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Date: 10/31/2008 4:34 PM
Subject: Comments on R655-16 by the City of Orem
Attachments: Text.htm; Comments on R655-16 by the Cityof Orem.pdf; Chris Tschirki1.vcf

Kaelyn,

The City of Orem respectfully submits the attached comments regarding proposed rule R655-16, Administrative Procedures for Defining Beneficial Uses for Supplemental Water Rights. A FAX of the same document was also sent to (801) 538-7442 on October 31, 2008. Please submit this with other comments for review by the State Engineer. Thank you.

CITY OF OREM

DEPARTMENT OF PUBLIC WORKS
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October 31, 2008

Mr. Jerry Olds, P.E.
State Engineer
Utah Department of Natural Resources
Division of Water Rights
1594 West North Temple, Room 220
Salt Lake City, UT 84116

RE: Comments on R655-16

Dear Mr. Olds:

The City of Orem is pleased to have the opportunity to comment on the proposed rule, R655-16, *Administrative Procedures for Defining Beneficial Uses for Supplemental Water Rights* and thanks the State Engineer for holding a public hearing for all interested parties regarding the proposed rule on September 16, 2008. Orem understands that the State Engineer's Office has the great responsibility of reviewing supplemental rights and ensuring that underlying water rights are not enlarged. This mandate is not only extremely time consuming but can also be very overwhelming at times. At this meeting, several members of the water community, including municipalities, water districts, agricultural representatives, attorneys, engineers, etc., attended. Each group seemed to have its unique perspective on the rule, but there were also some common concerns expressed.

Over the past several months, Orem staff has attended several Water Coalition meetings to keep itself abreast of any proposed water legislation for this coming legislative session. The City of Orem is one of many members of the Coalition. As a member, Orem concurs with the collective comments submitted by the Coalition. This sole source rule, R655-16, is of great concern to Orem. In particular, the areas of cost and time, application of the rule, and group contributions cause the most apprehension.

Cost and Time

There will likely be a significant cost and time burden placed on public water suppliers, and Orem is no exception. Under this rule, all supplemental water right holders, in effect, will be required to "self adjudicate" whenever a temporary or permanent change application is filed. Sole source allocations may require time-consuming research by public managers, engineers, and attorneys. For public water suppliers, most water rights would be used together. A strict interpretation of the proposed language would require a thorough investigation of all rights used in the service area, which would be very expensive and time consuming.

Application of Rule

R655-16-4 indicates that the Statement of Group Contribution Form is required when the "the State Engineer is requested to take administrative action with regard to an individual water right or group of water rights that are designated in the Division's records as part of a supplemental group and have no designated sole supply." Water right holders with large groupings of water rights, such as public water suppliers, would be required to take part in completing the Statement of Group Contribution if sole supply is not designated. Although it has been suggested that this form will only take 60 seconds to complete, this would be a cumbersome process necessary to investigate the background to every temporary or permanent change application associated with supplemental water rights. This process would most

certainly occupy multiple resources, such as public managers, engineers, and attorneys on a regular basis. As such, there is a reasonable likelihood that public water suppliers would be required to increase staff and raise fees or taxes to support this effort. Furthermore, smaller public water suppliers would be at a distinct disadvantage and could ultimately suffer the greatest damage. For these reasons, the City of Orem feels this rule should not apply to public water suppliers.

Group Contribution

- The definition of Group Contribution can be interpreted multiple ways and needs to be further refined to eliminate any confusion. When a group of supplemental water right holders is required to identify their beneficial uses, each right holder may interpret their beneficial use differently or incorrectly. This could be an obstacle that prevents any changes from occurring.
- Requiring supplemental water right holders to complete the Statement of Group Contribution could be a very monumental and cumbersome burden placed on the applicant because no one with authority is pressing the issue, and the applicant is at the mercy of the other right holders.
- Due process seems to be at jeopardy if other supplemental water right holders, for whatever reason, are not willing to take part in the Statement of Group Contribution. Of course, adjudicating the matter is always a possibility, but this seems to be the only safeguard for an applicant who is working with uncooperative supplemental water right holders. This action should be the absolute last form of resolution but appears to be the only avenue once negotiations have ceased.
- In the event the applicant is unsuccessful in negotiating with other supplemental water right holders, he/she may reluctantly relinquish rights in order to finalize the request. This is not a good byproduct of this rule but may very well occur on a regular basis.

As you can see, there are several outstanding concerns that need to be addressed regarding R655-16. Moreover, the City of Orem understands and appreciates the concerns of the State Engineer's Office to continue to administer water right applications. The required time and manpower to continue under current guidelines is significant. However, the City of Orem feels strongly that this burden not be placed on the individual applicants. Either this proposed rule should be withdrawn from consideration or public water suppliers should be made exempt from complying. Please feel free to contact us at (801) 229-7500 at your earliest convenience if you have any questions regarding this communication.

Sincerely,


Bruce W. Chesnut
Orem Public Works Director


Christopher R. Tschirki, P.E.
Orem Water Resources Manager