

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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In the Matter of the Petition for and Order )	<u>DOCKET NO. 02-2254-01</u>
to Show Cause Regarding Exemption )	
from Commission Regulation of Boulder )	
King Ranch Estates Water Company )	<u>NOTICE OF HEARING AND ORDER TO</u>
)	<u>SHOW CAUSE</u>

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ISSUED: May 10, 2002

By the Commission:

On April 11, 2002, the Division of Public Utilities (“Division”) filed a Petition for an Order to Show Cause why the Letter of Exemption issued by this Commission on April 19, 1999, should not be revoked, and why the Boulder King Estates Water Company (the “Company”) should not be certificated as a Public Utility, and its rates and conditions of service be subject to Orders and Administrative Rules adopted by this Commission. The Petition contains the results of the Division’s investigation of the company, and a history of the company’s dealings with the Division and the Public Service Commission. Requests from seven customers for a Commission investigation were also attached. The Division’s Petition and customer requests set forth good cause for an inquiry into whether the Company’s Exemption should be revoked and its rates and conditions of service be subject to Orders and Administrative Rules adopted by this Commission. A copy of the Division’s Petition is attached hereto, and incorporated by this reference. Whereas there appears to be good cause to support said allegations, the Commission enters the following order.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. BOULDER KING RANCH ESTATES WATER COMPANY and its officers, shall appear before the Administrative Law Judge of the Commission on Wednesday, May 29, 2002, at 6:00 p.m., at the Town Hall, 351 North 100 East, Boulder, Utah, to show cause, if any, why the Letter of Exemption issued by the Commission should not be revoked, the Company certificated as a Public Utility, and its rates and conditions of service be subject to Orders and Administrative Rules adopted by this Commission. The Company and its officers will take notice that they have the right to be represented by legal counsel, and that failure to appear by counsel will constitute a waiver of said right.
2. The Division of Public Utilities shall conduct such further investigation as it deems necessary and provide its recommendations at the hearing. The Division is further directed to send a copy of this notice, and a copy of the Petition, without attachments, to each property owner served or potentially to be served by the Company, according to the most current information in the possession of the Division.
3. Boulder Ranch Estates Water Company and its President Dale Clarkson are directed to cooperate with the Division and provide information requested by the Division in its investigation of the Company.
4. Any customers that are unable to attend this hearing may submit written comments to the Public Service Commission prior to May 29, 2002. Comments should include the docket number for this matter.

DOCKET NO. 02-2254-01

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In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during this hearing should notify Julie Orchard, Commission Secretary, at 160 East 300 South, Salt Lake City, Utah, 84111, (801) 530-6713, at least three working days prior to the hearing.

DATED at Salt Lake City, Utah, this 10<sup>th</sup> day of May, 2002.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Richard M. Campbell, Commissioner

Attest:

/s/ Julie Orchard  
Commission Secretary  
G#29457

BEFORE THE UTAH PUBLIC SERVICE COMMISSION

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In the Matter of a Petition for an Order	:	Docket No.
to Show Cause regarding Exemption from	:	
Commission Regulation of Boulder King	:	02-2245-01
Ranch Estates Water Company	:	

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PETITION FOR AN ORDER TO SHOW CAUSE

April 11, 2002

Comes now the Division of Public Utilities (Division) and petitions the Utah Public Service Commission pursuant to UCA § 54-4a-1, to open a docket for the purpose of requiring the officers of Boulder King Ranch Estates Water Company to show cause why the Letter of Exemption issued in its behalf by the Public Service Commission on April 19, 1999 should not be revoked, and why the Boulder King Estates Water Company should not be certificated as a Public Utility, and its rates and conditions of service subject to Orders and Administrative Rules adopted by the Public Service Commission.

In support of the petition, the Division submits:

1. On April 19, 1999, the Utah Public Service Commission issued Letter of Exemption No. 72 to the Boulder King Ranch Estates Water Company.
2. On March 11, 1999, the Division of Public Utilities recommended that a Certificate of Exemption from regulation by the Public Service Commission be issued to the Boulder King Ranch Estates Water Company. Initially, the Division had opposed the Company's request for exemption because the developer, Dale E. Clarkson, held majority voting control of the shares of stock in the Boulder King Ranch Estates Water Company such that the individual shareholders didn't enjoy "complete commonality of interest. Prior to making a positive

recommendation regarding the Company's application for exemption, the Division required Boulder King Ranch Estates Water Company to amend the Company By-Laws to achieve a commonality of interest for all shareholders. The By-Laws were amended to read "The developer shall be limited to one (1) vote for control purposes as it relates to policy making and managing the affairs of the company." (See Attachment No. 1)

3. In December 2000, the Boulder King Ranch Estates Water Company received an "Order to Cease Construction" from the Utah Division of Drinking Water due to violations of the Safe Drinking Water Act and Drinking Water Regulations. Due to the Company's letter of exemption, the Division did not pursue any regulatory action at that time. (See Attachment No. 2)

4. In late 2001, the Division received an inquiry from customers of Boulder King Ranch Estates Water Company regarding the charges proposed by Dale E. Clarkson as President of the water company. The customers believed that Mr. Clarkson improperly combined water company operations with other "development" activities and attempted to require shareholders to pay for unjustified improvement costs or risk termination of their water service. In an effort to help resolve the disputes, Mr. Bagnes from the Division staff agreed to review the Company's costs upon which the charges were based and advise both Mr. Clarkson and the other shareholders regarding how the costs and proposed charges would be viewed if the Company were a regulated utility. Mr. Bagnes summarized his conclusions in a memo to Mr. Clarkson dated December 26, 2001 (See Attachment No. 3).

5. In February and March, 2002, the Division received complaint letters from seven customer/ shareholders of the Boulder King Ranch Estates Water Company contending that the water company had always been in the control of the Developer and should have been a public

utility. (See Attachment No. 4)

6. The Division investigation into the shareholder allegations disclosed several facts which indicate that Mr. Clarkson maintains control of the Water Company and has co-mingled personal, development and water company activities and costs:

- a) Twenty-five unsold lots were put into an IRA account by Mr. Dale Clarkson and Mr. Clarkson assured the Division staff that he would not use those lots to exercise voting control of the company at the time the Division recommended a letter of exemption be issued to the company. At a recent meeting, the developer is reported by those attending to have exercised the 25 votes from the IRA account to control the shareholder meeting.
- b) In a February 8, 2002 letter to the Regional Engineer regarding an application for water rights by another stockholder of the Water Company, Mr Clarkson protested the application on the basis that: “This filing is on land I privately own and at a well location where I drilled a state certified well. . . I have over \$300,000.00 in this water system, main lines, fire plugs and other improvements in the water system and I must require that neighboring land owners contribute partially to the cost of this system.” Mr. Clarkson does not appear to recognize that he has also recovered, or stands to recover a substantial portion of those development costs through revenue from lot sales. (See Attachment No. 5)
- c) The electric accounts with Garkane Power to provide power for the wells which serve the Boulder King Ranch Estates Water Company system were opened in Dale Clarkson’s name and he is personally responsible for the accounts.
- d) As an officer of the Company, Mr. Clarkson paid for expenses which are not

normally associated with water company costs and has tried to recover those expenses through an assessment on water customers. Other shareholders have questioned why water users should be required to pay for attorney fees regarding “developer” issues, construction costs paid for work performed by unlicensed members of Mr. Clarkson’s family, road maintenance and lot clearing. However, Mr. Clarkson asserts the validity of these charges and has included the costs in justifying the amount of a Boulder King Ranch Estates Water Company “Improvement Package” billed to water company shareholders. Mr. Clarkson has threatened to terminate water service to shareholders who do not agree to pay for “improvement packages” which include the cost of roads, power lines, telephone lines, the cost of clearing lots, legal fees and overhead charges.

- e) On April 3, 2002, Mr. Clarkson notified the Division that: “I believe I carried more than my commonality of interest would require in financing, constructing and organizing a system to meet the requirements of the Division of Drinking Water.” It appears that Mr. Clarkson is confusing his commitment to provide “developer” related infrastructure and his obligations as a shareholder in the Water Company.

7. In March, 2002, the Utah Division of Drinking Water notified the Boulder King Estates Water Company that due to violations their system would be downgraded to a “Not Approved” rating.

Wherefore, the Division respectfully requests that the Commission open a docket

for the purpose of requiring Boulder King Ranch Estates Water Company and its officers to show cause why the Letter of Exemption issued by the Commission should not be revoked and the Company certificated as a Public Utility.

Dated this 11<sup>th</sup> day of April, 2002.

/s/ Kent Walgren  
Assistant Attorney General  
Division of Public Utilities