

# Truckee Meadows Water Authority

## Rule 8

### DISPUTE RESOLUTION



#### **A. Applicability**

This Rule describes the procedure for dispute resolution by any Person.

1. Definitions. Terms not defined in this Section shall have the meaning set forth in Rule 1. As used in this Rule:
  - a. "Hearing Officer" shall mean the hearing officer appointed by the Authority to hear contested cases under these Rules.
  - b. "Petitioner" means a Person disputing a final decision by the Authority.
  - c. "Complaint" means a written complaint from a Person disputing a final decision by the Authority.
  - d. "Day" or "Days" under this Rule counts every day, including intermediate Saturdays, Sundays, and legal holidays. If the last day of the period is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday. The event that triggers the period of days is not included in the calculation of days.

#### **B. Administrative Review**

1. General. A Person may obtain administrative review of a final decision (not to include bill disputes, as described in Section E below) of the Authority pursuant to these Rules by filing a written Complaint with the Authority not later than ten (10) days after notice of the final decision. Upon the filing of the Complaint, the Petitioner shall be afforded an opportunity for hearing as provided herein.
2. Complaint. The Complaint shall contain: (a) a statement of the legal authority and jurisdiction under which the hearing is to be held; (b) a reference to the legal grounds that provide a basis for the appeal and a reference to each provision of law allegedly violated; and (c) A brief and concise statement of the facts which provide the basis for the appeal. The Complaint must be sent by certified mail to the Authority's General Manager.
3. Adjudication. Complaints shall be adjudicated by a Hearing Officer, and either party may appeal a final decision of the Hearing Officer to the Board. In the event a conflict of interest requires the recusal of the Hearing Officer in a specific case, the General Manager shall appoint an alternate Hearing Officer to adjudicate that case. The cost of the Hearing Officer shall be shared equally between the Petitioner and the Authority.
4. Representation by Counsel. Any party may elect to be represented by an attorney. An attorney who represents a party under this Rule must be an active member of and in good standing with the State Bar of Nevada or associated with such a member.

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5. Informal Disposition. The parties may stipulate to waive the formal procedures set forth in Section C of this Rule and to allow the Hearing Officer to dispose of the Complaint by stipulation or agreed settlement or other alternative dispute resolution procedures.

#### **C. Complaints Before a Hearing Officer**

1. Hearing. Upon the filing of the Complaint, the Hearing Officer will set the time for a hearing, which shall be no later than thirty (30) Days following the Authority's receipt of the Complaint unless each party to the hearing agrees to waive its right to a hearing within thirty (30) days by notifying, in writing, the Hearing Officer. The Hearing Officer shall serve each party or its counsel of record notice of the place, date and hour of the hearing at least ten (10) Days before the date set for the hearing. If a party fails to appear at the time and place set for a hearing the Complaint may be dismissed with prejudice.
2. Briefs. The Petitioner and Authority shall submit briefs to the Hearing Officer. The Hearing Officer shall prescribe the period by which the briefs must be filed with the Hearing Officer and served on all parties. Except as otherwise provided by an order of the Hearing Officer, briefs filed pursuant to this subsection must conform to the following requirements: (a) Petitioner shall file an opening brief which does not exceed twenty (20) pages in length; (b) Authority shall file a response brief which does not exceed twenty (20) pages in length. The Hearing Officer may order additional briefing before or after a hearing in addition to any briefs pursuant to this subsection. Briefs pursuant to this subsection must be typewritten, in 12-point font, double-spaced (except for descriptions of real property or quotations of more than 50 words), and accompanied by a certificate or acknowledgement of service on all parties. A brief pursuant to this section may be served by US Mail, electronic mail or facsimile.
3. Identification of Witnesses and Exchange of Evidence. Except as otherwise ordered by the Hearing Officer, each party to a hearing before the Hearing Officer shall, not later than five (5) days before the hearing, provide to every other party: (a) Notice of the identify of each person who intends to offer direct oral testimony at the hearing; and (b) A copy of each exhibit which the party intends to offer as evidence in support of the party's position. If a party fails to provide notice of witnesses or evidence in compliance with this subsection the Hearing Officer may refuse to allow the witness to testify or refuse to admit the exhibit into evidence.
4. Transcriptions. Oral proceedings, or any part thereof, may be transcribed by a court reporter at the expense of the requesting party.
5. Communications. All pleadings, including, but not limited to, complaints, petitions, answers, briefs, motions, affidavits and applications, should be addressed to the Hearing Officer, and not to individual members of the Board or its staff. Informal communications may be made with individual members of the staff.





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6. Consolidation of Proceedings. The Hearing Officer may consolidate the hearings for two or more complaints if it appears that the facts and issues are substantially similar and the rights of the parties will not be prejudiced by the consolidation.
7. Evidence. The provisions of NRS 233B.123 regarding admissible evidence are adopted by reference as applicable to hearings before the Hearing Officer. Evidence may be received in any manner ordered by the Hearing Officer, but will ordinarily be received from the parties in the following order:
  - a. Brief orientation by Authority staff;
  - b. The Petitioner;
  - c. The Authority;
  - d. Rebuttal by Petitioner.
8. Burden of Proof. The Petitioner shall bear the burden of proof in any hearing. The Hearing Officer shall comply with the standards for review set forth in subsection 3 of NRS 233B.135.
9. Final Decision. After the hearing, the Hearing Officer shall prepare a written findings of fact, conclusions of law as applicable, and final decision on the issues presented in the hearing. Findings of fact and decisions must be based upon a preponderance of the evidence. Findings of fact must be accompanied by a concise and explicit statement of the underlying facts supporting the findings. The Hearing Officer shall serve a copy of the findings of fact, conclusions of law as applicable and decision upon all the parties of record within fifteen (15) Days after the date of the hearing.

#### **D. Appeal to Board**

1. Notice of Appeal. Either Petitioner or the Authority may appeal the final decision of a Hearing Officer to the Board by filing a notice of appeal with the Authority sent by certified mail to the Authority's General Manager within ten (10) Days after service of the final decision of the Hearing Officer. The Board will serve notice of the place, date and time of the hearing before the Board on the parties or their counsel of record at least thirty (30) Days before the date set for the hearing.
2. Briefs. The Petitioner and Authority shall submit briefs to the Board. The Board's Counsel shall prescribe the period by which the briefs must be filed with the Board and served on all parties. Except as otherwise provided by an order of the Board, briefs filed pursuant to this subsection must conform to the following requirements: (a) Petitioner shall file an opening brief which does not exceed twenty (20) pages in length; (b) Authority shall file a response brief which does not exceed twenty (20) pages in length. The Board may order briefs to be filed before or after a hearing in addition to any briefs pursuant to this subsection. Briefs pursuant to this subsection must be typewritten, in 12-point font, double-spaced (except for descriptions of real property or quotations of more

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than 50 words), and accompanied by a certificate or acknowledgement of service on all parties. A brief pursuant to this section may be served by US Mail, electronic mail or facsimile.

3. Procedures and Standard of Review. The provisions of NRS 233B.135 are adopted by referenced and incorporated herein as governing the procedures, burdens of proof and standard of review for appeals before the Board. The Board shall rely upon the record of the proceeding in front of the Hearing Officer and shall not allow additional new evidence to be submitted.
4. Decision. The decision of the Board shall be deemed the final decision of the Authority for purposes of judicial review. The Board shall prepare findings of fact, conclusions of law and a final decision on the issues presented in the hearing. Findings of facts and decisions must be based upon a preponderance of the evidence. Findings of fact must be accompanied by a concise and explicit statement of the underlying facts supporting the findings. The Board must notify the parties either personally or by certified mail of any decision or order.

#### **E. Bill Disputes**

1. If a Customer disputes any Authority bill for the delivery of water, the Authority shall promptly investigate the matter and report its determination which may include a proposed resolution to the Customer. The Customer may request the report to be made in writing.
2. If the Authority and Customer are unable to agree on a resolution of the bill dispute, the Customer shall have a right to request and receive a decision by the Board. The decision of the Board regarding a bill dispute shall be deemed the final decision of the Authority.

