

# *Jehn Water Consultants, Inc.*

*Water Resources and Environmental Consulting*

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November 26, 2008

Susan J. Festag  
Clerk of the Supreme Court  
2 East 14<sup>th</sup> Ave  
Denver, CO 80203

RE: Comments on the Proposed Amendments to Water Court Rules

Dear Ms. Festag:

Based on a collective consensus from the technical staff at Jehn Water Consultants, Inc., we hereby submit comments on the proposed Amendments to the Water Court Rules. Jehn Water Consultants staff has represented applicants and objectors, government and private clients in water court cases spanning over 30 years. Our staff have also appeared and testified as experts in over 90 cases.

The following present our comments:

1 Rule 6, (i) – Referral to the Referee:

*“.....the referee may appoint a single consulting expert.”* How would this selection be accomplished? Would the referee be obligated to vet the expert to determine (a) conflicts of interest, (b) applicable expertise, and (c) familiarity with the subject matter? Would the referee keep a list of experts that were to be called upon? If so, how would this list be generated? Would there be an annual request for qualifications, so this remains fair and equitable? How would the expert be allowed to charge for their services so it is fair and equitable between the parties?

2 Rule 6, (k) - Referral to Referee:

*“Referee shall not be bound by the opinions of the expert.”* Unless the referee is a recognized technical expert, he or she should not be given power to dismiss a technical expert’s opinion in a Water Court case. Applicants spend time and money hiring an expert, and to dismiss their opinions and *“.....enter a ruling supported by the facts and the law”* will not necessarily represent the technical facts in the case.

Overall, the proposed changes to Rule 6 seem too restrictive. For example, suppose an applicant has paid an expert for investigative and analytical services in order to file an Application and that expert is used in support of the evidence before the Referee. If the Referee does not accept that expert’s opinion and decides to complete his/her own investigation, the applicant might need to hire a new expert at additional cost to dispute the Referee’s investigation/decision. The resulting burden will be on

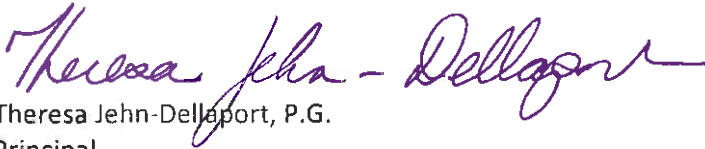
Ms. Fetag  
November 26, 2008  
Page 2

the applicant to hire a new expert and expend additional funds to get that expert up to speed before discovery or trial. It is feared that this proposed rule if adopted, may in fact delay rather than help expedite the process.

We appreciate the time and effort by the committee to address the complexity of these issues, and the opportunity to comment on these proposed rules.

Sincerely,

JEHN WATER CONSULTANTS, INC.

A handwritten signature in purple ink that reads "Theresa Jehn-DellaPort". The signature is written in a cursive, flowing style.

Theresa Jehn-DellaPort, P.G.  
Principal