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ENVIRONMENTAL QUALITY COUNCIL ADJUDICATION FUNDING WORK GROUP MINUTES

Date: June 7, 2004

Museum of the Rockies, Bozeman, Montana

WORKING GROUP MEMBERS PRESENT

SEN. MICHAEL WHEAT (Chairman)
SEN. WALTER MCNUTT
SEN. ROBERT STORY
REP. DEBBY BARRETT
MR. THOMAS EBZERY

STAFF PRESENT

KRISTA EVANS, Research Analyst
CYNTHIA A. PETERSON, Secretary

VISITORS

Visitors' list ([Attachment 1](#))
Agenda ([Attachment 2](#))

WORKING GROUP ACTION

- The Working Group voted to leave existing General Fund and State Special Revenue funding in tact.
- The Working Group set adjudication fees at \$20 per claim with a \$400 cap for multiple claims; industrials were set at \$1,000; ditch companies at \$400; FWP at \$2,500; municipalities will be assessed according to class as set forth in statute; and ditch companies will be assessed \$20 per user with a cap of \$400.

CALL TO ORDER

Sen. Michael Wheat called the Adjudication Funding Working Group (Working Group) to order at 9:35 a.m. in the Redstark Classroom, Museum of the Rockies, Bozeman, Montana. The secretary noted the roll ([Attachment 3](#)). Sen. Wheat explained the purpose of the Working Group was to discuss how to speed up the process, funding alternatives, take public comment, decide how much of a fee would be imposed, and where the additional fee would come from.

ADMINISTRATIVE MATTERS

• Krista Evans, Research Analyst

Ms. Evans stated the full EQC would like the Working Group's suggestions by the July 20, 2004, meeting. Ms. Evans submitted a fee proposal that she drafted at Rep. Barrett's request as a starting point ([Exhibit 1](#)).

GENERAL FUND/STATE SPECIAL REVENUE APPROPRIATION DISCUSSION

Ms. Evans suggested the Working Group should decide whether it wants to attempt to keep the General Fund and State Special Revenue amount of approximately \$2 million in the adjudication process. Ms. Evans identified the alternatives as (1) use only General Fund and State Special Revenues; (2) use current general fund and state special revenue funding and attempt to locate additional funding sources; or (3) fund adjudication solely on fees.

Mr. Tom Ebzery commented that there were assumptions in the proposal that the General Fund money and the State Special Revenue would be given back to the State to use for other purposes. Mr. Ebzery stated he was inclined to leave the money in tact and determine how much more revenue would be necessary to complete the job within a reasonable amount of time.

Sen. Wheat agreed that most of the Council members were in favor of leaving the General Fund appropriation in place. Sen. Wheat thought the question was whether there were special funds that could be tapped, such as user fees, in order to raise additional revenue to be earmarked for the adjudication process. Sen. Story agreed and stated they have to assume the next budget will contain the General Fund and Special Revenue allocation. Rep. Barrett agreed.

Mr. Ebzery moved the existing General Fund and State Special Revenue be left in tact, and any proposals considered would be above that baseline level.

Sen. Story requested clarification of where the money comes from. Ms. Evans reported in 2003, the Department of Natural Resources and Conservation (DNRC) received \$644,000 from the General Fund, the Water Court received \$653,400 of State Special Revenue, and the Compact Commission received \$709,000 of General Fund.

Mr. Ebzery's motion carried unanimously.

PUBLIC COMMENT

Mr. Walter Sales, representing Valley Ditch, stated he has paid twice to have his water rights adjudicated. Mr. Sales' understanding is all of the irrigation rights in the Gallatin River have been adjudicated and the basin has been closed. Mr. Sales' impression was that he was through the process for the second time. Mr. Sales recalled the federal government was included in the last adjudication. Mr. Sales commented if the problem lies with the federal government and the Tribes, then that is who the State should be looking to for payment. Mr. Sales wondered why he should pay more than once to have his water rights adjudicated.

Mr. Stan Bradshaw, representing Trout Unlimited on the Upper Clark Fork Steering Committee, expressed concerns with the pace and accuracy of the adjudication. Mr. Bradshaw applauded the efforts of the Environmental Quality Council (EQC) and submitted written testimony to the Working Group ([Exhibit 2](#)).

Sen. Wheat asked Mr. Bradshaw whether he had any alternative funding suggestions. Mr. Bradshaw did not have any suggestions, but stated he would be glad to solicit suggestions from the Steering Committee.

Mr. Ebzery asked Mr. Bradshaw if he looked at the proposals relating to flow and volume. Mr. Bradshaw replied the discussion centered around the disparity between the basins, how far along they are in the process, and how people in those basins are affected.

Mr. Dave Pruitt, a West Gallatin water user and a Water Commissioner on the West Gallatin River, appreciated the problems being experienced with the water adjudication process. Mr. Pruitt pointed out the water rights on the Gallatin River were adjudicated in 1909. Mr. Pruitt stated the water users on the West Gallatin again paid to have the water rights adjudicated in 1973 and still do not have final decrees. Mr. Pruitt reminded the Working Group that Montana's water is for everyone. Mr. Pruitt suggested using money from the Coal Trust to finish the adjudication process.

Mr. Ebzery asked Mr. Pruitt if he was suggesting using interest payments from the Coal Trust to finish the adjudication process. Mr. Pruitt agreed and thought the Coal Trust itself should be left alone. Mr. Pruitt expanded by suggesting power companies could contribute more money to the adjudication process. Mr. Pruitt closed by stating Montana's water is free, but the adjudication process is not.

Mr. Marty Westland testified that he is perturbed that there is a rush to make a decision and report back to the EQC. Mr. Westland recalled filling out water rights applications in 1982 and the work involved. Mr. Westland thought the process was good and stated he has already gone through the process and should not be required to pay for the process twice.

Sen. Wheat clarified the Working Group is attempting to gather information to get a pulse on everyone's feelings since the issue was raised during the last Legislative Session. The Legislature passed a joint resolution telling the EQC to begin hearings about the adjudication process. Sen. Wheat identified a perception that the adjudication process needs to be completed so everybody knows what their decreed rights are. Sen. Wheat explained how having the adjudication process completed will help solve disputes in the future. Sen. Wheat informed Mr. Westland that at the current pace, it is estimated the adjudication process will take

another 50 years to complete. Sen. Wheat stated it could be possible the EQC would decide not to assess a fee on those individuals who have already paid to have their water rights decreed. Sen. Wheat explained the hearings now are to obtain input from the public and become educated about the public's feelings about these issues.

Mr. Westland proposed establishing a system that would recognize the work done to date and that the responsibility of speeding up the system should be shifted to the new burdens. Mr. Westland repeated that he is apprehensive when he comes to a meeting and the first thing he hears is that the system needs to be accelerated. Sen. Wheat replied that was a misconception on Mr. Westland's part.

Sen. Story added that EQC has been discussing this issue for two years in public hearings. Ms. Evans added the minutes from previous EQC meetings are available on the website. Ms. Evans clarified that when she spoke of time lines, she was saying that if the EQC is going to take action in the upcoming session, they only have two more meetings to make a decision. In addition, the adjudication addresses pre-1973 water rights, and there are about 57,000 claims that have not even been examined, let alone a decree entered. The adjudication being discussed is to address all of those claims that have not gotten to the point where water users in the Gallatin are. Ms. Evans spoke of the proposal and noted it addresses every beneficial use, including recreational, municipal, power, and irrigation, and is not specific only to those rights subject to adjudication, but also includes new appropriation rights.

Rep. Barrett explained how all water issues are dependent on an accurate and timely adjudication, and those water rights cannot be protected until we know for certain what those rights are.

Mr. Bob Goffena, Chairman of the Board of Deadman's Basin and a water user on the Musselshell, testified that there are many errors in the adjudication, and it is unclear where the correct lines are, so enforcement is difficult. Mr. Goffena was curious how the completed adjudications were paid for.

(Tape 1; Side B)

Mr. William Bergin, a water user from the lower Musselshell River and a member of the Deadman's Basin Board and representing Musselshell Ditch Company, thanked the EQC for bringing the issue before the public. Mr. Bergin thought most people want to see a fair and equitable distribution of water in Montana. Mr. Bergin noted many individuals have had to hire attorneys to defend their water rights. Mr. Bergin testified he has defended his water rights twice in court, and that the adjudication on the Musselshell is not accurate. Mr. Bergin noted there is a \$100 fee every ten years to file each brand, and suggested a similar system could be used to raise revenue for the adjudication process.

Sen. Wheat asked if water users on the Musselshell were prepared to pay the suggested fee. Mr. Bergin stated that in order to have enforcement on the Musselshell River, they need to have at least 15 percent of the water users sign, and they were able to obtain 35 percent, and most of those were downstream users. Mr. Bergin replied he thought all of the 35 percent would agree to the fee.

Mr. John Youngberg, representing the Montana Farm Bureau, explained his concerns and questions about throwing money into the process without having a plan. Mr. Youngberg wondered if people who have reserve rights would pay, and Ms. Evans responded they would. Mr. Youngberg also wondered about people with multiple rights and whether there would be a maximum amount that would have to be paid. Mr. Youngberg inquired whether people with temporary preliminary decrees would be required to pay again even though they have already paid attorneys to adjudicate their water rights. Mr. Youngberg wondered where the end of the line would be and what would happen in 15 years if the process was not completed.

Sen. Story inquired how strong the feeling was among Montana Farm Bureau members that the process needs to be accelerated. Mr. Youngberg responded there was a general consensus the process needs to be faster and completed in an accurate manner, but they are hesitant about paying a water user fee.

Rep. Barrett agreed and stated having the water adjudication done in a timely manner is also the consensus of the EQC. Rep. Barrett stated the plan will be in proposed legislation and will contain checks and balances. Mr. Youngberg identified two issues: Whether the DNRC will be able act as an institutional objector, and whether the Water Court can act on its own motion if there are no other objectors on the stream.

Mr. Ken Morrison, representing PPL Montana, was supportive of the water adjudication efforts in Montana, and did not oppose speeding up the process. Mr. Morrison believed that if additional funding was going to come from water rights, it must be justly spread among the holders. Mr. Morrison disagreed with imposing 38 percent of the costs on power generators that have less than one-tenth of a percent of the water rights in Montana. Mr. Morrison would like to see an end to the process established, so the funding does not continue after the work is finished. Mr. Morrison asked the Working Group to consider a fee-per-claim approach, and stated if the Working Group does adopt a variable fee approach, it should consider capping the fee.

Mr. Victor DeMaio, from the Musselshell area, noticed the agenda assumed there would be a fee. Mr. DeMaio explained how everyone in the state pays for education, not just those who have children in school. Mr. DeMaio stated he is very tired of paying taxes, and agreed the adjudication system is not working. Mr. DeMaio did not feel the ranchers alone should be paying an additional fee. Mr. DeMaio suggested working with Farm Bureaus and judges already present in particular areas to solve the adjudication problem, and suggested judges could be educated about water issues. Mr. DeMaio pointed out everyone is using the water, so ranchers and farmers should not be the only ones expected to pay.

Mr. Blair Strong, representing Avista Corporation, submitted written testimony ([Exhibit 3](#)).

Ms. Evans asked Mr. Strong about his reference to “apparent biases” contained in the white paper Ms. Evans had written and stated as an unbiased staff person, her goal was to be fair as requested by the EQC. Ms. Evans asked if EQC decided to impose a fee based upon consumptive use, how the Legislature would get its arms around various consumptive uses within irrigation such as flood use, sprinkler use, wheel line, hand line, etc. Absent spending a substantial amount of money on return flow studies, Ms. Evans was not sure how the Legislature could capture true consumptive use. Mr. Strong agreed and replied it is important to stay away from a funding source based on flow rates or volumes, and stated it is much easier to

have a per-claim fee system. Mr. Strong further stated he did not mean to imply there was an intentional bias in Ms. Evans' paper, but that it was just the way numbers fell.

Rep. Barrett clarified she requested the white paper as a starting point, and that the flat rate had not been ruled out.

(Tape 2; Side A)

Mr. Tony Kolnik, a West Gallatin water user, suggested the adjudication process was created in the 1972 Constitution because of the coal slurrage, and people saw the need to protect Montana's water. Mr. Kolnik stated he fears any fee created would become a tax. Mr. Kolnick focused on protecting agriculture, and stated he would like to see the Legislature consider using the Coal Trust Fund as a way to fund the adjudication process. Mr. Kolnick suggested that if the power companies would stop objecting to water wells over 35 gallons per minute, the process would go faster and not cost as much.

Ms. Dana Brennan, the largest water right holder in Willow Creek and Pony Creek on the South Boulder, asked if there was a better way to advertise public hearings. Ms. Evans explained that they are required to provide public notice, and the meeting was noticed on the Legislative Services Division website, as well as mailed to the EQC interested persons list. In addition, Judge Loble sent notice of the hearing to over 700 water users. Ms. Brennan requested a copy of Ms. Evans' white paper, and Ms. Evans again directed Ms. Brennan to the website. Ms. Brennan inquired whether landowners were funding the judges and the courts and commented the process seemed to her like a basic title search. Sen. Wheat provided a history of the water rights adjudication process in Montana. Sen. Wheat informed Ms. Brennan that the current hearing was being held to identify funding mechanisms. Ms. Brennan suggested keeping the public informed and stressing to the public that no one is trying to take away their water rights; rather, they are trying to help Montanans protect their water rights.

Rep. Diane Rice, HD 33, stated she believes there is a huge misnomer because what the Working Group is attempting to implement is a water use fee when, in actuality, it should be a water court user fee. Rep. Rice testified many people are already operating under a court decree and should not be subjected to additional fees. Rep. Rice suggested requiring user groups to submit affidavits to the water court stating what they are operating under and, if there are no disputes, exempting that group from any water court user fee. Rep. Rice expanded by stating water users who are actually causing the court expense should be required to pay the fees. Rep. Rice thought a monetary incentive would speed the process along. Rep. Rice admitted water rights affecting the federal government and power companies would take more time, and she thought it would be appropriate to let them know up front that if it takes more time, it will cost more money.

Mr. Bob Lane, Chief Legal Counsel for the Department of Fish, Wildlife, and Parks (FWP) urged the EQC and the Working Group to continue to address the issues of timely adjudication and accurate adjudication. Mr. Lane thought 50 years was far too long a time for the adjudication process. Mr. Lane asked the Working Group to keep in mind that people who benefit most from accuracy are those with firm, good water rights. Mr. Lane testified the Water Court Advisory Committee has recommended a process be followed to ensure an accurate adjudication and implemented the on-motion policy. When DNRC finds an issue with a claim, it is noted in the issue remarks, and that issue needs to be taken care of. An attempt is made to take care of

issue remarks administratively through the on-motion process, alleviating the need for every water user to appear in court. Mr. Lane suggested the Working Group ask the water court for a budget for any additional measures necessary to implement the on-motion policy. Mr. Lane thought developing a way to assess water user fees would be complicated. Mr. Lane suggested taking the various categories of users and assigning each group a certain percentage and then developing a way to distribute the additional fees within that group. Mr. Lane thought this would alleviate the chance of treating a particular user group in an unfair manner.

Mr. Ebzery asked Mr. Lane to summarize the differences between his suggestion and Ms. Evans' proposal using flow and volume. Mr. Lane replied that based on Ms. Evans' proposal, power generation came out at approximately 28 percent, and he thought that was high. Mr. Lane suggested doing a calculation based on workload, ability to pay, and importance of the right. Mr. Lane depicted it as comparing apples and oranges, and suggested if every CFS were the same to every user, it would be fair to have a fee based on CFS, but noted rights do not have the same kind of use. Mr. Lane thought it would be best to work within individual categories. Mr. Lane testified FWP is willing to pay its fair share and has an idea of what that fair share should be.

Ms. Peggy Trenk, Montana Association of Realtors, testified the consensus of the Montana Association of Realtors is that the process should move more quickly. Ms. Trenk identified the Flathead area as the "poster child" because of the Compact Commission negotiations. Ms. Trenk explained that the inability to identify water rights impacts property transactions. Ms. Trenk supported hiring addition FTE for DNRC to focus specifically on the Flathead.

Mr. Mike Murphy, Montana Water Resources Association, supported the concept of speeding up the adjudication process. In addition, Mr. Murphy would like to see the adjudication process done accurately. Mr. Murphy recognized that in order to get the process done accurately, more funding would be needed.

Sen. Story stated the system he is on has 150 water users, but only one water right, so a flat fee could result in a small fee being assessed, when in reality, there are numerous individuals involved. Mr. Murphy agreed the issue is difficult and the scenario Sen. Story described is a concern.

Ms. Lezlie Kinne, Water Commissioner for the 18th Judicial Court, the South Boulder and the 5th Judicial Court, and a Dam Tender for Harrison Lake, testified ranchers are very concerned about the funding issue. Ms. Kinne thought the agricultural community would end up paying approximately 35-45 percent of the funding, and that the funding would impact water use and water rights protected under state law. Ms. Kinne's main concern was the decision time and suggested non-payment should constitute non-compliance.

(Tape 2; Side B)

Ms. Kinne concluded her testimony by stating a short time line at this point is of little consequence. Sen. Wheat submitted a letter dated May 27, 2004, that he received from Ms. Kinne ([Exhibit 4](#)).

Mr. Dick DeBernardis, a taxpayer and water user, testified that everyone in the state benefits from water and that the fee being considered is actually a tax, and the funding for the

adjudication process should come from everyone in the state. Mr. DeBernardis noted distribution of stockwater is very difficult to assess. Mr. DeBernardis will submit additional written comment to the Working Group once he has had a chance to contemplate the issues.

Rep. Barrett noted many people have already had their water rights decreed and wondered if when it goes through the adjudication process, whether those water rights are simply rubber stamped by the water court. Ms. Evans explained there are two types of decrees. The first are the old district court decrees issued before the new adjudication program started, and those decrees are not rubber stamped by the water court. The old district court decrees are considered by the water court when they decree the whole basin. However, if another water right surfaces that has an earlier priority date, it could affect the existing decree. Ms. Evans pointed out everybody in the state paid \$40 to file their claim, with a maximum of \$480. Ms. Evans agreed some people have paid their fee and had their rights adjudicated, but many water users also paid their fees and are not through the adjudication process.

Ms. Betty Bergin, representing Chandler Ditch, recalled how upset water users were when they were only receiving 80 percent of their water, and testified this year they are only getting 38 percent. Ms. Bergin would like to see any proposed fee spread out.

Mr. Pruitt explained on the West Gallatin, stockwater is available whenever the adjudicated water right for irrigation is there. Mr. Pruitt noted people cannot be charged year round for stockwater because it is seasonal. Mr. Pruitt proposed that he has a process to measure water, and offered to share that process with the Working Group.

Mr. Bill Bishop, Bureau of Indian Affairs (BIA), testified a number of protected stockwater and domestic rights have not been filed, and was curious how those would be assessed. Ms. Evans responded those rights that were exempt from the requirement to file claims are not included in the funding proposal.

Mr. Ebzery asked if it would be fair to say the water court spends a substantial amount of time reviewing Mr. Bishop's objections. Mr. Bishop replied 90 percent of the objections he files are resolved without the assistance of attorneys. Mr. Ebzery noted the BIA is a large objector, but does not contribute any funds to the water court.

Mr. Keith Hill, representing the Upper Musselshell Water Users' Association, expressed his concerns about enforcement and testified they spend approximately \$65,000 per year on the Upper Musselshell for enforcement.

Mr. Neil Peterson, Montana Department of Revenue (DOR), submitted a paper entitled "Adjudication Fee Concept, Administrative Costs Presentation" ([Exhibit 5](#)). Sen. Story asked how DOR arrived at the two-percent fee. Mr. Peterson responded that was the same amount collected by County Treasurers. Mr. Peterson pointed out that DOR's proposal was "a best guess," and the numbers could change.

Sen. Wheat noted DOR would get data from DNRC and wondered if DOR would program their computers to generate bills and mailing lists. Mr. Peterson replied that they would, but cautioned they would need accurate data from DNRC. Mr. Peterson hoped communications between DNRC and DOR would be done electronically.

Sen. Story thought fire-fighting costs also required interfacing between DOR and DNRC, but Mr. Peterson replied DOR did not end up collecting those costs for a number of reasons.

DISCUSSION OF PROPOSAL

Sen. Wheat noted the Working Group and members of the public have agreed timeliness and accuracy are important in the adjudication process.

Mr. Ray White inquired whether nonpayment of the fee could result in a lien being filed against his property. Mr. White was indifferent to the adjudication process, but said he would not want to pay anymore money for his water than what he is paying now.

Sen. McNutt cited the question as being whether there is a compelling State interest to speed up the adjudication process, and he thought public testimony indicated that there is. Sen. McNutt thought the adjudication process was necessary to protect Montana's water, and suggested the Working Group establish how much funding is needed to complete the adjudication.

Mr. Ebzery directed the Working Group to the Flat Fee Revenue Generation chart ([Exhibit 6](#)). Mr. Ebzery explained the Working Group would need to agree on some assumptions, and over a ten-year period, the adjudication process would cost approximately \$2.5 million per annum or \$25 million over a ten-year period. Ms. Evans asked whether Mr. Ebzery was including another five-year period, in addition to the ten-year period for claims examination, to allow time for the water court to conclude its business. In reviewing the proposal, Mr. Ebzery commented he is struck by the fact the federal government is not contributing to the process, although he admitted there would not be much they could do to make them contribute, but suggested seeking help from the Congressional Delegation. In addition, Mr. Ebzery suggested the Working Group adopt a maximum amount on the fee for those water users with multiple claims. Mr. Ebzery also thought collecting the fee every other year would assist in keeping down collection costs, and he suggested implementing a mechanism so if additional funds become available, that amount would be reduced in future assessments.

Sen. Story did not think additional General Fund money would be available since there are too many competing interests. Sen. Story also thought a flat fee structure would be easier to administer.

(Tape 3; Side A)

Sen. Story thought there could be a higher flat fee for larger water users such as power companies. Sen. Story was curious how many people hit the \$480 cap the last time they filed claims. Another issue Sen. Story identified was how to deal with irrigation companies that operate under one water right, but have multiple users of that right, and people who operate under a federal right and how they could be assessed their fair share.

Rep. Barrett agreed with Sen. Story and thought it is important for people to know the Legislature did take adjudication money out of the process and put it into NRIS, DNRC Conservation Districts, renewable resource grants, irrigation districts, and dam rehabilitation. Rep. Barrett suggested a moratorium could be put on funding these things, and the money could be put back into the adjudication process.

Sen. Wheat recalled the suggestion of using coal tax money, and he noted it would require a three-quarters vote of the Legislature to divert those funds and thought that process would be very difficult. Sen. Wheat agreed the flat-fee structure would be the correct choice and suggested the Working Group focus discussion around the flat-fee structure. The Working Group agreed, and Sen. Story commented he would like to see a graduated-fee structure, so the larger users would pay a proportionate share.

Sen. Wheat informed the audience that the Working Group would report back to the EQC on the comments it received and the proposed recommendations, and it will be up to the EQC as a whole to determine what it will propose to the Legislature. Sen. Wheat encouraged people in the audience to come to Helena and testify again at the appropriate time.

Sen. Story commented that it would be impossible to work on this problem once the Legislature starts, so work on any proposal needs to be done now. Sen. Wheat agreed the Working Group and the EQC need to do the front-end work now. Sen. Wheat explained a bill designed to use funds from the coal tax could be drafted in five minutes and introduced into the Legislature at any time, but Sen. Wheat reiterated that using coal tax fund money would require a threequarters vote of the whole legislature.

Mr. Lane was supportive of the concept of a flat fee and commented FWP was subject to the original 12-claim limit and stated FWP has close to 1,000 minimum in-stream flow claims. Mr. Lane thought looking to the Reservations for participation would provide an additional resource, and FWP was supportive of paying its share.

Mr. Ebzery would like to see Ms. Evans run numbers on a \$20 flat fee per claim assessed every other year over a maximum 10-year period, with the maximum amount of \$480.

Ms. Evans submitted a break down of water court costs with the on-motion policy ([Exhibit 7](#)) and reported approximately \$650,000 of additional funds would be needed, and this would enable them to add three new water masters, as well as nine FTEs for DNRC. Ms. Evans explained the on-motion practice as being the water court's authority to call issues in on its own motion. The Attorney General, through the Adjudication Advisory Committee, who works with Judge Loble, has made the recommendation that the statutes be amended, to a certain extent, to attempt to address the accuracy issue. A notice would go out to water users, and they would have the opportunity to address any issue remarks with DNRC. However, in that notice, they will be informed that if they do not work with DNRC and their claim is not objected to by another water user, then the water court will call it in on-motion. Currently, the water court has authority to exercise on-motion and call a claim in. The court exercises it's on-motion authority differently depending on the issue and direction from the Legislature. If EQC moves forward with on-motion, it would require the court to call every issue remark in on-motion. Therefore, the court would need at least three new water masters. DNRC would need three new FTE for each water master to meet the workload since DNRC put the issue remarks on the claims. Ms. Evans stated in DNRC's plan, they need an additional 30 FTE, 22.1 would be assigned to the eight regional offices and eight FTE would be assigned to the central office. Upon hiring of these employees, it will be made clear that they could be reassigned as the adjudication of basins is completed. In addition, 15 existing staff will be reassigned to work exclusively on the adjudication program. Ms. Evans noted there are 57,000 claims left to be examined, and the water court proposed to add three new water masters and a part-time clerk to handle the increased workload created by DNRC stepping up its process. Ms. Evans recalled only ten

percent of Idaho's cases go to the water court, and the majority of the cases are dealt with administratively.

Sen. Wheat requested clarification whether the ten-year examination period would require an additional 30 employees just for DNRC. Ms. Evans replied Sen. Wheat was correct and added 22.1 FTEs would be doing claims examination and 7.9 would be in the central office, and the annual cost would be \$2 million. In addition, the water court would need approximately \$875,000 for 3.5 FTEs.

Sen. Story strongly suggested including the on-motion practice because he did not feel speed should be any more important than accuracy. Sen. Wheat agreed and recalled accuracy was an issue presented at the last EQC meeting.

Mr. Strong expressed his concern that on the Bitterroot, the on-motion process may discourage the involvement of the federal government.

Mr. Goffena commented on-motion is needed to ensure accuracy, but thought funding would be needed for re-examination of some basins which were not properly examined. Ms. Evans stated DNRC's estimate includes staff and money needed to re-examine the basins that were previously verified. Ms. Evans inquired whether the Working Group would want to include a cushion in its funding proposal. Sen. Wheat thought it would be difficult enough to argue for the funding without requesting a cushion.

Sen. Story recalled DOR utilizes a process whereby it hires appraisers every six years and then lays those FTE's off after a couple of years. Sen. Story suggested that it be made clear during the legislative process that some of these FTEs will not stay for the full ten years and admitted it would be tough to sell these new positions to the Legislature.

Sen. Wheat calculated a flat fee of \$10 would raise the necessary revenue. Ms. Evans suggested sending out a bill for \$20 every other year would reduce the DOR commitment by \$150,000 every two years.

Ms. Evans cautioned placing a cap on the number of claims could reduce revenue by \$2-3 million. Sen. Story wondered what percentage of claimants would hit the cap. Mr. Jim Gilman, Department of Natural Resources and Conservation, agreed to obtain that information for the Working Group.

Ms. Evans recalled that it had been suggested an account be set aside to meet the State's share when negotiating reserved rights. Mr. Ebzery thought that would simply be a guesstimate.

Mr. Story thought it would be risky since the Legislature could raid the fund whenever it needed to. The other risk identified by Sen. Story was going into negotiations with the Tribes with an identified \$10 million in the bank.

Sen. Wheat summarized the Working Group's recommendation as the adjudication process will take an additional ten years, with an additional five-year period for the court to finish its process, and \$2.6 million annually will be needed. This amount includes mandatory on-motion, funds for DOR to send out bills and collect fees, and re-examination of basins that have already been adjudicated.

Mr. Ebzery inquired whether the Working Group would be recommending a cap on the fee. Mr. Ebzery thought the Working Group should identify a specific number for the cap, and acknowledged the Working Group is at a disadvantage until it receives information on how many people reached the cap.

(Tape 3; Side B)

Sen. Story suggested setting the cap at \$400 and setting a higher cap for municipalities and power companies.

Sen. Story moved the cap for individual water rights be set at 20 claims; large industrials such as power generators be capped at \$1,000; municipalities be capped at \$1,000; ditch companies also be capped at \$400; and FWP would be capped at \$1,000.

Mr. Lane commented \$1,000 is low, and FWP would want to pay its fair share, and Sen. Wheat agreed.

Sen. Story commented that when higher fees are assessed to agencies such as DEQ you are going after the State's money. Ms. Evans pointed out there might be other entities other than FWP that have in-stream flow rights or reservations.

Sen. Wheat commented he would like to ensure everyone is paying their fair share and the responsibility is not falling disproportionately to agriculture or some other entity.

Rep. Barrett amended Sen. Story's motion and suggested the six large municipalities pay \$1,000; medium municipalities pay \$500; and small municipalities pay \$250.

Ms. Evans inquired what would define "municipal." Ms. Evans pointed out that municipal water rights are owned by individuals, as well as cities and towns. Sen. Story clarified he was addressing incorporated cities and towns. Sen. Story thought there was a breakdown of cities and towns in statute by size and that the classification structure already in statute could be used.

Don Allen inquired about large landowners who have individual rights, but are also industrial and their rights are filed as either stock or for fire fighting. Sen. Story replied they need to attach numbers somehow and then find out if people are concerned and whether the numbers will need to be adjusted. Sen. Story clarified his thought that industrial would include businesses like refineries and mines.

Sen. Wheat was hopeful that DNRC and the water court would assist in breaking down the categories of water rights so a fair assessment can be made.

Mr. Lane assumed the cap would be for all of FWP's claims and would include claims for the Missouri and Yellowstone reservations along with any pre-1973 claims. Sen. Story suggested leaving the FWP reservations in the \$2,500, and DEQ's reservations would be run through as regular claims. In addition, municipal reservations would be included in the flat fee assessed to municipalities.

Mr. Ebzery inquired how industrials would be assessed if it had less than 20 claims. Sen. Story replied they would still be assessed \$1,000.

Mr. Murphy suggested it would make sense to provide a distinction between small ditch companies and large ditch companies. Sen. Story suggested assessing \$20 per user with a cap of \$400.

Sen. Story's motion, as amended by Rep. Barrett, to assess a \$20 fee for claim with a cap for multiple claimants at 20 claims; industrials at \$1,000; ditch companies at \$400; FWP at \$2,500; municipalities will be assessed according to class as set forth in statute; and ditch companies will be assessed \$20 per user with a cap of \$400, carried unanimously.

Sen. Wheat raised the issue of nonpayment of fees and how it should be handled. Mr. Ebzery commented forfeiting a water right for nonpayment of a fee is ridiculous. Mr. Ebzery thought a lien would be appropriate. Sen. McNutt agreed forfeiting a water right for nonpayment was too extreme and suggested DOR could handle filing liens for nonpayment. Sen. Story noted DOR has a collection process and suggested that process should be used before a lien is filed. Sen. Story noted there is probably a cost involved in collection.

Sen. McNutt thought people on the Yellowstone Irrigation Project would not object to paying a fee in the process.

Sen. Story suggested the individual water users in an irrigation project should be assessed a \$20 user fee every two years and not be subject to a cap. Sen. Story asked Ms. Evans to look into the federal project issue and see if she could find a list of federal projects.

Sen. McNutt requested a sunset provision be placed on the process. Mr. Ebzery suggested there should be a \$26 million cap on the fund and the process should sunset when it reaches the \$26 million. Ms. Evans suggested there could be a provision that once the cap is reached, the fee would no longer be collected. This would allow the state special fund and general fund continue to be expended. Sen. Story understood the \$26 million cap should be a collection cap. Sen. Story noted there would be a timing issue involved in setting any cap.

Mr. Ebzery suggested including language that if additional revenues are derived from the federal government for their fair share, the assessment could be diminished by that amount. Sen. Story noted inflation was not factored in, and the \$2.5 million needed today to complete the adjudication process will not be \$2.5 million in the future.

Sen. Wheat stated the idea has been to make sure whatever process is put in place has a limited life span and to get the adjudication process completed, hopefully within 15 years. Ms. Kinne requested language be put in that would specifically state the money is to be used only for adjudication. Sen. Wheat strongly agreed the money would be earmarked for the adjudication process.

(Tape 4; Side A)

Sen. McNutt added that the final bill draft should specifically state any new employees hired by DNRC to work on this process should only work on adjudication of water rights.

Rep. Barrett noted there are 57,000 claims left to be examined and wondered if the Working Group would want to set a specific amount of claims to be examined per year. Rep. Barrett thought this would be a good way to monitor the process and ensure the process is on track. Mr. Ebzery thought the idea should be discussed in July.

Ms. Kathleen Williams suggested implementing reporting requirements. Ms. Evans added other groups such as the Renewable Resource Grant and Loan Program and the Groundwater Assessment Steering Committee are required to provide reports to EQC. Ms. Evans suggested implementing two teams of 11 people and moving those teams from basin to basin until the claims examination is completed as an alternative for addressing the need to keep adjudication staff working only on adjudication. Sen. Wheat stated there should be benchmarks contained in any legislation to guide the process forward. Mr. Sales commented that he appreciated the approach the Working Group has taken to address the adjudication process.

ADJOURN

There being no further business to come before the Adjudication Work Group, the meeting adjourned at 3:30 p.m.