COLORADO GENERAL ASSEMBLY
JOINT BUDGET COMMITTEE

FY 2012-13 STAFF BUDGET BRIEFING

DEPARTMENT OF NATURAL RESOURCES

(Division of Reclamation, Mining, and Safety, Colorado Geological Survey, Oil and Gas Conservation Commission, State Board of Land Commissioners)

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

Prepared By:
Craig Harper, JBC Staff
November 16, 2011

For Further Information Contact:

Joint Budget Committee Staff
200 E. 14th Avenue, 3rd Floor
Denver, Colorado 80203
Telephone: (303) 866-2061
TDD: (303) 866-3472

FY 2012-13 BUDGET BRIEFING
STAFF PRESENTATION TO THE JOINT BUDGET COMMITTEE

DEPARTMENT OF NATURAL RESOURCES

(Division of Reclamation, Mining, and Safety, Colorado Geological Survey, Oil and Gas Conservation Commission, State Board of Land Commissioners)

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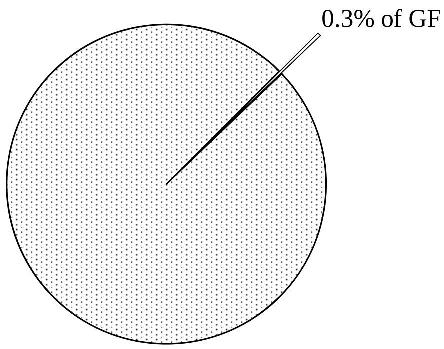
** The State Auditor's Office has not identified any outstanding recommendations for this department.*

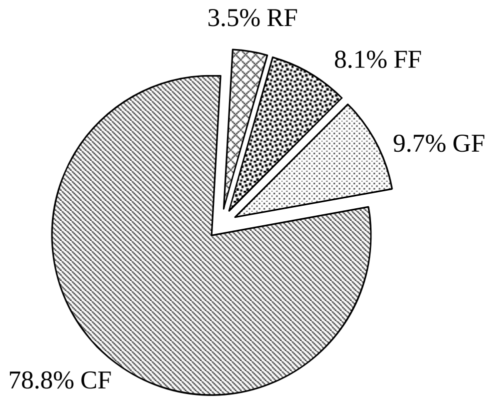
FY 2012-13 Joint Budget Committee Staff Budget Briefing
Department of Natural Resources

GRAPHIC OVERVIEW

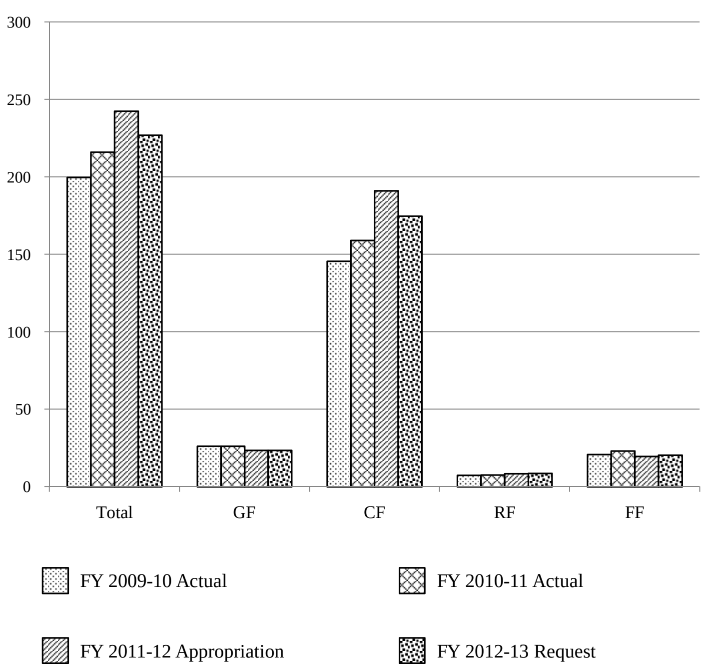
Department's Share of Statewide General Fund



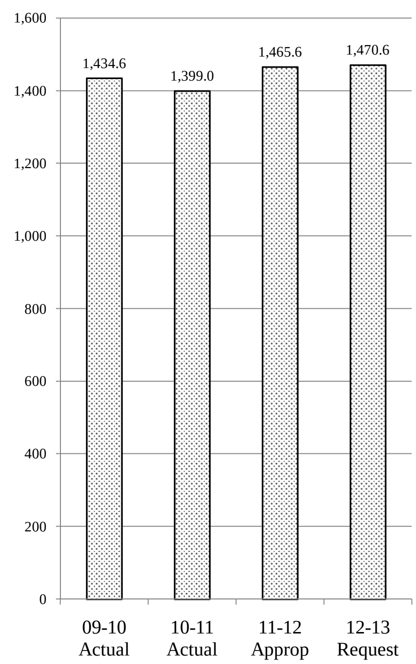
Department Funding Sources



Budget History
(Millions of Dollars)

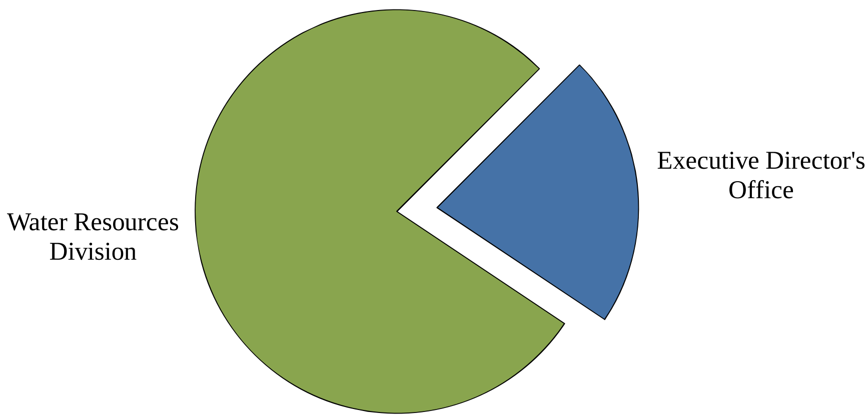


FTE History

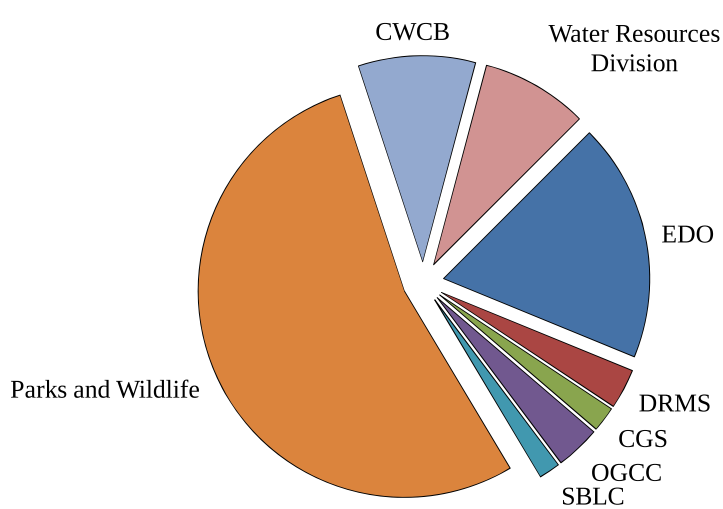


Unless otherwise noted, all charts are based on the FY 2011-12 appropriation.

Distribution of General Fund by Division



Distribution of Total Funds by Division



FY 2012-13 Joint Budget Committee Staff Budget Briefing
Department of Natural Resources
(Division of Reclamation, Mining, and Safety, Colorado Geological Survey, Oil and Gas Conservation Commission, State Board of Land Commissioners)

DEPARTMENT OVERVIEW

Key Responsibilities

- The **Division of Reclamation, Mining, and Safety** regulates the development and reclamation of mining sites.
- The **Colorado Geological Survey** seeks to enhance the economic vitality of the state, protect citizens from adverse geologic conditions and to provide information using geological tools.
- The **Oil and Gas Conservation Commission** promotes responsible development of oil and gas.
- The **State Board of Land Commissioners** manages state-owned lands for agriculture, minerals development, and commercial purposes, to benefit public schools and other trust beneficiaries.
- The **Division of Parks and Wildlife** manages 42 state parks and associated park projects and manages the state's 960 game and non-game wildlife species through the issuance of hunting and fishing licenses, the enforcement of wildlife regulations, and the administration of more than 250 state wildlife areas.
- The **Colorado Water Conservation Board** promotes conservation of the state's water resources to ensure maximum use and flood prevention.
- The **Water Resources Division** ("State Engineer's Office") administers and enforces water rights throughout the state.

This document covers only the Division of Reclamation, Mining, and Safety, the Colorado Geological Survey, the Oil and Gas Conservation Commission, and the State Board of Land Commissioners. The remaining divisions were included in a separate document and presented by another analyst.

Factors Driving the Budget

For FY 2011-12, funding for the entire department consists of 9.7 percent General Fund, 78.7 percent cash funds, 3.5 percent reappropriated funds, and 8.1 percent federal funds. The divisions included in this document received no General Fund appropriations in FY 2011-12 and are not requesting General Fund appropriations in FY 2012-13.

Severance Tax (Operational Account) Expenditures

The availability of severance tax revenues to the Operational Account influences the funding levels for many programs in the Department. Relative to the divisions included in this document, the Operational Account is a major source of funding for the Division of Reclamation, Mining, and

Safety, the Geological Survey, and the Oil and Gas Conservation Commission.

Section 39-29-108 (2), C.R.S., provides that 50.0 percent of total severance tax revenues are credited to the Severance Tax Trust Fund and 50.0 percent of the revenues are credited to the Department of Local Affairs for grants and distributions to local governments impacted by mining activities. Of the revenues credited to the Severance Tax Trust Fund, 50.0 percent are allocated to the Perpetual Base Account of the Severance Tax Trust Fund (or 25.0 percent of total severance tax revenues), which is used by the Colorado Water Conservation Board for water construction projects. The other 50.0 percent of Severance Tax Trust Fund revenues (or 25.0 percent of total severance tax revenues) are allocated to the Operational Account for programs that "promote and encourage sound natural resource planning, management, and development related to minerals, energy, geology, and water."

Severance tax revenues are highly variable. To manage this variability H.B. 08-1398 divided programs funded from the Operational Account into two tiers. The tier 1 programs primarily support the day-to-day operations of the Department of Natural Resources, including paying salaries for employees. The tier 2 programs primarily support grants, loans, research, and construction. The required reserve for tier 1 programs is one times the appropriations for a given year. The reserve requirement for tier 2 programs is equal to 15.0 percent of the authorized expenditures for the year. The distribution of funding for tier 2 programs is staggered with 40.0 percent released July 1, 30.0 percent released January 4, and the final 30.0 percent released April 1 of a given fiscal year. Tier 2 programs are subject to proportional reduction if mid-year revenue projections indicate there are insufficient funds to cover the full authorizations. The following table shows Operational Account revenues and expenditures for FY 2007-08 through FY 2010-11, with projections for FY 2011-12 and FY 2012-13. See the issue write-up beginning on page 12 for a discussion of the status of the Operational Account.

	FY 07-08 Actual	FY 08-09 Actual	FY 09-10 Actual	FY 10-11 Actual	FY 2011-12 Estimate	FY 2012-13 Estimate
Beginning balance	$40,012,876	$46,588,101	$68,073,848	$31,181,533	$18,206,983	$14,363,100
Revenues	39,367,947	81,052,610	10,119,342	35,213,796	40,354,549	47,663,258
Total available	$79,380,823	$127,640,711	$78,193,190	$66,395,329	$58,561,532	$62,026,358
Tier 1 Programs	9,715,887	12,701,274	15,910,585	16,513,233	13,939,673	14,147,170
Tier 2 Programs*	23,076,835	46,865,589	20,101,072	31,675,113	26,308,759	38,351,072
Transfer to GF	0	0	11,000,000	0	3,950,000	0
Ending balance	46,588,101	68,073,848	31,181,533	18,206,983	14,363,100	9,528,116
Reserve	32,431,774	19,731,112	18,925,746	21,268,394	17,734,834	19,899,831
Unobligated**	14,156,327	48,342,736	12,255,787	(3,061,411)	(3,371,734)	(10,371,715)

*Table shows authorized Tier 2 expenditures and does not incorporate proportional reductions.
** Negative "unobligated" fund balances indicate insufficient funds to support expenditures and required reserves.

State Board of Land Commissioners

The State Board of Land Commissioners (Land Board) manages properties in the Public School Trust to raise money for the benefit of K-12 education. The Land Board also manages seven other smaller trusts set up in the Colorado Constitution or in statute benefitting a range of entities, including higher education institutions, state parks, and the Department of Corrections. Approximately 98.0 percent of Land Board revenue is attributable to the Public School Trust, with the remainder coming from lands associated with the other trusts.

House Bill 08-1335 (known as the BEST bill; see Section 22-43.7-104, C.R.S.) significantly changed the distribution of state public school land revenue. Fifty percent of the gross amount of income received during the fiscal year from state public school lands is deposited in the Public School Capital Construction Assistance (PSCCA) Fund for the BEST program. Of the remaining 50.0 percent, roughly $9.1 million supports State Land Board operations and the Investment and Development Fund. The rest is currently deposited into the State Public School Fund to support school finance appropriations. For additional discussion of Land Board revenues, see the issue papers beginning on page 23 and page 26.

As shown in the table below, the School Trust received a total of $120.6 million in total revenues in FY 2010-11, roughly $47 million more than in FY 2008-09, the previous record. Mineral revenues are the primary driver of Land Board and School Trust revenues, and record bonus payments in FY 2010-11 were the major factor driving the increase in revenues. Bonus payments from oil and gas accounted for more than half (52.0 percent) of total School Trust revenues in FY 2010-11, while royalties from oil, gas, and coal accounted for 35.0 percent.

SCHOOL TRUST REVENUE	FY06-07 Actual	FY07-08 Actual	FY08-09 Actual	FY 09-10 Actual	FY 10-11 Actual
School Trust-Total Revenues	$61,151,881	$69,495,847	$74,023,629	$66,361,923	$120,557,802
Mineral Rental	1,614,907	2,023,401	1,739,678	1,729,683	2,049,480
Mineral Royalties	43,206,928	47,130,818	54,521,085	34,169,303	42,210,215
Mineral Bonuses	3,508,497	5,974,830	3,806,001	14,880,486	62,649,071
Surface Rental	8,371,449	8,819,293	8,305,534	9,157,949	8,222,629
Commercial/Other	3,259,564	5,172,228	5,210,122	6,210,687	5,133,310
Land Sales	60,021	4,085	3,250	4,095	53,824
Interest and Penalties	16,694	315,960	381,501	209,720	239,273
Timber Sales	1,113,821	55,232	56,458	0	0

Oil and Gas Activity

The Colorado Oil and Gas Conservation Commission (OGCC) is responsible for promoting the exploration, development, and conservation of Colorado's oil and natural gas resources. Colorado experienced a significant increase in oil and gas drilling activity from 2002 through 2008, which dramatically affected the Colorado Oil and Gas Conservation Commission's workload and expenditures. As shown in the table below, drilling activity, as measured by the number of permit applications received by the OGCC and by the number of active drilling rigs in Colorado, decreased precipitously from FY 2008-09 to FY 2009-10 but rebounded some in FY 2010-11 and the number of active wells in the state continues to grow. For additional information on oil and gas workload and an associated OGCC request for FY 2012-13, see the issue paper beginning on page 17 of this document.

Oil and Gas Conservation Commission	FY 07-08 Actual	FY 08-09 Actual	FY 09-10 Actual	FY 10-11 Actual	FY 11-12 Estimate	FY 12-13 Estimate
Workload Activity						
Drilling Permits Received	7,661	6,910	5,278	4,882	5,000	5,000
Location Assessments (Form 2A) Received	N/A	67	2,119	2,302	2,500	2,500
Number of Active Wells	35,686	39,944	42,324	45,401	47,916	50,756
Active Drilling Rigs	113	87	46	67	72	72
OGCC Expenditures[1/]	$6,533,355	$8,226,522	$7,238,243	$8,690,258	$8,454,869	$8,931,368
Total FTE	53.0	54.6	62.1	65.2	69.0	74.0

[1/] Division-only expenditures include all fund sources; does not include centrally appropriated items funded in the Executive Director's Office. Expenditures for FY 2011-12 and FY 2012-13 reflect the appropriation and request, respectively.

FY 2012-13 Joint Budget Committee Staff Budget Briefing
Department of Natural Resources
(Division of Reclamation, Mining, and Safety, Colorado Geological Survey, Oil and Gas Conservation Commission, State Board of Land Commissioners)

DECISION ITEM PRIORITY LIST

1	**OGCC Field and Technical Staff Support**		
	Oil and Gas Conservation Commission. The Department requests an increase of $430,472 cash funds from the Oil and Gas Conservation and Environmental Response Fund (supported by a mil levy on oil and gas production) and 5.0 FTE to expand the Oil and Gas Conservation Commission's field and technical support staff. The request is in response to: (1) the division's increased workload and (2) potential local concerns about the division's capacity to adequately regulate oil and gas development. For additional discussion of the Department's request, see the issue paper beginning on page 18 of this document. *Statutory authority: Sections 34-60-102 (1) and 34-60-106 (2) (d), C.R.S.*	**Total Funds** *FTE* CF	**$430,472** 5.0 430,472
2	**Asset Management System Upgrade**		
	State Board of Land Commissioners. The Department requests an increase of $750,000 cash funds from the State Land Board Trust Administration Fund in FY 2012-13 and again in FY 2013-14 to replace and upgrade the State Land Board's (Land Board's) asset management system. The requested system would: (1) replace the existing (and now unsupported) database; (2) consolidate the Land Board's leasing, development, and property management information into a single database; and (3) link directly to the Department's geographic information system (GIS) to facilitate the analysis and presentation of property management information. *Statutory authority: Sections 24-35-115 and 36-1-148, C.R.S.*	**Total Funds** *FTE* CF	**$750,000** 0.0 750,000
4	**State Land Board Interagency Water Expertise**		
	State Board of Land Commissioners. The Department requests an increase of $120,000 cash funds from the State Land Board Trust Administration Fund to allow the State Land Board (Land Board) to engage private consultants or other Department of Natural Resources divisions to maintain, manage, and expand the Land Board's water asset portfolio. If the reappropriated funds spending authority in decision item R-5 is approved, the Land Board anticipates paying the Geological Survey, the Division of Water Resources, and the Colorado Water Conservation Board for consulting assistance in	**Total Funds** *FTE* CF	**$120,000** 0.0 120,000

managing Land Board water rights. *Statutory authority: Sections 24-35-115 and 36-1-148, C.R.S.*	

TOTAL DECICION ITEM PRIORITY LIST

Total Funds	**$1,300,472**
FTE	5.0
CF	1,300,472

FY 2012-13 Joint Budget Committee Staff Budget Briefing
Department of Natural Resources
(Division of Reclamation, Mining, and Safety, Colorado Geological Survey, Oil and Gas Conservation Commission, State Board of Land Commissioners)

OVERVIEW OF NUMBERS PAGES

The following table summarizes the total change, in dollars and as a percentage, between the Department's FY 2011-12 appropriation and its FY 2012-13 request for the portion of the Department of Natural Resources addressed in this briefing packet.

Table 1: Total Requested Change, FY 2011-12 to FY 2012-13 (millions of dollars)

Category	CF	RF	FF	Total	FTE
FY 2011-12 Appropriation	$19.7	$1.1	$4.1	$24.9	213.0
FY 2012-13 Request	21.2	1.1	4.1	26.4	218.0
Increase / (Decrease)	$1.5	$0.0	$0.0	$1.6	5.0
Percentage Change	7.9%	0.8%	0.8%	6.4%	2.3%

The following table highlights categories of changes contained in the Department's FY 2012-13 budget request, as compared with the FY 2011-12 appropriation, for the portion of the Department covered in this briefing packet.

Table 2: Total Department Requested Changes, FY 2011-12 to FY 2012-13 (millions of dollars)

Category	CF	RF	FF	Total	FTE
Decision Items	$1.3	0.0	0.0	$1.3	5.0
Technical/Base Changes	0.3	0.0	0.0	0.3	0.0
TOTAL	$1.5	$0.0	$0.0	$1.6	5.0

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Department of Natural Resources
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BRIEFING ISSUE

ISSUE: Performance-based Goals and the Department's FY 2012-13 Budget Request

This issue brief summarizes the Department of Natural Resources' report on its performance relative to its strategic plan and discusses how the FY 2012-13 budget request advances the Department's performance-based goals. Pursuant to the State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act (H.B. 10-1119), the full strategic plan for the Department of Natural Resources can be accessed from the Office of State Planning and Budgeting web site.

The issue brief assumes that the performance-based goals are appropriate for the Department. Pursuant to the SMART Government Act legislative committees of reference are responsible for reviewing the strategic plans and recommending changes to the departments. The issue brief also assumes that the performance measures are reasonable for the performance-based goals. Pursuant to the SMART Government Act the State Auditor periodically assesses the integrity, accuracy, and validity of the reported performance measures. Please note that the Department's full strategic plan includes seven overarching objectives and associated performance measures. This issue brief only deals with two of the seven objectives. The other five objectives were evaluated in a separate issue brief presented by another analyst.

DISCUSSION:

Performance-based Goals and Measures

The Department's seven top priority objectives are:

1. Species Conservation.

Objective: Protect the diversity of Colorado's wildlife resources. (This objective was discussed in a previous presentation regarding the Department's other divisions.)

2. Outdoor Recreation.

Objective: Provide and promote a variety of outdoor recreational opportunities for citizens and visitors. (This objective was discussed in a previous presentation regarding the Department's other divisions.)

3. Compact Compliance.

Objective: Maximize efficient use of Colorado's water resources in compliance with interstate compacts. (This objective was discussed in a previous presentation regarding the Department's other divisions.)

4. Wildlife Recreation.

Objective: Provide hunting and fishing recreation opportunities for citizens and visitors to Colorado. (This objective was discussed in a previous presentation regarding the Department's other divisions.)

5. Water Supply.

Objective: Meet the current and future water supply needs of the State. (This objective was discussed in a previous presentation regarding the Department's other divisions.)

6. Energy Development.

Objective: Ensure that energy development is undertaken in a responsible manner that encourages protection of environmental resources such as water and wildlife habitat.

a. How is the Department measuring the specific goal/objective?

The Department's strategic plan includes two performance measures associated with this objective: (1) the percentage of oil and gas wells permitted in a given year that intend to use a closed loop drilling system (to minimize waste and contamination by eliminating the use of drilling pits); and (2) the percentage of oil and gas wells permitted in sensitive wildlife habitats that are included in wildlife management plans (to encourage broader "landscape scale" planning of oil and gas development and reduce impacts on sensitive wildlife species and habitats).

b. Is the Department meeting its objective, and if not, why?

The following tables display the Department's data associated with each performance measure.

Percent of Oil and Gas Wells Permitted with a Closed Loop Drilling System

	FY 2008-09 Actual	FY 2009-10 Actual	FY 2010-11 Actual	FY 2011-12 Estimate	FY 2012-13 Request
Benchmark	N/A	37	37	37	37
Actual	Incomplete data	37	67	unknown	unknown

Percent of Oil and Gas Wells Permitted in Sensitive Wildlife Habitats that are Included in Wildlife Management Plans

	FY 2008-09 Actual	FY 2009-10 Actual	FY 2010-11 Actual	FY 2011-12 Estimate	FY 2012-13 Request
Benchmark	N/A	0	0	0	0
Actual	N/A	15	45	unknown	unknown

It is difficult to assess whether the Department is meeting the objective because the objective does not include a quantifiable goal that would clearly align with the chosen performance measures. Based on the benchmarks shown in the above tables, the Department would appear to be meeting its goals with respect to the chosen measures although the benchmarks do not appear to provide much of a guide. For the first measure, the benchmark appears to be based on actual data from FY

2009-10 and does not anticipate progress relative to the measure. For the second measure, the benchmark is 0.0 percent. The meaning of this benchmark is unclear but according to the Department 15.0 percent of wells permitted in sensitive wildlife habitats in FY 2009-10 were included in wildlife management plans. In FY 2010-11, that percentage increased to 45.0 percent.

c. How does the budget request advance the performance-based goal?
The OGCC is requesting resources to support 5.0 additional FTE in FY 2012-13, and the requested positions are linked to the overarching objective for energy development. The linkage to the specific performance measures is unclear.

7. State Land Board Lands.

Objective: Maximize revenue on State Land Board properties for the benefit of all trusties.

a. How is the Department measuring the specific goal/objective?
The Department measures the annual percentage increase in School Trust revenues, with goal of 5.0 percent per year.

b. Is the Department meeting its objective, and if not, why?
The following table displays the Department's performance data. Staff has adjusted the "FY 2010-11 Actual" data to align with other information received from the Department.

Annual School Trust Revenues (Goal is to Increase by 5.0 percent per year)

	FY 2009-10 Actual	FY 2010-11 Actual	FY 2011-12 Appropriation	FY 2012-13 Request
Benchmarks	$49,697,543	$68,142,859	$71,550,002	$75,127,502
Actual	66,361,923	120,557,802	Unknown	Unknown

Staff cannot assess whether the Department is meeting the overarching objective based on the single performance measure included in the strategic plan. The objective includes maximizing revenues for *all trusts* and the measure covers only the School Trust. School Trust revenues constitute approximately 98 percent of revenues for all trusts, so a large increase for the School Trust could mask decreases in revenues from the smaller trusts. Even within the school trust, staff cannot assess whether the Department is maximizing revenues. The revenues are volatile (increasing from $66.4 million in FY 2009-10 to $120.6 million in FY 2010-11). Actual revenue levels for both years are well above the benchmarks included in the strategic plan, however.

c. How does the budget request advance the performance-based goal?
The Department's FY 2012-13 request includes two decision items meant to advance this objective. Decision item R-2 would replace and upgrade the Land Board's asset management system with a goal of improving analytical information and decision making to increase revenues. Decision item R-4 is seeking additional spending authority to contract with other DNR divisions and/or private consultants to improve the Land Board's management of it's water asset portfolio and thereby increase revenues.

FY 2012-13 Joint Budget Committee Staff Budget Briefing
Department of Natural Resources
(Division of Reclamation, Mining, and Safety, Colorado Geological Survey, Oil and Gas Conservation Commission, State Board of Land Commissioners)

BRIEFING ISSUE

ISSUE: Status of the Operational Account of the Severance Tax Trust Fund

Discusses current and projected fund balances in the Operational Account of the Severance Tax Trust Fund and a likely need for spending reductions in FY 2011-12 and FY 2012-13.

SUMMARY:

- ❏ The Operational Account of the Severance Tax Trust Fund is overcommitted. Expenditures exceeded annual revenue in FY 2009-10 and FY 2010-11, depleting the fund balance, and are expected to do so again in FY 2011-12 and FY 2012-13.

- ❏ In FY 2010-11, unexpectedly low revenues resulted in the use of $3.1 million (64.4 percent) of the tier 2 reserve for that year. Based on the September 2011 Legislative Council Staff Revenue Forecast, authorized expenditures in FY 2011-12 would use 88.8 percent of the tier 2 Reserve.

- ❏ The situation is projected to worsen in FY 2012-13, when anticipated expenditures under current law would more than consume the tier 2 reserve and force proportional reductions to Tier 2 programs unless the General Assembly reduces specific programs.

RECOMMENDATION:

Staff recommends that the JBC discuss potential Operational Account spending reductions for FY 2011-12 and FY 2012-13, including the Department's efforts to merge the Geological Survey with either the School of Mines or the Division of Reclamation, Mining, and Safety, at the Department's upcoming hearing. Staff recommends that the Committee base potential FY 2011-12 spending reductions on the December 2011 Legislative Council Staff Revenue Forecast (December Forecast) and base FY 2012-13 spending reductions on the March 2012 Legislative Council Staff Revenue Forecast (March Forecast).

DISCUSSION:

Background
Current statute, enacted as a JBC bill in 2008 (H.B. 08-1398), divides Operational Account expenditures into two categories. Tier 1 expenditures primarily support salaries and on-going core programs of the Department of Natural Resources. Tier 2 programs generally support grants, loans,

research, and construction. Because of the volatility in severance tax revenues, the General Assembly has established statutory reserve requirements for Operational Account expenditures. The reserve requirement for tier 1 programs is equal to one full year of operating appropriations. The reserve requirement for tier 2 programs is equal to fifteen percent of authorized expenditures. The distribution of funding for tier 2 programs is staggered with 40 percent released July 1, 30 percent released January 4, and the final 30 percent released April 1. If a mid-year projection indicates there will be insufficient funds in the Operational Account to support all statutorily authorized expenditures, statute forces proportional reductions to all tier 2 programs to fit the projections unless the General Assembly acts to prioritize reductions.

Revenues to the Operational Account declined from a high of $81.2 million in FY 2008-09 to $10.2 million in FY 2009-10. Revenues rebounded to $35.5 million in FY 2010-11 but remained below authorized expenditures, and the Operational Account fund balance declined from $68.1 million at the beginning of FY 2009-10 to $18.4 million at the end of FY 2010-11. In FY 2010-11, unexpectedly low revenues resulted in the use of $3.1 million (64.4 percent) of the tier 2 reserve for that year.

The General Assembly has historically used some Operational Account revenues for General Fund balancing during shortfalls. Recent actions include: (1) transfers of $11.0 million from the Operational Account to the General Fund in FY 2009-10 and another $3.95 million in FY 2011-12 and (2) refinancing $3.8 million in annual General Fund expenditures in the Division of Parks and Outdoor Recreation (now Parks and Wildlife) with Operational Account funds. For FY 2012-13, the Governor is proposing to use severance tax funds to refinance $1.6 million in General Fund expenditures associated with severance tax collections in the Department of Revenue. The proposal would reduce Operational Account revenues by approximately $400,000 per year starting in FY 2012-13.

Continued Revenue Shortfalls

As shown in the overview table on page 18, the September 2011 Legislative Council Staff Revenue Forecast (September Forecast) anticipates increases in severance tax revenues in FY 2011-12 and beyond relative to FY 2009-10 but revenues remain below expenditures in FY 2011-12 and FY 2012-13.

The forecasted fund balance in FY 2011-12 *will not support authorized expenditures and the required statutory reserves*. Based on the September Forecast, currently authorized expenditures would use $3.4 million (88.8 percent) of the tier 2 reserve and reduce the amount available for expenditure in FY 2012-13. **If the December Forecast continues to anticipate such a shortfall in FY 2011-12, staff recommends that the Committee sponsor legislation to reduce expenditures in FY 2011-12.**

The situation is expected to worsen in FY 2012-13 when forecasted revenues fall $10.4 million short of the amount necessary to support authorized expenditures and the required reserves. Such a shortfall would utilize the entire tier 2 reserve ($5.8 million based on authorized expenditures in FY

2012-13) and trigger $4.6 million in proportional reductions to all tier 2 programs. **If necessary based on the March Forecast, staff recommends that the Committee make specific reductions in FY 2012-13 rather than allow the proportional reductions to go forward.**

Staff and the Department agree that the Operational Account's reserves should be used to cover *unexpected* revenue shortfalls but that the General Assembly should take action to address anticipated shortfalls. **Given ongoing concerns about the Operational Account fund balance, staff recommends that the Committee avoid making any additional transfers to the General Fund or refinancing current General Fund programs without equivalent (or larger) cuts to Operational Account expenditures.**

Options for Severance Tax Spending Reductions
The following discussion briefly outlines some of the available options for Operational Account spending reductions

Tier 1
Tier 1 programs present limited options for major reductions in spending. Two tier 1 divisions (Reclamation, Mining, and Safety and the Oil and Gas Conservation Commission) directly regulate the industries that pay severance tax. Major reductions to those divisions without offsetting increases from other fund sources (most likely fees on the industries in question) would impact operations and could negatively impact severance tax revenues by delaying permitting and regulatory activities. While offsetting reductions in Operational Account funding with additional fees would be possible for some programs, increasing fees on severance tax paying industries to support additional General Fund programs would spur industry opposition.

The Geological Survey (Survey) provides services that support mineral-related industries in Colorado and its state funding is largely from the Operational Account. In the past the Department has resisted potential reductions to that division. However, in an effort to increase efficiency and reduce costs, the Department is considering effectively eliminating the Survey as an independent division within the Department of Natural Resources by consolidating portions of the Survey with either the Colorado School of Mines or the Division of Reclamation, Mining and Safety. According to the Department, discussions with the School of Mines are ongoing and details are not available. Department staff have indicated that legislation implementing a merger is a possibility during the 2012 Session.

The Department has indicated that the merger could include program reductions and eliminations, with a goal of preserving programs protecting public health, life, and safety. Although no details are available, **the Department has indicated that such a consolidation could save up to $1.25 million per year in Operational Account Spending, and staff recommends that the Committee explore the potential savings with the Department at the upcoming hearing.**

Outside of the three divisions associated with mineral industries, the Colorado Water Conservation Board (CWCB) and the newly consolidated Colorado Parks and Wildlife receive tier 1 appropriations. Additional adjustments to the CWCB appropriation may be warranted depending on future revenue forecasts; those options would be presented by another analyst. Given recent reductions in the state parks budget, the Department would oppose further cuts to state parks at this time.

Tier 2

Although tier 2 funding supports twelve major programs, five (Water Infrastructure Development, Species Conservation Trust Fund, Low-Income Energy Assistance, Forest Restoration, and the Aquatic Nuisance Species Fund) make up more than 90 percent of total tier 2 funding and more than 60 percent of total Operational Account funding. Significant reductions to balance the Operational Account would require reductions to those programs. Within that set of programs, the Department has indicated reductions to Water Infrastructure Development and the Species Conservation Trust Fund would be the least problematic of the major Department of Natural Resources programs, while reductions to the Aquatic Nuisance Species and Forest Restoration programs would be more problematic. Reductions to Low-Income Energy Assistance funding may also be possible in FY 2011-12 and FY 2012-13.

Staff will return to the Committee with recommended spending reductions if necessary based on the December Forecast (for FY 2011-12) and/or the March Forecast (for FY 2012-13).

Severance Tax Trust Fund
Operational Account

	Statutory Cite	Actual FY 09-10		Actual FY 10-11		Estimated FY 11-12		Estimated FY 12-13		Estimated FY 13-14		Key Bills
Beginning balance		$68,073,848		$31,181,533		$18,206,983		$14,363,101		$14,147,170		
Revenue		10,168,149		35,233,283		40,354,549 (est.)		48,064,439 (est.)		49,149,687 (est.)		
Revenue to Refinance DOR STAX Collections								(401,181)		(401,181)		
Public School Energy Fund	39-29-109.5	(48,807)		($19,487)		TBD		TBD		TBD		
TOTAL Available for Expenditure		**$78,193,190**		**$66,395,329**		**$58,561,533**		**62,026,359**	100.0%	**62,895,676**	100.0%	
Roll-forwards		$0		$0		$1,007,687						
Tier 1	39-29-109.3 (1)											
Colorado Geological Survey	(b)	$2,432,751	3.1%	$2,457,218	3.7%	$2,400,175	4.1%	2,456,013	4.0%	2,505,133	4.0%	
Oil and Gas Conservation Commission	(a)	2,958,240	3.8%	3,234,045	4.9%	3,182,569	5.4%	3,238,925	5.2%	3,303,704	5.3%	
Division of Reclamation, Mining, and Safety	(c)	4,211,250	5.4%	4,222,288	6.4%	4,539,239	7.8%	4,635,960	7.5%	4,728,679	7.5%	
Colorado Water Conservation Board	(d)	1,303,408	1.7%	1,285,999	1.9%	1,319,250	2.3%	1,319,250	2.1%	1,319,250	2.1%	
Division of Parks and Outdoor Recreation	(f)	3,659,838	4.7%	3,829,397	5.8%	2,498,440	4.3%	2,497,022	4.0%	2,497,022	4.0%	SB 08-13/HB 10-1326
Division of Wildlife	(e)	1,345,098	1.7%	1,484,286	2.2%	0	0.0%	0	0.0%	0	0.0%	SB 08-13
SUBTOTAL Tier 1		$15,910,585	20.3%	$16,513,233	24.9%	$13,939,673	23.8%	14,147,170	22.8%	14,353,788	22.8%	
Tier 2	39-29-109.3 (2)											
Water infrastructure development	(a)	$5,775,000		$6,000,000		$7,000,000		8,795,587		8,914,510		SB 06-179/HB 10-1326
Soil Conservation Districts matching grants	(b)	450,000		450,000		450,000		395,801		401,153		HB 06-1393
Water efficiency grants	(c)	0		0		0		483,757		490,298		SB 07-008/SB 10-025
Species Conservation Trust Fund	(d) & (e)	4,500,000		11,000,000		3,600,000		5,805,087		5,883,576		SB 08-168/SB 08-226
Low income energy assistance	(f)	1,625,000		6,500,000 *		6,500,000		11,434,263		11,588,862		HB 08-1387/HB 10-1319
Renewable energy - Higher ed consortium	(g)	0		0		0		0		0		HB 06-1322
Renewable energy - Agriculture	(h)	500,000		500,000		500,000		439,779		445,725		HB 06-1322
Interbasin water compacts	(i)	745,067		745,067		745,067		655,330		664,191		HB 05-1177/HB 06-1400
CO Water Research Institute - CSU	(j)	0		0		0		0		0		HB 08-1405
Forest restoration grants/ bark beetle	(k) and (n)	2,500,000		2,500,000		2,500,000		2,198,897		2,228,627		SB 08-71/HB 09-1199
Tamarisk control	(l)	0		0		0		0		0		HB 08-1346 (Sect. 29)
Aquatic Nuisance Species Fund	(m)	4,006,005		3,980,046		4,006,005		3,523,516		3,571,157		SB 08-226
SUBTOTAL Tier 2		$20,101,072	25.7%	$31,675,113	47.7%	$25,301,072	43.2%	33,732,019	54.4%	34,188,100	54.4%	
TOTAL Expenditures		**$36,011,657**		**$48,188,346**		**$40,248,432**		**47,879,189**		**48,541,888**		
Transfer to General Fund	39-29-109.3 (6)	$11,000,000		$0		$3,950,000						HB 10-1327/SB 11-226
Ending Balance		$31,181,533		$18,206,983		$14,363,101		14,147,170		14,353,788		
Tier 1 Reserve	39-29-109.3 (3)	15,910,585		16,513,233		13,939,673		14,147,170		14,353,788		HB 02-1041/HB 08-1398
Tier 2 Reserve	39-29-109.3 (3)	3,015,161		4,755,161		3,795,161		5,752,661		5,752,661		HB 08-1398
Low income energy assistance reserve		0		0		0		0		0		HB 06-1200/HB 08-1387
TOTAL Reserve Requirement		$18,925,746	24.2%	$21,268,394	32.0%	$17,734,834	30.3%	19,899,831	32.1%	20,106,449	32.0%	
UNOBLIGATED BALANCE		**$12,255,788**	15.7%	**($3,061,411)**	-4.6%	**($3,371,733)**	-5.8%	**(5,752,661)**	-9.3%	**(5,752,661)**	-9.1%	

(est.) = estimate. Revenue estimates are based on the Legislative Council Staff's September 2011 Revenue Forecast and include $400,000 in estimated interest in FY 2011-12 and $350,000 in FY 2012-13.
TBD = To be determined

FY 2012-13 Joint Budget Committee Staff Budget Briefing
Department of Natural Resources
(Division of Reclamation, Mining, and Safety, Colorado Geological Survey, Oil and Gas Conservation Commission, State Board of Land Commissioners)

BRIEFING ISSUE

INFORMATIONAL ISSUE: Decision Item R-1: Oil and Gas Conservation Commission Field and Technical Staff

In response to increasing Oil and Gas Conservation Commission (OGCC) workload and local government efforts to regulate oil and gas development, the OGCC is requesting an increase of $430,472 cash funds and 5.0 FTE in FY 2012-13.

SUMMARY:

❑ The Department is requesting $430,472 cash funds from the Oil and Gas Conservation and Environmental Response Fund and 5.0 additional FTE to expand the OGCC's field and technical support staff.

❑ An increasing workload is the Department's primary justification for the requested increase.

❑ In addition to workload, the Department and the industry have discussed concerns about local governments' efforts to implement oil and gas regulations as additional justification for the request.

DISCUSSION:

The Department is requesting the following additional positions for FY 2012-13:
- 1.0 FTE Hearing Officer;
- 2.0 FTE Field Inspectors (and two associated vehicles);
- 1.0 FTE Environmental Specialist; and
- 1.0 FTE Engineer.

Increased workload is the Department's primary justification for the request, although both the OGCC and the industry cite concerns about local government regulations as additional justification. A discussion of the requested positions and the relevant workload indicator(s) is below, followed by a brief discussion of concerns about local governments' efforts regulate oil and gas development.

1.0 FTE Hearing Officer
The OGCC holds hearings in response to requests from the industry as well as local governments concerned about permit applications. Approval of drilling applications is often tied to the outcome

of OGCC hearings, so delays in conducting hearings can slow the permitting process and increase average permit processing times.

The hearings and enforcement program last received an increase in staff in FY 2007-08. At that point, the OGCC was receiving approximately 100 hearing requests per year, an increase from 53 applications per year in FY 2004-05. The OGCC received 255 hearing requests in FY 2010-11 and has received 169 requests through the first three hearings of FY 2011-12 (see table below)..

	FY 05-06 Actual	**FY 06-07 Actual**	**FY 07-08 Actual**	**FY 08-09 Actual**	**FY 09-10 Actual**	**FY 10-11 Actual**	**FY 11-12 To Date**
Hearing Applications	102	107	104	103	125	255	169

To keep up with the increased requests, the hearings and enforcement unit has focused on hearing requests. However, with an increased focus on hearing applications the unit has developed a backlog of enforcement actions and is currently prosecuting rule violations from 2008. The requested hearings officer would allow the enforcement officer to focus more on enforcement matters and begin to eliminate the backlog of enforcement matters.

2.0 FTE Field Inspectors (1.0 in Weld County and 1.0 in Northwest Colorado)
The OGCC field inspection unit inspects oil and gas wells statewide, conducts reclamation inspections of plugged wells, respond to complaints, and ensures that exploration and production wastes are disposed of properly.

The agency's goal is to inspect each active well, on average, at least once every three years. According to the OGCC, meeting that goal requires that the agency have enough inspectors to keep the number of wells per inspector below 3,000 (each inspector is able to inspect an average of approximately 1,000 wells per year). The OGCC last increased the number of inspectors from 9.0 FTE to 14.0 FTE in FY 2008-09. However, as shown in the table below, the OGCC estimates that continued growth in the number of active wells will increase the number of wells per inspector to more than 3,400 in FY 2011-12. Based on the anticipated number of active wells in FY 2012-13, the ratio would remain above 3,000 wells per inspector even with the requested FTE but the additional staff would reduce the anticipated ratio from 3,625 to 3,172 in FY 2012-13.

	FY 07-08 Actual	**FY 08-09 Actual**	**FY 09-10 Actual**	**FY 10-11 Actual**	**FY 11-12 Est.**	**FY 12-13 Request**
Active Wells	35,686	39,944	42,324	45,401	47,916	50,756
FTE	9.0	14.0	14.0	14.0	14.0	16.0
Active Wells per FTE	3,965	2,853	3,023	3,243	3,423	3,172

1.0 FTE Environmental Specialist

The environmental program: responds to reported spills; reviews industry remediation plans for spills and other impacts; reviews applications for exploration and production waste facilities; and reviews industry reuse/recycling plans. As shown in the table below, the industry is reporting more spills and submitting more remediation plans for spills and other environmental impacts. According to the OGCC, the increase in reported spills does not necessarily indicate an increase in spills occurring in a given year because spills may go unnoticed for years until an operator upgrades equipment or transfers a property to new ownership.

	FY 05-06 Actual	FY 06-07 Actual	FY 07-08 Actual	FY 08-09 Actual	FY 09-10 Actual	FY 10-11 Actual	FY 11-12 To Date
Spill Reports	367	330	388	377	427	515	123
Remediation Plans	162	191	269	236	301	585	243

The environmental staff is also charged with managing, analyzing, and responding to a variety of environmental data sets to investigate potential environmental impacts from oil and gas development (such as contamination of ground water wells, etc.). According to the request, the environmental program does not have sufficient staff to respond to the workload discussed above *and manage the volume of data submitted to the environmental program.* The requested position would largely focus on data management and analysis, including: managing water quality data associated with oil and gas wells; tracking compliance with requirements to submit environmental data; maintaining complaint, spill/release and remediation project files; and reviewing and entering analytical data.

1.0 FTE Engineer

The OGCC's engineering program reports an increased workload associated with directionally and horizontally drilled wells. Directional and horizontal wells reduce surface impacts on the land and more efficiently extract resources but also increase the workload for the OGCC engineers because of the increased complexity of engineering required. The agency is requesting the new position largely in response to ongoing increases in the number and percentage of horizontal and directional well applications.

The requested position would: review routine regulatory reports, of which the OGCC currently has a backlog; evaluate well spacing requests, which are increasing in number because of the growth in directional drilling; and evaluate new drilling, cementing, and well stimulation techniques, including witnessing the cement casing of wells.

Higher Starting Salaries

For each position, the Department is requesting starting salaries above the range minimum (29 percent above the minimum for the field inspector and engineering positions, 17 percent above the minimum for the hearings officer, and 11 percent above the minimum for the environmental specialist). According to the agency, the requested salaries are based on the salaries required by the most recent qualified candidates for the assorted position classes.

Industry Support and Local Regulatory Concerns

The industry, as represented by the Colorado Oil and Gas Association, supports the Department's request for additional FTE. In addition to the increased workload (and related concerns about the timely processing of permits, etc.), the OGCC and the industry have both expressed concerns about local governments' efforts to independently regulate oil and gas development through land use restrictions. While local governments generally regulate land use issues associated with oil and gas (e.g., transportation issues, etc.), the industry is particularly concerned about "down-hole" regulations that have typically been under the state's purview.

With oil and gas development moving into new areas, particularly along the Front Range, multiple counties have moved toward implementing their own regulations on oil and gas development. Along the Front Range, Elbert, Arapahoe, Douglas, and El Paso counties have all taken steps to do so. For example, El Paso County has implemented a four month moratorium on the issuance of most drilling permits. Outside of the Front Range, Gunnison and Routt counties have also discussed or moved forward with local regulations, as have some municipalities including Coal Creek (in Fremont County) and Craig (in Moffat County). The OGCC and the industry are both hoping that the requested positions could help alleviate some of the local governments' concerns and increase public confidence in OGCC regulation by:

- continuing to process permits in a timely manner;
- allowing for adequate environmental review of permit requests and proposed well pad locations;
- allowing the OGCC to place appropriate, site-specific, conditions on permits that help protect public health, life, and safety;
- increasing inspection frequency and allowing OGCC staff to witness a higher percentage of critical operations;
- ensuring enforcement activities are undertaken in a timely fashion;
- improving the management and analysis of data to test, monitor, prevent, and remediate environmental and public health problems associated with oil and gas development; and
- continuing to enable prompt response to, and resolution of, public complaints.

The OGCC has also indicated that the Department is considering additional, more direct solutions to concerns regarding local regulations, including proposals to facilitate better communication between the OGCC and local governments. Those proposals may be presented to the General Assembly at a later time.

CCI and CML Response

Local governments, as represented by Colorado Counties Incorporated (CCI) and the Colorado Municipal League (CML), agree that additional OGCC staffing appears to be needed based on the agency's workload. However, CCI and CML are both concerned about the use of local regulatory efforts as justification for the request and would oppose potential efforts to use increased OGCC staffing as a rationale for preempting local regulations.

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Department of Natural Resources
(Division of Reclamation, Mining, and Safety, Colorado Geological Survey, Oil and Gas Conservation Commission, State Board of Land Commissioners)

BRIEFING ISSUE

INFORMATIONAL ISSUE: Oil and Gas Development on the Former Lowry Bombing Range

Discusses the State Land Board's (Land Board's) efforts to lease the Lowry Range property for oil and gas development and associated potential revenues for K-12 education.

SUMMARY:

- ❏ The Land Board is moving forward with plans to lease the Lowry Range for oil and gas development. The property sits atop the Niobrara Formation and is thought to contain significant quantities of recoverable oil.

- ❏ Depending on the development scenario, oil and gas development on the property could generate up to $553 million in revenues for K-12 education over the life of the wells (approximately 40 years), including up to $60.0 million in bonus payments spread over the next several years, with the remainder in royalties spread over the life of the wells. An external advisor's recommended plan could generate up to $509 million over that period and still protect some of the parcel's most significant habitat and natural resource values.

- ❏ Under current law, 50.0 percent of any revenues from Lowry would go to the Building Excellent Schools Today (BEST) Program. The other 50.0 percent would be used for school finance as long as the statutory "sweep" of trust lands revenue is in effect (currently through FY 2012-13). After expiration of the sweep, the non-BEST portion of revenues would be deposited into the Public School (Permanent) Fund.

DISCUSSION:

Background on the Lowry Range
The U.S. Air Force used the Lowry Range, located in unincorporated Arapahoe County about 20 miles southeast of Metro Denver and immediately east of the City of Aurora, as a training site for over twenty years from the 1940's to the 1960's. Between 1964 and 2003, the Land Board took ownership of 27,455 acres of the property, and the Land Board still owns approximately 26,000 acres (about 40 square miles) of the site. The parcel is part of the school trust and revenues from the site benefit K-12 education. To date, the Land Board has managed the property for traditional agricultural uses, recreational leases, some mineral development (including sand and gravel as well as oil and gas in some areas), and natural resource values. Significant portions of the parcel have required remediation from the U.S. Army Corps of Engineers because the Air Force used the area

as a bombing range. The majority of bombing target sites have been remediated but some of that work remains.

The Joint Budget Committee last received a briefing on the Lowry Range in 2008, for the FY 2009-10 budget process. At that point, the Land Board had a contract to develop a portion of the parcel as a mixed-use residential development, leaving much of the property intact for conservation. However, the developer abandoned the project based on concerns about water availability and the state of the real estate market. Given ongoing concerns about water and the real estate market, the Land Board does note believe that residential development of the property will be a viable option for decades.

The Land Board initiated a new strategic planning process for the property after the collapse of the residential development project. Given new information on the economic viability of oil development in the Niobrara and the fortuitous location of the Lowry Range, the Land Board is moving forward with plans to lease the property for additional oil and gas development.

Oil and Gas Development Scenarios and Revenue Potential

The pace and scale of potential oil and gas development on the property is a contentious issue because of the parcel's large size and relatively high natural resource values. The prior residential development plan would have left much of the property intact and conserved as open space, and the shift to more widespread oil and gas development has spurred concern from conservation interests.

The Land Board has contracted with an external contractor (Meagher Energy Advisors) to analyze the oil and gas potential of the Lowry Range, advise the Land Board, and facilitate the process of leasing the property. The contractor has worked with the county and with conservation intersts to formulate a range of development scenarios for the property depending on the amount and location of acreage protected through "no surface occupancy" provisions. The following table outlines Meagher's estimates of potential revenues over the life of the project from each scenario.

Development Scenario	Total Revenue Estimate (Bonus and Royalty)
Maximum Production (minimum constraints)	$553 million
Stewardship/Conservation Plan	$371 million
Consultant Recommendation	**$509 million**

The advisor's recommended plan seeks to balance the need to generate revenues with concerns about the property's natural resource values. Thus, the recommended plan includes more restrictions than the "maximum production" option but allows for more development than the "stewardship/conservation" option.

Project Timeline

The Land Board has not yet made a final decision to go forward with leasing the property but has taken steps toward doing so. The following is a basic timeline of past and future steps in the process.

- January 2009: Residential development project collapses, forcing the Land Board to rethink options for the property.
- December 2010: Hired external strategist to begin rethinking the future of Lowry Range.
- January 2011: Land Board received external presentation on the oil and gas potential of the property in light of recent information on the Niobrara formation.
- Summer 2011: Hired separate advisors to (1) develop stewardship/conservation plan for the property and (2) develop oil and gas development plans for the property to inform the leasing process.
- October 2011: Land Board authorized issuance of request for qualifications (RFQ) to develop a list of potential qualified bidders on an oil and gas lease.
- November 2011: Land Board received presentation of development scenarios with consideration of conservation values.
- December 2011: Land Board will decide whether to issue the request for proposals (RFP) for oil and gas lease based on the constraints and lease terms determined by the Land Board.
- March 2012: Potential Land Board decision on a final oil and gas lease for the property.
- April 2012: Potential closing on lease.

Revenue Timing

In a standard oil and gas lease, the Land Board receives the entire bonus payment when the bid is accepted at auction. The Land Board is planning a different process for the Lowry Range, with pre-qualified bidders submitting sealed bids for the project. Because of the size of the Lowry Range project and the anticipated bonus (between $40 million and $60 million), the Land Board currently expects to collect the bonus payment over four years, 25.0 percent (an estimated $10 million to $15 million) per year starting in FY 2011-12. Doing so will spread the bonus payment out and better ensure stable revenues for the school trust. Given the scale of the project and the amount of preparatory work required, the Land Board staff does not anticipate significant royalty income for approximately four years.

Revenue Disposition

Under current law, 50.0 percent of *gross* school trust income is diverted to the BEST program and supports either certificate of participation (C.O.P.) payments or cash grants to school districts to construct or improve school facilities. The diversion to BEST takes place before any funds are allocated for Land Board operations, etc. Of the remaining 50.0 percent, approximately $9.1 million per year supports Land Board staff and operations and the annual allocation to the Investment and Development Fund. The remainder is currently "swept" into the State Public School Fund for use in school finance. The "sweep" to school finance is scheduled to expire after FY 2012-13; if the sweep expires the revenues will again be deposited into the Public School (Permanent) Fund to generate interest for future use in school finance. *For further discussion of the disposition of school trust revenues, including potential revenues from the Lowry Range, see the following issue paper.*

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Department of Natural Resources
(Division of Reclamation, Mining, and Safety, Colorado Geological Survey, Oil and Gas Conservation Commission, State Board of Land Commissioners)

BRIEFING ISSUE

ISSUE: Potential Changes to the Distribution of State School Trust Land Revenues

Discusses the distribution of school trust revenues under current law and presents options to change the distribution.

RECOMMENDATION:

Staff recommends that the Committee sponsor legislation to increase deposits of school trust proceeds to the Permanent Fund. Staff further recommends that the Committee discuss this issue with the Departments of Natural Resources and Education at their respective hearings.

DISCUSSION:

As discussed briefly in the previous issue, current law distributes annual state school trust land revenues as follows:

- 50.0 percent of *gross* school trust revenues are allocated to the Building Excellent Schools Today (BEST) program and used to fund public school improvement and construction through either certificates of participation (C.O.P.s) or cash grants.

- Roughly $9.1 million supports State Land Board operations (approximately $4.1 million in FY 2011-12) and the Investment and Development Fund ($5.0 million per year).

- With the current statutory "sweep" of school trust revenues in effect through FY 2012-13, the remainder is allocated to the State Public School Fund and is appropriated to provide funding for public school finance.

- Prior to the sweep, remaining revenues were deposited into the Public School ("Permanent") Fund.

Current and Projected Revenues
In FY 2010-11, the Land Board collected a record $120.6 million for the school trust, $46.5 million more than the previous record year in FY 2008-09. Based on the distribution outlined above, in FY 2010-11 the BEST program received $60.3 million, the Land Board retained $4.1 million for operations and $4.0 million for the Investment and Development Fund, and $52.2 million were diverted into the State Public School Fund for school finance.

As shown in the following table, mineral revenues are the driving force behind current revenues. The record high revenues in FY 2010-11 were largely driven by one-time funds. Mineral (oil and gas) bonus payments provided $62.6 million (51.9 percent of the total). Mineral rents and royalties, which span more than one year but are finite based on the availability of minerals, generated another $44.3 million (36.7 percent). Ongoing sources such as commercial revenues, agricultural leases, and recreational leases provided the remaining revenues.

SCHOOL TRUST REVENUE	FY07-08 Actual	FY08-09 Actual	FY 09-10 Actual	FY 10-11 Actual	Percent of FY 10-11
School Trust-Total Revenues	$69,495,847	$74,023,629	$66,361,923	$120,557,802	n/a
Mineral Rental	2,023,401	1,739,678	1,729,683	2,049,480	1.7%
Mineral Royalties	47,130,818	54,521,085	34,169,303	42,210,215	35.0%
Mineral Bonuses	5,974,830	3,806,001	14,880,486	62,649,071	52.0%
Surface Rental	8,819,293	8,305,534	9,157,949	8,222,629	6.8%
Commercial/Other	5,172,228	5,210,122	6,210,687	5,133,310	4.3%
Land Sales	4,085	3,250	4,095	53,824	0.0%
Interest and Penalties	315,960	381,501	209,720	239,273	0.2%
Timber Sales	55,232	56,458	0	0	0.0%

The Land Board Staff is currently anticipating $86.6 million in revenues to the school trust in FY 2011-12, a decline of $34.0 million from FY 2010-11 but still well above the previous high of $74.0 million. *That estimate is meant to be conservative and does not include any revenues associated with the planned oil and gas development on the Lowry Range discussed in the prior issue.*

Brief Background on State Land Board and the Permanent Fund

Colorado's original allocation of school trust lands and the Permanent Fund that is supported by proceeds from the trust lands were both established in the state's enabling act. As described in section 14 of the enabling act, the "permanent school fund" is to receive the revenues resulting from the sale of state school lands and the interest earned by the permanent fund is to be expended in support of the common schools.

Section 3 of Article IX of the State Constitution makes the principal in the Permanent Fund inviolate and requires the interest and other income to be used only for "the maintenance of the schools of the state." Section 5 of Article IX establishes that the Permanent Fund consists of the proceeds of state school lands, among other sources. Section 9 of Article IX designates the Land Board as the trustee for state school lands as well as the other trusts, and Section 10 of Article IX directs the Land Board to manage such lands "to produce reasonable and consistent income over time."

Options for Changing the Distribution of Revenues

The major premise behind the school trust, the Permanent Fund, and the Land Board's management of school trust lands is the concept of an "intergenerational trust" benefitting K-12 students. As such, the General Assembly has generally focused on depositing revenues from finite resources (such as mineral production and the sale of land) into the Permanent Fund. The State Treasurer invests revenues in the Permanent Fund to generate returns, and a share of those returns is available for school finance on an annual basis. Investment in the Permanent Fund meets the intergenerational obligation of the school trust by providing revenues for future generations of students and allowing those students to benefit from the depletion of finite resources.

The current sweep, initially authorized in FY 2008-09 for two years and subsequently extended through FY 2012-13, contradicts the intergenerational concept of the trust and is using one-time sources of funds for ongoing operations through school finance. Thus, while the sweep has been an important tool to assist with budget balancing during the current downturn, **staff recommends that the Committee sponsor legislation during the 2012 Session to increase the annual deposit into the Permanent Fund in FY 2011-12 and beyond. Staff further recommends that the Committee discuss this issue with the Departments of Natural Resources and Education at their respective hearings.**

The following represent some options that would increase deposits to the Permanent Fund.

1. *Cap the amount allocated to the BEST program.* The BEST program currently receives 50.0 percent of gross revenues, with no limit. When the program receives more funding than is necessary for lease purchase payments, additional funds are awarded to school districts as cash grants. The General Assembly could cap distributions to the BEST program and increase deposits to the Permanent Fund. For example, the General Assembly could limit the annual diversion to the lesser of some amount (e.g., $40 million) or 50.0 percent of gross revenues, and direct the excess revenues to the Permanent Fund.

2. *Cap or eliminate the "sweep" to school finance.* The school finance act assumes a specific level of revenue from the sweep for school finance. However, the sweep captures *all* revenue not diverted to BEST or the Land Board. Limiting the sweep to a specific amount, ranging from zero (eliminating the sweep) to the amount appropriated for the state share of funding for school finance, would increase deposits to the Permanent Fund in any year in which the applicable revenues exceed the appropriation. In FY 2010-11, the school finance act assumed $31.6 million in revenues from the sweep. However, because of the high revenues in FY 2010-11, the sweep actually provided $66.2 million to the State Public School Fund. To put the size of the sweep into perspective, the amount diverted in FY 2010-11 represents only 2.1 percent of total state spending on school finance in FY 2010-11 but that same amount would have increased the balance of the Permanent Fund by 10.6 percent and generated benefits for K-12 education on a permanent basis.

Staff recommends that the Committee sponsor legislation including both of the above options, capping the BEST allocation (based on discussions with the Department of Education at its hearing), and capping the sweep to the State Public School Fund in FY 2011-12 and FY 2012-13 to increase deposits to the Permanent Fund. Staff also recommends that the Committee resist any potential efforts to extend the sweep beyond FY 2012-13.

	FY 2009-10 Actual	FY 2010-11 Actual	FY 2011-12 Appropriation	FY 2012-13 Request	Request vs. Appropriation

DEPARTMENT OF NATURAL RESOURCES
Mike King, Executive Director

(2) DIVISION OF RECLAMATION, MINING, AND SAFETY
Primary Functions: Provides regulation and enforcement related to the development and reclamation of mining sites. Primary sources of cash funds are fees on metal and aggregate mining operations and the severance tax.

(A) Coal Land Reclamation

	FY 2009-10 Actual	FY 2010-11 Actual	FY 2011-12 Appropriation	FY 2012-13 Request	Request vs. Appropriation
Program Costs	2,117,899	2,134,008	2,105,000	2,145,204	
FTE	20.0	20.0	23.0	23.0	
Cash Funds	444,163	447,548	714,771	723,214	
Federal Funds	1,673,736	1,686,460	1,390,229	1,421,990	
Indirect Cost Assessment	164,379	158,332	136,073	134,191	
Cash Funds	30,393	25,999	28,575	28,180	
Federal Funds	133,986	132,333	107,498	106,011	
Total Funds - (A) Coal Land Reclamation	**2,282,278**	**2,292,340**	**2,241,073**	**2,279,395**	**0.0%**
FTE	**20.0**	**20.0**	**23.0**	**23.0**	**0.0%**
Cash Funds	474,556	473,547	743,346	751,394	0.0%
Federal Funds	1,807,722	1,818,793	1,497,727	1,528,001	2.0%

*This line item includes a decision item.

	FY 2009-10 Actual	FY 2010-11 Actual	FY 2011-12 Appropriation	FY 2012-13 Request	Request vs. Appropriation
(B) Inactive Mines					
Program Costs	**984,788**	**1,017,477**	**1,607,759**	**1,636,925**	
FTE	7.4	7.2	16.4	16.4	
Cash Funds	15,893	48,800	519,247	519,247	
Federal Funds	968,895	968,677	1,088,512	1,117,678	
Mine Site Reclamation	**31,216**	**35,798**	**408,690**	**409,993**	
FTE	0.4	0.5	1.2	1.2	
Cash Funds	31,216	35,798	378,690	379,993	
Reappropriated Funds	0	0	30,000	30,000	
Reclamation of Forfeited Mine Sites	**0**	**15,900**	**171,000**	**171,000**	
Cash Funds	0	15,900	171,000	171,000	
Abandoned Mine Safety	**100,000**	**98,463**	**99,596**	**99,850**	
FTE	0.2	0.1	0.2	0.2	
Cash Funds	100,000	98,463	99,596	99,850	
Indirect Cost Assessment	**137,099**	**127,268**	**133,226**	**133,696**	
Cash Funds	8,250	12,995	12,026	14,633	
Federal Funds	128,849	114,273	121,200	119,063	
Total Funds - (B) Inactive Mines	**1,253,103**	**1,294,906**	**2,420,271**	**2,451,464**	**0.0%**
FTE	**8.0**	**7.8**	**17.8**	**17.8**	**(0.0%)**
Cash Funds	155,359	211,956	1,180,559	1,184,723	0.0%
Reappropriated Funds	0	0	30,000	30,000	0.0%
Federal Funds	1,097,744	1,082,950	1,209,712	1,236,741	2.2%

*This line item includes a decision item.

	FY 2009-10 Actual	FY 2010-11 Actual	FY 2011-12 Appropriation	FY 2012-13 Request	Request vs. Appropriation
(C) Minerals					
Program Costs	**2,164,151**	**2,170,170**	**2,135,806**	**2,176,730**	
FTE	20.5	20.8	24.1	24.1	
Cash Funds	2,164,151	2,170,170	2,135,806	2,176,730	
Indirect Cost Assessment	**109,392**	**112,421**	**121,219**	**127,188**	
Cash Funds	109,392	112,421	121,219	127,188	
Total Funds - (C) Minerals	**2,273,543**	**2,282,591**	**2,257,025**	**2,303,918**	**2.1%**
FTE	**20.5**	**20.8**	**24.1**	**24.1**	**0.0%**
Cash Funds	2,273,543	2,282,591	2,257,025	2,303,918	2.1%
(D) Mines Program					
Colorado and Federal Mine Safety Program	**487,560**	**441,380**	**503,506**	**513,045**	
FTE	5.0	4.0	5.0	5.0	
Cash Funds	316,741	318,632	314,785	324,324	
Federal Funds	170,819	122,748	188,721	188,721	
Blaster Certification Program	**105,782**	**107,916**	**106,777**	**108,353**	
FTE	1.0	1.0	1.0	1.0	
Cash Funds	22,064	22,512	22,275	22,606	
Federal Funds	83,718	85,404	84,502	85,747	
Indirect Cost Assessment	**28,076**	**24,808**	**28,191**	**24,419**	
Cash Funds	14,644	15,802	17,668	16,682	

*This line item includes a decision item.

	FY 2009-10 Actual	FY 2010-11 Actual	FY 2011-12 Appropriation	FY 2012-13 Request	Request vs. Appropriation
Federal Funds	13,432	9,006	10,523	7,737	
Total Funds - (D) Mines Program	**621,418**	**574,104**	**638,474**	**645,817**	**1.2%**
FTE	**6.0**	**5.0**	**6.0**	**6.0**	**0.0%**
Cash Funds	353,449	356,946	354,728	363,612	2.5%
Federal Funds	267,969	217,158	283,746	282,205	(0.5%)
(E) Emergency Response Costs					
Emergency Response Costs	**25,000**	**25,000**	**25,000**	**25,000**	
Cash Funds	25,000	25,000	25,000	25,000	
Total Funds - (E) Emergency Response Costs	**25,000**	**25,000**	**25,000**	**25,000**	**0.0%**
FTE	**0.0**	**0.0**	**0.0**	**0.0**	**0.0%**
Cash Funds	25,000	25,000	25,000	25,000	0.0%
Total Funds - (2) Division of Reclamation, Mining, and Safety	**6,455,342**	**6,468,941**	**7,581,843**	**7,705,594**	**0.0%**
FTE	**54.5**	**53.6**	**70.9**	**70.9**	**0.0%**
Cash Funds	3,281,907	3,350,040	4,560,658	4,628,647	0.0%
Reappropriated Funds	0	0	30,000	30,000	0.0%
Federal Funds	3,173,435	3,118,901	2,991,185	3,046,947	1.9%

*This line item includes a decision item.

	FY 2009-10 Actual	FY 2010-11 Actual	FY 2011-12 Appropriation	FY 2012-13 Request	Request vs. Appropriation

(3) GEOLOGICAL SURVEY
Primary functions: providing geologic information to the public and government agencies. Cash funds are from severance tax revenues, fees for geological services provided, and grants. Reappropriated funds are from transfers from other state agencies for geological services.

	FY 2009-10 Actual	FY 2010-11 Actual	FY 2011-12 Appropriation	FY 2012-13 Request	Request vs. Appropriation
Environmental Geology and Geological Hazards Program	**1,706,432**	**1,523,479**	**2,481,991**	**2,511,978**	
FTE	11.7	9.0	17.2	17.2	
Cash Funds	1,079,919	1,199,136	1,438,600	1,464,341	
Reappropriated Funds	364,775	324,343	447,269	448,881	
Federal Funds	261,738	0	596,122	598,756	
Mineral Resources and Mapping	**1,129,540**	**1,173,755**	**1,426,723**	**1,440,260**	
FTE	8.2	9.3	10.5	10.5	
Cash Funds	1,001,411	997,866	1,106,164	1,117,949	
Federal Funds	128,129	175,889	320,559	322,311	
Colorado Avalanche Information Center	**609,029**	**671,333**	**697,041**	**708,770**	
FTE	7.1	7.7	8.4	8.4	
Cash Funds	231,201	276,796	275,825	280,750	
Reappropriated Funds	372,961	377,504	403,133	409,833	
Federal Funds	4,867	17,033	18,083	18,187	
Indirect Cost Assessment	**240,533**	**180,208**	**152,789**	**144,421**	
Cash Funds	167,844	115,940	110,548	127,706	
Federal Funds	72,689	64,268	42,241	16,715	

*This line item includes a decision item.

	FY 2009-10 Actual	FY 2010-11 Actual	FY 2011-12 Appropriation	FY 2012-13 Request	Request vs. Appropriation
Total Funds - (3) Geological Survey	**3,685,534**	**3,548,775**	**4,758,544**	**4,805,429**	**1.0%**
FTE	**27.0**	**26.0**	**36.1**	**36.1**	**0.0%**
Cash Funds	2,480,375	2,589,738	2,931,137	2,990,746	2.0%
Reappropriated Funds	737,736	701,847	850,402	858,714	1.0%
Federal Funds	467,423	257,190	977,005	955,969	(2.2%)

(4) OIL AND GAS CONSERVATION COMMISSION
Primary functions: promoting and regulating responsible development of oil and gas natural resources. Cash funds are from the Oil and Gas Conservation and Environmental Response Fund and the severance tax.

	FY 2009-10 Actual	FY 2010-11 Actual	FY 2011-12 Appropriation	FY 2012-13 Request	Request vs. Appropriation
Program Costs	**5,720,272**	**5,858,020**	**5,812,371**	**6,354,248**	*
FTE	60.1	63.2	67.0	72.0	
Cash Funds	5,720,272	5,858,020	5,812,371	6,354,248	
Underground Injection Program	**88,385**	**86,769**	**96,559**	**96,559**	
FTE	2.0	2.0	2.0	2.0	
Federal Funds	88,385	86,769	96,559	96,559	
Plugging and Reclaiming Abandoned Wells	**162,084**	**216,768**	**445,000**	**445,000**	
Cash Funds	162,084	216,768	445,000	445,000	
Environmental Assistance and Complaint Resolution	**311,801**	**311,929**	**312,033**	**312,033**	
Cash Funds	311,801	311,929	312,033	312,033	
Emergency Response	**0**	**17,236**	**1,000,000**	**1,000,000**	
Cash Funds	0	17,236	1,000,000	1,000,000	

*This line item includes a decision item.

	FY 2009-10 Actual	FY 2010-11 Actual	FY 2011-12 Appropriation	FY 2012-13 Request		Request vs. Appropriation
Special Environmental Protection and Mitigation Studies	**192,843**	**173,184**	**325,000**	**325,000**		
Cash Funds	192,843	173,184	325,000	325,000		
Indirect Cost Assessment	**317,658**	**413,153**	**463,897**	**398,528**		
Cash Funds	310,119	405,977	456,220	393,108		
Federal Funds	7,539	7,176	7,677	5,420		
S.B. 07-198 Coalbed Methane Seepage Projects	**445,200**	**0**	**0**	**0**		
Cash Funds	445,200	0	0	0		
Total Funds - (4) Oil and Gas Conservation Commission	**7,238,243**	**7,077,059**	**8,454,860**	**8,931,368**		**5.6%**
FTE	**62.1**	**65.2**	**69.0**	**74.0**		**7.2%**
Cash Funds	7,142,319	6,983,114	8,350,624	8,829,389		5.7%
Federal Funds	95,924	93,945	104,236	101,979		(2.2%)

(5) STATE BOARD OF LAND COMMISSIONERS

Primary Functions: Manages around 2.6 million surface acres and 4.5 million mineral acres of state trust lands for the benefit of 8 public trusts, the largest of which is the School Trust (96% of holdings). Cash funds are from the Trust Administration Fund.

	FY 2009-10 Actual	FY 2010-11 Actual	FY 2011-12 Appropriation	FY 2012-13 Request		Request vs. Appropriation
Program Costs	**3,742,771**	**3,736,332**	**3,642,707**	**3,822,589**	*	
FTE	35.1	36.4	37.0	37.0		
Cash Funds	3,742,771	3,736,332	3,642,707	3,822,589		
Public Access Program Damage and Enhancement Costs	**0**	**224,599**	**225,000**	**225,000**		
Reappropriated Funds	0	224,599	225,000	225,000		

*This line item includes a decision item.

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Appendix A: Numbers Pages

	FY 2009-10 Actual	FY 2010-11 Actual	FY 2011-12 Appropriation	FY 2012-13 Request	Request vs. Appropriation
Asset Management System Upgrade	**0**	**0**	**0**	**750,000**	*
Cash Funds	0	0	0	750,000	
Indirect Cost Assessment	**165,450**	**177,993**	**189,581**	**202,527**	
Cash Funds	165,450	177,993	189,581	202,527	
Total Funds - (5) State Board of Land Commissioners	**3,908,221**	**4,138,924**	**4,057,288**	**5,000,116**	**23.2%**
FTE	**35.1**	**36.4**	**37.0**	**37.0**	**0.0%**
Cash Funds	3,908,221	3,914,325	3,832,288	4,775,116	24.6%
Reappropriated Funds	0	224,599	225,000	225,000	0.0%
Total Funds - Department of Natural Resources	**21,287,340**	**21,233,699**	**24,852,535**	**26,442,507**	**0.0%**
FTE	**178.7**	**181.2**	**213.0**	**218.0**	**2.3%**
Cash Funds	16,812,822	16,837,217	19,674,707	21,223,898	0.0%
Reappropriated Funds	737,736	926,446	1,105,402	1,113,714	0.8%
Federal Funds	3,736,782	3,470,036	4,072,426	4,104,895	0.8%

*This line item includes a decision item.

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APPENDIX B: SUMMARY OF MAJOR LEGISLATION

❏ **S.B. 11-024 (King K./Looper):** Authorizes the Board of Parks and Outdoor Recreation in the Department of Natural Resources to promulgate rules to allow members of the armed forces wounded warriors programs, and caretakers accompanying them, free entrance to any state park or recreation area. Wounded warriors are individuals who have been severely injured in military operations undertaken since September 11, 2001, and require years of intense, ongoing care or assistance. Wounded warriors who are residents of, or are stationed in Colorado, would be eligible for free entrance. The bill also authorizes the board to promulgate rules to allow all veterans free entrance to any state park on one day each year of the board's choosing.

❏ **S.B. 11-076 (Steadman/Becker):** For the 2011-12 state fiscal year only, reduces the employer contribution rate for the State and Judicial divisions of the Public Employees' Retirement Association (PERA) by 2.5 percent and increases the member contribution rate for these divisions by the same amount. In effect, continues the FY 2010-11 PERA contribution adjustments authorized through S.B. 10-146 for one additional year. Reduces the Department's total appropriation by $2,209,502 total funds, of which $384,244 is General Fund, $1,478,456 is cash funds, $74,295 is reappropriated funds, and $272,507 is federal funds.

❏ **S.B. 11-090 (Schwartz/Baumgardner):** Continues the "Weather Modification Act of 1972" until September 1, 2018. Requires the Executive Director of the Department of Natural Resources to ensure that all rules related to weather modification are updated by June 30, 2012.

❏ **S.B. 11-092 (Giron/Hamner):** Extends the vessel registration laws set to expire on July 1, 2011 until September 1, 2016. Requires State Parks to report to the President of the Senate and the Speaker of the House of Representatives if federal funding for recreational boating safety are expected to cease for any reason.

❏ **S.B. 11-147 (Hodge/Gerou):** Supplemental appropriation to the Department of Natural Resources to modify FY 2010-11 appropriations included in the FY 2010-11 Long Bill (H.B. 10-1376).

Also makes the following adjustments: (1) decreases transfers from the Operational Account to the Water Supply Reserve Account by $4.0 million in FY 2010-11 and by $3.0 million in

FY 2011-12 and beyond; and (2) decreases the FY 2009-10 Long Bill General Fund appropriation to the Division of Parks and Outdoor Recreation by $2,147,415 and increases its cash fund appropriation from the Operational Account by the same amount.

❑ **S.B. 11-164 (Hodge/Gerou):** Transfers $5.0 million from the Perpetual Base Account of the Severance Tax Trust Fund to the General Fund on June 30, 2011. For additional information on this bill, see the "Recent Legislation" section for the Department of Labor and Employment.

❑ **S.B. 11-203 (Schwartz/Sonnenberg):** Appropriates $4,500,000 from the Capital Account of the Species Conservation Trust Fund (Capital Account) and $2,100,000 from the Operation and Maintenance Account of the Species Conservation Trust Fund (Operation and Maintenance Account) to the Department of Natural Resources for programs to conserve native species that have been listed as threatened or endangered under state or federal law, or are candidate species or are likely to become candidate species as determined by the United States Fish and Wildlife Service. Also adjusts existing appropriations for projects beginning in FY 2000-01 to reflect the amount actually spent by the Department.

❑ **S.B. 11-208 (Schwartz/Sonnenberg):** Combines the following:

- the Wildlife Commission and the Board of Parks and Outdoor Recreation into a new Parks and Wildlife Board, and
- the Division of Wildlife and the Division of Parks and Outdoor Recreation into a new Division of Parks and Wildlife.

The new Board and new Division will assume all of the duties, powers, responsibilities, obligations, and functions that were previously exercised by their predecessor entities. Specifies that the new Board and Division shall constitute an enterprise for the purposes of Article X, Section 20 of the State Constitution. Additionally, specifies that all funds and expenditures will continue unaltered and does not merge the appropriations of the two divisions for FY 2011-12, but allows the new Division of Parks and Wildlife to expend appropriations to the former Division of Wildlife and the former Division of Parks and Outdoor Recreation contained in the 2011general appropriations act (S.B. 11-209). Requires the consolidation of the boards and divisions to take place within existing appropriations. Reaffirms the state's assent to the federal Pittman-Robertson and Dingell-Johnson acts.

In addition to all of the duties and functions of the two predecessor boards, requires the new board to develop an implementation plan in order to:

- address outstanding issues and to identify increased efficiencies and cost savings that may be realized from merging the divisions;
- consolidate the operations and programs of the two divisions in order to allocate costs over a reasonable period of time and within existing budget levels;

- use the identified cost savings to finance the implementation plan and transition; and
- include recommendations for restructuring the board.

Requires the new board to schedule monthly meeting dates through the 2011 calendar year beginning in July 2011 in order to develop the implementation plan. All meetings are to be open to the public and the board is required to solicit public input. Additionally, requires the Board to hold workshops at least every two months.

Authorizes the Board to raise or lower park fees or other charges if the Board anticipates that the total annual revenues realized from the change will not increase by more than 20 percent over the annual amount earned from fees and charges as of July 1, 2011. Additionally, when considering rules to increase or decrease a park fee or other charge, requires the Board to consider the effect that the change will have on park use and the demand for the service and to consider opportunities for differential pricing.

Requires the Executive Director to report to the House Agriculture, Livestock, and Natural Resources Committee and the Senate Agriculture, Natural Resources, and Energy Committee on the activities of the Board, the implementation plan, expected cost savings to result from the merger, and any recommendations for further legislation on or before February 29, 2012. Also requires the Executive Director to submit an informal progress report by November 30, 2011 that provides an update on the development of an implementation plan and any outstanding issues.

❑ **S.B. 11-209 (Hodge/Gerou):** General appropriations act for FY 2011-12.

❑ **S.B. 11-226 (Hodge/Gerou):** Transfers: $25.0 million from the Perpetual Base Account of the Severance Tax Trust Fund to the General Fund on July 1, 2011; transfers $23.1 million from the Perpetual Base Account of the Severance Tax Trust Fund to the General Fund on June 30, 2012; and transfers $3.95 million from the Operational Account of the Severance Tax Trust Fund to the General Fund on June 30, 2012. For additional information on this bill, see the "Recent Legislation" section for the Department of Education.

❑ **H.B. 11-1274 (Sonnenberg/Schwartz**): Appropriates $13,925,000 cash funds from the Colorado Water Conservation Board (CWCB) Construction Fund to the Department of Natural Resources in FY 2011-12 for various water-related projects. Transfers $300,000 from the CWCB Construction Fund to the Flood Response Fund in FY 2011-12. Transfers $700,000 from the CWCB Construction Fund to the Litigation Fund in FY 2011-12.

❑ **H.B. 11-1286 (Sonnenberg/Schwartz**)**:** Clarifies the State Engineer's rule-making authority regarding dewatering geologic formations for mining operations. Specifies that the State Engineer can make rules to determine which ground water in the formations or basins is determined to be nontributary, and can establish rule-making and adjudicatory procedures for nontributary determinations after the initial rule-making. Specifies that the courts must presume that any applicable nontributary determination made by the State Engineer is valid, subject to rebuttal.

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APPENDIX C: UPDATE ON FY 2011-12 LONG BILL FOOTNOTES AND REQUESTS FOR INFORMATION

Long Bill Footnotes

42 **Department of Natural Resources, Division of Reclamation, Mining, and Safety, Inactive Mines, Mine Site Reclamation --** It is the intent of the General Assembly that these funds shall remain available until completion of the project or the close of FY 2013-14, whichever comes first. At project completion or the end of the three-year period, any unexpended balances shall revert to the Operation Account of the Severance Tax Trust Fund from which they were appropriated.

Comment: This footnote provides roll-forward authority at the end of the fiscal year.

43 **Department of Natural Resources, Division of Reclamation, Mining, and Safety, Inactive Mines, Reclamation of Forfeited Mine Sites --** It is the intent of the General Assembly that the appropriation to this line item remain available until the completion of the project or the close of FY 2013-14, whichever comes first. At project completion or the end of the three-year period, any unexpended amount shall revert to the Operational Account of the Severance Tax Trust Fund, from which this appropriation was made.

Comment: This footnote provides roll-forward authority at the end of the fiscal year.

44 **Department of Natural Resources, Oil and Gas Conservation Commission, Emergency Response --** It is the intent of the General Assembly that funding for this line item be expended in the event that there is an oil and gas related emergency under the jurisdiction of the Oil and Gas Conservation Commission. The purpose of this funding is for investigation, prevention, monitoring, and mitigation of circumstances which are caused by or are alleged to be associated with oil and gas activities and which call for immediate action by the Oil and Gas Conservation Commission. An emergency creates a threat to public health, safety, or welfare or to the environment as proclaimed by the Oil and Gas Conservation Commission Director and approved by order of the Oil and Gas Conservation Commission.

Comment: This footnote sets forth the purpose, conditions, and limitations of the line item. The JBC created the Emergency Response line item in FY 2006-07, with an appropriation of $1.5 million from the Oil and Gas Conservation and Environmental Response Fund. Said sum is to be used -- if and when necessary -- for emergency responses. The funding was added due to a concern that emergency funding would be necessary during a time when the

JBC may not yet be meeting during the interim (and thus would have to wait for an interim supplemental, delaying the Department's ability to respond adequately).

45 **Department of Natural Resources, Oil and Gas Conservation Commission, Special Environmental Protection and Mitigation Studies --** It is the intent of the General Assembly that funding for this line item be used for special environmental protection and mitigation studies including, but not limited to gas seepage mitigation studies, outcrop monitoring studies, soil gas surveys in the vicinity of plugged orphaned wells, and baseline water quality and subsequent follow-up studies.

Comment: This footnote sets forth the purpose, conditions, and limitations of the line item.

Requests for Information

5 **All Departments, Totals --** Every department is requested to submit to the Joint Budget Committee, by November 1, 2011 information on the number of additional federal and cash funds FTE associated with any federal grants or private donations that were received in FY 2010-11 The Departments are also requested to identify the number of additional federal and cash funds FTE associated with any federal grants or private donations that are anticipated to be received during FY 2011-12.

Comment: Staff did not receive a response to this request for information.

2 **Department of Natural Resources, Oil and Gas Conservation Commission, Emergency Response --** The Oil and Gas Conservation Commission is requested to include in its annual budget request a report detailing all expenditures made in the previous year from this line item.

Comment: The Department complied with this request. The Department reports $17,236 in total expenditures from this line item in FY 2010-11 to alleviate safety risks resulting from a natural gas seep in the historic Florence oil field where homes were at risk.

3 **Department of Natural Resources, Oil and Gas Conservation Commission, Special Environmental Protection and Mitigation Studies --** The Oil and Gas Conservation Commission is requested to include in its annual budget request a report detailing all expenditures made in the previous year from this line item.

Comment: The Department complied with this request. The report describes seven studies that the Oil and Gas Conservation Commission supported through this line item in FY 2010-11, totaling $173,184 in expenditures. Spending is from cash funds in the Oil and Gas Conservation and Environmental Response Fund and is supported by a mill levy on oil and gas production. The Department's response is attached as Appendix E.

APPENDIX E: DEPARTMENT RESPONSE TO FY 2011-12 REQUEST FOR INFORMATION # 3: REPORT ON OGCC SPECIAL ENVIRONMENTAL PROTECTION AND MITIGATION STUDIES LINE ITEM

Department of Natural Resources - Colorado Oil and Gas Conservation Commission
Special Environmental Protection and Mitigation Studies Line Item
Annual Report of Expenditures

Special Study/Project Name	Description	FY 2010-11 Expenditures
Rulison and Rio Blanco Environmental Monitoring	**Project Rulison** was a 1969 underground nuclear blast conducted by the Atomic Energy Commission to investigate the use of nuclear explosives to stimulate gas production. It involved the detonation of a 40 kiloton nuclear device approximately 8,400 feet deep at a site about 40 miles east of Grand Junction. Detonation of the device created a cavity in the rock which contained approximately 170 million cubic feet of gas and fractured the surrounding rock. In 1970, a test well was drilled back into the cavity to evaluate the effect of the blast. Approximately 450 million cubic feet of gas was produced from the cavity and surrounding rock. At the conclusion of the testing and flaring period the radioactivity of the gas produced from the well was below levels hazardous to human health. This testing demonstrated that the 1970 flaring removed much of the gas-phase radioactive contamination from the blast site. In 1976, the test well was plugged and abandoned. Annual sampling of wells, springs, and streams in the Rulison area has been conducted by the Environmental Protection Agency since the time of the test, with no radionuclides detected above background. The federal government established a 40-acre area around the blast site within which drilling is prohibited below 6,000 feet. This no drill zone extends approximately 325 feet from the blast site, and it remains the only area near the blast site in which drilling has been prohibited by any federal, state, or local agency. The COGCC has, however, adopted special procedural requirements regarding APDs in the Project Rulison area. In 1998, the COGCC determined that APDs for locations within	$7,915

	three miles of the blast site would be forwarded to the Department of Energy (DOE) for review and comment. A three-mile area was adopted for this purpose because as of 1998 no active or proposed wells were located within that area. As part of that 1998 action, the COGCC Deputy Director prepared an extensive review of the literature regarding Project Rulison, which is available on the COGCC website. In 2004, the COGCC further directed that APDs for locations within one-half mile of the blast site would require a formal COGCC hearing. Drilling in the vicinity of Project Rulison has received a great deal of interest from Garfield County and local residents because of ongoing concerns that radioactive gas and drilling wastes might be encountered or generated. Operators with active and planned operations are required to conduct extensive monitoring, sampling, and analysis. COGCC requires the expertise of a health physicist to assist in the oversight of oil and gas activities being conducted in this area by ensuring that operators are in compliance with the radiological provisions of the approved "Project Rulison Sampling and Analysis Plan" (RSAP) and RSAP revisions. M.H. Chew & Associates (Chew) provided such expertise and assisted the COGCC by coordinating with COGCC, CDPHE, DOE, & oil and gas operators; preparing inspection checklists based on the RSAP; conducting inspections; preparing reports; and presenting the results of the inspections and audits to the COGCC, local government, and residents. In addition, Chew assists in answering questions from operators concerning the implementation of the RSAP and making recommendations for modifications to the RSAP as new data are evaluated. **Project Rio Blanco** is the site of a nearly simultaneous subsurface nuclear detonation of three 30 ± 3-kiloton nuclear devices at depths of 5,838, 6,230, and 6,689 feet below ground on May 17, 1973.The oil and gas operators, in consultation with other affected working interest	

	owners, have voluntarily agreed to a drilling moratorium within the area between the 600-foot Department of Energy (DOE) exclusion zone and a ½-mile radius of Project Rio Blanco until additional radiological data have been collected outside of this zone to demonstrate that gas drilling, completion, and production can be safely accomplished near Project Rio Blanco. The operators also agreed to a voluntary drilling exclusion zone around the Fawn Creek Government No. 1 (FCG No. 1) well where radioactively-contaminated water produced from the Rio Blanco test well was injected into an interval between 5,360 and 6,072 feet below the ground surface. The voluntary drilling exclusion zone around this well will be maintained until sufficient radiological data have been collected to confirm that radionuclide at the FCG No. 1 well have not migrated to producing gas wells outside this zone. Under the voluntary drilling exclusion zone around FCG No. 1, the operators propose to limit drilling and gas production within a 600-foot radius of the FCG No. 1 well to a true vertical depth of 6,500 feet below ground surface. FCG No. 1 is also within the ½-mile voluntary drilling moratorium area discussed above. The federal government did not implement a drilling exclusion zone around FCG No. 1. The COGCC has adopted special procedural requirements regarding APDs in the Project Rio Blanco area. Drilling in the vicinity of Project Rio Blanco has received a great deal of interest from Rio Blanco County and local residents because of ongoing concerns that radioactive gas and drilling wastes might be encountered or generated. Operators with active and planned operations are required to conduct extensive monitoring, sampling, and analysis. COGCC requires the expertise of a health physicist to assist in the oversight of oil and gas activities being conducted in this area by ensuring that operators are in compliance with the radiological provisions of the approved "Project Rio Blanco Sampling and Analysis Plan (RBSAP) and subsequent RBSAP revisions. M.H. Chew &	

	Associates (Chew) provided such expertise and assisted the COGCC by coordinating with COGCC, CDPHE, DOE, & oil and gas operators; preparing inspection checklists based on the RBSAP; conducting inspections; preparing reports; and presenting the results of the inspections and audits to the COGCC, local government, and residents. In addition, Chew's assistance in answering questions from operators concerning the implementation of the RBSAP are needed and appropriate.	
Mamm Creek Report Evaluation	The COGCC retained a third-party consultant, operating as Crescent Consulting, LLC, to review, assess, and render an opinion regarding drilling and completion practices within the eastern portion of the East Mamm Creek Area, which is located in the Mamm Creek Field, south of Silt, Colorado. The study area is referred to as the East Mamm Creek Project Area (EMCPA). The purpose of this study was to evaluate existing data, review past and present drilling and completion practices, and review current COGCC policies and procedures. Recommendations were made for drilling, completion, monitoring of new wells and for remedial actions on existing wells. When implemented, these recommendations should provide additional protection for groundwater and surface water resources from potential impacts related to natural gas exploration and production activities.	$30,000

San Juan Coalbed Methane Water Quality Study	The Fruitland Formation of the San Juan Basin extends from southwestern Colorado into New Mexico and is the most productive coalbed methane (CBM) reservoir in the United States. In 2000 the Colorado Oil & Gas Conservation Commission (COGCC) received a request from area operators to allow for an optional additional well to be drilled for production of Fruitland gas for certain 320-acre drilling and spacing units in the Ignacio-Blanco Field. As a result of that request the COGCC issued Orders No. 112-156 and 112-157 on April 25, 2000 outlining certain groundwater sampling and data gathering requirements that the operators would need to meet to obtain the additional well spacing. Subsequently approximately 25 more orders regarding optional additional wells have been approved by the COGCC Commission and each of these has also required groundwater sampling and analysis. Area operators have been submitting these data to the COGCC since 2000. The data are kept in an Access™ database in the Denver COGCC offices which currently consists of over 2,128 sampled wells and 7,074 associated datasets. In 2009 the COGCC hired an independent contractor, Geomatrix Consultants (now AMEC-Geomatrix) to provide data evaluation services. In 2010 AMECC updated the trend and data analysis. The results of both of these evaluations are available on the COGCC website Library. This project provided a full-scale statistical analysis of these data to: • Assess potential long-term trends in general groundwater quality in the San Juan Basin based on data available in the COGCC database and to evaluate any identified trends for relevance to area CBM drilling and production • Review and update current COGCC data management and QA/QC procedures, and • Add triggers and data flags to the current COGCC San	$20,769

	Juan Basin water quality database to help facilitate long-term management of CBM related water quality monitoring data.	
3M-4M Monitoring O&M	Since 2000, the COGCC has installed 17 monitoring wells at 11 locations along the Fruitland Outcrop in La Plata and Archuleta Counties to monitor gas pressure changes in the Fruitland Coal Formation. All wells are equipped with In-Situ Inc. downhole pressure transducers that report data via a satellite telemetry system to a central data center. The COGCC retained a third-party contractor knowledgeable in the systems, Norwest, to provide ongoing Operations & Maintenance (O&M) support to ensure the systems stay in working order and continue to relay data as designed. This typically includes 1-2 field visits per year to each location to physically evaluate operational conditions, ongoing remote data downloading, and the preparation of an Annual Report analyzing and summarizing the entire data set.	$44,255
South Fork Texas Creek Mitigation O&M	Fugitive methane gas emissions from the outcrop of coals in the Fruitland Formation in the San Juan Basin have resulted in explosion hazards, methane in water wells, distressed vegetation, and greenhouse gas emissions. In 2008 the COGCC implemented a pilot project to capture the fugitive methane emissions and to use the recovered gas to generate electricity. A mitigation system consisting of gas gathering, gas compression, and electric generation was installed at South Fork Texas Creek (SFTC) where methane has historically been observed bubbling through the water in the creek and where there was a large area of distressed vegetation in a pasture. A second mitigation system consisting of gas gathering and venting was installed at a second historic seep area in the Pine River Ranches (PRR) subdivision along the Los Pinos River. Ongoing operations and maintenance are conducted by a contractor, LT Environmental, to ensure the system(s) remain functional.	$49,490

Huerfano County Water Monitoring	The COGCC performed ongoing monitoring activities at water wells in Huerfano County. One of the water wells being monitored had a fire at the well head in 2007 and the other water well being monitored had an explosion in the well house in 2007. Both the fire and the explosion are thought to be related to coalbed methane that has migrated upwards from the Vermejo Formation. into sandstone aquifers of the overlying Poison Canyon Formation, Petroglyph Energy, Inc. is conducting a remediation and mitigation project in the area and monitors approximately 80 other domestic wells as part of the ongoing remediation as documented in staff reports and updates to the Commission.	$12,463
Elbert Co. Baseline Water Study	In response to landowners and local government concerns about future oil and gas development in Elbert County and its potential to impact ground water resources, COGCC environmental staff is conducting a baseline water quality investigation of the Dawson and Denver aquifers. Twenty-five domestic water wells have been sampled. Samples have been analyzed for volatile and semi-volatile organics, major anions and cations, dissolved metals, total dissolved solids as well as other parameters.	$8,292
Total Expenditures		**$173,184**