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Arizona Corporation Commission
DOCKETED

MAR 20 2012

5 Attorneys for Montezuma Rimrock Water Company, LLC

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9 BEFORE THE ARIZONA CORPORATION COMMISSION

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

DOCKET NO. W-04254A-08-0361

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

DOCKET NO. W-04254A-08-0362

16 **RESPONSE TO MOTION TO BAR
EXECUTION OF ARSENIC
TREATMENT CONTRACT**

17 Montezuma Rimrock Water Company, LLC (“Company” or “MRWC”) submits
18 the following response to the Motion to Bar Execution of Arsenic Treatment Contract
19 filed by intervenor John Dougherty on March 13, 2012 in this docket. In no uncertain
20 terms, Mr. Dougherty’s motion should be summarily denied as contrary to governing
21 Arizona law, unsupported and frivolous.

22 Mr. Dougherty’s motion is yet another attempt to delay resolution of the arsenic
23 issues and cause further harm to MRWC and its owner. As this Court is well aware, the
24 Commission issued Decision No. 71317 on October 30, 2009 establishing permanent
25 rates for water service from MRWC and authorizing MRWC to incur long-term debt in
26 the form of a WIFA loan for \$165,000 to construct an arsenic treatment project. In turn,

1 on January 23, 2011, MRWC requested that the Commission amend Decision No. 71317
2 to allow the Company to seek private funding for construction of arsenic treatment
3 facilities. On April 27, 2011, the Commission then voted to reopen Decision No. 71317
4 under Ariz. Rev. Stat. § 40-252.

5 After reconsideration was granted, MRWC modified its arsenic treatment plan.
6 Under the current plan, Ms. Olsen, in her individual capacity, intends to enter a contract
7 with Kevlor Design Group for construction and operation of arsenic treatment facilities.
8 The terms and conditions of the contract between Ms. Olsen and Kevlor were filed with
9 the Commission on February 21, 2012. Ms. Olsen intends to finance those facilities
10 through a lease agreement with Odyssey Equipment Financing Company. The terms of
11 that lease agreement will involve \$30,000 paid by Ms. Olsen to Odyssey over 60 months
12 at \$810/month, along with a \$7,000 payment for the facility building/housing paid over
13 48 months at \$275/month. In turn, Ms. Olsen proposes to enter a Water Services
14 Agreement with MRWC. Under that Water Services Agreement, Ms. Olsen proposes to
15 lease the arsenic treatment facilities to MRWC. The terms of the proposed Water
16 Services Agreement were filed with the Commission on February 21, 2012. These
17 contracts and lease agreement are in the process of final execution and MRWC will file
18 copies of those agreements with the Commission as soon as possible.

19 On those issues, however, it should be noted that the Commission does not have
20 any authority over the agreement between Ms. Olsen and Kevlor or the agreement
21 between Ms. Olsen and Odyssey. Likewise, the Water Services Agreement is not a debt
22 issuance requiring Commission approval. Rather, it is an operational agreement between
23 MRWC and Ms. Olsen by which the Kevlor arsenic treatment facilities will be used to
24 treat the water from MRWC Well No. 1 in accordance with applicable arsenic treatment
25 standards. The operational expenses incurred by MRWC may be reviewed by the
26 Commission or Commission Staff as part of a rate case, but the Water Services

1 Agreement itself does not require Commission approval as a debt issuance.

2 Under these circumstances, Mr. Dougherty now “moves the Commission to bar
3 Montezuma Rimrock from entering any contract in connection with the arsenic treatment
4 facilities until after Intervener and Commission Staff have an opportunity to analyze and
5 comment on any proposed contract(s) and formal Commission approval of the proposed
6 contract(s) is obtained.”¹ Not only is Mr. Dougherty’s argument not supported by
7 substantial evidence or any case law, but his attempt to dictate how MRWC does business
8 violates several fundamental principles of Arizona law.

9 To start, Arizona law is clear that it “is not the purpose of regulatory bodies to
10 manage the affairs of a corporation.”² As stated by the Arizona Supreme Court, “[i]t
11 must never be forgotten that, while the state may regulate with a view to enforcing
12 reasonable rates and charges, it is not the owner of the property of public utility
13 companies, and is not clothed with the general power of management incident to
14 ownership.”³ “Nowhere in the Constitution or in the statutes is the Commission given
15 jurisdiction, directly or by implication, to control the internal affairs of corporations...”⁴
16 “The day-to-day operation and running of public service corporations are matters of
17 management prerogative, and are beyond the power of the Commission to control--at
18 least directly.”⁵ These cases warrant summary denial of Mr. Dougherty’s motion.

19 Further, it is fundamental Arizona utility law that the Commission does not have
20 authority to prescribe and dictate the “specific contractual provisions to be agreed upon”
21 by a public utility.⁶ Put simply, the Commission does not have the authority to bar

22 ¹ Intervenor Motion at 2.

23 ² *Southern Pac. Co. v. Ariz. Corp. Comm’n*, 98 Ariz. 339, 343, 404 P.2d 692, 696 (1965).

24 ³ *Id.*

25 ⁴ *Arizona Corporation Comm’n v. Consolidated Stage Co.*, 63 Ariz. 257, 260, 161 P.2d
110, 113 (1945).

26 ⁵ Attorney General Opinion I79-099 (April 9, 1979).

⁶ *Trico Elec. Coop., Inc. v. Senner*, 92 Ariz. 373, 383, 377 P.2d 309, 319 (1962).

1 MRWC from entering contracts for arsenic treatment facilities until the Commission (and
2 Mr. Dougherty) review, revise, comment on and approve the terms of the contracts
3 executed by MRWC relating to arsenic treatment. MRWC is a private utility and the
4 Commission does not have the authority to manage the internal affairs of the Company.
5 That's not to mention that the Administrative Law Judge's March 12, 2012 Order already
6 requires "that if Montezuma Rimrock has executed any contractual documents related to
7 purchase, construction installation, operation or maintenance of an arsenic treatment
8 facility to treat the water from its Well #1 and/or Well #4, Montezuma Rimrock shall, by
9 March 30, 2012, file a copy of all such contractual documents in this docket."⁷

10 Aside from arguments relating to the Commission's authority, it is beyond dispute
11 that Mr. Dougherty does not have any right or authority to prevent MRWC from entering
12 the Water Services Agreements until he has reviewed, revised and approved those
13 contracts. Mr. Dougherty is a private citizen without any regulatory or management
14 authority over MRWC. That's especially true here given that Mr. Dougherty is not a
15 customer of MRWC and does not obtain water utility services from MRWC. As a matter
16 of law and fact, Mr. Dougherty's motion should be ignored and summarily denied as
17 contrary to governing Arizona law, unsupported and frivolous.

18 RESPECTFULLY SUBMITTED this 20th day of March, 2012.

19 FENNEMORE CRAIG

20 By 
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26 ⁷ March 12, 2012 Procedural Order at 5-6.

1 ORIGINAL and 13 copies
2 of the foregoing was filed
3 this 20th day of March, 2012 with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington Street
6 Phoenix, Arizona 85007

5 COPY of the foregoing
6 was hand-delivered this 20th
7 day of March, 2012, to:

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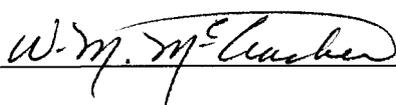
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13 A COPY of the foregoing
14 was mailed/emailed this 20th
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