



# ENVIRONMENTAL QUALITY COUNCIL

ENVIRONMENTAL QUALITY  
COUNCIL. 2003-2004

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PO BOX 201704  
HELENA, MONTANA 59620-1704  
(406) 444-3742

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## Memorandum

To: Environmental Quality Council

From: Krista Lee Evans  
Research Analyst

RE: Water adjudication program funding

Date: February 23, 2004

### Historical funding for Montana's Water Adjudication Program

Since Montana's statewide water adjudication effort was begun, funding has varied both in amount and source. I've attached a copy of the funding levels and their sources since 1974. In brief, the three sources for funding have been the Water Rights Account and Adjudication Account, the General Fund, and the State Special Revenue Fund (Resource Indemnity Trust, Renewable Resource Development, Renewable Resources Grants/Loans, Local Impact, Reclamation and Development).

The numbers that I have provided for this summary exclude the funding for the Compact Commission, which is for adjudication of reserved rights. The EQC had asked to be informed of numbers that the DNRC and Water Court for the Water Adjudication Advisory Committee came up with as an estimated cost to complete the adjudication in 15 years. Therefore, numbers excluding the Compact Commission are more appropriate for comparison purposes. A certain portion of the Water Court's time is spent on approving negotiated compacts. However, in comparison to the number of state-based rights that the Water Court has to handle, the negotiated compacts are fairly small.

The funding provided to DNRC and the Water Court has varied from \$313,118 as a low point in 1980 to just over \$1.6 million in 1985 as the high point. The average funding for the DNRC and the Water Court from 1980-2003 is just over \$1.2 million per year. Montana has spent a total of \$37,471,120.

## Comparison with adjudication in Idaho

As a comparison, the state of Idaho, which began its adjudication of the Snake River Basin in 1980, has spent a total of \$67,818,700, not quite double what Montana has spent. Idaho has funded its adjudication through the adjudication fund (SRBA account) and the general fund. I've attached a chart that details Idaho's funding sources and amounts. You will notice that there was a major shift in funding sources in 1997. Prior to 1997, the program was primarily funded by filing fees. After 1997, the program has been primarily funded by general fund appropriations. The shift was the result of a U.S. Supreme Court case, United States v. Idaho, ex rel. Director, Idaho Department of Water Resources, 508 U.S. 1 (1993). This case is very pertinent when discussing funding of an adjudication program and whether the United States can be assessed a fee. This decision provided: "While we therefore accept the proposition that the critical language of the second sentence of the McCarran Amendment submits the United States generally to state adjective law, as well as to state substantive law of water rights, we do not believe it subjects the United States to the payment of the sort of fees that Idaho sought to exact here. The cases mentioned above dealing with waivers of sovereign immunity as to monetary exactions from the United States in litigation show that we have been particularly alert to require a specific waiver of sovereign immunity before the United States may be held liable for them. We hold that the language of the second sentence making 'the State laws' applicable to the United States in comprehensive water right adjudications is not sufficiently specific to meet this requirement." The result of this decision was that Idaho could no longer collect filing fees from the United States, and therefore the funds were not available in the SRBA account to pay for the adjudication and the general fund picked up the slack. A copy of this decision is provided for your review.

The major differences between Idaho and Montana are the following:

1. Timeline
  - a. Idaho expects to be finished with the claims examination portion by 2005 and through the courts by 2010 at the latest -- total time to complete adjudication -- 25 years.
  - b. Montana started in 1974, and at current funding expects to be finished with claims examination by 2033, finished with court process by ? -- total time to complete adjudication -- at least 60 years.
2. Cost (the dollar amounts have not been adjusted to take into account inflation and other factors)
  - a. Total cost for Idaho -- estimate = \$80 million
  - b. Total cost for Montana (estimated by doubling what has been spent over the last 30 years) = \$75 million
3. Conclusion
  - a. Montana will take an additional 35 years for a \$5 million savings-- assuming a correlation exists between funding and timeliness of the adjudication.

## **Allocation of funds between DNRC and the Water Court**

Historically, a majority of the funding has been directed towards DNRC. This would make sense when compared with the adjudication process. The claims examination process has to be completed before the basin can come before the Water Court for its examination. Once the claims examination process is completed, it may be wise to shift funding from the DNRC to the Water Court to be able to complete decrees and enter the enforcement stage, hopefully arriving at final decrees within a reasonable timeframe. However, when moving the emphasis of funding from the DNRC to the Water Court, it would be imperative to recognize the level and amount of assistance that DNRC provides to the Water Court through the Court process and the enforcement process. Without DNRC expertise, it may slow down the Court's ability to complete decrees. Section 85-2-243(2), MCA, provides that "Department assistance to a water judge must be without cost to the judicial districts wholly or partly within the affected water division. Expenses incurred by the department under subsection (1) must be paid from the money appropriated to it for the adjudication program by the legislature to carry out its function under subsection (1) and when that appropriation is expended then the department is no longer required to provide further assistance. " (emphasis added)

The other issue to consider with staffing levels is whether or not DNRC shifts FTEs from the adjudication effort to other areas of need within DNRC. If there is concern that this might happen, it would be within the Legislature's authority to provide that FTEs that are allocated to DNRC for the purpose of the adjudication program may not be reallocated to other areas of DNRC.

## **Types of funding structures in other states**

### **Idaho**

I have provided a pretty detailed summary of how Idaho funds its program above. One reason I have gone into such detail on Idaho is because based on my interaction with various entities involved in adjudication in other states, it seems that Idaho is very well respected for its ability to move through the adjudication process and to have a completion date in sight. Other states, including Montana, seem to be known for the amount of time it is taking them to get the adjudication of state rights completed. Montana's Compact Commission has served as a model and example in other states for inexpensive settlement of reserved rights. Therefore, it might serve Montana well to pat ourselves on the back for being foresighted and having enough ingenuity to develop the Compact Commission to address the federal and tribal reserved rights within Montana and learn from Idaho's experiences and practices with regard to state-based rights.

As shown in the Idaho chart that I have provided, they are funded through the SRBA account and the general fund. Their statutory language is contained in section

42-1414, Idaho Code. "Fees for filing notice of claims with the director." This section contains a fee schedule for filing claims. The fees are due by a time certain and are different based on the beneficial use to which the water is applied. However, as time passes, the amount of funds available in a "filing fee" account are dwindling. Much like other states, Idaho will probably have to turn more and more to the state general fund to cover the costs of the adjudication.

### **Arizona**

Arizona pays for its adjudication through filing fees and through the general fund. It is important when discussing Arizona that it is clear that they are not doing a statewide adjudication. They are conducting their adjudication using a basin-by-basin approach. They are working on two basins right now. One basin is funded entirely by filing fees. For the other basin, because it is extremely small and there aren't very many claimants to provide funding through the payment of fees, a general fund appropriation of \$20,000 is being used in addition to the filing fees. Arizona's staff consists of two people, one special master and one additional staff person. Arizona's fee structure is established in sections 45-254 and 45-255, Arizona Revised Statutes. The fee for filing a statement of claim by an individual is \$20. The fee for filing a claim for a corporation, a municipal corporation, the state or any political subdivision, an association, or a partnership is 2 cents for every acre-foot of water claimed or \$20, whichever is greater. A claim is not considered by the court unless all fees have been fully paid.

### **Oregon**

Oregon relies exclusively on general fund appropriations to fund its adjudication of the Klamath River Basin. Revenue in the Water Resources Department budget only covers about one-half to two-thirds of the revenue required, however, forcing the adjudication process to seek additional WRD funds from savings in other programs. Current fiscal year revenue amounts to approximately \$700,000, leaving a shortfall of between \$550,000 to \$650,000.

### **Montana**

Montana's adjudication program was initially funded with filing fees and general fund. However, the money from the filing fees was expended and the program now relies primarily on the general fund and on the state special revenue fund referred to above. There were four divisions outlined in Montana. The divisions were the Yellowstone, the Clark Fork, the Upper Missouri, and the Lower Missouri. The filing fee was \$40 per claim and it could not exceed more than \$480 in a division. So if a claimant had more than 12 claims within the Yellowstone Division, the claimant only had to pay \$480. The fee was a flat rate and had no correlation with the amount of water claimed.

Montana also allowed for the filing of late claims. The filing fee associated with a late claim was a bit more. The fee was still \$40 for filing but there was an additional \$150 fee for processing.

A review of the attached chart will provide a better understanding of the funding levels and sources.

**Funding Alternatives for Montana**

**Claim Fee**

Montana has approximately 220,000 claims filed that are being addressed in the adjudication. An option would be to assess a fee on a per-claim basis. Because of the U.S. v. Idaho case that I discussed earlier, any claims by the United States would probably have to be excluded from assessment. Also, a certain number of claimants aren't going to be able to be found, etc. Therefore, let's assume that there are 175,000 claims that can be assessed a fee. The amount of the fee would be a policy decision. I have outlined some rough numbers below.

Fee per claim	Amount raised per year (assuming 175,000 claims and does not include cost of administration, collection, etc.)	Amount raised per biennium (assuming 175,000 claims and does not include cost of administration, collection, etc. and also assuming that the fees are recurring)
\$10	\$1,750,000	\$3,500,000
\$20	\$3,500,000	\$7,000,000
\$30	\$5,250,000	\$10,500,000
\$40	\$7,000,000	\$14,000,000

As you can see from the chart, a fairly nominal "per-claim fee" could produce significant amounts of money for the program. However, there are always other issues to consider, such as:

1. What happens if the fee isn't paid?

There are a couple of different alternatives to addressing this issue.

- a. Collect the unpaid "fee" as a delinquent tax. This is done in other areas of Montana law and could be set up in a similar structure. The Department of Revenue has the ability to do this, and since the structure exists, the cost to implement it should be less than giving this responsibility to a different state agency. The Department of Revenue would have to be consulted to be able to determine exact costs of implementing a collection mechanism.
- b. Forfeiture of the water right. This is a very severe result for not paying the fee and may lead to litigation. However, it is an alternative and it would probably be the

best avenue for ensuring payment. The question is whether or not the state wants to take away a water user's private property for failing to pay a \$10 fee. Under current law, if a claimant never paid a filing fee the Water Court will terminate the claim when it addresses that particular basin in the adjudication process. The difference between a filing fee and a post-filing fee are significant. In the filing process a water user could choose not to file a claim or pay the fee and forfeit any associated water right. In the instance of a post-filing fee, the water user has already paid the filing fee with the assumption that they would not have to pay fees in the future.

2. Who has to pay the fee?

This question starts to get into the complications of imposing a fee after the filing has already taken place.

a. What if a water user's basin is already adjudicated? If the water user's basin has already been adjudicated it would be very easy to make the case that this fee is in essence a tax on the right to use water. That isn't a good or bad thing, it is an element that needs to be considered when making a policy decision. Do water users located in a basin that has already been adjudicated benefit from a program with adequate funding? The answer might be yes because the Water Court would have enough staff to address all of the issue remarks that are coming to the surface as a result of decrees being enforced.

b. If only water users in nonadjudicated streams have to pay the fee, is that fair? The water users themselves really had no control over how and when their basin was adjudicated, unless they took it upon themselves to petition the District Court to have their stream certified to the Water Court. One might make the argument that it was the state's fault for taking so long to get the adjudication done and that citizens who just happened to be further down the list shouldn't be held responsible for paying when other users are not being held responsible. Is it their fault that their stream was further down "the list" when it came to the state getting the work done?

c. Do entities of state government have to pay the fee? Both DNRC (state lands) and FWP have water rights claims. Will they be responsible for paying a portion of the adjudication costs through the fee system? If the fee system is set up to collect fees from water rights holders in order to pay for the program, wouldn't it make sense to have the state agencies pay as well since they are receiving the same benefit that a water user is from having the adjudication completed?

3. What is the cost of managing a fee program? I mentioned above the cost of collecting when fees aren't paid. However, there are other costs associated with implementing a fee program as well. For instance:

a. DNRC's database will have to be current and functioning well to be able to separate

out the United States claims and to be able to pull names and addresses for mailing notices.

- b. The cost of developing, printing, and mailing notices and keeping a record.
  - c. I'm sure there are other issues to consider as well.
4. Is this a one-time fee or a recurring fee? If recurring, for how long?
5. Who will be in charge of collecting the fee? Does the fee go to the DNRC, the Department of Revenue, or the Water Court? Who is responsible for actually taking in the money and keeping the records associated with that? Can it be done at a local level?
6. Who will address noncompliance? This question relates to question #1. If a water user is required to forfeit his/her right if the fee isn't paid, it would be advisable to include the cost of litigation in the budget of the entity that has to follow up on claimant payments. If the fee is collected as a delinquent tax, then it would probably be advisable to have the Department of Revenue serve in this capacity. They already do this for other fees and would have the policies and framework established.
7. Based on my understanding of committee discussions, it appears that the purpose of trying to get more funding for the adjudication program is to try to speed up the process. If there is a potential for litigation based on a new funding source, like a fee, will this simply prolong the adjudication effort even further?

#### 8. Consumptive use

An issue that the EQC has not addressed specifically but has heard from public testimony is the issue of "consumptive use". In a wide angle lens, the easiest way to look at consumptive use is the accepted belief that some beneficial uses of water are consumptive, some aren't. As your lens begins to narrow you get to the more complicated discussion on how consumptive does a use have to be before it makes a difference. Within one type of beneficial use--let's use irrigation for an example--there are various levels of consumption of the water. This consumption is based on, to name a few:

- a. type of irrigation -- center pivot vs. wheel line vs. hand line vs. flood
- b. type of soil -- sandy vs. clay
- c. type of crop being grown -- alfalfa vs. wheat
- d. time of year irrigation is occurring -- spring vs. late summer

These issues are just a few that would have to be considered when addressing consumptive use. This raises the question of whether or not a distinction should be made between consumptive and nonconsumptive uses and whether or not the

Legislature believes it feasible to address it in statewide policies.

**Beneficial Use Fee**

An additional alternative for funding the adjudication program is to base a fee structure on the beneficial use to which the water is applied. This is how Idaho's filing fee structure is set up. There is a flat fee for domestic and/or stock water rights and a flat fee for all other rights. In addition to the flat fee there is a variable water use fee on all rights except domestic and/or stock water rights. A potential outline of fees, based on Idaho's statute, is provided below:

Beneficial Use	Fee
Domestic and/or stock water rights	\$25
Claims for all other rights	\$50 flat fee plus an additional variable water use fee based on acreage, power generating capacity, c.f.s., or equivalent volume of water
Additional variable water use fee	
Irrigation use	\$1.00 per acre (one fee irrespective of number of claims)
Power	\$3.50 per kilowatt of capacity (manufacturer's nameplate rating)
Aquaculture	\$10.00 per c.f.s.
Municipal, industrial, commercial, mining, heating, cooling	\$100.00 per c.f.s
Public instream flow, public lake level maintenance, wildlife	\$100.00 per c.f.s

**Hydro Tax**

SB 176 was introduced in the 2003 session. A hydro tax of this sort is also an option for funding the adjudication program. A copy of the bill and the fiscal note are attached for your review. I think it is important to remember that hydro facilities have water rights and generally speaking they are senior rights. Review the bill draft and the attached fiscal note and we can discuss any questions at the March meeting.

## Summary

The Montana Constitution provides the following:

### Article IX. Environment and Natural Resources

Section 3. Water rights. (1) All existing rights to the use of any waters for any useful or beneficial purpose are hereby recognized and confirmed.

(2) The use of all water that is now or may hereafter be appropriated for sale, rent, distribution, or other beneficial use, the right of way over the lands of others for all ditches, drains, flumes, canals, and aqueducts necessarily used in connection therewith, and the sites for reservoirs necessary for collecting and storing water shall be held to be a public use.

(3) All surface, underground, flood, and atmospheric waters within the boundaries of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law.

(4) The legislature shall provide for the administration, control, and regulation of water rights and shall establish a system of centralized records, in addition to the present system of local records. (emphasis added)

The important elements to look at with regard to the funding discussion are that (1) water within the boundaries of the state is property of the state and (2) all waters are subject to appropriation for beneficial uses as provided by law.

There are numerous examples of when the state assesses a fee for the use of a state-owned resource. One example is state lands. The property is owned by the state. Others are able to use those lands for specific purposes upon payment of a fee. The state also assesses administrative fees associated with the management of these state-owned resources. Therefore, the concept of fee for use is not new to Montana. It is wholly within the authority of the Legislature to assess a fee for the privilege of using the state's water for a beneficial purpose.

CI0429 4054k1ea.

September, 2003 DNRC											
MONTANA ADJUDICATION PROGRAM EXPENDITURES SINCE 1974											
Fiscal	DNRC			WATER COURT			COMPACT COMMISSION				
Year	WRA	GF	SSRF	WRA	GF	SSRF	WRA	GF	SSRF	TOTAL	
1974-80		974,784								974,784	
1980	310,409	0	0	2,709	0	0	29,106	0	0	342,224	
1981	667,103	0	0	4,694	0	0	157,832	0	0	829,629	
1982	1,084,504	0	0	105,087	0	0	140,260	0	0	1,329,851	
1983	552,291	500,865	0	0	192,398	0	0	178,659	0	1,424,213	
1984	1,382	1,150,557	0	0	229,039	0	0	40,723	129,592	1,551,293	
1985	0	515,203	736,960	0	364,103	0	0	197,292	0	1,813,558	
1986	1,471	984,549	81,990	406,883	0	0	0	65,501	136,331	1,676,725	
1987	66,354	496,424	358,936	420,656	0	0	0	50,592	129,440	1,522,402	
1988	0	549,221	0	400,328	0	0	0	124,367	85,597	1,159,513	
1989	0	517,688	0	0	0	393,465	0	112,534	112,532	1,136,219	
1990	22,130	620,756	43,926	0	0	429,267	0	112,816	180,383	1,409,278	
1991	1	760,619	2	0	0	448,029	0	132,269	229,309	1,570,229	
1992	0	741,692	384	0	0	495,641	0	133,548	269,306	1,640,571	
1993	0	584,395	66,301	0	0	553,979	0	132,142	308,636	1,645,453	
1994	0	457,232	70,982	0	0	541,156	0	0	474,406	1,543,776	
1995	47,691	486,830	190,182	0	0	521,501	0	5,448	486,895	1,738,547	
1996	22,189	706,567	0	0	0	529,385	0	218,307	289,717	1,766,165	
1997	72,106	681,561	0	0	0	567,259	0	212,710	286,819	1,820,455	
1998	166,584	557,590	78,773	0	0	573,298	0	199,193	371,447	1,946,885	
1999	90,802	457,953	65,334			551,807		210,181	377,723	1,753,800	
2000	68,802	596,076	0			593,378		644,379	0	1,902,635	
2001	49,777	569,771	0			627,869	0	661,548	0	1,908,965	
2002	4,508	610,015	22,279	0	0	665,013		729,510		2,031,325	
2003		644,009		0	0	653,454	0	709,946	0	2,007,409	
TOTAL	3,228,104	13,189,573	1,716,049	1,340,357	785,540	8,144,501	327,198	4,871,665	3,868,133	37,471,120	
WRA - Water Rights Account and Adjudication Account (water right filing fees)											
GF - General Fund											
SSRF - State Special Revenue Fund (Resource Indemnity Trust, Renewable Resource Development, Renewable Resources Grants/Loans, Local Impact, Reclamation And Development)											
Note: The Water Court and Compact Commission provided the above expenditure numbers for their area of the table.											
Note: As of October 1, 1982, a total of 200,578 claims had been filed and a total of \$3,706,422 had been received in fees.											
This amounts to an average of \$18.47 per claim.											
Note: DNRC year end expenditures for fiscal years 84 through 96 were verified from SBAS reports on 1/16/97.											

**Department of Water Resources  
Issues and Information**

Analyst: Houston

**Snake River Basin Adjudication<sup>1</sup> Costs**

Fiscal Year	Fund Source	IDWR <sup>2</sup>	Attorney General <sup>3</sup>	Judicial <sup>4</sup>	TOTAL
1985	SRBA Fund	150,900	0	0	150,900
1986	SRBA Fund	234,000	0	0	234,000
1987	General	680,000	0	0	680,000
	SRBA Fund	321,300	0	0	321,300
1988	General	651,700	0	0	651,700
	SRBA Fund	349,200	0	0	349,200
1989	SRBA Fund	2,366,100	0	0	2,366,100
1990	General	0	39,200	0	39,200
	SRBA Fund	2,030,700	0	0	2,030,700
1991	General	0	78,500	0	78,500
	SRBA Fund	2,308,600	0	101,300	2,409,900
1992	General	0	138,700	0	138,700
	SRBA Fund	2,615,900	0	226,700	2,841,600
1993	General	0	110,500	0	110,500
	SRBA Fund	2,636,000	0	522,500	3,158,500
1994	General	0	102,500	0	102,500
	SRBA Fund	2,332,500	0	413,300	2,745,800
1995	General	0	590,000	0	590,000
	SRBA Fund	2,697,100	0	483,400	3,180,500
1996	General	856,100	1,293,000	0	2,251,100
	SRBA Fund	1,255,200	0	538,900	1,794,100
1997	General	2,208,000	1,704,700	722,800	4,635,500
	SRBA Fund	433,000	0	0	433,000
1998	General	2,292,200	2,303,900	744,300	5,340,400
	SRBA Fund	166,400	0	0	166,400
1999	General	2,613,600	2,289,100	635,800	5,538,400
	SRBA Fund	(2,100)	0	0	(2,100) <sup>5</sup>
2000	General	2,484,300	1,732,700	730,400	4,947,400
	SRBA Fund	142,300	0	0	142,300
2001	General	2,560,000	489,500	727,000	3,776,500
	SRBA Fund	247,600	0	0	247,600
2002	General	2,654,900	260,300	801,500	3,716,700
	SRBA Fund	428,300	0	0	429,300
2003	General	2,510,300	163,600	745,100	3,419,000
	SRBA Fund	313,100	0	0	313,100 <sup>6</sup>
2004 est	General	2,742,100	NA	783,700	3,525,800 <sup>7</sup>
	SRBA Fund	608,500	0	0	608,500
2005 req	General	2,754,500	NA	899,800	3,654,300 <sup>7</sup>
	SRBA Fund	702,800	0	0	702,800
<b>TOTAL</b>	<b>General</b>	<b>25,109,600</b>	<b>11,296,200</b>	<b>6,790,400</b>	<b>43,196,200</b>
	<b>SRBA Fund</b>	<b>22,337,400</b>	<b>0</b>	<b>2,285,100</b>	<b>24,622,500</b> <sup>8</sup>
	<b>TOTAL</b>	<b>47,447,000</b>	<b>11,296,200</b>	<b>9,075,500</b>	<b>67,818,700</b>

Notes: 1) adjudicate vb: to settle judicially 2) The Idaho Department of Water Resources (IDWR) is primarily responsible for adjudicating state-based water rights (permits, licenses, and beneficial uses). 3) The Attorney General's office is primarily responsible for adjudicating the federal-based water rights (federal reservations and tribal rights). 4) The state Judicial system is responsible for adjudicating both state-based and federal-based water rights. 5) FY 1999 adjusted for \$135,800 transfer-in from General Fund and \$133,700 expenditures. 6) At the end of FY 2003, the free-fund balance in the SRBA Fund was \$239,500. 7) Some estimates are "Not Available". 8) Water right filing fees are scheduled under §42-1414.

To: Krista Lee Evans, Research Analyst  
Legislative Services Division

From: Candace West, Assistant Attorney General

Re: Potential costs of litigation of reserved water rights in Montana.

Date: February 24, 2004

You have asked that our office prepare some estimates of the costs associated with litigation of water rights that are reserved to the various federal or tribal entities in Montana. The Attorney General's Office has not prepared a budget for any proposed litigation and this summary of potential costs of undertaking litigation is not prepared with any particular water right, any federal enclave, or any tribal water rights as its focus. This is prepared at the request of the legislative interim committee solely for the purpose of reviewing and comparing approximate litigation costs to the costs that may be associated with negotiating reserved water rights in Montana.

In reviewing the numerous costs the state may face if it became necessary to pursue litigation to resolve claims of reserved water rights in Montana, the Attorney General's Office reviewed some historic costs associated with other comprehensive resource litigation including the Natural Resource Damage Litigation, Montana v. ARCO, and historic expenditures related to litigation In Re the Adjudication of the Blackfeet Tribe Reserved Water Rights, WC-91-1. The remaining projections of possible costs to undertake litigation relative to reserved water rights are based upon the expenditures that were made in adjacent states to litigate the reserved water rights belonging to the United States Forest Service.

Historic costs that have been associated with natural resource/water resource litigation, include the following expenditures:

### **Montana v. ARCO**

Between 1989 and 1994, the State of Montana expended **\$8,157,036** for pursuing damages for injuries to natural resources in the Clark Fork River Basin from Atlantic Richfield Corporation. Of that amount, \$5,392,800 was expended for consultants (experts) on the scientific assessment along with the legal fees to support the analysis of injuries and damages. The Department of Fish Wildlife and Parks expended an additional \$242,504 in direct support of the assessment of damages to those resources. In addition, since the Natural Resource Damage Program needed to borrow the funds to pursue the litigation from the Board of Investments, it also accrued and paid \$1,118,135 in interest.

Since the time of the partial settlement when all of the above costs were recovered from ARCO as a part of that agreement, the State of Montana has incurred additional annual expenses pursuing the remaining three claims against ARCO that were left unresolved in the settlement in 1996.

1995 Supplemental	\$ 675,000
1997 Biennium:	\$2,359,857
1999 Biennium:	\$1,492,000
2001 Biennium:	\$1,650,000
2003 Biennium:	\$ 523,816

When the 1995 through 2003 expenditures of \$6,700.673 are added to the previous \$8,157,036 spent through 1994, the total cost of the ARCO litigation to date is **\$14,857,709**.

### **In Re Blackfeet Tribal Reserved Water Rights**

A study of the historic basis of the tribal water, along with a study of potential irrigable acres on the Blackfeet Reservation was partially undertaken beginning in 1992 in preparation for litigation. While the studies were never completed, the State of Montana expended funds through the Attorney General's Office for consultants to develop the studies in the following amounts:

1992	\$107,027
1993	\$151,778
1994	\$147,070
1995	\$ 30,763
1996	\$ 3,023
1997	\$ 9,014
1998	\$ 17,243

The total expenditures of \$465,922 did not result in the completion of the studies, which are at this point in time are only partially complete, likely stale and would need further work. Nor did the expenditures and studies result in resolution of the litigation. The litigation with the Blackfeet is currently stayed pending negotiations.

**Future Litigation of any Tribal or other Federal Reserved Water Claim--some projections.**

In a draft analysis of some of the costs that may be associated with litigating any one of the outstanding tribal or other federal reserved water rights, one should expect to include the following categories of expenses:

Soils studies  
Hydrology studies  
Engineering  
Fisheries  
Historical Research  
Legal Research  
State Claims Review  
Legal Defenses and Motions  
Discovery Costs  
Expert Witnesses (including studies, expert disclosures, depositions and testimony)  
Technical Support (data collection, electronic presentation, maps, charts, GIS plots)  
Travel Expenses  
Support Staff and Services  
Trial Costs  
Additional DNRC and Water Court Staff FTE's and services.

Based on a comparison of other complex natural resource litigation, the cost for litigating even one tribal or federal reserved water right will likely be in the range of **\$5,000,000 to \$8,600.00.**

**By Way of Comparison With Other State's Adjudication Litigation:**

**Forest Service Claims**

The State of **Idaho** spent approximately **\$3 million** dollars on objections and development of objections and scientific studies for the Forest Service Claims on the Snake River Adjudication. The Forest Service claims never went to trial, but were ultimately withdrawn by the USFS.

The State of **Colorado** spent approximately **\$2 million** dollars on objections and development of objections and scientific studies for the Forest Service Claims in one of their seven Water Court Districts.

*U.S. v. Idaho ex rel. Director Idaho Dept. of Water Resources*  
*Decided May 3, 1993*  
*Chief Justice Rehnquist*  
*U.S. Supreme Court*  
*Docket No. 92-190*  
*508 U.S. 1*

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SUPREME COURT OF THE UNITED STATES

No. 92-190

UNITED STATES,  
PETITIONER

v.

IDAHO, ex rel. DIRECTOR,  
IDAHO DEPARTMENT OF  
WATER RESOURCES

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF IDAHO

[May 3, 1993]

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

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¶1 The McCarran Amendment allows a State to join the United States as a defendant in a comprehensive water right adjudication. 66 Stat. 560, 43 U. S. C. 666(a). This case arises from Idaho's joinder of the United States in a suit for the adjudication of water rights in the Snake River. Under Idaho Code 42-1414 (1990), all water right claimants, including the United States, must pay -filing fees- when they submit their notices of claims. Idaho collects these fees to -financ[e] the costs of adjudicating water rights,- 42-1414; the United States estimates that in its case the fees could exceed \$10 million. We hold that the McCarran Amendment does not waive the United States' sovereign immunity from fees of this kind.

¶2 Discovered by the Lewis and Clark expedition, the Snake River-the -Mississippi of Idaho--is 1,038 miles long and the principal tributary to the Columbia River. It rises in the mountains of the Continental Divide in northwest Wyoming and enters eastern Idaho through the Palisades Reservoir. Near Heise, Idaho, the river leaves the mountains and meanders westerly across southern Idaho's Snake River plain for the entire breadth of the State-some 400 miles. On the western edge of Idaho, near Weiser, the Snake enters Oregon for a while and then turns northward, forming the Oregon-Idaho boundary for 216 miles. In this stretch, the river traverses Hells Canyon, the Nation's deepest river gorge. From the northeastern corner of Oregon, the river marks the Washington-Idaho boundary until Lewiston, Idaho, where it bends westward into Washington and finally flows into the Columbia just south of Pasco, Washington. From elevations of 10,000 feet, the Snake descends to 3,000 feet and, together with its many tributaries, provides the only water for most of Idaho. See generally T. Palmer, *The Snake River* (1991).

¶3 This litigation followed the enactment by the Idaho Legislature in 1985 and 1986 of legislation providing for the Snake River Basin Adjudication. That legislation stated that -the director of the department of water resources shall petition the [state] district court to commence an adjudication within the terms of the McCarran [A]mendment.- Idaho Code 42-1406A(1) (1990). The 1985 and 1986 legislation also altered Idaho's methods for -financing the costs of adjudicating water rights-; it provided that the Director of the Idaho Department of Water Resources shall not accept a -notice of claim- from any water claimant unless such notice -is submitted with a filing fee based upon the fee schedule.- 42-1414.

¶4 -Failure to pay the variable water use fee in accordance with the timetable provided shall be cause for the

department to reject and return the notice of claim to the claimant.- 42-1414. Idaho uses these funds -to pay the costs of the department attributable to general water rights adjudicationsand -to pay for judicial expenses directly relating to the Snake river adjudication.- 42-1777(1) and (2).

¶5 The Director of the Idaho Department of Water Resources filed a petition in the District Court of the Fifth Judicial District naming the United States and all other water users as defendants. The District Court entered an order commencing the adjudication, which was affirmed by the Supreme Court of Idaho. In re Snake River Basin Water System, 115 Idaho 1, 764 P. 2d 78 (1988), cert. denied sub nom. Boise-Kuna Irrigation Dist. v. United States, 490 U. S. 1005 (1989). When the United States attempted to submit its notices of claims unaccompanied by filing fees, the director refused to accept them. The United States then filed a petition for a writ of mandamus with the state court to compel the director to accept its notices without fees, asserting that the McCarran Amendment does not waive federal sovereign immunity from payment of filing fees. The District Court granted Idaho summary judgment on the immunity issue: -The ordinary, contemporary and common meaning of the language of McCarran is that Congress waived all rights to assert any facet of sovereign immunity in a general adjudication of all water rights . . . which is being conducted in accordance with state law.- App. to Pet. for Cert. 86a (emphasis in original).

¶6 The Supreme Court of Idaho affirmed by a divided vote. Idaho Dept. of Water Resources v. United States, 122 Idaho 116, 832 P. 2d 289 (1992). It concluded that the McCarran Amendment -express[es] a 'clear intent' of congress to subject the United States to all of the state court processes of an 'adjudication' of its water rights with the sole exception of costs.- Id., at \_\_\_, 832 P. 2d, at 294. The court also -decline[d] to read the term judgment for costs as including the term filing fees.- Id., at \_\_\_, 832 P. 2d, at 295. Whereas -costs- are charges that a prevailing party may recover from its opponent as part of the judgment, -fees are compensation paid to an officer, such as the court, for services rendered to individuals in the course of litigation.- Ibid. Two justices wrote separate dissents, asserting that the McCarran Amendment does not waive sovereign immunity from filing fees. We granted certiorari, 506 U. S. -- (1992), and now reverse.

¶7 The McCarran Amendment provides in relevant part:

Consent is given to join the United States as a defendant in any suit (1) for the adjudication of rights to the use of water of a river system or other source, or (2) for the administration of such rights, where it appears that the United States is the owner of or is in the process of acquiring water rights by appropriation under State law, by purchase, by exchange, or otherwise, and the United States is a necessary party to such suit. The United States, when a party to any such suit, shall (1) be deemed to have waived any right to plead that the State laws are inapplicable or that the United States is not amenable thereto by reason of its sovereignty, and (2) shall be subject to the judgments, orders, and decrees of the court having jurisdiction, and may obtain review thereof, in the same manner and to the same extent as a private individual under like circumstances: Provided, That no judgment for costs shall be entered against the United States in any such suit. 43 U. S. C. 666(a). According to Idaho, the amendment requires the United States to comply with all state laws applicable to general water right adjudications. Idaho argues that the first sentence of the amendment, the joinder provision, allows joinder of the United States as a defendant in suits for the adjudication of water rights. It then construes the amendment's second sentence, the pleading provision, to waive the United States' immunity from all state laws pursuant to which those adjudications are conducted. Idaho relies heavily on the language of the second sentence stating that the United States shall be -deemed to have waived any right to plead that the State laws are inapplicable.- Because the -filing fees- at issue here are assessed in connection with a comprehensive adjudication of water rights, Idaho contends that they fall within the McCarran Amendment's waiver of sovereign immunity.

¶8 The United States, on the other hand, contends that the critical language of the second sentence renders it amenable only to state substantive law of water rights, and not to any of the state adjective law governing procedure, fees, and the like. The Government supports its position by arguing that the phrase -the State laws-

in the second sentence must be referring to the same -State law- mentioned in the first sentence, and that since the phrase in the first sentence is clearly directed to substantive state water law, the phrase in the second sentence must be so directed as well.

¶9 There is no doubt that waivers of federal sovereign immunity must be -unequivocally expressed- in the statutory text. See *Irwin v. Department of Veterans Affairs*, 498 U. S. 89, 95 (1990); *United States Dept. of Energy v. Ohio*, 503 U. S. --, -- (1992); *United States v. Nordic Village, Inc.*, 503 U. S. --, -- (1992). -Any such waiver must be strictly construed in favor of the United States,- *Ardestani v. INS*, 502 U. S. --, -- (1991) (slip op., at 7), and not enlarged beyond what the language of the statute requires, *Ruckelshaus v. Sierra Club*, 463 U. S. 680, 685-686 (1983). But just as -we should not take it upon ourselves to extend the waiver beyond that which Congress intended[.] . . . [n]either, however, should we assume the authority to narrow the waiver that Congress intended.- *Smith v. United States*, 507 U. S. --, -- (1993) (slip op., at 6-7) (quoting *United States v. Kubrick*, 444 U. S. 111, 117-118 (1979)).

¶10 We are unable to accept either party's contention. The argument of the United States is weak, simply as a matter of grammar, because the critical term in the second sentence is -the State laws, while the corresponding language in the first sentence is -State law.- And such a construction would render the amendment's consent to suit largely nugatory, allowing the Government to argue for some special federal rule defeating established state-law rules governing pleading, discovery, and the admissibility of evidence at trial. We do not believe that Congress intended to create such a legal no-man's land in enacting the McCarran Amendment. We rejected a similarly technical argument of the Government in construing the McCarran Amendment in *United States v. District Court for Eagle County*, 401 U. S. 520, 525 (1971), saying -[w]e think that argument is extremely technical; and we decline to confine [the McCarran Amendment] so narrowly.-

¶11 We also reject Idaho's contention. In several of our cases exemplifying the rule of strict construction of a waiver of sovereign immunity, we rejected efforts to assess monetary liability against the United States for what are normal incidents of litigation between private parties. See, e.g., *United States v. Chemical Foundation, Inc.*, 272 U. S. 1, 20-21 (1926) (assessment of costs); *Library of Congress v. Shaw*, 478 U. S. 310, 323 (1986) (recovery of interest on judgment); *Ohio*, supra, at -- (liability for punitive fines). And the McCarran Amendment's -cost proviso,- of course, expressly forbids the assessment of costs against the United States: -[N]o judgment for costs shall be entered against the United States.-

¶12 The Supreme Court of Idaho pointed out in its opinion that -fees- and -costs- mean two different things in the context of lawsuits, 122 Idaho, at \_\_\_, 832 P. 2d, at 295, and we agree with this observation. -Fees- are generally those amounts paid to a public official, such as the clerk of the court, by a party for particular charges typically delineated by statute; in contrast, -costs- are those items of expense incurred in litigation that a prevailing party is allowed by rule to tax against the losing party. See 10 C. Wright, A. Miller, & M. Kane, *Federal Practice and Procedure* 2666, pp. 173-174 (1983). Before Idaho altered its system for recovering its expenses in conducting comprehensive water right adjudications in 1985 and 1986, Idaho courts, at the time of entry of final judgment, used to proportionately tax the -costs- of the adjudication against all parties to the suit, and not simply against the losing parties. Idaho Code 42-1401 (1948). When Idaho revised this system, many of the items formerly taxed as -costs- to the parties at the conclusion of the adjudication were denominated as -fees,- and required to be paid into court at the outset. This suggests that although the general distinction between fees and costs may be accurate, in the context of this proceeding the line is blurred, indeed.

¶13 While we therefore accept the proposition that the critical language of the second sentence of the McCarran Amendment submits the United States generally to state adjective law, as well as to state substantive law of water rights, we do not believe it subjects the United States to the payment of the sort of fees that Idaho sought to exact here. The cases mentioned above dealing with waivers of sovereign immunity as to monetary exactions from the United States in litigation show that we have been particularly alert to require a specific waiver of sovereign immunity before the United States may be held liable for them. We hold that the language of the second sentence making -the State laws- applicable to the United States in comprehensive water right adjudications is not sufficiently specific to meet this requirement.

¶14 The judgment of the Supreme Court of Idaho is therefore reversed, and the case remanded for further proceedings not inconsistent with this opinion.

¶15 It is so ordered.

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JUSTICE STEVENS, concurring in the judgment.

As the Court points out, ante, at 6-7, before 1985 -fees- comparable to those at issue in this litigation were taxed as -costs- in Idaho. Because I am persuaded that these exactions are precisely what Congress had in mind when it excepted judgments for -costs- from its broad waiver of sovereign immunity from participation in water rights adjudications, I concur in the Court's judgment.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

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Montana SB SB0176

**2003 Montana Legislature**About Bill -- Links

SENATE BILL NO. 176

INTRODUCED BY K. TOOLE

A BILL FOR AN ACT ENTITLED: "AN ACT IMPOSING A 1 PERCENT HYDROELECTRIC TAX ON THE GROSS REVENUE DERIVED FROM THE SALE OF ELECTRICITY FROM CERTAIN HYDROELECTRIC FACILITIES; PROVIDING DEFINITIONS; PROVIDING EXEMPTIONS FROM THE HYDROELECTRIC TAX; PROVIDING FOR THE ADMINISTRATION OF THE HYDROELECTRIC TAX AND FOR PENALTIES AND INTEREST; REQUIRING THAT THE PROCEEDS FROM THE HYDROELECTRIC TAX BE DEPOSITED IN THE STATE GENERAL FUND; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION. Section 1. Definitions.** As used in [sections 1 through 11], unless the context requires otherwise, the following definitions apply:

(1) "Hydroelectric facility" means a turbine generator or any combination of physically connected turbine generators at a single site that are driven by falling water and that produce electricity.

(2) "Person" means an individual, estate, trust, receiver, cooperative association, corporation, small business corporation, limited liability company, firm, partnership, joint venture, syndicate, or other entity.

**NEW SECTION. Section 2. Hydroelectric tax -- rate of tax -- exemptions.** (1) Except as provided in subsection (2), a hydroelectric tax is imposed on the gross revenue derived from the sale of electricity produced from a hydroelectric facility with a nameplate capacity of 5 megawatts or greater. The tax is imposed at the rate of 1% of the gross revenue derived from the sale of electricity produced from a hydroelectric facility or from a combination of hydroelectric facilities owned or operated by the same person.

(2) (a) The gross revenue derived from the sale of electricity produced from a hydroelectric facility owned by the state or by an agency of the United States government is exempt from the tax imposed by this section.

(b) The gross revenue derived from the sale of electricity produced from a hydroelectric facility owned by a municipal electric utility referred to in 69-8-103(5) or by a rural electric cooperative organized under the provisions of Title 35, chapter 18, is exempt from the tax imposed by this section.

**NEW SECTION. Section 3. Returns -- payment -- authority of department.** (1) On or before the 30th day of the month following the end of the calendar quarter in which the tax imposed by [sections 1 through 11] is payable, a return, on a form provided by the department, and payment of the tax for the preceding calendar quarter must be filed with the department.

(2) Each person engaged in producing electricity from a hydroelectric facility in this state that is subject to the tax under [sections 1 through 11] shall file a return.

(3) (a) A person required to pay the tax imposed by [sections 1 through 11] shall keep records, render statements, make returns, and comply with the provisions of [sections 1 through 11] and the rules prescribed by the department. Each return or statement must include the information required by the rules of the department.

(b) For the purpose of determining compliance with the provisions of [sections 1 through 11], the department is authorized to examine or cause to be examined any books, papers, records, or memoranda relevant to making a determination of the amount of tax due, whether the books, papers, records, or memoranda are the property of or in the possession of the person filing the return or another person. In determining compliance, the department may use statistical sampling and other sampling techniques consistent with generally accepted auditing standards. The department may also:

- (i) require the attendance of a person having knowledge or information relevant to a return;
  - (ii) compel the production of books, papers, records, or memoranda by the person required to attend;
  - (iii) implement the provisions of 15-1-703 if the department determines that the collection of the tax is or may be jeopardized because of delay;
  - (iv) take testimony on matters material to the determination; and
  - (v) administer oaths or affirmations.
- (4) Pursuant to rules established by the department, returns may be computer-generated and electronically filed.

**NEW SECTION. Section 4. Examination of return -- adjustments -- delivery of notices and demands.**

(1) If the department determines that the amount of tax due is different from the amount reported, the amount of tax computed on the basis of the examination conducted pursuant to [section 3] constitutes the tax to be paid.

(2) If the tax due exceeds the amount of tax reported as due on the taxpayer's return, the excess must be paid to the department within 30 days after notice of the amount and demand for payment is mailed or delivered to the person making the return unless the taxpayer files a timely objection as provided in 15-1-211. If the amount of the tax found due by the department is less than that reported as due on the return and the tax has been paid, the excess must be credited or, if no tax liability exists or is likely to exist, refunded to the person making the return.

(3) The notice and demand provided for in this section must contain a statement of the computation of the tax

and interest and must be:

(a) sent by mail to the taxpayer at the address given in the taxpayer's return, if any, or to the taxpayer's last-known address; or

(b) served personally upon the taxpayer.

(4) A taxpayer filing an objection to the demand for payment is subject to and governed by the uniform dispute review procedure provided in 15-1-211.

**NEW SECTION. Section 5. Penalties and interest for violation.** (1) (a) A person who fails to file a return as required by [section 3] must be assessed a penalty as provided in 15-1-216. The department may waive the penalty as provided in 15-1-206.

(b) A person who fails to file the return required by [section 3] and to pay the tax before the due date must be assessed a penalty and interest as provided in 15-1-216. The department may waive any penalty pursuant to 15-1-206.

(2) A person who purposely fails to pay the tax when due must be assessed an additional penalty as provided in 15-1-216.

**NEW SECTION. Section 6. Authority to collect delinquent taxes.** (1) (a) The department shall collect taxes that are delinquent as determined under [sections 1 through 11].

(b) If a tax imposed by [sections 1 through 11] or any portion of the tax is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7.

(2) In addition to any other remedy, in order to collect delinquent taxes after the time for appeal has expired, the department may direct the offset of tax refunds or other funds that are due to the taxpayer from the state, except wages subject to the provisions of 25-13-614 and retirement benefits.

(3) As provided in 15-1-705, the taxpayer has the right to a review on the tax liability prior to any offset by the department.

(4) The department may file a claim for state funds on behalf of the taxpayer if a claim is required before funds are available for offset.

**NEW SECTION. Section 7. Interest on deficiency -- penalty.** (1) Interest accrues on unpaid or delinquent taxes as provided in 15-1-216. The interest must be computed from the date on which the return and tax were originally due.

(2) If the payment of a tax deficiency is not made within 60 days after it is due and payable and if the deficiency is due to negligence on the part of the taxpayer but without fraud, the penalty imposed by 15-1-216(1)

(c) must be added to the amount of the deficiency.

**NEW SECTION. Section 8. Limitations -- action on fraudulent return.** (1) Except in the case of a person who fails to file a return or who purposely or knowingly, as those terms are defined in 45-2-101, files a false or fraudulent return violating the provisions of [sections 1 through 11], a deficiency may not be assessed or collected with respect to a month or quarter for which a return is filed unless the notice of additional tax proposed to be assessed is mailed to or personally served upon the taxpayer within 5 years from the date on which the return was filed. For purposes of this section, a return filed before the last day prescribed for filing is considered to be filed on the last day.

(2) If, before the expiration of the 5-year period prescribed in subsection (1) for assessment of the tax, the taxpayer consents in writing to an assessment after expiration of the 5-year period, a deficiency may be assessed at any time prior to the expiration of the period to which the taxpayer consented.

(3) Whenever a return is required to be filed and the taxpayer files a fraudulent return or fails to file the return, the department may at any time assess the tax or begin a proceeding in court for the collection of the tax without assessment.

**NEW SECTION. Section 9. Refunds -- interest -- limitations.** (1) A claim for a refund or credit as a result of overpayment of taxes collected under [sections 1 through 11] must be filed within 5 years of the date on which the return was due, without regard to any extension of time for filing.

(2) (a) Interest on an overpayment must be paid or credited at the same rate as the interest rate charged on unpaid taxes as provided in 15-1-216.

(b) Except as provided in subsection (2)(c), interest must be paid from the date on which the return was due or the date of overpayment, whichever is later. Interest does not accrue during any period in which the processing of a claim is delayed more than 30 days because the taxpayer has not furnished necessary information.

(c) The department is not required to pay interest if:

- (i) the overpayment is refunded or credited within 6 months of the date on which a claim was filed; or
- (ii) the amount of overpayment and interest does not exceed \$1.

**NEW SECTION. Section 10. Administration -- rules.** The department shall:

- (1) administer and enforce the provisions of [sections 1 through 11];
- (2) cause to be prepared and distributed forms and information that may be necessary to administer the provisions of [sections 1 through 11]; and
- (3) adopt rules that may be necessary or appropriate to administer and enforce the provisions of [sections 1

through 11]. The rules must specify the method for reporting gross revenue derived from the sale of electricity from a hydroelectric facility or from a combination of hydroelectric facilities owned or operated by the same person.

NEW SECTION. **Section 11. Disposition of revenue.** Taxes collected under [sections 1 through 11] must, in accordance with the provisions of 15-1-501, be deposited in the general fund.

NEW SECTION. **Section 12. Codification instruction.** [Sections 1 through 11] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 11].

NEW SECTION. **Section 13. Effective date.** [This act] is effective January 1, 2004.

NEW SECTION. **Section 14. Applicability.** [This act] applies to electricity produced from hydroelectric facilities and to tax years beginning after December 31, 2003.

- END -

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**Latest Version of SB 176 (SB0176.01)**

Processed for the Web on January 9, 2003 (5:44pm)

New language in a bill appears underlined, deleted material appears stricken.

Sponsor names are handwritten on introduced bills, hence do not appear on the bill until it is reprinted.

See the [status of this bill](#) for the bill's primary sponsor.

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[This bill in WP 5.1](#) | [All versions of all bills in WP 5.1](#)

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Prepared by Montana Legislative Services

(406) 444-3064



**Fiscal Note Request SB0176, As Introduced**  
(continued)

<b>SB176 As Introduced</b>						
<b>Revenue Impact Calculations</b>						
<u>Fiscal Year</u>	<u>Taxable Generation (megawatt hour)</u>		<u>Price (megawatt hour)</u>	<u>Estimated Gross Sales</u>	<u>Tax Rate</u>	<u>Estimated Revenue</u>
FY2004	2,803,895	X	\$40	= \$112,155,819	X 1%	= <b>\$1,121,558</b>
FY2005	5,607,791	X	\$40	= \$224,311,637	X 1%	= <b>\$2,243,116</b>

6. Under this proposal, the Department of Revenue would require administrative time for compliance and administration work. However, given the limited population of filers the costs would be minimal.

FISCAL IMPACT:

	<u>FY 2004 Difference</u>	<u>FY 2005 Difference</u>
<u>Revenues:</u>		
General Fund (01)	\$1,121,558	\$2,243,116
<u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u>		
General Fund (01)	\$1,121,558	\$2,243,116

LONG-RANGE IMPACTS:

Revenues to the general fund would be increased in all fiscal years after fiscal 2005. The increase in revenue will depend on the amount of energy generated by taxable hydroelectric facilities and the price at which that energy is sold.