

POTENTIAL OPTIONS TO ADDRESS RIGHTS EXEMPT FROM FILING

The Department of Natural Resources and Conservation has put together the following options for discussion to address the issue of domestic and stockwater instream and groundwater rights exempt from filing in the statewide adjudication. All options are subject to policy considerations in addition to the obvious legal considerations.

Background Considerations

Several background considerations in reviewing potential options are:

- 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.
- Stockwater rights may be a larger issue than the domestic water rights due to the amounts used.
- Claim examination on these rights is typically minimal, but important to validate.
- Consideration should be given to the timing of the current decree issuance schedule and resources availability.

Options

A. MANDATORY STOCK AND VOLUNTARY DOMESTIC FILING WITH SUBSEQUENT PERMISSIVE FILING FOR DOMESTIC

1. Filing Period

a. Mandatory Filing Period for Stock Rights with Forfeiture

Process would be similar to SB 76¹ filing with a deadline to file statements of claim for groundwater and instream stockwater rights. Claimant would file claim with DNRC. Filing could be on a rolling basis depending on where basin decrees are in the process. Notice of filing deadlines would be sent/published by Water Court (WCT). Claims examination would be the same as current. Forfeiture provision would apply.

b. Voluntary Filing Period for Domestic Rights

Process would be similar to SB 76 filing with a deadline to file statements of claim for groundwater and instream domestic rights. Claimant would file claim with

¹ Notice process could be modified from the SB76 notice on all options referencing SB76.

DNRC. Filing could be on a rolling basis depending on where basin decrees are in the process. Notice of filing deadlines would be sent/published by WCT. Claims examination would be the same as current. Payment of notice and claims examination costs by State is an incentive to file.

2. Permissive Later Filing for Domestic After Deadline for Voluntary Filing

This is a WCT process where claimant files claim or motion for decree amendment on a case-by-case basis with WCT. DNRC performs claims examination. Claimant pays notice costs and DNRC examination fee (similar to Idaho). Filing could be made with DNRC and DNRC forwards to appropriate court (if WCT is no longer in existence). WCT incorporates claim into decree with opportunity for objection.

B. MANDATORY FILING FOR ALL RIGHTS WITH FORFEITURE

Process would be similar to SB 76.

C. PERMISSIVE FILING CASE BY CASE – Simply provide a forum with no deadline.

This is a WCT process where claimant files claim or motion for decree amendment on a case-by-case basis. DNRC performs claims examination. WCT incorporates claim into decree with opportunity for objection. Filing could be made with DNRC and DNRC forwards to appropriate court (if WCT is no longer in existence). Claimant pays notice costs and DNRC examination fee or taxpayers pay.

Policy Considerations

- Voluntary v. mandatory filing and forfeiture.
- Effect on current adjudication schedule.
- Level of impact importance on water resource of rights, stock v. domestic v. both.
- Cost – who pays for processing, claims examination and notice, taxpayers or claimants.
- Who bears the burden of proof on these rights.
- Filing forum, DNRC or WCT.
- Use of set flows and volumes for stock and/or domestic.
- Opportunity for objection by other water right holders.
- Differentiation on the basis of ground v. surface water.
- Potential for abuse, possibly in closed basins.