

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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In the Matter of the Petition for an Order to Show Cause Regarding Exemption from Commission Regulation of Boulder King Ranch Estates Water Company	) ) ) ) )	DOCKET NO. 02-2254-01  POST HEARING BRIEF
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STATEMENT OF ISSUE

The issue raised by the Division of Public Utilities is whether or not the above-named mutual water company, having received a Letter of Exemption on April 19, 1999, now should have said letter revoked and hereafter fall under the jurisdiction and regulation of the Public Service Commission and the Division of Public Utilities. In an effort to avoid the unnecessary regulation of the Commission, the following undisputed facts are presented:

STATEMENT OF THE FACTS

1. In 1962, the Boulder King Ranches, Inc. purchased the old Rawlins homestead near Boulder, Utah. In 1966, the Boulder King Ranch Estates subdivision was recorded in Boulder Town including 72 one-acre dry lots with no improvements. Over the next 17 years, 13 lots were sold with no promise of culinary water or other improvements at an average price of around \$1300. In the early 1980's, the Dale E. Clarkson Pension Trust, an irrevocable trust, acquired the unsold lots remaining in the original subdivision developed by Boulder King Ranches, Inc.<sup>1</sup>

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<sup>1</sup>See Testimony of Wesley Huntsman Page 24.

2. Between 1989 and 1990, nine lots were sold with the promise of culinary water for inside seasonal use and the availability of power hookups at prices around \$5,000. In the late 1980's, Mr. Clarkson sold eleven lots to a neighboring landowner and the eleven lots along the South end of the subdivision were removed from the recorded subdivision plat, leaving the 61 current lots in the subdivision. During the period 1989 to 1994, seven previously dry lot owners paid Dale Clarkson for a \$2,000 "Improvement Package" to purchase .25 acre feet of water rights for their lots, and power and water service to the front of their lots. Additionally, several lots were sold both as dry lots and with water rights that were later reconveyed back to the Dale Clarkson or his retirement Trust and were resold or are currently titled to the "TASC Trust".<sup>2</sup>

3. In 1993, Mr. Clarkson formed the Boulder King Ranch Estates Water Company (Hereafter referred to as Boulder King or the Water Company) as a nonprofit corporation. Keith Galley, Dale Clarkson, and his son, Larry Clarkson, were appointed to the board of the new water company. Mr. Clarkson provided shares in the new Water Company to lot owners in the subdivision who had either bought a lot with the promise of water rights, or had paid \$2,000 for the Improvement Package which included water. At that time, pursuant to a board resolution, Dale Clarkson began billing all lot owners who had not paid for a \$2,000 Improvement Package. On July 1, 1994, Mr. Clarkson increased the cost of the Improvement Package to \$2,500 to cover increased construction costs and carrying charges. Many dry lot owners had never asked for water or power hookups and refused to pay for the \$2,000-\$2,500 Improvement Package. At that time, Dale Clarkson, on behalf

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<sup>2</sup>See Testimony of Wesley Huntsman Page 25.

of the Water Company, also began charging a \$5 per month standby fee for lots not hooked-up to the water system and a flat \$15 per month fee for water usage to lots where water had occurred. Dale Clarkson, on behalf of the Water Company, began accruing interest at 18% on unpaid Improvement Package, standby fee and monthly usage fee balances pursuant to new company By-Laws.<sup>3</sup>

4. In May, 1998, the Division of Public Utilities filed a Petition for an Order to Show Cause against Dale Clarkson and Boulder King for operating as a public utility without proper authority. Mr. Clarkson argued that Boulder King was organized and intended to operate as a mutual water company and should be exempt from Commission regulation. Following an investigation by the Division staff, the Division agreed to recommend that the water company be issued a Letter of Exemption.<sup>4</sup>

5. 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

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<sup>3</sup>See Testimony of Wesley Huntsman Page 25-26.

<sup>4</sup>See Testimony of Wesley Huntsman Page 32.

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."<sup>5</sup>

6. On April 19, 1999, the Utah Public Service Commission issued Letter of Exemption No. 72 to the Boulder King Ranch Estates Water Company.<sup>6</sup>

7. In late 2001, the Division received an inquiry from customers at 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. Bagness from the Division staff agreed to review the Water 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 Water Company were a regulated utility. Mr. Bagness summarized his conclusions in a memo to Mr. Clarkson dated December 26, 2001.<sup>7</sup>

8. 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

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<sup>5</sup> See Page 1 of Petition for an Order to Show Cause, Par 2.

<sup>6</sup>See Testimony of Wesley Huntsman Page 32.

<sup>7</sup> See Page 2 of Petition for an Order to Show Cause, Par 4.

been a public utility.<sup>8</sup>

9. Twenty-nine unsold lots were put into the TASC Trust 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 Water Company.

10. 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 the filing is on land privately owned by Clarkson and at a well location where Mr. Clarkson drilled a certified well and invested over \$304,000.00 in a water system, water lines, fire plugs and other improvements in the water system for which Mr. Clarkson felt that the neighboring land owners benefitting therefrom should contribute partially to the cost of this system.”<sup>9</sup>

11. 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.<sup>10</sup>

12. The improvements were accepted after the fact by the Board, along with an approval to assign future hook-up fees to Mr. Clarkson to repay the cost of the improvements.<sup>11</sup>

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<sup>8</sup> See Page 2 of Petition for an Order to Show Cause, Par 5.

<sup>9</sup>See Page 3 of Petition for an Order to Show Cause, Par 6(b).

<sup>10</sup>See Page 3 of Petition for an Order to Show Cause, Par 6(c).

<sup>11</sup>See Testimony of Wes Huntsman Pg. 65.)

13. As an officer of the Water Company, Mr. Clarkson paid for expenses which are not normally associated with water company costs although said costs were required by state and local agencies prior to the approval of the water system, and therefore, Mr. Clarkson has tried to recover those expenses through a Water Company assessments. 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, a president of the Water Company, has threatened, pursuant to the Bylaws of the Water Company to terminate water service to shareholders for non-payment.<sup>12</sup>

14. The improvements to the subdivision road as well as clean-up and fire protection were required by the Boulder Town Council whose approval was in turn required by the Department of Environmental Quality before the later would issue a certificate for the operation of the water system.<sup>13</sup>

15. The Water Company serves only five full time residences.

16. The Water Company, pursuant to the Letter dated May 29, 2002, is currently exempt from the supervision of the Department of Environmental Quality.<sup>14</sup>

17. At no time during the existence of the Water Company has a vote been taken in which any lot owner has voted more than on vote per lot. Furthermore, the memberships

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<sup>12</sup>See Page 4 of Petition for an Order to Show Cause, Par 6(d).

<sup>13</sup>See Hearing Transcript Page 142.

<sup>14</sup>See Attached Letter of Exemption dated May 29, 2002.

held by the TASC Trust from California have never been voted on any matter pending before the Water Company.<sup>15</sup>

## ARGUMENT

The Division has made a great effort to portray the Water Company as well as its present officers and directors in an pejorative light. For example, the Division has included an extensive explanation of the relationship with the Department of Environmental Quality in which the Water Company has spent a great deal of time and effort to obtain an appropriate exemption. After an extensive process, including an appeal to the Utah Court of Appeals, the Department of Environmental Quality has in fact granted the exemption requested as evidenced by the attached Letter of Exemption. In an effort to simplify the argument as well as this brief, only the blatant errors which are relevant to the present case will be corrected.

### **1. STATUTORY CONCERNS**

The initial argument raised by the Respondent, Boulder King Ranch Estates Water Company, is one of jurisdiction. The representatives of the Division of Public Utilities (the “Division”) argue, and believe, that the Division as well as the Public Service Commission enjoy unlimited jurisdiction over all entities which convey any type of utility in any way within the State of Utah.<sup>16</sup> However, the language empowering the Commission and the Division specifically limits the jurisdiction of said agencies. The legislature has limited jurisdiction as follows:

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<sup>15</sup>See Testimony of Wesley Huntsman Page 77.

<sup>16</sup>See Hearing Transcript Page 56.

The commission is hereby vested with power and jurisdiction to supervise and regulate every **public utility** in this state, and to supervise all of the business of every such public utility in this state . . .<sup>17</sup>

With a simple review of the jurisdictional grant as adopted by the legislature, it is clear that the Commission is intended to regulate “Public Utilities”, but not every utility as argued by the Division. In order to fully understand what the legislature meant by “Public Utility” we now go to the Definitions lawfully adopted as law which state as follows:

“Public utility” includes every . . . water corporation . . ., **where the service is performed for, or the commodity delivered to, the public generally** . . .<sup>18</sup>

Congress later in the Definitions section of the statute make it clear that it does not wish to subject any activity not specifically involved in providing services to the “Public” to the jurisdiction of the Commission or the Division by stating as follows:

Any corporation or person not engaged in business **exclusively as a public utility** as defined in this section is governed by this title in respect **only** to the public utility owned, controlled, operated, or managed by the corporation or person, and not in respect to any other business or pursuit.<sup>19</sup>

Therefore, it is the intent of the legislature that the Division and Commission have jurisdiction and responsibility only to regulate “Public Utilities”.

In order to understand what constitutes the provision of utilities or services to the “Public” we must turn to the interpretation placed thereon by the Utah Courts. The

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<sup>17</sup>§54-4-1 Utah Code Ann. “General jurisdiction”.

<sup>18</sup>§15-2-1 Utah Code Ann.

<sup>19</sup>Id. (Emphasis added.)

Supreme Court of Utah has consistently held that unless a utility company can be required to service the public at large, it does not service the "Public" and cannot therefore be considered a "Public Utility". In the case of Oldroyd v. McCrea the Supreme Court found that a land and water corporation organized to acquire, sell and lease water rights for its private benefit, and that of its stockholders was a private corporation and therefore not subject to the jurisdiction of the Commission.<sup>20</sup> When asked to determine whether non-profit corporations only serving their members or shareholders, the Supreme Court has again clearly determined that the Commission does not have requisite jurisdiction to regulate the same. In the case of Garkane Power Co. v. Public Serv. Comm., 98 Utah 466, 100 P.2d 571 (Utah). It was held that a nonprofit membership corporation which served only its members who were limited to one share apiece, and was completely consumer owned although relatively easy to join, are not to be classified as a "public utility" within jurisdiction of commission.<sup>21</sup>

Boulder King Ranch Estates Water Company is a non-profit membership corporation which serves only its members who are limited to one share per lot in the Boulder King Ranch Estates Subdivision. Furthermore, the Water Company is wholly owned by its members/consumers, just as Garkane Power was at the time of the above-noted decision.

The Commission raised several arguments in the Garkane case which are nearly

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<sup>20</sup>Oldroyd v. McCrea, 65 Utah 142, 235 P. 580 (1925).

<sup>21</sup>Garkane Power Co. v. Public Serv. Comm'n, 98 Utah 466, 100 P.2d 571 (1940).

identical to the arguments posed by the Division now and should be evaluated. As part of the Garkane case the Supreme Court relied on a case dealing with a private carrier in which it distinguished entities which serve the public which should be subject to the Commission and entities which service private interests which should be free from Commission jurisdiction. In doing so the Court cited the following language:

. . . So, if the business or concern is not public service, where the public has not a legal right to the use of it, where the business or operation is not open to an indefinite public, ***it is not subject to the jurisdiction or regulation of the commission.***<sup>22</sup>

In the present case there is no contention that the Water Company provides any service to the public or that the public has any right to use the same in any way. Therefore the Commission should have no jurisdiction over the same.

The Supreme Court in Garkane further reasoned that Garkane did not hold itself out to serve all who apply and live near its lines; its very charter which gives it existence restricts its service to a certain group (members). It does not propose to serve "the public generally," but only to serve its members. In the case of Boulder King Ranch Estates Water Company, the Articles of Incorporation and Bylaws also specifically prohibit the possibility of supplying water to anyone other than its Members.

In arguing the right and responsibility of the Commission to regulate Garkane, as the Commission has argued in the case of Boulder King Ranch Estates Water Company, the Commission argued that as a matter of public policy it would be bad to allow

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<sup>22</sup> Garkane citing State v. Nelson, 65 Utah 457, 238 P. 237 also citing Humbird Lumber Co. v. Public Utilities Comm., 39 Idaho 505, 228 P. 271; Story v. Richardson, 186 Cal. 162, 198 P. 1057, 18 A.L.R. 750. (Emphasis added).

cooperatives such as Garkane and the Water Company to escape supervision and regulation on the theory, largely, that they must be protected from themselves or the members be protected from mismanagement. The theory of public utility regulation is based on a recognition that most public utilities are monopolistic, that their services are necessary or convenient to the residents of the area, and that because of the conflict of interest between the utility and its customers or consumers regulation is necessary. However, in the case of Garkane, as with the services of the Water Company, there is no conflict of consumer and producer interests--they are one and the same. If rates are too high the surplus collected is returned to the consumers pro rata. If rates are too low the consumers must accept curtailed service or provide financial contribution to the Corporation. If service is not satisfactory the consumer/members have it in their power to elect other directors and demand certain changes.<sup>23</sup> Therefore, the regulation of the Commission is not necessary or supported by the principals of law set forth in Garkane.

As for the public interest arguments of the Division the Court stated that “[c]ounsel's contention that the activities of Garkane will be affected with a public interest cannot be denied. But that which may be affected with a public interest is not necessarily a public utility.”<sup>24</sup>

## 2. COMMISSION RULES

In an effort to further define the statutory requirements discussed above, the

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<sup>23</sup>Garkane, 98 Utah 466, 100 P.2d 571 (1940).

<sup>24</sup>Garkane citing Nebbia v. New York, 291 U.S. 502, 54 S. Ct. 505, 78 L. Ed. 940, 89 A.L.R. 1469.

Commission has adopted rules which govern its decision making process, as well as the action of the Division. The Division has focused its argument to revoke the exemption of the Boulder King Ranch Estates Water Company on Rule R746-331-1. The examination of the Rule regarding exemption will follow section by section for clarity. The initial section of the Rule, entitled Section A, states as follows:

A. Upon the Commission's own motion, complaint of a person, or request of an entity desiring a finding of exemption, the Commission may undertake an inquiry to determine ***whether an entity organized as a mutual, non-profit corporation, furnishing culinary water, is outside the Commission's jurisdiction.***<sup>25</sup>

Boulder King Ranch Estates Water Company is undisputedly a non-profit corporation which furnishes culinary water to its members, who are the exclusive owners of the company, thereby making it a mutually owned company. The Rule continues in Section B to give further guidelines for the determination of exemption as follows:

- B. In conducting the inquiry, the Commission shall elicit information from the subject of the inquiry concerning:
1. the organizational form of the entity and its compliance status with the Utah Division of Corporations;
  2. ownership and control of assets necessary to furnish culinary water service, including water sources and plant;
  3. ownership and voting control of the entity. To elicit this information, the Commission may adopt a questionnaire asking for the information in form and in detail that the Commission shall find necessary to make its jurisdictional determination; the questionnaire may include a requirement that documentation be furnished therewith, including copies of articles of incorporation, and effective amendments thereto, filed with the Utah Division of Corporations and certified by that agency, together with a certificate of

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<sup>25</sup>R746-331-1(A) (Emphasis added).

good standing therewith.<sup>26</sup>

This portion of the rule is clearly intended to assist the Commission in determining whether or not a company is in fact a mutual, non-profit company, which services its members with culinary water. In the case of the Boulder King Water Company, it is undisputed that the company is properly formed as a non-profit water company which services its members. The sole issue raised by the Division is the question of voting control of the Company. However, the Division has also resolved this issue as well. The Division has in fact determined that each member/lot owner is entitled to one membership which includes one vote in directing the Water Company business.<sup>27</sup>

Next, the Rule then turns to re-define the requirements set forth above once more.

The Rule under Section C states as follows:

C. If, on the basis of the information elicited, the Commission finds that the entity is an existing non-profit corporation, in good standing with the Division of Corporations; that the entity owns or otherwise adequately controls the assets necessary to furnish culinary water service to its members, including water sources and plant; and that voting control of the entity is distributed in a way that each member enjoys a complete commonality of interest, as a consumer, such that rate regulation would be superfluous, then the Commission shall issue its finding that the entity is exempt from Commission jurisdiction, and the proceeding shall end. Issuance of the finding shall not preclude another Commission inquiry at a later time if changed circumstances or later-discovered facts warrant another inquiry.<sup>28</sup>

Once again it is undisputed that the Water Company is a non-profit corporation which is

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<sup>26</sup>R746-331-1(B).

<sup>27</sup>See Hearing Transcript Page 77.

<sup>28</sup>R746-331-1(C).

in good standing with the Division of Corporations with the State of Utah.<sup>29</sup> It is likewise undisputed that the Water Company owns or otherwise controls the assets necessary in providing its members with water service. The argument of the Division centers around the requirement that “voting control of the entity is distributed in a way that each member enjoys a complete commonality of interest, as a consumer, such that rate regulation would be superfluous”.<sup>30</sup>

The principal contention of the Division is that the voting control of the Water Company is such that it prevents a true “commonality of interest”. The Division representative stated under oath as follows:

Q. What is the basis of your contention that there is no commonality of interest, in a nutshell?

A. . . . I don't believe the interests of all ratepayers are equally represented in the administration of the company. And right now, with the amendments that were made in March of this year, at least 13 lots have not vote at all, even though they are members of the association, because they are currently delinquent on their assessments.

Q. Did they have the ability to vote on that particular amendment?

A. Yes, they did.<sup>31</sup>

It has been contended and admitted that each member enjoys one vote in the association. The Division then contends that Dale Clarkson controls more votes than other members. This is based on the fact that the TASC Trust in California owns several lots and regularly

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<sup>29</sup>See Hearing Transcript Page 76.

<sup>30</sup>R746-331-1(C).

<sup>31</sup>See Hearing Transcript Page 77-78

gives its proxy to Dale Clarkson. This however does not override the fact that each member have one vote per lot owned and each has been assessed equally, including the TASC Trust.

A commonality of interest cannot mean that each person is limited to owning one lot. The fact that all members have one vote per lot and each is assessed based on the number of lots owned is the essence of what is meant by a commonality of interest.

The Division argues that Clarkson has controlled the Water Company since its inception. The Division fails to point out that on multiple occasions, Mr. Clarkson has offered and/or asked the members of the Water Company to take over the management and operation of the Water Company which requests have been refused. It was testified that “[a]t one time Dale (Clarkson) wanted us to take over the water system.”<sup>32</sup> The fact that Mr. Clarkson wanted to have someone take over the operation of the Water Company seems completely inconsistent with a calculated effort to retain control of the entity as argued by the Division.

The concept of control has been argued by the Division without any legal support and in fact said argument is contrary to all legal precedent. The first argument is that Dale Clarkson controls the actions of his son Larry D. Clarkson. Control of another individual cannot be simply imputed at the convenience of the Division. If said control can be established, it must be based on specific acts, or upon sound legal precedent. The Division

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<sup>32</sup>See Hearing Transcript Page 157.

has failed to even attempt to supply the Commission with either.

Next the Division refers to the grant of proxy votes to Mr. Clarkson by the TASC Trust in California. Vote by proxy is a well established practice which is perfectly proper. The applicable statute provides as follows:

Unless otherwise provided by the bylaws, a member entitled to vote may vote or otherwise act in person or by proxy.<sup>33</sup>

The TASC Trust may provide any person it desires with a proxy to vote on relevant matters. This act alone does not constitute control. Furthermore, as set forth above, the Trust in question has paid for the improvements and water fees just like all other members and should be therefore entitled to vote just like all other members. To deny the vote of a member on lots which have been appropriately assessed and paid would in fact destroy any “commonality of interest” which is the primary stated goal of the Division.

The Supreme Court has stated its position on control in the Garkane case. The Commission argued that if not for Commission control and regulation all of the interests of all members may not be fairly represented in the governance of the company. This is the specific argument of the Division here. The Division has groundlessly asserted that the members, absent the regulation of the Commission, will not all get what they want. The specific scenario referred to by the Division is if the majority of members Company voted to raise standby rates to \$1,000.00 per month. In addressing a similar argument in the Garkane case, the Court reasoned as follows:

If service is not satisfactory (or if rate making or charges are not satisfactory)

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<sup>33</sup>§16-6a-712. Utah Code Ann. “Proxies”.

the consumer-members have it in their ***power to elect other directors*** and demand certain changes. ***Resort to equity***, as in the case of all mutuals, may be had ***if one group of members seeks to over-reach the others***.<sup>34</sup>

The place for internal matters and the resolution of the powers and authority of the corporation was clearly reserved to the courts of law and of equity and not intended to be resolved by the Commission.

### 3. **APPROPRIATE EXPENSES OF THE WATER COMPANY**

The Division has repeatedly referred to several facts in support of its allegations that the Water Company, and more specifically its president Dale Clarkson, have engaged in wrongdoing at the expense of the members. It is necessary that all of the relevant facts be presented whereas the Division has intentionally omitted material facts known to it and its representatives.

First the Division has filled its testimony with repeated allegations that monies of the Water Company should never have been used in the improvements to the roads of the Boulder King Estates Subdivision. However, as testified to by the Boulder Town Mayor, the improvement of the roads was a requirement by Boulder Town before approval would be forwarded to the Department of Environmental Quality for certification of the water system. Fire protection was an additional requirement placed on the Water Company before approval would issue. Fire protection is not specifically approved in the corporation documents nor does fire protection service the system users of culinary water in the Subdivision. However, without the approval of the Town Council the operation of the water

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<sup>34</sup>Garkane, 98 Utah 466, 100 P.2d 571 (1940)

system would have been prohibited. Therefore, the repairs and upgrades to the road were in fact necessary for the operation and improvement of the water system.

Next the Division calls our attention to the fact that utility agreements were entered by Mr. Clarkson individually instead of by the Water Company. However, the Division fails to reflect the fact that the relationship between Garkane Power and the Subdivision predated the Water Company's formation by nearly twenty years. Furthermore, as a general principal, Mr. Clarkson has always paid the power bill when money was not available from the Water Company and has not at any time to date cut off service for non-payment of instituted legal proceedings for collection of utility fees, even where members were several years in the arrears.

Finally the Division wishes to show that Mr. Clarkson exercises control of the Water Company through his letter to the State Engineer objecting to the water right application of a member of the Water Company. Mr. Huntsman testified that the letter claimed that the well is drilled on land owned by Mr. Clarkson. This is in fact true. Mr Clarkson is certainly entitled under current law to object to having an additional well drilled on his property. Next the Division makes clear that Mr. Clarkson claims to have spent in excess of \$300,000.00 on improving the water system. This is again true and correct. All expenditures by Mr. Clarkson were made pursuant to an agreement with the Trustees whereby they agreed to accept the assistance of Mr. Clarkson in financing the improvements of the system upgrade. There is nothing wrong with an individual opposing the request for a water right of another. That is specifically the purpose of the application process, and nothing stated in the objection is incorrect although the Division wished to portray Mr. Clarkson in a negative

way.

### CONCLUSION

The purpose of the Commission, and in turn the Division, as described in statute and the caselaw cited herein, is to regulate and set rates for public utilities within the State of Utah. The Boulder King Estates Water Company, by its very constitution, is not a public utility. It does not serve the public as the Courts have repeatedly required. Additionally the Water Company falls squarely in the rules adopted by the Commission describing mutual water companies which are to be exempted. The purposes and designs of the Commission are in no way served by asserting jurisdiction over the Water Company. Additionally the extra revenue demands which would arise through Division regulation would be extremely burdensome to a very small mutual company. Therefore, the Respondent, Boulder King Ranch Estates Water Company respectfully requests that the Commission not revoke the Letter of Exemption which is currently in effect.

DATED this 10<sup>th</sup> day of June, 2002.

ALLEN, ATKIN & CLARKSON, LLC

/s/ \_\_\_\_\_

Barry E. Clarkson



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DEPARTMENT OF ENVIRONMENTAL QUALITY  
DIVISION OF DRINKING WATER

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May 29, 2002

Dale Clarkson  
30 East Center Street  
Kanab, Utah 84741

Dear Mr. Clarkson:

Subject: Change In Classification Of Water System 09070, Boulder King Ranch Estates To Non-Public

This is to notify you of a change in the classification of your water system. As far as monitoring is concerned, your water system has been reclassified to "non-public" and the previous rating of: "Not Approved" has been deleted. In other words, your system is currently unrated.

This change is made because of the current conditions of water service. The number of service connections is ten, which is fewer than fifteen connections, and the number of people served water at least sixty days out of the year is eighteen people, which is less than the threshold of twenty-five people. Consequently your system is considered "non-public" at the current time. Should the number of connections increase to fifteen or should the number of individuals using water at least sixty days out of the year increase to twenty-five, your system would be reclassified as a public system.

Please note that this designation refers only to: a) monitoring b) quality, c) reporting and d) operator certification requirements. The requirements for plan review and source protection are still in force because plan approval and source protection approval are requirements that are applicable before the water system is built.

Please feel free to call me at 801-536-4207, if you have any questions.

Sincerely,

Kenneth H. Bousfield, P.E.  
Compliance Program Manager

Cc: Southwest Utah Public Health Department  
Scott Hacking, P.E., Department of Environmental Quality  
Wayne Thomas, P.E., Department of Environmental Quality  
Garfield County Planning Commission

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