in several ways:

First, it would permit more aggressive local investigation of interstate cases that might result in better data being reported to the interstate teams and thus greater recoveries; second, it would permit more overpayments to be reported back to HCPF for collection;² third, because more fraudulent providers would be identified, those providers can have their payments suspended by HCPF, resulting in savings to HCPF of money that would have been paid improperly to those providers³; and fourth, more investigation and prosecution will result in a greater deterrent effect to people who may consider committing fraud. These savings would be real, but would be difficult to quantify in dollars.

¹ Although the MFCU could probably bring civil suit against wrongdoers in the name of the State, the statute that provides civil penalties and multiple damages for Medicaid fraud, C.R.S. 25.5-4-306, only applies to the Department of Health Care Policy and Financing and not to the Attorney General in general.

² It must be understood, however, that the State is responsible for repaying the federal government back its 50% share of any Medicaid recoveries. Further, as we understand the rule, it also requires the state to make the repayment even if the recovery has been identified but not yet collected.

³ In such instances, the savings to HCPF would be only a part of the payments that are no longer being made to the providers because legitimate services would be transferred to other providers who would bill for those services.

10. How much could the Medicaid Fraud Unit be expanded and still qualify for a federal match?

Under the controlling federal statute, 42 U.S.C. 1396b (3)(b), the federal match portion of the MFCU’s budget shall not exceed one quarter of one percent of the Medicaid program size. If this formula is applied to, for example, a Medicaid program size of \$3.7 billion, the maximum federal match would be \$9.25 million. The actual federal match is approved at approximately \$1.22 million for FY 09-10. While this does not suggest that the federal government would be willing to multiply its match by a factor of seven at the State’s request, it does illustrate that the MFCU is funded at a far smaller size than would be federally permissible.

11. Provide a list of Medicaid fraud cases that produced financial recoveries in recent years. What fraudulent activities were discovered?

The table below is assembled from earlier JBC Footnote reports. Cases marked with an asterisk are interstate litigation recoveries against pharmaceutical or device manufacturers. The balances of the cases are criminal cases or cases in which overbilling is detected and a demand for repayment is made. These tables do not show collections made in a given year from cases settled in prior years.

2009 Footnote Report

<u>Name</u>	<u>Ordered / Settled Restitution</u>	<u>Paid Restitution</u>	<u>State Collected</u>	<u>Federal Collected</u>	<u>Types of Fraud Alleged</u>
Tina Martinez	63.26	0	0	0	Forged invoices, services not rendered
Ada A. Ngaska	8,376.55	0	0	0	Nurse impersonation, no value for payments made
Todd Teel	16,063.00	0	0	0	Paramedic impersonation, no value for payments
<i>BMS/Apothecon*</i>	1,323,097.95	1,323,097.95	1,323,097.95	0	<i>Off-label marketing, kickbacks</i>
<i>Cephalon*</i>	1,241,606.78	1,241,606.78	1,241,606.78	0	<i>Off-label drug marketing</i>
<i>Eli Lilly*</i>	2,699,899.61	2,699,899.61	2,699,899.61	0	<i>Off-label drug marketing</i>

2008 Footnote Report

Karen Bittner	30,891.60	474.00	237.00	237.00	Forged invoices, services not rendered, inflated billing
Daniel Arnold	1,060,151.17	0	0	0	Forged invoices, services not rendered, inflated billing
IRN International	2,590.80	2,590.80	1,295.40	1,295.40	Services not rendered
Cooper Corner	1,579.00	1,579.00	789.50	789.50	Inflated timesheets
Health Care One	6,362.43	6,362.43	3,181.21	3,181.22	Bill products received at no cost
<i>Purdue*</i>	792,952.78	792,952.78	792,952.78	0	<i>Fraudulent product representations</i>
<i>Medicis*</i>	17,739.75	17,739.75	17,739.75	0	<i>Off-label marketing</i>
<i>Aventis*</i>	121,621.56	121,621.56	121,621.56	0	<i>Average wholesale price reporting violations</i>
<i>Merck I*</i>	945,450.00	945,450.00	945,450.00	0	<i>Rebate and best price reporting violations, kickbacks</i>
<i>Merck II*</i>	844,345.00	844,345.00	844,345.00	0	<i>Rebate/ best price violations</i>
<i>GSK*</i>	54,696.00	54,696.00	27,348.00	27,348.00	<i>Average wholesale price reporting violations</i>
<i>Walgreens*</i>	731,447.38	731,447.38	731,447.38	0	<i>Improper dosage switching</i>

2007 Footnote Report

Anna Belyakova	835.24	835.24	417.62	417.62	Billing more hours than worked
Marina Bogdanov	756.40	0	0	0	Billing more hours than worked
Carl Nunn	4,084.50	0	0	0	Forged invoices, services not rendered, inflated billing
Ginta Mikulskiene	1,792.94	1,792.94	896.47	896.47	Billing more hours than worked
Nancy Morgan	30,685.36	20,396.01	10,198.00	10,198.00	Created fictitious employee, false billing for services
Bill Humphries	728,224.05	0	0	0	Forged invoices, services not rendered, inflated billing
<i>GSK-KZ*</i>	61,698.12	61,698.12	61,698.12	0	<i>Average wholesale price</i>
<i>Omnicare, Inc.*</i>	151,559.02	151,559.02	151,559.02	0	<i>Improper dosage switching</i>
<i>Schering Plough*</i>	1,093,844.46	1,093,844.46	1,093,844.46	0	<i>Rebate violations</i>
O'Hara Center	868,894.00	868,894.00	868,894.00	0	Care not provided

Financing Consumer Protection from the Consumer Protection Custodial Cash Fund

12. Can more of the balance in the Consumer Protection Custodial Cash Fund be used to support consumer protection and/or antitrust work, given the restrictions that have been placed upon these funds? Is it desirable to increase funding for the Consumer Protection and Antitrust Unit from this source?

To the extent that we already fund several FTE in Consumer Protection with custodial funds, we have done so reluctantly (potential loss of 30% of the Unit staff during 2003-04 budget "crisis"). Funding a significant portion (or all) of a Unit primarily dedicated to law

enforcement activities from recoveries obtained in law enforcement actions creates a potential conflict of interest. In enforcing consumer protection and antitrust laws, the Attorney General must always have the freedom to challenge the most egregious practices, and to pursue those cases that have the broadest public consequences. Such cases do not always have the greatest potential for the recovery of money damages or custodial funds. In fact, the appropriate focus in many such cases is on injunctive relief, restitution, and civil or criminal penalties. The Attorney General acts to stop such conduct, and must do so without regard to whether damages or custodial funds can be recovered. That concern may also negatively impact decisions about the resolution of cases. When confronted with the potential for a limited recovery, the Attorney General should not have to decide between consumer restitution and the survival of his important consumer protection and antitrust programs. Are we bringing a case -- or settling a case in a certain fashion -- because it is in the public interest or in the interest of the Unit's self-preservation? This is really no different than the perceived conflict inherent in the State hiring outside counsel on a contingency fee basis, giving private counsel a financial stake in the outcome of law enforcement activities of the State. Using custodial moneys to fund a significant portion of the Consumer Protection Unit also creates great uncertainty in the budget and planning for future law enforcement activities. The amount of custodial funds received in any given year is completely unpredictable, with some cases taking a number of years to come to fruition. A constant need to generate new funds to sustain the Unit will no doubt force the Unit to pursue smaller, less complicated cases that will result in quicker settlements and/or judgments. That may not be in the public's interest. Finally, funding a significant portion of the Consumer Protection Unit through custodial funds will mean that fewer, if any, of those funds will be available for important consumer education and outreach programs currently funded in this fashion (e.g., AARP ElderWatch), or that might be funded in the future.

3:00-4:00 STATUS OF CURRENT LITIGATION

13. What is the status of the Lobato case?

The case is on its way back to the trial court. In terms of the overall general time-line for remand to the trial court, the Supreme Court issued the mandate to the court of appeals on November 4. Under the appellate rules, the court of appeals has 46 days to enter judgment remanding the case to the trial court. By our calculation, the 46th day from November 4 is Sunday, Dec. 19, so by Mon. Dec. 21 the case should be in the trial court. CAR 41(b)(1). That said the court of appeals could take less than 46 days to send it to the trial court. Plaintiffs' counsel has indicated to the department that they intend to amend the complaint. So as it stands, and while it's a best guess, the Department does not expect to see this case becoming active before the end of the year.

14. If a court finds in favor of plaintiffs in the Lobato case, what funding options will the state have? Given the state's constitutional limits on taxes and spending, how could it comply with an order that may require that billions be spent?

Attorney Client privilege and must be discussed in executive session.

- 15. The state constitution requires that the General Assembly maintain a “thorough and uniform” system of free public education throughout the state. Leaving uniformity aside, can the state do anything statutory to alter the standard that a court could use to judge “thoroughness” in the Lobato case? Should the “thorough” standard be reduced to protect the state against a “thorough” claim?**

Attorney Client privilege and must be discussed in executive session.

- 16. What is the status of the Rothgery case and what are its implications for Colorado?**

In *Rothgery v. Gillespie County, Texas*, 128 S.Ct. 2578, 2581(2008), the United States Supreme Court held that a defendant’s right to counsel “attaches” at a defendant’s initial appearance before a judicial officer at which the defendant is told of the formal accusation against him and restrictions are imposed on his liberty. Attachment, however, does not necessarily equal an entitlement to the assistance of counsel. *Id.* at 2592. *Rothgery* involved a felony case, and did not specifically address how its holding might apply to “less serious” offenses (i.e. offenses which do not involve the possibility of incarceration, and which have traditionally not triggered the right to appointed counsel). See *Argersinger v. Hamlin*, 407 U.S. 25 (1972).

In Colorado, prosecuting attorneys are authorized to conduct plea discussions with defendants in misdemeanor, petty offense, or traffic offense cases before the defendant’s application for appointment of counsel is submitted. In addition, an indigent defendant is not provided counsel in these types of cases if the prosecutor files a written statement that incarceration is not being sought¹. However, these statutes recognize a defendant’s right to counsel and require communicating this right to the defendant at the first appearance in court; and they specifically allow for a defendant to exercise his right to counsel if he so desires. Where possible, however, they also provide flexibility for prosecutors and defendants to work out plea agreements and to dispose of small, easy cases quickly, efficiently, and economically. No Colorado appellate court has yet addressed whether this practice conflicts with the holding of *Rothgery*². Until an appellate court specifically addresses these statutes and finds them unconstitutional, it is premature to assume that it is necessary to provide appointed counsel to every indigent defendant in every criminal case.

The Attorney General is prepared to argue that the Colorado statutory scheme does not violate the dictates of *Rothgery*.

¹ §§ 16-7-207(1)(c) and 16-7-301(4)(a), C.R.S.

² Although the *Rothgery* court lists Colorado among a small number of states that delay appointing counsel, *Rothgery* at 2587-88, it appears that the Court may not have thoroughly considered the limited scope of the provisions in question.

17. What is the status of the arbitration proceeding with participating tobacco manufacturers?

All Participating Manufacturer actions in state MSA courts to compel arbitration have been completed and all MSA jurisdictions, except Montana, are participating in the diligent enforcement arbitration. The States and Participating Manufacturers are in the process of negotiating procedures for the arbitrations. As of November 2009, both sides have selected their party-appointed neutral arbitrators. A procedure is in place for the two party-appointed arbitrators to select a third arbitrator and for conflicts checks to be conducted. After the final arbitrator is selected, but not earlier than mid-February 2010, statements of claims will be filed along with submissions to the panel regarding any jurisdictional issues and unresolved procedural issues. This will be followed by an initial conference between the parties and the arbitration panel to set filing deadlines for responses and amended statement of claims, exchange of disclosures and discovery, and briefing on preliminary legal issues. At this time, there are no substantive discussions regarding settlement.

18. What is the status of the Republican River dispute?

In 1997, Kansas filed suit against Nebraska in the Supreme Court because of Nebraska's failure to deliver water to Kansas in the quantities allocated under the Republican River Compact. Colorado was joined in the Supreme Court litigation because of its status as a signatory to the Republican River Compact. The three States were able to negotiate a Final Settlement Stipulation (FSS) to resolve the Supreme Court litigation. In 2003, the FSS was incorporated into a Consent Decree issued by the Supreme Court. *Kansas v. Nebraska and Colorado* 538 U.S. 720 (2003). The FSS established the Republican River Groundwater Model as well as a set of accounting procedures, which utilize rolling average compliance periods to determine a state's compliance with the compact.

Both Nebraska and Colorado have exceeded their respective water allocations under the compact and are currently out of compliance with the compact. Curtailing (ie shutting off) water rights is the standard mechanism to bring a state into compliance with a compact but curtailing water rights in the Republican River basin is not a feasible solution because it would devastate the social and economic integrity of the Eastern Plains region and would not actually guarantee full compliance with the compact. Streamflow projections indicate that even if Colorado was to curtail all wells in the Republican River basin Colorado would still not be able to achieve compact compliance by 2032 due to the legacy effect of past well pumping.

In 2004, the Republican River Water Conservation District (RRWCD) was created by Colorado statute to assist the State in complying with its compact obligation. In order to assist Colorado in its compliance with the compact, the RRWCD has been working on cost sharing arrangements with the federal government to voluntarily retire irrigation water rights and restore irrigated fields to native vegetation through several federal programs, including the

Conservation Reserve Enhancement Program (CREP), Environmental Quality Incentives Program (EQIP), and Agricultural Water Enhancement Program (AWEP). The voluntarily retirement of irrigation rights has moved Colorado closer to compact compliance but will not place Colorado into full compact compliance. In order to avoid the risk of curtailment, a plan for a compact compliance pipeline (CCP) was developed. The RRWCD received a \$60.6 million construction loan from the Colorado Water Conservation Board to develop the pipeline, which was approved by the legislature. The CCP is a 12.7 mile pipeline which is designed to deliver groundwater pumped from the wells located 8 to 15 miles north of Laird, Colorado to the North Fork of the Republican River just above the stream flow gage at the Colorado Nebraska state line. The CCP is estimated to cost \$71 million and the RRWCD projects final completion of the CCP in late 2010. In addition to the CCP, the RRCWD is also advocating that Bonny Reservoir on the South Fork of the Republican River be operated as a "run of the river dam" that would allow all baseflows and non-flood flows to be passed through the reservoir rather than stored in the reservoir.

In March 2008, Colorado submitted an application to the Republican River Compact Administration (RRCA) on behalf of the RRWCD, which sought approval of the CCP. Colorado has also submitted a resolution concerning Bonny Reservoir to the RRCA. At a special RRCA meeting on April 28, 2009, Nebraska and Kansas RRCA members voted not to approve the CCP application. Colorado initiated fast track arbitration (6 months), which is authorized under the FSS, on August 21, 2009 in an attempt to resolve the CCP dispute. Last year, the three states pursued arbitration related to a number of issues (changes to accounting procedures, the proper measure of damages, etc.). The upcoming arbitration process, however, is focused predominantly on the issue of the CCP. Nebraska has also invoked a parallel non-binding arbitration related to crediting issues for past payments for compact breach.

Colorado is currently in negotiations with Kansas and Nebraska regarding the arbitration agreement and the selection of an arbitrator. Several weeks ago, we distributed a proposed draft of the arbitration agreement to Kansas and Nebraska. The State of Nebraska has responded with its suggested revisions to the arbitration agreement but we have not yet received comments from the State of Kansas. We reminded Kansas this week to respond with its comments so that the arbitration agreement can be completed as expeditiously as possible. The three states have also been working with a mediator to assist in the selection of a potential arbitrator. We originally started with five candidates that have extensive experience in complex water disputes. After reviewing the resumes and rates charged by the candidates, we had the mediator contact the interested candidates and inquire whether they would be willing to reduce their hourly rates to \$300. Two of the candidates responded that they would be willing to work at the reduced hourly rate and one additional candidate has indicated that he may be willing to work at the reduced hourly rate subject to his law firm's final approval. Counsel for Kansas, Nebraska, and Colorado are attempting to schedule a telephone conference next week to discuss the selection of the arbitrator and to discuss any proposed revisions to the original arbitration agreement submitted by Colorado. Once the arbitration agreement and Time Frame Designation, which specifies our deadlines

for arbitration, is completed and we have selected an arbitrator, the three states will commence the fast track arbitration process.

If Colorado is not able to resolve its compact breach through negotiations with Kansas and Nebraska, through non-binding arbitration, through the development of the CCP and other proposed plans, Kansas and Nebraska may initiate suit against Colorado in the Supreme Court. Kansas and Nebraska may either seek an injunction against Colorado requiring curtailment of well pumping in the Republican River basin or Kansas and Nebraska may seek damages against Colorado for compact breach or Kansas and Nebraska may seek both an injunction as well as damages against Colorado.

ADDENDUM: QUESTIONS REQUIRING ONLY A WRITTEN RESPONSE

Questions Common to All Departments

Please provide:

- 1. Organizational charts for your department, showing divisions and subdivisions (with geographic locations).**

It is attached and included in the Department's budget submission.

- 2. Definitions of the roles and missions of your department, its divisions and subdivisions.**

It is attached and included in the Department's budget submission.

- 3. The number of current personnel and the number of assigned FTE by division and subdivision (with geographic locations), including all government employees and on-site contractors.**

See attached organizational chart which is included in the FY11 budget submission.

- 4. A specific list of names, salaries, and positions by division and subdivision of any salaried officer or employee making over \$95,000 per year in FY 2009-10.**

List is attached.

- 5. A specific list of names, bonuses, and positions by division and subdivision of any salaried officer or employee making over \$95,000 per year who received any bonuses in FY 2008-09.**

The Department of Law does not award bonuses outside the state compensation plans for performance based pay.

- 6. Numbers and locations of any buildings owned or rented by any division or subdivision (by location) and the annual energy costs of all buildings.**

The Department of Law is located entirely in the State Services Building at 1525 Sherman Street. The Department leases the building from Capital Complex and they would be able to provide information on energy usage of its building.

The Department does lease storage space in the basement of the former Petroleum Club, but utilities are included in the rental price.

- 7. Any real property or land owned, managed, or rented by any division or subdivision (by geographic location).**

None.

8. List essential computer systems and databases used by the department, its divisions and subdivisions, with their actual FY 2008-09 expenditures.

The Department has three “computer systems or databases:

- Timekeeping and billing system
- POST Skills Manager/Training Manager
- And our network file/print/email services

The total cost of the three “systems is estimated to be \$170,528 which includes licensing, and hardware maintenance.

9. Any actual FY 2008-09 expenditures over \$100,000 total from the department or from its divisions and subdivisions to any private contractor, identifying the contract, the project, and whether the contracts were sole-source or competitive bid.

The Department had five contracts over \$100,000 in FY09. They are:

Sentinel Consulting	CERCLA	Bid
Hale Friesin LLP	Tobacco Litigation	Bid
Stratus Consulting	CERCLA	Sole-source
Beacon Communications	Building Security	Sole-source
RTD	Eco-passes	Sole-source

10. The amount of actual FY 2008-09 expenditures for any lobbying, public relations, gifts, public advertising, or publications including:

- a. expenditures for lobbying by public employees, contract lobbyists, or "think tanks;"**

None.

- b. expenditures for lobbying purposes at other levels of government;**

None.

- c. expenditures for lobbying purposes from grants, gifts, scholarships, or tuition;**

None.

d. expenditures for publications or media used for lobbying purposes;

None.

e. expenditures for gratuities, tickets, entertainment, receptions or travel for purposes of lobbying elected officials; or

None.

f. expenditures for any public advertising. Include all advertising campaigns, including those that are not for public relations.

\$2,385 primarily for advertising to fill a Spanish speaking position in the Foreign Prosecution Unit.

11. List of all boards, commissions, and study groups, including, actual FY 2008-09 expenditures, travel, per diem budgets and assigned FTEs.

Board	Travel Related Exp	Official Function	Total Expenditures	FTE
P.O.S.T	\$367	\$1,220	\$1,587	0.0
Collection Agency Board	\$358	\$389	\$747	0.0
U.C.C.C.	\$398	\$0	\$398	0.0

12. Suggest budget and staff reductions, including reductions in FTE and hours, by division and subdivision, that will reduce your department's total FY 2010-11 General Fund expenditures by 12.5% relative to FY 2009-10 appropriations before any adjustments that have been announced since the end of the 2009 session.

The Department is developing a multi-facet strategy to reduce its General Fund appropriation by 12.5% including base cuts, refinancing. The Department of Law's FY10 General Fund appropriation is \$10,008,041 of which \$2,096,078 is to pay the State portion of the District Attorneys' salaries. Therefore, the Department has control of approximately \$7,911,000 General Fund. For the purposes of budgetary reductions, the \$7.9 million figure is used as the baseline to calculate General Fund budget reductions percentages of which 12.5% is approximately \$988,000. For the Department's November 1st submission, the following reductions were included:

- \$50,000 to the Peace Officers Standards and Training Board
- \$7,538 for the elimination of the Statewide HIPAA Legal Services Line

- \$1,036 General Fund (\$6,282 all fund sources) lease space for offsite document storage.

Further strategies:

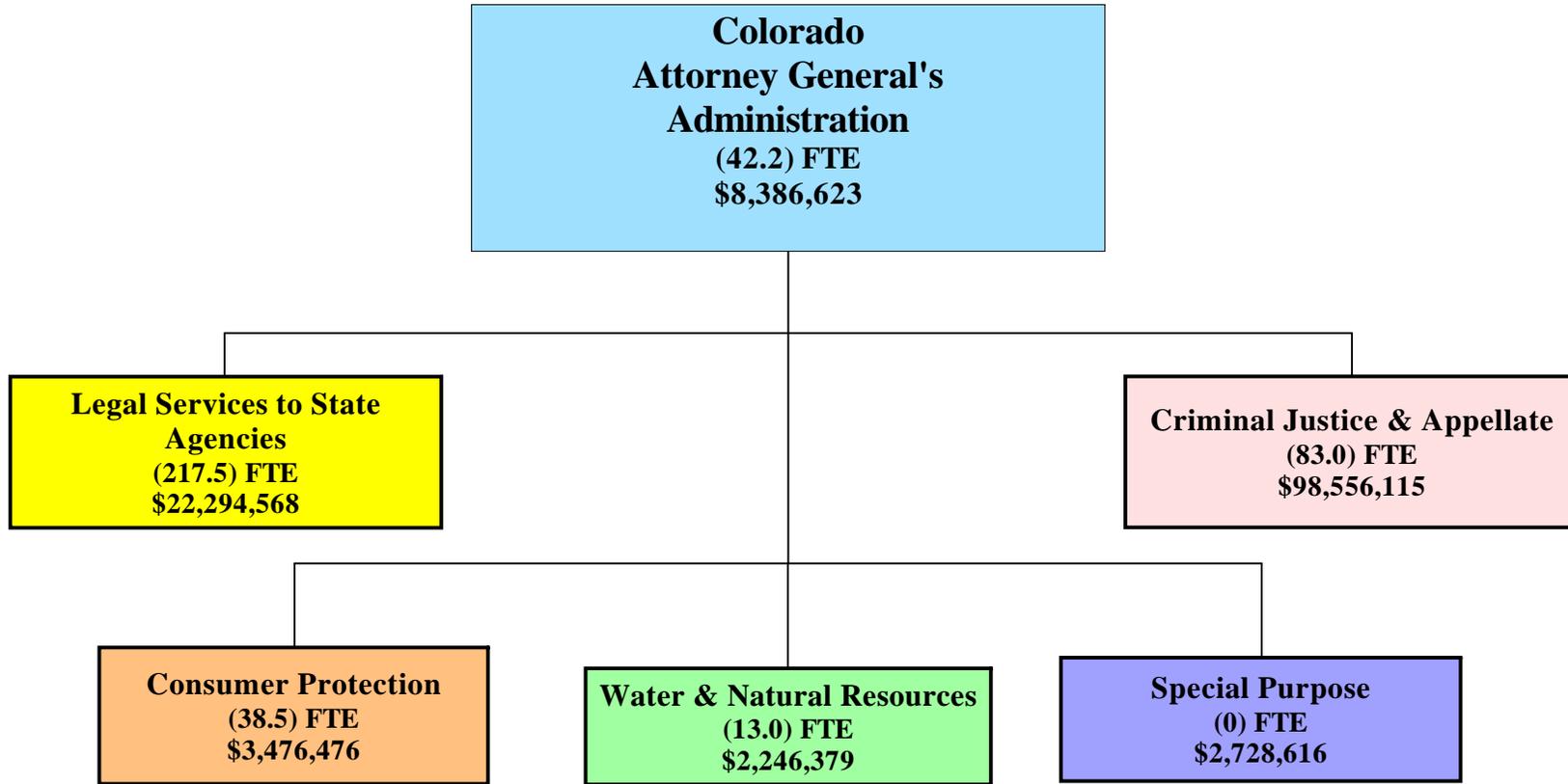
- Refinancing CERCLA and CERCLA contract line yielding a \$535,000 savings
- Refinancing two securities fraud investigators with division of securities cash funds as allowed per C.R.S. 11-51-603.5 (2). This would result in a general fund savings of \$172,000 in FY11.
- Examine all other General Fund positions and evaluate if any savings can be garnered.

The Department believes that it will be able to meet the targeted 12.5% reduction level by the time figure setting is complete.

13. Suggest budget and staff reductions, including reductions in FTE and hours, by division and subdivision, that will reduce your department's total FY 2010-11 General Fund expenditures by 25.0% relative to FY 2009-10 appropriations before any adjustments that have been announced since the end of the 2009 session.

A 25% reduction would be so drastic that the department would have to eliminate a number of positions in its limited General Fund programs. The Department has not formulated a detailed plan that would result in a 25% reduction in General Fund at this time, but could develop one if needed. The General Fund programs in the Department of Law include Appellate Unit, parts of Special Prosecution, Medicaid Fraud, Federal and Interstate Water Unit, CERCLA, Consumer Protection and District Attorney's Salaries.

**Colorado Department of Law
FY 10**



FY 09-10 Dept Total
\$47,688,777 (394.2) FTE

GF = \$10,008,041 CF = \$6,660,337
RA = \$29,727,339 FF = \$1,293,060

MISSION AND VALUES

Department of Law

2011

It is the mission of the Attorney General's Office to provide professional, ethical, and independent legal services to the State of Colorado and its citizens, to promote respect for and access to the justice system, to ensure the fair and open exercise of government, and to advance the public interest.

The Office values its employees as its most valuable resource and works to provide employees with the skills, knowledge and motivation to be successful and to exercise individual judgment and innovation.

The Office and its staff and volunteers commit to the highest professionalism, integrity, and ethical standards.

The Office promotes open and effective communications among and with its employees, clients, and the public and believes open communication is essential to its success.

The Office will provide quality legal service in an efficient, timely manner.

The Office respects diversity and commits to furthering it consistently through its programs, policies, and the effective use of the varied perspectives of its employees.

The Office will promote participatory, supportive management.

The Office will provide leadership on legal issues facing the state.

Department of Law
FY09 Salaried Officer making over \$95,000 per year

Section	Title	Monthly Salary	Annual Salary
Administration	DEPUTY ATTORNEY GENERAL	\$10,224	\$122,688
Administration	SOLICITOR GENERAL	\$10,885	\$130,620
Administration	CONTROLLER II	\$8,217	\$98,604
Administration	CHIEF DEPUTY ATT GENERAL	\$11,176	\$134,112
Administration	MANAGEMENT	\$9,541	\$114,492
Appellate	DEPUTY ATTORNEY GENERAL	\$10,168	\$122,016
Appellate	1ST ASST ATTORNEY GENERAL	\$8,227	\$98,724
Appellate	1ST ASST ATTORNEY GENERAL	\$7,909	\$94,908
Business & Licensing	DEPUTY ATTORNEY GENERAL	\$10,394	\$124,728
Business & Licensing	1ST ASST ATTORNEY GENERAL	\$8,875	\$106,500
Business & Licensing	1ST ASST ATTORNEY GENERAL	\$8,875	\$106,500
Business & Licensing	1ST ASST ATTORNEY GENERAL	\$8,338	\$100,056
Business & Licensing	SENIOR ASST ATTORNEY GEN	\$8,404	\$100,848
Business & Licensing	1ST ASST ATTORNEY GENERAL	\$8,505	\$102,060
Business & Licensing	SENIOR ASST ATTORNEY GEN	\$8,196	\$98,352
Consumer Protection	1ST ASST ATTORNEY GENERAL	\$8,274	\$99,288
Consumer Protection	1ST ASST ATTORNEY GENERAL	\$8,436	\$101,232
Consumer Protection	DEPUTY ATTORNEY GENERAL	\$10,394	\$124,728
Corrections Unit	DEPUTY ATTORNEY GENERAL	\$10,394	\$124,728
Corrections Unit	1ST ASST ATTORNEY GENERAL	\$9,805	\$117,660
Employment Tort	1ST ASST ATTORNEY GENERAL	\$8,621	\$103,452
Natural Resources	1ST ASST ATTORNEY GENERAL	\$8,291	\$99,492
Medicaid Fraud	1ST ASST ATTORNEY GENERAL	\$8,871	\$106,452
Medicaid Fraud	CRIMINAL INVESTIGATOR III	\$8,253	\$99,036
Natural Resources	1ST ASST ATTORNEY GENERAL	\$8,291	\$99,492
Natural Resources	SENIOR ASST ATTORNEY GEN	\$8,359	\$100,308
Natural Resources	SENIOR ASST ATTORNEY GEN	\$8,411	\$100,932
Natural Resources	1ST ASST ATTORNEY GENERAL	\$7,951	\$95,412
Natural Resources	SENIOR ASST ATTORNEY GEN	\$8,401	\$100,812
Natural Resources	SENIOR ASST ATTORNEY GEN	\$8,944	\$107,328
Natural Resources	1ST ASST ATTORNEY GENERAL	\$8,012	\$96,144

Natural Resources	1ST ASST ATTORNEY GENERAL	\$9,466	\$113,592
Natural Resources	1ST ASST ATTORNEY GENERAL	\$8,941	\$107,292
Natural Resources	1ST ASST ATTORNEY GENERAL	\$8,036	\$96,432
Natural Resources	DEPUTY ATTORNEY GENERAL	\$10,394	\$124,728
OAG/LSSA	SENIOR ASST ATTORNEY GEN	\$8,333	\$100,000
OCC	1ST ASST ATTORNEY GENERAL	\$8,672	\$104,064
P.O.S.T. Board	GENERAL PROFESSIONAL VI	\$8,230	\$98,760
Risk - Tort	1ST ASST ATTORNEY GENERAL	\$9,805	\$117,660
Special Prosecutions	CRIMINAL INVESTIGATOR II	\$7,917	\$95,004
Special Prosecutions	SENIOR ASST ATTORNEY GEN	\$8,440	\$101,280
Special Prosecutions	SENIOR ASST ATTORNEY GEN	\$8,460	\$101,520
Special Prosecutions	SENIOR ASST ATTORNEY GEN	\$8,000	\$96,000
Special Prosecutions	SENIOR ASST ATTORNEY GEN	\$7,919	\$95,028
Special Prosecutions	DEPUTY ATTORNEY GENERAL	\$10,221	\$122,652
Special Prosecutions	1ST ASST ATTORNEY GENERAL	\$8,502	\$102,024
Special Prosecutions	1ST ASST ATTORNEY GENERAL	\$9,095	\$109,140
State Services	1ST ASST ATTORNEY GENERAL	\$7,917	\$95,004
State Services	1ST ASST ATTORNEY GENERAL	\$7,916	\$94,992
State Services	SENIOR ASST ATTORNEY GEN	\$8,399	\$100,788
State Services	1ST ASST ATTORNEY GENERAL	\$8,850	\$106,200
State Services	ASST DEPUTY ATTNY GENERAL	\$11,294	\$135,528
State Services	1ST ASST ATTORNEY GENERAL	\$8,997	\$107,964
State Services	DEPUTY ATTORNEY GENERAL	\$10,224	\$122,688
State Services	1ST ASST ATTORNEY GENERAL	\$8,780	\$105,360
Transportation	1ST ASST ATTORNEY GENERAL	\$9,805	\$117,660
Transportation	SENIOR ASST ATTORNEY GEN	\$8,158	\$97,896
UCCC/CAB	1ST ASST ATTORNEY GENERAL	\$9,996	\$119,952

Department of Law			
FY09 Bonus Paid for Salaried Officer making over \$95,000			
SECTION		Monthly Salary	7/1/2008 NON-BASE BUILDING PERFORMANCE
Administration	CONTROLLER II	\$8,217	\$1,972
Administration	MANAGEMENT	\$9,541	\$2,290
Administration	SOLICITOR GENERAL	\$10,885	\$980
Business & Licening	1ST ASST ATTORNEY GENERAL	\$8,875	\$264
Business & Licening	1ST ASST ATTORNEY GENERAL	\$8,875	\$264
Business & Licening	1ST ASST ATTORNEY GENERAL	\$8,338	\$500
Consumer Protection	1ST ASST ATTORNEY GENERAL	\$8,274	\$393
Consumer Protection	1ST ASST ATTORNEY GENERAL	\$8,672	\$284
Consumer Protection	DEPUTY ATTORNEY GENERAL	\$10,394	\$2,500
Medicaid Fraud	1ST ASST ATTORNEY GENERAL	\$8,871	\$400
Medicaid Fraud	CRIMINAL INVESTIGATOR III	\$8,253	\$1,981
Natural Resources	1ST ASST ATTORNEY GENERAL	\$8,291	\$1,160
Natural Resources	1ST ASST ATTORNEY GENERAL	\$8,291	\$1,082
Natural Resources	1ST ASST ATTORNEY GENERAL	\$7,951	\$1,160
Natural Resources	1ST ASST ATTORNEY GENERAL	\$9,466	\$1,160
Natural Resources	1ST ASST ATTORNEY GENERAL	\$8,941	\$1,160
Natural Resources	1ST ASST ATTORNEY GENERAL	\$8,036	\$1,160
P.O.S.T. Board	GENERAL PROFESSIONAL VI	\$8,230	\$1,975
Special Prosecutions	CRIMINAL INVESTIGATOR II	\$7,917	\$1,900
Special Prosecutions	SENIOR ASST ATTORNEY GEN	\$8,440	\$700
Special Prosecutions	SENIOR ASST ATTORNEY GEN	\$8,460	\$150
Special Prosecutions	1ST ASST ATTORNEY GENERAL	\$8,502	\$150
Special Prosecutions	1ST ASST ATTORNEY GENERAL	\$9,095	\$275
State Services	1ST ASST ATTORNEY GENERAL	\$7,917	\$476
State Services	1ST ASST ATTORNEY GENERAL	\$8,850	\$500
State Services	1ST ASST ATTORNEY GENERAL	\$8,997	\$1,000
State Services	1ST ASST ATTORNEY GENERAL	\$8,780	\$1,000
Tort Litigation	1ST ASST ATTORNEY GENERAL	\$8,621	\$273
Tort Litigation	1ST ASST ATTORNEY GENERAL	\$9,805	\$235
Tort Litigation	SENIOR ASST ATTORNEY GEN	\$8,158	\$277
UCCC/CAB	1ST ASST ATTORNEY GENERAL	\$9,996	\$257