

RECLAMATION

Managing Water in the West

U.S. Department of the Interior
Bureau of Reclamation

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Fax Cover

Date: Monday, November 03, 2008

Pages including this cover:

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To: Jerry D. Olds, PE (Utah State Engineer)

From: Jonathan B. Jones

Code: 750

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Message: Reclamation's Comment Letter on Proposed Rule R655-16

An updated original letter will be mailed to your office in the next 7 days.

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WTR-4.10

Jerry D. Olds, P.E.
State Engineer
Division of Water Rights
1594 West North Temple, Suite 220
Salt Lake City, UT 84116-3154

Subject: Proposed Rule R655-16

Dear Mr. Olds:

Thank you for holding the September 16, 2008, hearing on the proposed rule R655-16, "Administrative Procedures for Defining Beneficial Use for Supplemental Water Rights." Based on the information presented at this hearing and our own review of R655-16, Reclamation is deeply concerned about the potential impacts this proposed rule may have on Reclamation's Projects water rights within the State of Utah.

As you are probably already aware, most of Reclamation's projects involve large storage facilities to supplement irrigation water rights during times of drought and during the late irrigation season. The amount of stored water delivered by these projects can vary significantly depending on the water year. This is emphasized by the fact that many of our reservoirs are sized to handle several years of holdover storage to provide water during multiple year droughts. Utah Code 73-3-4a partially contemplates this unique nature of Reclamation Projects by allowing project water right proofs to be based on the completion of project features and current and projected operation data. Unlike conventional rights, Reclamation project water rights are not narrowly defined as the irrigation of specific acres or as a constant annual acre-foot water use. In general, Reclamation Project rights are limited by the nature of the constructed facilities and their relatively junior priorities dates. We are concerned that a strict application of Rule R655-16 to project water rights will impair Reclamation's flexibility to adjust water deliveries to match our water users' need for stored water.

Reclamation is concerned with how project water rights will be quantified under the Proposed Rule R655-16. As noted previously, water delivered from Reclamation reservoirs can vary greatly from year to year. Reclamation is concerned how this variable use would be quantified and how this quantification could affect the flexibility of project water rights. Reclamation is concerned that defining project water rights in terms of sole supply will make it difficult to change these rights to new supplemental uses in the future.

Many of Reclamation's water rights are not perfected and according the proposed rule R655-16, a "Statement of Group Contribution" may need to be cosigned with every water user who uses

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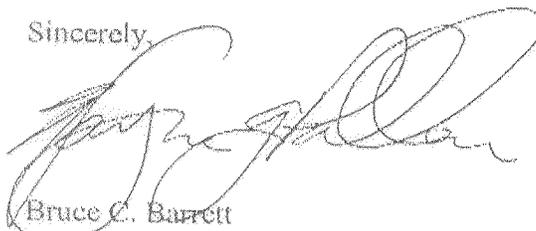
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project water rights before proof could be submitted. Reclamation projects often deliver water to multiple water companies who in turn commingle it with company water rights before delivering it to individual irrigators who use this water supplementally with their private water rights. It is not feasible for Reclamation to come to an agreement with every intermediate and end user of project water before a proof or a change application on project water rights.

Reclamation has additional concerns regarding the Proposed Rule R655-16 and its potential impacts to federal water delivery contracts and project operations as defined in the congressionally approved Definite Plan Reports. During the next couple months, Reclamation plans to meet with our Utah Project Sponsors to discuss this rule and its implications to our individual project operations. Reclamation would also like to meet with you and your staff to discuss the Proposed Rule R655-16 and how it would generally be applied to Reclamation Project water rights. Should you have any questions regarding this letter or Reclamation Project water rights, please contact Justin Record at (801)-379-1072.

Sincerely,



Bruce C. Barrett
Manager, Area Office

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