

Appendix C - ORDER OF SUMMARY AFFIRMANCE
on Decision And Order on State Engineer's
Motion To Dismiss

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Filed
Utah Appellant Courts
Sep 30 2025

Duane Morley Cox
Appellant
v.
Teresa Wilhelmsen And
Division of Water Rights
Appellees

ORDER OF SUMMARY
AFFIRMANCE
Case No. 20250471-CA

Duane Morley Cox appeals the district court's order granting a motion to dismiss his petition for judicial review for lack of jurisdiction. This matter is before the court on its own motion for summary disposition based upon the lack of a substantial issue for review warranting further proceedings by this court. Cox has failed to identify a cognizable legal issue for review.

The underlying proceedings arise from the State Engineer's decision rejecting a water rights change application filed by the Egbert Children Family Revocable Trust (Applicant). The Application was made in May 2022. A letter noting a presumption of quantity impairment was sent to Applicant in August 2022. A hearing was held on the application in

November 2022, at which the Applicant appeared and presented arguments to rebut the presumption. The State Engineer determined that the presumption had not been rebutted and issued a decision rejecting the change application on November 30, 2023. The decision included notice regarding seeking reconsideration on judicial review and provided the time frames and statutory provisions for doing so. The decision was sent to Applicant {FN #1: "Under Utah Code section 73-3-10, when the State Engineer approves or rejects an application, "the state engineer shall mail, or send electronically if receipt is verifiable, the decision of the applicant."} Utah Code § 73-3-10(2). No petition for judicial review was filed within thirty days after the decision was issued.

In February 2025, Cox filed a petition for judicial review of the State Engineer's decision. The State Engineer and Division of Water Rights moved to dismiss the petition for review as untimely because it was filed more than one year after the decision was issued, well beyond the statutory time period for filing. See Utah Code §63G-4-401(3)(a) (providing that a petition for judicial review of final agency action must be filed within 30 days). In response Cox asserted that he was entitled to separate notice of the decision and that a discovery rule should apply to make the time to petition for review to run from the time that he met with deputy state engineer in January 2025. The district court rejected the argument, applied the statutory time for petitioning for judicial review, and dismissed the Cox's petition (FN #2: "Although Cox argued that a statute of

limitations or discovery rule should apply, it is well-settled that the appeal period is tied to the “date of issuance” which provides for “a clear time frame for calculation of the appeal period.” *Perez v. South Jordan*, 2013 UT 1 @ 16, 296 P.3d 715. He appeals.

In his docketing statement Cox asserted issues beyond the scope and rationale of the district court’s ruling. In his response to the court’s motion FN #3: “Notably, Cox’s response was untimely, which would alone provide this Court with reason to affirm the district Court’s order. Regardless of the untimeliness, this court has considered Cox’s response.”]

Cox again fails to address the district court’s rationale. Rather he largely responds to Appellee’s memorandum in support of summary disposition, but fails to raise a cognizable legal issue for review on appeal. He acknowledges that he chose not to address the district court’s rationale for its ruling. 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.

However because an appeal seeks appellate review of a lower court’s decision, an appellant is required to identify an error in the decision and address why that decision should be overturned. See *Allen v. Friel*, 2008 UT. 56m @ 14, 194 P.3d 903. If an appellant does not address the rationale of a District Court, he generally cannot establish error. See *Duchesne Land, LC v. Division of consumer Prot.*, 2011 UT App 153, @ 8, 257 P.3d 441. Because Cox does not challenge the district court’s reasoning for its ruling,

he has not stated an issue for review warranting further proceedings in this court.

IT IS HEREBY ORDERED that the court's order of dismissal is affirmed.

Dated the 30th day of September 2025.

FOR THE COURT,

Signed by John D. Luthy
John D. Luthy, Judge

Appendix D - ORDER Denying Re-Hearing on
Decision And Order on State Engineer's
Motion To Dismiss

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Filed
Utah Appellant Courts
Oct 20 2025

Duane Morley Cox
Appellant

ORDER

v.

Teresa Wilhelmsen And
Division of Water Rights
Appellees

Case No. 20250471-CA

Before Judges Harris, Tenny and Luthy

This matter is before the court on petitioner Julie Turpin's petition for rehearing pursuant to Utah Rule of appellate Procedure 35.

IT IS HEREBY ORDERED that the petition is denied.

DATED this 28th day of October, 2025

FOR THE COURT:

Signed by John D. Luthy
John D. Luthy, Judge

Appendix E - ORDER Denying Petition of
Certiorari by the Utah Supreme Court

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The Order of the Court is stated below:

Dated: December 05, 2025

/s/ Jill M. Pohlman, Justice

11:40:04 AM

Duane Morley Cox Petitioner	ORDER
v.	Sup. Ct. No. 20251381-SC
Teresa Wilhelmsen	
And	Ct. App. No. 20250471-CA
Utah Division of Water	
Rights	Trial Ct. No. 250100077
Respondents	

This matter is before the Court upon a Petition for Writ of Certiorari filed on November 10, 2025.

IT IS HEREBY ORDERED that the Petition for Writ of Certiorari is denied.

End of order - Signature at the Top of the First Page

Appendix F - Detailed Authorities

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Table of Authorities

Precedents Pages

Aragon v. Clover Club Food Co., 857 P.2d
250, 252 (Ut. Ct. App. 1993) 7, 8, 9

“Limitation periods begin to run when a cause of action has occurred, 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 (Utah 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.”

Berry v. Beech Aircraft, 717 P.2d 670, 672
(Sup. Ct. 1985) 10

“To be constitutional, a statute of limitation must allow a reasonable time for the filing of an action after a cause of action arises.”

Big Butte v. State Board of Education, 308
P.2d 225, 229 [Internal Citation] ii, viii

Becton Dickinson & Co., 668 P.2d 1254
1257 (Utah 1983) 9

“The limitation period should not be allowed to run before the suit can be effectively filed.”

Borgnis v. Falk, 133 N.W. 209, 219 (Wisconsin
Sup. Ct. 1911) [Internal
Citation]..... viii

Cochran v. State of Kansas et. al., 86 L.Ed
1453 (U.S. Sup. Ct. 1942) i, x, 14, 16

“The State properly concedes that if the alleged facts pertaining 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 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.”

Dowd v. United States ex rel. Cook, 95 L.Ed
215 (U.S. Sup. Ct. 1951) i, 14, 16, 17

“... 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.

Horn, 151 P.2d 555 (1915) [Internal Citation] 10

Johnson v. Ind. Comm. 87 N.W.2d 822, 826 (Wisconsin Sup. Ct. 1958) viii

"The Constitutionality of the Workman's Compensation Act depends upon the right of judicial review to determine whether the findings are supported by evidence.

Laisne v. State Board of Optometry, 123 P.2d 457 [Internal Citation] ii, viii

Merton v. Ind. Comm., 50 N.W.2d 42, 46 Wisconsin Sup. Ct. 1951) viii

“The Constitutionality of the workman’s Compensation Act depends upon the right of judicial review to determine whether the findings are supported by evidence.”

Meyers v. McDonald, 635 P.2d 84, 88 (Ut Sup. Ct. 1981, Justice Howe concurring)10

“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 administered without denial. ...”

Milkovitch v. Industrial Commission, 64 P.2d 1290 (Ut. Sup. Ct.)12

“Industrial Commission cannot compel certain sorts of evidence, but must take cases as they are presented with such evidence as nature of

case, and from such evidence come to its conclusion, rather from fact that certain type of evidence, presentation of which it makes condition precedent is not forthcoming.”

Perez v. South Jordan, 2013 UT 1 @ 8, 257
P.3d 441 [Respondent Citation]11

R.R. Telegraphers, 88 L.Ed 788 (1944)
[Internal Citation] 9

St. Joseph Stock Yard Co. v. United States,
80 L.Ed 1033, 1054 (U.S. Sup. Ct. 1936, Brandeis
Concurring) ix, 12

“.. Agencies, with varying qualifications work in a field particularly exposed to political demands. Some may be expert and impartial, others subservient. It is not difficult for them to observe the requirements of the law in giving a hearing and receiving evidence. But to say that their findings of fact are conclusive where 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.”

State v. Finch, 315 P.2d 529, 532 & 533
(Sup. Ct. 1940) ii, viii

“It should be kept in mind that the evil of administrative action which must be guarded against is not the fact-finding power, but the conclusiveness of the fact-finding power coupled with the order based on the findings made which would deprive a person of a property right, such is the full exercise of judicial power, and such power in this state can be exercised only by one of the enumerated courts.” (Citing *Big Butte v. State Board of Education*, 78 Idaho 602, 308 P.2d 225, 229 & *Laisne v. State board of Optometry*, 19 Cal.2d 831, 123 P.2d 457)

And:

“...in conjunction with hearings before administrative board of this kind unless an appeal is provided therefrom a court, even though the scope of review be limited, due process is not satisfied,.” (Citing *Zachos v. Huiet*, 195 Ga. 780, 25 S.E. 806; *Precision Castings Co. v. Boland supra* [D.C. 13 F. Supp. 877, 2nd Cir., 85 F.2d 15]; *Warren v. Indiana Telephone Co.*, 217 Ind. 93, 26 N.E.2d 399; *Miller v. Price*, 282 Ky. 611, 139 S.W.2d 450; *Union Indemnity Co. v. Saling*, 166 Okl. 133, 26 P.2d 217)

U.S. v. Richmond, 279 F.2d 212, 279 (U.S. Ct. App. 2nd Cir. 1960) viii

“ the State Court denying the writ is the Highest Court of the State in which a decision could be had within the meaning of 28 USCA §1257, we think it plain that in such a case the Supreme Court would have power to review the judgement of such court. Canizio v. People of State of New York, 327 U.S. 82, 66 S.Ct. 452., 90 L.Ed 545; Robertson & Kirkham Jurisdiction of the Supreme Court of the United States (Edition 1951), Sec. 50 ... if on application, the statutory certificate had been denied, the road to the Supreme court would have been clear.”

Warren v. Indiana Telephone Co., 26 N.E.2d 399 @ 404 and 401, 409 (Ind. Sup. Ct.1940) ii, 15

“The Constitutional guarantee of due process is one of broad and comprehensive implications, not readily definable with recision. 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.”

5th Amendment, U.S. Constitution i, ii, x, 7, 13, 14, 17, 18

“No person ... shall be deprived of life liberty or property without due process.”

14th Amendment, U.S.

Constitution ii, x, 16, 17, 18

“No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; not shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.”

Art. 1, Sec. 10 of the U.S. Constitution x, 8, 18

“No State shall ... pass any Bill of Attainder or Ex-Post Facto Law ...”

UCA 68-3-3 x, 3, 4, 8, 18

“A provision of the Utah Code is not retroactive unless the provision is expressly declared to be retroactive.”

UCA 73-3-8(6)(c)(i) 4

“There is a rebuttable presumption of Quantity Impairment, as defined in Section 73-3-3, to the extent that for period of at least seven consecutive years, a portion of the right identified in a change application has not been: (A) diverted from the approved point of diversion, or (B) beneficially used at the approved place of use.”

UCA 73-3-10(2) 6, 11, 12, 15, 17

“On the same day on which the state engineer makes an approval decision or rejection decision described in Section (1), the State Engineer shall mail, or send electronically if receipt is verifiable, the decision to the applicant.”

**Additional material
from this filing is
available in the
Clerk's Office.**