

November 17, 2011 Minutes

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On November 17, 2011, the Water Adjudication Advisory Committee held a two hour plus telephone conference to discuss draft proposals concerning the exempt from filing claims which were not voluntarily filed during the general adjudication filing period ("exempt claims"). At least eighteen people attended the telephone conference.

The following Committee members were present: Ex officio members Jay Weiner, Anne Yates, and James DuBois; attorney members Holly Franz, and Mike Cusick; and water user member Robert Goffena.

During a previous Committee meeting held on September 19, 2011, some of the participants agreed to draft a Summary of the history of the exempt rights, a Mandatory filing option, and a Voluntary filing option. The proposals were posted on the Water Court website and notice of their location was circulated electronically among the Committee membership and some members of the public. Additionally, email notice of the website posting and the November 17 meeting was provided to sixty-nine people whose email addresses are kept on a "Water Right Adjudication Info Group" list maintained by the Water Court.

The Committee members and several members of the public discussed the benefits and disadvantages of the two proposals for at least 70-80 minutes. To focus the Committee's deliberations, a series of non-binding test votes were taken on six general proposals.

1) The Committee members unanimously opposed a mandatory filing for all exempt domestic and livestock claims with a forfeiture penalty for non-filing. 2) The Committee split 4-2 in favor of a mandatory livestock (both instream and groundwater) filing and a voluntary domestic claim filing, with a forfeiture penalty for the non-filing of livestock claims. 3) The Committee split 3-3 on a mandatory instream livestock claim filing process, with a forfeiture penalty for the non-filing of instream livestock claims. 4) The Committee split 4-2 in favor of a voluntary filing process, with the filed claims being granted prima facie status. 5) The Committee split 3-3 on a voluntary filing process, with the filed claims not being granted prima facie status. 6) In response to a question as to

whether the Committee should stop working on the exempt claims issue, the members voted unanimously against such a suggestion.

During the voting process and afterwards, the members discussed the deficiencies and limitations of the voting process and that voting on a few options could not capture the complexity of the issues and the permutations. More than one member expressed a belief that the Committee should be prepared to recommend taking no action if the alternatives reached by consensus would likely make the problem worse.

However, based on the directions revealed by the test votes, the Committee agreed to redraft the proposals for further discussion. Jay Weiner and Anne Yates agreed to revise the mandatory proposal. The DNRC agreed to provide estimates of the number of exempt claims which might be filed, the potential cost of examining the claims, and some prospective claim filing cost figures. Holly Franz agreed to draft a voluntary claim filing process. Mike Cusick agreed to revise the certification process and to include some notice provisions.

Joe Kolman advised the Committee that the Environmental Quality Council and/or Water Policy Interim Committee meets in January 2012 and would appreciate a report.

To be in a position to make such a report, the Committee agreed the newly created proposals would be emailed to the Water Court on or before **December 7, 2011** for posting on the Court website and to hold another telephone conference call on **December 19, 2011 at 10:00 AM** to discuss the proposals. To participate, dial 1-866-479-6576 and enter participant code 51610471# at the prompt.