

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Formal Complaint of
Patricia L. Matthews against Dammeron
Valley Water Works

DOCKET NO. 16-2025-01

ORDER DISMISSING FORMAL
COMPLAINT FOR LACK OF
SUBJECT MATTER JURISDICTION
AND VACATING FINAL REPLY
DEADLINE

ISSUED: March 9, 2016

I. Procedural background.

On February 17, 2016, Patricia L. Matthews (Ms. Matthews) filed with the Public Service Commission of Utah (Commission) a formal complaint against Dammeron Valley Water Works (DVWW), a public utility. Ms. Matthews alleged that she owns a water right, which DVWW refused to acknowledge and honor after Ms. Matthews moved to a new property. Ms. Matthews further alleged that, due to DVWW's refusal to acknowledge and honor the water right she claims, she has been overcharged.

On February 17, 2016, the presiding officer in this docket issued a scheduling order giving DVWW until March 18, 2016 to respond to Ms. Matthews's complaint, and giving Ms. Matthews until April 4, 2016 to file a final reply.

On February 22, 2016, Ms. Matthews supplemented her complaint with the following documents:¹

1. Statement of Perfected Water Right Ownership Segregation, Water Right #81-4861.
2. Statement of Perfected Water Right Ownership Segregation, Water Right #81-4860.

¹ On receipt of Ms. Matthews's supplemental documents, the presiding officer gave DVWW the opportunity to extend its response deadline. *See* the presiding officer's February 24, 2016 e-mail to the parties, attached hereto as Exhibit A. DVWW did not request additional time.

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3. February 11, 2016 screenshot from the Utah Division of Water Rights website concerning Water Right 81-4860.
4. February 11, 2016 screenshot from the Utah Division of Water Rights website concerning Water Right 81-4861.

Ms. Matthews has requested that the Commission order DVWW to grant Ms. Matthews use of the water she claims; order DVWW to reimburse her for amounts that she alleges to have been overcharged; and order DVWW to pay Ms. Matthews's attorney fees and to compensate her for mental anguish.

On February 25, 2016, the Division of Public Utilities (Division) filed comments in this docket. The Division recommended that the complaint be dismissed for lack of subject matter jurisdiction. Specifically, the Division stated that the parties' dispute is as to whether Ms. Matthews owns the water right she claims. Resolution of that dispute would require analysis of the deeds in the property's chain of title. Therefore the Division considers that this matter is a contractual dispute, which is outside of the Commission's statutory jurisdiction.

On March 8, 2016, DVWW filed its response to Ms. Matthews's complaint. In its response, DVWW stated that covenants, conditions, and restrictions (CC&Rs) are recorded against the property for which the water right was originally granted. DVWW argued that these CC&Rs prohibit any transfer of the water right to a different property. Therefore, it is DVWW's position that Ms. Matthews lost her water right when she sold the property to which it pertains.

DVWW has provided the following documents:

1. Warranty deed recorded August 2, 1994, in Washington County, Utah, transferring Lot 5, Dammeron Valley Old Farms – Phase I Subdivision, together with 20 acre feet of water, from The Dammeron Corporation to Terry L. Wade and Gina Wade.

2. Quit-claim deed recorded January 26, 2005, in Washington County, Utah, transferring Lot 5, Dammeron Valley Old Farms – Phase I Subdivision, together with 20 acre feet of water, from Terry L. Wade and Gina Wade to Patricia L. Matthews.
3. Warranty deed recorded November 10, 2009, in Washington County, transferring Lot 5, Dammeron Valley Old Farms – Phase I Subdivision, together with 20 acre feet of water, from Patricia L. Matthews to Patricia L. Matthews, Trustee of the Matthews Family Trust.
4. Protective Covenants and Declaration of Building and Use Restrictions for Old Farms Subdivision, Phase 2, recorded February 7, 2000, in Washington County, Utah.

II. Subject matter jurisdiction.

The Division is correct that we may not adjudicate this complaint unless the issues that require resolution are within our statutory jurisdiction. *Mack v. Utah State DOC*, 221 P.3d 194, 204 (Utah 2009): "Agencies ... are limited to the adjudicative authority granted by the legislature." *See also SMP, Inc., v. Kirkman*, 843 P.2d 531, 533 (UT App 1992): "As a statutorily created agency, [a] Commission has only those powers expressly or impliedly granted by statute."

Under DVWW's tariff, a customer who owns a water right is entitled to lower rates than is a customer who does not own a water right.² If there were no dispute as to whether Ms. Matthews owns a water right, we would have jurisdiction to apply DVWW's tariff, to calculate Ms. Matthews's bill, and to order a refund of any overbilling. However, we do not have jurisdiction to adjudicate a disputed water right.³ Nor do we have jurisdiction to award attorney fees or damages for mental anguish.

² *See* DVWW's most recent rate case, filed February 17, 2015 in Docket No. 15-2025-01.

³ We note that Utah Code Title 73, Chapter 4 governs the determination of water rights in this state. In general, adjudication of a disputed water right requires a court proceeding in which the state engineer and the Department of Environmental Quality, Division of Water Rights may take part.

ORDER

The formal complaint of Patricia L. Matthews against Dammeron Valley Water Works is dismissed for lack of subject matter jurisdiction. Dismissal is without prejudice. If Ms. Matthews obtains a ruling from a regulatory agency or a court of competent jurisdiction, stating that she owns one or more water rights, she may file that ruling in this docket, and we will then adjudicate her allegation as to overbilling.

The April 4, 2016 final reply deadline is vacated as moot.

DATED at Salt Lake City, Utah, March 9, 2016.

/s/ Jennie T. Jonsson
Administrative Law Judge

Approved and confirmed March 9, 2016 as the Order of the Public Service Commission of Utah.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary
DW#272213

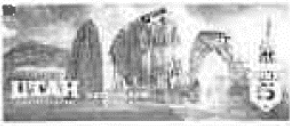
Notice of Opportunity for Agency Review or Rehearing

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 Commission 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 Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission'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



Jennie Jonsson <jjonsson@utah.gov>

Docket No. 16-2025-01, Amendment to Formal Complaint of Patricia Matthews v. Dammeron

Jennie Jonsson <jjonsson@utah.gov>
To: water@dammeronvalley.com
Cc: plmatthews@beyondbb.com

Wed, Feb 24, 2016 at 1:20 PM

Ms. Chauvin,

Ms. Matthews has submitted some additional information to the Public Service Commission in regard to her complaint against Dammeron Valley Water Works. In these circumstances, I am prepared to give the utility additional time to submit a response. If you would like a new deadline, please let me know.

Thank you,
Jennie T. Jonsson
Administrative Law Judge
Public Service Commission of Utah
[Quoted text hidden]

Amendment to Formal Complaint of Patricia Matthews 2-24-2016.pdf
435K

CERTIFICATE OF SERVICE

I CERTIFY that on March 9, 2016, a true and correct copy of the foregoing was served upon the following as indicated below:

By Electronic-Mail:

Patricia L. Matthews (plmatthews@beyondbb.com)

Lisa Chauvin (water@dammeronvalley.com)
Dammeron Valley Water Works

Patricia Schmid (pschmid@utah.gov)
Justin Jetter (jjetter@utah.gov)
Assistant Utah Attorneys General

By Hand-Delivery:

Division of Public Utilities
160 East 300 South, 4th Floor
Salt Lake City, Utah 84111

Office of Consumer Services
160 East 300 South, 2nd Floor
Salt Lake City, Utah 84111

Administrative Assistant