

RULE CHANGE 2016(09)

**UNIFORM LOCAL RULES  
FOR ALL  
STATE WATER COURT DIVISIONS**

**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) C.R.C.P. 16(b)-(e), ~~C.R.C.P. 16(f)(3)(VI)(C), and C.R.C.P. 16(g), and C.R.C.P. 26(a)(2)(B)(I)(g)~~ shall ~~be modified as follows:~~ not apply to water court proceedings.

(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 ~~eCase mManagement oOrder~~ 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 this Rule and C.R.C.P. ~~Rules 16 and~~ 26 49 days (7 weeks) 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 77 days (11 weeks) after a case is at issue.

(2) Responsible Attorney. For purposes of this Rule and C.R.C.P. Rule 16(f), 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 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 63 days (9 weeks) after the case is at issue, the responsible attorney shall arrange to 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 35 days after the case is at issue;

(II) An opposing party's disclosure shall be made 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 245 days (35 weeks) 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 182 days (26 weeks) before trial;

(III) An opposer's expert disclosure shall be made at least 126 days (18 weeks) 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 no later than 91 days (13 weeks) 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 54 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 **O**f Experts **T**o Identify Undisputed Matters of Fact and Expert Opinion and **T**o 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 49 days (7 weeks) 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 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 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. In addition, the content of the meetings, including notes taken by the experts or other records of the discussion during these meetings, are not discoverable, and can only be used for purposes of the preparation of the written statements and reports required or permitted by Water Court Rule 11(b)(5)(D). The meetings of the experts shall not include the attorneys for the parties or the parties themselves, unless they are the designated expert(s).

(E) Declaration **B**y 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 63 days (9 weeks) 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 77 days (11 weeks) 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)~~ no later than 119 days (17 weeks) after the case is at issue.

(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 84 days (12 weeks) 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 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 49 days (7 weeks) 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 77 days (11 weeks) 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 ~~e~~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)~~ Subsection (c)(4) of this Rule 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 77 days (11 weeks) 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)~~subsection (c)(4) of this Rule.

(4) Case Management Conference. If there is a disputed Case Management Order or if counsel or unrepresented party believes that it would be helpful to conduct a Case Management Conference, a Notice to Set Case Management Conference shall be filed stating the reasons why such a conference is required. If a Notice to Set Case Management Conference is filed concerning a disputed Modified Case Management Order, or if the Court determines that such a conference should be held, the Court shall set a Case Management Conference. The conference may be conducted by telephone. The Court shall promptly enter a Modified Case Management Order containing such modifications as approved by the Court.

~~(3)~~(5) Amendment of the Case Management Order. At any time following the entry of the Case Management Order, a party wishing to amend the presumptive Case Management Order or a Modified Case Management Order shall file a motion stating each proposed amendment and a specific showing of good cause for the timing and necessity for each modification sought including, where applicable, the grounds for good cause pursuant to C.R.C.P. 26(b)(2).

~~(d) C.R.C.P. 16(e), C.R.C.P. 16(f)(3)(VI)(C), and C.R.C.P. 16(g) shall not apply to water court proceedings.~~

**Form 1.**

District Court, Water Division No. _____, Colorado	<b>▲ COURT USE ONLY</b>
Court Address:	
Concerning the Application for Water Rights of: Applicant:	
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~~1) and Water Court Rule 11 were made by the applicant on \_\_\_\_\_, 20\_\_\_\_. Opposers' C.R.C.P. 26(a)-(~~2~~1) 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 no later than 91 days before trial.

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 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. \_\_\_\_\_

Amended and Adopted by the Court, En Banc, July 12, 2016, effective immediately.

By the Court:

Allison H. Eid  
Justice, Colorado Supreme Court

