

Montana State Senate



SENATOR JOHN C. BRENDEN
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The Big Sky Country

Chief Water Judge
C. Bruce Loble
601 Haggerty Lane
Bozeman, MT 59715-1738

RECEIVED

MAY 03 2011

Montana Water Court

Dear Judge Loble,

This letter is to request that you exercise your authority pursuant to 3-7-103, MCA to convene the water adjudication advisory council to examine an issue of statewide importance and provide recommendations. It has come to my attention that there are an unknown number of legal, but unfiled, water claims throughout the state that may not be included in the adjudication.

Claims for existing rights for livestock and individual, as opposed to municipal domestic uses, based upon instream flow or ground water sources were exempted from filing pursuant to 85-2-222, MCA. The exemption does not include reservoirs, pits, pit-dams, or other developments for surface water. The statute notes that these claims may be voluntarily filed.

However, the process and venue for proving unfiled claims in court was not addressed three decades ago when the exemption became law. Because these claims were not filed, they are not included in a temporary preliminary or preliminary decree. Therefore, the Water Court cannot consider objections to these claims because they are not included in the decree.

The issue has been brought before the legislature as well as legislative interim committees without resolution. I request that the water adjudication advisory council examine this issue, in particular unfiled exempt claims for water on federal land.

Please convene the advisory council at your earliest convenience and provide updates and recommendations to the Environmental Quality Council and the Water Policy Interim Committee. Also, please provide notice of these proceedings to interested parties or organizations and provide an opportunity to participate or provide comments on any prospective council recommendations.

Thank you for your consideration of this request. Contact me if you have questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "John Brenden", with a long horizontal flourish extending to the right.

Senator John Brenden

cc: Scott Cassel
Maxine Korman
Joe Kolman