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BEFORE THE CORPORATION COMMISSION  
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Commissioners

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2011 OCT 28 P 3:44

Arizona Corporation Commission

DOCKETED

AZ CORP COMMISSION  
DOCKET CONTROL

OCT 28 2011

DOCKETED BY

IN THE MATTER OF THE APPLICATION OF  
MONTEZUMA RIMROCK WATER  
COMPANY, LLC FOR APPROVAL OF A  
RATE INCREASE

DOCKET NO. W-04254A-08-0361

IN THE MATTER OF THE APPLICATION OF  
MONTEZUMA RIMROCK WATER COMPANY,  
LLC FOR APPROVAL OF A FINANCING  
APPLICATION

DOCKET NO. W-04254A-08-0362

**Motion for Protective Order**

**By the Intervener:**

The Intervener moves this Court for a Protective Order to prevent the annoyance, oppression, invasion of privacy, harassment and undue burden and expense of Montezuma Rimrock's demand for emails between Intervener and a private third party. This motion is supported by the Certificate of Intervener in Support of the Motion for Protective Order filed herewith and the following Memorandum of Points and Authorities, ARCP 26[c].

**Memorandum of Points and Authorities**

On August 17, Montezuma Rimrock requested Intervener produce all emails between Intervener and a private party, Mr. Ivo Buddeke. (Exhibit 1)

On August 24, Intervener responded to Company's request stating: "My emails with private individuals are irrelevant to the matters before the Commission in this docket." (Exhibit 2)

On October 5, the Company again stated in an email that communications between Intervener and Mr. Buddeke are discoverable. Intervener responded on the same day by email stating: "You have provided no reason for my communications with Ivo

Buddeke. It's clear your client is on a vindictive attack against Mr. Buddeke to the point of making false statements in criminal proceedings.” (Exhibit 3)

On October 7, Counsel for the Company and Intervener had a telephone conversation where Counsel again insisted that Intervener produce emails between Intervener and Mr. Buddeke. Intervener again told Counsel that the Company has not provided sufficient reason to do so.

On October 25, the Company filed a Motion to Compel seeking the Court's intervention to require Intervener to produce email communications between Intervener and Mr. Buddeke.

On October 26, the Company and Intervener had a personal telephone conversation and Intervener again asserted that the Company had provided insufficient reason to produce the emails between Intervener and Mr. Buddeke.

The issue before the Commission in this docket is whether to modify Decision 71317 to allow the Company to obtain financing for the proposed arsenic treatment facility from a source different than the one approved in the original order. It is the Company's burden to present a financing plan that is ultimately approved or rejected by the Commission.

Intervener's communications with private individuals who may be interested in the outcome of this case have nothing to do with the Company's requirement of obtaining alternative financing for the ATF.

Intervener has had no contact with any of the potential private Lenders or Lessors the Company has put forward as possible financiers of the ATF. If Intervener had exchanged emails with possible financiers of the ATF, then Intervener would agree such communications are Discoverable and would produce such communications.

Mr. Buddeke, however, is a private individual who is not party to this case.

The Company has provided no evidence that email communications between Intervener and Mr. Buddeke have any relationship whatsoever to the Company's effort to obtain alternative financing from that approved in Decision 71317. The Company has yet to even put forward its financing plan, despite repeated orders by the Commission to do so.

The Intervener has no knowledge that the Company has sought to obtain financing for the ATF from Mr. Buddeke.

The fact that Mr. Buddeke is Intervener's neighbor, lives near one of the Company's well sites and has an interest in the outcome of this Docket does not establish the relevancy of Intervener's email communications with Mr. Buddeke.

The residents living in the Company's service area are also Intervener's neighbors and live near the Company's well sites. The service area is only approximately 1/3 square mile. The entire community has an interest in the outcome of this case because it could directly impact their water rates, water quality and fire safety. Does this give the Company the right to ask for emails between Intervener and other Company customers?

Absolutely not.

The Company's request for emails between Intervener and Mr. Buddeke is overly broad and offers no framework on the topic of discussions. The Company's request is an unreasonable and an unwarranted invasion of Privacy for both Intervener and Mr. Buddeke.

Intervener asserts the Company has an ulterior motive to obtain emails between Intervener and Mr. Buddeke.

Montezuma Rimrock owner Patricia Olsen is actively pursuing criminal charges against Mr. Buddeke in Yavapai County (V-1300-CR-201180337), claiming Mr. Buddeke pointed a loaded weapon at her.

The Company's request for "all emails" between Intervener and Mr. Buddeke is a transparent attempt to use the Commission proceedings to gather possible evidence that could be used against Mr. Buddeke in the pending criminal case.

Intervener objects to the Company's effort to compel Intervener in a completely unrelated action to the pending criminal case to produce emails that may violate Mr. Buddeke's right against self-incrimination that is protected under the Arizona Constitution, Article 2, Section 100.

ARCP 26[c] authorizes the Court to enter appropriate orders to protect a party "from annoyance, embarrassment, oppression or undue burden or expense." The Intervener has demonstrated good cause for an entry of an order quashing the Company's Motion to Compel production of Intervener's emails with Mr. Buddeke.

Dated this 28<sup>th</sup> Day of October, 2011



John E. Dougherty  
Intervener

Copies of the foregoing mailed  
This 28th day of October, 2011 to:

Douglas C. Fitzpatrick  
LAW OFFICE OF DOUGLAS C. FITZPATRICK  
49 Bell Rock Plaza  
Sedona, AZ 86351

Patricia Olsen  
Montezuma Rimrock Water Company  
PO Box 10  
Rimrock, AZ  
86335

Exhibit 1

First Set of Data Requests from Montezuma Rimrock Water Company to John E. Dougherty  
ACC Docket Nos. W-4254A-08-0361 and 0362

1. Set forth the factual basis of your contention that MRWC is mismanaged.
2. Set forth the factual basis of your contention that MRWC and/or Patricia Olsen made misrepresentations to WIFA, ACC and ADEQ.
3. Provide copies of all communications [including but not limited to print copies of e-mails] between you and WIFA, ACC, ADEQ, AZTEC consulting and Ivo Buddeke for the period commencing 01/01/2010 through the present.
4. Do you represent or purport to represent the interests of anyone other than yourself and your spouse? \_\_\_\_\_ [yes or no]; if so, identify by name and address such persons and/or entities and describe the nature of the interests you purport to represent.
5. Identify the entity that will supply water to applicant's service area if its certificate of necessity and convenience is revoked.
6. Produce true and complete copies of the video tapes taken by you on or about April 19, 2011 at the site of the construction then in progress in applicant's service area.
7. Produce your APS bills which reflect power provided to your Rimrock property from 01/01/2010 to the present.
8. Identify by name, address, e-mail address and current phone number each and every tenant who has resided at your Rimrock property from 01/01/2008 to the present.

DATED this \_\_\_\_ day of August, 2011.

LAW OFFICE OF DOUGLAS C. FITZPATRICK

By \_\_\_\_\_

Douglas C. Fitzpatrick  
Attorney for MRWC

COPY of the foregoing sent  
via first class mail and e-mail  
this \_\_\_\_ day of August, 2011,  
to:

John Dougherty  
PO Box 501  
Rimrock, AZ 86335  
[jd.investigativemedia@gmail.com](mailto:jd.investigativemedia@gmail.com)

\_\_\_\_\_  
Douglas C. Fitzpatrick

## Exhibit 2

August 24, 2011

Mr. Douglas Fitzpatrick  
Law Office of Douglas Fitzpatrick  
49 Bell Rock Plaza  
Sedona, AZ 86351

Via email  
fitzlaw@sedona.net

RE: Intervenor's Response to First Set of Data Requests from Montezuma Rimrock Water Company to John E. Dougherty ACC Docket Nos. W-4254A-08-0361 and 0362

1. Set forth the factual basis of your contention that MRWC is mismanaged.

Response: On August 23, 2011, I filed a formal Complaint with the Commission that includes the factual basis, at this time, to my opposition to the application of MRWC to modify Docket 71317 to obtain a loan from a private lender to build the proposed arsenic treatment facility. I emailed you a copy of the Complaint on August 23, 2011 and the full complaint and exhibits are now available on the Commission's Website under W-04254A-11-0323. I will notify you of additional facts as they become available.

2. Set forth the factual basis of your contention that MRWC and/or Patricia Olsen made misrepresentations to WIFA, ACC and ADEQ.

Response: On August 23, 2011, I filed a formal Complaint with the Commission that includes the factual basis, at this time, to alleged misrepresentations that MRWC and/or Patricia Olsen made to WIFA and the ACC. I have not made any allegations in ACC documents, that I'm aware, of alleged misrepresentations with ADEQ. I emailed you a copy of the Complaint yesterday and the full complaint and exhibits are now available on the Commission's Website under W-04254A-11-0323. I will notify you of additional facts as they become available.

3. Provide copies of all communications [including but not limited to print copies of e-mails] between you and WIFA, ACC, ADEQ, AZTEC consulting and Ivo Buddeke for the period commencing 01/01/2010 through the present.

Response: All emails between me and WIFA, ACC and ADEQ are available from the state agencies, which will provide a complete record. There are no emails to AZTEC

Consulting. My emails with private individuals are irrelevant to the matters before the Commission in this docket.

4. Do you represent or purport to represent the interests of anyone other than yourself and your spouse? \_\_\_\_\_[yes or no]; if so, identify by name and address such persons and/or entities and describe the nature of the interests you purport to represent.

Response: On August 23, 2011, I filed a formal Complaint with the Commission. Mr. William Nicolas Kopko is a named complainant. I am not an attorney and do not purport to represent anyone in legal matters other than myself.

5. Identify the entity that will supply water to applicant's service area if its certificate of necessity and convenience is revoked.

Response: The Commission has the authority to appoint an interim manager to assume daily operations of MRWC. The Commission also has the authority to assign the CC&N to a new entity. If the Commission decides to pursue such action, the most logical entity is Arizona Water Company because it already provides arsenic treated water service to neighboring communities.

6. Produce true and complete copies of the videotapes taken by you on or about April 19, 2011 at the site of the construction then in progress in applicant's service area.

Response: The videotapes of the construction site are irrelevant to the matters before the commission in this docket.

7. Produce your APS bills which reflect power provided to your Rimrock property from 01/01/2010 to the present.

Response: My APS bills for my Rimrock property are irrelevant to the matters before the commission in this docket. As a solar energy power provider to APS, I can attest that the APS bills have been in my name since 1998.

8. Identify by name, address, e-mail address and current phone number each and every tenant who has resided at your Rimrock property from 01/01/2008 to the present.

Response: My landlord/tenant relationship is irrelevant to the matters before the commission in this docket.

Cordially,

John E. Dougherty

Copy of the foregoing sent via  
First Class mail and e-mail on  
This 24<sup>th</sup> Day of August 2011  
To: Law Office of Douglas Fitzpatrick  
49 Bell Rock Plaza  
Sedona, AZ 86351

Exhibit 3



John Dougherty &lt;jd.investigativemedia@gmail.com&gt;

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**0361 and 0362 data requests**

5 messages

**Doug Fitzpatrick <fitzlaw@sedona.net>****Wed, Oct 5, 2011 at 8:17 AM**

To: John Dougherty &lt;jd.investigativemedia@gmail.com&gt;

John –

I submitted data requests in the above cases asking that you provide “copies of all communications [including but not limited to print copies of e-mails] between you and WIFA, ACC, ADEQ, AZTEC Consulting and Ivo Buddeke for the period commencing 01/01/2010 through the present.” You responded that “All emails between me and WIFA, ACC and ADEQ are available from the state agencies, which will provide you a complete record. There are no emails to AZTEC Consulting. My emails with private individuals are irrelevant to the matters before the Commission docket.” If there are no e-mails or other communications between you and AZTEC Consulting, I’ll accept your avowal that such is the case. However, the fact that WIFA, ACC and ADEQ may have access to such communications does not relieve you of your obligation under the rules of discovery to produce them. Similarly, e-mails and other communications between you and Ivo Buddeke are, similarly, discoverable. I am available to discuss these issues in order to resolve them informally and trust that you will agree to respond to this data request within a reasonable time frame. Please advise. ~Doug Fitzpatrick [928 284 2190](tel:9282842190)

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**John Dougherty <jd.investigativemedia@gmail.com>****Wed, Oct 5, 2011 at 12:42 PM**

To: Doug Fitzpatrick &lt;fitzlaw@sedona.net&gt;

Doug,

Your response does not address my issues with the 361/362 docket. When are you going to produce those records?

I will not produce any communications between myself and any private citizen unless ordered by the Commission. You have provided no reason for my communications with Ivo Buddeke. It's clear your client is on a vindictive attack against Mr. Buddeke to the point of making false statements in criminal proceedings.

Again, a simple public records request to ADEQ, ACC and WIFA will produce all email correspondence between myself and those agencies.

I've never had any contacts whatsoever with AZTEC Engineering.

John

[Quoted text hidden]

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John Dougherty  
InvestigativeMedia.com  
[602-710-4089](tel:6027104089)

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**Doug Fitzpatrick <fitzlaw@sedona.net>**  
To: John Dougherty <jd.investigativemedia@gmail.com>

**Wed, Oct 5, 2011 at 3:34 PM**

John -

I'm aware of the unresolved discovery issues in the emergency rate case but not the 361/362 docket .. please clarify. ~dcf

[Quoted text hidden]

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**John Dougherty <jd.investigativemedia@gmail.com>**  
To: Doug Fitzpatrick <fitzlaw@sedona.net>

**Wed, Oct 5, 2011 at 10:38 PM**

Doug, The 2nd data request that I have sent twice to you is for the 361/362 docket. It's the same information that I sought in the emergency rate increase docket. I've attached them once again.

John

[Quoted text hidden]

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**2 attachments**

 **coverlet2nddatarequest92811.doc**  
48K

 **2NDDATAREQUEST.doc**  
28K

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**Doug Fitzpatrick <fitzlaw@sedona.net>**  
To: patsy@montezumawater.com  
Cc: John Dougherty <jd.investigativemedia@gmail.com>

**Thu, Oct 6, 2011 at 9:30 AM**

Patsy -

Please let me know where you stand in connection with the gathering of records which are responsive to the data requests about which John D. is concerned. They were originally submitted in 0296 and have been resubmitted in the 0361/0362 docket. Get what you have together and bring it over so that I can forward it to Mr. Dougherty. Thanks. ~Doug

-----Original Message-----

**From:** John Dougherty [mailto:[jd.investigativemedia@gmail.com](mailto:jd.investigativemedia@gmail.com)]  
**Sent:** Wednesday, October 05, 2011 10:38 PM

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**2 attachments**



**coverlet2nddatarequest92811.doc**  
48K



**2NDDATAREQUEST.doc**  
28K

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