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Application of Blackhawk Utilities LLC for Exemption	<u>DOCKET NO. 21-2627-01</u> <u>ORDER GRANTING EXEMPTION FROM REGULATION</u>
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ISSUED: May 20, 2021

### **BACKGROUND**

On March 26, 2021, Blackhawk Utilities LLC (“Blackhawk”) filed an Application and Exhibits for Exemption (“Application”) from regulation by the Public Service Commission (PSC). The Application explains that Blackhawk will be serving its members only and not the public generally. In addition, the Application states that Blackhawk intends to serve up to 500 residential customers and no more than one commercial customer.

On April 26, 2021, the Division of Public Utilities (DPU) filed a memorandum (“DPU Recommendation”), recommending the PSC grant the Application. DPU states that Blackhawk is a new water company proposing to serve 148 residential lots in phase one of a development project. DPU states that according to records of the Utah Division of Corporations, Blackhawk is listed as a “[c]urrent” or “[a]ctive” domestic LLC.<sup>1</sup> DPU further states that Blackhawk provided documentation in its Application showing that its plans have been reviewed by the Utah Department of Environmental Quality and the Utah Division of Drinking Water (“UDDW”).<sup>2</sup> DPU also states Blackhawk appears to be in compliance with UDDW requirements.<sup>3</sup>

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<sup>1</sup> DPU Recommendation, at 2.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

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

Utah Code Ann. § 54-4-1 vests the PSC with the power and jurisdiction to regulate public utilities, including water corporations. Utah Code Ann. § 54-2-1(38) defines a water corporation as “every corporation and person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any water system for public service within [the] state.” It specifically states that a water corporation “does not include private irrigation companies engaged in distributing water only to their stockholders, or towns, cities, counties, water conservancy districts, improvement districts, or other governmental units created or organized under any general or special law of this state.”<sup>4</sup>

As represented in the Application and DPU Recommendation, Blackhawk intends to only serve its members. The Application and DPU Recommendation confirm Blackhawk will not provide water service to the public generally. The PSC agrees and finds and concludes that Blackhawk does not meet the definition of a water corporation under Utah Code Ann. § 54-2-1(38). Therefore, it is not subject to the PSC’s jurisdiction and is thus exempt from regulation.

**ORDER**

Because Blackhawk will serve only its members, and will not otherwise serve the general public, the PSC concludes Blackhawk is exempt from the PSC’s regulation and grants the Application in accordance with Utah Code Ann. § 54-2-1(38). The letter of exemption is attached to this Order as Exhibit A.

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<sup>4</sup> *Id.*

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DATED at Salt Lake City, Utah, May 20, 2021.

/s/ Yvonne R. Hogle  
Presiding Officer

Approved and confirmed May 20, 2021 as the Order of the Public Service Commission  
of Utah.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Gary L. Widerburg  
PSC Secretary  
DW#318766

Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this order by filing a request for review or rehearing with the PSC within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the PSC fails to grant a request for review or rehearing within 30 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the PSC's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

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## Exhibit A



## State of Utah

SPENCER J. COX  
*Governor*

DEIDRE M. HENDERSON  
*Lieutenant Governor*

## Public Service Commission

THAD LeVAR  
*Chair*

DAVID R. CLARK  
*Commissioner*

RON ALLEN  
*Commissioner*

### LETTER OF EXEMPTION NO. 241

May 20, 2021

Blackhawk Utilities LLC  
c/o Jamison Smith  
2183 N. Tower Butte Dr.  
St. George, UT 84770

Dear Mr. Smith,

The Public Service Commission (PSC) has reviewed the proposed application for exemption for a new water company, filed on behalf of Blackhawk Utilities LLC (“Blackhawk”) on March 26, 2021.

On April 26, 2021, the Division of Public Utilities (DPU) recommended the PSC grant the request for exemption because Blackhawk “is a new water company proposed to serve 148 residential lots in phase one of a development project located in Sanpete County near Indianola, Utah”<sup>5</sup> and “[ ] is serving members only.”<sup>6</sup> Utah Code Ann. § 54-2-1(38) excludes water corporations from PSC regulation that distribute water only to their stockholders or members. Thus, it appears an exemption for Blackhawk is appropriate.

Please be advised that this Letter of Exemption No. 241 is granted pursuant to the representations contained in the Application and on the basis of DPU’s confirmation that Blackhawk will serve only its members and not the public generally. Blackhawk has a continuing obligation to update the PSC within 30 days of any change.

This Letter of Exemption No. 241 is revocable for cause at any time. Please refer to this letter number in any future correspondence with either the PSC or DPU.

Sincerely,

/s/ Gary L. Widerburg  
PSC Secretary  
DW#318766

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<sup>5</sup> DPU’s Action Request Response, at 2 (April 26, 2021).

<sup>6</sup> *Id.*

CERTIFICATE OF SERVICE

I CERTIFY that on May 20, 2021, a true and correct copy of the foregoing was served upon the following as indicated below:

By Email:

Jamison Smith ([jamison@utahlands.com](mailto:jamison@utahlands.com))  
Blackhawk Utilities LLC

Patricia Schmid ([pschmid@agutah.gov](mailto:pschmid@agutah.gov))  
Justin Jetter ([jjetter@agutah.gov](mailto:jjetter@agutah.gov))  
Assistant Utah Attorneys General

Madison Galt ([mgalt@utah.gov](mailto:mgalt@utah.gov))  
Division of Public Utilities

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Administrative Assistant