

November 26, 2008

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

VIA EMAIL
susan.festag@judicial.state.co.us

**Re: Public Comment by Water Law Section of the Colorado Bar Association
Concerning Proposed Changes to C.R.C.P 90 and Water Court Rules**

Dear Ms. Festag:

I currently serve as the chair of the Water Law Section of the Colorado Bar Association. Our membership consists of more than 400 lawyers who practice in all seven Colorado water court divisions.

On August 8, 2008, the Supreme Court established a standing Water Court Committee. I was included in the membership of the new standing committee due to my role as Section Chair. On behalf of the Section, I wish to express appreciation to the Court for including a Section representative on this Committee. This has facilitated regular updates to the Water Section leadership, including several discussions at monthly lunch meetings, as the Water Court Committee finalized the recommended rules changes that are now before the Court. While there are understandably a variety of perspectives among water practitioners concerning the substance of the proposed new rules, I do think there is a relatively high degree of awareness at this point.

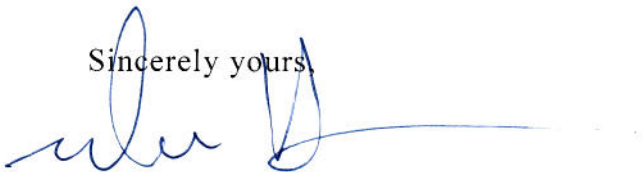
Given the variety of perspectives among the Section membership, the Section leadership is not able to present a consensus, or even a majority, position with respect to substantive provisions of the proposed rules. However, we do note that individual lawyers and law firms engaged in the practice of water law have provided specific comments and the Section urges the Court to carefully consider all comments received from those various water lawyers. While the Water Committee and its various sub-committees have had many meetings and extensive discussions concerning the recommended changes, and the Section has been involved in this process, the additional input offered in the form of practitioners' comments on the proposed rule changes is certainly valuable. In particular, comments intended to identify or limit potential unintended consequences of the proposed rule changes should be given careful consideration. In this instance, the risk of inadvertently creating conflicting standards is perhaps somewhat higher than normal due to the unique combination of statutes, civil rules, water rules and case law that govern water practice. If potential conflicts are

identified during the hearings, the inclusion of Committee Comments may be helpful to avoid interpretive issues. Legislative changes may also be needed to update applicable statutes in accordance with modern practice and procedure (such as the elimination of occasionally duplicative paper filing and service requirements).

It is also notable that, as currently proposed, the recommended rule changes would apply to practice in all seven water divisions, which divisions represent seven major river basins with a variety of water demands and development pressures. One thing the Water Section leadership has learned through communication with our members across the state is that there are significant differences among the various water divisions as to practices and procedures, including importantly the role and background of the water referee in each division. While overall efficiency is a shared goal of the water bar, the Court should consider whether any perceived issue with current procedures exists statewide or only within certain divisions. If the issues are more local in nature, differential practices and procedures may continue to be appropriate, which suggests that any state-wide rules should be flexible enough to allow different practices and procedures to be implemented through local rules or individualized case management procedures.

Thank you again for this opportunity to be a part of this process. I would welcome any questions that the Court may have.

Sincerely yours,



Mark E. Hamilton
for Holland & Hart LLP
2008-2009 Chair, Water Law Section of the Colorado Bar Association

MEH:lrr

cc: Andrea Bloom (via e-mail andrea.bloom@judicial.state.co.us)
Water Law Section Executive Council (via e-mail)