

ClydeSnow

ATTORNEYS AT LAW
CLYDE SNOW & SESSIONS
A PROFESSIONAL CORPORATION

ONE UTAH CENTER • THIRTEENTH FLOOR
201 SOUTH MAIN STREET
SALT LAKE CITY, UTAH 84111-2216
TEL (801) 322-2516 • FAX (801) 521-6280
www.clydesnow.com

CLARK W. SESSIONS
RODNEY G. SNOW
STEVEN E. CLYDE
E. BARNEY GESAS
EDWIN C. BARNES
NEIL A. KAPLAN*
D. BRENT ROSE
CHARLES R. BROWNS
J. SCOTT HUNTER
PERRIN R. LOVE*
DEAN C. ANDREASEN
ANNELI R. SMITH
WALTER A. ROMNEY, JR.
MATTHEW A. STEWARD
T. MICKELL JIMENEZ ROWE
JENNIFER A. JAMES †
ERIC P. LEE
MATTHEW S. WIESE § ‡
THOMAS D. BOYLE °

WENDY BOWDEN CROWTHER
CHRISTOPHER B. SNOW*
AARON D. LEBENTA
LEE A. KILLIAN
ROBERT D. ANDREASEN
KATHERINE E. JUDD
JOSEPH D. KESLER
SARAH L. CAMPBELL
OF COUNSEL:
ROBERT C. DILLON ‡
(PARK CITY OFFICE)
NATHAN B. WILCOX
EDWARD W. CLYDE (1917-1991)

* ALSO ADMITTED IN WASHINGTON, D.C.
† ALSO ADMITTED IN COLORADO
§ ALSO ADMITTED IN IDAHO
° ALSO ADMITTED IN TEXAS
‡ ALSO ADMITTED IN NEVADA
° ALSO ADMITTED IN GEORGIA

December 17, 2009

Kent Jones, Utah State Engineer
Division of Water Rights
1594 West North Temple
Salt Lake City, Utah 84116-3154

Re: Comments to Revised Proposed Administrative Rule R655-16

Dear Mr. Jones:

On behalf of our clients, the Central Utah Water Conservancy District and Tooele City, we submit the following comments to the proposed administrative rule R655-16 Administrative Procedures for Declaring Beneficial Use Limitations for Supplemental Water Rights.

1. Necessity of the Rule

The purpose of the rule, as explained by the Utah State Engineer, is to require the quantification of certain water rights when those rights are separated from a defined supplemental use group either by conveyance to another party or by change application. We question the need for the rule because the State Engineer already has the tools to require the quantification of water rights separated from a supplement use group by conveyance or by change application.

When a water right is separated from a supplement use group by means of a conveyance or transfer to another owner, the new owner is required to provide the State Engineer with a deed documenting the water right being conveyed and a Report of Water Right Conveyance (“ROC”) detailing the transfer. The existing statutes and rules related to the conveyance of a water right

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provide the State Engineer with the means to require the quantification of the right being conveyed. Rule R655-3-3 requires that individuals making a simple water right conveyance use a Water Right Deed and that the deed include a description of the beneficial uses being conveyed by type and amount. After the water right is conveyed, the new owner is required to file a Report of Water Right Conveyance ("ROC"). Under rule R655-3-4, when only a portion of a water right is conveyed the ROC must include the amount and type of each beneficial use that is conveyed. The existing rule can be modified to require that all ROC filings include an explanation of the beneficial uses conveyed by type and amount.

Utah Code Ann. §73-3-3 provides for the filing of permanent or temporary changes in the point of diversion, place of use, or purpose of use of a water right. The statute requires that all change applications include a description of the water right the user is seeking to change and the quantity of the water to be changed. Thus, when a water user attempts to separate a water right from a supplemental use group by means of a change application, the user is already required to quantify the right being changed.

The proposed rule is redundant and, thus, unnecessary. Adoption of the proposed rule is likely to further delay the administrative process, add considerable cost to water right transactions and provide no better information than could be provided with a properly completed ROC and/or application for change.

2. Exemption for Change Applications Filed by Public Water Suppliers

The proposed rule should contain an express exemption for a public water supplier filing an application seeking to change less than all of the rights they own in a supplement use group.

3. Language Setting Forth When a DIBUA Filing is Required

The text of R655-16-9 should be deleted from the proposed rule. R655-16-6 sets forth the circumstances under which a DIBUA filing may be required by the State Engineer. The exception language contained in R655-16-9 undermines the rule and negates the language of R655-16-6 by giving the State Engineer the discretion to require a DIBUA filing on any water right that is subject to the administrative process. We agree, however, that if at any time during the administrative process the State Engineer determines that the water right is subject to the provisions of R655-16-6, he should be able to require the filing of a DIBUA at that time even if he previously determined that the filing was not required.

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Additionally, the proposed language of R655-16-6 should be modified from "A DIBUA **shall** be required in situations where:" to "A DIBUA **may** be required in situations where:" to properly express the State Engineer's discretion in requiring the filing of DIBUA in connection with the administrative process.

Thank you for your consideration of these comments.

Yours truly,

CLYDE SNOW & SESSIONS, P.C.



Steven E. Clyde
D. Brent Rose
Wendy Bowden Crowther

cc: Jared Hansen, Central Utah Water Conservancy District
Paul Hansen, Tooele City