

# Supreme Court of Colorado

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GREGORY J. HOBBS, JR.  
JUSTICE

## Water Court Committee of the Colorado Supreme Court Report to the Chief Justice August 1, 2008

Dear Chief Justice Mullarkey:

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

You established the committee by your order of December 4, 2007, appointed its members on December 11, 2007, and requested its report by August 1, 2008, on which date your order sunsets the committee.

You 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. You also 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. You identified ten issues for the committee to consider and address in its report, but you did not limit the committee to only those issues. This report addresses each of those issues and some additional issues that surfaced during the process. I have attached the text of your orders at the conclusion of this report.

The process of the committee has been thorough and detailed. Initially, as Chair, I designated five subcommittees, focusing on referees (chaired by Casey Shpall), expert witnesses (co-chaired by David Robbins and Hal Simpson), small users (chaired by Jim Witwer), education (chaired by Doug Clements), and case management (chaired by Justice Michael Bender). Those subcommittees met multiple times throughout the past seven months. The full committee met at scheduled times to review the work of the subcommittees, discuss the emerging recommendations, and refer matters back to the subcommittees for further examination and language drafting.

As part of your order, you directed the committee to establish an agenda and process that allowed persons who have any interest in water to provide additional issues, information and proposals to the committee. To that end, the committee

has used the Colorado Judicial Branch webpage to announce the dates and places of committee and subcommittee meetings, which have been open to attendance by members of the public. The committee also accepted written comments throughout its existence, and it held a public meeting at the Court on March 10, 2008, at which it received oral and written comments.

The committee also circulated two surveys, one for the general public and another for professionals, and reviewed those results in its deliberations. Committee materials, including the survey results, are posted for future reference on the Colorado Judicial Branch webpage at:

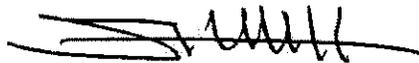
<http://www.courts.state.co.us/supct/committees/waterctcomm.htm>

Ultimately, the committee reached consensus on most points. In two areas, dealing with the process for addressing insufficient applications and the interface between the division engineer and the water referee, the committee did not reach consensus. Examining the 1969 Water Rights Determination and Administration Act for guidance, I exercised the prerogative of the Chair to resolve the impasse in conflicting language proposed by the subcommittees and individual members of the full committee. The text of rules language contained in this report reflects that resolution.

In tendering this report, the committee understands that the process of Court and General Assembly consideration is just beginning. If the Court approves the appointment of a standing Water Court Committee, it will promptly begin further work and may make further recommendations as the Court itself considers the language of a rulemaking proposal for public comment and hearing. Committee members retain their prerogative to participate individually, or on behalf of their clients or agencies, in support of or opposition to any proposal the Court or General Assembly may ultimately choose to initiate.

It has been the committee's privilege to undertake this assignment, and my personal privilege to chair it.

Respectfully submitted,



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

**TIMELY, FAIR AND EFFECTIVE WATER COURTS**

**REPORT OF THE WATER COURT COMMITTEE  
TO CHIEF JUSTICE MARY J. MULLARKEY,  
COLORADO SUPREME COURT**

**AUGUST 1, 2008**

## INDEX

	<u>Page</u>
Recommendations of the Water Court Committee.....	1
Water Court Committee’s Response (in italics) to the Ten Issues Listed in the Chief Justice’s Order Establishing the Committee.....	2
Synopsis Of Water Court Committee Recommendations .....	4
I. The Essential Water Rights Adjudication and Enforcement Framework.....	4
II. Reality Check 40 Years into the 1969 Act .....	6
III. Why These Recommendations? .....	7
IV. Proposed Statutory Change for Water Division 5 and 6 Jurisdictional Boundaries.....	10
V. Educational Program for Judges, Water Attorneys, Engineers, Experts, and Other Interested Professionals.....	11
VI. Rules Recommendations.....	17
-C.R.C.P. 90.....	24
-Rule 2.....	25
-Rule 3.....	26
-Rule 6.....	29
-Rule 11.....	34
-Declaration of Expert .....	41
VII. River Basin Computational Models, Predictive Tools, and Model Data Transparency.....	43
Supreme Court of Colorado Office of the Chief Justice Order dated December 4, 2007, Concerning the Establishment of the Water Court Committee of the Colorado Supreme Court .....	47

**RECOMMENDATIONS OF WATER COURT COMMITTEE  
AUGUST 1, 2008**

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.

