

October 29, 2008

Jerry D. Olds
Utah Division of Water Rights
1594 West North Temple
Salt Lake City, UT 84114

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WATER RIGHTS
SALT LAKE

Re: Draft Administrative Rule R655-16

Dear Mr. Olds:

This letter is submitted on behalf of Rio Tinto, Kennecott Utah Copper Corporation, OM Enterprises Company and Kennecott Land Company ("Kennecott") regarding Draft Rule R655-16 pertaining to the proposed administrative procedures for defining beneficial uses for supplemental water rights. Kennecott has some concerns regarding this rule as drafted.

With the respect to the provision in R655-16-4, Kennecott does not believe it is appropriate to require the determination of sole supply/supplemental water when administrative action is taken on Kennecott's existing water rights for its own use. For example, a change application that serves to change a point of diversion on one or more of its water rights would not enlarge or expand Kennecott water right portfolio. This is a different situation than conveyance of a user's water right to another entity which may diminish the group of water rights held by the grantor. Kennecott believes the foregoing is consistent with the exception that we understand is being granted to public water suppliers so long as the use is being made by the public water supplier within its service area.

More attention needs to be given to Section 6 of Draft Rule R655-16 requiring a "statement of group contribution." It is our understanding that this proposal would require all users who have or may have had interest in a water right to agree upon the

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apportionment. Until that is accomplished there would be no allocation of the sole supply to the users involved. The fundamental problem with this proposal is that if there is a defiant party, that party could hold up the allocation of water rights for personal or other reasons thus creating a substantial burden upon the user who needs to move forward with a portion of the water right involved. The draft rule does not effectively deal with this situation, and more attention needs to be given to this aspect of the rule and perhaps, a more user friendly procedure developed.

The proposed rule also requires that all users must submit a verified statement of their interest in an unquantified water right in the water use group. Our concern with this requirement is that as more information is acquired in the future, the initial verification may not be entirely accurate. This is an unfair requirement to place upon water users.

We also submit that the exception currently provided for in R655-16-7(2) should be strengthened to provide that a statement of group contribution is not required for *any* approved temporary change application since temporary change applications expire within a year of approval. Such an exception would not result in the enlargement of an underlying water right.

Thank you for your consideration with the points raised in this letter and please call me if you would like to discuss further.

Sincerely

Rio Tinto- Kennecott Land Company



Van F. King, P.G.

Manager Assets