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*Hand Delivered*

Utah Division of Water Rights  
Department of Natural Resources  
Room 220  
1594 West North Temple  
Salt Lake City, UT 84116-3154

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WATER RIGHTS  
SALT LAKE

**Re: Comments to Proposed Rules, R655-16 – Administrative Procedures for Defining Beneficial Uses for Supplemental Water Rights**

Dear Division:

Thank you for the opportunity to submit comments about the proposed rules governing the definition of beneficial uses for supplemental water rights. I submit these comments as a practicing water attorney with some of my general observations and suggestions.

1. In some cases the scope of the rules is too broad and too burdensome. The rules should be tailored to require the definition of only the water rights necessary to sufficiently evaluate a change application or conduct other administrative actions.

There are situations where the sole supply values for supplemental water rights must be defined. For example, when a parcel of property irrigated by both an underground well and a surface diversion is sold, but the seller retains the underground water right for the purpose of selling the water right to a city. Clearly, the quantity of water the ground water right represents must be determined. But often when the form for the Sole Supply Statement (or Statement of Group Contribution, hereinafter "Statement") is generated from the Division's website, either the ground or the surface water right will be linked to numerous other groups of water rights with multiple water rights owners who may have no interest in the ground water right.

Under R655-16-6 a change applicant is required to complete the form Statement provided by the State Engineer. When that Statement has signature lines for ten persons, under the rule all ten persons must sign the Statement and agree to the quantifications affecting their right. The water user has no control over the form or how the different water user groups were linked together. But under the proposed rule it now becomes the change applicant's burden to unravel the grouped supplemental rights.

The rule should allow for the Statements to be modified where the information solicited on the form has no bearing or relevance to the requested administrative action.

2. When multiple water right owners are required to sign the Statement, inevitably there are problems which require the preparation and filing of Reports of Water Right Conveyances, or owners can not be located, or so much time has expired the problems are compounded, or there are uncooperative persons listed on the Statement. The end result is that if the rules are adopted, change applications will be held up for reasons beyond the control of the applicant and for problems that can not be resolved short of expensive litigation. That is not good policy.

3. Under the proposed rules, Statements with inaccurate information are likely and will lead to (a) inaccurate water rights records, (b) approved change applications based on inaccurate data, (c) personal and business investments being at risk, and (d) conflicts between the Division's records and the records of the county recorder's offices which serve as the official office of record title to water rights.

The temptation to get a change application filed is too great for uninformed water right owners who are told by the Division they can complete the Statement "in under 60 seconds." Consequently, the accuracy and quality of the defined beneficial uses for the supplemental water rights may be very lacking. The accuracy of the Division's records will become dependent on the accuracy of the sole supply Statements and the qualifications of the persons filling in the blanks. Many of these supplemental water rights issues are complicated and often require the best expertise offered by the joint efforts of title companies, water rights consultants, engineers and attorneys.

The inaccurate information on the Statements will be incorporated into the records of the Division of Water Rights, perpetuated by approved change applications, and relied on, possibly to their detriment, by subsequent purchasers of the water rights and the public at large. More significantly, if a subsequent examination of the record title at the county recorder's office reveals that the Division's water right records are at odds with the official record title because of inaccurate information supplied on the Statements, you have a royal recipe for at least confusion and uncertainty, and for likely lengthy negotiations and litigation among the affected parties.

4. If the Rules are implemented, there will be multiple issues and judgment calls that must be made to address the problems. The Division should designate who has authority within the staff to address issues which have surfaced and which will likely continue to arise. If the rules move forward as written, there should be a clear chain of command of who can answer questions, provide uniformity in the Rules' implementation, and make decisions regarding what information is sufficient, whether an exception to the rule applies, and how to resolve other supplemental water rights matters.

Thank you for considering these comments.

Sincerely,

MABEY, WRIGHT & JAMES, PLLC

  
John H. Mabey, Jr.