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BEFORE THE CORPORATION COMMISSION
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Commissioners

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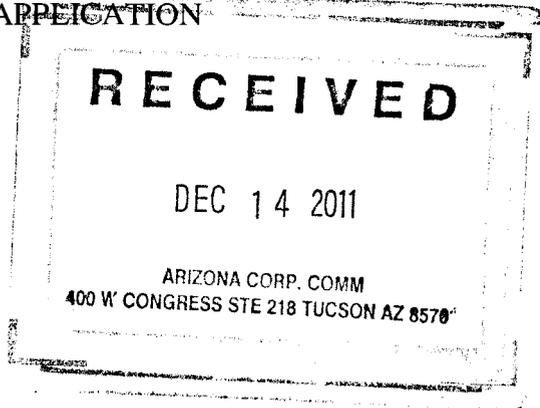
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IN THE MATTER OF THE APPLICATION OF
MONTEZUMA RIMROCK WATER
COMPANY, LLC FOR APPROVAL OF A
RATE INCREASE

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



RESPONSE TO INTERIM
REPORT OF MONTEZUMA
RIMROCK WATER CO., LLC

MOTION TO DENY
EXTENSION OF DEADLINE

MOTION FOR EVIDENTIARY
HEARING

BY THE INTERVENER:

This Response of the Intervener is submitted pursuant to Judge Sarah Harping's Procedural Order dated November 9, 2011

1. Regarding the GEcom lease. The Interim Report continues the Company's persistent failure in this docket to submit a detailed financial plan for the Arsenic Treatment Facility. The company has not filed a proposed lease agreement. All it has submitted is speculative terms taken from emails between the Company and GEcom and Odyssey Equipment Financing Company.

If the lease terms proffered in emails attached to the Interim Report accurately reflect the final lease terms, it will be a very expensive plan.

The \$30,000 arsenic equipment lease at \$810 per month over 60 months carries an interest rate of 21.9 percent. The \$7,000 "building" lease at \$275 per month over 48 months also rings up a 21.9 percent interest rate. The WIFA loan was projected at between 4 percent and 6 percent.

One email states both leases will carry a \$1 residual value for the purchase of the equipment. These terms would classify the lease as a "capital" lease, which would require Commission approval.

The Company sidesteps this issue in the Interim Report by claiming "it is *not in a position to offer meaningful analysis* as to whether either lease is or should be characterized as a capital lease or an operating lease."

Whether the proposed lease(s) is an operating lease versus a capital lease is the pivotal question that will determine whether full Commission approval is mandatory in this case. Intervener cannot provide definitive comments on the Company's proposed lease until one is actually presented.

2. Additional ATF Expenses. By focusing only on the arsenic filtration system it hopes to lease, the Company is attempting to slip past the Commission other expenses it has already incurred, or will incur, on the ATF that the Company will ultimately try to shift to ratepayers. These expenses were included in the Decision 71317 that authorized the company to seek a \$165,000 loan from the Arizona Water Infrastructure Financing Authority. (Exhibit 1)

The Company's single largest contingent liability is last April's construction of the 2,500-foot pipeline intended to connect Well No. 4 to the ATF. The Company states its owner, Patricia Olsen, has paid \$8,000 towards the projected \$44,000 cost of the pipeline approved in the Decision 71317 ATF financing plan. The Company has not stated how it intends to pay the balance owed to Rask Construction and whether it will repay Ms. Olsen.

The Company has already overspent its hookup fee account that is supposed to be used strictly for plant backbone, so this account cannot be used to pay for the pipeline. The hookup account showed a *negative balance* of \$18,587 as of December 31, 2010. (Exhibit 2).

The real estate recession stopped growth in Company's service area making it very unlikely that the hookup account's negative balance will be erased in the next several years. The Company has no other available resources to pay for the pipeline construction. The Company has not disclosed the carrying costs for the unpaid balance on the pipeline construction.

The pipeline expense, as well as all other Company expenses already incurred and to be incurred on the ATF project, should be included with whatever leasing proposal the Company presents. These costs should then be compared to the ATF financing plan that was approved in Decision 71317.

The Company's increased expense above the costs projected in Decision 71317 should be the full responsibility of the Company and should be barred from ever passing through to Ratepayers. Gross mismanagement, which includes picking a well site that required the Company to conduct an Environmental Impact Statement and the owner's excessive spending of Company funds for her personal benefit, has seriously damaged the Company's financial ability to pay for the ATF.

3. Violating Company's pledge not to begin construction. Even as the Company has failed to produce the detailed financial analysis that the Commission has been requesting since July, the Company's Interim Report states it has begun construction of the arsenic plant site.

Initiating construction contravenes the Company's October 25, 2011 SUPPLEMENTAL AND AMENDED PROPOSED PLAN FOR ARSENIC TREATMENT filing where the Company stated it "will *not move forward with construction* of the treatment plant until the commission has signed off on the proposed plan."

The Company's renegeing on its promise not to begin construction until it receives Commission approval is yet another clear signal that the Company is, and has been, operating in bad faith throughout this proceeding.

4. Ms. Olsen's dual role. The Company states it anticipates Ms. Olsen to personally lease the equipment from Gecom or Odyssey Equipment Financing Company

and then for Ms. Olsen to sublease the equipment to the Company. The Company offers no details on the financial terms of the sublease between Ms. Olsen and the Company.

The interjection of Ms. Olsen into the lease requires complete financial disclosure of the lease and sublease, as well as Ms. Olsen's personal financial statement. This cumbersome arrangement is fraught with potential for abuse, particularly since the Company already has admitted in the Formal Complaint (W-04254A-11-0323) to improperly billing customers for an arsenic surcharge on two occasions and failing to disclose to the Commission a \$32,000, long-term loan for five years.

5. The Company is Insolvent. The only plausible reason to have Ms. Olsen act as both the lessee and lessor is if the Company can't qualify for the lease because it is in desperate financial condition, which it clearly is. In September, the Company's longtime accountant, John Campbell, signed a sworn statement declaring Montezuma Rimrock to be insolvent.

"Based on my review of financial records of Montezuma Rimrock Water Company, LLC and the attached schedules, I find that Montezuma Rimrock Water Co, LLC is insolvent as of 9-18-2011." (Exhibit 3)

One schedule prepared by Mr. Campbell states that Ms. Olsen has paid \$49,956 in Company invoices "with personal funds" since April 20, 2010. A second schedule states that the Company has past due accounts as of September 18, 2011 of \$55,528, including \$36,000 to Rask Construction for the pipeline, \$10,785 to a Chase Credit Card and \$2,800 to an American Express Credit.

Company bank records obtained through Discovery support Mr. Campbell's bleak financial assessment. As of September 30, 2011 the Company's refundable Meter Deposit account was down to \$833, the refundable Customer Deposit account was at \$444 and the main checking account only had \$1,798. The Company's bank balance for the restricted hookup account showed a balance of \$3,735. (The overall hookup account balance shows a negative balance of \$18,587.)

The Company clearly is in financial shambles and more than \$105,000 in debt to Ms. Olsen and various creditors. The Company has known for more than a year that the WIFA loan would require an EIS. The Company has had eight months since reopening this docket to present a detailed financial plan to pay for the ATF and has failed to do so.

Given the dire financial condition of the company as expressed by its accountant and supported by Company records, Intervener believes the Company has no reasonable financial plan to solve the arsenic issue that it can or will present. Meanwhile, the Company's customers have been forced to obtain alternative drinking water supplies since June 2010 and the Company remains out of compliance with Decision 71317 since December 31, 2009.

Intervener respectfully moves the Commission to Deny the Company's request for an extension beyond December 9, 2011 to present its lease financing plan and analysis of whether it is an operating lease or a capital lease.

6. Requests for Evidentiary Hearing. Commissioner Paul Newman and Kathy Davis, Superintendent of Montezuma Well National Monument, have requested that an evidentiary hearing be held in this matter because of the Company's possible negative impact on the National Monument.

Their requests, in addition to the information presented above concerning the Company's insolvency, mounting debt and failure to present a financing plan make it imperative that the Commission moves forward with an evidentiary hearing.

Intervener respectfully moves the Commission to schedule an Evidentiary Hearing to consider the Company's final financing plan, its apparent insolvency, and whether to revoke the Company's Certificate of Convenience and Necessity.

7. Regarding the need for modification of Decision No. 71317. In addition to the reasons set forth above, the Company has yet to present an operating lease nor has Intervener or Commission Staff had the opportunity to review the financial terms of a possible lease. Therefore, it is possible the Company will continue to seek revision of Decision No. 71317, requiring this docket to remain open.

Intervener respectfully submits that it is premature to close this docket and that it is in the best interest of Ratepayers and the Public for this docket to remain open until the Company's final financing plan is either approved or disapproved.

Dated this 13th Day of December, 2011



John E. Dougherty

Intervener

Copies of the foregoing mailed
This 13th day of December, 2011 to:

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

Patricia D. Olsen, Manager
MONTEZUMA RIMROCK WATER COMPANY, LLC
P.O. Box 10
Rimrock, AZ 86335

supply to a point below the arsenic MCL.¹¹ The proposed WIFA loan would have a term of 20 years.

49. Montezuma intends to use the proceeds from the WIFA loan to pay for the following items needed for its arsenic treatment project:

Item	Cost
Arsenic treatment system at 160 GPM	\$ 81,746
Grading and concrete slab at Well #1	5,816
Plumbing modifications and electrical upgrade	6,812
Water line interconnecting Well #1 and Well #4 (2,500 feet of 4-inch PVC pipe)	42,870
New pump house, 10' x 20'	5,907
Radio telemetry	8,158
Engineering (8.3%)	13,691
Total	\$165,000

50. Staff explained that Montezuma is proposing to construct a 160 GPM arsenic treatment system at Well #1 to treat water from Well #1 and Well #4, which will be interconnected using 2,500 feet of transmission main.

51. Staff believes that the construction of an arsenic treatment system is necessary for Montezuma to comply with the MCL for arsenic of 10 ppb.

52. Staff has determined that the arsenic treatment project is appropriate and that the cost estimate totaling \$165,000 is reasonable. Staff has not made a "used and useful" determination regarding the proposed arsenic treatment project items and stated that no particular treatment regarding those items should be inferred for future ratemaking or rate base purposes.

53. Staff believes that Montezuma should be granted authority to obtain a WIFA loan for an amount up to \$165,000, with a term of 20 years and a *maximum interest rate of the prime rate plus 200 basis points*,¹² to purchase an arsenic treatment system to bring its water into compliance with the MCL for arsenic. Staff stated that the issuance of the proposed debt financing for the purposes stated by Montezuma is compatible with the public interest, is consistent with sound financial practices, and will not impair Montezuma's ability to provide public service.

¹¹ Specifically, Montezuma has indicated that it plans to acquire an arsenic adsorption treatment system from Adedge Technologies, which Montezuma believes will reduce up to 99 percent of total arsenic.

¹² Staff stated that the actual interest rate will not be known until a time closer to the final closing date for the WIFA loan.

Exhibit 2

W-04254A-04-0270

~~W-02067A-01-0227~~

Decision # 64665

W-02067A-04-0270

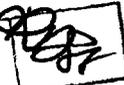
Decision # 67583

ORIGINAL

2010 Annual Hook-Up Report		
Montezuma Rimrock Water Company LLC		
P.O. Box 10		
Rimrock, Arizona 86335		
2010 Hook-Up Vendor Report		
Lot #	Name	Amount
	No Hook ups for 2010	
	Subtotal	\$0
	Prior Year Balance	-\$15,476.51
	Interest	
	Total Balance	-\$15,476.51
	Hookup Vendor Expenses	-\$3,111.28
	Balance	-\$18,587.79

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W-02064A-01-0787 Decision # 64665

W-02065A-04-0270 Decision # 67583

Montezuma Rimrock Water company LLC

P.O. Box 10

Rimrock, Arizona 86335

2010 Hook-Up Vendor Report

Vendor	Purpose	Amount
ADEQ		
	Submission to ADEQ for Approval to Construct for Well #4 & Arsenic Treatment System	-1,500.00
	Additional fee for Approval to Construct for Well #4	-48.00
Total ADEQ		-1,548.00
Collingwood Pumps, Inc.		
	Installation of new well pump	-463.99
	Installation of well pump motor	-449.29
Total Collingwood Pumps, Inc.		-913.28
Doug Fitzpatrick		
	Legal fees for Well #4	-450.00
Total Doug Fitzpatrick		-450.00
Sam Rede		
	Well #4 Landscape required by Yavapai County	-200.00
Total Sam Rede		-200.00
	TOTAL	-3,111.28

Exhibit 3

RB-LB, LLC
Accounting Services
51 Bell rock Plaza, Ste B
Sedona, AZ 86351

September 19, 2011

Judge Sarah N. Harpring
Arizona Corporation Commission
1200 W. Washington St., Room 104
Phoenix, AZ 85004-0000

I have a bachelor's degree in Accounting and I have 17 years of corporate accounting experience and 14 years of small business accounting and income tax preparation experience. I have been preparing schedules for various reports and federal and state tax returns for the Montezuma Water Co, LLC since 2006.

I have reviewed the accounting records of Montezuma Rimrock Water Company, LLC as of 9-18-2011. Patricia Olsen has prepared a schedule of aged accounts payable as of 9-18-2011. The aged accounts payable total \$55,528. A schedule is attached to this letter. I have reviewed this schedule. Patricia Olsen has also prepared a schedule of invoices issued to Montezuma Rimrock Water Co, LLC that Patricia Olsen has paid with her personal funds from 4-20-2010 through 5-2-2011. This schedule of invoices totals \$49,956. A schedule is attached to this letter along with copies of cancelled checks. I have reviewed this schedule.

An extensive amount of time has been spent by Patricia Olsen and me preparing responses to the data requests and the formal complaint filed against Montezuma Rimrock Water Co, LLC. Because so much time was spent answering data requests and complaints, there was not enough time to include copies of the invoices paid with Patricia Olsen's personal funds. Some of the invoices were not available since they were in possession of John Dougherty per his data request.

Based on my review of the financial records of Montezuma Rimrock Water Company, LLC and the attached schedules I find that Montezuma Rimrock Water Co, LLC is insolvent as of 9-18-2011.

I declare under penalty of perjury, that the foregoing is true and correct.

Also attached are responses to some of the allegations made in a formal complaint made on 8-23-2011.

Sincerely,



John Campbell
Accountant

Invoices paid with personal funds, since 4-20-2010

HCC	1,500
Fennemore Craig	1,000
EHS	11,900
Discount Supply	3,511
Ross Jacobs	2,254
Canyon Pipe & Supply	5,726
Yavapai title	16,757
Rask Construction	8,000
Southwest Groundwater	1,308

49,956

Outstanding past due Accounts Payable as of 9-18-11

Rask Construction	36,000
Law office of Douglas Fitzpatrick	5,609
John Campbell, accountant	334
Chase Bank Visa Card	10,785
American Express card	2,800

55,528