



STATE OF UTAH
DIVISION OF
WATER RIGHTS

Administrative Enforcement Procedures: A Brief Explanation

What are the steps in a Division of Water Rights enforcement action?

- Referrals are investigated and evaluated;
- Informal efforts are made to assure violator is aware of the issue under investigation;
- If warranted, an Initial Order is issued;
- A preliminary conference may be held;
- A hearing may be held, if timely requested;
- A Final Order is issued;
 - Reconsideration of the Final Order may be requested and granted;
 - A Final Order may be amended or set aside;
 - A Final Order may be appealed to District Court;
- Compliance inspections may be held.

Why did I receive an Initial Order [Notice of Violation (NOV) and/or Cease and Desist Order (CDO)]?

Investigations have documented non-compliance with a State Engineer notice or order, or non-compliance with the authorized diversion, impoundment or use of water or other statute administered by the Division of Water Rights (Division).

Who can I talk to about an Initial Order?

The Division staff member currently assigned to coordinate enforcement actions is:

Kurt Vest, Enforcement Engineer

Telephone: (435) 586-4231

E-mail: kurtvest@utah.gov

Office: 646 North Main Street

P. O. Box 506

Cedar City, UT 84721-0506

What if I don't agree with the alleged violations or non-compliance?

You have the right to request a hearing on the issues involved in the Initial Order. You also have the right to respond to the Initial Order with documentation rebutting the allegations.

How do I request a hearing?

All hearing requests must be made in writing and submitted through one of the three options described in this brochure. The request must include the State Engineer Agency Action (SEAA) number and must clearly and concisely state the specific issues that are in dispute, the supporting facts, and the relief sought. A hearing request must be *received* by the Presiding Officer within fourteen (14) days of the date the Initial Order was issued.

How do I respond to an Initial Order?

All responses must be in writing and submitted through one of the three options described in this brochure. The response must be *received* within 14 days of the date the Initial Order was issued. Your response must include information that you believe is relevant and that raises a genuine issue of material fact concerning the alleged violation or non-compliance.

What Are The Options For Filing

Submittals? There are three options for filing a hearing request and/or response to an Initial Order:

1) You may file by regular mail to the Presiding Officer listed in the Initial Order. The response

must be *received* before the expiration of the deadline associated with the submittal.

2) You may file electronically according to the directions included in the Initial Order.

3) You may file by FAX to the Presiding Officer at the FAX number listed in the Initial Order.

If filing electronically or by FAX, the signed original document must be submitted by regular mail, *postmarked* on or before the deadline date. All papers filed with the Division must be legibly hand-printed or typewritten on 8½ x 11-inch paper and must be signed and dated by you or your authorized representative. If necessary, maps may be larger than 8½ x 11-inches.

Is it possible to get an extension of time?

An extension of time may be granted for good cause shown. A request for an extension must be *received* before the end of the pertinent time period. It must be made in writing to the Presiding Officer and submitted through one of the three options described in this brochure.

Who is the Presiding Officer?

Any qualified person designated by the State Engineer may serve as the Presiding Officer. This will usually be an Assistant State Engineer or Deputy State Engineer, but a Region Engineer may be designated. The Presiding Officer's contact information for each enforcement action is listed in the Initial Order.

What if I recognize or agree that I may have violated the water law or not complied with a notice or order of the State Engineer?

You may request a hearing or preliminary conference before the Presiding Officer to discuss a resolution of the violations alleged in the Initial Order. If full agreement can be reached in a preliminary conference, a Consent Order can be prepared.

What is a Consent Order?

A Consent Order is a settlement by stipulation. It is not necessarily an admission of a violation, but is an agreement concerning critical facts and required compliance actions. A Consent Order can be agreed to any time before a Final Order is issued. A Consent Order is enforceable as a Final Order. Reconsideration by the State Engineer cannot be requested for Consent Orders, nor can they be appealed to the court.

What happens if I don't request a hearing or respond to an Initial Order by the deadline?

The Presiding Officer can issue a Default Order based on the facts in the Initial Order. A Default Order is a Final Order. A Default Order may be issued at any time if you fail to participate in a preliminary conference or hearing ordered by the Presiding Officer.

What is the purpose of a preliminary conference?

A preliminary conference is held to allow the parties (the alleged violator and the Division) to identify and clarify issues in dispute, determine points of consensus, and stipulate agreements prior to a hearing or Final Order. The Presiding Officer may order a preliminary conference be held at any time prior to a Final Order.

How are preliminary conferences and hearings conducted?

Preliminary conferences and hearings are to be conducted *informally* by the Presiding Officer. If you desire, an attorney or other professional may represent you. At hearings, the parties may call witnesses, present oral, documentary, or other evidence and cross-examine any witness. Witnesses will be required to give their testimony under oath or affirmation. Both parties have access to public information in the Division's files and to all materials and

information gathered in the Division's investigation, to the extent allowed by law. No evidence will be accepted after a hearing concludes unless otherwise ordered by the Presiding Officer.

How are the penalties determined?

The administrative fine imposed is a daily fine that begins to accrue on the first day the violation or non-compliance begins and may continue until compliance is achieved. By law and administrative rule, the Division considers the following in calculating the amount of the potential fine:

- The value or quantity of water taken (for water right violations);
- The gravity of the violation including economic injury or impact to others;
- The violator's efforts to comply with the State Engineer's orders;
- The economic benefit obtained from the violation;
- Whether the violation occurred knowingly or unknowingly.

The Presiding Officer has authority to order reimbursement of costs of enforcement, debt collection, and compliance inspections, as well as replacement of water taken without right.

What happens to the monies collected from fines and penalties?

All monies collected for administrative fines and reimbursement of enforcement costs are deposited into the state's General Fund.

What if I am required to replace water used without a right?

If the Presiding Officer has determined that water must be replaced, you may be required to submit a plan describing your proposal for replacing the water. The plan must include all necessary details including the time frame for

replacement. The plan must be approved by the Presiding Officer.

What if I believe the Final Order is in error?

You may request reconsideration of a Final Order within 14 days after the order is issued. The request must be in writing, submitted through one of the three options described in this brochure, and state the specific grounds upon which relief is requested. If the Presiding Officer does not issue a written order granting or denying the request for reconsideration within 14 days after the request is filed, the request is considered denied. Reconsideration of a Consent Order or a Default Order is not allowed by law.

Can I appeal a Final Order to the court?

An appeal may be made to the district court in Salt Lake County or the county where the alleged violation occurred. The request for judicial review must be filed within 20 days from the date the Final Order was served on you or the date reconsideration was denied. The Division may stay the execution of a Final Order while an appeal is pending. A Default Order may be appealed to the district court, but a Consent Order may not be appealed.

What if I don't comply with the Final Order or pay the fines or enforcement costs?

The administrative fines and enforcement costs associated with monitoring non-compliance may continue to accrue and your financial liability may increase. The Division may report the administrative fines and/or enforcement costs assessed to consumer reporting agencies and pursue collection as provided by Utah law. The Division may also seek enforcement of a Final Order through legal action.