

NON-ATTORNEY'S GUIDEBOOK TO COLORADO WATER COURTS

INTRODUCTION

Welcome to Colorado's Water Courts! This guidebook has been prepared to help guide you through the process of adjudicating a water right. It also addresses how to oppose an application for a water right.

Water rights are valuable property rights. Failure to participate knowledgeably in the legal process could cost you some or all of your right to use water. The more knowledgeable you are, the more efficiently the court process will function.

We want to inform you about the general steps that water right applicants and opposers go through in resolving issues in water court cases. This process is called the adjudication.

STATUTES

The Colorado Revised Statutes are laws specifically governing the water right adjudication process. (This guidebook makes references to specific sections of the Colorado Revised Statutes using the following format: C.R.S. § [title no.]-[article no.]-[section no.]) The principal statutes that govern the water right adjudication process are part of the "Water Right Determination and Administration Act of 1969" which is found at C.R.S. §§37-92-101 through -602. The Colorado Revised Statutes are updated after the most current General Assembly session has concluded. Be sure to check the most recent version.

FORMS

The water judges have approved forms for applications and certain other forms that need to be filed in water court. General and specific instructions accompany the forms. These forms and instructions are found at www.courts.state.co.us under "forms" and then "water" and at the offices of the seven water clerks. You should carefully read all such instructions.

RULES

The Colorado Supreme Court has adopted specific rules that govern water court proceedings: the Uniform Statewide Rules for All Water Court Divisions, or Water Court Rules and certain

rules of the Colorado Rules of Civil Procedure. The relevant rules are found at www.courts.state.co.us under "courts" and then "water courts."

Persons who participate in the water court process without an attorney are still required to follow all of the legal requirements contained in the applicable statutes, rules, and court cases. At the end of Section Seven is a list of locations where you can obtain the statutes, forms, and rules, as well as a general guide to Colorado water law.

This non-attorney's guide does not address the right to withdraw designated groundwater, which is handled by the Colorado Ground Water Commission, nor well permitting, which is handled by the Office of the State Engineer.

THIS GUIDEBOOK IS NOT A SUBSTITUTE FOR LEGAL ADVICE

Water court proceedings are often complex. While this guidebook can give you an overview of the process, and water court personnel can provide basic information concerning the status of an application, neither resource can give you legal advice about the specific steps you need to take to pursue your application or your opposition to someone else's application. For legal advice you need to hire an attorney.

SHOULD YOU PARTICIPATE WITHOUT AN ATTORNEY?

Some people do not retain attorneys for the adjudication process. A party without legal representation is known as a "pro se" party in a court action. Sometimes the issues involved in an application are mostly factual in nature, and don't involve highly technical information where help from another water specialist—for example, a hydrologist or water engineer—is required. Attorneys can help explain what factual and legal questions the applicant or opposer must answer in order to make their case effectively. People sometimes start through the process without attorneys and later retain attorneys if they believe the issues have become complex. Other people retain attorneys at the very start. This guidebook is meant to help you understand the process if you choose not to retain an attorney, and to help you work more efficiently with an attorney if you choose to use one.

QUESTIONS TO CONSIDER BEFORE FILING WITHOUT AN ATTORNEY

1. **Who is allowed to file without an attorney in water court?**

Individuals may file water right applications and statements of opposition pro se and may participate pro se in the case when it is before both the water referee and the water judge. Corporate or other organizational parties must hire an attorney to participate in a case transferred to the water judge, but may file applications and statements of opposition pro se and otherwise participate in the case when it is before the water referee (or the water judge acting as a water referee).

2. **What are the pros and cons of filing pro se?**

Pro se parties do not incur the expense of hiring an attorney. On the other hand, completing adjudication can be quite time-consuming because of the requirements of your specific case and the need to learn and comply with the general procedural requirements of water court, which an experienced attorney will already know. Deciding whether to hire an attorney will depend on your evaluation of time and cost considerations, the importance of the issues involved in the case to you, and the complexity of those issues. In general, the more legally and technically complex the issues, the more advisable it is for you to hire an attorney and a technical consultant.

3. **Who generally has the burden of proving facts and meeting legal requirements in water court?**

The applicant must prove the elements of a new water right and, in change of water right and plan for augmentation applications, must also prove the absence of material injury to other water rights from the proposed change or plan. This will require the applicant to prove the case by presenting evidence (testimony and exhibits). If the water referee or water judge does not believe that evidence, or finds the evidence of an opposer more persuasive, the water judge may rule against the applicant on the issue in dispute. In change of use and augmentation plan applications, applicants usually must hire a hydrologist, water engineer, or other technical expert to help assemble complex technical information and prove the absence of injury to other water rights.

Opposers may participate in new water right applications to require the applicant to prove the elements of a new right but, in order to argue injury to a water right in a proposed change of use or plan for augmentation proceeding,

the opposer must have a water right that could be injured by the proposed change or plan. At times, an opposer may also be required to prove certain claims in its opposition to the water right application.

Both applicants and opposers must comply with all rules and court orders concerning the presentation of evidence.

HOW TO USE THIS GUIDEBOOK

The adjudication of water rights will take some time to complete. There can be periods of up to several months between stages of the process and the more complex cases can take several years to achieve final resolution. During these periods of inactivity you may forget the overall picture. The guidebook will help refresh your memory as your case moves along through the water court process.

WHAT IS INCLUDED IN THE GUIDEBOOK?

- ◆ **SECTION ONE - Page 5:** Describes the Colorado water court system, identifies the seven water divisions, and the role of water court personnel.
- ◆ **SECTION TWO - Page 9:** Provides an overview of the different types of water court forms and filing fees.
- ◆ **SECTION THREE - Page 13:** Concerns proper preparation for filing an application.
- ◆ **SECTION FOUR - Page 17:** Describes the statement of opposition process and how to object to a water right application.
- ◆ **SECTION FIVE - Page 19:** Describes what happens in the process after the application is filed and gives deadlines for each step.
- ◆ **SECTION SIX - Page 24:** Explains what happens if a case is directed to the water court's trial track and what responsibilities are delegated to the applicant and opposer in this process.
- ◆ **SECTION SEVEN - Page 27:** Provides resources available to help you locate the information required by many of the forms and website links to the applicable statutes and water court rules.

SECTION ONE

COLORADO WATER COURTS, DIVISIONS AND PERSONNEL

Acquiring a water right in Colorado is a unique process compared to other parts of the United States. The use of surface and tributary groundwater in this state is generally governed by what is known as the prior appropriation system. This system of water allocation controls who uses how much water, the types of uses allowed, and when those waters can be used.

When Colorado achieved statehood in 1876, the Doctrine of Prior Appropriation was set forth in the Colorado Constitution and in statutes of the General Assembly that followed.

- ◆ To obtain a water right, water must be put to a beneficial use.
- ◆ Water rights are administered by the state water officials in order of their decreed priority.
- ◆ Water rights may be bought, sold, inherited, moved from one place to another, or changed from one type of use to another, as long as the change does not injure other water rights and the proper procedures are followed.

Three types of groundwater are not subject to the prior appropriation system under the Colorado Constitution: designated groundwater, non-tributary groundwater outside of designated basins, and Denver Basin groundwater. The Colorado Groundwater Commission issues permits for designated groundwater. The water courts issue decrees for non-tributary and Denver Basin groundwater. For more information on the water process in Colorado, visit the Colorado Division of Water Resources website at: <http://water.state.co.us/> or review The Citizen's Guide to Colorado Water Law, available at www.cfwe.org.

WATER COURT DIVISIONS

The Water Right Determination and Administration Act of 1969 created seven water divisions which are staffed with at least one of each of the following personnel: a water judge, a water referee, a water clerk, and a division engineer. Some of the water court divisions may have additional personnel due to higher volume of cases.

See <http://water.state.co.us/pubs/gis/coloradobasins.pdf> for a map of the water divisions and water basins in Colorado.

Colorado Water Court Divisions

<p style="text-align: center;">Water Division 1 (South Platte Basin) 901 9th Avenue P. O. Box 2038 Greeley, CO 80632 (970) 351-7300 x 5401</p> <p>Division Engineer's Office: (970) 352-8712</p>	<p style="text-align: center;">Water Division 2 (Arkansas River Basin) 320 West 10th Street Pueblo, CO 81003 (719) 583-7048</p> <p>Division Engineer's Office: (719) 542-3368</p>
<p style="text-align: center;">Water Division 3 (Rio Grande Basin) 702 Fourth Street Alamosa, CO 81101 (719) 589-4996 x 29</p> <p>Division Engineer's Office: (719) 589-6683</p>	<p style="text-align: center;">Water Division 4 (Gunnison, Uncompahgre, and San Miguel River Basins) 1200 North Grand Avenue, Bin A Montrose, CO 81401 (970) 252-4304</p> <p>Division Engineer's Office: (970) 249-6622</p>
<p style="text-align: center;">Water Division 5 (Main Stem of Colorado River) 109 Eighth Street, #104 Glenwood Springs, CO 81601 (970) 947-3862</p> <p>Division Engineer's Office: (970) 945-5665</p>	<p style="text-align: center;">Water Division 6 (Yampa, White River, Green & North Platte River Basins) P. O. Box 773117 Steamboat Springs, CO 80477 (970) 879-5020</p> <p>Division Engineer's Office: (970) 879-0272</p>
<p style="text-align: center;">Water Division 7 (San Juan, Piedra, Las Animas, Los Pinos, La Plata, and Mancos River Basins) 1060 East Second Avenue, Room 106 Durango, CO 81301 (970) 247-2304 x 6181</p> <p>Division Engineer's Office: (970) 247-1845</p>	

Your case must be filed in the proper water court - if you are in doubt as to which court, please check with the Division Engineer's Office at the number listed above.

WATER COURT PERSONNEL

WATER JUDGE.

Water judges are district court judges appointed by the Chief Justice of the Colorado Supreme Court to exercise the special water court jurisdiction in their water division. They have the authority to confirm water rights and determine all other water matters within the boundaries of their water division. Water judges must sign a water referee's ruling before it can become a decree of the court. When cases are "re-referred" to the water judge, or someone files a formal protest of a water referee's ruling, proceedings before the water judge will require the parties to resolve issues promptly or prepare for trial. All trials pertaining to water rights are conducted before the water judge.

WATER REFEREE.

All applications are initially referred by the water judge for consideration to the water referee. Upon referral of a case by the water judge, the water referee has the authority and duty to investigate, make rulings and issue a ruling and proposed decree to the water judge. Many cases are successfully resolved while they are before the water referee, and the water judge signs the ruling and makes it a decree of the court in these cases.

The water referee's role and authority in a case is to be a facilitator and enter a ruling with proposed findings of facts, conclusions of law, and decree. The water referee provides an impartial forum and helps the parties reconcile their differences and achieve a successful outcome. The water referee investigates each application to determine whether or not the statements in the application and statements of opposition are true. Sometimes site visits are appropriate and arranged by the water referee.

WATER CLERK.

The water clerk receives, numbers, and maintains applications, statements of opposition, and all other documents filed in water cases. All filings must be made with the water clerk using the court approved e-filing system. Because only attorneys may access this system, non-attorneys filing their own applications, statements of opposition, or other documents must file one paper copy of each with the water clerk who will upload it to the e-filing system.

DIVISION ENGINEER.

Colorado Division of Water Resources engineers at the local division engineer's office and state engineer's office review the application. Staff from the division engineer's office, generally the local water commissioners, performs field investigations to confirm the claims in the application. After consultation with the water referee, the division engineer submits a written report to the water court, with recommendations. This report discusses any issues, problems or questions related to the administration and other matters concerning the proposed water right. The division engineer may submit additional written reports upon receipt of new information. If the state or division engineer becomes a party to the case, the summary of consultation process is suspended.

SECTION TWO

WATER COURT FORMS AND FILING FEES

Each water court form contains detailed descriptions regarding the information you must provide the court. Failure to submit forms containing the necessary information may result in rejection of your document. You can find the following forms at the Colorado Judicial Branch web site under www.courts.state.co.us by going to the tab called "forms" or by going to the tab called "courts" and pressing the link to "water courts."

JDF 290	Certificate of Notice	  	R07/09
JDF 296W	Application for Water Rights (Surface)	  	R07/09
JDF 297W	Application for Water Storage Right	  	R07/09
JDF 298W	Application for Underground Water Right	  	R07/09
JDF 299W	Application for Change of Water Right	  	R07/09
JDF 300W	Application: For Finding of Diligence or To Make Absolute	  	R07/09
JDF 301W	Application for Approval of Plan for Augmentation	  	R07/09
JDF 302W	Pleading: In Protest/In Support to Referee's Ruling	  	R07/09
JDF 303W	Statement of Opposition	  	R07/09
JDF 304W	Protest to Revised Abandonment List	  	R07/09
JDF 307	Notice of Change in Ownership of Conditional Water Right and/or Change of Address	  	07/09
JDF 312	Form 2 - Declaration of Expert Regarding Report, Disclosure, and Opinion	  	07/09
JDF 319	Form 1 - Sample Modified Case Management Order	  	07/09

The following is an explanation of some of these forms:

JDF 296 - Application for Surface Water Right.

This is the application to file with the water clerk if you are seeking a water right for a surface water source, such as a river, stream, or spring. You must name the water source and specify the particular places of diversion and use by means of a legal description and location on a map, as well as the rate of diversion in cubic feet per second and the type of beneficial use. You will be required to prove there is unappropriated

water available for your water right, taking into account the exercise of all other water rights drawing from the same source. If you are successful, you will obtain a conditional decree with an appropriation date that will be assigned to your water right if you put the water to actual use.

If your water right application is for an underground water source, use JDF 298. You will be required to provide the same type of information as for a surface water source. For a water storage right use form JDF 297.

JDF 299 - Application for Change of Water Right.

This is the application to file with the water clerk if you are proposing a change in the way a water right is used, such as change in type, place or time of use, change in point of diversion, or adding points of diversion. It is not a change in use if a farmer changes the type of crop grown. The application requirements are complex and it is advisable for an applicant to hire an attorney and a technical expert to adequately present to the water court information documenting how much water was historically used by the water right, how the water will be used under the proposed change, and the absence of injury to other water rights. Early in the case, the application should be supported by an engineering analysis, usually prepared by a water resources engineer, to show the historical use and lack of injury under the changed use of the water right. *Remember, as the applicant it is your duty to prove your case.*

JDF 301 - Application for Approval of Plan for Augmentation.

This is the application to file when seeking an augmentation plan. A plan for augmentation is a way for junior appropriators to obtain water supplies through terms and conditions approved by the water court that protects senior water rights from injurious "out of priority" depletions caused by the new diversions. An augmentation plan typically involves storing water under a water storage right when "in priority" and releasing that water to meet the needs of a downstream "calling" water right, and/or purchasing senior water rights and changing the use of those rights to prevent any injury from the new water use. The application requirements are complex and it is advisable for an applicant to hire an attorney and a technical expert to adequately present to the court information documenting in detail how the augmentation plan will be operated to prevent injury to other water rights. Early in the case, the application should be supported by an engineering analysis,

usually prepared by a water resources engineer, to show how the water needs of the project were determined and how the new water use can occur without injury to water rights. *Remember, as the applicant it is your duty to prove your case.*

JDF 290W - Certificate of Notice.

This notice must be filed by applicants in many different types of water right applications that involve land or structures owned by others. This form is included as part of each application form.

JDF 303W - Statement of Opposition.

This is the form to file with the water clerk if you wish to object to an application. You must adhere to a strict deadline when filing this form. It must be filed by the end of the second month after the month in which the application was filed.

JDF 300W - Application for Finding Diligence or to Make Absolute.

Once you have received a notice of diligence in connection with your conditional water right, you will need to file an application for finding of diligence, or to make a portion of the water right absolute, by the applicable deadline. The notice of diligence contains a deadline in which the applicant must comply with providing information the water court seeks. Failure to provide this information within the deadline contained in the notice will result in cancellation of your currently decreed conditional water right. An absolute decree can be granted when the water is put to the actual beneficial use the conditional decree provides for.

IT IS STRONGLY RECOMMENDED that every pro se party keep copies of all documents sent or received by them in a file together with all their water right information.

FILING FEES

Mandatory filing fees for applications and statements of opposition or protest to an application are listed below. These fees are subject to change. Current filing fees are identified on the filing fee chart on the Colorado Judicial website:

http://www.courts.state.co.us/userfiles/File/Fees_Table_with_Surcharge_FY_2010.pdf

Applications for Change of Water Right & Approval for Plan for Augmentation	\$447.00
Surface, Underground, Storage, Diligence, or Application to Make Conditional Right Absolute	224.00
Protest to the Abandonment List	45.00
Statement of Opposition	158.00
Protest to Ruling of the Referee (no fee if already party)	158.00
Certification Fees	20.00

SECTION THREE

THE APPLICATION PROCESS

USE THE CORRECT FORMS.

Once you have determined the type of water right you are seeking, you must use the correct forms. For your convenience, these forms are available at <http://www.courts.state.co.us> and are grouped together by the type of water right being sought. For example, if you are seeking a surface water right, the forms you need are grouped together in the "Surface" folder on the website. Each form contains a detailed explanation of the information needed for you to complete the entries timely and accurately. If you do not have internet access, please see the water clerk who can provide you with the forms you need.

COMPLETE THE APPLICATION.

You must fill out the application accurately and completely. An incomplete or inaccurate application can result in delay in resume publication and sometimes dismissal, meaning the process has to be started all over again. The water clerks are available to answer any questions you may have, however, remember they cannot provide legal advice. You may also contact the division engineer to help you with any questions you may have about the application requirements.

SIGN VERIFICATION.

You will note that the last page of each application contains a "verification." This verification must be signed by the person who can verify that the information contained in the application is accurate and complete. As the applicant, you sign the application and often the applicant is the individual who signs the verification as well. Others who might sign the verification are an engineer or other professional who provided significant information included in the application. The signature on the verification must be acknowledged by a notary public.

INCLUDE ACCOMPANYING DOCUMENTS.

Include all additional documents as indicated on the application. Failure to include these documents could result in rejection of your application.

FILE WITH THE WATER CLERK.

All water court documents must be filed using the court approved e-filing system. Note that only practicing attorneys have e-filing access; therefore, if you are a pro se party, take your completed original application to the water clerk for uploading onto the system. Your case will be assigned a case number at the time of filing your application. Your case must be filed in the proper water court division. If you are in doubt as to which court is proper, check with the division engineer.

PAY FILING FEES.

Filing fees are due at the time your application is submitted. Fees can be paid by check presented to the water clerk. Cash and credit cards are accepted by most divisions.

NOTIFY LANDOWNERS.

Applicants are required to notify landowners that may be affected by the terms of the application. The proper form is attached to the application and a copy of it and a copy of the application must be mailed to any person or entity whose property could be impacted by your proposed water right. If you do not know who these individuals might be or how to contact them, contact your county clerk and recorder or the division engineer who may be able to help you identify other water right owners that may be impacted. Certified or registered mail notification must be made to landowners within ten days of filing the application.

SERVICE OF DOCUMENTS.

You must serve your documents on all other parties to the case. Attorneys may use the court approved e-filing system. Non-attorneys do not have access to the e-filing system and must serve the other parties by first class mail or hand delivery or other approved method of service and file with the water court a certificate of service.

RESUME PUBLICATION.

One of the documents you may file with your application is the "resume". This is a condensed summary of your application that you may write. If you do not provide it, the water clerk will provide this summary from your application. Once your application has been accepted by the water court, the water clerk will issue an order of publication requiring publication

of your application resume in one or more area newspapers as a means of notifying all potentially interested parties. The water clerk is responsible for forwarding a copy of the resume to the newspapers for printing. However, you as the applicant must pay the publishing organizations. The publishing entity will bill you directly. Once payment has been made, the newspaper will forward to you an affidavit of publication and an original of the published resume. As applicant, you must file these documents with the court as proof that the resume has been published and paid for. A decree cannot be issued until all the required publication affidavits have been filed with the court.

In summary, the following steps for obtaining a decree are provided as a guideline. They are not intended to address all situations.

To obtain a decree for a water right, the water user must:

1. Intend to make a beneficial use of the water;
2. Demonstrate this intent openly, for example, by conducting field surveys, posting notice at a diversion point, or by filing a water right or well permit application, or by diverting the water in priority and placing it to beneficial use;
3. File an application with the regional water court clerk on the proper form with the information required;
4. In regard to any type of application, whether surface, groundwater, storage, change of water right, or augmentation plan, among others, publish the application through the water court monthly water resume and by legal notice in local newspapers;
5. Allow two months for other parties to file statements of opposition;
6. Colorado Division of Water Resources engineers at the local Division Engineer's Office and State Engineer's Office will review the application;
7. Staff from the Division Engineer's office, generally the local water commissioners, perform field investigations to confirm the claims in the application;

8. After consultation with the water referee, the Division Engineer submits a written report to the regional water court, with recommendations;
9. If there is no opposition and proof of publication has been submitted, the application is reviewed by a water court referee who then issues a ruling. If there is opposition, the referee works with all parties to the case to establish a case management schedule and produce a ruling;
10. If no protest to the ruling is filed in the water court, the referee's ruling goes before the water court judge and he/she signs it in the form of a decreed water right;
11. If there is a protest, the case goes before the water court judge for trial and a decision and decree, unless the parties can reach agreement. In that instance, the water court may enter an agreed-upon decree;
12. The applicant bears the burden of proof in all applications. As an example, for a conditional water right, the applicant must show there is unappropriated water available for appropriation. For a change of water right, the applicant must demonstrate the historical beneficial consumptive use of the water right to be changed. For an augmentation plan, the applicant must show there is sufficient replacement water to prevent injury to senior water rights. In all cases, the applicant must show that its proposed water use, if decreed, will not injure other water rights. Maintenance of existing return flow patterns will generally be required to prevent injury.

SECTION FOUR

OPPOSITION

STATEMENT OF OPPOSITION. If you want to object to a recently filed water application, you may enter a case by filing a statement of opposition ("SOP") by using JDF 303W. The SOP must be filed no later than the last day of the second month following the month in which the application is filed. As with the application, specific information is required in order to successfully file an SOP. Failure to provide all information required could result in rejection of your SOP by the water court. Sometimes the water court will accept the incomplete SOP filing but may request additional information at a later date.

VERIFICATION. Your SOP must include a signed and notarized verification. The last page of the SOP contains the verification. This verification must be signed by the person who can verify that the information contained in the SOP is accurate and complete. As an opposer, you must sign the SOP and often the opposer is the individual who signs the verification as well. Others who might sign the verification are an engineer or other professional who provided significant information included in the SOP. The signature on the verification must be acknowledged by a notary public.

ACCOMPANYING DOCUMENTS. Include additional documents as indicated on the SOP form. Failure to include these documents could result in rejection of your SOP.

FILING WITH THE COURT. All water court documents are required to be filed using the court approved e-filing system. Note that only practicing attorneys have e-filing access; therefore, if you are a pro se party, take your completed original SOP to the water clerk for uploading onto the system.

SERVICE OF DOCUMENTS. You must serve your documents on all other parties to the case. Attorneys may use the court approved e-filing system. Non-attorneys do not have access to the e-filing system and must serve the other parties by first class mail or hand delivery or other approved method of service and file with the water court a certificate of service.

FILING FEES. Filing fees are due at the time your SOP is submitted. Fees can be paid by check presented to the water court clerk. Cash or credit cards are accepted by some divisions.

SECTION FIVE

AFTER THE APPLICATION - WHAT HAPPENS NEXT?

PROCESS: As the applicant, you have special responsibilities and deadlines to meet to move the application through the water court process. Once your application has been accepted by the water court, the water judge may refer it to the water referee for handling. This means the court expects that any issues related to your application can be resolved without assigning your case to the litigation track. The water referee process is more informal than the litigation track and many issues are resolved using a status conference format that allows all parties to attend either in person or by phone to discuss and resolve outstanding issues.

If your case is not referred to the water referee and remains on the trial track of the water judge, you must meet very specific sets of deadlines and file certain documents with the water court. At this point you should consider seeking legal advice on how to proceed most effectively. Failure to understand and comply with deadlines can result in dismissal of your application.

TIMING:

The water referee works with the parties to develop a timeline within which to proceed. However, the water referee must issue a ruling within one year following the deadline for filing statements of opposition. The water referee may extend the deadline for an additional six months upon finding that there is a substantial likelihood that the remaining issues can be resolved without trial. After the expiration of the one year period, the water referee may also re-refer the case to the water judge, or any party may file a motion to re-refer.

BURDEN OF PROOF:

The applicant bears the burden of proof in all applications. As an example, for a conditional water right, the applicant must show there is unappropriated water available for appropriation. For a change of water right, the applicant must demonstrate the historical beneficial consumptive use of the water right to be changed. For an augmentation plan, the applicant must show there is sufficient replacement water to prevent injury to senior water rights. In all cases, the applicant must show that

its proposed water use, if decreed, will not injure other water rights.

UNOPPOSED APPLICATIONS:

If you have filed an application pro se and no one files a statement of opposition by the deadline, the water referee will work to enter a ruling and proposed decree within sixty days following the statement of opposition deadline, but may extend this time for good cause. The water judge must approve and enter the final decree.

RE-REFERRAL:

If requested by a party, or if the water referee chooses, the application is re-referred to the water judge. This places the case on the litigation, or trial track.

SUMMARY OF CONSULTATION:

In every case the water referee initiates a formal consultation with the division engineer who then issues a written report known as the consultation report or summary of consultation. This summary of consultation discusses any issues, problems, questions, or specific requirements that the division engineer or water referee has concerning the proposed water right. The water referee initiates consultation with the division engineer promptly after the last day for filing statements of opposition. However, if the state or division engineer becomes a party to the case, the summary of consultation process is suspended. The summary of consultation will specify the date by which the applicant must respond to the summary of consultation. The applicant must file this response with the court and serve copies on the other parties in the case. The division engineer must file the summary of consultation within 30 days of the date that the water referee initiates consultation, unless the time is extended for good cause.

STATUS CONFERENCE:

In a case referred to the water referee, the status conference becomes the vehicle of communication. Key to the success of this process is a willingness of the parties to cooperate by participating in discussions, sharing information and working to resolve issues that may stand in the way of a final amicable resolution.

For the first status conference, if the applicant is not represented by counsel, the water referee sets a status conference to include all parties, within 60 days after the deadline for filing of statements of opposition. This and all subsequent status conferences may be attended in person or by telephone and all parties must attend unless excused by the water referee. The water referee may also invite the division engineer to participate.

If the parties and water referee believe the case is capable of settlement without trial proceedings by the water judge, at the first status conference the water referee will seek an agreement from the parties to work together to reach a successful resolution. Parties are given an opportunity to discuss their issues and the process of identifying key areas of negotiation will begin.

Usually at the first status conference, under the direction of the water referee, the parties may begin to work on a written case management plan. The case management plan provides a directional road map and a reasonable expectation of time needed to complete the process. All the parties are expected to contribute to the drafting of the case management plan and its substance, which sets forth the deadlines for completion of the necessary submittals. The main purpose of the case management plan is to arrive at a ruling in the case with as little delay as possible.

Depending on the requirements of the case management plan, the water referee may set additional status conferences where the parties report on their progress in providing information to the other parties and resolving disputed issues. Parties can certainly have contact and meaningful discussions outside of the status conference setting. In fact, usually much meaningful progress needs to be made between status conferences for the parties to resolve issues.

It is extremely important to be fully prepared for each status conference and fulfill your commitments under a case management plan. Failure to meet your commitments may result in the water referee dismissing your application or statement of opposition.

STIPULATIONS BETWEEN THE PARTIES:

When parties are able to agree on the language of a ruling (when the case is before the water referee) or a decree (when the case is before the water judge), they typically sign a stipulation.

The stipulation states that the parties have agreed upon a complete or partial form of ruling or decree, and usually includes an attachment of that ruling or decree language. The water referee or the water judge may accept and enter the stipulation in the case, or refuse to do so.

PROTESTS:

Twenty days after the water referee enters the ruling in the case, any party to the case or any other person may file a protest with the water court by using **JDF 302W**. Protested rulings commence a trial track in the case before the water judge on all aspects of the case.

DECREE:

Water referee rulings not protested may be entered by the water judge as part of a final water court judgment in the case.

TIMELINE FOR CASE BEFORE REFEREE:

The chart below contains a general description of timelines for a case before the water referee. The case management plan will set the actual timeline for completion of the necessary tasks in a case.

Deadlines and Rules	Time Period	Additional Comments
Deadline for Referee issuing ruling when application is unopposed. (Rule 6(e))	60 days after last day on which Statements of Opposition may be filed.	Referee may extend deadline up to one year following deadline for filing statements of opposition, and for an additional six months following one-year deadline upon finding that there is a substantial likelihood that remaining issues can be resolved without trial.
Deadline for Division Engineer's written consultation report. (Rule 6(e))	Within 30 days of the date the referee initiates consultation.	Upon request, Referee may extend deadline. Referee and Division Engineer may also agree to forego consultation. If the Engineers enter the case as a party, there will be no consultation

Deadline for Division Engineer's written consultation report regarding well construction. (Rule 6(e))	Four months after filing of the application.	Upon request, Referee may extend deadline.
Additional reports from Division Engineer. (Rule 6(e))	Upon receipt of new information.	
Deadline for initial status conference if statements of opposition filed. (Rule 6(h))	Within 60 days after the deadline for filing statements of opposition	Referee may extend deadline for good cause.
Deadline for filing proposed decree, commenting on proposed decree, filing status reports, and further proceedings. (Rule 11(b)(F))	Decree is submitted as soon as possible (ideally by first status conference) by Applicant for consideration and comments by Opposers.	Referee and parties establish Case Management Plan following initial status conference. Referee has authority to dismiss for failure to prosecute applications and statements of opposition of parties who fail to comply with the requirements of the rules or case management plan
Deadline for Referee to issue ruling where application is opposed and parties agree to remain before Referee. (Rule 6(m))	Within one year following the deadline for filing statements of opposition	Referee may extend deadline for an additional six months upon finding that there is a substantial likelihood that remaining issues can be resolved without trial. After expiration of one year period, Referee may also rerefer to the water judge, or any party may file a motion to rerefer
Deadline to protest Referee ruling or case dismissal by Referee (Rule 6(p))	20 days	

SECTION SIX

PROCEEDINGS BEFORE THE WATER JUDGES

Cases re-referred or protested to the water judge often become very complicated and involve numerous deadlines and filings. Applicants bear the burden of proving facts and meeting legal requirements in their case, and failure to do so will result in dismissal of the application. Significant time and expense are involved in this pre-trial and trial process. Frequently the applicant will need to retain an expert who can testify on technical issues. Below is a case timeline that will help you calculate the deadline dates that will govern your litigation or trial track process. Descriptions of the various pleadings are available by accessing the links included in the timeline.

C.R.C.P 16 and Water Court Rule 11 Timeline

The chart below can help you determine when filings are due in cases that are on trial track. Sometimes the water judge modifies these deadlines by agreement of the parties or for other reasons, and the deadlines will appear in the case management order and/or the trial management order:

Deadlines and Rules	Time Period	Additional Comments
At Issue date. (Rule 11(b)(1))	45 days after the earlier of either entry of an order of re-referral or filing of a protest to the ruling of the Referee, unless the Court directs otherwise.	
Parties confer and exchange information. (Rule 11(6)(A))	15 days after at issue date.	
Stipulated Modified Case Management Order. (Rule 11 (b)(c)(1))	75 days after at issue date.	
Trial setting deadline. (Rule 11(b)(4))	Applicant's responsibility to set the trial date 60 days after at issue date	
26(a)(1) Disclosures (Rule 11(b)(5)(A)(I) and Rule 11(5)(A)(II))	Applicants' disclosures due 30 days after at issue date; Opposers due 30 days after Applicants.	Extensions of time through the Court.

Proposed Decree (Rule 11(b)(F))	Applicant must submit a proposed decree at the time its expert disclosure is filed (240 days before trial); comments by Opposers must be submitted at the time of filing their expert disclosure (120 days before trial). Applicant shall respond to Opposer comments at the time of filing its rebuttal expert disclosure by providing an additional draft decree (90 days before trial).	
26(a)(2) Disclosures (Rule 11(b)(5)(B) (I) and (III))	Applicants are due 240 days before trial, Opposers due 120 days before trial.	Extensions of time through the Court.
Applicant's supplemental disclosures. (Rule 11(b)(5)(B)(II))	After the first meeting of the experts and served at least 180 days before trial.	
Applicants rebuttal experts (Rule 11(b)(5)(B)(IV))	90 days before trial.	
Meeting of experts following Applicant's expert disclosure. (Rule 11(b)(5)(D)(I))	45 days after filing.	
Meeting of experts following Opposers expert disclosures (Rule 11(b)(5)(D)(III))	25 days after filing.	
Joint expert report to the court, statement of disputed matters and undisputed matters. (Rule 11(b)(5)(D)(II))	Joint document filed 15 days after meeting of experts following Opposers expert disclosures (after the second expert meeting above).	
Rule 56 Motions (Rule 11(b)(5)(9))	90 days before trial	Subject to change per Trial Management Order.
Discovery Cutoff (Rule 11(b)(1))	50 days before trial	Subject to change per

		Trial Management Order.
Draft List of Witness and Exhibits (CRCP 16(f)(2)(B))	40 days before trial	Subject to change per Trial Management Order.
Trial Management Order (CRCP 16(f))	30 days before trial	
Pretrial Motions (Rule 11(b)(9))	35 days before trial	Subject to change per Trial Management Order.

SECTION SEVEN

RESOURCES

In Colorado, we are fortunate to have free and instant access to almost all documents that are related to water rights. You can access this information by going to the State Engineer's website: <http://water.state.co.us>, followed by entering the link on the right side of the first page, labeled *CDSS* (Colorado's Decision Support System). Most of the historical documentation you will need in filing out your water court forms can be found by using the drop down menu on this page; click the "View Data" link which then provides additional links that can be accessed for your search.

If you do not have access to the internet, you can visit the Denver office of the State Engineer at 1313 Sherman Street, 8th Floor, Denver, Colorado, where staff will assist you in obtaining the information you need.

If you need to determine property owners in order to provide notification of your application, you can visit your county clerk and recorder office. If you have internet access, check the online system for your county first as often these records are available for free (or for a small fee) online.

Below are links that will take you directly to the information that will help you as you navigate the water court system:

- ◆ Link to the relevant statutes: Go to home page of Colorado General Assembly and search for Colorado Revised States, Title 37, Article 92, Water Right Determination and Administration Act
<http://www.leg.state.co.us/Clics/Clics2009A/csl.nsf/Reference?OpenFrameSet>

- ◆ Link to Water Court Rules:
http://www.courts.state.co.us/userfiles/File/Full_set_of_CR_CP_and_Water_Rules.doc

- ◆ Link to the State Engineer's website:
<http://www.water.state.co.us/>

- ◆ Link to State Engineer's Well Permitting Guide:
<http://www.water.state.co.us/pubs/wellpermitguide.pdf>
- ◆ Link to Colorado Ground Water Commission Instructions:
<http://www.water.state.co.us/cgwc/>
- ◆ Link to Citizen's Guide to Colorado Water Law (which also contains a glossary of terms):
www.cfwe.org.
- ◆ Link to Statutory and Rule Changes to Water Court Practice
http://www.courts.state.co.us/userfiles/File/Court_Probation/Water_Courts/Statutory_and_Rule_Changes_to_Water_Court_Practice_Witwer_and_Jones_June_2009.pdf

CONCLUSION.

Water is Colorado's most valuable resource. We hope this guide helps you understand your participation in the water court process.

Prepared by Water Court Committee, Colorado Supreme Court.