

EXHIBIT A

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Scott M. Lilja (4231)
Nicole M. Deforge(7581)
VANCOTT, BAGLEY, CORNWALL & MCCARTHY
36 South State Street, Suite 1900
Salt Lake City, Utah 84111
Phone: (801) 532-3333
Facsimile: (801) 534-0058
slilja@vancott.com
ndeforge@vancott.com

Attorneys for Petitioner and Appellant,
Summit Water Distribution Company.

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**IN THE SECOND JUDICIAL DISTRICT COURT IN AND FOR
DAVIS COUNTY, STATE OF UTAH**

**SUMMIT WATER DISTRIBUTION
COMPANY,**

Petitioner and Appellant,

vs.

**UTAH STATE TAX COMMISSION,
COUNTY BOARD OF EQUALIZATION OF
SUMMIT COUNTY, STATE OF UTAH**

Respondent and Appellee.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER**

Case No. 080700032

(Third District Court
Case No. 030923183)

Judge John R. Morris

The above-entitled matter came before the Court on Petitioner Summit Water Distribution Company's ("Summit Water") appeal from the Order of the Utah State Tax Commission ("Tax Commission"), granting Partial Summary



VD29938387

pages: 19

Judgment in favor of the Summit County Board of Equalization ("Summit County"), dated February 15, 2002, and from the Tax Commission's Findings of Fact, Conclusions of Law, and Final Decision, dated January 29, 2003. Having read and considered all briefs and memoranda submitted, searched the record of the proceedings below to substantiate and clarify factual issues, and heard the arguments of Summit Water, Summit County, and the Tax Commission, the Court makes Findings of Fact and Conclusions of Law and Orders as follows:

FINDINGS OF FACT

1. Summit Water is a Utah nonprofit mutual water company, which provides culinary grade water for the use of its shareholders. Summit Water's Amended and Restated Articles of Incorporation establish Summit Water's corporate purpose as "the installation and operation of a general culinary water system and irrigation system for the use and benefit of the shareholders of the corporation."
2. Summit Water has four classes of stock: Class A (Development Stock; Class B (Residential and Commercial Culinary and Irrigation) Stock; Class C (Irrigation) Stock; and Class D (Snowmaking) Stock.
3. Class A (Development) stock is issued in anticipation of new development and requires the shareholder to convey to Summit Water, or to commit from its own shares, a source of water and diversion works sufficient to

meet such shareholder's proposed use. Class A stock must be converted to Class B stock to receive water and a proportionate residual ownership of Summit Water facilities. Class A stock represents a proportionate and specific interest in the company's domestic water, including the source site and source capacity, but no interest in Summit Water's water diversion and distribution facilities.

4. Once Class A shareholders have met specified requirements in building and developing water service infrastructures so that water can flow from Summit Water's existing infrastructure to the Class A shareholder's property, Class A shares can be converted to Class B shares. Title to the new water service infrastructure is generally transferred to Summit Water at the time of conversion. Summit Water then provides water to its Class B shareholders, who are residential and commercial water users.

5. Class B (Residential and Commercial Culinary and Irrigation) stock represents "an actual proportionate ownership interest in the water rights of the corporation as well as a corresponding interest in the diverting facilities, distribution works and water storage facilities."

6. Class C (Irrigation) stock represents a portion of irrigation water conveyed through an independent system to shareholder lands under Summit Water's water rights.

7. Class D (Snowmaking) stock is seasonally used for snowmaking purposes and similarly represents water under Summit Water's water rights that is delivered through an independent system and applied to shareholder lands.

8. Once a share of water from Summit Water attaches to a particular parcel of property, it becomes appurtenant thereto, and the water right cannot be sold or transferred separate from the property.

9. Upon dissolution, Summit Water's shareholders will receive their proportionate share of the company's assets. (R. at 00715.)

10. Summit Water provides water to properties where, for the most part, there is no municipal water source available. Without water these properties could not be developed for either residential or commercial purposes.

11. In 2001, Summit Water provided water service to approximately 2,200 individual residences and businesses.

12. On average, 51% of the water provided by Summit Water to its shareholders' property is used for outdoor irrigation of lawns, shrubs, trees, and gardens. The remaining 49% is used for indoor domestic purposes, such as drinking water. (R. at 00939.)

13. Summit Water's metering reveals the following annual percentages of irrigation use: 1996 - 44.3%; 1997 - 47.1%; 1998 - 38.9%; 1999 - 62.9%; 2000 - 57.7%. (R. at 00839.)

14. Summit Water holds title to water diversion facilities, distribution works, and storage facilities "for and on behalf of its shareholders." (R. at 00901.)

15. Among the property held by Summit Water are, as defined by the Tax Commission, "water pipelines and substation facilities including pumping stations, underground storage facilities and well houses" (collectively, "Water Distribution Facilities"). (R. at 00197.)

16. The Water Distribution Facilities include approximately 75 miles of pipeline buried in the ground. (Tax Comm'n Tr. at 118-119.) Approximately two-thirds of that pipeline is laid in public utility easements along public roadways. (Id.) Much of the remaining one-third of the pipeline is located on private rights of way. (Id.) The pipeline occasionally crosses under public roadways, but only a small fraction of the pipeline is actually laid under roadways. (R. at 00198.) In fact, of the 75 miles of pipeline operated by Summit Water, this "small fraction" consists of merely one-half to three-fourths of a mile of pipeline. (Tax Comm'n Tr. at 114.)

17. The pipelines are buried at least five feet underground. (Tax Comm'n Tr. at 78.) Those pipelines are buried with the intent that they remain where buried for their useful life, i.e., until worn out or superseded by something more suitable for water distribution, and may be removed or replaced only by

excavation at the risk of damage to the surface state and the pipeline itself. (Tax Comm'n Tr. at 120.)

18. The Water Distribution Facilities include ten storage reservoirs or tanks having an aggregate storage capacity of approximately 6,000,000 gallons. (R. at 01060.) The storage reservoirs or tanks are located on private property and buried in the ground. (Tax Comm'n Tr. at 119, 124-125.)

19. The Water Distribution Facilities also include well houses, which are buildings with a "concrete floor and pumps that go down into the ground 900 feet in some cases" and have an electrical system. (Tax Comm'n Tr. at 252.)

20. Real property in Summit County that has appurtenant water rights and a water supply to the property available for use has a significantly higher fair market value than similarly situated real property that has no water rights or supply. The availability of water to a lot increases the value by 50% or more over a similar lot without water. (Tax Comm'n Tr. at 132, 144-45, 199-203; R. at 00209-10.)

21. Summit Water's By-laws provide for assessments of Class A, B, C, and D stock in such a manner as to directly allocate increased separate costs (individual costs) to the shareholder causing such increased costs. For example, shareholders seeking a connection are assessed the costs of connection fees,

and shareholders whose lands lie at higher elevations and require pumping are assessed the additional costs of pumping.

22. Personal property taxes assessed to Summit Water are also directly and entirely passed through to Summit Water shareholders in proportion to their share ownership. (R. at 00417, 00456-458.)

23. Following an audit in 2000, the Tax Commission concluded that the market value of the Water Distribution Facilities was \$5,126,592. (R. at 00635.)

24. Based on the results of the audit, Summit Water's personal property taxes increased in 2000 by \$56,200. (R. at 00634.) Summit County also assessed back taxes for the years 1996-1999 in the amount of \$146,905.75, resulting in a total personal property tax bill for Summit Water in 2000 of \$204,020.40. (R. at 00698-702.)

25. Summit Water has at least seven parcels of real property containing its facilities which are taxed as real property by Summit County. (Tax Comm'n Tr. at 222-23.)

25. On February 21, 1992, the Summit County Assessor sent a letter to Summit Water expressly stating that "Section 59-2-11 gives exemption of property used for irrigation purposes. Under the category, water rights, ditches, canals, reservoirs, power plants, pumping plants, transmission lines, pipes, and flumes owned and used for irrigation purposes are exempt." (R. at 00375.)

27. The Summit County Assessor's office also sent to Summit Water a form document describing tax exemptions which expressly stated that "no formal application is required" to claim the irrigation tax exemption. (R. at 00524-25.)

28. Summit County has no ordinance requiring the filing of an application or affidavit or the making of a personal appearance before its Board of Equalization as a prerequisite to claiming the irrigation tax exemption.

29. Summit County has testified that nobody has ever submitted an application to Summit County for an irrigation exemption. (Ans. to Interrogs at 2, attached Exhibit "B.")

CONCLUSIONS OF LAW

A. Jurisdiction, Standard of Review, and Burden of Proof

1. The court has jurisdiction under Utah Code Ann. § 59-1-601. Decisions of the Tax Commission are reviewed de novo, meaning an "original, independent proceeding" and not "a trial de novo on the record." Utah Code Ann. § 59-1-601(2). The burden of proof on appeal is by a preponderance of the evidence, and rests upon the party seeking affirmative relief, namely, Summit Water. Utah Code Ann. § 59-1-604.

B. Taxable Personal Property

2. Summit County's authority to tax real and personal property derives from the Property Tax Act, Utah Code Ann. §§ 59-2-101 et seq. Property subject

to assessment and taxation according to its value under the Property Tax Act includes tangible property, defined as "(a) every class of property . . . which is the subject of ownership and not included within the meaning of the terms 'real estate' and 'improvements'; [and] (b) gas and water mains and pipes laid in roads, streets, or alleys[.]" Utah Code Ann. § 59-2-102(27).

3. Under the Property Tax Act, "personal property" is a catch-all or remainder classification applied to tangible property; it is what is left after excluding real estate and "improvements."

4. The statutory definition of "real estate or real property" expressly includes any "improvements" to land, Utah Code Ann. § 59-2-102(3).

5. When this appeal arose, an "improvement" was defined by enumeration to include: "(a) ... all buildings, structures, fixtures, fences, and improvements erected upon or affixed to the land, whether the title has been acquired to the land or not." Utah Code Ann. § 59-2-102(16) (2002).

6. "The fundamental rule of statutory construction is that statutes are generally to be construed according to their plain language. Unambiguous language in the statute may not be interpreted to contradict its plain meaning." Zoll & Branch, P.C. v. Asay, 932 P.2d 592, 594 (Utah 1997).

7. The plain language of the Property Tax Act is unambiguous: "improvements" are not personal property.

8. To be an "improvement," property must be "erected upon or affixed to the land." The erected or affixed property need not be permanent, or placed in perpetuity, or add value to the underlying land. The underlying land need not be owned by the person owning the erected or affixed property.

9. Because the Property Tax Act definitions are unambiguous, no other rules of statutory interpretation need be consulted as to legislative intent, and the words of the pertinent definitions may be given their usual and accepted meaning.

10. As interpreted by the Utah Supreme Court, there is only a single test determinative of whether or not something is an improvement: whether it is "erected upon or affixed to the land." Crossroads Plaza Ass'n v. Pratt, 912 P.2d 961, 968 (Utah 1996). All additional requirements have been expressly disavowed, and prior contrary holdings and dicta overruled. Ownership of the property to be classified for tax purposes or the real property to which it is affixed or upon which it is erected is not relevant, nor is it in dispute whether "affixation" includes "burial."

11. The water mains and pipes comprising the Water Distribution Facilities are incontrovertibly "erected upon or affixed to the land," and are therefore improvements; and except for "water mains and pipes laid in roads,

streets, or alleys," which are expressly excluded, they are not personal property or taxable as personal property under the Property Tax Act.

12. In addition to the water mains and pipes not laid in roads, streets, or alleys, "all buildings, structures, fixtures, fences, and improvements erected upon or affixed to the land, whether the title has been acquired to the land or not," are "improvements" not includable with personal property for purposes of assessment and taxation under the Property Tax Act.

13. Therefore, except for mains and pipes laid in roads, streets, or alleys, or other property which is neither real property nor an improvement under the statutory definition, the Water Distribution Facilities for purposes of assessment and taxation are expressly "improvements" that are not includable with personal property for purposes of assessment and taxation under the Property Tax Act.

C. Double Taxation

14. Article XIII, sections 2 and 3 of the Utah Constitution provide that "there shall be a uniform rate of taxation in this state so that every person, company, and corporation will be compelled to bear, as nearly as may be, his, her, or its pro rata of the burdens of general taxation according to the value of the taxable property of such person or corporation. And it is not contemplated that, when property is once assessed for general taxes according to its value and at

the same rate as other property subject to the same tax is assessed, it may again be taxed in some other way when the burden of both taxes falls on the same person, and while other property subject to the same tax is assessed but once." McCormick & Co. v. Bassett, 164 P.3d 852, 854 (Utah 1917), quoted in Holliday Water Co. v. Lambourne, 466 P.2d 371, 373 (Utah 1970).

15. Summit Water is a legal entity having a separate and independent existence from its shareholders. The taxation of one is not necessarily the taxation of the other.

16. Summit Water has failed to show by a preponderance of the evidence that the assessed valuation of the real property owned by its shareholders and serviced by its Water Distribution Facilities includes the shareholder's proportional share of the value of the facilities.

17. Summit Water has failed to show by a preponderance of the evidence the amount, if any, of the value of the Water Distribution Facilities that was, is, or would be included in the valuation of the real property owned by its shareholders and serviced by the facilities.

18. Summit Water has failed to show by a preponderance of the evidence that any increase in the assessed valuation of real property serviced by the Water Distribution Facilities is solely attributable to the value of the facilities.

19. Even assuming that any such increase is solely attributable to the value of the facilities, Summit Water has failed to show by a preponderance of the evidence that the 50% increase in the assessed valuation of real property attributable to the water made available by the Water Distribution Facilities is a proper measure of the value of the facilities.

20. Summit Water has not shown by a preponderance of the evidence that the increase in the assessed valuation of real property attributable to the water made available by the Water Distribution Facilities corresponds to the proportional value of the facilities imputable to the shareholder. In other words, there is insufficient evidence correlating the use of the Water Distribution Facilities by a given parcel, the parcel's proportionate share of the value of the Water Distribution Facilities based on such use, any increase in the value of the parcel attributable to the water supplied.

21. Summit Water has failed to show by a preponderance of the evidence that, if the Water Distribution Facilities were taxed, the amount of the tax would be passed on to its shareholders in proportion to the increase in value to the shareholders' property that is attributable to the water supplied by the facilities by the property. In fact, the classes of shareholders would appear to bear apportionment and assessment of operating expenses differently, based on

class and number of shares held, without taking into account the nature and extent of water usage or the distance between the source and terminus.

22. Although nearby facilities and buildings may increase or decrease a property's fair market value, it cannot be concluded that the value of those facilities or buildings necessarily corresponds to the increase or decrease, or that the facilities and buildings should not therefore be taxed, or should be taxed differently.

23. Summit Water has not carried its burden of proof in establishing that, if the Water Distribution Facilities were separately taxed as personal property, there would be an impermissible variation in the manner in which the facilities are taxed compared to other personal property, or that the Water Distribution Facilities would be taxed twice to its shareholders.

24. The separate taxation of the Water Distribution Facilities as personal property would not constitute double taxation.

D. Irrigation Tax Exemption

25. The power to tax property is expressly limited by the Utah Constitution. Pertinent here is the so-called irrigation exemption contained in Article XIII, Section 3:

- (1) The following are exempt from property tax: ... (i) water rights, reservoirs, pumping plants, ditches, canals, pipes, flumes, power

plants, and transmission lines to the extent owned and used by an individual or corporation irrigate land that is: (i) within the state; and (ii) owned by the individual or corporation, or by an individual member of the corporation.

26. A constitutional limitation of or exemption from the power to tax, such as the irrigation exemption, must be strictly observed by the legislative branch, enforced by the executive branch with exactitude, precision, and particularity, neither exceeding nor abusing the express power, and interpreted by the judicial branch with deference to legislative intent within the plain meaning and scope of the language of the limitation.

27. Judicial construction of the language of the Utah Constitution begins with its plain meaning and follows rules similar to those applicable to statutory construction.

28. The Utah Constitution was amended subsequent to Holliday Water Company v. Lambourne, 466 P.2d 371 (Utah 1970), to remove the word "exclusively" and insert in its place the phrase "to the extent." Thus, the constitutional irrigation exemption from taxation applies "to the extent" water distribution systems are owned and used for irrigation. "Irrigate" has a general meaning of supplying water artificially to land, and the amendment did not limit irrigation to agricultural land.

29. Use of the words "irrigation" and "irrigate" by the Utah Supreme Court has generally included water used for non-agricultural purposes, including the watering of lawns, grass, flowers, ornamental shrubbery, trees, and vegetation indigenous to a particular property. See, e.g., In re Gen. Determination of Water Rights, 98 P.3d 1 (Utah 2004); Mt. Olivet Cemetery Ass'n. v. Salt Lake City, 235 P 876, 880 (Utah 1925).

30. Based on a plain meaning interpretation of the exemption contained in the Constitution, and in view of the meaning implicit in decisions of the Utah Supreme Court, to the extent that the Water Distribution Facilities are used to convey water for the artificial watering of a shareholders' property, whether residential, commercial, or agricultural, those facilities are within the constitutional irrigation exemption and therefore exempt from taxation.

31. The Water Distribution Facilities are therefore exempt from taxation under Article XIII, Section 2 of the Utah Constitution to the extent that they are owned and used for the artificial watering of real property.

32. Because the record establishes that 51% of the water distributed by Summit Water through its Water Distribution Facilities is used for irrigation purposes, 51% of those facilities cannot be taxed.

33. The irrigation exemption is constitutional and applies whether an application is made or not. It may not be abridged or abrogated by administrative requirements.

34. Moreover, Summit County may waive any application requirement. Utah Code Ann. § 59-2-1102(3)(b). A representative of Summit County notified Summit Water that no application was necessary and none had ever been required. Thus Summit County by its actions waived any application requirement for the irrigation exemption.

35. Summit Water was not required to make application for the irrigation exemption or, alternatively, any such requirement was waived by Summit County.

ORDER

Based upon the foregoing findings of fact and conclusions of law,
IT IS HEREBY ORDERED that:

1. Summit Water's Water Distribution Facilities are "improvements" to real property and, with the exception of the water pipes laid in roads, streets, or alleys, are not includable as personal property for purposes of assessment and taxation under the Property Tax Act;


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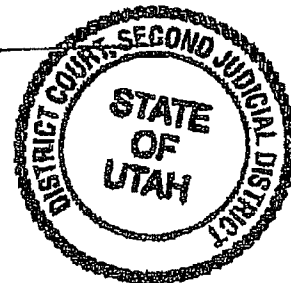
2. Fifty-one (51) percent of Summit Water's Water Distribution Facilities are exempt from taxation under the irrigation exemption found in Article XIII, Section 2 of the Utah Constitution; and,

3. Taxation of Summit Water's Water Distribution Facilities as personal property, to the extent allowed by this decision, would not constitute impermissible double taxation.

DATED this 6 day of ~~September~~ ^{October}, 2009.

BY THE COURT:


JUDGE JOHN R. MORRIS
DISTRICT COURT JUDGE



Approved as to form:

Attorneys for Summit County
Board of Equalization

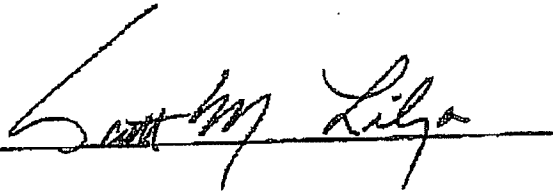
Attorneys for Utah State Tax Comm'n

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the within and foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER to be mailed, postage prepaid, this 16th day of September, 2009, to the following:

Jami R. Brackin
David L. Thomas
Summit County Attorney
60 North Main Street
Coalville, Utah 84017

Timothy A. Bodily
Utah State Tax Commission
160 East 300 South, 5th Floor
P.O. Box 140874
Salt Lake City, Utah 84114



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