

MONTANA WATER COURT



STATE OF MONTANA

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RECEIVED

July 18, 2005

JUL 19 2005

LEGISLATIVE ENVIRONMENTAL
POLICY OFFICE

David Ewer, Budget Director
Office of Budget and Program Planning
PO Box 200802
Helena MT 59620-0802

Re: House Bill 22 Water Adjudication Account - Water Court Start Up Costs

Dear Director Ewer:

House Bill 22, passed by the 2005 Legislature and approved by the Governor, was intended to accelerate the pace of the adjudication of water rights in Montana. House Bill 22 authorized the hiring of thirty-seven new FTEs by the Department of Natural Resources and Conservation and seven new FTEs by the Water Court. The DNRC and Water Court's HB 22 expenditures are respectively projected to be about \$2 million and \$416,000, for a total of about \$2.4 million. Funding for these FTEs and associated expenses is generated through the imposition of a ten year water adjudication fee on state water users. Upon payment, the fee is to be deposited in a Water Adjudication Account. (Section 7, HB 22). The first payments of the water adjudication fee are due January 31, 2006. Additionally, I think it is important to note that there is some concern that all the projected HB 22 revenue might not materialize because the state's water user database contains an unknown percentage of ownership and mailing address inaccuracies.

The Water Court has \$416,000 in state special revenue spending authority to pay its HB 22 expenditures ("allocated" from the Water Adjudication Account). However, apparently there are no funds currently in the HB 22 Water Adjudication Account to pay any actual Water Court HB 22 expenditures and there won't be any until sometime after January 31, 2006. I base this supposition on a June 8, 2005 Memorandum prepared by Lorene Thorson of the DNRC, copy attached. According to Ms. Thorson, the DNRC has a \$1.6 million general fund appropriation that will be transferred into the HB 22 special revenue account, but she believes the purpose of this appropriation was to provide HB 22 "start up" funds only for the DNRC's use.

ENVIRONMENTAL QUALITY COUNCIL

... to expedite and faci.

September 16, 2005

Exhibit 16

On page 2 of her Memo, Ms. Thorson states the following:

Because the \$1.6 million in general fund was appropriated to WRD for accelerated adjudication, it is assumed legislative intent was for those funds to be used by WRD and not to be transferred to the Water Court, Reserved Water Rights Compact Commission or Attorney General's office to assist in the adjudication.

Scenario 1 - HB 22 is Valid

The Water Resources Division is the only unit that essentially received "start up" funds in HB 2 for the accelerated adjudication. The \$1.6 million in general fund will be transferred to the state special revenue account created by HB 22 and a budget change document will be submitted to OBPP to move the authority to personal services and operating expenses. These funds can then be used to ramp up the WRD program starting July 1, 2005. In January 2006, revenues related to HB 22 will be received which will fund the HB 22 operation of the Water Court and WRD over the next 15 years. The \$1.6 million will be used to offset \$1.6 million in state special revenue allowing the cap of \$31.0 million to be reached slightly ahead of the original schedule.

Based on earlier conversations with a Legislative Fiscal Division staff member, my understanding was that once the \$1.6 million was transferred to the Water Adjudication Account, it would lose its original DNRC special funding attributes. Thereafter, all DNRC or Water Court HB 22 expenditures would be paid from the Water Adjudication Account, regardless of whether the funds in the account were originally derived from the general fund or from water adjudication fees.

Ms. Thorson's June 8th Memo appears to contradict my earlier understanding. If Ms. Thorson's Memo is correct, it appears that funds in the Water Adjudication Account will not be available to pay for the Water Court's startup costs until after the first water adjudication fees are deposited into the account sometime after January 31, 2006. Before the Water Court incurs substantial HB 22 expenditures, I need to be certain of exactly when HB 22 funds will be available to the Water Court.

Accordingly, I have the following questions:

(1) Are there any HB 22 Water Adjudication Account funds available between now and January 31, 2006 to pay for the increased Water Court staffing and expenditures authorized by HB 22? If not, is it your recommendation that the Water Court wait until after the first water adjudication fees are deposited into the account (sometime after January 31, 2006) before incurring HB 22 expenditures?

(2) If the Water Adjudication Account cannot pay any Water Court HB 22 expenditures until sometime after January 31, 2006, are there any other options that would allow the Court to begin hiring HB 22 staff, purchasing HB 22 office supplies and equipment, and leasing HB 22 office space between now and January 31, 2006? For example, section 17-2-107, MCA, allows

the Department of Administration to authorize a temporary loan from other accounting entities if the cash balance in the accounting entity from which the appropriation was made is insufficient. Do you believe this temporary avenue is appropriate to cover HB 22 startup expenses for the Water Court prior to January 31, 2006?

(3) Is there any other simple, practical solution that you would recommend to address the Water Court's cash flow problem?

Thank you for your assistance on this important matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "C. Bruce Loble".

C. Bruce Loble
Chief Water Judge

CBL:ab

cc: Jack Stults, Lorene Thorson, Krista Lee Evans

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION



BRIAN SCHWEITZER
GOVERNOR

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HELENA, MONTANA 59620-1601

TO: Mary Sexton
Jack Stults
Judge Loble

FROM: Lorene Thorson *Lorene*

DATE: June 8, 2005

RE: HB 22 Funding Scenarios

RECEIVED

JUN 13 2005

Montana Water Court

With the validity of HB 22 in question, this memo is an attempt to document the funding of the acceleration of the adjudication of water rights based on the following three scenarios: 1) the Attorney General issues an opinion that HB 22 is valid; 2) the Attorney General issues an opinion that HB 22 is not valid, but the bill is made valid by the legislature in a December special session; and 3) the Attorney General issues an opinion that HB 22 is not valid and the legislature does not make HB 22 valid in a December special session. I asked Barb Smith of the Legislative Fiscal Division and Doug Schmitz of the Office of Budget and Program Planning to review this information to ensure that we all had the same understanding of the issues and plans.

HB 2 contains three appropriations exclusively tied to the acceleration of the adjudication of water rights: 1) \$0.8 million in state special revenue for the biennium to the Water Court (WC); 2) \$3.98 million in state special revenue for the biennium to the Water Resources Division (WRD); and 3) \$1.6 million in general fund for the biennium to the WRD. The first two appropriations are contingent upon passage and approval of HB 22. Governor Schweitzer recommended the third appropriation and the legislature approved a biennial general fund appropriation of \$1.6 million in HB 2.

The first two appropriations are biennial appropriations of \$4.06 million of state special revenue. These appropriations are contingent on passage and approval of HB 22. HB 22 was passed and approved, but after the session adjourned it was declared invalid by the Code Commissioner. The Code Commissioner has stated that HB 22 was passed and approved and therefore the appropriations are valid. The issue from the fiscal standpoint is that if HB 22 is found not valid, there is not a mechanism to generate the revenue to support the appropriation for accelerating the adjudication of water rights.

The \$1.6 million appropriation is a restricted, biennial, one-time-only appropriation to the Water Rights Division that does not include any contingency language tying the appropriation to the passage of HB 22. However, the final use of the funds differs based on the outcome of HB 22. If HB 22 is not valid, the WRD will use the \$1.6 million to accelerate the adjudication of water rights in the 2007 biennium only. If HB 22 is valid, the \$1.6 million of general fund will be used to "start up" the HB 22 project in fiscal 2006 and offset \$1.6 million in state special revenue in

2015. Therefore, rather than \$31.0 million being collected in state special revenue over a 10-year period, only \$29.4 million will need to be collected thereby potentially shortening the time the fee has to be collected.

Because the \$1.6 million in general fund was appropriated to WRD for accelerated adjudication, it is assumed legislative intent was for those funds to be used by WRD and not to be transferred to the Water Court, Reserved Water Rights Compact Commission or Attorney General's office to assist in the acceleration.

Scenario 1 – HB 22 is Valid

The Water Resources Division is the only unit that essentially received "start up" funds in HB 2 for the accelerated adjudication. The \$1.6 million in general fund will be transferred to the state special revenue account created by HB 22 and a budget change document will be submitted to OBPP to move the authority to personal services and operating expenses. These funds can then be used to ramp up the WRD program starting July 1, 2005. In January 2006, revenues related to HB 22 will be received which will fund the HB 22 operations of the Water Court and WRD over the next 15 years. The \$1.6 million will be used to offset \$1.6 million in state special revenue allowing the cap of \$31.0 million to be reached slightly ahead of the original schedule. See the following table.

Fiscal Year	State Special Revenue Generated by HB 22	Schweitzer HB 2 General Fund Appropriation (WRD)	Approp of SSR in HB 2 for HB 22 (WRD/Water Court)	Ongoing Base Expenditures (WRD/Water Court/RWRCC)	Total Cost
2006	\$3.1	\$0.6	\$2.4	\$2.0	\$5.0
2007	3.1	1.0	2.4	2.0	5.4
2008	3.1		2.4	2.0	4.4
2009	3.1		2.4	2.0	4.4
2010	3.1		2.4	2.0	4.4
2011	3.1		2.4	2.0	4.4
2012	3.1		2.4	2.0	4.4
2013	3.1		2.4	2.0	4.4
2014	3.1		2.4	2.0	4.4
2015	1.5 *		2.4	2.0	4.4
2016			1.1	1.3	2.4
2017			1.1	1.3	2.4
2018			1.1	1.3	2.4
2019			1.1	1.3	2.4
2020			1.1	1.3	2.4
Total	<u>\$29.4</u>	<u>\$1.6</u>	<u>\$29.4</u>	<u>\$26.5</u>	<u>\$57.5</u>

*Fees reduced by the \$1.6 million of general fund received for the 2007 biennium.

Scenario 2 – HB 22 Invalid, Legislature Makes Valid in Special Session

The Water Resources Division's plan is to utilize the appropriation authority for its normal operations to cover the start up of HB 22 costs the first six months of fiscal 2006. Once the legislation is made valid, the \$1.6 million would be transferred to the state special revenue

account created by HB 22 and those expenditures captured in separate orgs created for HB 22 for the first six months of fiscal 2006 would be charged to the state special account and WRD's general operations appropriation would be made whole for those expenditures. In January 2006, revenues related to HB 22 will be received, which will fund the HB 22 operations of the Water Court over the next 15 years and the ongoing costs to WRD over the next 10 years.

Scenario 3 – HB 22 Invalid, Legislature Does Not Make Valid

Under this scenario, the WRD would still receive the \$1.6 million in general fund to fund the acceleration of the adjudication of water rights in the 2007 biennium. A budget change document would need to be approved by OBPP to make an operating plan change to move the \$1.6 million in transfers to personal services and operating expenses. Assuming, the division gears up on the supposition that HB 22 will be made valid and hires 39.0 FTE, the division can use the \$1.6 million to fund those positions and operating costs. The division would most likely revamp the acceleration plan, which may result in many of the newly hired FTE being laid off for lack of funding. The \$1.6 million would continue to be used to the fullest extent to move forward the acceleration in the 2007 biennium. The following table illustrates the funding that would be available for the adjudication based on this scenario.

Accelerated Adjudication of Water Rights (in Millions)						
Fiscal Year	State Special Revenue Generated by HB 22	Schweitzer HB 2 General Fund Appropriation (WRD)	Approp of SSR in HB 2 for HB 22 (WRD/Water Court)	Ongoing Base Expenditures (WRD/Water Court/RWRCC)	Total Cost	
2006	\$0.0	\$0.6	\$0.0	\$2.0	\$2.6	
2007	0.0	1.0	0.0	2.0	3.0	
2008	0.0		0.0	2.0	2.0	
2009	0.0		0.0	2.0	2.0	
2010	0.0		0.0	2.0	2.0	
2011	0.0		0.0	2.0	2.0	
2012	0.0		0.0	2.0	2.0	
2013	0.0		0.0	2.0	2.0	
2014	0.0		0.0	2.0	2.0	
2015	0.0		0.0	2.0	2.0	
2016			0.0	1.3	1.3	
2017			0.0	1.3	1.3	
2018			0.0	1.3	1.3	
2019			0.0	1.3	1.3	
2020			0.0	1.3	1.3	
Total	<u>\$0.0</u>	<u>\$1.6</u>	<u>\$0.0</u>	<u>\$26.5</u>	<u>\$28.1</u>	

cc: Terri McLaughlin
Ann Bauchman
Barb Smith
Doug Schmitz