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1 John E. Dougherty
2 PO Box 501
3 Rimrock, AZ 86335
4 Complainant & Intervenor
5

AZ CORP COMMISSION
DOCKET CONTROL

6 **BEFORE THE ARIZONA CORPORATION COMMISSION**
7

8
9 **COMMISSIONERS**

10
11 BOB STUMP-Chairman
12 GARY PIERCE
13 BRENDA BURNS
14 BOB BURNS
15 SUSAN BITTER SMITH
16

17
18 IN THE MATTER OF THE APPLICATION OF
19 MONTEZUMA RIMROCK WATER COMPANY,
20 LLC FOR APPROVAL OF FINANCING TO
21 INSTALL A WATER LINE FROM THE WELL ON
22 TIEMAN TO WELL NO. 1 ON TOWERS
23

W-04254A-12-0204

24 IN THE MATTER OF THE APPLICATION OF
25 MONTEZUMA RIMROCK WATER COMPANY,
26 LLC FOR APPROVAL OF FINANCING TO
27 PURCHASE THE WELL NO. 4 SITE AND THE
28 COMPANY VEHICLE.
29

W-04254A-12-0205

30 IN THE MATTER OF THE APPLICATION OF
31 MONTEZUMA RIMROCK WATER COMPANY,
32 LLC FOR APPROVAL OF FINANCING FOR AN
33 8,000-GALLON HYDRO-PNEUMATIC TANK
34

W-04254A-12-0206

35 IN THE MATTER OF THE RATE
36 APPLICATION OF MONTEZUMA RIMROCK
37 WATER COMPANY, LLC.
38

W-04254A-12-0207

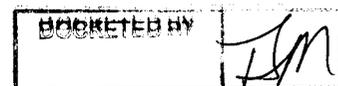
39 JOHN E. DOUGHERTY,
40 COMPLAINANT,
41 V.
42 MONTEZUMA RIMROCK WATER
43 COMPANY, LLC,
44 RESPONDENT.
45

W-04254A-11-0323

46 Arizona Corporation Commission

47 **DOCKETED**

48 **MAY 22 2013**
49



1 IN THE MATTER OF THE APPLICATION OF
2 MONTEZUMA RIMROCK WATER
3 COMPANY, LLC FOR APPROVAL OF A
4 RATE INCREASE.

W-04254A-08-0361

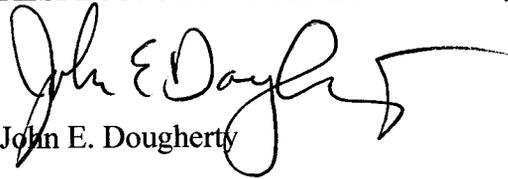
5
6 IN THE MATTER OF THE APPLICATION OF
7 MONTEZUMA RIMROCK WATER
8 COMPANY, LLC FOR APPROVAL OF A
9 FINANCING APPLICATION.

W-04254A-08-0362

10
11 **Complainant/Intervenor's**
12 **Notice of Filing**
13 **Direct Testimony**
14

15 Complainant/Intervenor hereby files the Direct Testimony of John E. Dougherty in the
16 above consolidated dockets.

17
18 RESPECTFULLY SUBMITTED this 22nd Day of May, 2013.

19
20 
21
22 John E. Dougherty
23

24 Copies of the foregoing Mailed/Hand Delivered
25 This 22nd day of May, 2013 to:

26
27 Todd C. Wiley
28 3003 N. Central Ave.
29 Suite 2600
30 Phoenix, AZ 85012

Janice Alward
Arizona Corporation Commission
1200 W. Washington St.
Phoenix, AZ 85007

31
32 Patricia D. Olsen, Manager
33 Montezuma Rimrock Water Company
34 PO Box 10
35 Rimrock AZ 86335

Steve Olea
Arizona Corporation Commission
1200 W. Washington St.
Phoenix, AZ 85007

36
37 Lyn Farmer
38 Arizona Corporation Commission
39 1200 W. Washington St.
40 Phoenix, AZ 85007
41
42
43
44
45
46
47

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2
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17 TIEMAN TO WELL NO. 1 ON TOWERS

W-04254A-12-0204

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W-04254A-12-0205

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W-04254A-12-0206

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30 IN THE MATTER OF THE RATE
31 APPLICATION OF MONTEZUMA RIMROCK
32 WATER COMPANY, LLC.

W-04254A-12-0207

33 _____
34 JOHN E. DOUGHERTY,
35 COMPLAINANT,
36 V.
37 MONTEZUMA RIMROCK WATER
38 COMPANY, LLC,
39 RESPONDENT.

W-04254A-11-0323

40 _____
41 IN THE MATTER OF THE APPLICATION OF
42 MONTEZUMA RIMROCK WATER
43 COMPANY, LLC FOR APPROVAL OF A
44 RATE INCREASE.

W-04254A-08-0361

45 _____
46 IN THE MATTER OF THE APPLICATION OF
47 MONTEZUMA RIMROCK WATER
48 COMPANY, LLC FOR APPROVAL OF A
FINANCING APPLICATION.

W-04254A-08-0362

1 **Direct**
2 **Testimony**
3 **Of**
4 **John E. Dougherty**
5 **Complainant/Intervenor**

6
7 **May 22, 2013**
8

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25

26 **Introduction**

27
28 Q. Please state your name and your address.

29
30 A. My name is John E. Dougherty. My residence is 5225 N. Bentley Drive, Rimrock, AZ,
31 86335.
32

33 Q. For whom are you testifying?
34

35 A. I am testifying on behalf of myself as a Complainant in W-04254A-11-0323 and
36 Intervenor in W-04254A-12-0204, 0205, 0206 and 0207 and W-04254A-08-0361, 0362.
37

38 Q. What is the purpose of your direct testimony?
39

40 A. My direct testimony will focus on the remaining allegations in the Amended Formal
41 Complaint. The testimony will refer to Exhibits already docketed and are offered into
42 evidence under R14-3-109 (Z).
43
44
45

1 **Summary of Direct Testimony**

2
3 Q. Please summarize your direct testimony.

4 A. The Formal Complaint and supporting evidence filed initially in August and
5 September 2011 reveals a Company with a longstanding disregard for Commission rules
6 and statutes that has engaged in corrupt corporate behavior including:

- 7
8 • The Company failed to report a \$32,000 long-term debt used to purchase land
9 for Well No. 4 and then covered it up for five years by filing false Annual
10 Reports to the Commission.
11
12 • Montezuma submitted false documentation in its 2009 WIFA loan application
13 causing WIFA to suspend a \$165,000 loan to construct the ATF and a pipeline.
14
15 • Montezuma constructed Well No. 4 on a residential lot without first obtaining
16 required zoning approvals from Yavapai County¹ and in violation of the
17 Yavapai County Water Well Code. As result, the Company has been unable to
18 use the Well since it was drilled in August 2006.
19
20 • Montezuma illegally imposed an unauthorized arsenic surcharge on its
21 ratepayers in November 2009 and again in April 2011. The company admits
22 that the unauthorized 2011 surcharge was implemented to provide evidence to
23 a commercial bank that Montezuma had sufficient cash flow to repay a private
24 loan.
25

26 These actions, and others including misspending company revenue on personal expenses
27 including car loans, cell phones, vacations and mortgage payments that were documented
28 in allegations withdrawn from the Formal Complaint, establish a pattern of incompetence
29 and flagrant disregard for Commission rules and statutes governing public service
30 corporations.
31

32 The illicit behavior culminated in the Spring of 2012 when Montezuma violated three
33 Procedural Orders when the Company failed to docket two Capital Lease Agreements it
34 secretly signed on March 22, 2012.
35

36 As detailed below under Allegation XVII, the Capital Leases were required under ARS
37 S40-301, 302 to be approved by the Commission before they could be implemented.
38

39 The Company executed this scheme to avoid any delays in installing the Arsenic
40 Treatment Facility prior to a June 7, 2012 ADEQ Consent Order deadline to have the
41 equipment in place.
42

¹ Formal Complaint, Aug. 23, 2011, Ex 1, W-04254A-11-0323

1 Violation of the ADEQ Consent Order would have led to sanctions and notification to
2 ACC that Montezuma was not in compliance with ADEQ regulations. The Company's
3 failure to install the ATF -- after years of delay -- would have provided sufficient
4 justification for the Commission to seek a Show Cause Order to remove Montezuma's
5 CCN because Montezuma was failing to provide adequate service at a reasonable cost to
6 its customers.

7
8 "Only upon a showing that a certificate holder, presented with a demand
9 for service which is reasonable in light of projected need, has failed to supply such
10 service at a reasonable cost to customers, can the Commission alter its certificate. Only
11 then would it be in the public interest to do so." (James P. Paul Water Co. v. Ariz. Corp.
12 Com'n, Ariz. Supreme Ct. 671 P.2d 404 (1983))

13
14 To sidestep Commission approval, Montezuma docketed two invalid leases dated March
15 16, 2012 signed by Mrs. Olsen, personally in W-04254A-08-0361, 0362. The Company's
16 Counsel claimed in an April 27, 2012 Legal Brief in W-04254A-08-0361, 0362 that the
17 March 16, 2012 leases did not require Commission approval.

18
19 "The second agreement is a lease between Ms. Olsen and Nile River Leasing.
20 Again, that agreement is strictly between Ms. Olsen and Nile River Leasing, neither of
21 which are public service corporations subject to jurisdiction of the Arizona Corporation
22 Commission. Again, no approval of the Corporation Commission is required as to that
23 lease agreement." (Montezuma Legal Brief, Pg.2, Lines 5-11, April 27, 2012)

24
25 Sworn affidavits submitted by Nile River Leasing, however, state the company did not
26 sign the March 16, 2012 leases and that Nile River does not enter into lease agreements
27 with individuals. (Statement of Facts in Support of Partial Summary Judgment, Ex. 5 & 6,
28 April 15, 2013)

29
30 Now, more than a year later, the Company finally admits it should have provided the
31 Capital Leases to Commission staff for review and offers its apologies for failing to do so.

32
33 Montezuma is now seeking retroactive approval for the Capital Leases it improperly hid
34 from the Commission, claiming that neither the Commission nor MRWC's customers
35 were harmed by its deceitful actions.

36
37 Montezuma's calculated bait-and-switch of the leases and submission of the March 16
38 leases that appear to have forged signatures has caused direct harm to the Commission
39 and MRWC's customers.

40
41 The Company embarked on an "ends justify the means" strategy to get the ATF in the
42 ground. If challenged on its illegal action, it would simply ask for forgiveness, while
43 claiming it was acting in the public interest by finally providing its customers with water
44 that meets federal arsenic standards.

45
46 This arrogant, unethical and illegal action is an affront to the Commission.

1 The Commission is damaged because MRWC's decision to keep secret the fact it had
2 signed Capital Leases shows a complete disrespect of the Commission's Constitutional
3 power under Article XV to regulate public service corporations.
4

5 Montezuma's action poses a direct threat to the Commission's authority and legitimacy if
6 the Commission allows the blatant violation of three Procedural Orders and state Statutes
7 to go unpunished. The Commission, and the public service corporations it regulates,
8 function under the rule of law, not the rule of expediency as espoused by Montezuma and
9 its Counsel.

10
11 MRWC's customers are damaged by the fact the Capital Leases were not subject to prior
12 review as required under ARS S. 40-301, 302. Prior review of long-term debt is designed
13 to protect captive ratepayers from being exposed to unnecessary debt obligations.
14

15 Montezuma decided, independent of Commission oversight, to acquire \$1,400 a month in
16 debt payments that may or may not be in the best interest of ratepayers.
17

18 If MRWC had followed Commission Orders by providing the March 22, 2012 Capital
19 Leases as Ordered, and this resulted in its failure to install the ATF by the ADEQ
20 deadline, the Company would have been subject to ACC sanctions including a Show
21 Cause Order to remove its CCN.
22

23 Such a course of action would have resulted in a major benefit to customers by removing
24 MRWC's incompetent and corrupt management that is now seeking to impose a huge
25 rate increase that will burden its customers with much higher rates than imposed by a
26 neighboring utility less than 2,000 feet away.
27

28 **Allegations in Amended Formal Complaint**

29
30 Q. Please provide your direct testimony to each of the remaining Allegations in the
31 Amended Formal Complaint:
32

33 A. The Amended Formal Complaint includes Allegations I, II, IV, VII, X, XI, XII, XV
34 and XVII.
35

36 I hereby incorporate by reference Allegations I, II, IV, VII, X, XI, XII and XV and all
37 supporting exhibits as docketed on August 23, 2011, August 30, 2011 and September 13,
38 2011 in W-04254A-11-0323.
39

40 I will address Allegation XVII separately with a more detailed response.
41

42 **Allegation I**

43
44 Q. What is the significance of Allegation I?
45

1 A. Allegation I states that Montezuma signed a \$32,000 Promissory Note in 2005 without
2 Commission approval to purchase property where it would drill a new production well
3 known as Well No. 4.

4 The Company then hid the long-term debt from the Commission by filing false Annual
5 Reports in 2006, 2007, 2008, 2009 and 2010 that did not disclose the debt.

6
7 On August 15, 2011, Ms. Olsen signed a cashier's check for \$16,757 payable to Yavapai
8 Title Agency to pay off the loan balance on the property purchased by Montezuma.
9 (Motion to Amend Complaint, Exhibit 2A, Sept. 13, 2011, Docket W-04254A-11-0323)

10
11 Allegation I therefore demonstrates that the Company violated Commission regulations
12 and ARS S40-301, 302 by entering into long-term debt without Commission approval
13 and submitted false financial reports to cover up the debt for five years.

14
15 Q. Identify the Exhibits that support Allegation I.

16
17 A. Formal Complaint, Aug. 23, 2011, W-04254A-11-0323, Exhibits 2, 3, 4, 5, 6 & 7

18 19 **Allegation II**

20
21 Q. What is the significance of Allegation II?

22
23 A. By failing to disclose the \$32,000 long-term debt in its Annual Reports, Montezuma
24 was also providing Commission staff with false and misleading financial information
25 used by Staff to prepare its audit report for the 2009 Rate Case.

26
27 Staff's 2009 audit report was also provided to WIFA as part of Montezuma's ATF loan
28 application. The fact that a \$32,000 loan was omitted from the Company's financial
29 reports is a material omission for a company that grosses approximately \$100,000 a year.

30
31 Allegation II therefore demonstrates that Montezuma deceived the Commission by
32 purposefully hiding a \$32,000 long-term loan in the 2007 Annual Report that served as
33 the basis for the 2009 Rate Case.

34
35 Q. Identify the Exhibits that support Allegation II.

36
37 A. Staff Report, June 15, 2009, MRWC's Application for a Permanent Rate Increase
38 (Docket No. W-04254A-08-0361, 0362).

39 40 **Allegation IV**

41
42 Q. What is the significance of Allegation IV?

43
44 A. Allegation IV demonstrates the continuing pattern of mismanagement and deception
45 by the Company when it included Well No. 4 as part of its "Water Company Plant
46 Description" in Annual Reports in 2007, 2008, 2009 and 2010. During this period,

1 Montezuma never had a valid Use Permit from Yavapai County to operate the
2 Commercial well on a residential lot.

3
4 Montezuma, however, included the well as part of its asset base in these Annual Reports
5 while at the same time failing to disclose that the Company had a long term liability
6 related to the undisclosed \$32,000 loan used to purchase the property.

7
8 Seven years after digging the well, Montezuma still does not have the County permit
9 needed to operate Well No. 4. The Company states it is resorting to condemnation
10 proceedings to acquire an easement on a neighbor's property to comply with Yavapai
11 County Water Well Code set back requirements.

12
13 Therefore, Allegation IV demonstrates the Company's failure to accurately describe its
14 asset base while understating its liabilities by selectively choosing which information to
15 include, or not include, in its Annual Reports. This pattern of misinformation permeates
16 Montezuma's filings with the Commission and other state and county agencies.

17
18 Q. Identify the Exhibits in support of Allegation IV.

19
20 A. Formal Complaint, Aug. 23, 2011, W-04254A-11-0323, Exhibits 9, 10, 11 & 12.

21
22 **Allegation VII**

23
24 Q. What is the significance of Allegation VII?

25
26 A. Allegation VII states that the Company failed to provide adequate service to its
27 customers by providing water in violation of federal and state arsenic standards.

28
29 Fifteen months before the Formal Complaint was filed, Montezuma had signed a June 7,
30 2010 ADEQ Consent Order. The Order required the company to provide drinking water
31 to its customers from the Company's office until Montezuma installed the ATF.

32
33 Requiring customers to obtain drinking water from the Company's office was a direct
34 result of the Company's failure to finance construction of an ATF in a reasonable time
35 period and in compliance with ADEQ and ACC regulations.

36
37 The only way the Company has been able to come into compliance with arsenic standards
38 was to violate Commission Procedural Orders and ARS S40-301, 302.

39
40 Therefore, Allegation VII demonstrates that Montezuma had been provided a reasonable
41 opportunity to provide adequate service to its customers but was unable legally to do so.

42
43 Q. Identify the Exhibits in Support of Allegation VII.

44
45 A. Formal Complaint, Aug. 23, 2011, W-04254A-11-0323, Exhibit 17.

46

1
2
3 **Allegation X**

4 Q. What is the significance of Allegation X?

5 A. Allegation X demonstrates the Company's ongoing pattern of providing misleading
6 statements to regulators.

7
8 When asked by an ACC investigator if the Company had obtained the proper county
9 zoning and use permits prior to and after construction of Well No. 4, the Company lied
10 when Ms. Olsen stated, "We obtained required permits to drill the well."
11

12 Ms. Olsen did not disclose to the investigator that Montezuma had failed to obtain a
13 zoning variance to use the residential lot for a commercial well site. The Company's
14 failure to obtain the zoning variance prior to construction resulted in Yavapai County
15 issuing a provisional Use Permit that required the company to also meet all other county
16 regulations.
17

18 Montezuma also drilled the well in violation of the County Water Code because it
19 violates the code's requirement for a 50-foot setback from two neighboring property.
20

21 As a result, Montezuma has been unable to operate Well No. 4.
22

23 Therefore, Allegation X demonstrates the Company's willingness to provide false and
24 misleading information to Commission investigators concerning the operation of a
25 production well that was constructed without the requisite county permits.
26

27 Q. Identify the Exhibits in support of Allegation X.

28
29 A. Formal Complaint, Aug. 23, 2011, W-04254A-11-0323, Ex. 18.
30

31 **Allegation XI**

32
33 Q. What is the significance of Allegation XI?

34
35 A. The allegation, which the Company admits, states that the Company illegally collected
36 a \$10.11 arsenic surcharge from its customers in the November 2009 bill.
37

38 The Company has never stated whether Customers were refunded the illegal surcharge.
39

40 Therefore, Allegation XI demonstrates that Montezuma is willing to take money from its
41 customers by illegally imposing an unauthorized surcharge.
42

43 Q. Identify the Exhibits in support of Allegation XI.

44
45 A. Formal Complaint, Aug. 23, 2011, W-04254A-11-0323, Ex 19.
46

1 **Allegation XII**

2
3 Q. What is the significance of Allegation XII?

4
5 A. The allegation, which the Company admits, states that for the second time the
6 Company illegally collected an arsenic surcharge, this time for \$15 in its April 2011
7 billing statement.

8
9 A commission investigator submitted questions to the Company concerning the
10 surcharge.

11
12 Ms. Olsen stated: "MRWC contacted the institution to discuss this matter. This left
13 MRWC in a position that it must provide evidence to the institution that it could meet the
14 debt service by implementing the arsenic surcharge...MRWC implemented the Arsenic
15 Surcharge on its April 1st, 2011, billing statement in order to provide documentation to
16 the private lending institution that it would be able to meet the debt service of the loan."
17 (Formal Complaint, Aug. 23, 2011, Ex 20, Pg. 3, W-04254A-11-0323)

18
19 This action is stunning on several levels.

20
21 First, this was the second time MRWC had implemented the unauthorized arsenic
22 surcharge without Commission approval.

23
24 Second, when faced with a fundamental management decision, MRWC elected to
25 illegally charge its customers an unauthorized surcharge in order to meet cash flow
26 requirements for a potential loan.

27
28 Third, MRWC was willing to commit bank fraud by telling a potential lender that it had
29 the ability to repay the loan through an arsenic surcharge that had not been approved by
30 the Commission.

31
32 Allegation XII demonstrates the Company was, for a second time, willing to take funds
33 from ratepayers by imposing an unauthorized surcharge and to commit bank fraud by
34 imposing an unauthorized arsenic surcharge and using the surcharge as evidence that it
35 could repay a bank loan.

36
37 Q. Identify the Exhibits in support of Allegation XII.

38
39 A. Formal Complaint, Aug. 23, 2011, Ex. 20, W-04254A-11-0323.

40
41 **Allegation XV**

42
43 Q. What is the significance of Allegation XV?

44
45 A. In September 2011, I was seeking MRWC financial records as an Intervenor in
46 Montezuma's Emergency Rate Increase in Docket W-04254A-11-0296. The Company

1 was refusing to comply with Data Requests. During a Sept. 12, 2011 Procedural
2 Conference, the Company, for the first time, revealed that its offices had been repeatedly
3 burglarized, company records stolen and computer hacked on numerous occasions
4 resulting in unauthorized emails being sent to customers.

5
6 In response to a question from the ALJ, Ms. Olsen stated she didn't notify the police
7 concerning the thefts.

8
9 Montezuma is required to maintain its books and records in accordance with the NARUC
10 Uniform System of Accounts.

11
12 Allegation XV demonstrates that Montezuma has failed to maintain its books and records
13 according the NARUC and took no action to protect its records after its office was
14 repeatedly burglarized. Such action shows gross negligence on the part of management in
15 the operation of a public service corporation.

16 17 Allegation XVII

18
19 Q. Please provide your direct testimony on Allegation XVII.

20
21 A. I hereby incorporate all filings and supporting exhibits filed in Docket W-04254A-
22 080-0361, 0362; W-04254A-12-0204, 0205, 0206 & 0207 and 04254A-11-0323.

23
24 In an earnest effort to substantially narrow this record, I hereby identify the following
25 filings and exhibits in W-04254A-080-0361, 0362 as being the most relevant and likely
26 to be relied upon in the evidentiary hearing:

27
28 1. Emergency Motion for Temporary Restraining Order, May 16, 2012, Ex. 1, 2

29
30 I hereby identify the following filings and exhibits in W-04254A-12-0204, 0205, 0206 &
31 0207 as being the most relevant and likely to be relied upon in the evidentiary hearing:

32
33 1. Motion to Hold Montezuma in Contempt, Jan. 14, 2013, Ex. 1, 2, 3, 4, 5, 6
34 2. Notice of Filing Additional Exhibit, Jan. 15, 2013, Ex. 7

35
36 I hereby identify the following filings and exhibits in W-04254A-11-0323 as being the
37 most relevant and likely to be relied upon in the evidentiary hearing:

38
39 1. Motion to Add Allegation XVII, Feb. 12, 2013, Ex. 1
40 2. Exhibits 8 & 9 in support of Allegation XVII, Feb. 21, 2013, Ex. 8 & 9
41 3. Exhibit 10 in Support of Allegation XVII, Feb. 25, 2013, Ex. 10

42
43 I hereby identify the following filings and exhibits in the Consolidated Docket W-
44 04254A-12-0204, 0205, 0206, 0207; W-04254A-11-0323; W-04254A-08-0361, 00362 as
45 being the most relevant and likely to be relied upon in the evidentiary hearing:
46

- 1 1. Amended Formal Complaint, Feb. 27, 2013
- 2 2. Corrected Amended Formal Complaint, Feb. 28, 2013
- 3 3. Exhibit 11 in support of Amended Complaint, March 1, 2013, Ex. 11
- 4 4. Notice of Filing Additional Exhibits, March 21, 2013, Ex. 11A, 13
- 5 5. Statement of Facts in Support of Motion for Summary Judgment, April 15, 2013;
- 6 Exhibits 1, 2, 3, 4, 5, 6, 7, 8.
- 7 6. Motion for Partial Summary Judgment, April 15, 2013;
- 8 7. Motion to Bar Rate Application, April 15, 2013, Ex. 1, 2, 3, 4, 5

9
10 In addition, I hereby include the following Exhibits appended to this filing.

- 11 1. Exhibit 14, Nov. 30, 2009 email from Patricia Olsen to Henry R. Darwin
- 12 2. Exhibit 15, ADEQ Notice of Violation to Montezuma, April 12, 2012

13
14 Q. Please describe the events that serve as the basis of Allegation XVII?

15
16 A: Montezuma's failure to fund construction of the ATF and ADEQ's June 7, 2012
17 Consent Order deadline culminated with the Company knowingly and willfully violating
18 three Procedural Orders² issued in early 2012 in W-04254A-08-0361, 0362 and secretly
19 incurring long-term debt to finance the ATF without prior Commission approval in
20 violation of ARS S40-301, 302.

21
22 By March 2012, Montezuma was under intense pressure from ADEQ to come into
23 compliance with a June 7, 2010 Consent Order to install the ATF. (ADEQ Notice of
24 Violation to MRWC, April 11, 2012, Ex. 15, appended)

25
26 Montezuma had been unable to secure financing since it withdrew its WIFA loan
27 application in January 2011. The company then failed to obtain private financing and an
28 Emergency Rate Increase in docket W-04254A-11-0296.

29
30 With its back against the wall, the Company had only one choice: Sign Capital Lease
31 agreements for the ATF.

32
33 "At that time, MRWC faced substantial pressure from ADEQ to address the
34 arsenic problem. MRWC attempted to find financing for the arsenic treatment facilities
35 and Odyssey Financial³ provided the only available option." (Olsen Declaration, Par. 8,
36 Lines 4-6, May 15, 2013, W-04254A-12-0204, Et seq.)

37
38 But the Company also knew from previous Procedural Conferences and Orders that a
39 Capital Lease was considered long-term debt and that the Commission must approve
40 long-term debt.

41
42

² Jan. 4, 2012, Procedural Order, W-04254A-08-036 1, W-04254A-08-0362;
March 12, 2012, Procedural Order, W-04254A-08-036 1, W-04254A-08-0362;
April 9, 2012, Procedural Order, W-04254A-08-036 1, W-04254A-08-0362

³ Odyssey Financial and Nile River Leasing are separate leasing companies owned by John Torbenson. (Personal Communication with Mr. Torbenson, May 21, 2013)

1 “MRWC is a company which is regulated by the Arizona Corporation Commission
2 (ACC) and is unable to incur long term debt without their (sic) approval.” (Patricia Olsen
3 email to Henry R. Darwin, Nov. 30, 2009, appended to this document as Ex. 14)

4
5 The Company sought to avoid Commission review of the Capital Leases in W-04254A-
6 08-0361, 0362 because it was unlikely the leases would have been approved. The
7 Company’s persistent operating losses would not have allowed for additional debt of
8 approximately \$1,400 a month needed to pay for the leases without modification of the
9 arsenic surcharge approved in Decision 71317.

10
11 “Evaluating the appropriateness of a capital lease involves determining whether the
12 utility has sufficient cash flow to make the lease payments and does not involve the
13 setting of rates.” (Commission Staff Report, Pg 4, Lines 3-7, April 27, 2013, W-04254A-
14 08-0361, 0362)

15
16 Furthermore, by March 2012, the time needed for Commission review and possible
17 approval of the Capital Leases and possible modification to the arsenic surcharge as well
18 as comments and objections from the Intervenor would not have given the Company
19 enough time to order and install the ATF equipment prior to ADEQ’s June 7, 2012
20 deadline.

21
22 Violation of the ADEQ Consent Order would have resulted in notification to the
23 Commission that Montezuma was not in compliance with ADEQ regulations, providing
24 sufficient legal foundation for the Commission to issue a Show Cause Order to revoke
25 Montezuma’s CCN.

26
27 Montezuma’s goal was to move approval of the Capital Leases out of W-04254A-08-
28 0361/0362 docket where any delay would trigger a violation of the ADEQ Consent Order
29 and into the upcoming rate case where the lease agreements could be handled after the
30 fact. Decision 71317 required Montezuma to file a new rate case by May 31, 2012.

31
32 If that meant disobeying Procedural Orders and ARS S40-301, 302, so be it.

33
34 “The Company intended that the lease agreement would be considered and reviewed by
35 the Commission in its rate case.” (Olsen Declaration, Par. 10, Lines 25-26, May 15, 2013,
36 W-04254A-12-0204, Et seq.)

37
38 Complicating Montezuma’s plan to avoid commission approval of Capital Leases in the
39 W004254A-08-0361, 0362 Docket, was the fact that the Commission had issued three
40 Procedural Orders on Jan. 4, March 12 and April 9, 2012 in W-04254A-08-0361, 0362
41 requiring the Company to docket all lease agreements entered into by the Company
42 and/or Ms. Olsen in connection with the ATF.

43
44 In order to give the appearance that the Company was complying with the Procedural
45 Orders, Ms. Olsen, while represented by counsel, on March 19, 2012 personally docketed
46 in W-04254A-08-0361, 0362 two lease agreements dated March 16, 2012 between Mrs.

1 Olsen, personally, and Nile River Leasing Company. (Statement of Facts, Motion for
2 Partial Summary Judgment, Ex. 1, April 15, 2013)

3
4 On April 13, 2012, Montezuma's Counsel docketed a "Notice of Filing" in W-04254A-
5 08-0361, 0362 that included copies of the March 16, 2012 Nile River leases, along with a
6 "Water Services Agreement".⁴

7
8 The Company's counsel argued in an April 27, 2012 Legal Brief that the March 16, 2012
9 leases between Ms. Olsen, acting personally, and Nile River were not subject to
10 Commission review.

11
12 The Company's counsel also stated that Ms. Olsen intended to sublease the ATF
13 equipment to Montezuma through the Water Services Agreement that the Company
14 claimed was also exempt from Commission review because it was an operating
15 agreement.

16
17 Commission Staff, however, concluded that the Water Services Agreement was a Capital
18 Lease that would need Commission approval.

19
20 "Staff believes that the Water Services Agreement represents a lease, that the lease is a
21 capital lease, and because it is a capital lease, Arizona Corporation Commission
22 ("Commission") approval will be necessary for the lease to go into effect." (Staff Report,
23 Pg. 1, Lines 25-27, April 27, 2012, W-04254A-08-0361, 0362)

24
25 Montezuma's Counsel stated at the conclusion of the April 30, 2012 Procedural
26 Conference that he would submit a new Water Services Agreement that would qualify as
27 an operating lease and therefore become exempt from Commission approval.

28
29 Montezuma, however, never submitted a modified Water Services Agreement for Staff's
30 review.

31
32 The reason is now clear. The Company, rather than Ms. Olsen, had already secretly
33 signed Capital Lease agreements for the ATF on March 22, 2012 and therefore there was
34 no need for the Water Services Agreement.

35
36 The March 16, 2012 leases signed by Ms. Olsen were never the true and effective leases
37 but were docketed to purposely mislead the Commission and the public into believing
38 that Ms. Olsen had signed the leases that were not subject to Commission review.

39
40 Furthermore, Nile River executives state in sworn affidavits obtained in March 2013 that
41 the Company never entered into lease agreements with Ms. Olsen, personally, and the
42 signature that appears on the March 16, 2012 lease agreements on behalf of Nile River is
43 not that of Nile River employee Robin Richards. Ms. Richards is not authorized to sign

⁴ Montezuma's Counsel made this representation even though Montezuma had already signed Capital Leases with Nile River Leasing and Financial Pacific on March 22, 2012.

1 leases. (Statement of Facts, Motion for Partial Summary Judgment, Ex. 5 & 6, April 15,
2 2013)

3
4 In order for Montezuma to accomplish its goal of installing the ATF prior to the ADEQ
5 June 7, 2012 deadline, it was necessary for the Company to sign the Capital Leases.

6
7 “As originally proposed, I intended to proceed with the personal leases with Nile River in
8 order to expedite the financing and construction of the arsenic facilities. Subsequently,
9 however, Nile River informed me that it could not enter a lease with me personally and
10 that the Company needed to be party to the agreement.” (Olsen Declaration, Par. 8, Lines
11 7-11, May 15, 2013, W-04254A-12-0204, Et seq.)

12
13 On March 22, 2012, Montezuma secretly signed a Capital Lease agreement with Nile
14 River Leasing for the ATF building. (Statement of Facts, Motion for Partial Summary
15 Judgment, Ex. 2, April 15, 2013,)

16
17 Montezuma also secretly signed a March 22, 2012 Capital Lease agreement with
18 Financial Pacific Leasing for the Arsenic treatment equipment. (Statement of Facts,
19 Motion for Partial Summary Judgment, Ex. 3, April 15, 2013)

20
21 The two March 22, 2012 Capital Lease agreements signed by the Company were not
22 disclosed to the Commission in violation of the three Procedural Orders and in violation
23 of ARS S. 40-301 and 302 requiring Commission approval prior to entering into long-
24 term debt.

25
26 Montezuma received substantial benefit from violating the Commission’s orders because
27 the illicit action allowed the Company to comply with ADEQ Consent Order and,
28 therefore, avoid possible Commission sanctions. The secret Capital Lease agreements
29 allowed Montezuma to order, receive and install the ATF building and equipment and
30 have it operational prior to the ADEQ June 7, 2012 Consent Order deadline.

31
32 “On those issues, it bears repeating that MRWC was under immediate orders and
33 pressure from ADEQ to install arsenic treatment system. For that reason, MRWC
34 proceeded with the lease agreements and installation of the arsenic facility.” (Olsen
35 Declaration, Par. 11, Lines 2-5, May 15, 2013, W-04254A-12-0204, Et seq.)

36
37 Montezuma did not disclose the secret March 22, 2012 leases until October 25, 2012,
38 when Ms. Olsen, who was not represented by Counsel at the time, slipped incomplete and
39 misdated Capital Leases into a filing docketed in the Company’s Rate Case application
40 W-04254A-12-0204, 0205, 0206, 0207. (Statement of Facts, Motion for Partial Summary
41 Judgment, Ex. 4, April 15, 2013)

42
43 In the filing, Montezuma did not include Rider No. 2 in the Nile River lease agreement
44 that showed the agreement qualified as a Capital Lease. The Company continued to insist
45 that the Nile River Lease was not a Capital Lease as recently as April 12, 2013 when it
46 stated:

1 “MRWC does not believe that the Nile River Lease qualifies as a capital lease, but the
2 Company is willing to submit that lease to the Commission for review and approval.”
3 (Notice of Filing Financing Applications, Pg. 1, Footnote 1, April 12, 2013, W-04254A-
4 12-0204 Et seq.)

5
6 The Rider was obtained in March 2013 through subpoena to Nile River. Montezuma now
7 accepts that the Nile River lease is a Capital lease, but now claims it didn’t previously
8 have a copy of the Rider.

9
10 “The Company also acknowledges that the Nile River lease agreement is a capital lease
11 based on Rider 2. Unfortunately, MRWC did not have a copy of Rider 2 in its files.”
12 (Olsen Declaration, Par. 9, Lines 15-17, May 15, 2013, W-04254A-12-0204, Et seq.)

13
14 In its October 25, 2012 filing, Montezuma also submitted only four of the first five pages
15 of the Financial Pacific lease agreement that was dated May 2, 2012. (Statement of Facts,
16 Motion for Partial Summary Judgment, Ex. 4, April 15, 2013)⁵

17
18 Montezuma continues to insist that May 2, 2012 is the effective date of the Financial
19 Pacific lease.

20
21 “I consider(ed) the May 2012 Financial Pacific lease as the final agreement.” (Olsen
22 Declaration, Par. 14, Lines 1-2, May 15, 2013, W-04254A-12-0204, Et seq.)

23
24 Financial Pacific has stated that the May 2, 2012 Financial Pacific lease docketed by
25 MRWC in October 2012 is an “unauthorized modified version” of the true and correct
26 lease Financial Pacific signed with Montezuma on March 22, 2012. (Statement of Facts
27 in Support of Motion for Summary Judgment, Ex. 8. April 15, 2013)

28
29 Financial Pacific filed a UCC Financing Statement with Arizona Secretary of State on
30 May 9, 2012 stating that the Capital Lease with Montezuma was dated April 3, 2012.
31 (Notice of Filing Exhibit, Ex. 7, January 15, 2013, W-04254A-12-0204 Et. Seq.)

32
33 In a March 22, 2013 letter, Financial Pacific’s legal department explained that the lease
34 was signed on March 22, 2012, but that it was not officially booked into its records until
35 April 3, 2012. (Statement of Facts, Motion for Partial Summary Judgment, Ex. 8, April
36 15, 2013)

37
38 Montezuma also failed to provide copies of the October 2012 filing to any of the parties
39 in the Rate Case Docket, in violation of Commission regulations. Furthermore, the
40 Company failed to disclose the Capital Lease agreements in the W-04254A-08-
41 0361/0362 docket where the Procedural Orders required their disclosure. (Insufficiency
42 Submittal and Amendments, Oct. 25, 2012, W-04254A-12-0204 Et. Seq.)

43

⁵ The fifth page of the agreement, obtained through subpoena to Financial Pacific in March 2013, shows that Ms. Olsen signed the lease on March 22, 2012. (Statement of Facts Motion for Partial Summary Judgment, Ex. 3, April 15, 2013)

1 Montezuma now admits that it should have provided the Commission with the two
2 Capital Lease agreements in response to the Procedural Orders issued in W-04254A-08-
3 0361/0362. The Company repeatedly offered its apologies for failing to do so in its May
4 15, 2013 Response to Motion for Partial Summary Judgment.

5
6 “The Company acknowledges that the Company should have docketed the lease
7 agreements and apologizes for the mistake.” (Olsen Declaration, Par. 15, Lines 5-6, May
8 15, 2013, W-04254A-12-0204, Et seq.)

9
10 Montezuma is now brazenly seeking retroactive approval of the Capital Leases that it
11 improperly hid from the Commission in 2012.

12
13 Regardless of whether the Commission might have the authority to retroactively approve
14 Capital Leases, to do so in this instance -- after being purposely deceived by Montezuma
15 -- would send a clear signal that the Commission’s rules and orders are meaningless and
16 can be flagrantly disobeyed with impunity when it is to the Company’s advantage.

17
18 Montezuma’s lengthy, ongoing, calculated and intentional violation of Commission
19 orders and regulations clearly shows the Company does not legally operate in the public
20 interest.

21
22 Therefore, the Commission has the power and the duty to hold Ms. Olsen, Montezuma
23 and Montezuma’s Counsel in Contempt of the Commission for withholding Capital
24 Leases and submitting invalid leases in their place and to revoke the Company’s
25 Certificate of Convenience and Necessity authorized in Decision No. 67583, dated
26 February 15, 2005.

27 28 Legal Analysis

29
30 Q. Please describe the legal basis for revoking Montezuma’s CCN.

31
32 A. There is no dispute that the Commission has the authority to revoke Montezuma’s
33 CC&N. A.R.S. § 40-252 provides this power: "The commission may at any time, upon
34 notice to the corporation affected, and after opportunity to be heard as upon a complaint,
35 rescind, alter or amend any order or decision made by it."

36
37 It is also well established in Arizona that a regulated utility is allowed to operate as long
38 as it is serving the public interest.

39
40 A “monopoly is tolerated only because it is to be subject to vigilant and continuous
41 regulation by the Corporation Commission and is subject to rescission, alteration or
42 amendment at any time upon proper service when the *public interest* would be served by
43 such action." (Emphasis added.) (Davis, 96 Ariz. at 218, 393 P.2d at 911 (1964).

44
45 That the public interest is the controlling factor in decisions concerning service of water
46 by water companies was reaffirmed in Arizona Corporation Commission v. Tucson Ins.

1 & Bond Agency, 3 Ariz.App. 458, 415 P.2d 472 (1966).
2
3 The Arizona Supreme Court upheld this view when it stated, “The Commission's
4 authority to grant a certificate of convenience and necessity is controlled by the public
5 interest, A.R.S. § 40-282(C). (James P. Paul Water Co. v. Ariz. Corp. Com’n, Ariz.
6 Supreme Ct. 671 P.2d 404 (1983)).
7
8 The courts have also ruled that it is in the public interest that a public service corporation
9 must be given the opportunity to provide adequate service at reasonable rates before its
10 certificate could be revoked or modified.
11
12 The holder of a CC&N is “entitled to an opportunity to provide adequate service at a
13 reasonable rate before a portion of its certificate could be deleted. A certificate holder is
14 entitled to that opportunity because providing it with that opportunity serves the public
15 interest.” (James P. Paul Water Co. v. Ariz. Corp. Com’n, Ariz. Supreme Ct. 671 P.2d
16 404 (1983))
17
18 Montezuma has been afforded the opportunity to provide “adequate service at a
19 reasonable rate” to its customers since Decision 71317 was issued in October 2009. It has
20 been unable to legally do so.
21
22 As detailed above in Allegation XVII, the Company was unable to meet ADEQ water
23 quality standards while also complying with Commission Orders and regulations. The
24 only way the Company could meet ADEQ’s Consent Order deadline was to intentionally
25 violate three Commission Procedural Orders and ARS S40-301, 302 by docketing the
26 invalid and forged March 16, 2012 leases.
27
28 The Company clearly had no legal basis to ignore Commission Procedural Orders.
29
30 “Once certified to supply water to a parcel of land, a water company must comply with
31 orders and regulations promulgated by the Commission in the public interest, see ARS SS
32 40-321 to 322, 331-332, 336 and 338. Though these orders and regulations may mandate
33 installation of facilities...and reduce expected profits, the certificate holder is required to
34 comply.” (James P. Paul Water Co. v. Ariz. Corp. Com’n, Ariz. Supreme Ct. 671 P.2d
35 404 (1983))
36
37 Montezuma failed to comply with Commission Orders when it docketed the invalid
38 March 16, 2012 lease agreements and withheld the true and effective March 22, 2012
39 Capital Lease agreements secretly signed by the Company. Even to this date, the
40 Company has not produced the true and accurate Capital Leases. Those have been
41 obtained only through subpoenas issued to Nile River and Financial Pacific.
42
43 If Montezuma had complied with Commission orders and docketed the March 22, 2012
44 Capital Leases, the Commission would have been obligated to provide a detailed
45 financial analysis under Docket W-04254A-08-0361/0362.
46

1 The time needed to conduct such an analysis would have prevented Montezuma from
2 ordering and installing the ATF equipment prior to the June 7, 2012 Consent Order
3 deadline.

4
5 Violating the ADEQ Consent Order to provide water that meets arsenic standards would
6 have met the public interest threshold required in *Paul* that is necessary for the
7 Commission staff to issue an Order to Show Cause seeking to remove the company's
8 certificate.

9
10 **Conclusion**

11
12 Q. Please provide a summarizing statement.

13
14 A. Montezuma's violation of Commission Orders and ARS S 40-301, 302 to avoid
15 violation of an ADEQ Consent Order must not be tolerated. This flagrant and calculated
16 action played out over a year deserves a punishment beyond a slap on the wrist and a
17 small fine.

18
19 Sufficient evidence has been submitted indicating a serious criminal act, forgery, was part
20 of the Company's scheme. The Commission should refer this matter to the Attorney
21 General or County Attorney for further investigation.

22
23 The Company's long history of disregarding Commission rules and regulations
24 culminating with the failure to disclose Capital Leases and submission of invalid leases
25 that appear to be forged provides substantial and legal justification for the Company, Ms.
26 Olsen and Montezuma's Counsel to be held in Contempt of the Commission and for the
27 revocation of the Company's CC&N.

28
29 Q. Does this conclude your direct testimony.

30
31 A. Yes.

From: Patricia Olsen (patsy@montezumawater.com)
To: hrd@azdeq.gov;
Date: Mon, November 30, 2009 3:31:25 PM
Cc: csc@azdeq.gov;
Subject: Montezuma Rimrock Water Company LLC

November 30, 2009

Henry R. Darwin
Arizona Department of Environmental Quality
1110 W. Washington St.
Phoenix, AZ 85007

Dear Mr. Darwin,

I own and operate Montezuma Rimrock Water Company, LLC (MRWC). I purchased the water company in July of 2005. When this water company was purchased, it had no arsenic treatment system in place. Originally, the prior owners submitted a plan to ADEQ for the installation of POU units in each home due to the small number of customers. When it was purchased, the water company had approximately 123 customers. Within two years, the customer base grew unexpectedly to over 200 customers. This required MRWC to reevaluate the original POU plan and seek a centralized form of treatment.

MRWC is a company which is regulated by the Arizona Corporation Commission (ACC) and is unable to incur long term debt without their approval. MRWC did not receive approval to seek WIFA funding until October 21, 2009 from ACC. MRWC must now wait until December 16, 2009 to receive approval from WIFA. MRWC has no resources to move forward with the arsenic treatment system until WIFA releases funds which is not scheduled until after December 16, 2009 and will expeditiously as possible install its arsenic treatment system. Operation of the arsenic treatment system is expected to begin April 30, 2009. MRWC's progress is and has been based on government agencies and their progress. MRWC has been making every effort to comply but is powerless to affect the speed of regulatory agencies.

MRWC received a draft consent order from ADEQ regarding the arsenic exceedence and subsequently requested a meeting with Ms. Vivian Burns. In a recent meeting with Ms. Burns, MRWC stated that it agreed with the consent order with the exception of the alternative drinking water provision. MRWC also informed Ms. Burns that it plans to have its arsenic treatment system installed and operating by April 30, 2009. MRWC asked Ms. Burns how long it had to sign the consent order and Ms. Burns stated that MRWC had until December 31, 2009. In the consent order it states that within 15 days of the signing of the consent order, MRWC must provide an alternative drinking water source to its customers. On November 23, 2009, MRWC received an email from Ms. Burns stating that MRWC must provide an alternative drinking water supply for its customers by December 1st, 2009. At this time, MRWC is unaware of any other water companies within the Verde Valley that must provide an alternative drinking water supply to its customers by December 1st. The City of Cottonwood, Big Park Water Company, and Pine Valley Water Company have not received orders to provide an alternative drinking water supply to its customers by December 1st. Although the City of Cottonwood is overseen by EPA, Ms. Burns in her email states, "I can't comment on the EPA ruling(s)." Although Big Park Water Company has some arsenic treatment systems in place, it still is serving many of its customers untreated water.

MRWC contacted Ms. Corrine Li from Region 9 of the EPA to seek a waiver in providing an alternative drinking water source. Ms. Li stated that the EPA would expect that ADEQ would provide a "level playing field with all companies". Ms. Li also stated that "with arsenic levels of 30-35, they do not expect there to be long term health effects."

MRWC is unable to provide an alternative drinking water source within the requested time frame for the following reasons:

1. Providing an alternative drinking water supply to its 480 customers each day would create a financial hardship on the company.
2. MRWC currently has no facilities to handle drive up water customer distribution.
3. To provide drive up water customer distribution would require that MRWC submit an Approval to Construct to ADEQ in order to restructure its water treatment facility. An ATC from ADEQ requires approximately 6 weeks.
4. Having to provide a temporary water situation will hinder a permanent solution.

MRWC has informed and communicated with Ms. Burns on the following:

- MRWC has been working with its engineers, Environmental Hydro-Systems
- MRWC has been working with ACC and received approval on October 21, 2009
- MRWC has been working with WIFA and anticipates financial assistance in December, 2009
- MRWC has been providing the quarterly monitoring although in the consent order Ms. Burns states it has not.

MRWC does not feel that ADEQ is providing a "level playing field" in this matter. MRWC can find no evidence of aggressive action that has been taken with local water companies such as The City of Cottonwood, Big Park Water Company and Pine Valley Water Company. MRWC understands that there are companies that have not made their applications to ACC and WIFA. Furthermore, although MRWC has been doing its best, it does not feel that it should have been subjected to off the cuff, unprofessional and derogatory comments made to Ms. Olsen by Ms. Burns. Ms. Burns stated to Ms. Olsen, "You must be sleeping with the guys over at the Arizona Corporation Commission for them to be so helpful to you."

MRWC requests that it be given until May 30, 2009 to install and begin operation of its intended arsenic treatment system. It is also requesting that the demand for the providing of alternative drinking water to its customers be removed. MRWC also requests an apology from ADEQ for the insulting comment made by ADEQ staff.

Sincerely,

Patricia D. Olsen
Montezuma Rimrock Water Company LLC

Cc: Cynthia Campbell

*Patricia D. Olsen, President
Montezuma Rimrock Water Co. LLC
P.O. Box 10
Rimrock, AZ 86335*

Ex 15



Janet Napolitano
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

1110 West Washington Street • Phoenix, Arizona 85007
(602) 771-2300 • www.azdeq.gov



Stephen A. Owens
Director

April 11, 2012

CERTIFIED MAIL
Return Receipt Requested

Patricia D. Olsen
Montezuma Rimrock Water Co, LLC
P.O. Box 10
Rimrock, Arizona 86335-0010

Subject: Administrative Notice of Violation, Public Water System #13-071
Montezuma Rimrock Water Co, LLC – Case # 130760

Dear Mr. Olsen:

The attached **Administrative Notice of Violation** (“NOV”) is an informal compliance assurance tool used by the Arizona Department of Environmental Quality (“ADEQ”) to put a responsible party (such as a facility owner or operator) on notice that the Department believes a violation of an administrative order issued by ADEQ has occurred. It describes the facts known to ADEQ at the time of issuance and cites the provision(s) of the order that ADEQ believes the party has violated. The NOV in no way changes obligations or time frames specified within the administrative order.

An NOV does not constitute an appealable agency action. Rather, an NOV provides the responsible party an opportunity to do any of the following before ADEQ takes **formal enforcement action**: (1) meet with ADEQ and discuss the facts surrounding the violation, (2) demonstrate to ADEQ that no violation has occurred, or (3) document that the violation has been corrected. Although the NOV states that ADEQ will agree to extend the NOV time frames only in a compliance schedule negotiated in the context of an administrative consent order or civil consent judgment, for violations(s) of an administrative order, ADEQ will agree to extend the time frames in the context of civil consent judgment only.

ADEQ reserves the right to take a formal enforcement action, such as filing a civil lawsuit or revoking/suspending an associated permit, regardless of whether the Department has issued an NOV. Neither ADEQ’s issuance of an NOV nor its failure to do so precludes the Department from pursuing these remedies. However, the timeliness of a complete response to this notice will be considered by ADEQ in determining if and how to pursue such remedies.

Sincerely,

Marcia Colquitt, Manager
Water Quality Enforcement Unit

Northern Regional Office
1801 W. Route 66 • Suite 117 • Flagstaff, AZ 86001
(928) 779-0313

Southern Regional Office
400 West Congress Street • Suite 433 • Tucson, AZ 85701
(520) 628-6733

Montezuma Rimrock Water Co.
April 11, 2012
Page 2 of 2

Enclosure:

Amendment #1 to Consent Order DW-36-10 (Effective date June 2, 2011)

Cc:

Vivian Burns, ADEQ Water Quality Enforcement Unit
Vivian Adams, ADEQ Drinking Water Section

Steve Olea
Utilities Division
Arizona Corporation Commission
1200 W. Washington St.
Phoenix, AZ 85007-2996

Yavapai County Community Health Services
Robert Resendes, Director
1090 Commerce Drive
Prescott, AZ 86305



Janice K. Brewer
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

1110 West Washington Street Phoenix, Arizona 85007
(602) 771-2300 www.azdeq.gov



Henry R. Darwin
Director

CERTIFIED MAIL
Return Receipt Requested

Case ID #: 130760

April 11, 2012

Montezuma Rimrock Water Co LLC
Attention: Patricia D. Olsen
PO Box 10
Rimrock, AZ 86335-0010

Subject: Montezuma Rimrock Water Co, Place ID 19794
LAT: 34d, 39', 1" N LNG: 111d, 46', 9" W

NOTICE OF VIOLATION

The Arizona Department of Environmental Quality (ADEQ) has reason to believe that Montezuma Rimrock Water Co LLC as the owner/operator of Montezuma Rimrock Water Co has violated a requirement of the Arizona Revised Statutes (A.R.S.), a rule within the Arizona Administrative Code (A.A.C.), or an applicable permit/license, administrative order or civil judgment. ADEQ discovered the violations alleged below during a file review completed on April 09, 2012.

I. LEGAL AUTHORITY and NATURE OF ALLEGED VIOLATION(S)

1. Administrative Order DW-36-10 - Section III (C)

Notwithstanding the disposition of finding, MRWC [Montezuma Rimrock Water Company] shall complete construction of the approved arsenic treatment system and submit an administratively complete application for an Approval of Construction (AOC) for the treatment system described in Section III (B) [of Consent Order DW-36-10] no later than April 7, 2012.

Amendment #1 to Consent Order DW-36-10 became effective June 2, 2011. The Amendment requires MRWC to complete installation of an arsenic treatment system and submit an administratively complete application for an Approval of Construction (AOC) for the treatment system no later than April 7, 2012. To date, MRWC has not submitted an AOC for the installation of an arsenic treatment system.

II. DOCUMENTING COMPLIANCE

1. Within 30 calendar days of receipt of this Notice, please submit documentation that the ~~violation(s) never occurred, or submit to ADEQ all required information to complete the application for the AOC for the arsenic treatment system.~~
2. Within 7 calendar days of receipt of this Notice, please submit documentation that the violation(s) never occurred, or contact Vivian Burns, ADEQ Water Quality Enforcement Case

Southern Regional Office
400 West Congress Street Suite 433 Tucson, AZ 85701
(520) 628-6733

Printed on recycled paper

Manager, at (602) 771-4608 to schedule a meeting with ADEQ.

III. SUBMITTING COMPLIANCE DOCUMENTATION

Please send all compliance documentation and any other written correspondence regarding this Notice to ADEQ at the following address:

Arizona Department of Environmental Quality, Attention: Vivian J. Burns, Water Quality Compliance Enforcement Unit, 1110 W Washington St, Phoenix, AZ 85007 MC: 5415B-1

IV. STATEMENT OF CONSEQUENCES

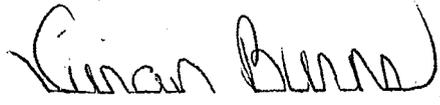
1. The time frames within this Notice for achieving and documenting compliance are firm limits. Failure to achieve or document compliance within the time frames established in this Notice will result in an administrative compliance order or civil action requiring compliance within a reasonable time frame, substantial civil penalties, and/or the suspension or revocation of an applicable permit/license. ADEQ will agree to extend the time frames only in a compliance schedule negotiated in the context of an administrative consent order or civil consent judgment.
2. Achieving compliance does not preclude ADEQ from seeking civil penalties, and/or suspending or revoking an applicable permit/license for the violation(s) alleged in this Notice as allowed by law.

V. OFFER TO MEET

ADEQ is willing to meet regarding this Notice. To obtain additional information about this Notice or to schedule a meeting to discuss this Notice, please contact Vivian J. Burns at (602) 771-4608.



Marcia R. Colquitt, Manager
Water Quality Compliance Enforcement Unit



Vivian J. Burns
Water Quality Compliance Enforcement Unit