

Water Court Committee Proposal of November 26, 2008, to Colorado Supreme Court for December 3, 2008 Public Hearing

Alternate to Proposed Rule 2 Showing Changes Marked to Supreme Court's proposal, Together with Suggested Legislative Change

Rule 2, Uniform Local Rules For All State Water Court Divisions

Rule 2. Filing and Service Procedure

(a) For all cases filed after July 1, 2009, applicants and opposers represented by counsel shall electronically file and serve through the approved judicial branch e-filing service provider all applications, pleadings, motions, briefs, exhibits and other documents. C.R.C.P. Rule 121, Section 1-26, Electronic Filing applies to water court filings. ~~Such filing shall relieve the requirement of C.R.S. § 37-92-302 to provide the water clerk with the application or statement of opposition in quadruplicate. The state or division engineer shall also electronically file and serve upon applicants and opposers in the proceedings, their consultation reports described in C.R.S. §§ 37-92- 302(2)(a) & (4).~~ The applicant and parties who are not represented by an attorney shall file with the clerk a single copy of the application and all subsequent documents in original paper format. The water court clerk on behalf of persons not represented by an attorney shall scan and upload such paper-filed documents to the approved judicial branch e-filing system and this shall likewise satisfy the otherwise applicable filing requirements of Article 37, Title 92, of the Colorado Revised Statutes. All documents and correspondence filed after the initial application shall contain the case number. The clerk shall include a certificate of service for every order, ruling or other document e-filed or otherwise served by the clerk to the parties in any water matter.

(b) An applicant shall file and serve upon all parties at least 15 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.

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C.R.S. §37-92-302. Applications for water rights or changes of such rights - plans for augmentation

(1) (a) Any person who desires a determination of a water right or a conditional water right and the amount and priority thereof, including a determination that a conditional water right has become a water right by reason of the completion of the appropriation, a determination with respect to a change of a water right, approval of a plan for augmentation, finding of reasonable diligence, approval of a proposed or existing exchange of water under section 37-80-120 or 37-83-104, or approval to use water outside the state pursuant to section 37-81-101 shall file with the water clerk a verified application setting forth facts supporting the ruling sought, a copy of which shall be sent by the water clerk to the state engineer and the division engineer. The term "determination of a water right or conditional water right" includes any plan or change in plan under the provisions of section 37-45-118 (1) (b) (II) which is or has been incorporated into a decree.

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(b) Any person, including the state engineer, who wishes to oppose the application may file with the water clerk a verified statement of opposition setting forth facts as to why the application should not be granted or why it should be granted only in part or on certain conditions. Such statement of opposition may be filed on behalf of all owners of water rights who by affixing their signatures to such statement of opposition, in person or by attorney, consent to being included in such statement and who may be detrimentally affected by granting of the application. The water clerk shall send a copy of such statement of opposition to the state engineer and the division engineer.

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(c) Such statement of opposition must be filed by the last day of the second month following the month in which the application is filed.

(d) (I) The fee for filing an application, complaint, petition, or any other pleading initiating a water matter shall be the same as that for filing a civil complaint in district court, as provided in section 13-32-101, C.R.S.; except that, for any application seeking a determination of a change of water right or approval of a plan for augmentation, the filing fee shall be twice as much. For filing a statement of opposition, the fee shall be the same as that for filing an answer to a civil action in district

court. A tax of one dollar must be included with every application, pursuant to section 2-5-119, C.R.S. No fee or tax shall be assessed to the state of Colorado or any agency of its executive department under this subsection (1) or subsection (3) of this section, but no other person or entity shall be exempt from such fee or tax.

(II) All fees collected under this paragraph (d) shall be transmitted to the state treasurer and be divided as provided in section 13-32-101, C.R.S.

(e) (Deleted by amendment, L. 2008, p. 2144, § 13, effective June 4, 2008.)

(2) (a) The water judges of the various divisions shall jointly prepare and supply to the water clerks standard forms which shall be used for such applications and statements of opposition. These forms shall designate the information to be supplied and may be modified from time to time. Supplemental material may be submitted with any form. In the case of applications for a determination of a water right or a conditional water right, the forms shall require, among other things, a legal description of the diversion or proposed diversion, a description of the source of the water, the date of the initiation of the appropriation or proposed appropriation, the amount of water claimed, and the use or proposed use of the water. In the case of applications for approval of a change of water right or plan for augmentation, the forms shall require a complete statement of such change or plan, including a description of all water rights to be established or changed by the plan, a map showing the approximate location of historic use of the rights, and records or summaries of records of actual diversions of each right the applicant intends to rely on to the extent such records exist. In the case of applications that will require construction of a well, other than applications for determinations of rights to ground water from wells described in section 37-90-137 (4), no application shall be heard on its merits by the referee or water judge until a written consultation report, as required by subsection (4) of this section, has been submitted and considered. The consultation report shall be submitted within four months after the filing of the application and shall include findings as to whether the construction and use of any well proposed in the application will injuriously affect the owner of, or persons entitled to use, water under a vested water right

or decreed conditional water right. In the case of applications for determinations of rights to ground water from wells described in section 37-90-137 (4), the application shall be supplemented by evidence that the state engineer has issued or failed to issue, within four months of the filing of the application in water court, a determination as to the facts of such application. Such state engineer's determination shall be made by the state engineer upon receipt from the water clerk of a copy of the application, and no separate filing or docketing with the state engineer shall be required.

(b) The application shall be supplemented by evidence that the applicant has, within ten days after filing the application, given notice of the application by registered or certified mail, return receipt requested, to:

(I) In the case of applications for determinations of rights to ground water from wells described in section 37-90-137 (4), every record owner of the overlying land and to every person who has a lien or mortgage on, or deed of trust to, the overlying land recorded in the county in which the overlying land is located, and, for purposes of such notice, the term "person" shall have the same meaning as is set forth in section 37-90-137 (4) (b.5); and

(II) The owner of the land upon which any new diversion or storage structure or modification to any existing diversion or storage structure or existing storage pool is or will be constructed or upon which water is or will be stored. In determining the owner of potentially affected land for purposes of such notice, the applicant may rely upon the real estate records of the county assessor for the county or counties in which the land is located.

(c) The provisions of paragraph (b) of this subsection (2) do not apply to political subdivisions of the state of Colorado, special districts, municipalities, or quasi-municipal districts that have obtained consent to withdraw ground water pursuant to section 37-90-137 (8) or by deed, assignment, or other written evidence of consent where the application concerns only such ground water and, at the time of application, the overlying land is within the water service area of such entity.

(3) (a) Not later than the fifteenth day of each month, the water clerk shall prepare a resume of all applications in

the water division which have been filed in his office during the preceding month. The resume shall give the name and address of the applicant, a description of the water right or conditional water right involved, and a description of the ruling sought. The resume may be provided by the applicant at the time of filing the application or at the time of any republication pursuant to paragraph (b) of this subsection (3), or, if no resume is provided, the water clerk shall prepare the resume for publication. The water clerk shall promptly submit to each applicant a bill for costs incurred by the water court in publishing the resume of the application. No ruling or decree shall be entered prior to payment of the charges.

(b) Not later than the end of such month, the water clerk shall cause such publication to be made of each resume or portion thereof in a newspaper or newspapers as is necessary to obtain general circulation once in every county affected, as determined by the water judge. If, at the request of or as the result of amendments made by an applicant, the resume of an application is republished, the applicant shall pay the cost of such republication. A newspaper in which the resume is published or republished shall directly bill the applicant rather than the water clerk for the costs of publication.

(c) (I) (A) to (C) Repealed.

(D) On and after January 1, 2006, not later than the end of each month, the water clerk shall post a copy of the resume on the water court's web site. Not later than the end of such month, the referee or the water clerk shall send a copy of such resume by mail or electronic mail to any person who the referee has reason to believe would be affected. The water clerk shall notify each person who has requested a copy of the resume by submitting his or her name and electronic mail address to the water clerk of the availability of the resume on such web site. The water clerk shall maintain an electronic mailing list of such names and addresses, and a person desiring to have his or her name and address retained on the list shall resubmit the information by January 5. A person who has not so resubmitted the information shall not be retained on the list, but such person may submit his or her name and electronic mail address at any time thereafter for inclusion on the list subject to the requirements of this section. In order to obtain an electronic mail notification

of the availability of the resume for a particular month, a person's name and address shall be received not later than the fifth day of the month of publication of the resume. A copy of the resume shall be furnished without charge to the state engineer and the appropriate division engineer.

(E) The water clerk shall provide a paper copy of the resume to a person upon payment of the fee required in section 13-32-104 (1) (a), C.R.S.

(II) Repealed.

(d) All publications provided for in paragraph (b) of this subsection (3) may be augmented, in the discretion of the water judge, by notices broadcast over any or all standard radio, FM radio, TV stations, and cable television. Such broadcast notices shall make reference to locations or publications wherein details of the subject matter of the notices are located.

(3.5) In addition to the resume notice required to be given by subsection (3) of this section, any notice of an application for a change of irrigation water rights that constitutes a significant water development activity shall include evidence that the applicant has given notice of the contents of such application by mail within ten days after filing to the:

(a) Board of county commissioners of the county from which the water is being removed;

(b) Board of the school district that encompasses the land from which the water is being removed;

(c) Offices of every water conservancy and water conservation district from which the water is to be removed;

(d) Secretary of every ditch company whose water is involved in the significant water development activity; and

(e) Governing body of every city, city and county, and town that encompasses land from which the water is being removed.

(4) The referee, without conducting a formal hearing, shall make such investigations as are necessary to determine

whether or not the statements in the application and statements of opposition are true and to become fully advised with respect to the subject matter of the applications and statements of opposition. The referee shall consult with the appropriate division engineer or the state engineer or both. The engineer consulted shall file a report in writing within thirty days, unless such time is extended by the referee, which original report shall be filed in the proceedings, and a copy shall be sent by the division engineer to the applicant or his attorney, who shall then send copies to all parties of record if they have not otherwise been served and so certify before any ruling shall be entered or become effective. A water judge who is acting as a referee in his division shall have the same authority as provided for the referee in this subsection (4). If the application is rereferred to the water judge by the referee prior to consultation, the division engineer shall file a written recommendation in the proceedings within thirty days of rereferral, unless such time is extended by the court, and shall send a copy thereof to the applicant or his attorney, who shall send copies to the other parties if they have not otherwise been served before any decree shall be entered or become effective. The water judge may request such written report from the state engineer if he desires.

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(5) Persons alone or in concert may initiate and implement plans for augmentation including water exchange projects. Water conservancy districts, irrigation districts, mutual or public ditch and reservoir companies, municipalities, or other entities which are governed by a board of directors or similar body may initiate and implement plans for augmentation for the benefit of all water users within their boundaries.

(6) The General Assembly recognizes the authority of the Colorado Supreme Court to adopt rules for filing and service of documents, and other case management procedures in water court proceedings. Such rules, if adopted, shall supplement the procedures set forth in this article.