

# WATER RIGHTS ENFORCEMENT PROCEDURES



If you have received an Initial Order, please take action immediately.



## Why did I receive an Initial Order?

*(An Initial Order is a Notice of Violation, and/or a Cease and Desist Order from the Utah Division of Water Rights)*

The division has documented non-compliance with water right statute. This could be related to an unauthorized diversion, an impoundment, unauthorized use of water, or violation of water rights statute.

## IF YOU AGREE

or acknowledge that, yes, a water right violation or non-compliance has occurred, you can proceed as follows:

- 1 Take immediate action to comply with the requirements listed in the Initial Order; and
- 2 File with the presiding officer a written statement of your intent to comply; and
- 3 Deliver full payment of the administrative fine and reimbursement of the State Engineer's enforcement costs as detailed in the Initial Order.

## What is a preliminary conference?

A preliminary conference allows opposing parties (the alleged offender and the division) to identify and clarify issues in dispute, to determine points of consensus, and to stipulate agreements prior to a hearing or Final Order.

## What is a Consent Order?

It is a settlement by stipulation which outlines agreed-upon terms that must be followed until the Final Order is issued. The Consent Order is legally enforceable, and may not be reconsidered by the State Engineer or appealed in court.

## IF YOU DISAGREE

with the Initial Order, and are within 14 days of the date on the Initial Order, you can proceed as follows:

- 1 Provide a written response to the Initial Order with documentation rebutting the allegations; or
- 2 Provide a written request for a hearing on the issues involved in the Initial Order.

### Request a hearing

All requests must be in writing, should reference the State Engineer Agency Action (SEAA) number, and must be sent through :

- **Regular mail** sent to the presiding officer listed in the Initial Order; or
- **Electronic filing** submitted according to the directions included in the Initial Order.

**Note:** The presiding officer may want to hold a preliminary conference before the hearing.



At hearings, each party may present evidence, call witnesses or cross-examine witnesses who are required to give testimony under oath.

Both parties are entitled access to public information, division files and evidentiary materials. You may bring an attorney or other representation. No evidence will be accepted after the hearing ends.



## NEED MORE TIME?

Hearing requests are required to be received 14 days from the Initial Order's issue date. Extensions may be granted for good cause shown. For more time, submit your request in writing to the presiding officer.

## Final Orders

A Final Order is the resolution or decision made by the presiding officer upon the hearing's conclusion.

### Reconsideration

You may request reconsideration for 14 days after the Final Order is issued. The request must be written, sent via mail, e-mail or FAX. If you don't receive an order granting or denying your request within 14 days, it has been denied.

### Appeals

An appeal may be made to the Salt Lake County district court or the county where the alleged violation occurred. The request must be filed within 20 days from the Final Order date or reconsideration denial date. You may be granted a stay of Final Order compliance while an appeal is pending.

### Compliance with the order

If you do not comply with the Final Order or fail to pay fines and enforcement costs, additional applicable fees will continue to accrue. In addition, you may be reported to consumer agencies, sent to collections, or risk facing additional legal action by the division as allowed by Utah law.

### Final Orders by default

If you do nothing and fail to respond to the Initial Order, a Final Order will be issued by default and without your input. This "default order" cannot be reconsidered by the State Engineer, it can only be appealed in district court.

## CONTACT

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## Penalties

In cases of non-compliance, a daily administrative fine\* may be imposed.

This daily fine starts accruing on the first day of the violation or non-compliance, and it may continue until compliance is fully achieved.

By law and administrative rule, the fine is based on the following:

- Value or quantity of water taken (for water right violations);
- Gravity of the violation including economic injury or impact to others;
- Efforts made to comply with the State Engineer's orders;
- Economic benefit obtained from the violation;
- Knowledge of the offense — 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.

\*Money collected from administrative fines or division reimbursement is deposited into the state's general fund.



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