SUPREME COURT, STATE OF COLORADO

The Colorado Supreme Court's Water Court Committee

Committee History and Purpose

In December 2007, then Chief Justice Mary J. Mullarkey signed an order establishing the Water Court Committee of the Colorado Supreme Court. It is now a permanent standing committee of the court, currently chaired by Justice Greg Hobbs. Its ongoing charge is to review the water court process and recommend to the General Assembly, the Governor, and the Supreme Court possible ways to improve fair, timely, and effective water court proceedings.

Rule Changes in 2009 to Improve Water Court Process

In 1969, the Colorado General Assembly established seven water courts in the state, each with a water judge, an alternate water judge, a referee, and a division engineer. All judgments of the water courts are subject to direct appeal to the Colorado Supreme Court. Following a lengthy study and public comment, the Colorado Supreme Court in 2009 adopted amendments to the Uniform Local Rules for all State Water Court Divisions. Many commentators had criticized the costly length of delays before issuance of a final water decree. As a result, changes to Rule 6 (referee proceedings, 18 month maximum to obtain consent decree) and Rule 11 (water judge proceedings, goal of 12 months to resolve case prior to trial) created a clear path to more timely decisions. Under the revised rules, judicial officers are active case managers from the outset of every water court filing. An important part of this process is division engineer consultations with the water referees and water judges. The rule changes appear to have had a positive, measurable impact in reducing unnecessary delay and uncertainty.

What was the Impact of the 2009 Rule Changes?

Statistics and analysis provided by the Colorado State Court Administrator's Office

Fewer Cases are Awaiting Decision

The number of open, active water cases has decreased by over 50% in the two largest water divisions since rule changes went into effect in July of 2009. There are fewer cases awaiting a ruling because the changes to Rule 6 and Rule 11 have created a more predictable case management system that emphasizes early, active case management. The tables on page two provide additional information on the decreases in the number of open cases since the rule changes went into effect.

Less Backlog in Division One

(Located in Greeley, Colorado)

4th Quarter, 2009: 966 open cases

Age of Case	Total
2 years or less	516
2-5 years	210
5-10 years	178
Over 10 years	62
Total	**966**

1st Quarter, 2014: 418 open cases

Age of Case	Total
2 years or less	253
2-5 years	58
5-10 years	79
Over 10 years	28
Total	**418**

Division One has ***548*** fewer active water cases today than at the end of 2009—a 57% decline.

Less Backlog in Division Five

(Located in Glenwood Springs, Colorado)

4th Quarter, 2009: 524 open cases

Age of Case	Total
2 years or less	351
2-5 years	133
5-10 years	30
Over 10 years	10
Total	**524**

1st Quarter, 2014: 242 open cases

Age of Case	Total
2 years or less	161
2-5 years	31
5-10 years	43
Over 10 years	7
Total	**242**

Division Five has ***282*** fewer active water cases today than at the end of 2009—a 54% decline.

Cases Take Less Time to Resolve Statewide

Water cases filed statewide *after* the new rules took effect resolve six months sooner than those filed before the rule changes.

- Cases filed in the three fiscal years before the rule changes took almost 1.5 years to resolve on average
- Cases filed after the rule changes resolve in about a year

The tables on the following page provide additional information on time needed to resolve water cases before and after the rule changes.

Before Water Rule Changes--Time to Disposition

By fiscal year in which a case was filed

Includes all Water Divisions

Fiscal Year Case Filed	Average Age at Disposition (in days)	Percentage of Cases Filed that are Closed
FY 2007	564	98%
FY 2008	550	96%
FY 2009	515	97%
All Years	**542**	**97%**

After Water Rule Changes--Time to Disposition

By fiscal year in which a case was filed

Includes all Water Divisions

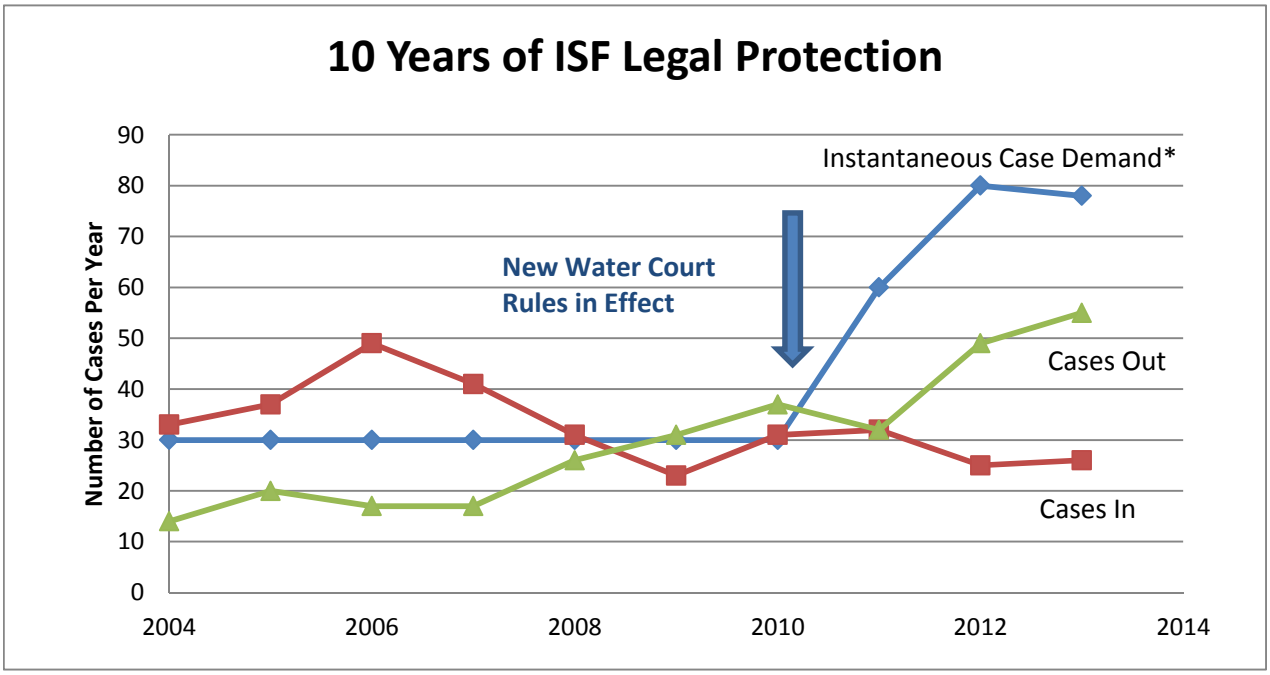
Fiscal Year Case Filed	Average Age at Disposition (in days)	Percentage of Cases Filed that are Closed
FY 2010	416	96%
FY 2011	380	93%
FY 2012	312	89%
FY 2013	228	75%
All Years	**347**	**89%**

Disposition data through May 2013

<u>The New Rules Frontload the Work by Attorneys and Engineers</u>

Consistent with the fact that cases filed statewide *after* the new rules took effect resolve six months sooner than those filed before the rule changes, one would expect that the lawyers and engineers must be working on the cases earlier. Data collected by the Colorado Water Conservation Board on In-stream Flow cases shows this dramatically.

- Prior to the new rules, cases were coming in faster than they were being resolved.
- After the rule changes, cases have closed at a rate greater than new filings.
- Lawyers (and by inference, engineers) are working harder early in the cases.
- There are cost savings for the parties and the courts in these changes.



Note: "Instantaneous Case Demand" represents the immediate workload for attorneys (i.e. motions, deadlines for briefs, writing of terms for proposed decrees), and by inference engineers, at a given moment. There are fewer cases but more work being done earlier in the cases.

In summary, water cases are moving through the judicial process sooner, but further improvement is subject to resource limitations such as the availability of public and private engineering, along with the required field work, analysis, and reports.