

**Comments of the Upper Clark Fork Steering Committee  
To the EQC Adjudication Funding Alternatives Working Group  
June 7, 2004**

The Upper Clark Fork Steering Committee (steering committee) has previously provided the Environmental Quality Council (Council) with its concerns about the pace and accuracy of the statewide water rights adjudication. The steering committee had the opportunity at its May meeting to review the excellent memorandum from Krista Evans concerning a variable beneficial use fee for funding the water adjudication. Her memorandum describes both some of the opportunities and problems with such an approach. Upon reviewing that memorandum, the steering committee elected to provide this comment to the working group.

First, the steering committee appreciates the commitment of the Council to address the difficult issues of how to complete a timely and accurate adjudication. Further we appreciate the challenge that the working group faces in seeking a workable funding method. In times of funding crisis such as Montana has experienced in recent years, it is difficult to speak of finding a way of increasing funding for the completion of an undertaking as large as the adjudication. Nonetheless, as formidable as the task is, steering committee believes the working group's effort is a worthy one.

While the steering committee appreciates the need to look at mechanisms such as beneficial use fees, we urge the council not to confine its inquiry to that, and also to the extent that it pursues such a fee, to consider some fundamental issues of equitability in the institution of such a fee.

As to the first point, while the beneficial use fee may have the appeal of imposing the fee on those who benefit most directly--water rights claimants--the benefits of an accurate adjudication of water rights extend well beyond those who hold the rights. As a result, a beneficial use fee may not adequately assess all the beneficiaries of the adjudication.

The second point goes to the fact that, twenty-plus years into the adjudication, the level of completion of the adjudication varies significantly from one basin to the next. As a number of the agricultural members of the steering committee have pointed out, in some basins, claimants have expended substantial money to date, hiring lawyers and water rights experts, resolving objections, and have largely completed the process of resolving their claims with regard to other users, even though the final decrees have not been issued. Those claimants may fail to see any benefit that accrues to them of having a beneficial use fee assessed.

On the other hand, there are basins where the process has barely begun. In those basins, the levy of a beneficial use fee may have real benefit in expediting and improving the accuracy the adjudication.

The disparity that arises as to fees is a function of trying to impose a beneficial use fee so many years after the process has begun. With the benefit of hindsight, it is possible to argue we should have done this at the start of the adjudication. Because we didn't this working group is now faced with the challenge of coming up with a funding mechanism that is equitable enough to generate sufficient support among water rights claimants to pass the legislature. Ms. Evans memorandum touches on that in her description of "costs" on page eight. The steering committee shares that concern.

While the steering committee has identified these concerns with a beneficial use fee, we welcome the working group's efforts and will be happy to assist your deliberations in any way we can.