

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>CARL J. PARIS, LINDA MORTON AND MARTIN PARIS,</p> <p>v.</p> <p>Respondent:</p> <p>DELTA COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 61333</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on March 27, 2013, Debra A. Baumbach and Gregg Near presiding. Mr. Joe Wild appeared on behalf of Petitioners. Respondent was represented by Ms. Christine L. Knight, Esq. Petitioners are protesting the 2012 classification of the subject property.

Petitioners agreed with Respondent's value of the property should the land be classified as vacant. The only disagreement between the parties pertains to the 2012 classification of the property. Therefore, the hearing was limited to the parties' arguments pertaining to the classification of the subject.

Subject property is described as follows:

**Vacant Land
F Road
Delta, CO 81416
Delta County Reception No. R013098**

The subject property consists of 66.5 acres of vacant ground. The land is fenced and is improved with ditches for irrigation purposes.

Petitioners are requesting an agricultural classification of the subject property for the 2012 tax year. Petitioners contend that the subject is eligible for agricultural classification based on the

agricultural use of the subject. Petitioners also argue that the subject is eligible for agricultural classification based on the water rights associated with the land.

Petitioners' witness, Mr. Joe Wild, presented background history of irrigated land in the area. According to Mr. Wild, the majority of water rights in the area are the property of the Uncompahgre Valley Water Users Association ("Water Association"). Water is allotted based upon classification of the land to be irrigated. The best quality crop land receives one share per acre. The landowners must pay for their share of the annual assessed costs of operation and maintenance of the Water Association. Mr. Wild indicated that Petitioners' payments to the Water Association were up to date.

Mr. Wild testified that the confusion as to the classification of the subject began in 2009, when Delta County Assessor's Office sent an Agricultural Land Classification Questionnaire to Mr. Leslie L. Paris, the record owner of the subject at the time. Ms. Linda Morton, a family member and a landowner of adjacent property, responded to the letter acting in her capacity with power of attorney. Ms. Morton indicated the property was not being used as a ranch or a farm.

Mr. Wild indicated that Ms. Morton was unaware of plans in effect by other members of the family to lease the property for farming, harvesting and grazing. According to Mr. Wild, the said plans to pursue agricultural operations on the subject did not materialize as expected due to the death of Mr. Leslie L. Paris. Pursuant to Mr. Wild's testimony, the land was not farmed in 2009 or 2010. In 2011, the owners were involved in improvements to the property fencing and ditches and in 2012 the subject produced a visible crop. Mr. Wild points to Petitioners' efforts to improve, lease and manage the property, which resulted in a pattern of agricultural use despite the lack of a paying operation.

In addition, Mr. Wild stated that Petitioners' ownership of water rights entitles the property to agricultural classification. He indicated that there are five different types of "decreed" water rights that may affect a land's eligibility for agricultural classification. According to Mr. Wild, some types of decreed water rights permit rental or lease arrangements that are similar to Petitioner's agreement with the Water Association. In support of this contention Mr. Wild presented the testimony of Mr. Kyle Hooper, a Property Tax Specialist with the Division of Property Taxation. Mr. Hooper testified that in his opinion, if the water is guaranteed, such guarantee is sufficient to obtain agricultural classification.

Petitioners contend that the land has been used for agricultural purposes throughout their ownership. The break in the pattern of use was caused by a lack of tenants, a death in the family, required repairs to fencing and irrigation ditches and the failure of the most current tenant to complete his contract. Petitioners also note the land in question is served by water they must pay for even if it is not used.

Respondent has classified the property as vacant ground.

Respondent's witness, Mr. Greg Cross, a Certified General Appraiser, provided a summary appraisal report.

Mr. Cross indicated that in order to be qualified as agricultural property, the land must have been used the previous two years (2010/2011) and must presently (2012) be used as a farm or a ranch. Mr. Cross stated the property has not been used for agricultural purposes for several years. An Agricultural Land Classification Questionnaire was sent in 2009 and returned with the statement there was no farming or ranching activity on the property at that time.

Respondent determined that the land was not eligible for agricultural classification in 2009, 2010 or 2011. However, there are crops currently growing on the land and it has been classified as agricultural use for 2012. If agricultural operations continue through 2013, the subject will be eligible for agricultural classification based on agricultural use in 2014.

Respondent contends the land has not been used for growing crops or grazing animals at any time between 2009 and sometime in early 2012. This was confirmed by Petitioners' own statements and the only activity on the land during 2009-2011 was preparatory.

Mr. Cross researched the term "Decreed Water Rights" and found definitions from Colorado State University's "Glossary of Water Terminology". According to the Glossary, a "decree" is defined as "an official document issued by the court defining the priority, amount, use, and location of the water right." A "decreed water right" is defined as "a court decision placed on a water right that is then administered by Colorado's Water Resources Department." Mr. Cross determined that a decreed water right requires a court decision.

Mr. Cross testified that the owner of the decreed water rights is the Water Association and the subject property owns only the shares of irrigation water. Petitioners, as the holders of the irrigation rights, have the right to use the water allotted to the land, if the water is paid for. Respondent presented an explanation of the irrigation water rights in the Uncompahgre Project that states in relevant part that:

"UVWUA has, through the years, filed on water rights, purchased canal and ditch companies with old priority water rights and filed on or purchased other water rights as they became available. UVWUA holds these senior and junior water rights but the shares allotted to the landowners / water users are allotted Uncompahgre Project Water with **no priority or senior decree to any of the parcels** in the Uncompahgre System." (Emphasis added).

Respondent interpret the document to state that Petitioners, as the owners of the land, have the right to use any Uncompahgre Project Water allocated to it but do not have documented "decreed water rights" as required by Section 39-1-102 (1.6)(a)(IV), C.R.S.

Respondent also points to *Public Serv. Co. v. Meadow Island Ditch Co.*, 132 P.3d 333, 340 (Colo. 2006) as instructive. According *Meadow Island*, "Colorado law distinguishes between an adjudicated water right and a contractual entitlement to make use of water." *Id* at 340. The court in *Meadow Island* emphasized that "contractually-delivered water rights are 'far different' than a water right acquired by original appropriation, diversion, and application to beneficial use." *Id*.

Respondent presented sufficient probative evidence and testimony to show that the subject property was correctly classified for tax year 2012.

The Board was compelled by the demonstrated lack of agricultural use, either of growing crops or grazing animals, during 2010 or 2011, as required by Section 39-1-102 (1.6)(a)(I), C.R.S. Further, the Board found that the subject does not qualify for agricultural classification based on water rights because Petitioners do not own the type of decreed water rights in the subject as required by Section 39-1-102 (1.6)(a)(IV), C.R.S.

ORDER:

The petition is denied.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation of the respondent county, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

Section 39-8-108(2), C.R.S.

DATED and MAILED this 18th day of April, 2013.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

Debra A. Baumbach

Gregg Near

Gregg Near

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.

Milla Crichton

Milla Crichton

