

**Schedule 13**  
**Funding Request for the 2013-14 Budget Cycle**

Department: Natural Resources  
 Request Title: Legal Services Adjustments  
 Priority Number: R-6

Dept. Approval by: Will: H. Lei 10/18/2012  
 Date  
 OSPB Approval by: Greg H. Lee 10/23/12  
 Date

- |  |
|--|
| <input checked="" type="checkbox"/> Decision Item FY 2013-14 |
| <input type="checkbox"/> Base Reduction Item FY 2013-14      |
| <input type="checkbox"/> Supplemental FY 2012-13             |
| <input type="checkbox"/> Budget Amendment FY 2013-14         |

Line Item Information		FY 2012-13		FY 2013-14		FY 2014-15
		1	2	3	4	6
	Fund	Appropriation FY 2012-13	Supplemental Request FY 2012-13	Base Request FY 2013-14	Funding Change Request FY 2013-14	Continuation Amount FY 2014-15
<b>Total of All Line Items</b>	<b>Total</b>	3,507,923	-	3,507,923	123,600	123,600
	FTE	-	-	-	-	-
	GF	850,052	-	850,052	-	-
	GFE	-	-	-	-	-
	CF	2,565,896	-	2,565,896	123,600	123,600
	RF	40,324	-	40,324	-	-
	FF	51,651	-	51,651	-	-
<b>(1) Executive Director's Office, Legal Services</b>	<b>Total</b>	3,507,923	-	3,507,923	123,600	123,600
	FTE	-	-	-	-	-
	GF	850,052	-	850,052	-	-
	GFE	-	-	-	-	-
	CF	2,565,896	-	2,565,896	123,600	123,600
	RF	40,324	-	40,324	-	-
	FF	51,651	-	51,651	-	-

Letternote Text Revision Required? Yes:  No:  If yes, describe the Letternote Text Revision:

Cash or Federal Fund Name and COFRS Fund Number: Various Sources of Cash Funds

Reappropriated Funds Source, by Department and Line Item Name:

Approval by OIT? Yes:  No:  Not Required:

Schedule 13s from Affected Departments:

Other Information:



# DEPARTMENT OF NATURAL RESOURCES

John W. Hickenlooper  
Governor

*FY 2013-14 Funding Request  
November 1, 2012*

Mike King  
Executive Director

11/1/2012

Signature

Date

## **Department Priority: R-6 Increased Legal Services Adjustments**

<b>Summary of Incremental Funding Change for FY 2013-14</b>	<b>Total Funds</b>	<b>General Fund</b>	<b>Cash Funds</b>	<b>FTE</b>
Department of Natural Resources – Increased Legal Services Support (1,600 hours)	\$123,600	\$0	\$123,600	0

### **Request Summary:**

For FY 2013-14 and beyond, the Department of Natural Resources (DNR) projects that two divisions are likely to require legal services support that is significantly higher than their current appropriation. The Division of Parks and Wildlife (DPW) is likely to see an increase in legal issues related to water and water rights, and the Oil and Gas Conservation Commission (OGCC) is already experiencing increased legal workload related to the overall increase in oil and gas activity in the state. To address these two needs, DNR projects that a permanent increase of 1,800 hours of legal services for DPW and a permanent increase of 800 hours for the OGCC is necessary. (Please note that for purposes of billable hours, the AG's office uses this 1,800 hours figure to represent a full-time equivalent position.) This totals 2,600 hours in increased legal services support for these two divisions; however, DNR will be able to meet some of this

need by reallocating legal support hours from the State Land Board and the Division of Reclamation Mining and Safety to DPW and the OGCC. DNR estimates that these internal adjustments can meet 1,000 hours of DPW and OGCC's increased need. DNR is requesting increased departmental appropriations totaling 1,600 hours to meet the remaining need.

Annual legal services appropriations for DNR are currently based on a total of 45,410 hours, allocated among the department's divisions based on historical need. (See Attachment A.) Divisional legal needs can be somewhat volatile from year to year based on a number of things, including rule makings, lawsuits, emerging programmatic needs, and other factors, many of which are beyond the control of the divisions. It is quite common for the Department to adjust allocations during the course of the fiscal year, increasing one division's spending authority due

to need while simultaneously reducing another division's allocation.

DNR has reviewed historical allocations and transfers and identified approximately 1,000 hours of currently appropriated legal support that likely can be permanently transferred from divisions without diminishing their legal integrity. Specifically, the legal services budget for the State Land board will be decreased by 700 hours and the legal budget for the Division of Reclamation Mining and Safety will be reduced by 300 hours. These reductions will offset the needs in DPW and OGCC, such that DNR is seeking a net increase of 1,600 legal hours.

The final cost of 1,600 hours will depend on the blended rate in effect for FY 2013-14, which is set annually via the Common Policy process. As a benchmark, in FY 2012-13 the blended rate in effect is \$77.25. Per OSPB budget instructions for FY 2013-14, DNR is using this rate for the purposes of this Funding Request. As such, 1,600 hours of increased legal services support will require increased cash appropriations of  $(1,600 * 77.25) = \$123,600$  to the DNR Legal Services line item.

### **Anticipated Outcomes:**

#### *Division of Parks and Wildlife:*

DPW and the Attorney General's Office project that the division's legal costs will increase significantly over the next several years, primarily as a result of water issues. Water is a highly contentious issue in Colorado, and as the holder of a large portfolio of water rights DPW is susceptible to a wide variety of legal actions stemming from water.

Currently, staff at the Attorney General's Office dedicated to DPW are working on 89 pending water matters. AG staff are increasingly concerned about the number and complexity of water matters affecting DPW and about having sufficient staffing to handle the matters in a thorough and timely fashion. In the recent past,

both DPW staff and AG staff have been allocating significant time and resources to resolving long-standing water rights matters, particularly where DPW is a water rights applicant in water court. However, there are a number of large historic matters that are likely to come to the fore in the very near future which will require further and expanded AG attention. These include the Chatfield reallocation project and its associated environmental assessment; the Catlin Canal change of use; the Hale Ditch change of use; work on the San Luis Valley Irrigation Rules and planning for associated augmentation and change of use; and securing adequate water supplies for the State Fish Unit.

Further, there are a number of "routine" water rights applications which have been effectively put on hold pending more available AG staff time. Some of these matters cannot be put on hold much longer.

DPW, as the holder of a diverse portfolio of water rights, must also prevent other water users from "injuring" DPW's water rights. While DPW has used great discretion to avoid "entering" cases where the possibility of injury is so remote as to be negligible, the number and complexity of others' water rights applications, including plans for augmentation, is not getting smaller or easier. To the contrary, water rights schemes to address the growing demand for water supply are leading to highly complex cases with more sophisticated and more numerous parties to each case. This, added with new water court rules which hold applicants (and opposers) to tighter deadlines for case resolution than has ever been seen in the past, is pushing staff resources to the limit.

DNR and DPW staff believe that adding support in the AG's office equivalent to 1.0 FTE (1,800 billable hours) will help alleviate these issues and help the division better protect the state's water rights. 200 of these hours will come from internal reallocations, and 1,600 are requested in this Funding Request.

The Department and Attorney General's Office believe that 1.0 to 2.0 FTE will be needed by DPW over the coming years to address the water rights caseload and other DPW legal issues. DNR is intentionally approaching its legal needs conservatively, given budgetary pressure experienced by the division. As a result, it is possible that this request will not fully address the issues identified and that additional legal resources may be requested in the future.

*Oil and Gas Conservation Commission:*

The baseline legal service needs of some divisions have increased in recent years due to increased programmatic activities. The Oil and Gas Conservation Commission has seen an increase in its legal services needs that stems (either directly or indirectly) from the major increase in oil and gas activity in the state over the last several years. Not only has the number of active oil and gas wells in the state been steadily increasing over recent years, but the public has become increasingly concerned over hydraulic fracturing. Some issues are now spilling over to local governments, which has resulted in increasing local government involvement in the state's regulatory process as well as increasing local regulation outside of the state's regulatory framework. All of these developments have resulted in increasing legal work to support the OGCC.

To meet these increased needs, DNR has continually had to reallocate funding from other divisions to OGCC. Over the last four years, the Department has increased the OGCC's baseline Legal Services allocation by an average of 823 hours per year. (See Attachment B.)

As with the Division of Parks and Wildlife, the Department is taking a conservative approach to addressing OGCC's legal needs. It is possible that this adjustment will not fully address the issues identified and that additional legal resources may be requested in the future.

**Assumptions for Calculations:**

DNR is using a baseline of 1,800 billable hours per year for a full-time equivalent position in the Attorney General's Office, and an annual blended rate of \$77.25 per budget instructions.

**Consequences if not Funded:**

DNR will be able to cover some of the projected shortfall via internal reallocations of the department's current legal services appropriation. With the increased workload that AG staff are likely to experience are likely to come significant delays and potential increased liability for the state.

**Impact to Other State Government Agency:**

The Attorney General's Office in the Department of Law works closely with DNR and its divisions in the overall management of the Department's legal issues. The requested additional spending authority will enable DNR to fund additional legal services hours, which will ultimately be provided by the AG's Office.

**Cash Fund Projections:**

NA

**Relation to Performance Measures:**

NA

**Current Statutory Authority or Needed Statutory Change:**

NA

Department of Natural Resources  
 FY 2013-14 Funding Request R-6, Legal Services Adjustments  
 Attachment A: Departmental Appropriation of Legal Hours

Division	Hours	Funding Splits				
		Total	GF	CF	RF	FF
Executive Director's Office	522	40,324	0	0	40,324	0
DRMS - Coal	763	58,941	0	12,389	0	46,552
DRMS - MSTP	85	6,566	0	6,566	0	0
DRMS - Inactive Mines	66	5,099	0	0	0	5,099
DRMS - Minerals	4,667	360,528	0	360,528	0	0
DRMS - Mined Land Board	1,014	78,332	0	78,332	0	0
Colorado Geological Survey	18	1,391	0	1,391	0	0
Oil & Gas Conservation Commission	2,031	157,034	0	157,034	0	0
State Land Board	7,008	541,368	0	541,368	0	0
Division of Parks & Outdoor Recreation	3,902	301,368	0	301,368	0	0
Colorado Water Conservation Board	6,218	480,341	0	480,341	0	0
Division of Water Resources	11,274	870,530	850,052	20,478	0	0
Division of Wildlife	7,842	606,105	0	606,105	0	0
Total:	45,410	3,507,923	850,052	2,565,897	40,324	51,650

Department of Natural Resources  
 FY 2013-14 Funding Request R-6, Legal Services Adjustments  
 Attachment B: Mid-Year Increases to OGCC Allocation, FY 2008-09 to Present

<b>OGCC Legal Services</b>	<b>Original Allocation (Dollars)</b>	<b>Mid-Year Increase (Dollars)</b>	<b>Mid-Year Increase, Hour Equivalent</b>
FY 2008-09	152,528	65,000	858
FY 2009-10	153,097	78,551	1,042
FY 2010-11	149,014	52,145	711
FY 2011-12	153,767	51,744	684
Four-year Avg:	152,102	61,860	823