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ADVANCE SHEET HEADNOTE

June 23, 2026

2026 CO 54

**No. 26SA15, *In Re Arrowhead v. Roxborough Park Foundation*—Eminent Domain Proceedings—Condemnation Hearings—Civil Procedure.**

In this original proceeding under C.A.R. 21, the supreme court concludes that the trial court erred in finding it lacked discretion to order prehearing discovery in condemnation proceedings. Instead, the supreme court holds that C.R.C.P. 26(d) and 26(b)(2) grant trial courts the discretion to order discovery, while C.R.C.P. 16(b)(1) grants trial courts the authority to deem a case “at issue” which then enables the court to authorize discovery. Accordingly, the supreme court makes the order to show cause absolute and remands the case to the trial court to determine, in its discretion, whether to grant or deny the Foundation's request for prehearing discovery.

**The Supreme Court of the State of Colorado**  
2 East 14th Avenue • Denver, Colorado 80203

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**2026 CO 54**

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**Supreme Court Case No. 26SA15**  
*Original Proceeding Pursuant to C.A.R. 21*  
Douglas County District Court Case No. 25CV31109  
Honorable Ben Leutwyler, Judge

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**In Re**  
**Petitioner:**

Arrowhead Colorado Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado,

v.

**Respondents:**

Roxborough Park Foundation, a Colorado nonprofit corporation; City and County of Denver, acting through its Board of Water Commissioners, a Colorado home rule municipality; Public Service Company of Colorado, a Colorado Corporation; Red Rocks Cablevision Limited Partnership, a Colorado limited partnership; Roxborough Water and Sanitation District, a quasi-municipal corporation and political subdivision of the State of Colorado; Bradley J. Phillips, an individual; Tisha K. Fujii, an individual; Polly P. Lawrence, an individual; Roye Varghese, an individual; Tinsy Elizabeth Varghese, an individual; Stanley R. Brown Trust; Marilyn M. Brown Trust; Carpenter Trail LLC, a Colorado limited liability company; Eagles Nest Owners Association Inc., a Colorado nonprofit corporation; Denver Vista LLC, a Colorado limited liability company; The Board of County Commissioners of the County of Douglas, Colorado, a political subdivision of the State of Colorado; Core Electric Cooperative, a Colorado Cooperative Association, formerly known as Intermountain Rural Electric Association; West Metro Fire Protection District, a quasi-municipal corporation and political subdivision of the State of Colorado; Naul Hahn Manthe, an individual; Tanna Rae Manthe, an individual; and David Gill, in his official capacity as the Treasurer of Douglas County.

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**Order Made Absolute**

*en banc*

June 23, 2026

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**JUSTICE BLANCO** delivered the Opinion of the Court, in which **CHIEF JUSTICE MÁRQUEZ**, **JUSTICE BOATRIGHT**, and **JUSTICE HOOD**, **JUSTICE GABRIEL**, **JUSTICE SAMOUR**, and **JUSTICE BERKENKOTTER** joined.

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JUSTICE BLANCO delivered the Opinion of the Court.

¶1 This case involves a discovery dispute between a community association, Roxborough Park Foundation (“the Foundation”), and a quasi-municipal corporation and political subdivision, Arrowhead Colorado Metropolitan District (“Arrowhead”). Arrowhead seeks to exercise the power of eminent domain to condemn easements over two of the Foundation’s private roads.

¶2 Before the trial court’s hearing on whether Arrowhead could take immediate possession of the roads, the Foundation moved for expedited prehearing discovery, which Arrowhead opposed. The trial court denied the motion, concluding that neither the eminent domain statutes nor the Colorado Rules of Civil Procedure (the “Rules”) allowed for prehearing discovery. Because we conclude that C.R.C.P. 26(d), C.R.C.P. 26(b)(2), and C.R.C.P. 16(b)(1) grant trial courts discretion to order prehearing discovery, including in condemnation proceedings, we make the order to show cause absolute and remand the case to the trial court to exercise its discretion and rule on the Foundation’s discovery motion.

### **I. Facts and Procedural History**

¶3 This case arises from the proposed condemnation of easements around a plot of land located in Roxborough Park, Douglas County, known as the “Homestead Parcel.” The Foundation owns the land, roads, and pathways around

the Homestead Parcel, while Arrowhead's related entity, Arrowhead Colorado Propco, LLC, owns the Homestead Parcel. For that reason, Arrowhead sought easements across the Foundation's land and filed a petition in condemnation. Further, in line with Colorado's eminent domain statutory scheme, Arrowhead asserted that it was entitled to immediate possession of this property, specifically under section 38-1-105(6)(a), C.R.S. (2025). An immediate possession hearing was expedited and set for January 30, 2026. On November 18, 2025, the Foundation moved the trial court for limited and expedited discovery, asserting that such discovery was essential to its preparation for the January hearing.

¶4 The trial court denied the motion, concluding that neither sections 38-1-101 to -122, C.R.S. (2025), nor the Rules allowed for prepossession discovery. *Arrowhead Colo. Metro. Dist. v. Roxborough Park Found.*, No. 25CV31109, at 2, (Dist. Ct., Douglas Cnty., Dec. 22, 2025) (unpublished order). First, it concluded that sections 38-1-101 to -122 make no provision for discovery; therefore, the Rules control. *Id.* Next, the court noted that the Rules permit discovery only after a case management order is served, which in turn requires a case to be "at issue." *See* C.R.C.P. 26(d), 16(b)(1). The court then interpreted Rule 16(b)(1) to mean that trial courts may deem a case "at issue" only once all necessary pleadings had been filed. *Arrowhead*, at 2. The court concluded that because condemnation proceedings do

not require responsive pleadings, such a case can never be “at issue,” and therefore, discovery is not permitted. *Id.*

¶5 The Foundation sought relief under C.A.R. 21, asserting that it was entitled to prehearing discovery. We issued an order to show cause.<sup>1</sup>

## II. Analysis

¶6 We start by explaining our decision to exercise our original jurisdiction and then discuss the applicable standard of review. Next, we examine the plain language of the Rules before applying them to this case.

### A. Original Jurisdiction

¶7 Relief under C.A.R. 21 is an extraordinary remedy, and the decision to exercise original jurisdiction rests solely in our discretion. C.A.R. 21(a)(2); *In re Marriage of Green*, 2024 CO 24, ¶ 8, 547 P.3d 1095, 1097. We have previously held that we may exercise our original jurisdiction by granting a C.A.R. 21 petition to “review a trial court’s pretrial orders when an appellate remedy would be inadequate.” *People v. Sotade*, 2025 CO 38, ¶ 11, 570 P.3d 491, 494. This rule applies here. Although this pretrial discovery order is appealable through the ordinary appellate process, the order would not be *curable* through the ordinary appellate

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<sup>1</sup> The issue present by the Foundation in its C.A.R. 21 petition is as follows:

Whether a respondent landowner who has a good faith basis for challenging condemnation should be afforded the opportunity to conduct discovery prior to an immediate possession hearing.

process. Without review at this stage, Arrowhead could take immediate possession of the Homestead Parcel and potentially damage the property before any appeal process could even begin. *See Direct Sales Tire Co. v. Dist. Ct.*, 686 P.2d 1316, 1318 (Colo. 1984) (exercising our C.A.R. 21 original jurisdiction over a pretrial discovery order because it “may cause unwarranted damage to a litigant that cannot be cured on appeal”).

### **B. Standard of Review**

¶8 We generally review a trial court’s discovery order for an abuse of discretion. *Trenshaw v. Jennings*, 2025 CO 23, ¶ 24, 568 P.3d 413, 421. However, in the case at hand, we address a trial court’s interpretation of a statute and the Rules, which presents a legal question that we review de novo. *Miller v. Amos*, 2024 CO 11, ¶ 11, 543 P.3d 393, 396.

¶9 In interpreting the Rules, we use the same canons that guide our interpretation of statutes. *People v. Bueno*, 2018 CO 4, ¶ 18, 409 P.3d 320, 325. When doing so, we look to “the plain meaning of the language used, considered within the context of the statute as a whole.” *Bly v. Story*, 241 P.3d 529, 533 (Colo. 2010). If the language is clear, then there is no need to resort to other rules of statutory construction and we will apply the text as written. *People in Int. of B.C.B.*, 2025 CO 28, ¶ 26, 569 P.3d 74, 79. Additionally, we avoid constructions and interpretations that would render any statutory words or phrases superfluous or that would lead

to illogical or absurd results. *N. Integrated Supply Project Water Activity Enter. v. VIMA Partners, LLC*, 2026 CO 29, ¶ 10, 588 P.3d 727, 731. Accordingly, we will neither add words to nor subtract words from a rule or statute. *Byers Peak Props., LLC v. Byers Peak Land & Cattle, LLC*, 2026 CO 7, ¶ 25, 583 P.3d 97, 103.

### **C. Prehearing Discovery**

¶10 In this case, the trial court concluded that it lacked authority to grant the Foundation’s motion for expedited discovery under either sections 38-1-101 to -122 or the Rules. *Arrowhead*, at 2. We agree regarding the statutory sections but disagree regarding the Rules.

¶11 First, we agree with the trial court that sections 38-1-101 to -122 make no explicit provision for discovery. This does not, however, indicate that the legislature intended to either eliminate or confer any particular rights regarding discovery in condemnation actions. *See Turbyne v. People*, 151 P.3d 563, 568 (Colo. 2007) (explaining that when a statute is silent on a subject, we may not infer the legislature’s meaning). Rather, it simply means that these sections are not determinative of the discovery issue here.

¶12 Additionally, section 38-1-121(3), C.R.S. (2025), indicates that the legislature did not intend for parties in condemnation proceedings to be divested of otherwise available discovery rights. Section 38-1-121(3) states that “[n]othing in this section shall be construed as in any way . . . limiting the discovery rights of parties to

eminent domain proceedings.” In this context, “eminent domain proceedings” are not confined to any single type of hearing or trial (such as a valuation trial) but rather encompass all hearings that form the eminent domain process. *See Town of Telluride v. Lot Thirty-Four Venture, L.L.C.*, 3 P.3d 30, 35 (Colo. 2000) (stating that “[i]n assessing the plain language, the court should not read a statute to create an exception that the plain language does not suggest, warrant, or mandate”). Thus, the statute suggests that discovery rights extend to condemnation proceedings as well.

¶13 Although section 38-1-121(3) suggests that discovery rights apply to condemnation hearings, it does not directly address a trial court’s authority to order discovery. Accordingly, we turn to the Rules. *See C.R.C.P. 1(a)*; *see, e.g., Myers v. Myers*, 135 P.2d 235, 236 (Colo. 1943) (reasoning that, in the divorce context, the Rules govern because the relevant statute was silent on the necessary procedure).

¶14 We hold that the Rules empower the trial court with discretion to order discovery in condemnation proceedings. Rule 26(d), Rule 26(b)(2), and Rule 16(b)(1) each grant trial courts discretion to authorize discovery in condemnation proceedings.

¶15 At the outset of its analysis, the trial court noted that Rule 26(d) provides that “a party may not seek discovery from any source before the service of the Case

Management Order pursuant to C.R.C.P. 16(b).” *Arrowhead*, at 2. For this reason, the trial court turned to Rule 16(b)(1). *Id.* But this reading overlooks the Rule’s crucial introductory language. Rule 26(d) begins by stating: “*Except when authorized by these Rules, by order, or by agreement of the parties. . . .*” C.R.C.P. 26(d) (emphases added). Under the plain language of the rule, a trial court may order discovery before a case management order has been served. Had the court found the Foundation’s motion for prehearing discovery persuasive, it could have authorized discovery based on Rule 26(d) alone.

¶16 Rule 26(b)(2) likewise vests the trial court with discretion to order discovery in a condemnation proceeding. Generally, Rule 26(b) “defines the permissible scope of discovery in any given case.” *DCP Midstream, LP v. Anadarko Petroleum Corp.*, 2013 CO 36, ¶ 5, 303 P.3d 1187, 1190. Black’s Law Dictionary defines the “scope of discovery” as “[t]he limits within which a court allows litigants to employ pretrial procedures aimed at finding or ascertaining information relevant to the litigation.” *Scope of Discovery*, Black’s Law Dictionary (12th ed. 2024). Rule 26(b)(2), in particular, grants trial courts discretion to limit discovery orders for “good cause shown.” C.R.C.P. 26(b)(2).

¶17 Applying these Rules and definitions, a trial court may limit or otherwise manage the parties’ participation in pretrial discovery based on its own finding of good cause. Good cause is determined by any of the four factors set out in C.R.C.P.

26(b)(2)(F) or by any other factors a court may consider pertinent given the needs of the case. *See DCP Midstream*, ¶ 9, 303 P.3d at 1191; *see also In re Marriage of Gromicko*, 2017 CO 1, ¶ 30, 387 P.3d 58, 63. Therefore, in condemnation proceedings, a trial court may consider any factors it deems pertinent and exercise its discretion to grant or deny the motion.

¶18 Thus, the trial court did not need to reach the question of whether the case was “at issue” under Rule 16(b)(1), because it could have ordered discovery under Rule 26(d) or Rule 26(b)(2).

¶19 The trial court did, however, reach Rule 16(b)(1) and ended its inquiry after noting that a case becomes “at issue” when all parties have been served and the required responsive pleadings are filed. *See* C.R.C.P. 16(b)(1). That is correct, but Rule 16(b)(1) further provides that a case may also be deemed “at issue” – and discovery may be ordered – “at such other time as the court may direct.” *Id.* Specifically, Rule 16(b)(1) states:

A case shall be deemed at issue when all parties have been served and all pleadings permitted by C.R.C.P. 7 have been filed or defaults or dismissals have been entered against all non-appearing parties, *or at such other time as the court may direct.* The proposed order shall state the at issue date.

C.R.C.P. 16(b)(1) (emphasis added).

¶20 The trial court understood this provision to mean that a case is not deemed “at issue” until all parties have been served and all pleadings permitted under

Rule 7 have been filed, or defaults entered as described in the first clause of Rule 16(b)(1). And given that the language of section 38-1-109, C.R.S. (2025) does not require responsive pleadings, the trial court concluded that condemnation cases brought under section 38-1-109 could never satisfy Rule 16(b)(1).

¶21 However, this reading of Rule 16(b)(1) overlooks the rule’s plain and relevant language “or at such other time as the court may direct.” We generally presume that the word “or” is used in the disjunctive, presenting alternative possibilities. *See Armintrout v. People*, 864 P.2d 576, 581 (Colo. 1993) (“[W]hen the word ‘or’ is used in a statute, it is presumed to be used in the disjunctive sense, unless legislative intent is clearly to the contrary.”); *see also Campos-Chaves v. Garland*, 602 U.S. 447, 457 (2024) (“The word ‘or’ is ‘almost always disjunctive.’” (quoting *Encino Motorcars, LLC v. Navarro*, 584 U.S. 79, 87 (2018))). Thus, the plain language of Rule 16(b)(1) establishes two alternative paths for deeming a case “at issue.” The first applies when all parties have been served, all relevant pleadings have been filed, and defaults or dismissals have been entered against non-appearing parties. The second permits a court to deem a case “at issue” whenever it determines that doing so is appropriate.

¶22 Therefore, trial courts retain discretion to determine when a case is “at issue” even when the first pathway is inapplicable. By failing to give effect to the language “or at such other time as the court may direct,” the trial court departed

from our long-established principle that courts may not subtract words from rules or statutes. See *Turbyne*, 151 P.3d at 567. In concluding that it lacked authority to order discovery, the trial court rendered this language superfluous, and therefore erred. *N. Integrated Supply Project Water Activity Enter.*, ¶ 10, 588 P.3d at 731.

¶23 Notwithstanding the plain language of the rules, Arrowhead contends that *Carousel Farms Metropolitan District v. Woodcrest Homes, Inc.*, 2019 CO 51, ¶ 36, 442 P.3d 402, 411, supports its position that discovery is precluded in an immediate possession hearing due to the hearing's expedited nature. We disagree. *Carousel Farms* discussed the public use requirement within eminent domain proceedings, not the timeliness or propriety of discovery. Nothing in *Carousel Farms* precluded discovery in the context of an immediate possession hearing. Furthermore, we see *Carousel Farms* as factually distinguishable from the case at hand. In *Carousel Farms*, the taking at issue was for a public benefit. ¶ 27, 442 P.3d at 409. Thus, *Carousel Farms* did not hold that condemnation is permissible in all circumstances where there is a legitimate factual dispute about whether the condemnation serves a public purpose, as is the case here.

¶24 Arrowhead also relies on *American Family Mutual Insurance Co. v. American National Property & Casualty Co.*, 2015 COA 135, ¶ 46, 370 P.3d 319, 330, where, in the context of a hearing on a motion to dismiss, the court of appeals affirmed a trial court's denial of discovery prior to the case being "at issue" because "no good

cause has been shown.” Arrowhead likens that C.R.C.P. 12(b)(5) hearing to the immediate possession hearing at hand here, asserting that both involve expedited requests and therefore allow discovery only upon a showing of good cause. We deem this case distinguishable. Discovery related to a Rule 12(b)(5) hearing, which concerns the sufficiency of a complaint’s allegations and a party’s ability to meet pleading standards, is fundamentally different from discovery in an immediate possession hearing, which is a merits-based proceeding. Therefore, the parties’ discovery needs in each context differ significantly.

¶25 In sum, Rules 26(b)(2), (d), and 16(b)(1) grant trial courts both the discretion to order discovery and the authority to determine when a case is “at issue,” enabling the court to authorize discovery. Here, the trial court should exercise that discretion in deciding whether to grant or deny the Foundation’s request for discovery.

### **III. Conclusion**

¶26 For these reasons, we make the order to show cause absolute and remand the case to the trial court to exercise its discretion in determining whether to grant or deny the Foundation’s request for pretrial discovery.