

## MINUTES

### COLORADO SUPREME COURT WATER COURT COMMITTEE

Friday, April 15, 2016, 1:30 p.m.  
Ralph L. Carr Colorado Judicial Center  
2 E.14<sup>th</sup> Ave., Denver CO 80203  
Third Floor Conference Room

The Colorado Supreme Court Water Court Committee was called to order by Justice Allison Eid at 1:30 p.m., in the Supreme Court Conference Room on the fourth floor of the Ralph L. Carr Colorado Judicial Center. Members present or excused from the meeting were:

<b>Name</b>	<b>Present</b>	<b>Excused</b>
Justice Allison Eid, Chair	X	
Justice (Ret.) Gregory Hobbs	X	
Judge (Ret.) John Kuenhold	X	
Judge (Ret.) Thomas Ossola		X
Referee John Cowan		X
Referee Holly Strablizky	X	
Gerald Marroney		X
Casey Shpall	X	
Dick Wolfe	X	
Steve Witte	X	
James Eklund	X	
Robert Sakata		X
Bill Trampe		X
Doug Clements	X	
Jennifer Ashworth	X	
Mark Hamilton	X	
Mark Hermundstad		X
Andy Jones	X	
David Robbins		X
Jim Witwer	X	
Doug Sinor	X	
<b>Non-voting Participants</b>		
Andrew Rottman	X	
Jenny Moore		X

## **I. Welcome and Introductions**

## **II. Approval of Minutes from 10/26/2015 Meeting**

The October 26, 2015, minutes were approved with a minor change requested by Holly Strablizky.

## **III. Civil Rules Consistency Subcommittee memo and proposed rules**

Doug Sinor presented the subcommittee's proposed rules to ensure the Uniform Local Water Court Rules are not in conflict with the 2015 amendments to the Colorado Rules of Civil Procedure. The intent of the proposed rule changes is to maintain the status quo in water court procedures. There are no substantive changes, and the proposed rules preserve the presumptive case management deadlines. Jim Witwer has some suggested minor changes and also suggested that the Non-Attorneys Guidebook to Colorado Water Courts should be updated in accordance with the new rules, once adopted. After minor changes, a draft of the proposed rule will be circulated to water judges.

Doug Clements asked about whether the proposed rules cover exchanging exhibits and the deadline for doing so. This issue is not addressed in the proposed rules and is typically addressed in a CMO. The Committee had general discussion about possible avenues for clarification of this issue, and it will revisit this issue at a later date.

## **IV. Abandonment Rules Subcommittee memo and proposed rule**

Holly Strablizky chairs the Abandonment Rules Subcommittee and presented a proposed abandonment rule to the Committee. Ms. Strablizky thanked Paul Benington and Jen Mele for their work on the rule. Regarding the issue of determining ownership of a water right in an abandonment proceeding, Steve Witte explained a situation in Huerfano county where an abandonment proceeding was stayed so that a quiet title action could be filed and resolved in the county where the water right was located. Mr. Witte stated that it would be more efficient to resolve ownership in the abandonment proceeding itself. Justice Hobbs had questions about resume notice and the process for resolving ownership. Andy Rottman explained concerns raised in the subcommittee about the compatibility of resume notice with a quiet title action. Jim Witwer questioned whether there would be unintended consequences of a rule allowing ownership determinations in abandonment proceedings and was concerned that proof of ownership would be required for all water cases. Judge Kuenhold and others discussed whether there could be a "limited" quiet title just for parties involved in the abandonment proceeding. The Committee discussed rewriting subparagraph (h) of the proposed rule to address questions of ownership in more general terms.

Judge Kuenhold mentioned that Chief Judge Swift is interested in a voluntary abandonment provision and process, as no procedure currently exists for voluntarily abandoning a water right. The Committee briefly discussed the rules and process for voluntary abandonment. Some water right owners are filing a notice of intent to abandon their water right in the previous case adjudicating that water right. Dick Wolfe stated that fees have increased, so some owners may not protest abandonment for the non-exempt portion of a right. Mr. Wolfe also stated that he has

an affidavit template the Engineers use for voluntary abandonment. Judge Kuenhold will run that by Chief Judge Swift.

Justice Hobbs pointed out that there is a deadline to get a rule into the printed rule publication.

Andy Jones questioned how affected parties receive notice of abandonment proceedings. Ms. Strablizky noted that the resume includes protests.

## **V. Alternative Dispute Resolution Subcommittee Report**

Justice Hobbs provided an update on the ADR bar meeting and upcoming CLE. Justice Hobbs relayed that Chief Judge Hartmann believes the proper time for mediation is after engineering reports are in, and Chief Judge Hartmann is motivated by a concern about number of cases settling right before trial. Justice Hobbs passed out a sample order for mediation and mediation agreement. Justice Hobbs noted that at the October 2015 CLE, clients stated they want to be more involved in the process of resolving their case, and mediation provides an opportunity to do so. Also, lots of questions come up in mediation that are not straight engineering issues and the process can benefit from client involvement. Judge Kuenhold stated that mediation is contrary to the water bar's current practice, but it is a good idea. Justice Hobbs noted that the benefits to mediation include the absence of an evidentiary bar. A concern was raised that mediation will become routine and just an obstacle to get past. The Committee agreed that judges should make a determination as to whether each specific case is suitable for mediation. Steve Witte raised a concern about whether judges have enough information about a case to pick the cases that are most suited to mediation. Mark Hamilton stated that mediation can control costs, but the parties have to wait until expert reports to know the issues. A concern was raised about the new trailing docket in Division 1 and the difficulty of scheduling engineering reports and mediation in numerous cases at the same time. There was discussion about mediation versus the role played by the referees. Andy Jones stated that frontloading information in water cases makes early resolution easier, and frontloading is generally lacking in cases before referees.

## **VI. Open Discussion of Future Projects**

### CLE Update – Doug Clements

Doug Clements reported that CBA-CLE needs an updated water law CLE program because the Water Law 101 CLE has expired. Mr. Clements wants to develop a new CLE that will include new speakers and a more interactive format.

### Role of Engineers and Consultation Process – Steve Witte

Steve Witte raised the issue of the role of the State and Division Engineers in the consultation and litigation process. Mr. Witte believes there should be an opportunity to discuss best practices and outstanding issues with the current system. Mr. Witte will head a subcommittee to consider the issue. Justice Hobbs stated a concern about what the specific proposal is. Casey Shpall stated that the State Engineer's Office has ideas about its role, and the Committee should facilitate that discussion. Dick Wolfe believes part of that conversation should be a discussion concerning the uniformity of consultation process and an opportunity to share ideas and practices among divisions. Jennifer Ashworth stated that this issue was a possible CLE topic. Mr. Witte and Mr. Wolfe asked that this issue be made an agenda item for the next meeting.

Meeting with Governor – James Eklund

James Eklund stated that the Governor is interested in convening a meeting under the state water plan, and Mr. Eklund would like to facilitate a meeting.

Dispute Resolution CLE – Andy Jones

Andy Jones discussed the upcoming dispute resolution CLE for water cases.

**VII. Next Meeting Date**

The next meeting will take place in October. Andy Rottman will coordinate and schedule.

**VIII. Adjourn**