

# DEPARTMENT OF NATURAL RESOURCES

DIVISION OF WATER RESOURCES

## RULES OF PROCEDURE FOR ALL ADJUDICATORY HEARINGS

2 CCR 402 - 3

DIVISION OF WATER RESOURCES

### EDITORS NOTES \*

Rulemaking Authority for this Rule is cited in the Attorney General Opinions listed below. Those opinions may be found in the Code of Colorado Regulations, Attorney General Opinions Volume.

History and Amendments:

pp. 1-5 adopted 4/1/81, effective 6/1/81, 4 CR 5. pg. 5 adopted 8/7/81, effective 10/1/81, 4 CR 9.

A. G. Opinions:

4 AG 92; 4 AG 204

Annotations:

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I. BASIS AND PURPOSE

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1. These rules of procedure implement the Colorado Ground Water Management Act, C.R.S. 1973, 37-90-101 et seq., as amended, hereinafter referred to as the "Act." They shall govern the procedure to be followed by parties in adjudicatory hearings held by the Colorado Ground Water Commission, hereinafter referred to as the "commission."

2. These rules of procedure are intended to establish procedures to assure that all adjudicatory hearings held by the commission are conducted in a fair and impartial manner, to assure that all parties to proceedings under the Colorado Ground Water Management Act are accorded due process of law, and to provide the commission with all relevant facts and information pertinent to decision making. These rules shall be construed to carry out these purposes.

3. These rules of procedure are promulgated pursuant to C.R.S. 1973, 37-90-113, as amended, and 24-4-103, as amended.

II. APPLICABILITY OF STATE ADMINISTRATIVE PROCEDURE ACT

The procedures described in the State Administrative Procedure Act, C.R.S. 1973, 24-4-101, et seq., as amended,

shall apply to all adjudicatory hearings held by the commission. Specifically, the provisions of C.R.S. 1973, 24-4-105, as amended, shall apply to all hearings unless such provisions are inconsistent with specific provisions of the Ground Water Management Act, in which case the Ground Water Management Act shall control.

### III. PREHEARING CONFERENCES

A prehearing conference may be held if deemed advisable by the commission or the hearing officer assigned to the case. A request for a prehearing conference may be made in writing to the commission or the hearing officer at least 30 days before the scheduled hearing. The prehearing conference shall be for the purpose of facilitating the adjudication of issues to be determined at the hearing. The scope of issues to be raised at the prehearing conference shall be determined by the chairman of the commission or the hearing officer. Prehearing conferences shall be held in the commission offices in Denver unless it is determined by the chairman of the commission or the hearing officer that the conference should be held at some other location. The commission or the hearing officer may hold prehearing conferences by telephone at their discretion for the convenience of the parties.

#### IV. DISCOVERY

Any party seeking to use discovery pursuant to the Colorado Rules of Civil Procedure shall first attempt to obtain the information or documents requested informally. All further discovery shall be conducted pursuant to the Colorado Rules of Civil Procedure.

Subpoenae shall be issued by the hearing officer or the commission in accordance with C.R.S. 1973, 24-4-105(5), as amended, on forms provided to the hearing officer or the commission by the party requesting the subpoena.

#### V. CONDUCT OF HEARINGS

1. The hearing officer shall determine the order in which the parties shall present their cases, except that unless good cause is shown, the applicant or petitioner or whichever party shall be determined to bear the burden of proof, shall proceed first.

2. With respect to the submission of evidence, the Colorado Rules of Evidence shall be adhered to to the extent deemed appropriate by the hearing officer, and in accordance with the provisions of C.R.S. 1973, 24-4-105(7), which provides as follows:

(7) Except as otherwise provided by statute, the proponent of an order shall have the burden of proof, and every party to the proceeding shall have the right to present his case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Subject to these rights and requirements, where a hearing will be expedited and the interests of the parties will not be substantially prejudiced thereby, a person conducting a hearing may receive all or part of the evidence in written form. The rules of evidence and requirements of proof shall conform, to the extent practicable, with those in civil nonjury cases in the district courts. However, when necessary to do so in order to ascertain facts affecting the substantial rights of the parties to the proceeding, the person so conducting the hearing may receive and consider evidence not admissible under such rules if such evidence possesses probative value commonly accepted by reasonable and prudent men in the conduct of their affairs. Objections to evidentiary offers may be made and shall be noted in the record. The person conducting a hearing shall give effect to the rules of privilege recognized by law. He may exclude incompetent and unduly repetitious evidence. Documentary evidence may be received in the form of a copy or excerpt if the original is not readily available; but, upon request, the party shall be given an opportunity to compare the copy with the original. An agency may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.

3. The hearing officer may examine any witness appearing before him.

VI. PARTICIPATION OF THE GROUND WATER COMMISSION STAFF

The staff of the Ground Water Commission may appear to present any testimony or evidence relevant to any matter being heard by the commission or its hearing officer. The staff shall be represented by the attorney general.

VII. TIME FOR FILING APPEALS OF ORDERS OF THE GROUND WATER COMMISSION OR THE STATE ENGINEER

A. The basis and purpose of this rule are the same as stated in Rule I of the Rules of Procedure for All Adjudicatory Hearings Before the Ground Water Commission (2 CCR 402-3). Rule I is incorporated herein by reference and is hereby re-affirmed.

B. Any person who wishes to request a hearing on or claim injury from an order of the Ground Water Commission or the State Engineer pursuant to C.R.S. 1973, 37-90-114, shall file a written statement with the commission setting forth the grounds for the request for hearing or claim of injury within 30 days of receipt of the order.

After receipt of such a request for hearing or claim of injury, the commission shall conduct a hearing thereon.

C. This rule shall be effective on October 1, 1981.