

Media Alert

Colorado Judicial Branch
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Business in Colorado water courts

What are water courts?: The Water Right Determination and Administration Act of 1969 created seven water divisions based upon the drainage patterns of various rivers in Colorado. Each water division and basin is staffed with a division engineer, appointed by the state engineer; a water judge (an active district judge assigned to a water division), appointed by the Colorado Supreme Court; a water referee, appointed by the water judge; and a water clerk, assigned by the district court. Water judges have jurisdiction over surface water and tributary groundwater. They determine water rights, changes of water right, augmentation plans, the use and administration of water, and all other water matters within the jurisdiction of the water divisions.

The Colorado legislature enacted the Colorado Groundwater Management Act in 1965. Each of the eight designated groundwater basins has a district judge, appointed by the Supreme Court, to preside over any matters involving the 1965 act and involving underground water in their designated district. Like the water judges, each of the groundwater judges sits as a district judge and hears the regular docket in addition to any groundwater cases. Groundwater Basins are administered by the Colorado Groundwater Commission and thirteen local groundwater districts. Designated ground water basins exist on the eastern high plains where there is little surface water and ground water is the predominant source of supply, from either the Ogallala Aquifer or deep non-tributary aquifers.

Specific information regarding each of the seven water divisions and the eight designated groundwater basins is available at <http://www.courts.state.co.us/supct/supctwaterctindex.htm>.

Water cases: Because water judges are also district judges, proceedings in water cases compete with all the other kinds of cases on the docket. Under the current prevailing caseloads in Colorado courts, calendars are full far into the future. Litigation in general, is becoming more complicated with more motions, hearings and longer trials. While some case types in the court system have mandatory deadlines such as speedy trial requirements in criminal cases, and cases concerning young dependent and neglected children, water cases do not.

Scrutiny: In general, the state's waters are "over-appropriated" in the South Platte, Arkansas, and Rio Grande basins, with a disputed amount of yet to be developed water in the Colorado River Basin. So, every application is scrutinized carefully. Because of the over-appropriation, there are dozens of objectors that oppose every significant application. Many of the applications are very complex involving augmentation plans (generally, these are plans that replace depletions to groundwater that affect seniors holding senior surface stream rights) with multiple structures such as wells and reservoirs that are not reflected in the filing numbers. One filing may include 200 or more claims. For example, an application for one well and an application involving 1,000 structures each counts as "one filing" when water court statistics are compiled.

Parties: In Colorado there are relatively few water engineers and water lawyers, particularly in complex water cases. If the engineer or lawyer has a complex case going before one water judge, they generally do not want to double set with a judge in another division. As a result, cases may proceed slowly. Even with agreement in principle on a potential settlement, it takes months or years to fine-tune a document that must be reviewed by multiple attorneys and engineers.

Often water engineering studies are very time consuming. Circulating each study to other engineers for study, comment, revision of prior opinions and proposals takes time. The engineering and appropriate legal language then needs to be combined. The division engineers are typically understaffed and are hard pressed to act quickly to make the diligent study and recommendation expected in every application.

The number of entities filing objections to every application is growing. All parties tend to be conscious that Colorado is an arid climate and that owners of existing water rights must be vigilant to protect their interests. Some of these entities are well financed and retain their own expert engineers.

There is a strong culture of negotiating agreements as opposed to litigation. Comprehensively litigating any case is extremely expensive, time consuming, and at this time there are many uncertainties as to outcome. With so many experts and parties, once a case is tracked for litigation the depositions and preparation of formal expert engineering reports are not something that can be accomplished quickly.

Example 1: On the South Platte River some of the major augmentation plans being litigated are used to provide sources of replacement water for the wells that have been shut down as a result of recent court decisions and legislation. For example, there was one four-week trial scheduled to begin in May 2005 that was set two years ago involving some 998 structures. This is the second of six cases involving large augmentation plans brought by one applicant that uses the same law firm and engineers. The parties' last trial is scheduled in January 2007 only because the applicant and its experts cannot prepare the cases any faster or at the same time as its other cases.

Example 2: Many water cases involve change of use from irrigation to municipal or industrial use. When a user wants to change the use or point of diversion anywhere on the South Platte River or its tributaries, both upstream and downstream users challenge the application because such changes can affect their water rights. That means challenges can come from water users as far apart as Douglas County and Sedgwick County. Even developers of small subdivisions in the foothills and on the plains that are applying for relatively small quantities of water rights are facing stiff opposition. The process takes a considerable amount of time for the applicants to complete the engineering and overcome any resistance even if the individual case is settled without a contested trial. The water courts must give the litigants an opportunity to work out contested applications because any water court trial is expensive for all sides to the case.

Caseloads: Statistical reports of water court filings and claims are available at <http://www.courts.state.co.us/panda/statrep/pandaannualsindex.htm>.