

R655. Natural Resources, Water Rights.

R655-14. Administrative Procedures for Enforcement Proceedings Before the Division of Water Rights.

R655-14-1. Authority.

(1) These rules establish procedures for enforcement adjudicative proceedings which may be commenced under Section 73-2-25. Under Subsection 73-2-1(4)(g), the State Engineer, as the Director of the Utah Division of Water Rights, is required to make rules regarding enforcement orders and the imposition of fines and penalties.

(2) The State Engineer's powers and duties include acting on behalf of the State of Utah to administer, as the agency head of the Division of Water Rights, the distribution and use of all surface and ground waters within the state in accordance with statutory authority, including but not limited to Sections 73-2-1, 73-2-1.2, and 73-2-25.

R655-14-2. Application and Preamble.

(1) These rules are applicable statewide to the use of the waters of the state. Additional rules may be promulgated to address enforcement for specific hydrologic areas.

(2) The Division may issue an Initial Order for any violation of the Water and Irrigation Code as set forth in Subsection 73-2-25(2)(a).

(3) Following the issuance of an Initial Order, the respondent may contest the Initial Order in a proceeding before the State Engineer or the appointed Presiding Officer. Enforcement adjudicative proceedings are not governed by the Utah Administrative Procedures Act as provided under Subsection 63G-4-102(2)(s) and are not governed by Rule R655-6 regarding informal proceedings before the Division of Water Rights.

(4) These rules shall be liberally construed to permit the Division to effectuate the purposes of Utah law.

R655-14-3. Purpose.

(1) These rules are intended to:

(a) Assure the protection of Utah's water and the public welfare by promoting compliance and deterring noncompliance with the statutes, rules, regulations, permits, licenses and orders administered and issued under the Division's authority by removing any economic benefit realized as a direct or indirect result of a violation; and

(b) Assure that the State Engineer assesses and imposes administrative fines and penalties lawfully, fairly, and consistently, which fines and penalties reflect:

(i) The nature and gravity of the violation and the potential for harm to Utah's water and the public welfare by the violation;

(ii) The length of time which the violation was repeated or continued; and

(iii) The additional costs which are actually expended by the Division during the course of the investigation and subsequent enforcement.

(c) Clarify the Division's authority to enforce the laws it administers under the State Engineer's supervision, and the rules, regulations, permits, and orders adopted pursuant to appropriate authority.

(2) The three elements of the statutorily provided penalties are intended to achieve different aims of equity and public policy. To achieve these aims, the following classes of penalties have been established by statute:

(a) Administrative fines are intended to remove the financial incentive of the violation by removing the economic benefit as well as imposing a punitive measure.

(b) Replacement of water is intended to make whole the resource and impacted water users, as far as this is possible, by requiring respondents to leave an amount of water undiverted or undiminished in the resource for use by others. The allowance of up to 200% replacement indicates the penalty can incorporate a punitive element, as appropriate.

(c) Reimbursement of enforcement costs is intended to make whole the state by requiring a violator to replace the public funds expended to achieve compliance with the law.

R655-14-4. Definitions.

(1) Terms used in this rule are defined in Section 73-3-25.

(2) In addition,

(a) "Administrative Penalty" means a monetary fine or water replacement ordered by the Presiding Officer to be paid or accomplished by the respondent in response to a violation of, or a failure to comply with, a law administered by the State Engineer, or any rule, regulation, license, permit or order adopted pursuant to the State Engineer's authority.

(b) "Cease and Desist Order" (CDO) means a written order issued by the State Engineer or the Enforcement Engineer requiring a respondent to cease and desist violations and/or directing that positive steps be taken to mitigate any harm or damage arising from the violation, including a notice of administrative penalties to which a respondent may be subject. CDO's are further described in Section R655-14-11. A CDO constitutes an Initial Order (IO), whether issued alone or in conjunction with a Notice of Violation (NOV).

(c) "Consent Order" means an order issued by the Presiding Officer reflecting a stipulated and voluntary agreement between the parties concerning the resolution of an enforcement adjudicative proceeding. A Consent Order constitutes a Final Judgment and Order.

(d) "Default Order" means an order issued by the Presiding Officer after a respondent fails to participate or continue to participate in an enforcement proceeding. A Default Order constitutes a Final Judgment and Order.

(e) "Distribution Order" means a written order from the State Engineer that includes any or all of the following:

(i) An interpretation of the water rights on a river system or other water source and procedures for the regulation and distribution of water according to those water rights;

(ii) A requirement of specific action or actions on the part of a water right owner or a group of water right owners to ensure that water is diverted, measured, stored, or used according to the water rights involved and that the diversion, storage, or use does not infringe on the rights of other water right owners;

(iii) A description of the hydrologic limitations of a river system or other water source and a plan based on the water rights of record designed to manage and maximize beneficial use of water while protecting the sustainability of the water source;

(iv) A requirement that reports be submitted to the Division as provided in Section 73-5-8.

(v) A regulation tag issued by the Division or by a Water Commissioner according to Section 73-5-3 and as defined in Section R655-15.

(f) "Division" means the Division of Water Rights.

(g) "Economic Benefit" means the benefit actually or potentially realized and/or a cost actually or potentially avoided by a violator as a result of unlawful activity defined as a violation in an IO.

(h) "Enforcement Costs" means a monetary sum ordered by the Presiding Officer to be paid by a respondent for any expense incurred by the State Engineer in investigating and stopping a violation of, or a failure to comply as defined herein. Enforcement costs are further defined in this rule at Subsection R655-14-12(6). Collection of said costs is authorized at Subsection 73-2-26(1)(a)(iii).

(i) "Enforcement Engineer" means the State Engineer or an authorized delegate who may commence and prosecute an enforcement action pursuant to Subsection 73-2-25(2)(a).

(j) "Filed" means timely submitted to the Division pursuant to Subsection R655-14-8(3).

(k) "Files" means information maintained in the Division's public records, which may include both paper and electronic information.

(l) "Final Judgment and Order" means a final decision issued by the Presiding Officer on the whole or a part of an enforcement adjudicative proceeding. This definition includes "Consent Orders" and "Default Orders."

(m) "Initial Administrative Penalty" means an administrative fine, a requirement to replace water unlawfully taken, and/or the enforcement costs required to be repaid as these are described and set forth in the Initial Order (IO) as required at Subsection 73-2-25(2)(b)(ii). These penalties do not include accrued penalties for violations continuing past the date of the IO.

(n) "Initial Order" (IO) means a Notice of Violation and/or a Cease and Desist Order.

(o) "Issued" as it applies to an IO or a Final Judgment and Order means the document has been executed by an authorized delegate of the State Engineer (in the case of an IO) or by the Presiding Officer (in other cases) and deposited in the mail.

(p) "Knowing" or "Knowingly" as used in Section 73-2-26, means the same as the definition contained in Section 76-2-103. A person engages in conduct knowingly, or with knowledge with respect to his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or the existing circumstances. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

(q) "License" means the express grant of permission or authority by the State Engineer to carry on an activity or to perform an act, which, without such permission or authority, would otherwise be a violation of State law, rule or regulation.

(r) "Location" means the current residential or business address of a party as recorded in the Division's files. If a current residential address is not available for an individual, "location" means an employment or business address if known, or nonresidential mailing address such as a Post Office Box or Rural Route, at which a party whose location information is being sought receives mail.

(s) "Mitigation" means compensation acceptable to the Division for injury caused by a stream channel or dam safety violation.

(t) "Noncompliance" or "Nonconformance" or "Failure to Comply" or "Violation" each means any act or failure to act which constitutes or results in:

(i) Engaging in an activity prohibited by, or not in compliance with, any law administered by the State Engineer or any rule, license, permit or order adopted or granted pursuant to the State Engineer's authority;

(ii) Engaging in an activity without a necessary permit or approval that is required by law or regulation;

(iii) The failure to perform, or the failure to perform in a timely fashion, anything required by a law administered by the State Engineer or by a rule, license, permit or order adopted pursuant to the State Engineer's authority.

(u) "Notice of Violation" (NOV) means a written notice issued by the Enforcement Engineer that informs a respondent of Water and Irrigation Code violations. Notice of Violation is further described in Section R655-14-11. A NOV constitutes an Initial Order (IO), whether issued alone or in conjunction with a Cease and Desist Order (CDO).

(v) "Participate" means, in an enforcement proceeding that was commenced by an IO, to:

(i) Present relevant information to the Presiding Officer within the time period prescribed by statute or rule or order of the Presiding Officer for submitting relevant information or requesting a hearing; and/or

(ii) Attend a preliminary conference or hearing if a preliminary conference or hearing is scheduled and a notice is properly issued.

(w) "Party" means the State Engineer, an authorized delegate of the State Engineer, and/or the respondent(s).

(x) "Permit" means an authorization, license, or equivalent control document issued by the State Engineer to implement the requirements of any federally delegated program or Utah law administered or enforced by the State Engineer.

(y) "Person" means an individual, trust, firm, joint stock company, corporation (including a quasi-governmental corporation), partnership, association, syndicate, municipality, municipal or state agency, fire district, club, non-profit agency or any subdivision, commission, department bureau, agency, department or political subdivision of State or Federal Government (including quasi-governmental corporation) or of any interstate body and any agent or employee thereof.

(z) "Post Initial Order Penalty Adjustments" means those adjustments, in the form of increases or decreases, made by the Presiding Officer to the initial administrative penalties assessed in the IO in consideration of information pertaining to the violation.

(aa) "Presiding Officer" means the State Engineer or an authorized delegate of the State Engineer who conducts an enforcement adjudicative proceeding.

(ab) "Record" means the official collection of all written and electronic materials produced in an enforcement proceeding, including but not limited to the IO, pleadings, motions, exhibits, orders and testimony produced during the adjudicative proceedings, as well as the files of the Division as defined herein.

(ac) "Respondent" means any person against whom the Enforcement Engineer commences an enforcement action by issuing an IO.

(ad) "Requirement" means any law administered by the State Engineer, or any rule, regulation, permit, license or order issued or granted pursuant to the State Engineer's authority.

(ae) "State Engineer" is the Director and agency head of the Division of Water Rights in whom ultimate legal authority is vested by Sections 73-2-1 and 73-2-1.2.

(af) "Unknowingly" or "Not Knowing" means the converse of the definition of "Knowingly" contained in Section 76-2-103. A person engages in conduct unknowingly, or without knowledge with respect to his conduct or to circumstances surrounding his conduct when he is unaware of the nature of his conduct or the existing circumstances. A person acts unknowingly, or without knowledge, with respect to a result of his conduct when he is unaware that his conduct is reasonably certain to cause the result.

(ag) "Water Commissioner" or "Commissioner" means a person appointed to distribute water within a water distribution system pursuant to Section 73-5-1 and Section R655-15.

(ah) "Well" means an open or cased excavation or borehole for diverting, using, or monitoring underground water made by any construction method.

(ai) "Well driller" means a person with a license to engage in well drilling for compensation or otherwise.

(aj) "Well drilling" means the act of drilling, constructing, repairing, renovating, deepening, cleaning, developing, or abandoning a well.

R655-14-5. Other Authorities.

(1) Nothing in these rules shall limit the State Engineer's authority to take alternative or additional actions relating to the administration, appropriation, adjudication and distribution of the waters of Utah as provided by Utah law.

R655-14-6. Designation of Presiding Officers.

(1) The following persons may be designated Presiding Officers in adjudicative proceedings:

(a) Assistant State Engineers;

(b) Deputy State Engineers; or

(c) Other qualified persons designated by the State Engineer.

R655-14-7. Service of Notice and Orders.

(1) Notices, orders, written decisions, or any other documents for which service is required or permitted to be made by Section 73-2-25 shall be served upon the respondent at the respondent's location using certified mail or methods described in Rule 5 of the Utah Rules of Civil Procedure.

R655-14-8. Computation of Time.

(1) Computation of any time period referred to in these rules shall begin with the first day following the act that initiates the running of the time period. The last day of the time period computed is included unless it is a Saturday, Sunday, or legal holiday or any other day on which the Division is closed, in which event the period shall run until the end of the business hours of the following business day. When the time period is less than seven (7) days, intervening days when the Division is closed shall be excluded in the computation.

(2) The Presiding Officer, for good cause shown, may extend any time limit contained in these rules, unless precluded by statute. All requests for extensions of time shall be made by motion.

(3) Documents required or permitted to be filed under these rules shall be filed with the Division, to the attention of the Presiding Officer or Enforcement Engineer, as may be required, within the time limits for such filing as set by the Enforcement Engineer, the Presiding Officer, or other provision of law. Papers filed in the following manner shall be deemed filed as set forth:

(a) Papers hand delivered to the Division during regular business hours shall be deemed filed on the date of hand-delivery. Papers delivered by hand at times other than during regular business hours shall be deemed filed on the next regular business day when stamped received by the Division.

(b) Papers deposited in the U.S. mail shall be deemed filed on the date stamped received by the Division. In the event that no stamp by the Division appears, papers shall be deemed filed on the postmarked date.

(c) Papers transmitted by facsimile, telecopier or other electronic transmission shall not be accepted for filing unless permitted in writing by the Presiding Officer, the Enforcement Engineer or by this rule.

R655-14-9. Filings Generally.

(1) Papers filed with the Division shall state the State Engineer Agency Action (SEAA) number, the title of the proceeding, and the name of the respondent on whose behalf the filing is made.

(2) Papers filed with the Division shall be signed and dated by the respondent on whose behalf the filing is made or by the respondent's authorized representative. The signature constitutes certification that the respondent:

(a) Read the document;

- (b) Knows the content thereof;
 - (c) To the best of the respondent's knowledge, represents that the statements therein are true;
 - (d) Does not interpose the papers for delay; and
 - (e) If the respondent's signature does not appear on the paper, authorized a representative with full power and authority to sign the paper.
- (3) All papers, except those submittals and documents that are kept in a larger format during the ordinary course of business, shall be submitted on an 8.5 x 11-inch paper. All papers shall be legibly hand printed or typewritten.
- (4) The Division may provide forms to be used by the parties.
 - (5) The original of all papers shall be filed with the Division with such number of additional copies as the Division may reasonably require.
 - (6) Simultaneously with the filing of any and all papers with the Division, the party filing such papers shall send a copy to all other parties, or their authorized representative to the proceedings, by hand delivery, or U.S. Mail, postage prepaid, properly addressed.

R655-14-10. Motions.

- (1) A party may submit a request to the Presiding Officer for any order or action not inconsistent with Utah law or these rules. Such a request shall be called a motion. The types of motions made shall be those that are allowed under these Rules and the Utah Rules of Civil Procedure.
- (2) Motions may be made in writing at any time before or after the commencement of a hearing, or they may be made orally during a hearing or a preliminary conference. Each motion shall set forth the grounds for the desired order or action and, if submitted in writing, state whether oral argument is requested. A written supporting memorandum, specifying the legal basis and support of the party's position shall accompany all motions.

R655-14-11. Options for Adjudicative Enforcement.

- (1) The State Engineer may pursue any combination of the following administrative and judicial enforcement actions depending upon the circumstances and gravity of each case.
- (a) Notice of Violation: a formal notice of a suspected violation issued in accordance with Section 73-2-25 which:
 - (i) Cites the law, rule, regulation, permit and/or order allegedly violated;
 - (ii) States the facts that form the basis for the State Engineer's belief that a violation has occurred;
 - (iii) States the administrative fine, enforcement costs, and/or other penalty to which the respondent may be subject;
 - (iv) Specifies a reasonable deadline or deadlines by which the respondent:
 - (A) Shall comply with the requirements described in the Notice of Violation, and/or
 - (B) Shall pay the administrative fine and enforcement costs, and/or
 - (C) Shall submit a written plan or proposal setting forth how and when the respondent proposes to replace water taken without right.
 - (v) Informs the respondent:
 - (A) Of the right to file a timely written request for a hearing on the alleged violation, the administrative penalties defined, or both;
 - (B) That the respondent must file said written request for a hearing with Division within fourteen (14) days after service of the Notice of Violation;
 - (C) That said written request shall strictly comply with R655-14-16;
 - (D) That said notice shall become the basis for a Final Judgment and Order of the Presiding Officer upon the respondent's election to waive participation or failure to timely respond or otherwise participate in the proceeding, and
 - (E) That the Enforcement Engineer may treat each day's violation as a separate violation in describing the Initial Administrative Penalty under Subsection 73-2-25 (2)(b)(ii); that is, the administrative penalty continues to accrue each day from the time the violation begins until compliance is achieved.
 - (vi) Identifies the individual to whom correspondence and inquiries regarding the Notice of Violation should be directed;
 - (vii) States to whom and the date by which the administrative fine and enforcement costs shall be paid if the respondent elects to waive or fails to request an adjudicative hearing in a timely manner and elects to pay the fine and costs; and
 - (viii) States the State Engineer's authority to pursue further administrative or judicial enforcement action.
 - (b) Cease and Desist Order (CDO): an immediate compliance order issued pursuant to Section 73-2-25 either upon discovery of a suspected violation of the Water and Irrigation Code or in combination with a Notice of Violation, which:
 - (i) Cites the law, rule, license, permit, notice and/or order allegedly violated;
 - (ii) Describes the act or course of conduct that is prohibited by the Cease and Desist Order;
 - (iii) Orders the respondent to immediately cease the prohibited act or prohibited course of conduct;
 - (iv) States any action deemed necessary by the Enforcement Engineer to confirm compliance and assure continued compliance;
 - (v) Takes effect immediately upon the date issued or within such time as specified by the Enforcement Engineer in the CDO; and
 - (vi) States the administrative penalties to which the respondent may be subject for any violation of the CDO.
 - (c) Court Action
 - (i) Civil: direct recourse to a court of competent jurisdiction either in addition to or in lieu of administrative action where:
 - (A) It is necessary to enforce a Final Judgment and Order and seek civil and/or administrative penalties

(B) An imminent threat to the public health, safety, welfare or environment exists which warrants injunctive or other emergency relief; or

(C) A pattern of continuous, significant violations exists such that administrative enforcement action alone is unlikely to achieve compliance; or

(D) The court is the most convenient or appropriate forum for resolution of the dispute.

(ii) Criminal: referral to the County Prosecutor or the Attorney General's Office for prosecution or criminal investigation where:

(A) The alleged act or failure to act may be defined as a criminal offense by state law;

(B) Enforcement is beyond the jurisdiction or investigative capability of the State Engineer; or

(C) Criminal sanctions may be appropriate.

(d) Miscellaneous - other enforcement options may be pursued to achieve compliance. Additional options include, but are not limited to:

(i) Joint actions with, or referrals to, other federal, state or local agencies;

(ii) Direct legal or equitable actions in state or federal court; and/or

(iii) Denial, suspension or revocation of state-granted licenses, approvals permits or certifications.

(2) Unless otherwise stated, all notices, orders and judgments are effective upon the date issued.

(3) Combinations of enforcement actions are not mutually exclusive and may be concurrent and/or cumulative.

(4) An IO may be incorporated into a Default Order if the respondent fails to participate as defined herein.

R655-14-12. Administrative Penalties and Administrative Costs.

(1) Pursuant to Sections 73-2-1 and 73-2-25 and these rules, the Enforcement Engineer shall assess the initial administrative penalties, which may include an administrative fine, a requirement to replace water and the reimbursement of enforcement costs to which the respondent may be subject for any violation as set forth in Subsection 73-2-25(2)(a).

(2) No penalty shall exceed the maximum penalty allowed by Subsection 73-2-26(1), as may be amended.

(3) Each day a violation is repeated, continued or remains in place, constitutes a separate violation.

(4) The penalty imposed shall begin on the first day the violation occurred, and may continue to accrue through and including the day the Notice of Violation and/or Cease and Desist Order is issued, or the Final Judgment and Order is issued, or until compliance is achieved.

(5) The amount of the penalty shall be calculated based on:

(a) The value or quantity of water unlawfully taken, including the cost or difficulty of replacing the water;

(b) The gravity of the violation, including the economic injury or impact to others;

(c) Whether the respondent attempted to comply with the State Engineer's orders; and

(d) The respondent's economic benefit from the violation.

(6) Enforcement costs, interest, late payment charges, costs of compliance inspections, and collection costs may be assessed in addition to the administrative fine. These include:

(a) Enforcement costs: Costs for time spent by Division staff, supervisors, the Presiding Officer, and personnel of the Attorney General's Office, at the full cost of each employee's hourly rate, including salary, benefits, overhead and other directly related costs.

(b) Late payment charges: Costs accrued at the monthly percentage rate assessed by the Utah Department of Administrative Services, Office of Debt Collections.

(c) Compliance inspection costs: Time spent by Division staff at the full cost of each employee's hourly rate, including salary, benefits, overhead and other directly related costs.

(d) Collection costs: Actual collection costs.

(7) The State Engineer may report the total amount of administrative fines and/or enforcement costs assessed to consumer reporting agencies and pursue collection as provided by Utah law.

(8) Any monies collected under Section 73-2-26 and these rules shall be deposited into the General Fund.

R655-14-13. Replacement of Water.

(1) In addition to administrative fines and enforcement costs, the Enforcement Engineer may impose and the Presiding Officer may order the respondent to replace up to 200 percent of water unlawfully taken in accordance with Section 73-2-26.

(2) The Presiding Officer may order actual replacement of water after:

(a) A respondent fails to request judicial review of a Final Judgment and Order issued under Section 73-2-25; or

(b) Completion of judicial review, including any appeals.

(3) Pursuant to Section 73-2-26, and before imposing or ordering replacement of water, the Enforcement Engineer and the Presiding Officer shall consider the following factors:

(a) The value or quantity of water unlawfully taken, including the cost or difficulty of replacing the water;

(b) The gravity of the violation, including the economic injury or impact to others;

(c) Whether the respondent attempted to comply with the State Engineer's orders; and

(d) The respondent's economic benefit from the violation.

(4) The Enforcement Engineer may require and the Presiding Officer may order the respondent to submit a plan to replace water, which shall be submitted in writing and contain the following information:

(a) The name and mailing address of the respondent or persons submitting the plan;

(b) The State Engineer Agency Action (SEAA) number assigned to the IO;

- (c) Identification of the water right(s) and property for which the water replacement plan is proposed;
 - (d) A description of the water replacement plan; and
 - (e) Any information that assists the Enforcement Engineer in evaluating whether the proposed water replacement plan is acceptable.
- (5) The factors the Enforcement Engineer or Presiding Officer may consider to determine if the plan is acceptable include, but are not limited to:
- (a) Whether the plan provides for the respondent to forgo use of a vested water right owned or leased by the respondent until water is replaced to the extent required in the IO or ordered in the Final Judgment and Order;
 - (b) The reliability of the source of replacement water over the term in which it is proposed to be used under the plan; and
 - (c) Whether the plan provides for monitoring and adjustment as necessary to protect vested water rights.
- (6) As provided in Section 73-2-26, water replaced shall be taken from water to which the respondent would be entitled during the replacement period.
- (7) In accordance with Subsection 73-2-26(5)(a), or any other statutory authority, the Division may record any order requiring water replacement in the office of the county recorder where the place of use or water right is located. Any subsequent transferee of such property shall be responsible for complying with the requirements of said order.

R655-14-14. Procedures For Determining Administrative Penalties, Enforcement Costs and Water Replacement.

- (1) An administrative fine shall not exceed the maximum amounts established by statute at Subsection 73-2-26 (1), as such may be amended.
- (2) For violations per Subsections 73-2-25(2)(a)(i) through (vii), the following procedures shall be employed:
- (a) Administrative Fines: This penalty shall be based primarily on the actual economic benefit estimated to result or potentially to result from the violation. The economic benefit may come in the form of a direct economic benefit as income derived directly from the unlawful activity or it may come in the form of avoided costs that would otherwise be incurred in order to comply with a specific statute, rule, notice or order from the State Engineer. The administrative fine assessment procedure used (direct economic benefit or avoided costs) will be that which produces the greater fine. In order to implement the punitive intent of this penalty, a multiplier is to be calculated and applied to the estimated actual direct economic benefit or avoided costs.
 - (i) "Direct Economic Benefit" Initial Administrative Fine Calculations. The initial administrative fine shall be calculated in the following manner:
 - (A) The daily economic benefit is equal to the gross income that is or could potentially be realized from the violation (without regard for production costs, taxes, etc.) divided by the number of days of violation. For water right violations, the daily economic benefit is calculated using the gross income through a full period of beneficial use, divided by the number of days in the period of beneficial use.
 - (B) The daily administrative fine is equal to the product of the daily economic benefit and the multiplier to be calculated as described in paragraph (iii) below.
 - (C) The initial administrative fine is equal to the product of the daily administrative fine and the number of days of continuing violation to the date the IO is issued, but shall not exceed the product of the highest calculated total realized economic benefit and the penalty multiplier.
 - (D) The total initial administrative fine will have a maximum value of four times the direct economic benefit or the statutory maximum fine, whichever is less.
 - (ii) The multiplier for penalties based on direct economic benefit shall be calculated utilizing the following statutory considerations. (Statutorily required considerations relative to the quantity of water taken and the gravity and impact of the violation are accommodated in the calculations of the economic "benefit" and "injury.")
 - (A) Whether the violation was committed knowingly or unknowingly;
 - (B) The economic injury to others;
 - (C) The length of time over which the violation has occurred; and
 - (D) The violator's efforts to comply.
 - (iii) The penalty multiplier is the sum of the points calculated using Table 1:

TABLE 1

DIRECT ECONOMIC BENEFIT PENALTY MULTIPLIER CONSIDERATION / CRITERIA	MULTIPLIER POINTS
Knowing or unknowing violation	
Knowing	1.00
Unknowing00
Economic injury to others	
Greater than \$15,000	1.00
\$10,000 to \$15,00075
Less than \$10,000 or injury is not measurable or there is no evidence others suffered economic injury	0.50
Length of violation	
Three (3) or more years of violation	1.00

More than one (1), but less than three (3) years of violation	0.75
One (1) year or less of violation	0.50
Violator's efforts to comply prior to Initial Order	
Violator has made no efforts to comply	1.00
Violator has made limited but ineffective efforts to comply	0.75
Violator has made reasonable and partially effective efforts to comply	0.50
Violator fully complied prior to issuance of Initial Order	0.00

(iv) "Avoided Cost Economic Benefit" Initial Administrative Fine Calculation: In some cases, including but not limited to violations under Subsections 73-2-25 (2)(a) (iii) through (vii), an economic benefit may result from an avoided cost of compliance with a notice or order from the State Engineer, or from failure to obtain a necessary approval, permit or license. In the case of a failure to comply with a prior notice or order, the daily administrative fine commences with the day following the compliance date in the notice or order. In the event of a failure to obtain a necessary approval, permit or license, the period of violation is deemed to begin on the first day the unauthorized activity is commenced. The economic benefit and daily administrative fine for an "avoided cost economic benefit" shall be calculated in the following manner:

(A) The total realized economic benefit is equal to the highest calculated avoided costs of failing to implement specific actions required by a statute, rule, notice or order from the State Engineer.

(B) The daily administrative fine is equal to the product of \$20 or 5% of the total realized economic benefit, whichever is greater, and the penalty multiplier to be calculated as described in paragraph (vi), below.

(C) The initial administrative fine is equal to the product of the daily administrative fine and the number of days of continuing violation preceding the date of the IO, but shall not exceed the product of the highest calculated total realized economic benefit and the penalty multiplier.

(D) The total initial administrative fine will have a maximum value of three times the economic benefit or the statutory maximum fine, whichever is less.

(v) The statutory considerations applicable to producing the multiplier for an avoided cost economic benefit are: (Statutorily required considerations relative to the quantity of water taken and the gravity and impact of the violation are accommodated in calculations of the economic "benefit" and "injury.").

(A) Whether the violation was committed knowingly or unknowingly;

(B) The economic injury to others; and

(C) The violator's efforts to comply.

(vi) The penalty multiplier is the sum of the points resulting from Table 2:

TABLE 2

AVOIDED COST ECONOMIC BENEFIT PENALTY MULTIPLIER

CONSIDERATION / CRITERIA	MULTIPLIER POINTS
Knowing or unknowing violation	
Knowing	1.00
Unknowing	0.00
Economic injury to others	
Greater than \$15,000.	1.00
\$10,000 to \$15,000	0.75
Less than \$10,000 or injury is not measurable or there is no evidence others suffered economic injury	0.50
Violator's efforts to comply prior to Initial Order	
Violator has made no efforts to comply	1.00
Violator has made limited but ineffective efforts to comply	0.75
Violator has made reasonable and partially effective efforts to comply	0.50
Violator fully complied prior to issuance of Initial Order	0.00

(b) Replacement of Water: This penalty will be initially calculated as the product of 100% of the amount unlawfully taken and the penalty multiplier previously calculated, but not to exceed 200% of that unlawfully taken. If replacement of water unlawfully taken is deemed to be infeasible by the Enforcement Engineer or the Presiding Officer, this penalty will not be further considered.

(c) Reimbursement of Enforcement Costs: This penalty will be initially based on a standard requiring 100% reimbursement of the State Engineer's enforcement costs to the date of the IO.

(3) For violations related to unlawful natural stream channel alteration or dam safety regulations per Subsections 73-2-25(1)(a)(vi) and (vii), the following procedures shall be employed:

(a) Daily Administrative Fine: All enforcement activities for unlawful natural stream alteration or dam safety violations must statutorily result from violation of a prior notice or order. Statute provides for a daily administrative fine with the day following the compliance date in the notice/order being counted as the first day of violation. The calculated daily administrative fine would apply to violations continuing beyond the compliance date set forth in the notice or order. The economic benefit and daily administrative fine shall be calculated in the following manner:

(i) For stream alteration and dam safety violations, there may be a direct economic benefit, or there may be an avoided cost economic benefit deriving from:

(A) Initiating an activity without the benefit of proper permitting and/or,

(B) Failing to implement specific actions required by a notice, order or permit from the State Engineer.

(ii) The daily administrative fine is equal to the product of \$20 or 5% of the total realized economic benefit, whichever is greater, and the multiplier to be calculated as described in paragraph (iii), below.

(iii) The penalty multiplier is calculated as the sum of the points from Table 3 or Table 4, as may be appropriate:

TABLE 3

STREAM ALTERATION PENALTY MULTIPLIER	
CONSIDERATION / CRITERIA	MULTIPLIER POINTS
Knowing or unknowing violation	
Knowing	1.00
Unknowing	0.00
Gravity of violation	
Natural stream environment harmed to significant levels not readily reversible by mitigation efforts	
	1.00
Natural stream environment harmed to moderate levels partially reversible by mitigation efforts	
	0.75
Natural stream environment harmed to minor levels readily reversible by mitigation efforts. . .	
	0.50
Violator's efforts to comply prior to Initial Order	
Violator has made no efforts to comply	1.00
Violator has made no reasonable or effective efforts to comply	0.75
Violator has made reasonable and partially effective efforts to comply	0.50
Violator achieved full compliance prior to issuance of Initial Order	0.00

TABLE 4

DAM SAFETY PENALTY MULTIPLIER	
CONSIDERATION / CRITERIA	MULTIPLIER POINTS
Knowing or unknowing violation	
Knowing	1.00
Unknowing	0.00
Gravity of violation	
Failure to comply with a notice or order for a high-hazard or moderate-hazard dam:	
1) Related to building, enlarging or substantially altering same without prior approval or authorization; OR	
2) Addressing an existing unsafe condition . . .	
	1.00
Failure to comply with a notice or order for a high-hazard or moderate-hazard dam:	
1) Addressing a developing unsafe condition OR	
2) Requiring monitoring or critical dam	

performance indicators; OR
 Failure to prepare and file acceptable required operational documents, OR
 Failure to comply with a notice or order for a low-hazard dam related to building, enlarging or substantially altering same without prior authorization0.75
 Failure to comply with a notice or order for a high-hazard or moderate-hazard dam related to routine operation or maintenance activities, OR
 Failure to comply with a notice or order for a low-hazard dam to address an existing or developing unsafe condition 0.50
 Violator's efforts to comply prior to Initial Order
 Violator has made no efforts to comply1.00
 Violator has made limited reasonable or effective efforts to comply0.75
 Violator has made reasonable and partially effective efforts to comply0.50
 Violator achieved full compliance prior to issuance of Initial Order0.00

(iv) The total administrative fine shall not exceed the product of the highest calculated total realized economic benefit and the penalty multiplier.

(b) Reimbursement of Enforcement Costs is initially based on a standard requiring 100% reimbursement of the State Engineer's enforcement costs to the date of the Initial Order.

(4) For violations under Subsection 73-2-25(2)(a)(viii) related to failure to submit a report required by Section 73-3-25, the following procedures shall be employed:

(a) The daily administrative fine is equal to \$5.00.

(b) The number of days of continuing violation commences 90 days after the day on which the well driller license lapses.

(c) The initial administrative fine is equal to the product of the daily administrative fine and the number of days of continuing violation to the date the IO is issued, up to a maximum fine of \$200.

(d) The total administrative fine shall not exceed the product of the daily administrative fine and the number of days of continuing violation, up to a maximum fine of \$200.

(e) Reimbursement of enforcement costs is initially based on a standard requiring 100% reimbursement of the State Engineer's enforcement costs to the date of the Initial Order.

(5) For violations under Subsection 73-2-25(2)(a)(ix) related to engaging in well drilling without a license required by Section 73-3-25, the following procedures shall be employed:

(a) The direct economic benefit is equal to the gross income that is or could potentially be realized (without regard for production costs, taxes, etc.) from engaging in well drilling (as defined herein) without a license.

(b) The total initial administrative fine is equal to the product of the direct economic benefit resulting from the violation and the penalty multiplier described in paragraph (c) below.

(c) The penalty multiplier is calculated as the sum of the points from Table 5.

TABLE 5

WELL DRILLING PENALTY MULTIPLIER

CONSIDERATION/ CRITERIA . . . MULTIPLIER POINTS

Knowing or unknowing violation

Knowing 1.50

Unknowing 1.00

Gravity of Violation

New well construction 1.00

Deepening a well 0.80

Renovating a well 0.60

Abandoning a well 0.40

Cleaning/developing a well . . . 0.20

(d) The total administrative fine shall not exceed the product of the direct economic benefit and the penalty multiplier.

(e) Reimbursement of enforcement costs is initially based on a standard requiring 100% reimbursement of the State Engineer's enforcement costs to the date of the Initial Order.

(6) Post-Initial Order penalty adjustments: Subsequent to issuance of the IO, the Presiding Officer may make adjustments to the initial administrative fine; the requirement for replacement of water unlawfully taken; requirements pertaining to violations of stream channel alteration or dam safety regulations; and/or the requirement for reimbursement of enforcement costs. Such adjustments may be based on one or more of the following considerations:

(a) Errors or Omissions in Calculation of an Initial Administrative Penalty: If shown by acceptable evidence or testimony that any fact used in calculation of the economic benefit, of the quantity of water unlawfully taken, or of the penalty multiplier was in error, or that a significant fact or group of facts was omitted from consideration, the Presiding Officer shall recalculate the initial administrative penalties taking consideration of the corrected or additional fact(s).

(b) Reduction in Penalty Multiplier: The penalty multiplier used in calculating the Initial Administrative Penalties may be reduced according to Table 6 on the basis of the respondent's efforts to comply after receiving the IO.

TABLE 6

PENALTY MULTIPLIER REDUCTION

CONSIDERATION / CRITERIA	MULTIPLIER POINTS
Respondent's efforts to comply with the Initial Order	
Respondent has made extraordinary efforts to successfully achieve full and prompt compliance with the IO.	1.00
Respondent has made efforts to successfully achieve full and prompt compliance with the IO, but these efforts are not extraordinary50
Respondent has made efforts that achieve full compliance with the IO, but the efforts were neither extraordinary nor prompt	0.25
Respondent has made no efforts to comply or has made efforts that fail to achieve full compliance with the IO	0.00

If the Presiding Officer determines that the penalty multiplier should be reduced according to the table above, the appropriate number of points will be subtracted from the penalty multiplier used in calculating the initial administrative penalty and the penalty will be re-calculated with the new multiplier.

(c) Failure to take reasonable and effective measures to achieve full and prompt compliance with the requirements of the IO will allow the daily administrative fines to continue to accrue as provided in rule at Subsection R655-14-12(4) until full compliance is achieved.

(d) Adjustments to recovery of enforcement costs:

(i) If shown by acceptable evidence or testimony that any expense incurred by the State Engineer and assessed for reimbursement resulted from activities not pertinent to the violation, the Presiding Officer may reduce that portion of the reimbursement requirement accordingly.

(ii) Pursuit of an enforcement action after issuance of the IO will continue to require the expenditure of varying amounts of staff time and may require acquisition and analysis of special data or information. Such costs may be added to the initial reimbursement requirement, specifically including all costs incurred that are unique to the enforcement action under consideration.

(e) Mitigating Factors: Other factors which the Presiding Officer may consider in amendment of initial penalties for incorporation into a Final Order or Consent Order may include, as appropriate:

(i) Ability to pay: This factor will be considered only if raised by a respondent and only if the respondent provides all necessary information to evaluate the claim. The burden to demonstrate inability to pay rests solely on the respondent. The Presiding Officer shall disregard this factor if a respondent fails to provide sufficient or persuasive financial information. If it is determined that a respondent cannot afford the full monetary penalties prescribed by this rule, or if it is determined that payment of all or a portion of the monetary penalties will preclude the respondent from achieving compliance or from carrying out remedial measures which are deemed more important than the deterrent effect of the monetary penalties, the following options may be considered by the Presiding Officer:

(A) A delayed payment schedule with full payment of monetary penalties to be made at a date not exceeding 180 days from the date the Final Judgment and Order is issued; or

(B) A direct reduction of the monetary penalties, which reduction is deemed by the Presiding Officer to be consistent with achieving the purposes of the enforcement action and the aims of equity and justice.

(C) A portion of the monetary penalties may be suspended with conditions as determined by the Presiding Officer, which suspension is deemed by the Presiding Officer to be consistent with achieving the purposes of the enforcement action and the aims of equity and justice. Failure by a respondent to adhere to the conditions of the suspension may result in an Order of reinstatement of any part of the suspended monetary penalties, which will be due and payable immediately upon reinstatement.

R655-14-15. Procedures for Conducting Adjudicative Enforcement Proceedings.

- (1) The procedures for conducting adjudicative enforcement proceedings are as follows:
 - (a) In proceedings initiated by an IO, the Presiding Officer shall issue a default order unless the respondent does one of the following within fourteen (14) days of the date the IO is issued:
 - (i) Satisfies all requirements of the IO, including but not limited to ceasing the violation(s), full payment of all the administrative fines, reimbursement of the State Engineer's enforcement costs in full, and submission of any required water replacement plan; or,
 - (ii) Files with the Division a timely and proper written response to the IO but waives a hearing and submits the case upon the record. Submission of a case without a hearing does not relieve the respondent from the necessity of providing the facts supporting the respondent's burdens, allegations or defenses; or
 - (iii) Files with the Division a timely and proper written response to the IO, having timely filed a request for a hearing as provided in the IO and in Section R655-14-16.
 - (b) Within a reasonable time after the close of an enforcement adjudicative proceeding, the Presiding Officer shall issue a written and signed Final Judgment and Order, including but not limited to:
 - (i) A statement of law and jurisdiction;
 - (ii) A statement of facts;
 - (iii) An identification of the confirmed violation(s);
 - (iv) An order setting forth actions required of the respondent(s);
 - (v) A notice of the option to request reconsideration and the right to petition for judicial review, except as such are waived in a Consent Order;
 - (vi) The time limits for requesting reconsideration or filing a petition for judicial review, except as such are waived in a Consent Order; and
 - (vii) Other information the Presiding Officer deems necessary or appropriate.
 - (c) The Presiding Officer's Final Judgment and Order shall be based on the record, as defined in this rule, or, in the case of a Consent Order, on the stipulation accepted by the parties and the Presiding Officer.
 - (d) A copy of the Presiding Officer's Final Judgment and Order shall be promptly mailed to each of the parties.

R655-14-16. Request for Hearing.

- (1) Regardless of any other provision of the general laws to the contrary, all requests for a hearing shall be in writing and shall be filed with the Division within fourteen (14) calendar days of the date the IO was issued.
- (2) The request for a hearing shall state clearly and concisely the specific facts that are in dispute, the supporting facts, the relief sought, the State Engineer Agency Action (SEAA) number, and any additional information required by applicable statutes and rules.
- (3) The Presiding Officer may, upon the Presiding Officer's own initiative or upon the motion of any party, order any party to file a response or other pleading, and further permit either party to amend its pleadings in a manner just to all parties.
- (4) The Presiding Officer shall, if it is determined a hearing is warranted, give all parties at least three (3) days notice of the date, time and place for the hearing. The Presiding Officer may grant requests for continuances for good cause shown.
- (5) Any party may, by motion, request that a hearing be held at some place other than that designated by the Presiding Officer, due to disability or infirmity of any party or witness, or where justice and equity would be best served.

R655-14-17. General Requirements for Hearings.

- (1) A hearing before a Presiding Officer is permitted in an enforcement adjudicative proceeding if:
 - (a) The proceeding was commenced by an IO; and
 - (b) The respondent files a timely request for hearing that meets the requirements of Section R655-14-16; and
 - (c) The respondent raises a genuine issue of material fact; or
 - (d) The Presiding Officer determines that a hearing is required to serve the interests of equity or justice.
- (2) No genuine issue of material fact exists if:
 - (a) The evidence presented to the Presiding Officer by the Enforcement Engineer and by the respondent is sufficient to establish the violation of the respondent under applicable law; and
 - (b) No evidence presented by the respondent conflicts with or substantially counters the evidence the Enforcement Engineer relied on when issuing the IO.
- (3) The Presiding Officer may make a decision without holding a hearing if:
 - (a) Presentation of testimony or oral argument would not advance the Presiding Officer's understanding of the issues involved;
 - (b) Delay would cause serious injury to the public health and welfare;
 - (c) Disposition without a hearing would best serve the public interest.
- (4) If no hearing is held, the Presiding Officer may issue a Final Judgment and Order in reliance upon the record, as defined in this rule, or may order a preliminary conference to supplement or clarify the record.
- (5) A respondent at any time may withdraw the respondent's request for a hearing. The withdrawal shall be filed with the Division, in writing, signed by the respondent or an authorized representative, and is deemed final upon the date filed.

R655-14-18. Preliminary Conference.

- (1) The Presiding Officer may require the parties to appear for a preliminary conference prior to granting a request for a hearing or prior to the scheduled commencement of a hearing or at any time before issuing a Final Judgment and Order.
- (2) The purpose of a preliminary conference is to consider any or all of the following:
 - (a) The simplification or clarification of the issues;
 - (b) The possibility of obtaining stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreements which shall avoid unnecessary proof;
 - (c) The limitation of the number of witnesses or avoidance of similar cumulative evidence, if the case is to be heard;
 - (d) The possibility of agreement disposing of all or any of the issues in dispute; or
 - (e) Such other matters as may aid in the efficient and equitable disposition of the adjudicative enforcement proceeding.
- (3) If a request for hearing has been timely and properly filed and has not been denied, all parties shall prepare and exchange the following information at the initial preliminary conference:
 - (a) Names and addresses of prospective witnesses including proposed areas of expertise for expert witnesses;
 - (b) A brief summary of proposed testimony;
 - (c) A time estimate of each witness' direct testimony;
 - (d) Curricula vitae (resumes) of all prospective expert witnesses.
- (4) The scheduling of a preliminary conference shall be solely within the discretion of the Presiding Officer.
- (5) The Presiding Officer shall give all parties at least three (3) days notice of the preliminary conference.
- (6) The notice shall include the date, time and place of the preliminary conference.

R655-14-19. Telephonic or Electronic Hearings and Preliminary Conferences.

- (1) The Presiding Officer may conduct hearings or preliminary conferences by telephone or other reliable electronic technology.

R655-14-20. Procedures and Standards for Orders Resulting from Service of an Initial Order.

- (1) Consent Order:
 - (a) If the respondent substantially agrees with or does not contest the statements of fact in the IO, or if the parties agree to specific amendments to the statements of fact in the IO, the parties may enter into a Consent Order by stipulating to the facts and either or both of the following:
 - (i) Negotiated administrative penalties;
 - (ii) Negotiated replacement of water; or
 - (iii) Negotiated reimbursement of enforcement costs.
 - (b) A Consent Order based on that stipulation, shall be prepared by the Enforcement Engineer for execution by the parties. The executed Consent Order shall be reviewed by the Presiding Officer and, if found to be acceptable, will be signed and issued by the Presiding Officer.
 - (c) A Consent Order issued by the Presiding Officer is not subject to reconsideration or judicial review.
- (2) Final Judgment and Order Without Hearing: If the respondent does not request a hearing or is not granted a request for a hearing, participates by attending a preliminary conference or otherwise presents relevant information to the Presiding Officer, but is unable or unwilling to negotiate a stipulated Consent Order, the Presiding Officer shall issue a Final Judgment and Order based on the record, as defined in this rule.
- (3) Final Judgment and Order After Hearing: If the respondent timely and properly requests a hearing, the hearing request is granted, the respondent participates by attending all scheduled preliminary conferences, and/or by attending the hearing, but is unwilling or unable to negotiate a stipulated Consent Order, the Presiding Officer shall issue a Final Judgment and Order based upon the record, as defined in this rule.
- (4) Default Order: The Presiding Officer may issue a Default Order if the respondent fails to participate as follows:
 - (a) The respondent does not timely request a hearing and fails to respond to the IO; or
 - (b) After proper notice the respondent fails to attend a preliminary conference scheduled by the Presiding Officer; or
 - (c) After proper notice, the respondent fails to attend a hearing scheduled by the Presiding Officer.
- (5) A respondent who fails to participate pursuant to an IO waives any right to request reconsideration of the Final Judgment and Order per Section R655-14-25, but may petition for judicial review per Section R655-14-29.

R655-14-21. Conduct of Hearings.

- (1) All parties, authorized representatives, witnesses and other persons present at the hearing shall conduct themselves in a manner consistent with the standards and decorum commonly observed in Utah courts. Where such decorum is not observed, the Presiding Officer may take appropriate action including adjournment, if necessary.
- (2) The Presiding Officer shall conduct the hearing, make all decisions regarding admission or exclusion of evidence or any other procedural matters, and have an oath or affirmation administered to all witnesses.

R655-14-22. Rules of Evidence in Hearings.

- (1) Discovery is prohibited, but the Division may issue subpoenas or other orders to compel production of necessary evidence.
- (2) A party may call witnesses and present oral, documentary, and other evidence.

(3) A party may comment on the issues and conduct cross-examination of any witness as may be required for a full and true disclosure of all facts relevant to any issue designated for hearing, and as may affect the disposition of any interest which permits the person participating to be a party.

(4) A witness' testimony shall be under oath or affirmation.

(5) Any evidence may be presented by affidavit rather than by oral testimony, subject to the right of any party to call and examine or cross-examine the affiant.

(6) Relevant evidence shall be admitted.

(7) The Presiding Officer's decision may not be based solely on hearsay.

(8) Official notice may be taken of all facts of which judicial notice may be taken in Utah courts.

(9) All parties shall have access to public information contained in the Division's files and to all materials and information gathered in the investigation, to the extent permitted by law.

(10) No evidence shall be admitted after completion of a hearing or after a case is submitted on the record, unless otherwise ordered by the Presiding Officer.

(11) Intervention is prohibited.

(12) A respondent appearing before the Presiding Officer for the purpose of a hearing may be represented by a licensed attorney. The Enforcement Engineer shall present evidence before a Presiding Officer supporting the State Engineer's claim. At the State Engineer's discretion, a representative from the office of the Attorney General may also present supporting evidence.

R655-14-23. Transcript of Hearing.

(1) Testimony and argument at the hearing shall be either recorded electronically or stenographically. The Division shall make copies of electronic recordings available to any party, upon written request. The fee charged for this service shall be equal to the actual costs of providing the copy. The Division is not responsible to supply any party with a transcript of a hearing.

(2) If any party shall cause to be produced a transcript of a hearing, a copy of said transcript shall be filed with the Division and provided to all other parties. By order of the Presiding Officer and with the consent of all parties, such written transcript may be deemed an official transcript.

(3) Corrections to an official transcript may be made only to conform it to the evidence presented at the hearing. Transcript corrections, agreed to by opposing parties, may be incorporated into the record, if and when approved by the Presiding Officer, at any time during the hearing, or after the close of the adjudicative proceeding. The Presiding Officer may call for the submission of proposed corrections and may determine the disposition thereof at appropriate times during the course of the proceeding.

R655-14-24. Consent Order.

(1) At any time prior to the Presiding Officer issuing a Final Judgment and Order, the parties may attempt to settle a dispute by stipulating to a Consent Order.

(2) Every Consent Order shall contain, in addition to an appropriate order:

(a) A statement of facts accepted by the parties;

(b) A waiver of further procedural steps before the Presiding Officer and of the right to judicial review; and

(c) A statement that the stipulation is enforceable as an order of the State Engineer in accordance with procedures prescribed by law.

(3) The Consent Order may contain a statement that signing the Consent Order is for settlement purposes only and does not constitute an admission by any party that the law or rules have been violated as alleged in the IO.

(4) When issued by the Presiding Officer, a Consent Order constitutes a Final Judgment and Order, effective on the date issued.

R655-14-25. Reconsideration.

(1) Within 14 days after the Presiding Officer issues a Final Judgment and Order, any party may file a written request for reconsideration stating the specific grounds upon which relief is requested.

(2) Unless otherwise provided by statute, the filing of a request for reconsideration is not a prerequisite for seeking judicial review of the order.

(3) The request for reconsideration shall be filed with the Division to the attention of the Presiding Officer and one copy shall be mailed to each party by the party filing the request.

(4) The Presiding Officer may issue a written order granting or denying the request for reconsideration. It is not required that the written order explain the grounds for the Presiding Officer's decision.

(5) If the Presiding Officer does not issue an order granting a request for reconsideration within 14 days after the date it is filed with the Division, the request shall be considered denied.

(6) A Final Judgment and Order in the form of a Consent Order or a Default Order is not subject to a request for reconsideration under this rule.

R655-14-26. Setting Aside a Final Judgment and Order.

(1) On the motion of any party or on a motion by the Presiding Officer, the Presiding Officer may set aside a Final Judgment and Order on any reasonable grounds, including but not limited to the following:

(a) The respondent was not properly served with an IO;

(b) The order has been replaced by a judicial order that covers the same violation and time period;

- (c) A rule or policy was not followed when the Final Judgment and Order was issued;
 - (d) Mistake, inadvertence, excusable neglect;
 - (e) Newly discovered evidence which by due diligence could not have been discovered before the Presiding officer issued the Final Judgment and Order; or
 - (f) Fraud, misrepresentation or other misconduct of an adverse party;
- (2) A motion to set aside a final order shall be made in a reasonable time and not more than three (3) months after the Final Judgment and Order was issued.
- (3) The Presiding Officer shall notify the parties of the receipt and consideration of a motion to set aside a final order by issuing a notice to all parties, including therewith a copy of the motion.
- (4) Any party opposing a motion to set aside a final order may submit information within the time period to be established by the Presiding Officer's notice of the motion.
- (5) After consideration of the motion to set aside an order and any information received from the parties, the Presiding Officer shall issue an order granting or denying the motion, and provide a copy of the order to all parties.

R655-14-27. Amending Administrative Orders.

- (1) On the motion of any party or of the Presiding Officer, the Presiding Officer may amend an IO or Final Judgment and Order for reasonable cause shown, including but not limited to the following:
- (a) A clerical mistake made in the preparation of the order; or
 - (b) The time periods and alleged violation(s) covered in the order overlap the time periods and alleged violation(s) in another order for the same respondents.
- (2) A motion by any party to amend an order shall be made in a reasonable time and, if to amend a Final Judgment and Order, not more than three (3) months after the Final Judgment and Order was issued.
- (3) The Presiding Officer shall notify the parties of the receipt and consideration of a motion to amend an order by issuing a notice. The notice shall include a copy of the motion.
- (4) Any party opposing a motion to amend an order may submit information within the time period to be established by the Presiding Officer's notice of the motion.
- (5) After considering a motion to amend an order and any relevant information received from the parties, the Presiding Officer shall advise the parties of his determination. If the Presiding Officer determines that the order shall be amended, the Presiding Officer shall issue the amended order to all parties.

R655-14-28. Disqualification of Presiding Officers.

- (1) A Presiding Officer shall disqualify himself from performing the functions of the Presiding Officer regarding any matter in which he, his spouse, or a person within the third degree of relationship to either of them or the spouse of such person:
- (a) Is a party to the proceeding, or an officer, director, or trustee of a party;
 - (b) Has acted as an attorney in the proceeding or served as an attorney for, or otherwise represented, a party concerning the matter in controversy;
 - (c) Knows that he has a financial interest, either individually or as a fiduciary, in the subject matter in controversy or in a party to the proceeding;
 - (d) Knows that he has any other interest that could be substantially affected by the outcome of the proceeding; or
 - (e) Is likely to be a material witness in the proceeding.
- (2) A Presiding Officer is also subject to disqualification under principles of due process and administrative law.
- (3) These requirements are in addition to any requirements under the Utah Public Officers' and Employees' Ethics Act, Section 67-16-1 et seq.
- (4) A motion for disqualification shall be made first to the Presiding Officer. If the Presiding Officer is appointed, any determination of the Presiding Officer upon a motion for disqualification may be appealed to the State Engineer.

R655-14-29. Judicial Review.

- (1) Pursuant to Section 73-2-25, a Final Judgment and Order may be reviewed by trial de novo by the district court:
- (a) In Salt Lake County; or
 - (b) In the county where the violation occurred.
- (2) A respondent shall file a petition for judicial review of a Final Judgment and Order within 20 days from the day on which the order was issued, or if a request for reconsideration has been filed and denied, within 20 days of the date of denial of the request for reconsideration.
- (3) The Presiding Officer may grant a stay of an order or other temporary remedy during the pendency of the judicial review on the Presiding Officer's own motion, or upon the motion of a party. The procedures for notice, for consideration of motions, and for issuing a determination shall be as set forth herein for a motion to set aside a Final Judgment and Order.

KEY: water rights, enforcement, administrative penalties

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