

**Colorado Supreme Court
Notice of Proposed Rule and Request for Public Written Comment**

The Colorado Supreme Court proposes to amend the Water Court Rules as follows:

CHAPTER 36
UNIFORM LOCAL RULES FOR ALL STATE WATER COURT DIVISIONS
**(Showing only provisions that contain proposed rule changes.
Proposed changes are shown in strike and add legislative format)**

Rule 2. Filing and Service Procedure

(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

(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~~ OWNERS OR USERS IN COMMON.

(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 GROUND WATER 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 RECORDED COPIES OF a) 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 b) 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 a) THE ORDINANCE OR RESOLUTION DESCRIBED IN C.R.S. § 37-90-137(8) THAT INCORPORATES GROUND WATER, AND b) 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OVERLYING LAND OWNERS MAY FILE A JOINT APPLICATION FOR DETERMINATIONS OR CHANGES OF RIGHTS TO SUCH GROUND WATER TO BE WITHDRAWN THROUGH A “WELL FIELD,” PROVIDED THAT THE APPLICATION MUST CONTAIN SUFFICIENT INFORMATION TO DEMONSTRATE THAT LANDS SUBJECT TO THE APPLICATION MEET THE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 GROUND WATER 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 GROUND WATER 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.

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

(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.

(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.

(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.

(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.

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

(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.

(3) Confer and Exchange Information. No later than ~~15~~ 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~~ 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

(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.

(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.

(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.

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

COLORADO WATER COURT FORMS

Form 1. Sample Modified Case Management Order

District Court, Water Division No. ____, Colorado Court Address: <hr/> Concerning the Application for Water Rights of: Applicant: In the _____ River or its Tributaries In _____ County	<hr/> <p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> Case Number: Division: Courtroom:
<hr/> SAMPLE MODIFIED CASE MANAGEMENT ORDER <hr/>	

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** ~~within 20~~ 91 days *BEFORE TRIAL* ~~after the disclosure was made by the other party.~~

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].

Rationale for proposed rule change

This proposed rule change, if adopted, would convert time periods contained in the current Water Court Rules to uniform increments of 7 in place of the various time periods currently specified in the rules. This would conform to the Civil Rules Committee’s suggestion that all Colorado court rules be converted to “the rule of 7” as with Federal Rules. This proposal does not propose any change for time periods prescribed by Colorado water statutes.

In addition, this proposed rule change proposes to revise Rule 3 to accommodate multiple applicants in a single application for augmentation and exchange plans and non-tributary groundwater applications. These are circumstances involving common ownership or

subdivisions situations in which a single application is a more efficient and economical manger for providing notice and managing the adjudication.

Deadline for filing written comment

Any person desiring to file a written comment on this proposed rule may do so by filing the original and seven copies of the comment no later than Friday, September 30, 2011 at 5:00 p.m. addressed to:

**Clerk of the Colorado Supreme Court
Christopher T. Ryan
101 West Colfax Avenue, 8th Floor
Denver, Colorado 80202**