

Kolman, Joe

From: Mike & Nancy Ereaux <7mfe7195@mtintouch.net>
Sent: Monday, September 10, 2012 11:02 AM
To: Kolman, Joe
Cc: Michael Fred & Nancy Ereaux
Subject: Water Committee-Exempt From Filing Claims-Give Opportunity to File

Montana Water Policy Interim Committee,

I'm writing to let you know that it is important to give people the opportunity to file. I've listened to the volunteer committee on their conference calls and was listening when they came to the conclusion of option 2 to allow voluntary filings. We then got an e-mail that told us that the people not in attendance on the call turned the tide so option 2 was no longer the chosen option. I want to convey to you it is very important for an option to file be given since we have been told in the past that we couldn't file, it isn't cost efficient to file and it's not necessary to file.

The oldest recognized beneficial use of water is for instream stockwater. Most rights are over a century old when fully researched.

According to the verbatim transcript of the Montana Constitutional Convention, Vol. V, p. 1302 (1971-1972), Delegate Davis stated, ". . . The whole purpose, just for the purpose of the journal, is to establish, in the first sentence, that all existing water rights are recognized and confirmed -- so no one will get any idea that we're trying to take away any vested or existing rights. . . ."

However, people with instream stockwater rights were asked not to file. The story at that time was that they were well-established and not in contention, and that it would be needlessly expensive for the state and the water users to have them filed. People were theoretically allowed to file, but in many cases were actively discouraged from doing so and even told they couldn't file.

In 1978, a DNRC (Department of Natural Resources and Conservation) report to the Montana Water Policy Interim Committee stated, "...exempting adjudication of groundwater domestic and stock rights should be considered. The DNRC estimates that this would reduce the total number of existing water rights perfected prior to July 1, 1973 and needing adjudication from an estimated 500,000 to around 275, 000. Postponing adjudication of stock and domestic rights until later..."

June 15, 2011, the DNRC reported, "At the time of SB76, the general understanding was that adjudication of these rights would be postponed, not that they would never be adjudicated. Holders of these water rights were told by the Legislature at the time that they need not file in the adjudication and the holders and their water rights should not be penalized for not filing at that time. A forum needs to be provided so that holders of these water rights have an avenue to formally validate these water rights and have a way to have these rights distributed by water commissioners."

The CMR has just laid claim to 2.49 million acre-feet of these "unclaimed" water rights. "Later" has come and the song has changed from "Please wait to file, because it's too much of a hassle if everyone files at once," to "You had two chances to file and you didn't, you lazy sods." Unless the promised filing avenue is given, the Legislature just stole a DNRC-estimated 225,000 vested water rights from Montana citizens.

It is a big deal and I appreciate your time,
Nancy Ereaux
Double O Ranch
Malta, MT

Kolman, Joe

From: Waters <h2os@mtintouch.net>
Sent: Monday, September 10, 2012 10:36 AM
To: Kolman, Joe

Dear Judge Loble,

I would like to ask your committee member if there is a difference between a filing period when people are being actively discouraged from filing and a filing period when people are told they should file? My family's experience should suffice. We were told by the DNRC, "You don't want to do that. It's expensive, and you don't need to do it." The instream stockwater rights are the oldest continuously used and recognized beneficial water rights in Montana, and yet those water users are the only ones that have never had a filing period. While the other water users got two filing periods, the instream stock users were told, "Don't file now. It's too expensive and too much of a hassle. We'll deal with those later." Now "later" is here, and those users are being told, "No, actually, when we were telling you not to file, THAT was your filing period. Why were you too lazy to file?"

Right now, the federal government is claiming one million acre-feet of water that has already been in continuous beneficial use for a century as instream stockwater for the CMR Refuge. They are claiming that water because the owners of the water right believed the Montana legislature and the Montana DNRC when they told them not to file those rights. Was it the goal of the Legislature to take validly used Montana water rights away from Montana citizens and transfer them to the federal government?

Sincerely
Scott Waters

MONTANA WATER COURT



STATE OF MONTANA

(406) 586-4364
1-800-624-3270 (In-State only)
FAX: (406) 522-4131

PO BOX 1389
Bozeman, MT 59771-1389

September 10, 2012

Senator Bradley Maxon Hamlett, Chair
Water Policy Interim Committee
Montana Legislature
Capitol Building
Helena, Montana 59601

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SEP 10 2012

LEGISLATIVE ENVIRONMENTAL
POLICY OFFICE

Senator Jim Keane, Chair
Environmental Quality Council
Montana Legislature
Capitol Building
Helena, Montana 59601

Re: Report on Exempt from Filing Claims Under Section 85-2-222, MCA.

Dear Chairman Hamlet, Chairman Keane, Committee and Council Members:

In May 2011, Senator John C. Brenden requested the chief water judge to convene the Water Adjudication Advisory Committee and to examine the issues of livestock and domestic water right claims based upon instream flow or ground water sources which were not voluntarily filed during the claim filing process. Under §85-2-222, MCA, these types of claims were exempt from the mandatory filing requirements, but they could be voluntarily filed. For purposes here, these claims will be referenced as "exempt from filing claims." They should not be confused with the "exempt claims" which are the subject of a study initiated by House Bill 602 of the 2011 Legislature.

In response to the Senator's letter, the Water Adjudication Advisory Committee held several public meetings, exchanged and studied several proposals, and eventually settled, by a plurality of the Committee members, on a draft proposal. The proposal contemplated legislation to authorize water users to file voluntary petitions with the Water Court to include non-filed exempt from filing claims in Water Court decrees. The petitioner would have the burden of proving the historical beneficial use of the claim and would also be responsible for any publication or notice costs. Failing to file such a petition would not result in the forfeiture of any exempt from filing claim. If the filing of

"... to expedite and facilitate the adjudication of existing water rights."
CH.697 L. 1979

a petition was determined to be without merit, the water judge would be authorized to award costs and reasonable attorney fees to any party who objected to the claim.

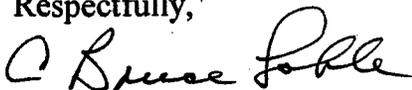
The Advisory Committee is composed of seven members. Three members represent the United States, the Department of Natural Resources and Conservation (DNRC), and the Montana Attorney General's office; three members are water lawyers; and two members are water users. The members representing the United States, the DNRC, and the Attorney General did not want to take a specific position on the issue, but they did participate in the research and discussion of the various options, and worked on the draft proposal. The draft proposal appeared to have tentative support from the three water lawyers and one water user, so some draft statutory amendments were circulated to implement the proposal.

On August 27, 2012, after reviewing the draft amendments, two of the water lawyer members withdrew their support from the tentative proposal. They advised that the latest proposal creates a situation that is no different under the current version of § 85-2-222, MCA, that there have been two opportunities to file exempt from filing claims, and that they see little point in creating another claim filing period for these types of water rights.

As there is a lack of consensus among the members of the Advisory Committee, it appears that the Water Adjudication Advisory Committee must report that it cannot, at this time, recommend a proposal.

I intend to convene the Advisory Committee at least one more time to see if a solution might be available. I have asked Judge McElyea to attend the meeting. Perhaps, his fresh eyes might see a solution. If the Advisory Committee finds a solution before the next legislative session, it will advise Mr. Kolman. If a legislator wishes to sponsor the proposed solution, the Water Court and some of the Advisory Committee members would likely be available to provide assistance.

Respectfully,



C. Bruce Loble
Chief Water Judge

cc: Members of the Water Adjudication Advisory Committee

Kolman, Joe

From: Ted & Norma Kelly <tsnkelly@hotmail.com>
Sent: Monday, September 10, 2012 11:04 AM
To: Kolman, Joe
Subject: Water rights near CMr

Please don't let the Federal take any more of our rights. Ranchers were told their water rights would be honored for stock water and now the State of Mont. is not standing up for them. Don't give into eastern block environmentalists.

Thanks,
Ted Kelly
Box 773
Malta, MT 59538

Kolman, Joe

From: Thigpen, Helen
Sent: Monday, September 10, 2012 9:26 AM
To: Kolman, Joe
Subject: FW: Avulsion comments from Jeffco Clerk and Recorder

Linda,

I agree with Janice. I would file the survey. However, I think the proposed law should require the owner to file the survey and deeds with the Clerk and Recorder – not the Department of Revenue. See pg 2 in new section(3) line 10 which requires the owner to notify the department of revenue- this should be changed to Clerk and Recorder and the law should specifically require the filing of the survey approved by the board of land commissioners. The deeds transferring title must be recorded in our office.

Bonnie Ramey
Clerk and Recorder/Assessor/Election Administrator
Jefferson County

Kolman, Joe

From: Sierra Dawn Stoneberg Holt <sierra@nemont.net>
Sent: Monday, September 10, 2012 9:08 AM
To: Kolman, Joe
Subject: Water rights exempted from filing

Dear Mr. Kolman:

In 1978, the DNRC recommended to the Montana Legislature that the process of adjudicating Montana's water rights was going to be too costly, and it would save money if half the water rights, the oldest water rights, the instream stockwater rights, 225,000 water rights were postponed and filed later. The owners of those water rights dutifully put the demands of the state's budget above their personal interest and waited. They have been waiting almost 40 years. Now a lot of people are saying, "You already had two filing periods (during which they were being actively discouraged from filing and being told to wait, it wasn't yet your turn). You won't get another." The federal government is trying to take those water rights, because they feel that if the state hasn't allowed the owners to file on them in 40 years, it must have been the Legislature's intent to extinguish those 225,000 water rights. Please give us the promised filing avenue. 40 years is a long time to be postponed until "later".

Sincerely,
Sierra Stoneberg Holt