

ALPERSTEIN & COVELL, P.C.
ATTORNEYS AT LAW

DONALD W. ALPERSTEIN
CYNTHIA F. COVELL
ANDREA L. BENSON

1600 BROADWAY, SUITE 2350
DENVER, COLORADO 80202-4921

dwa@alpersteincovell.com
cfc@alpersteincovell.com
alb@alpersteincovell.com

GILBERT Y. MARCHAND, JR.
Of Counsel

November 26, 2008

TELEPHONE (303) 894-8191
FAX (303) 861-0420

Susan J. Festag
Clerk of the Court
Colorado Supreme Court
2 E. 14th Avenue
Denver, CO 80203

Via Email - susan.festag@judicial.state.co.us

RE: *Proposed Amendments to Water Court Rules*

Dear Ms. Festag:

Thank you for the opportunity to provide comments on the proposed amendments to the C.R.C.P. Rule 90 and the Uniform Local Rules for all State Water Court Divisions. This firm represents water court applicants and opposers in Divisions 1, 2, 5 and 6. Our clients include governmental entities, irrigation companies, and individual water users. This letter sets forth some general observations and comments on the rules based on this firm's experience with water court matters.

We understand the intent of the revisions to the rules is primarily to help expedite the disposition of water court cases and reduce the time and associated expense of expert witness involvement in these oftentimes complex cases. To that end, the amended rules include several new mandatory deadlines the parties, referees and experts must meet in order to encourage settlement of cases and/or to reduce the issues that must be tried to the court. We support the concept of deadlines that will keep cases from languishing, and that will encourage both applicants and opposers to proceed with efficiency.

We have discussed the proposed time lines with various other water professionals and we are unable to determine if the proposed time lines are realistic. As a small example, we do not know if a group of experts can be reasonably expected to be able to provide an agreed-upon written statement setting forth disputed issues within five days of a meeting. Depending on the number of experts and disputed issues in the case, this deadline may be difficult for the consultants to meet. Therefore, we recommend that in order to determine whether these deadlines are reasonable in practice, the Court consider applying these new rules on a temporary basis, and delineate a specific group of water court cases to which these new rules will apply.

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The Court may then be able to evaluate the effectiveness of the new rules over a period of time (perhaps one or two years), before imposing them on all water court cases across the state. We understand this procedure is not unprecedented and the Supreme Court has applied other procedural rules on a temporary basis to a specific class of cases.

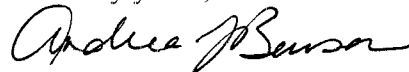
We have several concerns with respect to the expert witness meetings in particular. We are concerned that this new practice may give rise to due process issues. The amended Rule 11(b)(5)(D)(III) forbids attendance at meetings of experts by attorneys for the parties or the parties themselves. It appears that the expert witness meetings may well involve negotiation concerning disputed issues, and the parties should be able participate in such negotiations in person and/or through counsel. Some parties may choose not to retain an expert witness and would therefore be precluded from participating in discussions involving certain aspects of the case or the determination of whether an issue is in dispute and should be resolved at trial. Some parties, such as cities or large corporations, may have in-house experts, and it is unclear whether such experts could participate in the meetings.

To avoid having the expert meetings be negotiating sessions from which the parties themselves and their counsel are barred, we support the recent suggestion by attorney Charles B. White that the parties and the process may be better served by having the experts meet to seek agreement on undisputed facts and technical issues. This has the potential to provide some efficiency in both the discovery and the trial process without compromising the parties' rights to participate in substantive negotiations.

We also support the revised language for the expert disclosure set forth in the Expert Subcommittee's proposal dated November 21, 2008.

Thank you again for this opportunity to provide comments on the amended rules. Please contact us if you have any questions.

Sincerely yours,



Andrea L. Benson

alb/m
cc: Andrea Bloom