

RULE CHANGE 2011(16)

CHAPTER 36 UNIFORM LOCAL RULES FOR ALL STATE
WATER COURT DIVISIONS

Rules 2, 3, 6, 11

APPENDIX 1 TO CHAPTER 36

Rule 1. [NO CHANGE]

Rule 2. Filing and Service Procedure

(a) [NO CHANGE]

(b) An applicant shall file and serve upon all parties at least ~~15~~ 21 days prior to hearing on any application before the water judge, a proposed order that sets forth any necessary findings, terms or conditions that the applicant reasonably believes the court should incorporate into the decree.

Rule 3. Applications for Water Rights

(a) [NO CHANGE]

(b) (1) More than one water right, claim or structure may be incorporated in any one application under one caption, provided that the required information is given for each water right, claim, or structure. ~~and that each has the same ownership.~~

(2) Persons alone or in concert may file applications for approval of plans for augmentation, including water exchange projects, and subsequent changes thereto.

(3) In applications for determinations of rights to groundwater described in C.R.S. § 37-90-137(4):

(A) If the applicant claims consent of the owner(s) of the overlying land as the basis for such a determination, the application must include one or more of the following documents as applicable:

i) If the basis for such consent is C.R.S. § 37-90-137(4)(b)(II)(A), the application must include (1) recorded copies of the written consent from the owner(s) of the overlying land to the applicant, which consent includes a legal description of the land and identification of the aquifers for which consent has been given, and (2) an instrument evidencing ownership of such land by such consenting owner(s) at the time such consent was granted.

ii) If the basis for such consent is C.R.S. § 37-90-137(4)(b)(II)(C), the application must include a certified copy of (1) the ordinance or resolution described in C.R.S. § 37-90-137(8) that incorporates groundwater, and (2) the part of the detailed map described in C.R.S. § 37-90-137(8) that shows the land area as to which consent is deemed to have been given.

(B) Two or more overlying land owners may file a joint application for determinations or changes of rights to such groundwater to be withdrawn through a “well field,” provided that the application must contain sufficient information to demonstrate that lands subject to the application meet the requirements of a “well field” as defined in the “rules and regulations applying to applications for well permits to withdraw groundwater pursuant to section 37-90-137(4), C.R.S.” 2 C.C.R. 402-7. Such joint application may include only claims for determinations or changes of rights to groundwater described in C.R.S. § 37-90-137(4) and plans for augmentation (with or without exchanges) related thereto.

(4) Nothing contained in this rule 3(b) shall prevent the consolidation or bifurcation of applications or portions thereof under other applicable rules or law, or affect or discourage applications involving a single applicant or single water right, claim or structure.

(c) Where more than one water right was conditionally decreed under one case number, each water right so decreed may, but need not be, incorporated again in ~~an~~ a single application for a finding of reasonable diligence or to make absolute; regardless of whether such rights remain in common ownership; however, such an application shall not be combined with any other case or application except by leave of court and the owner of each such right shall be an applicant in such application.

(d) [NO CHANGE]

(e) [NO CHANGE]

(f) [NO CHANGE]

Rule 4. [NO CHANGE]

Rule 5. [NO CHANGE]

Rule 6. Referral to Referee, Case Management, Rulings, and Decrees

(a) [NO CHANGE]

(b) [NO CHANGE]

(c) [NO CHANGE]

(d) [NO CHANGE]

(e) To promote the just, speedy, and cost efficient disposition of water court cases, the goals of the referee, as contemplated by C.R.S. § 37-92-303(1), shall include a ruling on each unopposed application within ~~sixty~~ 60 days after the last day on which statements of opposition may be filed, and all other applications as promptly as possible. In pursuit of this goal, the referee shall initiate consultation with the division engineer in every case promptly after the last day for filing statements of opposition. The division engineer's written report on the consultation is due within ~~thirty~~ 30 days of the date the referee initiates consultation in accordance with C.R.S. § 37-92-302(4), except that for applications that require construction of a well, the division engineer's written report is due within ~~four~~ 4 months after the filing of the application in accordance with C.R.S. § 37-92-302(2)(a). Upon request, the referee may extend the time for filing the division engineer's written report. The division engineer may submit additional written reports upon receipt of new information and shall provide them to the referee and all parties. The referee shall not enter a ruling on applications for determination of rights to groundwater from wells described in C.R.S. § 37-90-137(4) until the state engineer's office has had the opportunity to issue a determination of facts concerning the application in accordance with C.R.S. § 37-92-302(2)(a). The referee and the division engineer may confer and jointly agree to forego consultation in a particular case because it is not needed; and, if so, the referee shall enter a minute order as provided in section (o) of this Rule 6.

(f) For good cause, upon agreement of the parties, or sua sponte, the referee may extend the time for ruling on the application beyond ~~sixty~~ 60 days after the last day on which statements of opposition may be filed but not to exceed a total of ~~one~~ 1 year following the deadline for filing statements of opposition, except that the referee may extend the time for entering a ruling to a specified date that is not more than ~~six months~~ 182 days after the expiration of the one year period, upon finding that there is a substantial likelihood that the remaining issues in the case can be resolved, without trial before the water judge, in front of the referee.

(g) [NO CHANGE]

(h) For all applications in which statements of opposition are filed, the attorney for the applicant, or the referee if the applicant is not represented by counsel, shall set a status conference with the referee and all parties. The status conference shall occur within ~~sixty~~ 63 days after the deadline for filing of statements of opposition, unless the deadline is extended by the referee for good cause. The status conference may be conducted in person or by telephone. All parties must attend the status conference unless excused by the referee. The referee shall advise the division engineer of the status conference and invite or require the division engineer's participation. To assist discussion at the status

conference, applicants are encouraged to prepare and circulate a proposed ruling and proposed decree to the referee and the parties in advance of the conference.

(i) [NO CHANGE]

(j) [NO CHANGE]

(k) [NO CHANGE]

(l) Regardless of whether any expert is involved in the proceedings before the referee, the referee shall not be bound by the opinions and report of the expert, may make investigations without conducting a formal hearing, including site visits, and may enter a ruling supported by the facts and the law. The case management plan shall contain a listing of the disputed issues to the extent known, the additional information needed to assist in resolution of the disputed issues, additional investigations needed to assist in resolving the disputed issues, an estimate of the time required to complete the tasks, the time for filing a proposed ruling and proposed decree, the time for opposers to file comments on the proposed ruling and proposed decree, the time for the applicant to file status reports, and a schedule for further proceedings. The referee may make such interim rulings, including scheduling additional status conferences and allowing amendments to the case management plan, as will facilitate prompt resolution of the application and issuance of a proposed ruling and proposed decree. The proceedings before the referee shall be completed and the proposed ruling and proposed decree issued no later than ~~one~~ 1 year following the deadline for filing of statements of opposition, except that the referee may extend the time as specified in subsection (f) above.

(m) [NO CHANGE]

(n) [NO CHANGE]

(o) [NO CHANGE]

(p) The referee shall have the authority to dismiss for failure to prosecute applications of parties who fail to comply with the requirements of the Water Court Rules or any case management plan, and to dismiss statements of opposition of parties who fail to comply with the requirements of the water court rules or any case management plan. Such dismissal may be protested to the water judge by any party within ~~twenty~~ 21 days ~~of receipt~~ from the date of the order of dismissal.

(q) [NO CHANGE]

Rule 7. [NO CHANGE]

Rule 8. [NO CHANGE]

Rule 9. [NO CHANGE]

Rule 10. [NO CHANGE]

**Rule 11. Pre-Trial Procedure, Case Management, Disclosure,
and Simplification of Issues.**

The provisions of C.R.C.P. Rules 16 and 26 through 37 shall apply except that they shall be modified as follows:

(a) [NO CHANGE]

(b) **Presumptive Case Management Order.** Except as provided in section (c) of this Rule, the parties shall not file a Case Management Order and subsections (1)-(10) of this section shall constitute the Case Management Order and shall control the course of the action from the time the case is at issue, unless the water court orders otherwise for good cause shown. The time periods specified in this case management order are provided to take into account protested or re-referred cases that involve computer modeling or detailed technical analysis. Parties and counsel are encouraged to request a Modified Case Management Order, pursuant to section (c), to shorten time periods whenever possible, unless the water court orders otherwise for good cause shown.

(1) **At Issue Date.** Water matters shall be considered to be at issue for purposes of C.R.C.P. Rules 16 and 26 ~~forty-five (45)~~ 49 days after the earlier of either of the following: entry of an order of re-referral or the filing of a protest to the ruling of the referee, unless the water court directs otherwise. Unless the water court directs otherwise, the time period for filing a Certificate of Compliance under subsection (b)(7) of this Rule shall be no later than ~~75~~ 77 days after a case is at issue.

(2) **Responsible Attorney.** For purposes of Rule 16, as modified herein, the responsible attorney shall mean applicant's counsel, if the applicant is represented by counsel, or, if not, a counsel chosen by opposers, or the water court may choose the responsible attorney. The responsible attorney shall schedule conferences among the parties, prepare and file the Certificate of Compliance, and prepare and submit the proposed trial management order.

(3) **Confer and Exchange Information.** No later than ~~45~~ 14 days after the case is at issue, the lead counsel for each party and any party who is not represented by counsel shall confer with each other about the nature and basis of the claims and defenses, the matters to be disclosed pursuant to C.R.C.P. 26(a)(1), the development of a Certificate of Compliance, and the issues that are in dispute.

(4) **Trial Setting.** No later than ~~60~~ 63 days after the case is at issue, the responsible attorney shall set the case for trial pursuant to C.R.C.P. 121, section 1-6, unless otherwise ordered by the water court.

(5) **Disclosures.**

(A) The time for providing mandatory disclosures pursuant to C.R.C.P. 26(a)(1) shall be as follows:

(I) Applicant's disclosure shall be made ~~30~~ 35 days after the case is at issue;

- (II) An opposing party's disclosure shall be made ~~30~~ 35 days after applicant's disclosures are made.
- (B) The time periods for disclosure of expert testimony pursuant to C.R.C.P. 26(a)(2) shall be as follows:
- (I) The applicant's expert disclosure shall be made at least ~~240~~ 245 days before trial;
- (II) The applicant's supplemental expert disclosure, if any, shall be made after the first meeting of the experts held pursuant to subsection (b)(5)(D)(I) of this Rule, and served at least ~~180~~ 182 days before trial;
- (III) An opposer's expert disclosure shall be made at least ~~120~~ 126 days before trial;
- (IV) If the evidence is intended to contradict or rebut evidence on the same subject matter identified by another party under subsection (b)(5)(B)(III) of this Rule, such expert disclosure shall be made ~~at least 90~~ no later than 91 days before trial.
- (C) **Additional Expert Disclosures.** In addition to the disclosures required by C.R.C.P. 26(a)(2)(B)(I), the expert's disclosure shall include:
- (I) A list of all expert reports authored by the expert in the preceding ~~five~~ 5 years; and
- (II) An executable electronic version of any computational model, including all input and output files, relied upon by the expert in forming his or her opinions. The court may require the party to whom this information is disclosed to pay the reasonable cost to convert the data from the electronic format in which it is maintained in the expert's normal course of business to a format that can be used by the expert for the opposing party(ies).
- (D) **Meeting Of Experts To Identify Undisputed Matters of Fact and Expert Opinion and To Refine and Attempt to Resolve Disputed Matters of Fact and Expert Opinion.**
- (I) The expert witness(es) for the applicant and the opposer(s) shall meet within ~~45~~ 49 days after the applicant's initial expert disclosures are made. The meeting(s) may be in person or by telephonic means. The purpose of the meeting is for the experts to discuss the matters of fact and expert opinion that are the subject of the expert(s) disclosures and with respect to such disclosures: to identify undisputed matters of fact and expert opinion, to attempt to resolve disputed matters of fact and expert opinion, and to identify the remaining matters of fact and expert opinion in dispute. The applicant may subsequently file a supplemental disclosure pursuant to Water Court Rule 11(b)(5)(B)(II) to address matters of fact and expert opinion resolved in or arising from the meeting(s) of the experts.
- (II) The expert witness(es) for the applicant and the opposer(s) shall meet within ~~25~~ 28 days after the opposers' expert disclosures are made. The meeting may be in person or by telephonic means.

The purpose of the meeting is for the experts to discuss the matters of fact and expert opinion that are the subject of the expert(s) disclosures and, with respect to such disclosures: to identify undisputed matters of fact and expert opinion, to attempt to resolve disputed matters of fact and expert opinion, and to identify the remaining matters of fact and expert opinion in dispute. Within ~~15~~ 21 days after such meeting, the experts shall jointly submit to the parties a written statement setting forth the disputed matters of fact and expert opinion that they believe remain for trial, as well as the undisputed matters of fact and expert opinion, arising from the expert disclosures.

(III) The content of the meetings of the experts and the written statement prepared pursuant to Water Court Rule 11(b)(5)(D)(II) shall be considered as conduct or statements made in compromise negotiations within the ambit of CRE 408. For this reason, notes taken by the experts or other records of the discussion during these meetings shall not be discoverable, and none of the content of the meetings of the experts or the written statement prepared shall be admissible at trial. The meetings of the experts shall not include the attorneys for the parties or the parties themselves, unless they are the designated experts(s).

(E) **Declaration By Expert.** Expert reports, disclosures, and opinions are rendered to the water court under professional standards of conduct and duty to the court. No person, including a party's attorney, shall instruct an expert to alter an expert's report, disclosures, or opinion. This does not preclude suggestions regarding the factual basis, accuracy, clarity, or understandability of the report, disclosure, or opinion, or proofreading or other editorial corrections, or an attorney communication of legal opinion to the expert of the attorney's client. The expert shall not include anything in his or her expert report, disclosure, or opinion that has been suggested by any other person, including the attorney for the expert's client, without forming his or her own independent judgment about the correctness, accuracy, and validity of the suggested matter. Matters of legal opinion pertinent to formulation of the expert's report, disclosure, or opinion are within the professional province and duty to the court of the attorney who represents the client who has retained the expert. Each expert witness's written disclosure, report, or opinion shall contain a declaration by the expert as set forth in the applicable water court form.

(F) **Proposed Decree.** Applicant shall provide proposed findings of fact, conclusions of law and decree at the time of its initial C.R.C.P. 26(a)(2) disclosures. All opposers shall provide comments on the proposed decree, including the language of specific decree provisions deemed necessary by the opposers, at the time of opposers' initial C.R.C.P. 26(a)(2) disclosures. Applicant shall respond to opposers' suggested decree language by providing an additional draft decree at the time of its rebuttal C.R.C.P.

26(a)(2) disclosures. In circumstances where, as a result of identification of witnesses and documents within the time frame for such identification set forth in this Presumptive Case Management Order but with insufficient time to allow responsive discovery or supplementation by an opposing party, then modification of this Presumptive Case Management Order shall be freely granted.

(6) Settlement Discussions.

(A) No later than 35 days after the case is at issue, the parties shall explore possibilities of a prompt settlement or resolution of the case.

(B) No later than ~~60~~ 63 days before trial the parties shall jointly file a statement setting forth the specific disputed issues that will be the subject of expert testimony at trial.

(7) Certificate of Compliance. No later than ~~75~~ 77 days after the case is at issue, the responsible attorney shall file a Certificate of Compliance. The Certificate of Compliance shall state that the parties have complied with all requirements of subsections (b)(3)-(7) (except (b)(5)(B) through (F) and (b)(6)(B)), inclusive, of this Rule or, if they have not complied with each requirement, shall identify the requirements which have not been fulfilled and set forth any reasons for the failure to comply. A request for a Case Management Conference shall be made at the time for filing the Certificate of Compliance.

(8) Time to Join Additional Parties and Amend Pleadings. The time to join additional parties and amend pleadings shall be in accordance with C.R.C.P. 16(b)(8).

(9) Pretrial Motions. Unless otherwise ordered by the court, the time for filing pretrial motions shall be no later than 35 days before the trial date, except that motions pursuant to C.R.C.P. 56 shall be filed at least ~~90~~ 91 days before the trial date.

(10) Discovery Schedule. Until a case is at issue, formal discovery pursuant to C.R.C.P. 26 through 37 shall not be allowed. Informal discovery, including discussions among the parties, disclosure of facts, documents, witnesses, and other material information, field inspections and other reviews, is encouraged prior to the time a water case is at issue. Unless otherwise directed by the water court or agreed to by the parties, the schedule and scope of discovery shall be as set forth in C.R.C.P. 26(b), except that depositions of expert witnesses shall not be allowed until ~~30~~ 28 days after the time for filing of the opposers' C.R.C.P. 26(a)(2) disclosures. The date for completion of all discovery shall be ~~50~~ 49 days before the trial date.

(c) Modified Case Management Order. Any of the provisions of section (b) of this Rule may be modified by the entry of a Modified Case Management Order pursuant to this section.

(1) Stipulated Modified Case Management Order. No later than ~~75~~ 77 days after the case is at issue, the parties may file a Stipulated Proposed Modified Case Management Order, supported by a specific showing of good cause for each modification sought including, where applicable, the grounds for good cause

pursuant to C.R.C.P. 26(b)(2). Such proposed order need only set forth the proposed provisions which would be changed from the Presumptive Case Management Order set forth in section (b) of this Rule. The Court may approve and enter the Stipulated Modified Case Management Order, or may set a Case Management Conference.

(2) **Disputed Motions for Modified Case Management Orders.** C.R.C.P. 16(d) shall apply to any disputes concerning a Proposed Modified Case Management Order. If any party wishes to move for a Modified Case Management Order, lead counsel and any unrepresented parties shall confer and cooperate in the development of a Proposed Modified Case Management Order. A motion for a Modified Case Management Order and one form of the proposed Order shall be filed no later than ~~75~~ 77 days after the case is at issue. To the extent possible, counsel and any unrepresented parties shall agree to the contents of the Proposed Modified Case Management Order but any matter upon which all parties cannot agree shall be designated as "disputed" in the Proposed Order. The proposed Order shall contain specific alternate provisions upon which agreement could not be reached and shall be supported by specific showing of good cause for each modification sought including, where applicable, the grounds for good cause pursuant to C.R.C.P. 26(b)(2). Such motion need only set forth the proposed provisions which would be changed from the Presumptive Case Management Order set forth in section (b) of this Rule. The motion for a Modified Case Management Order shall be signed by lead counsel and any unrepresented parties, or shall contain a statement as to why it is not so signed.

(3) **Court Ordered Modified Case Management Order.** The water court may order implementation of a Modified Case Management Order if the Court determines that the Presumptive Case Management Order is not appropriate for the specific case. The Court shall not enter a Court Ordered Modified Case Management Order without first holding a Case Management Conference pursuant to C.R.C.P. 16(d).

(d) [NO CHANGE]

COMMITTEE COMMENT [NO CHANGE]

Rule 12. [NO CHANGE]

COMMITTEE COMMENT

The amendment to the water court rules effective January 1, 2012 adopt the “rule of 7” numbering for procedural time periods specified in these water court rules. Statutorily-prescribed time periods incorporated into the rules have not been changed, except to express those time periods in numbers instead of words.

The amendments to water court rule 3 effective January 1, 2012 address applications that contain multiple claims, rights and structures, including applications filed by multiple applicants. Deletion of the words “and that each has the same ownership” from the former water court rule 3(b), now numbered water

court rule 3(b)(1), is not intended to alter or change any provision of law pertaining to ownership of a claim, right or structure that may otherwise be applicable to the adjudication of an application.

**APPENDIX 1 to CHAPTER 36
UNIFORM LOCAL RULES FOR ALL STATE WATER COURT DIVISIONS**

COLORADO WATER COURT FORMS

(Additional [Water Court](#) forms are available from the Colorado [courts-Judicial Branch](#) web page at <http://courts.state.co.us/ehs/court/forms/selfhelpcenter.htm>)

SPECIAL FORM INDEX

- Form 1. Sample Modified Case Management order.
Form 2. Declaration of Expert Regarding Report, Disclosure, and Opinion.
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Form 1.

District Court, Water Division No. ____, Colorado	
Court Address:	
Concerning the Application for Water Rights of: Applicant:	▲ COURT USE ONLY ▲
In the _____ River or its Tributaries	Case Number:
In _____ County	Division: Courtroom:

SAMPLE MODIFIED CASE MANAGEMENT ORDER

Counsel for Applicant(s) and Opposer(s) _____ have agreed to the contents of the following proposed Case Management Order for the above referenced application for water rights, except as specifically noted below. [Add if a case management conference is to be requested.] Matters upon which all counsel have not agreed are designated as “Disputed” in this proposed Case Management Order.

I. TRIAL SETTING

The parties anticipate that a trial of ___ days in length will be required. The trial has been scheduled for ___ days beginning on _____, 20 _____. The parties acknowledge their duty to promptly notify the court in writing if the anticipated length of the trial changes.

II. DISCLOSURE

A. Pursuant to C.R.C.P. 26(a)(1). Disclosures pursuant to C.R.C.P. 26(a)(2) and Water Court Rule 11 were made by the applicant on _____, 20 _____. Opposers' C.R.C.P. 26(a)(2) disclosures are due on _____, 20 _____.

B. Pursuant to C.R.C.P. 26(a)(2) (Experts). The parties anticipate the need for expert witnesses at the trial of this application for water rights.

1. Applicant shall disclose the identity of persons who may present evidence at trial pursuant to Rules 702, 703, or 705 of the Colorado Rules of Evidence, along with the information required by C.R.C.P. 26(a)(2), on or before _____, 20 _____.

2. The Opposers shall disclose the identity of persons who may present evidence at trial pursuant to Rules 702, 703, or 705 of the Colorado Rules of Evidence, along with the information required by C.R.C.P. 26(a)(2), on or before _____, 20 _____.

3. If the evidence is intended to contradict or rebut evidence on the same subject matter identified by another party, such disclosures shall be made ~~within~~ no later than 20 91 days before trial. ~~after the disclosure was made by the other party.~~

C. Continuing Duty to Disclose. The parties acknowledge a continuing duty to timely supplement or correct the information provided pursuant to C.R.C.P. Rules 26(a)(1) and 26(a)(2), pursuant to C.R.C.P. 26(e).

III. IDENTIFICATION OF PERSONS, DOCUMENTS AND TANGIBLE THINGS

Each party will identify all persons who may be called as witnesses, as well as documents and tangible things which might be introduced at trial, not otherwise disclosed pursuant to C.R.C.P. 26(a)(1), on or before _____, 20 _____. [This date shall be no later than the date established for the completion of discovery in Section IV. below.] The identification shall be in accordance with the provisions of C.R.C.P. 26(a)(4). To the extent that the identification described above or discovery conducted after the date identified above causes any party to wish to identify additional witnesses, documents, or tangible things which may be introduced at trial and which could not have reasonably been previously identified, modification of the Case Management Order to permit additional identification by such party shall be freely allowed.

IV. DISCOVERY SCHEDULE

Discovery shall be in accordance with Water Court Rule 11. The date for completion of discovery shall be _____, 20 ____ [no later than ~~50~~ 49 days prior to trial or such time as the court shall direct].

The undersigned counsel certify that they have advised their clients of the estimated costs and fees involved in conducting such discovery.

V. TIME TO JOIN ADDITIONAL PARTIES AND AMEND PLEADINGS

The parties [do] [do not] anticipate the need for joining additional parties or amending the pleadings. The time for joining additional parties and amending the pleadings shall be in accordance with C.R.C.P. 16(b) and Water Court Rule 11.

VI. PRETRIAL MOTIONS

The following motions are currently pending before the court:

[Add appropriate information]

The schedule for the filing of anticipated pretrial motions (other than motions relating to discovery) shall be in accordance with Water Court Rule 11.

VII. SETTLEMENT

The parties expressly affirm that they have discussed settlement. The parties' plans for future efforts to settle the case are as follows:

VIII. OTHER MATTERS

[Describe any other matters which are appropriate under the circumstances of the case or which have been directed by the court to be included in the proposed Case Management Order.] Applicant shall file and serve upon all parties at least ____ days prior to trial a proposed order that sets forth any necessary findings, terms, or conditions that the applicant reasonably believes the Court should incorporate into the decree, pursuant to Water Court Rule 2(f).

DATED: _____

[Signature of lead counsel for Applicant(s)]

ATTORNEYS FOR APPLICANT

[Signatures for Opposers As Appropriate]

ATTORNEYS FOR THE OPPOSER

THE CASE MANAGEMENT ORDER SET FORTH ABOVE IS APPROVED BY THE COURT AND SHALL GOVERN THE FUTURE CONDUCT OF THIS CASE.

BY THE COURT:

District Judge
Water Division No. ____

Form 2. [NO CHANGE]

Amended and Adopted by the Court, En Banc, November 3, 2011, January 1, 2012.

By the Court:

**Gregory J. Hobbs
Justice, Colorado Supreme Court**