

PUBLIC LANDS LITIGATION

EXECUTIVE OFFICES & CRIMINAL JUSTICE APPROPRIATIONS SUBCOMMITTEE
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BUDGET BRIEF

SUMMARY

FY 2011 was the inaugural year for the Public Lands Litigation Line Item. During the 2010 General Session the Legislature passed House Bill 324, "Public Lands Litigation." The bill appropriates money to the Constitutional Defense Council, a separate line item in the Governor's Office, for the purpose of challenging ownership of certain lands by the federal government. Instead of rolling HB 324 appropriations into the Constitutional Defense Council Line Item, the Public Lands Litigation Line Item was created to track these appropriations apart from the other appropriations to the Constitutional Defense Council.

ISSUES AND RECOMMENDATIONS

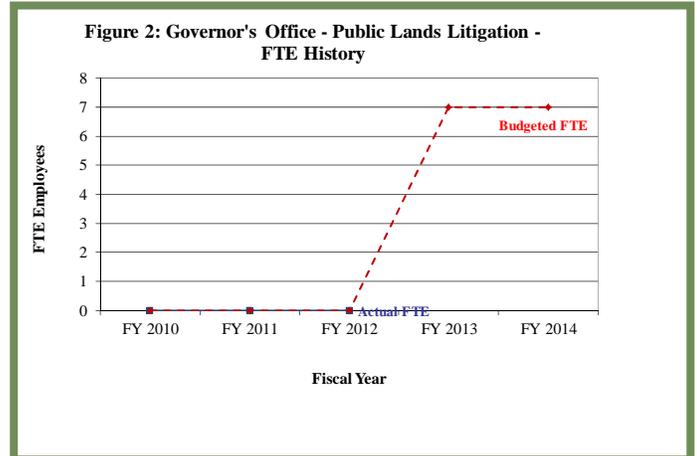
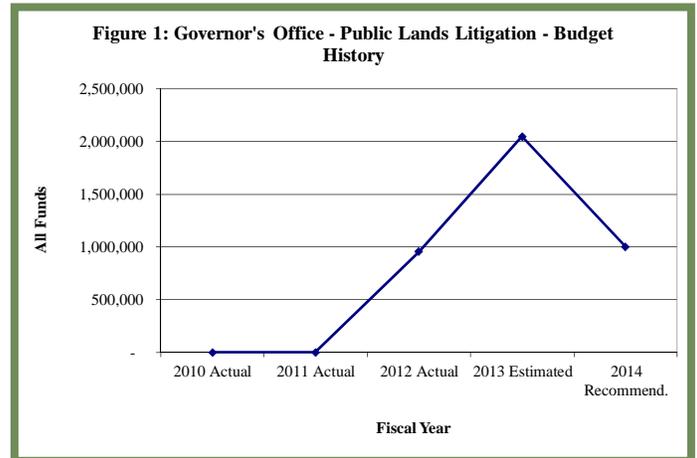
Base Budget

An effective sunset provision in the authorizing legislation for this line item's funding has come to term. As a result, the Fiscal Analyst recommends a FY 2014 budget for the Public Lands Litigation Line Item of \$0. Further detail is provided below.

House Bill 324, "Public Lands Litigation," discussed above, authorized two appropriations for FY 2011, FY 2012, and FY 2013 to provide funding for the Public Lands Litigation Line Item. First, a \$1 million appropriation from the General Fund Restricted – Land Exchange Distribution Account to the General Fund Restricted – Constitutional Defense Account; and second, a \$1 million appropriation from the General Fund Restricted – Constitutional Defense Account to the Constitutional Defense Council. The second appropriation, from the Constitutional Defense Account to the Constitutional Defense Council, was not an appropriation in the bill, but was authorized in effect, through intent language for the three respective fiscal years.

Additionally, 2011 General Session House Bill 76, "Federal Law Evaluation and Response," altered the statute codified by HB 324, and authorized an ongoing appropriation of \$1 million from the General Fund Restricted - Land Exchange Distribution Account to the General Fund Restricted - Constitutional Defense Account. However, no language in the bill authorized an annual appropriation from the General Fund Restricted- Constitutional Defense Account to the Constitutional Defense Council. Likewise, no intent language accompanied HB 76 authorizing this appropriation.

The result is that the Public Lands Litigation Line Item does not have either 1) intent language directing the appropriation of money from the General Fund Restricted - Constitutional Defense Account to the Constitutional Defense Council, or 2) statute authorizing the same. According to UCA 63C-4-103(4), "The Legislature may annually appropriate money from the General Fund Restricted - Constitutional Defense Account..." to the Constitutional



Defense Council to carry out its duties outlined in statute, but the \$1 million appropriation being executed from FY 2011 through FY 2013 is not an ongoing appropriation built into the base budget.

The Legislature has two options with the Public Lands Litigation Line Item budget:

- 1) **Status Quo.** In this scenario the General Fund Restricted – Constitutional Defense Account will receive an annual appropriation of \$1 million from the General Fund Restricted – Land Exchange Distribution Account and its balance will grow by that amount. In order to continue an appropriation from the General Fund Restricted - Constitutional Defense Account to the Constitutional Defense Council through this line item, it would be necessary for the Legislature to take this action with the appropriations process during each General Session.
- 2) **Change Statute.** To continue including the annual appropriation of \$1 million from the General Fund Restricted – Constitutional Defense Restricted Account to the Constitutional Defense Council through this line item in the base budget, new legislation would be necessary to codify this action.

Intent Language

A report on intent language passed by the Legislature during the 2012 General Session for the Governor is included in the issue brief entitled *Governor 's Office Follow-up on Previous Intent Language*.

The Fiscal Analyst recommends the following intent language to make the Public Lands Litigation line item FY 2013 unexpended appropriations nonlapsing at the end of FY 2013:

Under section 63J-1-603 of the Utah Code, the Legislature intends that appropriations provided for the Governor's Office-Public Land Litigation in Item 2 Chapter 11 Laws of Utah 2012 not lapse at the close of Fiscal Year 2013.

ACCOUNTABILITY DETAIL

The State of Utah filed three lawsuits in Kane County and one in Garfield County in 2010 and 2011 to quiet title to federal lands. In November of 2011 Utah filed a Notice of Intent to Sue the United States to over 18,000 roads throughout the state. In addition to the lawsuits from 2010 and 2011, the State of Utah filed 24 lawsuits in the United States District Court to quiet title to approximately 12,000 roads crossing BLM managed lands in FY 2012; these lawsuits covered each public lands county in the state. These 12,000 roads are part of the statewide transportation system that provide access to SITLA parcels, towns, recreation areas and areas containing natural resources. The state has taken over 40 preservation depositions of old and infirm witnesses in 2012. It is anticipated that this effort will involve hundreds of depositions statewide while these cases move through the court system. It is anticipated that this litigation is a multi-year project. .

Bald Knoll case (2010): A claim to 16 roads in Kane County, it includes roads leading to a state park and 4 SITLA parcels. The case has resulted in partial judgment quieting title to 75 miles of roads. The court granted Utah and Kane County's Motion for Partial Summary Judgment giving Utah and Kane County title to some of the roads, including Skutumpah, Hancock and Sand Dunes roads. Trial concluded in August and the case was submitted on oral argument on January 26, 2012.

Hole in the Rock case (2011): Involves suit to 66 roads in Kane County in which Utah filed a Motion to Intervene. The Motion was granted on December 31, 2011 and Utah is now a party to that case. This case involves significant access to School Trust lands.

Utah and Kane County v. United States and Utah and Garfield County v. United States (2011): November of 2011. Suing for title to the remaining R.S 2477 roads in the Grand Staircase Escalante National Monument on all remaining R.S. 2477 roads in the monument. One involves about 700 roads in Kane County and another involves 96 roads in Garfield County.

BUDGET DETAIL TABLE

Governor's Office - Public Lands Litigation						
	FY 2012	FY 2013		FY 2013		FY 2014*
Sources of Finance	Actual	Appropriated	Changes	Revised	Changes	Recommended
GFR - Constitutional Defense	1,000,000	1,000,000	0	1,000,000	(1,000,000)	0
Beginning Nonlapsing	1,000,000	0	1,045,300	1,045,300	(1,045,300)	0
Closing Nonlapsing	(1,045,300)	0	0	0	0	0
Total	\$954,700	\$1,000,000	\$1,045,300	\$2,045,300	(\$2,045,300)	\$0
Programs						
Public Lands Litigation	954,700	1,000,000	1,045,300	2,045,300	(2,045,300)	0
Total	\$954,700	\$1,000,000	\$1,045,300	\$2,045,300	(\$2,045,300)	\$0
Categories of Expenditure						
Personnel Services	578,500	0	557,900	557,900	(557,900)	0
In-state Travel	1,700	0	10,000	10,000	(10,000)	0
Current Expense	74,500	0	977,400	977,400	(977,400)	0
Other Charges/Pass Thru	300,000	1,000,000	(500,000)	500,000	(500,000)	0
Total	\$954,700	\$1,000,000	\$1,045,300	\$2,045,300	(\$2,045,300)	\$0
Other Data						
Budgeted FTE	0	0	7	7	0	7

*Does not include amounts in excess of subcommittee's state fund allocation that may be recommended by the Fiscal Analyst.

SUMMARY OF RECOMMENDATIONS

The Analyst recommends the Legislature:

1. Approve a FY 2014 recommended budget of \$0.
2. After review and adjustment, approve the intent language described on page 2.