

## CHAPTER VI

### CONTESTED CASE PROCEDURE

Section 1. Controlling Statutes. In any action before the Board wherein the State or any other party appears in an adverse position against the petitioner, or wherein the petitioner's legal rights, duties or privileges are required by law to be determined by the Board after an opportunity for hearing, the matter is conducted as a contested case pursuant to the Wyoming Administrative Procedure Act, W.S. 16-3-107 through 16-3-112. The specific statute or statutes for the type of petition involved may also require that certain procedures be followed.

Section 2. Additional Definitions. In addition to the terms used in the Wyoming Administrative Procedure Act, W.S. 16-3-101 through 16-3-115, and the definitions given in Chapter II of those regulations, the following definitions apply to contested cases before the Board:

a. "Contestant" means any party who initiates a contest against any petition or proof filed with the Board for its decision, or who seeks to have a water right declared abandoned.

b. "Contestee" means the holder of a water right against which abandonment proceedings have been initiated or a party who has filed a petition or proof with the Board which is being opposed or contested (the term "petitioner" may also be used if no confusion results).

c. "Hearing Officer" means whoever is designated by statute or by the Board as the person to preside over a contested case proceedings.

### Section 3. Notice and Service.

a. Notice and service on all contested cases shall be given in accordance with W.S. 16-3-107. A contested case may be initiated by objection being made to a proof of appropriation or construction, by the filing of an abandonment action, or by objections raised to a proposed change of use or change in point of diversion, etc. In cases where the Board is required to hold a hearing in determining the extent of an appropriator's water

## CHAPTER VI

rights without any adverse party being present, contested case procedures as to notice and service shall be observed by the Board and by all persons who appear as parties.

b. In a contested case, any person whom the Board knows to have an interest in the matter shall be given notice of the proceedings and of all motions or pleadings by acknowledged personal service or by certified mail, return receipt requested. All unknown persons shall be notified through publication. After all persons wishing to appear as parties have made themselves known, usually at the commencement of a hearing, further notice and service may be made personally at the hearing or by first class mail to the addresses given by the parties. However, the record of the proceedings must be documented in some fashion, such as by transcript notation or by letter copy.

c. Proofs of certified mailings, whether made by the Board or by any party shall be made part of the record. Affidavits of publication shall likewise be made a part of the record.

d. The moving party, whether contestant or contestee, shall be responsible for paying publication charges and may be assessed for the Board's mailing costs connected with a contested case proceedings.

e. The hearing officer may give personal notice to any party at a hearing in any manner so long as the fact of service is documented in the record of the proceedings.

f. In an action for involuntary abandonment of water rights, the petitioner (contestant) shall search all readily available public records to identify all persons who may have any interest in the appropriation or appropriations for which the declaration of abandonment is sought. A list of such persons with their mailing addresses and respective land ownership interests shall be filed in the Board's Cheyenne office with the petition for declaration for abandonment. Within three working days, the Board's staff shall determine if the petition and accompanying list of affected persons appears to be complete. If so determined, the Board's staff shall by

## CHAPTER VI

the end of the third day send a copy of the petition by certified mail to all persons believed by the petitioner or Board's staff to have any interest in the matter. The action on the petition for declaration of abandonment shall be deemed as having commenced at the close of business on the day the petition was filed. If the Board's staff determines that the petition and supporting documents are inadequate to give notice to all persons believed to have an interest in the matter, or in any other particular, the original papers filed in the Board's Cheyenne office shall be returned to the petitioner by the end of the third by certified mail with a letter explaining any noted deficiency. A copy of the petition and supporting documents shall be kept for record purposes, but no action shall be deemed to have commenced as a result of the filing of a deficient petition for declaration of abandonment. However, there shall be no restriction of the correction and refiling of a deficient petition.

g. Each party in any contested case is required to keep the hearing officer and all other parties informed of his current mailing address and telephone number or that of his authorized attorney.

Section 4. Pleadings. Except as required by statute for the action initiated, and as stated in the notice of hearing or otherwise required by the hearing officer, formal pleadings are not mandatory. However, each party in a contested case proceedings is advised to make his or her position known in writing so that the issues of fact and law can be clearly defined. All documents in the nature of pleadings which are filed with the Board or given to the hearing officer are deemed to be verified or sworn statements and must be personally signed by the party for who they are submitted or by its attorney.

Section 5. Docket File. The official docket file for a contested case shall be maintained by the Board's Cheyenne office. All notices, pleadings, motions, transcripts, reports, documents, maps, and any other papers or evidence of any kind pertaining to a contested case proceeding shall be systematically filed in the docket file. When complete, the docket file shall constitute the record of the proceedings. Official filings shall not be made with any other person other than the secretary and/or adjudication officer or other Board employee in Cheyenne. Original documents, etc., which pertain

## CHAPTER VI

to a contested case that come into the possession of any Board officer or employee shall be forwarded to the Adjudication Officer in Cheyenne. When appropriate, duplicate copies should be provided to the division superintendent or other person designated as the hearing officer. The hearing officer may obtain or retain possession of all or part of the official docket file during the conduct of the hearing.

### Section 6. Appearances.

a. Appearance or representation of parties may be made as follows:

(1) An individual may appear and be heard on his or her own behalf;

(2) A partnership may appear and be represented by a partner;

(3) A corporation may appear and be represented by an executive corporate officer, a managing employee, or other duly authorized agent;

(4) A municipal corporation or government agency may appear and be represented by an officer, a member of its governing body, or a duly authorized employee;

(5) An unincorporated association may appear and be represented by any bonafide general officer or full time employee authorized to represent the membership of the association;

(6) Any party may appear and be represented by an attorney at law admitted to active practice in Wyoming. An attorney admitted to practice in another state must associate with local counsel and move the hearing officer to allow his or her appearance.

(7) In unusual circumstances, the hearing officer may allow representation by other persons upon request.

b. The filing of a pleading by an attorney constitutes an appearance for the party he or she represents.

## CHAPTER VI

c. The secretary and hearing officer must be notified in writing of the withdrawal of any attorney.

### Section 7. Hearing Officer.

a. In addition to such other duties as may be imposed by law, the hearing officer shall:

- (1) Issue Subpoenas;
- (2) Supervise the taking of depositions and other discovery as allowed by W.S. 16-3-107(g) and (h);
- (3) Conduct pre-hearing conferences as he or she deems necessary;
- (4) Arrange for attendance at the hearing of a certified court reporter and ensure that the hearing room is available as scheduled;
- (5) Officially open and close the hearing;
- (6) Administer oaths and affirmations;
- (7) Preside over the hearing and control the course of the proceedings;
- (8) Rule upon offers of proof and receive into the record of the case all competent evidence relevant to the issues;
- (9) Rule upon or otherwise dispose of all procedural motions and requests;
- (10) Prepare a recommended decision for consideration by the full Board at its next regularly scheduled meeting if so requested by the Board.

b. In performing his or her duties, the hearing officer may be assisted, in regard to procedural or legal questions, by the Attorney General, and by the adjudication officer in regard to the Board's books and records maintained in its Cheyenne office. Additionally, the hearing officer may allow or direct

## CHAPTER VI

other State employees and officials to assist in the preparation of evidence. For example, State Engineer employees or ground water control advisory board members may be asked to advise the hearing officer as to technical facts. They may question witnesses as directed by the hearing officer. They may also be asked questions by other parties. Their recommendations may be requested in either written or oral form. However, testimony always shall be given under oath and in a hearing.

c. Preferably, the hearing officer will be addressed by names or titles such as "Mr. Examiner" or "The Hearing Officer."

Section 8. Rules of Procedure. To the extent applicable, the Wyoming Rules of Civil Procedure will guide the conduct at a contested case hearing. These proceedings are being conducted before an administrative body and not a court, thus the technical rules of evidence do not apply (see W.S. 16-3-108).

Section 9. Official Notice. In any contested case proceedings, the hearing officer or the Board members may take notice of maps, documents, or other papers in the docket file, which have been brought to the attention of the parties. Official notice may also be taken of all information, data, and the material included within the books and records of the State Engineer and the State Board of Control. The Board may also make on-the-ground inspections. If official notice is to be taken of any information, data, or material not previously made available to the parties, or if a field inspection is relied upon, the parties shall be given notice and an opportunity to present rebuttal evidence (see W.S. 16-3-108[d]).

Section 10. Discovery Procedures. Limited discovery procedures are available to the parties as provided by W.S. 16-3-107(g) and (h). In advance of a hearing, any party may request that the other parties name their witnesses, state the nature of their intended testimony, or make the witnesses available for deposition. A request also may be made that documents, exhibits, etc., be produced for examination. Discovery and disclosure may be voluntary or as directed by the hearing officer or President of the Board as authorized by law.

## CHAPTER VI

Section 11. Subpoenas. As authorized by W.S. 16-3-107(d), the hearing officer, upon written request of a party, may issue subpoenas to compel the appearance of witnesses or the production of books, papers or other documents relevant or material to the inquiry. Upon authorization by the hearing officer or by the President of the Board, any voting member of the Board, the secretary, and/or adjudication officer may issue subpoenas in contested case proceedings. However, subpoenas are usually prepared by the attorneys for the parties and submitted to the hearing officer for signature.

Section 12. Motions. It shall be within the discretion of the hearing officer as to how to dispose of all procedural motions in a contested case. Motions for continuance shall be granted only if good cause is shown. Motions which go to the merits of a case shall be decided only by the full Board.

### Section 13. Pre-hearing Conference.

a. At any time prior to the hearing, the hearing officer may direct the parties to consider:

- (1) Simplification of the issues;
- (2) The necessity or desirability of amending the pleadings;
- (3) The possibility of obtaining admissions of fact and stipulations as to expert qualifications and authenticity of documents which can avoid unnecessary proof;
- (4) Such other matters as may aid in the disposition of the case.

b. The pre-hearing conference may be conducted in person or by telephone conference call.

c. At the conclusion of a pre-hearing conference, the hearing officer shall cause to be prepared a pre-hearing order reciting the matters discussed and the agreements reached among the parties. This order shall control the subsequent course of the hearing unless modified by the hearing officer to prevent manifest injustice.

## CHAPTER VI

Section 14. Disposition by Stipulation. Any contested case may be partially or finally disposed of by stipulation of the parties provided the Board also gives its approval. An appropriate order reflecting the terms of the stipulation will be entered in the Order Record at the conclusion of the proceedings.

Section 15. Default. In a case where a contest has been initiated, or a protest entered, and the party initiating the protest or entering the objection fails to appear at the hearing without good cause, the proceeding may be dismissed. A failure of any party in a contested case to appear at the hearing without good cause may allow the Board to decide all issues adversely against the party not present. In any event, the matter will be brought before the Board at its next regularly scheduled meeting for consideration and appropriate action.

Section 16. Full Board Hearing. Any matter which must be decided by the State Board of Control may at its discretion be heard by the full Board. A party in a contested case proceedings may make a request for a full Board hearing to the Secretary of the Board or the hearing officer. Any request for a full Board hearing will be communicated to the President of the Board for his or her consideration and decision, which is to be made in consultation with the other Board members. The party or parties requesting a full Board hearing shall make payment to the Secretary of the Board in an amount sufficient to cover all expenses, including travel expenses, for the Board members and necessary staff.

Section 17. Hearing Procedure. As nearly as may be practicable, contested case hearings shall be conducted as outlined below:

a. The hearing officer will announce that the hearing is called to order and state the case docket number, nature of the proceedings, and official title of the action.

b. The appearance of all parties appearing at the hearing will be taken and recorded.

## CHAPTER VI

c. The hearing officer will briefly review the allegations in any pleadings, state the position of the parties, and describe any evidence which has previously been presented.

d. All pending motions will be disposed of then or later.

e. Opening statements may be made in the following order by each party for the purpose of explaining their position and the evidence they intend to offer:

(1) The petitioner for the action involved, whether the petitioner be contestant or contestee;

(2) The party or parties objecting, responding or defending, whether they be contestant or contestee;

(3) Interveners whose appearances have been accepted;

(4) The State Engineer or any other Wyoming official or agency representative.

f. Each party will then present its evidence in the order stated in subsection "e" above. Cross examination will be allowed to every other party. The hearing officer, Board members, or the Board's legal advisor may also examine any witness. Exhibits will be marked as directed by the hearing officer. A party may appear as his or her own witness and give evidence in the form of testimony provided that they are sworn to tell the truth and may be cross examined by the other parties.

g. The petitioning party may then offer rebuttal evidence, and the other parties may cross examine.

h. The hearing officer will recall any witness which he or she or a Board member wishes to examine further.

i. Closing statements will then be allowed to each party in the order stated in subsection "e" above.

j. At appropriate times throughout the hearing, or at its conclusion, the hearing officer will announce any intentions on the part of the Board to take official notice.

## CHAPTER VI

k. The hearing officer may recess or continue the hearing as he deems appropriate to the circumstances.

l. The hearing officer may allow testimony and evidence to be presented out of order.

m. Witnesses will be excused when their testimony has been concluded and there is no reason for them to remain present.

n. The parties may provide written briefs or memoranda at any time, or the hearing officer may call for whatever briefs he or she believes may be desirable.

o. After all interested parties have been offered an opportunity to be heard, the hearing officer will declare the evidence closed and excuse all witnesses not previously excused.

p. When the taking of evidence is closed, the hearing officer will allow the parties an opportunity to check that the reporter has in his or her possession or control all exhibits, reports, and other items of evidence accepted as part of the record.

q. At the conclusion of a contested case hearing, the hearing officer will announce that the evidence is being taken under advisement by the State Board of Control and that its findings of fact, conclusions of law and order will be released at its next regularly scheduled meeting or as soon thereafter as may be possible. A further announcement will be made that the Board's decision shall be recorded in the Board's Order Record kept in its office in Cheyenne, and that a copy shall be sent to each party of record by certified mail as soon as it can be put into written form.

r. It should be noted that before a final order has been entered in the Order Record, the evidence in a contested case proceeding may be reopened for good cause shown upon order of the State Board of Control.

## CHAPTER VI

### Section 18. Witnesses.

a. Any witness summoned before the State Board of Control is entitled to receive the same fee as if he or she were appearing in a district court of the State of Wyoming. Witness fees are to be paid by the party at whose insistence the witness' testimony is given. Witness fees are not required for state water officials who appear as witnesses in their official capacities.

b. Any persons who is to testify at a Board hearing in a contested case shall stand and be given the following oath or something substantially similar by the Hearing Officer:

DO YOU AFFIRM THAT THE TESTIMONY YOU  
ARE ABOUT TO GIVE IN THE MATTER NOW IN  
HEARING BEFORE THE STATE BOARD OF  
CONTROL SHALL BE THE TRUTH, THE WHOLE  
TRUTH, AND NOTHING BUT THE TRUTH?

### Section 19. Hearing Record.

a. In all contested cases heard by the State Board of Control, the oral testimony of witnesses shall be recorded by a certified court reporter. Except as may be otherwise provided by the statute(s) for the particular petition involved in the proceedings, the petitioner shall pay the reporter's fees and any other incidental costs of preparing the hearing record.

b. An original and one copy of a hearing transcript shall be provided to the Board's Cheyenne office. The parties to a contested case proceedings may purchase additional copies for themselves by contacting the reporter.

### Section 20. Decision.

a. In all contested cases, the Board's decision shall be based upon the record of the proceedings.

b. After a case has been decided by the Board, the Secretary of the Board shall cause to be prepared a written decision containing findings of fact, conclusions of law, and an order. The final written decision shall be approved by all

## CHAPTER VI

Board members who voted on the matter before it is entered in the Order Record. The Board's Order shall become its final administrative action when signed and entered in the Order Record. The Secretary of the Board shall cause a copy of the Board's decision to be sent to all parties or their attorneys by certified mail.