

Compliance Enforcement Policy

Division of Water Resources

Mission

The enforcement regulations are intended to achieve compliance with Nevada's water law within a framework that minimizes enforcement; to assure the protection of Nevada's water resources and the public welfare by promoting compliance and deterring noncompliance with the statutes, regulations, permits, certificates, waivers and orders administered and issued by the State Engineer; and to assure that if the State Engineer assesses any administrative penalties, that it is done lawfully and equitably.

Legal Authority

The State Engineer has the statutory authority under Nevada Revised Statutes (NRS) §533.481, §534.193, §535.200, and §536.200 to issue certain penalties in addition to other penalties allowed for within chapters 533, 534, 535, and 536 of the NRS. The State Engineer has the statutory authority under Nevada Revised Statutes (NRS) §533.482, §534.195, §535.210, and §536.210 to seek injunctive relief from the appropriate court in addition to any other remedy of law. NRS §532.120 provides the State Engineer with the authority to make rules and regulations, and such regulations have been adopted under Nevada Administrative Code (NAC) Chapter 532 (adopted regulation [R024-08A](#)) for the administration of compliance enforcement.

Policy and Procedures

The following policy is hereby initiated to assure a consistent implementation of the enforcement regulations. This policy will be available on the Division of Water Resources (Division) website in the compliance enforcement section. The State Engineer reserves the right to act in variance of this policy and to change it without public notice. This policy supersedes any previous policy.

Water Planning Engineer

The Water Planning Engineer is the point contact for the Office of the State Engineer and the public for issues regarding compliance and enforcement. This will promote a consistency in how these regulations are implemented.

Alleged Violations

Each alleged violation (or group of related alleged violations) will be assigned an "Alleged Violation Number" by the Water Planning Engineer at the time of database entry. This number is the "AV No." field (completed by the Water Planning Engineer) shown on the *Investigation of Alleged Violation Summary and Checklist* and the *Request to Investigate Alleged Violation* forms. This is a unique identifier comparable to all the other numbers that this office assigns in sequence (e.g. applications, certificates, rulings, orders, waivers, etc.). The number itself is arbitrary, and only serves to establish a unique record within the files of the State Engineer, including the database developed to track alleged violations. It does not denote ranking, priority, timing or resolution.

There are two principle ways in which an alleged violator will come under consideration. The first is through the submission by the public a *Request to Investigate Alleged Violation* form (or an equivalent written complaint). The other is through staff recommendation based on criteria. Both of these are described in the following sections.

Requests to Investigate Alleged Violation(s)

When a complaint is received through a *Request to Investigate Alleged Violation* form or its equivalent and after review by the State Engineer, it will be routed to the Water Planning Engineer who will assign an Alleged Violation Number, create a database entry, and forward the complaint, any preliminary findings and a request for field investigation to the basin engineer or appropriate field staff for follow-up investigation.

Complaints must be in writing and the complainant must be identified for the complaint to be investigated. If a complaint is made by e-mail, telephone or in person, staff should direct the complainant to complete the *Request to Investigate Alleged Violation* form available in the Forms Room page of the Division's website, unless waived by the State Engineer or a Deputy State Engineer.

Selection Criteria and Field Work

It is the intention of the State Engineer that this office act methodically and at a deliberate pace towards bringing in the most egregious alleged violators into compliance. To identify outstanding violations, basin engineers should:

1. Review any pumpage data that has been collected for their basins or have been submitted under a reporting requirement and generate a ranked list of those who have the greatest quantity of over-pumping and a ranked list of those who have the greatest percentage of over-pumping relative to their water rights;
2. Review large irrigation rights for incorrect places of use and points of diversion and generate a ranked list;

3. Flag any immediate concern or unsafe condition for which other methods of regulation have failed to resolve (e.g. a dam safety issue or an open well casing);
4. Identify those applicants who do not have a meter or have not submitted pumping reports per their permit terms;
5. Investigate *Requests to Investigate Alleged Violation* submitted by the public and forwarded to them from the Water Planning Engineer.

The other situation in which an alleged violation may come under consideration is through the course of performing assigned tasks by Division staff. As applications to appropriate or change a water right, reports of conveyance, requests for extensions of time, proofs of completion of work, applications of water to beneficial use, and other forms are reviewed and water level measurements, crop and pumpage inventories, dam inspections, and other tasks are executed, staff of the division may become aware of any of the above described alleged violations or other alleged violations such as, but not limited to, the use of water without a permit, a well not being properly plugged and abandoned, the use of water for a purpose other than the permitted use, etc.

In these cases, letters with increasingly strict language should be sent to provide a reasonable opportunity for corrections to be made by the Respondent. It may be that many letters, meetings, and other communications are already in the record, in which case the sternest letters may be sent. If these letters are insufficient to achieve compliance, then the matter can be referred to the Water Planning Engineer to consider an enforcement action. In some cases the matter may be sufficiently egregious as to warrant an enforcement action be taken immediately; staff is urged to discuss with their supervisor and consult with the Water Planning Engineer as to what action to take.

It is possible that in addition to written correspondence that staff has made verbal communication with the alleged violator. Such cases should be documented in the appropriate file or record by memo or other appropriate note. Date, time and description of what was discussed should all be noted to provide a complete record. "Sticky notes" should not be used to record these conversations, which may be important for establishing the record upon which a finding or other action may be based.

When an alleged violator is identified, an *Investigation of Alleged Violation Summary and Checklist* should be completed and attached to any field investigation or other report in support of the case for an alleged violation. This form contains much of the same information as provided for in the *Request to Investigate Alleged Violation* and is just to provide an at-a-glance summary of the "who, what, when, and where" involving the alleged violation. In cases where water is being illegally diverted or wasted, the quantity should be determined as best as possible for inclusion in the report of informal field investigation. This packet of information should then be passed on to the Water Planning Engineer, who will track Alleged Violations and send warning letters or recommend additional action per the regulations under NAC 532. There should be enough information in the *Summary*, the field investigation, permit file(s), and other records that the Water Planning Engineer can initiate an enforcement action at the State

Engineer's instruction. If there is not, then the Water Planning Engineer may request additional information or another field investigation to complete the record.

Staff should track the hours spent in the investigation of Alleged Violations in case a penalty is issued, since per subsection 3 of section 20 of NAC 532 the enforcement costs can be assessed in addition to administrative fines or replacement of water. Likewise, any other costs directly related to investigations or enforcement should be documented.

Resolution

Utilizing the information and recommendation from the Division staff, the Water Planning Engineer will prioritize alleged violations and begin the enforcement actions defined under the regulations and statutes.

For most circumstances, the first step for bringing an alleged violator into compliance will be the issuance of a warning letter per NAC 532. If the alleged violator takes steps to come into compliance, and continues to do so until in compliance, then no further enforcement action will occur. However, if upon conclusion of time frames established in the warning letter no significant progress has been made, then the Water Planning Engineer will recommend other options to be considered under NAC 532. These options are issuing a Finding of Alleged Violation and Violation Order (FOAV & VO) and/or seeking injunctive relief. A decision will then be made by the State Engineer or his Deputies as to which action to take.

Although the first action taken will likely be a warning letter, the State Engineer is not precluded by this policy from taking any of the other actions available under the regulations and statutes if the nature of the alleged violation warrants such action.

In case of issuance of a FOAV & VO, a timeframe will be established per NAC 532 Section 18, in which the Respondent must perform all items requested in the VO. This will include a hearing in which the Respondent must show cause why the Division should not seek injunctive relief or assess a penalty based on the actions taken by the Respondent in response to the FOAV & VO. The hearing will be conducted by a Hearings Officer and the Water Planning Engineer, State Engineer, Deputy State Engineer(s) and/or Deputy Attorney General (as legal counsel) may be present. All testimony must be given under oath, and the hearing will either be recorded by a stenographer or by a device. The hearing is closed to the public; only the Respondent, the Respondent's counsel or agent(s), appropriate Division staff, the Deputy Attorney General, witnesses, court recorder and other persons deemed appropriate by the State Engineer or Hearing Officer may be present.

As a result of the hearing, a decision will be made by the State Engineer that no violation occurred; that a violation occurred, but no penalty will be issued; or that a violation occurred and a penalty will be issued. The result of the hearing may also assist in determining if injunctive relief should be sought.

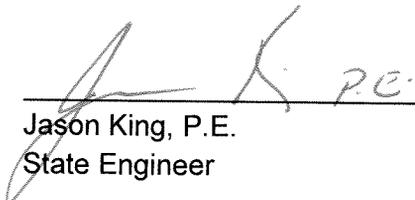
If no penalty will be issued, then the State Engineer may issue an order stating his decision that either no violation has occurred or that a violation has occurred, but no penalty will be issued based on the facts supporting the FOAV and the facts presented at the hearing. It may still be possible that the latter decision still be made if the penalty panel returns a recommendation that no penalty should be assessed.

If a penalty is to be issued, then the matter is referred to a penalty panel. The penalty panel will be comprised of three senior Division staff members. At least one will be a Deputy State Engineer and the remainder will be Section Chiefs. The penalty panel will be assisted by the Water Planning Engineer, who can provide background information, perform costs analyses, and execute other technical functions. The State Engineer will then issue an order assessing a penalty per NAC 532 Section 20 taking into consideration the penalty panel's analysis and recommendation in accordance with the *Penalty Assessment Policy*. At this time the violator may accept the penalty, recommend an alternate but equal penalty (which may be done at any time), or appeal to the Independent Advisory Committee (IAC) within thirty days.

When a written appeal is timely received by the Division, the Director of the Department of Conservation and Natural Resources (Director) will form the three-member IAC from the pool of candidates selected previously. The Division will schedule a hearing to take place within thirty days of receiving a written appeal from the respondent. At the hearing, the respondent may then present a case before the IAC as to why the penalty should be reduced or eliminated and/or why injunctive relief should not be sought. Within thirty days after the hearing is held, the State Engineer will make a final decision taking into consideration the recommendations of the IAC. Within thirty days from the decision the violator may appeal the decision to the District Court per NRS §533.450.

The goal of the Division of Water Resources is to conserve, protect, and manage Nevada's valuable water resource by administering and enforcing Nevada water law. This policy serves to guide the Division through the regulations intended to achieve this goal, and may be updated from time to time to reflect changes in statute, regulation and practice as needed to continue to achieve this goal.

Dated this 29TH day of JUNE, 2011



Jason King, P.E.
State Engineer