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From: Sierra Dawn Stoneberg Holt [<mailto:sierra@nemont.net>]

Sent: Wednesday, August 17, 2011 10:22 PM

To: Loble, Bruce

Subject: Water Adjudication Advisory Committee - Exempt From Filing Claims - Pursuit of Options

Greetings:

I am responding to the proposals listed at <http://courts.mt.gov/water/WAAcommittee/default.mcp>

First, no proposal except Maxine Korman's mentions vested rights.

Montana Water Court Case No. 40E-A:

[Prior to 1973, a water right appropriated on the public domain in accordance with Montana law or custom generally vested in the appropriator. (p. 13)] seems fairly clear to me, and I cannot help but wonder what has happened to all those pre-1973 rights that supposedly vested in the appropriator. It seems odd to me that they can have simply disappeared and be no longer worthy of consideration.

I recognize and sympathize with John Bloomquist's concern that the filings be voluntary and not result in loss of rights. I don't think anyone wants any of these rights to be lost to a failure to file. (Although they seem to be de facto lost already at the moment despite their owners following all the applicable laws and following official advice.) Still, what good will the adjudication be, if it is riddled with an unknown number of unclaimed rights that are supposedly still valid. It doesn't seem practical to me to issue a decree, and then follow that up by a process of adding an unknown number of claims of unknown amount to that decree. Still, having an actual mechanism to have these rights adjudicated would probably be an improvement over the current state.

In general, I am sympathetic to Don MacIntyre's suggestions and opinions. I am concerned however, that the case of Idaho seems to me to indicate that an adjudication including voluntarily filed rights is federally invalid and unlawful. I'd hate to see that happen. If I wasn't concerned about that and if I wasn't concerned about the apparent evaporation of vested rights, I would really like the idea that these claims can be filed at any time and will in general enjoy the same benefits of "prima facie evidence" as claims that were required to be filed earlier, but should not burden the adjudication process unduly, and may include a burden of proof in some situations.

Michael Cusick's proposal seems to rely on the belief that following the law and the advice of state employees was untimely and was a failing by people that "have already had an opportunity to file and did not avail themselves of that opportunity." The assumption seems to be that these people should be grateful to have any vestiges of rights remaining to them. I can understand this viewpoint, but disagree strongly.

The DNRC's background considerations are very important in my opinion, particularly the first three. The DNRC lays out fairly reasonable options. The permissive filing sounds tempting, since there is no forfeiture (something no one wants.) I remain concerned that this could invalidate the entire adjudication.

I agree with Maxine that I would like to see pre-1972 rights filed with a Declaration of Vested Water Right. I wish it could be voluntary, but I can't believe the adjudication would be in accordance with federal law if it was. Forfeiture is harsh, but, as was pointed out, that is the only reasonable consequence of failing to do a mandatory filing. If filing isn't mandatory, then the adjudication isn't complete, and if it isn't complete, what is the point? I do not believe that any number of missed non-mandatory deadlines is equivalent to missing a mandatory deadline. Therefore, I do not believe that past, non-mandatory deadlines should be made retroactively mandatory now, and those prior rights liquidated for failure to file in a timely fashion.

Thanks so much for allowing me to voice my opinion, Sierra Dawn Stoneberg Holt