

To the Water Rights Division and Jerry Olds, State Engineer: I am commenting on proposed R655-16, Administrative Procedures for Defining Beneficial Uses for Supplemental Water Rights, as General Counsel of the Utah Association of Special Districts at the specific request of the Association. There are approximately 390 local districts (formerly referred to generically as special districts) and special service districts in Utah, more than half of which are members of the Association. Many of these districts are water districts, ranging from small retail districts that supply culinary and/or irrigation water to the local community to large multi-county wholesale water suppliers. As a consequence, the Association and its members are vitally interested in and impacted by the proposed Rule. Representatives of the Association have participated in the Utah Water Coalition's extensive review and consideration of proposed R655-16, and the Association fully supports and agrees with the comments on R655-16 submitted by Fred Finlinson representing the Coalition. We do not intend to restate all of the Coalition's comments, but want to make it clear that the Association seconds every point made in Mr. Finlinson's thoughtful comments and to place emphasis on some of those points. As stated in the comments submitted by the Utah Water Coalition, "most if not all water rights [held by a public water supplier such as a wholesale or a retail district] will be used together and under a strict reading of the proposed language, any change application, including a simple diversion point, will require a full blown report on all rights used in the entities service area which will be expensive" and, the Association would add, should not be necessary. We do not believe that it would be difficult to tweak R655-16 to allow reasonable latitude to the State Engineer to excuse the filing of a Statement of Group Contribution under such circumstances. While all of the points in the comments filed by the Coalition are important, we would like to emphasize point number 2 and point number 5. We do not doubt that the current State Engineer intends, as stated in the Coalition's comments, "that public water suppliers who have gone through the change application process to convert Ag water to M&I, or which hold municipal water applications originally approved for that purpose, will not be required to fill out the form each time any administrative action is requested from the State Engineer's office." However, there will be a new State Engineer after December 16th, and that person may not recognize that degree of latitude unless it is clearly spelled out in the Rule. R655-16-6(1)(a) is helpful, but may not go far enough. To the extent a water district is the owner of all of the water rights in a group, R655-16(1)(c) and (d) may not be particularly troublesome. However, as presented in point 5 of the Coalition's comments, a third-party water right owner should not have absolute veto power, and that should be the case regardless of who that water right owner may be. As stated by Mr. Finlinson, that likely is a fatal flaw in the proposed Rule. One point not directly raised by the Coalition relates to the definition of "sole supply" in R655-16-5(1)(c). Point 6 of the Coalition's comments refers to the creation of "blocks or impediments to conjunctive management" due to the inability to correct information once a Statement has been filed. The strict definition of "sole supply" may present a similar issue. The definition refers to the sole supply of an individual water right that is a member of a group as being "the maximum beneficial use of water associated with that water right when used alone and separate from all supplemental rights." The definition further states that "[t]he sole supply of a water right is the sum of its group contributions." Conjunctive management of a district's water rights might mean that a particular well is used extensively one year while a different well is used more another year. Those decisions may be based on technical difficulties (such as a motor going out) or on other needs of the district. If all of the "supplemental" water rights list all of the district's wells and other water sources as points of diversion, proper management of the resource should not be difficult. However, what happens if different water rights within the supplemental group are assigned to each well or other water source? Once the so called sole supply has been quantified, with specific amounts within the whole assigned to each source, the district may lose its ability to properly manage its water system and meet the needs of its constituents without violating the Rule, even though less water is being produced and used than the total quantity or flow reflected in the water rights held within the group. Obviously, the Association is interested in the impact of the Rule on water districts, but it could have the same chilling effect on the ability of other water suppliers to meet their needs. Thank you for considering these comments and concerns in conjunction with those submitted on behalf of the Utah Water Coalition and other interested water right owners. Respectfully submitted. Mark H. Anderson  
General Counsel  
Utah Association of Special Districts