No. 25-1159



In The Supreme Court of the United States

Duane Morley Cox

Petitioner

v.

Teresa Wilhelmsen, Utah State Engineer and
Utah Division of Water Rights

Respondents

On Petition For Writ of Certiorari
To The 1st District Court of Utah

# PETITION FOR WRIT OF CERTIORARI

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An Issue of First Impression

## QUESTIONS PRESENTED

Petitioner, an Owner on water right 25-11775, and an Applicant on Change Application 25-11775 a48940, asserts that this Petition for Certiorari Case is a Case of "First Impression" which presents three Federal Constitutional Questions to this Court which the Utah Court of Appeals and the Utah Supreme Court each declined to consider.

Petitioner filed a "Complaint" seeking Judicial Review in Utah's 1st District Court after Respondent State Engineer issued an "Order of Rejection" for Quantity Impairment which rendered 25-11775 to be "Worthless", where the State Engineer failed to serve Mr. Cox with a copy of the Order.

These three Constitutional Questions "Appeared" when the Utah 1st District Court Granted Respondent's Motion to Dismiss Petitioner's Complaint seeking Judicial Review of the State Engineer's Order of Rejection which rendered Petitioner's Water Right to be "Worthless", where Judicial Review on the Agency Action, although mandatory under the 5th Amendment to the U.S. Constitution, became "Unavailable" to Petitioner Cox (*See Similarly Cochran v. Kansas and Dowd v. United States ex rel. Cook where "Remand" was ordered by this Court*).

A. First Constitutional Question: "Does the Order of the District Court Granting Respondents Motion To Dismiss Violate Petitioner's Due Process Rights Under the 5th Amendment to The U.S. Constitution?"

B. Second Constitutional Question: "Does the Order of the District Court Granting Respondent's Motion to Dismiss violate Petitioner's Right to Equal Treatment Under the 14th Amendment to the U.S. Constitution?"

C. Third Constitutional Question: "Does the Order of the District Court, Granting Respondent's Motion to Dismiss, if sustained, create a new and novel Precedent which gives a Utah State Agency power to impair an Individuals property right and avoid subsequent Judicial Review by simply with-holding service of the Order on the impacted individual?

After Petitioner filed with the District Court for Judicial Review, which Review is required to be available in order for Agency Actions to be Constitutional, the District Court Dismissed the Cox "Complaint" seeking Judicial Review thereby assuring that the due process elements of Notice and a Fair Trial by a Competent Court [*Warren v. Indiana Telephone Co., 26 N.E.2d 399, 404 and 410, 409 (Ind. Sup. Ct. 1940)*] were never accomplished, in violation of Separation of Powers Considerations [*State v. Finch, 315 P.2d 529, 532 (Idaho Sup. Ct. 1940)* Citing: *Big Butte, 308 P.2d 225, 229 & Laisne, 19 Cal.2d 831, 123 P.2d 457*)], thereby violating Petitioners due process and equal protection rights under the 5th and 14th Amendments to the U.S. Constitution.



List of Parties

## List of Parties

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Utah Division of Water Rights
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## Jurisdiction

The U.S. Supreme Court has jurisdiction to hear this case because the Utah Supreme Court has Denied Petitioner Cox's Petition for Certiorari on 05 December 2025, and the U.S. Supreme Court has Jurisdiction on all cases which arise from adverse decisions by the Highest Court of each and every State [See *U.S. v. Richmond*).

The U.S. Supreme Court also has Jurisdiction over Federal Questions of First Impression, and this case is one of First Impression where for the First Time in Utah, the Utah Courts, at the urging of the Utah Attorney General's Attorneys, have created a Precedent which allows a State Agency to "Destroy" an Owners valuable Water Right and avoid the necessary Judicial Review by "Intentionally" or "Negligently" failing to serve Notice of the Agency Order on the Owner, so that the injured Owner was not able to timely file for Judicial Review.

This circumstance is in violation of the 5th Amendment to the U.S. Constitution and strikes at the very heart of our Administrative form of government which requires that Agency Actions to be Constitutional must be subject to a subsequent Judicial Review on the Merits (See *Borgnis v. Falk* (Wisconsin); *Johnson v. Ind. Comm.* (Wisconsin); *Merton v. Ind. Comm.*(Wisconsin); *State v. Finch* (Idaho) Citing *Big Butte v. State Board of Education*, (Idaho) and *Laisne v. State Board of Optometry* (California) and five additional Jurisdictions. And is best said by this very Court as Quoted below:

> "... agencies, with varying qualifications work in a field peculiarly exposed to political demands. Some may be expert and impartial, others subservient. It is not difficult for them to observe the requirements of law in giving a hearing and receiving evidence. But to say that their findings of fact are conclusive where constitutional rights of liberty and property are involved, although the evidence clearly established that the findings are wrong and constitutional rights have been invaded, is to place those rights at the mercy of administrative officials and seriously impair the security inherent in our judicial standards [*St. Joseph Stock Yard Co. v. United States, 80 L.Ed 1033, 1041 (U.S. Sup. Ct. 1936)*]

Yet today, Petitioner Cox appears before this Court without having been allowed to have the Order of Rejection by the Utah State Engineer, Division of Water Rights (which makes Cox's Water Right 25-11775 a48940 "Worthless") reviewed on its Merits by a Utah District Court because he was never served with the Order of Rejection.

Such a circumstance creates a Precedent which may be followed by Utah Agencies and other Jurisdictions to the detriment of existing Jurisprudence, and the guidance previously articulated by this Court.

This Court surely has the Jurisdiction, if not a duty, to review a decision which erodes and conflicts with prior articulated Precedents by this Court and the U.S. Constitution. Pg ix

## Statement and Status Of Case

A. This case is a case of First Impression.

B. If Respondents prevail, the State of Utah will have created a Precedent which allows the Division of Water Rights or any other State Agency to impair, take or destroy valuable water rights, or other property rights, and avoid Judicial Review by "Intentionally" or "Negligently" with-holding service of Notice of the Order or Agency Action from the affected individual(s) in contradiction to the 5th and 14th Amendments of the U.S. Constitution.

C. The principal that all Agency Actions must be subject to Judicial Review to be Constitutional will be set aside in Utah.

D. And the State Engineer for the Division of Water Rights will *CONTINUE* to Reject Change Applications by "Retroactively" asserting Quantity Impairment against various Water Rights, as has been occurring for years, which Rejections makes such Water Rights "Worthless", in violation of Utah Code 68-3-3 and Article 1, Section 10 of the U.S. Constitution.

E. However, Petitioner believes that the precedents of *Cochran v. State of Kansas et. al., 86 L.Ed 1453* (U.S. Sup. Ct. 1942) and *Dowd v. United States ex rel. Cook,* 95 L.Ed 215 (U.S. Sup. Ct. 1951) are controlling with respect to due process and equal protection violations under the 5th and 14th Amendments to the U.S. Constitution. Pg x

## Facts

Denials must fairly meet the substance of the Facts being denied. And Facts and Statements followed by (*Aff*), are part of an imbedded Sworn Affidavit, which Affidavit is at the end of this section.

1. On 13 May 2022, Applicants Cox, his wife Jeanne and the Egbert Children Family Revocable Trust (Trust) jointly filed Change Application 25-11775 a48940 seeking to return to beneficial use 0.25 acre feet of irrigation water under 25-11775 which had been in protective Non-Use since 16 July 2016 (*Aff*) [*See Copy of Change Application for 25-11775 a48940 which show that Mr. Cox and his Wife Jeanne were Co-Applicants, Appendix G*].

2. On 5 August 2022, the Logan Regional Engineer gave Notice of Quantity Impairment (QI) against 25-11775 a48940 (*Aff*) stating:

> "... the period of nonuse from 2003 to November 2017 qualifies a finding of quantity impairment. [*Memo To File by William Atkin, Logan Regional Engineer*]

2a. The QI Statutes became law effective May 12, 2015 [*See State Engineer's Order of Rejection on 25-11775 a48940, Appendix A, Pg A-4*]

2b. For QI to exist there has to be "a period of at least seven consecutive years, [where] a portion of the right identified in a change application has not been:

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Select Parts of Change Application
Showing That Cox and His Wife Were Applicants

"(A) diverted from the approved point of diversion; or (B) beneficially used at the approved place of use." [*See State Engineer's Order of Rejection on 25-11775 a48940, Appendix A, Pg A-3*]

2c. UCA 68-3-3 states:

> "A provision of the Utah Code is not retroactive, unless the provision is expressly declared to be retroactive."

2d. The QI Statutes do not expressly state that the QI Statutes are to be applied retroactively (*Aff*), which means the years prior to the date of enactment of the QI statutes (as declared by the Regional Engineer) are retroactive and cannot be used in the computation of the continuous seven year period necessary for there to be Quantity Impairment (*Aff*).

2e. Thus, where water right 25-11345 was placed in approved protective non-use by an Approved Non-Use Application as of 6 July 2016 (*Aff*), and where 25-11775 was segregated from 25-11345 on 22 October 2021 (*Aff*) 25-11775 has been in protective non-use since 6 July 2015 (*Aff*).

2f. Thus it is a Fact that Water Right 25-11775 was in unprotected prospective non-use from the enactment date of the QI Statutes of 12 May 2015 until 6 July 2016 which is less than the continuous seven years period required for QI to exist (*Aff*).

2g. Therefore the time period of possible non-use from 2003 until 12 May 2015 is "Retroactive" to the date of enactment (*Aff*), and cannot be "Retroactively" counted in the determination of Quantity Impairment for Change Application 25-11775 a48940 (*Aff*).

3. At the Hearing held on 10 November 2022, Cox as an Applicant representing the other Applicants, prepared and presented "Hearing Chart # 1" (*Aff*) which variously stated (*Aff*):

> "The Quantity Impairment Statutes Are Not Retroactive And the Change Application Does Not Meet The Seven (7) Year Time Period of Non-Use Under 73-3-8(6)(c)(i)
> 1. See Indenture A, Pg 2 of Justification Attached to the Change Application.
> 2. The Quantity Impairment Statutes were effective on or abut 1 June 2015.
> 3. Pursuant to 68-3-3 ... the Quantity Impairment Statutes are not retroactive, and no exceptions have been argued.
> 4. Parent Water Right 25-11345 was segregated from 25-3494 on 27 May 2016 in the amount of 33.91 acre feet, and 25-11345 was placed in protective Non-Use as of 6 July 2016 via a Non-Use Application which was not protected and was Approved on 22 November 2017.
> 5. For Quantity Impairment purposes, the longest consecutive time period of non-use is from 1 June 2015 to the filing date 6 July 2016 for the protective Non-Use Application.

5a. Which is only one (1) year, thirty-six (36) days, which does not meet the seven (7) [year] continuous time period required for there to be Quantity Impairment under 73-3-8(6)(c)(i) (Att #3) in order for there to be Quantity Impairment.
*On these grounds alone, the assertion of Quantity Impairment must be Rejected and the Change Application Approved.*" (*Aff*) (Citations Omitted).

3a. And the Division noted on the bottom of Hearing Chart #1, that Morley Cox (that's Mr. Cox), an Applicant, was the submittee of this Chart (*Aff*).

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4. On 30 November 2023, the State Engineer issued an Order of Rejection of Change Application 25-11775 a48940 on grounds of Quantity Impairment (*See Appendix A here-in*) which rendered 25-11755 to be "Worthless" (*Aff*) because Quantity Impairment is the Administrative equivalent to Judicial Forfeiture (*Aff*).

4a. On Pg 1 there-in, the Order of Rejection indicates that the Trust was the Applicant, omitting to include Mr. Cox and his Wife Jeanne Cox as Applicants (*Aff*).

4b. And it is a Fact that the Order refers to Mr. Cox as the Applicant's Representative (*See Appendix A, Pg Pg A-4, Pg A-4 a second time, and Pg A-5*), while omitting to include Mr. Cox and his wife Jeanne Cox on the distribution list for the Order of Rejection *(See Appendix A, Pg A-8*), even though UCA 73-3-10(2) requires that service be made to the Applicants on the same day as the Decision is made (*Aff*), and <u>even though Morley Cox (*that's Mr. Cox*) is recognized as an "Applicant" on the bottom of Hearing Chart #1 as presented above</u> (*Aff*).

4c. Thus, it is a Fact that these actions to "pretend" that Mr. Cox and his wife were not Applicants creates the impression that it was done in order to knowingly deny Mr. Cox and his Wife Jeanne of service of the Order (*Aff*) in violation of the State Engineer's duty under 73-3-10(2) (*Aff*), so that Mr. Cox could not timely file an Appeal for Judicial Review which might prevail (and put an end to the on-going "Retroactive" use of the Quantity Impairment Statutes) *(Aff*).

5. And it is a Fact that where the Order of Rejection renders the Water Right to be "Worthless" (*Aff*), the State Engineer was duty bound to serve the Cox's as Owners of Water Right 25-11775 a copy of the Order of Rejection pursuant to the 5th & 14th Amendments to the U.S. Constitution (*Aff*) which guarantees Owners of Property due process when their property rights are impaired, taken or destroyed by an Agency Action (*Aff*) [*See Deed for 25-11775, Appendix H which was twice filed with the Division of Water Rights*].

6. It was near a year and 1/4 before Cox realized that the Order of Rejection on 25-11775 a48940 had been issued (*Aff*), but not to himself or his wife (*Aff*).

6a. In an attempt to understand why he had not been served, on 9 January 2025, Cox drove to Salt Lake City and met with Deputy State Engineer Eric Jones (*Aff*), who after examining the Division Data Base advised Cox that it appeared that the reason Cox had not been served was because of an administrative error (*Aff*).

6b. Mr. Jones indicated he would talk to the State Engineer about the issue on Monday, and would then call Mr. Cox (*Aff*).

6c. But when that call never came, Mr. Cox, being aware of Utah's 'Discovery Rule' (See Aragon v. Cover Club Foods Co.) filed a Request for Reconsideration (*Aff*), which was acknowledged but when no action was taken (*Aff*), the Request by statute was deemed DENIED as of 6 February 2025 (*Aff*).

7. Mr. Cox then timely filed his "Complaint - Appeal of the Rejection of Change Application 25-11775 a48940" with the 1st District Court on 24 February 2025 (*Aff*).

7a. This "Complaint" was focused upon the alleged "Retroactive" application of the Quantity Impairment Statutes in violation of UCA 68-3-3 and Article 1, Section 10 of the U.S. Constitution (*Aff*).

7b. Instead of filing an Answer, Respondents on 17 March 2025 interposed a Motion to Dismiss which was based upon the strict application of the statutes and rules governing Appeals, asserting Cox's "Complaint " was untimely (*Aff*).

> "The Complaint is untimely and thus is barred under the Administrative Procedures Act."

7c. On 22 March 2025, Petitioner filed his "Response in Opposition to Respondents Motion to Dismiss" with the 1st District Court which recounted his meeting with Deputy State Engineer Jones (*Aff*), and on Pg 12 there-in responded as quoted below:

> "In Utah, Limitation Periods are sometimes subject to circumstances not always contemplated by the "Applicable" Statutes of limitations.
>
> > "Limitation periods begin to run when a cause of action has accrued, which occurs 'upon the happening of the last event necessary to complete the cause of

action'." Citing Becton Dickinson & Co., 668 P.2d 1254, 1257 (Uth 1983). Quoting Order of R.R. Telegraphers, 64 S. Ct. 582, 586, 88 L.Ed 788 (1944). "This general rule may be subject to the 'Discovery Rule" such that the running of the statute of limitations is tolled until the Plaintiff discovers (or should have discovered) all of the facts that form the basis for the cause of action." (See Aragon v. Clover Club Foods Co., 857 P.2d 250, 252 (Ut. Ct. App. 1993)

Unfortunately, in this case, the last event necessary to understand why Petitioner was not sent a copy of the State Engineer's Rejection of his change Application 25-11775 a48940 occurred when Petitioner met with Deputy State Engineer Eric Jones, and he indicated that the Division should have sent him a Notice that he needed to file a "Record of Conveyance", but apparently failed do so. So the Division's apparent delinquency to so Notify Petitioner was the root cause for Petitioner failing to receive a timely copy of the Order of Rejection." (*Petitioner's Response to Respondent's Motion to Dismiss, Pg 12*)

7d. Petitioner reinforced this argument with citation to additional Precedents as presented on Pg 13 of Petitioner's Response to the Motion to Dismiss.

> ""The limitation period should not be allowed to run before the suit can be effectively filed." (*See Becton Dickinson,, Pg 252)"*

""To be constitutional, a statute of limitation must allow a reasonable time for the filing of an action after a cause of action arises." (*See Berry v. Beech Aircraft, 717 P.2d 670, 672 (Sup. Ct. 1985) (Citing Horn, 151 P.2d 555 (1915))"*

""We should always be careful not to encroach on legislative prerogative. However, there may well be a denial of constitutional rights in foreclosing persons from access to the court under these unusual circumstances. Besides, the constitutional guarantees of due process and equal protection of the law, our Constitution, Article 1, Section II provides that "All courts shall be open, and every person for an injury done to him in person ... shall have remedy by the due course of law which shall be administrated without denial..." (*See Meyers v. McDonald, 635 P.2d 84, 88 (Ut Sup. Ct. 1981, Justice Howe concurring)"*

8. Unfortunately, it is a Fact that the 1st District Court's Order dated 8 April 2025 Granting Respondent's Motion to Dismiss adopted Respondents position that Cox's Request for Reconsideration and/or Complaint to the District Court were untimely without any discussion as to why the Precedents cited by Mr. Cox did not entitle him to relief (*Aff*).

8a. In addition, it is a Fact that the Order of the 1st District Court created the three Constitutional Questions which are now before this Court for consideration (*Aff*).

9. Petitioner Cox then timely filed an "Appeal Of Order of Dismissal" with the Utah Court of Appeals on 8 May 2025, which Appeal was based on the three Constitutional Questions now before this Court (*Aff*).

10. On 30 September 2025, the Utah Court of Appeals issued its "Order of Summary Affirmance" of the District Court's Order Granting Respondent's Motion to Dismiss (*See Appendix C*).

10a. This Order first sought to create grounds to avoid Petitioner's three Constitutional Questions by asserting that Cox was not an Applicant and was therefore not entitled to be served with a copy of State Engineer's Order of Rejection on Change Application 25-11775 a48940 (*Aff*) because UCA 73-3-10(2) only required the State Engineer to serve copies on Applicants (*Aff*).

10b. In Footnote #1, the court touched on Cox's "Discovery Rule" argument, citing *Perez v. South Jordan*, which is distinguished because unlike Cox who had no delinquency because he was not served and thus had no idea he had to take any action, where Perez knew that he had a duty to respond but failed to timely do so. (*Aff*).

10c. Then the Order of Affirmance asserted that Cox instead "failed to address the district court's rationale", and that "He instead chose to focus on the "detrimental effects" of the district court's order rather than on alleged "errors of logic or discretion" in the ruling" (*See Appendix C, Pgs C-2 & C-3*).

10d. In this case the "Detrimental Effects" happened to be the three Constitutional Questions which according to this Court's Precedent in St. Joseph Stock Yard Co. v. United States, has indicated that Constitutional Questions must be ruled upon by some court at some time (*Aff*).

10e. Mr. Cox properly brought the three Constitutional Questions to the Court of Appeals, and the Court had an affirmative duty to address them not insist that other allegations and evidence be presented (*Aff*) (*See Milkovitch v. Industrial Commission, 64 P.2d 1290 (Ut. Sup. Ct.)*)

11. It is a Fact that Mr. Cox respectfully requested Re-Hearing which Request included a copy of the Change Application which showed that Mr. Cox and his wife Jeanne were Applicants on Change Application 25-11775 a48940 (*Aff*), which had the effect of nullifying the basis of the Order of Affirmance (*Aff*) because the cause of the inability to timely file a Request for Reconsideration with the State Engineer was caused by the failure of the State Engineer to serve Mr. Cox and his wife with the Order of Rejection pursuant to UCA 73-3-10(2) (*Aff*), and not any lack of due diligence on Mr. Cox's part (*Aff*).

12. On 28 October 2025, the Utah Court of Appeals issued an Order on Cox's case which stated:

> "This matter is before the court on Petitioner Julie Turpin's Petition for rehearing pursuant to Utah "Rule of Appellate Procedure 35."

12a. Petitioner Cox has no idea who Julie Turpin is (*Aff*), certainly she has nothing to do with this case (*Aff*), but the message was clear anyway (A*ff*). So Petitioner filed a Writ of Certiorari with the Supreme Court of Utah, presenting the same Constitutional Questions, which Writ was summarily Denied (*Aff*).

13. It is a Fact that the Utah Court of Appeals and the Utah Supreme Court have failed to rule on Cox's three Constitutional Questions or Claims which are now before this Court (*Aff*).

13a. It is a Fact that Petitioner Cox was treated differently than others when the State Engineer served owners Egbert Children Family Trust but not owners Mr. Cox and his wife Jeanne Cox with the Order of Rejection (*Aff*).

13b. It is Fact that once Assistant Solicitor General Dymek was assigned, the State never denied any of Cox's factual representations to the Utah Court of Appeals or the Utah Supreme Court (*Aff*).

13c. It is a Fact that when the Court of Appeals issued their Order of Affirmance, there was created a Precedent which allows any Utah State Agency to take, destroy or impair property rights and avoid Judicial Review by "Intentionally" or "Negligently" failing to make service on the affected individuals in violation of the 5th Amendment to the U.S. Constitution (A*ff*).

## Sworn Affidavit

**I, Duane Morley Cox, after being identified and duly sworn does hereby swear that the Facts and Statements contained in the Cox Petition For Writ Of Certiorari followed by (*Aff*), are part of an imbedded affidavit and are true and correct to the best of my information, knowledge and belief.**

D M Cox — 25 FEB 2026

**Duane Morley Cox, Pro Se** — **Date**

**County of Cache:**

**State of Utah:**

**On this 25th day of February 2026, Duane Morley Cox, after being identified and sworn, did swear before me that the above statement was true and correct to the best of his information, knowledge and belief.**

Sarah Lewis — 2/25/26

**Notary** — **Date**

SARAH LEWIS
NOTARY PUBLIC ● STATE of UTAH
COMMISSION NO. 738793
COMM. EXP. 08-19-2028

## Argument

Cox argues this case is similar to the cases of Dowd v. United States ex rel. Cook, 95 L.Ed 212 and Cochran v. State of Kansas et. al. 86, L.Ed. 1453.

These two cases involved convicted criminals who were Denied Judicial Review of the convictions because of post conviction circumstances (prison rules) beyond their control, one Convicted for murder and sentenced to life, and the other as a Habitual Criminal and also sentenced to life.

In this case Cox is similarly Denied Judicial Review of the State Engineer's Order of Rejection by circumstances beyond his control (the failure to be served with the Order of Rejection by the State Engineer), which made Petitioner's Water Right 25-11775 to be "Worthless").

Petitioner Cox argues that his case is a violation of the 5th Amendment to the U.S. Constitution which guarantee property will not be taken, destroyed or impaired without due process. And the Cook and Cochran cases were similarly 5th Amendment cases which also guarantees that Liberty will not be taken without due process.

And the operational part of due process has been described as follows:

"The Constitutional guarantee of due process is one of broad and comprehensive implications, not readily definable with precision. Among its elements are reasonable notice, an opportunity for fair hearing, and the right to have a court of competent jurisdiction determine if the findings is supported by evidence." [*See Warren v. Indiana Telephone Co., 26 N.E.2d 399, 217 Ind. 93 (Ind. Sup. Ct. 1940)*]

Under this criteria, Mr. Cox's circumstance is identical to that experienced by Mr. Cook and Mr. Cochran. All appeared at the doorstep of the U.S. Supreme Court having been unable to obtain a Judicial Review on the Merits of the Orders of Convictions, or in Cox's case, a Judicial Review on the Merits of the Order which destroyed the value of his property right, protected 5th Amendment Rights.

And the root cause of their inability to obtain a Judicial Review on the Merits was traceable to circumstnces which were beyond their ability to control. Cook's and Cochran's circumstance arose because Prison Rules operated to defeat their rights to timely appeal, and in Cox's circumstance, arose because the State Engineer failed to serve him a copy of her Order of Rejection on his Change Application pursuant to UCA 73-3-10(2) thereby defeating Cox's ability to timely file a Request for Reconsideration or for a Court Review within the timelines of the Administrative Procedures Act as stated on Pg 8 of the State Engineer's Order.

And where due process under the 14th Amendment to the U.S. Constitution not only necessitates Notice and a Judicial Review, it also demands that there be equal treatment under the law.

In the case of Cochran, this Court held:

"The State properly concedes that if the alleged facts pertining to suppression of Cochran's appeal 'were disclosed as being true before the supreme court of Kansas, there would be no question but that there ws a violation of the equal protection clause of the Fourteenth Amendment'. ... However inept, Cochran's choice of words, he has set out allegations supported by affidavits and nowhere denied that Kansas refused him privileges of appeal which it afforded to others. Since no determination on the verity of these allegations appears to have been made, the cause must be remanded for further proceedings." [*See Cochran, @ 6*]

In the case of Cook, this Court held:

"... respondent [Cook] has never had the same review of judgement against him as he would have had as of right in 1931 but for the suppression of his papers. We therefore agree with the Court of Appeals that, while the State's "wavier' theory is ingenuous, it is without Merit. Under the peculiar circumstances of this case, nothing short of an actual appellate

determination of the merits of the conviction - according to the procedure prevailing in ordinary cases - would cure the original denial of equal protection of the law. ... Now that this Court has determined the federal constitutional question, Indiana may find it possible to provide he appellate review to which respondent is entitled. The judgements of the Court of Appeals and the District Court are vacated and the case remanded. On remand, the District Court should enter such orders as are appropriate to allow the State a reasonable time in which to afford respondent [Cook] the full appellate review he would have received but for the suppression of his papers, failing which he shall be discharged [Citations omitted] It is so Ordered." [See *Dowd v. United States ex rel Cook, 95 L.Ed. 215 @ 3 & 4 (U.S. Sup. Ct. 1951*}

## Conclusion

Where Cox's right to a Judical *de novo* Review, as is customary afforded to others, of the State Engineer's Order of Rejection on his change Application 25-11775 a48940, which Order renders the underlying Water Right 25-11775 to be "Worthless", and the State Engineer failed to serve Mr. Cox a Copy of her Order of Rejection when he was a Co-Owner of Water right 25-11775, an also failed to serve Mr. Cox as a Co-Applicant as required by UCA 73-3-10(2), this Court should find that the State Engineer nullified Cox's due process and equal protection rights under the 5th and 14th Amendments to the U.S. Constitution.

And where Respondents thru Counsel, Assistant Solicitor General, have not denied any of Cox's well presented facts and averments which were supported by citations to relevant records or a Sworn Affidavit, it is clear that Cox has been denied his rights under the 5th and 14th Amendments to the U.S. Constitution which require due process (Notice and Judic9ial Review) and equal protection under the law, where another Owner and Applicant (Egbert Children Family Trust) was properly and timely served, but Cox and his wife were never served with the order of Rejection which set forth the necessary timelines for Appeal.

Thus, the rights to Notice have been violated, and he was and is entitled to relief pursuant to Utah's "Discovery Rule" which was based upon this Court's precedent in R.R. Telegraphers.

In addition Cox has been denied the right of Appeal normally available to others who were properly Noticed, and thus has been denied Equal Protection, as were Cockran and Cook, making Remand Appropriate.

## Relief Be Granted

It is respectfully requested that this Court now vacate the Orders of the Utah Supreme Court, Court of Appeals and the 1st District Court in this matter and Remand to the District Court for a Trial on the merits pertaining to Cox's allegations that the State Engineer wrongfully applied the Quantity

Impairment Statutes "Retroactively" against his Change Application, in violation of UCA 68-3-3 and Article 1, Section 10 of the U.S. Constitution which forbids Ex-Post-Facto laws.

Or in the Alternate also vacate the 1st District Court Order Granting Respondent's Motion to Dismiss, and Remand the case to the State Engineer the opportunity to decide if she really wants to have to the Court(s) decide if she is in violation of UCA 68-3-3 and/or Article 1, Section 10 of the U.S. Constitution with her alleged "Retroactive" application of the statutes - which might save the Court system a lot of unnecessary time and cost of subsequent litigation.

Respectfully Submitted;

D M Cox — 27 FEB 2026

Duane Morley Cox, Pro Se — Date

D M Cox — 30 MARCH 2026