

ORIGINAL



0000130677

1 Douglas C. Fitzpatrick
2 49 Bell Rock Plaza
3 Sedona, Arizona 86351
4 (928) 284-2190
5 Bar ID #005152
6 fitzlaw@sedona.net
7 Attorney for Montezuma
8 Rimrock Water Company, LLC

RECEIVED

2011 OCT 25 A 8 30

Arizona Corporation Commission

DOCKETED

OCT 25 2011

AZ CORP COMMISSION
DOCKET CONTROL

DOCKETED BY	MW
-------------	----

BEFORE THE ARIZONA CORPORATION COMMISSION

9	JOHN E. DOUGHERTY,)	DOCKET NO. W-04254A-11-0323
10)	
11	Complainant,)	MOTION TO STRIKE
12)	ADMINISTRATIVE SUBPOENA
13	-vs-)	DUCES TECUM
14)	
15	MONTEZUMA RIMROCK WATER)	
16	COMPANY, LLC,)	
17)	
18	Respondent.)	

16 Patricia Olsen, by her undersigned counsel, moves to strike the Administrative Subpoena
17
18 Duces Tecum issued on October 18, 2011 at the request of John E. Dougherty for the following
19 reasons:

- 20 1. It does not specify a place for production of the documents and records requested.
21 *ARCP 45[a][1][C]* ["Every subpoena shall command each person to whom it is directed to do
22 the following *at a specified time and place...*"]
23
- 24 2. The subpoena was not properly served. *ARCP 45[d]* requires that subpoenas be
25 served by "delivering a copy to the named person ..." Nothing in any of the rules allows for
26 substituted service of a subpoena on a person's legal representative or attorney.
27
28

1 3. It fails to allow a reasonable time for compliance in violation of *ARCP*
2 *45[e][2][A][ii]*. The subpoena seeks the production of 12 categories of records, one of which
3 contains three subcategories of documents and one of which contains five subcategories of
4 records. The subpoena was served on undersigned counsel on October 19 and specifies that it is
5 returnable "prior to the October 25, 2011 Procedural Conference" but does not indicate where it
6 is returnable. Given the large quantity of documents sought by Mr. Dougherty, the six days
7 allowed for production is inadequate.

9 4. Fees for attendance and mileage were not served with the subpoena in violation of
10 *ARCP 45[d][1]*.

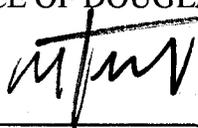
11 5. Service of the subpoena appears to be an attempt by Mr. Dougherty to circumvent the
12 limitations of *ARCP 34[b]* which allows a party to seek the production of "ten distinct items or
13 categories of items" from another party or witness. The subpoena includes a request for the
14 production of 18 categories and subcategories of documents.

15 Patricia Olsen will respond promptly to a properly framed and issued subpoena which
16 complies with the relevant Rules of Civil Procedure. For the reasons set forth above, however,
17 she requests that the Administrative Subpoena Duces Tecum in question be stricken.
18

19 DATED this 25th day of October, 2011.

20 LAW OFFICE OF DOUGLAS C. FITZPATRICK

21
22
23 By _____

24 
25 Douglas C. Fitzpatrick
26 Attorney for Patricia Olsen
27
28

1 ORIGINAL and 13 copies
2 of the foregoing hand-delivered
3 this 25th day of October, 2011,
4 to:

5 Arizona Corporation Commission
6 Docket Control
7 1200 West Washington Street
8 Phoenix, Arizona 85007

9 COPY of the foregoing
10 foregoing hand-delivered
11 this 25th day of October, 2011,
12 to:

13 Darak R. Eaddy
14 Utilities Division
15 Arizona Corporation Commission
16 1200 West Washington Street
17 Phoenix, Arizona 85007

18 John Dougherty
19 PO Box 501
20 Rimrock, Arizona 86335

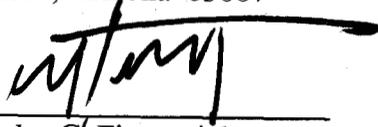
21 Patricia D. Olsen
22 Montezuma Rimrock Water
23 Company, LLC
24 PO Box 10
25 4615 E. Goldmine Road
26 Rimrock, Arizona 86335

27 Mrs. Janice M. Alward
28 Chief, Legal Division
Arizona Corporation Commission
Legal Division
1200 West Washington Street
Phoenix, Arizona 85007

Mr. Steven M. Olea
Director, Utilities Division
Arizona Corporation Commission
Legal Division
1200 West Washington Street
Phoenix, Arizona 85007

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Ms. Lyn Farmer
Chief, Hearing Division
Arizona Corporation Commission
Legal Division
1200 West Washington Street
Phoenix, Arizona 85007



Douglas C. Fitzpatrick

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

JOHN E. DOUGHERTY,
COMPLAINANT

DOCKET NO. W-04254A-11-0323

VS.

MONTEZUMA RIMROCK WATER
COMPANY, LLC,
RESPONDANT

**ADMINISTRATIVE
SUBPOENA DUCES TECUM**

TO: Patricia Olsen
c/o Mr. Douglas Fitzpatrick
Law Office of Douglas Fitzpatrick
49 Bell Rock Plaza
Sedona, AZ
86351

YOU ARE HEREBY COMMANDED, pursuant to A.R.S. §§ 40-241, 40-244, A.A.C. R14-3-109 and Ariz. R. Civ. P. 30 and 45 to produce for inspection and copying the following records prior to the October 25, 2011 Procedural Conference in the above-captioned action:

1. All loan payments made by the Montezuma Rimrock Water Company for a vehicle (White, PT Cruiser) normally driven by Company manager Patricia Olsen. This includes, but is not limited to, all payments made to Bank of the West.
2. All Company funds used to make the down payment, including state and local sales taxes, on the PT Cruiser.
3. The Arizona Department of Motor Vehicles title for the PT Cruiser.
4. The complete record of all payments made by the Company to Toyota and the purpose for such payments. If these payments were in connection for a loan payment for a Toyota vehicle, please provide the title for this vehicle.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Shaylin A. Bernal, Executive Assistant to the Executive Director, voice phone number 602-542-3931, e-mail sabernal@azcc.gov. Requests should be made as early as possible to allow time to arrange the accommodation.

1 5. The complete record of all payments made by the Company for title and registration fees
2 for all vehicles and a copy of the title associated with each payment, whether the vehicle is
3 titled to the Company or to private parties.

4 6. The complete records of all Company paid motor vehicle insurance policies including an
5 accounting of all premiums paid by the Company from the date of the first payment.

6 7. The complete record of all credit card bills, including the record of goods and services
7 purchased, that have been paid for with Company funds dating back to the Company's first
8 payment towards the Credit Card bill. This request includes, but is not limited to, the
9 following Credit Cards:

- 10 A. Chase Bank
- 11 B. Kohl's Department Store
- 12 C. American Express

13 (If these records are not available, please provide a waiver giving permission to Complainant
14 to obtain such records directly from the Credit Card Company. This waiver is to include all
15 identifying information necessary to obtain such information.)

16 8. The complete accounting record of mortgage payments to Wells Fargo Bank, or any other
17 mortgage lenders, made by the Company from the date the first payment was made. This
18 includes, but is not limited to, mortgage loan statement(s) for the property, or properties, that
19 are receiving or have received Company funds for mortgage payments.

20 9. The complete record of all Company payments made for "Student Loan" from the date of
21 the first payment for "Student Loan". Please identify the person who incurred the "Student
22 Loan" and their relationship to the Company.

23 10. The complete for the Company's Chase Bank account, or accounts, from the date the
24 account, or accounts, were opened to the date they were closed. If the Chase bank statements
25 are not in the possession of the Company, or its accountant, please provide a waiver giving
26 permission to Complainant to obtain such records directly from Chase Bank.

27 11. The complete record of payments made by the Company in connection with a \$32,000
28 loan received from Anna Barbara Brunner in connection with the Company's purchase of a
residential lot (Parcel # 405-25-517). This includes, but is not limited to, the following:

- A. The promissory note.
- B. Loan repayment invoices and records of payments.
- C. The amortization schedule.
- D. Any loan forbearance or forgiveness documentation.
- E. Any agreement for valuable consideration to be provided by Montezuma Rimrock
Water Company to Ms. Brunner, including, but not limited to, free or discounted
water delivered to Ms. Brunner's home.

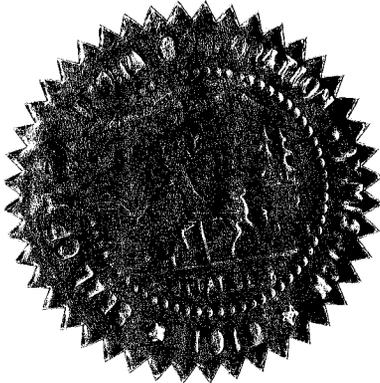
1 12. All communications between the Company and the Company's proposed Lessor of
2 an Arsenic Treatment Facility that discuss in any way the terms of the proposed arrangement
3 whereby the Lessor would provide the equipment necessary for the Company to meet State
4 and Federal Arsenic treatment standards.

5 YOU HAVE BEEN SUBPOENED BY:

6 JOHN E. DOUGHERTY
7 Complainant
8 Docket W-4254A-11-0323
9 PO BOX 501
RIMROCK, AZ 86335
602-710-4089
Jd.investigativemedia@gmail.com

10 DISOBEDIENCE OF THIS SUBPOENA constitutes contempt of the Arizona Corporation
11 Commission and may subject you to further proceedings and penalties under law, pursuant to A.R.S.
12 § 40-424.

13 Given under by hand the seal of the Arizona Corporation Commission this 18th day
14 of October, 2011.



27
28



Ernest G. Johnson, Executive Director
Arizona Corporation Commission

27 Persons with a disability may request a reasonable accommodation such as a sign language
28 interpreter, as well as request this document in an alternative format, by contacting Shaylin A. Bernal,
Executive Assistant to the Executive Director, voice phone number 602-542-3931, e-mail
sabernal@azcc.gov. Requests should be made as early as possible to allow time to arrange the
accommodation.