

RULE CHANGE 2022(09)
UNIFORM LOCAL RULES FOR ALL STATE WATER COURT DIVISIONS

Rule 12

Rule 12. Procedure Regarding Decennial Abandonment Lists

For all decennial abandonment lists filed by the Division Engineers pursuant to C.R.S. § 37-92-401(4), the following procedures apply:

a. [NO CHANGE]

b. At any time, the Division Engineer may file motions to correct the final decennial abandonment list to remove water rights, in whole or in part, accompanied by the Division Engineer's sworn statement confirming that, based on determinations made by the Division Engineer prior to filing the final abandonment list, the water rights were incorrectly included on the final decennial abandonment list due to mistake or inadvertence. Upon proper motions, the water court shall grant the Division Engineer's voluntary withdrawal of such abandonment claims without ordering republication and the water rights shall be removed from the decennial abandonment list. Such motions or orders granting such motions shall not be construed to have enhanced or diminished any cause of action or defense which might otherwise exist concerning any abandonment of the removed water rights.

cb. Any protest filed pursuant to C.R.S. § 37-92-401(5) shall automatically trigger a bifurcation from the original case in which the decennial abandonment list was filed without the necessity of a motion to bifurcate or any bifurcation order by the court. Each bifurcated protest case shall be assigned a new case number by the water clerk, shall include a reference to the original abandonment case number, shall include on the service list any counsel of record for the Division Engineer in the original abandonment case, and shall be published in the water court resume and newspapers in accordance with C.R.C.P. ~~Rule~~ 90 and C.R.S. § 37-92-302(3) and with notice of the deadline for any entry of appearance under Water Court Rule ~~12(d)~~ 12(e). The protestor shall be responsible for the costs of publication. Parties to the bifurcated protest cases shall not be considered parties to the original abandonment case for the purpose of filings and service in the original abandonment case, except as provided in Water Court Rule 12(l) ~~12(j)~~.

de. All other Water Court Rules, with the exception of Water Court Rules 3, 6 and 9, apply to the bifurcated protest cases. For the purposes of the applicable Water Court Rules, the final decennial abandonment list shall be considered an application, the Division Engineer shall be considered the applicant, any protest shall be considered a statement of opposition, and any protestant shall be considered an opposer.

ed. Any person who may be affected by the subject matter of a protest or by any ruling thereon and desiring to participate in any hearing pursuant to C.R.S. § 37-92-401(6) must file an entry of appearance by August 31, 2022, or the respective tenth anniversary thereafter. If the water judge permits additional protests after June 30, 2022, or the respective tenth anniversary thereafter, as will serve the ends of justice pursuant to C.R.S. § 37-92-401(6), then any entry of appearance under this Water Court Rule ~~12(d)~~ 12(e) must be filed by the last day of the second month following the month in which an additional protest is filed. An entry of appearance must identify:

(1) the portion of the decennial abandonment list with respect to which the appearance is being made; (2) whether the person is participating in support or in opposition to abandonment of the subject water right(s); (3) any factual and legal basis for any allegation that the person may be affected by the subject matter of the protest or by a ruling on the protest; and (4) any claim of ownership in the subject water right(s).

fe. The at-issue date for a bifurcated protest case shall be 49 days after the deadlines for filing an entry of appearance by any potentially affected persons under Water Court Rule ~~12(d)~~12(e) unless modified by order of the water court entered in the original abandonment case or in a bifurcated protest case. In no event shall the at-issue date precede the deadline for filing an entry of appearance.

gf. For the purpose of the proceedings within the bifurcated protest case, any person entering an appearance under Water Court Rule ~~12(d)~~12(e) in support of abandonment of the subject water right(s) shall have the same case management deadlines and order of presentation at hearing as the Division Engineer unless otherwise ordered by the water judge. Any person entering such an appearance in opposition to abandonment of the subject water right(s) shall have the same case management deadlines and order of presentation at hearing as the protestant(s) unless otherwise ordered by the water judge.

hg. Any person who wishes to participate in a bifurcated protest case after the deadline for filing an entry of appearance must intervene pursuant to Water Court Rule 7.

ih. If it is necessary to determine the ownership of or right to use a water right that is the subject of a protest to the decennial abandonment list in order to determine whether the water right has been abandoned, in whole or in part, then the water judge may exercise jurisdiction over any such controversy. If the water judge elects to exercise jurisdiction over such a controversy, the water judge shall order any party to serve additional notice under C.R.C.P. ~~Rule~~ 4, and to file such supplemental pleadings as the water judge finds necessary or appropriate to resolve such controversy. Any such controversy may be resolved by separate hearing and under a preliminary case management order prior to implementing the case management procedures of Water Court Rule 11 as to the Division Engineer's claim of abandonment. If the water judge does not elect to exercise jurisdiction over such controversy, then the water judge may order the applicable parties to commence a separate proceeding to resolve the controversy and stay further proceedings on the abandonment claim until the that controversy is resolved. If the water judge exercises jurisdiction over issues of ownership in such abandonment proceedings, the water judge will consider any requests by a party as to the place of trial, and venue is proper within any county in the water division notwithstanding C.R.C.P. 98.

ji. Any order of the water court in a bifurcated protest case resolving the alleged abandonment of all or part of any water right that is the subject of a protest shall be entered in the bifurcated protest case and in the original abandonment case. Any party may file a motion in the bifurcated protest case requesting the water court certify an order in a bifurcated case as a final judgment

under C.R.C.P. 54(b) and appellate review shall be allowed as in other water matters. Any order certifying a final judgment in a bifurcated protest case shall be entered in the bifurcated protest case and in the original abandonment case.

k. If no protests have been filed, then promptly after the deadline for filing protests, the water judge shall enter a final judgment and decree incorporating and confirming the decennial abandonment list under C.R.S. § 37-92-401(7), without modification except as to any corrections made under Water Court Rule 12(b). If protests to the final abandonment list have been filed, then no less than 91 days after the deadline for filing any protests, the Division Engineer may file a motion in the original abandonment case for the entry of a final judgment and decree incorporating and confirming the decennial abandonment list as to those water rights with respect to which no protest was filed. No appellate review shall be allowed with respect to a final judgment and decree which confirms a portion of the decennial abandonment list with respect to which no protest was filed.

l. Within 63 days of resolution of all bifurcated protest cases, including any appellate reviews, the Division Engineer shall file a motion in the original abandonment case for a judgment and decree listing: (1) the final decennial abandonment list as filed with the court by the Division Engineer; (2) identification of all orders by case number and date in the bifurcated protest cases and the resolution of the alleged abandonment of all or part of any water right that was the subject of a protest; and (3) a complete listing of the water rights, in whole or in part, abandoned by the water court. No conferral with any person shall be required prior to the Division Engineer filing the motion. In each bifurcated protest case, the Division Engineer shall simultaneously file notice of the filing of the motion in the original abandonment case and a copy of the proposed judgment and decree. Any party to a bifurcated protest case objecting to the form of the proposed judgment and decree may file a response to the Division Engineer's motion in the original abandonment case solely to identify any clerical errors in the proposed judgment and decree within 21 days of the date that notice of the motion's filing was filed and served in the bifurcated protest case, and the Division Engineer may file a reply.

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d. All other Water Court Rules, with the exception of Water Court Rules 3, 6 and 9, apply to the bifurcated protest cases. For the purposes of the applicable Water Court Rules, the final decennial abandonment list shall be considered an application, the Division Engineer shall be considered the applicant, any protest shall be considered a statement of opposition, and any protestant shall be considered an opposer.

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g. For the purpose of the proceedings within the bifurcated protest case, any person entering an appearance under Water Court Rule 12(e) in support of abandonment of the subject water right(s) shall have the same case management deadlines and order of presentation at hearing as the Division Engineer unless otherwise ordered by the water judge. Any person entering such an appearance in opposition to abandonment of the subject water right(s) shall have the same case management deadlines and order of presentation at hearing as the protestant(s) unless otherwise ordered by the water judge.

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i. If it is necessary to determine the ownership of or right to use a water right that is the subject of a protest to the decennial abandonment list in order to determine whether the water right has been abandoned, in whole or in part, then the water judge may exercise jurisdiction over any such controversy. If the water judge elects to exercise jurisdiction over such a controversy, the water judge shall order any party to serve additional notice under C.R.C.P. 4, and to file such supplemental pleadings as the water judge finds necessary or appropriate to resolve such controversy. Any such controversy may be resolved by separate hearing and under a preliminary case management order prior to implementing the case management procedures of Water Court Rule 11 as to the Division Engineer's claim of abandonment. If the water judge does not elect to exercise jurisdiction over such controversy, then the water judge may order the applicable parties to commence a separate proceeding to resolve the controversy and stay further proceedings on the abandonment claim until the that controversy is resolved. If the water judge exercises jurisdiction over issues of ownership in such abandonment proceedings, the water judge will consider any requests by a party as to the place of trial, and venue is proper within any county in the water division notwithstanding C.R.C.P. 98.

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Amended and Adopted by the Court, En Banc, June 3, 2022, effective immediately.

By the Court:

**Monica M. Márquez
Justice, Colorado Supreme Court**