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Judge Loble- per our June 1 conference call I offer the following suggestion for exempt water rights under 85-2-222. I would suggest authorizing the use of a filing to record such water rights within the state's centralized records. The filing would be voluntary. If an exempt right holder wished to have the right adjudicated by the water court they could so move the court after the issuance of a water court decree for the basin. The date for any such motion would be established by the court in the basin-wide notice. The notice for any such motion would be the same as the claim amendment procedures. For basins where the decrees have been issued already it may be noticed up when decrees are issued for a second time in certain basins, or noticed up as a separate process in those which were "one objection" basins.

The other process wherein exempt rights may need to be adjudicated is in enforcement/administration settings. In these instances if an exempt right holder was asserting priority the district court would ask the water court to adjudicate the elements of the right (if never adjudicated by the water court) or the water court could advise the district court of the priority of the right if the holder had the right determined under the process outlined above. This would at least address the situations where an exempt right later asserts priority but the right has never been addressed by the water court. This does not address a situation where the water court is no longer around (20??), but that circumstance could be addressed in the future by the legislature.

As far as the evidentiary status of the voluntary filings they would not be afforded prima facie. To the extent a holder of the right wishes to have the right adjudicated they would need to establish the elements of the right before the water court.

I am sure there are issues to discuss with this approach as there always are with the subject. I think this may be an avenue to give those water right holders with exempt rights the mechanism to have their rights adjudicated by the court; address those instances where enforcement/administration may be affected by any such rights; while also not forcing everyone with exempt rights into a costly mandatory process. Thank you. JEB