

ORIGINAL



0000130679

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: 32

AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

OCT 25 2011

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

BEFORE THE ARIZONA CORPORATION COMMISSION

9 IN THE MATTER OF THE APPLICATION OF)
10 MONTEZUMA RIMROCK WATER)
11 COMPANY, LLC FOR APPROVAL OF A)
12 RATE INCREASE.)

DOCKET NO. W-04254A-08-0361

DOCKET NO. W-04254A-08-0362

MOTION TO COMPEL
DISCOVERY

12 IN THE MATTER OF THE APPLICATION OF)
13 MONTEZUMA RIMROCK WATER)
14 COMPANY, LLC FOR APPROVAL OF A)
15 FINANCING APPLICATION)

16 Several months ago, the Company propounded data requests to Mr. Dougherty which
17 sought production of "copies of all communications (including but not limited to print copies of
18 e-mails) between you and WIFA, ACC, ADEQ, AZTEC Consulting and Ivo Buddeke for the
19 period commencing 01/01/2010 through the present." Mr. Dougherty responded: "All emails
20 between me and WIFA, ACC and ADEQ are available from the state agencies, which will
21 provide you a complete record. There are no e-mails to AZTEC Consulting. My e-mails with
22 private individuals are irrelevant to the matters before the Commission docket."

24 When undersigned counsel conferred by phone with Mr. Dougherty on October 7, he
25 admitted that he has "boxes" of records which relate to his communications with the state
26 agencies in question and agreed to make them available. The Company now wishes to make a
27 record of Mr. Dougherty's commitment to turn over such records which relate to his
28

1 communications with the state agencies in question.

2 The Company has also sought the production of written communications and print copies
3 of e-mails between Mr. Dougherty and Ivo Buddeke. Mr. Buddeke is a neighbor of both the
4 Company and Mr. Dougherty. Mr. Buddeke is extremely interested in the issues before the
5 Commission. Mr. Dougherty is in regular communication with Mr. Buddeke about the pending
6 proceedings. According to Mr. Dougherty, he speaks to Mr. Buddeke “all the time” about the
7 proceedings in question and the water company.
8

9 Mr. Dougherty contends that “third party e-mails” are irrelevant and that he will “fight”
10 before turning over any such communications. Mr. Dougherty does not, apparently, understand
11 that relevance is not the standard which controls the discoverability of evidence under the Rules
12 of Civil Procedure. Neither does Mr. Dougherty have any authority that “third party e-mails” are
13 protected from discovery.
14

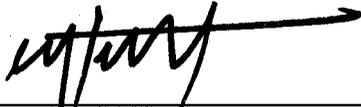
15 ARCP 26[b][1][A] provides “...It is not grounds for objection that the information
16 sought will be inadmissible at the trial if the information sought appears reasonably calculated to
17 lead to the discovery of admissible evidence.” Given Mr. Buddeke’s interest in the pending
18 proceedings, proximity to the Company’s Well #4 and close cooperation with Mr. Dougherty,
19 the communications between Mr. Dougherty and Mr. Buddeke are discoverable. For such
20 reasons, the Company requests that the Court confirm Mr. Dougherty’s obligation to release the
21 records which relate to his communications with the specified state agencies and also order him
22 to turn over all communications, including print copies of e-mails, between him and Mr.
23 Buddeke.
24
25
26
27

28 ///

1 The Company further requests that it be awarded its reasonable attorney's fees incurred
2 in connection with the preparation and submission of this motion.

3 DATED this 25th day of October, 2011

4 LAW OFFICE OF DOUGLAS C. FITZPATRICK

5
6 BY 

7 Douglas C. Fitzpatrick
8 Attorney for applicant, Montezuma Rimrock
9 Water Company, LLC.

10
11 ORIGINAL and 13 copies of
12 the foregoing hand-delivered
13 this 25th day of October, 2011,
14 to:

15 Arizona Corporation Commission
16 Docket Control
17 1200 West Washington Street
18 Phoenix, Arizona 85007

19 COPY of the foregoing
20 hand-delivered this 25th
21 day of October, 2011, to:

22 Darak R. Eaddy
23 Utilities Division
24 Arizona Corporation Commission
25 1200 West Washington Street
26 Phoenix, Arizona 85007

27 John Dougherty
28 PO Box 501
29 Rimrock, Arizona 86335

30 Patricia D. Olsen
31 Montezuma Rimrock Water
32 Company, LLC
33 PO Box 10
34 4615 E. Goldmine Road
35 Rimrock, Arizona 86335

1 Mrs. Janice M. Alward
2 Chief, Legal Division
3 Arizona Corporation Commission
4 Legal Division
5 1200 West Washington Street
6 Phoenix, Arizona 85007

7 Mr. Steven M. Olea
8 Director, Utilities Division
9 Arizona Corporation Commission
10 Legal Division
11 1200 West Washington Street
12 Phoenix, Arizona 85007

13 Ms. Lyn Farmer
14 Chief, Hearing Division
15 Arizona Corporation Commission
16 Legal Division
17 1200 West Washington Street
18 Phoenix, Arizona 85007

19 
20 _____
21 Douglas C. Fitzpatrick

22
23
24
25
26
27
28