

**WATER ADJUDICATION ADVISORY COMMITTEE**  
**SEPTEMBER 19, 2011 MINUTES**  
Prepared by Bruce Loble

On September 19, 2011, the Water Adjudication Advisory Committee held an in person and telephone conference. At least twenty people participated in the meeting.

The following Committee members were present: Ex officio members Jay Weiner, Ann Yates, and James DuBois; attorney members John Bloomquist, Holly Franz, and Mike Cusick; and water user member Robert Goffena. In addition to the Committee members, five people convened in the DNRC Bannock Room in Helena and nine people identified themselves on the telephone conference call.

During previous meetings, different members of the Committee agreed to draft and present two options to stimulate discussion concerning the exempt from filing claims which were not voluntarily filed during the general adjudication filing period ("exempt claims"). The two options were identified as a Mandatory filing option and a Voluntary filing option. Additionally, public participant Maxine Korman filed documents expressing her concerns and her proposal to resolve the exempt claims issue.

The proposals were posted on the Water Court website and circulated electronically among the Committee membership and some members of the public. Additionally, email notice of the website posting and the September 19 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.

In one document provided the Committee by Maxine Korman, entitled "Proposals Correcting Montana Water Use Act," it was stated that the "recommendation of Ron Korman and Maxine Korman is that all water rights that pre-date the 1972 Montana Constitution and under the 1973 Water Use Act be required to be filed as Declaration of Vested Water Right." After providing documentation and authorities supporting the Korman recommendation, Mrs. Korman closed the same document with the statement that "For these reasons our recommendation is simply that pre Water Use Act water rights be recorded as Declaration of Vested Water Right and show up in the adjudication as such."

The September 19 meeting began with a discussion of the Korman proposal. Mrs. Korman was asked if her concerns could be addressed by requiring the title of any water right ownership document issued after the final decree to be titled as a "Declaration of Vested Water Right" rather than being titled as a "Certificate of Water Right" as § 85-2-236, MCA, currently requires. Mrs. Korman advised that such a title change would not be satisfactory. Her contention was that if Montana's water right adjudication was to be supportable, it needed to be started over and that all water right claimants would need to file a Declaration of Vested Water Right. Although there was some doubt expressed that the Legislature would be interested in starting the adjudication over, the Korman proposal will be included as an option in the Committee's report to the Legislature.

The next item discussed was the Mandatory filing proposal. This proposal would be similar to the original claim filing process, but some questions about possible alternatives were also included in the proposal. For example, should the filings be prima facie proof of their content or not? Should **all** exempt claims be required to be filed or face forfeiture, or should some claims, perhaps domestic claims be allowed to remain unfiled? Although there did not

appear to be a consensus to require a Mandatory filing, there was sufficient agreement to include a Mandatory filing proposal as an option in the Committee's Report to the Legislature. Jay Weiner agreed to draft the proposal for the prospective report.

The next item discussed was the Voluntary filing proposal. The initial proposal was to allow exempt rights to be adjudicated by the Water Court as part of a district court certification proceeding filed under § 85-2-406(2), MCA. Since such certifications require the existence of a "water distribution controversy," some concern was expressed about requiring litigation to be commenced between neighbors as a prerequisite to certifying exempt claims to the Water Court. That concern led to a suggestion that §§ 85-2-233, 85-2-237 and 85-2-406 might be modified to authorize the recording of exempt claims for recognition purposes; and/or to provide a method to allow exempt claims to be filed, adjudicated, and inserted into the general water rights adjudication process resulting eventually in the inclusion of exempt claims in water right tabulations to be distributed by a water commissioner.

Holly Franz agreed to draft a proposal under § 85-2-233 and/or § 85-2-237. John Bloomquist agreed to draft a proposal under § 85-2-406, MCA. Tim Hall and Judge Loble agreed to draft a brief history of the exempt claim issue to serve as an introduction to the Committee's legislative report, perhaps using the "Water Court Exempt Claim Memo -1-2011 teleconf" document posted on the Court website as a template. The drafts are to be emailed to Judge Loble by November 3, 2011 for posting on the Water Court website.

Joe Kolman advised the Committee that it would likely be requested to provide a report to the Environmental Quality Council and/or Water Policy Interim Committee in January 2012. Scott Cassel suggested that some agricultural groups, such as the Montana Stockgrowers, would also be interested in learning about the Committee's progress during their upcoming fall conferences.

To meet these prospective deadlines, the Committee set a telephone conference call for **November 17, 2011 at 10:00 AM** to discuss the proposals. To participate, dial 1-866-479-6576 and enter participant code 51610471# at the prompt.