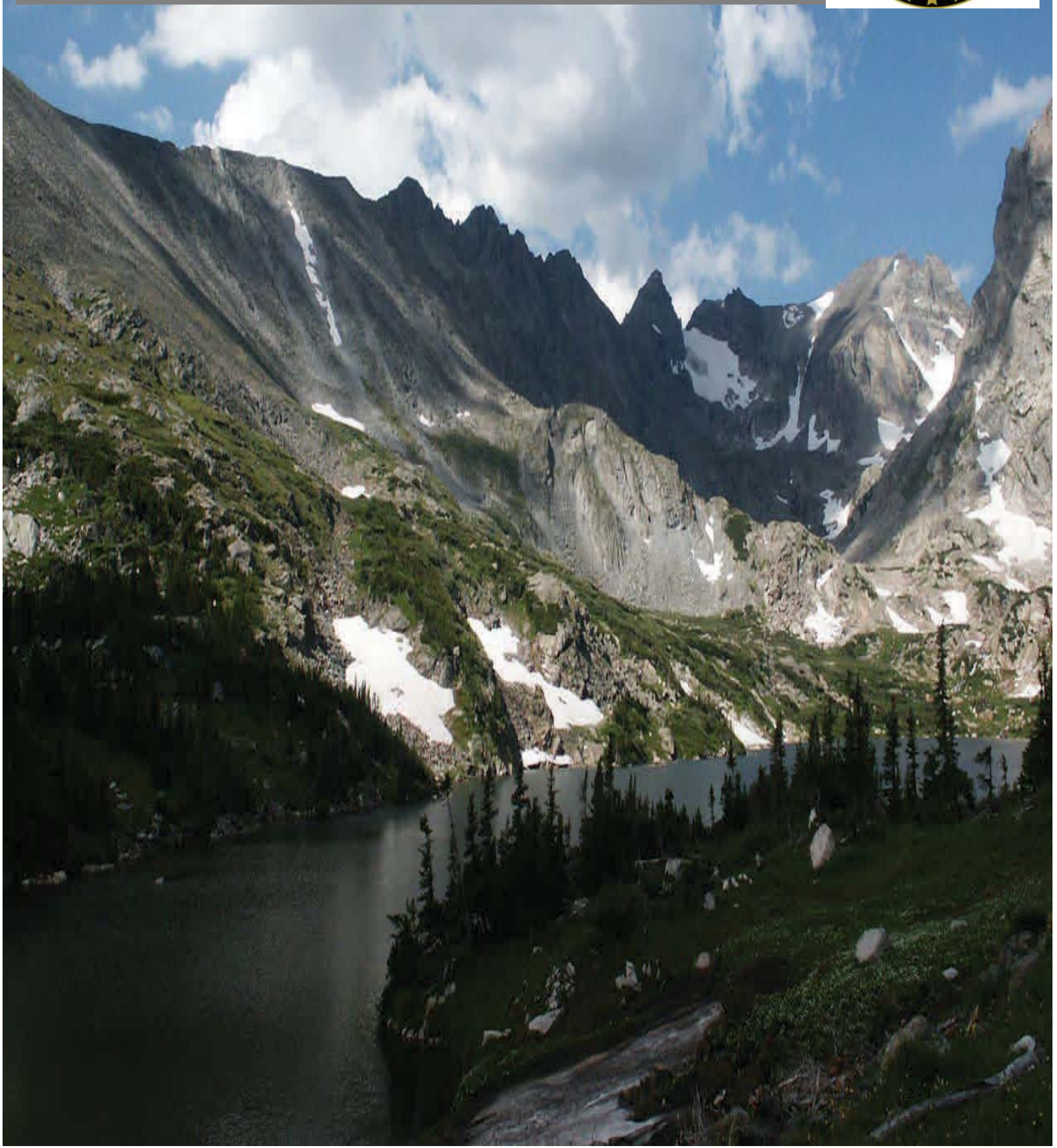
Colorado Attorney General

John W. Suthers

Annual Report 2012



To my fellow Coloradans,

It is a great privilege to serve as your Attorney General. Since becoming Colorado's 37th Attorney General, I have had the honor of working with hundreds of dedicated public servants at the Colorado Department of Law.

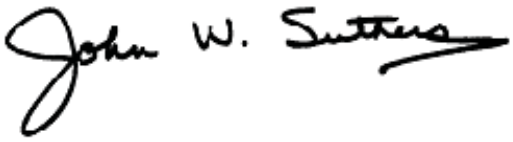
The 2012 Annual Report of the Colorado Department of Law is only a snapshot of the work we do on behalf of the people of Colorado and our clients throughout state government. From protecting Colorado's water, to defending the state against frivolous lawsuits, the work of the Department of Law's affects Coloradans throughout the state.

Here are a just few of the Department of Law's accomplishments from 2012:

- We announced that 100 % of the $51.17 million in mortgage foreclosure prevention efforts were distributed and that approximately 3,700 Colorado homeowners have benefitted.
- The Colorado Natural Resource Damages Trustees awarded $10,150,000 in funding for 11 conservation projects in the vicinity of the Rocky Mountain Arsenal National Wildlife Refuge. The projects encompass more than 800 acres comprising the Rocky Mountain Greenway Project and are expected to leverage another $31 million in additional funding to build a regional, integrated greenway and open space network.
- Our work with our Mexican peers to seek justice and improve public safety was deepened as we welcomed Mexico Ambassador Arutro Sarukhán to Colorado.
- My office announced several settlements with pharmaceutical companies for improperly marketing drugs. Chief among them was a $4.5 million settlement with GlaxoSmithKline and was the largest health care fraud settlement in history.
- We arrested twelve individuals, including the "Johns" and self-reported members of the Crips gang and accused them of running a domestic, human-trafficking operation involving juvenile girls.
- We reached an antitrust settlement with three U.S. publishing companies, Hachette, HarperCollins, and Simon & Schuster over allegations they were price-fixing E-Book.
- We indicted a medical marijuana dispensary and its owners for selling out its back door and distributing medical marijuana to other states in a distribution ring that violates the Colorado Organized Crime Control Act.

We will continue to provide ethical representation and legal advice of the highest caliber to our client agencies and service of the highest quality to the people of Colorado.

Sincerely,



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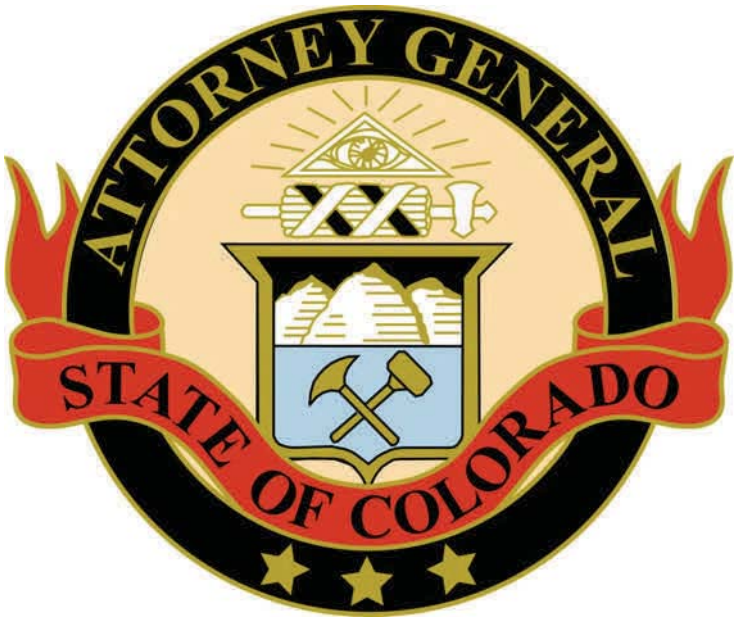

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Cover Photo of Brainard Lake Taken By Department of Law Employee, **Michael Ciavatta**

Back Photo of Indian Peaks Wilderness Area Taken by Department of Law Employee, **Ryan Crane**

Attorney General John W. Suthers

On January 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 large margin to serve a full, four-year term. Mr. Suthers was re-elected in November 2010 with more than 960,000 votes — more than any other statewide candidate.

As Attorney General, Mr. Suthers is charged with representing and defending the interests of the people of the state of Colorado, and serves as chief legal counsel and adviser 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 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.

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 of 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. In 2012 $10,150,000 was awarded to funding 11 conservation projects in the vicinity of the Rocky Mountain Arsenal National Wildlife Refuge.

The projects encompass more than 800 acres and are expected to leverage another $31 million in additional funding to build a regional, integrated greenway and open space network. The project funding is related to the Rocky Mountain Arsenal natural resource damages settlements.
He has served on the executive committee of the National Association of Attorneys since 2007 and has been a member of the U.S. Attorney General's Executive Working Group on Prosecution since 2005. In June, Mr. Suthers was awarded the Kelley-Wyman Award by the National Association of Attorneys General. It is the highest award given by the Association and is presented annually to the Attorney General who has done the most to advance the interests of the Association.

Mr. Suthers has served on the board of numerous civic organizations. He served as president of the El Paso County Bar Association in 1990-1991, 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. Additionally, Mr. Suthers serves as an adjunct professor at the University of Denver School of Law and as a scholar in residence at the University of Colorado-Colorado Springs.

Chief Deputy Attorney General Cynthia Coffman

Cynthia Honssinger Coffman serves as Chief Deputy to General Suthers and supervises the attorneys and staff and manages all administrative functions of the Department of Law. In September 2012, Ms. Coffman won *Law Week Colorado's* Barrister's Best Award for Best Public Sector Lawyer.

Before joining the Office of the Attorney General in March 2005, Ms.Coffman served as chief legal counsel to Colorado Governor Bill Owens. From 1999 to 2003, she served as Director of Legal and Regulatory Affairs and later as Deputy Director of the Colorado Department of Public Health and Environment. Previously, Ms. Coffman worked for the state's Office of Legislative Council and staffed the Senate Judiciary Committee.

A native of Missouri and a graduate of the University of Missouri, Columbia, she earned a JD at Georgia State University College of Law and practiced law in Georgia before moving to Colorado in 1997. Ms. Coffman worked as an attorney for the Georgia Attorney General and the Atlanta Committee for the Olympic Games.

Solicitor General Daniel D. Domenico

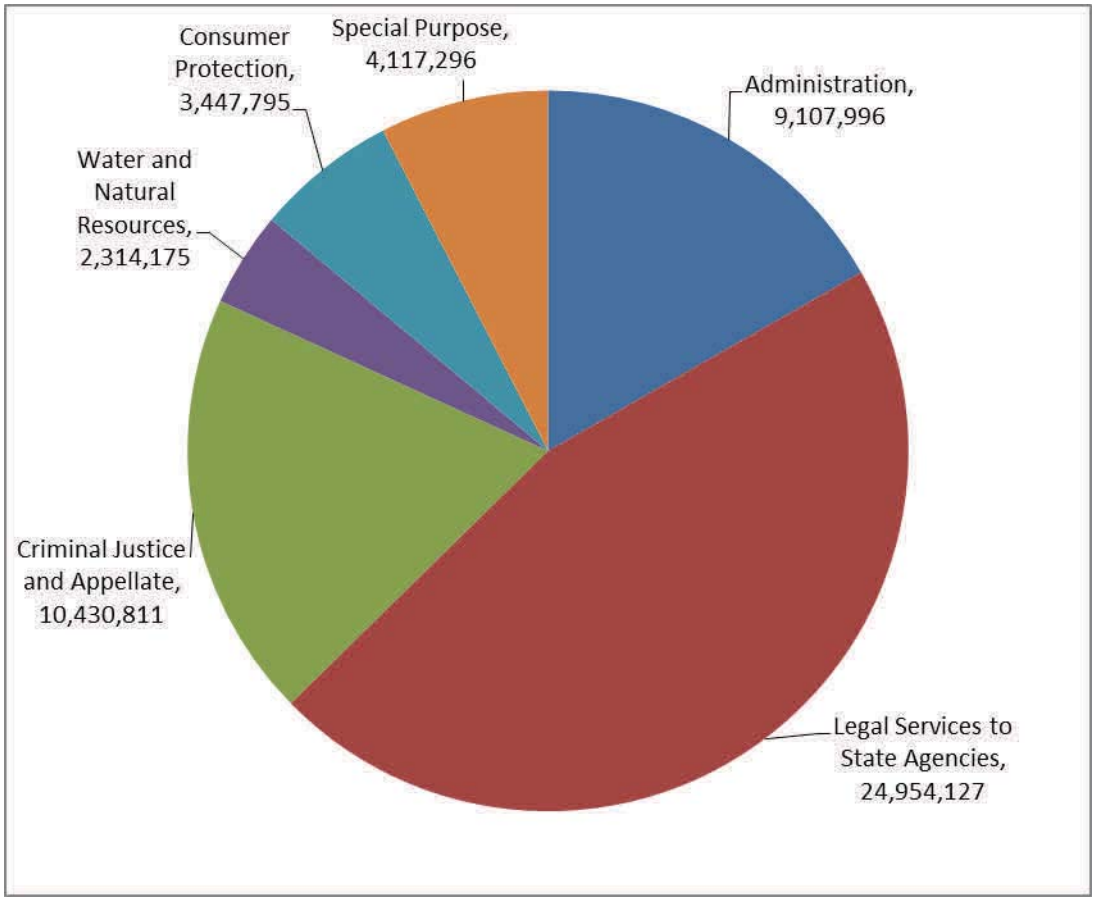
Attorney General Suthers appointed Dan Domenico as Solicitor General of Colorado in April 2006. In 2012, he argued his first case before the U.S. Supreme Court , *Wood v. Milyard*, concerning whether or not a federal appellate court can raise the untimeliness of a convicted felon's habeas corpus petition despite the issue not being decided at the district court level. The state argued that the 10th Circuit Court of Appeals did not err in raising the issue.
Before joining the Office of the Attorney General, Mr. 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, Mr. 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.

A Boulder native, Mr. Domenico 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.

The Department of Law Budget

Total FY 2011-2012 Appropriation	$54,372.000
Total Full-Time Employees	419



OUR FOCUS

The Colorado Department of Law shall:
Uphold the United States and Colorado Constitutions.
Provide the highest level of ethical legal service to the State of Colorado.
Defend the laws and officers of the State of Colorado from legal challenge.
Protect and preserve the quality of Colorado's land, water and air.
Advocate for policies that help law enforcement improve community safety.
Protect Coloradans from consumer scams and fraud.
Ensure that Colorado's elections remain free from criminal fraud.
Promote open, accountable governance.

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.

The Attorney General promotes consumer protection through a variety of initiatives and enforcement activities. Consumer protection enforcement activities are handled by four distinct units which were formed in order to handle the states numerous consumer protection laws enacted.

Consumer Fraud

Complaint intake processed a record 6,780 general consumer complaints in 2012 along with an additional 1,131 mortgage-specific complaints, totaling 7,911 complaints for 2012. Consumer complaints are received by mail, e-mail and through the website. In addition to these written complaints, intake received 11,738 phone calls and 3,897 pre-recorded message inquiries. During this time, intake continued to evaluate complaint processing procedures and has utilized existing systems to increase complaint processing efficiency while reducing complaint processing times. This freed up additional resources to provide better customer service and additional value-added services.

The unit also engaged in extensive consumer education and outreach efforts. Complaint intake continued to develop and issue consumer fraud advisories, consumer fraud awareness newsletters, and other consumer-protection web content. Intake also managed the development, design, publishing, and distribution of more than 8,500 copies of the new *Consumer Guide for Military Personnel and Their Families*. In addition, intake developed and managed the Consumer Protection victim restitution process by utilizing electronic victim surveys and questionnaires, document management systems, notification alerts, and the actual distribution of funds to victims. The 2012 restitution distribution totaled $954,757.58 to 1,101 consumers.

Mortgage Fraud and Foreclosure Prevention

In 2012, the Attorney General continued work on a national investigation into foreclosure practices of the country's largest loan servicers. This investigation grew out of the "robo-signing" allegations that came to light in late 2010. The Attorney General, in conjunction with other state and federal law enforcement offices, completed negotiations with the five largest mortgage servicers in March 2012. A civil lawsuit and consent judgment were filed in:

United States of America, et al. v. BAC Home Loans Servicing, LP, Bank of America Corporation, Bank of America, N.A.,, Citibank, N.A., Citigroup, Inc., CitiMortgage, Inc., Countrywide Financial Corporation, Countrywide Home Loans, Inc., Countrywide Mortgage Ventures, LLC, Ally Financial, Inc. Funding Co., LLC, J.P. Morgan Chase & Company, JPMorgan Chase Bank, N.A., Residential Capital, LLC, Wells Fargo & Company, Wells Fargo Bank, N.A., Civil Action No. 1:12-cv-00361 RMC (D.D.C.)

Approved by the court in April 2012, these consent judgments included comprehensive injunctive relief, including mortgage servicing standards, payments to some foreclosed homeowners, loan modification relief for current homeowners, and payments to the states for local homeownership and foreclosure assistance programs. All told, the settlement is expected to be worth in excess of $25 billion. As of November 2012, an estimated $207.4 million in consumer relief had gone to 3,700 homeowners in Colorado.

The Attorney General and his Consumer Protection staff met with the governor's office, members of the legislature, and many other interested parties to develop a plan for Colorado's approximately $51 million share of the cash payments made to the states. By October, the Attorney General had committed $24 million for supplemental loan-modification programs; $18.196 million for affordable housing programs; $5.625 million for housing counseling through the state; $1.5 million for Colorado Legal Services; $750,000 for temporary staffing at the Attorney General's Office; $600,000 for the Colorado Foreclosure Hotline; and, $500,000 for marketing and outreach efforts.

In addition to these foreclosure prevention efforts, the Attorney General has continued investigations and lawsuits against local companies that have taken advantage of homeowners:

Bella Homes, Mark Stephen Diamond, David Delpiano, Michael Terrel, David Delpiano, and Laura C. Tabrizipour – federal court action brought with the United States Attorney for the District of Colorado against a Georgia company and its principals for operating a fraudulent foreclosure avoidance scheme. All defendants agreed to a Stipulated Consent Judgment and Permanent Injunction that shut the scheme down and resulted in $ 10 million in fines and restitution.

Antitrust

The Unit continued its work on important antitrust matters in 2012. The highlight was:

Penguin Group (USA) Inc., MacMillan Holdings, LLC, Simon & Schuster, Inc., Simon & Schuster Digital Sales, Inc., and Apple, Inc. – Colorado and a number of other states brought an antitrust lawsuit against these defendants alleging that they conspired to fix prices and restrain competition in the e-books market. Case is pending in the United States District Court for the Southern District of New York.

Other Consumer Fraud Activities

During 2012, the Consumer Fraud Unit took a series of actions, including:

Consolidated Medical Services, LLC and Joseph Benedetto – Company and its president marketed deceptive on-line business opportunity for affiliates to market non-insurance health plans. Final Consent Judgment enjoined further operation of this business and ordered the payment of $250,000 in fines, penalties, restitution, damages and costs and fees.

Telemarketing/magazine sales – The Attorney General sued and obtained a preliminary injunction against 21 companies and nine individuals who engaged in deceptive magazine telemarketing in various offices in the Denver area. Settlements were reached with most of the defendants, closing their business operations in Colorado and providing for the payment of nearly $700,000 in restitution, penalties, and costs.

Alta Colleges/Westwood College – Lawsuit filed against for-profit college headquartered in Denver, Inc., for deceptive sales practices in connection with the recruitment of new students, including gainful employment of graduates and total cost of obtaining a degree. Final Consent Judgment provided a permanent injunction banning deceptive sales practices, mandating conspicuous disclosures about gainful employment and cost of tuition, and $4.5 million in restitution, loan credits, costs, and attorney fees.

Full Spirit Ministries a/k/a Open Door Mission, Richard M. Thebo, Darren C. Thebo, Andrew Kaminski, and Patsy Kaminski – Lawsuit against Fort Collins-based homeless shelter for misrepresentations in fundraising appeals and misuse of charitable donations. Action was settled with a permanent injunction and restitution orders against the individual defendants. The Fort-Collins Mission was taken over by the Denver Rescue Mission.

Jennifer Proffitt-Payne, Cody Payne, Great Lakes Circulation, Inc.; D2D Consulting, LLC; Reviste, Inc.; Rivista, Inc.; American Cash Awards, Inc.; Monitoring Services Network, Inc.; Youth Incentive Marketing, Inc.; Direct Youth Marketing; Magazines, Inc.; and Fun Sales, Inc. – Evergreen-based company managed teams of young people going door-to-door to sell magazines in Colorado and a number of other states and using deceptive sales practices. Default judgment was entered against all defendants providing a permanent injunction and nearly $1 million in restitution, civil penalties, costs and attorney fees.

Abbott Laboratories – Consent Judgment entered May 9, 2012 - permanent injunction/$100 million to states.

Skechers USA, LLC – Multistate Colorado Consumer Protection Act (CCPA) violations — Consent Judgment – entered on May 21, 2012 – permanent injunction/$40 million restitution/$5 million to states.

Janssen Pharmaceuticals, Inc., and Johnson & Johnson (Risperdal) — CCPA violations — Final Judgment and Consent Decree – dated September 3, 2012 – injunction/ $181,047,437 in damages.

GlaxoSmithKline LLC (Avandia) – CCPA violations — Final Consent Judgment – dated November 28, 2012 – permanent injunction/ $1,913,853.56 to Colorado.

Springs Transmission and Automotive, Greg Ehnes, individually, and Jessica White, individually – CCPA violations – Temporary Restraining Order entered November 16, 2012.

Consumer Credit Unit

The Consumer Credit Unit enforces nine 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 Child Support Collection Consumer Protection Act (private child support collections), the Debt-Management Services Act (credit counseling and debt settlement), the Credit Services Organization Act (credit repair), the Rental Purchase Agreement Act (rent-to-own), and the Re-

fund Anticipation Loans Act.

Lending Practices

In 2012, the Unit:

Regulated and supervised 732 licensed lenders consisting of payday lenders (37%), mortgage companies (49%), finance companies (12%), and small installment and other lenders (2%). Enforced credit laws against 1,445 other companies including creditors that sell goods and services on credit, sales finance companies that collect those contracts, and rent-to-own companies.

Required refunds of $1,174,661 million to Colorado consumers in excess finance charges and other credit overcharges from compliance examinations, investigations of consumer complaints, lawsuits, and settlements. Obtained $42,895 in penalties, costs and fees from settlements and lawsuits.

Conducted 351 compliance examinations of licensed lenders, creditors, and sales finance companies and required them to take corrective action and refund overcharges.

Investigated 419 written consumer complaints against licensed lenders, creditors, sales finance companies and credit repair companies.

Filed or litigated 16 cases against lenders, creditors and credit repair companies.

Obtained an order from Denver District Court that Oasis Legal Finance, LLC and Funding Holding, Inc. dba LawCash's litigation advance transactions are loans under the UCCC. Oasis and LawCash appealed the case to the Colorado Court of Appeals. The companies stopped taking new clients and the court ordered that money received under prior agreements be held in escrow.

Obtained a decision from the Colorado Court of Appeals in Tulips Investments, LLC d/b/a CashBanc and J. David Blevins that Colorado courts have subject matter jurisdiction to enforce administrative subpoenas served on out-of-state creditors to investigate potential violations of the UCCC.

Appealed to the Colorado Court of Appeals the Denver District Court decision in the Cash Advance and Preferred Cash cases that payday lending operations are protected by tribal sovereign immunity as "arms of the tribe." This despite the fact that the lenders were previously owned and operated as non-tribal entities; that the non-tribal partners received 99% of gross revenue; that the lenders were not authorized as tribal businesses until a later date, and were used as an attempt to shield the non-tribal businesses with tribal immunity. Briefing in the Court of Appeals will be completed in 2013.

Sent 12 cease and desist advisory notices to unlicensed payday lenders, two cease and desist advisories to merchants for illegal credit card surcharges, and one to an auto dealer for advertising violations.

Debt Management

In 2012, the Unit:

Regulated and supervised 45 credit counseling and debt settlement companies.

Investigated 37 written complaints against debt-management providers.

Conducted 7 compliance examinations on registered debt-management providers.

Filed 6lawsuits against debt settlement companies and denied two debt-management registration applications.

Obtained more than $10 million in judgments and orders in cases against four debt-management providers: CSA – Credit Solutions of America, LLC and its owner, Doug Van Arsdale, for $5,366,000 in civil penalties and $3,830,149 in restitution; Johnson Law Group, PLLC of Nevada and its owner, Clint L. Johnson, for $783,447 in restitution; Consumer and Business Debt Counseling Services, Inc. d/b/a CBDC and its owner, Isaac Bobbe, for $321,278 in restitution; and New Life Debt Relief Corp. and its owner, Jesse Brown, for $20,000 in civil penalties and $35,340 in restitution.

Negotiated voluntary consent decrees and stipulations in cases against two debt-management providers: Prestige Financial Solutions, Inc. and its owner, Amy Thompson, for $165,000 in restitution; and Orion Financial Group, Inc. and its owner, Eric Thompson, for $70,000 in restitution.

Appealed to the Colorado Court of Appeals the Denver District Court decision in the Morgan Drexen, Inc., et al. case. The court held that when the company provided debt-management services under the purported supervision of attorneys, it was exempt from the Debt-Management Services Act. The court also invalidated the 2011 amendments to the DMSA attorney exemption. Briefing should be completed in 2013.

Sent 41 informational packets to companies about the debt-management law based on internet searches and media advertisements.

Debt Collection

In 2012, the Unit:

Regulated and supervised 802 licensed collection agencies.

Investigated 1,149 written complaints and inquiries against collection agencies.

Investigated or litigated 70 cases and obtained $388,348 in fines, payments and consumer restitution through voluntary stipulations and settlements. Most actions were for failure to include statutorily-required consumer rights disclosures and disclosure of the local Colorado office address on collection notices.

Obtained a judgment against Michael Scata, owner of Regent Asset Management Solutions, Inc., for $70,000 in civil penalties and a permanent injunction prohibiting him from collecting debts without a Colorado collection agency license and violating the Colorado Fair Debt Collection Practices Act and CCPA.

Resolved administrative charges against GC Services Limited Partnership, a licensed collection agency, involving several consumers. The agency signed a stipulation and paid a total of $35,000.

Issued 78 cease and desist notices to unlicensed collection agencies.

Office of Consumer Counsel Unit

The OCC Unit provides legal support and represents the Office of Consumer Counsel (OCC). By statutory mandate, the OCC advocates on behalf of residential, small business, and agricultural interests before the Colorado Public Utilities Commission (PUC) and in other forums on issues concerning electricity, natural gas, and telephone issues. On behalf of the OCC, staff in this Unit appeared or worked on 60 matters before the PUC, including protests, interventions, and rulemaking activities and before Colorado Courts. In 2012, consumers realized savings, based on the OCC's representation, of approximately $42.6 million. Some of the significant cases include:

On April 27, 2011, Black Hills/Colorado Electric Utility Company LP ("Black Hills-Electric") filed Advice Letter 642-Electric proposing to change its Energy Cost Adjustment. On April 28, 2011, Black Hills-Electric filed Advice Letter 643-Electric requesting a revenue increase of $40,234,175, or an 18.84 % increase, based on a 2010 historic test year. The PUC consolidated these filing into one proceeding. The OCC recommended in its Answer Testimony that the increase be $15.1 million rather than the $40.2 million proposed by Black Hills-Electric. After a partial settlement of some of the issues was reached by the parties and an evidentiary hearing on the disputed issues, the parties filed their Statements of Position. The OCC's final position was that a revenue increase of $4.5 million was appropriate. The Commission issued its Decision on December 22, 2011 authorizing a revenue increase of $10.5 million, or a 4.91% increase.

On October 31, 2011, Public Service Company of Colorado (Public Service) filed its Application seeking approval of its 2011 Electric Resource Plan (ERP). Subsequent to this filing, Public Service filed two additional Applications seeking to retire its Arapahoe No. 4 coal-fired generating station by the end of 2013 and to enter into a multi-year transaction with Southwest Generation Operating Company (Arapahoe 4 Application) and to acquire the Brush Units No. 1, 3 and 4 generating facilities (Brush Application). The Commission consolidated the three applications. The OCC was an active participant in this proceeding by filing Answer Testimony and participating in the hearing before the Commission. On January 24, 2013, the Commission approved Public Service's ERP Application; approved the Arapahoe 4 Application, in part; and denied the Brush Application. The parties to this proceeding have an opportunity to appeal the Commission's Decision.

On November 22, 2011, Public Service filed Advice Letter No. 1597-Electric, PUC No. 7 Electric seeking to increase Public Service's annual base-rate electric revenue by $141.9 million, or a 10.6% increase, based on a 2012 forecast test year. On March 2, 2012 the OCC filed Answer Testimony recommending a revenue requirement increase of $9.4 million increase based on a historic test year. On April 2, 2012, Public Service, the OCC, the Commission's Trial Staff and other parties filed a Settlement Agreement. The Settlement Agreement provided, among other issues, for a three year settlement in which Public Service would be allowed a $73 million increase in 2012 (residential impact-2.5 %), $16 million in 2013 (residential impact-1.9 %) and $25 million in 2014 (residential impact-1.0 %). The Commission approved the Settlement Agreement on May 9, 2012.

On November 23, 2011, Public Service filed a Petition for Interim Rate Relief based on its November 22 electric rate case filing pursuant to § 40-6-111(1)(d), which was included in CACJA. Public Service's Interim Rate Relief request was for $100 million. This was the first instance in which an electric utility filed a petition for interim rate relief under this statute. On December 23, 2011, the OCC and other parties filed their responses to the Public Service's Interim Rate Relief request. The OCC argued that normal regulatory lag was not sufficient for interim rate relief and that Public Service had not proven that the amount requested was material, that reliable service would be impaired and that its ability to attract capital would be impaired. The Com-

mission orally denied Public Service's Petition on January 11, 2012 and issued its Order on January 20, 2012. On January 12, 2012, Public Service filed a RRR Application based on the Commission's oral decision. The OCC filed its Reply to Public Service's RRR Application on January 17, 2012. The PUC denied Public Service's RRR Application.

On December 14, 2011, Public Service filed an application seeking to recover approximately $16.6 million in costs incurred in the SmartGrid City Project (SGC Project) in Boulder. The $16.6 million was not included in the PUC's prior order which granted Public Service recovery of $27.9 million for the SGC Project. The OCC filed Answer Testimony criticizing how Public Service handled the SGC Project and recommended that the Commission deny Public Service recovery of the $16.6 million. On January 13, 2013, the Administrative Law Judge issued his Recommended Decision denying Public Service's Application for additional SGC Project cost recovery. Public Service has the right to appeal the Recommended Decision to the PUC.

On June 4, 2012, Black Hills/Colorado Gas Utility, LP ("Black Hills-Gas") filed Advice Letter No. 554 seeking to increase its revenue requirement by $1,040,937, or a 4.94 % increase, based on a 2011 historic test year. The OCC filed Answer Testimony ad recommended a rate reduction of $822,152. On October 9, 2012, Black Hills-Gas, the OCC the PUC Trial Staff and other parties filed a Settlement Agreement. The Settlement Agreement, among other matters, proposed an annual revenue increase of $174,000 and was approved on December 5, 2012.

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 in local communities as requested. Section members provide special assistance to district attorneys in complex homicides, cold cases, human trafficking cases and large-scale drug conspiracies. The Criminal Justice Section also oversees the Peace Officer Standards and Training Board, provides legal counsel to the Department of Public Safety and coordinates the prosecution of foreign fugitives.

The Section also prosecutes white-collar crimes, environmental crimes and multi-jurisdictional matters. Prosecution of crimes in the Criminal Justice Section may be initiated through direct filings in which the prosecutor files charges directly with the court, or through the use of the Statewide Grand Jury, which hears testimony, views evidence and decides whether to issue criminal charges through an indictment. The Criminal Justice Section is recognized as a premier prosecutors' office in the State. The following is a summary of the Units within the Criminal Justice Section.

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 types of fraud-related offenses. Additionally, the Attorney General operates as the legal adviser to the Statewide Grand Jury. This function further allows the Special Prosecutions Unit to undertake the investigation and prosecution of complex criminal cases which occurred in multiple judicial districts throughout the state. These complex cases often involve, but are not limited to, criminal enterprises committing narcotics trafficking, identity theft, auto theft and human trafficking.

The Special Prosecutions Unit, which is comprised of seven attorneys, five investigators and one paralegal, is responsible for many of the multi-jurisdictional matters in Colorado, as well as special investigations referred to it by other state agencies or the governor. Unit attorneys prosecute cases throughout the state, either by original jurisdiction or as specially-appointed deputy district attorneys in the 22 judicial districts.

The Special Prosecutions Unit took the lead with a multi-agency law enforcement team to investigate and prosecute a six-defendant burglary ring that operated throughout the Denver Metropolitan area in 2012. This ring committed dozens of commercial burglaries in Adams, Arapahoe, Boulder, Broomfield, Denver, Jefferson and Weld counties in 2012. Additionally, in 2012 the Unit was approached by the United States Drug Enforcement Administration to take the lead investigating a large-scale prescription drug diversion and distribution enterprise that was centered in Colorado. After a comprehensive investigation, 15 defendants were charged, with the majority being accused of violating Colorado's Organized Crime Control Act (COCCA) and are being prosecuted by a Unit attorney in conjunction with an attorney from the Adams County District Attorney's Office.

In 2012, the Unit emerged as a statewide leader in the prosecution of human-trafficking offenses. These offenses can involve significant levels of physical and sexual abuse and are very difficult to investigate and prosecute. The Unit was both proactive and innovative in the prosecution of crimes related to human trafficking and assisted other jurisdictions and trained prosecutors throughout Colorado on how to prosecute offenses related to human trafficking.

The continued proliferation of narcotics trafficking into Colorado led the Unit to initiate a large-scale narcotics distribution investigation in 2012. These cases were prosecuted by a Special Prosecutions attorney in Larimer County District Court. Additionally, many other defendants who were indicted in 2010 and 2011 as part of other narcotics distribution cases had their cases resolved by Unit attorneys in 2012 in Adams, Jefferson and Larimer counties. These case dispositions included lengthy sentences to Department of Corrections in excess of 40 years for some of the key leaders of the various narcotics trafficking organizations.

High-level cases of multi-jurisdictional fraud involving check fraud, credit card fraud, identity theft and mortgage fraud were another area of emphasis for this Unit in 2012. Unit attorneys handling these cases appeared in many jurisdictions including Adams, Arapahoe, Boulder and Mesa counties.

Protecting Colorado's citizens from the fraudulent use of state funds is an important function of the Special Prosecutions Unit. Multiple cases, including various matters of significant tax fraud, were successfully handled this year by the Unit. In 2012, the Unit continued to successfully prosecute a variety of felonies involving

unemployment insurance fraud and workers' compensation insurance fraud.

The Environmental Crimes Prosecution team protects Colorado's natural resources by enforcing environmental laws. The Environmental Crimes prosecution team within the Special Prosecutions Unit investigated 11 environmental crimes during 2012 resulting in multiple convictions. This team works closely with the United States Attorney's Office, the United States Environmental Protection Agency and other state and federal agencies in pursuing environmental crimes that harm Colorado's water, air and soil.

Noteworthy cases prosecuted in 2012:

The re-investigation of the murder of Peggy Hettrick in Fort Collins, CO: In 2011, Governor Hickenlooper reaffirmed Governor Ritter's 2008 Order which appointed the Attorney General to take the lead in this matter and further authorized the Attorney General to continue with this investigation. Timothy Masters had been convicted in the 1987 murder and sentenced to life without parole. After beginning the re-investigation of the case, the Attorney General's Office was assigned to work with the Deputy Attorney General for Criminal Justice, as well as with an investigator from the Unit's Violent Crime Assistance Team, to conduct this investigation.

"Operation Money Raiders": Operation Money Raiders was a six-defendant enterprise which committed a sophisticated credit card fraud scheme throughout many Western and Midwestern states. It was a multi-state credit card fraud case that the Colorado Bureau of Investigations investigated. This organized crime ring used young women to obtain cash from bands and merchandise from stores through the use of a fraudulent credit card. The transactions were facilitated by one member of the criminal enterprise who provided authorization for the transactions over the phone by giving false authorization codes to bank tellers and store clerks. Six targets were indicted by the Statewide Grand Jury and five of those cases resolved in pleas agreements. The main target, Stacy Harris, plead not guilty and proceeded to a jury trial that resulted in the Harris being found guilty of all counts which included violating the COCCA, aggravated motor vehicle theft and five counts of theft. On November 26, 2012, Harris was sentenced to 10 years in the Department of Corrections and was ordered to pay $28,846.27 in restitution (joint and several with some of the co-defendants).

"Operation I-70": Operation I-70 was the culmination of a three-year, multi-jurisdictional sex trafficking case involving four juvenile victims who were sexually exploited throughout the Front Range, primarily through the use of Backpage.com. The Statewide Grand Jury indicted 14 people in January 2012 on 70 counts, most of which were related to the sex trafficking of children (human trafficking of a child, pimping of a child, pandering of a child). These cases were filed in Jefferson County District Court and all of the cases resolved by plea agreements. One of the primary targets in the case was the last to resolve: Chad Gow plead guilty to pimping of a child and inducement of child prostitution with no sentencing concessions. In December 2012, Gow was sentenced to four years in the Department of Corrections. A 10-year prison sentence was requested by the People, however, Gow was 21 years old at the time of the sentencing and had no prior adult felony convictions. Like many sex trafficking cases, the victims were not fully cooperative and were reluctant to participate. All of the juvenile victims were offered counseling and related services.

"Operation Traveler's Hill": Another significant matter handled by the Unit began in 2010 and concluded in 2012 with agents from the South Metro Drug Task Force, the United States Post Office and the Criminal Tax Division of the Colorado Department of Revenue coordinating an investigation with the Attorney General's Office to take down a Metro Denver-based, interstate large-scale marijuana ring. The ring made use of the United States mail and various web-based chat rooms to ship marijuana to purchasers located in more than a dozen different states. Much of this trafficked marijuana was sourced from Colorado medical marijuana dispensaries operating illegally. Numerous undercover operations utilizing confidential informants and multiple search warrants lead to the indictment of 11 individuals and a medical marijuana dispensary, the Silver Lizard. Charges included illegal trafficking and production of marijuana, money laundering, financial and tax-related offenses. All but four defendants plead guilty in 2012; the last four are expected to plead guilty in 2013. Nearly one-third of all defendants will receive Department of Corrections (community based) multi-year sentences. Approximately $1 million in assets, including multiple cars and a home, were seized in the arrests and are pending auction.

People v. Tienda: Thomas Tienda was prosecuted by the Environmental Crimes Prosecution Team, consisting of the Unit attorney and Unit investigator, in Pueblo District court for exposing unprotected workers to asbestos contamination when they were hired to demolish a contaminated building Tienda owned. Following a two-week jury trial in late 2011, Tienda was sentenced in 2012 to four years in the Department of Corrections and ordered to pay more than $300,000 in clean-up costs.

People v. Manor: In late 2011 and throughout 2012, the Unit's Environmental Crimes Prosecution Team investigated and prosecuted an individual responsible for the illegal dumping of more than 50 bags of asbes-

tos-containing materials (ACM) located in an alley near a Denver public school. Investigators contacted the Colorado Department of Public Health and Environment (CDPHE) and coordinated a comprehensive environmental clean-up response along with a forensic examination of the evidence contained within the bags and the acquisition of a video from nearby privately-owned surveillance cameras. Fortunately, no people nor the environment were exposed to this deadly contaminant. After tracing documentation contained within the contaminated bags to an environmental disposal company named Colorado Hazardous Environmental (CHE) and conducting numerous interviews, investigators ultimately focused on Adman Manor who was a new CHE employee and in October, Manor plead guilty. At sentencing, the prosecution presented scientific reports on the dangers of asbestos and the proximity of school-aged children to the dumping site. The Court sentenced Manor to 90 days in jail and two years of Intensive Supervision Probation.

Victim Assistance Program

The Victim Services Program is part of the Criminal Justice Section and the Victim Services Coordinator is a resource to prosecutors and investigators in the Special Prosecutions, Colorado Justice Review Project and the Financial Fraud Units, and to the other units within the Department of Law.

The Victim Services Coordinator is also a liaison for the Department of Law to the statewide network of victim services. The Coordinator represents the Office with statewide taskforces on: human trafficking, post-sentencing victim services, District Attorney Victim Witness Coordinators, Victim Rights Amendment legislative working groups, Sex Assault Nurse Examiner Advisory Board, Domestic Violence Program, and other initiatives that convene to improve services to crime victims. Additionally, the Coordinator is a resource for the Department of Law employees suffering intimate partner violence and other types of victim issues in their lives providing support and referrals in keeping with the Office's Domestic Violence Policy.

In 2012, the Victim Assistance Program provided 1,900 notifications to victims of violent crimes while the convictions and sentences in the offenders' cases were on appeal. Other services provided to the crime victims include post-trauma advocacy, referrals to Victim Compensation and other community resources, as well as accompaniment to oral argument in the Colorado Court of Appeals and the Colorado Supreme Court.

Auto Theft Prosecution Initiative

In early 2012, the Attorney General's Auto Theft Prosecution Initiative team was awarded a new grant, extending the initiative into its third fiscal year. During 2012, the unit tried two auto-theft related cases and obtained felony convictions in both. The Unit also saw the return of two indicted criminals, one from another state and the other another country, back to Colorado to face serious theft and organized crime charges.

Noteworthy cases prosecuted by the Auto Theft Prosecution Initiative of 2012 include:

People v. Hemingway: Jason Hemingway was convicted of ten felony counts including Aggravated Motor Vehicle Theft, Attempt to Influence a public servant, and theft after a December jury trial in Arapahoe County. The jury's verdict represents the culmination of a lengthy investigation and prosecution that was repeatedly delayed by the defendant. Hemingway was found guilty of having perpetrated an elaborate scheme between 2003 and 2010 in several metro-area jurisdictions to steal cars and sell them to unsuspecting buyers using fraudulent paperwork.

People v. Mewbourn: The auto theft unit obtained a 20-year sentence and an order of restitution of approximately $300,000 in May against Mikel Mewbourn. Mewbourn recruited friends and acquaintances to assist in his scheme to repeatedly defraud insurance companies with false reports of vehicle theft and property damage. Participants staged fake automobile accidents and thefts and provided fraudulent information to insurance companies to collect settlements on the resulting claims. Of the six individuals indicted in 2011, all but one has either plead guilty or been convicted for his or her part in the scheme.

Violent Crimes Assistance Team

In 2012, the Attorney General expanded the Homicide Assistance Team's role to offer the elected district attorneys and local law enforcement an expert team consisting of two senior assistant attorneys general and a criminal investigator to provide critical support and assistance in all aspects of violent crime investigations and prosecution, including homicides, and renamed the unit the Violent Crimes Assistance Team (VCAT). Leading off the success of the unit was the February conviction of Tyrone Martinez in Conejos County. Martinez was convicted of Murder in the First Degree, Burglary, and Tampering with Evidence, based upon evidence that he was driven to his victim's apartment in La Jara, Colorado where he reached through an open window and fatally shot the victim three times. Throughout 2012, the VCAT participated in pending murder cases in Conejos, Crowley, Hinsdale, Montezuma and Montrose Counties.

The Unit members continued participation as special deputy district attorneys on three death-penalty cases

in Arapahoe and Douglas Counties. VCAT not only was an effective member of the prosecution teams throughout the state, but also continued to provide guidance and assistance to individual prosecutors throughout the state. VCAT received 83 inquiries for assistance from prosecutors in 18 of 22 judicial districts. Additionally, the team is actively involved in many cold case investigations throughout the state. The attorneys also gave twelve presentations to prosecutors and law enforcement across Colorado and were requested to present on three occasions to prosecutors in other states.

Colorado Justice Review Project

In its third year of existence, and funded by a second grant award, the Attorney General's Office again led the Colorado Justice Review Project (JRP) in reviewing Colorado criminal convictions pursuant to a grant from the National Institute of Justice's Post-Conviction DNA Testing Assistance Program. The JRP identifies cases without modern DNA testing of case evidence and considers whether testing the physical evidence for DNA now could identify a different perpetrator of the crime and establish innocence for the incarcerated inmate. The work of the JRP is a collaborative effort with the Colorado Department of Corrections, the Colorado Bureau of Investigations, members of the defense bar, the Colorado State Public Defenders Office and the Office of Alternate Defense Counsel, law enforcement agencies statewide and with the 22 District Attorneys.

The Attorney General's Office continues to partner with the Denver District Attorney's Office on the JRP. The JRP staff consists of two attorneys, a criminal investigator and legal interns and reviews cases originating in the 21 counties outside of Denver County while the JRP staff at the Denver District Attorney's Office reviews cases originating in Denver County. In cooperation with the Department of Corrections, in 2012 the JRP distributed applications to more than 7,900 inmates incarcerated on crimes of violence. More than 450 inmates returned applications to the JRP to have their cases reviewed for possible exoneration through DNA testing.

All inmates who submit an application to the JRP receive a case review. The JRP also examines the evidence to ensure that it is available and in proper condition for DNA testing, and interviews witnesses and attorneys. As in the first grant, all 22 district attorneys have fully cooperated with the JRP in allowing access to trial files and case evidence.

In April 2012, the JRP had its first exoneration. Mr. Robert Dewey was convicted of the 1995 rape and murder of a 19-year-old woman in Palisade, Colorado. After extensive investigation by the JRP staff, DNA testing funded by the JRP and conducted by the Colorado Bureau of Investigation indicated another person's DNA on the case evidence. The Mesa County District Attorney's Office then elected to take the case back for re-investigation and assembled a team of investigators from the Mesa County Sheriff's Office, the Colorado Bureau of Investigation and the Palisade Police Department who determined that Dewey was wrongly convicted of those crimes. In April, the Mesa County District Court released and exonerated Dewey. That same day, another man was charged with the original crime and that case is pending in Mesa County.

Foreign Prosecutions Unit

The Foreign Prosecutions Unit (FPU) works with Mexican authorities to prosecute, apprehend and incarcerate fugitives in Mexico. Foreign prosecutions occur when a victim or defendant is a Mexican national and the offender has fled from the United States to the Republic of Mexico. The fugitive can be subjected to prosecution by Mexican authorities in Mexico pursuant to Article IV of the Mexican Federal Penal Code and also by mutual agreement through an international treaty. These proceedings are based on casebooks submitted by the FPU investigator to the Federal Attorney General's Office of the Republic of Mexico in Mexico City – the Procuraduría General de la República (PGR).

The FPU completed investigations on several Article IV cases in 2012 and continued to work on open case investigations and filings for the Montrose Police Department, the Mesa County Sheriff's Office, the Weld County Sheriff's Office, the Adams County Sheriff's Office, the El Paso County Sheriff's Office and the Thornton Police Department. The FPU investigator is responsible for continued work on outstanding arrest warrants and works with respective law enforcement agencies to conduct follow-up interviews of witnesses and to develop further information to locate and apprehend fugitive suspects.

In addition, the Regional Attaché of the PGR came to Colorado on two separate occasions in 2012 to interview key witnesses on Article IV cases filed for Montrose and Thornton Police Departments respectively. The Attaché and FPU investigator conducted interviews and ratified statements provided on the murder cases already presented and filed in Mexico. These interviews were completed at the Mexican Consulate Office to comply with the mandates of the treaty agreement and under the jurisdiction of the Mexican authorities.

With the assistance of the FPU, Mexican authorities have apprehended several suspects charged with murder who are currently in custody awaiting the Mexican federal court's ruling and sentencing orders. This

"Period of Instruction" under the Mexican Judicial System may be delayed up to 24 months. The PGR will often call upon the FPU to provide supplemental interviews, documents and evidence during this process.

A number of American citizens wanted in Colorado were apprehended in Mexico and returned to this state. Mexican authorities have supported Colorado law enforcement through extradition or expulsion of suspects. Working with Mexico, and U.S. agencies including HSI/ICE, U.S. Marshal's Service and the FBI, the FPU continues to assist as a liaison for federal, state and local agencies in returning American citizens to stand trial in this country.

Similarly, when witnesses return to Mexico after a crime is committed and are later needed for the prosecution, the FPU provides assistance to the local district attorney's offices to return the witnesses to Colorado pursuant to a Significant Public Benefit Parole Visa issued through Homeland Security and the State Department. In 2012, the FPU assisted and facilitated the process to return victims and witnesses to Colorado from Mexico to testify in the high-profile trial of Dr. Diego Posada, an optometrist. The FPU also assisted the Commerce City Police Department and the Adams County District Attorney's Office, the Aurora Police Department and the Arapahoe County District Attorney's Office, and the Sterling Police Department and the Morgan County District Attorney's Office with the visa process to allow witnesses to return to Colorado to testify and assist the prosecution of the perpetrators in those jurisdictions.

In addition, the FPU investigator has assisted or served as liaison for several local Colorado law enforcement agencies as a conduit to obtain information for or from Mexico including the Grand Junction Police Department, the Aurora Police Department, the Boulder Sheriff's Office, the Morgan County Sheriff's Office, the Colorado Springs Police Department and the El Paso County Sheriff's Office, the Adams County Sheriff's Office, the Greeley Police Department, the Weld County Sheriff's Office, the West Metro Drug Task Force and the North Metro Drug Task Force, and the Commerce City Police Department.

The FPU also participates in training attorneys and law enforcement located both here and abroad. In 2012, the FPU Investigator presented *"Foreign Prosecutions an Alternative to Extraditions - Justice Beyond Our Common Borders*" to attendees at the Colorado District Attorney's Council Conference. The program was well received and several district attorneys' offices requested FPU's assistance in cases involving individuals who have left Colorado and now known to be residing in Mexico as a result.

In addition, the FPU worked with the Conference of Western Attorneys General and the Alliance Partnership – U.S./Mexico (CWAG), to facilitate, organize and conduct a four-day training of 74 Mexican prosecutors with attorneys from the Criminal Justice Section on a mutual exchange program for the Judicial Reforms for the Judicial System of Mexico.

The FPU is an effective, internationally-recognized unit that also saves the State of Colorado millions of dollars in prosecution and incarceration every year. Through dedication and strong working relationships, the work of the FPU ensures justice for victims and their families, helps prevent fugitives from committing additional offenses in Mexico, and most importantly, brings these fugitives to justice.

Noteworthy cases pursued in 2012 include:

The Murder of Claudia Ceballos: An Article IV case filed in December of 2011 carried over into first months of the 2012. The victim, Claudia Ceballos, a 39 -year-old mother of three, was brutally beaten, stabbed to death and found by her 19-year-old son when he returned home on Thanksgiving evening 2009. The son left Colorado after his mother's murder. The Procuraduría General de la República (PGR) – Federal Attorney General's Office of the Republic of Mexico – requested DNA samples for comparison to evidence gathered at the murder scene and a follow-up interview with the son. Several weeks of investigation resulted in locating the son in California. Initially, the son was extremely reluctant to cooperate; however, the FPU Investigator was able to convince the son that his cooperation was critical to the success of the Article IV case with the Mexican authorities. The FPU Investigator traveled to Los Angeles, California, to interview the son and take buccal swabs from him. All the supplemental information and evidence was submitted to the PGR in Mexico City, along with some additional evidence. The case was presented to the federal court in Mexico and a federal arrest warrant was issued under Article IV of the Mexican Federal Penal Code for the apprehension of the murder fugitive.

The Murder of Carlos David Serrano-Gutierrez: The FPU investigator prepared an Article IV homicide case for the Westminster Police Department and the 17th Judicial District in 2012. On September 3, 2011, Carlos David Serrano-Gutierrez was bludgeoned to death with a baseball bat. The suspect was identified and confirmed to have fled to Mexico to avoid apprehension and prosecution. The case will be presented for filing to the PGR in February of 2013.

Three-Victim Hit and Run/Murder: The FPU initiated and is currently preparing an Article IV case with the Greeley Police Department and the 19th Judicial District. Three individuals had a verbal altercation with the suspect at a local bar. The suspect then pursed the

victims when they left the bar, resulting in a hit and run traffic collision. One victim died at the scene of the accident; the two other victims were seriously injured. Witnesses provided information regarding the suspect and follow-up investigation and interviews of family members and close associates revealed that the suspect fled to Mexico to avoid arrest and prosecution.
The Murder of Floyd Sanchez: During the 2012 calendar, the FPU continued to assist the PGR with the investigation into the murder of Floyd Sanchez, Jr., which the Adams County Sheriff's Office initiated. At the request of the PGR, the FPU Investigator traveled to Grand Junction, CO, with the PGR Regional Attaché and his Deputy Attaché and conducted interviews of two witnesses. The Mesa County Sheriff's Office provided the facility to take statements from the two witnesses.

The Murder of Lyn Pham: The FPU assisted the Aurora Police Department with the investigation into the beating, choking and stabbing of Lyn Pham. Lupe Rubio, the victim's assistant manager at the Descanso Apartment Complex, was romantically involved with the suspect who is now a fugitive from Colorado and suspected to be in Mexico. The FPU Investigator assisted the Major Crimes Unit by conducting two lengthy interviews of Rubio in Spanish, after which Rubio was arrested. Rubio was charged by the 17th Judicial District Attorney with First Degree Murder, Conspiracy and Aiding and Abetting in a Crime of Violence. A jury convicted Rubio on the accessory and crime of violence charges but the jury was hung on the murder charge. Rubio was sentenced to 23 years to the Department of Corrections. The FPU is currently assisting with the International Request for Extradition of the primary suspect. The 17th Judicial District Attorney requested the suspect's return to the United States to face charges and the FPU is working with the Department of State in Washington D.C., Office of International Affairs at the Department of Justice, to request a Provisional Arrest Warrant for the apprehension of the suspect in Mexico.

Securities Fraud Unit

The Attorney General has statutory authority to aggressively prosecute criminal violations relating to securities and securities fraud and is recognized statewide for its expertise on securities fraud matters. Colorado citizens are swindled out of millions of dollars every year through securities fraud, which take many forms including pyramid schemes, oil and gas investment schemes, and "fix-and-flip" housing scams, among others. In addition, Colorado's aging populations are often specifically targeted by those seeking to perpetrate investment crimes and the resulting losses to retirement funds and life savings can be catastrophic. Due to the impending explosion of baby boom generation retirements, the potential for loss is ever increasing.

In 2012, the Securities Fraud Unit utilized its original jurisdiction to independently investigate, charge and prosecute securities violations statewide. The Securities Fraud Unit frequently utilized the Statewide Grand Jury for these sophisticated, complex and high profile cases. The Securities Fraud Unit closely collaborated with the Colorado Division of Securities and Colorado law enforcement agencies to prosecute these crimes. The Unit is made up of two attorneys, two investigators, a paralegal and half time administrative assistant.

The Unit obtained thirteen convictions involving securities fraud in 2012. The convictions resulted in restitution orders totaling $12,325,750.64 on behalf of 160 victims. In each case, the defendant was convicted of one or more charges of class-three felony securities fraud. All but one defendant were first-time criminal offenders, seven of whom were sentenced to incarceration in the Colorado Department of Corrections.

The Securities Fraud Unit also conducted 16 formal investigations in 2012. In addition, investigators reviewed another 99 complaints derived from multiple sources, including law enforcement agencies, citizens, and a complaint website that investigators and attorneys ultimately referred to other sources or determined did not warrant further formal investigations. The Unit tracked restitution payments of 79 defendants during 2012, during which time more than $283,000 was collected by the courts on behalf of victims.

Noteworthy cases prosecuted by the Securities Fraud Unit in 2012 include:

People v. Trujillo: Phillip Trujillo was the principal of Wealth Management Resources, LLC and Trujillo Investments, LLC. Trujillo worked in the securities industry for a number of years and possessed a number of investment licenses. Trujillo solicited more than $4 million from investors for investment entities he controlled. He represented that monies would be directed to "investment grade securities" among other things when in fact the bulk of the funds went to unsecured promissory notes. Trujillo was convicted of five counts of securities fraud and one count of theft and was sentenced to 12 years in the Colorado Department of Corrections. He was further ordered to pay $4,813,266.37 in restitution to 69 victims.

People v. Anderson: Stanley Fenton Anderson had a number of Colorado business interests including tax services, a trucking company, a cleaning company as well as management companies. He solicited approximately 30 Coloradoans to invest in these interests promising high rates of return of up to 35%. Anderson

told investors that he would use the money to purchase trucks and offer high interest loans. Instead, Anderson used the money for his own personal expenses and to pay back prior investors. He was convicted of securities fraud and was sentenced to 11 years in the Colorado Department of Corrections. In addition, Anderson was ordered to pay $1,774,168.91 in restitution to 25 victims.

Insurance Fraud Unit

The Insurance Fraud Unit investigates and vigorously prosecutes criminal offenses relating to insurance fraud. Colorado residents pay billions of dollars annually in insurance premiums. When insurance fraud in its many varied forms occurs, those costs are not only borne by the insurance companies, they are also passed on to Colorado citizens in the form of higher premiums and insurance costs. Typical cases involve staged accidents, theft of premiums, fraudulent claims, contractor fraud and overbilling for services and charges often involve crimes such as theft, forgery, identity theft, and in some instances, racketeering.

In 2012, the Insurance Fraud Unit expanded and now consists of four attorneys, five investigators, one full-time paralegal, one half-time paralegal, and half of the time of an administrative assistant. This Unit is uniquely situated to handle insurance fraud cases and the Attorney General's staff is highly regarded statewide due to their expertise in this area. Staff of the Insurance Fraud Unit share their expertise in this arena and provide assistance to other investigators and law enforcement throughout the state.

The Insurance Fraud Unit had 1385 referrals of potential criminal cases relating to insurance fraud in 2012. This represents more than double the referrals from the prior year. Most of these referrals were made to the Unit by the Colorado Division of Insurance and the National Insurance Crime Bureau (NICB). In addition, the Unit investigated and responded to a number of citizen complaints and continued to work larger, more complex cases both internally and in conjunction with other law enforcement agencies. In 2012, the Unit concluded investigations in the Statewide Grand Jury that began the year prior and conducted several large and complex investigations in the Grand Jury, obtaining grand jury indictments.

In 2012, after screening all of the case referrals, the Unit opened 129 new investigations. In addition, the Unit filed a total of 29 new cases in Colorado courts by complaint and information. Cases were filed in Adams, Arapahoe, Broomfield, Chaffee, Delta, Denver, El Paso, Jefferson, and Weld counties. Due to enhanced tracking capability, since July of 2012 the Unit recorded the following number of cases per category: 124 accident and health, 23 agent or producer, 458 automobile, 23 commercial liability, 1 commercial auto, 98 health and accident, 254 homeowner, 3 life insurance, 12 worker's compensation, and 35 others.

The Insurance Fraud Unit supervised the restitution payments of 58 defendants on probation for insurance fraud-related crimes and collected $304,277.14 in restitution in 2012. Additionally, the Unit achieved new restitution orders in 2012 totaling $366,954.47.

Insurance crimes often goes unnoticed by individual insurance companies because the claim losses are spread out among different companies. The Insurance Fraud Unit is changing that by taking the helm and coordinating multiple investigations through the Unit. For instance, the Unit continues to see a large number of staged accidents of motor vehicles and is organizing the investigations of these rings with the dozens of insurance companies affected. By also working with the National Insurance Crime Bureau, the Unit has been able to leverage its unique expertise to initiate investigations based upon analysis of crime patterns and the assimilation of insurance data.

Noteworthy cases prosecuted by the Insurance Fraud Unit in 2012 include:

People v. Lobatos: Martin Lobatos made a claim for worker's compensation insurance after an accident. Lobatos and his wife Belen then began representing to medical providers that Martin's condition was deteriorating to the point that they claimed he had become nearly catatonic. Over a period of 18 months, the Lobatos attended dozens of medical appointments where Mr. Lobatos presented as being in a catatonic state. Witnesses reported observing Martin Lobatos hiding in the back seat of the family car as it would depart the residence with his wife driving. Subsequent surveillance revealed that Mr. Lobatos was engaging in regular activities such as driving, shopping, going to church, and tending to his horse. Both defendants plead guilty to theft and providing false statements. Restitution was ordered in the amount of $161,721.69.

People v. Phelps: Ann Phelps owned an insurance agency and had a number of employees. She collected $27,780 from her employees to have them covered under *Errors and Omissions Malpractice Insurance*. However, she did not have the insurance put into place on behalf of her employees and kept the money for herself. She issued her employees false Declaration Sheets of Insurance that she created. She plead guilty to forgery and paid all the money back to her employees. She received two years supervised probation.

Medicaid Fraud Control Unit

The Medicaid Fraud Control Unit (MFCU) defends the financial integrity of the state's Medicaid program and the safety of patients in Medicaid-funded facilities. It investigates and prosecutes fraud by providers against the Medicaid program. The Unit also investigates and prosecutes patient abuse, neglect and exploitation in Medicaid-funded facilities and serves as an authority and training resource on abuse prevention and investigations. Additionally, it pursues civil recoveries and damages against providers under the Colorado False Claims Act.

Colorado pays approximately $4.7 billion each year to more than 10,000 participating Medicaid providers such as nursing homes, physicians, psychologists and mental health therapists, dentists, pharmacies, laboratories, hospitals, clinics and durable medical equipment companies. In 2012, nearly 700,000 citizens qualified for Medicaid benefits. The Medicaid Fraud Control Unit preserves state resources devoted to Colorado's Medicaid program and protects these funds against fraud.

In 2012, the Medicaid Fraud Control Unit opened 182 new investigations (178 fraud and 4 abuse/neglect) and 11 new criminal cases were filed with the courts throughout Colorado. Eleven criminal convictions and 63 civil settlements were obtained, with the settlements totaling $31,799,219.74. One hundred twenty cases were resolved and closed.

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; other cases resulted in federal criminal charges being filed against individuals and corporations. Unit representatives also participate in several working groups of local law enforcement and other agencies dedicated to combating health care fraud.

Noteworthy cases prosecuted by the MFCU Criminal Division in 2012 include:

People v. Moss: Responding to a citizen complaint, the MFCU initiated an investigation of occupational therapist Cheryl Moss, of Castle Rock, into allegations that she had improperly billed the Colorado Medicaid Program. MFCU's investigators discovered at least 83 forged treatment records and thus, confirmed the fraudulent billings. Moss forged those records to support the fraudulent bills submitted to the Colorado Medicaid Program. She claimed that she was providing occupational therapy services for Medicaid recipients when she did not in fact perform those services and Medicaid, in turn, paid Moss for services that she never rendered. Moss entered pleas of guilty in Denver District Court to one count of felony theft and one count of felony forgery. She was ordered to pay the Colorado Medicaid program $54,332.00 in criminal restitution; serve 60 days of home detention; pay all court costs and fees, and perform 360 hours of community service. She was also placed on four years supervised probation, and will pay for all costs associated with probation. Ms. Moss also agreed to pay a civil penalty of $46,000.00 to the Colorado Medicaid program to resolve any potential civil issues.

People v. Kwong: In a case which was referred to the MFCU by the Program Integrity Unit of the Colorado Department of Health Care Policy and Financing, the MFCU obtained a criminal conviction against Viola Kwong in Denver District Court. Kwong had requested services for her elderly father through a Medicaid program known as CDASS (Consumer Directed Attendant Support Services). CDASS is a program which allows a Medicaid client to direct his or her own home-based personal health care when able. In this case, Kwong's father had been too infirm to direct his own care. Medicaid authorized services for Kwong's father, and because he was too infirm to direct his own care, designated his daughter, Viola Kwong as his personal representative in obtaining those services.

Kwong's father died on July 23, 2010. The MFCU investigation revealed that Kwong continued to submit numerous fraudulent documents to Medicaid reflecting personal health care services rendered to her father after he had died, with invoices requesting payment from Medicaid dated as late as November 8, 2010. Kwong received checks from Medicaid as payment for the fictitious services, endorsed the checks, and deposited them into her personal account.

At the conclusion of the MFCU investigation, Ms. Kwong entered a plea of guilty to one count of Offering a False Instrument for Recording, a Class Five Felony. She was sentenced to pay criminal restitution in the amount of $16,063.29 and perform 50 hours of Useful Public Service. Kwong was also placed on supervised probation for four years, and she will pay all court costs and probation supervision fees. She also agreed to pay a civil penalty of $37,126.58 to the Colorado Medicaid program to resolve any potential civil liability to the program.

People v. Jessop: George Jessop worked as the plant maintenance director for a company that manages nursing homes in the Denver Metro-area. While employed as the maintenance director, Jessop submitted forged invoices to the company to obtain reimbursement for items he did not purchase or for which he inflated the price paid. For example, Jessop would purchase an item for one price and then forge a receipt reflecting the purchase of the item at a much higher

price. The invoice would then be submitted to his employer, who would reimburse Jessop for the higher cost, and Jessop would keep the difference between the true price of the item and the higher price he was paid. The investigation established that Jessop unlawfully obtained more than $100,000.00 in this manner.

Investigation by the MFCU uncovered Jessop's criminal wrongdoing. Jessop entered pleas of guilty to felony theft and felony forgery. He was sentenced to pay criminal restitution of $100,000.00 and perform 120 hours of community service, and to be on four years supervised probation. Jessop was also ordered to pay all court costs and fees, and to pay all costs associated with his probation.

Noteworthy cases litigated by the MFCU's civil division in 2012 include:

Penalties for Improper Home Health Billings: Using a data analysis provided by the Colorado Department of Health Care Policy and Financing (HCPF), the MFCU investigated several dozen providers during the year for submitting bills to the state for home health care on days when the patients were not at home because they had been admitted into the hospital. Demands for repayment and penalties were made against numerous providers. During 2012, settlements were reached with 42 of them for repayment and, in most cases, treble (triple) damage penalties. More than $62,000.00 has been collected so far on behalf of Colorado Medicaid in this program. The MFCU will monitor future home health billings by these and other providers to determine whether the program has had any deterrent effect.

GlaxoSmithKline Settlement: In August of 2012, the State received $2.2 million from GlaxoSmithKline (GSK) in a large multi-state settlement of illegal marketing allegations. An additional $2.3 million was returned to the federal government for its portion of Colorado's recovery, resulting in a total recovery of $4.5 million. The settlement was the largest health care settlement in history, totaling more than $3 billion in recoveries, penalties, and criminal fines to many government health care programs. An attorney from the Colorado MFCU was a member of the team that helped negotiate the settlement on behalf of the state Medicaid programs throughout the United States. Four whistleblower suits alleged that GSK engaged in off-label marketing of a number of drugs such as marketing Paxil to patients under 18 and marketing Wellbutrin for weight loss and smoking cessation. Rebate program violations were also alleged and a third component of the settlement resolved allegations that the company engaged in misleading and improper promotion of the diabetes drug Avandia, impacting patient health and resulting in damages to health care programs.

Cost Report Repayments for Unauthorized Workers: In October and November of 2012, the MFCU collected more than $28,000.00 from nursing home providers whose billings included amounts attributable to unqualified nursing staff. In one case, the employee had received a suspension of his nursing privileges from the State Board of Nursing; in another, the employee's license had been issued based on a falsified social security number. In both cases salaries paid to these unqualified employees were included in reports that were used to calculate future years' billing rates. The MFCU developed a procedure that identified and adjusted the amounts reflected in these cost reports and then recalculated the daily rates that should have applied during the following fiscal year(s). As a result, each of the nursing homes was obligated to repay the state for a portion of their billings. The MFCU director addressed the National Association of Medicaid Fraud Control Units on this innovative procedure after an informal survey indicated that no other state MFCU was recovering money in this fashion.

Department of Public Safety

The Public Safety Unit of the Attorney General's Office is responsible for providing legal advice, counsel, and representation on issues arising from or related to the wide range of Colorado Department of Public Safety (CDPS) entities and areas of responsibility. The CDPS is the principle statewide, law enforcement entity responsible for providing a leadership role in issues and concerns of law enforcement including statewide commissions and multi-jurisdictional task forces. The CDPS includes the Colorado Bureau of Investigation, the Colorado State Patrol, the Division of Criminal Justice, the Division of Fire Prevention and Control, the Division of Homeland Security and Emergency Management, and approximately 50 boards and commissions. The mission and responsibilities of CDPS expanded in 2012 to include statewide management of all natural and human-caused disasters in addition to being tasked with wide ranging, diverse, and critical responsibilities touching on all aspects of law enforcement.

The Unit's one full-time attorney provides myriad services to CDPS including legal research on current issues and policy considerations; coordination of legal matters with outside attorneys; consultation and attendance at various Board meetings; drafting and reviewing transactional documents for intergovernmental agreements and accreditation by the Commission on Accreditation for Law Enforcement Agencies; advice and attendance at all rule making hearings; representation on the Asset Forfeiture committee and at Executive Team meetings; review of open records requests; representation of CDPS in non-party criminal and civil trials; and representation of CDPS in all civil, non-monetary litigation in state, federal, local, and admin-

istrative forums.

Mid-year, the Department of Law shifted CDPS personnel actions before the State Personnel Board to the Civil Litigation and Employment Law Section of the Attorney General's Office. At the time of transfer, there were 13 active personnel board cases. The transfer has resulted in approximately eight different attorneys handling the ever-increasing CDPS personnel cases.

In addition, the attorney in this Unit also serves as legal counsel to the Peace Officers Standards and Training Board.

Following is a brief description of each CDPS entity for which the Attorney General's Office provides counsel:

*The Colorado Bureau of Investigation (CBI): C*onducts statewide criminal investigations; provides laboratory analyses and testimony on crime scene evidentiary matters; develops and maintains databases vital to law enforcement efforts throughout the state (e.g. CCIC/NCIC, CoG, criminal histories, transfers of firearms, sex offender registries); investigates and prosecutes identity theft and financial fraud; and implements the Amber Alert, Missing Senior Citizen and Persons With Disabilities Alert, and the Blue Alert programs statewide.

The Colorado State Patrol (CSP): The largest division of CDPS is responsible for enforcing all laws on state highways including human smuggling and human trafficking, motor carrier regulations, transport of hazardous and nuclear materials, and the vigilant enforcement of traffic laws to include driving while impaired or under the influence of alcohol or drugs. The CSP operates statewide communications/dispatch centers; collaborates with local law enforcement agencies to address matters of local concern; and maintains a fulltime training Academy for annual classes of cadet recruits, annual in-service training, advanced and specialized training, and hosting outside groups at its driving range, firing range, and conference facilities. In 2012, the Ports of Entry function and employees was transferred into CSP, from the Department of Revenue.

The Department of Criminal Justice (DCJ): The state research center for the collection, analysis, and dissemination of information concerning crime and criminal justice for the purpose of improving the quality of criminal justice at all levels of government in the state. The DCJ areas of research include data on community policing, projected long-range needs of correctional facilities and juvenile detention facilities, recidivism reduction, victim prevention, and development of the sex offender risk assessment screening instrument. The DCJ distributes and administers state and federal grants and other moneys; administers the Sex Offender Management Board, the Domestic Violence Offender Management Board, and the Crime Victim Services Advisory Board; and oversees Community Corrections program statewide.

The Division of Fire Prevention and Control (DFPC): Provides statewide coordination of the prevention, control, and mitigation of wildfires; administers certification programs for firefighters, first responders, hazardous materials responders, school building inspectors, and fire suppression systems inspectors; works closely with stakeholders in adopting rules and regulations on codes and national standards governing their performance; and is authorized to enforce its rules and regulations through civil penalties and disciplinary actions.

The Division of Homeland Security and Emergency Management (DHSEM): Formalized in statute in 2012, bringing state homeland security and emergency management functions into CDPS. DHSEM is responsible for the coordination and facilitation of efforts among various local, regional, state and federal entities in identifying, preventing, mitigating, and handling threats to the public safety and providing effective response management. The realignment into one department eliminated redundancies in emergency management and homeland security training and exercise, public risk communication systems, and grant management. The reorganization combined related functions, responsibilities, and employees formerly housed in the Colorado Department of Public Health and Environment, the Department of Local Affairs, and the Governor's Office.

Noteworthy activities of counsel for CDPS in 2012 include:

Occupy Denver: Provided follow-up advice to CSP and state officials concerning Occupy Denver encampment on state property; enforcement actions taken; consultation with prosecutors on resulting trials, and legal review of an ACLU open records request for documents related to enforcement actions.

Employment Background Investigations: Handled litigation concerning pre-employment background investigations for potential CDPS employees, including the use of polygraphs.

CDPS Employee Transfers: Provided legal advice and representation of 25 personnel appeals, including the transfer of approximately 245 employees into CDPS from the Department of Revenue, Colorado State University, Department of Local Affairs, and the Colorado Department of Public Health and Environment.

POST Vacancy Assistance: Assisted Colorado Peace Officer Standards and Training staff during the POST Director vacancy and during the transition to the new

Peace Officer Standards and Training Board

The Colorado Peace Officer Standards and Training Board (POST) manages the training and certification of approximately 14,000 active and reserve peace officers who are appointed to Colorado Law Enforcement Agencies, in addition to managing 28 certified peace officer training academies in Colorado and approximately $2 million dollars in training grants. POST currently consists of six employees, 57 subject matter experts, and 20 appointed POST Board members. Ten of the 11 training regions also have an advisory board for their region. There are more than 100 training advisory board members.

The POST Board is composed of 20 appointed members, three of whom are statutory members: the Attorney General (chairperson); the FBI Special Agent in Charge of the Denver Division of the Federal Bureau of Investigation; and the Executive Director of the Colorado Department of Public Safety. Seventeen members are appointed to three-year terms by the Governor, and include one local government representative; one member of the general public; six active sheriffs; six active chiefs of police; and three line-level peace officers serving at the rank of sergeant or below.

The POST training grant awards are funded by statute. Senate Bill 03-103 was enacted to establish a funding source for peace officer training throughout the State through the POST Board Cash Fund. Revenue for the fund is primarily derived from a fee on motor vehicle registrations, pursuant to Section 42-3-134 (32), C.R.S. The fee was initially $0.25 on each registration, but was increased to $0.60 per registration in 2009, with the passage of House Bill 09-1036. According to Section 24-31-310(2) C.R.S., the purpose of the cash fund is to provide training programs for peace officers, especially those in rural and smaller jurisdictions that have limited resources due to their size or location. The mission and goals of the Board has always been to set priorities to ensure monies are awarded to assist the smaller and rural agencies to develop and receive training that they might not be able to afford, but need in order to maintain or improve the proficiencies of their peace officers.

The POST Unit is divided into several different functions, including:

Certifications: The Certifications Unit handles a wide variety of certifications for peace officers in Colorado. In 2012, these certifications included the issuing of 1,514 Conditional Peace Officer Certifications. However, on Aug 8, 2012, Conditional Peace Officer status was discontinued and officers certified conditionally as of August 8, 2009, were converted to full basic certification. This Unit also processed seven Felony Certification Revocations and 14 Misdemeanor Revocations. The Unit granted 34 Provisional Certifications and 24 Reserve Certifications.

Academies: The Academies Unit oversees the 28 POST -approved academies in Colorado. These academies conducted 39 basic academy classes, three reserve academy classes, one lateral academy class, two refresher academy classes and 15 skills instructor programs in 2012. In addition, there were 24 academy and program inspections by the POST Compliance Investigator and all academies were found to be in compliance.

The Academies Unit also coordinates four Subject Matter Expert Committees. These committees have a total of 57 Subject Matter Experts (SME) in the areas of curriculum, firearms, arrest control, and law enforcement driving. In 2012, there were ten new subject matter experts from law enforcement across Colorado appointed to the various SME committees.

POST Testing and Training: POST continued to work in 2012 towards developing a new certification exam to be administered online to academy graduates. The exam is being developed using the best practices in the certification testing arena and is being overseen by experts in the field.

The Training Unit disbursed approximately $1.3 million dollars in grant funds to the training regions in 2012. POST implemented an automated grant application and reimbursement system to increase efficiency. More than 5,000 peace officers obtained specialized training to improve their proficiency, safety and performance. POST provided more than $650,000 for the development and delivery of new law enforcement curricula. The Greater Metro Training Region, in partnership with POST, developed a comprehensive web-based calendar of law enforcement training opportunities. During 2012, POST evaluated and approved 155 course curricula to be used for training.

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 sealing-of-records cases and property and bond forfeiture actions), and in the federal courts in habeas corpus actions challenging state criminal convictions.

The state's 22 District Attorneys and the Attorney General employ hundreds of trial level prosecutors to do felony trial work; the Attorney General's Appellate Division has 26 full-time and four half-time attorneys supported by three staff members to respond to all of the defense appeals generated by those cases. Cases range from relatively minor sentencing and postconviction appeals, to complicated white-collar crime, homicide, child abuse, sexual assault, and death penalty litigation. The Division's caseload is both high and demanding. Of the Appellate Division cases decided by the various appellate courts in 2012, Division attorneys won 91%.

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 impact only the defendants and the victims directly involved, any given case may result in new published law that has a significant impact on how law enforcement authorities conduct searches and arrests; on procedures for criminal trials and sentencing hearings throughout the state; on the State's Department of Corrections; or 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.

2012 Caseload

The Appellate Division opened 1,123 new appellate cases in 2012. These cases involved the following convictions:

- 722 assaults or sexual assaults against children
- 402 burglaries and thefts
- 330 homicides and attempted homicides
- 425 kidnappings and assaults
- 168 completed or attempted aggravated robberies
- 191 drug offenses
- 188 sexual assaults on adults
- 1,194 other offenses (primarily felonies)

In addition, these cases included 577 habitual offender sentence enhancement counts.

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

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 912 opening briefs, answer briefs, and answers to orders to show cause.

O*ral Arguments*: Appeared at 121 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 45 petitions for rehearing to try to correct matters that were wrongly decided by the courts.

Petitions for Certiorari: Asked the State Supreme Court to conduct further review in 30 cases that would otherwise have an adverse impact on law enforcement.

Natural Resources Section

The Natural Resources and Environment Section works 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 Resource Trustees to recover damages for injuries to natural resources and to restore, replace or acquire the equivalent of the injured resources.

Federal and Interstate Water

In 2012, attorneys:

Protected the state's interests regarding the Republican River Compact in arbitration and in the U.S. Supreme Court case *Kansas v. Nebraska and Colorado*.

Assisted the State Engineer's Office in developing response areas and response functions for the groundwater model domain in Water Division No. 3 (San Luis Valley) as a prerequisite to promulgating groundwater use rules intended to protect senior surface water rights and Colorado's compact obligation while reducing groundwater withdrawals as little as possible to comply with state law.

Represented the State Engineer and defended his decision to approve Subdistrict No. 1's Annual Replacement Plan with conditions in Water Division No. 3.

Protected the state's interests regarding the Colorado River Compact and the Upper Colorado River Compact, including:

Represented Colorado's and the Upper Colorado River Commission's interests during negotiation and execution of Minute 319 to the 1944 US-Mexico Water Treaty – an interim agreement among the United States Bureau of Reclamation, International Boundary and Water Commission, Seven Colorado River Basin States.

Represented the Seven Colorado River Basin States as intervenors in the Grand Canyon Trust's appeal to the Ninth Circuit of the District Court of Arizona's decision to reject ESA and NEPA challenges to the Bureau of Reclamation's operation of Glen Canyon Dam.

Assisted the Colorado Water Conservation Board's review of and comment on the Department of the Interior's development of a High-Flow Experimental Protocol and a Non-Native Fish Control Plan and a Long-Term Experimental and Management Plan for Glen Canyon Dam.

Assisted the Colorado Water Conservation Board's consultation efforts with the Bureau of Reclamation and the seven Colorado River Basin states in the development and finalization of the Colorado River Basin Study.

Advised the Colorado Water Conservation Board in their development of and participation in ongoing studies concerning application and administration of the Colorado River Compact.

Assisted the Colorado Water Conservation Board's consultation with the Bureau of Reclamation and interested Colorado parties regarding Ruedi Reservoir debt retirement.

Participated in the Aspinall Unit reoperations Environmental Impact Statement review, and commented on the draft designation of critical habitat for the southwestern willow flycatcher pursuant to National Environmental Policy Act and Endangered Species Act processes for the state.

Provided advice to the Department of Natural Resources in negotiating various agreements on the Blue River Decree.

Assisted the State Engineer's Office in coordinating with interested stakeholders to develop a protocol for Animas-La Plata operations consistent with Colorado water law.

Continued to provide legal and policy advice to the Colorado representatives on all of the various interstate Compact and Decree Commissions.

Water Resources and Conservation

In 2012, attorneys:

Represented the State Engineer in hundreds of water

rights proceedings in Colorado's water courts, including appeals to the Colorado Supreme Court.

Represented the State Engineer before the Colorado Supreme Court in defending a water court decision upholding the State Engineer's adoption of rules assisting with administration of more than 40,000 oil and gas wells.

Represented the State Engineer and the Colorado Water Conservation Board in connection with historic agreements resolving long outstanding questions concerning the operation of several major transmountain diversion projects.

Assisted the Colorado Water Conservation Board, the State Land Board, Colorado Department of Transportation, Department of Corrections, and the Division of Parks and Wildlife in acquiring 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, 4, 5, 6 and 7.

Provided representation for more than 230 cases for the Colorado Water Conservation Board.

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 Colorado Ground Water Commission in conducting and ruling on a request for de-designation for a ground water district.

State Trust Lands

In 2012, attorneys:

Advised and assisted the State Board of Land Commissioners on general management of the trust assets it holds, primarily for the benefit of K-12 education, which generated more than $145 million of trust revenue this past fiscal year.

Advised and negotiated on behalf of the State Board of Land Commissioners in a multiple private party, multiple governmental entity transaction to convey trust property to the United States for the expansion of the Rocky Flats Wildlife Refuge in return for approximately $10 million to the trust.

Advised and negotiated on behalf of the State Board of Land Commissioners in acquisition of a $14.7 million office building in the Denver Tech Center.

Advised and assisted the State Board of Land Commissioners with additional specific transactions involving approximately 21,000 acres and more than $5 million. The State Land Board holds nearly three million acres of land in fee title and approximately four million acres of mineral interest, which generates significant demand for transactional legal services and the resolution of disputes on the transactions.

Advised and assisted the State Board of Land Commissioners to develop a process for leasing more than 20,000 acres for oil and gas development at the former Lowry Bombing Range, including assisting in developing best management practices and plans to avoid, minimize and mitigate any adverse impacts of the development on the Range's ecosystem. This will generate $137 million in bonus payments over a five-year period, plus royalties for oil and gas produced.

Advised and assisted the State Board of Land Commissioners to create a new land management program for the Hesperus Trust, which supports Ft. Lewis College in cooperation with the board of trustees for the college.

Advised and negotiated on behalf of the State Board of Land Commissioners to resolve access and lease issues related to the National Hog Farms property and allow for oil and gas leasing.

Advised and assisted the State Board of Land Commissioners develop the Energy By Design project in cooperation The Nature Conservancy, Ft. Collins and Larimer County for oil and gas development with ecosystem appropriate best management practices.

Advised and negotiated on behalf of the State Board of Land Commissioners regarding its development agreement regarding its Roxborough property.

Developed new procedures for the State Board of Land Commissioners to respond to Colorado Open Records Requests.

Represented the State Board of Land Commissioners in federal district court and the 10th Circuit Court of Appeals successfully defending the Rock Flats Section 16 transaction.

Represented the State Board of Land Commissioners and successfully negotiated the settlement of *State Board of Land Commissioners v. Marketplace Associates, et al.*in Denver District Court.

Represented the State Board of Land Commissioners in the ongoing matter *Pure Cycle v. State Board of Land Commissioners* in Denver District Court.

Continued to represent the State Board of Land Commissioners in court actions related to water rights, land use, lease disputes and other matters related to the ownership and management of the trust lands.

Continued legal assistance provided to the State Board of Land Commissioners for operational matters including the implementation of a new strategic plan and a comprehensive review of its governing policies.

State Wildlife and Park Lands

In 2012, attorneys:

Advised and assisted in the merger of the Division of Parks and Outdoor Recreation and the Division of Wildlife into the new Division of Parks and Wildlife and consolidating the Board of Parks and Outdoor Recreation and the Wildlife Commission into the new Parks and Wildlife Commission. The new agency contains more than 75% of all personnel within the Department of Natural Resources.

Advised and assisted in the acquisition by the Division of Parks and Wildlife of more than $20 million 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 Parks and Wildlife in responding to the challenges posed to park and wildlife resources from oil and gas development on state and federal lands within Colorado that also provide critical wildlife habitat for game and threatened and endangered species and significant parks and outdoor recreation opportunities. Oil and gas development, particularly in split-estate situations where Parks and Wildlife owns the surface estate, but not the mineral estate, and residential development likely present the greatest threat to wildlife habitat throughout Colorado.

Advised and assisted the Division of Parks and Wildlife in the development and implementation of fish and wildlife mitigations plans required of applicants for water storage projects in Colorado, including the Windy Gap and Moffat Tunnel firming projects in the Colorado RiverBasin, and the Chatfield Reservoir reallocation of storage in the South Platte basin, and in the development and implementation of enhancement plans to address prior impacts from water projects to the fisheries in the Colorado River.

Advised and assisted the Division of Parks and Wildlife with proposals to re-purpose management of Bonny Lake State Park, including local control of a portion of the park property and management of the remaining property as part of the South Republican State Wildlife Area. Such a management change became necessary to address the draining of Bonny Reservoir due to compliance issues with the Republican River Compact.

Advised and assisted the Division of Parks and Wildlife with all matters involving water rights held by the division. Previously, all such matters were handled by attorneys within the water units also charged with assisting the Division of Water Resources (DWR) and the Colorado Water Conservation Board. At the request of the Division of Parks and Wildlife, water counsel was added to the Parks and Wildlife Unit and dedicated to representation of the division to otherwise avoid conflict issues that might arise between the Division of Parks and Wildlife and the other clients of the water units, including such actions as DWR abandonment proceedings or challenges to water rights applications filed by the Division of Parks and Wildlife.

Advised and assisted the Division of Parks and Wildlife with regard to issues related to the proposed reallocation of additional water storage space in Chatfield Reservoir, including the preparation of its response to the draft environmental impact statement and in developing mitigation for the impacts associated with the federal reallocation project to Chatfield State Park.

Successfully defended against a significant Open Meetings challenge involving the former Board of Parks and Outdoor Recreation n the Colorado Court of Appeals. Counsel for the Parks Board not only secured a very favorable Open Meetings precedent – including the right of a state agency to "cure" any prior violations of state Open Meetings law by holding a subsequent hearing in compliance with state Open Meetings law, but also successfully argued against any award of costs or attorney fees despite the otherwise mandatory fee provision in state Open Meetings law.

Defended against a state district court challenge to the former Parks Board's decision to authorize, as a matter of state law, the temporary art display otherwise known as "Over the River" by the artists Christo and Jeanne-Claude. The Parks Board authorized the construction of the Over the River project and its display within the Arkansas Headwaters Recreation Area (AHRA) for a three week period initially scheduled for August of 2014. The AHRA is largely comprised of federal lands owned by the U.S. Bureau of Land Management, but managed for recreational purposes by the Division of Parks and Wildlife. Both the federal and state approvals have been challenged in court.

Assisted and advised the Parks and Wildlife Commission and the Division of Parks and Wildlife in the drafting of a memorandum of understanding with the Ute Mountain Ute Indian Tribe concerning the exercise of its federal reserved hunting and fishing rights within the southwestern 1/5 of the State of Colorado. Pursuant to an 1874 agreement with the United States (the Brunot Agreement), the Tribe has the sovereign right to hunt and fish in the Brunot area, but as part of the MOU the Tribe has agreed that, except for certain ceremonial hunting activities, the hunting and fishing activities of its members will be consistent with that of the general public hunting and fishing in the area pursuant to state law.

Oil & Gas and Minerals

In 2012, attorneys:

Defended the Colorado Oil and Gas Conservation Commission (COGCC) in various litigation pending before the Denver District Court, the Court of Appeals and the Supreme Court related to applications for permits to drill and designated outside activity areas.

Participated in stakeholder meetings and assisted in the drafting of new regulations regarding two significant rulemakings; one pertaining to statewide groundwater sampling and monitoring, and another relating to setbacks from occupied structures. Advised the COGCC and worked closely with both industry and environmental representatives during a lengthy rulemaking process.

Took an active role on behalf of the COGCC, through letters and appearances at local public meetings, to stay in consistent communications with various local governmental entities discussing preemption issues related to the regulation of the oil and gas industry in Colorado.

Initiated litigation against a home rule city arising out of its adoption of comprehensive oil and gas regulations. The reason for filing suit is that the COGCC believes that many aspects of the adopted local regulations are in operational conflict with the state's regulatory regime and are therefore preempted by the Oil and Gas Conservation Act.

Participated in COGCC enforcement efforts and helped prepare the cases for pre-hearing conferences, negotiations, and formal hearings. Provided legal advice and assistance to COGCC staff in negotiating Administrative Orders by Consent (AOCs) for unpermitted or illegal activities against numerous operators, successfully collecting fine amounts and other monies due the COGCC without contested hearings.

Assisted the COGCC in implementing regulations promulgated in 2011 to regulate oil and gas activities, specifically disclosure of chemicals used in oil and gas activities, including hydraulic fracturing fluids.

Successfully settled litigation related to the Schwartzwalder site and negotiated a compliance order with Cotter for $90,000 in civil penalties and the issuance of a cease and desist order and corrective actions to address ongoing impacts to groundwater from the mine pool.

Successfully defended the Mined Land Reclamation Board in judicial review litigation concerning the new rules and amendments the Board adopted to implement legislation regarding the regulation of traditional and in situ leach uranium mining operations and prospecting activities.

Provided advice to the Department of Natural Resources regarding the transfer of the Colorado Geological Survey from DNR to the Colorado School of Mines. Assisted in the drafting of the MOU transferring the duties and functions of CGS to CSM.

Assisted the Division of Reclamation, Mining and Safety in implementing the regulations the Mined Land Reclamation Board promulgated to regulate uranium mining operations, designated mining operations, and prospecting operations.

Advised and assisted the Division of Reclamation, Mining, and Safety with updates and revisions to many of its financial warranty and permit application/modification forms.

Advised and assisted the Division of Reclamation, Mining and Safety's Coal Program in developing an electronic permitting option for coal mining operations. Assisted the Division of Reclamation, Mining and Safety in rulemaking proceedings to implement changes to the regulations concerning coal mining operations.

Defended the Division in various litigation related to hard rock and coal mining operations currently pending before the district courts in Denver, La Plata, and Montrose counties. Successfully argued for dismissal of the Division from a civil lawsuit alleging substantial monetary damages related to a coal mining operation in Montrose County.
Successfully prosecuted numerous violators in administrative enforcement actions before the Mined Land Reclamation Board, including the finding of numerous violations and civil penalties at Cotter's Schwartzwalder uranium mine.

Air, Land and Water Quality

In 2012, attorneys:

Obtained dismissal of a controversial judicial review

action challenging regulations implementing the Clean Air-Clean Jobs Act.

Secured penalty of more than $1 million from the Suncor Refinery for violations of the Clean Air Act.

Provided counsel to the Air Quality Control Division regarding major revisions to mobile source inspection and maintenance program.

Provided counsel to the Air Quality Control Division regarding Clean Air Act restrictions on Colorado's air quality program development.

Rewrote the procedural rules for the Air Quality Control Commission.

Provided counsel to the Air Quality Control Division on the implementation of new one hour Sulfur Dioxide and Nitrogen Oxides standards.

Provided counsel to the Air Quality Control Division on strategies to improve effectiveness, efficiency and fairness for its enforcement program.

Provided counsel to the Air Quality Control Division on rulemaking initiatives to improve effectiveness, efficiency and fairness for mobile source program.

Represented the Air Quality Control Division in enforcement actions to stop unpermitted emissions from major and area sources.

Provided counsel to the Air Quality Control Division on self-audit penalty immunity petitions.

Represented the Air Quality Control Division with major revisions to Colorado's testing of vehicle emissions.

Assisted the Water Quality Control Division in addressing discharges of uranium and radium from the closed Schwartzwalder uranium mine.

Settled violations of Colorado's drinking water regulations at several drinking water facilities throughout the state.

Defended an administrative appeal of the Water Quality Control Division's certification of Colorado Springs Utilities' Southern Delivery System water supply project under the Clean Water Act.

Continued involvement in litigation in support of EPA's rule exempting water transfers from Clean Water Act permitting requirements in order to protect Colorado's interests in interbasin water transfers.

Defended the Colorado Department of Public Health and Environment in issuing the first conventional uranium mill license in the country in 25 years.

Successfully defended several water quality storm water enforcement actions in administrative and civil litigation.

Successfully convened and conducted an adjudicatory hearing on the Piñon Ridge Uranium Mill license application.

Resolved appeals of drinking water waiver withdrawals, bringing these facilities into compliance with the state's drinking water disinfection requirements.

Used judgment liens against a public water supply system owner/operator to gain compliance with the state's primary drinking water regulations, following lengthy administrative and civil enforcement actions for multiple violations.

Successfully defended an administrative appeal of the Water Quality Control Division's certification of Colorado Springs Utilities' Southern Delivery System (SDS) water supply project under the Clean Water Act. The project is intended to serve Colorado Springs' growing population through additional water storage in Pueblo Reservoir that will be conveyed via pipeline to Colorado Springs. The division's certification includes numerous conditions to ensure protection of water quality in the Fountain Creek and Arkansas River Basins.

Filed briefs in the court of appeals defending the Water Quality Control Division's certification of the SDS Project.

Settled numerous violations of the radiation regulations by a medical imaging company.

Settled violations of the radiation regulations by an industrial radiography company.

Continued to represent the department in the decontamination of two large uranium mills.

Successfully represented the Water Quality Control Commission and Water Quality Control Division in the promulgation and adoption of nutrient control regulations.

Continue to represent the WQCD on several drinking water violations by insolvent companies.

Represented the Water Quality Control Commission and Water Quality Control Division in the promulgation and adoption of numerous regulations, including arsenic, basic standards, drinking water, and organic chemicals.

Successfully mediated a dispute between three local governments over water quality planning.

Hazardous and Solid Waste

In 2012, attorneys:

Fully resolved five lawsuits involving the Clean Harbors Deer Trail hazardous waste disposal facility on terms favorable to the State. The settlement provides for continued safe disposal of low level radioactive wastes and reimbursement from Adams County of $850,000 in misspent impact fees.

Counseled the Hazardous Materials & Waste Management Division (HMWMD) regarding regulatory flexibility options at low-threat groundwater contamination sites.

Won an injunction in Colorado District Court ordering the owner of a property with historic dry cleaning operations to take remedial actions to prevent dry cleaning solvents from continuing to migrate toward a preschool and a residential neighborhood, and to clean up the site.

Assisted Petroleum Storage Tank Fund Committee in its breach of contract, unjust enrichment and fraud claims arising from major oil companies' improper retainage of Underground Storage Tank Funds. Two major oil company settlements recovered approximately $20 million, and a third matter is set for trial in April, 2013.

Counseled the Solid & Hazardous Waste Commission and the Solid Waste Program on promulgation and implementing of new regulations, including those for medical waste, recycling, waste tires, asbestos, and waste grease.

Issued and prosecuted solid waste enforcement orders to protect construction workers and the public from the illegal disposal of asbestos at the West Elbert County Landfill, during construction of RTD's light rail corridors and during renovation and construction at the Denver Federal Center.

Assisted HMWMD enforcement of corrective action requirements at the Suncor Refinery hydrocarbon spill site, including issuance of seven interim action orders to reverse adverse impacts on Sand Creek, the South Platte, and workers at the Denver Metro Waste Water and Republic Paperboard Industries properties.

Continued to improve long-term protectiveness of environmental remediation projects in the state by counseling and training the Colorado Department of Public Health and Environment to effectively implement Colorado's unique institutional controls statute.

Advised CDPHE in bringing solid waste enforcement actions for mishandling of asbestos contaminated soils during a municipal park renovation project adjacent to a residential area.

Counseled the Department of Public Health and Environment on proposed residential redevelopment of a military municipal and industrial landfill at Lowry Air Force Base.

Natural Resource Damages, Land Cleanup and Restoration

In 2012, attorneys:

Continued work to disburse settlement funds received for injuries to groundwater at the Lowry Landfill Superfund Site, and began preparations for projects that will provide groundwater protection and improvements for Platte River basin groundwater.

Initiated the State's first natural resource damages case under the Oil Pollution Act and Clean Water Act, instead of CERCLA. Conducted a scientific evaluation of the impact of oil on Sand Creek and the South Platte River, and engaged in fruitful settlement negotiations.

Participated with federal agencies in pursuing insurers of the Standard Metals Company for natural resource damages caused by mining operations near Crested Butte and Silverton.

Worked with federal trustees to continue restoration projects for the Lake County California Gulch Superfund site, including work on stream restoration, fencing to protect stream areas, noxious weed control, land acquisitions, irrigated pasture revegetation and wetland enhancement.

Counseled the HMWMD during its implementation of the Clear Creek/Central City Superfund Site Operable Unit 4, which required the State's first application for a water right to set an in-stream flow protective of the fish in North Fork of Clear Creek, opposition to local governments' water rights applications thwarting effectiveness of CERCLA remedial action, and protracted five-party negotiations between local, municipal, County, State and Federal interests.

With other Trustee representatives, administered $10 million in Rocky Mountain Arsenal Natural Resource Damages monies by working with community groups and non-profits to develop integrated natural resource restoration projects in the greater Denver Metro area worth more than $30 million.

Counseled Natural Resource Damages Trustees and HMWMD during contracting and construction of Terrace Irrigation Spillway replacement project that will allow increased storage of water and restoration of Alamosa River and trust lands and resources throughout the Alamosa River Valley.

Won a case against two environmental groups and two municipalities allowing a complex set of land transactions and mineral rights deals to move forward, resulting in the protection of hundreds of acres from inappropriate development while providing for completion of the beltway around the Denver Metro Area.

Assisted EPA Region 8 in selecting a final Superfund remedy for cleaning up an abandoned hard rock mine outside of Crested Butte.

Worked with State Trustee representatives to administer the $1.5 million natural resource damage settlement at the Shattuck superfund site in Denver. The Trustees approved a plan to, together with matching funds, complete several instream restoration projects on the South Platte River.

State Services Section

Education

During 2012, attorneys:

Defended the constitutionality of the State's School Finance System in the *Lobato* litigation. The District Court's decision that the system is unconstitutional is before the Colorado Supreme Court. The matter was fully briefed and argued in March 2013.

Defended the State Board of Education and the Colorado Department of Education in a constitutional and statutory challenge to the Douglas County Option Certificate Pilot Program. The district court decision enjoining the program is on appeal to the Colorado Court of Appeals. The matter is fully briefed and oral argument took place on November 19, 2012.

Defended State Board of Education rules requiring school districts to notify parents whenever a teacher is arrested for or convicted of certain felonies. These Rules were not continued by the Colorado General Assembly.

Continued representing the State Board of Education in its general supervision over public schools and the Department of Education in execution of its statutory duties, including open records and open meetings issues, rulemaking, personnel issues, charter school appeals, litigation, transactional matters and general legal advice.

Continued representing the Capital Construction Assistance Board in general governance matters regarding administration of the Building Excellent Schools Today program which has completed five rounds of BEST Lease Purchase Financing totaling $746,960,000 for K-12 school construction and maintenance.

Continued supporting the State Board of Education in protecting students by prosecuting disciplinary charges against educator license holders and applicants who violate statutory requirements. Disciplinary actions included charges of sexual misconduct and child abuse.

Continued representing the Charter School Institute in general governance matters regarding approving and overseeing State charter schools, including public records and open meetings issues, policy development, rulemaking, applications, renewals, closures, appeals, transactions and general legal advice.

Continued representing the State's public institutions of higher education, including the community colleges and the Auraria Higher Education Center, in general governance matters, including open records and open meetings issues, Board representation, policy development, faculty dismissal hearings, personnel issues, state and federal compliance issues, student discipline issues, environmental issues, litigation, transactions and general legal advice.

Continued representing the Colorado Higher Education Insurance Benefits Alliance Trust in general governance matters, including open records and open meetings issues, policy development, trust amendments, employee benefit issues, transactions and general legal advice.

Continued representing the Private Occupational School Board in general governance matters including open records and open meetings issues, rulemaking, refund disputes, illegal schools, litigation, transactions and general legal advice.

Continued supporting the Department of Higher Education, Division of Private Occupational Schools in protecting consumers by prosecuting disciplinary actions against applicants and holders of certificates to operate private occupational schools who violate statutory requirements. Disciplinary actions included charges of deceptive trade practices.

Continued representing the Colorado Historical Society in support of their mission to collect, preserve and interpret the history of Colorado and the West and carry out historic preservation and educational activities and programs authorized by statute or rule. Continued to provide general legal advice to the Society on a wide range of matters including transactional issues associated with operation of the new Colorado state museum and regional museums. Continued to provide general legal advice to offices administered by the Society, including the State Historic Preservation Officer, the Office the State Archaeologist, and the State Historic Fund, which awards hundreds of thousands of dollars in historic preservation grants every year.

Health Care

During 2012, attorneys:

Assisted the Department of Health Care Policy and Financing (HCPF) in recovering Medicaid overpayments from providers through settlement negotiations and litigation, including one settlement from a provider suspected of forging documents in the amount of $500,000.

Assisted HCPF in recovering funds from liable third parties in personal injury actions for a total of $316,117.

Advised and represented HCPF in withholding Medicaid payments to providers suspected of fraud.

Obtained a favorable published Court of Appeals decision affirming the Department's 'medical necessity' requirement for eligibility in the Children's Waiver program.

Negotiated a settlement on behalf of HCPF for the full amount of damages against an attorney who allegedly failed to notify HCPF of his client's settlement from a liable third party.

Negotiated settlement of complex nursing facility rate appeals after regulation implementing the phase-in rate changes was declared void by an Administrative Law Judge.

Negotiated settlements of 11 nursing facility rate appeals involving 25 facilities challenging the Fair Rental Value in the appraisals and then assisted HCPF in developing a methodology to implement the settlements. Also assisted HCPF with developing a related statutory amendment to facilitate resolution of future appeals.

Defended HCPF in a lawsuit brought by a major health insurance carrier alleging breach of contract and millions of dollars in damages. Negotiated a favorable settlement in order to resolve the case.

Defended HCPF in a federal law suit brought under the Americans with Disabilities Act challenging Medicaid program rules.

Continued to defend against an action regarding the operation of the Colorado Benefits Management System. Assisted HCPF with improvements to the system that have resulted in successfully meeting processing of benefit claims mandated under the settlement agreement.

Assisted HCPF with responding to and defending against deferral and disallowance notices from CMS.

Provided numerous legal opinions and general legal advice to the Department, including assistance with the Affordable Care Act, the new MMIS contract, revisions to CDASS training rules and policies, and the new RAC contract.

Represented the Colorado Department of Public Health and Environment (CDPHE) in numerous medical marijuana-related matters, including defending against many subpoenas to produce confidential information, providing general legal advice related to the administration of the Registry, and defending litigation challenging the Department's statute and regulations.

Defended CDPHE in administrative hearings challenging the imposition of fines and sanctions assessed on assisted living facilities where patients' well-being was at risk.

Assisted CDPHE in revoking or suspending Emergency Medical Technician licenses when public safety was at risk.

Defended against subpoenas seeking confidential information obtained from health facility surveys and investigations and from CDPHE's HIV/disease control records.

Successfully obtained a public health order against a high risk and non-compliant individual to prevent the transmission of HIV and other sexually transmitted diseases The case is currently in the Court of Appeals.

Assisted CDPHE with a public health investigation regarding the possible spread of disease due to substandard dentistry practices.

Provided numerous legal opinions and general legal advice to CDPHE on a wide variety of public health matters.

Human Services

During 2012, attorneys:

Continued to defend the state in ongoing litigation involving CBMS and patient deaths at CMHIP.

Represented the Department of Human Services in 37 child care licensing cases, including nine summary suspensions of licenses where providers presented a threat to the health and safety of children.

Represented the Department of Human Services in 87 child abuse and neglect administrative appeals.

Defended actions for judicial review and the final

agency decisions of the Office of Appeals in 16 cases in District Court.

Represented the Department of Human Services Division of Youth Corrections in 32 District Court cases regarding the appropriate sentencing, placement or release of juveniles. These cases now also include transfer requests for juveniles who have been direct filed as adults and sexual offender de-registration petitions.

Represented or advised the Department of Human Services in six transactional issues ranging from mineral rights to negotiating or reviewing contract matters.

Represented the Department of Human Services Division of Vocational Rehabilitation in seven cases regarding the provision of vocational rehabilitation services or business enterprise program vendors and subpoenas for records.

Defended and represented the State Hospital in Pueblo in 11 cases involving records, transfer of a violent patient, and other patient matters.

Provided legal advice or assistance to various Divisions within the Department of Law on at least 31 different issues, including subpoenas.

Represented the Department of Law in defending a final agency action demanding return payment from a grant where fraud is suspected and defended the Department in action taken discontinuing benefits.

Labor/Personnel/BAA Unit
Department of Labor and Employment, Department of Personnel and Administration and Board of Assessment Appeals

The Labor/Personnel/BAA Unit opened 83 cases to force employer compliance with mandatory workers' compensation insurance statutes. Unit attorneys closed 75 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 Unit collected $16,065 in settlements and fines, and sent $2,017,735 in fines to collection.

In 2012, attorneys also:

Opened 26 cases, filed 19 briefs, and participated in six oral arguments in appeals for the Industrial Claims Appeals Office.

Opened 28 cases and closed 23 cases in petroleum storage tank clean up reimbursement protests for the Division of Oil and Public Safety.

Opened 17 enforcement and miscellaneous cases and closed eight enforcement cases for the Division of Oil and Public Safety.

Handled 39 subpoenas on behalf of the Division of Workers' Compensation, the Division of Unemployment Insurance, and the Division of Oil and Public Safety.

Completed 18 rule opinions for the Department of Labor and Employment and the Department of Personnel and Administration.

Handled 24 miscellaneous and subpoena enforcement cases for the Division of Unemployment Insurance.

Handled five miscellaneous cases for the Department of Personnel and Administration.

Opened 20 cases and filed two briefs in appeals for the Board of Assessment Appeals.

Handled three conflicts cases before the State Personnel Board.

Public Officials

During 2012, attorneys:

Represented the Secretary of State in a federal court action challenging the constitutionality of state initiative and referendum requirements.

Represented the Secretary of State in a state court action alleging the improper dismissal of a Help America Vote Act administrative complaint.

Represented the Secretary of State in a state court action challenging the ability of county clerks to mail ballots to "inactive – failed to vote" voters in a coordinated general election.

Represented the Secretary of State in a state court action alleging that the non-receipt of a mail ballot in a coordinated general election violated the First and Fourteenth Amendment rights of "inactive – failed to vote" voters.

Represented the Secretary of State in a federal court action challenging the constitutionality of state campaign finance disclosure requirements.

Represented the Secretary of State in state court actions challenging the validity of rules governing state campaign finance disclosure requirements.

Represented the Secretary of State and the Governor in a federal court action challenging the constitutionality of state campaign contribution limits for unaffiliated, write-in candidates.

Represented the Secretary of State in a federal court action challenging the constitutionality of the "natural born" citizen requirement for Presidential candidates.

Represented the Secretary of State in a state court action challenging the validity of the 2012 primary election results in two counties.

Represented the Secretary of State in a state court action seeking additional time to collect the number of signatures required to qualify an initiative to the 2014 general election ballot.

Represented the State Treasurer a state court action seeking records from the Colorado Public Employees Retirement Association.

Represented the State in a federal court action challenging certain gun laws.

Successfully represented the Secretary of State in a lawsuit claiming a federal constitutional right to absolute ballot secrecy.

Successfully represented the Governor in a challenge to whether state law requires physician-supervision of certified registered nurse anesthetists.

Advised the Division of Housing on public housing legislation.

Provided advice to the Colorado Lottery and Office of Economic Development.

Provided advice and legal representation to the Judicial Department.

Handled escheat and unclaimed property matters for the State Treasurer.

Public Utilities Commission

During 2012, attorneys:

Energy – Public Service Electric Resource Plan: The Commission completed the first phase of Public Service's proposed plan for an additional 400MW of generation, including implementation of recent legislation requiring consideration of renewable resources and new, clean technologies.

Energy – Black Hills Electric Resource Plan: The Commission denied Black Hills's plan for incompleteness and failure to obtain approval of new generation facilities that are to replace coal-fired plants. The case is on appeal and Black Hills is due to re-file its plan in May 2013.

Telecommunications — Competition and High Cost Fund Rulemaking: The Commission completed the first of at least three phases to reform its rules governing competition and the state high cost fund. The new rules better defined the test for effective competition for basic services and authorized the Commission to reduce subsidies in areas where effective competition exists.

Telecommunications — Commission Authority to Set Basic Service Rates: The PUC group obtained an opinion from the state Supreme Court upholding the Commission's method of considering factors for analyzing rates for basic local exchange services. The Supreme Court's ruling overturned a District Court ruling stating that the Commission is required to base rates upon the amount of a carrier's cost. The Supreme Court reversed, stating that the applicable statutes required the Commission only to "consider" a carrier's costs; there is no requirement to quantitatively factor costs into rates.

Telecommunications — Switched Access Discrimination Case: The Commission granted a formal complaint brought by Qwest Communications against multiple competitive local exchange carriers alleging undue discrimination in the provision of switched access services. The complaint involved issues such as statutes of limitation and the doctrine of equitable tolling, interpretation of applicable statutes prohibiting discrimination in the provision of switched access services, and the ability of the Commission to order reparations.

Telecommunications — Reform Act: Advised the Commission on proposed legislation to revise the telecommunications statutes addressing competition and the high cost fund.

Transportation — Taxi Matters: Handled two significant matters relating to taxi services. In one, filed briefs and argued before the Supreme Court on whether the Commission correctly implemented the test for regulated competition when it denied a taxi company's application for a certificate to operate. A decision is expected in the first or second quarter of 2013. In another, defended a Commission decision denying an application for authority to operate on the grounds that the applicant has not shown operational or financial fitness or that a grant of a certificate would be in the public interest.

Transportation – Municipality/Railroad Dispute: This was a complex application to build a railroad-public highway crossing and allocate costs between a municipality and a railroad. The proceeding involved the extent of the Commission's jurisdiction to allocate costs and federal preemption.

Independent Ethics Committee Matters: Obtained dismissal of a complaint against Commissioner Baker related to reimbursement for travel. We also advised the Commission and drafted comments to a new position statement and wrote numerous requests for advisory opinions.

State Auditor Matters: Advised the Commission during an audit performed per legislative request and pursuant to § 2-3-103, C.R.S., by the Office of the State Auditor. The objective of the audit was to review the processes and controls over the Commission's regulatory and decision-making activities and travel. The State Auditor provided recommendations to improve current practices.

Practice and Procedure Rulemaking: The Commission issued a comprehensive set of new rules governing practice and procedure, including updates for electronic filings, additional public comment, burden-shifting proceedings, confidentiality, and information privacy.

Open Meetings Law and Deliberative Privilege: Successfully defended the Commission in a State Court appeal, which found that emails between the commissioners concerning draft legislation did not violate the Colorado Open Meetings Law and are protected from disclosure by the deliberative process privilege.

Civil Litigation and Employment Law Section

The Colorado Attorney General's Office, through the Civil Litigation and Employment Law Section, defends all state agencies, institutions of higher education (except the University of Colorado) and employees sued in state and federal court for personal injuries, property damage, employment discrimination and constitutional violations. The Section also represents state agencies and institutions of higher education in personnel matters in front of the State Personnel Board and appellate courts, 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, the Colorado Civil Rights Division, the Special Funds Unit of the Division of Workers' Compensation, and the employees of those agencies. The Section attorneys provide advice and training to all state agencies and institutions of higher education on a myriad of employment and general liability issues.

The 35 attorneys and 17 support staff in the Section handled more than 837 new cases and reviewed more than 400 contracts in 2012.

Corrections Unit

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 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, compliance issues and administrative regulations.

In 2012, the Unit:

Opened 300 new cases.

Obtained favorable rulings in 239 matters brought by inmates or their attorneys and unfavorable rulings in only 19 cases.

Obtained favorable rulings from Appellate Courts in 29 of 34 rulings.

Obtained favorable federal jury and bench verdicts in seven out of eight cases that went to trial. (The one loss was more of a mixed result as the Unit prevailed on four out of the five claims asserted in the case).

Obtained favorable rulings in two out of three hearings held in state court.

Settled three cases for $19,583.34. (One case settled for $19,169.99; another for injunctive policy change and payment of costs in the amount of $413.35; and a third for nonmonetary transfer of an offender to a different facility). While inmates generally seek unspecified damages in their complaints, specified damage requests were in excess of $25,000,000.

Employment/Personnel and Civil Rights Unit

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

The Unit also provides legal advice to the Colorado Civil Rights Division within the Department of Regulatory Agencies (DORA) 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 and Major Medical Insurance Funds which are part of the Special Funds Unit of the Division of Workers' Compensation within the Department of Labor and Employment.

In 2012, the Unit:

Provided daily front-end employment advice and consultation to state agencies and institutions of higher education 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 the Colorado Civil Rights Division and represented the Division at Colorado Civil Rights Commission meetings.

Defended cases before the State Personnel Board and the Colorado Court of Appeals, including 260 new cases. Won 70% of all mandatory hearing cases and obtained denials of hearings in 71% of all discretionary hearing cases that were briefed.

Prosecuted 18 cases that were noticed for hearing by the Colorado Civil Rights Commission at the Office of Administrative Courts or in state District Court.

Negotiated more than $130,000.00 in settlement payments to private citizens in employment and fair housing cases. The settlements included provisions requiring policy changes, mandatory discrimination training for private employers and housing providers, and discrimination reporting.

Won all five cases that it argued before the Court of Appeals, including the reversal of a judgment that could have amounted to payment of back pay and interest of almost $250,000 to a former state employee.

Employment Tort Litigation Unit

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 to the state agencies and training regarding employment law issues.

In 2012, the Unit:

Defended 42 cases filed in state and federal courts. The cases involved 116 claims for relief against state agencies, and 113 claims for relief against state employees.

Aggressively sought and obtained early dismissal or summary judgment of 26 claims. Seven claims were dismissed on motions to dismiss before any time or money had been spent on discovery. Another 19 claims were dismissed on summary judgment.

Won both appellate cases that were decided during 2012.

Settled six cases for a total of $308,750, saving the state more than $1,200,000.

Created and presented training to numerous state agencies and to higher education institutions on the FLSA, supervisor training, and conducting investigations.

Provided day-to-day advice to state agencies and higher education institutions, including handling performance issues for non-classified employees, responding to EEOC Charges, mediating with the EEOC, developing or implementing litigation hold policies, responding to Colorado Open Records Act requests, and reviewing proposed agency policies.

Tort Litigation Unit

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 2012, the Unit:

Opened 211 new cases including 43 conflict counsel cases and 4 cases which are being monitored for attorney fees claims associated with 42 U.S.C. §1983 cases seeking injunctive relief. This includes the Lower North Fork litigation, in which the Unit interpleaded claims of 120 individuals and entities with damages from the Lower North Fork fire in a lawsuit against Department of Public Safety brought by six property insurers.

Convinced 11 plaintiffs to dismiss their complaints prior to motions to dismiss or before rulings on motions.

Filed 57 motions to dismiss, of which 44 were granted or granted in part and two were denied.

Filed eight motions for summary judgment, of which seven were granted and one remains pending.
Settled 15 damages cases for a total of $2,802,000. Plaintiffs in these cases had sought damages totaling $8,766,435.

Settled attorney fees claims in three cases for $710,623 on demands totaling $1,039,522.

Appeared in 12 appeals, prevailed in seven, and lost two with three pending.

Petitions for certiorari in the U.S. Supreme Court were filed against the State in three cases and the Court denied certiorari in all of them.

Transportation Unit

The Transportation Unit advises the Colorado Department of Transportation (CDOT) on a multitude of legal issues. The Unit prosecutes all condemnation actions, defends inverse condemnation actions and handles administrative actions. The Unit also handles administrative appeals involving regulation of access control, billboard location, and relocation benefits. Unit attorneys also deal with CDOT procurement matters and protests. The Unit represents two TABOR-exempt enterprises that are divisions of CDOT. The Unit also advises CDOT on construction matters and represents CDOT in construction disputes, claims and litigation.

The Unit provides advice regarding environmental and real estate issues and defends and negotiates settlements in these areas. Members of the Unit assist with the drafting, review, and revision of high risk CDOT contracts and all innovative road and bridge construction contracts. The Unit assists in rulemaking and approval of regulations. Unit attorneys serve as issuer counsel in public finance transactions. The attorneys also review proposed legislation affecting CDOT.

In 2012, the Unit:

Represented CDOT in 18 new condemnation cases and continued to represent the agency in numerous ongoing condemnation, access, relocation, billboard, inverse condemnation, and quiet title cases.

Settled or resolved by trial 16 condemnation cases, saving the state approximately $1.7 million.

Reviewed approximately 400 contracts for CDOT, with an average turnaround time of two and one-half days.

Continued to provide legal guidance related to CDOT's two TABOR-exempt enterprises created by the FASTER legislation, Senate Bill 09-108. In 2012, the Unit defended, and continues to defend, the Colorado Bridge Enterprise against litigation challenging the Bridge Enterprise's enterprise status. In 2012, the Unit continued to represent the Colorado High Performance Transportation Enterprise and a member of the Unit spent a significant amount of time in 2012 as part of the legal team representing the HPTE in negotiating the HPTE's first toll road concession agreement on US 36 between Denver and Boulder.

In 2012, several members of the Unit worked with CDOT to analyze claims made by Union Pacific Railroad regarding expired leases of Union Pacific land in which state highways sit. The Unit worked diligently on this issue in 2012 and hopes to reach positive resolutions for most or all of the parcels in 2013.

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 (DORA) and its divisions of Professions and Occupations, Banking, Civil Rights, Financial Services, Insurance, Real Estate and Securities. The Section also represents the Department of Agriculture, the State Personnel Board and the Independent Ethics Commission.

Real Estate Division

The Unit representing the Division of Real Estate works to protect Colorado consumers from incompetent or deceptive brokers, appraisers and mortgage 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 Board.

In 2012, among other matters, the Unit received the following favorable outcomes:

Successfully negotiated the revocation of a real estate broker's license and a fine of $15,000 after uncovering evidence that as part of the broker's rental property management services, the broker deceptively marked up prices for home repair services, disregarded mandatory accounting practices and commingled funds.

Reached a favorable settlement against an unlicensed individual who offered mortgage loan services and held himself out as a mortgage loan originator. The unlicensed individual agreed to cease and desist his unlicensed practice, pay a $25,300 fine, pay more than $5,000 in restitution and accept a public censure.

Negotiated a stipulation with a licensee who purchased a home at a foreclosure auction after the broker unsuccessfully represented the home owner. The terms of the stipulation included a six month suspension, two years of license supervision, 36 hours of coursework, public censure and a $5,000 fine.

Aided the Real Estate Commission in reaching a settlement with a real estate broker who unlawfully removed his client's personal property from his home. The settlement agreement included a public censure, a 30-day suspension, a $2,000 fine, 33 hours of education and a two-year license probation.

Obtained a favorable settlement with a real estate broker who allowed a buyer she represented to take an undisclosed rebate of more than $52,000 and who also took an undisclosed rebate of more than $33,000 as the buyer in a transaction. The broker agreed to discipline including a 30-day suspension, two years of supervision, a $2,000 fine and coursework.

Obtained a permanent injunction against an unlicensed individual who solicited clients on mortgage loan websites, convinced clients to give him money upfront, failed to provide any services and subsequently disappeared.

Negotiated the revocation of a mortgage loan originator who approved FHA loans with little to no knowledge of the financial viability of the borrowers.

Medical Unit

The Medical Unit provides legal representation to the state boards within the Department of Regulatory Agencies that regulate physicians, physician assistants, podiatrists, anesthesiologist assistants, and pharmacists. The Unit also represents the Healthcare Professions Profile Program. The Unit supports each represented entity in its mission to protect public health, safety and welfare. Legal services provided include litigation and resolution of licensure, disciplinary and injunctive matters. Unit attorneys also provide legal advice and guidance on rulemaking and policy issues. Outside the healthcare field, the Unit additionally represents the Division of Financial Services and the Colorado Civil Rights Commission, also housed in the DORA. Within the Department of Personnel Administration, the Unit represents the State Personnel Board.

Division of Financial Services

Unit attorneys represent the Division of Financial Services and the Financial Services Board which supervise 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 promulgation of rules and regulations, enforcement of corresponding state laws and regulations, involuntary liquidation, and any other emergency issues that may arise.

During 2012, attorneys representing the Division of Financial Services worked closely with the Commissioner of Financial Services and Financial Services

Board in order to revise and update Board rules.

Personnel Board

Counsel for the board filed two petitions for writs of certiorari to the Colorado Supreme Court in order to confirm and clarify the standard of review to be exercised by the Board, as well as to clarify the effect of Board procedural rules. Counsel for the board additionally provided legal advice and guidance on rulemaking, required following the passage of Constitutional Referendum "S".

Colorado Civil Rights Commission

Unit attorneys advised the Commission on the conduct of appeals of Director decisions pending before the Commission. Additionally, Unit attorneys assisted the Commission in handling public appeals for assistance. For instance, Unit attorneys advised the Commission regarding a public school district request for guidance in addressing transgendered student needs.

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.

Board attorneys advised and assisted Board professional staff and the Board through a comprehensive rule overhaul following sunset legislation effective in 2012.

Following a fatal outbreak of meningitis, the Board's counsel swiftly and effectively executed the Board's direction, addressing the Colorado component of the New England Compounding Center matter. Counsel's representation resulted in a suspension of licensure and surrender of wholesaler registration.

Colorado Medical Board

Counsel for the Medical Board successfully prosecuted and resolved several complex disciplinary actions against physicians who engaged in unprofessional conduct, including the provision of substandard care. Counsel for the board also litigated on behalf of the board before the Office of Administrative Courts and provided guidance and rulemaking advice in relation to new professional review related legislation.

Colorado Medical Board v. Jerath, M.D. Counsel for the Colorado Medical Board successfully tried the Board's case over three days, involving opinions from four expert physicians concerning an instance of patient care. Dr. Jerath was the on-call OB/GYN for an emergency department. Dr. Jerath did not examine or speak with a presenting patient before recommending that the ER physician administer a medication. The patient suffered a serious negative outcome resulting from misdiagnosis following inadequate evaluation. Following the hearing, the Administrative Law Judge found that the care was substandard and admonished Dr. Jerath for her conduct in a 13-page Initial Decision.

Colorado Medical Board v. Cruz-Martinez, M.D. Board attorneys tried this case over four days at the Office of Administrative Courts concerning the care of Dr. Cruz-Martinez, a psychiatrist who was practicing inpatient, adult psychiatric care at Parkview Medical Center in Pueblo. The Administrative Law Judge relied on the Board's expert opinion and found that the doctor provided substandard care through inadequate evaluation, conferral, and referral when treating a 25-year-old developmentally-disabled male with historical diagnoses of autism and a seizure disorder. The ALJ further recommended revocation of the physician's license to practice medicine.

Colorado Medical Board v. Credeur, D.C. Counsel for the Medical Board successfully sought a district court order to enforce a subpoena issued in a Board investigation of a chiropractor. The Board's investigation concerned whether the chiropractor's practice exceeded the scope of chiropractic practice. Through extensive briefing at the state district court and court of appeals, the Board's authority to issue and enforce such subpoenas was clarified and confirmed.

Board attorneys advised the Board and Division staff during the legislative session regarding major changes proposed to Colorado's peer review (now "professional review") statute. The resulting law confirmed the Board's authority to access professional review records and clarified the reporting requirements of professional review entities to the Medical Board, particularly when taking action adversely affecting (for instance) physician privileges.

Board attorneys continue to prosecute multiple medical marijuana-related disciplinary matters for the Board. These cases involve physicians the Board alleges recommended medical marijuana without establishing a bona fide physician-patient relationship. These matters are ongoing.

Nursing and Dental Unit

The Nursing and Dental Unit provides legal representation to the state boards that regulate nurses, dentists, certified nurse aides, psychiatric technicians, nursing home administrators, surgical assistants and surgical technologists, and the Nurse Physician Advisory Task Force for Colorado Health Care. The Unit

supports each represented entity in its mission to protect public health, safety and welfare. Legal services provided include litigation and resolution of licensure, disciplinary and injunctive matters, as well as general counsel representation at board meetings, advice and guidance with regard to compliance with the state's open meetings law, rulemaking and policy issues.

Board of Nursing

Counsel for the Board of Nursing resolved a large number of cases this year related to Advanced Practice Nursing, Registered Nurses, Licensed Practical Nurses and Certified Nurse Aides. Counsel successfully resolved a case involving a registered nurse who admitted to engaging in substandard care, substandard practice, and incorrect documentation. The nurse's conduct included responding to an alarm regarding an infiltrated intravenous line, but not assessing the patient as unresponsive. The patient required a "code zero" followed by a transfer to ICU. Respondent agreed to a two-year period of probation. Counsel successfully litigated a case involving a CNA ("Certified Nurse Aide"), in which the CNA's certification was revoked following a hearing upon proof that the CNA failed to report her felony conviction to the Board and her related criminal conduct was in violation of the practice act. (The CNA had entered pleas of guilty related to criminal conduct and a sexual relationship with an inmate.)

In addition to general counsel representation at the Full Board Meetings and Panel Meetings, counsel for the board provided advice on issues including statutory construction regarding prescriptive authority and professional review of advanced practice nurses and advice on significant rulemaking.

Board of Examiners of Nursing Home Administrators

Counsel for the board provided general legal representation at board meetings and advice and guidance with regard to compliance with the state's open meetings law and advice on rulemaking. Counsel also provided legal representation on disciplinary matters.

Surgical Assistants and Surgical Technologists

Counsel litigated two disciplinary cases, including the first case referred for discipline in this program. Counsel successfully prosecuted a surgical technologist who was found to be using an anesthetic agent while working, as well as using a prescription drug for which she did not have a prescription. The surgical technologist's registration was revoked following a hearing. The testimony in this case clarified the statutory language regarding what constitutes "abuse" of a prescription drug, as well as defining the anesthetic agent (a non-scheduled, non-habit forming drug) as a drug "having similar effect" within the meaning of the disciplinary statute.

Counsel worked closely with the Division Director in this Director-model program and provided general counsel representation including providing advice on statutory authority for discipline and advice on rulemaking. Counsel also assisted with the Director in successfully defending a rule before Legislative Legal Services.

Nurse Physician Advisory Committee Task Force

The Nurse Physician Advisory Committee Task Force is comprised of physicians and nurses, representatives of their professional organizations, and communities who provide consensus recommendations to the executive director of the Department of Regulatory Agencies, the Colorado Medical Board or the Board of Nursing on a number of issues. Counsel for the Nurse Physician Advisory Committee Task Force provided general counsel representation, including advice and guidance on compliance with the state's open meetings law for this unique task force.

The Colorado Board of Dental Examiners

Counsel for the board successfully negotiated, resolved, or initiated litigation in a number of complex disciplinary cases involving dentists. Counsel to the Board negotiated a stipulated relinquishment in a highly publicized case in which a dentist had previously signed an Interim Cessation of Practice Agreement, in lieu of summary suspension, on allegations of abuse/misuse of controlled substances and diverting controlled substances from patients. Respondent subsequently relinquished his license making admissions related to habitual abuse or excessively using habit-forming drugs or alcohol and on allegations of needle sharing between patients. Counsel for the Board filed charges in numerous cases this year, including filing charges against two dentists who admitted to substandard dental care, fraudulent billing, and failing to make essential entries related to dental care involving dentures and dental implants. The cases were resolved by stipulations in which each dentist stipulated to probation and practice monitoring. Counsel resolved a number of cases against dentists who were unsafe to practice because of health conditions including drug diversion. The public was protected in each case by the prompt use of interim agreements to cease practice, ultimately resulting in public discipline.

Counsel represented the board in a case before the

Court of Appeals. The case resulted in a ruling favorable to the board based on the Appellant's appeal being moot.

Counsel to the Board provided general counsel representation at the Full Board Meetings and Panel Meetings, providing advice on the open meetings laws, as well as on rulemaking.

Health Services Unit

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

- Board of Addiction Counselor Examiners
- Marriage and Family Therapist Examiners Board
- Office of Massage Therapist Registration
- Psychologist Examiners Board
- The Social Work Examiners Board
- The Board of Veterinary Medicine
- The Board of Chiropractic Examiners
- The Board of Optometric Examiners
- The Board of Registered Psychotherapists
- The Licensed Professional Counselors Examiners Board

The Unit supports 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.

Examples of cases in 2012 include:

Office of Massage Therapist Registration v. Kim Ziwak: Following a favorable decision to deny Ms. Ziwak's application for Massage Therapy registration, Ms. Ziwak initiated an appeal, seeking judicial review before the Court of Appeals. Unit attorneys defended the matter before the Court of Appeals, which upheld the Director's decision to deny Ms. Ziwak's application based on a prior conviction for a prostitution-related offense. The Court rejected Ms. Ziwak's arguments concerning the ex-offenders employment statute and retrospective application of the Massage Therapy Practice Act.

Board of Optometric Examiners v. Diego Posada: Unit attorneys negotiated a settlement with Diego Posada, obtaining a permanent relinquishment of his license to practice optometry in the state of Colorado following allegations that he sexually assaulted the children of patients who were seeking treatment in his office.

Chittenden v. Board of Social Work Examiners: Unit attorneys successfully defended an appeal of an administrative decision by the Social Work Board to not entertain a petition for declaratory order submitted by Chittenden. The petition for declaratory order was essentially an "end-run" around a currently pending disciplinary matter. The Court upheld the Board's decision and found that given the context of the appeal and the relief sought, the refusal to consider the petition was not reviewable and dismissed Ms. Chittenden's appeal.

Board of Chiropractic Examiners v. Cody: Unit attorneys successfully prosecuted an administrative hearing before the Office of Administrative Courts, obtaining a recommendation for revocation of the chiropractic license of Dr. Jack Cody, DC following allegations that he made improper sexual contact with a patient during an examination in his office. The matter remains pending before the Board of Chiropractic Examiners pending final agency review.

Board of Chiropractic Examiners v. Thomas Lawrence, D.C.: Unit attorneys obtained an initial decision, upheld by the Board of Chiropractic Examiners, denying the license application of Thomas Lawrence based upon his prior convictions for felony billing fraud in connection with Medicare. Lawrence had been convicted of 36 felony counts relating to his previous practice as a chiropractor, where he was alleged to have entered codes for services not rendered in an effort to secure payment from Medicare.

Unit attorneys continue to advise the 10 boards and programs throughout the year, as they update and modernize their rules to comply with the new sunset review statutes and modernize their rules and policies in light of evolving trends in their respective professions. For example, the Board of Optometric Examiners addressed concerns relating to the changes that were intended to allow optometrists to dispense certain medications, and the Board of Veterinary Medicine continues to look at issues that impact animal health care, including small and large animal dentistry.

The Division of Insurance

The Division of Insurance is responsible for regulating the *business of insurance* in Colorado and other businesses and/or professions related to insurance. The Division's regulatory authority extends to health care insurance, health maintenance organizations, long-term care insurance, Medicare supplement insurance, life insurance and annuities, title insurance and property and casualty insurance (including auto and homeowners insurance). The Division also oversees the *bail bond* business in Colorado by regulating bail bond agents, bail bond registrants and insurance companies

that underwrite bail bonds. The Division is also responsible for certain regulatory matters related to *preneed funeral contracts*.

Unit attorneys assist the Commissioner of Insurance and Division personnel on a wide variety of matters, including general counsel advice on fiscal and policy matters; legal issues related to the business of insurance through Informal Attorney General Opinions; rulemaking (including participation in monthly rulemaking hearings); requests for records under the Colorado Open Records Act; and changes and amendments to the insurance laws during the legislative session.

Unit attorneys also prosecute and represent the Division in litigation involving regulatory actions and market conduct examinations against *unauthorized* individuals and companies and *licensed* individuals and insurance companies engaged in the business of insurance. Unit attorneys also defend the Commissioner and Division personnel in third-party litigation where the Commissioner and/or the Division are named as defendants or when Division personnel and/or Division records are subpoenaed. The Division currently has cases involving insurance producer licensing matters and market conduct examinations pending at the Office of Administrative Courts, in state district court and the Colorado appellate courts.

Significant cases in 2012 included the following:

Farmers Insurance Exchange, Mid-Century Insurance Company, and Bristol West Insurance Company: Unit attorneys successfully completed a three-part settlement of a case filed in the Denver District Court and the Colorado Court of Appeals related to three Final Agency Orders issued by the Commissioner concerning Division market conduct examinations of Farmers Insurance Exchange, Mid-Century Insurance Company, and Bristol West Insurance Company. The MCEs in question identified numerous violations of Colorado insurance statutes and regulations related to the Companies' *private passenger auto insurance* business in Colorado. Pursuant to terms of the settlements, the companies agreed to comply with the Division's interpretation of disputed insurance statutes and regulations regarding the failure of the companies to provide mandated language in policies fully informing consumers of their policy rights. The terms of the settlements also required the adoption of an improved computerized record-keeping system for the claims handling process that will be implemented by all Farmers' companies doing automobile liability and motor vehicle liability insurance business in Colorado. The settlements also included civil penalties and surcharges totaling $590,000.

Alliant Title Insurance Company: The Division conducted a market conduct examination of Alliant Title Insurance Company indicating the company violated various Colorado insurance laws and regulations related to the company's *title insurance* business in Colorado. Unit attorneys successfully negotiated a settlement with the company just prior to litigation being filed simultaneously in Denver District Court and the Colorado Court of Appeals. The company admitted various violations of Colorado law and related regulations including, but not limited to, failure to provide anti-fraud statements in title documents, charging unfiled (improper) rates, failing to preserve evidence of examination of title, failure to provide evidence that specific coverage exceptions had been disclosed and failure to properly remit and/or report premium. The settlement also included $106,000 in civil penalties and surcharges.

John Alden Life Insurance Company: The Division oversaw a market conduct examination of John Alden Life Insurance Company indicating the company violated various Colorado insurance laws and regulations pertaining to the company's *health insurance* business. Prior to issuance of a Final Agency Order, the Commissioner of Insurance called for and, with the guidance of Unit attorneys, conducted a non-adversarial "Investigatory Hearing" under Title 10, C.R.S. This was the first hearing of its type conducted by the Division. The Commissioner ultimately determined that the company violated various provisions of Colorado law and related regulations including, but not limited to, failure of the company's contracts and forms to include required provisions and/or correct/complete provisions for cervical cancer vaccines, hearing aids for minor children, organ transplants and outpatient physical, occupational and speech therapies. The Commissioner also imposed $85,500 in civil penalties and surcharges.

Unites States Fire Insurance Company and North River Insurance Company: The Division conducted a market conduct examination of Unites States Fire Insurance Company and North River Insurance Company indicating the companies violated various Colorado insurance laws and regulations related to the company's *bail bond* business in Colorado. Unit attorneys assisted the Division with negotiating settlements with the companies after the Commissioner issued Final Agency Orders pertaining to the MCEs which assessed $155,200 in civil penalties against US Fire and $85,000 in civil penalties against North River. The FAOs also required the companies to develop plans to ensure future compliance with Colorado insurance laws and regulations pertaining to the bail bond business.

Consolidated Medical Services & Joseph Benedetto: Unit attorneys prosecuted and successfully settled a case involving a Cease & Desist Order issued against Consolidated Medical Services and its founder, Joseph

Benedetto. CMS/Benedetto operated a website as a vehicle to purportedly sell insurance and recruit "Affiliates" for an internet-based marketing program. The Cease & Desist Order determined that CMS/Benedetto (and their Affiliates) engaged in fraud and the unauthorized transaction of insurance business in Colorado by marketing and selling *medical benefit programs* to consumers as an alternative to traditional health insurance. The medical benefit programs targeted consumers who had pre-existing conditions and/or who may have been denied traditional major medical insurance. The Cease & Desist Order precludes CMS/Benedetto from conducting any insurance related business in Colorado.

Cinergy Health, Inc. and Steven Trattner: Unit attorneys prosecuted and successfully settled a case involving Cinergy Health, Inc. and Cinergy representative Steven Trattner. Cinergy entered into contracts with various associations and/or purported insurance companies to market *limited health benefit plan insurance policies* to consumers in many states, including Colorado. Limited health benefit plan insurance policies provide coverage, typically through membership in an association, with insurance limits for individuals and groups that are far lower than those provided by a traditional health insurance policy. Limited health benefit plan insurance policies are typically recommended to be used only in conjunction with and not as an alternative to a traditional major medical or catastrophic coverage policy. The policies sold by Cinergy generally provided first dollar coverage to policyholders (immediate coverage for medical expenses not subject to a deductible) though it capped coverage for certain medical costs and treatment at amounts substantially lower than the actual coverage required by policyholders. Cinergy marketed and sold the policies in Colorado primarily through television advertisements aired in the state and through telephone solicitations into Colorado by unlicensed agents in Florida. Cinergy/Trattner admitted having their agents engage in the unauthorized transaction of the business of insurance in Colorado, that their agents made false and misleading statements to consumers as part of their marketing and advertising, and that they failed to disclose administrative and/or regulatory proceedings in other states. Cinergy/Trattner admitted that they violated various provisions of Colorado law and related regulations and agreed to pay $110,000 in civil penalties and surcharges.

Minnesota Surety & Trust Company: In 2011, Unit attorneys and the Division obtained a $1,200,000 settlement with Minnesota Surety & Trust Company, a non-resident *bail bond insurance* company, after an expedited investigation and administrative action involving numerous sworn statements and extensive review of records. The settlement included the suspension of the company's authority to conduct business in Colorado for various violations of Colorado insurance laws and regulations. Relying on the work done in Colorado, the Minnesota Attorney General's Office successfully took steps in 2012 to liquidate the company in Minnesota, its state of domicile.

The Bail Bonding Agent Act (BBAA), §§12-7-101, C.R.S., et seq was set to Sunset in 2012. House Bill 1266 was introduced in order to continue the regulation of bail bond agents. In its final form, HB 1266 repealed the BBAA and re-codified the majority of the BBAA within Title 10 (new Article 23). Specifically, professional cash and cash bail bond agents will now be registrants and bail bond agents that are appointed by an insurance company must now be licensed as insurance producers with a casualty line of authority. Unit attorneys offered extensive advice and counsel to the Division throughout the Sunset and legislative process involving HB 1266, and assisted the Division with the drafting and promulgating of regulations for the implementation of HB 1266.

Unit attorneys continue to assist the Division with matters related to federal health care reform and the Division's commitment to making healthcare more accessible to consumers and containing health care costs while at the same time trying to maintain a competitive, viable market among insurers. The Unit's workload regarding federal health care reform will continue to increase given implementation deadlines set out in the federal law, the need to align state insurance law with federal law, and issues related to insurance premium rates.

Securities

Unit attorneys act as general and litigation counsel to the Securities Commissioner and the Colorado Division of Securities. The Unit assists the Division of Securities in the regulation of securities, issuers, broker-dealers, sales representatives, investment advisers, investment adviser representatives and other related entities. Unit attorneys primarily conduct litigation in administrative and district courts on behalf of the Division of Securities against individuals and entities involved in the offering of traditional investments (such as stocks and bonds), private placement offerings, and exotic/non-traditional instruments such as derivatives (eg. collateralized mortgage obligations) and auction rate securities.

Significant cases in 2012 include:

Joseph v. Mieka Corporation: Unit attorneys successfully defended an appeal initiated by Mieka Corporation following a successful administrative action resulting in an order directing Mieka to cease and desist from future securities violations in Colorado. As a result, the Court of Appeals issued a published opinion

providing additional guidance concerning whether "joint venture" investments are securities under Colorado law, an issue which continues to be hotly contested in Colorado Courts.

Fred Joseph v. Clinton D. Fraley: Unit attorneys successfully obtained a temporary restraining order, and ultimately, a permanent injunction against Clinton D. Fraley and his associated businesses and his trust following evidence that Fraley essentially solicited and then stole money from two Denver-area firefighters. Evidence revealed that Fraley took investor funds out of their trading accounts through the use of forged checks and then used the money to purchase a home in the Denver-area under the name of Clinton D. Fraley Living Trust. A judgment in the amount of $598,785.37 was entered against Fraley and he was permanently enjoined from conducting business in Colorado as a securities professional.

Joseph v. John J. Jellinek. Unit attorneys successfully obtained a permanent injunction and restitution in the amount of $400,000.00 from Jellinek and his company, Jelco Ventures, Inc. following a scheme to raise money from investors for the purchase of preferred stock. Instead of investing the funds, Jellinek diverted the money to pay off other investors, and used investor funds for personal expenses including his personal residence. Under the terms of the permanent injunction, Jellinek is barred from the securities industry in Colorado.

Bottom Line Results, Inc.: Unit attorneys successfully obtained a summary suspension, and then a revocation of the broker-dealer license of Bottom Line Results, Inc. and the securities sales representative license of Richard Roop following allegations that Roop and Bottom Line failed to comply with a lawful demand for records by the Division of Securities.

Unit attorneys continue to represent the Division of Securities in active litigation before all Colorado state and administrative courts, and continue to advise the Division as requested on a variety of issues impacting the regulation of securities professionals and securities products offered in and from the state of Colorado.

Agriculture/Regulatory Boards
Division of Registrations Professional and Technical Licensing Boards

The Unit provides general counsel and litigation representation to a variety of Type 1 boards and Type 2 licensing programs within the DORA. The Unit supports 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.
The Type 1 boards represented include the Board of Accountancy; the Board of Licensure for Architects, Professional Engineers and Professional Land Surveyors; the State Electrical Board; the Board of Landscape Architects; the Passenger Tramway Safety Board; and the Examining Board of Plumbers.

The Type 2 programs represented include: the Office of Acupuncture Licensure, the Office of Audiology and Hearing Aid Provider Licensure, the Office of Athletic Trainer Registration, the Office of Barber and Cosmetology Licensure, the Office of Funeral Home and Crematory Registration, the Office of Midwifery Registration, the Office of Physical Therapy Licensure, the Office of Occupational Therapist Registration, the Office of Outfitters Registration, and the Office of Respiratory Therapy Licensure.

In 2012, counsel for the Board of Licensure for Architects, Professional Engineers and Professional Land Surveyors filed charges to suspend the license of an engineer, Gary Howell, for allegedly performing substandard work on an elementary school in Meeker. The Meeker Elementary School was closed and evacuated in November 2011 after it was found to be structurally deficient. The Board claims that, in his engineering design, Mr. Howell did not meet professional practice standards and violated rules of conduct, including that he failed to consider seismic forces, failed to apply the correct occupancy category, failed to properly size foundation footings, and failed to complete structural design loads. Mr. Howell agreed to cease practice until the case is complete. The matter is scheduled for hearing in early 2013.

Division of Banking

The Unit acts as general and litigation counsel to the Division of Banking and to the Colorado Banking Board which are responsible for the regulation of state -chartered commercial banks, trust companies, industrial banks, and money transmitters. 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, involuntary liquidation, and any other emergency issues that may arise.

Department of Agriculture

The Unit acts as general and litigation counsel to the various divisions of the Department of Agriculture, advising on a wide variety of subject areas including rulemaking, alternative livestock, Pet Animal Care Facilities Act enforcement matters, emergency preparedness, zoning, animal cruelty, animal identification,

homeland security, regulation of the sale and use of pesticides, regulation of seed and nursery stock, promotion and marketing of agricultural products, control of noxious weeds, certification of organic producers, regulation of farm products dealers and commodity handlers, inspection of all commercially used weights and measures in the state, administration of the livestock brand recording system, and administration of the State Fair and its associated activities.

In 2012 the attorneys in the Unit:

Briefed appellate argument in defense of an injunction that permanently barred cattle ownership by a Logan County resident who had been found by the district court to be unfit to own livestock; and argued the appeal before the appellate court. The Court of Appeals affirmed judgment and published the opinion. 2012 COA 144.

In late 2011, the Department's attorneys obtained a court order that permanently enjoined a Park County rancher from owning cattle in that County after he allowed more than 150 head of cattle to starve to death during the 2010 winter. During 2012, the Department's attorneys worked with counsel for the parties who had leased the cattle to the rancher in their legal efforts to be compensated. The lessors prevailed, winning a judgment in excess of $1M. The rancher has appealed the district court's decisions, and the Department's attorneys are awaiting a final briefing schedule from the Court of Appeals with regard to the question of whether the injunction may stand.

Provided counsel to the Alternative Livestock program and assisted with bringing various alternative livestock owners' records into order and compliance with the rules and regulations promulgated by the Colorado State Board of Stock Inspection Commissioners.

Defended the State Fair in its decision to disqualify two goats, one of which had been the 2011 Reserve Grand Champion, based on alleged violations of the 2011 Competition Requirements. Resolved the case through a mediated settlement, the contents of which are confidential.

Re-wrote Colorado State Fair's General Rules, General Livestock Competition Requirements, Junior Livestock Competition Requirements, and Junior Livestock Sale Participation Requirements and Livestock Competition Requirements so that the rules would include processes by which participants could appeal decisions of CSF and the CSF Authority.

Mined Land Reclamation Board

The Unit acts as general and litigation counsel to the Mined Land Reclamation 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 as required by the board, including approving or denying permits and permit modifications when there has been public comment; issuing violations; setting civil penalties; setting program policy, and promulgating rules, and revoking permits and forfeiting bonds.

Noteworthy cases of 2012 include:

Cotter Corporation, Schwartzwalder Mine: Cotter Corporation brought a judicial review action concerning the Board's order to dewater the Schwartzwalder Mine. The mine is adjacent to Ralston Creek, which flows into Ralston Reservoir, a drinking water source for Denver and Arvada. Cotter ceased mining operations in 2000, but the mine filled with water containing high levels of uranium, radium, and molybdenum. The mine pool contains almost 150 million gallons of contaminated water and reaches a level 25 feet above Ralston Creek. The Division of Reclamation, Mining and Safety notified Cotter that the situation at the mine was a potential violation of the Mined Land Reclamation Act. The Board heard the matter in July 2010, where it found Cotter in violation of the Act and ordered Cotter to reinitiate mine dewatering sufficient to reestablish a hydraulic gradient away from Ralston Creek. The Board also ordered Cotter to provide financial warranty, to amend its permit, and to pay a civil penalty. Cotter filed a Complaint for Judicial Review in Denver District Court, which affirmed the Board's order, finding that the Board's decision was supported by substantial evidence and was otherwise reasonable and proper. Cotter appealed the District Court's decision to the Court of Appeals in November 2011. The Board and Cotter settled the case in September 2012, in which the Board agreed to allow Cotter to treat the mine water to remove pollutants and Cotter agreed to dewater the mine as the Board ordered. If treatments are ineffective.

High Country Citizens' Alliance: The Board defended a judicial review action by High Country Citizens' Alliance concerning the Board's order approving a prospecting notice. High Country argued that the Board should have considered and required additional bonding for potential impacts on water resources near the mine. The Board reviewed findings of other state agencies charged with monitoring water quality, the reduced size of the mining project, steps taken to protect water resources, and the historical quality of the water at issue. The District Court affirmed the Board's order. High Country filed an appeal with the Court of Appeals in July 2012.

Independent Ethics Commission

Amendment 41, which was passed by Colorado voters in 2006, 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 advised the commission in its resolution of complaints, issuance of advisory opinions, letter rulings and position statements. Those opinions, rulings and statements issued in 2012 covered a broad range of topics, including:

Acceptance of travel expenses from a federal agency;

Conflicts of interest of a local government official;

Acceptance of travel expenses from a non-profit entity;

Application of the gift ban at political events;

Acceptance of registration fees for conferences;

And acceptance of travel expenses from foreign governmental agencies.

Conflicts of interest of a local government official;

Application of the gift ban at political events.

Revenue and Utilities Section

In order to create better efficiencies and streamline operations, the new Revenue and Utilities Section was created in 2012 by dividing the Business & Licensing Section in two. The three units of the Revenue and Utilities Section provide legal advice and litigation services to the Department of Revenue, the Litigation Staff of the Public Utilities Commission within the Department of Regulatory Agencies, and the Property Tax Administrator and Property Tax Division within the Department of Local Affairs.

Revenue Unit

The Revenue Unit's attorneys provide general counsel and litigation support to all of the Department of Revenue's business groups: taxation, enforcement, lottery and motor vehicles. This Unit also represents the Property Tax Administrator within the Department of Local Affairs.

Tax Enforcement

The Department of Revenue's taxation divisions require intensive legal services to ensure that taxpayers comply with the law and pay the amounts owed under the law, thereby protecting the interests of all taxpayers. Tax cases often are complex, involving disputed amounts in the millions of dollars. Under state law, tax cases are tried twice: once at the administrative level, and then again in a *de novo* trial in district court. Many cases also are appealed to Colorado's appellate courts. Once the amount of tax is conclusively assessed, the Revenue Unit's attorneys provide legal advice and representation regarding collections. When delinquent taxpayers declare bankruptcy, the Department's interests must be protected in bankruptcy court.

During 2012, Unit attorneys represented the Department of Revenue's taxation divisions in administrative hearings, in state and federal trial and appellate courts.

The Revenue Unit attorneys also defended the state's interest in numerous bankruptcy cases and involuntary seizures, resulting in recovery of sums of money that otherwise might not be collected. Unit attorneys are regularly called upon to determine whether the state's activities are consistent with the automatic stay while bankruptcy cases are pending, and whether taxes and other monies owed to the state remain collectible once a bankruptcy discharge has been granted.

Tax cases pending in district court this year will address many issues, including, for example, the taxability of so-called "blunt wraps," a type of cigar wrapper, under the state's "other tobacco product" tax and the applicability of the machinery sales tax exemption to refining plants which are not located in enterprise zones.

The Unit's attorneys will also represent the Department in several tax cases in appellate courts, including for example:

Defending the denial of bad debt deductions to financial institutions that merely funded motor vehicle purchases;

Seeking review of an order addressing the types of deductions allowed for severance tax; and

Defending a state law which established reporting requirements for retailers that do not collect Colorado sales or use tax.

Regulation and Licensure

Attorneys in the Unit also represent the Department of Revenue's enforcement and lottery business groups and its several boards, commissions and regulatory programs. These include the Colorado Limited Gaming Control Commission, the Motor Vehicle Dealer Board, the Colorado Racing Commission, the Liquor Enforcement Division the Medical Marijuana Enforcement Division and the Colorado Lottery. Each regularly assigned lawyer provides general counsel advice to the programs, litigates cases at the administrative level, and represents the client on judicial review or appeal.

The Attorney General's medical marijuana litigation team successfully settled a lawsuit against the Department of Revenue, the Department of Public Health and Environment, and the Governor, challenging several statutory and regulatory provisions governing medical marijuana primary caregivers and businesses. The Unit's attorneys also advised the Medical Marijuana Enforcement Division on a variety of licensing matters, and successfully defended all appealed business denials.

Attorneys for the Gaming Commission successfully defended a lawsuit brought by Gilpin County challenging the Gaming Commission's rule codifying its historical interpretation of how certain gaming funds are distributed to Teller County, Gilpin County, and the three gaming towns. The case was appealed to the Colorado Court of Appeals and the court affirmed the district court's dismissal of the challenge to the Gam-

ing Commission's rulemaking.

Unit Attorneys advised the Division of Motor Vehicles ("DMV") by issuing informal opinions and reviewing rules. Attorneys represented the Department in cases against two third-party testers, and in driver's license revocation cases in several district courts in Colorado and in the Colorado Court of Appeals. Attorneys prevailed in two cases before the Colorado Court of Appeals concerning the applicability of the Fourth Amendment in civil administrative driver's license revocation hearings, an issue of first impression in Colorado. In *Francen v. Colorado Dep't of Revenue* and in *Hanson v. Colorado Dep't of Revenue*, the Court of Appeals agreed with the Department that the Fourth Amendment's exclusionary rule does not apply in civil administrative driver's license revocation proceedings. Petitions for writ of certiorari are pending in both of these cases.

Property Tax Administrator

Attorneys provided legal advice and litigation services to the Colorado Department of Local Affairs' Division of Property Taxation, led by the Property Tax Administrator. The Division coordinates and administers the implementation of property tax law throughout 64 counties in Colorado, and is responsible for the valuation of the operating plant and property of all public utilities doing business in Colorado. These include telephone companies, airlines and railroads, among others. Attorneys representing the Division provide statutory interpretation and other general counsel services as needed and represent the Property Tax Administrator in administrative hearings and litigation before the Board of Assessment Appeals and the state district and appellate courts. This year, attorneys for the Property Tax Administrator pursued appeals in exemption cases concerning the YMCA camps in Larimer and Grand Counties, arguing in the Court of Appeals that the Board of Assessment Appeals misconstrued the law. A decision in that case is pending. Attorneys also continued to defend the Division's method of valuation of public utilities on constitutional and statutory grounds. That case is pending in the Colorado Supreme Court, awaiting argument in 2013.

Conservation Easement Tax Credit Unit

The Conservation Easement (CE) Tax Credit Unit attorneys represent the Department of Revenue in litigation of the denial of CE income tax credits in administrative hearings and in *de novo* trials in district court. The Unit was created in 2011, following House Bill 11-1300, which established special procedures to facilitate the equitable and expeditious resolution of hundreds of these disputes.

Noteworthy Highlights from 2012:

On January 5, 2012, in a published opinion, the Colorado Court of Appeals dismissed a petition for interlocutory appeal pursuant to C.A.R. 4.2 filed by taxpayers' counsel, in the matter of *Farm Deals, LLLP, et al. v. Colorado Department of Revenue, et al.* The taxpayers sought interlocutory review of two issues of law related to service of process on CE tax credit purchasers (Transferees). The Court of Appeals held that the trial court improperly granted the untimely motion for certification pursuant to C.A.R. 4.2. The Court further held that the petition was jurisdictionally barred due to taxpayers' counsel's failure to file the petition within the fourteen-day deadline set by C.A.R. 4.2(d), and that counsel failed to show good cause for an extension under C.A.R. 26(b).

On March 15, 2012, in a published opinion, the Colorado Court of Appeals affirmed in part and reversed in part an Order issued by Judge M. Jon Kolomitz in a CE tax credit case: *Kowalchik, et al., v. Brohl*. The Court of Appeals held that neither the statutory procedure governing CE tax credit cases nor due process require that CE tax credit Transferees be joined as necessary parties to CE tax credit cases. The Court of Appeals also held that CE tax credit Transferees are taxpayers who may be subject to deficiencies, interest, and penalties stemming from their CE tax credit following the conclusion of litigation regarding the validity and value of CE tax credits which they purchased and used.

From early spring to late summer, the rest of the CE tax credit cases, which had been halted pending resolution of the *Kowalchik* C.A.R. 4.2 appeal described above, were served by taxpayers upon the Department of Revenue. The Department of Revenue answered, and pressed to move these cases through procedural and administrative requirements as expeditiously and efficiently as was possible.

The first of many CE tax credit threshold validity hearings was held in the Otero District Court in La Junta, Colorado on October 9 and 10, 2012. The Department of Revenue awaits written findings from the Court determining whether the CE tax credit is valid, as provided in section 39-22-522.5(2)(i), C.R.S.

On October 15, 2012, in *Medved v. Brohl*, the Court of Appeals heard a taxpayer's C.A.R. 4.2 petition in a CE tax credit dispute involving over $6 million in liability. The Court of Appeals denied a taxpayer's request for interlocutory review of a statute of limitations ruling against the taxpayer. The district court previously had agreed with the Revenue, ruling (1) it should defer to the agency in light of the 2006 statute's silence on the issue; and (2) the 2007 amendment was a mere clarification of the existing statute. Revenue opposed interlocutory review, arguing that the issue was not "controlling" and that interlocutory review would not

promote a more orderly disposition of the litigation due to the presence of other pending claims. The Court of Appeals agreed with the Department and denied the C.A.R. 4.2 petition.

As of the end of calendar year 2012:

478 disallowed CE cases subject to the provisions of House Bill 11-1300 have been filed as district court cases against the Department of Revenue and consolidated into 125 discrete cases.

Two additional district court judges have been identified to hear these district court cases bringing the total number of judges hearing CE disputes to five.

The CE Tax Credit Tax Credit Unit trial teams have set validity hearings in 33 of the 125 outstanding distinct district court cases. These hearings commence in February and are scheduled to date through the end of November, with the remainder of the validity hearings to be set as soon as is possible.

The majority of the district court appeals are entering the discovery phase with the Department of Revenue pressing to set the remaining hearings as soon as possible. Substantial settlements have been negotiated with donors and transferees, mitigating the need for and expense of further litigation.

More than half of the cases remaining in the administrative process have been settled. Many of the remaining administrative cases are in settlement negotiations. All of the administrative cases will have had a hearing or have been settled prior to the dates imposed under House Bill 11-1300.

As of December 31, 2012, settlements in the amount of $6,721,879.25 have been negotiated on behalf of the Department. In six cases, Notices of Final Determination have been issued by the Department representing an additional amount of $2,176,145 due and payable by taxpayers in CE tax credit cases.

Public Utilities Commission Litigation Unit

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 commission in litigated matters on behalf of the public interest to balance the need for fair utility rates for all consumers and the financial health of the utilities. The Unit works to ensure that adequate and reliable gas, electric, telephone, water and water/sewer, and motor carrier utility service is provided at reasonable rates.

Significant cases in 2012 include:

Public Service Company of Colorado 2011Electric Resource Plan: Represented Staff in Public Service Company of Colorado's (Public Service or the company) 2011 Electric Resource Plan (2011 ERP) docket. The company filed this ERP pursuant to Colorado Public Utility Commission (the Commission or PUC) rules to evaluate the need for additional generation resources in the next ten years and to propose a process and plan for acquiring such resources. By separate application, the company also proposed two alternative forms of acquisition outside of the 2011 ERP plan, although these applications were consolidated with the 2011 ERP. The company proposed to acquire the Brush generating units, roughly 78 MW of existing gas generation (the Brush acquisition) and to enter into a power purchase agreement and a gas sales agreement with Southwest Generation, Inc. (the SWG transactions). Staff participated in a two week hearing on the consolidated matter and offered a number of recommendations. The Commission conducted public deliberations in December 2012. The Commission agreed with Staff's recommendation to deny the Brush acquisition because of the age and other attributes of the generating units. The Commission approved the SWG transactions despite agreeing with Staff that there were transparency concerns and other concerns with the way the Company conducted the acquisition. Finally, the PUC adopted a number of Staff's recommendations for the yet-to-come competitive resource solicitation.

Public Service Company of Colorado Energy Rate Case: Represented Staff in a Public Service Company of Colorado rate case in which Xcel Energy, Public Service's parent company, requested an annual increase to Public Service of $153.2 million. Staff completed its audit and review and a settlement was entered into by Xcel, Staff, and other major intervenors including the Office of Consumer Counsel, Colorado Energy Consumers, and Climax Molybdenum. The settlement permitted Xcel to implement a series of three rate increases, as follows: $73 million for the period May 1, 2012 through December 31, 2012, $16 million for the period January 1, 2013 through December 31, 2013, and $25 million for the period January 1, 2014 through December 31, 2014. The PUC approved the settlement.

Windsource Long Term Contract Program: Windsource is a voluntary "green" program Public Service offers to ratepayers. In its most recent form, the program was undifferentiated between residential customers and commercial and industrial customers. Customers paid a premium, which varied between customer classes, on top of the tariffed electric rates and could claim that they were purchasing green energy. In its latest case, Public Service proposed to continue offering its "standard" program to residential customers at a reduced premium price, while offering its commercial and industrial customers a complex "contract for differences" between the cost of a low-cost wind purchase

power agreement and Public Service's avoided costs (the Long Term Contract program). The company proposed to direct all but 17% of the output from the low-cost wind contract toward its Windsource programs. Staff opposed Public Service's Long Term Contract program because of the complexity of the contract and also opposed dedicating the benefits of the low-cost wind contract to the Windsource programs because Staff believes all ratepayers should experience the benefits of the low-cost wind contract. The Commission agreed with Staff's position and issued an order denying the Long Term Contract Program.

Public Service's Application to Provide Different Treatment to Its Boulder Customers: This was a case of first impression. Public Service filed an application seeking to apply different terms and conditions to some of the services it provides to its customers within the City of Boulder. Public Service argued that since (in the Company's view), Boulder has taken significant steps towards the municipalization of Public Service's electric distribution system within the City's limits, it was necessary to apply different treatment to its Boulder customers to prevent costs from being inappropriately shifted to the remainder of its customers in the event municipalization occurs. All the parties, with the exception of Public Service, argued that the company's application was premature. The Commission agreed and dismissed Public Service's application without prejudice.

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