Agency Recommendation Summary

The Columbia River Gorge Commission (CRGC), a bi-state agency created by an interstate compact between Washington and Oregon, has been sued in the Western District of Washington. This appropriation would permit the Attorney General’s Office (AGO) to represent CRGC in this lawsuit. The CRGC is usually represented by one in-house attorney, but covering this lawsuit is outside of the in-house counsel’s workload capacity. Additionally, this matter involves a claim for monetary damages, which the AGO is better equipped to defend.

Fiscal Summary

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<tr>
<th>Fiscal Summary</th>
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Decision Package Description

CRGC is requesting funding to support the assistance of the Washington state AGO to represent the CRGC in a pending lawsuit in the Western District of Washington. The CRGC is a bi-state agency, created by an interstate compact between the States of Washington and Oregon as permitted by federal law. RCW 43.97.015; 16 U.S.C. §§ 544—544p.

CRGC has been sued on a number of theories including inadequate public disclosure, constitutional rights violations, and tortious interference with business expectancy. These sorts of claims, especially the ones related to alleged inadequate disclosure of public records, are outside of the in-house counsel’s usual experience. The name of the case is Zimmerly v. Columbia River Gorge Commission, et al. and it is currently pending in the United States District Court for the Western District of Washington.

There are currently seven different claims filed, four are related to public records request and the other three are Torts claims and will be paid out of the Self-Insurance Liability Program (SILA funds). Using the claim split, the AGO has determined that CRGC will be billed as follows; 60 percent Legal Services Revolving Account (LSRA) paid by CRGC and 40 percent SILA funds billed to Department of Enterprise Services (DES), Risk Management.

Assumptions and Calculations

Expansion, Reduction, Elimination or Alteration of a current program or service:

This is not an expansion or alteration of the current program. The requested funding is to pay for litigation costs associated with support from the AGO.

Detailed Assumptions and Calculations:

Zimmerly v. CRGC et al. is expected to be moderately complex and the need for 0.5 AAG, 0.25 Legal Assistant 3 and 0.05 Paralegal 2 will be needed to litigate this case. In addition, it is anticipated the expert witness costs will come in at $150,000 in FY 2023. CRGC Legal Counsel will also be engaged in the case, but costs will be covered by the existing CRGC budget as an in-kind contribution.

Workforce Assumptions:

Not applicable.
Columbia River Gorge Commission
Maintenance Level - AG - Request Additional AG Assistance

Strategic and Performance Outcomes

Strategic Framework:

(Results Washington): This proposal fits within the Mission to “improve state government by approaching complex issues through collaboration, performance management, and continuous improvement.” CRGC seeks to collaborate with the AGO for appropriate representation in a federal district court lawsuit.

(AGO Strategic Plan): This proposal fits within the AGO objective of “proactively engage in risk management efforts to reduce the state’s liability and improve outcomes for the public.” Here, CRGC is unable to provide the level of legal representation appropriate to meet our needs. Providing this service through the AGO proactively manages the risk posed by the lawsuit.

Performance Outcomes:

No incremental changes.

Equity Impacts

Community outreach and engagement:

No answer was provided.

Disproportional Impact Considerations:

No answer was provided.

Target Populations or Communities:

CRGC works with the four federally recognized Columbia River Treaty Tribes in a government-to-government consultation process to protect tribal treaty rights in the Columbia River Gorge National Scenic Area. These four tribes include the Yakama Nation, the Confederated Tribes of the Warm Springs, the Confederated Tribes of the Umatilla Reservation, and the Nez Perce. Two Washington Governor-appointed Commission members represent the Warm Springs and the Yakama Nation. Providing adequate tribal representation on the Commission is important to the State of Washington and serves to promote engagement, cooperation, and respect for their sovereign rights and state government’s responsibilities in protecting their treaty rights in the National Scenic Area. This request for funding does not impact any tribal treaty rights directly. CRGC also works with diverse communities within the National Scenic Area as part of the Diversity, Equity, and Inclusion Initiative, as well as Washington’s Pro-Equity Anti-Racism (PEAR) workplan engaging stakeholders in assisting CRGC to eliminate inadvertent systemic discrimination in CRGC policies and guidelines, as well as internal operations. Staff time spent on this lawsuit shifts time away from staff addressing other needs and priorities of CRGC.
Other Collateral Connections

**Puget Sound Recovery:**
Not applicable.

**State Workforce Impacts:**
Not applicable.

**Intergovernmental:**
The Columbia River Gorge Commission is a regional agency created by Washington and Oregon through the Columbia River Gorge Compact (RCW 43.97.015 and ORS 196.150). The Oregon Department of Justice is representing the Gorge Commissioners appointed by the Oregon governor and Oregon counties. Additionally, there is a federal appointee on the Gorge Commission, which the U.S. Attorney for the Western District of Washington is representing. This proposal is in support of Washington's partnership with Oregon and the federal government for land management in the Columbia River Gorge National Scenic Area.

**Stakeholder Response:**
There is no known opposition to this request at this time.

**State Facilities Impacts:**
Not applicable.

**Changes from Current Law:**
Not applicable.

**Legal or Administrative Mandates:**

Zimmerly v. Columbia River Gorge Commission litigation

### IT Addendum

**Does this Decision Package include funding for any IT-related costs, including hardware, software, (including cloud-based services), contracts or IT staff?**

No

### Objects of Expenditure

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<tr>
<th>Objects of Expenditure</th>
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### Agency Contact Information

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