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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

GARY PIERCE - Chairman  
BOB STUMP  
SANDRA D. KENNEDY  
PAUL NEWMAN  
BRENDA BURNS

IN THE MATTER OF THE APPLICATION OF  
MONTEZUMA RIMROCK WATER  
COMPANY, LLC FOR APPROVAL OF A  
RATE INCREASE.

DOCKET NO. W-04254A-08-0361

IN THE MATTER OF THE APPLICATION OF  
MONTEZUMA RIMROCK WATER  
COMPANY, LLC FOR APPROVAL OF A  
FINANCING APPLICATION.

DOCKET NO. W-04254A-08-0362

PROCEDURAL ORDER

**BY THE COMMISSION:**

On October 30, 2009, the Commission issued Decision No. 71317, establishing permanent rates for Montezuma Rimrock Water Company, LLC ("Montezuma Rimrock") and authorizing Montezuma Rimrock to incur long-term debt in the form of a Water Infrastructure Finance Authority of Arizona ("WIFA") loan in an amount up to \$165,000, for the purpose of completing an arsenic treatment project as described in the Decision. *Inter alia*, Montezuma Rimrock was also ordered to make the following filings with the Commission by the following dates:

Deadline	Compliance Filing
December 31, 2009	Arizona Department of Environmental Quality ("ADEQ") Certificate of Approval of Construction ("AOC") for Well #4
April 30, 2010	ADEQ AOC for arsenic treatment project
May 31, 2012	Rate application using test year ending December 31, 2011
60 days after executing documents finalizing the WIFA Loan	Arsenic remediation surcharge application requesting approval of surcharge to provide funds to meet principal and interest obligations on WIFA loan
60 days after executing documents finalizing the WIFA Loan	Copies of each executed loan document or agreement setting forth the terms of the financing obtained

On November 24, 2009, a copy of an ADEQ Certificate of Approval to Construct ("ATC") was filed for Well #4, on which ADEQ indicated that Well #4's water exceeds the maximum

1 contaminant level ("MCL") for arsenic and that an AOC for the Well will not be issued until  
2 acceptable water quality data has been submitted.

3 On December 11, 2009, Montezuma Rimrock filed a letter requesting that the filing deadline  
4 for the AOC for the Well be extended to June 30, 2010, because Montezuma Rimrock would not be  
5 able to obtain an AOC until after completing installation of the arsenic treatment system.

6 On February 3, 2010, the Commission's Utilities Division ("Staff") filed a Memorandum  
7 stating that Staff agreed that Montezuma Rimrock would be unable to obtain an AOC for the Well  
8 without an AOC for the arsenic treatment system and, further, that Staff did not object to the  
9 requested extension to June 30, 2010, to file the AOC for the Well.

10 On February 11, 2010, a Recommended Order that would have granted the requested  
11 extension was issued by the Hearing Division, for consideration at the Open Meeting of March 2 and  
12 3, 2010.

13 On February 19, 2010, John E. Dougherty III, of Rimrock, Arizona, filed extensive objections  
14 to the Recommended Order.

15 On February 26, 2010, Staff issued a letter to Montezuma Rimrock expressing concern about  
16 Montezuma Rimrock's lack of compliance with the MCL for arsenic and requesting that Montezuma  
17 Rimrock submit to Staff, within 60 days, a detailed plan addressing and remediating the arsenic issue,  
18 explaining why Montezuma Rimrock declined to sign an ADEQ Consent Order related to the arsenic  
19 issue, and describing what actions Montezuma Rimrock had taken to date to comply with the Consent  
20 Order. The letter stated that if no plan were submitted within 60 days, the issue would be referred to  
21 the Commission's Legal Division for possible enforcement action.

22 At the Open Meeting of March 2 and 3, 2010, the Commission allowed public comment  
23 regarding the Recommended Order, discussed the Recommended Order, and unanimously voted to  
24 disapprove the Recommended Order.

25 On April 5, 2010, Montezuma Rimrock filed a letter in response to Staff's letter, including a  
26 description of steps already taken and being taken by Montezuma Rimrock to come into compliance  
27 with ADEQ. Montezuma Rimrock included a copy of an ADEQ Compliance Order issued on  
28 February 25, 2010, for which Montezuma Rimrock stated it had requested a hearing and an informal

1 settlement conference with ADEQ.

2 On April 13, 2010, a copy of a Yavapai County Superior Court Complaint, filed by Mr.  
3 Dougherty and Frederick Shute against the Yavapai County Board of Supervisors ("Board") on April  
4 7, 2010, was filed in this docket. The Complaint requested reversal of the Board's March 15, 2010,  
5 approval of a Use Permit and Screening Variance to allow Montezuma Rimrock to operate Well #4  
6 on residential parcel 405-25-517.

7 On October 1, 2010, a White Paper regarding wells and water use near Montezuma Well  
8 National Monument was filed.

9 On October 7, 2010, public comments were filed by a former board member of Montezuma  
10 Estates Property Owners Association ("MEPOA"). A petition with the signatures of 102 "property  
11 owners and/or residents within Montezuma Estates," expressing support for Montezuma Rimrock,  
12 was also filed.

13 On January 24, 2011, Montezuma Rimrock filed a request, pursuant to A.R.S. § 40-252, to  
14 have the Commission amend Decision No. 71317 to allow Montezuma Rimrock to seek funding from  
15 a private financial institution, with terms and prevailing interest rates of the financial institution.  
16 Montezuma Rimrock asserted that such an amendment would allow Montezuma Rimrock to meet an  
17 ADEQ Consent Order requirement to have its arsenic treatment facility completed by June 2011.  
18 Montezuma Rimrock asserted that the Environmental Impact Statement required by WIFA for its  
19 loan would take one to two years to complete with an estimated cost in excess of \$100,000.

20 On February 10, 2011, Staff issued a Status Report on Montezuma Rimrock, providing  
21 information regarding Montezuma Rimrock's status with ADEQ and WIFA, stating that Montezuma  
22 Rimrock was seriously attempting to fulfill its arsenic treatment mandate to comply with ADEQ and  
23 the Commission and that Staff was not recommending any action<sup>1</sup> at that time. Staff noted that  
24 Montezuma Rimrock's A.R.S. § 40-252 request was pending possible Commission action.

25 On March 14, 2011, Mr. Dougherty filed extensive comments in opposition to Montezuma  
26 Rimrock's A.R.S. § 40-252 request. Mr. Dougherty asserted that the Commission should set an  
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28 <sup>1</sup> Due to the context, this is understood to mean that Staff was not recommending any adverse action at that time.

1 Order to Show Cause hearing to consider revoking Montezuma Rimrock's Certificate of  
2 Convenience and Necessity.

3 On April 7, 2011, Mr. Dougherty filed a letter formally requesting to be included on the  
4 service list for "all documents and notifications of hearings or any other proceedings involving the  
5 Montezuma Rimrock Water Company." Mr. Dougherty included several attachments to his letter,  
6 including documents from the U.S. Environmental Protection Agency ("EPA"); AZTEC Engineering,  
7 Arizona LLC; the U.S. Department of the Interior National Park Service; and the Arizona Game and  
8 Fish Department.

9 From April 22 through 26, 2011, five comments were filed by Montezuma Rimrock  
10 customers expressing support for funding of the arsenic treatment plant.<sup>2</sup>

11 On April 27, 2011, e-mail correspondence between Mr. Dougherty and Commission  
12 personnel were filed. In the e-mails to Commission personnel, Mr. Dougherty asserted that action  
13 should be taken against Montezuma Rimrock to stop construction of a pipeline to link Well #4 to the  
14 location for the arsenic treatment plant.

15 On April 27, 2011, at the Commission's Staff Open Meeting, the Commission voted to reopen  
16 Decision No. 71317 pursuant to A.R.S. § 40-252 to determine whether to modify the decision  
17 concerning financing approval and related provisions. The Commission directed the Hearing  
18 Division to schedule a procedural conference to discuss the process for the A.R.S. § 40-252  
19 proceeding. Montezuma Rimrock attended the Staff Open Meeting via teleconference, and Mr.  
20 Dougherty attended in person.

21 On April 28, 2011, a Procedural Order was issued scheduling a procedural conference for  
22 May 16, 2011, at the Commission's offices in Phoenix, Arizona.

23 On May 10, 2011, Montezuma Rimrock filed a letter with numerous attachments, including a  
24 Declaration of Patricia Olsen, owner of Montezuma Rimrock, apparently made for purposes of the  
25 lawsuit in Yavapai County Superior Court, in which it appears Montezuma Rimrock is now a party  
26 defendant.

27 \_\_\_\_\_  
28 <sup>2</sup> The comments appear to have been received by the Commission's Consumer Services Section on April 21 and 22,  
2011.

1 On May 11, 2011, another customer comment was filed in support of the arsenic treatment  
2 project.

3 On May 16, 2011, a procedural conference was held as scheduled at the Commission's offices  
4 in Phoenix, Arizona. Montezuma Rimrock appeared through Ms. Olsen, and Staff appeared through  
5 counsel. Ms. Olsen stated that Montezuma Rimrock had an attorney to represent it, but that the  
6 attorney was unable to attend. Jodi Jerich, Director of the Residential Utility Consumer Office  
7 ("RUCO") attended, but stated that RUCO currently was just monitoring the case. Ms. Olsen  
8 indicated that Montezuma Rimrock had applied for financing from a single financial institution, but  
9 did not know when a decision on the application would be forthcoming. Staff indicated that it did not  
10 yet have the information necessary to produce a Staff Report because Montezuma Rimrock did not  
11 yet have a firm proposal for financing through a financial institution. Staff suggested that  
12 Montezuma Rimrock be required to make a filing in three weeks to provide the information for Staff  
13 to analyze for the Staff Report, which would be issued four weeks later. Staff indicated that customer  
14 notice at that point would not be valuable because it was not yet apparent what the financing  
15 information would be. It was determined that a Procedural Order would be issued to establish the  
16 filing deadlines for Montezuma Rimrock and Staff.

17 On May 16, 2011, a Procedural Order was issued requiring Montezuma Rimrock to file, by  
18 June 16, 2011, an update regarding its financing application with the financial institution referenced  
19 during the procedural conference, which update was to identify the financial institution; completely  
20 describe the terms of the financing requested; provide the status of the application; and if the  
21 application had been disapproved, describe the alternate arrangements Montezuma Rimrock was  
22 exploring to finance the arsenic treatment facilities for its system or any other actions Montezuma  
23 Rimrock intended to explore or to take to remedy its system's arsenic MCL exceedance. The  
24 Procedural Order also required Staff to file, by July 18, 2011, a Memorandum analyzing the  
25 information provided by Montezuma Rimrock and making recommendations as to notice and  
26 whether a hearing should be held. The Procedural Order required the Memorandum to be a full Staff  
27 Report if the financing application had been approved by a financial institution. The Procedural  
28 Order further required Montezuma Rimrock's counsel to promptly file an appearance if Montezuma

1 Rimrock is to be represented by counsel in this matter. Finally, the Procedural Order established a  
2 deadline and requirements for Motions to Intervene and responses thereto.

3 On June 9, 2011, Mr. Dougherty filed a letter requesting intervention.

4 On June 14, 2011, Mr. Dougherty amended the June 9, 2011, filing to request that a public  
5 hearing be held in this matter. Mr. Dougherty did not, however, specify for what purpose/s a hearing  
6 should be held.

7 On June 15, 2011, a public comment was filed by Karlene Voepel, a resident of Montezuma  
8 Estates and Montezuma Rimrock customer, regarding events allegedly occurring at a MEPOA  
9 meeting in January 2010 and for several weeks thereafter.

10 On June 15, 2011, Montezuma Rimrock filed a June 10, 2011, letter to Montezuma Rimrock  
11 from Sunwest Bank stating that Sunwest Bank had determined that Montezuma Rimrock does not  
12 appear to have sufficient cash flow to service the debt for its requested \$165,000 loan. Montezuma  
13 Rimrock did not include any information regarding alternate arrangements to finance the arsenic  
14 treatment facilities for its system or any other actions Montezuma Rimrock intends to explore or take  
15 to remedy its system's arsenic MCL exceedance.

16 Because it appears unlikely that Sunwest Bank is willing to provide a loan to Montezuma  
17 Rimrock, and Montezuma Rimrock has not provided any information regarding alternate means of  
18 financing arsenic treatment facilities or any other actions to be explored or taken to remedy its  
19 system's arsenic MCL exceedance, it is unlikely that Staff has sufficient information to make a  
20 meaningful filing on July 18, 2011. Additionally, it is unclear whether Montezuma Rimrock is to be  
21 represented by counsel in this matter. Finally, it is unclear for what purpose Mr. Dougherty desires to  
22 have a hearing scheduled in this matter. Thus, it is reasonable and appropriate to suspend Staff's  
23 filing obligation and to hold a procedural conference for the purpose of obtaining clarity as to these  
24 items and discussing the process to be followed in this matter. Also, because no objections have been  
25 filed to Mr. Dougherty's request for intervention, it is appropriate to grant Mr. Dougherty  
26 intervention at this time.

27 IT IS THEREFORE ORDERED that a **procedural conference** shall be held in this matter on  
28 **July 22, 2011, at 1:00 p.m.**, in Hearing Room No. 1 at the Commission's offices at 1200 West

1 Washington Street, Phoenix, Arizona 85007.

2 IT IS FURTHER ORDERED that **John E. Dougherty is hereby granted intervention in**  
3 **this matter.**

4 IT IS FURTHER ORDERED that the **requirement for Staff to make a filing on July 18,**  
5 **2011, is hereby suspended.**

6 IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules  
7 31 and 38 and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac vice*.

8 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized  
9 Communications) applies to this proceeding and shall remain in effect until the Commission's  
10 Decision in this matter is final and non-appealable.

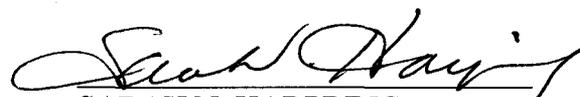
11 IT IS FURTHER ORDERED that any motion filed in this matter that is not ruled upon by the  
12 Commission within 20 calendar days of the filing date of the motion shall be deemed denied.

13 IT IS FURTHER ORDERED that any response to a motion other than a Motion to Intervene  
14 shall be filed within five calendar days after the filing date of the motion.

15 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance  
16 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Arizona  
17 Supreme Court Rule 42). Representation before the Commission includes appearing at all hearings,  
18 procedural conferences, and Open Meetings at which the matter is scheduled for discussion, unless  
19 counsel has previously been granted permission to withdraw by the Administrative Law Judge or the  
20 Commission.

21 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,  
22 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at  
23 hearing.

24 DATED this 29<sup>th</sup> day of June, 2011.

25  
26  
27   
28 SARAH N. HARPRING  
ADMINISTRATIVE LAW JUDGE

1 Copies of the foregoing mailed/delivered  
2 this 29<sup>th</sup> day of June, 2011, to:

3 Patricia D. Olsen, Manager  
4 MONTEZUMA RIMROCK WATER COMPANY, LLC  
5 P.O. Box 10  
6 Rimrock, AZ 86335

7 John Dougherty  
8 P.O. Box 501  
9 Rimrock, AZ 86335

10 Janice Alward, Chief Counsel  
11 Legal Division  
12 ARIZONA CORPORATION COMMISSION  
13 1200 West Washington Street  
14 Phoenix, AZ 85007

15 Steven M. Olea, Director  
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20 ARIZONA REPORTING SERVICE, INC.  
21 2200 N. Central Ave., Suite 502  
22 Phoenix, AZ 85004-1481

23 By:   
24 Debra Broyles  
25 Secretary to Sarah N. Harpring  
26  
27  
28