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Attorneys for South Duchesne Culinary Water Inc.

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Formal Complaint of Tanya and Nick Olsen against South Duchesne Culinary Water, Inc.	DOCKET NO. 17-2372-01 MOTION TO DISMISS COMPLAINT OF TANYA AND NICK OLSEN AND MEMORANDUM IN SUPPORT
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MOTION TO DISMISS COMPLAINT

By and through its attorneys of record, South Duchesne Culinary Water Inc. (SDCW), respectfully moves the Public Service Commission (PSC) to dismiss the Formal Complaint in the above captioned matter because the only relief requested by the Complainants, Tanya and Nick Olsen (the “Olsens”), of having the water reconnected to their property has already been provided. Therefore, the subject Complaint should be dismissed as moot because it fails to state a claim upon which relief may be granted. Utah R. Civ. Proc. 12(b)(6).

MEMORANDUM IN SUPPORT OF THE MOTION TO DISMISS

The material facts supporting this Motion to Dismiss are not in dispute and are as follows:

1. On or about January 1, 2017, SDCW sent Olsens an invoice in the amount of \$120.00 for water services for the months of January, February, and March of 2017 for their rental property located in the Utah Mini Ranch subdivision (Lot #330). The invoice was payable on or before January 21, 2017. (See Exhibit A).

2. Olsens failed to pay the January invoice in a timely manner. The Olsens, did however, remit a payment of \$120.00 more than a month late which was received and posted in the SDCW records on about March 1, 2017. (See Exhibit A).

3. On or about April 1, 2017, SDCW sent Olsens an invoice in the amount of \$165.00 (\$120.00 for water services for the months of April, May, and June of 2017, and \$45.00 for the late payment fee associated with the tardy payment in the first quarter). The invoice was payable on or before April 21, 2017. (See Exhibit A).

4. On April 20, 2017, SDCW hand delivered a Final Notice to the property of the Olsens, giving notice that the \$165.00 needed to be paid on or before April 25, 2017 or the water service would be disconnected and that a \$100.00 reconnection fee would then be imposed to restore water service. (See Exhibit B).

5. No payment was received from the Olsens prior to April 25, 2017.

6. On or about May 4, 2017, SDCW sent a "Termination Notice" to the Olsens via priority mail. The Termination Notice informed the Olsens that if their payment of \$165.00 was not received on or before May 9, 2017, the water service would be disconnected and that a \$100.00 reconnection fee would be imposed to restore water service. (See Exhibit C).

7. No payment was received by SDCW from the Olsens on or before May 9, 2017.

8. On or about May 13, 2017, SDCW disconnected the water service from the Olsens' property.

9. On May 17, 2017, the SDCW received a payment of \$165.00 from the Olsens. However, the Olsens did not remit the required reconnection fee of \$100.00. (See Exhibit D).

10. On May 17, 2017, SDCW informed Olsens that it could not reconnect the water service until it received the reconnection fee of \$100.00. SDCW also requested that Olsens sign a current contract and begin bi-annual payments of \$240.00 to avoid further delayed payments in the future. (See Exhibit D).

11. From May 18 until July 27, 2017, the Olsens complained to the local police, the local press, the PSC and others about having their water being disconnected, but they did not make a payment for the reconnection, a payment for water service, or enter a current agreement for water services.

12. On the morning of July 27, 2017, SDCW received a letter from the Olsens' attorney, Mr. Russell T. Monahan that included (a) a payment from the Olsens in the amount of \$400 (\$100.00 for the reconnect fee, \$240.00 for the water service for the months of July-December 2017 and \$60 for late fees) and (b) a current contract for water service signed by the Olsens. (See Exhibit E).

13. Upon receipt of the payments and agreement identified in the preceding paragraph on July 27, 2017, SDCW immediately reconnected the water to the Olsens' property, and contacted Marialie Wright at the PSC to inform her that the payments had been received and that the water would be reconnected immediately. (See Exhibit F).

14. On July 27, 2017, the Olsens filed a Formal Complaint Form with the PSC requesting the water be reconnected to their rental property. (See Exhibit G hereto).

ARGUMENT

It is well established Utah law that a case should be dismissed as moot “when the requested judicial relief cannot affect the rights of the litigants.” *Burkett v. Schwendiman*, 773 P.2d 42, 43 (Utah 1989) (case dismissed as moot because the only relief requested was to reverse the decision to revoke Burkett’s driver’s license for one year, and the year had already passed and Burkett’s had his driver’s license); *see also Merhish v. Folsom*, 646 P.2d 731 (1982 Utah S. Ct.) (case dismissed as moot because the only relief requested was to vacate the garnishment and the lien created by the garnishment, but the garnishment had already been received and the lien released); *Spain v. Stewart*, 639 P.2d 166 (Utah 1981) (habeas corpus action dismissed as moot because the only relief requested was an audience before a magistrate, and petitioner had already been provided a hearing before the magistrate and had been released).

It is undisputed that the only relief requested by the Olsens in this matter is to have the “water turned on” to their rental property. It is undisputed that SDCW turned the water back on to the Olsens’ property on July 27, 2017 even before SDCW had notice of the Olsens’ Complaint. The relief requested by the Olsens in this matter has already been provided and thus this matter is moot. Inasmuch as there is no additional relief requested to be given by the PSC, the PSC should dismiss the Complaint in this matter as being moot. SDCW respectfully requests that the PSC enter an order dismissing the Olsens’ Complaint.

Dated this 18th day of August, 2017.

HOLLAND & HART LLP

/s/ David J. Crapo

David J. Crapo

John T. Deeds

Attorneys for South Duchesne Culinary Water, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18th day of August, 2017, a true and correct copy of the foregoing **MOTION TO DISMISS COMPLAINT OF TANYA AND NICK OLSEN** was served in the manner and upon the recipients names below:

<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Via Electronic Court Filing <input checked="" type="checkbox"/> E-Mail	Russell T. Monahan Cook & Monahan, LLC 323 South 600 East, Suite 200 Salt Lake City, UT 84101 Russell@cooklawfirm.com Attorneys for Tanya and Nick Olsen
<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Via Electronic Court Filing <input checked="" type="checkbox"/> E-Mail	Patricia Schmid pschmid@agutah.gov Justin Jetter jjetter@agutah.gov Asst. Utah Attorneys General
<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Via Electronic Court Filing <input checked="" type="checkbox"/> E-Mail	Erika Tedder etedder@utah.gov Division of Public Utilities
<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Via Electronic Court Filing <input type="checkbox"/> E-Mail	Office of Consumer Services 160 East 300 South, 2nd Floor Salt Lake City, UT 84114

/s/ Peggy M. Watson, Secretary

EXHIBIT A

SOUTH DUCHESNE CULINARY WATER
P.O. BOX 901351
SANDY, UTAH 84090

Nick & Tanya Olsen
2818 North Hills drive
Layton, UT, 84040



Date	Description	Amount	Balance
02/28/2017	Balance forward		129.00
03/01/2017	PMT #10072 JAN/FEB/MAR	-120.00	0.00
04/01/2017	INV #3042661	45.00	45.00
04/01/2017	INV #3542911	120.00	165.00
04/25/2017	Amount Due		165.00

Account #	Amount Due
UMR-330 OLSEN	\$165.00

Please note: Beginning this month, we will bill Standby Fees quarterly. We will continue to bill Usage Fees monthly.

EXHIBIT B

PAID - DELIVERED

South Duchesne Culinary Water
P.O. Box 294
Duchesne, UT 84021
435-738-6200



FINAL NOTICE

Account # UMR-330 Date: 4-20-17

Name: Tonya Olsen / Nick Olsen

Lot: # UMR 330

Service Address: 11132 S. CR. 29 Duchesne
UT 84021

The total amount due of \$ 165⁰⁰ must be paid within 48 hours for continued water service. Unless payment is made before 4-25-17 the water will be turned off. Payment in full plus A \$100.00 reconnect fee must be paid in order to restore service

* New Contract

Required!

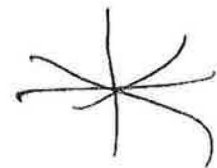


EXHIBIT C

South Duchesne Culinary Water Inc.
P.O. Box 294-Duchesne, UT.84021 435-738-6400

May 4, 2017

Tonya & Nick Olsen
28818 North Hills Dr.
Layton, UT.84040

*****Cut Off Left On Door April 20, 2017*****
Re: Lot 330-UMR - Delinquent Water Bill
"Termination Notice"

Mr. and Mrs. Olsen:

This is a notice of termination of water service. There was a notice left on your door in the UMR -330. Your tenant was inside but would not come to door. You have violated the second agreement with you, which you have failed to abide by. The balance must be paid in full on or before Tuesday, May 9, 2017. Mail to our office South Duchesne Culinary Water Inc. P.O. Box 294 Duchesne, UT.84021. I would suggest over-night mail to avoid termination and additional fee.

Your account can no longer be in arrears. The last payment received from you was March 1, 2017. You were 7 months behind...when you sent that payment to SDCW which did not pay the balance owed The balance at this time is \$165. Including late fees = TOTAL Delinquent \$165.00

TOTAL Delinquent \$165.00... This balance must be paid on or before Tuesday May 9, 2017. CUT OFF ...Tuesday Evening. There will also be re-connect fees if terminated and the contract based upon new terms. When you pay balance.... Per new agreement, July-Dec 2017=\$240., then you will be paid through Dec.31, 2017.

We attempted to help you by placing you on a quarterly payment, but you failed to pay that. Due to years of delinquent payment, you must pay 6 months in advance....\$180. After this delinquent amount is paid, we will prepare new contract regarding 6 month payment.

South Duchesne Culinary Water Inc.

EXHIBIT D

South Duchesne Culinary Water, Inc.

P.O. Box 294-Duchesne, Utah, 84021-435-738-6400

5/17/17

UMR-330/OLSEN

Mr. and Mrs. Olsen,

As stated in the most recent priority mail letter sent to you, you will need to pay for your reconnect since you missed the cut-off date and are two months late. We received the \$165.00 for April-June today. We made you aware through TWO separate cut-off notices of the terms. Please forward the \$100 reinstatement fee to reconnect.

In looking through the file on this account, it appears that payments have been inconsistent since 2008. We restructured your payment schedule to quarterly, in an effort to confirm payment consistency. SDCW is not in the business to provide free service to anyone, as it appears we've done with you. Please note the terms of the new water contract. 2 payments per year of \$240.00 to begin July 1, 2017. We will need to receive this contract back from you signed and NOTARIZED. This contract will be NOT be accepted unless notarized. Return contract to the company with a check for \$100 and we will turn the water back on. We received many calls from you to turn OFF the water due to a leak in your home. We need to know this problem has been addressed as well.

Good day.

SDCW

EXHIBIT E

COOK & MONAHAN, LLC

Attorneys at Law

323 South 600 East, Suite 200
Salt Lake City, Utah 84103
Telephone (801) 595-8600
Facsimile (801) 595-8614

Stephen W. Cook
stephen@cooklawfirm.com
Russell T. Monahan
russ@cooklawfirm.com
Jennifer R. Jackson
jennifer@cooklawfirm.com

July 25, 2017

South Duchesne Culinary Water
P.O. Box 294
Duchesne, UT 84021

Re: Nick & Tanya Olsen
Duchesne property: Lot #330

To Tasha Steed and/or Jeff Schnars:

Please find enclosed a check in the amount of \$400.00 and signed contract that you are requiring in order to have service turned back on at my client's property located at 11131 CR29 Lot #330 in the Utah Mini Ranches. Please have their water turned back on no later than Thursday, July 27, 2017.

If you have any questions or concerns regarding this matter, please contact me and I will be happy to address them with you.

Sincerely,

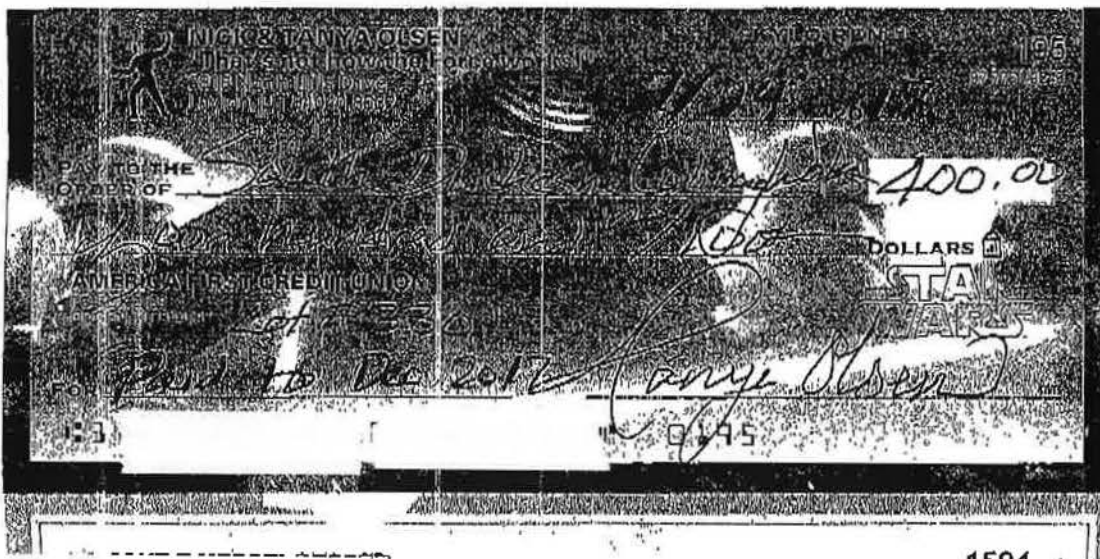


RUSSELL T. MONAHAN

RTM/aw

Enclosures

cc: Nick and Tanya Olsen



AGREEMENT TO PURCHASE CULINARY WATER

THIS AGREEMENT, made this, between South Duchesne Culinary Water Inc., a public utility corporation, hereinafter referred to as "Company" and hereafter referred to as "Consumer".

RECITALS:

THIS Agreement to provide culinary water service as specified by South Duchesne Culinary Water, Inc., and to clarify terms and conditions by which the Company will provide Water service to Consumer.

The parties hereto agree:

- (1) Company agrees to provide to Consumer and Consumer hereby agrees to be supplied with culinary water service to Phase 7 Lot 330 Utah Mini Ranches Subdivision, Duchesne, Utah, for the purpose of household use.
- (2) Culinary Water use will NOT be used for irrigation, landscaping, hauling water or resale.
- (3) Water service will be available to the Consumer on the day of Maintenance rate charge minimum per month for up to 8000 gallons of water per month. Customer agrees to make bi-annual payment of \$240.00. First pay per this contract will begin 7/1/2017. Second payment due 1/1/2018, and so on. Each additional 1000 gallons of water used over the initial 8,000 gallons of water will be at a rate of \$2.00 per thousand gallons or portion thereof.
- (4) Customer agrees to pay for water bi-annually in the amount billed by the Company, payable by the 21st of each month. Any amount not paid within 20 days will incur an additional fee in the sum of \$60.00. Any amount due more than 30 days shall bear interest of 18% per annum.
- (5) Company will terminate service when any billing is not paid within thirty (30) days. Service may be reinstated upon payment of all outstanding amounts and a \$150.00 fee for reactivation of water service is paid.

- (6) Payments shall be mailed to Company at: Make Checks to: SDCW
P.O. Box 294
Duchesne, UT 84021

Phone 435-738-6400, water emergency only 435-738-6200.

This agreement shall be subject to such changes or modifications as the Company may direct in the exercise of it's jurisdiction.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement at: 59 W. Main St. Duchesne, UT 84021.

Accepted and approved by:

SOUTH DUCHESNE CULINARY WATER INC.

By _____
Jeff Schnars
Certified Water Operator
#26134

Consumer Information: Nick and Tanya Olsen

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P.O. Box 294
Duchesne, UT 84021

Phone 435-738-6400, water emergency only 435-738-6200.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement at: 59 W. Main St. Duchesne, UT 84021.

Accepted and approved by:

SOUTH DUCHESNE CULINARY WATER INC.

By _____
Jeff Schnars
Certified Water Operator
#26134

Consumer Information: Nick and Tanya Olsen

Mailing Address: 2818 North Hills Dr.
Layton, UT 84040
Telephone: 801-856-8188

Nick Olsen 7-24-17-
Consumer sign/date/soc.sec#.

Tanya Olsen 7/24/17-
Consumer sign/date/soc.sec#

EXHIBIT F

Informal Complaint Report

I apologize for not getting back with you sooner as I just got back the office today and catching up on work.

I did receive the envelope you sent but have not had a chance to review the paperwork you sent yet. I also received your message on my answering machine.

As the Informal Complaint stands, the complaint was closed 7/21/2017 after I received your formal response. Ms. Olsen has been advised to move forward and file her Formal Complaint with the Public Service Commission. As of now, we have no knowledge that she did so.

Thanks,
Maria

7-27-2017 (10:07 AM)

Dear Ms. Olsen,

SDCW has responded to your Informal Complaint. Your complaint is now closed in our office. Attached are the informal complaint report, SDCW attachments 1 and 2 for your review.

If you wish to move forward with a Formal Complaint, please fill out the attached Formal Complaint form and submit it to the UT Public Service Commission accordingly.

Thank you,

--
Marialie Wright
Manager, Customer Service
Division of Public Utilities
marmartinez@utah.gov
(801) 530-6604

7-27-2017 (11:23 AM)

I just received a call from Ms. Steed of SDCW informing me that they received a letter from Ms. Olsen's attorney asking them to "please" turn Ms. Olsen's water back on, along with a signed new contract and a check payment.

According to Ms. Steed, it is normal procedure for them to wait until the check clears the bank but this time they will just go ahead and turn the water back on.

I thanked Ms. Steed for the update and ended the call.
-Maria-

7-27-2017 (12:02 PM)

Marialie,

At your Directors (Chris Parker's), recommendation on Friday, July 21, 2017, I have already filed the formal complaint that was mailed out on Monday 7/24/17 and it was delivered yesterday 7/26/17, per my tracking number. Chris Parker has looked over my evidence and has encouraged me (given my strong evidence) to file an order to have my water turned on immediately during the long formal complaint process. I have looked over SDCW response below and am not surprised by their inaccuracy's ... AGAIN!... Might I also add that the recent shut off has nothing to do with what THEY say happened 8 to 12 years ago, and is why my Attorney back then had mailed them the Utah codes of requirements in terms of notices and shut off that they have NEVER obeyed. In reference to Ms. Steed response from YEARS ago. I went ahead and paid the connect fee to avoid long processes like this, that takes days and sometimes months to remedy.

In the end, I hope they never get away with this again. By the way, I'm not alone. I have neighbors who have been through the same issues with these people. Might I also add that their (SDCW) requested \$400 payment (Which I don't owe but I am paying anyway), was mailed off two days ago, along with their contract that they wanted me to sign for my water to be turned back on, is sitting in their PO box ONCE AGAIN!... They do not have an office anymore and do all of their business through a PO Box that they only pick mail up from a few times per month. How is the customer responsible for their inability to pick up payments? I am so shocked that the State of Utah allows a company to have so much control and to have access to peoples water without proper etiquette. So shameful. I am not stopping at the formal complaint process. I have gone almost 3 months without water and plan on taking my story to the local news. It won't be the first time the Steeds have been on the air for taking advantage of people. Google their reputation. They are crooks!

Sincerely,
Tanya

Thursday, July 27, 2017

Page 6 of 7

EXHIBIT G

FORMAL COMPLAINT FORM
PUBLIC SERVICE COMMISSION
Heber M. Wells State Office Building
160 East 300 South, Fourth Floor
P.O. Box 45585
Salt Lake City, Utah 84114

Complaints are public documents and are maintained on the Public Service Commission website. Further information on formal complaints is available at:

<https://psc.utah.gov/complaint-process/>

1. Name of Complainant: Tanya & Nick Olson
Address: 2818 North Hills Dr. Layton, UT 84040
Telephone No.: 801-856-8188
If represented by counsel, list:
Name: Russell Monahan
Address: 323 South 600 E. Suite 200 SL, 84102
Telephone No.: 801-545-8600
2. The utility being complained against is: South Duchesne Culinary Water
3. What did the utility do which you (the Complainant) think is illegal, unjust, or improper?
Include exact dates, times, locations and persons involved, as closely as you can.
Has been sent payment twice recently, but they are refusing to pick up my money at their PO Box. They have NO business address.
4. Why do you (the Complainant) think these activities are illegal, unjust or improper?
Many reasons! The tracking numbers show that my payments are in their possession, but they refuse to pick it up!
5. What relief does the Complainant request?
Water turned on!
6. Signature of Complainant: Tanya Olson
Date: 7/27/17