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As of: August 27, 2004 (2:01pm)

**ENVIRONMENTAL QUALITY
COUNCIL. 2003-2004**

September 13, 2004

Ex. No. 13

**** Bill No. ****

Introduced By *****

By Request of the Environmental Quality Council

A Bill for an Act entitled: "An Act providing the findings and purpose of implementing a water adjudication fee; providing benchmarks and action, including elimination of the fee, that must be taken if benchmarks are not met by the department; defining what owner means in terms of the water adjudication fee; establishing a water adjudication fee schedule; providing that the fee does not apply to federal water rights and indian reserved and aboriginal claims to water; providing that the department of revenue collect the fee on behalf of the department; requiring the department to assign any unpaid fees to the department of revenue for collection; providing that a lien is placed on a water right if the fee is not paid after collection efforts; establishing a water adjudication account; establishing a statutory appropriation; providing that the fee cannot be assessed once \$28 million has been deposited in the adjudication account; requiring the department and the water court to report to the environmental quality council and the applicable legislative appropriations subcommittees; providing that a water right with an unpaid assessment may not be transferred; providing a contingent voidness; amending sections 15-1-216, 17-7-502, and 85-2-403, MCA; providing an effective date; and providing a termination date."

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Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Findings -- purpose.** (1)

Montana's water is critical to economic development and economic stability to its citizens. It is critical that Montana's water rights be adjudicated and quantified.

(2) The department and the water court must be accountable to the water users of Montana and are responsible for completing the adjudication in a timely and accurate manner.

(3) The completion of Montana's water adjudication is critical to the future of our state. Water users that filed their water right claims, pursuant to law, have the right to have their water rights quantified and made part of a decree. As water use and demands for water increase it is critical that water users have the option of enforcing their decree as a tool to help manage water in their area.

(4) The department's process for evaluating claims was changed from a verification process to an examination process. The examination process is conducted pursuant to rules adopted by the Montana Supreme Court. For those basins that were verified rather than examined, it is critical that the irrigation claims in these basins be reexamined.

(5) The purpose of [sections 1 through 9] is to generate revenue to adequately fund Montana's water adjudication program to:

(a) complete claims examination and the initial decree phase;

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(b) reexamine all irrigation claims in basins that were verified and were not subject to the Supreme Court examination rules; and

(c) ensure that the product of the adjudication is accurate decrees.

(6) With adequate funding, it is realistic and feasible for the department to complete claims examination and reexamination of verified basins by June 30, 2015. It is also realistic and feasible for the Water Court to issue a preliminary or temporary preliminary decree by June 30, 2020 for all basins in Montana.

(7) It is critical to preserve the trust that the water users of Montana have placed in the Legislature by ensuring that the revenue generated by the water adjudication fee established in [section 5] is only used for the purpose of adjudicating Montana's water rights.

NEW SECTION. Section 2. Benchmarks and action taken if not met. (1) The completion of initial claims examination is of a higher priority than reexamination of claims that were subject to the verification process unless the Chief Water Judge issues an order making reexamination a higher priority as provided in subsection (3)(b).

(2) There are approximately 57,000 water right claims that were filed pursuant to 85-2-212 that must be examined. There are approximately 18,800 irrigation claims that were verified that must be reexamined using the Supreme Court Examination rules.

(3)(a) The water court shall prioritize basins for the

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purpose of claims examination and reexamination by the department.

(b) The Chief Water Judge has the authority to order that reexamination be completed for a certain basin in a higher priority than claims examination. If the Chief Water Judge issues an order requiring the department to reexamine claims rather than examining claims, the number of claims that were reexamined must be counted against the amount of claims that the department is required to examine for that period.

(4) (a) The biennial cumulative benchmarks that are provided in subsection (4) (b) must be met. If the benchmarks are not met the fee contained in [section 5] attached to a water right for the purpose of funding the adjudication may not be assessed the following even numbered year.

(b)

Date	Total Number of Claims Examined	Total Number of Claims Reexamined
December 31, 2006	10,000	0
December 31, 2008	30,650	0
December 31, 2010	51,300	0
December 31, 2012	57,000	7,140
June 30, 2015		18,800

NEW SECTION. **Section 3. Definitions.** For the purposes of [sections 1 through 9] the following definitions apply:

(1) "calculated volume" means the feasible volume given the flow rate and period of use;

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(2) "person" means an individual, corporation, partnership, association, firm, or other legal entity.

(3) "water right" means a legal right to the beneficial use of water as recorded in the centralized water recording system by a water court decree, provisional permit, ground water certificate, filed exempt right, Powder River declaration, statement of claim, stockwater permit, temporary provisional permit, 1962 to 1973 groundwater filings as recorded with DNRC, or water reservation.

NEW SECTION. **Section 4. Owner.** (1) For the purposes of giving notice or imposing a fee as provided for in [section 5], owner means the first enumerated entity on a water right.

(2) The first enumerated entity is responsible for collecting the proportionate share of any fee from the other entities enumerated on the water right.

NEW SECTION. **Section 5. Water adjudication fee schedule -- exceptions.** (1) (a) Except as provided in subsection (1) (c), a water adjudication fee is authorized and directed to be imposed by the department of revenue on all water rights, provisional permits, ground water certificates, exempt rights, Powder River declarations, statements of claim, stockwater permits, temporary provision permits, and water reservations.

(b) Except as provided in [section 2], [section 7], subsection (1) (c) of this section, and subsection (5) of this section, an owner shall pay a biennial fee for the purpose of

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funding Montana's water adjudication based on the schedule in subsections (4) through (6).

(c) The water adjudication fee may not be imposed on federal water rights and tribal reserved and aboriginal water rights.

(2) The water adjudication fee is due on January 31 of even numbered years. The penalty and interest provisions contained in 15-1-216 apply to late payments of the fee.

(3)(a) Subject to subsection (3)(b), the department of revenue may withhold revenue equal to the actual cost of collecting the water adjudication fee.

(b) The department of revenue may not withhold more than 5% of the revenue generated.

(4) An owner for the following purposes shall pay according to a graduated scale. The number of water rights for which a fee must be paid on a per purpose basis is capped at 20 water rights per person per graduated level.

(a) The fee schedule for a commercial water right with a claimed or calculated volume that is:

- (i) 0 acre feet to 100 acre feet, \$20;
- (ii) greater than 100 acre feet and less than or equal to 5000 acre feet, \$1000; and
- (iii) greater than 5000 acre feet, \$2000.

(b) The fee schedule for an industrial water right with a claimed or calculated volume that is:

- (i) 0 acre feet to 1000 acre feet, \$20;
- (ii) greater than 1000 acre feet and less than or equal to

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4000 acre feet, \$1000; and

(iii) greater than 4000 acre feet, \$2000.

(c) The fee schedule for a mining water right with a claimed or calculated volume that is:

(i) 0 acre feet to 1000 acre feet, \$20;

(ii) greater than 1000 acre feet and less than or equal to 4000 acre feet, \$1000; and

(iii) greater than 4000 acre feet, \$2000.

(d) The fee schedule for a municipal water right with a claimed or calculated volume that is:

(i) 0 acre feet to 1000 acre feet, \$20;

(ii) greater than 1000 acre feet and less than or equal to 4000 acre feet, \$1000; and

(iii) greater than 4000 acre feet, \$2000.

(e) The fee schedule for a power generation water right, both consumptive and non-consumptive, with a claimed or calculated volume that is:

(i) 0 acre feet to 100,000 acre feet, \$20;

(ii) greater than 100,000 acre feet and less than or equal to 1,000,000 acre feet, \$1000; and

(iii) greater than 1,000,000 acre feet, \$2000.

(5) The fee schedule for an instream flow water right or an instream flow water reservation, except those used for the purposes identified in subsection (3), with a claimed or calculated volume that is:

(a) 0 acre feet to 50,000 acre feet, \$20;

(b) greater than 50,000 acre feet and less than or equal to

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1,000,000 acre feet, \$1000; and

(c) greater than 1,000,000 acre feet, \$2000.

(6) The fee schedule for an irrigation water right or irrigation claim that is part of an irrigation district, ditch company, canal company, irrigation project, water user's association, or other organized group with the purpose of allocating irrigation water is \$20 per user with the fee capped at 40 user's. The fee must be paid by the user. If an irrigation district, ditch company, or water user's association has more than 40 users the fee may not exceed \$800 and must be split equally among the users.

(7) The fee schedule for all water rights that are not subject to subsections (4) through (6) is \$20. The fee is capped at 20 water rights per person for purposes that are not addressed in subsections (4) through (6).

(8) The fee schedule applies to all water rights on record with the department that are not withdrawn, terminated, or otherwise abandoned.

(9) A person may file an administrative appeal with the department to contest the total amount of the fee assessed against them or a fee imposed based on incorrect ownership records.

(10) Fees authorized in this section may not be assessed after June 30, 2014.

NEW SECTION. Section 6. Debt collection. If the owner of a water right does not pay the fee after receiving an initial bill

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and one reminder bill:

(1) the department shall turn over this debt to the department of revenue for collection pursuant to Title 17 chapter 4.

(2) if efforts to collect the debt are not successful, the department of revenue shall file a lien against the water right in the county where the water is put to beneficial use.

NEW SECTION. **Section 7. Water adjudication account.** (1) There is a water adjudication account within the state special revenue fund created in 17-2-102.

(2) There is statutorily appropriated to the department and the Water Court, as provided in 17-7-502, up to \$2.8 million, plus the HJR2 approved inflation factor, each fiscal year from the water adjudication account for the sole purpose of funding the water adjudication program.

(3)(a) Subject to subsection (3)(b), the total amount of revenue deposited in the account from the fee provided for in [section 5] may not exceed \$28 million.

(b) If federal funds are appropriated for the purposes of [sections 1 through 9], the maximum amount that can be deposited in the account must be reduced by the amount of federal funds appropriated.

(c) Once revenue generated from the fees provided for in [section 5] and any federal revenue appropriations have reached \$28 million the fee may no longer be assessed.

(4) Interest earnings on the account must be deposited in

the account.

(5) Excess revenue remaining in the account when the fee is terminated must be transferred to the water rights account provided for in 85-2-318.

NEW SECTION. **Section 8. Reporting requirements.** The department and the water court shall:

(1) provide reports to the environmental quality council at each meeting during a legislative interim on:

- (a) the progress of the adjudication; and
- (b) the total revenue generated by the fee in [section 5] and deposited in the account provided for in [section 7].

(2) include a status report on the adjudication in their presentation to the applicable appropriations subcommittees during each legislative session.

(3) provide a budget that outlines how each of the entities will be funded in the next biennium including general fund, state special revenue funds, and the statutorily appropriated fee revenue.

NEW SECTION. **Section 9. Rulemaking authority.** The department may adopt rules for the purpose of implementing [sections 1 through 9].

Section 10. Section 15-1-216, MCA, is amended to read:
"15-1-216. Uniform penalty and interest assessments for violation of tax provisions -- applicability -- exceptions.

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(1) (a) A person who fails to file a required tax return or other report with the department by the due date, including any extension of time, of the return or report must be assessed a late filing penalty of \$50 or the amount of the tax due, whichever is less.

(b) A person who purposely fails to file a required return, statement, or other report must be assessed an additional late filing penalty of \$200 or the amount of the tax due, whichever is less.

(c) A person who fails to pay a tax when due must be assessed a late payment penalty of 1.5% a month or fraction of a month on the unpaid tax. The penalty may not exceed 18% of the tax due.

(d) A person who purposely fails to pay a tax when due must be assessed an additional penalty equal to 25% of the tax due or \$200, whichever is less, plus interest as provided in subsection (2).

(2) Interest on taxes not paid when due must be assessed at the rate of 12% a year, accrued at 1% a month or fraction of a month, on the unpaid tax. Interest on delinquent taxes and on deficiency assessments is computed from the original due date of the return until the tax is paid.

(3) (a) Except as provided in subsection (3)(b), this section applies to taxes, fees, and other assessments imposed under Titles 15 and 16, and [section 5].

(b) This section does not apply to:

(i) property taxes;

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(ii) gasoline and vehicle fuel taxes collected by the department of transportation pursuant to Title 15, chapter 70; or
(iii) taxes, fees, and other assessments subject to other penalty or interest charges as provided by law."

{ *Internal References to 15-1-216:*

15-1-217 x	15-24-921 x	15-30-142 x	15-30-142 x
15-30-209 x	15-30-209 x	15-30-323x	15-30-323 x
15-30-323 x	15-31-510 x	15-31-543 x	15-31-545 x
15-35-105x	15-35-112 x	15-35-113 x	15-36-311 x
15-36-313x	15-36-314 x	15-36-315x	15-37-105 x
15-37-108x	15-37-109 x	15-37-114 x	15-37-115x
15-37-205 x	15-37-210 x	15-37-211 x	15-38-107 x
15-38-107x	15-38-107x	15-50-309 x	15-50-309x
15-51-103x	15-51-109 x	15-51-110x	15-51-111x
15-51-111 x	15-53-147 x	15-53-147x	15-59-106 x
15-59-106 x	15-59-112 x	15-59-113 x	15-60-204 x
15-60-208 x	15-65-115 x	15-65-115 x	15-65-115 x
15-65-116 x	15-66-204 x	15-66-208 x	15-67-204 x
15-67-208x	15-68-514 x	15-68-517x	15-68-525x
15-72-112 x	15-72-112x	15-72-112 x	15-72-114 x
15-72-114 x	15-72-116 x	16-1-403 x	16-1-409 x
16-1-411 x	16-11-143 x	16-11-203x	75-2-220x
75-2-220 x	75-5-516x	80-2-230x	87-2-903x }

Section 11. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory

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appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-11-404; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; [section 7]; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1,

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2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 2 and 5, Ch. 481, L. 2003, the inclusion of 90-6-710 terminates June 30, 2005; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; and pursuant to sec. 135, Ch. 114, L. 2003, the inclusion of 2-15-151 terminates June 30, 2005.) "

{ Internal References to 17-7-502:

2-15-151 x	2-17-105x	5-13-403 x	10-3-203 x
10-3-310 x	10-3-312 x	10-3-312x	10-3-314 x
10-4-301 x	15-1-111x	15-1-113 x	15-1-121x
15-23-706 x	15-35-108 x	15-35-108x	15-36-332x
15-37-117 x	15-38-202 x	15-38-202x	15-65-121 x
15-65-121 x	15-70-101 x	16-11-404 x	17-1-508 x
17-3-106x	17-3-212 x	17-3-222 x	17-3-241x
17-6-101x	17-7-304 x	17-7-501 x	18-11-112 x
19-3-319 x	19-9-702 x	19-13-604x	19-17-301x
19-18-512 x	19-19-305 x	19-19-506x	19-20-604 x
20-8-107 x	20-9-534x	20-9-622 x	20-26-1503 x
22-3-1004 x	23-5-306 x	23-5-409 x	23-5-612 x
23-5-631x	23-7-301 x	23-7-402x	37-43-204 x
37-51-501 x	39-71-503x	42-2-105 x	44-12-206 x
44-13-102 x	50-4-623x	53-1-109 x	53-6-703 x
53-24-108x	53-24-108 x	53-24-206x	61-3-415 x
69-3-870 x	75-1-1101 x	75-5-1108x	75-6-214 x
75-10-622 x	75-11-313 x	77-2-362x	80-2-222 x
80-4-416x	80-5-510 x	80-11-518 x	82-11-161 x
87-1-513x	90-3-1003 x	90-6-710x	90-9-306 x}

Section 12. Section 85-2-403, MCA, is amended to read:

"85-2-403. Transfer of appropriation right. (1) The right to use water shall pass with a conveyance of the land or transfer

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by operation of law, unless specifically exempted therefrom. All transfers of interests in appropriation rights shall be without loss of priority.

(2) Failure to comply with the provisions of 85-2-402 does not render a conveyance or reservation of a water right void, but the right may not be used until the department has approved the change. This subsection applies retroactively, within the meaning of 1-2-109, to a conveyance or reservation made after July 1, 1973.

(3) A water right, as defined in [section 3], with an unpaid assessment imposed pursuant to [section 5] may not be transferred. For the purposes of this subsection, an unpaid assessment includes assessments written off pursuant to Title 17, chapter 4, part 1."

{ *Internal References to 85-2-403:*
85-2-419x }

NEW SECTION. Section 13. {standard} Codification instruction. [Sections 1 through 9] are intended to be codified as an integral part of Title 85, chapter 2, part 2, and the provisions of Title 85, chapter 2, part 2, apply to [sections 1 through 9].

NEW SECTION. Section 14. Contingent voidness. If at least \$2 million is not line item appropriated in any fiscal year from state sources other than the water adjudication account in [section 7] per year, for the purposes of funding Montana's water

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adjudication program, then [this act] is void.

NEW SECTION. **Section 15. {standard} Effective date.** [This act] is effective July 1, 2005.

NEW SECTION. **Section 16. {standard} Termination.** [This act] terminates June 30, 2020.

- END -

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