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Counsel for Plaintiffs

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF YAVAPAI

JOHN DOUGHERTY; FREDERICK  
SHUTE;

Plaintiffs,

v.

YAVAPAI COUNTY BOARD OF  
SUPERVISORS; JOHN DOES 1-10,

Defendants.

*P130000*

No. 201000585 -

COMPLAINT

(Declaratory and Injunctive Relief)

Plaintiff, by its undersigned attorneys for its complaint, allege upon personal knowledge and upon information and belief as follows:

NATURE OF THIS ACTION

1. This action challenges a decision of the Yavapai County Board of Supervisors (the "Board") to approve the Montezuma Rimrock Water Company ("MRWC") application for a Use Permit and Screening Variance to operate a production well on residential parcel 405-25-517.

2. In approving the Use Permit and Screening Variance at issue, the Board ignored applicable zoning and other legal obligations. The Board's action was not supported

COMPLAINT SEEKING JUDICIAL  
REVIEW OF ADMINISTRATIVE  
DECISION

- 1 -

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1 by substantial evidence, was contrary to law, arbitrary, capricious and/or an abuse of  
2 discretion. *See*, A.R.S. § 12-910(E).

3  
4 3. Plaintiffs seek, in pertinent part, reversal of the Board's decision. *See*, A.R.S. §  
5 12-910-(E).

6  
7 **PARTIES**

8  
9 4. Plaintiff John Dougherty owns property within 300 feet of MRWC's well, and  
10 is directly impacted by the Board of Supervisors decision to grant the Use Permit and  
11 Screening Variance to permit the operation of this well on residential property. Mr.  
12 Dougherty was involved in whatever administrative comment and appeal process was  
13 available to the public.

14 5. Plaintiff Frederick is a resident of Yavapai County and a Beaver Creek  
15 community leader and is directly impacted by the Board of Supervisors decision to grant the  
16 Use Permit and Screening Variance. Mr. Shute is also the founder and past president of  
17 Friends of the Well, an organization dedicated to protecting Montezuma Well National  
18 Monument. The Montezuma Well National Monument is approximately 300 feet from the  
19 location of the proposed well. Mr. Dougherty was involved in whatever administrative  
20 comment and appeal process was available to the public.

21  
22 6. Defendant, Yavapai County Board of Supervisors is a political subdivision of  
23 the State of Arizona.  
24  
25  
26



1                   **STATEMENT OF THE FINDINGS AND DECISION TO BE REVIEWED**

2  
3           11.    On or about September 11, 2009 Plaintiff John Dougherty filed a complaint  
4 with Yavapai County Development Services over the operation and the sale of water from  
5 MRWC's well site No. 4 on parcel 405-25-517, in a residentially-zoned area.

6  
7           12.    On or about October 7, 2009, Yavapai County Development Services issued a  
8 Notice of Violation ("NOV") to MRWC for "non-permitted use" and "outside storage" in  
9 violation of the county planning and zoning code. The NOV obligated MRWC to seek a Use  
10 Permit to operate the well, more than three years after it was drilled.

11  
12           13.    On or about October 21, 2009, Yavapai County Development Services issued  
13 an Administrative Review with Comment Period concerning the company's request to allow  
14 placement of a well site on a nonconforming parcel and waiver of the screening requirement.

15  
16           14.    On or about October 26, 2009, Plaintiff John Dougherty transmitted written  
17 opposition to the MRWC's request for the Use Permit and Screening variance. The written  
18 opposition required MRWC to go before the Planning & Zoning Commission and Board of  
19 Supervisors to obtain approval of the Use Permit and Screening Variance.

20  
21           15.    On or about January 20, 2010, the Planning and Zoning Commission voted  
22 unanimously to delay making a decision on the use permit and screening variance.

23           16.    On or about February 17, 2010, the Planning and Zoning Commission voted  
24 unanimously to recommend approval of MRWC's request for a Use Permit and Screening  
25 Variance. The Commission stated it was not concerned with the location of the well on the  
26

1 parcel and whether it violated setbacks, but only that the parcel was suitable for a production  
2 well.

3  
4 17. There was enough opposition from neighbors within 300 feet of the parcel to  
5 require unanimous approval by the Board of Supervisors.

6 18. On or about March 15, 2010, the Board of Supervisors unanimously approved  
7 MRWC's Use Permit and Screening Variance for the parcel. This final action of the Board  
8 of Supervisors is the decision that is at issue in the instant case.<sup>1</sup>  
9

10 **COUNT 1**

11 **(The Board's Decision is Contrary to Law and in Direct Violation of the Yavapai**  
12 **County Water Well Code Requiring Setbacks)**  
13

14 19. Plaintiffs re-allege and incorporate the preceding paragraphs as if fully set forth  
15 herein.

16 20. Yavapai County Water Well Code, Reg. 1-2-203 (A) states that "[n]o well shall  
17 be approved for construction in a location less than 50' from the property boundaries of the  
18 parcel on which the well is proposed for construction. . ."

19 21. There is no single spot on parcel 405-25-517 where a well can be drilled so  
20 that it is at least 50 feet away from all four property boundaries. The current well is  
21 approximately 41 feet from the back property line – in direct violation of the Code.  
22  
23

24  
25 <sup>1</sup> Pursuant to A.R.S § 12-909 Plaintiffs do not anticipate that a transcript is to be  
26 designated as part of the record.



1 26. Neither the County nor MRWC notified, for example, Montezuma Well  
2 National Monument and/or the Yavapai-Apache Nation prior to the January 20 and February  
3 17 Planning & Zoning Commission hearings about the proposed use permit/variance.<sup>2</sup>  
4

5 27. Montezuma Well National Monument Superintendent Kathy Davis requested  
6 that the Yavapai County Planning & Zoning Commission delay its February 17, 2010 hearing  
7 to give the Park Service time to assess the situation because it had only learned of the hearing  
8 on February 4 from a concerned citizen. The Commission rejected her request when it voted  
9 to recommend approval of the use permit/variance.  
10

11 28. The Board's approval of the Use Permit and Screening Variance is in direct  
12 violation of the Yavapai County Planning and Zoning Ordinance. *See*, Ordinance at §  
13 209(I)(D)(1) and (4). The Board's action is not supported by substantial evidence, is contrary  
14 to law, is arbitrary and capricious or is an abuse of discretion. *See*, A.R.S. § 12-910(E).  
15  
16

### 17 COUNT 3

18 **(The Board of Supervisors Failed to Comply With the Basic Requirement For a Citizen**  
19 **Participation Plan Pursuant to Section 209 of the Yavapai County Planning and Zoning**  
20 **Ordinance)**  
21

22 <sup>2</sup> Apparently, the County has asserted that no notice to the Montezuma Well National  
23 Monument was required because, according to their database, the monument is slightly more  
24 than 300 feet from the parcel. This is incorrect. Even, however, assuming, *arguendo*, that  
25 the database is correct, the County is obligated to notice, in part, property owners, interested  
26 parties, political jurisdictions and public agencies that may be affected by the application”  
regardless of distance from the boundary. *See* Ordinance at § 209(I)(D)(4); *see also, e.g.*, §  
209(I)(D) (1) (300 feet constitutes the “minimum” area for inclusion in the target area).





1           1. Find that the Board's approval of MRWC's Use Permit and Screening  
2 Variance is not supported by substantial evidence, is contrary to law, is arbitrary and  
3 capricious or is an abuse of discretion;

4  
5           2. Reverse the Board of Supervisor's decision to approve MRWC's Use Permit  
6 and Screening Variance;

7           3. Award to Plaintiffs their reasonable attorneys' fees and costs;

8           4. Grant to Plaintiffs such other and further relief as this Court may deem just,  
9 equitable or proper.  
10

11 DATED: April 7, 2010

12  
13 THE SHANKER LAW FIRM, P.L.C.

14  
15  
16 By 

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