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AZ CORP COMMISSION
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2 BOB STUMP – Chairman
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BEFORE THE ARIZONA CORPORATION COMMISSION

7 IN THE MATTER OF THE APPLICATION
8 OF MONTEZUMA RIMROCK WATER
9 COMPANY, LLC FOR APPROVAL OF
10 FINANCING TO INSTALL A WATER LINE
11 FROM THE WELL ON TIEMAN TO WELL
12 NO. 1 ON TOWERS.

Docket No. W-04254A-12-0204

11 IN THE MATTER OF THE APPLICATION
12 OF MONTEZUMA RIMROCK WATER
13 COMPANY, LLC FOR APPROVAL OF
14 FINANCING TO PURCHASE THE WELL
15 NO. 4 SITE AND THE COMPANY
16 VEHICLE.

Docket No. W-04254A-12-0205

14 IN THE MATTER OF THE APPLICATION
15 OF MONTEZUMA RIMROCK WATER
16 COMPANY, LLC FOR APPROVAL OF
17 FINANCING FOR AN 8,000-GALLON
18 HYDRO-PNEUMATIC TANK.

Docket No. W-04254A-12-0206

17 IN THE MATTER OF THE RATE
18 APPLICATION OF MONTEZUMA
19 RIMROCK WATER COMPANY, LLC.

Docket No. W-04254A-12-0207

19 JOHN E. DOUGHERTY,
20
21 COMPLAINANT,

Docket No. W-04254A-11-0323

21 V.
22 MONTEZUMA RIMROCK WATER
23 COMPANY, LLC

24 RESPONDENT

Arizona Corporation Commission

DOCKETED

MAY 15 2013

DOCKETED BY

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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 MOTION FOR PARTIAL SUMMARY JUDGMENT

Montezuma Rimrock Water Company LLC (“MRWC” or “Company”) responds to Mr. Dougherty’s Motion for Summary Judgment filed on April 15, 2013. In no uncertain terms, Mr. Dougherty doesn’t establish any basis for issuing summary judgment on any claim or cause of action in his complaint proceeding. Mr. Dougherty’s motion should be summarily denied as a matter of fact and law. This response is supported by the attached declaration of Patricia Olsen (“Olsen Decl.”).

I. THERE IS NO BASIS FOR SUMMARY JUDGMENT AGAINST MRWC.

A. Brief Statement of the Response.

In his motion, Mr. Dougherty improperly assumes that Allegation XVII in his amended complaint is amenable to a motion for summary judgment. That allegation, however, does not support entry of a summary judgment on a legal cause of action. Put simply, Allegation XVII is not ripe for a summary judgment for several reasons.

In Allegation XVII, Mr. Dougherty asserts two primary legal arguments. First, Mr. Dougherty claims that MRWC “knowingly and willfully violated” certain procedural orders issued in Docket No. 08-0361, *et. seq.*¹ Mr. Dougherty then claims that “this action was undertaken to circumvent Commission approval of Capital Leases in violation of ARS S40-301, ARS S40-302, ARS S40-424 and ARS S40-425.”² This claim does not support summary judgment and also is contrary to the facts. Any alleged violations of a

¹ Motion for Partial Summary Judgment (“Motion”) at 2.
² *Id.*

1 procedural order in those dockets do not warrant summary judgment on a claim or cause
2 of action as a matter of law. The Company acknowledges that it should have docketed the
3 lease agreements with Nile River and Financial Pacific and sought Commission approval.
4 MRWC apologizes for the mistake. MRWC did not have any ulterior or improper motive
5 and, in fact, MRWC took corrective action by docketing those agreements in October
6 2012 and then seeking financing approval for those leases in April 2013. All parties have
7 been aware of the terms and conditions of those leases since October 2012. As a matter of
8 law, the Commission has authority to retroactively approve such agreements, including
9 review of the lease terms in accordance with A.R.S. §§ 40-301 and 40-302.

10 Second, Mr. Dougherty claims that MRWC docketed “fraudulent” lease
11 agreements with Nile River and Financial Pacific. On this claim, Mr. Dougherty’s motion
12 is largely based on false assumption and innuendo. That’s not to mention that the factual
13 arguments contained in Mr. Dougherty’s motion are contested by MRWC. Mr.
14 Dougherty focuses on the dates of the various lease agreements and does not contend that
15 any material terms or conditions were altered or changed. Given that the lease terms and
16 conditions submitted by MRWC are the actual terms and conditions for the leases with
17 Nile River and Financial Pacific, there is absolutely no fraud. Moreover, Mr. Dougherty
18 does not allege, let alone demonstrate, any harm or injury to any customer of MRWC or
19 any other party relating to those lease agreements. Rather, those lease agreements are
20 currently before the Commission for review and approval.

21 Under the facts of this case, MRWC’s actions have benefitted the public and its
22 customers by facilitating financing, installation and construction of necessary arsenic
23 treatment facilities. The issue of finding MRWC in violation of A.R.S. §§ 40-301 and 40-
24 302 for not seeking prior approval of those lease agreements has been rendered moot by
25 the Company’s application for retroactive approval of those lease agreements. The
26

1 Commission's decision on whether to approve those lease agreements retroactively likely
2 will address any alleged violations of A.R.S. §§ 40-301 and 40-302.

3 Under the facts and circumstances of this case, the Administrative Law Judge
4 should deny Mr. Dougherty's motion for partial summary judgment and proceed with the
5 scheduled evidentiary hearing for the various consolidated dockets in this case. The
6 allegations raised by Mr. Dougherty relating to MRWC's motives and fraudulent scheme
7 are disputed by MRWC in its answers to Mr. Dougherty's complaint, in Ms. Olsen's
8 declaration and throughout this proceeding. Contrary to Mr. Dougherty's motion, there
9 are disputed issues of fact that preclude summary judgment, not to mention that summary
10 judgment motions are rarely granted in Commission proceedings in order to develop a full
11 evidentiary record for consideration by the Commissioners in issuing a final decision.

12 **B. The Nile River Lease Agreement.**

13 To start, Mr. Dougherty argues that "[t]o avoid disclosure of Capital Leases that
14 would have required review and approval by Commission staff, Montezuma executed a
15 fraudulent scheme in Docket W-04254A-08-0361, 0362 whereby the Company and its
16 Counsel stated that Ms. Patricia Olsen had personally entered into two separate lease
17 agreements for the facility and the building." This claim relates to the Nile River lease
18 agreement. Mr. Dougherty's claims are completely unfounded and unsupported.

19 Mr. Dougherty has not offered any evidence relating to any fraudulent scheme by
20 MRWC and Ms. Olsen. Rather, Mr. Dougherty makes that argument without any factual
21 basis whatsoever. His motion should be denied for that reason alone.

22 Originally, Odyssey Financial provided Ms. Olsen with two versions of the lease
23 agreement—two leases for her personal signature and one for the Company.³ Those
24 leases are attached as Exhibits 1 and 2 to Mr. Dougherty's statement of facts. Ms. Olsen
25

26 ³ Olsen Decl. at ¶¶ 5-6.

1 did not draft those lease documents—rather they were provided by Odyssey Financial.⁴
2 That is readily apparent from the March 16, 2012 lease agreement between Ms. Olsen and
3 Nile River attached as Exhibit 1 to Mr. Dougherty’s motion. That is not contract
4 document or form created by Ms. Olsen. Those documents were provided by Odyssey
5 Financial to Ms. Olsen.⁵

6 In his motion, Mr. Dougherty cites to the fact that the signature of Ms. Richards on
7 the March 16, 2012 lease agreements is not an authorized signature. Ms. Olsen does not
8 know who signed that agreement for Nile River—she believed it was an authorized
9 signature of Nile River.⁶ That issue is a red herring because the March 22, 2012 lease
10 signed by Mr. Torbenson is the actual agreement between MRWC and Nile River.

11 At that time, MRWC faced substantial pressure from ADEQ to address the arsenic
12 problem. MRWC attempted to find financing for the arsenic treatment facilities and
13 Odyssey Financial provided the only available option.⁷ In turn, Mr. Olsen signed both
14 lease agreements with Nile River dated March 16, 2012. As originally proposed, Ms.
15 Olsen intended to proceed with the personal leases with Nile River in order to expedite the
16 financing and construction of the arsenic facilities. Subsequently, however, Nile River
17 informed Ms. Olsen that it could not enter a lease with her personally and that the
18 Company needed to be party to the agreement. Odyssey Financial then provided the
19 March 22, 2012 lease agreement between MRWC and Nile River.⁸

20 As acknowledged in prior pleadings, the Company should have docketed the
21 March 22, 2012 lease agreement between MRWC and Nile River and sought Commission
22 approval. MRWC apologizes for that omission. The Company also acknowledges that

23 ⁴ Olsen Decl. at ¶ 6.

24 ⁵ Olsen Decl. at ¶ 6.

25 ⁶ Olsen Decl. at ¶ 7.

26 ⁷ Olsen Decl. at ¶ 8. That circumstance was created in part by Mr. Dougherty’s efforts to prevent MRWC from obtaining WIFA financing for the arsenic treatment plant.

⁸ Olsen Decl. at ¶ 8.

1 the Nile River lease agreement is a capital lease based on Rider 2. Unfortunately, MRWC
2 did not have a copy of Rider 2 in its files.⁹ In any event, the Company submitted the
3 March 22, 2012 Nile River lease agreement for Commission approval in its Notice of
4 Filing Financing Applications on April 12, 2013. MRWC also docketed that lease
5 agreement and the May 2, 2012 lease agreement with Financial Pacific with the
6 Commission on October 26, 2012 in Docket No. 12-0204.

7 Mr. Dougherty's contention that MRWC was employing a fraudulent scheme to
8 avoid Commission review of the lease agreement is false and contrary to the underlying
9 facts. Ms. Olsen was in contact with Commission Staff relating to the lease agreements
10 and MRWC docketed the Nile River lease agreement on October 26, 2012.¹⁰ The fact that
11 MRWC docketed those agreements in October 2012 shows that the Company intended for
12 the Commission to review the leases. The Company intended that the lease agreement
13 would be considered and reviewed by the Commission in its rate case.

14 In his motion, Mr. Dougherty focuses on issues relating to the timing of the lease
15 agreements with both Nile River and Financial Pacific. On those issues, it bears repeating
16 that MRWC was under immediate orders and pressure from ADEQ to install an arsenic
17 treatment system. For that reason, MRWC proceeded with the lease agreements and
18 installation of the arsenic facility. That decision served the public interest and clearly
19 benefitted MRWC customers by facilitating installation of arsenic treatment facilities, an
20 undisputed fact that Mr. Dougherty completely ignores in his motion.

21 It also bears emphasis that there was no harm or injury to any customer or party as
22 a result of the timing of these transactions. To the contrary, MRWC customers clearly
23 benefitted through financing and construction of arsenic treatment facilities. MRWC
24 Customers are receiving water in compliance with Safe Water Drinking standards for

25 ⁹ Olsen Decl. at ¶ 9.

26 ¹⁰ Olsen Decl. at ¶ 10.

1 arsenic—another undisputed fact in this case.¹¹ Further, MRWC didn't start making
2 payments to Financial Pacific for the arsenic treatment system until October 23, 2012.
3 And MRWC started making payments to Nile River for the arsenic building on December
4 17, 2012.¹² Prior to those dates, Ms. Olsen made the payments to Financial Pacific and
5 Nile River through her personal checking account. Further, the leases required up front
6 money deposits and those deposits were paid by Ms. Olsen out of her personal account.¹³

7 **C. The Financial Pacific Lease Agreement.**

8 Next, Mr. Dougherty claims that summary judgment is warranted because MRWC
9 docketed a May 2, 2012 lease agreement with Financial Pacific, rather than an April 2,
10 2012 lease agreement. Mr. Dougherty apparently claims MRWC committed fraud by
11 docketing a lease dated May 2, 2012 instead of April 2, 2012—even though the terms of
12 those leases are otherwise identical. This claim does not support summary judgment in
13 any way, shape or form.

14 To start, the May 2 and April 2 lease agreements contain the same terms and
15 conditions for the lease agreement. As a result, there is no fraud relating to any material
16 terms or conditions of the lease. The fact that one lease is dated a month after the other
17 lease does not equate with fraud. Both of those lease agreements were provided to
18 MRWC and Ms. Olsen by Financial Pacific.¹⁴ Whether the lease is dated May 2, 2012 or
19 April 2, 2021 does not impact the terms and conditions of the lease.

20 Odyssey Financial originally provided an undated lease agreement to MRWC,
21 which was signed by Ms. Olsen.¹⁵ Subsequently, Ms. Olsen spoke with a representative
22 of Financial Pacific and was advised that it would take 30-60 days to finalize the
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24 ¹¹ Olsen Decl. at ¶ 12.

25 ¹² Olsen Decl. at ¶12.

26 ¹³ Olsen Decl. at ¶12.

¹⁴ Olsen Decl. at ¶13.

¹⁵ Olsen Decl. at ¶14.

1 agreement.¹⁶ As a result, Financial Pacific provided MRWC with two copies of the lease
2 agreements dated April 2, 2012 and May 2, 2012. Representatives of Financial Pacific
3 advised Ms. Olsen that the agreement could be dated in April or May.¹⁷ At the time,
4 MRWC and Ms. Olsen focused on getting the financing in place for the arsenic treatment
5 plant. Aside from the fact that summary judgment is not warranted on any legal grounds,
6 these issues are all disputed facts that preclude summary judgment.

7 **D. There Is No Legal Basis for Summary Judgment on Any Cause of**
8 **Action.**

9 As a matter of law, Mr. Dougherty's motion should be denied because his claims
10 are not amenable to a summary judgment motion and they do not support the relief
11 requested by Mr. Dougherty in his motion. As established in prior pleadings, the
12 Commission has authority to retroactively approve financial transactions and, in fact, the
13 Commission has done exactly that for many years. Under case law and the statutes
14 themselves, the Commission has authority and discretion to retroactively approve debt
15 transactions like the leases at issue here. Mr. Dougherty does not cite any case law or
16 authority to the contrary. Thus, Mr. Dougherty cannot obtain summary judgment relating
17 his claims based on A.R.S. § 40-301 and § 40-302.

18 Summary judgment should not be granted on those issues without a full evidentiary
19 hearing to establish a full record for consideration by the Commissioners. Obviously,
20 representatives of Nile River and Financial Pacific may need to testify at hearing and be
21 subject to cross examination. The affidavits from Nile River and letters from legal
22 counsel for Financial Pacific do not establish any undisputed facts and, in fact, those
23 documents may not even be admissible without establishing foundation and allowing
24 cross examination at hearing. The purpose of an evidentiary hearing is to establish a full
25 evidentiary record for consideration by the Commission.

26 ¹⁶ Olsen Decl. at ¶15 .

¹⁷ Olsen Decl. at ¶15.

1 Summary judgment also should be denied because Ariz. Rev. Stat. § 40-302(B)
2 provides that the “Commission may grant or refuse permission for the issue of evidences
3 of indebtedness or grant the permission to issue them in a lesser amount, and may attach
4 permission conditions it deems reasonable and necessary.” Likewise, Ariz. Rev. Stat.
5 § 40-302(A) provides that the power to issues debt by public utilities “shall be exercised
6 as provided by law and under rules, regulations and orders of the Commission.” Those
7 statutes clearly provide the Commission with sufficient authority to grant retroactive
8 approval of the capital leases at issue here, as long as the Commission “finds that such
9 issue is for lawful purposes which are within the corporate powers of the applicant, are
10 compatible with the public interest, with sound financial practices, and with the proper
11 performance by the applicant of service as a public service corporation and will not impair
12 its ability to perform that service.”¹⁸ Granting Mr. Dougherty’s motion would nullify the
13 Commission’s ability to retroactively approve the Nile River and Financial Pacific leases.

14 As noted by the Administrative Law Judge and legal counsel for Commission
15 Staff, the Commission has issued many decisions retroactively approving financing
16 transactions and debt issuances under Ariz. Rev. Stat. §§ 40-301 and 40-302. Those
17 decisions warrant denial of Mr. Dougherty’s motion. *See, e.g., Columbus Elec. Coop.,*
18 *Inc.*, 2012 WL 1996804 (May 18, 2012) at * 1 (retroactively approving three secured
19 loans and related mortgages); Decision No. 72667 (Little Park Water Company),
20 November 17, 2011 at 10-11 (retroactively approving \$140,000 financing request for a
21 bridge loan not previously approved by the Commission and noting that “Little Park is not
22 in compliance with A.R.S. § 40-301 with respect to the promissory note issued to Big
23 Park.”); *Yarnell Water Imp. Ass’n, Inc.*, 2009 WL 246452 at *1, 13 (January 20, 2009)
24 (retroactively approving financing of \$19,827 for purchase of truck); *Park Water Co.*,
25 2004 WL 3410764 (August 10, 2004) (retroactively approving \$37,519 in financing to

26 ¹⁸ Ariz. Rev. Stat. § 40-301(C). *See also* Ariz. Rev. Stat. § 40-302(A).

1 cover operating costs and plant improvements); *Golden Shores Water Co.*, 2008 WL
2 622130 at *1-2, 4-5 (involving promissory note to Bank One for loan in amount of
3 \$286,200 for new well and storage tank, stating that “GSWC acknowledges that approval
4 of the loan should have been obtained from the Commission prior to executing the
5 transaction” under § 40-302 and ordering that “Golden Shores Water Company, Inc. is
6 hereby retroactively authorized to borrow \$286,200 from Bank One”); Decision No.
7 65853 (*Bellefont Water Co.*), April 25, 2003 (granting retroactive approval of a \$22,792
8 loan to Bellefont from shareholder for drilling of well and pump); *Pinecrest Water Co.*,
9 1993 WL 495133 (October 18, 1993) at *1, 4-5 (finding that company “has issued stock
10 without Commission approval” and retroactively approving stock issuance used to fund
11 installation of new main).

12 Finally, the issue of finding MRWC in violation of A.R.S. §§ 40-301 and 40-302
13 for not seeking prior approval of those lease agreements has been rendered moot by the
14 Company’s application for retroactive approval of those lease agreements. The
15 Commission’s decision on whether to approve those lease agreements after-the-fact likely
16 will address any alleged violations of A.R.S. §§ 40-301 and 40-302. That is a decision
17 that should be left to the Commission following an evidentiary hearing.

18 Retroactive consideration of those leases is the appropriate remedy for these
19 alleged issues—a fact conceded by Mr. Dougherty when he filed a motion on January 15,
20 2013 requesting that “the Commission require the Company to submit the true and
21 complete, unredacted leases between the Company and Nile River Leasing for Arsenic
22 Treatment Building and the Company and Financial Pacific Leasing for the Arsenic
23 Treatment System for Approval by the Commission as Capital Leases under ARS S40-

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1 302(A) as part of the ongoing rate case application and approval of various long term debt
2 in this consolidated docket.”¹⁹

3 **E. Mr. Dougherty Is Not Entitled to the Relief Requested in His Motion.**

4 As a matter of law, Mr. Dougherty’s motion should be denied because he is not
5 entitled to the relief requested in his motion. In his motion, Mr. Dougherty requests that
6 the Company and Ms. Olsen be found in contempt of the Commission under A.R.S. § 40-
7 424.²⁰ Commission Staff has not suggested that MRWC be found in contempt. The only
8 party proposing such action is Mr. Dougherty as part of his continuing vendetta against
9 MRWC and Ms. Olsen. A contempt finding is not warranted because the Company did
10 not have any ulterior or improper motive and MRWC corrected that occurrence by
11 docketing those lease agreements in October 2012 and then seeking financing approval for
12 those leases in April 2013.

13 The contempt authority in § 40-424 is not intended for this type of error by a
14 Company and a contempt order is not warranted or justified under the facts of this case.
15 All parties have been fully aware of the material terms of those lease agreements since
16 October 2012 and the Commission can address those terms and conditions in the pending
17 rate case. A contempt order also would be unduly punitive on MRWC.

18 In his motion, Mr. Dougherty also asks that “the Commission make a criminal
19 referral under ARS S40-421 (A, B) to the Attorney General or County Attorney for the
20 fraud violations described herewith...”²¹ This claim is completely meritless. A.R.S. § 40-
21 421 is intended for use by the Commission in ensuring “enforcement of the provisions of
22 the constitution and statutes affecting public service corporations...” Here, MRWC
23 already has filed an application seeking retroactive approval of the lease agreements. As

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25 ¹⁹ Motion to Require Company to Submit Capital Leases to Commission for Approval
docketed January 15, 2013, at 3.

26 ²⁰ Motion at 7.

²¹ *Id.*

1 such, there is nothing for the Commission to refer to the Attorney General for
2 enforcement proceedings.

3 Further, Mr. Dougherty has not shown the necessary elements to support his claims
4 for fraud.²² Mr. Dougherty is using the word “fraud” as a catch phrase designed as a
5 smear tactic against MRWC. That claim is meritless because there is no fraud given that
6 the material terms and conditions of the various lease agreements are substantially the
7 same. MRWC’s filings in this case do not constitute fraud in any way, shape or form.

8 Finally, Mr. Dougherty seeks a judgment revoking MRWC’s CC&N. Mr.
9 Dougherty has not alleged, let alone established, any factual basis for revoking MRWC’s
10 CC&N. On this record, it is undisputed that MRWC is providing adequate and reliable
11 water service to its customers and, therefore, there are no grounds to revoke MRWC’s
12 CC&N as a matter of law.²³

13 **II. CONCLUSION.**

14 For the reasons set above, the Administrative Law Judge should issue an order
15 denying Mr. Dougherty’s motion for partial summary judgment.

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22 ²² *Echols v. Beauty Built Homes, Inc.*, 132 Ariz. 498, 500, 647 P.2d 629, 631 (1982)(“A
23 showing of fraud requires (1) a representation; (2) its falsity; (3) its materiality; (4) the
24 speaker’s knowledge of its falsity or ignorance of the truth; (5) the speaker’s intent that it
be acted upon by the recipient in the manner reasonably contemplated; (6) the hearer’s
ignorance of its falsity; (7) the hearer’s reliance on its truth; (8) the right to rely on it; and
(9) his consequent and proximate injury.”)

25 ²³ *James P. Paul Water Co. v. Ariz. Corp. Comm’n*, 137 Ariz. 426, 431, 671 P.2d 404, 400
26 (1983)(“Because there was no evidentiary showing that Paul was unable or unwilling to
provide service at reasonable rates the Commission was without legal authority to amend
Paul’s certificate as it did.”).

1 RESPECTFULLY SUBMITTED this 15th day of May, 2013.

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FENNEMORE CRAIG

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An original and 13 copies
of the foregoing was filed
this 15th day of May, 2013,
with:

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Phoenix, Arizona 85007

A copy of the foregoing
was hand delivered/mailed/emailed this
15th day of May, 2013, to:

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John E. Dougherty, III
P.O. Box 501
Rimrock, Arizona 86335


8164044.4

1 know who signed that agreement for Nile River—I believed it was an authorized signature
2 of Nile River. I also would note that the March 22, 2012 lease signed by Mr. Torbenson
3 is the actual agreement between MRWC and Nile River.

4 8. At that time, MRWC faced substantial pressure from ADEQ to address the
5 arsenic problem. MRWC attempted to find financing for the arsenic treatment facilities
6 and Odyssey Financial provided the only available option. In turn, I signed both lease
7 agreements with Nile River dated March 16, 2012. As originally proposed, I intended to
8 proceed with the personal leases with Nile River in order to expedite the financing and
9 construction of the arsenic facilities. Subsequently, however, Nile River informed me that
10 it could not enter a lease with me personally and that the Company needed to be party to
11 the agreement. Odyssey Financial then provided the March 22, 2012 lease agreement
12 between MRWC and Nile River.

13 9. As acknowledged in prior pleadings, I acknowledge that the Company
14 should have docketed the March 22, 2012 lease agreement between MRWC and Nile
15 River and sought Commission approval. MRWC apologizes for that omission. The
16 Company also acknowledges that the Nile River lease agreement is a capital lease based
17 on Rider 2. Unfortunately, MRWC did not have a copy of Rider 2 in its files. In any
18 event, the Company submitted the March 22, 2012 Nile River lease agreement for
19 Commission approval in its Notice of Filing Financing Applications on April 12, 2013.
20 MRWC also docketed that lease agreement and the May 2, 2012 lease agreement with
21 Financial Pacific with the Commission on October 26, 2012 in Docket No. 12-0204.

22 10. I was in contact with Commission Staff relating to the lease agreements and
23 MRWC docketed the Nile River lease agreement on October 26, 2012. The fact that
24 MRWC docketed those agreements in October 2012 shows that the Company intended for
25 the Commission to review the leases. The Company intended that the lease agreement
26 would be considered and reviewed by the Commission in its rate case.

1 11. In his motion, Mr. Dougherty focuses on issues relating to the timing of the
2 lease agreements with both Nile River and Financial Pacific. On those issues, it bears
3 repeating that MRWC was under immediate orders and pressure from ADEQ to install an
4 arsenic treatment system. For that reason, MRWC proceeded with the lease agreements
5 and installation of the arsenic facility. That decision served the public interest and clearly
6 benefitted MRWC customers by facilitating installation and construction of arsenic
7 treatment facilities.

8 12. Put simply, MRWC customers clearly benefitted through financing and
9 construction of arsenic treatment facilities. Customers are receiving water in compliance
10 with Safe Water Drinking standards for arsenic. Further, MRWC didn't start making
11 payments to Financial Pacific for the arsenic treatment system until October 23, 2012.
12 MRWC started making payments to Nile River for the arsenic building on December 17,
13 2012. Prior to those dates, I made the payments to Financial Pacific and Nile River
14 through my personal checking account. Even further, the leases required up front money
15 deposits and I paid those deposits through my personal checking account.

16 13. Next, Mr. Dougherty apparently claims MRWC committed fraud by
17 docketing a lease with Financial Pacific dated May 2, 2012, instead of April 2, 2012.
18 Both of those lease agreements were provided to MRWC and Ms. Olsen by Financial
19 Pacific. I did not draft those lease documents—rather they were provided by Financial
20 Pacific. That lease is not a contract document or form created by MRWC.

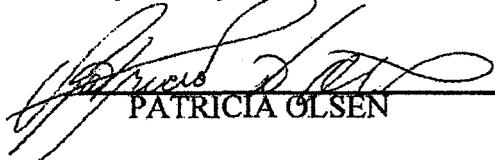
21 14. Odyssey Financial originally provided an undated lease agreement to
22 MRWC, which was signed by me. Subsequently, I spoke with a representative of
23 Financial Pacific and was advised that it would take 30-60 days to finalize the agreement.
24 As a result, Financial Pacific provided MRWC with two copies of the lease agreements
25 dated April 2, 2012 and May 2, 2012. Representatives of Financial Pacific advised Ms.
26 Olsen that the agreement could be dated in April or May. At the time, MRWC focused on

1 getting the financing in place for the arsenic treatment plant. For these reasons, I
2 considered the May 2012 Financial Pacific lease as the final agreement. I should also
3 mention that the April 2012 and May 2012 Financial Pacific lease agreements have
4 identical terms and conditions.

5 15. The Company acknowledges that the Company should have docketed the
6 lease agreements and apologizes for the mistake. The Company did not have any ulterior
7 or improper motive. MRWC corrected that occurrence by docketing those agreements in
8 October 2012 and then seeking financing approval for those leases in April 2013.

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

10 EXECUTED this 14th day of May, 2013.

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13 PATRICIA OLSEN

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