

**SOUTHWEST JORDAN VALLEY GROUND WATER CLEANUP PROJECT
STATE OF UTAH NATURAL RESOURCE DAMAGE TRUSTEE**

**COMMENT RESPONSE SUMMARY
AUGUST 31, 2004**

Response to Common Comment No. 11 – Allocation of Treated Water

The Joint Proposal allocates the treated water produced from the reverse osmosis (RO) water treatment plants among the municipalities in the Affected Area. Some commenters questioned that allocation, including asking questions about how the allocation was derived and others suggesting that other entities should be allocated some portion of the treated water. The Trustee has reviewed the proposed allocation and has determined that it conforms to the terms of the Consent Decree and applicable state and federal law.

Under the Joint Proposal, four municipalities in the Affected Area (West Jordan City, South Jordan City, Riverton City, and Herriman City) will be given a priority in the allocation of the drinking water produced from the Zone A and Zone B/Lost Use water treatment plants. The process and formula for allocating treated water is described in Sections 11 and 14 of the Joint Proposal. The allocation is based on the terms of the Consent Decree and provisions of Utah water law.

The Consent Decree specifies that the Trust Fund monies and monies from the Irrevocable Letter of Credit (ILC) will be used only to restore, replace, or acquire the equivalent of the resources for the benefit of the public in the Affected Area. Section V.D.1 and V.D.4 of the Consent Decree. The Consent Decree does not specify any particular formula or method for allocating the water, so parties proposing restoration projects to be funded by the Trust Fund have some flexibility in developing a method of allocating the water.

The Trustee has determined that the method for allocating water that is defined in the Joint Proposal is reasonable, in part because it is based upon relevant factors that include population of the municipality, area of the municipality encumbered by the contaminated plume, and municipal water rights held by the municipalities within the Affected Area. The proposal also provides an efficient distribution of the treated water by using the existing distribution network of the JWCD and the existing process for contracting for the sale and distribution of water in the area.

A few individuals expressed concerns that the Joint Proposal does not resolve all potential claims of injury, because it fails to allocate water to all who may claim to be affected. In this regard, it is important to note that the Consent Decree was not intended to nor does it resolve or bar claims for interference with the quantity or quality of water rights of an individual who is not a party to the Consent Decree. Consent Decree, Section VIII.C. As explained in Response to Common Comment No. 12, the damages paid to the Trustee do not resolve claims of private water rights holders. Some commenters questioned why treated water was not allocated to other individuals or water companies that may be affected. Further, commenters raised issues that the resulting costs to different municipalities may not be equitably based on location of distribution points and charges by JWCD. The Consent

Decree does not require the Trustee or any proposal evaluated by the Trustee to make an all-encompassing or precise equal-cost proportional distribution of water to those who may be “affected.” Given the growth and change in the population in the Affected Area, such a requirement could not be met. However, the Trustee believes that the Joint Proposal represents a reasonable allocation of municipal-quality drinking water for the benefit of the public in the Affect Area. The Consent Decree also does not require nor is the Trustee authorized to arbitrate claims of individuals or entities asserting that they have been “affected” by the groundwater contamination. Claims by third parties, to include governmental entities not a party to the Consent Decree, are not resolved by the Consent Decree or the Joint Proposal. The Joint Proposal relies on the municipalities as the representatives of the public in the Affected Area and proposes an allocation formula that will distribute the water (and the benefits of the restoration project) broadly to members of the public in the Affected Area. The relationship between JWCD and these municipalities is a matter of negotiated contract that must be consistent with the provisions of the Joint Proposal. It should also be noted that individuals and entities could contract for water with the JWCD or the Municipalities (depending upon jurisdiction). No entities within the Affected Area are barred or excluded from receiving treated water, if there is surplus water beyond the priority allocation among the affected municipalities.

Some commenters suggested that the proposed allocation formula might not be appropriate because the Affected Area is not properly defined. The Affected Area is defined by the Consent Decree and the Trustee does not have discretion to change that definition. The studies conducted as a part of the Consent Decree evaluated contamination caused by Kennecott’s mining and leaching operations, including increased levels of total dissolved solids (sulfates), lower pH levels, and other contamination. Those studies relied on a substantial amount of water quality data. The studies were used to define the area of contamination and to establish the Natural Resource Damage claim. See Attachment 10 of the Supporting Document to the Consent Decree. Finally, to the extent that there is an injury to the groundwater resource outside of the Affected Area, the Trustee has reserved those claims. The commenters have not provided conclusive, substantive data regarding injury outside of the Affected Area; nor has the Trustee identified such an injury based on water quality monitoring data. Future water quality data will be reviewed on an ongoing basis.

A few commenters questioned whether Kennecott would receive or beneficially use water provided under the Joint Proposal, contrary to Section V.D.5 of the Consent Decree. Section V.D.5 provides that “Kennecott shall not receive or beneficially use any of the surface or ground water resources provided to the public, and which are developed for credit or developed by expenditures of the Trustee pursuant to Section V.D of this Decree.” Kennecott Land Company, acting as the agent for OM Enterprises Company (collectively Kennecott Land), both subsidiaries of Kennecott Utah Copper Corporation, is developing a master-planned community, Daybreak Development, within the municipal boundaries of the South Jordan City and within the Affected Area. Municipal quality drinking water (culinary water) is being provided to businesses, and will be provided to residents, of Daybreak by the City of South Jordan through a contract that the City has with Jordan Valley Water Conservancy District (JWCD). This arrangement is consistent with the wholesale contracting for municipal water service as provided in the JWCD rules. This arrangement for providing culinary water is similar to arrangements among businesses or residents and cities and JWCD throughout the Affected Area. Furthermore, it is an arrangement that operates independent of the source of the water. The Trustee has determined that the arrangement for providing drinking water to the Daybreak Development will not violate Section V.D.5 of the Consent Decree if the Joint Proposal is approved.