

JEFFRY T. NIERMEYER
DIRECTOR

SALT LAKE CITY CORPORATION
DEPARTMENT OF PUBLIC UTILITIES
WATER SUPPLY AND WATERWORKS
WATER RECLAMATION AND STORMWATER

RALPH BECKER
MAYOR

December 1, 2009

Kent L. Jones, P.E.
State Engineer
Utah State Engineer's Office
1594 West North Temple
Salt Lake City, Utah 84116

Re: Comments Concerning Proposed Rule R655-16

Dear Mr. Jones:

Salt Lake City Department of Public Utilities (the "City") respectfully submits the following comments concerning the adoption of Proposed Rule R655-16:

1. The City has previously expressed its concerns related to how a sole supply rule would affect how municipalities manage their water rights. We believe that you have made positive changes in revising the rule to address many of the concerns with the prior version of the Rule. Your explanation that a Declaration of Individual Beneficial Use Amounts ("DIBUA") usually would not be filed by municipalities under the provisions of R655-16-6(2) is helpful.

The City continues to be concerned, however, that application of the Proposed Rule would be problematic for municipalities in several areas. By intent and practice, municipal water rights are all supplemental to provide a reliable water supply to support public health, public safety for fireflow, and to nearly all levels of business and commerce in the communities they serve. Municipalities must maintain water and water rights for periods of severe drought, such as the 1930's when many rights were developed in response to the absence of many significant surface water supplies. This also includes the need for supplemental rights in the event a major supply source is lost due to natural or anthropogenic disasters. Based upon the inherent supplemental nature of municipal water rights, including the constitutional prohibition of municipalities from selling their water rights, we believe it would be appropriate to amend the Proposed Rule to specifically exclude municipal and other public water supplier water rights from the requirements of filing a DIBUA.

The City also hopes to avoid the burden of responding to DIBUA requests submitted by others. Since the City's water rights are supplemental to many other water use groups, a myriad of "trigger" events could exist where the City

RECEIVED

DEC 01 2009 TG

**WATER RIGHTS
SALT LAKE**

1530 SOUTH WEST TEMPLE, SALT LAKE CITY, UTAH 84115

TELEPHONE: 801-483-6900 FAX: 801-483-6818

WWW.SLCGOV.COM



would be required to respond to a DIBUA based upon the water right filing action of others. These include a multitude of small rights held by water right owners to supplement their uses of water. For example, water rights used for large wells provide supplemental supply for institutions such as the LDS Church, University of Utah, cemeteries, parks and golf courses. Also, a substantial number of individual supplemental secondary water rights are used to support residential and commercial LEED development projects. Other public water supply owners such as irrigation companies, Sandy City, Park City, Jordanelle Special Service District have rights supplemental to the City's water rights. The City has hundreds of supplemental water rights. Based upon initial evaluation of the water use groups, of the City's 9,831 water rights, there are over 470 supplemental rights in numerous water use groupings.

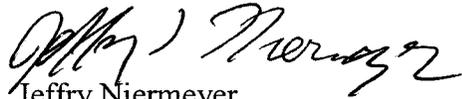
Even if a small percentage of individuals who have rights that overlap with the City's supplemental rights are required to submit the DIBUA, the City will be required to devote extra-ordinary resources to respond to inquires from such individuals. The DIBUA filing requirements under the Proposed Rule would impose extensive and expensive efforts on municipalities that would be the equivalent of an adjudicatory proceeding, without the benefit of an actual adjudication determination.

The City requests that you consider amending the Proposed Rule to specifically provide that if a water right is supplemental for a municipality, the municipality would not required to file the DIBUA with respect to that water right. Furthermore, the City requests that you consider amending the Proposed Rule to provide that if municipal water rights are supplemental to those of another water right holder who is submitting a DIBUA, the municipality's water rights should be excluded from the DIBUA requirements.

2. The City's primary concerns are set forth above. We believe that the following items, however, should also be carefully considered before adoption of the Proposed Rule:
 - Will the DIBUA only result in further delays in obtaining approvals of change applications and add to confusion with erroneous reliance on information included in the DIBUA? The City believes that it would result in an overall slowing down of the change application process.
 - Will the Proposed Rule result in an artificial fix of the use of water from particular sources and result in unnecessary adjudication of water rights in court proceedings? The interests of the water community are not advanced if litigation results from the proposed change in the State Engineer's administrative rules.

In conclusion, the City wants to support the efforts of the State Engineer, but believes that it would be wrong to apply the Proposed Rule to municipalities. Specifically excluding municipalities from the Proposed Rule would help avoid unintended consequences imposed upon municipalities and other members of the water community.

Sincerely,



Jeffrey Niermeyer
Director, Department of Public Utilities

RECEIVED

DEC 01 2009

**WATER RIGHTS
SALT LAKE**