# MINUTES

**COLORADO SUPREME COURT**

**WATER COURT COMMITTEE**

Friday, April 23, 2021, 1:30 p.m.

Webex or Call in Only

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| --- | --- | --- |
| **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 |  |
| Kirsten Kurath | X |  |
| Andy Jones | X |  |
| Peter Ampe |  | X |
| Jim Witwer | X |  |
| Doug Sinor | X |  |
| Chris Geiger |  | X |
| Emily Hunt | X |  |
| **Non-voting Participants** |  |  |
| Andrew Rottman | X |  |

Also Present: Paul Benington, Gregor MacGregor

1. **Call to Order**
2. **Approval of Minutes from April 23, 2021 Meeting**

#### **Civil Rules Committee action on CRCP 16, 16.1, and 26**

Justice Márquez updated the Committee on the actions of the Civil Rules Committee and the supreme court following the Water Court Committee’s recommended changes clarifying which cases are subject to the Rules of Civil Procedure and which are subject to the Uniform Local Rules for Water Courts. Following the Committee’s recommended changes, the Civil Rules Committee recommended changes to CRCP 16, 16.1 and 26. These changes were approved by the supreme court and became effective April 1. Justice Márquez thanked the Committee for its work.

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

Jennifer Ashworth updated the Committee on the actions of the Education Subcommittee. The CLE scheduled for May 7 will cover old ideas and new directions. The CLE will again be virtual. Part of the CLE will address different perspectives on Water Exchange Project rights, which will be moderated by Referee Ryan. This topic is intended to be educational for the bar to have a better understanding on the differences between appropriative exchanges and Water Exchange Projects. There will also be discussion of anti-speculation and sustainability.

#### **Water Exchange Projects Subcommittee Update**

Susan Ryan updated the Committee on the Water Exchange Project subcommittee discussions. The subcommittee has met 2 or 3 times to determine the scope of the issues to be addressed and a path forward. The subcommittee believed the first step in the process was to educate the bar and water users on the new written instructions regarding Water Exchange Projects and the different perspectives on the topic. After the May 7 CLE, the subcommittee will meet in June to discuss the CLE and decide next steps. The subcommittee anticipates that there might not be a consensus around the issue. Kirsten Kurath mentioned that the water bar puts on monthly CLEs that are inexpensive, and the bar is looking for new topics. Referee Ryan reported that another idea was to put together a tutorial on augmentation plans and exchanges. The subcommittee will report back at the next meeting.

#### **Update on the Anti-Speculation Work Group**

Kevin Rein provided an update on the statutory Anti-Speculation Work Group. When he last reported on the subject in October, the work group was just starting the planning process for the work and report. The goal of the work group is to strengthen anti-speculation laws, and that means proposing new statutory language. Mr. Rein explained that the background of the bill and the purpose of the report goes beyond the traditional understanding of speculation. The report must be finalized by August 15. The structure of the report will be an introduction to the issue of speculation, the historical and legal background of the issue, and Colorado’s risks for speculation. There will be difficult work in identifying and addressing non-traditional questions of speculation. The report will be a recommendation to the Water Resource Review committee and will take the form of risks/solutions and pros/cons.

#### **Voluntary Abandonment Form**

Referee Ryan addressed the issue of voluntary abandonment and whether the Committee should work on a form to facilitate these kinds of filings. The issue has come up around the state, and there is a lack of consistency in how the information is presented and how each water division handles questions of voluntary abandonment outside of the decennial abandonment list. The committee discussed the mechanics of such a filing and whether it would add anything to the decennial abandonment list process. Paul Benington raised a concern as to whether this is the type of application contemplated by statute, and what would be the notice and publication requirements. Doug Sinor raised additional questions about resolution of ownership disputes in the process. Referee Ryan stated that in some divisions, the applicant approaches the Division Engineer and requests voluntary abandonment. A standardized form and court filing would provide more process. Craig Cotten stated that some owners want to abandon a right when they are concerned about costs. One practice now is for owners to fill out an affidavit of abandonment and the right is placed on the decennial abandonment list. The Committee discussed the different ways that abandonment is currently raised, and the Division Engineers believed that they can only consider a right abandoned when there is a court order stating so. Jim Witwer questioned what constitutes proper notice for a petition for abandonment. The Committee also discussed how frequently the issue comes up and whether there is a real need for uniformity. Referee Ryan was concerned about the court and the Engineers receiving accurate information about the water right. The Committee also discussed the distinction of abandonment of all or part of a conditional water right versus the abandonment of an absolute water right. Abandonment of an absolute water right is much less common. The Committee did not reach a conclusion as to whether an abandonment form is needed.

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

Gregor MacGregor shared a list of pro se resources that he has been working on with the Divisions. He has spoken to water clerks, judges, and referees regarding the needs of pro se water litigants. He focused on a pro se applicant handbook, a pro se opposer handbook, resources and training for Self-Represented Litigant Coordinators, online resources and videos, and local outreach efforts. Justice Márquez asked about the timeline for implementation and whether there were funding considerations. Mr. MacGregor estimated the time to work on the handbooks and had not worked on the funding question, but he believed there were good options that would not require much, if any, funding.

#### **Next Meeting Date**

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

#### **Adjourn**