

Schedule 13 Funding Request for the 2014-15 Budget Cycle

Department: Natural Resources
 Request Title: Additional Legal Services for Enforcement
 Priority Number: R-2

Dept. Approval by: Willi H. Loring 10/23/2013
 Date

- Decision Item FY 2014-15
- Base Reduction Item FY 2014-15
- Supplemental FY 2013-14
- Budget Amendment FY 2014-15

OSPB Approval by: [Signature] 10/25/13
 Date

Line Item Information		FY 2013-14		FY 2014-15		FY 2015-16
		1	2	3	4	5
		Appropriation FY 2013-14	Supplemental Request FY 2013-14	Base Request FY 2014-15	Funding Change Request FY 2014-15	Continuation Amount FY 2015-16
	Fund					
Total of All Line Items	Total	4,280,030	-	4,280,030	327,888	327,888
	FTE	-	-	-	-	-
	GF	1,003,109	-	1,003,109	-	-
	GFE	-	-	-	-	-
	CF	3,172,117	-	3,172,117	327,888	327,888
	RF	43,853	-	43,853	-	-
	FF	60,951	-	60,951	-	-
(1) Executive Director's Office, (A) Administration, Legal Services for 46,992 hours	Total	4,280,030	-	4,280,030	327,888	327,888
	FTE	-	-	-	-	-
	GF	1,003,109	-	1,003,109	-	-
	GFE	-	-	-	-	-
	CF	3,172,117	-	3,172,117	327,888	327,888
	RF	43,853	-	43,853	-	-
	FF	60,951	-	60,951	-	-

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

Cash or Federal Fund Name and COFRS Fund Number: Oil and Gas Conservation and Emergency Response Fund (#170)

Reappropriated Funds Source, by Department and Line Item Name: N/A

Approval by OIT? Yes: No: Not Required:

Schedule 13s from Affected Departments: Department of Law

Other Information: The Long Bill line item name should be adjusted to reflect 50,592 hours



Cost and FTE

- The Oil and Gas Conservation Commission (OGCC) requests an increase of \$327,888 Cash Funds from the Oil and Gas Conservation and Environmental Response Fund in order to increase legal services to the OGCC by 3,600 hours annually, the equivalent of 2.0 FTE.

Current Program

- The Attorney General's office provides legal advice and support to the Commission and staff of the OGCC on all matters, including hearings, enforcement proceedings, and rulemakings.

Problem or Opportunity

- Oil and gas development in Colorado continues to grow in both volume and in the complexity of development. Colorado's active well count recently topped 50,000 wells, more than double what it was ten years ago, and continues to increase. With OGCC's field staff inspecting a growing number of active wells, the need for legal support in enforcement and other areas continues to grow.
- Since 2006, the Hearings Unit has seen a more than 400% increase in the number of applications submitted to the Commission. Enforcement matters in front of the Commission have increased to a similar degree and are expected to continue increasing in the next several years. In contrast, since 2006, legal support to the OGCC has only increased by 100% (1.0 FTE to 2.0 FTE.)
- Increased public interest in oil and gas development has led to an increase in requests for rulemaking and open record requests, which requires legal assistance and OGCC staff time. Only two attorneys are dedicated to the Commission and workload increases cannot be absorbed.

Consequences of Problem

- The Assistant Attorneys General must prioritize their time to deal with the most pressing, legally complex issues before the Commission, leaving little time for enforcement matters.
- The OGCC's ability to promptly process regulatory and enforcement actions is currently constrained.

Proposed Solution

- Adding two additional Assistant Attorneys General for the support of the Commission is a proportional response to the overall increase in workload driven by oil and gas development.
- Additional Assistant Attorneys General resources will strengthen the agency's enforcement process, allowing more timely enforcement of rule violations. Further, this request will provide more resources to support rulemakings, hearings, and other public matters before the Commission.
- Effective legal support is vital to the operation of the OGCC and the regulation of oil and gas development. Legal advice from the Assistant Attorneys General informs the Commission's actions and has a direct impact on the operations and actions of the Commission.



COLORADO

Department of Natural Resources

FY 2014-15 Funding Request | November 1, 2013

John W. Hickenlooper
Governor

Mike King
Executive Director

Department Priority: R-2

Request Detail: Oil and Gas Conservation Commission Additional Legal Services for Enforcement

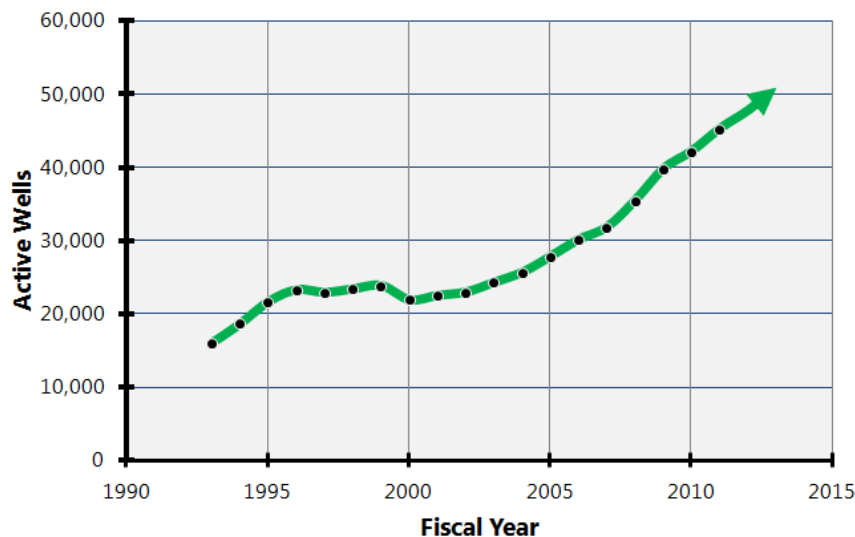
Summary of Incremental Funding Change for FY 2014-15	Total Funds	General Fund
Additional Legal Services for Enforcement	\$327,888	\$0

Problem or Opportunity:

With the Colorado Oil and Gas Conservation Commission's (OGCC) field staff inspecting a growing number of active oil and gas wells, and increased public concern with oil and gas activities in many parts of the state, the OGCC's need for legal support for its enforcement, rulemaking, and other public hearing matters continues to grow.

New oil and gas production technologies have led to high rates of Colorado oil and gas exploration and development activity in recent decades. Colorado operators have more than 50,000 active oil and gas wells, a number that has doubled since 2003 and continues to increase (see Figure 1, below).

Figure 1
Active Oil and Gas Wells by Fiscal Year



Source: OGCC Staff Report, July 29, 2013

To meet its regulatory responsibilities, the OGCC is filling field staff positions authorized in the FY 2013-14 Long Bill (S.B. 13-230) and is devoting greater resources to monitoring and enforcement programs. These inspectors and environmental protection specialists oversee a growing number of active wells and respond to an increasing number of public complaints.

The OGCC's enforcement staffing is the same as it was in FY 2006-07. A new Enforcement Officer position was authorized in FY 2013-14 and will soon be filled. Demands on the OGCC enforcement staff are increasing, and legal staff is necessary to develop and prosecute a growing caseload of enforcement matters. The ability of the OGCC to prosecute enforcement actions is directly related to the resources applied to the prosecution effort.

Legal support from the Attorney General's Office (AG's Office) also enables the OGCC to complete new and amended rulemakings, develop additional public outreach and education opportunities, respond to the increase in requests pursuant to the Colorado Open Records Act (CORA), and provide advice on legal matters related to agency operations.

Areas Requiring Additional Legal Services

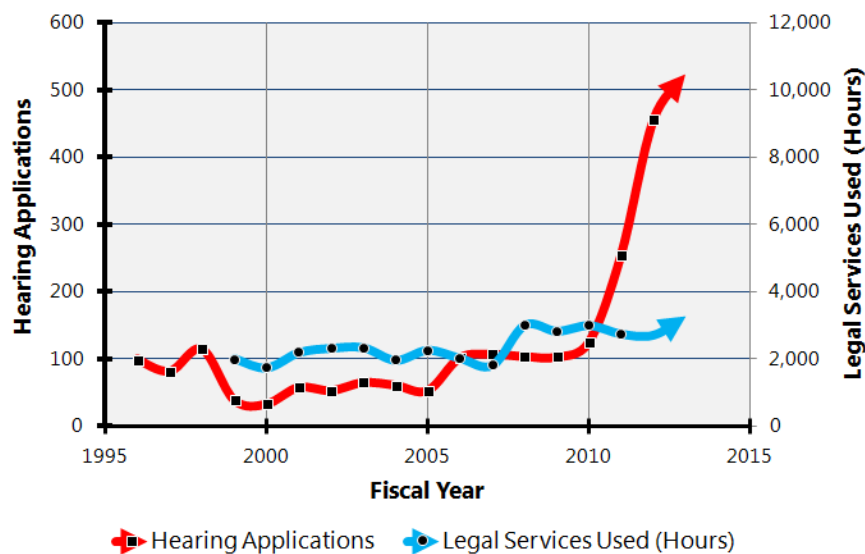
The OGCC's Hearings Unit administers four key functions that depend on legal resources provided by the AG's Office:

1. **Compliance with OGCC rules and regulations by oil and gas operators.** Enforcement actions are presented to the Commission by an OGCC enforcement officer or staff from the AG's Office. The action takes the form of either a settlement agreement (Administrative Order on Consent) or a contested hearing. As a result of an enforcement action, operators typically correct identified problems, pay a monetary penalty, or both.
2. **Rulemaking hearings to adopt new regulations or modify existing regulations.** Defensible proceedings by the Commission to amend rules related to public health, environmental quality, and the orderly development of resources, is best done with a team combining Assistant Attorneys General and OGCC staff. With adequate legal support, proposed rules be will consistent with enabling statutes and clearly communicate new standards to the regulated community. By statute, the AG's office must review all proposed rules before they are finalized, and the Assistant Attorneys General must assist with preparation of the required Statement of Basis and Purpose for new or amended rules.
3. **Adjudicatory hearings on requests from operators.** The Commission is authorized by statute to adjudicate matters of well spacing, statutory pooling, unitization, additional wells, cost recovery, and other requests. New guidance on these matters requires legal review early in the process when Commission agendas are formulated, and requires legal advice during Commission deliberation.
4. **Public education and outreach, including open records requests.** Staff from the AG's office participate closely with OGCC in outreach to local governments concerning OGCC and local government regulatory responsibilities, including reviewing proposed local government regulations, agreements with operators, and proposed memoranda of understanding between local governments and OGCC. These issues will continue to require legal analysis and insight for the foreseeable future. The Assistant Attorneys General also provide critical legal analysis and support for OGCC's responses to a growing volume of requests for public records under CORA.

Each of the functions in the list above strongly ties to the OGCC’s Performance Plan, which states that the agency’s objectives are to (i) prevent and mitigate adverse impacts to public health, safety, and welfare, in addition to the environment and wildlife; (ii) ensure compliance through an effective enforcement program; (iii) expedite the processing of oil and gas well drilling, recompletion, and underground injection well permit application; and (iv) serve as the primary government resource to the public regarding oil and gas development in Colorado.

Growth in the Hearings Unit’s workload has mirrored the demand for OGCC permitting, monitoring, and reclamation work associated with increased oil and gas activity in Colorado. One measure of the change in workload is the number of applications for Commission orders (see Figure 2). Legal support for the Hearings Unit and the broader agency has grown in recent years (blue line with circle markers), but has not kept pace with the demand for Commission orders for oil and gas well spacing, statutory pooling requests, well density, and other matters supporting orderly oil and gas development (red line with square markers).

Figure 2
Agency Hearing Applications and Legal Services Used by Fiscal Year



Sources: DNR Executive Director’s Office, July 2013; OGCC Permit/Technical Services Group, July 2013

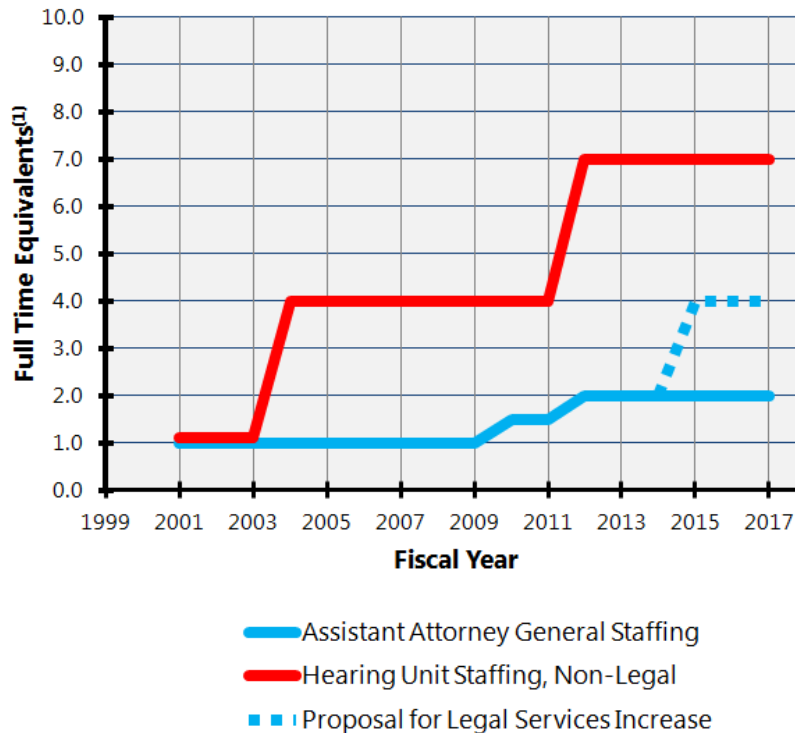
Proposed Solution:

This proposal would increase the OGCC’s annual allocation of legal services hours provided by the AG’s Office from 3,600 (2.0 FTE) to 7,200 (4.0 FTE) beginning in FY 2014-15. An ongoing appropriation of \$327,888 in cash funds from the OGCC’s Oil and Gas Conservation and Environmental Response Fund would be used to fund the request.

In response to the growing workload discussed in the prior section, the Hearings Unit has added significant staff to respond to the added volume of enforcement actions, new rules, adjudicatory hearings, and public communication (see the upper line in Figure 3, below) over the past two fiscal years. During the same

period of time, the Unit’s activities have been supported by the services of one to two Assistant Attorneys General shared with the entire agency (solid lower line in Figure 3). Each Assistant Attorney General can provide up to 1,800 hours of service to the OGCC each year.

Figure 3
Hearings Unit and Assistant Attorney General
Staffing History with Proposed Increase



Footnote: (1) FTE basis for legal staff is 1,800 hours/year, and FTE basis for other staff is 2,080 hours/year.

Source: OGCC Hearings Unit, July 2013

This request, if approved, would add additional legal services to the OGCC (dotted middle line in Figure 3) and develop new capacity for Assistant Attorney General support of future enforcement actions, rulemaking hearings, adjudicatory matters, and public outreach. In terms of enforcement capacity, the Division will use the additional resources in the proposal to support Executive Order D 2013-004, which directs the OGCC to develop a more assertive enforcement program with more enforcement actions and larger fines. As part of clarifying the enforcement process, the Division must define when applying the maximum penalty is appropriate, and when an alleged violation of OGCC rules should go directly to a formal hearing in front of the Commission. Most critically, there will be an increasing need for legal support to prosecute enforcement actions during formal hearings.

Absent these additional legal resources, the OGCC’s enforcement program will fall farther behind in processing a growing number of potential enforcement actions issued by field inspectors and other staff. As the inspection staff grows, this situation will worsen. Currently, the OGCC’s enforcement staff consists of one enforcement officer and one of the two Assistant Attorneys General assigned to the agency. Legal

interns assisted the enforcement staff in the spring and summer during the most recent year, but interns are not a viable permanent solution.

Delays in prosecuting enforcement matters to conclusion will detract from the deterrent effect of the statutory penalty provisions. Delays also reduce staff's confidence in and efficacy of the enforcement program, prevent staff resources from attending to other enforcement actions, and generally result in a less fair process for the alleged violator.

Without the additional legal resources it will also be a challenge to maintain the volume of rulemaking that has been completed in the recent past. There is an ongoing need for new or updated rules to address emerging oil and gas practices, technology, and, development, and the public's concerns and complaints about these emerging issues.

The primary beneficiary of increased legal services funding for the OGCC will be the public, who will note more timely enforcement actions, rulemaking, public outreach, and agency responses to open records requests. Operators will also benefit and receive timelier processing of enforcement actions as well as contested hearing matters such as well spacing and pooling.

Anticipated Outcomes:

Funding additional legal services for the OGCC will create more capacity in the Hearings Unit to respond to increasing workload related to enforcement including matters for adjudicatory hearings, rulemaking, public outreach, and open records requests. These outcomes will be measured using the agency's existing tracking systems for the Commission work flow: hearing applications, orders, and violations (including the most common categories of notices of alleged violation, administrative orders for compliance, and orders finding violation).

Increased legal support will help the OGCC make timelier decisions related to enforcement actions, rulemakings, and other Commission activities which require legal review. Relevant OGCC Performance Plan outputs tied to an effective amount of legal support for the OGCC will include counts of the number of days in which notices of alleged violation were resolved or moved to the next level of enforcement, the total number of notices of alleged violations processed annually, and the number and outcome of adjudicatory hearings heard by the Commission. The OGCC Hearings Unit manager will have the responsibility to evaluate changes in performance after legal resources arrive.

Assumptions and Calculations:

Calculation Assumptions:

Department of Law Blended Rate -- Based on the FY 2013-14 Department blended rate of \$91.08 per hour for attorney and legal assistant positions. The blended legal rate is used to compute the Long Bill appropriations for legal services for the various agencies of state government.

Expenditure Detail	FY 2014-15		FY 2015-16		
	Hours	\$	Hours	\$	
POTS Allocations					
Legal Services	91.08	3,600	327,888	3,600	327,888
Subtotal POTS Allocations		\$ 327,888		\$ 327,888	
Subtotal Operating Expenses					
		\$ 327,888		\$ 327,888	
TOTAL REQUEST	-	\$ 327,888	-	\$ 327,888	
<i>General Fund:</i>					
<i>Cash funds:</i>	-	\$ 327,888	-	327,888	
<i>Reappropriated Funds:</i>					
<i>Federal Funds:</i>					