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RECEIVED

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Kennecott

January 30, 1992

WATER RIGHTS
SALT LAKE

Mr. Robert L. Morgan
Utah State Engineer
1636 West North Temple
Salt Lake City, UT 84116

RE: Draft Utah Lake Drainage Basin Distribution Proposal

Dear Mr. Morgan:

Kennecott Utah Copper Corporation ("Kennecott") submits the following comments with respect to the October 15, 1991 draft distribution proposal for Utah Lake Drainage Basin. Kennecott supports the concept of a more fully integrated distribution program for the Utah Lake Drainage Basin. However, any such proposal must protect established rights in Utah Lake and the Jordan River. In this regard, Kennecott has certain concerns and objections regarding the current draft proposal.

1) The draft proposal fails to recognize Water Right 59-3518 owned by Kennecott. Water Right 59-3518 is a primary storage right from Utah Lake with an 1850 priority. This is a perfected water right for 30 cfs of water and for year around industrial use. In terms of acre feet, this right should be recognized for 21,719.3 acre feet of water.

Any tabulation of primary storage rights from Utah Lake should include Water Right 59-3518. Thus, both Table 1 on page 8 and Table 2 on page 9 should be amended to include Water Right 59-3518. Further, the last summary in the draft proposal summarizes storage rights from Utah Lake that are greater than 100 acre feet. Water Right 59-3518 is set forth on page 1 of that summary but the footnote reference on page 5 incorrectly states that the right is probably non-consumptive. This footnote should be deleted. Water Right 59-3518 is a consumptive use right for industrial purposes and has been consistently recognized as such by the State Engineer's office, most recently in Book 4, Salt Lake County West Division, Southwest Subdivision of the Utah Lake/Jordan River adjudication. The draft proposal should be amended to reflect a flow of 30 cfs and 21,719.3 acre feet of primary water for Water Right 59-3518.

2) Two other Kennecott water rights are not adequately recognized in the draft proposal. Water Right 59-23 and 59-30 with priorities of 1912 and 1918, respectively, are not included in the secondary water rights summary in Table 1 on page 8. Together, these two rights are for 48,596.6 acre feet of water and any water budget that fails to incorporate them is deficient. These rights

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utilize water from the Utah Lake/Jordan River system and upstream rights that have a later priority must not impair or interfere with these rights.

3) The draft proposal makes reference to accretion flows from the Jordan River as a source of supply for the primary direct flow rights from the Jordan River. However, these rights are not tied to or limited by accretions in the Jordan River as a source of supply. It should be made clear that these, and other Jordan River water rights, are not restricted to accretions and have a demand on the system as a whole as a source of supply.

4) It is difficult at this time to forecast the precise impact of the draft distribution proposal on the regiment of Utah Lake and the Jordan River. This is so because the draft proposal will, to some degree, alter the manner in which the water has been historically managed through the various reservoirs on the system. Also, the operation of the Jordanelle Reservoir, once it is completed, will introduce an additional factor into the overall management of this system. Consequently, if a new distribution plan is implemented, it should be done on an interim or trial basis and should be without prejudice to the respective rights of the water users. This should be coupled with an annual meeting and report of the State Engineer which reviews the operation of the system for the previous year.

5) Any distribution proposal that is implemented should re-affirm that it is not an adjudication of the individual rights of the parties and that any such adjudication will occur within the framework of the pending statutory adjudication. Further, it should be made clear that this is not a proceeding under either the Utah Administrative Procedures Act or under the Utah Rule-Making Act.

Very truly yours,

Keith S. Hansen

K. L. Hansen
Manager, Property and
Water Resources

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