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BEFORE THE ARIZONA CORPORATION COMMISSION

7	IN THE MATTER OF THE APPLICATION	Docket No. W-04254A-12-0204
8	OF MONTEZUMA RIMROCK WATER	
9	COMPANY, LLC FOR APPROVAL OF	
10	FINANCING TO INSTALL A WATER LINE	
	FROM THE WELL ON TIEMAN TO WELL	
	NO. 1 ON TOWERS.	

11	IN THE MATTER OF THE APPLICATION	Docket No. W-04254A-12-0205
12	OF MONTEZUMA RIMROCK WATER	
13	COMPANY, LLC FOR APPROVAL OF	
	FINANCING TO PURCHASE THE WELL	
	NO. 4 SITE AND THE COMPANY	
	VEHICLE.	

14	IN THE MATTER OF THE APPLICATION	Docket No. W-04254A-12-0206
15	OF MONTEZUMA RIMROCK WATER	
16	COMPANY, LLC FOR APPROVAL OF	
	FINANCING FOR AN 8,000-GALLON	
	HYDRO-PNEUMATIC TANK.	

17	IN THE MATTER OF THE RATE	Docket No. W-04254A-12-0207
18	APPLICATION OF MONTEZUMA	
	RIMROCK WATER COMPANY, LLC.	

19	JOHN E. DOUGHERTY,	Docket No. W-04254A-11-0323
20		
21	COMPLAINANT,	
22	V.	
23	MONTEZUMA RIMROCK WATER	
24	COMPANY, LLC	
	RESPONDENT	

Arizona Corporation Commission
DOCKETED
 JUN 14 2013

DOCKETED BY

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

Docket No. W-04254A -08-0361

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

Docket No. W-04254A -08-0362

**MONTEZUMA RIMROCK
WATER COMPANY
OBJECTIONS AND MOTION TO
STRIKE**

8 In accordance with the Procedural Order dated March 21, 2013, Montezuma
9 Rimrock Water Company (“MRWC” or “Company”) hereby files the following
10 objections to the direct and responsive testimony filed by Mr. Dougherty. MRWC also
11 moves to strike portions of Mr. Dougherty’s direct and responsive testimony.

12 **I. BRIEF SUMMARY OF THE MOTION.**

13 Although Mr. Dougherty is a *pro per* intervenor, he should be held to the same
14 legal standards as other parties relating to witness testimony. Mr. Dougherty has
15 presented himself as a factual witness to support his complaint against MRWC and his
16 intervention in the Company’s rate case. As such, Mr. Dougherty may present relevant
17 factual testimony based on his personal knowledge relating to the issues raised in his
18 complaint against MRWC or the rate case. He is not an expert witness on any issue in this
19 case and he is not a licensed attorney. Fundamentally, it is not proper for a factual witness
20 to present legal argument, render legal opinions or to offer opinions as to the motives and
21 intent of another party. Nor is it proper for a factual witness to offer legal analysis on
22 issues to be decided by the Commission. Unfortunately, Mr. Dougherty’s direct and
23 responsive testimony violates all of these principles.

24 As such, various portions of Mr. Dougherty’s direct and responsive testimony
25 should be excluded and stricken for several controlling reasons. To start, the bulk of Mr.
26 Dougherty’s direct and responsive testimony is legal argument, and not factual testimony.

1 It's axiomatic – witness testimony does not include legal argument with citation to
2 statutes and published judicial decisions that allegedly support a party's arguments. It is
3 not proper for an intervenor or any party to camouflage legal argument in the guise of
4 witness testimony. Various portions of Mr. Dougherty's testimony also should be
5 excluded because he offers legal opinions without any legal qualifications or expertise.
6 He also offers engineering opinions without any expertise or qualifications. Finally,
7 portions of Mr. Dougherty's direct and responsive testimony should be stricken because it
8 is based on his general opinions as to the motives and intent underlying MRWC's actions.
9 Obviously, Mr. Dougherty doesn't have any personal knowledge as to the motives or
10 intent of MRWC or Ms. Olsen.¹

11 **II. OBJECTIONS TO DIRECT TESTIMONY OF MR. DOUGHERTY.**

12 In no uncertain terms, Mr. Dougherty's direct testimony is primarily legal
13 argument and wide-ranging opinion testimony. Mr. Dougherty attempts to offer
14 substantive testimony and argument on legal and regulatory matters. He does not present
15 factual testimony based on his own personal knowledge, but instead offers a myriad of
16 legal arguments mixed with legal conclusions and opinions.² He offers his opinions about
17 MRWC's motives and intent, his interpretation of statutes and regulations and his "legal
18 opinions" about revocation of MRWC's CC&N and other similar issues. Mr. Dougherty
19 even goes so far as to cast aspersions at MRWC by arguing that MRWC's "arrogant,

20
21 ¹ See Ariz. R. Evid. 602 ("A witness may testify to a matter only if evidence is introduced
sufficient to support a finding that the witness has personal knowledge of the matter.").

22 ² See, e.g., Dougherty Direct Testimony at 5 ("As detailed below under Allegation XVII, the
23 Capital Leases were required under ARS S40-301, 302 to be approved by the Commission before
they could be implemented. The Company executed this scheme to avoid any delays in installing
24 the Arsenic Treatment Facility prior to a June 7, 2011 ADEQ Consent Order deadline to have the
equipment in place."); *Id.* at 6 ("The Company's failure to install the ATF – after years of delay –
25 would have provided sufficient justification for the Commission to seek a Show Cause Order to
remove Montezuma's CC&N because Montezuma was failing to provide adequate service at a
reasonable cost to its customers."). See also *id.* at 6:8-23, 37-46; at 7:1-26; at 8:4-5, 31-33; at
26 9:13-16, 37-41; at 10:23-25; at 11:28-35; at 12:12-15. at 13:16-40; 14:5-45; at 15: at 15:32-38;
16:7-30; 18:13-26. and at 18:32 – 20:8.

1 unethical and illegal action is an affront to the Commission”³ and arguing that MRWC
2 “was willing to commit bank fraud.”⁴ Incredibly, on pages 18 (starting on line 30)
3 through page 20 (line 8) of his direct testimony, Mr. Dougherty includes an entire section
4 of his testimony entitled “Legal Analysis” and offers a variety of legal arguments and
5 analysis with case citations and legal opinions.

6 Not only is it improper for a factual witness to make legal argument or offer legal
7 opinions, but Mr. Dougherty is not qualified to offer any opinions or testimony on any of
8 those legal issues. As the old saying goes, “where facts are few, experts are many.” Here,
9 Mr. Dougherty takes that credo to the extreme by offering a smattering of legal arguments
10 and opinions throughout his testimony. Mr. Dougherty doesn’t stop there – he also offers
11 his interpretations and opinions as to MRWC’s and Ms. Olsen’s motives and intent. Mr.
12 Dougherty simply does not have any personal knowledge, foundation, basis or
13 qualifications to offer such opinions at trial.

14 MRWC understands that Commission evidentiary proceedings are less formal than
15 Superior Court proceedings, but it bears emphasis that Mr. Dougherty’s proposed legal
16 arguments and opinion testimony would not be admissible in Superior Court. Under Ariz.
17 R. Evid. 701, a lay witness may present opinion testimony only if it is (a) rationally based
18 on the witness’s perception; (b) helpful to a clearly understanding the witness’s testimony
19 or to determining a fact in issue; and (c) not based on scientific, technical or other
20 specialized knowledge within the scope of Rule 702.⁵ Mr. Dougherty does not meet any
21 of those requirements. Likewise, under Ariz. R. Evid. 602, “[a] witness may testify to a
22 matter only if evidence is introduced sufficient to support a finding that the witness has
23 personal knowledge of the matter.”

24
25 ³ *Id.* at 6:46.

26 ⁴ *Id.* at 11:28-30.

⁵ Ariz. R. Evid. 701.

1 Under these circumstances, MRWC objects to Mr. Dougherty's pre-filed direct
2 testimony and moves to exclude all legal arguments, legal analysis and opinion testimony
3 presented in that testimony. Specifically, MRWC moves to strike the following portions
4 of Mr. Dougherty's direct testimony as improper legal argument, improper opinion
5 testimony and/or lack of foundation and qualifications: pages 5:26-41, 6:1-23, 6:37-46,
6 7:1-26, 8:4-5, 8:31-33, 9:13-16, 9:37-41, 10:23-25, 11:28-35, 12:12-15, 13:16-40, 14:5-
7 45, 15:32-38, 16:7-30; 18:13-26, and 18:32 – 20:8. At minimum, the entire "Legal
8 Analysis" section of Mr. Dougherty's direct testimony (page 18, line 28 through page 20,
9 line 31) should be excluded and stricken. Allowing Mr. Dougherty or any party to present
10 this type of blatant legal argument and unsupported and unqualified opinion evidence at
11 trial violates clear Arizona law and fundamental principles of due process.

12 **III. OBJECTIONS TO RESPONSIVE TESTIMONY OF MR. DOUGHERTY.**

13 These same objections and grounds for exclusion apply equally to various portions
14 of Mr. Dougherty's responsive testimony. In his responsive testimony, Mr. Dougherty
15 offers opinions as to legal advice between MRWC and its counsel, legal arguments and
16 opinions relating to forcing Ms. Olsen to sell MRWC to Arizona Water Company,
17 opinions about Arizona Water Company "being well positioned to take over Montezuma's
18 service area,"⁶ opinions about Arizona Water Company being interested in purchasing
19 MRWC,⁷ and other legal arguments and opinions.⁸

20 Under these circumstances, MRWC objects to Mr. Dougherty's pre-filed
21 responsive testimony and moves to strike the following portions of Mr. Dougherty's
22 responsive testimony as improper legal argument, improper opinion testimony and/or lack
23 of foundation and qualifications: pages 7:24-27, 7:40 – 8:22, 8:43 – 9:13, 9:39-42, 10:1-
24

25 ⁶ *Id.* at 10:30-35
26 ⁷ *Id.*
⁸ *Id.* at 15:

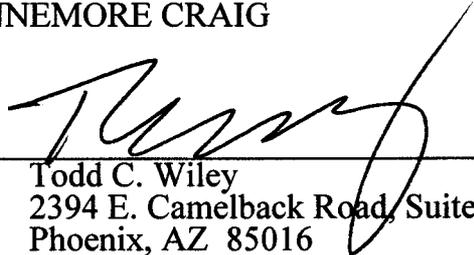
1 9, 10:17-35, 11:7-8, 11:18-21, 11:44 – 12:11, 15:1-32, 16:34-38, 17:1-7, and 23:21-29. In
2 his responsive testimony, Mr. Dougherty also offers opinions and testimony about excess
3 storage capacity.⁹ Mr. Dougherty does not have any expertise, qualifications or basis for
4 rendering any opinions about excess storage capacity for MRWC's system and that
5 testimony should be summarily excluded.

6 **IV. CONCLUSION.**

7 For the reasons set forth above, MRWC respectfully requests that that
8 Administrative Law Judge exclude and strike the portions of Mr. Dougherty's pre-filed
9 direct and responsive testimony noted above from the hearing and record in this case.

10 RESPECTFULLY SUBMITTED this 14th day of June, 2013.

11 FENNEMORE CRAIG

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13
14 By 

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21 An original and 13 copies
22 of the foregoing was filed
this 14th day of June, 2013,
23 with:

24 Docket Control
Arizona Corporation Commission
1200 West Washington Street
25 Phoenix, Arizona 85007

26 ⁹ *Id.* at 21:8-13; 25:14-17.

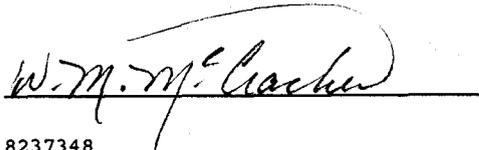
1 A copy of the foregoing
2 was hand delivered/mailed/emailed this
3 14th day of June, 2013, to:

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