

# ARTICLE 11.8. SURFACE WATER DISPUTES MEDIATION

## Rule 1. Administration and Implementation

### 312 IAC 11.8-1-1 Administration

Authority: IC 14-10-2-4; IC 14-25-1-8; IC 14-25-1-11

Affected: IC 4-21.5-3.5; IC 14-25-1

Sec. 1. (a) The commission's division of hearings shall administer and coordinate application of IC 4-21.5, including the use of mediation under IC 4-21.5-3.5 for a dispute that arises between the uses of surface water in a watershed area.

(b) The department's division of water shall administer and coordinate the professional and technical functions required of the department under IC 14-25-1 and this rule. The division of water may provide professional and technical assistance to parties to assist with achieving a resolution of a surface water dispute. (*Natural Resources Commission; 312 IAC 11.8-1-1; filed May 22, 2013, 2:56 p.m.: 20130619-IR-312120554FRA*)

### 312 IAC 11.8-1-2 Initiation of petition for mediation

Authority: IC 14-10-2-4; IC 14-25-1-8; IC 14-25-1-11

Affected: IC 14-25-1

Sec. 2. To seek mediation under IC 14-25-1-8 for a dispute between the users of surface water in a watershed area, an affected person must file a petition under this rule at the following address:

Division of Hearings

Natural Resources Commission

Indiana Government Center North

100 North Senate Avenue, Room N103

Indianapolis, IN 46204-2273

(*Natural Resources Commission; 312 IAC 11.8-1-2; filed May 22, 2013, 2:56 p.m.: 20130619-IR-312120554FRA; errata filed Aug 16, 2017, 2:55 p.m.: 20170823-IR-312170389ACA*)

### 312 IAC 11.8-1-3 Contents of petition for mediation

Authority: IC 14-10-2-4; IC 14-25-1-8; IC 14-25-1-11

Affected: IC 14; IC 36-9-27.4; IC 36-9-28.7

Sec. 3. A petition filed under section 2 of this rule must include the following information:

(1) The location of the dispute, including reference to an affected watershed.

(2) Names and addresses of persons believed necessary to resolve the dispute.

(3) Identification of the harm caused by human activity that results from a change in surface water quantity.

(4) Except as provided in subdivision (5), citation to a statutory section or sections of IC 14-25 through IC 14-29 that places jurisdiction in the department over the subject matter of the dispute. The petition must specify how the section or sections would authorize relief from the harm asserted in subdivision (3).

(5) For mediation of a dispute arising under IC 14-26-2, 312 IAC 11 applies.

(6) A showing the petitioner does not have an adequate remedy under IC 36-9-27.4 or IC 36-9-28.7. The showing is not met if the petitioner sought but was denied relief on the merits.

(*Natural Resources Commission; 312 IAC 11.8-1-3; filed May 22, 2013, 2:56 p.m.: 20130619-IR-312120554FRA*)

### 312 IAC 11.8-1-4 Conduct of proceeding and mediation

Authority: IC 14-10-2-4; IC 14-25-1-8; IC 14-25-1-11

Affected: IC 4-21.5; IC 14-25-1

Sec. 4. (a) Following the receipt of a petition, an administrative law judge shall be appointed to conduct a proceeding under IC 4-21.5.

(b) As soon as practicable following appointment, the administrative law judge shall schedule a prehearing conference and notify each of the following:

- (1) The petitioner.
- (2) Persons identified by the petitioner in section 3(2) of this rule.
- (3) The department.

(c) The administrative law judge shall conduct a preliminary hearing under IC 4-21.5-3-7(c) to determine whether the petition satisfies the requirements of section 3 of this rule. The preliminary hearing may be conducted in conjunction with the prehearing conference scheduled under subsection (b). The petitioner has the burden of going forward with the evidence. For purposes of the preliminary hearing, section 3 of this rule is satisfied if the evidence is viewed in the light most favorable to the petitioner. Following the hearing, the administrative law judge shall issue an order that includes a statement of the facts and law on which it is based. If the order denies the petition, the order shall be designated as a nonfinal order and is subject to IC 4-21.5-3-29.

(d) Each of the persons identified in subsection (b), and any other person identified and joined by the administrative law judge as a party needed for just adjudication, is a party to the proceeding.

(e) The parties may agree upon a person to serve as mediator. In the absence of an agreement, the administrative law judge shall seek to cause the appointment of a mediator who is qualified under IC 4-21.5-3.5.

(f) Following consultation with the parties and the conduct of any mediation, the mediator shall report to the administrative law judge either:

- (1) under IC 4-21.5-3.5-21; or
- (2) the parties have settled.

(g) If an agreement is not achieved following a reasonable opportunity to conduct mediation, the administrative law judge shall order the proceeding dismissed.

(h) The department is not required to attend a preliminary hearing or a mediation session. If the department attends a mediation session, the session shall be conducted in Marion County unless the department otherwise agrees.

(i) If an agreement is achieved, the parties may enter either of the following:

- (1) A private agreement and request the administrative law judge to dismiss the proceeding. The parties may enter an agreement under this subdivision without participation by the department.
- (2) A proposed agreed order for approval by the administrative law judge and the commission. An agreed order constitutes a final agency action by the commission, as well as a settlement among the parties.

*(Natural Resources Commission; 312 IAC 11.8-1-4; filed May 22, 2013, 2:56 p.m.: 20130619-IR-312120554FRA)*

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