

January 4, 2008

Honorable Kathleen Curry
Chair, House Agriculture, Livestock &
Natural Resources Committee
Colorado General Assembly
State Capitol
Denver, Colorado 80203

Honorable Jim Isgar
Chair, Senate Agriculture, Natural Resources &
Energy Committee
Colorado General Assembly
State Capitol
Denver, Colorado 80203

Executive Director Harris Sherman
Colorado Department of Natural Resources
1313 Sherman Street
Denver, Colorado 80203

Dear Representative Curry, Senator Isgar, and Mr. Sherman:

I have the privilege of serving as Chair of the Water Court Committee of the Colorado Supreme Court. The Chief Justice has established this committee and appointed its members pursuant to her authority under Article VI, Section 5 of the Colorado Constitution. I have included the establishment and appointment orders with this correspondence, as well as the minutes of the December 20, 2007 organizational meeting of the committee.

As you know, the University of Denver Water Futures panel and the South Platte Task Force both recommended in 2007 that the court undertake a study of possible ways to streamline the water court process. The suggestions made by both groups largely focus on issues that might be addressed by the Chief Justice under her authority as executive head of the judicial system and/or promulgation of new or amended rules by the full court. I include those portions of the DU and South Platte forum suggestions that deal with streamlining the water court process.

As with other committees of the court, this committee is advisory only. The rulemaking authority of the Colorado Supreme Court is conferred only upon the justices of the court under Article VI, Sections 2 and 5, of the Colorado Constitution. If a committee suggests to the court that it consider adopting a new rule or amending an existing rule, the court determines whether to propose a rule or a rule amendment. The court typically notices proposed rules through its web page and by publication in The Colorado Lawyer. When the court issues such a notice, it provides a time period for public written comment and may also hold a public hearing on its proposal.

As you know, the 1969 Water Rights Determination and Administration Act established Colorado's water court system for the adjudication of water matters, which include applications for conditional water rights, findings of reasonable diligence for conditional water rights, absolute water rights, changes of water rights, augmentation plans, exchanges, and approval for use of water outside of the state, section 37-92-302, C.R.S. (2007), and rotational crop management contracts, section 37-92-305. The water courts also have authority to review State Engineer regulations, section 37-92-501; State Engineer-approved temporary changes of water rights, substitute supply plans, and interruptible water supply agreements, sections 37-92-308 & 309; and the State Engineer abandonment list, section 37-92-402.

The 1969 Act is a complex body of legislation. It has been the subject of a number of statutory amendments and court decisions over the past 39 years, and it contains a number of statutorily-imposed procedures.

Accordingly, the work of the Water Court Committee necessarily involves a study of what streamlining procedures might be accomplished by the court's rulemaking authority and what might require statutory changes. But, the committee is not empowered to make any rule changes or statutory changes. This is the province of the Colorado Supreme Court and the General Assembly, and will follow their processes for decision-making.

Typically our supreme court advisory committees do not involve public participation or attendance, as that occurs in the court's rulemaking process. However, this committee will hold a public meeting in March of 2008 to take public input and will hold scheduled meetings of the full committee, as shown in the December 20, 2007 minutes, which members of the public may attend. We will provide information to the public about the work of the committee through the web page of the Colorado Judicial Branch.

The Chief Justice has required the Water Court Committee to transmit its written report to her by August 1, 2008, which she will then provide to the General Assembly and the Governor. I look forward very much to a thoughtful and well-analyzed committee report.

Best regards.

Sincerely,

Gregory J. Hobbs, Jr.
Chair, Water Court Committee