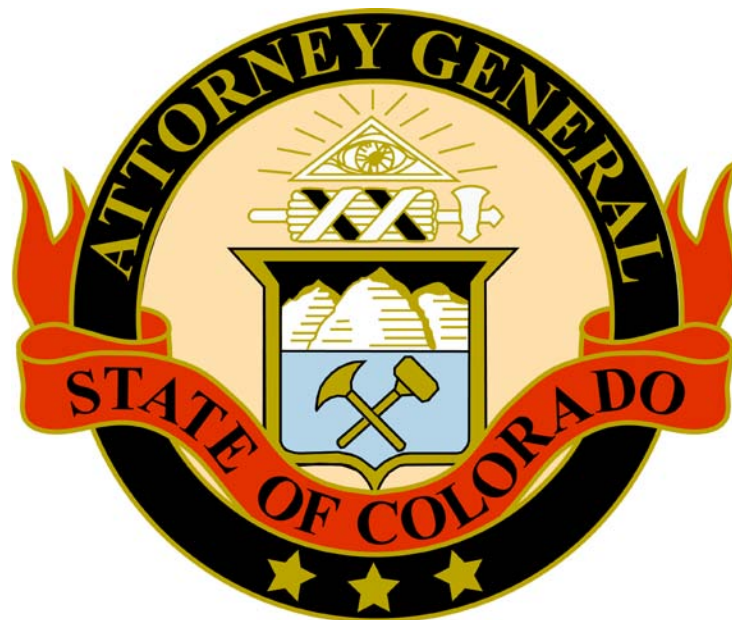


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Attorney General John W. Suthers



On Jan. 4, 2005, John W. Suthers was appointed as Colorado's 37th Attorney General. In November of 2006, the voters of Colorado elected Attorney General Suthers by a substantial margin to serve a full, four-year term. As Attorney General, Suthers is charged with representing and defending the interests of the People of the State of Colorado, and serves as chief legal counsel and advisor to state government, its statewide elected officials, and its many state agencies, boards, and commissions.

Attorney General Suthers graduated magna cum laude from the University of Notre Dame with a degree in government in 1974, and from the University of Colorado Law School in 1977. From 1977 to 1981, he served as a deputy and chief deputy district attorney in Colorado Springs. From September of 1979 to January of 1981, he

headed the Economic Crime Division of the DA's office and co-authored a nationally published book on consumer fraud and white-collar crime.

In January 1981, Mr. Suthers entered private practice as a litigation partner in the Colorado Springs firm of Sparks Dix, P.C. He remained with the firm until November 1988, when he ran against and defeated the incumbent district attorney for the 4th Judicial District. He was elected to a second term as district attorney in 1992. After serving two terms in office, he returned to Sparks Dix, P.C. as senior counsel in charge of the firm's litigation section.

In 1999, Mr. Suthers was appointed executive director of the Colorado Department of Corrections by Gov. Bill Owens. As head of the state's correctional system, he oversaw an organization with almost 6,000 employees and an annual operating budget of approximately \$500 million.

On July 30, 2001, Mr. Suthers was nominated by President George W. Bush to be the United States Attorney for the District of Colorado. He was unanimously confirmed by the U.S. Senate, and represented the United States in all criminal and civil matters within the District.

In his tenure as Attorney General, Mr. Suthers has founded a safe surfing initiative to protect Colorado's children from internet predators. He also has convened a Mortgage and Foreclosure Fraud Task Force which has led to several pieces of legislation designed to combat mortgage and foreclosure fraud. Attorney General Suthers has been a champion for Colorado's environment, leading the charge to reclaim damages for the Rocky Mountain Arsenal Superfund site. He serves on the executive committee of the National Association of Attorneys General and as a

member of the U.S. Attorney General's Executive Working Group.

Mr. Suthers currently serves as the chairman of the Conference of Western Attorneys General. As part of his tenure as head of the organization, whose members include the attorneys general of 15 western states and three pacific territories, Mr. Suthers has chosen to focus on water issues during his time as the organization's chairman.

Mr. Suthers has served on the board of numerous civic organizations. He served as president of the El Paso County Bar Association in 1990-91, president of the Colorado District Attorney's Council in 1994-1995, and senior vice president of the Colorado Bar Association in 1996-1997. In 1992, Suthers was appointed by the Colorado legislature to serve as a delegate to the National Conference on Uniform State Laws, serving as such until January 1997. In the summer of 2000, Mr. Suthers received a Gates Foundation Fellowship to attend the Government Executives Program at Harvard University's Kennedy School of Government.

John and his wife, Janet, have been married for 34 years and have two daughters, Alison, a graduate of Georgetown University Law School and attorney with Holland & Hart in Washington, D.C., and Kate, a Lieutenant J.G. in the United States Navy Reserve and a MBA student at the University of Hawaii.

Daniel Domenico Solicitor General



Attorney General Suthers appointed Dan Domenico as Solicitor General of Colorado in April 2006. Before joining the Office of the Attorney General, Domenico was special assistant to the solicitor of the United States Department of the Interior. In that role, he advised the Secretary and senior management of the Department on a wide range of matters relating to National Parks, federal land, water resources, energy production, and other issues important to Coloradans and citizens of the American West.

Prior to his work at the Interior Department, Domenico practiced for several years in the Denver and Boulder offices of the national law firm Hogan & Hartson. He also clerked for Judge Tim Tymkovich of the United States Court of Appeals for the 10th Circuit (himself a former Colorado Solicitor General), and also worked with U.S. Senator John Thune.

Domenico, a Boulder native, received his undergraduate degree, magna cum laude, from Georgetown University. He attended the University of Virginia School of Law, where he served as editor for two academic journals, including the Virginia Law Review, and was elected to the Order of the Coif.

Cynthia Coffman

Chief Deputy Attorney General



Cynthia Honssinger Coffman joined Attorney General John Suthers' administration as Chief Deputy in March 2005. Her responsibilities include managing the office's attorneys and administration and serving as the Attorney General's second in command.

Ms. Coffman has been in public service since graduating from Georgia State University Law School in 1991.

Immediately prior to joining the Attorney General's staff, Ms. Coffman served as chief legal counsel to Colorado Governor Bill Owens. She has worked for the Colorado Department of Public Health and Environment, the Office of Legislative Counsel of Colorado's General Assembly, the Georgia Attorney General and the Atlanta Committee for the Olympic Games.

Geoff Blue

Deputy Attorney General for Legal Policy and Governmental Affairs



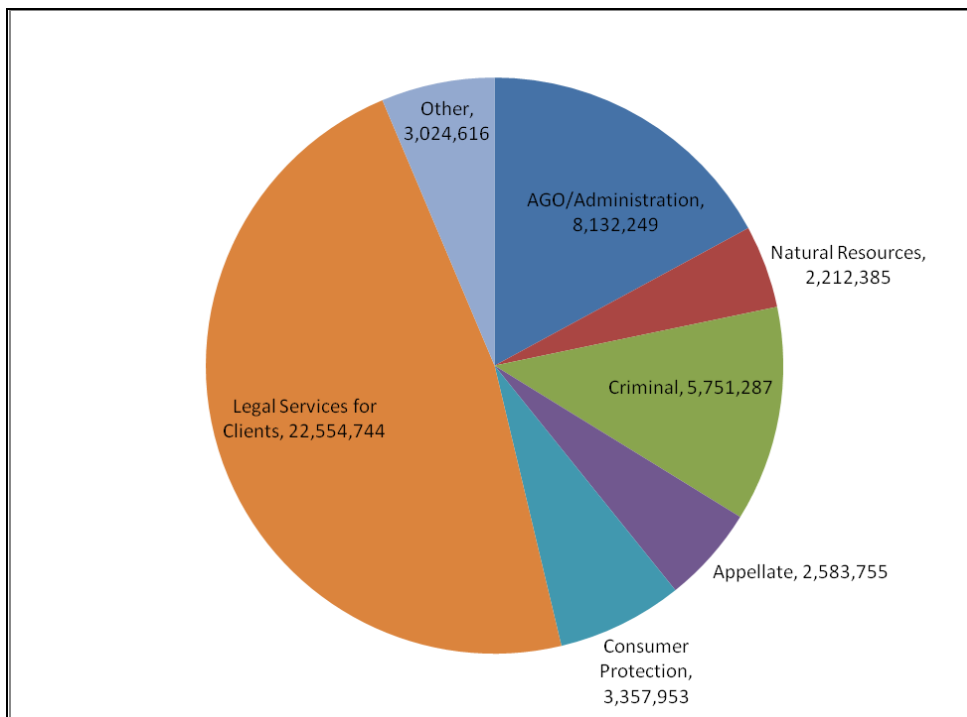
Geoff Blue joined the Attorney General's Office in early 2008 as a senior policy adviser to the Attorney General and the office's liaison to the governor, General Assembly and local governments.

Prior to joining the office, Mr. Blue practiced law with Farfield and Woods, P.C., as a general commercial litigator. His legal experience includes stints with Higgins, Hopkins, McLain & Roswell, LLC, Wheeler Trigg & Kennedy, P.C., and Wolf, Block, Schorr & Solis-Choen, LLP.

Mr. Blue received his bachelor of arts degree in politics from Princeton University. From there, Mr. Blue matriculated to Victoria University of Manchester, England, where he earned a master of arts in health care ethics. Finally, Mr. Blue was granted a JD from the Georgetown University Law Center in 1998.

The Department of Law budget by the numbers

Total FY2009-2010 appropriation	\$47,616,989
Total full-time positions	396.1



2009 Legislative Initiatives

The Office of the Attorney General had a spectacular 2009 legislative session with every bill it pushed becoming law. The office's successes ranged from securing better funding for police training initiatives to strengthening the state's consumer protection laws. The bills that became law were:

- **House Bill 1109**, which expands the definition of when a home is in foreclosure to help protect homeowners late on their mortgage payments from being victimized by foreclosure-consulting scams;
- **Senate Bill 54**, which raises the civil-penalties cap for companies that violate the Colorado Consumer Protection Act and increases the maximum penalty a company can incur for violating the Colorado Antitrust Act of 1992;
- **House Bill 1036**, which increases funding for law enforcement training programs provided through the Peace Officer Standards and Training program;
- **House Bill 1183**, which toughens the criminal penalties for those who commit appraisal fraud;
- **Senate Bill 119**, which clarifies provisions of the Colorado Water Quality Control Act, making it clear no part of the law impairs the state's ability to enforce penalties for companies discharging hazardous waste or hazardous materials into Colorado waters;
- **House Bill 1141**, which updates the Uniform Consumer Credit Code; and,
- **House Bill 1124**, which expands the authority of public bodies' governing boards to go into executive session to discuss legal issues with their attorneys.

Consumer Protection Section

The Colorado Attorney General's Office protects Colorado consumers and businesses against fraud and maintains a competitive business environment by enforcing state and federal consumer protection laws; enforcing state and federal antitrust laws; implementing and enforcing provisions of the tobacco master settlement agreements; enforcing state laws on consumer lending, predatory lending, debt collection, rent-to-own and credit repair; and, advocating for residential, small business and agricultural public utility ratepayers.

Consumer Fraud, Antitrust and Tobacco Settlement Enforcement

The Consumer Fraud and the Consumer Protection, Antitrust and Tobacco Units enforce a variety of state and federal consumer protection and antitrust statutes as well as the terms of the Tobacco Master Settlement Agreement and related statutes. The laws enforced by this unit includes the Colorado No-Call List Act (§ 6-1-901, *et seq.*, CRS), the Colorado Antitrust Act (§ 6-4-101, *et seq.*, CRS), the Foreclosure Protection Act enacted in 2006 (§ 6-1-1101, *et seq.*, CRS) and the mortgage fraud-related laws that were enacted in 2007 (§§ 12-61-905.5 and 911 and § 38-40-105, CRS). Most of the work of this unit in 2009 focused on mortgage fraud and addressing the fallout from the foreclosure crisis. This unit also launched a new educational program to prevent bid rigging on federal, state and local contracts. This unit also continues to enforce the Colorado No-Call Act and terms of the Tobacco Master Settlement Agreement and related tobacco laws.

Loan Modification Scams

In 2009, foreclosures again reached record levels in Colorado. With the rise in foreclosures, new scams were targeted at homeowners who had fallen behind on their payments. Loan modification firms from across the country bombard Colorado borrowers with offers to modify their loans, most with significant upfront fees.

The Foreclosure Protection Act, enacted in 2006, prohibits these firms from accepting an upfront fee from a homeowner in foreclosure. This law was amended in 2009 to broaden its coverage to protect homeowners who were 30 or more days delinquent on their loans. Since this law was enacted in 2006, this office has taken action against 33 foreclosure rescue firms and loan modification companies.

Because of the nationwide scope of this problem, this office has teamed up with the Federal Trade Commission and other state attorneys general to crack down on loan modification companies. One half of this office's enforcement actions against loan modification companies were concluded as part of two separate sweeps that this federal-state working group conducted in 2009. The first sweep (Operation Loan Lies) was announced July 15, 2009 in Southern California, which is home to many of these loan modification companies. The second sweep (Operation Stolen Hope) was announced Nov. 24, 2009 in Las Vegas, Nevada, one of the regions hardest hit by the foreclosure crisis.

Mortgage Fraud

This office continued to take a leading role

on a national level in combating mortgage fraud. Staff and the Attorney General work on two federal-state task forces that are designed to enforce laws that will protect fair lending and prevent mortgage scams, the State-Federal Task Force on Mortgage Enforcement and the Mortgage Fraud Working Group of the recently formed Financial Fraud Enforcement Task Force. This office also led a training session in April 2009 for the offices of other state attorneys general concerning enforcement actions that our offices can undertake to combat mortgage fraud.

Also in 2009:

- This office has also continued to enforce Colorado's mortgage fraud laws. It reached a \$100,000 settlement with a local mortgage brokerage firm that used deceptive direct-mail solicitations designed to appear as though they were coming from federal lending authorities.
- Unit attorneys sued a brokerage firm that placed numerous borrowers in the Cañon City area into loans that they could not afford.
- We settled another lawsuit against a loan originator who ran numerous false advertisements in *The Denver Post* and *Rocky Mountain News*. The settlement bars the broker from originating loans in Colorado and required him to pay \$7,887 in restitution to an elderly couple that took out an option ARM loan after responding to an advertisement.
- In February 2009, this office joined the nationwide settlement with Countrywide, which was acquired by Bank of America in 2008. This settlement resulted from an investigation that was focused on Countrywide's deceptive marketing and originating of exotic subprime and option ARM loans that ultimately proved unaffordable to borrowers. Under this settlement, Bank

of America paid \$4.4 million to the state. Approximately one half of this amount has been paid as restitution to Colorado borrowers who lost their homes as a result of these risky loans with Countrywide. The remainder has been reserved for future losses by borrowers and for foreclosure-prevention efforts.

Foreclosure Prevention

This office continues to work with the State Foreclosure Prevention Working Group in order to prevent foreclosures. The State Foreclosure Prevention Working Group is a multistate group composed of the offices of sixteen attorneys general and three state banking agencies. This group is working with loan servicing companies to modify loans where it makes economic sense to keep the borrower in the home rather than let it fall into foreclosure. Since the Home Affordable Modification Program was announced by the Department of Treasury in early 2009, this working group has remained in constant contact with the Treasury Department in order to improve upon the modifications that are being offered to borrowers under this new plan.

Antitrust

In 2009, this office launched an educational effort in order to identify and prevent bid rigging federal, state and local contracts. This office has designed a presentation for government procurement officials to use to identify signs of possible bid rigging. Several presentations have been made to these officials across the state. It is hoped that this education effort will prevent inflated bids on government contracts, thereby saving government dollars in these difficult economic times.

No-Call Act Enforcement

During 2009 the nature of no-call enforcement became complicated by the various calling techniques that no-call violators employed to hide their identities and make their calls difficult to trace. These calls generally use auto-dialer devices and recorded messages that make offers to consumers, including solicitations on auto warranties and credit-card rates. This office has persistently traced these calls despite the callers' use of various masking technologies. This office provided invaluable assistance to the Federal Trade Commission as it shut down one of these violators, Voice Foundations, in an action filed in a Chicago federal court.

Consumer Fraud

The Consumer Fraud Unit handles about 75 consumer complaints a day. Consumers can file complaints by phone, mail, e-mail and online at www.coloradoattorneygeneral.gov/ complaint.

In 2009, Unit attorneys filed a variety of complaint-driven cases, including:

- *State of Colorado v. The Colorado Humane Society & S.P.C.A. et al.*
In December 2008, we brought an action in Arapahoe County District Court against the Colorado Humane Society and its top management for charitable fraud and mismanagement of charitable assets. We successfully got the Court to appoint a custodian to manage the charity and to have the top management step down. We continued with our case against the managers of the Colorado Humane Society. In December 2009, the Court found that even if the State did not prevail in its case, the managers would have no right to return to the Colorado Humane Society. We ultimately entered into a settlement with

the former Colorado Humane Society management that prevents them from serving as an officer, director or manager of a charity for 10 years, and from owning, operating or managing any facility governed by the Pet Animal Care Facilities Act for five years.

- *State of Colorado v. National Rebate Fund, Inc.*
We sued National Rebate Fund and its president, Timothy Stubbs, in February 2009 for violations of the Colorado Consumer Protection Act. Specifically, Stubbs ran a rebate program through the National Rebate Fund purporting to offer consumers the opportunity to obtain thousands of dollars in rebates on home improvement items, when in fact the National Rebate Fund arbitrarily and rarely paid out rebate claims. The Court granted our motion for default judgment, awarding a \$4.3 million judgment against National Rebate Fund and Stubbs, and allowing us to distribute \$4.4 million to consumers that the National Rebate Fund held in escrow to pay rebate claims.
- *State of Colorado v. Sara Paige Widener et al.*
In September 2009, we obtained a temporary restraining order against Sara Widener, a young woman who acquired thousands of dollars in gifts, services and donations as a result of misrepresenting that she suffered from cancer. We entered into a stipulated judgment with Ms. Widener whereby she agreed to stop representing herself as a cancer patient and to pay more than \$8,000 to defrauded consumers.
- *State of Colorado v. Immigration Center, Charles Doucette*
This Colorado Springs-based Web site offered legal advice on immigration matters and marketed itself as affiliated with the U.S. Customs and Immigration Service. Defendants claim to be able to

provide immigration services (without a law license) but actually provide little more than the governmental application forms readily available at the actual the U.S. Customs and Immigration Service Web site. We obtained a preliminary injunction order preventing the Immigration Center and Doucette from continuing to market their legal services. A trial is set for May.

- *State of Colorado v. Legal Aid Daniel Ketelson*
We sued and obtained a default judgment against this Colorado based Internet company offering to provide “legal services” to consumers across the country. Consumers paid thousands of dollars for advertised legal services for work performed by non-lawyers that often times was rejected by the courts.

Consumer Credit, Debt Settlement and Collection Agencies

The Consumer Credit Unit enforces six state credit-related laws: the Uniform Consumer Credit Code (consumer finance) including the Consumer Equity Protection Act (predatory lending) and the Deferred Deposit Loan Act (payday loans), the Fair Debt Collection Practices Act (collections), the Debt-Management Services Act (debt management/settlement), the Credit Services Organization Act (credit repair) and the Rental Purchase Agreement Act (rent-to-own).

During 2009, Unit attorneys:

- Supervised 1,043 licensed lenders consisting of payday lenders (47 percent), mortgage companies (39 percent), finance companies (12 percent), and small installment and other lenders (2 percent).
- Enforced credit laws against other creditors, including 987 companies that file notification and collect their own credit contracts.
- Conducted 699 compliance examinations of licensed lenders and required them to take corrective action and refund overcharges as appropriate.
- Investigated 459 written consumer complaints against licensed lenders, creditors, and credit repair companies, including 72 against payday lenders.
- Refunded more than \$1.6 million in overcharges to consumers from compliance examinations, investigations, and legal and administrative actions of lenders, creditors, and credit repair companies, including \$994,315 from payday lenders. Collected \$241,000 in penalties, educational funds and cost reimbursements, including \$42,500 from payday lenders.
- Investigated or litigated 20 cases against lenders, creditors and credit repair companies, including a payday lender’s failure to comply with the payment plan law, mortgage and loan servicers charging consumers non-permitted fees when they paid by telephone or online, and unlicensed lending.
- Registered 46 credit counseling and debt settlement companies under the Debt Management Services Act.
- Investigated or litigated 22 cases against debt management companies for excessive fees and unregistered activity. Obtained refunds of \$1 million in enrollment fees for Colorado consumers and penalties of \$354,250.
- Sent nine cease and desist advisory notices to unlicensed payday lenders.
- Sent six cease and desist advisory notices to unregistered debt management companies.
- Continued to litigate a case against a lender that makes small installment

- loans alleging that it failed to assess consumers' repayment ability, falsified application information and charged excessive fees. The trial will be in 2011.
- Filed briefs in the Colorado Supreme Court in a case involving our ability to investigate unlicensed internet payday lenders that may be tribal entities of two Native American Indian tribes.
 - Passed legislation to add consumer protections to leases and modernize the fee structure paid by licensees and registrants.
 - Updated existing Uniform Consumer Credit Code rules to comport with the new law.
 - Issued the Uniform Consumer Credit Code composite data reports and a press release on 2008 activity in supervised lending, payday lending, and small installment lending.
 - Oversaw the activities of 716 licensed collection agencies.
 - Investigated or litigated 47 cases, collected \$51,130 in fines, and required \$12,721 in consumer refunds. Most of the cases involved unlicensed debt collection activities and collection of illegal fees.
 - Investigated 757 written complaints against collection agencies in addition to telephone complaints and inquiries.
 - Issued 73 cease and desist notices to unlicensed collection agencies.
 - Litigated an administrative discipline case against a collection agency that continued to contact a consumer after the consumer requested it cease communication. Awaiting the administrative law judge's decision.
 - Continued to litigate a lawsuit against a collections law firm and its principals that allegedly threatened legal action on old debts beyond the statute of limitations and misrepresented that civil penalties were due prior to obtaining court judgments. The matter is pending.

- Gathered information for a legislative study on whether to continue the in-state office requirement for out-of-state collection agencies. The study was completed in October 2009 by the Department of Regulatory Agencies.

Office of Consumer Counsel

The Office of Consumer Counsel Unit provides legal support and represents the Office of Consumer Counsel. By statutory mandate, the Office of Consumer Counsel advocates on behalf of residential, small business, and agricultural interests before the Colorado Public Utilities Commission and in other forums on issues concerning electricity, natural gas, and telephone service. On behalf of the Office of Consumer Counsel, staff in this Unit appeared or worked on 52 matters before the Public Utilities Commission, including protests, interventions and rulemaking activities. In fiscal year 2009, consumers realized savings, based on the Office of Consumer Counsel's representation, of \$58.5 million.

Significant cases include:

- Public Service Company of Colorado filed in November 2007 its 2007 Colorado Resource Plan that identifies future electric generating needs through 2015. In addition, Public Service requested that the Commission waive its competitive procurement rules to approve the Company's proposal, for carbon reduction purposes, to replace two coal units at its Cameo Station, east of Grand Junction, and two coal units at its Arapahoe Station in Denver with a new 480 mW natural gas combined cycle facility at the Arapahoe Station. The Commission issued its Phase I Decision which included the closure of

the Cameo and Arapahoe Stations. Phase II Decision by the Commission approved Public Service's generation resources through 2015.

- On June 30, 2008, Aquila Networks-PNG filed Advice Letter No. 528, which is a Phase I (Revenue Requirements) Gas Rate Case, seeking to increase its annual revenue requirement by nearly \$27 million or 14.94 percent. Aquila subsequently transferred all of its Colorado utility properties to Black Hills/Colorado Electric Utility Company, LP. Black Hills filed its Phase II (Rate Design) Testimony on September 19, 2008 with the following proposed rate impacts: 4.13 percent increase for residential; 4.40 percent increase for small commercial; 5.02 percent decrease for large volume; 26.24 percent increase for large volume transportation and \$0.01 increase per month for small volume and irrigation classes. A settlement among various parties including the Office of Consumer Counsel was reached which provided for a nearly \$1.4 million revenue requirement increase. The Commission approved the settlement.
- On Nov. 14, 2008, Public Service Company filed Advice Letter No. 1522, which is a Phase I (Revenue Requirements) Electric Rate Case. Public Service proposed an electric revenue requirement increase of approximately \$175 million. A settlement among various parties including the Office of Consumer Counsel was reached which provided for a \$112.2 million revenue requirement increase. The Commission approved the Settlement Agreement.
- On Sept. 8, 2008, Qwest Corporation filed an Application to set the maximum price for residential basic local exchange service, and for an Order from the Commission approving its proposed rates and tariffs for residential basic local exchange service, measured service, message service, the tribal lifeline credit and the low income telephone assistance program. After a hearing the Commission set a maximum cap of \$16.52 for residential basic local exchange service which will be increased to \$17 one year after the effective date of the order. The Office of Consumer Counsel filed a Complaint and Writ of Certiorari regarding the Commission's decision in the District Court for the City and County of Denver. The case will continue in 2010.
- On May 1, 2009, Public Service Company filed Advice Letter No. 1535, which was a Phase I (Revenue Requirements) and Phase II (Rate Allocation) Electric Rate Case. Public Service proposed an electric revenue requirement increase of approximately \$180 million over the rates set in its previous electric rate case discussed above. After the Phase I hearing a settlement among various parties, but not including the Office of Consumer Counsel, was reached which included an electric revenue requirement increase of approximately \$136 million. The Commission modified the Settlement Agreement and authorized a revenue increase of approximately \$128 million. Because Comanche 3 would not be in-service until 2010, the Commission authorized an increase of approximately \$67 million effective Jan. 1, 2010 with the remaining increase to be effective when Comanche 3 comes on line. The Commission's revenue requirement decision has been appealed and the final decision will be forthcoming in 2010. A hearing on the Phase II portion of the proceeding will be held in 2010.

Criminal Justice Section

The Criminal Justice Section of the Colorado Attorney General's Office assists local prosecutors and law enforcement agencies throughout the state on matters that occur in more than one local jurisdiction, including presenting cases to the Statewide Grand Jury and serving as special district attorneys as requested. Section members provide special assistance to district attorneys in death penalty and gang activity cases and administer the Peace Office Standards and Training Board.

The Criminal Justice Section coordinates the prosecution of foreign fugitives and represents the Department of Public Safety. The Division has statutory authority to prosecute white-collar crimes, environmental crimes and multi-jurisdictional matters through direct filings and the use of the Statewide Grand Jury.

Insurance Fraud

Under Colorado law, the Attorney General has original jurisdiction to prosecute allegations of criminal conduct relating to insurance fraud. The Insurance Fraud Unit consists of two attorneys, four investigators and a paralegal, all assigned full-time to insurance fraud matters.

In 2009, the Unit opened 41 investigations which resulted in the filing of 18 new cases in Colorado courts. The cases were filed in Arapahoe, Chaffee, Denver, Douglas, Jefferson, Mesa and Weld Counties. Four of these cases were initiated by indictments issued by the Statewide Grand Jury. The remainder were directly filed by Complaint and Information. During 2009, one case

went to trial and 15 cases were resolved through plea negotiations.

Noteworthy cases included:

- Trenton Stone was charged in 2007 with both working as an accountant while drawing full medical disability pay and embezzling about \$250,000 from one of his clients. He had worked for the State of Colorado as an accountant at the time he filed his disability claim. The case went to a jury trial in May of 2009 in Arapahoe County District Court and the defendant was convicted of felony theft.
- Susan Weiss-Nakash was indicted by the statewide grand jury in May of 2009 for two counts of felony theft relating to mortgage fraud. Weiss-Nakash used her mortgage company, Miracle Mortgage, to create fraudulent loans to illegally obtain monies from both a lender and a title insurance company. She then deposited those funds into accounts for her personal use. She pleaded guilty to both counts in December and was sentenced to 10 years of probation, 25 hours of community service and ordered to pay restitution in the amount of \$189,100.65 to the defrauded companies.
- C.P. Fortney, Terry Robinson and Mary Catherine Cross were indicted by the Statewide Grand Jury in May of 2009 and charged with multiple counts of bribery and theft. Fortney was a used car salesman, Robinson was a field claims adjuster, and Cross was an in-house claims adjuster. Fortney paid bribes to Robinson to write estimates showing that wrecked vehicles were total losses, and paid bribes to Cross to arrange to sell the cars to him without salvage titles. Fortney repaired the vehicles and sold them to members of the public without disclosing that the vehicles had been rebuilt from salvage. Robinson and Cross have entered into plea bargains and have agreed to testify against Fortney in his trial set to begin March 29, 2010 in Mesa County District Court.

During 2009, the Insurance Fraud Unit supervised the restitution payments of 48 defendants on probation for insurance fraud-related crimes. A total of \$219,823.37 in restitution was collected from January through mid-December 2009. Additionally, the Unit achieved new restitution orders totaling \$364,439.74.

Securities Fraud

Pursuant to Colorado law, the Attorney General has original jurisdiction to prosecute criminal violations relating to securities and securities fraud. The Attorney General's Office independently investigates and prosecutes allegations of securities violations statewide and in doing so, works closely with the Colorado Division of Securities and other law enforcement agencies.

The Unit is made up of two attorneys, two investigators and a paralegal who all work on securities fraud cases full-time. The Unit obtained a total of four felony convictions which resulted in restitution orders for 72 Colorado victims of securities fraud totaling more than \$4.4 million. In each plea bargained case, the defendant pleaded guilty to securities fraud, a class 3 felony. In each case, this was the most serious charge pending against each defendant and each defendant was sentenced to prison.

The Unit opened nine investigations and filed seven felony criminal cases throughout the state. Of the cases opened, four were initiated by the Attorney General's Office and five cases were referred by the Colorado Division of Securities.

One significant case involved the prosecution of Rick Van Vleet. The defendant sold investments in kiosks to be used in music stores. He channeled these investor funds into a different, undisclosed investment scheme as well as using some of the money for personal use. He pleaded guilty to Securities Fraud and was sentenced to 10 years in the Colorado Department of Corrections and ordered to pay over \$2.9 million in restitution.

The Unit tracked the restitution payments of 63 defendants during 2009. Restitution collected on behalf of victims totaled \$218,876 for the year.

Medicaid Fraud

In 2009, Colorado paid over \$3.7 billion to over 10,000 participating Colorado Medicaid providers (such as nursing homes, doctors, psychiatrists, psychologists and mental health therapists, dentists, pharmacies, laboratories, hospitals, clinics and durable medical equipment companies) on behalf of nearly 700,000 citizens who qualified for Medicaid benefits. The goal of the Medicaid Fraud Control Unit is to preserve state resources devoted to Colorado's Medicaid program and to protect these funds against fraud.

The Unit also investigates and prosecutes complaints of neglect and physical abuse in long-term care facilities such as nursing homes, and serves as an authority and a training resource on abuse investigation and prevention. The Unit includes two attorneys, eight investigators, an auditor, a nurse investigator, a paralegal and a program assistant.

In 2009, the unit opened 39 new investigations (35 fraud and four abuse) and filed five new cases of fraud, including licensure fraud and durable medical equipment fraud. Four criminal convictions, one revocation of a deferred sentence and eight civil settlements were obtained, with recoveries totaling more than \$6.3 million.

The unit also works closely with its counterparts in other states and the federal government on a broad range of fraud cases that span multiple jurisdictions. Several of these cases resulted in regional and national settlements that included activities occurring in Colorado.

Special Prosecutions

The Attorney General has statutory authority to prosecute specifically enumerated crimes including environmental violations, tax fraud, mortgage fraud, election fraud, workers' compensation fraud and other fraud-related offenses. Additionally, the Attorney General functions as the legal adviser to the Statewide Grand Jury. This duty allows for the prosecution of complex criminal cases which occurred in multiple judicial districts throughout the state. The Special Prosecutions Unit, which is comprised of five attorneys, four investigators and one support-staff employee, is responsible for prosecuting many of the state's multiple jurisdiction matters, as well as special investigations which may be referred by other state agencies or the governor.

Unit attorneys prosecute cases throughout the state either under the auspices of the Attorney General or as specially appointed

deputy district attorneys in the 22 judicial districts.

The Unit also is handling the investigation of the 1987 murder of Peggy Hettrick in Fort Collins. In early 2008, Gov. Bill Ritter issued an executive order that placed the Attorney General's Office in charge of the case. During 2009 a unit prosecutor and three unit investigators were assigned to work with the Deputy Attorney General for Criminal Justice as well as with an attorney and an investigator from the Attorney General's Homicide Assistance Team to conduct this investigation.

In 2009, this unit indicted 60 defendants who were involved in two separate drug distribution enterprises that operated not only in the Metro Denver area, but also throughout Northern Colorado and into Southern Wyoming. The leaders of these schemes were charged under the Colorado Organized Crime Control Act and continue to be prosecuted by a Special Prosecutions Unit in Adams County. This unit continued with its prosecution of 10 offenders who were associated with a sophisticated mortgage fraud scheme. This particular prosecution included this unit conducting a successful multi-week jury trial in 2009 against Uto Essien, the key leader of the criminal enterprise. Mr. Essien ultimately was convicted of violating the Colorado Organized Crime Control Act and was sentenced to 30 years in prison.

Other cases indicted and prosecuted by this unit included a seven-defendant illegal gambling ring that also involved loan-sharking, insurance fraud and money laundering. The ring leader, Jeffrey Castardi pleaded guilty to violating the Colorado

Organized Crime Control Act and was sentenced to 16 years in prison by a Jefferson County District Court judge. A unit prosecutor and an investigator took the lead this year in indicting a 10-defendant pimping organization that operated in Denver, Longmont and in Glenwood Springs. The leaders of the enterprise all plead guilty to felonies and received prison sentences.

Unit prosecutors were also assigned to prosecute a six-defendant heavy equipment theft ring in Adams County. All six defendants plead guilty to felonies with many receiving prison sentences and over \$150,000 in restitution being ordered by the Court to compensate the victims of the crimes. Another set of crimes that were prosecuted by this Unit in 2009 focused on identity theft. In at least three separate indictments that were handled by this Unit, a total of 12 defendants were charged with crimes that center around identity theft.

The three separate cases either were or continue to be prosecuted in Boulder, Mesa and Summit counties. Between the two lead defendants who were prosecuted in Boulder and Summit counties, unit prosecutors received 34 years in prison and court-ordered restitution of more than \$45,000.

The unit also assigned an attorney and an investigator to take the lead in investigating and prosecuting multi-jurisdictional Charity Fraud schemes. In 2009 this unit indicted and successfully prosecuted two defendants in a Colorado Organized Crime Control Act scheme that involved the depriving hundreds of victims, many of whom were at-risk adults, of thousands of dollars. The two defendants both plead guilty to Colorado

Organized Crime Control Act charges and each received 16-year prison sentences.

Also in 2009, a unit prosecutor completed the Four Corners prosecutions in Durango with the two leaders of this auto theft and methamphetamine distribution enterprise being convicted of multiple felonies and Colorado Organized Crime Control Act charges. Defendant JayDee Russel was found guilty following a jury trial and was adjudicated as a habitual criminal with the Court imposing a 96-year prison sentence. The other key defendant was David Torrez who pleaded guilty and was sentenced to 24 years in prison.

The final seminal case that was handled by this Unit in 2009 was a 10-defendant Colorado Organized Crime Control Act case that involved residential burglaries, auto theft and methamphetamine distribution that occurred in Jefferson, Adams, Broomfield and Denver Counties. All 10 of the defendants plead guilty with the leader, Duy Nguyen, receiving a 30-year prison sentence.

Protecting Colorado's citizens from the fraudulent use of state funds is an important function for the Special Prosecutions Unit. Multiple cases, including at least 11 matters of significant tax fraud, were concluded this year. The tax fraud cases as a whole resulted in more than \$374,000 of restitution being ordered on behalf of the citizens of Colorado.

For example, unit prosecutors handling tax-crime cases were responsible for the conviction of a businessman in a tax fraud, securities fraud, identity theft and theft scheme resulting in approximately \$150,000

of restitution. Fourteen individuals were successfully prosecuted for felonies involving unemployment insurance fraud, with more than \$85,646 in restitution being ordered by courts. Twelve cases of workers' compensation insurance fraud resulted in convictions and restitution in an amount of approximately \$221,000 being ordered by the courts.

Protecting Colorado's natural resources by enforcing environmental laws also is an important part of this unit's responsibility. The environmental crimes prosecution team within the Special Prosecutions unit filed five environmental crimes cases in the last year. The Attorney General works closely with the U.S. Attorney's Office and both state and federal agencies in pursuing environmental crimes.

Homicide Assistance Team

The Attorney General employs an expert team of two attorneys and a seasoned homicide investigator to provide critical support and assistance to the elected district attorneys and to local law enforcement throughout the state in matters involving all aspects of homicide investigation and prosecution.

In 2009, members of this assistance team assisted local prosecutors and investigators in many counties, including Boulder County, Larimer County, Park County, El Paso County, Arapahoe County, Douglas County, Rio Grande County, Lake County and Montrose County. The key assistance this past year was the appointment of one of the Homicide Assistance Team attorneys to be the lead prosecutor in the Caudle double homicide case that is now being prosecuted

by the District Attorney for the 12th Judicial District in the San Luis Valley. One of the Homicide Assistance Team attorneys is being assisted by the unit's investigator in this complex matter. The other ongoing investigation that involves the Homicide Assistance Team is the assignment of one attorney and the investigator to work on the Hettrick homicide that was referenced above. The Unit attorneys and its investigator also are responsible for conducting invaluable training for Colorado prosecutors and investigators.

Peace Officer Standards and Training Board

The Colorado Peace Officer Standards and Training Board manages and documents the training and certification accomplishments of nearly 15,000 active peace officers and reserve peace officers appointed by Colorado law enforcement agencies. The Peace Officer Standards and Training Board and staff continue to manage and improve the accuracy of records of Colorado peace officers, through the application of the Crown Pointe computer software program.

Part 3 of article 31 of title 24, C.R.S. was amended by the addition of a new section, DNA Evidence – Collection – Retention, C.R.S. 24-31-311, which mandated that POST certify DNA-related curriculum for new recruits and in-service peace officer training. The Peace Officer Standards and Training Board approved and implemented DNA-related curriculum for Basic Academies which became effective on March 1, 2009.

In December 2009 the program started an online DNA-training program available to

all peace officers and reserve peace officers. This training is offered at no cost to officers and their agencies until June 2011.

The Peace Officer Standards and Training Board continued to partner with the Anti-Defamation League to offer the ADL/POST Anti-Bias Training for Law Enforcement Officers program to Colorado law enforcement officers. This project meets the peace officer training requirements of C.R.S. 24-31-309(c)(5); provides training to law enforcement agencies on-line for a nominal fee. More than 14,000 Colorado peace officers have completed either the POST/ADL face-to-face and online training or approved agency training programs.

The Peace Officer Standards and Training Board accepted the recommendations of staff and its training subcommittee in approving more than \$1.5 million in grants for FY 2009-2010. This represents a 64 percent increase over the funding level of \$720,000 provided for FY 2008-2009. The increased funding was the result of the legislature amending C.R.S. 42-3-304, which provides funding for peace officer training statewide through a surcharge on annual vehicle registrations. The fee was increased from \$0.25 to \$0.60 per vehicle registration. Funds are dispersed to 10 training regions and four statewide training provider partners. Each training region includes representatives from law enforcement agencies within the region. Each regional committee identifies and facilitates training programs specific to the needs of the peace officers and community members within their region.

The Peace Officer Standards and Training Board staff and its training subcommittee

worked diligently to complete the grant funding process. The subcommittee's grant funding recommendations were presented to, and accepted by, the Peace Officer Standards and Training Board. The Board approved training grant funding in the amount of \$720,000 for the period July 1, 2008 through June 30, 2009. Four statewide training partners and 10 training regions, made up primarily of judicial districts, have been established to manage peace officer training programs. The law enforcement leaders serving on each of the regional committees have identified and facilitated training programs unique to, and needed by, the law enforcement officers serving within their region.

In 2009:

- The Colorado Peace Officer Standards and Training Board reviewed the criminal convictions of 26 peace officers convicted of felonies and certain misdemeanors. In each of those cases, the certificate of the convicted peace officer was revoked by the Board. Colorado revocations actions are entered into the POST electronic database, and are also reported and entered into a national peace officer decertification database.
- Twenty-five Peace Officer Standards and Training Board-approved basic academies in Colorado graduated a total of 43 basic academy classes, two refresher academy classes and two reserve academy classes. Three of the 25 academies did not conduct any basic academy classes, while 17 academies graduated one or two classes each, and five academies graduated three or four basic academy classes each.
- The Colorado Peace Officer Standards and Training Certification Exam was administered to 823 individuals. There were 782 individuals that passed the exam on their first attempt, 16 that passed it on their second attempt and four that passed it on their third attempt for a total of 802 individuals passing the exam in 2009.

- Colorado Peace Officer Standards and Training Board staff and members of the skills Subject Matter Expert Committees conducted a total of 18 academy or program inspections. Overall, the inspections revealed that a vast majority of the academies are continuing to meet or exceed state standards. However, deficiencies were encountered at two academies and Compliance Orders were issued by the Colorado Peace Officer Standards and Training Director. One academy remedied its deficiencies and satisfied the Compliance Order. The other academy failed to comply with the compliance order, which is the first time that an academy has failed to comply with orders.
- Approximately 55 to 60 Subject Matter Experts serve on the Peace Officer Standards and Training Board Subject Matter Expert Committees for Arrest Control, Driving, Firearms and Curriculum. During 2009, four new Subject Matter Expert Committee members were appointed to serve on these committees.

Department of Public Safety

The Department of Public Safety is the principle state law enforcement agency providing a leadership role in policy development and implementation of a wide range of criminal justice issues through its divisions (the Colorado Bureau of Investigation, the Colorado State Patrol, the Division of Criminal Justice, Fire Safety and Homeland Security) and approximately 50 boards and commissions. Examples of the wide range of the Department of Public Safety responsibilities include statewide crime scene investigations, laboratory analyses and testimony in criminal cases; fire code inspections and certifications;

immigration enforcement on state highways; leadership of statewide commissions and multi-jurisdictional taskforces; statewide grant awards to law enforcement agencies; and the development of standards for the treatment of convicted offenders.

This Unit represents the Department of Public Safety in all civil, non-monetary litigation and provides legal advice on a wide range of issues including policy development, personnel matters, rule making, policies and procedures of boards and commissions, asset forfeitures, open records requests and subpoenas, and representation of Department of Public Safety issues in criminal prosecutions.

This Unit consists of one attorney, who also serves as counsel to the Peace Officers Standards and Training Board.

In 2009:

- Counsel for the Department of Public Safety represented the State in two cases before the Colorado Court of Appeals, four cases in the Colorado district courts, 10 cases before the State Personnel Board, four criminal cases on behalf of the Colorado Bureau of Investigation and four rulemaking hearings.
- Issues addressed during the year included the DNA Familial Search policy, defense of the DNA database in criminal cases, renegotiation of the Colorado State Patrol-U.S. Immigration and Customs Enforcement memorandum of agreement, presentations at board meetings, responding on behalf of the Department of Public Safety to requests for information, filing motions as needed and frequently providing legal advice to executive staff on numerous matters.

The Appellate Division

The Appellate Division of the Attorney General's Office is Colorado's prosecutorial authority at the appellate level of the criminal justice system. Division attorneys represent law enforcement when defendants appeal criminal convictions in the Colorado appellate courts. In addition, the division represents the interests of the State in extradition appeals, in selected civil appeals (such as property and bond forfeiture actions) and in the federal courts in *habeas corpus* actions challenging state criminal convictions.

The overwhelming majority of trial convictions are obtained by the hundreds of deputy district attorneys who do felony trial work for the 22 District Attorneys in the state. As of the end of 2009, the Attorney General's Appellate Division had 28 full-time attorneys supported by 3 staff members to respond to all of the defense appeals of these felony convictions. Not surprisingly, the division's caseload is both high and demanding.

Because the division responds to appeals that are filed on behalf of convicted criminals, it cannot control the size of its caseload. The division must provide effective and ethical representation in all cases, which range from relatively simple trial court denials of postconviction relief to more complicated constitutional questions and issues of statutory interpretation and trial practice. In each case, the attorney must read the trial transcript and other pertinent documents, conduct legal research on each of the defendant's claims, and write an argument explaining why law enforcement should prevail.

While a majority of the cases directly impact only the defendant and the victims, any given case may have a significant impact on how law enforcement authorities conduct searches and arrests; on criminal trials and sentencing hearings throughout the state; on the State's Department of Corrections; and on probation, parole, and county community corrections programs.

In addition to their appellate litigation, Appellate Division attorneys share their expertise in criminal law issues with the district attorneys through weekly case law updates, informal advice, and formal presentations at Colorado District Attorneys Council meetings and training sessions.

2009 Caseload

The Appellate Division opened 1,228 new appellate cases in 2009 (98 more cases than in 2008 and 277 more than in 2007). Division attorneys successfully upheld criminal convictions and/or sentences in 90 percent of their cases. These cases involved the following convictions:

- 656 assaults or sexual assaults against children
- 830 burglaries and thefts
- 403 kidnappings and assaults
- 229 drug offenses
- 371 homicides
- 235 aggravated robberies
- 145 sexual assaults on adults
- 1,180 other offenses (primarily felonies)

In managing the appellate caseload, attorneys also performed the following issues:

- *Motions*
Monitored and responded as necessary to ongoing pleadings in hundreds of cases in the preliminary stages of the appellate process.
- *Opening and Answer Briefs*
Filed 1062 opening briefs, answer briefs, and answers to orders to show cause (126 more than in 2008).
- *Oral Arguments*
Appeared at 111 oral arguments to present

the State's position and answer questions from the judges. In most instances, panels of three or more division attorneys review the briefs and serve as judges in mock arguments to prepare the attorney handling the case for argument.

- *Petitions for Rehearing*
Filed 46 petitions for rehearing to correct matters that were wrongly decided by the courts.
- *Petitions for Certiorari*
Asked the State Supreme Court to conduct further review in 19 cases that would otherwise have an adverse impact on law enforcement.

Natural Resources Section

The Natural Resources and Environment Section works on behalf of Coloradoans to protect and improve the quality of our State's natural environment and to ensure intelligent use and development of our natural resources. The Section provides legal counsel and representation to the Colorado Department of Natural Resources, the Colorado Department of Public Health and Environment, and any other state agency or official with a natural resource or environmental issue. The Section also advocates on behalf of the State Natural Resources Trustees to recover damages for injuries to natural resources and to restore those resources.

Federal and Interstate Water

The Natural Resources Section protects Colorado's interests in its interstate rivers.

In 2009, attorneys:

- Successfully represented the State of Colorado in the Republican River Compact Arbitration. Following extensive legal briefing and trial, the arbitrator ruled in favor of Colorado by accepting Colorado's proposed damage measurement, rejecting Nebraska's proposed changes to the Compact Accounting Procedures and determining that Kansas had failed to prove the amount of its proposed damage award and was limited to nominal damages of \$10,000 for Nebraska's overuse of Republican River water.
- Assisted the State Engineer's Office in a continuing series of public meetings to draft and achieve consensus on Rules in Water Division No. 3 to protect senior surface water rights and Colorado's compact obligation while reducing groundwater withdrawals as little as possible.

- Successfully represented the State of Colorado in U.S. Supreme Court litigation that approved the Special Master's Fifth and Final Report and limited Kansas' recovery for expert witness attendance fees against Colorado to \$40 per day under 28 U.S.C § 1821. *Kansas v. Colorado*, 129 S.Ct. 1294 (2009). The 2009 Supreme Court decision accepted Colorado's arguments as to the statutory limit of expert witness fee awards in cases of original jurisdiction and effectively ended the *Kansas v. Colorado* litigation which began in 1985.
- Successfully defended an award of costs to the State Engineer in a rulemaking case, establishing the right of the State Engineer to such an award.
- Promulgated Rules addressing the effect of increased irrigation efficiencies on the State's ability to meet its compact obligations under the Arkansas River Compact.
- Represented the State Engineer and defended his decision to approve Subdistrict No. 1 in Water Division 3 in a 10-day trial.
- Protected the State's interests in litigation and legislation regarding the Colorado River Compact and the Upper Colorado River Compact.
- Participated in the Aspinnall Unit reoperations Endangered Species Act review and National Environmental Policy Act processes on behalf of the State.

Water Resources and Conservation

In 2009, attorneys:

- Assisted the State Engineer's Office in drafting legislation to assist with administration of over 40,000 oil and gas wells. Represented staff of the State Engineer's Office in a three-week hearing to adopt rules governing oil and gas well administration.
- Represented the State Engineer in hundreds of water rights proceedings in Colorado's water courts, including several appeals to the Colorado Supreme Court.

- Achieved victory before the Colorado Supreme Court on behalf of the State Engineer's Office in decision affirming the State Engineer's authority to administer storage rights so as to protect vested water rights from injury.
- Assisted the Colorado Water Conservation Board, the State Land Board, Colorado Department of Transportation, Department of Corrections, the Division of Wildlife, Division of Parks and Outdoor Recreation, and the Colorado Historical Society in acquiring new water rights and protecting existing water rights.
- Successfully obtained instream flow decrees for the Colorado Water Conservation Board, including appropriations in Water Divisions 1, 2, 5 and 6.
- Provided representation for more than 200 cases for the Colorado Water Conservation Board encompassing all seven water court divisions.
- Continued an in-depth, long-term analysis of Colorado State Parks' water rights in order to create a comprehensive inventory of ground and surface water rights owned, leased or used at each of the State's 45 parks. The inventory will then be used to identify potential water right issues, determine which areas need additional water rights, and which water rights need protection or development.
- Successfully prosecuted enforcement actions against illegal water diverters in all seven water divisions to protect vested water rights holders from injury caused by illegal diversions.
- Assisted the Tort Litigation Unit in defending takings claims brought against the State Engineer as a result of his enforcement actions against entities pumping in violation of the State Engineer's Orders.
- Undertook several rulemakings for the Colorado Ground Water Commission. Successfully defended Management District rules against appellate challenge.
- Assisted the Colorado Water Conservation Board in the Chatfield Reallocation Project, a \$125 million water storage project designed to increase water availability in the South Platte River Basin. Worked with the Division of Parks and Outdoor Recreation to

identify concerns with the reallocation based on its dual role as project participant and the operator of Chatfield State Park.

Oil, Gas and Minerals

In 2009, attorneys:

- Assisted and advised the Colorado Oil and Gas Conservation Commission and its staff on implementation of extensive rules and regulations promulgated by the Commission.
- Won numerous procedural motions for the Colorado Oil and Gas Conservation Commission in a district court challenge to rules and regulations promulgated by the Commission.
- Represented the Colorado Oil and Gas Conservation Commission in a lawsuit concerning the process for the thousands of applications for permits to drill wells the Commission receives annually.
- Advised the Department of Natural Resources on oil shale issues and continued to participate in federal, state, and local team meetings regarding regulation of oil shale development.
- Drafted for the Division of Reclamation, Mining, and Safety proposed rules and regulations for prospecting and uranium mining operations. Presented such proposed regulations to the Mined Land Reclamation Board for its consideration. Advised the Division on numerous issues concerning the proposed regulations, and led discussions on the proposed regulations during eight months of stakeholder meetings.

State and Trust Lands

In 2009, attorneys:

- Advised on and facilitated in the acquisition by the Division of Wildlife of more than \$20 million dollars in real property interests, both fee title and conservation easements, that protect and preserve critical wildlife habitat throughout Colorado. Acquisitions were funded by federal fish and wildlife aid, state hunting and fishing license fee

revenues and moneys provided by the Great Outdoor Colorado Trust Fund.

- Advised and assisted the Division of Wildlife in responding to the threats posed to state wildlife resources from oil and gas development on federal lands within Colorado that also provide critical wildlife habitat for game and threatened and endangered species, including the development of cooperative agreements with oil and gas companies and best management practices that otherwise assist the companies in avoiding or minimizing impacts to state wildlife resources.
- Advised and assisted the Division of Wildlife in the development and implementation of a new five-year season structure for big game hunting, the major revenue generating activity for the Division, which will control big game hunting by residents and nonresidents in Colorado over the next five years. Revenues from the sale of big game hunting licenses provide the majority of revenues supporting all state fish and wildlife management programs.
- In two separate district court actions, defended the Division of Wildlife's interest in maintaining public hunting access to public and private lands located near or adjacent to areas being developed for large lot or ranchette home sites. Some residents of these areas have sought to close neighboring private and public lands to hunting despite the absence of any discernable threat to public safety generally or to the residents specifically from such hunting activity.
- Assisted in the implementation of a regulatory program by the Division of Wildlife and the Division of Parks and Outdoor Recreation to address increasing threats to state wildlife and recreational resources from aquatic nuisance species. Aquatic nuisance species management continues to be an issue of critical national importance as problems with such exotic nonnative species continue to expand.
- Advised and assisted the Division of Parks and Outdoor Recreation as it undertook a major re-structuring of programs, personnel and financing in responding to and complying with an extensive performance

audit requested by the Department of Natural Resources. Problems with the past administration of state parks programs continue to be identified by the new leadership at the Division, which require extensive assistance to resolve, including addressing issues raised by the audit regarding the Division use of moneys provided by the Great Outdoor Colorado Trust Fund.

- Advised and assisted the Division of Parks and Outdoor Recreation as it implemented significant budget cuts related to the recent economic downturn that required significant reduction in parks services and partial closure of some state parks.
- Advised and assisted the Division of Parks and Outdoor Recreation on responding to requests to develop mineral resources underlying some state parks that are owned by the Division and in responding to the threats posed to state parks from development of mineral resources owned by third parties directly adjacent to and in some cases underlying existing state parks.
- Advised and assisted the State Board of Land Commissioners on general management of the trust assets it holds for the benefit of K-12 education, which over the past year generated approximately \$60 million dollars of net trust income to support public education in Colorado. The SLB holds approximately 3 million acres of land in fee title and 4 million acres of mineral interest, which generates significant demand for transactional legal services and the resolution of disputes regarding such transactions.
- Assisted the State Board of Land Commissioners in resolving disputes involving development agreements or leases of State Land Board properties, including development of the former Lowry Bombing Range and properties leased to National Hog Farms.

Air, Land and Water

In 2009, attorneys:

- Assisted the Colorado Department of Public Health and Environment's Air Pollution

Control Division and Air Quality Control Commission in preparing and adopting an interstate transport State Implementation Plan to address ozone and particulate emissions and their impacts on neighboring states.

- Continued to assist the Colorado Department of Public Health and Environment's Air Pollution Control Division and Air Quality Control Commission in preparing a Regional Haze State Implementation Plan revision to address visibility issues within Colorado's national parks and wilderness areas.
- Obtained a judgment for \$72,000 against a lodge management company for violations of the State's open burning requirements and asbestos regulations.
- Brought suit and secured successful remediation of major asbestos spills in Pueblo residential neighborhoods caused by a building owner.
- Assisted the Water Quality Control Division in formulating a new process and criteria for prioritizing the award of \$65 million in stimulus funds to public entities within Colorado, for drinking water and wastewater infrastructure projects under the American Reinvestment and Recovery Act of 2009.
- Settled litigation and obtained \$680,000 in penalty assessments from three oil and gas operators on the Roan Plateau for stormwater violations resulting in pollution discharges to Parachute Creek.
- Negotiated settlement of a \$90,000 penalty for stormwater violations against a homebuilder in Eagle; negotiated a settlement of \$107,000 in penalty assessment for stormwater violations against a contractor in Fort Lupton; and obtained a \$32,000 penalty against a Montrose subdivision developer for violations of construction stormwater requirements.
- Settled violations of the State's drinking water regulations at a trailer park in El Paso County. The settlement will bring the facility into full compliance.
- Obtained a \$100,000 judgment against a facility that failed to conduct proper operation and monitoring of its drinking water system.
- Successfully defended the Water Quality Control Division in the appeal of a discharge permit at the Lucky Jack Mine over financial assurance requirements. The terms of the permit were upheld by an administrative law judge.
- Worked with the Colorado Department of Public Health and Environment and the Colorado Oil and Gas Conservation Commission to develop criteria to ensure safe oil and gas recovery near the Rulison nuclear blast site.
- Negotiated compliance orders with two housed commercial swine feeding operators to bring the facilities into compliance with water quality and air quality permits.
- Assisted in negotiating several compliance orders with an oil and gas exploration and production company for more than \$500,000 in penalties and injunctive relief to bring its facilities back into compliance with air quality permitting requirements.
- Negotiated a compliance order with an asphalt production company for a \$72,000 penalty and injunctive relief to bring its facilities back into compliance with air quality standards.
- Continued our involvement in 11th Circuit litigation in support of the Environmental Protection Agency's rule exempting water transfers from Clean Water Act permitting requirements, in order to protect Colorado's interests in interbasin water transfers.
- Worked closely with the Colorado Department of Public Health and Environment to mitigate potential air and water quality impacts regarding commercial oil shale development on Western Slope public lands.

Hazardous and Solid Waste

In 2009, attorneys:

- Commenced negotiation of a settlement to require better monitoring of waste chemical weapons stored by the Department of Defense at the Pueblo Chemical Depot. Continued a separate suit to force final treatment of the waste chemical munitions by 2017.

- Facilitated transition of two of the largest used tire storage facilities in the country to new owners. Worked with local officials and the new owners to bring the facilities into full compliance after a decade of regulatory problems.
- Successfully defended the Solid and Hazardous Waste Commission's promulgation of regulations effectuating House Bill 08-1414, regarding mandatory liners for oil and gas exploration and production brine waste impoundments.
- Obtained summary judgment and a civil penalty in litigation against Adams County for misappropriating more than \$1 million from a county-controlled hazardous waste fund established to offset state and local governmental costs associated with the Clean Harbors Deer Trail Disposal Facility.
- Participated in innovative shareholder meetings to address state-wide concerns regarding remediation of contaminated dry-cleaning facilities. As part of this effort, counseled the Colorado Department of Public Health and Environment on development of criteria for deciding when no further groundwater remediation would be necessary.
- Counseled Petroleum Storage Tank Fund Committee on creation of subrogation policy to allow the fund to pursue third parties responsible for releases from petroleum tanks.
- Represented the Colorado Department of Public Health and Environment in negotiating the cleanup of and the penalty for a pesticide wholesaler who unsafely and illegally stored thousands of gallons of hazardous waste in his backyard for years.
- Continued to assist the Colorado Department of Public Health and Environment in drafting regulations on liquid waste impoundment. This ongoing stakeholder process, involving diverse industry sectors and all three of the Colorado Department of Public Health and Environment's environmental divisions. Rulemaking is tentatively set for late 2010.
- Assisted in establishing a household pharmaceutical take-back program with pick-up locations throughout the Denver metro area and Summit County. This

program protects state waters from degradation by flushed medications and medications improperly disposed of in household trash.

- Successfully litigated first ever Hazardous and Solid Waste Commission penalty review and obtained reversal of an administrative law judge's reduction of the Department's administrative penalty assessment. Defendant had illegally stored and disposed of hazardous waste and failed to inform State and local authorities of his waste-generation activities. The commission determined that a \$405,000 administrative penalty was appropriate, reversing the administrative law judge's drastic reduction of the penalty.

Natural Resource Damages, Restoration and Land Cleanup

In 2009, attorneys:

- Initiated procedures for natural resource restoration project identification using \$35 million settlement of the State's claim against Shell Oil and the U.S. Army for natural resource damages at the Rocky Mountain Arsenal.
- Approved nearly \$1.5 million in proposals to restore natural resources at Rocky Flats.
- Recovered 100 cents on the dollar plus interest for the State in the Asarco nationwide bankruptcy proceeding. Settlement included conveying some Asarco properties to a Colorado environmental trustee. Resolution included natural resources damages, past response costs, and future operations and maintenance payments totaling \$16 million for the Globeville site, \$4 million for Silverton and \$7 million for various other sites including California Gulch, Summitville, and Bonanza. Colorado's recovery totaled \$27 million.
- Through training of select State employees, Unit attorneys grew the Natural Resource Damages Program to systematically identify injuries to natural resources of the state, assess appropriate damages, and restore or replace the resources through fair and cost-effective projects.

- Represented the Colorado Natural Resource Trustees in their administration of \$27.4 million in Rocky Mountain Arsenal natural resource damage funds. This ongoing process has involved working with community groups and local governments to come up with matching funds and projects that will restore, replace or acquire the equivalent of the natural resources injured at the Rocky Mountain Arsenal.
- Worked with Colorado and federal trustees to identify restoration projects for the Lake County California Gulch site. Prepared restoration plan for public comment. Continued to establish relationships with local groups to ensure quick implementation and protection of projects.
- Negotiated a settlement for injuries to groundwater at the Lowry Landfill Superfund Site with Denver, Waste Management, and twelve entities that arranged for disposal at the site. The agreements will be filed with the court in the first quarter of 2010 and provide for groundwater protection and improvement projects for Platte River basin groundwater.
- Began the process of working with State Trustee representatives to administer the \$1.5 million natural resource damage settlement at the Shattuck superfund site in Denver. This process had been on hold pending the recent completion of remedial activities at the site.

State Services Section

The State Services Section of the Colorado Attorney General's Office represents the governor, other elected state officials, the administrative parts of the judicial branch, the State Board of Education, more than 20 Colorado-supported universities, colleges and community colleges, the Public Utilities Commission and the Departments of Human Services, Public Health and Environment, Health Care Policy and Financing, Education, Higher Education, Labor and Employment, and Personnel and Administration.

Constitutional cases

During 2009, the attorneys from the State Services Section:

- Successfully defended the State in an open records lawsuit concerning the governor's personal cell phone records. The case is pending on a petition for review in the Colorado Supreme Court.
- Successfully defended a constitutional challenge in state court by a nonprofit corporation to campaign finance disclosure laws pertaining to issue committees. The U.S. Supreme Court denied review.
- Successfully defended challenge to Colorado's Clean Indoor Air Act by area theatres. The dismissal was upheld in the Colorado Supreme Court.
- Continued to defend a major constitutional challenge to Colorado's system of financing K-12 education.
- Continued to defend a constitutional challenge in federal court to disclosure requirements in ballot-measure elections.
- Continued to defend a TABOR challenge to the coal severance tax formula in the Colorado Court of Appeals.

Education

Over the course of 2009, the State Services Section:

- Continued representing the Charter School Institute. Section members reviewed six new charter school applications, resulting in the approval of one new school to open in the fall of 2009, and one new school to open in the fall of 2010. Monitored the process of selecting a new Executive Director for the Institute, the renewal of charters for two existing schools, and the non-renewal of one existing low-performing school.
- Continued to represent the Colorado Higher Education Insurance Benefits Alliance Trust in advisory and transactional capacities.
- Continued to represent the State's public institutions of higher education in preparing and negotiating State contracts for various services, products, and real estate, including contracts for providing students with electronic warnings of on-campus emergencies.
- Continued to assist the State's public institutions of higher education with governance matters, open records and open meetings issues, policy development, faculty dismissal hearings, personnel issues, litigation and general legal advice.
- Represented the Capital Construction Assistance Board, a newly constituted board created to administer the Building Excellent Schools Today program, which is authorized to provide up to \$250 million for K-12 school construction and maintenance. In spring 2009 (award cycle 2008-09), the Board recommended and the State Board of Education approved, \$85.2 million. In summer 2009 (award cycle 2009-10), the Board recommended and the State Board of Education approved \$127.5 million, for a total of nearly \$212.8 million.
- Prosecuted disciplinary actions on behalf of the State Board of Education against educator license holders and applicants who violated statutory requirements, including

disciplinary actions involving charges of sexual offenses or misconduct and theft.

- Advised the Department of Education on issues regarding federal regulatory compliance and federal audits.
- Advised the Department of Higher Education on the closing of 3 diploma mills, on student complaints against private colleges, and on recovering funds owed to the State.

Child Protection, Human Services and Health Care

On behalf of the Department of Human Services, the State Services Section initiated actions against 19 entities seeking fines for violations of licensing statutes and regulations and collected more than \$7,150 in fines.

In 2009, the Section also:

- Represented the Department of Human Services in an additional 35 cases against child care providers, including 15 summary suspensions of providers who failed to comply with licensing statutes and regulations or operated without a license.
- Represented the Department of Human Services in 934 child protection cases, resolving most through mediation.
- Represented the Department of Human Services in four actions for judicial review of the Department's Final Agency Decision.
- Assisted the Department of Human Services Division of Child Support Enforcement in five district court actions to assert and protect the Division's authority in the use of enforcement remedies.
- Represented various divisions of the Department of Human Services regarding subpoenas for records.
- Represented the Department of Human Services Division of Youth Corrections in 41 cases regarding appropriate sentencing, placement, or release of juveniles.
- Represented the Department of Human Services Division of Behavioral Health, Alcohol and Drug Abuse Division against

five providers who failed to comply with the licensing statutes and regulations governing their facilities.

- Represented the Department of Human Services Division of Vocational Rehabilitation in seven appeals filed by applicants or eligible individuals regarding the provision of vocational rehabilitation services.
- Continued to defend the Department of Human Services in a \$10 million dollar class action challenge to the state disability benefits program which would have required the State to pay for applicants' attorneys' fees.
- Assisted the Department of Health Care Policy and Financing in recovering more than \$567,000 in Medicaid overpayments through settlement negotiations.
- Advised and represented the Department of Health Care Policy and Financing in the termination of several Medicaid providers suspected of fraud; intercepted and withheld payment on more than \$800,000 in suspect claims. Settled two matters that recovered \$136,000.
- Successfully defended the Department of Health Care Policy and Financing in matters challenging the type of income that can be placed into disability trusts.
- Represented the Colorado Department of Public Health and Environment in numerous medical marijuana related matters, including defending against several subpoenas to produce confidential information.
- Represented the Colorado Department of Public Health and Environment during Hepatitis C investigation involving hospital employee.
- Successfully defended the Colorado Department of Public Health and Environment in administrative hearings challenging the imposition of fines and sanctions assessed on assisted living facilities where patients' safety and well-being was at risk.
- Continued to defend the Colorado Department of Public Health and Environment in a challenge to Colorado's air ambulance regulations.
- Continued to defend against an action seeking multi-million dollar changes in the

operation of the Colorado Benefits Management System to make it compatible with other computer programs.

Workers' Compensation

The State Services Section opened 110 cases to force employer compliance with mandatory workers' compensation insurance statutes. Section attorneys closed 94 cases, either by settlement, the employer's payment of fines, sending the fines to collection, or by the employer obtaining insurance or closing the business. Of these cases, the section initiated five cease and desist cases, collected \$14,405 in settlements and fines, sent \$665,130 in fines to collection, and settled one independent contractor case. Section attorneys also opened 54 cases, filed 41 briefs, and participated in five oral arguments in appeals on behalf of the Industrial Claims Appeals Office.

Other Legal Actions

Attorneys and staff in the State Services Section also:

- Handled 28 subpoenas for the Division of Workers' Compensation and Unemployment Insurance.
- Opened 32 cases and closed 49 cases in petroleum storage tank clean up reimbursement protests on behalf of the Division of Oil and Public Safety.
- Successfully defended the Division of Oil and Public Safety's denial of individual explosives permits in four cases involving persons with criminal convictions.
- Completed 32 rule opinions for the Division of Labor and Employment and the Department of Personnel and Administration.
- Completed nine informal opinions for the Division of Employment and Training, the Division of Oil and Public Safety, the Department of Personnel

and Administration, and the State Controller's Office.

- Provided legal guidance to the Public Utilities Commission on electric, gas, telephone, water, railroad and transportation matters, including major electric and telephone rate cases as well as resource planning cases.
- Defended the Public Utilities Commission in nine court matters.
- Drafted or reviewed and edited approximately 650 Public Utilities Commission decisions and orders.
- Successfully defended the Public Utilities Commission against constitutional challenge to state statutory presumption regarding public need for additional taxicab companies in metro areas.
- Successfully defended the Public Utilities Commission, in part, in federal court proceeding seeking judicial review of a Public Utilities Commission decision interpreting the Federal Communication Commission's definition of a telephone business line for purposes of determining the level of competition in a telephone wire center and ultimately, the price for network elements sold at wholesale to facilities-based competitive local exchange carriers.
- Successfully defended the Public Utilities Commission before the Colorado Supreme Court in a judicial review proceeding seeking to overturn the Public Utilities Commission's issuance of a civil penalty to a towing carrier.
- Continued to defend the Public Utilities Commission against constitutional challenge to a 2006 Public Utilities Commission rule that provides that, for power purchase contracts that predate Amendment 37, the renewable energy credits associated with the generation of electricity from renewable sources will be deemed to be combined with the energy transferred under the contract.
- Advised the Public Utilities Commission in its consideration of Public Service Company's application to raise its electric rates by \$136 million. The Public Utilities Commission reduced the request to \$128.3 million and later reduced it temporarily to \$65 million to account for delays in Public Service's new Comanche 3 coal plant.

- Advised the Public Utilities Commission in its consideration of the 120-day bid evaluation reports filed by Public Service Company and the independent evaluator as part of Phase II of Public Service's application for approval of its electric resource plan covering 2008-2015.
- Advised the Public Utilities Commission in Qwest Corporation's application under House Bill 08-1227 to increase the cap for its basic local exchange service offering.
- Advised the Public Utilities Commission on various new taxicab applications, which are premised on the relaxed entry standard enacted at § 40-10-105(2)(b) C.R.S., as amended by House Bill 08-1227.
- Advised the PUC in an investigation concerning the PUC's legal authority to regulate the resource planning activities of cooperative electric associations and Tri-State Generation and Transmission Association, Inc. The PUC and Tri-State reached agreement on a process that increases the transparency of Tri-State's resource planning activities.
- Continue to advise PUC regarding proposed transmission line construction project extending from San Luis Valley to Pueblo. Matter concerns the application and interpretation of Senate Bill 07-100, codified at § 40-2-126, concerning the construction of transmission lines to support renewable electricity generation.

Civil Litigation and Employment Law Section

The Colorado Attorney General's Office, through the Civil Litigation and Employment Law Section, defends state agencies and employees sued in state and federal court for personal injuries, property damage, employment discrimination and constitutional violations. The section also represents state agencies in personnel matters in front of the State Personnel Board and brings administrative cases against private parties on behalf of the Colorado Civil Rights Commission.

Additionally, Section attorneys provide general legal advice and representation to the Colorado Department of Transportation, the Colorado Transportation Commission, the Colorado Department of Corrections, the Colorado State Board of Parole, the Division of Risk Management and the employees of those agencies. The section provides advice and training to all State agencies on a myriad of employment and general liability issues.

The Section handled a total of 705 new cases in 2009.

Tort Litigation

The Tort Litigation Unit defends the state of Colorado, its agencies, employees, entities and officials in lawsuits seeking damages for personal injury and property damage, as well as those brought pursuant to federal law, often claiming civil rights violations. The unit also provides day-to-day advice to agencies, including Risk Management, on questions of liability, coverage, indemnity, settlements and applicability of the Colorado Governmental Immunity Act.

In 2009, the Unit:

- Opened 83 new cases, including 13 overflow cases from the Corrections Unit and six attorneys fees claims associated with 42 U.S.C. Section 1983 cases seeking injunctive relief.
- Won 35 cases on motions to dismiss.
- Won two cases on motions for summary judgment.
- Settled 18 damages cases for a total of \$1,070,281. Two of these were large settlements (\$400,000 and \$250,000); the average settlement of the remainder was \$26,268.
- Settled one claim for attorneys fees for \$450,000 even though the fee application had sought \$767,000.
- Prevailed in five appeals.

Corrections

The Corrections Unit defends inmate lawsuits involving various issues, including constitutional rights, time computation, prison discipline proceedings, *habeas corpus* petitions, parole and contract-related matters. Unit lawyers also handle compliance issues and claims filed by inmates in the class action ADA lawsuit, *Montez v. Ritter, et. al.* The lawyers also provide general legal advice to the Department of Corrections and the Parole Board on a daily basis on matters such as open records requests, environmental issues, sentencing issues, internal discipline and procedural matters, and administrative regulations.

In 2009, the Unit:

- Opened 405 new cases.
- Obtained favorable rulings in 299 matters and unfavorable rulings in 12 matters — a success rate of 96.1 percent.

- Obtained favorable rulings from appellate courts in 67 of 68 rulings — a success rate of 98.5 percent.
- Obtained favorable rulings in 12 of 13 hearings in state court.
- Obtained defense verdicts in the four federal court jury trials litigated this year.
- Settled six cases for \$135,000, saving the State nearly \$3 million in damages requested in those cases.
- Obtained a published opinion from the Colorado Court of Appeals upholding the DOC's authority to ban discovery and to limit cross-examination in prison disciplinary cases.
- Provided monthly training to disciplinary hearing officers on due process requirements.
- Settled eight cases alleging 63 claims for relief for a total of \$116,478, saving the State more than \$7 million.
- Advised several agencies on Fair Labor Standards Act issues, including classification, time keeping and calculation of overtime.
- Assisted with the drafting and review of overtime policies.
- Presented training to numerous State agencies and higher education institutions.
- Advised and trained State agencies on retaliation provisions of the American Reinvestment and Recovery Act.
- Provided day-to-day advice to State agencies and higher education institutions, including the handling of performance issues for non-classified employees, the management of statewide furlough days and review of lay-off policies and matrixes.

Employment Tort Litigation

The Employment Tort Unit defends State agencies and employees in state and federal employment litigation. The cases involve claims arising under a myriad of federal and state statutes, including Title VII of the Civil Rights Act, the Americans with Disabilities Act, the Fair Labor Standards Act, the Equal Pay Act, the Age Discrimination in Employment Act, the state Whistleblower Act, and other state and federal employment laws. The Unit attorneys also provide advice and training to State agencies regarding employment law issues.

In 2009, the Unit:

- Defended 32 employment cases filed in state and federal district courts including 10 new cases. The cases involved 267 separate claims against State agencies and 753 claims for relief against State employees.
- Aggressively sought and obtained early dismissal and summary judgment of 55 claims for relief.
- Won every appellate issue decided during the year.
- Advised State agencies on issues related to the use of medical marijuana.

Personnel, Employment, Civil Rights and Special Funds

The Personnel/Employment/Civil Rights and Special Funds Unit helps State government manage classified employees and defends the State and its employees in employment and personnel disputes. The Unit represents all agencies in personnel hearings and matters before the State Personnel Board and on appeal. The Unit provides advice and training to State agencies and employees regarding personnel matters.

The Unit also provides legal advice to the Colorado Civil Rights Division within the Department of Regulatory Agencies in conjunction with the Colorado Civil Rights Division's investigation of charges of employment, housing and public accommodations discrimination and prosecutes those cases which have been noticed for hearing by the Colorado Civil Rights Commission. The Unit also defends

the Subsequent Injury Fund and the Major Medical Insurance Fund which are part of the Special Funds Unit of the Division of Workers' Compensation within the Department of Labor and Employment.

In 2009, the Unit:

- Provided daily “front-end” employment advice and consultation concerning hiring, discharging, and disciplining employees.
- Coordinated and presented statewide and agency-specific training seminars directed to State officials and managers to effectively educate, train, and manage the workforce.
- Provided civil rights advice to Colorado Civil Rights Division and represented Colorado Civil Rights Division at Colorado Civil Rights Commission meetings.
- Defended 275 cases before the State Personnel Board and the Colorado Court of Appeals, including 162 new cases. Won 69 percent of all mandatory hearing cases and received hearings denied on 69 percent of all discretionary hearing cases.
- Prosecuted 13 cases that were noticed for hearing by the Colorado Civil Rights Division at the Office of Administrative Courts.
- Negotiated more than \$200,000 in settlement payments to private citizens, plus mandatory training on the Colorado Anti-Discrimination Act for private employers.
- Defended 10 Special Funds cases before the Office of Administrative Courts, including six new cases.
- Drafted two formal opinions involving State personnel employment matters.

Transportation

The Transportation Unit advises the Colorado Department of Transportation on a myriad of legal issues. The unit prosecutes all condemnation actions, defends inverse condemnation actions and handles administrative actions. The unit also handles issues involving access control, highway beautification, billboard location, and

Procurement Code protests. The unit advises the Colorado Department of Transportation in construction matters and represents the Colorado Department of Transportation in construction arbitration and litigation.

The unit also provides advice regarding environmental and real estate issues and defends and negotiates settlements in these areas. Members of the unit review, revise and approve all Colorado Department of Transportation contracts and assist in rulemaking and approval of regulations. The attorneys also review proposed legislation affecting the Colorado Department of Transportation.

In 2009, the Unit:

- Represented the Colorado Department of Transportation in 45 condemnation, access, relocation, billboard, inverse condemnation, quiet title and other cases.
- Settled or resolved by trial 10 condemnation cases, saving the State \$1.3 million.
- Reviewed 550 contracts for the Colorado Department of Transportation, with an average turnaround time of three days.
- Provided legal guidance related to the formation and implementation of two new enterprises created by the FASTER legislation, SB09-108. The Colorado Bridge Enterprise and High Performance Transportation Enterprise began operations in 2009 with articles of organization and bylaws governing their business purposes and legal staff guiding open meetings of their respective boards.
- Represented the Colorado Department of Transportation in several state court cases involving subcontractor disputes with prime contractors, resolving matters without additional cost to the State.
- Represented the Colorado Department of Transportation in construction disputes and claims by prime contractors seeking additional compensation for highway and bridge projects. Resolved two claims, saving the State more than \$500,000.

- Negotiated and drafted contracts, grants, and related agreements with the Regional Transportation District, the City and County of Denver, and other parties to implement redevelopment of Denver Union Station, the FASTRACKS program and other transportation-improvement projects.
- Provided legal assistance to CDOT and other governmental entities on implementation and reporting requirements of the American Recovery and Reinvestment Act — also known as the federal stimulus program.

Business and Licensing Section

The six units of the Business and Licensing Section provide legal advice and litigation services to several State agencies, including the Department of Regulatory Agencies and its divisions of Banking, Civil Rights, Financial Services, Insurance, Real Estate, Registrations, Securities and the staff of the Public Utilities Commission. The Section also represents the Department of Revenue, the Department of Agriculture, the State Personnel Board and the Independent Ethics Commission.

Real Estate Unit

The Unit representing the Division of Real Estate works to protect Colorado consumers from incompetent or deceptive brokers, appraisers, and loan originators. Counsel for the Real Estate Division represents the Real Estate Commission, the Board of Real Estate Appraisers, the Conservation Easement Oversight Commission and the Mortgage Loan Originator Program (formerly Mortgage Broker Program).

In 2009:

- Counsel for the Real Estate Commission focused on cases involving mortgage fraud, which resulted in revocation of seven real estate broker licenses.
- Counsel for the Mortgage Loan Originator Program provided general counsel advice to the Division of Real Estate as it sought to implement the new Mortgage Loan Originator Licensing Act to bring the state of Colorado in line with new federal minimum licensing standards.
- Division of Real Estate's attorneys successfully represented the Real Estate Appraiser Board and the Director of the Division of Real Estate in disciplining

- appraiser and mortgage loan originator licensees for incompetent practice.
- Counsel provided assistance to the Real Estate Commission and Division of Real Estate in order to protect the Colorado consumer by denying real estate and mortgage broker licenses to individuals convicted of crimes involving theft.
- Counsel for the Mortgage Loan Originator Program successfully asserted and defended the Division of Real Estate's basic ability to carry out its duty to protect Colorado consumers through subpoenas used in investigations. Subpoenas are the Division's tools for uncovering deception or incompetence.

Revenue Unit

Unit attorneys provide legal services to all of the divisions and programs within the Colorado Department of Revenue. This includes several divisions devoted to determining, enforcing and collecting state and local tax, and several regulatory boards, commissions and programs. Unit attorneys represented the Department of Revenue in administrative hearings, in state and federal trial courts, and on appeal before state and federal courts.

Unit attorneys also represent several boards, commissions and other regulatory programs, including the Motor Carrier Services Division, the Colorado Limited Gaming Control Commission, the Motor Vehicle Dealer Board, the Boxing Commission, the Colorado Racing Commission and the Liquor Enforcement Division. Each regularly assigned lawyer presents cases for the staff before his assigned board, commission or program and represents his client on judicial review or appeal.

Attorneys in this Unit also provide legal representation to the Property Tax Division within the Colorado Department of Local Affairs. The Property Tax Division coordinates and administers the implementation of property tax law throughout 64 counties in Colorado. Attorneys representing the Division provide statutory interpretation and other general counsel services as needed and represent the Administrator in administrative hearings and negotiations before the Board of Assessment Appeals.

In 2009:

- The Unit’s attorneys prepared an Attorney General Opinion concluding that medical marijuana is tangible personal property subject to sales tax and that a state retail sales tax license does not represent an endorsement of the license-holder’s compliance with the law.
- Unit attorneys litigated cases defending the tax on tobacco products against claims of unconstitutionality, analyzed whether the generation of electricity constitutes the “manufacture” of “tangible personal property” and disputed appropriate taxation of the sales of materials used for well fracturing operations in the oil and gas production industry.
- Revenue Unit attorneys successfully obtained a ruling from the Colorado Supreme Court holding that the maximum conservation easement tax credit permitted by statute applies to the aggregate credit claimed per donation, rather than permitting each member of a tenancy in common to claim up to the maximum credit. This decision affects 42 similar cases with an estimated total of \$5 million in income tax plus interest.
- Unit attorneys defended a district court ruling in the Colorado Court of Appeals that said the Department of Revenue’s approach to calculating taxation for the mining industry did not violate the Taxpayer’s Bill of Rights.
- Unit attorneys worked with the attorneys general in 40 other states in the bankruptcy cases filed by Chrysler and General Motors. In these cases, Revenue Unit attorneys ensured that the State’s regulatory authority over the reorganized car manufacturers was preserved and that all tax liabilities of the car manufacturers were assumed by the successor entities.
- Unit attorneys successfully defended a lawsuit against the Colorado Port of Entry concerning the assessment of an administrative penalty for failure to register construction equipment.
- Attorneys also successfully defended against a homeowners association lawsuit against State liquor license authorities for approving a retail liquor license.
- Colorado Gaming Commission attorneys assisted with the promulgation of new rules necessary for the implementation of Amendment 50, which significantly expanded the scope of gaming in Colorado.
- Attorneys provided frequent legal advice to the Motor Vehicle Division by reviewing rules and records requests, and by representing the Division in appeals of driver’s license revocation cases to the Colorado Court of Appeals and the Colorado Supreme Court.

Medical Unit

The Medical Unit provides legal representation to Department of Regulatory Agencies boards and commissions that oversee physicians, physician assistants, podiatrists, nurses, certified nurse aides, psychiatric technicians and nursing home administrators. The Unit also represents the newly created Nurse Physician Advisory Task Force for Colorado Health Care, which was created in 2009. The Unit provides legal support to each board and commission as they protect public health, safety and welfare. The Unit’s legal services include litigation and resolution of licensure, disciplinary, and injunctive matters, as well

as advice and guidance with regard to rulemaking and policy issues.

Board of Medical Examiners

In 2009:

- Counsel for the Board of Medical Examiners successfully prosecuted and resolved several complex disciplinary actions against physicians who engaged in unprofessional conduct.
- As a result of an amicus brief filed by counsel for the Board of Medical Examiners in private party litigation, the Colorado Supreme Court recognized that documents from a Board of Medical Examiners investigation are not subject to automatic disclosure under civil procedure rules.
- Counsel for the Board successfully defended an appeal regarding the Board's revocation of a physician who had engaged in more than 40 instances of substandard care.
- Counsel for the Board also defended the Board of Medical Examiners' decision to permanently bar a physician from surgery after evidence that the physician treated a surgical patient in a manner which fell below the standard of care.
- Attorneys for the Board of Medical Examiners successfully obtained several revocations or permanent relinquishments of licenses in 2009, including the revocation of a physician's license after she violated an order voluntarily agreeing not to practice medicine.
- Counsel secured the permanent relinquishment of the Colorado license of a physician practicing in California who persuaded patients to undergo unnecessary respiratory treatments.
- Counsel obtained the permanent relinquishment of a physician's license after he failed to fully complete an education and post-education plan.
- Unit attorneys also secured the permanent relinquishment of a physician assistant's license after an investigation determined the physician assistant engaged in an improper sexual relationship with a patient and in improper prescribing practices.

Board of Nursing

In 2009:

- Counsel for the Board of Nursing successfully prosecuted a licensed practical nurse who had engaged in multiple instances of criminal conduct, including aggravated motor vehicle theft and forgery, which ultimately resulted in the revocation of her license to practice nursing.
- Counsel also represented the Board of Nursing in multiple summary suspension proceedings involving nurses who diverted narcotics for their own personal use from hospitals or other medical facilities. At least three of these cases were reported by the media during the past year. Counsel moved swiftly in all of these cases and successfully removed these nurses from practice.
- Counsel also represented the Board of Nursing in another summary suspension proceeding against a licensed practical nurse who falsified her licensing application and submitted forged documents as proof of residency and nursing education. This case ultimately resulted in the surrender of her license to practice practical nursing.

Board of Examiners of Nursing Home Administrators

In 2009:

- Counsel for the Board of Examiners of Nursing Home Administrators successfully prosecuted and resolved a case against a licensee who had manipulated and convinced elderly individuals to invest their money in a fraudulent mortgage scheme devised by the licensee and his business partner. The licensee entered a plea of guilty in a related criminal action, and ultimately agreed to permanently surrender his license.

Colorado Board of Pharmacy

The Board of Pharmacy's attorneys provided regular general counsel and litigation services to the Board in its efforts to regulate the practice of pharmacy in the

state. For example, the Board’s counsel assisted with the coordination of efforts between the Pharmacy Board and law enforcement to investigate an unlicensed entity suspected of selling products containing prescription drugs via Internet orders from a residence and without prescriptions.

The Colorado Board of Dental Examiners

This Unit provides legal representation to the Colorado Board of Dental Examiners, including litigation and resolution of licensure, disciplinary, and injunctive matters, as well as advice and guidance with regard to rulemaking and policy issues. Attorneys advised the Board regarding newly adopted statutes and rules, and prosecuted multiple disciplinary and licensure denial actions.

The Board of Dental Examiners’ attorneys successfully resolved or initiated litigation of a number of complex substandard care cases. Unit attorneys also obtained an opinion from the Colorado Court of Appeals affirming the Board of Dental Examiners’ authority to require the applicant’s demonstration of continued competency. Finally, the Dental Board legal team achieved additional efficiencies in meeting the client’s goals of public protection by successfully mediating multiple cases.

Health Services Unit

The Unit provides general counsel and litigation representation to the various health-related regulatory programs.

In 2009:

- Attorneys for the Social Work Examiners Board and Certified Addiction Counselor Program successfully negotiated a settlement with a licensed clinical social worker and addiction counselor to relinquish his licenses following allegations that he committed seven felonies, including introducing contraband to youths at a youth treatment facility, contributing to the delinquency of a minor, obscenity and conspiracy to commit sexual conduct in a penal institution.
- Unit attorneys successfully settled with a social worker engaged in questionable therapy techniques, including so-called “holding therapy” and “strong sitting.”

Other Professional and Technical Licensing Boards

Attorneys from the Business and Licensing Section also provide legal representation to a variety of Type 1 boards and Type 2 licensing programs supporting each represented entity in its mission to protect the public. Legal services provided include litigation and resolution of licensure, disciplinary, and injunctive matters, as well as advice and guidance with regard to rulemaking and policy issues. Also represented include the professions, boards or offices of:

Accountancy, Architects, Engineers and Surveyors, Electricians, Landscape Architects, Passenger Tramway Safety, Plumbers, Acupuncturists, Athlete Agents, Physical Therapy, Occupational Therapist, Outfitters Registration, Midwifery, Respiratory Therapists, Barbers and Cosmetologists, Audiology and Hearing Aid Dealers, and Funeral Home and Crematory Registration.

In 2009, significant cases for these clients included:

- The revocation of the C.P.A. certificates of two Coloradans who also were defendants in one of the largest tax shelter cases ever prosecuted by the U.S. Department of Justice.
- The revocation of the C.P.A. certificate of an individual who solicited tax clients and others to invest in “prime bank” instruments, which is a Ponzi scheme.

Insurance

The Insurance Unit acts as general and litigation counsel to the various divisions of the Division of Insurance. Unit attorneys assist and advise on a wide variety of subject areas in rulemaking related to the regulation of insurance companies and their agents, and provide legal advice regarding changes and amendments to the insurance laws.

Attorneys conduct litigation on behalf of the Division of Insurance against unauthorized companies and individuals and insurance companies and their agents offering numerous types of insurance including, health care, health maintenance organizations, long-term care, Medicare supplement insurance, life insurance, property and casualty insurance, and preneed funeral contracts.

In 2009:

- Unit attorneys successfully determined that the Neptune Society, a national company, underfunded the trust for their preneed funeral contracts. State law provides that 75 percent of the money paid into preneed funeral contracts must be deposited with a trustee. The Insurance Unit assisted the Division in negotiating a settlement requiring the Neptune Society to place approximately \$1.5 million in trust to fund the underfunded accounts, change the Neptune Society’s business model to comply with Division of Insurance

regulations, and pay a civil penalty of approximately \$1.2 million, plus a surcharge.

- Unit attorneys also handled a similar case against Drinkwine Family Mortuary. The Division of Insurance’s investigation found approximately 30 accounts in which Drinkwine had failed to properly trust funds for preneed contracts. The unit assisted in negotiating a settlement in which Drinkwine was assessed a civil penalty of \$34,500. Drinkwine also agreed to properly fund its preneed contracts within 60 days, requiring approximately \$122,800 to be trusted to properly fund the account and agreed to suspension of its preneed license until an auditor had validated that the violations had been rectified.
- Unit attorneys also successfully obtained a permanent revocation of a man’s insurance producer license after he was found to have diverted his customer’s health insurance or long-term care insurance premium checks for his own use. An administrative law judge determined permanent revocation was warranted given the predatory nature of the insurance producer’s conduct.
- Unit attorneys also successfully negotiated a settlement with a company that issued title commitments on properties while the named entity did not hold vested title in the subject property on the date of the title commitment. The licensee also commingled title insurance premiums with business funds. As part of the settlement the company in question and its principals were required to pay a \$11,000 civil penalty and agree not to seek any insurance licensure for 10 years.

Public Utilities Commission

The Public Utilities Commission regulates the rates, charges, services and facilities of public utilities within Colorado. The Public Utilities Litigation Unit primarily represents the litigation staff of the Public Utilities Commission. The unit appears before the Public Utilities Commission in litigated matters on behalf of the public interest to

achieve fair utility rates for all types of customers. The unit works to ensure that all Coloradans receive adequate and reliable gas, electric, telephone, water and water-sewer, and motor carrier utility service.

In 2009:

- Unit attorneys represented staff on behalf of the public interest in an application to increase electric rates submitted by an Xcel Energy subsidiary, Public Service Company of Colorado. Xcel initially requested a rate increase of \$180.2 million and the Public Utilities Commission approved an increase of \$128.3 million, which went into effect Jan. 1, 2010.
- Attorneys from the Unit represented the commission staff in a proceeding addressing Xcel Energy's application to establish a new Electric Commodity Adjustment mechanism to recover its fuel and purchased energy costs. The Public Utilities Commission adopted the majority of staff's recommendations concerning rate structure and incentive mechanisms.
- Unit attorneys represented the Public Utilities Commission staff in a proceeding addressing Qwest Corporation's application to increase its rate cap for residential basic local exchange phone service. Based in part on staff's advocacy, the Public Utilities Commission granted an increase significantly lower than that requested by Qwest.

Division of Banking and Division of Financial Services

The Division of Banking is responsible for the regulation of state-chartered commercial banks, trust companies, industrial banks and money transmitters. The Division of Financial Services supervises state-chartered credit unions, savings and loan associations, and certain financial activities of life care institutions. Unit attorneys assist and advise on a variety of matters, including charter and license application hearings, promulgation

of rules and regulations, enforcement of corresponding state laws and regulations, and any emergency issues that might arise.

In 2009:

- Unit attorneys worked closely with the Division of Banking on the closure of New Frontier Bank in Greeley.
- Attorneys from the Unit also assisted with the ongoing liquidation proceeding of American International Depository and Trust.

Agriculture

This Unit acts as general and litigation counsel to the various divisions of the Department of Agriculture. Unit attorneys advise the Department of Agriculture on a wide variety of subject areas including rulemaking, Pet Animal Care Facilities Act enforcement matters, emergency preparedness, zoning, homeland security, regulation of the sale and use of pesticides, regulation of seed and nursery stock, certification of organic producers, regulation of farm products dealers and commodity handlers, inspection of all commercially used weights and measures in the state, and administration of the State Fair and its associated activities.

In 2009:

- Unit attorneys successfully obtained a restraining order against an individual who threatened to slaughter 23 Arabian horses held on his property either by inviting sharpshooters to engage in target practice or by massacring them on the steps of county buildings. Their work allowed the Department of Agriculture and the Weld County Sheriff's Office to take possession of the horses. The State prevailed in a fitness of ownership hearing, allowing the Department of Agriculture to bar the individual from recovering the animals.

Mined Land Reclamation Board

The Unit acts as general and litigation counsel to the Mined Land Reclamation Board, a multi-interest citizen board which establishes the regulations, standards and policies that guide the Division of Reclamation, Mining and Safety. The board implements the Colorado Mined Land Reclamation Act and is actively involved in the decision-making process for controversial permit issuance and enforcement actions. The Unit provides legal assistance to the board as required by its various activities, which include approving or denying permits and permit modifications when there has been public comment.

The Mined Land Reclamation Board is currently involved in developing rules for uranium in-situ leach mining operations and updating rules for hard rock mining operations.

Independent Ethics Commission

Amendment 41 to the Colorado Constitution established the Independent Ethics Commission to handle complaints and advisory opinions to help define ethical conduct for government officials and employees. Subsequent legislation further clarified the Independent Ethics Commission's duties. Since 2008, counsel for the Independent Ethics Commission has aided the Commission in its resolution of complaints, issuance of advisory opinions, letter rulings and position statements.

The opinions, rulings, and statements issued in 2009 covered a broad range of topics, including:

- Service by State officials or employees on the boards of nonprofits;
- Acceptance of prizes by State officials or employees;
- Restrictions on employment by State officials after leaving office; and,
- Restrictions on how State officials and employees may seek and secure future employment.

Securities

Attorneys from the Department of Law provided general counsel to the Colorado Securities Commissioner and the Colorado Division of Securities within the Colorado Department of Regulatory Agencies and assist in enforcing state securities laws.

In 2009, the Unit:

- Successfully argued a case involving the appeal of a final agency decision on a cease and desist proceeding. The Court of Appeals, among other things, held that the staff and the commissioner do not need to prove scienter in a civil enforcement or cease and desist action except where there is a specific statutory requirement or fact such as a license revocation, bar by a self-regulatory organization or a permanent injunction that was material and needed to be disclosed to potential investors.
- Attorneys from the Unit filed a lawsuit against a company alleging that the company and 14 other defendants violated the registration, licensing and antifraud provisions of the Colorado Securities Act through the sale of so-called "joint venture" investment opportunities in oil and gas wells located throughout the United States. The defendants, operating out of Colorado, fraudulently obtained tens of millions of dollars from investors throughout the country utilizing a sophisticated scheme that employed "boiler room" cold-call, high-pressure sales techniques to sell the securities to investors who were frequently elderly, infirm or unsophisticated, promising fantastic returns that typically never materialized. This case is ongoing.