

Senate Bill 355 – Exempt Claim Filing Statute

Frequently Asked Questions

1. What is an exempt water right?
 - a. An exempt right is a water right in existence before 1973, exempted by statute from the two previous mandatory claim filing periods. These rights include existing rights for livestock and individual, as opposed to municipal, domestic uses based upon instream flow and groundwater sources. This subset does NOT include rights for irrigation or stockwater rights not falling within the preceding definition.
2. Why do I want to file my exempt water right? What do I gain?
 - a. By filing your exempt water right, you are able to enforce the right against all other timely filed water rights in the state, including groundwater certificates and DNRC water use permits. In addition, if your exempt water right is filed and recorded with the DNRC, you are entitled to receive notice of various water right proceedings in your basin.
3. What happens if I don't file my exempt water right?
 - a. Your water right will NOT be enforceable against other water rights.
4. How much is the exempt claim filing fee?
 - a. \$160.00 for the DNRC claim filing fee. There is no fee for filing the required petition with the Water Court.
5. When is the exempt right claim filing period? When does it start and when does it end?
 - a. The exempt right claim filing period begins on October 1, 2013. The duration of the exempt claim filing period depends on how close your basin is to the issuance of a Final Decree by the Water Court. Contact the Water Court or your regional DNRC office to find out the current status of your basin.
6. Where can I get exempt water right claim forms?
 - a. Claim forms are available at any DNRC Regional Office, the Montana Water Court, and online at http://www.dnrc.mt.gov/wrd/water_rts/adjudication/default.asp.
7. Is a claim form all I need to file for my exempt water?
 - a. No. You must also file a Petition for Judicial Determination of Exempt Water Rights with the Water Court. This Petition is available online, at your DNRC Regional Office, or the Water Court. **The Petition must be filed with the DNRC at the same time you file your Statement of Claim.**

The DNRC will forward the Petition, along with your claim file, to the Water Court after you have completed the claim filing process.

8. Can I file my Petition for Judicial Determination of Exempt Water Rights with the Water Court before I file my Statement of Claim form?
 - a. No. You must complete your Statement of Claim filing with the DNRC prior to filing your Petition with the Water Court. The DNRC will assign your exempt water right a claim number and that number must be included on your Petition for the Court's records. Your Petition will be rejected by the Water Court if it does not contain a DNRC issued claim number on its face.
9. Is there any other documentation or information I should provide when filing my statement of claim?
 - a. Some water users already filed claims for their exempt rights. If an exempt right was timely filed before April 30, 1982, or during the late claim filing period (1993-July 1, 1996), there is no need to re-file that right.
10. What is the current status of exempt rights that were timely filed during previous claim filing periods?
 - a. If an exempt right was timely filed in the adjudication process, the water right was made part of the decree for that basin. If the exempt water right was not filed as a statement of claim in the adjudication, the water right is NOT part of the decree for the basin.
11. Will my exempt water right statement of claim be handled in the same way as previously filed statements of claim, previously exempt or not?
 - a. Yes. In the interest of preserving equal treatment and due process for all water users in Montana, your exempt water right claim filing will be examined and adjudicated the same as any other timely filed existing water right in the Statewide Adjudication.
12. If I filed an exempt right during the late claim filing period ending on July 1, 1996, can I still file a claim during this claim filing period?
 - a. There is no reason to file an exempt claim during this claim filing period if you filed on that water right during the 1993-July 1, 1996 late claim filing period. Exempt claims filed during the late claim filing period (1993-July 1, 1996) retained their claimed priority date.
13. If I filed a form 627 exempt right notice with the DNRC, can I still file a claim during this claim filing period?
 - a. Yes. By filing a statement of claim during the exempt claim filing period, you are establishing a timely filed water right claim that entitles you to all

the rights held by water users who filed their claims during the original claim filing period ending on April 30, 1982. The 627 forms were voluntary filings for the DNRC and its public notice efforts. A 627 form is **NOT** considered a valid claim.

14. If I, or my predecessors in interest, filed a groundwater right in compliance with the 1962 Groundwater Code, but did not file a statement of claim for the right in the statewide adjudication, do I need to file an exempt right claim at this time?
 - a. No. However, failure to do so could result in subordination of your right to all timely filed rights, groundwater certificates, and permits.
15. Do I need to provide evidence to support my exempt water right claim?
 - a. The requirements for exempt claim filings are exactly the same as they were for timely filed claims in 1982 and late filed claims in 1996. You do need to provide evidence to support your claim. Contact your regional DNRC office for more information on evidentiary requirements for your individual exempt rights, as they can vary greatly by type of right.
16. Can I get my exempt right adjudicated right now?
 - a. Yes, you can request that your petition to adjudicate your exempt water right be expedited by the Water Court and DNRC. This will require that you publish notice in two area newspapers and mail personal notice to other water users in your area as ordered by the Water Court.
17. What if I don't want to pay for notice costs and don't need my exempt water right to be adjudicated quickly?
 - a. You do not have to proceed quickly and pay for public notice costs immediately. An option is available to have your exempt water right claim and Water Court petition received, but not immediately examined and adjudicated by the DNRC and Water Court. Your exempt claim will be held for claim examination and public notice at the next decree issuance for your basin. Contact the Water Court or regional DNRC office for more information about the status of your basin and when your next decree will be issued.
18. What else is expected of me when I file my exempt claim?
 - a. You will also need to work with the DNRC claim examiners to resolve any factual issues they find with your claim. This may create an additional time commitment on your part. Further, you may receive objections to your exempt claim filing when it is publicly noticed. You will need to be prepared to address and resolve any objections that are filed before the Water Court will issue a final decree for your exempt water right.

19. Do I forfeit my exempt right if I don't file a claim?

a. No. Your right to use water will remain valid provided it is based on historic beneficial use. However, failure to do so will result in subordination to all timely-filed rights, groundwater certificates and permits.