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Douglas C. Fitzpatrick  
49 Bell Rock Plaza  
Sedona, Arizona 86351  
(928) 284-2190  
Bar ID #005152  
[fitzlaw@sedona.net](mailto:fitzlaw@sedona.net)  
Attorney for Montezuma  
Rimrock Water Company, LLC

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AZ CORP COMMISSION  
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Arizona Corporation Commission  
DOCKETED

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

|                         |   |                             |
|-------------------------|---|-----------------------------|
| JOHN E. DOUGHERTY,      | ) | DOCKET NO. W-04254A-11-0323 |
|                         | ) |                             |
| Complainant,            | ) | MOTION FOR PROTECTIVE       |
|                         | ) | ORDER                       |
| -vs-                    | ) |                             |
|                         | ) |                             |
| MONTEZUMA RIMROCK WATER | ) |                             |
| COMPANY, LLC,           | ) |                             |
|                         | ) |                             |
| Respondent.             | ) |                             |

Montezuma Rimrock Water Company, LLC moves this Court for a protective order to prevent the annoyance, oppression and undue burden and expense of the numerous data requests propounded by John Dougherty. This motion is supported by the Certificate of Counsel in Support of Motion for Protective Order filed herewith, the attachments appended hereto and the following Memorandum of Points and Authorities. *ARCP 26[c]*.

**MEMORANDUM OF POINTS AND AUTHORITIES**

1. Background. This is this is the second time that the Company has sought the protection of the Court in connection with discovery requests propounded by the Intervener. On August 2, 2011, Mr. Dougherty propounded thirteen data requests in the W-4254A-08-0361 and 0362 docket. On August 23, he submitted thirty data requests in W-04254A-11-0296. On

1 August 28, he propounded seven additional data requests in the 0296 docket. The Intervener's  
2 submission of yet an addition thirty-seven data requests in the 0296 docket prompted the  
3 Company's first Motion for Protective Order.

4 2. Mr. Dougherty's most recent discovery requests.

5 More recently on September 23, Mr. Dougherty submitted thirteen additional data  
6 requests in the 0296 docket. When the emergency rate application [0296] was withdrawn, he  
7 resubmitted the identical data requests under the 0361/0362 docket on September 29. On October  
8 18, Mr. Dougherty had issued an Administrative Subpoena Duces Tecum in the 0323 docket  
9 which sought production of the same records *for the third time*. At the Procedural Conference  
10 on October 25, Mr. Dougherty apparently recognized that his subpoena had been improperly  
11 issued and served. He then recast the same data requests, adding nine additional categories of  
12 documents, in yet a *fourth* discovery request for the same materials under the 0323 docket. The  
13 most recent variation of the Intervener's discovery requests is appended hereto.<sup>1</sup>

14 3. Mr. Dougherty seeks to continue discovery in the emergency rate case which is closed.

15 In connection with the first round of data requests in the 0296 docket, the Company made  
16 all of its records which were responsive to the requests available for Mr. Dougherty's review at  
17 the office of undersigned counsel. Mr. Dougherty spent the entire business days on September  
18 19 and 20 reviewing, sorting, studying and photocopying hundreds of pages of records. He had  
19 every opportunity, during such two days, to copy any and all records of interest to him. In his  
20 most recent discovery requests on October 25, Mr. Dougherty has asked that the records  
21 previously produced on September 19 and 20 pursuant to the data requests in the 0296 docket

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26 <sup>1</sup> Mr. Dougherty's most recent variation of the discovery requests includes requests for "all emails from October  
27 1, 2009 through October 25, 2011 between Patricia Olsen" and eight individuals and entities; it also seeks each of  
28 the company's "monthly billing statements mailed and/or delivered to *every* MRWC customer from January 1, 2009  
through November 1, 2011." If such billing statements were available, the Company would be obliged to produce  
approximately 7, 000 billing documents in response to this data request.

1 again be made available again so that he can “complete [his] review of these files.” Mr.  
2 Dougherty should be precluded from pursuing discovery in a docket which is now closed  
3 especially given his two days of review of the records which have already been made available to  
4 him.

5 4. Mr. Dougherty’s discovery requests are oppressive and unduly burdensome.

6 The number and scope of discovery requests propounded by Mr. Dougherty are  
7 excessive. The presumptive limit of categories of documents which may be requested under  
8 ARCP 34[b] is ten. While the Company recognizes that the commission has the authority under  
9 R14-3-101 to override the Rules of Civil Procedure, Mr. Dougherty has, to date, submitted in  
10 excess of one hundred requests for different categories of documents, proclaiming that “The  
11 Rules of Civil Procedure don’t apply to this case.”  
12  
13

14 The Company does not deny that some personal expenses of its owner were paid from its  
15 business account. It disputes the notion adopted by Mr. Dougherty, however, that such payments  
16 open the door to discovery of all of the owner’s personal financial records. Mr. Dougherty’s  
17 request for the personal credit card bills of the Company’s owner exceeds the limits of  
18 permissible discovery, especially given the owner’s willingness to admit that some personal  
19 obligations were paid from the Company’s business account.  
20

21 5. Conclusion

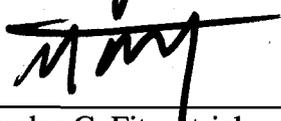
22 The Company is mindful of the Court’s October 12 order to “provide discovery of all of  
23 the records necessary to give complete and authentic information as to its properties and  
24 operations.” However, the Court’s oversight is requested given the repeated barrages of  
25 discovery requests from Mr. Dougherty.  
26

27 In light of the foregoing, the Company respectfully requests that the Court: 1] impose  
28

1 reasonable limitations on the scope and number of discovery requests propounded by the  
2 Intervener; 2] preclude discovery of personal financial records of the Company's owner; 3]  
3 preclude further discovery which relates to the closed emergency rate case; 4] preclude Mr.  
4 Dougherty from submitting duplicate sets of discovery requests whether by data requests or  
5 subpoenas in the open dockets; 5] designate which of the Intervener's most recent variation of  
6 data requests must be responded to and set a deadline for such responses.  
7

8 DATED this 31<sup>st</sup> day of October, 2011.

9 LAW OFFICE OF DOUGLAS C. FITZPATRICK

10  
11 BY 

12 Douglas C. Fitzpatrick  
13 Attorney for Montezuma Rimrock  
14 Water Company LLC

15 ORIGINAL and 13 copies  
16 of the foregoing mailed  
17 this 31<sup>st</sup> day of October,  
18 2011, to:

19 Arizona Corporation Commission  
20 Attn: Docket Control  
21 1200 West Washington Street  
22 Phoenix, Arizona 85007

23 COPY of the foregoing  
24 mailed this 31st day of  
25 October, 2011, to:

26 Darak R. Eaddy  
27 Utilities Division  
28 Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

John Dougherty  
PO Box 501  
Rimrock, Arizona 86335

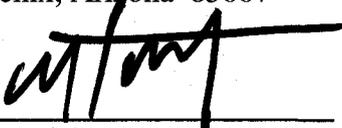
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Patricia D. Olsen  
Montezuma Rimrock Water  
Company, LLC  
PO Box 10  
4615 E. Goldmine Road  
Rimrock, Arizona 86335

Mrs. Janice M. Alward  
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

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



Douglas C. Fitzpatrick

**MONTEZUMA RIMROCK WATER COMPANY  
DOCKET NOs. W-4254A-11-323**

**COMPLAINANT JOHN E. DOUGHERTY'S  
FIRST SET OF DATA REQUESTS**

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Please make available the MRWC records that I inspected on Sept. 19 and 20 in your office so that I may complete my review of these files.

In addition, please make available the following records:

1.03 Debt—Please provide the complete record of all loan payments made by the 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.

In addition, please identify by check, debit or cash diversion to Ms. Olsen or another person, all Company funds used to make the down payment on this vehicle.

1.03 Debt—Please provide 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 a copy of the title for this vehicle.

1.31 Titles—Please provide a copy of the Arizona Department of Motor Vehicles title for the PT Cruiser.

1.31 Titles—Please provide the complete record of all payments made by the Company for title and registration fees for all vehicles and a copy of the title associated with each payment, whether the vehicle is titled to the Company or to private parties.

1.32 Auto Insurance—Please provide a copy of any Company paid insurance policy that includes coverage for the PT Cruiser, and the complete accounting of all premiums paid by the Company from the date of the first payment.

1.03 Debt—Please provide the complete record of all credit card bills, including the record of goods and services purchased, that are paid for with Company funds dating back to Company's first payment towards the Credit Card bill.

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

This request includes, but is not limited to, the following Credit Cards:

- A. Chase Bank credit card.
- B. Kohl's department store credit card.
- C. American Express credit card.
- D. All other credit card accounts, past and present, that have received any payment whatsoever from the Company.

1.04 Debt—Please provide the complete record of mortgage payments to Wells Fargo Bank made by the Company from the date the first payment was made.

1.33 Mortgage—Please provide a copy of the mortgage loan statement(s) for the property, or properties, that are receiving or have received Company funds for mortgage payments.

1.34 Student Loan—Please provide a complete record of all Company payments made for "Student Loan" from the date of the first payment for "Student Loan". Please identify the person who incurred the "Student Loan" and their relationship to the Company.

1.35 Chase Bank Account—Please provide a complete record of bank statements for the Company's Chase Bank Account, or accounts, from the date the account was opened by the Company to that date it was purportedly closed.

Please identify the bank account or any other entity that received the assets from the Chase Account when it was purportedly closed.

(If the Chase bank statements are not in the possession of the Company, or its accountant, please provide a waiver giving permission to Intervener to obtain such records directly from Chase Bank.)

1.36 All communications between the Company and Gecom, the proposed Lessor of an Arsenic Treatment Facility, that discuss in any way the terms of the proposed arrangement whereby the Lessor would provide the equipment necessary for the Company to meet State and Federal Arsenic treatment standards.

1.37 All emails from October 1, 2009 through October 25, 2011 between Patricia Olsen and the following parties:

- A. Norman Rask
- B. Anna Barbara Brunner
- C. Don Barnes
- D. Rose Mary Barnes
- E. All email communications with Yavapai County Development Services or any other County department of elected official.
- F. All email communications with Arizona Corporation Commission staff and elected officials.
- G. All email communications with any representative of the Arizona Department of Environmental Quality.
- H. All email communications with any representative of the Arizona Water Company.

**MONTEZUMA RIMROCK WATER COMPANY  
DOCKET NO. W-4254A-11-323**

**COMPLAINANT JOHN E. DOUGHERTY'S  
SECOND SET OF DATA REQUESTS**

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**1.38—MRWC Billing Statements:** Please provide copies of all of MRWC's monthly billing statements mailed and/or delivered to every MRWC customer from January 1, 2009 through November 1, 2011.