



## MEMORANDUM

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Date: February 18, 2014 – 6:00 p.m. work session  
To: Mayor Dickson and City Council  
From: Dara MacDonald  
RE: General Items

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### I. Legal Services Discussion



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**MEMORANDUM**

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DATE: February 18, 2014

TO: Mayor Dickson and City Council members

FROM: Dara MacDonald, City Administrator

RE: Discussion on ways to reduce attorney related expenses

The attached pages provide a summary of legal expenses incurred by the City from 2010 – 2013. There are four legal services that the City utilizes:

1. City Attorney – Karp Neu Hanlon
2. Water Attorney – Moses, Wittemyer, Harrison & Woodruff
3. Municipal Prosecutor – Rex Kindall
4. CIRSA – different outside law firms are retained by CIRSA to handle City matters depending upon the nature of cases that are covered by insurance

The first three positions fall under Section 2-3-60 of the Salida Municipal Code – City Attorney.

2-3-60. City Attorney.

(a) Appointed by the City Council, the City Attorney shall, whenever required, give legal advice to the City Council and all other officers of the City; and shall, when necessary, give an opinion in writing upon any legal question coming before the City Council, the Mayor or any of the appointed officers of the City. When deemed necessary by the City Council, the City Attorney shall attend the meetings thereof. When requested by the City Council, the City Attorney shall appear on behalf of the City in suits or proceedings involving the City in any court where the same may be pending, or about to be instituted by the City, and defend or prosecute the same as the case may be.

(b) In lieu of appointing a City Attorney who is a department head and an appointed officer as defined by this Code, the City Council may, at its discretion, contract with an attorney or law firm to provide legal services for the City on such terms and for such compensation as the City Council deems advisable. Such attorney or law firm shall fulfill the function of the City Attorney as defined by state statute, but shall be deemed an independent contractor, not an employee of the City.

Karp Neu Hanlon is generally referred to as the 'City Attorney' as they provide general legal services to the City on a variety of issues. The City began utilizing the services of this firm in 2007 for land use matters transitioning to the city attorney in mid-2008. Although a relatively small community, Salida is a full-service municipality offering a broad array of services that many small communities do not have including water & wastewater utilities, event center, pool and recreation programs, and full-time police and fire. The City Attorney is expected to be familiar with the legal environment under which all of these services operate. Contracting with a full service law firm versus hiring an individual provides the City with more breadth and depth of legal expertise and coverage for any period of time when the primary attorney may be out due to illness, vacations or any other reasons.

Moses, Wittemyer, Harrison & Woodruff provides legal services specifically related to water rights. The City has been with this firm since at least the mid-1980's. They have specialized in helping their clients navigate Colorado's complex water law system since 1973 and, in 2013, were listed as a Tier 1 Water Law law firm on U.S. News & World Report, "Best Law Firms."

Rex Kindall serves as the prosecutor on behalf of the City in municipal court. Mr. Kindall was first appointed to this position in 2006. Mr. Kindall also works as a Deputy District Attorney in the Salida office of the 11<sup>th</sup> Judicial District.

Colorado Intergovernmental Risk Sharing Agency ("CIRSA") is a member based organization that provides property/casualty coverages. CIRSA provides coverage for a variety of claims against the City and its employees including elected officials. They do not provide coverage for land-use related matters. The City has been a member of CIRSA since its inception in 1982. The City's deductible is \$25,000 per claim. Depending upon the nature of claims submitted by the City, CIRSA will generally retain outside legal counsel to handle litigation. The City has worked with at least three different firms for claims such as bodily injury, police matters, employment law and general litigation.

**Legal Billings  
Summary**

	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>
City Attorney (net to City)	177,782	224,653	179,181	157,762
Water Attoney	51,496	42,557	48,520	41,598
City Prosecutor	15,063	17,715	17,335	19,590
CIRSA	25,473	8,377	477	45,970
<b>Total \$</b>	<b>269,813 \$</b>	<b>293,301 \$</b>	<b>245,512 \$</b>	<b>264,919</b>

**LEGAL BILLINGS  
CITY ATTORNEY'S OFFICE**

	2010	2011	2012	2013
<b>City Expenses:</b>				
General Legal	\$ 109,146.79	\$ 133,093.99	\$ 135,201.42	\$ 115,079.07
Personnel Matters	6,565.25	2,463.50	10,540.95	985.50
Water General	1,774.00	7,699.50	1,160.00	914.00
Sewer General	-	1,711.00	1,995.00	173.00
Planning General	12,106.00	2,913.50	-	161.00
Unique Theater	22,600.55	13,364.84	94.00	-
Wastewater Treatment Plant 302 G Street	5,323.30	25,410.51	-	-
Medical Marijuana	3,474.00	8,489.10	85.00	-
Poncha Springs Hot Springs	13.50	-	-	-
Quiznos Pro Challenge Bike Race	1,549.00	4,474.00	-	-
Touber Building	475.00	-	-	-
Everett Property	128.00	-	-	-
Code Rewrite	-	21,493.75	10,394.00	-
Milk Run Annexation	-	-	2,912.50	-
Tenderfoot Tower	-	-	2,163.00	706.00
Home Rule	-	-	2,149.00	210.00
Cable Franchise	-	-	-	95.00
<b>subtotal</b>	<b>\$ 163,155.39</b>	<b>\$ 221,113.69</b>	<b>\$ 166,694.87</b>	<b>\$ 118,323.57</b>
<b>Litigation:</b>				
Litigation - Other	\$ 2,291.00	\$ -	\$ -	\$ -
Poncha Springs Sewer Dispute	9,641.90	-	-	-
Rocky Mountain Chipseal	2,693.46	-	-	-
Young	-	-	7,107.24	-
Dominick water rights litigation	-	-	3,671.00	3,506.50
Marks Litigation	-	-	1,708.00	8,498.01
Auxier - Fritz Litigation	-	-	-	24,799.80
Auxier Budget Litigation	-	-	-	912.00
<b>subtotal</b>	<b>\$ 14,626.36</b>	<b>\$ -</b>	<b>\$ 12,486.24</b>	<b>\$ 37,716.31</b>
<b>Open Records Requests</b>	<b>\$ -</b>	<b>\$ 3,539.00</b>	<b>\$ -</b>	<b>\$ 1,721.75</b>
<b>subtotal - City cost</b>	<b>\$ 177,781.75</b>	<b>\$ 224,652.69</b>	<b>\$ 179,181.11</b>	<b>\$ 157,761.63</b>
<b>Pass-Through Billings:</b>				
Planning Dept Reimbursable Costs	\$ 13,277.65	\$ 3,345.70	\$ 7,018.00	\$ 3,012.25
Natural Resources Center	15,474.70	57,643.28	7,139.50	-
Appeal of HPC Decision re: CORA Kahn	1,499.00	-	-	-
Auxier - Building Permit Appeal	-	-	6,760.00	3,053.74
<b>subtotal - pass-through costs</b>	<b>\$ 30,251.35</b>	<b>\$ 60,988.98</b>	<b>\$ 20,917.50</b>	<b>\$ 6,065.99</b>
<b>Total Billings</b>	<b>\$ 208,033.10</b>	<b>\$ 285,641.67</b>	<b>\$ 200,098.61</b>	<b>\$ 163,827.62</b>
<b>Net Cost to the City</b>	<b>\$ 177,781.75</b>	<b>\$ 224,652.69</b>	<b>\$ 179,181.11</b>	<b>\$ 157,761.63</b>
<b>General Legal Percentage of Total</b>	<b>52.5%</b>	<b>46.6%</b>	<b>67.6%</b>	<b>70.2%</b>

**LEGAL BILLINGS**  
**CIRSA**

	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>
<b>Matter</b>				
Occupation Tax	20,000	-	-	-
Trip & Fall	473	-	-	-
Trip & Fall	5,000	-	-	-
Auto Accident	-	308	-	-
Wrongful Death	-	8,069	477	-
Police Arrest	-	-	-	22,994
Trip & Fall	-	-	-	13,509
Police Arrest	-	-	-	4,097
Open Records	-	-	-	1,400
Budget Lawsuit	-	-	-	3,970
	-	-	-	-
	-	-	-	-
	-	-	-	-
<b>Totals</b>	<b>\$25,473</b>	<b>\$8,377</b>	<b>\$477</b>	<b>\$45,970</b>

**LEGAL BILLINGS**  
**MOSES, WITTEMYER, HARRISON AND WOODRUFF, P.C.**

<b>Billing Categories</b>	<b>Case No. (if applicable)</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>
<b>Applications:</b>					
Exchange	02CW180	-	-	74	-
Tennessee Ditch	04CW125	233	440	-	-
Dominick Change	09CW131	10,837	14,439	19,100	19,019
North Fork Exchange Diligence	10CW92	2,445	954	-	-
Exchanges Diligence Application	12CW092	-	-	4,225	126
Holman/School District Diligence Case	13CW3012	-	-	-	9,009
	<b>subtotal</b>	<b>13,515</b>	<b>15,832</b>	<b>23,398</b>	<b>28,154</b>
<b>Stipulate/Oppose:</b>					
Tom Smith	01CW114	71	-	-	-
Aurora	01CW145	85	24	351	-
Pueblo West	01CW152	378	-	25	-
Upper Arkansas WCD	04CW096	20	1,810	254	217
Colorado Springs	05CW096	-	-	-	1,764
High Line and Aurora	05CW105	-	314	977	42
Aurora, et al.	06CW120	14	-	220	2,766
Streu	07CW033	715	-	-	-
Poncha Springs Friend Ranch	07CW111	5,753	3,871	9,766	-
Donala W&SD	09CW073	475	326	74	-
Donala W&SD	09CW073 & 09CW096	8,728	7,708	-	-
Upper Arkansas WCD	09CW085	751	54	-	-
Upper Arkansas WCD	09CW086	548	54	-	-
Donala W&SD	09CW096	112	107	-	-
Town of Poncha Springs	09CW138	3,505	919	1,981	987
Chaffee County	12CW107	-	-	662	151
Climax Molybdenum	12CW124	-	-	-	1,286
Colorado Springs	90CW056	84	165	-	-
Upper Arkansas WCD	92CW084	357	24	98	-
Counter/Knickerbocker	96CW215	138	141	-	-
Upper Arkansas WCD & Salco	97CW031	1,786	15	-	-
Lake County	98CW173	188	401	2,444	147
Aurora and Rocky Ford Ditch Sellers	99CW169	-	-	152	-
	<b>subtotal</b>	<b>23,705</b>	<b>15,929</b>	<b>17,000</b>	<b>7,359</b>
<b>Other:</b>					
General		5,637	6,976	4,691	366
North Fork Reservoir		165	666	744	126
Augmentation Accounting		47	-	-	-
Fry-Ark Water		257	-	59	-
Poncha Springs		4,332	1,952	-	-
SECWCD Storage		893	-	137	63
Upper Arkansas Storage Authority		-	-	196	-
Water Lease		-	-	-	231
Water Rights		-	495	332	4,095
Water Supply Study		1,398	-	-	-
	<b>subtotal</b>	<b>12,728</b>	<b>10,088</b>	<b>6,157</b>	<b>4,881</b>
<b>General and Out of Pocket Costs:</b>					
Filing Fees		1,048	325	553	700
Publication Fees		149	134	1,022	190
Other Out of Pocket Cost		351	249	391	315
	<b>subtotal</b>	<b>1,548</b>	<b>708</b>	<b>1,966</b>	<b>1,204</b>
<b>Total Water Attorney Costs</b>		<b>\$ 51,496</b>	<b>\$ 42,557</b>	<b>\$ 48,520</b>	<b>\$ 41,598</b>