



0000130515

ORIGINAL

W-04254A-11-0323

**Ivo W. Buddeke III, RLS
PO Box 1176, Rimrock, AZ 86335**

Mr. Michael A. Fulton, Director
Water Quality Division
Arizona Department of Environmental Quality
1110 W. Washington, AZ 85007

RECEIVED

2011 OCT 17 A 9:30

AZ CORP COMMISSION
DOCKET CONTROL

Via Email: maf@azdeq.gov

September 19, 2011
re: Montezuma Rimrock Water Company DW-36-10

Greetings Mr. Fulton,

I am Ivo W. Buddeke, a 14-year resident within the Area of the "Certificate of Convenience and Necessity (CC&N) served by Montezuma Rimrock Water Company (MRWC) PWS 13-071.

In June, ADEQ amended Consent Order DW-36-10 to grant Montezuma Rimrock Water Company (MRWC) a 10-month extension for the Company to attain an Approval of Construction (AOC). The stated reason in MRWC's request was to AVOID a National Environmental Policy Act requirement for an Environmental Impact Statement! Now MRWC has proposed a leased titanium system based on the same engineering plan using a lease to operate the Arsenic treatment facility.

As a state agency using federal funds, ADEQ must equal or exceed federal standards with regard to NEPA's requirements. To wit:

*"NEPA requires federal agencies to integrate environmental values into their decision making process by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions."*¹

As such, it appears ADEQ breached NEPA policy by extending the Consent Order's deadline and thereby allowing MRWC to now seek an emergency rate increase before the Arizona Corporation Commission for the specific purpose of bypassing an EIS.

State agencies are required to adhere to federal policy under:
40 CFR 142: *The requirements for States to obtain and retain primacy for the Public Water System Supervision (PWSS) program.*

And Under 40 CFR 142, Subpart B: States must have: Regulations that are no less stringent than the federal regulations.

¹ US EPA website

Arizona Corporation Commission
DOCKETED

OCT 17 2011

DOCKETED BY 

Signing the First Amendment to the Consent Order without adhering to NEPA policy is a clear violation.

The grounds for granting the extension in the decision itself had not been met.:

DW-36-10

Section III. Compliance Schedule, paragraph C.:

“Not Withstanding the disposition of the funding request to WIFA, within one year from the effective date of this Order (June 7th, 2010) MRWC shall complete construction of the approved arsenic treatment system and submit an administratively complete application for an Approval of Construction (AOC) for the treatment system described in Section III(B) of this Order.”

And;

DW-36-10

Section VII. FORCE MAJEURE, paragraph A.

“MRWC shall perform all the requirements of this Consent Order according to the time limits set forth herein, unless performance is prevented or delayed by events which constitute a force majeure...financial inability of MRWC to comply with the terms of this Consent Order shall not constitute a force majeure”

A *force majeure* as defined in the Consent Order:

“as any event, arising from causes beyond control of MRWC ... which delays or prevents the performance of any obligation under this Consent Order and which could have been overcome or prevented by MRWC”.

It is clear from the Consent Order that MRWC's financial status is NOT a determining factor in a *force majeure*. Granting an extension ostensibly allows time for MRWC to produce a NEPA EIS. Yet the stated reason for the extension is to AVOID an EIS.

The extension of the deadline affords MRWC additional time to seek private funding and in the words of the ACC Utilities director Steve Olea²:

“...negate the need for an EIS thereby providing substantial savings for the ratepayers.”

This is not the first time an unjustified extension has been afforded MRWC:

On January 23, 2001, the Environmental Protection Agency (EPA) reduced the drinking water maximum contaminant level (MCL) for arsenic from 50 ppb to 10 ppb. While the process under which the MCL reduction was made was filled with delays and changes, the date that is important for the water system is January 23, 2001. It was that change that prompted Montezuma Estates Property Owners Association (MEPOA), the former

² addendum to request for 10 month extension from MRWC dated March 24th

operator of the Water System, to hire Patsy Olsen. She was to manage the water company and eventually become its owner because of the technical knowledge required to meet the new standards. In other words, the MRWC has known about the requirement since 2002.

The federal arsenic rule required all community water systems (CWS) to comply with the new 10 ppb MCL within five years of promulgation of the federal rule. That meant January 23, 2006 was the first deadline confronting the Water Company. Under the ARSENIC MASTER PLAN, ADEQ can grant a three-year exemption if the water system demonstrates that several conditions exist which prevents it from meeting the January 23, 2006 compliance date:

1. The water system is unable to comply with the arsenic MCL because of compelling factors, which may include economic factors.

THIS DID NOT OCCUR.

MRWC was ordered by the Arizona Corporation Commission to submit an Arsenic Abatement Plan as a condition of the sale of the Company from MEPOA. Olsen's plan was to implement a POINT OF USE Reverse Osmosis, under the sink arsenic treatment at an estimated Cost of \$50,000. That was a key issue MRWC had to convince the Commission to approve the sale of the Water Company. The cost was roughly a fifth of the original estimated cost of \$250,000 for an Iron-Oxide POE system similar to the one she plans to implement today. MRWC abandoned the POU plan, according to MRWC, due to rapid growth within the service area. The projected growth in that plan would be serving 280 households today if it had been implemented. Yet the POU plan was abandoned before the sale of the company closed escrow.

Hindsight is often 20/20 but the basic result is that MRWC was gambling on steady state growth in customer base and never had the financial strength to handle a growth spurt followed by a recession. The fact remains that the POU plan was not a viable plan due to the fact that MRWC's wells do not have sufficient production to serve the existing customer base.

2. The exemption from the MCL will not result in an unreasonable risk to public health.

THIS DID NOT OCCUR.

MRWC ratepayers have been exposed to arsenic levels that exceed the MCL for more than six years. The company only has the capacity to serve 92 households yet has over 200 hook-ups right now. The company has insufficient flow and storage for adequate fire protection. The company's interim source of potable water (the garage kiosk) is ineffective because customers have to make an appointment to get water and they are limited to 1 gal per appointment.

3. The water system does not have a reasonably available alternative source of water that can be used to achieve compliance with the arsenic MCL.

THIS IS NOT TRUE.

Arizona Water Company (AWC) has been providing potable water that meets the MCL for arsenic since 2006. AWC had installed a large capacity well and a main water line 2000 feet away from MRWC service area in 2007. MRWC declined to make provisions for use of that water source despite the cost factors involved with developing an addition Arsenic Treatment Facility. It would be reasonable to obtain water from the neighboring system with at least 5 times the customer base, a strong financial profile, a proven tract record and sufficient resources to handle growth or recession.

4. The water system is unable to make management or restructuring changes that will result in compliance with the MCL or improve the quality of their drinking water.

THIS DOES NOT APPLY.

MRWC has mismanaged its operations incurring triple the operating cost allowed by the ACC rate base calculations. Exorbitant perks for management allow the company to enrich the Owners and her family while depleting the company of scarce resources needed to come into compliance with the arsenic standards. (see ACC docket W-04254A-11-0323 on financial mismanagement)

5. Necessary capital improvements cannot be completed before January 23, 2006.

THIS DOES NOT APPLY.

MRWC through mismanagement has wasted company funds developing a well that does not have a Certificate of Compliance from Yavapai County Development services. The Company might certainly have had the resources to implement the POU plan before 2009 but has ended up wasting capital on a pipeline to nowhere and company perks.

6. The water system needs financial assistance for necessary capital improvements and has entered into an agreement to obtain the financial assistance or the water system has entered into an enforceable agreement to become part of a regional public water system.

THIS HAS NOT OCCURRED.

MRWC has not yet entered into an agreement for financial assistance necessary for capital improvements with any institution nor has it entered into an enforceable agreement to become part of a regional public water system.

The company has failed to demonstrate the requirements for the first exemption or the second extension, or the third extension. Has ADEQ adequately considered the factors required before granting the exemption or the two extensions?

Extensions to the Consent Order serve to prolong the community's exposure to higher risks of cancer and other health effects, higher fire danger and may jeopardize the delicate natural and cultural surroundings.

I will assume the proposed Treatment facility would be more expensive and much less robust than a simply connecting to the existing network of wells and treatment facilities already in place and owned by Arizona Water Company right next door.

Delivery of potable water has been provided to neighboring water system run by Arizona Water Company³ (AWC) since 2006. AWC provides water that has meets the quality standards for Arsenic. AWC is a financially solvent provider with 1200+ customers adjoining MRWC's CC&N area and already has lower rates for water which meets the MCL

For the reasons stated above, the unusual circumstances surrounding ADEQ's conduct in regulating this company raise questions about whether the agency is providing special treatment for Ms. Olsen, who is a former agency employee and whose husband also worked for ADEQ.

Allowing a former ADEQ employee to bypass the requirement of a NEPA EIS has the appearance of impropriety. ADEQ has effectively granted an exemption for an EIS instead of enforcing the original Consent Order.

Should not the priority of ADEQ be "*to protect public health and the environment*"?

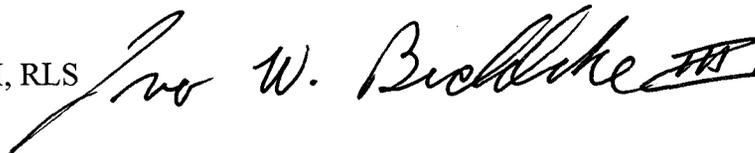
I ask the director to explain in detail its decision to invoke a *force majeure* in consent order DW-36-10.

I also respectfully request the Agency to consider the following amendment to the Consent Order:

Amend DW-36-10 to include a provision for completion of an EIS prior to issuing an Approval of Construction for Well No. 4.

Given that the cost of conducting an EIS is significant and MRWC may not be able to meet the burden to protecting the environment, I request ADEQ and the ACC to coordinate efforts to fully assess the economic and engineering factors which could provide water to the MRWC service area in the event MRWC abandons operations or is unable to meet arsenic treatment standards.

Sincerely,
Ivo W. Buddeke III, RLS



³ see formal complaint ACC docket W-04254A-11-0323 requesting feasibility study in the event MRWC fails.

via US mail to:

Arizona department of Environmental Quality
Office of Administrative Counsel
Attention: Brett Parke, Administrative
Counsel
110 West Washington
Phoenix, AZ 85007-2935

Arizona Corporation Commission
Docket control

Lyn Farmer
Az CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

Patrick Chan EES-WTR-6
US-EPA Region IX
75 Hawthorne Street
San Francisco, CA 94105

Arizona Ombudsman-Citizens' Aide
3737 N. 7th Street, Suite 209
Phoenix AZ 85014

OFFICE OF THE ATTORNEY GENERAL
Consumer Information and Complaints
1275 W. Washington
Phoenix, Arizona 85007-2926
Telephone:(800) 352-8431
via email: consumerinfo@azag.gov

John Dougherty
PO Box 501
Rimrock, AZ 86335
via email: jd.investigativemedia@gmail.com

Wm Nick Kopko
5185 Kramer Dr.
Rimrock, AZ 86335
via email: wnkop24@yahoo.com

Kathy Davis, Superintendent
National Park Service
PO Box 219
Camp Verde, AZ 86322
Via email: "Kathy Davis"
kathy_m_davis@nps.gov

Steven M. Olea, Director
Utilities Division
Az CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

Janice Alward
AZ CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

Arizona Reporting Service, Inc.
2200 N. Central Ave. -502
Phoenix, AZ 85004-1481

Douglas C. Fitzpatrick, ESQ
49 Bell Rock Plaza
Sedona, AZ 86351
Attorney for Montezuma Rimrock Water Co.
fitzlaw@sedona.net

Patricia Olsen, Owner/Manager via Attorney
listed above: Montezuma Rimrock Water

 Parsons-Korn
President, Friends of the Well
friends-of-the-well.org
info@friends-of-the-well.org
via email: kayo@kayodesign.com