

## **Certification to Water Court Option**

For inclusion in 85-2-406(2) the following new subsection:

"(c ) When a water distribution controversy involves claims for existing rights exempt from the filing requirements under 85-2-222, a party to the controversy may petition the district court to certify the matter to the chief water judge. If a certification request is made the district court shall certify to the chief water judge the determination of the existing rights exempt under 85-2-222 according to procedures set by the chief water judge. The district court from which relief is sought shall retain exclusive jurisdiction to grant injunctive or other relief as necessary and appropriate pending adjudication of the existing rights exempt under 85-2-222. After determination of the matters certified the water judge shall return the decision to the district court with a tabulation or list of the existing rights exempt under 85-2-222 and their relative priorities. The provisions of subsection(c) are supplemental to the certification provisions provided in subsection(b) and may be applied independently or in conjunction with the provisions of subsection (b) depending upon the nature of the water distribution controversy and the existing rights involved in the controversy."

The idea here is to allow exempt claims to be adjudicated if the owner wishes for them to be enforced on the source. I have language that allows this process to be done by itself or in conjunction with the certification of claims which have yet to be determined under Part 2 (ie adjudicated by the water court). My only question is how would the exempt right get adjudicated by the water court after there is a final decree from the water court? Maybe we need to do something with (3) to address those circumstances which are still some years away.