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As of: August 11, 2004 (2:45pm)

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**** Bill No. ****

Introduced By *****

By Request of the Environmental Quality Council

A Bill for an Act entitled: "An Act providing findings and the purpose for implementing a fee for the purpose of funding the water adjudication program; providing a water adjudication fee schedule; allowing for an administrative appeal of the fee; establishing a water adjudication account in the state special revenue fund; creating a statutory appropriation; implementing reporting requirements for the department of natural resources and conservation and the water court; amending section 17-7-502, MCA; providing an effective date; and providing a termination date."

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

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

There are approximately 57,000 water right claims that were filed pursuant to 85-2-212 that have not been examined. The department is urged to examine at least 5,700 claims per fiscal year beginning July 1, 2005 to ensure they can meet the deadline of June 30, 2016 for completion of claims examination. The water court shall prioritize basins for the purpose of claims examination by the department. Except as provided in subsection (1) (b), if less than 5,700 claims are examined in a fiscal year, the fee contained in [section 3] attached to water rights or

basins for the purpose of reexamination by the department. Except as provided in subsection (5) (b), if less than 1,880 claims are reexamined in a fiscal year, the fee contained in [section 3] attached to water rights or water right claims for the purpose of funding the adjudication may not be assessed the following biennial period.

(b) Less than 1,880 claims may be reexamined in a fiscal year if the total number of claims left to be reexamined is less than 1,880.

(6) The purpose of [sections 1 through 7] is to generate revenue to adequately fund Montana's water adjudication program to:

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

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

(7) The revenue generated by the water adjudication fee established in [section 3] is to be used solely for the purpose of adjudicating Montana's water rights.

(8) The department shall complete claims examination and reexamination of verified basins by June 30, 2016. The Water Court shall ensure that all basins are issued a preliminary or temporary preliminary decree by June 30, 2021.

NEW SECTION. **Section 2. Definitions.** For the purposes of [sections 1 through 7] the following definitions apply:

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

(2) "owner" means:

(a) an entity that filed a water right claim pursuant to 85-2-212; or

(b) an entity that holds a water right certificate for a water right granted pursuant to the Water Use Act.

NEW SECTION. Section 3. Water adjudication fee schedule -- exceptions. (1) (a) A water adjudication fee is authorized and directed to be imposed by the department of revenue on all water rights and water right claims.

(b) Except as provided in [section 1], [section 5], and subsection (5) of this section, an owner shall pay a biennial fee for the purpose of funding Montana's water adjudication based on the schedule in subsections (3) through (6).

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

Unofficial Draft Copy

As of: August 2, 2004 (12:21pm)

LCEQC1

(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 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

Unofficial Draft Copy

As of: August 2, 2004 (12:21pm)

LCEQC1

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

(4) 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 1,000,000 acre feet, \$1000; and

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

(5) 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.

(6) The fee schedule for all water rights or claims that are not subject to subsections (1) through (4) is \$10. The fee is capped at 20 water rights or claims per owner for purposes that are not addressed in subsections (1) through (4).

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

(8) A person contesting the fee may file an administrative appeal with the department.

(9) Fees authorized in this section may not be assessed after June 30, 2016.

NEW SECTION. **Section 4. Debt collection.** If the owner of a water right or a water right claim does not pay the fee after receiving an initial bill and one reminder bill, the department shall turn over this debt to the department of revenue for collection pursuant to 17-4-105.

NEW SECTION. **Section 5. 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, as provided in 17-7-502, up to \$2.6 million 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 3] may not exceed \$26 million.

(b) If federal funds are made available for the purposes of [sections 1 through 7], the maximum amount that can be deposited in the account must be reduced by the amount of federal funds received.

(c) Once revenue generated from the fees provided for in [section 3] and any federal revenue allocations have reached \$26 million the fee may no longer be assessed.

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

the account and must be counted against the \$26 million total.

NEW SECTION. Section 6. Reporting requirements. The department and the water court shall:

(1) provide status reports on the progress of the adjudication to the environmental quality council. The status reports must be presented at the organizational meeting of the environmental quality council following a legislative session and at least one additional meeting of the environmental quality council; and

(2) include a status report in their presentation to the appropriations subcommittee during each legislative session.

NEW SECTION. Section 7. Rulemaking authority. The department may adopt rules for the purpose of implementing [sections 1 through 7].

Section 8. Section 15-1-216, MCA, is amended to read:

"15-1-216. Uniform penalty and interest assessments for violation of tax provisions -- applicability -- exceptions.

(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

Unofficial Draft Copy

As of: August 2, 2004 (12:21pm)

LCEQC1

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 3].

(b) This section does not apply to:

(i) property taxes;

(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

Unofficial Draft Copy

As of: August 2, 2004 (12:21pm)

LCEQC1

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 9. 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 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;

Unofficial Draft Copy

As of: August 2, 2004 (12:21pm)

LCEQC1

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 5]; 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, 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}

NEW SECTION. Section 10. {standard} Codification

instruction. [Sections 1 through 7] 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 7].

NEW SECTION. Section 11. Contingent voidness. If at least \$2 million is not appropriated from sources other than the water adjudication account in [section 5] per year for the purposes of

Unofficial Draft Copy

As of: August 2, 2004 (12:21pm)

LCEQC1

funding Montana's water adjudication program, then [this act] is void.

NEW SECTION. Section 12. {standard} Effective date. [This act] is effective July 1, 2005.

NEW SECTION. Section 13. {standard} Termination. [This act] terminates July 1, 2021.

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