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Hand Delivered

NATURAL RESOURCES  
WATER RIGHTS  
Room 220  
1594 West North Temple  
Salt Lake City, UT 84116-3154

Re: Comments on R655-16. Administrative Procedures for Declaring Beneficial Use  
Limitations for Supplemental Water Rights.

Dear Kent L. Jones:

The Utah Water Coalition appreciates the process provided by the State Engineer's office to introduce the proposed "sole source allocation" rule. The hearing was very beneficial and the meeting of the Water Coalition with Kent and Lee helped refine issues for the Coalition. We held an additional meeting of the Coalition on the 15<sup>th</sup> of December to discuss the proposed rule. The following comments reflect issues of concern and some resolving recommendations:

General Reflections:

One of the central issues is the problem of transferring of water rights. The Coalition has been working on this problem with the discussion of deed rider legislation. Getting all of the changes made to the State Engineer's data base to accurately reflect what has happened and what is proposed to a given water right is part of this big problem facing the water community. The existing tools already vested in the State Engineer's office could deal with these issues without the creation of a new administrative process such as "Record of Conveyances" and proper disclosure in the change application process.

One of the big concerns with last year's proposed rule and this year's proposed rule is the water right groupings developed by the State Engineer. This year, the proposed rule has a couple of processes that allow for adjustment of the water right groups. This is clean up process is very helpful. Specific Comments will be directed to the applicable rule and do not represent a priority of any sort.

Specific Comments:

1. R655-16-1. Authority.  
The draft seemed adequate and no discussion raised the need for any changes.
2. R655-16-2. Justification.

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The Coalition agrees with need for the quantification of beneficial uses; however, as noted above, the existing process should produce the information required. No specific changes are suggested for this part of the rule.

3. R655-16-3. Purpose.  
The process of allowing individuals to submit respective contributions from various sources is a good purpose and no suggestions for changes were deemed necessary.
4. R655-16-4. Application of Rule.  
The draft seemed adequate, but if the water group is not right, it is the source of a lot work that will be necessary to process into a proper group.
5. R655-16-5. Definitions.  
The draft seemed adequate and no discussion raised the need for any changes.
6. R655-16-6. Declaration of Individual Beneficial Use Amounts.
  - (1) This section seemed adequate and no discussion raised the need for any changes.
  - (2) We suggest the change from "(a) shall be required" to read "(a) may only be required." Last year, public water supplier requested an exemption from the 2008 proposed sole source rule. This request had been accepted by Jerry Olds. Yet in this draft, there did not seem to be an exemption for the public water supplier. At both meetings with Kent Jones, the water community was assured that (2) would exempt public water suppliers and all other water users from the sole source requirement if all four of the provisions (I – IV) of (2) were not met. This exemption becomes critical to all water users. Part of the problem is that the first exemption in R655-16-9. Exceptions, allows the State Engineer to override the criteria and even if all four are not met, the strict reading of the total rule, allows the state engineer to require the declaration on any criteria that he wants. Therefore our suggestion is that the "shall" be change to "may" and we are recommending the deletion of that first exception. See our comment to R655-16-9.
  - (3) (4) & (5). The draft seemed adequate and no discussion raised the need for any changes.
7. R655-16-7. State Engineer Review and Evaluation.
  - (1) The draft seemed adequate and no discussion raised the need for any changes.
  - (2) At the December 15<sup>th</sup> meeting, the issue of the utilization of the Declaration process as a delaying tactic to stop a change application for a controversial project, (like a power plant). "The water right holder may request" is a pretty broad authorization for any person to utilize the declaration process as another delaying tactic. Just the process of another review, even if it is not granted, provides delay which in the end may be the nail in the coffin for given project. We suggest that some criteria be developed to protect against a potential abuse of the system by people opposed to a given project. It is noted that an attempt has been made to exclude the declaration process from the Utah Administrative Procedures Act ("UAPA"), but what is the appeal, de novo into the district court?
  - (3) This provision is a great improvement.
8. R655-16-8. Application to State Engineer for Apportionment of Beneficial Use Amounts.
  - (1) This is the clear issue of concern raised in the discussion for R655-16-7(2); however, this time "an applicant" may submit a request for an informal adjudicative proceeding as provided in the UAPA. The process is good, but it clearly would allow opponents to utilize

the process to delay a given project and because it is a separation administrative proceeding, it has a string of appeal processes that would have to be finished before getting back to the change application process.

(2) The rest of rule 8 seems to be adequate and no discussion indicated a need to change.

9. R655-16-9. Exceptions.

(1) We suggest the elimination of this exception. The criteria for filing a declaration is set forth in R655-16-6(2)(a). This exception allows the State Engineer to requiring the filing for any other requirement he thinks is necessary, which creates uncertainty in the criteria. It becomes these four plus anything else that the state engineer wants.

(2) No changes are suggested for sections (2) and (3).

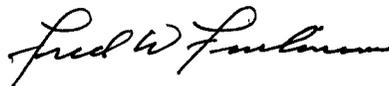
(3) In Section (4), the Coalition suggest the elimination of the string "if the water right is owned by a mutual irrigation company, a water-supplying entity, a municipal water system, or a federal agency and." This would eliminate the need for definitions for the string and would be much cleaner to allow the State Engineer to clean up water use groups.

10. General Concern, re Declarations and Change Use Applications.

The general plan proposed by the rule is that at any time in the change application process, the state engineer could request a declaration process. It appears that this creates a separate process from the change application process. Under the UAPA the new agency action is given a separate life of its own, which means that this process most likely has to be completed before the change application process proceeds. This could really help in the process, but the administrative process for two agency actions maybe should be structured as a part of the overall change application process with the state engineer issuing in his order, a provision apportioning sole source provisions as part of his order on the change application. This consolidation may be a more efficient process than creating a new administrative process that could create an extraordinary time to get through the change application process. Once again, this focus was developed just two days ago, but it is a critical issue. Consolidation if the declaration occurs during a change application process may be a far better way than creating a second UAPA track.

Thanks for the opportunity to respond with comments and suggestions about the proposed rule.

Sincerely,



Fred W. Finlinson  
Coalition Chairman

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