

**Supreme Court of Colorado**  
State Judicial Building  
2 East 14<sup>th</sup> Avenue  
Denver, Colorado 80203-2116

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(303) 837-3771

Mary J. Mullarkey  
Chief Justice

August 8, 2008

Governor Bill Ritter  
State Capitol  
200 East Colfax Avenue  
Denver, Colorado 80203

Colorado General Assembly  
State Capitol  
200 East Colfax Avenue  
Denver, CO 80203

Re: Submission of Water Court Committee Report

Dear Governor Ritter and Members of the General Assembly:

I am pleased to submit to you the report of the Colorado Supreme Court's Water Court Committee, *Timely, Fair and Effective Water Courts, August 1, 2008*.

After consulting with the Chairs of the two committees of the General Assembly assigned to water matters and the Executive Director of the Department of Natural Resources, I established the committee by order of December 4, 2007, appointed its members on December 11, 2007, and requested its report by August 1, 2008, on which date my order sunset the committee.

I charged the committee with reviewing the water court process, identifying possible ways through rule and/or statutory change to achieve efficiencies in water court cases while still protecting the quality of outcomes, and ensuring the highest level of competence in water court case participants. I stated that the purpose of the committee was not to include altering or impairing the existing water rights of any public agency or private person. I identified ten issues for the committee to consider and address in its report, but I did not limit the committee to only those issues. The committee's report addresses each of those issues and some additional issues that surfaced during the process.

The Committee's report makes the following recommendations:

1. The Colorado General Assembly should consider an amendment to C.R.S. § 37-92-201 (e) and (f) to place the White River and its drainages within the jurisdiction of Water Division 6, instead of Water Division No. 5 as currently placed.
2. The Colorado Supreme Court, using its public comment and hearing procedures, should consider amending Colorado Rule of Civil Procedure 90 and Rule 2, 3, 6, and 11 of the Uniform Rules For All Water Court Divisions.
3. The Colorado Supreme Court should consider adopting a declaration for all experts to sign in water court proceedings.
4. The Colorado Supreme Court, the Colorado Bar Association through its Water Section, and Continuing Legal Education, Inc. of the Colorado Bar Association should work together for a comprehensive ongoing educational program for water attorneys, judges, and other professionals participating in water court proceedings.
5. The Colorado Supreme Court should establish a standing Water Court Committee.
6. The State Court Administrator's Office should work with the standing Water Court Committee to prepare a user friendly set of materials designed for assisting the public and individuals without attorneys to better understand and participate in water court proceedings.
7. The Water Judges, working with the standing Water Court Committee, should review all current standard forms used in water court proceedings and make appropriate revisions and additions.
8. The Colorado Supreme Court, the Attorney General, the Department of Natural Resources, the State Engineer, and the Colorado Water Conservation Board should work together to obtain the General Assembly's approval of funding necessary for operation of timely, fair and effective water courts.
9. The Colorado General Assembly should continue to foster the development of publicly-usable river basin computational models, predictive tools, and model data transparency.
10. The Colorado Supreme Court through its State Court Administrator should review all current water court staffing and assignments and make necessary additional assignments or reassignments, as needed to ensure timely, fair and effective water courts.

All of these recommendations address the public's interest in timely, fair and effective water courts. Recommendations 1, 8, and 9 address matters within the purview of the General Assembly. The other 7 recommendations address matters within the purview of the Colorado Judicial Branch. Those 7 recommendations, particularly recommendations 8 and 9, also involve officers and agencies of the Department of Natural Resources.

I will establish the standing Water Court Committee, as set forth in recommendation 2. I will charge it with proceeding to work with the Water Judges, the State Court Administrator's Office, the members of our court, the General Assembly, and the Governor's Office on all of these recommendations and others that may arise concerning the Water Courts over the coming years.

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I thank the Chair of the committee, Justice Greg Hobbs, and the members of the committee who worked on this report the past seven months. I especially thank the Chairs of the five subcommittees that focused on the following subjects: referees, Casey Shpall; expert witnesses, David Robbins and Hal Simpson; small users, Jim Witwer; education, Doug Clements; and case management, Justice Michael Bender.

The committee's report and reference materials, including two surveys it circulated, one for the general public and another for professionals, are posted on the Colorado Judicial Branch webpage at: <http://www.courts.state.co.us/supct/committees/waterctcomm.htm>

I respectfully commend this report to your attention.

Sincerely,

A handwritten signature in black ink, reading "Mary J. Mullarkey". The signature is written in a cursive style with a large, sweeping initial "M".

Mary J. Mullarkey