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LARRY MITCHELL, Research Analyst
REBECCA SATTLER, Secretary
TODD EVERTS, Legislative Environmental Analyst

EQC WATER ADJUDICATION FUNDING WORKING GROUP MINUTES

Date: August 12, 2004

Museum of the Rockies, Bozeman, Montana

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.**

WORKING GROUP MEMBERS PRESENT

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

WORKING GROUP MEMBERS EXCUSED

SEN. WALTER MCNUTT

STAFF PRESENT

KRISTA EVANS, Research Analyst
CYNTHIA A. PETERSON, Secretary

VISITORS

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

CALL TO ORDER AND ROLL CALL

Sen. Mike Wheat, Chairman, called the Water Adjudication Working Group to order at 1:00 p.m., and the secretary noted the roll ([Attachment 3](#)).

WORKING GROUP ACTION

The Working Group did not take any official action,

DISCUSS ADJUDICATION FUNDING BILL DRAFT

Ms. Krista Evans, Research Analyst, Legislative Services Division, provided the Adjudication Funding Working Group (Working Group) with an overview of LCEQC1 ([Exhibit 1](#)). Ms. Evans pointed out that Section 1 identifies specific benchmarks DNRC will have to meet and noted the fee will not be assessed if DNRC fails to meet the required benchmarks. Ms. Evans suggested the Working Group may want to segregate the benchmarks. Ms. Evans explained DNRC will be required to examine 5,700 per fiscal year and both the water court and DNRC are required to report to EQC at the organizational meeting after the Legislature meets, as well as one other EQC meeting each interim. DNRC and the water court will also be required to submit a status report to the Appropriations Subcommittee each session.

Mr. Ebzery commented he would like to see the reporting requirement to include a requirement that DNRC and the Water Report submit a status report at each EQC meeting. Mr. Ebzery would like to see the EQC stay more involved in the issue.

Ms. Evans continued and explained 18,800 irrigation claims need to be reexamined. These irrigation claims are in basins that were verified instead of examined. DNRC will have a benchmark of 1,880 claims per year.

Chairman Wheat asked if Krista had spoken with DNRC and the water court about the benchmark for reexamination. Ms. Evans replied after discussing the matter with DNRC, she thought it might not be realistic to expect DNRC to hit the ground running and meet the benchmarks the first year. Ms. Evans suggested the benchmark numbers may have to be adjusted down for the first year, and that DNRC will be required to pick up those claims over the next eight to nine years. In addition, Ms. Evans was not certain whether the Working Group would want to prioritize claims examination over reexamination.

Chairman Wheat commented that he would like to see the process move forward for the benefit of the people who are using the water. Chairman Wheat wanted to ensure the benchmarks are realistic for DNRC and the water court.

Mr. Ebzery agreed and wondered what would happen if DNRC failed to meet the benchmarks. Ms. Evans replied the funding would stop. Mr. Ebzery thought stopping the funding could be problematic and suggested looking at alternative solutions.

Ms. Evans continued reviewing the proposed legislation and noted that revenue generated from the fee is to be used solely for the purpose of adjudicating Montana's water rights. Ms. Evans identified the deadline for DNRC as 2016 and the deadline for the water court as 2021. Ms. Evans noted the definition section defined "calculated volume" and thought this was important since some claims only contain flow rate and for purposes of the fee, DNRC will have to calculate the volume. Ms. Evans explained the fee will be biennial and will be imposed by the Department of Revenue (DOR). Ms. Evans explained the proposed fees would be \$20, \$1,000, and \$2,000. Ms. Evans included in the proposed legislation the ability to file an administrative appeal if a person wanted to contest the fee. The DOR will be responsible for collecting unpaid

fees. The water adjudication account will be set up within the state special revenue fund, and \$26 million is the maximum amount that can be deposited in that account. If federal money is received, the maximum amount that can be deposited will be reduced by the amount of federal money received. Ms. Evans explained she will edit the reporting requirements to include Mr. Ebzery's suggestion that a status report be submitted at each EQC meeting. Ms. Evans explained the proposed legislation grants rulemaking authority to DNRC. Ms. Evans noted DOR has authority to begin collection procedures if fees are not paid.

Mr. Ebzery asked about the reference to § 17-4-105, and Ms. Evans explained this section will allow DOR to withhold any amount owing from a person's tax return or other money they may be owed by the state. Mr. Ebzery stated he would prefer that Section 8 be amended so it referred to tax "or fee." Ms. Evans shared Mr. Ebzery's concern.

Ms. Evans explained Section 11 is a contingent voidness clause that states if \$2 million is not appropriated from other sources other than the water adjudication account, the whole Act will be void. The effective date of the proposed legislation is July 1, 2005.

Rep. Barrett noted the bill gives the water court authority to prioritize the basins for the purpose of claims examination by DNRC, and Rep. Barrett asked if a basin can petition the Legislature to give their basin priority. Ms. Evans replied entities can go to the district court and ask that their case be certified to the water court. Ms. Evans explained there is no change from what is currently in statute. Rep. Barrett asked if that practice had been disruptive in the past when priorities change. Mr. Jim Gilman, Montana Department of Natural Resources and Conservation, replied that it has not been an issue and the biggest problem is lack of employees.

Rep. Barrett asked whether the Working Group thought there would be merit in removing politics from the process and adjudicating water basin-by-basin and working the way across the state. The Honorable Bruce Loble, Chief Water Judge, thought that would take away the flexibility to address basins that need work. Judge Loble stated he was unaware of any politics involved in the prioritization of basins.

Rep. Barrett asked what the criteria would be for prioritizing one basin over another. Judge Loble explained the Teton Basin has stated it is anxious to have an enforceable decree. Rep. Barrett wondered if they could go to the district court and use their existing decree. Judge Loble stated district courts are no longer adjudicating water rights and only enforce existing decrees, and the Teton Basin does not have an existing decree. Judge Loble depicted loss of historical knowledge as detrimental to the adjudication process.

Mr. Stults stated prioritization criteria is in statute at § 85-2-218, MCA.

- **DNRC Comments**

Mr. Jack Stults stated DNRC likes the bill with the benchmarks. Mr. Stults voiced concern about having to hire a significant amount of staff, and stated DNRC would not be able to pay anyone prior to July 1, 2005. Mr. Stults added new employees will require a significant amount of training. Mr. Stults stated DNRC was comfortable they could meet the benchmarks if they were fully staffed. Mr. Stults stated the new employees must be dedicated and remain focused on the adjudication process. Mr. Stults suggested setting the first benchmark as a biannual goal rather

than annual goal. Mr. Stults favored having a benchmark of 9,000 for the first biennium and prorating the difference over the remainder of the ten-year period. Mr. Stults stated he was concerned whether the funds available in the regular appropriation will be sufficient to cover DNRC's costs during the start up period.

Chairman Wheat asked Mr. Stults if DNRC should ask for additional funding through the appropriation process, so DNRC can begin the process and also to provide a bridge between the start up time and the time fees are actually collected. Mr. Stults replied he may be able to find funding outside the adjudication program, but within his division.

Chairman Wheat asked how long it would take for Mr. Stults to determine whether there would be enough funding to get the program started. Mr. Stults replied he would have the information before the next EQC meeting. Mr. Stults stated, off the top of his head, that he suspected if they were to make the adjudication program's general fund and state special revenue funding for the first biennium rather than annual that would cover the start up period and be the least cumbersome. With respect to allocation between the water court and the DNRC, Mr. Stults thought it would be best to leave that to the appropriations committee. Mr. Stults stated the way in which the two entities would be applying these funds to gain any additional resources will be different between the two, and it is the type of thing that might be different year to year, and it certainly might be different biennium to biennium. Mr. Stults thought it might be too cumbersome to get into language that would not have some unintended consequences in the appropriations program. Mr. Stults suggested leaving the allocation of funding between the two entities to the Appropriations Committee. Mr. Stults thanked the Working Group for their assistance.

Mr. Ebzery asked Mr. Stults whether he was talking about finding funds, to be paid back when funds from the fees are available, and being able to hire people before July 1, 2005. Mr. Stults clarified. They would be doing advance work, so they could have employees in chairs and plugged in by July 1. Mr. Stults thought by April 2005, they would have a clear idea of whether they could get the preliminary work done. Mr. Stults clarified that he was referring to covering the cost from July 1 until revenue was coming in. Mr. Stults stated he could "rob Peter to pay Paul" to cover that cost, as long as it was clear that funds coming in from the fee revenue would have to backfill the programs they borrowed from. Mr. Stults thought the process would be cumbersome.

Mr. Ebzery asked Mr. Stults if he could take some of the annual money and utilize it if there is a note in HB 2. Mr. Stults thought a more simple way would be to have the Appropriations Committee make the adjudication funding biennial, that way he could use the State Special Revenue DNRC currently gets and the General Fund they currently get. As to hiring people in FY 2005 and getting reimbursed from 2006 funds, Mr. Stults explained the division is running at a deficit of \$200,000, and he did not anticipate having funds to hire anyone. Mr. Ebzery noted there may be fire funds available, and believed there could be some creative solutions available.

Sen. Story suggested the division could run up against problems with their vacancy savings, and Mr. Stults replied that was what he was referring to when he spoke about the \$200,000 deficit. Sen. Story asked if more experienced people would take on claims examination and noted current employees are probably very important to other programs. Mr. Stults replied people in the adjudication program are doing other functions, and they will continue to do that, but they will begin dedicating experienced existing staff to this program with the highest priority.

Sen. Story asked if there were places that DNRC knows will take longer to adjudicate. Mr. Stults replied areas that have gone through a lot of land use change and subdivision are more complex and will take a longer time. Mr. Stults identified a need for flexibility on which basins to work on.

(Tape 1; Side B)

Mr. Ebzery commented he would like to see the bill workable and provide enough flexibility, so people who have signed onto the process are assured it will be completed.

The Honorable Bruce Loble, Chief Water Court Judge, stated he has no problems with the bill as drafted. Judge Loble wondered how the initial \$2.6 million would be distributed to the agencies by July 1. Judge Loble added when people do not pay their fees for filing their claims, their claims are terminated. Judge Loble suggested people will pay the fee if it means forfeiture of their water right claims.

Mr. Ebzery responded the intent is the bill would be a separate bill and did not think there is any assurance the bill will pass. Therefore, Mr. Ebzery does not want to do anything to jeopardize the \$2.6 million, and that money should be in a separate appropriation. Mr. Ebzery firmly stated this bill should not jeopardize anything already being done. Mr. Ebzery did not feel terminating a person's claim for nonpayment of the fee would be very fair at this point in the process.

PUBLIC COMMENT

Ms. Susan Cottingham, representing the Reserved Water Rights Compact Commission, stated the bill would be considered a "cat and dog" and it would all get coordinated at the end in HB 2.

Mr. Bob Lane, Chief Legal Counsel for the Montana Department of Fish, Wildlife and Parks (FWP), believed completing the process would be a great benefit to Montanans. Mr. Lane expressed concern about assumptions that were made about the number of years and the number of claims. Mr. Lane was concerned about the penalty for not meeting the benchmark. Mr. Lane suggested there could be a year where DNRC is unable to meet the benchmark and the whole process would stop until the Legislature could meet again. Mr. Lane suggested there could be other ways to address the problem and still give commitment to the process.

Chairman Wheat interjected that people across the state believe that when the Legislature meets the citizens believe their money is in peril, and they have watched the adjudication process fail. Chairman Wheat explained the benchmarks are there to ensure accountability and that the process will move forward. Chairman Wheat believed the benchmarks would help to ensure the proposed legislation will pass. Mr. Lane did not disagree with Chairman Wheat, but suggested it is just a matter of what is the best way to ensure accountability. Mr. Lane was concerned about benchmarks not being met because of technicalities and the program failing midstream. Mr. Lane suggested that benchmarks remain in the bill, but not put in the penalty. Mr. Lane also thought DNRC should be required to provide an explanation as to why they did not meet the goal. Mr. Lane suggested the Legislature, through the appropriations process, and EQC, could make judgments based on DNRC's progress whether to continue the program.

Mr. Ebzery agreed with Mr. Lane's suggestion since stopping the program will hurt the people who have money in the program. Mr. Ebzery thought Mr. Lane's reporting requirements would be worth looking at.

Sen. Story did not disagree with Mr. Lane and did not want to get more than half way through the process and then quit. Sen. Story also expressed concerns about being able to get the process moving again.

Lezlie Kinnie, Water Commissioner for the Willow Creek Drainage on the South Boulder, reiterated DNRC is confident they can meet the benchmarks and accountability, and she did not see any reason to make any changes.

Chairman Wheat asked Mr. Stults if it would be better to have the benchmarks set at a range such as 5,500 - 6,000. Mr. Stults commented it is always good to have an incentive built in, and that incentive could include that if DNRC exceed the benchmark, it would be credited toward future years. Mr. Stults pointed out this would address Sen. Story's concern that some basins are more difficult than others. Mr. Stults identified one of the risks of the current benchmark structure is that it may become a prioritization mechanism. Mr. Stults thought another dynamic that should be worked with is how to deal with the prioritization issue of reexamination. Mr. Stults was excited about the prospect of reporting at every EQC meeting and the level of commitment to the project.

Rep. Barrett suggested providing flexibility by setting a minimum per biennium, so if DNRC has a tough year followed by an easy year, DNRC would still be able to meet its benchmark.

Curt Martin, Water Rights Bureau Chief, Department of Natural Resources and Conservation, suggested implementing cumulative targets. Mr. Martin explained the benchmark could be set from zero, and suggested if the benchmark is at 5,700 the first year, the benchmark could be moved to a total of 20,000 by the fifth year.

Chairman Wheat suggested through the reporting requirement to EQC, there is an opportunity for DNRC to come in and plead their case if they are falling behind. DNRC could request the benchmarks be tweaked if DNRC gets in trouble.

Mr. Jim Gilman, Adjudication Program Manager, Department of Natural Resources and Conservation, stated in the overall objective is to be done in ten years. Mr. Gilman suggested setting the benchmarks at five years and ten years. Mr. Gilman was confident DNRC could complete the adjudication within ten years.

Mr. John Youngberg, Montana Farm Bureau, stressed the importance of having benchmarks and providing accountability.

Mr. Mike Murphy, Montana Water Resources Association (MWRA), testified MWRA supports the concept of the legislation and is concerned about accountability. Mr. Murphy suggested doing the harder projects first, and supported giving DNRC flexibility to decide which projects are going to be done when. Mr. Murphy expressed concerns about the fee, and Chairman Wheat provided clarification that the billing cycle will be every other year.

Chairman Wheat asked Mr. Murphy if MWRA would be more inclined to favor the bill if it contained benchmarks, and Mr. Murphy stated that was correct.

Mr. Jay Bodner, representing the Montana Stockgrowers' Association (MSGA), was supportive of the adjudication process, but stated MSGA had concerns with the proposed legislation. Mr. Bodner explained there is uncertainty about putting more money into the process and nothing getting accomplished. Mr. Bodner identified another concern as the possibility of setting a precedence for a water tax. In addressing the specifics of the legislation, Mr. Bodner suggested reexamination of irrigation claims should be left to the water court, and Mr. Bodner suggested it should include reexamination of all claims and not just irrigation claims. Mr. Bodner thought the water court should have discretion in deciding whether to reexamine claims. In addressing industrial water rights, Mr. Bodner did not feel small industrials should pay the same amount as large industrials. Mr. Bodner closed by stating MSGA has formed a Task Force to take a closer look at the proposed legislation. Chairman Wheat requested the Task Force submit written comments to Ms. Evans for distribution at the next EQC meeting.

Mr. Stults commented that he would like to see specific numbers in the bill as benchmarks. Mr. Stults suggested that would keep everyone focused on the same ball. Mr. Stults was open to including either specific numbers or ranges.

Mr. Ebzery commented he had clearly heard there is a need for numbers setting benchmarks. Ms. Evans inquired whether the Working Group was interested in considering different types of numbers, such as cumulative numbers as suggested by Mr. Martin.

Rep. Barrett commented she was interested in reviewing a cumulative numbers with five- and ten-year benchmarks and requiring reports to EQC.

Sen. Story supported cumulative benchmarks with an annual minimum. Sen. Story was concerned about being eight years into the program before realizing there was a problem. Sen. Story commented that DNRC will be held to benchmarks, but commented he does not see that the water court will be required to do anything. Ms. Evans explained that Mr. Greg Petesch, Chief Legal Counsel, Legislative Services Division, had indicated to her there is a separation of powers issue, and that the proposed legislation does contain a section that says the water court is accountable. Sen. Story asked if the Findings and Purposes section of the proposed legislation carries legal authority. Ms. Evans explained that she feels the benchmarks need to be in a separate area, and should stand alone.

Chairman Wheat commented the benchmarks are critical to implementation and enforcement of the bill. Chairman Wheat agreed the benchmarks should be removed from Section 1 and be set out separately from the Findings and Purpose.

Chairman Wheat summarized that benchmarks and numbers are needed, and noted DNRC has indicated they can live with the numbers. Chairman Wheat was inclined to leave the numbers in the bill as proposed until a viable alternative is proposed that would provide flexibility. Chairman Wheat suggested the Working Group consider changing the benchmarks and providing flexibility and incentives at the next meeting.

(Tape 2; Side A)

Ms. Evans asked the Working Group if the benchmarks provide more flexibility, whether the penalty for not meeting the benchmarks would still be appropriate. Chairman Wheat commented it was harsh, but he would like the legislation to provide that if the benchmarks are not met, the funding would be gone. Mr. Ebzery stated if the benchmarks are not met and the process stops, it will be the people who have already contributed to the process who will be hurt. Rep. Barrett disagreed, and stated the adjudication process needs to be completed one way or another since it is in the Constitution. Rep. Barrett suggested the process had been lenient and flexible for way too long. Chairman Wheat wanted to make it clear that he is looking for flexibility and would like to avoid giving the process the death penalty.

Sen. Story asked Ms. Evans about the mechanics of the fee in the Special Revenue Account. Sen. Story wanted to know what would happen if the fees collected exceed \$2.6 million and what happens if before 2016 if it reaches more than \$26 million. Sen. Story wanted to know if there was some way the fee could drop off.

Ms. Evans replied only up to \$2.6 million can come out each year. Ms. Evans directed Sen. Story to subsection 3(a) that provides the total amount of revenue deposited in the account cannot exceed \$26 million, and if federal funds are available, the amount in the account will need to be reduced by the amount of federal funds received. Section 5(3)(c) provides that once revenue, and any other sources, have reached \$26 million, the fee will disappear. Sen. Story asked if the intention was to adjust the fee the last year. Ms. Evans pointed out that using the \$10 fee, \$26 million will be reached in 8.5 years. Sen. Story suggested the last billing cycle should be adjusted to compensate.

Sen. Story thought the biannual fee for municipalities and departments could put a strain on their budgets and pointed out local governments have a cap on their spending and this process could interfere with revenue collections and spending. Sen. Story suggested municipalities may want to pay annually.

Ms. Evans asked for direction from the Working Group on who will pay annually and who will pay biannually. Sen. Story did not want to see the \$10 fee payers go to an annual payment because of the administrative costs involved.

Mr. Ebzery recalled Mr. Alec Hanson indicating the cost would be a direct bill through and would not go against the city's capital. Chairman Wheat recalled Mr. Hanson was supposed to provide more information to the Working Group.

Mr. Ebzery asked about the definition of "owner" and asked if everyone who played the game has a water right certificate. Judge Loble replied everyone who has a statement of claim is referred to as either an "owner" or "claimant." Judge Loble stated there can be multiple owners on statements of claim. Judge Loble stated it is not unusual in the Bitterroot to have ten owners on one claim, and each owner uses the water on one-acre. Judge Loble commented each statement of claim could have more than one ownership. Ms. Evans added the fee is per water right claim or certificate.

Mr. Ebzery asked what happens if the water right is passed on. Judge Loble stated when that happens, the water right has to be transferred through the DNRC. If the water right is not transferred, it can cause problems.

Mr. Stults commented ownership is supposed to transfer with the property and the certificate filed with DNRC is to keep the records updated. Mr. Stults suggested the legal owner of the water right is the legal owner of the property.

Ms. Evans was concerned about property sold prior to the requirement of filing a transfer certificate. Mr. Stults repeated the person who owns the property is the person who owns the water right. Ms. Evans suggested removing the definition "owner."

Sen. Story asked who would get the bill if there are five owners. Mr. Stults replied the bill will be sent to the first person on the list.

Mr. Steve Brown, Attorney for the Department of Fish, Wildlife and Parks, stated he has seen instances where a number of individuals have claimed the same right, and it is made clear once the ownership dispute is resolved, each of the claimants will be decreed a separate water right claim number, dividing the right among the parties. Mr. Brown identified it as the water court's obligation to determine the current owner of all claims.

Judge Loble stated the water court is supposed to split the water rights out in the final decree, and presently they sometimes split them out, but not always.

Sen. Story asked if the water rights are split out in the preliminary decree, and Judge Loble responded they ask the water users what they would like to see, and the water users' desires vary. Sen. Story wondered if this was a good practice.

The Working Group agreed the definition of "owner" should be removed.

Ms. Evans noted the Working Group had discussed finishing all claims examination before performing any reexaminations, and Ms. Evans noted the benchmarks require some of each be done per year and asked direction from the Working Group.

Mr. Ebzery requested more information on the reexamination process. Mr. Ebzery wondered if the stakeholders thought reexamination is as important as having a final adjudication for the whole process.

Mr. Stults stated DNRC believes examination is a higher priority than reexamination, but commented that blanket statement is a gross oversimplification. Mr. Stults was concerned about the diminishing resources in terms of historical knowledge. Mr. Stults identified the end result of the project is to have an enforceable decree. Mr. Stults suggested leaving the issue of reexamination prioritization to Judge Loble.

Judge Loble agreed that examination of claims is the highest priority since it is the first contact with the water users. Judge Loble stated he has always been concerned about taking DNRC staff away from examining new claims. Judge Loble suggested both could be done if there was enough staff.

Mr. Ebzery suggested requiring 5,700 claims be completed, of which no more than 10 percent of the claims per year can be used for reexamination and wondered if that would give enough flexibility while leaving the focus on examination. Judge Loble stated he works in consultation with DNRC and rarely gives direction to DNRC, Mr. Ebzery recalled difficulties on the Mussellshell and wondered if the Legislature would receive pressure to reexamine those claims.

Chairman Wheat asked Mr. Stults if he could meet the benchmark and still deal with potential reexamination claims that become a high priority. Mr. Stults noted the proposed legislation requires DNRC to be responsible for 5,700 claims, plus 1,880 reexaminations, and Mr. Stults believed DNRC could meet that benchmark.

Chairman Wheat asked if it would be more beneficial to allow DNRC more flexibility on the reexaminations and allow the reexaminations to be brought before the water court and be dealt with on an as-needed basis. Chairman Wheat suggested this would allow problems, such as those experienced on the Mussellshell, to be dealt with immediately. Chairman Wheat suggested there could be five- and ten-year benchmarks on reexamination.

Mr. Lane suggested there could be one number as a benchmark, and that would allow flexibility to the water court and DNRC to determine how best to address examinations and reexaminations.

Sen. Story wanted to know how many basins were included in the 18,000 claims to be reexamined. Mr. Gilman recalled they were in some thirty plus basins spread across the state. Sen. Story suggested the reexamination process would need to be done basin-by-basin. Mr. Stults added some basins have thousands of claims.

Chairman Wheat noted Mr. Stults is suggesting the idea of a five- and ten-year benchmark for reexamination may work better and would provide more flexibility, rather than requiring a specific number. Mr. Stults agreed, and would like the proposed legislation to make it clear that examination is the priority. Chairman Wheat commented the Working Group would like to ensure the process is completed and that the five- and ten-year targets would give the DNRC needed flexibility.

Judge Loble commented that it would be more important to get through the temporary preliminary decrees first and get everyone through the first go around. Judge Loble thought reexamining claims is the next step in the finalization of the adjudication process. Judge Loble would prefer to see the first five years spent solely on examination of claims and initial decrees issued. Judge Loble suggested they could then go back and address reexaminations.

Ms. Evans asked if a loophole should be left, so the Judge could direct reexamination if it was needed. Judge Loble agreed that would be a good idea, and Mr. Stults also agreed. Chairman Wheat explained the benchmarks would be higher for the first five years since they would only be examining new claims; the benchmark for the next five years would include reexamination, as well as the remaining new claims. Mr. Stults commented he would like to obtain feedback from his staff, but agreed the concept made sense. Chairman Wheat responded the claims would all have to be completed within ten years regardless, and it is simply a question of prioritization.

Mr. Ebzery asked whether initial examinations or reexaminations take more time. Mr. Stults replied reexaminations take more time because they are irrigation claims. Mr. Ebzery wondered how much opposition the legislation would receive if it gave priority to examination of claims. Mr. Stults stated the people who are talking about reexaminations are people who support the benefits of the adjudication process. Mr. Ebzery suggested flexibility be given to perform reexaminations if they are needed. Ms. Evans clarified Judge Loble could order reexaminations and if there is reexamination, those claims would count toward the benchmark numbers.

Chairman Wheat suggested they may not have to do any reexaminations in a year and will be able to focus on new claims. However, if an issue with reexamination arises, then they will have that flexibility. Chairman Wheat stated the proposed legislation must recognize the original claims have priority and that reexamination will be done based on "best professional judgment."

Ms. Evans asked about who will pay for leased water rights, and the Working Group replied the owner will pay. The owner could then decide whether to bill the cost back to the person leasing the land.

Mr. Stults stated one area of the bill is unrealistic because all of the money is at current value. Mr. Stults thought that would be unrealistic for a program that will run ten years. Mr. Stults identified a simple way to address the problem would be to have the interest make up the difference.

(Tape 2: Side B)

Mr. Ebzery stated instead of having the interest go against the \$2.6, it should remain in the fund and be unrelated to the cap. Mr. Ebzery thought this would be easier and better than trying to include an inflation factor in the fee.

Mr. Lane stated FWP addresses water right fees in its lease agreements.

With respect to the benchmarks for the first biennium, Mr. Stults will work with Ms. Evans to come up with language. The Working Group agreed the benchmarks should be lower for the first year to allow DNRC to begin the process, and the difference would be made up in subsequent years.

Ms. Evans identified the changes to the proposed legislation as:

- (1) requiring DNRC to report on the adjudication process at every EQC meeting, as well as to the Appropriations Subcommittee;
- (2) placing benchmarks in a separate section of the proposed legislation, and working with DNRC to determine those benchmarks;
- (3) determining how best to handle the last billing cycle to adjust the fee so the total does not go over the \$26 million cap;
- (4) adding benchmarks that include priority of examination of claims over reexamination;
- (5) deleting the reference that requires the interest to count towards the cap;

(6) removing the reference to “owner” in the definitions.

Mr. Ken Morrison, representing PPL Montana, addressed the fee authorization sunset and suggested the date should be changed to 2014 since the fee will begin January 31, 2006. The Working Group agreed.

Mr. Lane requested clarification as to whether the penalty would be on a five-year basis or on a biennial basis. Chairman Wheat replied it would be on a biennial basis. Chairman Wheat added if the biennial benchmarks are not met, the funding would stop. Chairman Wheat suggested if Mr. Lane would like to draft substitute language, Mr. Lane could discuss his proposal with the full EQC.

WATER RIGHTS DATABASE UPDATE

Mr. Curt Martin, Water Rights Bureau, Department of Natural Resources and Conservation, submitted a status report to the Working Group on the progress in improving DNRC’s database ([Exhibit 2](#)).

- **Questions from the Working Group**

Chairman Wheat asked if the database would be able to accommodate everything anticipated by the proposed adjudication legislation. Mr. Martin provided an analogy and stated they have a Volkswagen that they can work on in the garage and can make it work, but they need a much fancier no-maintenance vehicle that will be more efficient at issuing decrees. Mr. Martin was confident DNRC would be able to issue a decree on the Teton by the end of the year, but admitted it will take a lot of work-arounds and manual manipulations. Mr. Martin explained it is a matter of finding the money to fix the system. Mr. Martin is in the process of obtaining an estimate of how much it will cost.

Chairman Wheat asked Mr. Martin whether he would make the funding a line item in DNRC’s budget for the next legislative session. Mr. Martin responded they are attempting to find the funding during this biennium and, if they cannot, will build the funding into the next budget.

Mr. Ebzery applauded the work being done to turn things around. Mr. Martin replied they will always be finding things to be improved over time. Mr. Martin stated the Water Rights Bureau’s budget has remained the same since 1992, and has not even been adjusted for inflation.

Mr. Kyle Hilmer, Department of Administration, commented that DNRC is on the right course to resolving issues with its database, and stated the objective is to have a multi-based set of estimates. Mr. Hilmer reported the cost for the estimate will be approximately \$12,635.

ADJOURN.

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