

ORIGINAL



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August 30, 2011

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Ernest G. Johnson  
Executive Director  
Arizona Corporation Commission  
1200 W. Washington Street  
Phoenix, AZ 85007

AUG 30 2011

ARIZONA CORP. COMM  
400 W CONGRESS STE 218 TUCSON AZ 85704

**Docket W-04254A-11-0323**

**Addition of Exhibits to  
Formal Complaint against Montezuma Rimrock Water Company**

On August 23, 2011, Complainants filed a formal Complaint against Montezuma Rimrock Water Company.

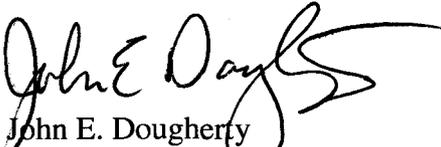
In the complaint, it was noted that two exhibits (23 and 24) were to be added to the complaint. At this time, Complainants have attached these two exhibits from a transcript of a March 2, 2010 Commission open meeting regarding MRWC.

Complainants have also filed a copy of the complete transcript of the March 2, 2010 meeting marked as Exhibit 25.

In addition, Complainants have attached Exhibit 2A to be included with the original set of exhibits submitted on Aug. 23, 2011.

Exhibit 2A is a Deed of Release and Full Reconveyance of a \$32,000 loan between MRWC and a private party that was signed on or about August 9, 2011. MRWC has never disclosed this loan to the Commission since it was incurred in October 2005.

Dated this 30<sup>th</sup> Day of August

  
John E. Dougherty  
For the Complainants

Mr. John E. Dougherty  
5225 N. Bentley Drive  
Rimrock, AZ 86335  
Resident and Property Owner in MRWC Service Area

Mr. William Nicholas Kopko  
5185 Kramer Drive  
Rimrock, Arizona 86335  
MRWC Customer

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Copies of the foregoing mailed  
This 30th day of August, 2011 to:

Douglas C. Fitzpatrick  
LAW OFFICE OF DOUGLAS C. FITZPATRICK  
49 Bell Rock Plaza  
Sedona, AZ 8635 1  
Attorney for Montezuma Rimrock Water Company, LLC

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



Mr. O'Lea:

1 appeals this. And the Company has 30 days to appeal.

2 That's why the 30-day timeframe.

3 But, basically, what this says is that the Company's  
4 out of compliance for arsenic, which we all knew, that they  
5 have -- they have 10 days to issue public notice. They have  
6 15 days to submit an application for Approval to Construct,  
7 for approval of the arsenic treatment, which Staff was under  
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10 submitted an application for the Approval to Construct for the  
11 arsenic treatment.

12 The third thing is they have 30 days after the  
13 Approval to Construct is issued -- they have 30 days to  
14 complete construction of the arsenic treatment. They have 10  
15 days from the effective date of this order to start supplying  
16 either bottled water or some other type of water that meets  
17 the arsenic standard. And they have five days after the  
18 arsenic treatment is actually built to start testing it to  
19 make sure that it's meeting the requirements. And Staff just  
20 received this last Friday.

21 So based on that, if you were to issue a time  
22 extension on this, the date would probably be -- you would  
23 want to marry up the two dates to be June 30, 2010. If  
24 everything went perfectly, the Company could meet that date.  
25 If they stumble on anything, they're not going to be able to

1 meet that date and Staff's recommendation would be, if they  
2 can't meet that date, then we would do an Order to Show Cause  
3 where they would have to show why they should be given either  
4 more time, or why they shouldn't be fined, or why some other  
5 sanctions should not be imposed.

6 MADAM CHAIR: How are they going to meet that date  
7 if their WIFA loan has been suspended and if the National Park  
8 Service is investigating the location of the well and its  
9 impact on, you know, a national monument?

10 MR. OLEA: And for that piece on WIFA, I've actually  
11 asked the Executive Director of WIFA to be here. She's in the  
12 audience. She can probably answer exactly what's happening to  
13 WIFA. Ms. Judy Navarrete is here, if you want to hear from  
14 her. She can answer specifically what WIFA is doing with  
15 that.

16 The other option that we just found out today that  
17 we heard was that the Company said that they apparently have  
18 other financing that they could go to for the same amount but  
19 it would be from a private bank. I guess that's what I  
20 understood the Company to say today. And, on that, I have no  
21 details because I just heard that today.

22 MADAM CHAIR: Okay. And why -- why shouldn't we,  
23 given the issues with this Company in the past, and the  
24 concern of the neighbors and, obviously, apparently, the  
25 concern of the National Park Service, why should we grant

1 would be concerned that in the absence of an order that  
2 actually set forth, if you will, the specific allegations that  
3 the Company needs to respond to, it would be difficult for  
4 them to present their case appropriately.

5 COMMISSIONER KENNEDY: Well, my only concern is we  
6 have information and -- I don't know if I can make a  
7 recommendation that the information we received today be sent  
8 back to you for a reconsideration. I don't --

9 ALJ HARPRING: At the moment, what is before me,  
10 even, is application by the Company requesting an extension,  
11 and a Staff memorandum not objecting to it, essentially  
12 acquiescing in the extension of time. And then what is  
13 essentially public comment from Mr. Dougherty. The record  
14 isn't -- it -- it is somewhat nebulous and I would have to say  
15 at this point doesn't exactly include all of the information  
16 that we've seen today.

17 MADAM CHAIR: Okay. Mr. Olea, and then we'll come  
18 back to the Company.

19 MR. OLEA: Yes, Madam Chair and Commissioner  
20 Kennedy, you asked the question what would happen if you did  
21 nothing today. If you did nothing today, the Company is not  
22 in compliance. At that point, when they're out of compliance  
23 and basically you're doing nothing, has told Staff you're not  
24 going to give them the time extension, then the only option,  
25 at least that I see that Staff has, is to do an Order to Show

1 Cause because they're out of compliance.

2 At that point, we would do exactly like the judge  
3 said. We would list all the counts that the Company would  
4 have to respond to. And I don't know if I'm incorrect but  
5 that's -- that's how I see what happens if you do nothing  
6 today.

7 MADAM CHAIR: Okay. Go ahead.

8 MS. OLSEN: I would like to address the issue that  
9 came back in October had to deal with our well site and it was  
10 the question as to why didn't we get an Approval to Construct  
11 of the well. However, many times, many water companies will  
12 construct a well because we have no idea what it will produce.

13 Although MRWC did a fracture trace analysis and  
14 other kinds of scientific research, we felt that we could not  
15 get an Approval to Construct until we actually knew what the  
16 value of that well would be. It proved to be a very viable  
17 well, and that was the issue that was brought up in October.  
18 The concern was an Approval to Construct.

19 However, an Approval to Construct only -- even  
20 though we constructed it, and ADEQ does not necessarily  
21 require that you do an Approval to Construct a well, if you're  
22 going to just drill a well, as long as you do not put it on-  
23 line.

24 So until we are ready to put it on-line, do we get  
25 an Approval to Construct from ADEQ? Which we have obtained.

ARIZONA CORPORATION COMMISSION  
Open Meeting  
Excerpt: Item No. 14  
Montezuma Rimrock Water Company

Arizona Corporation Commission  
March 2, 2010

Transcribed by: Mass Transcription  
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[www.MassTranscription.com](http://www.MassTranscription.com)

## APPEARANCES ON THE RECORD:

## Commissioners:

Kristin K. Mayes - Madam Chair

Gary Pierce

Paul Newman

Sandra D. Kennedy

Bob Stump

## Madam Secretary

Sarah N. Harpring, Administrative Law Judge

## Staff:

Steven Olea, Director

Janice Alward, Legal Counsel

## Public Comment:

John Dougherty

## Company:

Patricia D. Olsen, Owner

## WIFA:

Judy Navarrete

Sarah Conrad

1 THEREUPON:

2 MADAM CHAIR: Let's go back on the record. We are  
3 now up to Item Number 14, Montezuma Rimrock Water Company,  
4 Application for Extension of Time Deadline Contained in  
5 Decision Number 71317.

6 Judge Harpring, if you want to begin with a  
7 discussion of the item and then we have one public comment.

8 ALJ HARPRING: Sarah Harpring, for the Hearing  
9 Division. This order grants Montezuma Rimrock Water Company  
10 an extension of the deadline in Decision No. 71317 for the  
11 deadline to file a copy of the Approval of Construction, or  
12 AOC, for its new Well Number Four.

13 The decision required the AOC for the well to be  
14 filed by the end of 2009, and after the decision Montezuma  
15 discovered that ADEQ will not issue an AOC for the new well  
16 until after an AOC has already been issued for its arsenic  
17 treatment facilities to treat the water from the well because  
18 the well's water exceeds the maximum contaminant level for  
19 arsenic of 10 parts per billion.

20 Staff has confirmed with ADEQ that indeed the AOC  
21 for Well Number Four will not be issued until an AOC has been  
22 issued for the arsenic treatment facilities, and Staff did not  
23 object to the requested extension.

24 The order extends the AOC filing deadline from  
25 December 31, 2009 to June 30, 2010, as requested by the

1 Company, and extensive comments have been filed by John  
2 Dougherty, or Dougherty, I'm not sure.

3 MADAM CHAIR: Dougherty.

4 ALJ HARPRING: Whose relationship to Montezuma is  
5 not entirely clear. But no amendments have been filed.

6 MADAM CHAIR: Okay. Mr. Dougherty is here, I think.  
7 And, also, is there anyone -- go ahead, John, if you want to  
8 come forward.

9 Is there anyone from the Company present? Okay.  
10 And, ma'am, if you want to sit here at counsel table and we'll  
11 go to you after Mr. Dougherty provides public comment.

12 MR. DOUGHERTY: Thank you, Madam Chair, and Members  
13 of the Commission. I appreciate the opportunity to be here  
14 today.

15 I am an interested party because I live and own a  
16 house within 300 feet of Well Number Four. I submitted  
17 extensive exceptions to the Administrative Law Judge's  
18 recommendation. I hope everybody's read that. And I'll just  
19 make really one important point.

20 Well Number Four and the arsenic treatment plant are  
21 completely interrelated. The arsenic treatment plant cannot  
22 come online without Well Number Four because the arsenic  
23 treatment plant requires 150 gallons per minute, and only Well  
24 Number Four is the only well within this Company's business  
25 that can do that.

1 Well Number Four can't come online without the  
2 arsenic treatment plant because it exceeds the arsenic  
3 standard. So, therefore, there's no reason to separate the  
4 deadline for Well Number Four and the arsenic treatment plant.  
5 They should be contemporaneous.

6 The Commission already has an April 30 compliance  
7 deadline for the arsenic treatment plant. All I'm asking is  
8 to roll forward the compliance deadline for Well Number Four  
9 to be the same time as the arsenic treatment plant on April  
10 30<sup>th</sup> because, frankly, they go hand-in-hand.

11 This Company has had numerous delays over the years  
12 and has failed to perform under the agreements that it made  
13 with the Corporation Commission when it was granted the  
14 certificate in 2005. It has not put in an arsenic treatment  
15 system to date. When they were given the certificate in '05,  
16 they said they would provide point-of-use or numerous reasons.  
17 That hasn't happened.

18 When they drilled Well Number Four, they put it in a  
19 parcel within 300 feet of my home without obtaining a use  
20 permit from Yavapai County up front. This is a residentially  
21 zoned neighborhood.

22 Now they're going through a big battle at the end of  
23 the game, years later, with neighbors who oppose this well  
24 facility in a residential area. This is a parcel that is  
25 surrounded by a six-foot fence, triple-strand of barbwire,

1 with equipment that's stored in the middle of an area. It  
2 should be in a commercial area. It should not be in the  
3 middle of our neighborhood.

4 Another thing is -- that I addressed as point number  
5 one, they did not file a truthful statement with WIFA when  
6 they tried to obtain the arsenic treatment loan for  
7 \$165,000.00. They failed to disclose key items in their  
8 Notice of Disclosure to obtain an exemption from meet the  
9 requirements, and WIFA has suspended their loan until they  
10 comply with an EA that will have -- need to have a Notice of  
11 No Significant Impact.

12 Importantly, this well is located adjacent to  
13 Montezuma Well National Monument, and this is going to -- is  
14 already stirring up a hornet's nest in Yavapai County. This  
15 Company failed to notify the National Park Service that this  
16 well was within 300 feet of their property, and the Park  
17 Service is now conducting environmental studies to determine  
18 whether this well will have an impact on the national  
19 monument.

20 So I think this is a major, major omission. This  
21 company has made severe management mistakes repeatedly, over  
22 and over and over. I'm just asking the Commission, give them  
23 one more delay, April 30<sup>th</sup>, on Well Number Four. Make it the  
24 same as the arsenic treatment system and let's see what  
25 happens and go from there.

1 Thank you very much.

2 MADAM CHAIR: Thanks, Mr. Dougherty, for being here  
3 and for your extensive comments. And I want to ask both the  
4 judge and the staff to -- Commission Staff to react to him,  
5 but, Commissioner Newman, you want to go ahead?

6 COMMISSIONER NEWMAN: Thank you, Mr. Dougherty. The  
7 Montezuma's Well issue is very interesting to me from federal  
8 -- well, not only because it's considered a holy Native  
9 American site and the water and the well is very, very  
10 important. What is the relationship between Montezuma's Well  
11 and -- and the Well Number Four, or -- and if you're not  
12 qualified to say that hydrologically, you should tell me but -  
13 -

14 MR. DOUGHERTY: I'm a journalist by training. I'm  
15 not a hydrologist --

16 COMMISSIONER NEWMAN: Right.

17 MR. DOUGHERTY: -- but USGS is conducting surveys --  
18 two surveys, it's my understanding, one in relationship to the  
19 Park Service and also another one with the Justice Department.  
20 It's unknown at this point and I think that's why an  
21 environmental assessment needs to be done.

22 But we do know Well Number Four is within 300 feet  
23 of the western boundary of Montezuma Well National Monument  
24 and I think the supervisor from the Park Service would be  
25 better equipped to answer questions on the direct impact at

1 this point. But we don't know.

2 COMMISSIONER NEWMAN: I just wanted the record to  
3 reflect at least, you know, my knowledge of this area and how  
4 it's not only, you know, importance from a hydrological  
5 standpoint, it actually has lots of cultural importance to --

6 MR. DOUGHERTY: To -- sorry.

7 COMMISSIONER NEWMAN: Yeah, to, I'm sure, the  
8 National Park Service and tribes who actually take their water  
9 out of the well and use it for their ceremonies. There's a  
10 whole extensive area of cultural involvement. Do you want to  
11 make a better record on that?

12 MR. DOUGHERTY: Madam Chair, Commissioner Newman, it  
13 is considered the emergence point for some of the native  
14 peoples there. Montezuma Well is a very significant cultural  
15 site in the southwest for the Native American people.

16 COMMISSIONER NEWMAN: So that's also interesting.

17 Madam Chair, I just have a question for you because  
18 I -- actually, I wasn't sure of Mr. Dougherty's connection to  
19 the case and whether he's an intervener or how -- how it  
20 worked. And so out of the, you know, out of just being  
21 careful in the case, I didn't want to have any discussions  
22 with him off the record or anything, so this is the only time  
23 I have to ask him. I didn't have even any paper on what he's  
24 asking about, but I do think it makes a lot of sense that the  
25 two issues are merged and that, you know, if we can create a

1 timeline that would be important.

2 And I don't -- we haven't heard from the Company yet  
3 so we have to hear from their position, but I do think Mr.  
4 Dougherty makes a good case. I just didn't want to have any  
5 ex parte communications with him before today (inaudible)  
6 paper prepared, per se.

7 MADAM CHAIR: Okay. I appreciate that. And, Mr.  
8 Dougherty, if you can just sit close because we may ask you to  
9 come back.

10 Why don't we go now to the Company and then I'd like  
11 to have Staff and the judge respond to Mr. Dougherty's  
12 comments.

13 Ma'am, if you could state, for the record, your  
14 name.

15 MS. OLSEN: I'm Patricia Olsen, owner and operator  
16 of Montezuma Rimrock Water Company. My degree is in geology.  
17 I have studied hydrogeology and that kind of stuff. I'm a  
18 grade three water and wastewater operator.

19 I did do a little bit of research. I have been --  
20 our WIFA loan was deferred due to the request -- the objection  
21 by Mr. Dougherty, so my loan has been deferred pending an EID,  
22 that's an Environmental Impact Document. Currently, I'm  
23 working on that and trying to do the research, however I'm not  
24 getting a lot of cooperation from Kathy Davis, who's the  
25 supervisor of Montezuma Well. I did get a little bit of

1 information from her and I'd like to share that with you.

2 I do want to first address the USGS publication,  
3 Water Resources Investigation Report Number 97-4156, in 1997,  
4 Hydrogeology and Water Chemistry of Montezuma Well and  
5 Montezuma Castle National Monument and surrounding area,  
6 Arizona. Increasing population and associated residential and  
7 commercial development have greatly increased water usage and  
8 consumption in the Verde Valley near Montezuma Well, a unit of  
9 Montezuma Castle National Monument in Central Arizona. Flow  
10 from Montezuma Well and water levels innate wells that are  
11 measured annually do not indicate that the groundwater system  
12 has been affected by development.

13 However, this was done prior to our entering into a  
14 drought stage. Well Number One, which is currently in  
15 operation, is closer to Montezuma Well, the actual well.  
16 Montezuma Well Number Four is at the boundary of -- Mr.  
17 Dougherty states that it's within the 300, however, according  
18 to the Yavapai County GIS, it was not. So that is why  
19 Montezuma Well was not notified. That was based on Yavapai  
20 County information.

21 I did request, myself, the addresses and names of  
22 everybody that needed to be contacted within the 300 feet area  
23 and they did not include Montezuma Well.

24 Well Number One, which is in current operation, is  
25 much closer to Montezuma Well than Well Number Four. Also, I

1 haven't received information from the Montezuma Well to help  
2 me complete my environmental impact document, however I have  
3 done my own research and did an investigation over there.

4 A preliminary investigation has revealed that  
5 Montezuma Well level has remained constant for the last 20  
6 years despite that we have been in a drought for approximately  
7 12 years.

8 Montezuma Well -- and I received this information  
9 from Kathy Davis -- is -- the depth is approximately 55 feet  
10 and has remained at 55 feet for the last 20 years, almost  
11 since the whole time they have been monitoring it.

12 Their flow is 1,100 GPM. That's 1,100 gallons per  
13 minute they discharge from Montezuma Well for personal  
14 irrigation and for private irrigation, homeowners or  
15 residential areas. I'm not privy to who the private people  
16 that have access to the irrigation.

17 Montezuma Well has made no attempts to recapture any  
18 discharged water for aquifer recharge purposes despite their  
19 own concern regarding groundwater levels within the area. So  
20 they are discharging 1.5 million gallons per day. MRWC is  
21 using 40,000 gallons per day, and that is at our well  
22 currently that is closer to Montezuma Well.

23 Now, when we put Well Number Four on-line, we are  
24 not going to be using an additional 150 GPM. That's the  
25 capacity of that well. This is just going to switch from one

1 area to another. So we're talking 40,000 gallons per day  
2 within a 1,000-foot radius different.

3 Montezuma Well does not currently have a groundwater  
4 monitoring system and Montezuma Well's artesian flow does not  
5 have continuous monitoring, nor does it have barometric --  
6 recordings of barometric pressure and correlating flow.

7 Montezuma Well has not addressed growth in the area  
8 prior to this instance. Other developments have been -- have  
9 not been opposed, which increases the demand from other water  
10 sources within the vicinity.

11 This is being treated as brand new withdrawal. This  
12 is not the case. This allows MRWC the ability to transfer the  
13 same withdrawal amount from one source to another, not an  
14 additional 150 GPM in addition to a certain withdrawal.

15 This new well provides MRWC the ability to implement  
16 groundwater withdrawal management practices. This will help  
17 to monitor the groundwater within the area and determine safe  
18 yield for a larger area. Other areas within the Verde Valley  
19 have not implemented this type of monitoring. Active  
20 groundwater withdrawal management is vital to the preservation  
21 of our valuable natural resource.

22 MADAM CHAIR: Okay. I appreciate that. I'm not  
23 sure it gets to the issue that we have in front of us today,  
24 but if I could ask you, Mr. Dougherty has suggested to the  
25 Commission today that we marry up the compliance deadline for

1 both the arsenic treatment, I believe, and the -- and the  
2 AOC for the well and the arsenic treatment. Your thoughts on  
3 that?

4 And I would add, if you're now faced with an issue  
5 being raised by the National Park Service, how -- how are you  
6 going to -- and if WIFA has withdrawn your loan or has  
7 suspended your loan, what does that do to your ability to  
8 achieve the AOC?

9 MS. OLSEN: MRWC was going to request from the  
10 Arizona Corporation to amend the Decision 71317 and requesting  
11 that I be able to receive private funding from an outside  
12 source rather than from WIFA.

13 MALE SPEAKER: That's not (inaudible).

14 MADAM CHAIR: Okay. So the answer is it's going to  
15 be difficult for you to move forward with the -- with the  
16 construction --

17 MS. OLSEN: Uh-huh.

18 MADAM CHAIR: -- without that WIFA loan.

19 MS. OLSEN: Right.

20 MADAM CHAIR: Right.

21 Mr. Olea, can you respond to these issues?

22 Obviously, there's a lot that's been revealed to us today, a  
23 lot of issues here and a lot of concern, I think, on the  
24 bench. And I would add, from my standpoint, we've -- we've --  
25 you know, we've had -- I think Mr. Dougherty is right, that

1 we've had some compliance issues in the past with this  
2 company and we've seen them several times in recent months.

3 MR. OLEA: Yes, Madam Chair and Commissioners, and,  
4 again, this is Steve Olea, for Staff.

5 Okay, the issue in front of you is Decision 71317.  
6 The initial request from the Company was to extend the date to  
7 submit the Approval of Construction from DEQ for Well Number  
8 Four from December 31, 2009 until June 30, 2010.

9 They did -- the Company did not ask for a time  
10 extension to submit the AOC on arsenic treatment. And the  
11 AOC, by Decision 71317, was to submit the AOC for arsenic  
12 treatment by April 30.

13 So Staff is in agreement with Mr. Dougherty that the  
14 two should be married up. The question is to what date.  
15 Based on the timeframe we're in today, there's no way that the  
16 Company is going to be able to meet the April 30<sup>th</sup> deadline.

17 And last Friday -- and I want to pass this out right  
18 now and then I'll explain what it is.

19 MADAM CHAIR: Okay.

20 MR. OLEA: Okay. What I just passed out was a  
21 Compliance Order from DEQ against Montezuma Rimrock. It was  
22 issued last Friday, February 26<sup>th</sup>. According to this, it  
23 doesn't become effective until one of two things happens. It  
24 either becomes effective 30 days after it's issued or on the  
25 day that the DEQ ALJ issues a final order if the Company

1 appeals this. And the Company has 30 days to appeal.

2 That's why the 30-day timeframe.

3 But, basically, what this says is that the Company's  
4 out of compliance for arsenic, which we all knew, that they  
5 have -- they have 10 days to issue public notice. They have  
6 15 days to submit an application for Approval to Construct,  
7 for approval of the arsenic treatment, which Staff was under  
8 the understanding that the Company had already done that, and  
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15 days from the effective date of this order to start supplying  
16 either bottled water or some other type of water that meets  
17 the arsenic standard. And they have five days after the  
18 arsenic treatment is actually built to start testing it to  
19 make sure that it's meeting the requirements. And Staff just  
20 received this last Friday.

21 So based on that, if you were to issue a time  
22 extension on this, the date would probably be -- you would  
23 want to marry up the two dates to be June 30, 2010. If  
24 everything went perfectly, the Company could meet that date.  
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1 meet that date and Staff's recommendation would be, if they  
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6 MADAM CHAIR: How are they going to meet that date  
7 if their WIFA loan has been suspended and if the National Park  
8 Service is investigating the location of the well and its  
9 impact on, you know, a national monument?

10 MR. OLEA: And for that piece on WIFA, I've actually  
11 asked the Executive Director of WIFA to be here. She's in the  
12 audience. She can probably answer exactly what's happening to  
13 WIFA. Ms. Judy Navarrete is here, if you want to hear from  
14 her. She can answer specifically what WIFA is doing with  
15 that.

16 The other option that we just found out today that  
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19 it would be from a private bank. I guess that's what I  
20 understood the Company to say today. And, on that, I have no  
21 details because I just heard that today.

22 MADAM CHAIR: Okay. And why -- why shouldn't we,  
23 given the issues with this Company in the past, and the  
24 concern of the neighbors and, obviously, apparently, the  
25 concern of the National Park Service, why should we grant

1 additional time to June rather than requiring that it be  
2 done sooner?

3 MR. OLEA: Well, you could require that it be done  
4 sooner but just -- just saying that isn't going to make it  
5 happen. You actually have to go through all the process, and  
6 the end game here is to get arsenic-free water to the  
7 customers, and they are the only game in town right now. They  
8 do have the CC&N.

9 MADAM CHAIR: Well, Mr. Dougherty -- I know they do.  
10 But Mr. Dougherty has pointed out that apparently Staff, in  
11 2005, had recommended a different option for this area.

12 MR. OLEA: And we may have, but I don't recall what  
13 that was at this point.

14 MS. OLSEN: May I comment?

15 MADAM CHAIR: Sure. You can go ahead and respond.  
16 Let me ask you an initial question, ma'am. Did you file your  
17 application for an ATC?

18 MS. OLSEN: Yes. That has been filed with ADEQ and  
19 we're just pending receiving the Approval to Construct.

20 MADAM CHAIR: Okay. Go ahead. If you could respond  
21 to the time deadline issue.

22 MS. OLSEN: When Montezuma Rimrock Water Company  
23 purchased Montezuma Estates Property Owner's Association Water  
24 Company in 2005, when the initial exchange was going to occur,  
25 or when MRWC was considering purchasing the water company, at

1 that time there were 73 customers. When Montezuma Rimrock  
2 Water Company actually bought the water company there were 123  
3 customers.

4 ADEQ, it's not a very formal -- but they do  
5 recommend that any system that is under 166, and this was, at  
6 that time, used point-of-use and felt that that was adequate.  
7 However, in the two years that Montezuma Rimrock Water Company  
8 has owned -- the first two years -- owned the water company,  
9 it was quite obvious because the population doubled.

10 So to do point-of-use was almost impossible to try  
11 and keep up knowing that the community is going to -- has a  
12 maximum build-out of 500. So to put in point-of-use and then  
13 to go back and request more money to do a centralized unit was  
14 almost redundant, and it was not cost-effective for the  
15 customers.

16 However, still, at this time, even though we are in  
17 a slump, there are people that we -- we're still growing. So  
18 to put in point-of-use is -- it just doesn't make any sense.  
19 It's not a viable choice. Now --

20 MADAM CHAIR: That's fine. That's not really my  
21 question. Let's just try to get down to the nub of this  
22 thing. You apparently are now under an order by DEQ, a  
23 compliance order --

24 MS. OLSEN: Right. I received that on Friday, and  
25 let me address the issues so that you can understand --

1 MADAM CHAIR: Yeah. And can you walk us through  
2 exactly --

3 MS. OLSEN: Yes.

4 MADAM CHAIR: -- how you intend to meet this  
5 compliance order and when?

6 MS. OLSEN: Yes. The first -- it is ordered Item A.  
7 It says, "Within 10 calendar days of the effective date of  
8 this order, Montezuma Rimrock shall issue a Public Notice."

9 Well, Montezuma Rimrock has continually complied  
10 with this. Every quarter it has submitted all of its  
11 monitoring.

12 "Within 15 calendar days," Item B, "shall submit to"  
13 -- "for an Approval to Conduct to ADEQ," which has already  
14 been submitted.

15 MADAM CHAIR: Okay.

16 MS. OLSEN: Item C, "Within 30 days, ADEQ issues the  
17 ATC." However, that is almost impossible because to order the  
18 unit, which we have designed for this system, it's going to  
19 take six to eight weeks to build from the company itself. So  
20 despite that, and until ADEQ gives the Approval to Construct,  
21 we cannot -- we cannot construct it. We cannot begin to order  
22 the -- the system because we don't know if ADEQ is going to  
23 have any questions, any changes, any other recommendations.  
24 We haven't -- we have to await that.

25 Also, within 10 calendar days of the effective date

1 of this order shall provide alternative drinking source --  
2 an alternate drinking source to its customers. That's Item D.  
3 And MRWC does not have a problem with that. MRWC is already  
4 currently contacting -- or working with a water company to  
5 provide alternative drinking source.

6 MADAM CHAIR: Well, let me just say I have a problem  
7 with that. I mean this is ridiculous. We cannot have a  
8 situation where people in this area are being forced to drink  
9 bottled water because the Company has been unable so far to  
10 complete the arsenic treatment.

11 So, Mr. Olea, or Judge Harpring -- Judge, can you  
12 respond to some of this? It seems like we're headed for a  
13 cliff here, or this Company is headed for a cliff, that's now  
14 foreseeable. Within a matter of weeks they're going to have  
15 to start handing out bottled water. The Company owner is now  
16 saying she can't get the system -- that it's going to take six  
17 to eight weeks for the system to be built and that she says --  
18 and I can't verify this -- that she can't get the system built  
19 unless she gets an ATC from DEQ.

20 So what -- I'm looking for some help either from you  
21 or from Staff about what to do under these circumstances.

22 ALJ HARPRING: Well, I certainly think that at the  
23 time that the order that resulted in Decision 71317 was  
24 written, the record was quite a bit different than what -- I  
25 mean, we've received quite a bit of new information just very,

1 very recently. Even the order that's before you today was  
2 written without a view to the information that was provided by  
3 Mr. Dougherty or by Ms. Olsen today.

4 I would think, as I believe Mr. Olea already said,  
5 that the April 30th deadline that's in Decision 71317 for the  
6 arsenic treatment facilities is not going to happen. I can't  
7 see at this point how it would happen.

8 The WIFA loan, as I understood it, was the Company's  
9 only option for obtaining the financing, at least at that  
10 time, to create the arsenic treatment facility in the first  
11 place. So without the availability of that, they are in a  
12 very bad place. Yeah.

13 MADAM CHAIR: I think you've very well summed it up.  
14 So maybe at this point it would be good to get it -- Ms.  
15 Navarrete -- where -- there you are, Judy. Would you come  
16 forward and -- if you're more comfortable sitting down, that's  
17 fine, or standing up, whichever is fine by you.

18 MS. NAVARRETE: I'm more comfortable sitting down.

19 MADAM CHAIR: Okay. Great. And, Judy, if you could  
20 just use the microphone, that'd be great. And state your name  
21 for the record.

22 MS. NAVARRETE: Judy Navarrete.

23 When we received a citizen's complaint about  
24 Montezuma, we went back and looked at the environmental  
25 information that we received and it was quite different from

1 the complaint, so we decided to not do a categorical  
2 exception for the environmental review and go ahead and do an  
3 environmental -- send out an environmental information  
4 document, which once we receive that back we'll do an  
5 environmental assessment.

6 And if -- it's a public process. If we issue a  
7 FONSI, Finding of No Significant Interest, we'll have a 30-day  
8 public comment period on that. And then, if everything goes  
9 correct -- the FONSI is able to be issued, then we can close  
10 the loan.

11 MADAM CHAIR: So you decided to not close the loan  
12 pending this environmental assessment?

13 MS. NAVARRETE: An environmental assessment, yes.

14 MADAM CHAIR: And that was because you found --

15 MS. NAVARRETE: It was new information.

16 MADAM CHAIR: You found a discrepancy between the  
17 information that the Company had originally provided in the  
18 application and the information provided by Mr. Dougherty?

19 MS. NAVARRETE: That's correct.

20 MADAM CHAIR: Okay. And can you give the Commission  
21 a sense of how long that process will be, your process?

22 MS. NAVARRETE: Well, once we receive the  
23 information back from the water company then we will take the  
24 information, look at it, and if we -- if there's -- you know,  
25 Sarah is here. She does the process.

1 So, Sarah, come here and --

2 MADAM CHAIR: Okay.

3 MS. NAVARRETE: She knows the process better than I  
4 do.

5 MADAM CHAIR: Okay, that's fine. And then if you  
6 can give us, also -- well, state your name for the record and  
7 then go ahead.

8 MS. CONRAD: I'm Sarah Conrad.

9 MADAM CHAIR: And talk into the microphone, if you  
10 could. There you go.

11 MS. CONRAD: I'm Sarah Conrad.

12 MADAM CHAIR: Okay.

13 MS. CONRAD: So as she was saying, once we receive  
14 the completed environmental information document, it will take  
15 us, you know, a couple of weeks to review it, do an  
16 environmental assessment based on that document. At that  
17 point, we issue a FONSI, a Finding of No Significant Impact,  
18 which is put in the newspaper for 30 days.

19 So when we get the EID back, we'll need a couple of  
20 weeks and then 30 days.

21 MADAM CHAIR: So you may issue a FONSI or you may  
22 not issue a FONSI.

23 MS. CONRAD: Correct.

24 MADAM CHAIR: And what happens if you don't issue a  
25 FONSI and you do find issues of merit?

1 MS. CONRAD: Then it would go to an Environmental  
2 Impact Statement level, which would be expensive.

3 MADAM CHAIR: Yeah. So then they have to do an EIS?

4 MS. CONRAD: Uh-huh.

5 MADAM CHAIR: Wow. Okay. So that's months and  
6 months and months of process.

7 MS. CONRAD: Possibly.

8 MADAM CHAIR: Okay. And this is all separate from  
9 whatever the National Park Service is doing, isn't it? Or is  
10 there a connection, a nexus between these two?

11 MS. CONRAD: There is a connection.

12 MADAM CHAIR: Okay.

13 MS. CONRAD: One of the questions in our  
14 Environmental Review Checklist asks if there's any impact to  
15 cultural resources, which is, of course, the National Park  
16 Service.

17 MADAM CHAIR: Oh. So if the National Park Service  
18 comes back and objects, and I assume the Company checked no on  
19 your application, and if now the answer is yes --

20 MS. CONRAD: The question is worded differently but,  
21 yes. They originally checked yes and the answer is now no,  
22 but yes.

23 MADAM CHAIR: Okay. Okay. Well, this is all clear  
24 as mud.

25 Yeah, Commissioner Newman?

1           COMMISSIONER NEWMAN: I just wanted to check. It  
2 is a little bit confusing now because the other added -- and I  
3 think we're going to have to delay this in some way, per the  
4 judge's intuition, I think that there's so many unknowns.

5           But there was testimony today that a private -- they  
6 wouldn't have to go through WIFA, and I need to know a little  
7 bit more about that, that there's a private person. So they  
8 don't need the WIFA loan to do the arsenic treatment, if you  
9 take the representation of -- of the representative of the  
10 Company today.

11           So how does that throw a wrench into things in terms  
12 of DEQ's involvement slash WIFA, or does WIFA have a different  
13 role than DEQ? Do you -- there was testimony today that they  
14 can do it on their own; they don't need a WIFA loan. So how  
15 does that factoid affect the process, if it's indeed true?

16           MS. CONRAD: We are both with WIFA.

17           COMMISSIONER NEWMAN: Okay. I know.

18           MS. CONRAD: And so if they don't -- if they don't  
19 use WIFA funding -- we get federal funding, which is why we  
20 have to do an NEPA review. If they don't use federal funding,  
21 we -- you know, our process will stop.

22           COMMISSIONER NEWMAN: So there will be no EA or --  
23 in the case --

24           MS. CONRAD: Not from us.

25           COMMISSIONER NEWMAN: But you're also -- I know

1 you're separate from DEQ but you're housed in the DEQ  
2 building and -- and is there -- I -- would the Department of  
3 Environmental Quality, given the concerns -- given other  
4 concerns, be involved in any way? Or is this -- is this what  
5 we just -- the reason why I'm confused is because I was  
6 presented with a paper that I've not seen until today that  
7 says before the director of the Arizona -- director of  
8 Environmental Quality. Do you hear what I'm saying?

9 MR. OLEA: Madam Chair?

10 MADAM CHAIR: Mr. Olea.

11 MR. OLEA: Madam Chair and Commissioner Newman, I  
12 think I can help there.

13 COMMISSIONER NEWMAN: Okay.

14 MR. OLEA: Two things. You asked the first  
15 question, what if they don't go with WIFA.

16 COMMISSIONER NEWMAN: Yes.

17 MR. OLEA: Well, they can't not go with WIFA unless  
18 you allow them to, because in the order that approved their  
19 financing application, it specifically stated that you are  
20 approving the financing for \$165,000.00 from WIFA. So you  
21 would have to amend that decision in order for them to go to a  
22 private bank.

23 The second thing is, if I recall correctly, and it's  
24 been quite a while since I looked at the rules of DEQ for  
25 this, but DEQ's rules are not going to be concerned with the

1 environmental impacts to Montezuma Well. They're going to  
2 be concerned with complying with the DEQ rules, which have to  
3 do with the proper construction and they do have setback  
4 requirements for the well from septic tanks. I don't recall  
5 setback requirements from a national monument or another well.  
6 Obviously, that could have changed since I last looked at the  
7 rules. It's been a while.

8 But I -- I don't think that if they don't go through  
9 WIFA they would have to do the Environmental Impact Statements  
10 because, as was stated by WIFA, the reason they have to do it  
11 with WIFA is WIFA uses federal funds and any time you use  
12 federal funds you've got to comply with a NEPA process, which  
13 includes all of the environmental assessments. If they went  
14 to a private bank, that could be a different story.

15 COMMISSIONER NEWMAN: Well, Madam Chair, boy is it  
16 hard to think through this -- this problem, but it seems to me  
17 that this Commission, if -- I'm actually a little bit  
18 surprised that DEQ doesn't have, you know, statutory -- a  
19 statutory way to get at this in a sense. But that doesn't  
20 mean that we, as a Commission, can't take notice of potential  
21 environmental problems.

22 We heard from the representative of the Company that  
23 one well is going down and this other well will just keep up  
24 with the flow, but we also heard that there's a potential in  
25 the future of -- of another -- a growth of more than 100

1 percent in this Company. So, I mean, for us to ignore a  
2 potential -- the Corporation Commission to ignore a potential  
3 problem for the wells existence, I don't -- I don't feel very  
4 comfortable with that at all.

5 So if DEQ doesn't have authority, I think that we at  
6 least have to take into recognition that there needs to be  
7 some science put to this, to look at whether there's a damage  
8 to Montezuma's Well.

9 MADAM CHAIR: Okay. Mr. Olea?

10 MR. OLEA: Madam Chair and Commissioner, you asked  
11 me earlier about what was Staff's original recommendation.

12 MADAM CHAIR: Yeah.

13 MR. OLEA: I'll read it to you. It's not going to  
14 make you any happier, but I do have a solution maybe --

15 MADAM CHAIR: Okay.

16 MR. OLEA: -- based on this. Okay. It's --  
17 basically, this was Decision 67583. This was the decision  
18 that gave the CC&N to -- to the current Company and the  
19 current owner. Finding of Fact 32 states that Staff is  
20 recommending a denial of the Company's application herein  
21 because Staff does not believe there's sufficient financial  
22 evidence to support MRWC's offer to acquire the Company's  
23 assets to ensure that the customers will continue to receive  
24 equal or better service than from the Applicant, even with the  
25 payment for the utility being made all in cash.

1                    Finding of Fact 33: Staff believes that  
2 Applicant's customers could better be serviced by the  
3 transaction going forward with Arizona Water Company as a  
4 buyer for the following reasons: Arizona Water Company's  
5 Rimrock System is within 600 feet of Applicant's system, AWC  
6 has a strong financial history, AWC has a new 350 gallon per  
7 minute well which can be interconnected with the Applicant's  
8 system and used to provide service the Company's service area,  
9 and AWC already has a Commission-approved plan for arsenic  
10 treatment when it is necessary.

11                    And it also goes on to Finding of Fact 34 that Staff  
12 also recommends that if Commission approves the purchase of  
13 the system by MRWC, some form of performance bond should be  
14 imposed to ensure ongoing viable operations in the event MRWC  
15 encounters financial difficulties.

16                    The order did require a \$30,000.00 bond, and I asked  
17 Mr. Bozzo if that bond was still in effect and, as far as we  
18 know it's still in effect. So that \$30,000.00 bond is sitting  
19 with you today in the business office.

20                    What I was -- you know, what I was thinking of here  
21 today is you could do one of two things. You could give the  
22 Company until June 30 to see if they could comply, and if you  
23 do that it's going to be a pretty tough collar, if you want to  
24 give them, you know, a couple more months, or something. That  
25 was -- so that's one thing you could do.

1           The other thing you could do is you could order  
2 Staff to do an Order to Show Cause and bring that forward to  
3 you, and one of the possible outcomes of that would be an  
4 interim manager. Just from what I read from the, you know,  
5 from the very old decision, which was issued back in February  
6 15, 2005, you may have Arizona Water Company willing to be the  
7 interim manager while things get fixed up and then turn it  
8 back over to this Company, since they are, apparently, just  
9 within a few hundred feet of where this Company operates.

10           So sitting here today, those are the only two things  
11 I can think of.

12           MS. OLSEN: May I comment?

13           MADAM CHAIR: Hang on just a second.

14           Okay, thank you, Mr. Olea. We have Commissioner  
15 Kennedy on the Board now.

16           COMMISSIONER KENNEDY: Madam Chair, Mr. Olea, will  
17 the Order to Show Cause send it back to the ALJ?

18           MR. OLEA: And I could use some help there from  
19 Legal, but it's my understanding that an Order to Show Cause  
20 would be another hearing where the Company would basically be  
21 asked to come and show to this Commission why it should not be  
22 fined or sanctioned and why one of the sanctions should not be  
23 an interim manager. And if they can convince you that you  
24 should not do that, then you would not do that. If they  
25 cannot convince you of that at the hearing then you would

1 order that through a rule that would be issued by the ALJ  
2 and then come to you to an open meeting for your final  
3 decision.

4 COMMISSIONER KENNEDY: And Madam Chair, Mr. Olea,  
5 the information that we have in front of us today that we've  
6 received, will this information -- will it be included in the  
7 Order of Cause -- or Order to Show Cause? Will it go back to  
8 the ALJ? That's my question.

9 MR. OLEA: At the Order to Show Cause hearing, the  
10 Company would provide whatever information it thought would  
11 convince you that you should not sanction it. Staff would  
12 provide you whatever information we thought you should have so  
13 you should sanction it.

14 So, yes, all the information that you're seeing  
15 today would be part of the evidence at that hearing that you  
16 could then make your decision on, plus any other information  
17 that we gather from DEQ or WIFA or, you know, whoever that we  
18 don't have today or that you have not heard today that we  
19 don't know about today.

20 MS. ALWARD: Chairman, Commissioners, you know, on  
21 the agenda we haven't noticed this for an Order to Show Cause  
22 discussion or a vote. So although the description of a  
23 possible avenue I think is appropriate by Mr. Olea, any  
24 extensive discussion on pursuing an Order to Show Cause today  
25 really hasn't been noticed.

1 MADAM CHAIR: Okay. I understand. So we'll --

2 COMMISSIONER KENNEDY: Madam Chair, before Mr. Olea  
3 gave a brief explanation, I was sitting here and I was trying  
4 to remember this case, and if I'm not mistaken, last year,  
5 back in October, when we first looked at this, there were some  
6 issues then. And if I'm not mistaken, I voted no, the October  
7 decision, because there were some issues that were raised by  
8 this Commission that Ms. Olsen could not answer.

9 MS. OLSEN: Yes, it was --

10 MADAM CHAIR: Hold on, please. Please.

11 COMMISSIONER KENNEDY: And I wanted to ask Judge  
12 Harpring, if we did nothing today and referred it back to you  
13 -- or if we do absolutely nothing today, what would happen?

14 ALJ HARPRING: If you did absolutely nothing today  
15 in terms of voting on anything, I would expect that you would  
16 bring it back on the next agenda for an open meeting, or  
17 possibly -- which could possibly be a Staff open meeting as  
18 opposed to a regularly scheduled open meeting here. And you  
19 would determine at that time, based upon how it was described  
20 in the agenda, what action you wanted to take going forward.

21 My concern -- initial concern with an Order to Show  
22 Cause, beyond what Ms. Alward has mentioned about proper  
23 notice in the agenda, is that the Order to Show Cause  
24 generally has counts that actually specify exactly what they  
25 are -- the Company would be expected to respond to. And I

1 would be concerned that in the absence of an order that  
2 actually set forth, if you will, the specific allegations that  
3 the Company needs to respond to, it would be difficult for  
4 them to present their case appropriately.

5 COMMISSIONER KENNEDY: Well, my only concern is we  
6 have information and -- I don't know if I can make a  
7 recommendation that the information we received today be sent  
8 back to you for a reconsideration. I don't --

9 ALJ HARPRING: At the moment, what is before me,  
10 even, is application by the Company requesting an extension,  
11 and a Staff memorandum not objecting to it, essentially  
12 acquiescing in the extension of time. And then what is  
13 essentially public comment from Mr. Dougherty. The record  
14 isn't -- it -- it is somewhat nebulous and I would have to say  
15 at this point doesn't exactly include all of the information  
16 that we've seen today.

17 MADAM CHAIR: Okay. Mr. Olea, and then we'll come  
18 back to the Company.

19 MR. OLEA: Yes, Madam Chair and Commissioner  
20 Kennedy, you asked the question what would happen if you did  
21 nothing today. If you did nothing today, the Company is not  
22 in compliance. At that point, when they're out of compliance  
23 and basically you're doing nothing, has told Staff you're not  
24 going to give them the time extension, then the only option,  
25 at least that I see that Staff has, is to do an Order to Show

1 Cause because they're out of compliance.

2 At that point, we would do exactly like the judge  
3 said. We would list all the counts that the Company would  
4 have to respond to. And I don't know if I'm incorrect but  
5 that's -- that's how I see what happens if you do nothing  
6 today.

7 MADAM CHAIR: Okay. Go ahead.

8 MS. OLSEN: I would like to address the issue that  
9 came back in October had to deal with our well site and it was  
10 the question as to why didn't we get an Approval to Construct  
11 of the well. However, many times, many water companies will  
12 construct a well because we have no idea what it will produce.

13 Although MRWC did a fracture trace analysis and  
14 other kinds of scientific research, we felt that we could not  
15 get an Approval to Construct until we actually knew what the  
16 value of that well would be. It proved to be a very viable  
17 well, and that was the issue that was brought up in October.  
18 The concern was an Approval to Construct.

19 However, an Approval to Construct only -- even  
20 though we constructed it, and ADEQ does not necessarily  
21 require that you do an Approval to Construct a well, if you're  
22 going to just drill a well, as long as you do not put it on-  
23 line.

24 So until we are ready to put it on-line, do we get  
25 an Approval to Construct from ADEQ? Which we have obtained.

1 We ended up getting that. So that was the October issue  
2 that was at hand. And you guys referred to several things and  
3 that was the issue that was back in October.

4 Also, I would like to bring -- this is a little bit  
5 of a digression, however I think it's important that you  
6 understand, and where I'm coming from, and where this Mr.  
7 Dougherty is.

8 Currently, we have an injunction against harassment  
9 from Mr. Dougherty, and I can read some information. This is  
10 from a Mr. Edward Borowski (ph). To whom it may concern, I'm  
11 writing this --

12 MADAM CHAIR: Ma'am, just one second. Ms. Alward,  
13 can we -- I have no idea if what she's saying is accurate, and  
14 I don't want -- there's a danger of someone being slandered  
15 here.

16 MS. ALWARD: And Chairman, Commissioners, you don't  
17 have to provide the opportunity at this time. If there's  
18 going to be further proceedings, she'll have an opportunity.

19 MADAM CHAIR: Yeah. So if you could -- no more on  
20 that line, okay?

21 MS. OLSEN: Okay. I just would like to mention that  
22 --

23 MADAM CHAIR: No.

24 MS. OLSEN: -- there is an injunction against  
25 harassment.

1 MADAM CHAIR: No. Stop. Okay.

2 Mr. Olea -- hang one just a second, Commissioner.

3 So it seems to me there's a lot of new information  
4 that the Commissioners are faced with here. I'm not  
5 particularly comfortable granting an extension again for this  
6 Company, and it seems to me that the option then is to -- you  
7 know, if we do nothing then Staff will do what Staff feels it  
8 needs to do, and it can also be brought back on a Staff  
9 meeting agenda in the next couple of weeks. Would that be  
10 accurate? Janice?

11 MS. ALWARD: Yes, we could -- Staff could either  
12 supplement a Staff Report with a recommendation and ask for  
13 another order, if that's something Staff would like to do.  
14 Alternatively, Staff could consider an appropriate --  
15 initiating an appropriate proceeding for your consideration.

16 MADAM CHAIR: Okay. And then in developing future  
17 information, from my standpoint, I think it would important to  
18 contact the National Park Service to find out what's going on  
19 from their end as well.

20 Commissioner Newman?

21 COMMISSIONER NEWMAN: Oh, we --

22 MADAM CHAIR: Can we go to Commissioner Kennedy  
23 again? That was my fault.

24 COMMISSIONER NEWMAN: No, not a problem.

25 COMMISSIONER KENNEDY: Madam Chair, I just wanted to

1 make sure that -- we've got consumers in this area, in this  
2 service territory, who are consuming arsenic, and that is a  
3 concern. So if we wait -- I mean it's like a double sword  
4 here.

5 And help me out, Mr. Olea, because I want to make  
6 sure I'm doing the right thing for the people.

7 MR. OLEA: Okay. And so I will try to help you out  
8 there, Commissioner Kennedy. The old standard for arsenic was  
9 50 parts per million, and it was that for many, many years.  
10 It was changed to 10 parts per million five or six years ago,  
11 and time passes quickly so I'm not sure, you know.

12 But, currently, the arsenic being -- the water being  
13 delivered by the Company, it's in that compliance filing I  
14 gave you, it's currently at 33 parts per million and 29 parts  
15 per billion. So if we were under the old standard, they would  
16 meet the standard. So basically what I'm trying to do here is  
17 DEQ is not pushing this any harder than any other system.  
18 Apparently, they don't feel there's a dire emergency because  
19 it's been here for a while. So the fact that you might delay  
20 this for three or four months, that shouldn't be a problem.

21 Now, if you were going to delay it for years then  
22 you might have a problem. So that's about the best I could do  
23 to put your mind at ease.

24 COMMISSIONER KENNEDY: Okay.

25 MS. OLSEN: May I comment?

1 MADAM CHAIR: Not -- just a second.

2 COMMISSIONER KENNEDY: Madam Chair, you mentioned a  
3 few minutes ago about her having -- the owner having to bring  
4 in bottled water.

5 MADAM CHAIR: Yeah, and I want to get to that issue.  
6 I know that's -- according to the -- and, Paul, if I could  
7 just -- to this -- to this issue.

8 At what -- at what date are they going to have to  
9 start hauling in water or providing bottled water, Mr. Olea?

10 MR. OLEA: Page two, at the bottom of the Compliance  
11 Order, it says within 10 calendar days of the effective date  
12 of this order. The earliest this order can become effective,  
13 I believe, is March 28. That would be 30 days after it was  
14 issued.

15 If the Company decides to appeal it then it's 10  
16 days after the final order from DEQ and that could be months  
17 down the line.

18 MADAM CHAIR: Right. And then there's the issue of  
19 -- and then on top of all that is the issue of where they're -  
20 - you know, even if we didn't delay it by a week or -- they  
21 still have now a WIFA delay and we don't know how long that's  
22 going to take. And they can't go to private financing unless  
23 we were to amend our order.

24 MR. OLEA: Correct.

25 MADAM CHAIR: So we have lots of layers of issues

1 here and I'm just not sure that we're prepared to answer all  
2 of these questions today.

3 Commissioner Newman?

4 COMMISSIONER NEWMAN: Madam Chair, I agree with you.  
5 I just don't know actually -- I guess a remedy is to do some  
6 research, come back in a couple weeks. That's certainly  
7 helpful. Or we can give it to the judge as well.

8 I just want a little bit more information because I  
9 know when I go to bed tonight and if I haven't asked this  
10 question, I'll hit myself. But you might as well lay it out.  
11 I mean what is the private financing? I want to know. And  
12 then, number two, you can answer this -- it's going to be a  
13 tough question. Are you seeking -- is the Company seeking  
14 private financing because they want to avoid an environmental  
15 assessment?

16 MS. OLSEN: No.

17 COMMISSIONER NEWMAN: So those are two questions.

18 MS. OLSEN: No. I'm still working -- I've just told  
19 them that I'm still trying to communicate with the National  
20 Park Service but I'm not getting the cooperation that I need  
21 in order to fill out my EID. However, I realize that DEQ has  
22 issued this Compliance Order and I have to comply.

23 We've been still moving forward. We've submitted  
24 out ATC. We actually had our arsenic treatment system on  
25 order and called them back because I don't know when the

1 funding is going to be released. So I have six -- I had six  
2 weeks to provide the Company with the money to purchase the  
3 arsenic treatment system.

4 COMMISSIONER NEWMAN: And that money is a promissory  
5 statement that you have already signed or --

6 MS. OLSEN: No. No, I haven't. That's why, when I  
7 came here today, knowing I was going to be here, I was going  
8 to request if there would be an amendment so that I can obtain  
9 private funding. Not because I'm trying to overstep this EID.  
10 I've been in contact with the National Park Services. I sent  
11 them some more requests for information so that I can continue  
12 and move forward, but if I don't get any information, how can  
13 I do an EID adequately?

14 COMMISSIONER NEWMAN: Okay. So, to conclude, the --  
15 and the Company's official reason for seeking private funding  
16 and not getting a low interest WIFA loan is --

17 MS. OLSEN: I need --

18 COMMISSIONER NEWMAN: -- why?

19 MS. OLSEN: -- to comply with ADEQ.

20 COMMISSIONER NEWMAN: Pardon?

21 MS. OLSEN: I need to comply with ADEQ's --

22 COMMISSIONER NEWMAN: Okay. Would it be more  
23 expensive going through the private sector or would it be less  
24 expensive for your ratepayers?

25 MS. OLSEN: It would -- I actually went to a bank

1 and was -- and said that the interest rate would be in the  
2 six percentile.

3 COMMISSIONER NEWMAN: And WIFA's interest rate?

4 MS. OLSEN: Is approximately four percent.

5 COMMISSIONER NEWMAN: And why is that in the  
6 interest of the ratepayers to do the six percent versus the  
7 four percent? We just heard testimony earlier this morning to  
8 borrow \$50 million on a 30 interest loan costs \$60 million in  
9 interest payment.

10 So in that sort of light, why would it be in the  
11 interest of the ratepayers to have to pay more for interest  
12 instead of going through WIFA?

13 MS. OLSEN: Well, I -- I believe that their health  
14 is of concern.

15 COMMISSIONER NEWMAN: I agree.

16 MS. OLSEN: And --

17 COMMISSIONER NEWMAN: And it's been nine years  
18 they've been waiting for something.

19 MS. OLSEN: Right.

20 COMMISSIONER NEWMAN: And what has the Company --  
21 what has your Company done in the nine years?

22 MS. OLSEN: We have been -- well, originally, we  
23 were going to do the point-of-use but, as I said before, we  
24 didn't -- we did not anticipate the growth that was going to  
25 happen.

1 COMMISSIONER NEWMAN: Okay.

2 MS. OLSEN: And so we've been doing research. It's  
3 just been ominous. The research and the companies that are  
4 out there trying to sell these systems that -- and I,  
5 personally, have worked for other water companies and we  
6 purchased these systems that were -- that cost hundreds of  
7 thousands of dollars and ended up not being able to operate  
8 and not even treating arsenic. So I guess I could have gone  
9 that route.

10 COMMISSIONER NEWMAN: And this equipment is on order  
11 is going to be my last question for you.

12 MS. OLSEN: It was on order but we halted it because  
13 I wasn't sure when this WIFA funding was going to come  
14 through. However, the Company is on hold and ready to start  
15 construction of it the minute I say yes.

16 COMMISSIONER NEWMAN: Okay. And --

17 MS. OLSEN: And if you give me the approval to get  
18 private funding, we will call the Company immediately and have  
19 them start the process of building the system so that we can  
20 put it on-line.

21 COMMISSIONER NEWMAN: I understand your point of  
22 view and I just had to ask you some more questions about it.

23 Madam Chair, do you mind if I ask Mr. Dougherty --  
24 if I can ask him one or two questions?

25 MADAM CHAIR: Well, let me -- yeah, in a second, but

1 I'd like to ask a couple of questions of the Company.

2 COMMISSIONER NEWMAN: Sure.

3 MADAM CHAIR: One thing we haven't discussed is the  
4 information provided by Mr. Dougherty that you were cited by  
5 Yavapai County for operating a commercial business in a  
6 residentially zoned neighborhood, and cited for distributing  
7 water from the Well Number Four. And then Yavapai County,  
8 according to him, and you can tell me if this is accurate,  
9 Yavapai County Planning and Zoning Commission voted to delay  
10 making a recommendation on whether to grant you a use permit.  
11 They then did recommend to the Board of Supervisors -- they  
12 voted to approve a recommendation to issue a use permit.

13 But according to Mr. Dougherty, neighborhood  
14 opposition to the use permit will require a unanimous vote of  
15 the supervisors to issue the permit, and that that is  
16 scheduled for a vote in mid-March.

17 MS. OLSEN: Okay. Just to go back a little bit on  
18 that, what you just stated --

19 MADAM CHAIR: Yeah.

20 MS. OLSEN: That Well Number Four is not connected  
21 physically to my system. It is not serving anybody. However  
22 --

23 MADAM CHAIR: But you want to connect it to your  
24 system.

25 MS. OLSEN: Right. I don't have the Approval to

1 Construct to put the pipeline in.

2 MADAM CHAIR: Well, they're saying you violated --  
3 they've already issued a citation to you. Is that accurate?

4 MS. OLSEN: Yeah, they did, but I wasn't serving.  
5 What I did is there was a construction guy. I mean he was  
6 doing road grading and he wanted some water for construction.  
7 I gave him the water to water the streets. It was not feeding  
8 anybody. It has never fed anybody. It doesn't have a water  
9 line. It's not connected.

10 MADAM CHAIR: Well, are you seeking the use permit  
11 to operate the well?

12 MS. OLSEN: Yes. And on February 16, the County,  
13 Planning and Zoning, unanimously voted to give me the permit,  
14 the use permit for that well site. However, it goes to the  
15 Board of Supervisors.

16 MADAM CHAIR: Okay.

17 MS. OLSEN: Now, I need to add one more thing. When  
18 we originally were drilling that well and doing the stuff on  
19 it, I was told by the County, when you are ready to put it on-  
20 line and start operating it, come to us and we will start the  
21 process so that we can turn it over to a commercial property.  
22 And that's where we're at.

23 MADAM CHAIR: Okay. Well, okay. Mr. Dougherty, I -  
24 - Commissioner Newman has some questions for you, and if you -  
25 - can you elaborate on -- obviously, your view is that Yavapai

1 County has not yet weighed in on this and there has to be a  
2 unanimous vote.

3 MR. DOUGHERTY: Madam Chair and Commission, last  
4 September a complaint was filed with Yavapai County, operating  
5 a business at this particular parcel without the proper  
6 zoning. This Company submitted a plot plan to drill this well  
7 in July of 2006. On that plot plan it stated they were going  
8 to place the well in a certain location. Well, unfortunately,  
9 they didn't put it in that location. That has now complicated  
10 the whole issue before the Supervisors to obtain the permit.  
11 They're in violation of the Yavapai County water code on top  
12 of everything else.

13 But the fact of the matter is, last fall they were  
14 distributing water to a road construction company. They were  
15 issued a Notice of Violation by Yavapai County. That  
16 triggered, for the very first time, an opportunity for  
17 neighbors to even know what the heck was going on there.

18 I protested the Notice of -- they were trying to  
19 administratively approve this through the County. I filed  
20 written objection. That's what triggered the hearing.

21 So four years after they bought the lot, three years  
22 after the drilled the lot, the public and the neighbors in  
23 that community had their first opportunity to find out what  
24 the heck was going on. And that's now triggered this rather  
25 divisive situation within the community, where I, my wife and

1 another gentleman have been cast as evil villains and  
2 slandered maliciously, I would say, in public hearings by  
3 other people associated with this Company, and I appreciate  
4 you cutting them off there at the unsubstantiated claims. I'm  
5 the bearer of bad news for them; that's basically it.

6 Now, the -- Yavapai County is a whole separate  
7 issue. They still have to get through that hurdle, and that's  
8 going to be a major hurdle because there's a lot of opposition  
9 growing in the community aside just from their citing issues  
10 just because of the well and environmental impacts. So I hope  
11 that answers your question involving Yavapai County.

12 MADAM CHAIR: Yeah. And so you're anticipating that  
13 the Supervisors will vote in mid-March?

14 MR. DOUGHERTY: March 15. The hearing is set.

15 MADAM CHAIR: Okay. Commissioner Newman?

16 COMMISSIONER NEWMAN: Thank you. Mr. -- I was just  
17 going to ask you about this -- you heard my question to the  
18 representative of the Company about environmental assessment,  
19 that if they don't go through a WIFA loan -- they're asking us  
20 to grant them the right to do this on their own, privately.  
21 And that might be a quick way of doing it, but it also might  
22 be an obfuscation for an environmental assessment.

23 What is your view on that?

24 MR. DOUGHERTY: Madam Chair, Commissioner Newman, I  
25 think it's clearly a dance around trying to meet the

1 environmental assessment with impact on their cultural  
2 resource there. Secondly, she, if I heard her right, did not  
3 identify a lender, did not identify any kind of terms, did not  
4 identify an interest rate or provide any information  
5 whatsoever concerning an alternative source of funding and  
6 whether, in fact, she can even get that.

7 I think it's going to be very, very questionable  
8 that anyone is going to make a loan on a well site that hasn't  
9 even been permitted by Yavapai County. And there's some  
10 serious questions whether they will permit this site. There's  
11 some legal issues that they have to surmount that we'll see.  
12 I mean I can't project what the supervisors will do, but  
13 there's also the right of appeal in Superior Court if the  
14 supervisor's decision does not take into account the -- the  
15 interest of homeowners immediately adjacent to this site.

16 And, as I said, there's some setback issues that  
17 they have to deal with. They didn't place the well even in  
18 the spot they told the County they were going to place it in.  
19 That's putting them in a very precarious spot at Yavapai  
20 County.

21 The Company's in a precarious position across the  
22 board, and any further extension and delay I think creates a  
23 further health hazard to the community and, ultimately, this  
24 cost of water that's being produced by this company is much,  
25 much higher than the other company down the road. The other

1 company has the arsenic treatment plant in place, and the  
2 other company is quite capable financially of taking care of  
3 the situation.

4 COMMISSIONER NEWMAN: And the other company is  
5 Arizona Water Company?

6 MR. DOUGHERTY: Arizona Water Company put in the  
7 water -- arsenic treatment plant, and that was the company  
8 Staff recommended a few years ago, yes, sir.

9 COMMISSIONER NEWMAN: Thank you, Mr. Dougherty.

10 MR. DOUGHERTY: Thank you.

11 MADAM CHAIR: I'm going to recommend that we pull  
12 this item from the agenda and not vote on it, unless there's  
13 another idea from the bench or significant opposition to that  
14 idea.

15 COMMISSIONER NEWMAN: Madam Chair, no, I totally  
16 agree. It just occurred to me, after Mr. Dougherty spoke,  
17 that I didn't finish all my questions about the private side.  
18 I asked enough questions to sort of wet my appetite but I  
19 think that that also needs to be disclosed. I mean,  
20 respectfully, to the representative of the Company, we would  
21 actually need to see the specifics of that and -- and I'm sure  
22 the judge will need to see the specifics of it.

23 And when it comes to health, you're right, that this  
24 needs to be done as quickly as possible, but it wasn't any of  
25 the Commissioner's fault that it wasn't done as soon as

1 possible. That's the Company's responsibility.

2 MADAM CHAIR: Okay. Commissioner Kennedy?

3 COMMISSIONER KENNEDY: Madam Chair, can I recommend  
4 that we put it on the Staff agenda so that we can start  
5 working the details out as soon as possible?

6 MADAM CHAIR: Yep. Yep. Mr. Olea?

7 MR. OLEA: Yes, Madam Chair and Commissioners,  
8 you're thinking about just kind of tabling it and doing  
9 nothing. Just from a Staff perspective, I was talking to --  
10 you know, I was talking to Ms. Alward and it really doesn't  
11 make a difference from a legal standpoint.

12 But from a Staff perspective, Staff would get a  
13 better sense of direction and would start doing exactly what  
14 you just talked about, getting everything in order, if the  
15 Commission just voted no instead of doing nothing.

16 MADAM CHAIR: Okay. Well --

17 MR. OLEA: Because a no vote means you're denying  
18 the time extension and then we would proceed accordingly.

19 MADAM CHAIR: Okay. That's the other option. All  
20 right. Well, why don't I call a vote on it then and we'll see  
21 where that falls and go from there.

22 Without any other questions from the bench or  
23 comments, Madam Secretary, please call the roll.

24 MADAM SECRETARY: Commissioner Kennedy?

25 COMMISSIONER KENNEDY: No.

1 MADAM SECRETARY: Commissioner Stump?

2 COMMISSIONER STUMP: No.

3 MADAM SECRETARY: Commission Newman?

4 COMMISSIONER NEWMAN: No.

5 MADAM SECRETARY: Commissioner Pierce?

6 COMMISSIONER PIERCE: No.

7 MADAM SECRETARY: Madam Chair?

8 MADAM CHAIR: No.

9 By a vote of five no's and zero ayes, you have not  
10 approved the extension of time for this -- for Montezuma  
11 Rimrock Water Company.

12 And that completes that item for today.

13 Thank you, WIFA, for being here, and everyone else  
14 who was here.

15

16 (Thereupon, the Item Excerpt from the open meeting  
17 concludes.)

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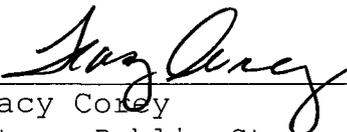
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WITNESS my hand and official seal this 27th day of August, 2011.

  
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Tracy Corey  
Notary Public-State of Arizona  
My commission No. 258973 expires  
June 29, 2015.