

December 14, 2009

Kent L. Jones
State Engineer
Utah Division of Water Rights
1594 West North Temple
Salt Lake City, UT 84114

Re: Draft Administrative Rule R655-16

Dear Mr. Jones:

This response is submitted on behalf of Rio Tinto, Kennecott Utah Copper LLC, OM Enterprises Company and Kennecott Land Company (“Kennecott”) to Draft Rule R655-16 (the “Rule”) regarding the proposed administrative procedures for evaluating sole supply/supplemental water rights.

The grouping concept is a very important aspect of implementing the Rule. Based on the Rule and the information provided at the November 17, 2009 meeting, it is our understanding that water users will be allowed to have substantial input in the grouping of water rights. Kennecott submits that this will facilitate implementing the Rule for both water users and the State Engineer’s office. In this regard Kennecott would welcome the opportunity to meet with representatives of your office and present Kennecott’s proposed grouping of its water rights. Based on Kennecott’s initial evaluation of the grouping concept, it is Kennecott’s opinion that its rights could be and should be administered in a

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limited number of groups. As you are aware, the great majority of Kennecott's water rights are for industrial purposes, e.g., mining, milling, concentrating, etc.

In keeping with the group concept, Kennecott submits that when it modifies one of its water rights within a group, pursuant to a change application, this should not trigger the determination of a sole supply/supplemental evaluation of the right being changed or of other Kennecott water rights within the group. Kennecott believes this will make the rule much more efficient and workable for water users, as well as reducing the administrative work of the State Engineer's office. Kennecott understands that if it sells a water right and moves that right outside the group this will require an evaluation of the sole supply of the right sold. Kennecott believes that the foregoing is consistent with how the Rule is to be applied to public water suppliers' use of their existing water rights within their service area.

Kennecott is also concerned about how a supplemental evaluation may be applied to its individual water rights. As we understand it, the Rule would require that a supplemental water right will be evaluated in terms of the average amount of water supplied by the right, but would allow the use of the total water right when required by the water user. It is important to Kennecott's operations that its water rights not be unduly limited in any sole supply/supplemental evaluation. It is imperative that Kennecott have the entire quantity of its individual water rights available for "peaking purposes" or when an "emergency situation" may require that a supplemental Kennecott water right be fully used.

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Finally, Kennecott submits that the Rule should not require the sole supply/supplemental evaluation for water rights moved outside the established group with a temporary change application. Since the temporary change application will lapse following a one-year term, it does not seem that this could result in an enlargement of water rights within the group. Also, this would provide the short-term flexibility that is sometimes needed to utilize a water right for the benefit of another water user or for the public.

Thank you for your consideration in this matter and if you have any comments or need clarification, please give me a call.

Sincerely,

Rio Tinto- Kennecott



Van King, P.G.
Manager Assets

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