

**COLORADO GENERAL ASSEMBLY
JOINT BUDGET COMMITTEE**



SUPPLEMENTAL REQUESTS FOR FY 2013-14

DEPARTMENT OF LAW

**JBC Working Document - Subject to Change
Staff Recommendation Does Not Represent Committee Decision**

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DEPARTMENT OF LAW

Department Overview

The Attorney General is one of five independently elected constitutional officers of the State. As the chief executive officer of the Department of Law, the Attorney General represents and defends the legal interests of the people of the State of Colorado and serves as the legal counsel and advisor to state agencies. The Department's FY 2013-14 appropriation represents 0.3 percent of statewide operating appropriations and 0.2 percent of statewide General Fund appropriations.

Summary: FY 2013-14 Appropriation and Recommendation

Department of Law: Recommended Changes for FY 2013-14						
	Total Funds	General Fund	Cash Funds	Reappropriated Funds	Federal Funds	FTE
FY 2013-14 Appropriation						
SB 13-230 (Long Bill)	\$66,991,115	\$13,473,403	\$10,800,781	\$40,946,567	\$1,770,364	443.6
Other legislation	<u>572,957</u>	<u>(1,304,689)</u>	<u>1,529,351</u>	<u>348,295</u>	<u>0</u>	<u>2.9</u>
Current FY 2013-14 Appropriation	\$67,564,072	\$12,168,714	\$12,330,132	\$41,294,862	\$1,770,364	446.5
Recommended Changes						
Current FY 2013-14 Appropriation	\$67,564,072	12,168,714	\$12,330,132	\$41,294,862	\$1,770,364	446.5
S1 Lowry Range litigation expenses	503,049	0	503,049	0	0	0.0
NP1 Governor's Office legal services	584,139	0	0	584,139	0	3.9
NP2 DNR Division of Water Resources legal services	163,944	0	0	163,944	0	1.0
NP3 Statewide vehicle lease payment true-up	<u>(1,081)</u>	<u>0</u>	<u>0</u>	<u>(1,081)</u>	<u>0</u>	<u>0.0</u>
Recommended FY 2013-14 Appropriation	\$68,814,123	\$12,168,714	\$12,833,181	\$42,041,864	\$1,770,364	451.4
Recommended Increase/(Decrease)	\$1,250,051	\$0	\$503,049	\$747,002	\$0	4.9
Percentage Change	1.9%	0.0%	4.1%	1.8%	0.0%	1.1%
FY 2013-14 Executive Request	\$68,814,123	\$12,168,714	\$12,833,181	\$42,041,864	\$1,770,364	451.4
Request Above/(Below) Recommendation	\$0	\$0	\$0	\$0	\$0	0.0

Request/Recommendation Descriptions

S1 Lowry Range litigation expenses: The request includes \$503,049 cash funds (from the State Land Board’s Investment and Development Fund) to support increased litigation expenses for the Lowry Range case. The recommendation is to fund the request.

NP1 Governor’s Office legal services: The request includes a net increase of \$584,139 reappropriated funds (originally General Fund in the Governor’s Office) and 3.9 FTE to support increased legal expenses for the Governor’s Office in FY 2013-14. The request includes an increase of \$634,139 associated with the *Cooke et al. v. Hickenlooper* litigation and a decrease of \$50,000 to eliminate the appropriation for Lobato litigation expenses in FY 2013-14 as that appropriation is no longer necessary. The recommendation is pending Committee action on the Governor’s Office supplemental request.

NP2 DNR Division of Water Resources legal services: The request includes an increase of \$163,944 reappropriated funds (originally General Fund in the Department of Natural Resources) and 1.0 FTE to support increased legal services costs for the Division of Water Resources in FY 2013-14. The recommendation is pending Committee action on the Department of Natural Resources supplemental request.

NP4 Statewide vehicle lease payment true-up: The request includes a reduction of \$1,081 reappropriated funds as part of the statewide vehicle lease payment adjustment requested by the Department of Personnel. The recommendation is pending Committee action on the Department of Personnel supplemental request.

Prioritized Supplemental Requests

SUPPLEMENTAL REQUEST, DEPARTMENT PRIORITY #1 LOWRY RANGE LITIGATION EXPENSES

	Request	Recommendation
Total	<u>\$503,049</u>	<u>\$503,049</u>
Cash Funds	503,049	503,049

Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? [An emergency or act of God; a technical error in calculating the original appropriation; data that was not available when the original appropriation was made; or an unforeseen contingency.]	YES
JBC staff and the Department agree that this request is the result of new information regarding the timing of the trial and the associated costs for the Lowry Range litigation.	

Department Request: The Department requests an increase of \$503,049 cash funds from the State Land Board’s Investment and Development Fund to cover litigation expenses for the Lowry Range case in FY 2013-14. The Investment and Development Fund is continuously appropriated to the State Land Board and the funds do not appear in the annual Long Bill, so the

funds are classified as cash funds in this request. The request is intended to cover increased costs to prepare for a trial in July 2014, the timing of which was unknown at the time of the original appropriation.

Staff Recommendation: Staff recommends approving the request and providing the resources necessary to vigorously defend the State in the Lowry Range litigation.

Staff Analysis: The supplemental budget request seeks funding to support additional legal costs in FY 2013-14 for the Lowry Range litigation (*Pure Cycle Corporation and Rangeview Metropolitan District v. State of Colorado, by and through its State Board of Land Commissioners*). The State Land Board entered into a water lease with Rangeview Metropolitan District (RMD) in 1986 for the right to use all the water on and under the Lowry Range. RMD retained Pure Cycle Corporation to act as service provider of water developed at the Lowry Range. With oil and gas development moving forward on the Lowry Range, RMD asserts that it has exclusive right to provide water to all users at Lowry Range, including oil and gas lessees. The Land Board disagrees with this assertion. Pure Cycle and RMD filed the lawsuit against the Land Board in December 2011 alleging breach of contract, promissory estoppel, contract reformation, and unjust enrichment claims.

The trial date was unknown when the General Assembly made the FY 2013-14 appropriation. However, the Court has now set a three-week trial beginning July 7, 2014, and the Department is seeking additional funding to prepare for the trial. The requested amount is based on current billings for outside counsel (the State Land Board and the Department have hired Hogan Lovells to assist in the litigation) and anticipated costs for trial preparation and expert witnesses.

The General Assembly appropriated \$638,870 for the Lowry Range litigation in FY 2012-13. However, as a result of delays in the case, the Department spent only \$238,007 of that funding and reverted \$400,863. With the supplemental request for \$503,049, the Department is requesting a total appropriation of \$1,119,569 in FY 2013-14 for litigation efforts and trial preparation. The Department's FY 2014-15 request, which is unaffected by the supplemental, includes \$392,400 for the Lowry Range case.

As discussed in the FY 2014-15 Joint Budget Committee Staff Briefing for the Department of Law, the Lowry Range case could have a significant financial impact on the State. The plaintiffs have stated that their damages may be \$128 million, although the Department has indicated that the plaintiffs' estimate appears inflated and improbable.

Staff recommends that the Committee approve the request to provide the resources necessary to litigate the case.

Non-prioritized Supplemental Requests

NON-PRIORITIZED SUPPLEMENTAL REQUEST #1 GOVERNOR’S OFFICE LEGAL SERVICES

	Request	Recommendation
Total	<u>\$584,139</u>	Pending JBC Action on Governor’s Office Request
FTE	3.9	
Reappropriated Funds	584,139	

Summary: The Governor’s Office has submitted a supplemental request (Governor’s Office priority #1) to increase its appropriation for the purchase of legal services from the Department of Law by a total of \$584,139 General Fund. The request includes: (1) an increase of \$634,139 to support the *Cooke et al. v. Hickenlooper* litigation; and (2) a reduction of \$50,000 to eliminate the FY 2013-14 appropriation for the *Anthony Lobato, et al., v. the State of Colorado, et al.* litigation because those funds are no longer necessary. The Department of Law would need corresponding spending authority to receive the additional funds from the Governor’s Office for the Cooke case. The staff recommendation for this request is pending Committee action on the Governor’s Office supplemental request. Staff asks permission to include the spending authority and FTE corresponding with the Committee’s action in the Department of Law’s supplemental bill.

NON-PRIORITIZED SUPPLEMENTAL REQUEST #2 DNR DIVISION OF WATER RESOURCES LEGAL SERVICES

	Request	Recommendation
Total	<u>\$163,944</u>	Pending JBC Action on DNR Request
FTE	1.0	
Reappropriated Funds	163,944	

Summary: The Department of Natural Resources has submitted a supplemental request (Department of Natural Resources priority #1) to increase its appropriation for the purchase of legal services from the Department of Law by \$163,944 General Fund. The Department of Law would need corresponding spending authority to receive the additional funds from the Department of Natural Resources. The staff recommendation for this request is pending Committee action on the Department of Natural Resources’ supplemental request. Staff asks permission to include the spending authority and FTE that correspond with the Committee’s action in the Department of Law’s supplemental bill.

Statewide Common Policy Supplemental Requests

This request is not prioritized and is not analyzed in this packet. The JBC will act on this item later when it makes decisions regarding common policies.

Department's Portion of Statewide Supplemental Request	Total	General Fund	Cash Funds	Reapprop. Funds	Federal Funds	FTE
Statewide vehicle lease payment true-up	(\$1,081)	\$0	\$0	(\$1,081)	\$0	0.0
Department's Total Statewide Supplemental Requests	(\$1,081)	\$0	\$0	(\$1,081)	\$0	0.0

Staff Recommendation: The staff recommendation for this request is pending Committee approval of common policy supplementals. Staff asks permission to include the corresponding appropriation in the Department's supplemental bill if the Committee approves this common policy supplemental. If staff believes there is reason to deviate from the common policy, staff will appear before the Committee later to present the relevant analysis.

JBC Staff Supplemental Recommendations - FY 2013-14
Staff Working Document - Does Not Represent Committee Decision

Appendix A: Number Pages

	FY 2012-13 Actual	FY 2013-14 Appropriation	FY 2013-14 Requested Change	FY 2013-14 Rec'd Change	FY 2013-14 Total W/ Rec'd Change
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DEPARTMENT OF LAW
John Suthers, Attorney General

S1 Lowry Range Litigation Expenses

(6) SPECIAL PURPOSE

Lowry Range Litigation Expenses	<u>238,007</u>	<u>616,520</u>	<u>503,049</u>	<u>503,049</u>	<u>1,119,569</u>
Cash Funds	238,007	616,520	503,049	503,049	1,119,569

Total for S1 Lowry Range Litigation Expenses	238,007	616,520	503,049	503,049	1,119,569
<i>FTE</i>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>
Cash Funds	238,007	616,520	503,049	503,049	1,119,569

Totals Excluding Pending Items					
LAW					
TOTALS for ALL Departmental line items	53,804,216	67,564,072	503,049	503,049	68,067,121
<i>FTE</i>	<u>404.9</u>	<u>446.5</u>	<u>0.0</u>	<u>0.0</u>	<u>446.5</u>
General Fund	9,960,636	12,168,714	0	0	12,168,714
Cash Funds	10,804,641	12,330,132	503,049	503,049	12,833,181
Reappropriated Funds	31,571,004	41,294,862	0	0	41,294,862
Federal Funds	1,467,935	1,770,364	0	0	1,770,364