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Arizona Corporation Commission
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ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007-2927

RE: Exceptions To The Recommendation of the Administrative Law Judge in the matter of MONTEZUMA ESTATES PROPERTY OWNERS' ASSOCIATION (MEPOA) dba MONTEZUMA ESTATES WATER COMPANY(SALE OF ASSETS/CC&N TRANSFER) Dockets W-02064-A-04-0270 & W-04254A-04-0270

Dear Commissioners:

I am a member of a LLC which owns both developed and undeveloped property in the MEPOA service area. MEPOA is seeking approval of the sale of their water company to Montezuma Rimrock Water Company, LLC (MRWC). I attended and provided testimony at both the July 8th & October 28, 2004 hearings on this matter where Commission Staff twice recommended denial of the application. My letters to the ACC of 6/18/04 & 10/20/04 are part of the record. Exceptions to the 1/21/2005 recommendation of the Administrative Law Judge include:

The sole shareholder of MRWC, Ms. Patricia Arias is presently employed on a full-time basis by the Arizona Department of Environmental Quality (ADEQ) as an environmental health specialist. At the time of the 1st hearing she was based in Phoenix & transferred to a Flagstaff based position by the time of the 2nd hearing. Doug Olson, Ms. Arias's fiancé, is also an ADEQ employee (10/28 transcript, p. 210 & 211 - Future page references are to the same transcript) and attended both hearings. It is my understanding that ADEQ plays a significant role in the regulation and monitoring of rural water companies. There is the potential for a "Conflict of Interest" that could result in endangering public health, if an owner of a privately held water company is also employed by ADEQ, the department charged with monitoring Water Company's compliance with regulations designed to protect public health. The Commissioners; before approving the transaction proposed, should request/require ADEQ to provide documentation that ADEQ's management is aware of Ms. Arias's outside business activities as a water company owner and that ADEQ has determined no potential conflict of interest exists. That requested ADEA document as to why there is not a conflict of interest should be made part of the record on these proceedings. With recent increased public awareness of ethics/conflicts of interest it is important that State Agencies set an example by avoiding both the appearance & actuality of potential conflicts of interest.

At the 10/28 hearing significant concerns about the operation of the system were raised by Peter Sanchez, the father of Ms. Arias & President of MEPOA, and ACC Staff members Mr. Roland and Mr. Fisher. Those concerns included "Black Muck" in a water storage tank and significant system leaks. Mr. Sanchez's comments are included on pages 149 & 183/184 of the 10/28 transcript. During Mr. Roland's cross of Ms. Arias, MEPOA's current certified operator, (p. 212/213) she indicated she was unaware of the muck situation as the tank had not been used in a year as there was a hole in it & the adjacent well was not operable. Based on the record it appears the system, at a time of drought conditions & significant connection expansion, has been relying on one well & storage for at least a year. The question is this adequate supply coverage in the event of a well breakdown? As to the "Black Muck" problem equipping the storage tanks with an inexpensive sight gauge would quickly determine if a muck problem exists. The portion of Mr. Roland's direct examination of Mr. Fisher (p.253 thru 257) also contains several comments of concern about how the system is being operated. During Mr. Fitzpatrick's cross of Mr. Fisher (p. 259) Mr. Fisher indicates "I think the system has a lot of problems, and I think that Ms. Arias and Mr. Sanchez are, according to the testimony of Mr. Sanchez, part & parcel of the problem". While the proposed transaction brings a buyer to the table with an unknown financial capability (versus the apparent limited financial capability of MEPOA) it leaves property owners & users still relying on an absentee certified operator and the same field

management. A significant point is the property owner's are foregoing any control over water supply operations by selling to MRWC. In return they may receive something less than \$200 for each lot they own. It could be a better path for owners to negotiate with the adjacent (200 yards away) Arizona Water Company (AWC) who is well financed, has proven well capacity, a maintenance staff, and an ADEQ approved treatment plant based arsenic removal system at a price that is in the neighborhood of MEPOA's rate case value and put the other issues as to future water quality, service & supply behind them.

MEPOA's water system, per testimony of the current management/proposed buyer, at both hearings will require significant expenditures to cope with concerns related to water supply/transmission & new arsenic reduction regulations which take effect in January, 2006. MRWC has provided no documents or financial analysis (p.194) as to how they will address these concerns. As to water supply Mr. Sanchez said they might use the well (with a tested arsenic content of 30 parts per billion which is 20 parts per billion over the (p.140) new requirement) supplying the Sanchez residence (p. 152) as an additional water source or possibly develop another well(p. 139) on property he recently purchased. As to dealing with the new arsenic limits the testimony ranged from Mr. Sanchez's comment on policing the arsenic situation (p.199) that "ADEQ is just going to be checking the bigger companies" to Ms. Arias's thoughts (p. 208-209) that MRWC is considering using a residence based R/O system where one portion of the system would be tested every 9 years. To the best of my memory, Ms. Arias provided a listing of assets/liabilities at one of the hearings that indicated a personal net worth (the capital committed to her LLC MRWC would presumably be less) in the range of \$250,000 with a significant portion of that net worth coming from equity in a Glendale, AZ residence. In view of the possible extent of the system's financial requirements Item 37 requiring a performance/surety bond to protect user's interests is prudent. However the \$30,000 requirement is not enough in view of the possible magnitude of the investment required, especially since MRWC has not made a meaningful financial analysis of the alternatives and the funds required. In addition, the other restrictions placed on MRWC in Item 37 pertaining to encumbering assets without ACC approval & seeking recovery of excess cost over book value paid in a future rate proceeding limit MRWC's options in generating cash flow necessary to fund improvements & operations.

Item 25 of the recommendation is a very concise/somewhat incomplete description of the dealings with AWC. MEPOA's Board did not contact AWC, during the summer of 2003, as a potential buyer BEFORE putting the sale of the system to a membership vote. As a result of the 7/8/04 hearing, Mr. Sanchez on 7/22/04 contacted AWC (p. 239) requesting a "letter of denial" concerning AWC's interest in MEPOA. AWC issued an 8/5/04 letter to ACC concerning their interest in pursuing the acquisition of MEPOA's system providing MEPOA was also interested. Mr. Sanchez, Ms. Arias, & MEPOA's attorney were involved in providing AWC the information needed by AWC to evaluate the acquisition of the system. Per Mr. Sanchez (p. 179) testimony the process of providing the AWC requested records was done sometime during the two weeks before the 10/28/04 hearing. The comments of Ms. Arias, the other potential system buyer, (p.207-209 & 214-216) concerning her conversations with an AWC accountant as to a probable acquisition offer occurred during the same period of time. The unreasonable delay (at least 60 days after AWC expressed an interest) in providing requested information to AWC, the inherent conflict involved in a competing buyer and her father being involved in that process, the expressed distain (p. 142) Mr. Sanchez has for AWC, may well have lead to AWC either not receiving a fair hearing concerning their interest or AWC deciding it was too messy of a situation to get involved in. That is unfortunate as AWC is well equipped to deal with the system's current problems.

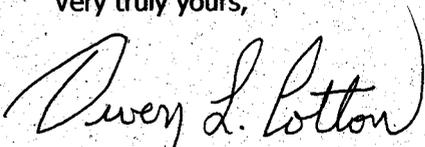
The quote of Mr. Sanchez in item 26 of the Recommendation as to how present users view AWC is supplemented as follows. I and Bruce Schell (a member of our LLC, & a MEPOA area resident/contractor) have contacted at least 10 MEPOA owner/users plus others involved in real estate activities in MEPOA's service area as to how they would view AWC acquiring the system. Several of those people contacted were excited about the possibility of AWC acquiring the system & mentioned having a water source with less mineral content, quicker service due to AWC's local crews, & the financial & engineering help AWC could provide in meeting new arsenic level regulations. Most people avoid controversy, and it is possible when presented with the option of MRWC or

AWC they just agree with the known preference of the person asking the question (especially if that person is the father of one of the potential buyers & also controls the water supply to their home). Perhaps Mr. Sanchez should have considered this factor before taking it upon himself to "Say No" to AWC.

Item 16 addresses MEPOA's history on water loss. Since completing the construction of our triplex in March, 2003 we have experienced two complete water outages and three instances where we have been shut done for service. The most recent supply line leakage situation (p. 149) occurred on 10/28/04, the day of the 2nd hearing. The incidence of shutdowns/leakage incidents is greater than any other property I have owned/lived in before. A good part of my life has been spent in smaller (as small as 1500 people) rural communities in Texas & Oklahoma where the regulation of water utilities is lax. I will say Mr. Sanchez is always concerned & responsive when we need service & gets the situation resolved as quickly as he can with the resources available. Our experience above can be compared to the service received this year when my wife & I spent the summer in Munds Park, where AWC provides community water service. While getting our newspaper from the driveway one morning I noticed a water line leak. My neighbor who was outside said he called AWC for service about 10 minutes before. About 20 minutes later, when we left the house to take our dog for a walk, an AWC crew & equipment had arrived. When we returned in an hour the crew had the leak fixed, the hole closed, and was repairing the asphalt. A larger provider isn't always bad especially when it results in fast efficient service.

I disagree with the recommendation of the Administrative Law Judge on this matter and ask the Commissioners to consider the above factors and reject the recommendation. Water service is an important matter in an area which provides mostly affordable housing to a growing population. Allowing MRWC to acquire MEPOA's water system is not in the best interests of the area's public health or the economical future of the service area. Your help in assisting our community in arriving at the best possible solution to its water supply situation is appreciated.

Very truly yours,



Owen L. Cotton

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