# MINUTES

**COLORADO SUPREME COURT**

**WATER COURT COMMITTEE**

Friday, October 16, 2020, 1:30 p.m.

Webex or Call in Only

|  |  |  |
| --- | --- | --- |
| **Name** | **Present** | **Excused** |
| Justice Monica Márquez, Chair  | X |  |
| Justice (Ret.) Gregory Hobbs  |  | X |
| Judge (Ret.) John Kuenhold  | X |  |
| Judge (Ret.) Thomas Ossola | X |  |
| Referee John Cowan | X |  |
| Referee Nicolas Sarmiento |  | X |
| Referee Susan Ryan | X |  |
| Holly Strablizky  | X |  |
| Scott Steinbrecher | X |  |
| Kevin Rein | X |  |
| Erin Light | X |  |
| Craig Cotten | X |  |
| Kaylea White  | X |  |
| Doug Clements  | X |  |
| Jennifer Ashworth | X |  |
| Mark Hamilton  |  | X |
| Kirsten Kurath  | X |  |
| Andy Jones  | X |  |
| Peter Ampe | X |  |
| Jim Witwer | X |  |
| Doug Sinor  |  | X |
| Chris Geiger  | X |  |
| Emily Hunt | X |  |
| **Non-voting Participants**  |  |  |
| Andrew Rottman  | X |  |
| Veronique Van Gheem | X |  |

Also present: Paul Benington

1. **Call to Order**
2. **Welcome to Kirsten Kurath**

Justice Márquez welcomed Kirsten Kurath to the Committee.

1. **Approval of Minutes from 04/27/2020 Meeting**

The Committee approved the minutes from the 04/27/2020 meeting with no changes.

#### **Supreme Court Actions to Adopt Revised Forms and Rules**

Justice Márquez updated the committee on the supreme court’s actions that occurred after the April 27, 2020, meeting:

On June 25, 2020, the supreme court adopted the committee’s proposed changes to Rule 3 regarding resume publication.

Also on June 25, the court adopted changes to a number of water court forms.  The changes related to required location information, changes and a new form for abandonment proceedings, and changes from notarization to verification on a number of forms.

Regarding the Committee’s extended discussion about the treatment of “water law” cases under CRCP 16 and 26, the committee’s vote at the end of June was to send the proposal to the Civil Rules Committee.  Justice Márquez sent the committee’s proposal to Justice Gabriel and the Civil Rules Committee. The Civil Rules Committee approved the changes, but asked that this Committee give its opinion regarding whether there is a need to modify any of the civil forms.

#### **Civil Rules Committee action on CRCP 16, 16.1, and 26 and request for this Committee’s opinion regarding necessary forms changes**

Paul Benington addressed the question of whether additional forms changes are needed to comply with the modified CRCP Rules. Mr. Benington had reviewed the civil forms and determined that the civil case cover sheet might need to be updated to track the language of the modified rules. The corresponding instruction form would need a similar change. Mr. Benington didn’t believe that any other forms needed to be changed. Justice Márquez shared her screen and walked through Mr. Benington’s proposed language. The committee suggested some small changes to the language, and Referee Ryan offered to run the language by her water clerk. Mr. Benington then stated that he had reviewed the forms and thought that these were the only necessary changes, but there may be more. He agreed to check with his paralegal and review all of the forms. The committee agreed that the proposed changes should be recommended to the Civil Rules committee unless Mr. Benington determined additional forms needed to be modified or Referee Ryan determined the language should be modified.

#### **Report from Education Subcommittee**

Jennifer Ashworth reported that the planned water trial CLE program set for the previous May was canceled because that presentation was not conducive to a virtual presentation. The CLE subcommittee then put together a half-day program focusing on negotiation and mediation essentials, which was held on October 9. There were 28 participants and it was well received. The subcommittee is hoping to hold an in-person program in the spring of 2021.

#### **Background and Summary of the Anti-Speculation Work Group**

Kevin Rein provided a report on the recently created anti-speculation work group. This was the product of SB48, which directed the Department of Natural Resources to appoint a workgroup to address concerns about water speculation. The workgroup is to prepare a report in August of 2021. The Department of Natural Resources and the Attorney General’s Office are running the project and are inviting other stakeholders like private attorneys and water users. Kevin Rein provided a roster of the appointees to the group. He then explained that the group has three primary objectives – 1) conduct legal research regarding the history of the anti-speculation doctrine and its development over time; 2) evaluate whether anti-speculation laws should be strengthened or transformed; 3) to prepare a report to the review committee. The CWCB has a link on its website to the meetings, and anyone can join the meetings and listen in. Justice Márquez offered the committee’s help to the extent it’s needed. Mr. Rein said he was open to questions or suggestions for the workgroup.

#### **Water Exchange Projects and Implications for this Committee**

Referee Ryan and Paul Benington brought the issue of water exchange projects to the committee’s attention. The State and Division engineers have begun distinguishing water exchange projects from water exchanges that can be administratively approved. Water exchange projects rely on lagged accretions or depletions and are therefore more appropriately considered as part of an augmentation plan. In contrast, water exchanges that can be administratively approved rely on a one-for-one measured exchange of surface water. Mr. Benington explained that the concepts are not new, but there has been a relatively recent crystallization of though with the Engineers and the AG’s office. Referee Ryan and Mr. Benington were not proposing rules or forms changes at this point but suggested that it might be appropriate to have a subcommittee explore all of the issues further. Jim Witwer questioned what courts have decided on this issue to date and sought clarification on the cases that this new thinking would apply to. The committee discussed the potential for confusion among users and the water bar and thought part of the subcommittee’s tasks could be communicating the issue clearly to all groups. Referee Ryan agreed, and stated that one of the big issues is explaining the Engineers’ thinking and guidance to the public. Mr. Benington stated that the issues could take a while to get finally adjudicated by the courts, but there might be opportunities to have more clear written guidance in the interim. Justice Márquez questioned what the subcommittee would be tasked with. She suggested that a subcommittee look at forms, instructions, outreach, and education. The committee agreed that this was an emerging issue, and the committee should proactively look into. The committee appointed a subcommittee to look into the issue. The subcommittee will be chaired by Referee Ryan, and will include Referee Cowan, Andy Jones, Jim Witwer, Kaylea White, Doug Clements, and Jennifer Ashworth.

#### **Update on Pro Se Resources**

Susan Ryan updated the group on her subcommittee’s work to increase access for pro se water litigants. She was in the process of putting together a Water Law 101 for pro se parties, and it will be included as part of the branch’s legal resource week. The presentation is set for October 28. There are 47 people signed up for the webinar. It will be recorded and posted when it is finished. Justice Márquez asked Referee Ryan to send a link to the group.

#### **Open Discussion of Future Projects**

None.

#### **Next Meeting Date**

Andy Rottman will coordinate.

#### **Adjourn**