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November 3, 2008

Jerry D. Olds, P.E.
Utah State Engineer
P.O. Box 145300
Salt Lake City, UT 84114-6300

Re: Proposed Rule R655-16 Relating to Sole Supply for Supplemental Water Rights

Dear Mr. Olds:

Provo River Water Users Association (the "Association"), respectfully submits the following comments on the proposed new Rule R655-16, Administrative Procedures for Defining Beneficial Uses for Supplemental Water Rights, published in the Utah State Bulletin August 1, 2008 (the "Proposed Rule").

The Association's concerns and comments regarding the Proposed Rule are summarized as follows:

- **The stated purposes and scope of application of the Proposed Rule are inconsistent and confusing.**

- **The application of the Proposed Rule is overly broad. Requiring the quantification of the sole supply of a supplemental water right in connection with *all* administrative actions is burdensome on the water community, and is logically unnecessary. This information should not be required of an applicant unless and until:**

  - **The supplemental rights are no longer being used together, due to the requested action; *and***

- **The requested action changes either the nature of use, or expands the place of use.**

- **Municipalities, mutual water irrigation companies, water users associations and similar entities with multiple water rights and large service areas should be categorically excluded from operation of the Proposed Rule.**

- **The overly broad application of the Proposed Rule destroys the fundamental nature of supplemental rights, turning them instead into primary rights with defined, but reduced, use limits.**

- **Requiring unanimous, written agreement, under oath, by all owners of water rights in a supplemental group, may be requiring the impossible. The Proposed Rule must include an administrative remedy for an applicant who has exercised due diligence. The Proposed Rule should not force an applicant to bring judicial action against all uncooperative water right holders.**

These comments and others will be addressed in detail below.

A. Confusing and Inconsistent Statement of Purpose and Application.

The Proposed Rule suffers from internal inconsistency and confusion of purpose. If nothing else, the Proposed Rule should be crystal clear about its scope of application. Instead, the Proposed Rule includes at least seven somewhat inconsistent statements regarding its scope, each of which are set forth below.

1. Under RULE ANALYSIS - PURPOSE OF THE RULE OR REASON FOR THE CHANGE, it is stated that:

> "The purpose of this rule is to set forth the conditions under which an applicant filing a permanent or temporary change application shall be required to file a Statement of Sole Supply[1] with the State Engineer."

First, this statement confines application of the Proposed Rule to permanent or temporary change applications. Second, this statement suggests there are circumstances or conditions under which an applicant filing a permanent or temporary change application *will* be required to file a Statement of Group Contribution, and circumstances under which the applicant *will not* be required to file the Statement. The reader is led to expect clarification as to when the Statement will be required, and when it will not be.

[1] Please note that the Proposed Rule refers interchangeably to "Statement of Sole Supply" and "Statement of Group Contribution." The Proposed Rule should be revised to use one term consistently. We will use "Statement of Group Contribution" herein.

2. Under RULE ANALYSIS - SUMMARY OF THE RULE OR CHANGE, we find this statement:

> "This rule defines procedures for resolving supplemental water right beneficial use quantification issues . . . *when a water right is to be used by itself* rather than with the water rights to which it is supplemental." (Emphasis added.)

The clear implication here is that quantification will only be required when a water right, once used in a supplemental fashion, is now going to be used by itself. If this were the case, much of our concern would be eliminated. As we see below, however, the Proposed Rule is not, in fact, limited to these circumstances.

3. The Proposed Rule states, at Section R655-16-2:

> " . . . Administrative activities *requiring an evaluation of the beneficial use of a water right* necessitate the quantification of each supplemental water right in a water use group." (Emphasis added.)

First, this statement broadens the scope of the Proposed Rule from just change applications to all "administrative activities." Beyond that, this statement acknowledges and suggests that some administrative activities, by their nature, *require* a quantification of the supplemental right, and some do not. Again, the reader is led to believe that the Proposed Rule will explain which administrative activities require such quantification, and which do not. Unfortunately, the Proposed Rule doesn't actually do this, opting instead for a dragnet approach.

4. The Proposed Rule states, at Section R655-16-4:

> "This rule shall apply when 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."

There are two concerns with this statement. First, there is no definition of "administrative action." This could range from something entirely innocuous, such as filing for a change of address, changing title through the filing of a Report of Conveyance, or filing a non-use application. Does the State Engineer intend the application of the Proposed Rule to be so broad? Second, this suggests that a Statement of Group Contribution may not be required when the applicant's water rights have a designated sole supply, but the other rights in the group do not. Is this the intent?

5. The Proposed Rule states, at Section R655-16-6(1):

> "A Statement of Group Contribution . . . (a) . . . is required in support of a water right administrative action as deemed necessary by the State Engineer . . . ."

If this statement is intended to grant to the State Engineer the discretion to determine when the filing of a Statement of Group Contribution is necessary, it is inconsistent with other statements that (i) make such a filing mandatory in all cases, and (ii) narrowly limit the State Engineer's ability to waive filing. Aside from the inconsistency, making the filing discretionary on the part of the State Engineer, with no standards as to how to exercise that discretion gives no guidance to the water community and is tantamount to no rule at all.

6. The Proposed Rule states, at Section R655-16-6(4):

> "A water right change application will not be considered acceptably complete . . . until the affected water right(s) sole supply has been properly defined on the records of the State Engineer."

Again, is the Proposed Rule limited to change applications, or does it extend to all administrative actions? Can requests for administrative actions other than change applications be considered complete without a Statement of Group Contribution?

7. The Proposed Rule states, at Section R655-16-7(2):

> "The State Engineer may waive the filing of a Statement of Group Contribution for a temporary change application when he believes sufficient water and beneficial uses are available for the purposes of the temporary change."

Taken together, these statements of the Proposed Rule's scope of application are confusing and inconsistent. The Purpose statement says the Proposed Rule applies only to permanent and temporary change applications. Yet 16-4 and 16-6 state the Proposed Rule applies to all *administrative actions*, which is not defined, but which presumably would *not* be limited to permanent and temporary change applications, contrary to the Purpose statement. The Purpose statement suggests a Statement of Group Contribution is required only under certain circumstances. Section 16-2 suggests those circumstances are limited to administrative actions where the nature of the requested action *requires* or *necessitates* a sole source evaluation; the Summary statement suggests a quantification is required only when a water right is separated from a supplemental group and used by itself; and 16-6(1)(a) provides that a Statement of Group Contribution is required *as deemed necessary* by the State Engineer. Yet, 16-4 does not admit of any exceptions, nor does 16-6(4), which says no change application is complete unless it defines the sole supply. Finally, 16-7(2) expressly states that the State Engineer may waive the filing of a Statement of Group Contribution for *temporary* change applications. The negative inference is that the State Engineer *may not* waive the filing for any other applications. This reading would

render meaningless the language in 16-6(1)(a) to the effect that the filing is required when "deemed necessary" by the State Engineer.

It is our view that the Proposed Rule never really addresses the central purpose declared in its very first sentence; namely, to describe the conditions under which a Statement of Group Contribution is required. If the answer is "always," as suggested by 16-4 and 16-6(4), this fails to recognize the central premise for the Proposed Rule, which is that differences need to be recognized, defined and clarified. If the answer is "whenever the State Engineer deems it necessary," as suggested in 16-6(1)(a), the water community is left guessing. We agree that a rule is needed, to clarify the uncertainty which currently prevails. However, that clarification must fall somewhere in-between "always," and "whenever the State Engineer says so." Our suggestions for appropriate guidelines are set forth in Section B below.

B. Overly Broad Application of Proposed Rule.

Notwithstanding the inconsistencies noted above, we understand, based on statements made by the State Engineer at the September 16 hearing, that a Statement of Group Contribution will be required in connection with all administrative actions, of any kind, and that exceptions will only be allowed, as stated in 16-7(2), in connection with temporary change applications, and then only in the discretion of the State Engineer.

This brings us to our single biggest concern with the Proposed Rule; namely, its overly broad application. **The Proposed Rule imposes a burden on the water community in time, energy and resources out of all proportion to the legitimate needs of effective water rights administration. Quantification of the sole supply of a supplemental water right should not be required unless and until necessary to prevent the enlargement of the supplemental water right. The Proposed Rule should attempt to identify, and should be restricted to, those administrative actions that risk an enlargement of the water right.**

C. Quantification of Sole Supply Should Not be Required Unless a Water Right is Removed From a Supplemental Group.

It is entirely appropriate for the State Engineer to consider requiring the quantification of the sole supply of a supplemental water right when that water right, or a portion of it, is being removed from the supplemental group. However, to require quantification prior to separation from the supplemental group is an unnecessary use of time, energy and resources. Section 16-6(2)(a) states that the required agreement among the owners of the water rights within the supplemental group "becomes binding on all parties signatory to it." Yet, Section 16-6(6)(b) states that the quantification "does not restrict the ability of water right holders to manage the use of their supplemental water rights while they continue to be used together." Presumably, this means that the quantification has no practical application *until* the water rights are no longer used together. This begs the obvious question: Why then is the quantification required before that point in time? What is the purpose of collecting information if the information is unneeded and

remains unused? Requiring quantification prior to the separation of water right from a group seems entirely arbitrary. If there is a purpose to be served, the State Engineer should articulate that purpose. Otherwise, **the Proposed Rule should be modified to require quantification only at such time as the supplemental water rights are no longer used together.**

D. Quantification of Sole Supply Not Required With All Segregations.

Furthermore, even the removal of a water right from a supplemental group does not *always* require quantification of the sole supply of that right. Please refer to Illustration No. 1 attached hereto. Assume a 4-acre parcel which is irrigated by shares in an irrigation company, with a supplemental underground water right for a 1-acre portion of the 4 acres. The authorized place of use of the supplemental well right is illustrated by the circle. Theoretically, in a dry year when no water is available through shares in the irrigation company, the property owner is authorized to utilize the "supplemental" well right to the full extent of the duty for the land situated within the circle, or 4 acre-feet. In some years the owner may use the full amount of water authorized for diversion under the well right, in some years only half, and in other years none at all. Such is the nature, and value, of supplemental rights.

Now assume that the owner of the 4-acre parcel ("Owner A") desires to sell to a neighbor ("Owner B"), half of the parcel, together with the portion of the well right appurtenant to the portion of land to be sold, and half of the irrigation shares. The sale of half of the well right to Owner B requires the segregation of that right, and the creation of a new supplemental group. It might be argued that such sale and segregation necessitates the quantification of the sole supply of the well right. However, this is not true, *as long as the place and nature of use of the water from the supplemental right do not change*. Assuming no such change, Owner B will be able to utilize the well right in exactly the way the Owner A did, but only on the portion of the circle now owned by Owner B. The authorized duty of 4 acre-feet, applied to a ½ acre parcel, would allow Owner B to use a total of 2 acre-feet of water. The same would be true for Owner A with respect to the ½ acre of the authorized place of use retained by Owner A. Owner A's 2 acre-feet, plus Owner B's 2 acre-feet, add up to a total of 4 acre-feet--exactly the maximum usage allowed under the water right when the entire water right was owned by Owner A. Segregating the water right, without changing the place or nature of use, does not effect an enlargement of the right.

If, on the other hand, Owner B wants to develop his 2 acres as residential, and transfer his ½ interest in the well right to a city, the use changes, and a quantification is necessary. Otherwise, use by the city may well exceed historic use as a supplemental irrigation right. **Therefore, the Proposed Rule should require quantification only when the requested administrative action (i) involves the removal of a water right from a supplemental group, *and* (ii) changes the place or nature of use.**

E. Other Circumstances Not Requiring Quantification.

There are many other circumstances requiring "administrative action" that do not risk an enlargement of a supplemental right, and therefore should not require quantification of a sole supply. Two examples are given below, although there are undoubtedly many others.

(i) Refer again to Illustration No. 1. Assume Owner A simply wants to move the place of use of the 1-acre well right to a slightly different location within his 4-acre parcel. This change involves no risk whatsoever of the enlargement of the right, and quantification of its sole supply should not be required.

(ii) Assume Owner A keeps the place of use the same, but desires to change the point of diversion by drilling a new well. Again, no quantification is necessary, because there is no possibility of enlargement.

F. Municipalities, Mutual Water Irrigation Companies And Water Users Associations Should be Categorically Exempt.

The Proposed Rule should have an express exception for municipalities, mutual irrigation companies, water users associations and similar entities (referred to herein collectively as "Water Suppliers"). The exception should both (i) excuse such entities from preparing a Statement of Group Contribution when requesting administrative action relative to such entities' water rights, and (ii) excuse other water right holders from obtaining a quantification statement and agreement from such entities when the entities' water rights are included in a supplemental group with such other water right holders.

This issue can perhaps best be discussed in the context of a municipality. The State Engineer has taken the position that each water right held by a municipality is supplemental to every other water right held by the municipality. This creates supplemental water groups that in many cases include hundreds of "supplemental" water rights. According to the Proposed Rule, the first time that a municipality files a change application, an exchange application, a request for an extension of time to show proof, a non-use application, or any other "administrative action," the request triggers the requirement to file a Statement of Group Contribution for each of the water rights in the municipality's portfolio, including rights which have nothing to do with the requested administrative action.

To what end? Municipalities are prohibited by the Utah Constitution from conveying away water rights. That means that all of a municipality's water rights will continue to be used as part of the same supplemental group, regardless of the nature of the requested administrative change. Section 16-6(6)(b) provides that the quantification of a sole supply "does not restrict the ability of water right holders to manage the use of their supplemental water rights while they continue to be used together." In the case of municipalities, that will *almost always* be the case. The exception might be in connection with an exchange. However, the exception can be dealt

with narrowly in the Proposed Rule. If the State Engineer thinks there are cases where a municipality should be required to define the sole supply of a water right, the Proposed Rule should define what those cases are. For example, the Proposed Rule might provide that, in the case of a municipality, a Statement of Group Contribution will only be required in connection with an exchange application, and then only as to those water rights involved in the exchange.

More fundamentally, the real problem with applying the Proposed Rule to Water Suppliers is the nature of the service provided by these entities. Their water rights specify a large service area as the defined place of use. Within these service areas are other individuals and entities which own and use their own, separate water rights. Because these places of use overlap with the place of use of the water rights held by Water Suppliers, separate supplemental groups have been created. Accordingly, under the Proposed Rule, each time an individual water right holder files a change application on a water right, he or she must approach the Water Supplier and request an agreement (see discussion below) whereby the Water Supplier "quantifies" the sole supply for each of the Water Supplier's potentially hundreds of water rights used to supply water to the applicant's land.

Aside from being onerous, this literally may not even be possible. We'll use the Association as an example in tracing water from its source to its place of use within the service area of Salt Lake City. The Association collects and commingles water derived from at least 8 different Provo River Project water rights. The relative amounts of water diverted from the Weber River, the Dushesne River and the Provo River vary greatly from year to year. The commingled water is then delivered to Metropolitan Water District of Salt Lake & Sandy ("MWDSLS"). MWDSLS then commingles this water with water derived from other water rights, including rights held by Salt Lake City and Sandy City, and delivers the water to Salt Lake City. Salt Lake City then commingles this water with water derived from various Salt Lake City water rights and sources, including City Creek, Parley's Creek, Big Cottonwood Creek, and numerous wells, and delivers this water into an extensive water distribution system. The water from all of these sources and water rights is ultimately delivered to Farmer John's property. Farmer John uses this water, together with water from a supplemental well right, to irrigate his parcel. If Farmer John ever wants to file a change application or seek any other administrative action relative to the well right, he must now, under the terms of the Proposed Rule, somehow get the Association,[2] MWDSLS, Salt Lake City and Sandy City to enter into a legal agreement which quantifies the relative portion of the potentially hundreds of water rights that flow through Farmer John's spigot to water his parcel. We would submit this is an impossibly complex task.

Yet, even assuming such a quantification were possible, what purpose is being served? It should be enough that Farmer John quantifies his own right. Quantifying the amount of water supplied to his property by Water Suppliers accomplishes nothing. It is difficult to conceive how this information could ever be of practical, useful benefit to the State Engineer. It imposes a completely unnecessary burden on Farmer John, all of the mentioned Water Suppliers, and the State Engineer.

[2] The Bureau of Reclamation may also assert a right to approve the quantification.

There is a potentially much more serious consequence of applying the Proposed Rule to Water Suppliers. We stated above that municipal water rights would almost always continue to be used together. This may not be true, however, as to those few private rights included in a supplemental group. If the ability to continue using a water right in a supplemental fashion is limited to the period of time during which the rights are "used together," and all rights in a supplemental group cease to be "used together" as soon as one right is removed from the group, removal of a private water right from a supplemental group poses a serious risk to the Water Supplier's remaining water rights in the supplemental group. A single private water user, whose water right is included in a supplemental group with hundreds of municipal water rights by virtue of the private user's location within the service area of a municipality, may apply to move his water right out of the supplemental group. Under the Proposed Rule, this change would (i) trigger the quantification of the sole supply of all the municipal rights in the supplemental group, and (ii) limit the municipality's use of all such rights to the sole supply so established. We assume the State Engineer does not intend to apply the Proposed Rule in this fashion. If this is the case, the meaning of "used together" should be clarified. Otherwise, this reading could prove devastating to Water Suppliers.

We are aware of Section R655-16-7(4), which provides as follows:

> "The State Engineer reserves the right to eliminate water rights from water use groups if the uses are based upon shares in a mutual irrigation company, a contract with a water supplying entity, or a connection to a municipal water system."

By "reserving the right" to modify these groups, the State Engineer clearly retains the prerogative *not* to exercise that right, and to require the inclusion of such rights in the supplemental group. In fact, that appears to be the rule, with a possible exception to be exercised by the State Engineer in his/her sole discretion. We think it should be just the other way around. In the vast majority of these cases, no purpose will be served by requiring a sole supply determination. The Proposed Rule should have a categorical exclusion in all cases involving Water Suppliers, with a discretionary exception when the State Engineer can demonstrate a legitimate interest requiring the determination.

Finally, the burden imposed on Water Suppliers of responding to requests for sole supply agreements could be overwhelming. The Association examined one water right connected with the Provo River Project, Water Right # 55-295, and discovered that this single right is included in 495 supplemental groups, each of which includes between 10 and 24 other water rights. This single right generates the potential for approximately 9,000 requests to quantify the sole supply of WR # 55-295 - and this is only one of the water rights associated with the Provo River Project. With a small administrative staff of five, the Association simply could not respond to all the anticipated requests.

Even if the Association had the staff to respond to the requests, it does not have the necessary information. The Association has no control over, or any knowledge of, how water is allocated by MWDSLS, Salt Lake City and Sandy to their respective customers.

G. Unnecessary Quantification Changes The Nature And Diminishes The Value of Supplemental Rights.

If the Proposed Rule is adopted and applied as currently written, the result will be to prevent the full beneficial use of a supplemental right for which a sole supply has been defined. Referring back to our example using Illustration No. 1, Owner A will be required to state, under oath, that on average Owner A historically diverted only 2 acre-feet of the well right, or perhaps less. Because a segregation is taking place, 16-6(6)(b) does not apply, and future use of the right will be limited to 2 acre-feet, collectively, by both Owner A and Owner B. This is true even though the same rights are being used for irrigation of the same ground, in exactly the same way they have always been used. As this example illustrates, the Proposed Rule effectively destroys the supplemental nature of the right. If the two resulting owners of the segregated right can, after segregation, collectively use less water than a single owner could have used before segregation, the water right has been devalued significantly. Thus, while the purported purpose of the Proposed Rule is to prevent the unintended *enlargement* of water rights, the actual affect of the Proposed Rule may be to unfairly and unnecessarily effect the *diminution* of water rights. There is simply no logical reason to force this result.

H. Difficulty With "Binding" Nature of Quantification.

Section 16-6(2)(a) of the Proposed Rule provides that the Statement of Group Contribution "becomes binding on all parties signatory to it." Two Sections attempt to grant some relief to this provision. First, Section (6)(b) provides that the quantification does not "restrict the ability of water right holders to manage the use of their supplemental water rights while they continue to be used together." Second, Section (2)(c) provides that the quantification may be revised, if signed by all holders of water rights within the supplemental group.

These provisions are inadequate. Quantification of a sole supply necessarily looks backward. Prior use of one supplemental right necessarily depends on the availability of rights supplemental to it. However, past is not necessarily prologue. Water available under a surface right, prior to quantification, may diminish in the future, necessitating an increased future reliance on a supplemental well right. If that happens, when the time comes to break up a supplemental group, the relative allocation of uses to those rights may be quite different than they were when the quantification was originally made as and when required by the Proposed Rule. Yet, a revision can be made only upon the satisfaction of two conditions. First, all signatories to the original agreement must sign the revision, and second, there can have been *no change* to any of the rights in the meantime. The likelihood that both of these conditions can be satisfied is remote. The result is that, going forward, the rights are administered based on dated, historical data.

Why? Why not wait until quantification is required by the nature of the proposed administrative action? In the unlikely event the conditions can be met and corrective action can be taken, the vital question remains: **What was the point of requiring the first quantification? What purpose did it serve in the interim? The information was (a) not needed when requested (as recognized and admitted by 16-6(6)(b), and (b) incorrect and irrelevant when segregation actually occurs.** To clarify this point, imagine that, under the Proposed Rule, a water right holder is required, in 2010, to obtain an agreement for a Statement of Group Contribution for all rights in the supplemental group of which his right is a part. He may continue to use the rights together for 20 years. When he finally segregates the rights, in 2030, the actual uses of his supplemental rights may have changed dramatically. Yet, the segregation must be administered based on outdated and inaccurate information. The same is true of the administration of the rights of all of the signatories to the agreement, whether that happens before, or long after, 2030. Why base all future administrative actions on facts frozen in time in 2010?

I. Difficulty of Obtaining Agreement For Statement of Group Contributions.

Section 16-6-(1)(d) provides that a Statement of Group Contribution "may be filed only if all holders of unquantified rights in a water use group sign the form." This is a completely unrealistic, unworkable and unfair requirement. While the applicant in connection with a change application, non-use application or any other type of administrative action certainly has an incentive to comply with the Proposed Rule, the other water right holders in the group do not. In fact, they are likely to feel antagonistic. They may view their refusal to sign as a passive way of blocking a change they don't like. Even if they are not openly hostile, their likely reaction will be, "What's in this for me? Why should I put my water right at risk? Why should I quantify my supplemental right and be bound forever by the filing?" These questions will be asked by every single person in the water group, and it is a virtual certainly that at least one will say "Thanks, but no thanks."

Furthermore, it may not even be possible to locate all of the water right holders. Again, a cursory review of just one of the Provo River Project water rights revealed approximately 18 water rights in each of 495 supplemental groups. Just tracking down that many owners is likely to be very difficult. Ownership records are often not current. Title searches will need to be done. Family trusts will have to be dealt with. Out of state owners will have to be tracked down, and uninformed owners will have to be educated. With even a modestly sized supplemental group, and even if hostile owners are not encountered, the applicant is likely to run into at least one dead end.

Assuming an applicant is not able to obtain all of the necessary signatures, what is the applicant to do? He cannot file the Statement of Group Contribution without all of the signatures, and he cannot file the application without the Statement of Group Contribution. Can he sue the reluctant water right holders? This is doubtful. Nowhere in the Utah Code is a water

right holder obligated to submit this type of information. The Proposed Rule does not require it, and even if it did, it is doubtful such a requirement would withstand judicial scrutiny without a statutory basis. Therefore, the applicant would be left without a remedy.

Assuming for the sake of discussion that the applicant would have a cause of action, do we want to put an applicant to this kind of effort to get a simple administrative request processed? Do we want to force other water right holders in the water group to devalue their rights, or face expensive litigation? We do not think this represents sound public policy.

Accordingly, we feel the Proposed Rule should provide an administrative remedy for an applicant who has exercised due diligence in obtaining the requested sole supply information. If the Proposed Rule is adopted in its present form, the change application process will grind to a halt.

J. The Proposed Rule is Overly Burdensome.

Regarding the cost of compliance, the Proposed Rule provides as follows:

> "There is no cost if the water rights under consideration continue to be used together . . . . If clarification of supplemental uses is required, there is a slight cost to complete one or more "group contribution statement forms" but this information is already required by statute to be part of the information provided the state engineer. There is no fee to obtain or submit a form and no specialized assistance is required in it's [sic] preparation. . . . It is estimated the form can be completed in under 60 seconds."

As to the statement that "there is no cost if the water rights continue to be used together," this is only true if the Statement of Group Contribution is not required as long as the rights are being used together. While we would certainly like to see the Proposed Rule modified in this way, that's not the way it reads now.

As to the balance of the statement, this is a gross underestimation of complexity involved in completing a Statement of Group Contribution in all but the most simple circumstances. As suggested above, just the process of identifying the owners of all the water rights in a water group could take days, weeks or months of work. Very few water professionals have any real experience in completing sole supply statements, let alone the average water right holder. While we recognize that the Association is not the typical water right holder, a change application involving WR # 55-295 would require the Association to file *495* separate group contribution statements, each with approximately 18 water rights. It is no exaggeration to say that this effort would take *years* to complete, and hundreds of thousands of dollars, if it were even possible. If 60 seconds is an honest estimate by the State Engineer, then we are seriously misreading the requirements of the Proposed Rule.

We are aware that other water users, and the Water Coalition, will be filing separate comments on the Proposed Rule, and that those comments will raise issues we have failed to raise here. We also suspect that there are consequences to the Proposed Rule that may not be identified for some time. We would hope that the State Engineer, after reviewing and evaluating these comments, would circulate a new version of the Proposed Rule for further evaluation and comment by the water community.

We appreciate the difficult task faced by the State Engineer in administering water rights that may be supplemental to other water rights in an environment increasingly characterized by changes in historical uses. Preventing the enlargement of water rights in fully appropriated drainages is critically important. However, tools to assist the State Engineer in managing this task must be tailor-made to achieve their stated purpose, without imposing an undue burden on the water community. We think the Proposed Rule in its current form does not achieve this important balance.

Sincerely,

PROVO RIVER WATER USERS ASSOCIATION

Christopher E. Bramhall
General Counsel

cc: G. Keith Denos,
General Manager

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Illustration No. 1