

ATTORNEY GENERAL
STATE OF MONTANA

SENATE FINANCE & CLAIMS

Exhibit No. 25

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Bill No. HB2

Department of Justice
215 North Sanders
PO Box 201401
Helena, MT 59620-1401

Tim Fox
Attorney General



Testimony of Attorney General Tim Fox
Regarding HB2
Senate Finance and Claims Committee
April 8, 2013

Mr. Chairman, members of the committee, for the record my name is Tim Fox, Attorney General. Thank you to subcommittee members: Chairmen Gibson, Representatives Dudik and Brodehl, as well as Senators Walker, Moore and Tropila, along with staff, Brent Doig and Greg Dewitt, for review of the Department of Justice's budget. As the budget currently stands, there are a couple of budget proposals that are not included and are mission critical for the Department.

The Montana Law Enforcement Academy is the premier law enforcement and public safety educational and training institution for state, county, city and tribal officers. The Academy offers entry-level programs referred to as Basic Programs and advanced training through an array of Professional Development Programs. Well-qualified and highly trained law enforcement and public safety professionals are essential to providing effective and efficient service to the people of Montana. In 2003, the legislature created a state special revenue source to fund the academy. The source of the state special revenue fund is from surcharge revenues. The assumption at the time was that the surcharge revenues would generate 1.1 million dollars annually to fund the academy. That revenue assumption has never been realized, thus leaving the academy in an on-going annual shortfall of \$175,000. The department requests an appropriation of \$175,000 each year, to complete the funding of the academy.

The second mission critical budget request that is not currently in the department's budget relates to major litigation. The major litigation budget is reserved for instances where the state has a duty to sue, or gets sued, and outside counsel and experts are required due to the specialized expertise and background needed.

One prominent example of this kind of case is the water dispute of *Montana v. Wyoming*. The Yellowstone River Water Compact was negotiated between Montana and Wyoming in 1950. Faced with repeated, serious violations of the Compact by the State of Wyoming, in 2007 former Attorney General Mike McGrath was forced to file suit against Wyoming. The Supreme Court of the United States has jurisdiction over this case and has appointed a Special Master to preside

over it. Water disputes between sovereigns are extremely complex and inordinately expensive. *Montana v. Wyoming* is no exception. This case alone has cost the State \$3 million over the last six years and the case is entering its most intensive and costly phase.

It is crucial for our State that we get favorable decisions in this case to ensure there is adequate water for the residents, farmers, ranchers and businesses of eastern Montana. This litigation produced an initial favorable decision to Montana on three issues, and the remaining issues will be decided at a trial beginning in late October of 2013. If the Special Master determines that the Compact has been violated, a second damages trial will be scheduled. The case will very likely end up back in the Supreme Court of the United States in 2014 and 2015.

This single case is estimated to cost Montana around \$2 million over the next two years. But there are and will be more instances over the next two years where we need resources to defend Montana laws, such as challenges to initiatives or referenda passed by voters, redistricting, anticipated lawsuits opposing our campaign finance laws, possible challenges to funding of public schools or the public defender system, the PPL Montana riverbed case, and pending litigation involving access to medical marijuana. These are just some of the suits my office is defending or can be expected to defend.

Though we have no way of knowing for certain what suits we will be required to defend, rest assured more challenges are coming and one of my core duties is to defend Montana's interests and Montana's laws vigorously. In addition to the \$1.2 million currently in the major litigation budget, the department respectfully requests a \$2 million, one-time-only, restricted appropriation, for the purpose of taking the *Montana v. Wyoming* water litigation to trial and beyond. If those funds are not used, they will be returned to the general fund at the end of the biennium.

Thank you for further consideration of our budget today and my staff is available if you have any questions.