waterrights DNR <waterrights@utah.gov>

Kennecott Utah Copper LLC Comments Regarding Initiation of a Jordan River Distribution Plan

1 message

Balling, Ted J (RTKC) <Ted.Balling@riotinto.com> Mon, Mar 2, 2020 at 2:20 PM
To: "waterrights@utah.gov" <waterrights@utah.gov>
Cc: Jody Williams <JLWilliams@hollandhart.com>

Dear Ms. Wilhelmsen,

Attached is Kennecott Utah Copper's comments regarding the initiation of a Jordan River Distribution Plan. If you have any questions, please feel free to contact myself.

Thanks,

Ted Balling

Senior Advisor – Water Resources

Rio Tinto | Kennecott

4700 Daybreak Parkway, South Jordan, UT 84009

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Kennecott Utah Copper LLC
Attn: Water Resources
4700 West Daybreak Parkway
South Jordan, Utah 84009
T (801) 204-2809

March 2, 2020

Teresa Wilhelmsen, State Engineer
Utah Division of Water Rights
1594 West North Temple, Suite 220
Salt Lake City, UT 84116-3154

Subject: Kennecott Utah Copper LLC Comments Regarding Initiation of a Jordan River Distribution Plan

Dear Ms. Wilhelmsen,

Kennecott Utah Copper LLC ("Kennecott") thanks you for the opportunity to provide initial comments to a Jordan River Distribution Plan ("Distribution Plan") discussed in a public meeting held December 3, 2019 at the Utah Division of Water Rights (the "Division"). Kennecott is a member of the Utah Lake Water Users Association (the "Association") and endorses the comments and questions submitted by the Association's counsel. In addition, Kennecott is submitting these comments which are more specific to Kennecott's individual Jordan River water rights. And, consistent with the position of the Association, Kennecott reserves the right to comment further throughout this process.

Kennecott's Water Rights Supplied by Utah Lake Storage Rights. Kennecott is the owner of Water Right number 59-3517. Water Right No. 59-3517 is a Utah Lake primary storage water right approved and used for industrial purposes. The Utah Lake primary storage water rights were decreed in the 1901 Morse Decree and confirmed in 1909 in the Booth Decree. For well over a hundred years, this water right supplied Kennecott's mining and smelting that were fundamental to the development of Utah. It remains critical to Kennecott's current, and future mining and industrial operations. When all of this water right is not being used for Kennecott's industrial uses, it is leased to large agricultural operations as authorized under temporary change applications. Kennecott also relies on the approved water right exchange E33. E33 is an exchange with Kennecott's Jordan River water right 59-3518 and the North Jordan Irrigation Company's Utah Lake storage water right 59-3496 which allows Kennecott to exchange up to 30 cfs of water for its mining and industrial operations.

Kennecott's Water Rights Supplied by the Jordan River. Kennecott is the owner of three Jordan River water rights, 59-3518, 59-23, and 59-30. These water rights have been used for industrial purposes in conjunction with Kennecott's Utah Lake storage water rights and are likewise critical to Kennecott's current and future mining and industrial operations. These water rights are also critical to agricultural operations and the support of wildlife and their habitat as authorized under approved temporary change applications.

Kennecott's Comments and Questions Regarding the Initiation of a Jordan River Distribution Plan

1. Jordan River Model. Kennecott requests additional time and information to undertake a full evaluation of the Jordan River model introduced in the December 3, 2019 meeting. Kennecott was unable to complete a full review of the model, as

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presented, in the amount of time allotted for the initial comment period. Kennecott would like to know what assumptions were made in the model and be able to further review its data inputs. The Jordan River is very dynamic, and its hydrograph can change dramatically and quickly. Thus, day to day operational decisions should not be made on a model that quantifies gross volumes of water entering and discharging from the system. Kennecott would like a clear explanation and on how the model will be used in making water right distribution decisions, specifically in regard to Kennecott's water rights. After additional information is presented, including on how the model is constructed and operated, and Kennecott has an opportunity to evaluate it, Kennecott will be in a better informed position to make pertinent comments to the model.

2. Change Application a-4907 (59-3517) Stipulated Decree (Snow Decree, 1967). The "Snow Decree" (1967) stipulated a settlement to protests to Change Application a4907 (59-3517) filed by North Jordan Irrigation Company and KUC. It provides for KUC to release water into the Jordan River when flows at the 2100 South intersection with the river fall below 325 c.f.s during the irrigation season to compensate lower Jordan River water users. Both flows and demands in the lower Jordan River have changed significantly in the 50-plus years since the Snow Decree was entered, and KUC is unaware of any period when this water has been called for and the stipulation has been exercised. In the same 50-plus year period, a substantial amount of water has been moved off of land below 2100 South under change applications, and development has occurred on land irrigated decades ago. Any input to a Jordan River model prepared by the Division must take into account the decrease in water use and the type of water use and reduce both the amount of water that the River Commissioner could call for release and the probable frequency of any call occurring.

3. Restriction of Approved Change Applications with Later Priority. Kennecott is aware of approved change applications that have moved water rights with PODs lower in the Jordan River to locations above Kennecott's PODs and that influence the accretionary flow to the Jordan River. Some of these change applications include shallow wells in proximity to the Jordan River. These change applications must be taken into account in the Division's model and regulated prior to any regulation of Kennecott pursuant to conditions in the approving orders of the change applications. Typically, the change applications order that these "rights be administered by the Utah Lake/Jordan River Commissioner...Should this proposed diversion interfere with any other diversion on the Jordan River existing prior to (change application priority date) downstream..., where water would have been available to the right at the historical point of diversion but diverting it at the proposed point of diversion impairs other diversions, this proposed point of diversion shall be regulated as if it has a priority of (change application priority date). Any additional expenses incurred by the commissioner in distributing water under this application shall be borne by the applicants."

4. What Impact will the Jordan River Distribution Plan have on Distribution of Water from Utah Lake and the Utah Lake Interim Distribution Plan? Kennecott reinforces the comments of the Association with respect to this question. In addition, Kennecott's Exchange 33 is operationally unique with respect to Utah Lake storage and must be recognized in any modelling undertaken by the Division.

5. Operation of Utah Lake Pump Station. The Utah Lake Pump Station is owned and operated by the Utah Lake Water Users Association (ULWUA), of which Kennecott is a member and shareholder. The ULWUA operates, maintains, and pays all costs associated with the Pump Station. As stated in the Association's comments, the

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Pump Station is necessary to pump the stored water, including Kennecott's Utah Lake storage water, when it cannot be delivered out of Utah Lake by gravity. The Association operates the Pump Station based on agreements, investments and decrees and a course of dealing developed and implemented over 135 years. Any model developed by the Division should honor the history and commitment and legal precedent developed by the Association.

6. Utah Lake and Jordan River Water Rights. Kennecott's diversion points from the Jordan River are much lower on the river than the major irrigation companies' diversions. Thus, Kennecott's Jordan River diversions are dependent on not only deliveries from Utah Lake under its storage water rights, but are also sources from the accretionary flows in the Jordan River which may include return flows from Utah Lake water rights sourced from Utah Lake during the irrigation season. Any change to Utah Lake deliveries or to the customary diversions and uses by the upstream Association members can have an exaggerated impact on Kennecott. This impact must be avoided. Kennecott needs more information from the Division in order to understand the potential impacts.

7. Quantification of Conveyance Losses. Kennecott shares the Association's concern over the possible new treatment of conveyance losses in canals diverting from the Jordan River and requests much more dialogue between the Association as a group and the Division prior to the Division requiring irrigation companies to file water user's claims.

Thank you for consideration of Kennecott's comments in early consideration of the points to go into a Distribution Plan. Kennecott believes that significant additional discussion and analysis among the Division, the Association and Kennecott will be helpful at each step. It looks forward to participating and working through the process.

If you have any questions in regards to this letter, please feel free to contact myself, Ted Balling, at ted.balling@riotinto.com, 801-204-2809.

Sincerely,

Ted Balling

cc: Jody Williams
jlwilliams@hollandhart.com

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