

**Program Budget Comparison**

The following table summarizes the total proposed budget by year, type of expenditure, and source of funding.

Program Budget Comparison								
Budget Item	Base Fiscal 2014	Approp. Fiscal 2015	Budget Fiscal 2016	Budget Fiscal 2017	Biennium Fiscal 14-15	Biennium Fiscal 16-17	Biennium Change	Biennium % Change
FTE	24.50	24.50	24.50	24.50	24.50	24.50	0.00	0.00 %
Personal Services	1,690,684	1,994,663	2,022,992	2,025,906	3,685,347	4,048,898	363,551	9.86 %
Operating Expenses	260,943	255,382	276,331	279,877	516,325	556,208	39,883	7.72 %
Equipment & Intangible Assets	0	8,287	0	0	8,287	0	(8,287)	(100.00)%
<b>Total Costs</b>	<b>\$1,951,627</b>	<b>\$2,258,332</b>	<b>\$2,299,323</b>	<b>\$2,305,783</b>	<b>\$4,209,959</b>	<b>\$4,605,106</b>	<b>\$395,147</b>	<b>9.39 %</b>
General Fund	0	0	1,071,664	1,074,200	0	2,145,864	2,145,864	0.00 %
State/Other Special Rev. Funds	1,951,627	2,258,332	1,227,659	1,231,583	4,209,959	2,459,242	(1,750,717)	(41.59)%
<b>Total Funds</b>	<b>\$1,951,627</b>	<b>\$2,258,332</b>	<b>\$2,299,323</b>	<b>\$2,305,783</b>	<b>\$4,209,959</b>	<b>\$4,605,106</b>	<b>\$395,147</b>	<b>9.39 %</b>

**Program Description**

The Water Courts Supervision Program, located in Bozeman, adjudicates claims of existing water rights in Montana pursuant to Title 3, Chapter 7 and Title 85, Chapter 2, MCA.

**Program Highlights**

<b>Water Courts Supervision Major Budget Highlights</b>
<ul style="list-style-type: none"> <li>• The only adjustments for this program are to:                             <ul style="list-style-type: none"> <li>◦ Annualize the pay plan passed by the 2013 Legislature</li> <li>◦ Adjust certain expenditure accounts for inflation</li> <li>◦ Adjust funding for office lease contract increases</li> </ul> </li> </ul>
<b>Major LFD Issues</b>
<ul style="list-style-type: none"> <li>• The water adjudication fund has previously been appropriated and is proposed to be appropriated above the statutory limits and the balance is not enough to fund the court until 2020</li> </ul>

**Program Discussion -**

This agency was exempt from the HB 2 boilerplate language.

*Personal Services*

In FY 2015 legislative budget, personal services comprised 88.3% of the program budget. The Governor proposes 88.0% in FY 2016 and 87.9% in FY 2017. The increases in costs are due to:

- Restoration of the 2% vacancy savings applied to the FY 2015 legislative budget
- Funding to annualize of the legislative pay plan
- Funding to annualize elected official pay per the statutory salary survey

In FY 2014, the program experienced 9.4% vacancy savings in hours expended compared to budgeted hours. Besides general turnover, primary reasons for the level of vacancy were: 1) retirement of the chief water judge followed by a nearly two month delay in filling the position; and 2) delays in filling new positions moved from the Department of Natural Resources and Conservation.

### Funding

The following table shows proposed program funding by source from all sources of authority.

Judicial Branch, 05-Water Courts Supervision Funding by Source of Authority					
Funds	HB2	Non-Budgeted Proprietary	Statutory Appropriation	Total All Sources	% Total All Funds
01100 General Fund	2,145,864	0	0	2,145,864	46.60 %
02431 Water Adjudication	2,459,242	0	0	2,459,242	100.00 %
02576 Natural Resources Operations SSR Fu	0	0	0	0	0.00 %
<b>State Special Total</b>	<b>\$2,459,242</b>	<b>\$0</b>	<b>\$0</b>	<b>\$2,459,242</b>	<b>53.40 %</b>
<b>Federal Special Total</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>0.00 %</b>
<b>Proprietary Total</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>0.00 %</b>
<b>Total All Funds</b>	<b>\$4,605,106</b>	<b>\$0</b>	<b>\$0</b>	<b>\$4,605,106</b>	

In the 2015 biennium the Water Court is supported entirely by state special revenue from the natural resources operations account and the water adjudication account. Legislation passed by the 2007 Legislature (HB 473 of the regular session) transferred \$25.0 million from the general fund to the state special revenue account for adjudication of water rights claims. The following figure shows the projected fund balance for the Water Adjudication Fund through the end of the 2017 biennium. The Governor's proposal includes a request to switch the funding currently provided from the natural resources operations account to general fund, a \$2.1 million biennium funding change.

Department of Natural Resources and Conservation Water Adjudication Fund (02431)				
	Actual FY 2014	Appropriated FY 2015	Executive Request FY 2016      FY 2017	
Beginning Balance	\$9,357,844	\$6,107,356	\$2,604,109	(\$733,942)
Expenditures				
Judiciary - Water Court	1,068,046	1,165,035	1,227,659	1,231,583
DNRC - Water Resources	<u>2,227,109</u>	<u>2,368,212</u>	<u>2,140,392</u>	<u>2,142,981</u>
Total Expenditures	3,295,155	3,533,247	3,368,051	3,374,564
Revenues	45,158	30,000	30,000	30,000
Adjustments	(491)	-	-	-
Ending Balance	\$6,107,356	\$2,604,109	(\$733,942)	(\$4,078,506)

### Potential Funding Issues for Water Adjudication

In order for Montana to defend its water use from demands from other states and Canada, it must have water right decrees in place. To expedite this process, the 2005 Legislature passed HB 22 requiring the Department of Natural Resources and Conservation to complete claims examination by June 30, 2015. The Water Court would have an additional five years to finish the process by issuing preliminary or temporary preliminary decrees by June 30, 2020.

The program was initially funded by a water right fee deposited to the water adjudication fund. However, in the 2007 Legislative Session the fee was eliminated and the fund was provided a \$25.0 million transfer from the general fund. According to 85-2-280, MCA, the fund was to be sufficient to finish the on-the-ground work and fund the Water Court until FY 2020. However, estimates show that at the end of FY 2015, the water adjudication fund will have less than \$2.7 million to fund the remaining work of issuing and enforcing decrees. If allocations are made up to the limit allowed in law the projected balance of \$2.7 million would be insufficient to fund the \$5.3 million in expenditures for the five years of fiscal years 2016 through 2020. Refer to the following LFD Issue for further details.

**LFD COMMENT**

Water Adjudication Fund is Out of Funds

The Water Court and portions of the Department of Natural Resources and Conservation are funded with the water adjudication fund and funding in the account would be depleted in FY 2016 without actions by the legislature. The impact would be that the Water Court would likely not be able to complete adjudication work by 2020 as intended by the legislature.

The legislature established limits in statute on expenditures for the Water Adjudication Program from fiscal years 2006 through 2020. The intent of these limitations was to allow the fund to be used for adjudication activities and to ensure funding would last for the duration of the adjudication period, including the five years of estimated Water Court work after the on-the-ground portion has been completed. The limit is based on an allocation of \$2.6 million in FY 2006 with annual increases tied to the inflation assumptions of the revenue estimating resolution. Beginning July 1, 2015, the limit is reset to \$1.0 million for FY 2016 with annual increases tied to the inflation factor of the revenue estimating resolution.

Department of Natural Resources and Conservation Water Adjudication Fund Statutory Limit and Disbursements				
Fiscal Year	Limit	Disbursements	Difference	Cummulative
2020	\$1,125,509	\$1,125,509	\$0	(\$7,059,349)
2019	1,092,727	1,092,727	-	(7,059,349)
2018	1,060,900	1,060,900	-	(7,059,349)
2017	1,030,000	3,374,564	(2,344,564)	(7,059,349)
2016	1,000,000	3,368,051	(2,368,051)	(4,714,785)
2015	3,392,410	3,533,247	(140,837)	(2,346,734)
2014	3,293,602	3,295,155	(1,553)	(2,205,897)
2013	3,197,672	3,184,964	12,708	(2,204,344)
2012	3,104,536	2,810,205	294,331	(2,217,052)
2011	3,014,113	3,504,904	(490,791)	(2,511,383)
2010	2,926,323	5,090,920	(2,164,597)	(2,020,592)
2009	2,841,090	3,193,938	(352,848)	144,005
2008	2,758,340	2,784,071	(25,731)	496,853
2007	2,678,000	2,437,545	240,455	522,584
2006	2,600,000	2,317,871	282,129	282,129

The above figure compares the actual, appropriated, and requested amounts with the statutory limit that has been inflated 3 percent per year. As shown, the statutory limit is exceeded in FY 2008 through FY 2011 and again in FY 2014. Appropriations for FY 2015 and the requested budgets for the 2017 biennium also exceed the limit. The cumulative effects through the 2017 is that \$7.1 million more would be expended from the fund than the legislature intended in order to allow the fund to last through 2020. For the 2017 biennium, the fund would be appropriated by nearly \$4.7 million more than the statutory limit.

Based on the funding in the Governor’s request the water adjudication fund would be depleted before FY 2016 is completed and the Water Court would have no funding from the fund to complete the remaining three years of work. The amount could be different depending on the amount of interest earned and the actual expenditures from the fund. At issue is whether the

proposed executive budget will negatively impact the legislature’s ability to fund the Water Court’s completion of issuance and enforcement of decrees. To address this issue, the legislature would need to reduce the amount of funding coming from the water adjudication fund or find another source of revenue for the fund.

This same issue was raised during the 2011 and 2013 Legislatures. The 2011 Legislature passed SJ 26 that recommended monitoring of the Water Court by the Legislative Finance Committee during the interim. The Water Court and the Department of Natural Resources and Conservation (DNRC) reports at each interim meeting of the Environmental Quality Council providing the status of the water adjudication process. Through June 2014, 57,000 water rights claims have been examined, which is the benchmark the 2005 Legislature set for DNRC to complete by the end of FY 2015. Being a year ahead of schedule for claims examination progress reduces the risk of falling short on funding for the program.

Legislative Options

With no action taken to restore funding for the water adjudication fund, which provides nearly half of the funding for the Water Court, it will be out of funds in FY 2016 under the executive budget. To address the impact on the Water Court, the legislature could choose from the following options:

- Switch funding from the water adjudication funds state special revenue to another funding source, such as the general fund
- Reduce funding for DNRC from the water adjudication account via a reduction or funding switch
- Establish a new revenue stream or transfer funds into the water adjudication fund

**Budget Summary by Category**

The following summarizes the total budget utilizing the FY 2015 Legislative base, present law adjustments, and new proposals.

Budget Item	-----General Fund-----				-----Total Funds-----			
	Leg. Budget Fiscal 2016	Leg. Budget Fiscal 2017	Leg. Biennium Fiscal 16-17	Percent of Budget	Leg. Budget Fiscal 2016	Leg. Budget Fiscal 2017	Leg. Biennium Fiscal 16-17	Percent of Budget
2015 Budget	0	0	0	0.00 %	2,258,332	2,258,332	4,516,664	98.08 %
PL Adjustments	0	0	0	0.00 %	40,991	47,451	88,442	1.92 %
New Proposals	1,071,664	1,074,200	2,145,864	100.00 %	0	0	0	0.00 %
<b>Total Budget</b>	<b>\$1,071,664</b>	<b>\$1,074,200</b>	<b>\$2,145,864</b>		<b>\$2,299,323</b>	<b>\$2,305,783</b>	<b>\$4,605,106</b>	

**Present Law Adjustments -**

The “Present Law Adjustments” table shows the changes from FY 2015 legislative appropriation to the budget proposed by the executive. PSPL adjusts all personal services. LGPL provides for adjustments to other expenditures such as operating expenses. Each is discussed in the narrative that follows. Total funds in the Present Law Adjustments table do not include proprietary funds budgeted in House Bill 2.

Present Law Adjustments	-----Fiscal 2016-----					-----Fiscal 2017-----				
	FTE	General Fund	State Special	Federal Special	Total Funds	FTE	General Fund	State Special	Federal Special	Total Funds
DP 98 - LEG. Personal Services Present Law	0.00	0	28,329	0	28,329	0.00	0	31,243	0	31,243
DP 99 - LEG. Present Law	0.00	0	12,662	0	12,662	0.00	0	16,208	0	16,208
<b>Grand Total All Present Law Adjustments</b>	<b>0.00</b>	<b>\$0</b>	<b>\$40,991</b>	<b>\$0</b>	<b>\$40,991</b>	<b>0.00</b>	<b>\$0</b>	<b>\$47,451</b>	<b>\$0</b>	<b>\$47,451</b>

**DP 98 - LEG. Personal Services Present Law -**

The following table outlines various components of the changes included in the PS PL adjustments.

Personal Services Present Law Adjustments					
FY 2016					
CP 98 PSPL Item	FTE	General Fund	State Special	Federal Special	Total Funds
State Share Health Insurance	24.50	\$0	\$11,907	\$0	\$11,907
Executive Implementation of 2015 Pay Increase		-	-	-	-
Fully Fund 2015 Legislatively Authorized FTE		-	-	-	-
Other		-	16,422	-	16,422
<b>Personal Services Present Law Adjustments</b>	<b>24.50</b>	<b>\$0</b>	<b>\$28,329</b>	<b>\$0</b>	<b>\$28,329</b>
FY 2017					
CP 98 PSPL Item	FTE	General Fund	State Special	Federal Special	Total Funds
State Share Health Insurance	24.50	\$0	\$11,907	\$0	\$11,907
Executive Implementation of 2015 Pay Increase		-	-	-	-
Fully Fund 2015 Legislatively Authorized FTE		-	-	-	-
Other		-	19,336	-	19,336
<b>Personal Services Present Law Adjustments</b>	<b>24.50</b>	<b>\$0</b>	<b>\$31,243</b>	<b>\$0</b>	<b>\$31,243</b>

The executive has proposed to increase funding for personal services by 1.4% in FY 2016 and by 1.6% in FY 2017 compared to the FY 2015 legislative budget.

Changes that make up the other adjustments include the following:

- Funding to restore 2% vacancy savings applied to non-elected official positions

DP 99 - LEG. Present Law -

The executive has proposed to increase funding for all other expenditure categories excluding personal services by 4.8% in FY 2016 and by 6.1% in FY 2017 compared to the FY 2015 legislative budget. Changes that makeup the LGPL adjustment are:

- Contractual increase in the lease for the offices of the Water Court
- Increases to fund fixed costs for an increase in the indirect cost allocation plan
- Postage and mailing

The executive requests an increase in state special revenue to address a 3% inflation clause in the lease for offices of the Water Court in Bozeman. The lease cost increases by 3% every May per the lease agreement. Funding is from the natural resources operations fund.

**New Proposals -**

Total funds in the New Proposals table do not include proprietary funds budgeted in House Bill 2.

New Proposals	-----Fiscal 2016-----					-----Fiscal 2017-----				
	FTE	General Fund	State Special	Federal Special	Total Funds	FTE	General Fund	State Special	Federal Special	Total Funds
DP 500013 - Water Court Funding Switch	0.00	1,071,664	(1,071,664)	0	0	0.00	1,074,200	(1,074,200)	0	0
<b>Total</b>	<b>0.00</b>	<b>\$1,071,664</b>	<b>(\$1,071,664)</b>	<b>\$0</b>	<b>\$0</b>	<b>0.00</b>	<b>\$1,074,200</b>	<b>(\$1,074,200)</b>	<b>\$0</b>	<b>\$0</b>

DP 500013 - Water Court Funding Switch -

The executive requests general fund to replace state special revenue from the natural resources operations account. The executive state the funding switch is requested to address a declining revenue stream in the fund.

<b>LFD COMMENT</b>	<u>Natural Resources Operations Account Balance</u> Refer to the narrative in the Department of Natural Resources and Conservation for a discussion of the balance in the natural resources operations account.
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