

PART I.

CHAPTER XII.

RULES OF PRACTICE IN CONTESTED MATTERS

Section 1. Authority. These rules are promulgated by the State Board of Control and the State Engineer, as authorized by Section 2, Article 8, Wyoming Constitution, and Sections 41-154, 41-155, 41-164, 41-190, 41-211 (Section 1, Chapter 180, Session Laws of Wyoming 1965), and 9-276.19 (Laws 1965), Wyoming Statutes 1957.

Section 2. Definitions. The following definitions shall prevail in these rules:

- a. BOARD - The State Board of Control.
- b. CONTESTANT - Shall include any party instituting a contest of any petition, proof of appropriation of water, or filing a petition for abandonment of an adjudicated water right before the State Board of Control, the State Engineer, or a Water Division Superintendent.
- c. CONTESTEE - Shall include any party filing a petition or proof of appropriation of water before the State Board of Control, the State Engineer, or a Water Division Superintendent, which is being opposed or contested.
- d. HEARING OFFICER - The State Board of Control, the State Engineer, or a Superintendent acting as a presiding officer at a hearing.
- e. ENGINEER - The State Engineer.
- f. PRESIDENT - The State Engineer acting as President of the State Board of Control.
- g. SUPERINTENDENT - Water Division Superintendent.
- h. SECRETARY - Deputy State Engineer as Ex-officio Secretary of the State Board of Control.

Section 3. Applicability. These rules are applicable to all contested or adversary proceedings before the Board of Control or a Superintendent or the Engineer.

Section 4. Initiation. Contests shall be initiated in the manner prescribed by the Statutes cited in Chapter III of the Board of Control portion of the Manual of Regulations and Instructions.

Section 5. Notices and Service. Notices shall be as prescribed by the Statutes found in Chapter III of the Board of Control portion of the Manual of Regulations and Instructions and shall be served as therein provided. When private persons are the moving parties, other parties to the proceedings shall be given prompt notice of issues controverted in fact or law. When the hearing is initiated by the Hearing

PART I.

Officer, he may require responsive pleadings.

Section 6. Pleadings. Pleadings shall be those required by Statutes noted in Chapter III of the Board of Control portion of the Manual of Regulations and Instructions.

Section 7. Docket. When a proceeding becomes contested, the Hearing Officer, who is to hear the controversy, shall notify the Secretary of the names of the parties, the date of filing, and the nature of the controversy. The Secretary shall then assign it a number and enter the proceeding, with the date of its filing, on a separate page of a docket provided for such purposes. The Secretary shall establish a separate file for each such docketed case, in which shall be systematically placed all papers, pleadings, documents, transcripts and evidence pertaining thereto, and all such items shall have noted thereon the docket number assigned and date of filing.

Section 8. Form of Pleadings. The form of pleadings for contested cases shall be substantially as on the following page:

PART I.
PLEADINGS

BEFORE THE STATE ENGINEER

STATE OF WYOMING

John Doe,)
)
Contestant,)
)
vs.)
)
Harry Roe,)
)
Contestee.)

Docket No. _____

PETITION

(Answer, Motion, etc.)

STATE OF WYOMING)
)
) SS.
COUNTY OF _____)

Contestant states:

- 1.
- 2.
- 3.
4. etc.

(Signed) _____
Name typed or printed
Contestant (Contestee)

_____(Signed)
Name typed or printed
Address
Attorney for Contestant (Contestee)

PART I.

Section 9. Default. In the event of the default of any party within the time allowed, provided service has been made as required and after due notice to both parties, the Hearing Officer, if he so desires, may order those parties in attendance to present their evidence. If the Hearing Officer determines that there is no material fact in issue, he need not hold the hearing. In either event, the contest will be brought before the State Engineer for consideration and appropriate action.

Section 10. Disposition of Case by Stipulation. Any case may be partially or finally disposed of by stipulation of the parties, approved by the State Engineer. An appropriate Order accordingly shall be entered in the case records.

Section 11. Pre-hearing Conference.

a. As authorized by Section 9-276.30 (a) and (b) (Laws 1965), Wyoming Statutes 1957, at a time on or before the day of the hearing in a contested case, the State Engineer or the Superintendent may direct the parties or their attorneys to consider:

- (1) The simplification of the issues.
- (2) The necessity or desirability of amending the pleadings.
- (3) The possibility of obtaining admission of fact and of documents which will avoid unnecessary proof.
- (4) Stipulations as to qualifications of expert witnesses.
- (5) Such other matters as may aid in the disposition of the case.

b. Such conference shall be conducted informally. A memorandum will be prepared which recites the action taken at the conference, amendments allowed, agreements of the parties, and limiting the issues to those not disposed of by admission or agreements of counsel and the parties. The pre-hearing memorandum shall control the course of the hearing unless modified by the State Engineer to prevent manifest injustice.

Section 12. Motions. The Hearing Officer, after 10 days notice by him, may hear any motion filed in connection with contests to be heard by him. It shall be within his discretion as to whether such hearing shall be oral, or upon the exchange of briefs, or other writings, or a combination thereof.

Section 13. Hearing Before Full Board. Any hearing provided by law to be held before a Superintendent may, at the discretion of the State Engineer or the Board, be held before the full Board upon stipulation of the parties.

Section 14. Subpoenas. As authorized by Section 9-276.25(d) (Laws

PART I.

1965), Wyoming Statutes 1957, subpoenas for appearance and to produce books, papers or documents, will be issued by the Superintendent, Secretary or State Engineer, as appropriate, by written request.

Section 15. Hearing. After the issues shall have been defined, the State Engineer shall set a date for hearing and shall fix such date and notify all parties in interest of record of the date and place of hearing at least 15 days prior to the date thereof; or such notice as may be required by Statute, which notice may be given personally or by prepaid mail, or as required by Statutes found in Chapter III of the Board of Control portion of the Manual of Regulations and Instructions.

Section 16. Order of Procedure at Hearing. As nearly as may be practicable, hearings shall be conducted in accordance with the following order of procedure:

a. The Hearing Officer shall announce that the hearing is called to order to transact business and call by Docket Number and Title the case to be heard.

b. The Hearing Officer will briefly review the case and any evidence previously presented.

c. The Contestant will be allowed an opening statement to briefly explain his position and outline the evidence he proposes to offer, together with its purpose.

d. The Contestee will be allowed an opening statement, in the same manner as allowed Contestant.

e. The Contestant's evidence will be heard. Witnesses may be cross-examined by the Contestee. The Hearing Officer, or his advisors, may examine witnesses. Contestant's offered exhibits will be marked by letters of the alphabet, beginning with "A".

f. The Contestee's evidence will be heard in the same manner as allowed Contestant. Contestee's exhibits will be marked with numbers, beginning with "1".

g. The Hearing Officer, with the assistance of the Attorney General or member of his staff, will introduce any evidence required on behalf of the Board or Superintendent.

h. The Contestant may offer rebuttal evidence.

i. The Board, Superintendent or State Engineer, may in their discretion, allow evidence to be offered out of the order as herein prescribed. A witness will be permanently excused when all his testimony has been concluded and no good reason exists for his remaining in attendance.

j. Closing statements will be made in the following sequence:

PART I.

- (1) Contestant.
- (2) Contestee.
- (3) Contestant in rebuttal.

k. The Hearing Officer may recess the hearing as required.

l. Parties may tender briefs, or the Hearing Officer may call for such briefs as may be desirable.

m. After all interested parties have been offered an opportunity to be heard, the Hearing Officer shall excuse all witnesses not previously excused and declare the evidence closed. The evidence of the case may be reopened at a later date and before a final Order has been made, for good cause shown, by Order of the State Board of Control, upon motion of any party to the proceeding, the Superintendent, the State Engineer, or the Board.

n. The Hearing Officer will declare that the case is being taken under advisement and that findings and an Order will be announced. He will make such announcement as may be appropriate with respect to further disposition of the case.

Section 17. Witnesses at Hearings to be Sworn. All persons testifying at any hearing, before the Board, Superintendent or State Engineer, shall stand and be administered the following oath by the Hearing Officer:

"Do you swear (or affirm) that the testimony you are about to give in the matter now in hearing shall be the truth, the whole truth and nothing but the truth in this hearing now before the (Board, Superintendent, State Engineer)?"

Section 18. Applicable Rules of Civil Procedure to Apply. Proceedings before a Hearing Officer shall be conducted in accordance with the rules of practice and procedure contained in the Rules of Civil Procedure of the State of Wyoming, insofar as the same may be applicable and not inconsistent with the laws of the State of Wyoming, including the Administrative Procedure Act (Sections 9-276.19 through 9-276.33 (Laws 1965), Wyoming Statutes 1957), and those pertaining in particular to the State Board of Control, the State Engineer and the Superintendents of the Water Divisions. For the application of such Rules of Civil Procedure, the Deputy State Engineer is designated as the Clerk as in the relationship of a Clerk of Court to a Court.

Section 19. Attorneys. The filing of a pleading by an attorney constitutes his appearance for the party for whom the pleading is filed. The Board, Superintendent or State Engineer must be notified, in writing, of the withdrawal of an attorney from any case.

PART I.

Section 20. Attorney General Present. In all contested matters before a Hearing Officer, the Attorney General or a member of his legal staff may be present to assist and advise.

Section 21. Taking of Testimony - Reporter. Where oral testimony of witnesses is taken in a contested case, before the Board, Superintendent or State Engineer, the testimony will be reported by a competent reporter who shall be satisfactory to the Board, Superintendent or State Engineer, or by other appropriate means. The compensation of such reporter for taking the testimony shall be paid as required by law or as ordered. A transcript of testimony for the record will be furnished, as required by law, to the Board, Superintendent or State Engineer.

Section 22. Compensation of Reporters. Reporters or stenographers will be allowed such compensation and fees for reporting or transcribing from an electronic device, testimony in contested cases before the Board, Superintendent or State Engineer, as may be lawful and proper.

Section 23. Decision, Findings of Fact, Conclusions of Law and Order. The State Engineer shall make a written decision and Order containing Findings of Fact and Conclusions of Law. Such decision and Order shall be made of record in the Office of the State Engineer and will, without further action, become the decision and Order in the case on the 15th day thereafter. Forthwith upon receipt, the State Engineer shall send a copy, by prepaid mail, to each party or his attorney.

Section 24. Appeals and Reserved Questions to District Court. Judicial review by the District Court, from decisions of the State Engineer, are governed by statute, and Rule 72.1 of the Rules of Civil Procedure, as amended and promulgated by the Supreme Court of Wyoming.

Section 25. Amendment of Rules. Any amendments to these rules shall become effective as provided by Sections 9-276.20 through 9-276.24 (Laws 1965), Wyoming Statutes 1957.