# MINUTES

**COLORADO SUPREME COURT**

**WATER COURT COMMITTEE**

Monday, April 27, 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 |
| Mark Hermundstad  | X |  |
| Andy Jones  | X |  |
| Peter Ampe | X |  |
| Jim Witwer | X |  |
| Doug Sinor  | X |  |
| Chris Geiger  | X |  |
| Emily Hunt | X |  |
| Kara Godbehere |  | X |
| **Non-voting Participants**  |  |  |
| Andrew Rottman  | X |  |
| Veronique Van Gheem | X |  |

Also Present: Paul Benington

1. **Introductions and Recognition of Mark Hermundstad**

This was Mark Hermundstad’s last meeting before stepping down from the Committee. Justice Márquez thanked Mark Hermundstad for his years of service on the Committee.

1. **Approval of Minutes from 10/24/2019 Meeting**

The Committee voted to approve the minutes from the 10/24/2019 meeting.

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

Jennifer Ashworth reported that the May 8 CLE is scheduled to cover trial practice in water courts, and the agenda has been well received.

#### **C.R.C.P. Applicability to “Water Law” Cases**

Paul Benington summarized previous Committee discussions regarding the applicability of C.R.C.P. 16 and 26 to “water law” proceedings. Mr. Benington stated that the issue is unchanged from the last meeting. Jim Witwer thanked the Attorney General’s Office for identifying the issue and developing a proposal. Mr. Witwer believed that C.R.C.P. 16, as opposed to C.R.C.P 16.1, is the more appropriate default for water law cases that don’t fall under the Uniform Local Rules for Water Courts. Mr. Benington stated that C.R.C.P. 16 is not the best fit for the types of cases contemplated by this rule change. Justice Márquez asked whether the concerns with the proposal are limited to whether Rule 16 or 16.1 should be the default. Mr. Witwer stated that that is the only remaining issue, and he recognized that the judge is free to modify the Case Management Order if merited by the case. Mr. Witwer questioned whether the affected cases can be specified in the rule change, and different case types could explicitly fall under 16 or 16.1 depending on complexity. The Committee agreed that further feedback would be beneficial, and Mr. Benington agreed to draft a memo that could be submitted to the Water Law Section of the Bar Association for comment. Mr. Benington believed it would be best for the memo to come from the Committee itself. The Committee agreed to send the memo and request comments or concerns. Justice Márquez suggested a deadline for feedback of May 15. She then proposed that, unless there is substantive feedback from the Bar, the Committee should vote by email and send the proposal to the Civil Rules Committee.

#### **Abandonment Protest Form and Abandonment Entry of Appearance Form**

Paul Benington briefly summarized the revised Abandonment Protest Form and revised Abandonment Entry of Appearance Form. The water judges had reviewed the forms and had no comments. Mr. Benington believed the forms were ready for a final vote by the Committee. The Committee unanimously voted to submit the proposed forms to the supreme court.

#### **Location Information on Water Court Forms**

Erin Light reminded the committee of previous discussions about the location information on certain water court forms. When an applicant uses both UTM and PLSS information on a form, sometimes they are inconsistent and refer to two different locations. The engineers propose amending the forms so they request either PLSS or UTM location, with a preference for UTM coordinates. Ms. Light made the proposed changes on two forms as an example of how all of the affected forms could be amended. The water judges had reviewed the proposed changes, and the only comment came from Referee Susan Ryan. Referee Ryan told the Committee that her questions had been answered. Ms. Light agreed to make changes to all of the affected forms and send them to Andy Rottman. Mr. Benington pointed out a statutory requirement that the water judges jointly prepare and supply the forms. Justice Márquez agreed that the Committee should run all of the proposed forms changes by the water judges one last time for approval. The Committee voted to send the proposed forms to the water judges for approval and, if approved, to send the proposed forms to the supreme court.

#### **Resume Publication Proposed Rule Change**

Mark Hermundstad explained that the Committee had previously voted to send the proposed change to Rule 3 regarding resume publication to the water judges. The water judges had no comments on the proposed rule change. The Committee voted to send the proposed changes to the supreme court.

#### **Verification Language on Water Court Forms**

Andy Rottman reported that the legal department of the state court administrator’s office had reviewed the new unsworn declaration statute and the statutory requirements in water cases and had determined that the forms could be amended to remove the notary requirement. The Committee voted to amend the forms accordingly. Mr. Rottman agreed to work with SCAO to amend the forms.

#### **Petition for Determination of Abandonment Form**

Andy Rottman reported that he received an email from Referee Brewer in Division 2. Referee Brewer asked the Committee to consider whether to develop a form for a Petition for Determination of Abandonment action. Mr. Benington believed that this falls outside of the statutory abandonment process and would be an expansion of forms to include matters outside of the 69 Act. The Committee expressed concerns that this would invite filings that in many cases are disputes between neighbors. Jim Witwer stated that these actions aren’t invalid just because they are based in common law, but there are other opportunities for individuals to consult with the engineers regarding water rights being placed on the abandonment list. Justice Márquez believed that the consensus is that the Committee should not pursue a form on this issue, and the Committee agreed.

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

Referee Susan Ryan reported that she discussed the need for more pro se resources in water cases with Justice Hart. Ms. Ryan then spoke to the State Court Administrator’s Office about developing additional pro se resources, including a series of online videos on different water topics. She worked with Referee Sarmiento on scripts for the videos. She is also pursuing a water law day with local access to justice committees. She believes some form of a water law day would be valuable and is working on a marketing strategy.

#### **Next Meeting Date**

The next meeting will be held in October. Andy Rottman will coordinate.

#### **Adjourn**