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Arizona Corporation Commission

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AZ CORP COMMISSION
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BEFORE THE ARIZONA CORPORATION COMMISSION

9 IN THE MATTER OF THE APPLICATION OF
10 MONTEZUMA RIMROCK WATER COMPANY
11 LLC FOR AN EMERGENCY RATE INCREASE

DOCKET NO. W-04254A-11-0296

RESPONSE OF MONTEZUMA
RIMROCK WATER COMPANY,
LLC TO STAFF REPORT

12 Montezuma Rimrock Water Company, LLC, by its undersigned counsel, responds to
13 staff's report concerning its application for interim rates. This response is supported by the
14 following Memorandum of Points and Authorities.
15

16 **MEMORANDUM OF POINTS AND AUTHORITIES**

17 Applicant generally agrees with staff's "Executive Summary" and history of the events
18 which preceded its application for the rate increase which is the subject of this proceeding.
19

20 Staff's conclusions are premised on its contention that there is 1] no evidence of a
21 sudden change which has brought hardship to the Company; 2] no evidence that the Company is
22 insolvent and 3] no evidence that the ability of the Company to maintain service is in serious
23 doubt pending a formal rate determination. The controlling law on the issues before the Court is
24 embodied in *Attorney General [AG] Opinion No. 71-17*. In that opinion, the criteria for
25 imposition of interim rates were described as follows:
26

27 The foregoing authorities make it clear that, in general,
28 courts and regulatory bodies utilize interim rates as an
emergency measure when sudden change brings hardship

1 to a company, when the company is insolvent, or when
2 the condition of the company is such that its ability to
3 maintain service pending a formal rate determination is
in serious doubt [*emphasis supplied*].

4 Staff asserts [and the Company agrees] that “one of these conditions must exist to apply
5 emergency rates.” If any one of the three conditions described in *AG Opinion No. 71-17* are
6 established, the Company is entitled to the interim rates it seeks:

7
8 1. Sudden change has brought hardship to the Company. The Water Infrastructure
9 Financing Authority [WIFA] has declined to provide the Company the financing it requires to
10 construct the arsenic treatment plant unless it conducts an Environmental Impact Study [EIS].
11 The cost of an EIS is prohibitive. So is the time it would take to conduct such study given the
12 impending April 2012 ADEQ deadline for building the plant.¹

13
14 The cost and time demands of the EIS have created an unanticipated financial obstacle to
15 construction of the arsenic treatment plan. The Company does not need to demonstrate the
16 existence of an emergency as that term is commonly understood:

17 Even though present financial conditions, prices, and wages
18 [showing almost unprecedented changes], together with the
19 financial condition of the plaintiff company, do not show a

20 ¹ WIFA’s requirement that the Company undertake an EIS is an unanticipated and
21 unforeseeable obstacle to construction of the plant. WIFA required the EIS in response to
22 concerns expressed about how the Company’s construction of Well #4 might impact Montezuma
23 Well. Evidence concerning the well’s hydrology strongly suggests that the concerns are more
24 imagined than real. A recent article from the Camp Verde Bugle covered this issue. It was
25 reported that “Six years ago the National Park Service made a request to the U.S. Geological
26 Survey for a comprehensive study of the well’s hydrology to determine if the proliferation of
27 wells surrounding [the] Montezuma well posed a threat.” According to USGS hydrologist
28 Raymond Johnson, “Our study shows the water comes up from the Redwall Limestone, a
cavernous formation about 750 feet below and is directed to the surface by a combination of
fractures, faults and impermeable basalt dikes...because the water feeding the well comes from
such a great depth, it is relatively ‘disconnected’ from area wells that are tapping into the
shallower lake deposits of the Verde formation but could be impacted by deeper wells, up
gradient from the Well.” The company’s Well #4 is only 400 feet deep, significantly more
shallow than the water source of Montezuma Well, 750 feet below the surface.

1 situation which would be technically denominated an
2 emergency, yet, if they do show a situation which makes
3 it altogether probable that the past and present rate is
4 insufficient to yield a revenue which will pay that fair average
5 return which the laws supposes, the commission is empowered,
6 and it may be its duty, to permit a temporary rate, limited to the
7 time required for making an investigation and finding of the value
8 of the property. *Omaha & C.B.St.Ry.Co. vs. Nebraska State
9 Railway Commission, 173 NW 690 [Supreme Court of Nebraska,
10 1919], cited with approval in AG Opinion #71-17.*

11 WIFA's insistence that the Company obtain an EIS has created a change of
12 circumstances that represents a hardship to the Company justifying the imposition of interim
13 rates.

14 2. *The Company is insolvent or on the brink of insolvency.* A utility's insolvency
15 justifies the imposition of interim rates. *Id. @ p. 13.* The financial challenges of the Montezuma
16 Rimrock Water Company are a matter of public record. The Company will present evidence to
17 establish its insolvency.

18 When ownership and control of the Company passed to Ms. Olsen in 2005, she inherited
19 an operation that was, in many respects, in disrepair and in need of capital improvement. That
20 Ms. Olsen has infused substantial personal resources into the water Company speaks to its
21 inability to meet its own obligations. The Company's insolvency constitutes independent
22 grounds for the imposition of interim rates.

23 3. *The Company's ability to provide or maintain service is in serious doubt.* The
24 Company's inability to provide water to its customers which complies with federal arsenic
25 standards is a matter of public record. Its ability to maintain service is not merely 'in serious
26 doubt' but amply demonstrated by the arsenic levels of its water. The imposition of interim rates
27 to enable financing and allow for construction of the treatment plant would make it possible for
28 the Company, for the first time, to maintain service and provide its customers with safe water.

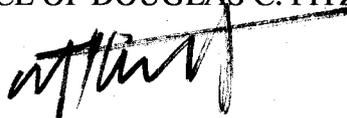
1 In summary, the Company will prove that all three criteria justify the rate increase it
2 seeks. The following observations of the Nebraska Supreme Court are insightful:

3 It would seem that no wrong would be done, which
4 could not be corrected, in allowing such increase in
5 fares as would make the company secure against
6 insolvency for a temporary period. Insolvency might
7 do permanent injury to the utility for which, in the long
8 run, the people would have to suffer. No great risk of that
9 should be taken. *Omaha v. Nebraska State Railway
Commission, 173 NW @ 692.*

10 An order which allows for interim rates and construction of the arsenic treatment plant
11 would serve the best interests of the community which constitutes the Company's service area.
12 The outcome of other pending proceedings involving this water Company and its fate are
13 unknown. It is clear, however, that "no wrong would be done" in allowing a rate increase which
14 would both protect the Company against insolvency and render safe the water it supplies to its
15 customers

16 DATED this 19th day of September, 2011.

17 LAW OFFICE OF DOUGLAS C. FITZPATRICK

18
19 BY 

20 Douglas C. Fitzpatrick
21 Attorney for Montezuma Rimrock Water Company, LLC

22
23 COPY of the foregoing mailed
24 this 19th day of September,
25 2011, to:

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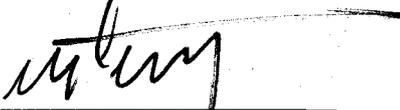
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