

**WATER POLICY INTERIM COMMITTEE
 OUTLINE OF WATER ADJUDICATION ADVISORY COMMITTEE PRELIMINARY OPTIONS
 REGARDING EXEMPT FROM FILING CLAIMS § 85-2-222, MCA**

Prepared by Bruce Loble
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When Montana's statewide water adjudication began, the 1979 Legislature required all water users to file a statement of claim of pre July 1973 water rights with the DNRC or face claim forfeiture. Exempted from the filing requirements were groundwater and instream stock and domestic uses. This exemption was based on a 1978 DNRC report that exempting these types of claims would reduce the number of filings from an estimated 500,000 claims to around 275,000. Although these claims were exempted from the filing mandate, they could be voluntarily filed and almost 74,000 exempt claims were voluntarily filed.

The DNRC estimates that there are as many as 150,000 non-filed exempt claims. The actual number which might be filed under the adoption of any of the Advisory Committee proposals would probably be less than 150,000 due to filing fees and other factors. Assuming a \$40 per claim filing fee, the DNRC estimates that the costs of examination and the examination completion date of a sliding number of claims is represented in the following tabulation:

	25,000 Claims @ 2 Years	27,000 Claims @ 2 Years	50,000 Claims @ 3 Years	65,000 Claims @ 3 Years	100,000 Claims @ 5 Years	150,000 Claims @ 8 Years
Est. Program Cost	3,702,104	3,702,104	5,598,520	5,598,520	9,484,451	15,685,705
\$40 Fee Collected	1,000,000	1,080,000	2,000,000	2,600,000	4,000,000	6,000,000
Total Est. Cost	2,702,104	2,622,104	3,598,520	2,998,520	5,484,451	9,685,705

A synopsis of the current status quo and the current proposals follow:

1) Take No Action Option - Current Status Quo: Of the 219,000 claims currently involved in the statewide adjudication of water rights, the DNRC water rights database identifies 73,892 exempt from filing claims as being voluntarily filed. These voluntarily filed claims are examined by the DNRC, included in the adjudication process, and enjoy the same prima facie status as all timely filed claims. After all objections are resolved on a source, the terms of a Water Court decree may be enforced and water distributed by a district court appointed water commissioner.

Non-filed exempt claims are not included in the statewide adjudication effort. If the claims in a Water Court decree are administered or regulated by a court appointed water commissioner, the non-filed exempt claims are not included in the distribution list or otherwise regulated.

2) **Voluntary Petition Filing Option**: Exempt from filing claim owners could be authorized to file a petition with the Water Court to quantify the elements of a non-filed exempt claim. Notice would be provided to all water users in the basin at the expense of the petitioning water user. The burden of proof would be on the petitioner. After the Water Court quantifies the claim, it would be included in the basin decree and be subject to regulation by a water commissioner (if appointed). Petitions would be allowed until final decrees are issued. All exempt claims for which a petition is not filed would remain unregulated as they are under the current status quo.

3) **Voluntary Claim Filing Option**: Under this option, a statewide filing deadline for non-filed exempt claims would be set. The newly filed claims would be examined by the DNRC, included as part of any newly issued Water Court decree, and treated the same as any other timely filed claim. Some previously issued decrees would have to be reopened and notice of the newly filed exempt claims provided to water users. Filings would be allowed until issuance of final decrees. Failure to file a claim would not result in a forfeiture of the non-filed exempt claim, but it would not be included in any water commissioner distribution or enforcement effort. Non-filed exempt claims would remain unregulated as they are under the current status quo.

4) **Mandatory Filing Option**: All non-filed exempt claims (both instream and groundwater) would be required to be filed by a date certain or be forfeited. After filing, the claims would be fully examined by the DNRC. (An alternative or further refined proposal could require no DNRC examination if the newly filed claim asserts a flow rate or volume below a specified minimum threshold.) Newly filed claims would be included in all newly issued Water Court decrees. Past issued decrees would need to be reopened and notice provided to water users. After being included in the Water Court decrees, all exempt claims would then be adjudicated using the same procedures as other claims in the decree.

5) **Mandatory Stock/Voluntary Domestic Filing Option**: This option would be similar to the Mandatory Filing Option, except only stock claims (both instream and groundwater) would be required to be filed or deemed forfeited. Domestic non-filed exempt claims could be voluntarily filed as set forth in the 3) Voluntary Claim Filing Option.

6) **Mandatory Refiling and Re-Adjudication of All Vested Claims Option**: Maxine Korman, a member of the public who has been attending the Committee meetings appears to support this option, but I am not absolutely certain. Mrs. Korman has provided the Committee with extensive materials and comments and it appears she contends that if Montana's water right adjudication is to be supportable, it needs to be started over and that all water right claimants with pre-July 1973 vested water rights would need to file a Declaration of Vested Water Right of all their water right claims. Mrs. Korman's materials are posted on the Water Court website at

<http://courts.mt.gov/water/WAAcommittee/default.mcp>