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BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
DOCKET CONTROL

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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

PROCEDURAL ORDER

BY THE COMMISSION:

On October 30, 2009, the Commission issued Decision No. 71317, establishing permanent rates for Montezuma Rimrock Water Company, LLC ("Montezuma Rimrock") and authorizing Montezuma Rimrock to incur long-term debt in the form of a Water Infrastructure Finance Authority of Arizona ("WIFA") loan in an amount up to \$165,000, for the purpose of completing an arsenic treatment project as described in the decision. *Inter alia*, Montezuma Rimrock was also ordered to make a number of compliance filings.

On April 27, 2011, in response to a request filed by Montezuma Rimrock, the Commission voted at the Commission's Staff Open Meeting to reopen Decision No. 71317 pursuant to A.R.S. § 40-252 to determine whether to modify the decision concerning financing approval and related provisions. The Commission directed the Hearing Division to schedule a procedural conference to discuss the process for the A.R.S. § 40-252 proceeding. Montezuma Rimrock attended the Staff Open Meeting via teleconference, and John Dougherty attended in person.

In this docket since that time, Mr. Dougherty has been granted intervention, several procedural conferences have been held, numerous Procedural Orders have been issued, and numerous party filings (mostly related to motions) have been made.

A Procedural Order issued on November 9, 2011, required Montezuma Rimrock to make a filing, by December 9, 2011, to include the following: (1) an explanation of the material terms of the

1 intended lease for arsenic treatment facilities and, if possible, a copy of the lease; (2) an explanation
2 of the source and ownership of the funds that will be used to make the lease payments; (3) an analysis
3 of whether the lease is properly characterized as a capital lease or an operating lease under applicable
4 accounting standards; and (4) an explanation of Montezuma Rimrock's intentions related to pursuing
5 modification of Decision No. 71317. The Procedural Order further required Staff and Mr. Dougherty
6 to file, by December 23, 2011, any responses to Montezuma Rimrock's filing; denied several motions
7 filed by Mr. Dougherty; and held in abeyance several motions related to discovery.

8 On December 7, 2011, Montezuma Rimrock filed the Interim Report of Montezuma Rimrock
9 Water Company, LLC ("Interim Report"), stating that Montezuma Rimrock had not yet received the
10 written lease from GCom; that Montezuma Rimrock believed that Odyssey Equipment Financing
11 Company ("OEF") would provide financing for the lease payments; that the lease would require
12 payment of \$30,000 over 60 months at \$810 per month; that the \$7,000 charge for "the building"
13 would be paid for over 48 months at \$275 per month; that construction for the plant was in process;
14 that Montezuma Rimrock would be paying \$500 per month into a reserve account for media
15 changeouts or filters; that Ms. Olsen personally would be entering into the lease with GCom and
16 would be subleasing the system to Montezuma Rimrock; that payment to GCom or OEF would be
17 made with Ms. Olsen's personal funds; that Montezuma Rimrock was not yet in a position to offer
18 meaningful analysis as to whether the lease should be characterized as a capital lease or an operating
19 lease; that Montezuma Rimrock requested an unspecified extension of the deadline to submit such
20 analysis; and that Montezuma Rimrock believed that there was no longer a need to pursue
21 modification of Decision No. 71317 and, thus, that this matter could be brought to a close and the
22 docket retained solely for ongoing compliance filings. Montezuma Rimrock included several e-mails
23 between Ms. Olsen and GCom and OEF personnel.

24 On December 15, 2011, Mr. Dougherty filed a Response to Interim Report of Montezuma
25 Rimrock Water Co., LLC; Motion to Deny Extension of Deadline; Motion for Evidentiary Hearing
26 ("Dougherty Response to Interim Report"). Mr. Dougherty asserted therein that the proposed lease,
27 as described by Montezuma Rimrock, would be very expensive and would require Commission
28 approval as a "capital" lease; that Montezuma Rimrock was trying to "slip past" the Commission

1 other arsenic treatment expenses that had already been incurred or would be incurred and that
2 Montezuma Rimrock would try to shift to ratepayers; that Montezuma Rimrock was acting in bad
3 faith in that it had begun construction after stating that it would not do so without Commission
4 approval; that Ms. Olsen's proposed dual role as the lessee of the arsenic treatment equipment and
5 building and the lessor of the same to Montezuma Rimrock was fraught with potential for abuse; and
6 that Montezuma Rimrock was insolvent. In addition, Mr. Dougherty moved the Commission to deny
7 Montezuma Rimrock's request for an extension beyond December 9, 2011, to file its lease financing
8 plan and analysis of whether the lease was an operating lease or a capital lease; moved the
9 Commission to schedule an evidentiary hearing to consider Montezuma Rimrock's "final financing
10 plan, its apparent insolvency, and whether to revoke [its] Certificate of Convenience and Necessity";
11 and asserted that it would be premature to close this docket and that it would be in the best interest of
12 ratepayers and the public to keep the docket open until Montezuma Rimrock's "final financing plan"
13 was approved or disapproved.

14 On December 22, 2011, Mr. Dougherty made a filing including the text of an online petition
15 urging the Commission to require an Environmental Impact Statement, along with a list of names
16 asserted to be 1,072 online petition signatures.

17 On January 4, 2012, a Procedural Order was issued scheduling a procedural conference to be
18 held on January 18, 2012, jointly with a procedural conference already scheduled to occur in the
19 Dougherty Complaint Docket.¹ The Procedural Order also required Montezuma Rimrock to explain
20 the current status of the lease dealings at the procedural conference; required Montezuma Rimrock to
21 file copies of lease documents as soon as they were in Montezuma Rimrock's possession and to
22 provide courtesy copies of the documents to Mr. Dougherty and Staff through electronic mail;
23 required the parties to make every effort to prepare analyses and present the analyses at the
24 procedural conference if the lease documents were made available to the parties at least 24 hours
25 before the procedural conference; otherwise required Montezuma Rimrock to identify at the
26 procedural conference a date by which the lease documents would be made available; and denied the

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28 ¹ The Dougherty Complaint Docket is Docket No. W-04254A-11-0323.

1 Dougherty Motion for an Evidentiary Hearing.

2 On January 6, 2012, Ms. Olsen, apparently without the involvement of counsel, filed a
3 “Request to have John Dougherty Removed as Intervener” (“Olsen Request”) in which numerous
4 allegations against Mr. Dougherty were made and to which numerous attachments were appended.
5 Among other things, Ms. Olsen asserted that Mr. Dougherty had violated an Injunction by sending
6 Ms. Olsen an e-mail on December 4, 2011, and that Mr. Dougherty was aware that he is not
7 permitted to contact Ms. Olsen due to the Injunction.

8 Also on January 6, 2012, Douglas Fitzpatrick, counsel for Montezuma Rimrock, filed a
9 Motion to Withdraw, stating that the “motion is necessary because of the excessive and burdensome
10 barrage of motions and discovery requests submitted by Intervener John Dougherty [which] have
11 resulted in significant time demands on . . . counsel and into bills for legal services which are onerous
12 to the water company.”² Mr. Fitzpatrick included with his Motion to Withdraw Montezuma
13 Rimrock’s contact information, Certificate of Counsel in Support of Motion to Withdraw, Consent to
14 Withdraw signed by Ms. Olsen on behalf of Montezuma Rimrock, and a proposed Order. Mr.
15 Fitzpatrick’s Motion to Withdraw did not state that Montezuma Rimrock would retain different
16 counsel to represent it in this matter. Mr. Fitzpatrick’s Motion to Withdraw also did not address how
17 Montezuma Rimrock would be able to engage in communications with Mr. Dougherty, who is
18 representing himself herein, and vice versa, if Montezuma Rimrock were not represented by counsel.

19 On January 11, 2012, a Procedural Order was issued denying Mr. Fitzpatrick’s Motion to
20 Withdraw, without prejudice, because the Motion to Withdraw had not established how Mr.
21 Fitzpatrick’s withdrawal as counsel would not interfere with the administration of justice and would
22 not prejudice any party to this matter in light of a current Injunction Against Harassment prohibiting
23 Mr. Dougherty from having contact with Ms. Olsen “except through attorneys, legal process, and
24 court hearings.”³ The Procedural Order directed Montezuma Rimrock, by March 12, 2012, to file
25 one of three possible types of documentation relating to Montezuma Rimrock’s ongoing

26 ² Mr. Fitzpatrick did not provide any factual information to support these assertions, and the Commission makes no
27 finding as to the accuracy of the assertions or specifically as to whether Montezuma Rimrock has incurred excessive legal
fees as a result of Mr. Dougherty’s status as an intervenor in this matter. It is also noted that Montezuma Rimrock did not
oppose Mr. Dougherty’s request for intervention until after it had been granted without opposition.

28 ³ The Procedural Order of January 11, 2012, provides additional information.

1 representation in this matter. The Procedural Order also continued the procedural conference
2 scheduled for January 18, 2012, until further Order of the Commission.

3 On February 21, 2012, someone filed in this docket a bundle of documents that appear to be
4 an unexecuted proposal for a contract under which Kevlor Design Group, LLC would build an
5 arsenic treatment system for Ms. Olsen and/or Montezuma Rimrock; an unexecuted "Water Services
6 Agreement" under which Ms. Olsen would construct, install, maintain, and own arsenic treatment
7 facilities to treat the water produced by Montezuma Rimrock's Well #1 and Well #4 for a 20-year
8 period in return for monthly standby fees of \$1,500.00 and treatment fees of \$400.00 per acre foot,
9 and Montezuma Rimrock would be required to purchase the arsenic treatment facilities from Ms.
10 Olsen for \$1.00 at the end of the 20-year period; and an uncompleted and incomplete "Lease
11 Agreement" showing "Financial Pacific Leasing, LLC" as lessor. The bundle of documents was
12 docketed with a cover sheet that was blank except for the docket numbers.

13 On March 9, 2012, Montezuma Rimrock filed a Notice of Replacement Counsel, stating that
14 Todd C. Wiley of Fennemore Craig, P.C. would be serving as counsel for Montezuma Rimrock in
15 this matter.

16 On March 12, 2012, a Procedural Order was issued granting Mr. Fitzpatrick's Motion to
17 Withdraw; scheduling a joint procedural conference⁴ for April 13, 2012; and requiring Montezuma
18 Rimrock, if it had executed any contractual documents related to purchase, construction, installation,
19 operation, or maintenance of an arsenic treatment facility to treat the water from its Well #1 and/or
20 Well #4, to file a copy of all such contractual documents by March 30, 2012.

21 On March 13, 2012, Mr. Dougherty filed a Motion to Bar Execution of Arsenic Treatment
22 Contract ("Motion to Bar Execution"). Mr. Dougherty requested that the Commission bar
23 Montezuma Rimrock from entering into any contract in connection with arsenic treatment facilities
24 until after he and Staff had an opportunity to analyze and comment on the contract and formal
25 Commission approval of the contract is obtained or, in the alternative, if Montezuma had already
26 signed contractual agreement, that the Commission issue an order barring Montezuma Rimrock from

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28 ⁴ The other matter involves a complaint filed by John Dougherty against Montezuma Rimrock and is assigned Docket
No. W-04254A-11-0323.

1 implementing any aspect of the contract until after a review by Mr. Dougherty and Staff and formal
2 Commission approval. This Motion has been deemed denied under the Procedural Order issued on
3 April 28, 2011 ("April 28 P.O."), which ordered that any motion not ruled upon by the Commission
4 within 20 calendar days of the filing date is deemed denied.

5 On March 14, 2012, Mr. Fitzpatrick filed Notice of Withdrawal of Motion to Withdraw. This
6 Motion, which was received after the Motion to Withdraw had already been granted, has been
7 deemed denied under the April 28 P.O.

8 On March 19, 2012, someone filed in this docket another bundle of documents without a
9 cover sheet identifying by whom they were filed. These documents appear to include an e-mail sent
10 to Ms. Olsen by a customer; a September 2011 "Statement to the Arizona Corporation Commission"
11 by "Gregory S. Olsen, Hydrologist"; an executed lease between Nile River Leasing, L.L.C. ("Nile
12 River") and Ms. Olsen for an arsenic building plant; a second executed lease between Nile River and
13 Ms. Olsen for an arsenic removal water treatment system; an unexecuted Water Services Agreement
14 between Ms. Olsen and Montezuma Rimrock; and a Contract for Arsenic Treatment System between
15 Kevlor Design Group, LLC ("Kevlor") and Ms. Olsen as Owner/Operator of Montezuma Rimrock,
16 with an accompanying Contract Acceptance Form executed by Kevlor and Ms. Olsen.

17 On March 20, 2012, Montezuma Rimrock filed a Response to Motion to Bar Execution of
18 Arsenic Treatment Contract, stating that Ms. Olsen intends to enter a contract with Kevlor for
19 construction and operation of arsenic treatment facilities, which Ms. Olsen intends to finance through
20 a lease agreement with Odyssey Equipment Financing Company ("Odyssey"),⁵ and that Ms. Olsen
21 proposes to lease the arsenic treatment facilities to Montezuma Rimrock through a Water Services
22 Agreement. The Response stated that the contracts and lease agreement were in the process of final
23 execution and that Montezuma Rimrock would file copies of them as soon as possible. The Response
24 further asserted that the Commission does not have any authority over the agreement between Ms.
25 Olsen and Kevlor or the agreement between Ms. Olsen and Odyssey and that the Water Services
26 Agreement between Montezuma Rimrock and Ms. Olsen is an operational agreement that does not

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28 ⁵ This appears to be a misidentification of the lessor.

1 require Commission approval as a debt issuance. Montezuma Rimrock asserted that Mr. Dougherty's
2 Motion should be ignored and summarily denied as contrary to law, unsupported, and frivolous.

3 On March 21, 2012, Mr. Dougherty filed a Response to Company's Signed Purchase, Lease
4 and Sublease Agreements; Supplement to Motion to Bar Implementation of Signed Contracts
5 ("Response & Supplement"). In the Response & Supplement, Mr. Dougherty takes issue with the
6 terms of the lease arrangement for the arsenic treatment facilities and the arrangement under which
7 Ms. Olsen would be paid for its use by Montezuma Rimrock, characterizing the lease as a capital
8 lease agreement by Montezuma Rimrock to finance equipment acquisition and the arrangement as a
9 "ploy to sidestep regulatory oversight." Mr. Dougherty again moved for the Commission to bar
10 implementation of the signed purchase agreement, lease agreement, and water services agreement
11 until they receive full Commission approval as required under A.R.S. § 40-252.

12 On March 21, 2012, Mr. Dougherty also filed a Motion to Deny Counsel's Notice of
13 Withdrawal of Motion to Withdraw, asserting that Mr. Fitzpatrick should not be permitted to reenter
14 the case as counsel for Montezuma Rimrock.

15 On April 6, 2012, Mr. Dougherty filed a Motion to Reschedule April 13 Hearing ("Motion"),
16 stating that he would be flying to Virginia on April 9 and staying there for approximately 10 days due
17 to an unforeseen serious medical situation involving a family member there. Mr. Dougherty further
18 stated that he then would be traveling for business until approximately April 25. Mr. Dougherty
19 stated that he would be available to participate by telephone, if necessary, but that he believed
20 personal attendance to be extremely important. In addition, Mr. Dougherty related that he had sent
21 Mr. Wiley an e-mail on March 22 in an attempt to resolve some discovery issues and request some
22 additional documents, but had not yet received a response. Mr. Dougherty went on to urge the
23 Commission to grant the requests in his Motion to Bar Execution and Response & Supplement.

24 Although neither Montezuma Rimrock nor Staff has yet responded to Mr. Dougherty's
25 Motion, in light of Mr. Dougherty's being unavailable to appear in person for the joint procedural
26 conference, it is reasonable and appropriate to grant Mr. Dougherty's request to reschedule the
27 procedural conference for a time when Mr. Dougherty should be available to attend in person. In
28 addition, it is reasonable and appropriate to require Montezuma Rimrock, through counsel, to file

1 complete copies of any and all agreements that have been executed by Ms. Olsen individually or for
2 Montezuma Rimrock, for the purpose of Montezuma Rimrock's obtaining arsenic treatment for its
3 water supply. Further, it is reasonable and appropriate to require Montezuma Rimrock, Mr.
4 Dougherty, and Staff to file, before the procedural conference, the following analyses, which shall be
5 discussed at the procedural conference:

6 1. For each document:

- 7 a. Regardless of its title, whether it is a lease agreement and why or why not;
8 b. If it is a lease agreement, whether it is a capital lease or an operating lease and
9 why; and
10 c. Whether Commission approval is required for the document and why or why
11 not;

12 2. Whether this docket should remain open for consideration of whether to modify
13 Decision No. 71317 under A.R.S. § 40-252 concerning financing approval and related
14 provisions; and

15 3. If the docket should remain open, whether an evidentiary hearing should be held for
16 such consideration.

17 IT IS THEREFORE ORDERED that the **joint procedural conference** scheduled for **April**
18 **13, 2012**, is hereby **vacated**.

19 IT IS FURTHER ORDERED that a **joint procedural conference** involving the above-
20 captioned docket and Docket No. W-04254A-11-0323 shall proceed on **April 30, 2012, at 1:00 p.m.**,
21 or as soon thereafter as is practicable, in Hearing Room No. 2 at the Commission's offices at 1200
22 West Washington Street, Phoenix, Arizona.

23 IT IS FURTHER ORDERED that **Montezuma Rimrock, through counsel, shall, by April**
24 **13, 2012, file complete copies of any and all agreements** that have been executed by Ms. Olsen
25 individually or for Montezuma Rimrock, for the purpose of Montezuma Rimrock's obtaining arsenic
26 treatment for its water supply.

27 IT IS FURTHER ORDERED that **Montezuma Rimrock, Mr. Dougherty, and Staff shall,**
28 **by April 27, 2012, file the following analyses,** which shall be discussed at the procedural

1 conference:

- 2 1. For each document:
- 3 a. Regardless of its title, whether it is a lease agreement and why or why not;
- 4 b. If it is a lease agreement, whether it is a capital lease or an operating lease and
- 5 why; and
- 6 c. Whether Commission approval is required for the document and why or why
- 7 not;
- 8 2. Whether this docket should remain open for consideration of whether to modify
- 9 Decision No. 71317 under A.R.S. § 40-252 concerning financing approval and related
- 10 provisions; and
- 11 3. If the docket should remain open, whether an evidentiary hearing should be held for
- 12 such consideration.

13 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,

14 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at

15 hearing.

16 DATED this 9th day of April, 2012.

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19 

20 SARAH N. HARPRING

21 ADMINISTRATIVE LAW JUDGE

22 Copies of the foregoing mailed/delivered/e-mailed

23 this 9th day of April, 2012, to:

24 Todd C. Wiley

25 FENNEMORE CRAIG, P.C.

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27 Phoenix, AZ 85012

28 twiley@fclaw.com

Attorney for Montezuma Rimrock Water Company, LLC

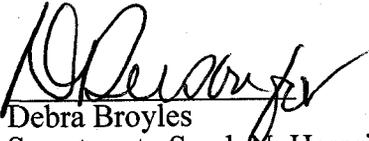
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