

ORIGINAL



0000147799

RECEIVED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

FENNEMORE CRAIG, P.C.
Todd Wiley (No. 015358)
2394 East Camelback Road
Suite 600
Phoenix, Arizona 85016
Attorneys for Montezuma Rimrock Water Company

2013 AUG 30 P 12:33

AZ CORP COMMISSION
DOCKET CONTROL

BEFORE THE ARIZONA CORPORATION COMMISSION

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

Docket No. W-04254A-12-0204

IN THE MATTER OF THE APPLICATION
OF MONTEZUMA RIMROCK WATER
COMPANY, LLC FOR APPROVAL OF
FINANCING TO PURCHASE THE WELL
NO. 4 SITE AND THE COMPANY
VEHICLE.

Docket No. W-04254A-12-0205

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

Docket No. W-04254A-12-0206

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

Docket No. W-04254A-12-0207

JOHN E. DOUGHERTY,

COMPLAINANT,

V.

MONTEZUMA RIMROCK WATER
COMPANY, LLC

RESPONDENT

Docket No. W-04254A-11-0323

Arizona Corporation Commission

DOCKETED

AUG 30 2013

DOCKETED BY nr

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

MONTEZUMA RIMROCK WATER COMPANY

CLOSING BRIEF

August 30, 2013

Table of Contents

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

I. BRIEF STATEMENT OF THE ISSUES AND CASE. 1

II. RATE CASE. 2

 A. MRWC’s Rate Application. 2

 B. The Commission Should Adopt Staff’s Recommendations. 3

 C. MRWC’S Financing Applications Should Be Approved. 5

 1. Financing for the 8,000 gallon hydro-pneumatic pressure tank
 should be approved. 5

 2. Financing for the four 20,000 gallon storage tanks should be
 approved. 7

 3. The long-term debt under the Nile River and Financial Pacific
 leases should be retroactively approved. 8

 D. Rate Case Expense. 9

III. OVERVIEW OF MRWC. 11

 A. Montezuma Rimrock Water Company. 11

 B. Utility Service Provided by the Company Has Dramatically
 Improved Under Ms. Olsen’s Ownership. 12

 C. MRWC’s Water System. 15

 D. MRWC Served the Best Interest of Customers Relating to Well
 No. 4. 16

 1. Acquisition of Well No. 4 did not harm MRWC or its
 customers. 17

 2. Well No. 4 is not currently being used. 18

 3. MRWC sought regulatory approval for Well No. 4. 18

 4. Mr. Dougherty has jeopardized the interests of MRWC and its
 customers relating to Well No. 4. 20

 E. The Arsenic Treatment Facility. 22

 1. ADEQ required installation of the ATF irrespective of funding
 disposition. 23

 2. Mr. Dougherty harmed MRWC customers by blocking WIFA
 financing for the ATF. 23

 3. MRWC had no choice but to finance the ATF through leases. 26

 4. Failure to docket the Nile River and Financial Pacific Leases
 did not harm the Commission or MRWC customers. 29

 F. Testimony of Gerry Becker. 33

 G. Testimony of Marlin Scott. 37

1	H.	Testimony of Vivian Burns.....	38
2	I.	It Is Undisputed That MRWC Is Providing Reasonable and Adequate Water Service to Customers.....	40
3	J.	Testimony of John Campbell.....	41
4	K.	Testimony of John Torbenson and Robin Richards.....	43
5	L.	Testimony of John Dougherty.....	44
6		1. Mr. Dougherty did not establish any actual, concrete injury suffered by any party as a result of the Company's actions.	45
7		2. The Commission should prevent Mr. Dougherty from using administrative processes to harm MRWC and Ms. Olsen.	45
8		3. Mr. Dougherty's actions and end-goals are against the public interest of this Commission and MRWC's customers.....	48
9			
10	IV.	MR. DOUGHERTY'S COMPLAINT SHOULD BE DISMISSED IN ITS ENTIRETY.....	52
11		A. Allegation I Should Be Dismissed: Acquisition of the Well No. 4 Property Does Not Warrant Any Action Against MRWC.	53
12		B. Allegation II Should Be Dismissed Because the 2009 Staff Audit Is a Non-Issue.	54
13		C. Allegation IV Should Be Dismissed: Well No. 4 Is Excluded from the Rate Case.....	54
14		D. Allegation VII Should Be Dismissed Because MRWC Is In Compliance With State and Federal Safe Water Standards.....	55
15		E. Allegation VIII Should Be Dismissed Because Well No. 4 Is Not Being Used By MRWC To Provide Water Service.....	55
16		F. Allegation X Should Be Dismissed For Lack of Evidence.....	56
17		G. Allegations XI and XII Should Be Dismissed.	56
18		H. Allegation XV Is Frivolous and Should be Dismissed.	57
19		I. Allegation XVII Relating to the Arsenic Leases Does Not Warrant Any Action Against MRWC.....	58
20			
21			
22			
23			
24	V.	LEGAL ISSUES.....	60
25		A. The Commission Cannot Lawfully Grant the Relief Requested by Mr. Dougherty.....	60
26		1. The Commission cannot lawfully revoke MRWC's CC&N in this case because MRWC is providing adequate and reliable	

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

water utility service to customers. 61

2. The Commission Cannot lawfully transfer MRWC’s CC&N or service rights to Arizona Water Company..... 62

B. The Commission Cannot Lawfully Rescind Ms. Olsen’s Acquisition of the Company As Requested by Mr. Dougherty..... 63

1. MRWC did not violate Decision No. 67583..... 63

2. The Commission cannot lawfully and should not modify Decision No. 67583 under A.R.S. § 40-252. 66

C. The Commission Has Authority to Retroactively Approve the Nile River and Financial Pacific Leases. 68

1. The Commission Has Broad Authority Under Title 40 to Retroactively Approve Long-Term Debt..... 69

2. The Commission Has A Long Standing Precedent and Practice of Granting Retroactive Financing Approvals..... 70

D. The Commission Has Limited Authority to Impose Fines Against MRWC. 71

VI. CONCLUSION..... 74

8302664/028469.0003

1 Montezuma Rimrock Water Company (“MRWC” or “the Company”) hereby
2 submits the following Closing Brief in support of its application for a rate increase and
3 relating to the complaint proceeding in these consolidated dockets.¹

4 **I. BRIEF STATEMENT OF THE ISSUES AND CASE.**

5 This consolidated docket involves four separate proceedings. The first proceeding
6 is the Company’s 2012 rate case (Docket No. 12-0207). On that matter, the rate case
7 issues are largely undisputed except for the Company’s request for additional rate case
8 expense. The Company has accepted Commission Staff’s recommendations and the
9 Commission should adopt Commission Staff’s rate case recommendations in this case,
10 including Commission Staff’s recommendation for retroactive approval of the long-term
11 debt incurred by the Company with the April 2, 2012 lease with Financial Pacific for the
12 arsenic treatment plant and the March 22, 2012 lease with Nile River for the arsenic
13 treatment building, and approval of financing for four 20,000 gallon storage tanks.

14 The second proceeding involves the Company’s financing application for an 8,000
15 gallon hydro-pneumatic pressure tank (Docket No. 12-0206). Commission Staff has
16 recommended approval and the Commission should approve that financing. The
17 Company’s additional financing applications filed in Docket Nos. 12-0204 and 12-0205
18 are no longer at issue because Well No. 4 is not currently being used for utility service and
19 the Company is not seeking financing approval of the water line from Well No. 1 to Well
20 No. 4 or the Well No. 4 property.

21 The third proceeding is Mr. Dougherty’s complaint against the Company (Docket
22 No. 11-0323). To say the least, Mr. Dougherty’s complaint is contrary to the underlying
23 facts and testimony, controlling Arizona law and the recommendations of Commission

24 ¹ At hearing, the Administrative Law Judge (“ALJ”) directed the parties to brief any and
25 all issues in their closing briefs. As a result, the Company has attempted to comply with
26 the ALJ’s directions by addressing various issues raised at hearing in this brief, in turn
leading to the length of this brief. Tr. V at 1097:11-1098:15 (ALJ Harpring). The
Company reserves any and all rights to file exceptions to any recommended order in this
case as stated at hearing. Tr. V at 1098:16-1100:16.

1 Staff. Mr. Dougherty's complaint should be dismissed entirely. The final proceeding
2 relates to reconsideration of the Company's 2008 rate case (Docket Nos. 08-0361 and 08-
3 0362). Those dockets should be closed because all of the remaining issues in dispute can
4 be resolved as part of the 2012 rate case and/or Mr. Dougherty's complaint proceeding.

5 **II. RATE CASE.**

6 **A. MRWC's Rate Application.**

7 The Company's current rates were approved in Decision No. 71317 issued by the
8 Commission on December 30, 2009. There has been very minimal growth since the last
9 rate case. Even so, the Company has made substantial capital investments for arsenic
10 treatment and other water facilities that have contributed to the need for this rate case,
11 including the arsenic treatment system and the building which houses the arsenic
12 treatment system, line replacement, another fire hydrant installation, and multiple repairs.²

13 The test year used by MRWC is the 12-month period ending December 31, 2011.
14 The Company requested a revenue increase of \$ 76,800 based on operating expenses and
15 operating margin.³ MRWC is a small company that cannot afford any rate analysts or
16 consultants. Ms. Olsen compiled and filed the rate case herself. MRWC seeks a revenue
17 requirement sufficient for the Company to pay for arsenic treatment, legal expenses,
18 engineering, permitting, and the pressure tank and storage tanks that are necessary
19 improvements to the Company's water system.⁴

20 The Company was ordered to file a rate case in Decision No. 71317 issued by the
21 Commission on October 30, 2009, using a test year ending December 31, 2011. During
22 the test year, operating expenses were \$93,537 and total revenue was \$101,276. That is
23 not an accurate account of expenses, however, because there are still several invoices that
24 are still unpaid at this time from 2011, resulting in a net operating loss in 2011.⁵ In 2012,

25 ² Ex. A-2, Direct Testimony of Patricia Olsen ("Olsen DT") at 5-8.

26 ³ *Id.* at 5, 8.

⁴ *Id.* at 5-8.

⁵ *Id.* at 6

1 the Company's operating expenses were \$120,846 and total revenue was \$110,129,
2 leaving a substantial shortfall for a class D utility like MRWC.

3 **B. The Commission Should Adopt Staff's Recommendations.**

4 In terms of the rate case, there are virtually no issues in dispute. The Company is
5 willing to accept the recommendations from Commission Staff and Mr. Becker.⁶ In his
6 responsive testimony, Mr. Becker recommends a revenue increase of \$27,946 or 27.59%
7 over the test year revenues of \$101,276.⁷ Mr. Becker's recommended revenue increase
8 would produce an operating income of \$2,770 for a 4.11% rate of return on an adjusted
9 OCRB of \$67,414.⁸ As the only intervenor in the rate case, Mr. Dougherty did not present
10 any evidence or testimony relating to Staff's recommended revenues for the Company.

11 Further, Commission Staff recommends approval of two surcharges for \$18,541 of
12 debt related to an 8,000 gallon hydro-pneumatic pressure tank and \$108,000 in debt for
13 four 20,000 gallon storage tanks.⁹ At hearing, Mr. Dougherty did not present any
14 evidence or testimony relating to the surcharges for those improvements.¹⁰

15 Commission Staff based its recommendations on a cash flow analysis "that
16 provides the Company adequate cash flow to pay its bills including the full amount due
17 for the Arsenic Treatment System excluding media costs."¹¹ As testified by Ms. Olsen at
18 hearing, MRWC has accepted the rate case recommendations by Commission Staff and
19
20

21 ⁶ Tr. I at 35:15-36:10 (Olsen); Ex. A-3, Rebuttal Testimony of Patricia Olsen ("Olsen
22 RT") at 2-4, 7-8. The transcripts for the hearing shall be referenced to by transcript
23 volume (ex. "Tr. I"), page numbers and line numbers (ex. "at 35:1-5) and testifying
24 witness (ex. "Olsen").

25 ⁷ Ex. S-2, Responsive Testimony of Gerald Becker ("Becker RT"), at 4.

26 ⁸ *Id.* at 4.

⁹ *Id.* at 5.

¹⁰ At hearing, Mr. Dougherty questioned the Company's decision to purchase a used
pressure tank from Ms. Olsen's son, but Mr. Dougherty did not present any evidence or
testimony contesting the fact that the pressure tanks and storage tanks are necessary
improvements for MRWC's water system and, therefore, require financing approval.

¹¹ Ex. S-2, Becker RT at 5.

1 Mr. Becker.¹² Mr. Becker's responsive testimony also reflects an increase in the operating
2 expenses attributable to salaries and wages of \$13,181 to account for a two-year
3 normalized salary and wages expense.¹³ As such, the Commission should adopt the rate
4 case recommendations proposed by Commission Staff and Mr. Becker.

5 In his testimony, Mr. Becker also recommended that the Commission rescind its
6 requirement that MRWC maintain a surety bond as ordered in Decision No. 67583. Mr.
7 Becker explained that "the transfer of the Company occurred in 2005 and the Company
8 continues to provide service under present ownership. Staff believes the original purpose
9 of the bond no longer exists."¹⁴ On those issues, the Company supports Mr. Becker's
10 recommendation to rescind the requirement for MRWC to post a \$30,000 surety bond.

11 To the extent that the Commission decides to require posting of such bond,
12 however, the evidence is undisputed that the revenue amount recommended by Mr.
13 Becker would need to be increased by \$4,500 to cover the cost of such surety bond.¹⁵ Ms.
14 Olsen testified that the yearly cost for a \$30,000 surety bond is \$4,500 and, under Staff's
15 revenue recommendations, there is not sufficient revenue to pay for that \$4,500 expense.¹⁶
16 As such, if the Commission were to continue the surety bond requirement, it also would
17 need to authorize sufficient revenue for the Company to pay for such surety bond.

18 Ultimately, the Commission should adopt Commission Staff's rate case
19 recommendations in this case, including Mr. Becker's recommendations for retroactive
20 approval of the long-term debt under the Nile River and Financial Pacific Leases for the
21 Arsenic Treatment Facility ("ATF"). In this case, the Company simply asks for a rate
22

23 ¹² Tr. I at 109:6-18. (Olsen). MRWC, however, does seek recovery of additional rate case
24 expense incurred by the Company as noted on Ex. A-56, Summary of Legal and Rate
Case Expense.

25 ¹³ Ex. S-2, Becker RT at 4; Ex. A-3, Olsen RT at 5.

26 ¹⁴ Ex. S-2, Becker RT at 4.

¹⁵ Tr. I at 109:22-110:12 (Olsen); Ex. A-3, Olsen RT at 6-7, Attachment E to Olsen RT,
Invoice from MCC Surety Group for \$4,500.

¹⁶ Id.

1 increase sufficient to ensure that MRWC has sufficient cash flow to meet its obligations.¹⁷

2 **C. MRWC'S Financing Applications Should Be Approved.**

3 On the financing approvals, the Company seeks financing approval for four items:
4 (1) four 20,000 gallon storage tanks; (2) an 8,000 gallon hydro-pneumatic pressure tank;
5 (3) the March 22, 2012 lease with Nile River for the ATF building; and (4) the April 2,
6 2012 lease with Financial Pacific for the ATF. *It is undisputed that the Company*
7 *satisfies the statutory requirements under A.R.S. §§ 40-301 and 40-302 for those*
8 *financing requests.* Mr. Dougherty opposes approval of the arsenic leases because they
9 were not pre-approved by the Commission. Mr. Dougherty didn't present any evidence
10 that the arsenic leases fail to meet the statutory requirements in §§ 40-301 and 40-302.

11 As established at hearing, the proposed financings for the pressure tank, the storage
12 tanks, the Nile River lease and the Financial Pacific lease are undertaken "for a lawful
13 purpose, within the corporate powers of Montezuma Rimrock Water Company as a public
14 utility."¹⁸ And those financings are consistent with the public interest being served by
15 MRWC as a public utility, as well as the terms of those financings being compliant with
16 "sound financial practices as a utility."¹⁹ Finally, those financings do not and will not
17 hinder "the Company's ability to provide utility service to its customers in any way."²⁰
18 In fact, MRWC and Ms. Olsen have been making payments to Nile River and Financial
19 Pacific on the leases, while providing adequate water service to its customers.²¹

20 **1. Financing for the 8,000 gallon hydro-pneumatic pressure tank**
21 **should be approved.**

22 Mr. Dougherty opposes MRWC's purchase of a used 8,000 gallon pressure tank

23 ¹⁷ Ex. A-1, Olsen DT at 6.

24 ¹⁸ Tr. I at 127:2-128:16 (Olsen), Tr. IV at 829:17-22 (Dougherty); Tr. IV at 891:1-20 (Becker).

25 ¹⁹ *Id.*

26 ²⁰ Tr. I at 127:2-128:16 (Olsen).

²¹ *Id.* at 105:5-20 (Olsen); Ex. A-15, Payment Authorization Notices and Receipts for Payments to Financial Pacific; Ex. A-16, Receipts of Payments to Odyssey Equipment Financing.

1 from Ms. Olsen's son (Sergei Arias). Unfortunately, Mr. Dougherty misstated the facts
2 relating to the pressure tank by claiming that the Company had purchased the tank from
3 Ms. Olsen's son. That simply isn't true. In reality, Ms. Olsen's son purchased the tank
4 and, in turn, agreed to sell the tank to MRWC for \$15,000, which is the amount that the
5 Company seeks financing approval for that tank.²² At hearing, Mr. Dougherty suggested
6 that the pressure tank is substandard, and that the Company is paying an inflated price to a
7 family member. Mr. Dougherty did not present any evidence on these issues at hearing.

8 The underlying record clearly demonstrates that the proposed transaction is an
9 arms' length transaction beneficial to MRWC and its customers. Specifically, the
10 evidence is undisputed that the pressure tank is in good condition and that the \$15,000
11 acquisition price is substantially below what it would otherwise cost MRWC for a new
12 8,000 gallon storage tank.²³ Ms. Olsen visually inspected the tank and had a tank
13 inspection done—both showing that the tank is in good condition.²⁴ In fact, the welder
14 that inspected the tank confirmed “that the tank was in good shape and that it was worth
15 \$15,000.”²⁵ Apparently Mr. Dougherty would rather have the Company and its customers
16 pay for a new \$40,000 gallon tank as opposed to paying \$15,000 for a used tank in good,
17 useable condition. As pointed out by the ALJ at hearing, this transaction provided a
18 “unique opportunity” to acquire a good quality used pressure tank at a reasonable price.²⁶

19 Mr. Dougherty also suggested that MRWC incurred a long-term debt for the
20 pressure tank without Commission approval based on the listing of the pressure tank on
21

22 ²² Tr. I at 72:12-24 (Olsen).

23 ²³ *Id.* at 73:3-8 (Olsen). In fact, Ms. Olsen testified at hearing that a new 2,000 gallon
24 hydro-pneumatic tank typically costs \$40,000 new and that purchasing a used 8,000
25 gallon pressure tank in good condition is a “good deal for ratepayers.” *Id.*

26 ²⁴ *Id.* at 189:9-23 (Olsen).

²⁵ *Id.* at 190:24-25 (Olsen).

²⁶ *Id.* at 440:21-25 (Olsen). (“Q. And did you see it as a unique opportunity? A. Yes,
because the hydro-tanks that we have have been repaired, and as a matter of fact, last
week the tank that this new hydro-tank is supposed to replace, failed again, and it took
them a while to try to fix it.”) (question by ALJ Harpring).

1 utility annual reports filed by MRWC. That argument doesn't have any basis in fact. It is
2 undisputed that the Company doesn't have any loan obligations for the tank; the pressure
3 tank is not owned or possessed by MRWC; the Company is not currently using the
4 pressure tank to provide water service; and the loan was listed on the annual report "to
5 signify the fact that at some point the company was going to buy the tank."²⁷

6 Ms. Olsen and Mr. Campbell explained that the loan agreement between MRWC
7 and Mr. Arias was a proposed loan agreement contingent on approval by the
8 Commission.²⁸ Ms. Olsen testified that the pressure tank is needed because the pressure
9 tank at Well No. 1 has ruptured and been repaired many times.²⁹ On this record, the
10 Commission should approve MRWC's financing request for the pressure tank.

11 **2. Financing for the four 20,000 gallon storage tanks should be**
12 **approved.**

13 Ms. Olsen also explained the need for additional storage tanks to operate MRWC's
14 system. The Company currently has one 10,000 storage tank that "leaks profusely."³⁰ As
15 a result, the Company seeks financing approval for four new 20,000 gallon storage
16 tanks.³¹ In fact, Staff Engineer Marlin Scott inspected MRWC's system and
17 recommended that the Company install the additional storage capacity.³² Mr. Dougherty
18 did not present any contrary testimony or evidence.

19 On this record, and as recommended by Mr. Becker and Mr. Scott, the Commission
20 should approve the requested financing for the four 20,000 gallon storage tanks. It also
21 should be noted that MRWC filed an application with WIFA for financing of the four
22 20,000 gallon storage tanks and, as set forth in Exhibit A-27, "Montezuma Rimrock Water
23 Company's storage tank replacement project was added to WIFA's drinking water project

24 ²⁷ *Id.* at 523:4-524:5 (Olsen).

25 ²⁸ *Id.* at 523:22-24 (Olsen); Tr. II at 572:22-25, 575:7-13 (Campbell).

26 ²⁹ Tr. I at 553:16-24 (Olsen).

³⁰ *Id.* at 73:18-22 (Olsen).

³¹ *Id.* at 74:14-20 (Olsen).

³² Tr. III at 695:8-12 (Scott).

1 priority list at the WIFA Board of Directors June 19, 2013 meeting.”³³

2 **3. The long-term debt under the Nile River and Financial Pacific**
3 **leases should be retroactively approved.**

4 Finally, the Commission should adopt Commission Staff’s and Mr. Becker’s
5 recommendations for retroactive approval of the long-term debt under the Nile River and
6 Financial Pacific leases for the ATF. On this record, there simply is nothing to be gained
7 by denying approval and recognition of the debt for the ATF under the Nile River and
8 Financial Pacific leases. As Mr. Becker testified at hearing, even if the Commission
9 rejects retroactive approval of the long-term debt under those leases, Mr. Becker would
10 recommend approval of the lease payments to Nile River and Financial Pacific because
11 “the objective of Staff’s calculation in its revenue requirement is to give the company
12 enough money to continue operating.”³⁴ Further, Mr. Becker has, in fact, penalized the
13 Company for failing to seek prior approval of the lease by disallowing an operating
14 margin to the Company, which essentially requires the Company to put depreciation
15 expense (or cash to the owner) back into the business to pay operating expenses.³⁵

16 Ultimately, MRWC realizes it made a mistake when it didn’t seek prior approval of
17 those leases and failed to file copies in the pending dockets, but that it is not a reason to
18 deny approval of the debt under those leases, which are clearly in the public interest.³⁶
19 The Company’s failure to seek prior approval of that debt from the Commission did not
20 harm customers or the Commission in any way, shape or form. On the other hand, Mr.
21 Dougherty’s demand that the Commission deny recognition of the debt under the leases
22 would harm MRWC’s customers because, such decision would jeopardize operation of
23 the ATF, endangering the health, safety, and welfare of MRWC customers.³⁷

24 ³³ Ex. A-27, email from S. Konrad (WIFA) to P. Olsen dated 6/19/2013; Tr. I at 132:8-
133:4 (Olsen).

25 ³⁴ Tr. IV at 1084:15-1085:23 (Becker).

26 ³⁵ *Id.* at 1087:6-11 (Becker).

³⁶ Ex. A-3, Olsen RT at 11-12.

³⁷ Tr. IV at 926:23-927:15 (Becker); Ex. A-2, Olsen DT at 14-15.

1 **D. Rate Case Expense.**

2 With respect to the rate case recommendations, MRWC requests that the
3 Commission grant additional rate case expense under the extenuating circumstances of
4 this case. Commission Staff and Mr. Becker recommend \$57,000 in rate case amortized
5 over four years, or \$14,250 per year.³⁸ Unfortunately, the actual rate case expense in
6 these consolidated dockets is substantially higher. As noted on the Summary of Legal and
7 Rate Case Expenses admitted as Exhibit A-56, the rate case expense requested by MRWC
8 is \$92,725.50.³⁹ As such, MRWC requests that the Commission authorize \$92,725.50 in
9 rate case expense, amortized over five years, or \$ 23,181.38 per year. That would result
10 in an additional increase in the revenue requirement of \$8,931.

11 The legal expenses in this rate case resulted from five days of hearing, drafting of
12 pre-filed testimony, responding to numerous motions filed by Mr. Dougherty's including
13 two dispositive motions, extensive briefing ordered by the ALJ and the consolidation of
14 the rate case with Mr. Dougherty's complaint proceeding.

15 At the procedural conference on February 23, 2013, MRWC requested that the rate
16 case proceed independently of Mr. Dougherty's complaint proceeding and that the rate
17 case proceed expeditiously without filing of testimony and based on issuance of a staff
18 report as is typical for Class D utilities. The Company made that request in an effort to
19 expedite the rate case and minimize rate case expense. On February 25, 2013, however, a
20 Procedural Order was issued consolidating the rate case with Mr. Dougherty's complaint
21 docket and requiring the parties to file direct and rebuttal testimony, along with an
22 evidentiary hearing that lasted five days with eight witnesses. That decision dramatically
23 increased rate case expense through no fault of MRWC or its counsel. MRWC filed its
24 rate application on May 31, 2012 and the hearing commenced on June 20, 2013—385

25
26 ³⁸ Ex. S-1, Direct Testimony of Gerald Becker ("Becker DT"), at 15.

³⁹ The Company's actual rate case expenses are much higher, but MRWC is willing to accept \$92,725.50.

1 days later. That is a significant period of time for a Class D utility.

2 During that time period, Mr. Dougherty's filings and actions in this case have
3 dramatically increased legal costs. After MRWC filed its rate case on May 31, 2012, and
4 Mr. Dougherty filed his motion to intervene on June 7, 2012, Mr. Dougherty has made a
5 total of 32 filings in the rate case (in addition to over 40 filings in the other dockets),
6 including 24 motions.⁴⁰ Mr. Dougherty filed his motion to intervene on June 7, 2013 and
7 the rate case hearing commenced on June 20, 2013, a period of 378 days. During that
8 time period, Mr. Dougherty made 32 total filings or a filing every 12 days and he filed 24
9 motions or one motion every 16 days.

10 Under these circumstances, it would be patently unfair and unjust to force MRWC
11 or its attorneys to pay such increased rate case expense. MRWC made every effort to
12 avoid increased legal costs in the rate case. As testified by Mr. Becker, a substantial
13 burden was placed on the Company in responding to various motions, data requests and
14 other filings from Mr. Dougherty.⁴¹ As a matter of fairness, the Company should not have

15
16 ⁴⁰ See (1) Motion to Reschedule Witness Appearances dated 6/18/2013; (2) Motion to
17 Withdraw Motion to Order Staff to File Response to Formal Complaint dated 6/6/2013;
18 (3) Motion to Order Staff to Determine Whether March 22, 2012 Leases are Capital
19 Leases dated 6/3/2013; (4) Motion for Revised Public Notice of a Rate Hearing dated
20 4/29/2013; (5) Motion for Partial Summary Judgment dated 4/15/2013; (6) Motion to Bar
21 Rate Application dated 4/15/2013; (7) Motion for Protective Order dated 4/5/2013; (8)
22 Motion to Maintain Complaint portion of Docket under Current Hearing Schedule dated
23 3/21/2013; (9) Motion to Deny RUCO's Motion to Withdraw as Intervenor dated
24 3/18/2013; (10) Amended Formal Complaint and Motion to Add Allegation XVII dated
25 2/27/2013; (11) Motion to Reschedule Feb. 7 Procedural Conference dated 1/30/2013;
26 (12) Motion to Require Company to Submit Capital Leases to Commission for Approval
dated 1/15/2013; (13) Motion to Hold Montezuma In Contempt of Commission/ (14)
Motion to Bar Montezuma From Expending Ratepayer Funds for Unapproved Capital
Leases/ (15) Motion to Require Patricia Olsen to Refund Company Payments from
Unapproved Capital Leases/ (16) Motion for Criminal Referral/ (17) Motion to Deny
Company's Motion to Compel/ (18) Motion to Order Staff to File Response to Formal
Complaint dated 1/14/2013; (19) Motion for Procedural Conference to Resolve Discovery
Dispute dated 1/14/2013; (20) Motion to Revoke Montezuma's CC&N dated 1/14/2013;
(21) Request to Attend January 2, 2013 Procedural Conference Telephonically, dated
12/14/2012; (22) Motion to Compel Production of Records Requested in First Data
Request dated 11/29/2012; (23) Motion to Order Montezuma Rimrock to Provide
Intervenor Copies of Filings dated 10/16/2012; (24) Motion to Intervene dated 6/7/2012.

⁴¹ Tr. IV at 1076:2-20 (Becker).

1 to bear the financial costs of such legal burdens placed on the Company in this case.

2 **III. OVERVIEW OF MRWC.**

3 In this docket, Mr. Dougherty has made a variety of arguments that MRWC and
4 Ms. Olsen have “defrauded,” “conned” or “fleeced” customers relating to provision of
5 water service by the Company. Mr. Dougherty uses those catch phrases in an attempt to
6 portray Ms. Olsen and MRWC in a bad light. To say the least, Mr. Dougherty’s
7 insinuations on those issues are completely unsupported on this factual record. On the
8 other hand, the record clearly shows that Mr. Dougherty has made every effort to prevent
9 MRWC from providing utility service and he has misstated the facts and evidence on
10 numerous issues. It is Mr. Dougherty who is the bad actor here, not Ms. Olsen or MRWC.

11 **A. Montezuma Rimrock Water Company.**

12 MRWC is an Arizona limited liability company providing water utility service to
13 approximately 210 customers near Rimrock, Arizona in Yavapai County.⁴² MRWC’s
14 service area contains approximately 3/8 square miles northeast of Camp Verde. In
15 Decision No. 67583 dated February 15, 2005, the Commission approved the transfer of
16 the CC&N of Montezuma Estates Property Owners Association (“MEPOA”) to MRWC.⁴³
17 Patricia Olsen is the sole member of MRWC.

18 MRWC is a Class D, sole proprietor owned utility with limited financial resources.
19 Although MRWC has limited financial resources, Ms. Olsen has invested a large amount
20 of personal assets in the Company’s operations and she has *substantially improved* utility
21 service by the Company.⁴⁴ The record is *undisputed* that MRWC is providing reliable
22 and adequate water service to customers at reasonable rates.⁴⁵

23 _____
24 ⁴² Ex. A-2, Olsen DT at 2-3; Decision No. 71317 at 4, ¶ 18.

25 ⁴³ Decision No. 67583 at 9.

26 ⁴⁴ Tr. I at 105:5-20 (Olsen); Ex. A-15; Ex. A-16; Tr. II at 575:7-578:1 (Campbell); Tr. III
at 748:1-5 (Scott).

⁴⁵ Tr. I at 117:2-118:5 (Olsen); Tr. IV at 696:2-5 (Scott); Tr. IV at 864:7-24 (Dougherty);
Tr. IV at 889:19-22 (Becker); Ex. A-2, Olsen DT at 10-11, 15, 36-37; Ex. A-3, Olsen RT
at 14-15.

1 Company. The Commission issued Decision 67583 in February 2005 and Ms. Olsen has
2 been operating the Company since then.

3 After Ms. Olsen acquired the company, she corrected those operational issues,
4 including reducing the leakage rates, correcting the water outages, solving water pressure
5 problems and installing an ATF to comply with the arsenic water standards.⁵¹ The
6 evidence is *undisputed* that Ms. Olsen dramatically improved the operations and utility
7 service provided by MRWC, as well as improving the quality of water and public health
8 of MRWC customers. *Ms. Olsen, Commission Staff (Gerry Becker and Marlin Scott)*
9 *and ADEQ (Vivian Burns) all testified on those points.*⁵² Even Mr. Dougherty conceded
10 that MRWC has served the public interest by meeting the arsenic standards.⁵³

11 The underlying record establishes beyond doubt that Ms. Olsen is a qualified and
12 good water system operator. Like many closely held Class D or E utilities, MRWC has
13 made bookkeeping and procedural errors relating to Commission filings. Ms. Olsen and
14 MRWC have acknowledged those procedural errors and have committed to gain a better
15 understanding of the Commission legal and filing requirements in the future.⁵⁴ The
16 evidence shows that those errors resulted from Ms. Olsen's confusion about certain legal
17 and bookkeeping issues and the extenuating circumstances that MRWC was placed under
18 relating to installation of the ATF.

19 Aside from those procedural and bookkeeping errors, Ms. Olsen is a committed
20 utility owner that has dramatically improved water service to customers and has remedied
21 the public health issues associated with arsenic. The Commission should not take any
22 action against a company and/or owner that fully intended to comply with Commission
23 regulations and clearly has served the interests of its customers in providing water service.
24

25 ⁵¹ Tr. IV at 697:18-698:8 (Scott); Tr. III at 544:1-548:8 (Olsen); Ex. A-2, Olsen DT at 4.

26 ⁵² *Id.*; Tr. IV at 889:19-22 (Becker); Tr. II at 489:19-23, 491:4-18 (Burns).

⁵³ Tr. IV at 800:16-25 (Dougherty).

⁵⁴ Tr. III at 544:1-548:8 (Olsen).

1 Ms. Olsen's testimony on these issues shows a committed and good utility owner:

2 ... Q. Irrespective of all of the bookkeeping and technical accounting
3 issues that you have had over the last few years, are you providing adequate
and reliable water service to your customers?

4 A. Yes.

5 Q. And, in fact, I think you had talked about this briefly in response to some
6 questions from Judge Harpring. What was the condition of the company
when you acquired the system in terms of service to customers?

7 A. Do you want a little bit of detail with that?

8 Q. Yes.

9 A. Okay. Well, like I said, I calculated the water loss at the time was 300
10 percent. Water – the customers were out of water three to four days out of
the week. And it was shortly thereafter, I mean nobody had complained
11 about water pressure before, but it was almost like within a month after I
had procured the water company, then the customers on the upper end of the
12 system had complained and said that they had low water pressure and could
barely take a shower. So I went to investigate that. And they were correct.
13 They had 13 psi. And the regulation or the state statute requires that they
have a minimal pressure of 21 psi. But everybody knows even at 21 psi
14 that's not even enough to operate a household. So we, with the installation of
one valve, which did not alter in any way the arsenic, I mean the piping or
15 the distribution system, we were able to give anywhere from 45 to, I would
say, 60 psi on a daily basis.

16 Q. And have you resolved, since you acquired the company, have you
17 resolved all of those preexisting service problems for the customers of the
company?

18 A. Yes, I believe so.

19 ...Q. Okay. And in addition to improving the service quality since you
20 acquired and took over the system, you have installed an arsenic treatment
facility to meet the Safe Water Drinking standards for arsenic?

21 A. Yes.

22 Q. And on top of that, you spend a lot of time working in the field and in the
23 trenches so to speak to install the system, work on the lines, construct the
lines, and improve the service for the company, agreed?

24 A. Yes. If there is a leak, I am the first one on call. I usually do the digging
25 to find out exactly where the leak is. And sometimes I have got to dig five to
six feet to determine before I call in the contractors. If the well site goes
26 down, it is my job to, or I take it upon myself to assist with the removal of
the well with the pump tech that comes out. ...

1 Q. And throughout all of the course of doing all of those things, did you
2 ever intend to avoid the Commission's rules or regulations or requirements
3 as you understood them?

3 A. As I understood them, no.

4 Q. Okay. And do you believe as we sit here today that you have a better
5 understanding of the requirements for financing by the company going
6 forward?

6 A. Yes, I do.⁵⁵

7 **C. MRWC's Water System.**

8 MRWC's water system includes three well sites. They are designated as Well No.
9 1, Well No. 2 and Well No. 4. Well No. 1 consists of one groundwater well with a 2,000
10 gallon hydro tank, one 10,000 gallon storage tank and two 5,000 gallon storage tanks.⁵⁶
11 Due to the arsenic treatment system, one of the 5,000 gallon storage tanks is used for
12 backwash.⁵⁷ The 10,000 gallon storage tank has been repaired for leaks and is in poor
13 condition. Based on its current condition, it is unlikely that this tank can endure any
14 further repairs. The tank walls are thin due to corrosion and both the Company and Staff
15 witnesses testified that additional storage tanks are necessary and should be installed.⁵⁸

16 Well site No. 2 consists of Well No. 2 and Well No. 3. It also has a 2,000 gallon
17 hydro tank and one 10,000 gallon storage tank. The storage tank is beyond repair and
18 continually leaks. The leaking of the tank causes an additional 3-10% water loss each
19 month depending on the repair and how long the repair lasts. Well No. 2 and Well No. 3
20 are not currently operating. Well No. 2 was damaged due to re-drilling prior to Ms.
21 Olsen's purchase of the system. The arsenic level in Well No. 3 is above 40 ppb so it has
22 not been used in a long time. The water system was built in 1969 and is comprised of
23 approximately six miles of 4-6" schedule 40 pvc pipe.⁵⁹

24 ⁵⁵ Tr. III at 544:1-548:8 (Olsen).

25 ⁵⁶ Ex. A-2, Olsen DT at 4.

26 ⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

1 Currently, Well No. 1 is the only well in use in providing service to customers. At
2 this time, the system is relying solely on Well No. 1 which produces approximately 50
3 gpm. The system demand is 36 gpm.⁶⁰ As testified by, Mr. Scott, customers would
4 benefit from an additional water source such as Well No. 4 for purposes of additional fire
5 flow and back-up water supply.⁶¹

6 **D. MRWC Served the Best Interest of Customers Relating to Well No. 4.**

7 Well No. 4 is a 150 gpm well located within the Company's CC&N. Originally,
8 Ms. Olsen intended to purchase Well No. 4 in order to use it as part of the ATF. In 2005,
9 the Company agreed to purchase Lot 500 in Lake Montezuma Estates, Unit Two, for
10 \$35,000 from property owner Anna Barbara Brunner as the proposed site for location of
11 Well No. 4. The Company made a down payment of \$3,000 and the property transfer was
12 subject to the Company's payment of \$32,000 for the property.⁶²

13 On or about November 16, 2005, Ms. Brunner recorded a Warranty Deed to
14 Montezuma Rimrock Water Co, LLC conveying Lot 500 in Lake Montezuma Estates,
15 Unit Two (Yavapai County Recorder No. B-4335 P-428) to the Company. The parties
16 also recorded a Deed of Trust and Assignment of Rents with the Yavapai County
17 Recorder (Recorder No. B-4335 P-429) by which the Company as Trustor conveyed the
18 property in trust to Yavapai Title Agency as Trustee and Ms. Brunner as beneficiary as
19 security for payment of the remaining \$32,000 purchase price. Ms. Olsen paid the amount
20 due for the Well No. 4 property from personal funds.⁶³ The Deed of Trust has been fully
21 paid and a Deed of Release and Full Conveyance was recorded on August 15, 2011.⁶⁴

22
23

⁶⁰ *Id.*

24 ⁶¹ Tr. II at 712:12-21 (Scott).

25 ⁶² Ex. A-20, Cashier's check to Yavapai Title dated 8/15/2011; A-21, Deed of Release and
26 Full Conveyance dated 8/15/2011; Tr. I at 67:22-69:11 (Olsen); Ex. A-2, Olsen DT at 20-
27.

⁶³ Ex. A-2, Olsen DT at 23.

⁶⁴ *Id.*, Ex. A-20; Ex. A-21.

1 **1. Acquisition of Well No. 4 did not harm MRWC or its customers.**

2 In his complaint, Mr. Dougherty alleges that “the Company did not seek or obtain
3 Commission approval to enter into a long-term, \$32,000 debt in 2005 to acquire property
4 for Well No. 4 in violation of A.R.S. § 40-30 and A.R.S. § 40-302.”⁶⁵ Mr. Dougherty
5 further alleges that “the Company has willfully encumbered or spent ratepayer funds to
6 pay for the undisclosed loan from 2005 through 2011 in violation of A.R.S. § 40-423 and
7 A.R.S. § 40-424.”⁶⁶ The underlying facts establish that no action should be taken against
8 the Company relating to Well No. 4.

9 To start, there are no ratepayer funds at issue. The Company is a private water
10 utility and ratepayers do not possess any ownership interest in any Company funds or
11 property. As the United States Supreme Court has explained, “[c]ustomers pay for
12 service, not for the property used to render it...By paying bills for service they do not
13 acquire any interest, legal or equitable, in the property used for their convenience or in the
14 funds of the company. Property purchased out of moneys received for service belongs to
15 the company just as does that purchased out of proceeds of its bonds and stock.”⁶⁷

16 Moreover, the purchase price for the property has been paid in full and there is not
17 any outstanding long-term debt obligation for MRWC from this transaction. On August
18 15, 2011, Ms. Olsen issued a cashier’s check from personal funds to pay off the remaining
19 amount for the Well No. 4 property.⁶⁸ On August 22, 2011, Yavapai Title Agency
20 recorded a Deed of Release and Full Reconveyance with the Yavapai County Recorder
21 (Recorder No. B:4829, P:739) releasing all rights to the property and reconveying the
22 property to the Company.⁶⁹ Thus, the Company is the owner of the property, there is no
23 existing long-term debt relating to that property and there are no Company debts at issue.

24 ⁶⁵ Amended Complaint at 3, ¶ 18.

25 ⁶⁶ Id.

26 ⁶⁷ Bd. of Pub. Utility Comm’rs v. New York Tele. Co., 271 U.S. 23, 32 (1926).

⁶⁸ Ex. A-20; Tr. I at 68:20-69:7 (Olsen); Ex. A-2, Olsen DT at 26.

⁶⁹ Ex. A-21; Ex. A-2, Olsen DT at 26.

1 **2. Well No. 4 is not currently being used.**

2 Well No. 4 is not currently being used by the Company in providing utility
3 service.⁷⁰ As such, the Deed of Trust with Ms. Brunner did not encumber any assets of
4 the Company used in providing utility service. A.R.S. § 40-285 provides that a utility
5 may encumber utility property not used and useful in providing service to customers.

6 With respect to entering the long term debt without Commission Approval, Ms.
7 Olsen explained that she did not believe that the Well No. 4 property was an asset of the
8 Company at the time she acquired it and, therefore, she did not seek Commission approval
9 or list that debt on the annual reports. When Ms. Olsen acquired the Company, she
10 “requested to take out a loan for the water company in order to purchase it” and “was
11 informed by ACC that I could not – you know, the assets of the water, the current assets
12 of the water company could not be encumbered....And so when [Ms. Olsen] bought Ms.
13 Brunner’s piece of property, it was not, [she] did not consider it an asset of the water
14 company.”⁷¹ As noted at hearing, Ms. Olsen now understands Staff’s position that a utility
15 must seek approval for any loan or financing for greater than a year and Ms. Olsen has
16 committed to abide with that requirement.⁷² These facts do not show any ill intent by Ms.
17 Olsen or MRWC, but instead shows that Ms. Olsen was attempting to resolve the arsenic
18 treatment issues in the best interest of the Company and its customers.

19 **3. MRWC sought regulatory approval for Well No. 4.**

20 Mr. Dougherty also argues that MRWC and Ms. Olsen illegally constructed Well
21 No. 4 without regulatory approval. As Paul Harvey says, however, Mr. Dougherty does
22 not tell the “rest of the story.” Originally, MRWC sought County approval of the well in
23 2006 when the Company submitted a site plan for the drilling of Well No. 4.⁷³ Yavapai
24

25 ⁷⁰ Ex. A-2, Olsen DT at 23-24; Ex. S-1, Becker DT at 12-13.

26 ⁷¹ Tr. I at 114:7-17 (Olsen).

⁷² Tr. III at 548:5-24 (Olsen).

⁷³ *Id.* at 122:4-25 (Olsen); Ex. A-2, Olsen DT at 27-28; Ex. A-3, Olsen RT at 13-14.

1 County approved the well site plan on or about July 19, 2006.⁷⁴ The Company also
2 obtained approval from the ADWR relating to the drilling of Well No. 4.⁷⁵ As such, when
3 the Company drilled Well No. 4, Ms. Olsen believed that the Company was in compliance
4 with legal requirements from ADWR and the County.⁷⁶ Ms. Olsen and MRWC clearly
5 did *not* intend to avoid County and ADWR regulations.

6 In March 2010, Yavapai County issued a Conditional Use Permit (“CUP”) to
7 MRWC for construction and operation of Well No. 4.⁷⁷ Mr. Dougherty then filed a
8 complaint with the County relating to that permit, alleging violations of the setback
9 requirements in the County zoning regulations. In turn, Yavapai County revoked the use
10 permit and issued a notice of violation to MRWC.⁷⁸

11 After Mr. Dougherty raised these issues and caused the County use permit to be
12 revoked, MRWC then began the process of obtaining easement rights from the adjacent
13 property owner (the Burches) to comply with the County setback requirements, which
14 would allow MRWC to obtain a CUP for Well No. 4. At that point, MRWC had no
15 choice but to pursue condemnation proceedings against the adjacent property owner to
16 comply with the County setback requirement.⁷⁹ MRWC had an appraisal done for the
17 value of the easement rights and the Company then negotiated an agreement with the
18 property owners for those access rights.⁸⁰ Incredibly, Mr. Dougherty communicated with
19 the adjacent property owner relating to granting an easement to MRWC, illustrating yet
20 another attempt to impede MRWC.⁸¹

21 _____
22 ⁷⁴ *Id.*; Ex. A-28, ADWR Pump Installation Complete Report at 6, Well Site Plan approved
by Yavapai County Development Services on 7/19/2006.

23 ⁷⁵ *Id.*

24 ⁷⁶ Tr. I at 123:6-14 (Olsen).

25 ⁷⁷ Ex. A-17, letter from Yavapai County Development Services re: granting use permit
dated 3/15/2010.

26 ⁷⁸ Ex. A-3, Olsen RT at 13.

⁷⁹ Ex. A-2, Olsen DT at 5-7.

⁸⁰ Tr. I at 118:16-119:4 (Olsen); Ex. A-3, Olsen RT at 20-21.

⁸¹ Tr. III at 791:21-25 (Dougherty).

1 Fortunately, the adjacent property owner signed the Easement Agreement on July
2 23, 2013. A copy of that Easement Agreement is attached to this brief as Exhibit A. By
3 Mr. Dougherty's own testimony, that easement will resolve the setback requirements
4 under the County well code relating to Well No. 4.⁸² MRWC now intends to file an
5 application with Yavapai County for a CUP to operate Well No. 4. On these issues, Mr.
6 Dougherty has done nothing more than cause MRWC to incur thousands of dollars in
7 costs and expenses over the last three years and delayed the use of Well No. 4 to the
8 detriment of MRWC's customers. If and when the County issues such a use permit in
9 2013-2014, the Company will be right back where it started with the County back in
10 March 2010 when it originally issued the first CUP for Well No. 4.

11 **4. Mr. Dougherty has jeopardized the interests of MRWC and its**
12 **customers relating to Well No. 4.**

13 No matter how Mr. Dougherty's spins his involvement in this case, Mr.
14 Dougherty's involvement in these dockets revolves primarily around protection of his
15 own well on his property. In fact, Mr. Dougherty intervened in these proceedings for the
16 stated purpose of protecting his own private well.⁸³ Mr. Dougherty believes that
17 MRWC's operation of Well No. 4 will jeopardize his own water supply. Of course, what
18 Mr. Dougherty didn't say when intervening in these dockets is that his well already has
19 production problems.⁸⁴ In fact, the evidence was undisputed at hearing that Mr.
20 Dougherty drilled his well to a depth of 145 when the water table in the area is located at
21 roughly 141 feet.⁸⁵ As testified by Ms. Olsen, the water dept at "141 feet below ground
22 surface shows that Mr. Dougherty has four feet of water in his well," which would explain

23 ⁸² Tr. IV at 826:16-20 (Dougherty).

24 ⁸³ Motion to Intervene dated 6/7/2012, Docket No. 12-0207.

25 ⁸⁴ Ex. A-26, Declaration of Heather Macauley, at ¶3-5. Ms. Macauley rented Mr.
26 Dougherty's property in 2008-2009, and her declaration notes that his well frequently
went dry and Mr. Dougherty "explained that when he dug the well he did not dig deep
enough." *Id.* at ¶ 5.

⁸⁵ Tr. I at 138:10-139:13 (Olsen); Ex. A-25, USGS Monitoring Well, Well Registry
Detail.

1 the water supply problems at his well.⁸⁶

2 As conceded at hearing, Mr. Dougherty's "main and sole objection throughout this
3 entire proceeding has been Well No. 4. It has nothing to do with the arsenic treatment
4 facility."⁸⁷ In no uncertain terms, Mr. Dougherty has done everything in his power to
5 prevent MRWC from putting Well No. 4 into operation, even to the detriment of the
6 health of MRWC customers. Incredibly, in a February 9, 2010 email to Yavapai County
7 relating to the location of Well No. 4, Mr. Dougherty stated that "the applicant could have
8 purchased commercial land along Beaver Creek in between the company's two other well
9 locations and we wouldn't be here protesting."⁸⁸ Mr. Dougherty went on to say that "if
10 [MRWC] had located Well No. 4 on a commercial piece of property or obtained a use
11 permit properly before they drilled the well, there would have been no need or
12 requirement for me to complain."⁸⁹ On those issues, even Mr. Dougherty concedes that
13 the easement obtained by MRWC will resolve the setback requirements under the County
14 Water Well Code, which necessarily means that MRWC has satisfied the requirements for
15 a CUP from the County.⁹⁰

16 Even though the County setback requirements have been satisfied, Mr. Dougherty
17 stated that he will continue to oppose operation of Well No. 4. Yet Mr. Dougherty
18 concedes that MRWC has the legal right to use Well No. 4 in providing service:

19 Q. Right. And, in fact, I can show you the e-mail if you want, but you
20 wrote in an email: We are not located in an active management area which
restricts groundwater pumping; I believe she can pump all she wants.

21 A. That's correct. It's a major concern.

22 Q. And "she" you are talking is Ms. Olsen and Montezuma Rimrock
23 Water Company, correct?

24 ⁸⁶ Tr. I at 141:5-8 (Olsen).

25 ⁸⁷ Tr. II at 646:23-25 (Dougherty).

26 ⁸⁸ *Id.* at 782:1-783:3 (Dougherty).

⁸⁹ *Id.* at 782:22-783:3 (Dougherty).

⁹⁰ Tr. IV at 820:16-20 (Dougherty).

1 A. That's correct.

2 Q. And what you are talking about there is, because you are outside,
3 because this area is outside of an AMA, the company is within its rights to
4 pump [Well No. 4] as necessary for its operation of the utility?

4 A. That's correct....

5 Q. Okay, so you would agree the company has got water rights to use that
6 well assuming its gets a use permit from the [County]?

6 A. Yes.⁹¹

7 Mr. Dougherty's arguments and allegations in this case should be seen for what
8 they really are—subterfuge for Mr. Dougherty's opposition to the Company's use of Well
9 No. 4. The Commission should not allow Mr. Dougherty to use the Commission as a tool
10 to serve his personal agenda relating to the Company's lawful operation and use of Well
11 No. 4, which clearly would benefit customers.

12 **E. The Arsenic Treatment Facility.**

13 MRWC is a small company with limited financial resources. Even so, MRWC
14 installed a reasonably priced arsenic system for roughly \$47,000 and did the best it could
15 to finance the system under difficult circumstances. Mr. Dougherty focuses on paperwork
16 issues relating to filing and approval of the leases used to finance the ATF without
17 acknowledging the clear benefits of the actions taken by Ms. Olsen and MRWC.

18 MRWC is currently providing water that meets drinking water standards.
19 Specifically, the "lab results are returned with less than 0.0001 parts per billion."⁹²
20 MRWC not only meets the arsenic standard, the results are below the reporting limit for
21 arsenic.⁹³ MRWC's customers clearly benefit from the ATF.⁹⁴ The benefits to customers
22 can't be understated. "When [Ms. Olsen] first started assisting with the water company,
23

24 ⁹¹ Tr. IV at 775:23-777:4 (Olsen).

25 ⁹² Tr. I at 76:20-22 (Olsen); Ex. A-8, ADEQ Groundwater Treatment Plant Initial
26 Monitoring Reporting Form with attached Chemical Analysis Reports; Ex. A-1, Olsen DT
at 9-10.

⁹³ Tr. I at 78:2-16 (Olsen); Ex. A-8.

⁹⁴ Tr. I at 78:18-19 (Olsen).

1 or MEPOA, the arsenic levels varied between 50 and 60 parts per billion.”⁹⁵ At that time,
2 Ms. Olsen assisted MEPOA in installing a chlorination system that reduced arsenic levels
3 to 30-35 parts per billion.⁹⁶ Since then, MRWC and Ms. Olsen have reduced arsenic
4 levels to below the reporting limit—a dramatic improvement over water quality before her
5 acquisition of the Company.⁹⁷

6 **1. ADEQ required installation of the ATF irrespective of funding**
7 **disposition.**

8 On May 27, 2010, MRWC entered a Consent Order with ADEQ relating to arsenic
9 violations. In that Consent Order, ADEQ ordered MRWC to correct the arsenic issues
10 irrespective of the Company’s financing issues:

11 *Notwithstanding the disposition of the funding request to WIFA, within*
12 *one year from the effective date of this order, MRWC shall complete*
13 *construction of the approved arsenic treatment system....*⁹⁸

14 Ms. Olsen initially intended to construct an arsenic treatment plant with funding
15 from WIFA. Unfortunately, however, the WIFA funding was blocked by Mr. Dougherty.
16 As a result, the WIFA funding fell through and MRWC requested an extension from
17 ADEQ to construct the arsenic plant. In turn, ADEQ issued Amendment No. 1 to the
18 Consent Order (Exhibit A-12), which stated: “*Notwithstanding the disposition of the*
19 *funding, MRWC shall complete construction of the approved arsenic treatment*
20 *system....no later than April 7, 2012.*”⁹⁹

21 **2. Mr. Dougherty harmed MRWC customers by blocking WIFA**
22 **financing for the ATF.**

23 Mr. Dougherty refuses to take responsibility for his efforts to prevent installation of
24 the ATF by blocking the WIFA financing. Instead, Mr. Dougherty has suggested that
25 MRWC and Ms. Olsen filed a fraudulent loan application with WIFA relating to the

26 ⁹⁵ *Id.* at 79:11-14 (Olsen).

⁹⁶ *Id.* at 79:20-21 (Olsen); Ex. A-1, Olsen DT at 9.

⁹⁷ Ex. A-1, Olsen DT at 10-11.

⁹⁸ Ex. A-11, ADEQ Consent Order at 4, ¶C (emphasis added).

⁹⁹ Ex. A-12, Amendment No. 1 to ADEQ Consent Order at 1 (emphasis added).

1 “Environmental Review Checklist” attached to the WIFA application. Unfortunately, that
2 is just one of many unsupported and erroneous claims made by Mr. Dougherty. As
3 testified by Ms. Olsen, she filled out the WIFA Environmental Review Checklist with the
4 help of WIFA manager John Bernreuter.¹⁰⁰ When Ms. Olsen and Mr. Bernreuter filled out
5 that checklist, there was no evidence that installation of the arsenic treatment facility or
6 operation of Well No. 4 would have any negative impacts on the environment.¹⁰¹

7 After MRWC filed its WIFA application, WIFA initially approved the loan for the
8 ATF and issued a Categorical Exemption from any requirements under the National
9 Environmental Policy Act (NEPA).¹⁰² Mr. Dougherty then filed a citizen’s complaint
10 with WIFA alleging that the arsenic treatment plant and well no. 4 would cause harm to
11 the surrounding environment.¹⁰³ Specifically, Mr. Dougherty lobbied Sara Konrad
12 (WIFA Environmental Program Specialist) and Judy Navarette (WIFA Director) to
13 withdraw the Categorical Exemption and require that MRWC undertake an environmental
14 impact study to assess potential impacts on Montezuma Well from the ATF.

15 On February 5, 2010 WIFA then revoked its approval of the loan for the arsenic
16 treatment due solely to the complaint filed by Mr. Dougherty:

17 *WIFA received a citizen’s complaint regarding some environmental*
18 *concerns of the arsenic facility installation project. Due to these newly*
19 *raised issues which were not addressed in the Environmental Review*
Checklist, WIFA has rescinded the initial categorical exemption and
20 *decided to require a higher level of environmental review.*¹⁰⁴

21 Mr. Dougherty’s attempt to portray this decision by WIFA as resulting from a misleading
22 loan application by MRWC is just plain false. In response to questions by Judge
23 Harpring, Mr. Dougherty admitted that WIFA did not conclude that Ms. Olsen or MRWC

24 ¹⁰⁰ Tr. I at 84:1-85:5 (Olsen).

25 ¹⁰¹ *Id.* at 84:1-85:5 (Olsen).

26 ¹⁰² *Id.* at 85:20-86:7 (Olsen).

¹⁰³ *Id.* at 86:8-12 (Olsen); Ex. A-18, WIFA Financing Application at 3; Ex. A-1, Olsen DT at 10.

¹⁰⁴ Ex. A-18, email from S. Konrad to P. Olsen dated 2/5/2010.

1 filed a false application.¹⁰⁵

2 Even more troubling is that when Mr. Dougherty filed his complaint with WIFA,
3 he did *not* produce any definitive evidence of environmental impacts from the ATF or
4 operation of Well No. 4 and he did not produce any such evidence at trial.¹⁰⁶ Incredibly,
5 not only did Mr. Dougherty not offer any corroborating evidence on these issues, but
6 known hydrological evidence shows that Montezuma Well and Well No. 4 are not located
7 with the same aquifer system—meaning that operation of Well No. 4 and the ATF will not
8 have any impacts on Montezuma Well.¹⁰⁷ As noted in Exhibit A-52, the author of the
9 USGS Study for Montezuma Well (Raymond Johnson) concluded that “[B]ecause the
10 water feeding the well comes from such a great depth, it is relatively disconnected from
11 area wells that are tapping into the shallower lake deposits of the Verde formation, but
12 could be impacted by deeper wells, up gradient from the well.”¹⁰⁸ Well No. 4 is down
13 gradient and not connected to Montezuma Well.¹⁰⁹ Mr. Dougherty’s WIFA complaint
14 was part of his concerted effort to prevent MRWC from installing an ATF using Well No.
15 4. Because the environmental study required by WIFA—at Mr. Dougherty’s insistence—
16 would cost over \$100,000, MRWC had no choice but to abandon WIFA financing.¹¹⁰

17 It also should be noted that Mr. Dougherty’s apparent concerns about impacts from
18 use of Well No. 4 on Montezuma Well and Wet Beaver Creek only apply to MRWC. At
19 hearing, Mr. Dougherty acknowledged that Arizona Water Company (“AWC”) has
20 production wells located in the vicinity of Montezuma Well and Wet Beaver Creek, yet
21

22 ¹⁰⁵ Tr. IV at 854:13-855:3 (Dougherty).

23 ¹⁰⁶ Tr. IV at 768:18-22 (Dougherty) (“Q: And nobody has really done a definitive analysis
24 whether the operation of Well No. 4 will impact Montezuma Well or Wet Beaver Creek as
25 we sit here today, agreed: A: Agreed.”)

24 ¹⁰⁷ Ex. A-52, “Explore The Mystery: Montezuma Study goes public”, The Bugle
25 4/7/2011; Ex: A-54, USGS Report re: Source of Groundwater to Montezuma Well,
26 Johnson/DeWitt/Wirt/Arnold/Horton, 2011; Ex. A-55, Article re: USGS Study.

26 ¹⁰⁸ Ex. A-52 at 2.

¹⁰⁹ Tr. III at 536-537 (Olsen).

¹¹⁰ Ex. A-2, Olsen DT at 5, 9-10; Ex. A-3, Olsen RT at 14.

1 Mr. Dougherty is not concerned about impacts on Wet Beaver Creek and Montezuma
2 Well from the operation of AWC's wells.¹¹¹

3 **3. MRWC had no choice but to finance the ATF through leases.**

4 To say the least, MRWC did not do anything wrong on these issues and Mr.
5 Dougherty placed the Company in a no-win situation by blocking the WIFA financing.¹¹²
6 MRWC then requested that the Commission modify Decision No. 73317 and allow
7 MRWC to obtain private financing for the ATF.¹¹³ Unfortunately, the Commission did
8 not grant that request, leaving MRWC with virtually no options to finance an ATF.¹¹⁴

9 At that point, Ms. Olsen was approached by Kevlor Design about the possibility of
10 leasing an ATF.¹¹⁵ MRWC had signed a contract with Kevlor for engineering and
11 installation of the ATF in January 2012. Leasing an ATF was the only financing option
12 available to MRWC in order to comply with the ADEQ Consent Order and install an
13 ATF.¹¹⁶ Ms. Olsen did not have any experience with leases as a financing option for
14 arsenic facilities.¹¹⁷

15 Initially, Ms. Olsen signed two leases between herself personally and Nile River
16 Leasing on or about March 16, 2012. She intended to execute those agreements as
17 operating leases and then enter a water services agreement with MRWC regarding use of
18 the ATF.¹¹⁸ Those personal leases were provided by Nile River (John Torbenson) and
19 Ms. Olsen received copies signed by someone purporting to represent Nile River. Ms.
20 Olsen believed that those leases were signed by Nile River and, in turn, MRWC docketed
21

22 ¹¹¹ Tr. II at 862:6-22 (Dougherty).

23 ¹¹² Ex. A-2, Olsen DT at 9-10.

24 ¹¹³ Tr. I 88:9-24 (Olsen); Ex. A-2, Olsen DT at 5..

25 ¹¹⁴ Tr. I at 88:20-25 (Olsen). Sun West Bank approved private financing for the ATF, but
the Commission did not approve the private financing option. *Id.* at 89:24-90:2 (Olsen).

26 ¹¹⁵ *Id.* at 88: 20-24 (Olsen).

¹¹⁶ *Id.* at 89:13-19 (Olsen).

¹¹⁷ *Id.* at 89:2-7 (Olsen).

¹¹⁸ Ex. A-2, Olsen DT at 11.

1 those personal leases with the Commission.¹¹⁹

2 The record is clear that Ms. Olsen was very confused about the leases and, to say
3 the least, she was under a large amount of stress relating to compliance with the ADEQ
4 Consent Order. As stated at hearing, Ms. Olsen believed that she didn't have any choice
5 but to sign those leases and she signed all of the leases that were sent to her.¹²⁰ At
6 hearing, Mr. Olsen explained those personal leases as follows:

7 Q. Can you tell the judge here today how those personal leases came
8 about?

9 A. I had requested to have the leases put in my name, because I wanted
10 to make sure that I could meet the deadlines. And when I got the leases, the
11 original leases, it was Nile River and Nile River. There were two leases.
12 And then subsequently I got another one that said Nile River and Financial
13 Pacific, or it didn't say Financial Pacific but I received the other one and was
14 informed it was Financial Pacific.

15 Q. Did you have any role, you or the company have any role in drafting the
16 leases –

17 A. No.

18 Q. -- or writing the terms of the leases?

19 A. No, none....

20 Q. Mr. Dougherty has suggested throughout his filings in this case that the
21 company was essentially trying to pull a fast one with the Commission with
22 respect to these leases. Did you intend that the Commission and
23 Commission Staff would review the agreements with Nile River and
24 Financial Pacific?

25 A. Yes.

26 Q. Okay. And are you an expert in finance applications under the
Commission's rules and regulations with respect to lease agreements and
things like that?

A. No. And Odyssey never at any point explained to me that I would be
entering lease agreements with Nile River or Financial Pacific.

Q. Until you received those leases in the mail?

A. Right. And actually, when I received them, I didn't know who they were

¹¹⁹ *Id.* at 92:3-93:22 (Olsen).

¹²⁰ Ex. A-2, Olen DT at 11-12; Tr. I at 92:3-93:22 (Olsen).

1 from. I didn't know that they came from Odyssey.

2 Q. And at the time you received those leases and you signed them, did you
3 feel that you had any choice but to sign those leases given the DEQ consent
4 order requirements?

5 A. I felt I was forced to sign whatever they would give me.¹²¹

6 In turn, Ms. Olsen also signed the leases between MRWC and Nile River Leasing and
7 Financial Pacific.¹²² Those leases were also provided by Odyssey and Mr. Torbenson.
8 Ms. Olsen originally thought she "was entering agreements with Odyssey. [She] didn't
9 know who Nile or Financial Pacific was."¹²³

10 Mr. Dougherty contends that MRWC violated Commission orders by failing to file
11 those Company leases with Nile River and Financial Pacific in March/April 2012 when
12 they were signed. The Company acknowledges that it should have docketed those
13 agreements with the Commission, but it should be noted that Ms. Olsen did not receive
14 copies of those leases signed by Nile River and Financial Pacific until after July 2012.¹²⁴

15 Mr. Dougherty also has raised issues about two versions of the Financial Pacific
16 leased day in April and May 2012. That issue is a red herring. At hearing, Ms. Olsen
17 explained why there were two versions of that lease: "I was contacted by Financial
18 Pacific because there was an issue with -- and I don't recall what the issue was. Because
19 this was the first I had heard of Financial Pacific. They -- I asked how long is it going to
20 take to get the money or get the lease through. And they said, well, anywhere from 30 to
21 60 days, depending on the process and if there is any issues with it. I then stated I need to
22 submit something to ACC. And so since it was going to be 30 to 60 days, I said I need
23 something that I can file in 30 days or the 60 days, depending on what happens. So they
24 sent me a 4/15 and, I believe it was, 5/15, but somewhere in May also. After that I never

25 ¹²¹ Tr. I at 92:3-93:22 (Olsen).

26 ¹²² Tr. I at 90:7-20 (Olsen); Ex. A-9, Lease between MRWC and Nile River dated 3/22/2012; Ex. A-10, Lease between MRWC and Financial Pacific dated 4/2/2012.

¹²³ Tr. I at 91:16-20 (Olsen).

¹²⁴ Tr. II at 360-361 (Olsen).

1 received another copy from them or any more information other than they sent somebody
2 out to inspect the arsenic treatment system twice.”¹²⁵

3 MRWC understands it should have filed those leases agreements with the
4 Commission for approval and apologizes for that error. Ms. Olsen’s explanation for that
5 failure is reasonable under the extenuating circumstances here:

6 Q. Okay. And can you explain in your own words why that didn't happen
7 here?

8 A. Because I was under an enormous amount of pressure from the county
9 and from ADEQ to install the arsenic treatment system regardless of
10 whether there was or was not funding available.

11 Q. And were you also confused about the leases and who they were with
12 and in terms of filing those for approvals?

13 A. Yes. ...

14 Q. You understand that the company has filed a Nile River lease and the
15 Financial Pacific lease in this docket or in this consolidated docket seeking
16 retroactive approval of those leases, correct?

17 A. Yes.

18 Q. Okay. Did those leases benefit the customers of the company?

19 A. Yes.

20 Q. How so?

21 A. In many ways. Well, we are complying with the Safe Drinking Water Act
22 at this time now. The arsenic treatment system and the cost to the customers
23 will be similar to that of WIFA funding. And, however, although the WIFA
24 funding would have gone for 20 years at that rate, with these, with these
25 lease agreements, it will only be a five-year period of the, of the same
26 amount, close to the same amount that WIFA would have been required to
pay back.¹²⁶

27 **4. Failure to docket the Nile River and Financial Pacific Leases did**
28 **not harm the Commission or MRWC customers.**

29 As noted above, the Company’s failure to obtain prior approval of those issues did
30 not harm its customers or the Commission. That is evident from the fact that the

31 ¹²⁵ Tr. I at 95:11-96:7 (Olsen); Ex. A-2, Olsen DT at 13..

¹²⁶ Tr. I at 98:17-100:18 (Olsen); Ex. A-2, Olsen DT at 13-14.

1 Commission had previously approved WIFA financing for the ATF and it is undisputed
2 that the terms of the leases with Nile River and Financial Pacific are similar to the
3 payment terms for the WIFA financing approved by the Commission in Decision 71317.
4 In that Decision, “Staff calculated that the annual debt service on a \$165,000 loan with a
5 term of 20 years at an 8 percent interest rate would be \$16,562, that the annual interest
6 expense on the loan would be \$13,074, that the annual principal payment on the loan
7 would be \$3,488, and that the surcharge per customer would be \$6.41.”¹²⁷

8 By comparison, the Financial Pacific lease and the Nile River lease involve
9 payments totaling \$1,480 per month.¹²⁸ Put another way, it’s undisputed that the
10 “financial terms of the Financial Pacific and the Nile River leases are about the same as
11 the WIFA terms stated in Decision 71317 in terms of the monthly payment requirements
12 by the company” with the added benefit of the lease terms being only five years instead of
13 20 years under the WIFA loan.¹²⁹

14 It also should be noted that the personal leases filed by the Company with the
15 Commission in March and April 2012 have the same financial terms as the Company
16 leases with Financial Pacific and Nile River.¹³⁰ Those leases are for the same scopes of
17 work, have the same lease terms, involve the same monthly payment amounts and have
18 the same financial costs. Thus, the Commission and Mr. Dougherty knew the basic deal
19 points for the ATF in March 2012.

20 Mr. Dougherty has suggested that if the Nile River and Financial Pacific leases
21 with the Company had been filed with the Commission in March/April 2012, then the
22 Commission would have denied approval of those leases.¹³¹ That is yet another
23

24 ¹²⁷ Decision No. 71317 at 14, ¶ 56; Tr. I at 101:1-12 (Olsen).

25 ¹²⁸ Tr. I at 101:5-102:3 (Olsen); Ex. A-9, Nile River Lease dated 3/22/2012; Ex. A-10,
26 Financial Pacific Lease dated 4/2/2012.

¹²⁹ Tr. I at 102:2-8 (Olsen).

¹³⁰ Tr. I at 533:14-534:13 (Olsen).

¹³¹ Ex. C-92, Direct Testimony of John Dougherty (“Dougherty DT”) at 14:5-10.

1 unsupported statement by Mr. Dougherty. Because Mr. Dougherty had blocked the WIFA
2 financing and because the Commission did not approve MRWC's request for private
3 financing, those Company leases were the only financing options available to MRWC.¹³²
4 As a result, any decision by the Commission to reject such financing would have
5 prevented the Company from complying with the arsenic standards, endangered the
6 health, safety and welfare of MRWC's customers and conflicted with ADEQ's consent
7 order. The suggestion by Mr. Dougherty that the Commission would do those things is
8 unrealistic.

9 Perhaps most importantly, Commission Staff understood that the Company was
10 moving forward with construction of the ATF in April 2012 and agreed that the most
11 important consideration was getting the ATF installed.¹³³ Following the Nile River and
12 Financial Pacific leases, MRWC moved forward with construction of the ATF—with the
13 full knowledge and approval of Commission Staff and ADEQ. The Company completed
14 construction in July 2012 and the ATF became operational in November 2012.¹³⁴ ADEQ
15 issued its Approval of Construction on November 21, 2012.¹³⁵

16 Not only do the leases with Financial Pacific and Nile River benefit MRWC's
17 customers, but the financial impacts of those leases are much less than the original arsenic
18 treatment plan proposed by MEPOA.¹³⁶ As originally proposed, MEPOA intended to
19 install point-of-use Reverse Osmosis systems for all customers at each residence or
20 business, involving loan payments of \$6,074 per month and a surcharge to customers of
21 \$15 per service connection per month.¹³⁷ MEPOA proposed those costs as an interim

22 ¹³² Tr. I 534:14-18 (Olsen); Ex. A-2, Olsen DT at 5; Tr. IV at 1058:23-25 (Becker).

23 ¹³³ Tr. IV at 931:1-932:25 (Becker); Tr. II at 699:15-700:14 (Scott); Tr. II at 485:15-18
(Burns).

24 ¹³⁴ Tr. I at 103:7-13 (Olsen).

25 ¹³⁵ Ex. A-13, ADEQ Approval of Construction Partial Approval dated 11/21/2012.; Tr. I
at 104:2-16 (Olsen).

26 ¹³⁶ Ex. C-89, Arsenic Treatment Plan for Montezuma Rimrock Water Company, LLC
dated 4/14/2015.

¹³⁷ Ex. C-89 at 8; Tr. I at 542:19-24 (Olsen).

1 measure pending the Company's installation of a permanent ATF for \$256,000. By
2 comparison, Ms. Olsen and MRWC installed a ATF for substantially less and without any
3 customer surcharge. Ms. Olsen should be applauded for her actions relating to the ATF,
4 not vilified for doing what was and is clearly in the best interest of Company customers.

5 Finally, the Commission should consider the extenuating circumstances
6 surrounding the ATF in 2012. At that time, Ms. Olsen was almost entirely engrossed in
7 getting the ATF plant constructed, installed and operational. She is a one-person shop and
8 she simply didn't have the time or resources to complete construction of the ATF at the
9 same time as filing for approval of those leases. Ms. Olsen was under an extreme amount
10 of stress due, in large part, to Mr. Dougherty and Mr. Buddeke, along with facing
11 financial fines from ADEQ.¹³⁸ Ms. Olsen and MRWC are not sophisticated business
12 entities. As noted above, Ms. Olsen was confused about the leases and dealings with
13 Odyssey Financial, Nile River and Financial Pacific. She did not receive any final copies
14 of the company leases with Nile River and Financial Pacific until July/August 2012. The
15 only signed leases she had up to that point of time were the leases purportedly signed by
16 Nile River with Ms. Olsen personally. Ms. Olsen's confusion about the leases and failure
17 to follow the ALJ's Procedural Orders does not take away from the fact that those leases
18 serve the public interest and meet all statutory requirements for financing approval.

19 Ms. Olsen also had been in contact with Commission Staff about the ATF and
20 leases during the summer of 2012.¹³⁹ Commission Staff did not advise Ms. Olsen that she
21 could not move forward with construction of the ATF until the financing had been
22 approved. Rather, Commission Staff supported installation of the ATF for the reasons
23 stated by Mr. Becker and Mr. Scott. As testified by Mr. Becker, approval of these leases
24 is just, reasonable and in the public interest "[b]ecause they were crucial to getting the
25

26 ¹³⁸ Ex. A-2, Olsen DT at 13-14, 25-26; Tr. II at 338:17-339:25, 433:9-20 (Olsen); Tr. IV
at 918:4-919:24 (Becker).

¹³⁹ Ex. A-2, Olsen DT at 12.

1 arsenic remediated and the company really didn't have any other alternatives."¹⁴⁰

2 MRWC acknowledges that it did not correct its filings of the personal leases and
3 did not fully comply with certain Procedural Orders, but that did not lead to any action
4 taken by the ALJ on any matter. Neither Commission Staff nor the ALJ has been
5 deprived of the opportunity to review the debt under those leases. The Company
6 acknowledges that it should have complied with the ALJ's procedural orders. To extent
7 that failure affected the ALJ, the Company apologizes and would simply ask that the ALJ
8 consider the extenuating and stressful circumstances that Ms. Olsen was placed under in
9 the spring of 2012. The Commission and ALJ also should consider what would have
10 happened if the Company had filed those leases for approval in March 2012. The likely
11 outcome is that the Commission would have acted on those leases and approved the
12 leases, meaning that failing to file those leases in March/April 2012 did not make any
13 difference. After all, Mr. Becker testified that his recommendations for approval would
14 have been the same whether those leases were filed in March 2012 or October 2012.¹⁴¹

15 **F. Testimony of Gerry Becker.**

16 Mr. Becker's testimony is critical and persuasive on several issues in this case. To
17 start, Mr. Becker testified that installation of the ATF "was a good thing for Montezuma's
18 customers" and that Commission Staff is in full support of the Company's efforts to install
19 and construct the ATF.¹⁴² Mr. Becker testified that MRWC is providing reliable and
20 adequate service to customers.¹⁴³ Unlike Mr. Dougherty, Mr. Becker and Commission
21 Staff do not prioritize timing issues relating to financing approvals over the public health
22 and compliance with arsenic standards. Mr. Becker supports retroactive approval of the
23 Nile River and Financial Pacific leases, and he testified that the terms and conditions of
24

25 ¹⁴⁰ Tr. IV at 1058:23-25 (Becker).

26 ¹⁴¹ *Id.* at 888:13-22 (Becker).

¹⁴² *Id.* at 887:21-24 (Becker).

¹⁴³ *Id.* at 889:19-22 (Becker).

1 those leases met the appropriate approval requirements set forth in Arizona statutes.¹⁴⁴

2 What's more, whether or not those leases were filed in March/April 2012 is
3 immaterial to Staff because Mr. Becker would have made the same recommendations for
4 approval as he has done now:

5 Q. Had those leases been presented to you in March of 2012, would you
6 have given similar recommendations for approval of those leases?

7 A. Yes.

8 Q. And that would have been based on the same analysis with respect to
9 the statutory requirements, the financial terms, and the installation of the
arsenic treatment facility that you use in your recommendation today,
agreed?

10 A. Yes.¹⁴⁵

11 Mr. Becker also acknowledged that the various versions of the leases (personal and
12 company leases) have the same financial terms relating to monthly payments, payment
13 amounts, and purposes of the leases.¹⁴⁶ He agreed that the financial impacts to customers
14 from the Nile River and Financial Pacific lease are similar to the financial impacts to
15 customers from the WIFA financing approved in Decision 71317, with the added benefit
16 that the leases are for a shorter term resulting in a shorter period of time for customers to
17 pay rates including such operating expenses.¹⁴⁷

18 In this rate case, Mr. Becker conducted a comprehensive analysis of MRWC's rate
19 application and financing requests—"I pretty much looked at just about everything in one
20 way or another. I didn't examine and audit everything, but I basically had to look line by
21 line and account by account and try and substantiate the balance that the Company asked
22 for."¹⁴⁸ Mr. Dougherty's characterization of Staff as not conducting a proper due
23 diligence relating to MRWC's rate case and financings is not supported by any evidence.

24 ¹⁴⁴ *Id.* at 888:4-12 (Becker).

25 ¹⁴⁵ *Id.* at 888:13-22 (Becker).

26 ¹⁴⁶ *Id.* at 889:5-22 (Becker).

¹⁴⁷ *Id.* at 892:13-24 (Becker).

¹⁴⁸ *Id.* at 901:5-9 (Becker).

1 Mr. Becker also addressed several additional issues raised by Mr. Dougherty.
2 First, Mr. Dougherty alleged that MRWC did not properly include certain long term debt
3 on the Company's annual reports filed with the Commission. Aside from the fact that
4 MRWC did not actually incur the debt alleged by Mr. Dougherty, Mr. Becker testified
5 that Utility Annual Reports for smaller Class D and Class E are typically not relied on in
6 rate cases because "typically you have to help them a lot make sense of things."¹⁴⁹ Thus,
7 Mr. Dougherty's focus on those prior annual reports is largely irrelevant.

8 Second, Mr. Dougherty raised concerns about MRWC using company funds to pay
9 for personal expenses of Ms. Olsen. Mr. Becker's explanation was simple—the Company
10 did not seek rate recovery for any of those alleged personal expenses paid by MRWC and
11 Staff's recommendations do not allow rate recovery for those payments.¹⁵⁰ Mr. Becker
12 also testified that it is appropriate for MRWC to pay Ms. Olsen's personal expenses
13 through a "draw" account.¹⁵¹ Those personal expenses are a non-issue.

14 Finally, with respect to retroactive approval of the ATF leases, Mr. Becker
15 explained why retroactive approval of those leases is reasonable and necessary:

16 Because when all is said and done and at the end of the day, we put the
17 public safety over getting the paperwork in. And we think that it was more
18 important for the company to get the arsenic treatment plant in when she got
19 it in.¹⁵²

20 Mr. Becker went on to state that prioritizing public safety over paperwork has been "the
21 standard way it has been around here for quite awhile."¹⁵³

22 When asked about compliance with the Procedural Orders relating to filing of the
23 leases, Mr. Becker testified that Ms. Olsen acted reasonably in focusing on getting the
24 ATF installed rather than focusing on the "paperwork" filings:

25 ¹⁴⁹ *Id.* at 882:8-10 (Becker).

26 ¹⁵⁰ *Id.* at 905:20-906:6, at 910:9-16 (Becker).

¹⁵¹ *Id.* at 1042:10-20 (Becker).

¹⁵² *Id.* at 926:23-927:4 (Becker).

¹⁵³ *Id.* at 927:13-15 (Becker).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Q. Do you think it is reasonable, Mr. Becker, for a company to ignore procedural orders of this court?

A. Under certain circumstances I think there has to be an order of priority. And if getting the plant in had to come before getting the paperwork done, it is reasonable.¹⁵⁴

* * * * *

Q. Mr. Becker, is Staff in position to determine whether or not a company's potential noncompliance with a procedural order should be forgiven or not?

THE WITNESS: I think in this case the answer is yes, and yes because we are, we are more concerned with getting the arsenic treatment system in place than we are with, what I understand the question here is, getting the capital lease and the associated debt approved.¹⁵⁵

* * * * *

Q. Do you consider yourself personally, procedural orders of this court to be optional?

A. No.

Q. Unless there is an extenuating circumstance, perhaps?

A. I think it is important to try and comply with procedural orders. I think there is competing priorities here. *And in Staff's view, getting the plant in the ground and operating took priority, appropriately so.*¹⁵⁶

MRWC's and Commission Staff's focus on getting the ATF installed prior to financing approval is supported by the fact that the Commission "has in the past retroactively approved a long-term debt."¹⁵⁷

As stated by Mr. Becker, refusal to grant retroactive approval of the leases would "leave the Company in noncompliance" and "really be detrimental."¹⁵⁸ Finally, Mr. Becker testified that Commission Staff simply is not concerned with the fact that Ms. Olsen filed the personal leases instead of the Company leases:

¹⁵⁴ *Id.* at 927:19-24 (Becker).

¹⁵⁵ *Id.* at 931:1-9 (Becker).

¹⁵⁶ *Id.* at 932:22-25 (Becker) (emphasis added).

¹⁵⁷ *Id.* at 939:11-19 (Becker).

¹⁵⁸ *Id.* at 1045:3-11 (Becker).

1 For our purposes, we think the final ones were adequate for our purposes.
2 And we used that as our basis. We pretty much are not concerned that she
had – that there were some incorrect leases filed previously.¹⁵⁹

3 The Commission should follow the recommendations and testimony of Mr. Becker.

4 **G. Testimony of Marlin Scott.**

5 On the engineering issues, Mr. Scott testified favorably to the Company on many
6 issues. To start, Mr. Scott testified that he did not see anything wrong that the Company
7 did in regards to Well No. 4 in this case.¹⁶⁰ Mr. Scott confirmed that the Company has
8 been providing arsenic lab tests and that those lab results show that MRWC is meeting
9 arsenic Safe Drinking Water standards.¹⁶¹ Mr. Scott also confirmed that the Company
10 needs the requested four 20,000 gallon storage tanks and that he recommends approval of
11 MRWC's request for financing for those tanks as a benefit to customers.¹⁶² He provided
12 similar testimony relating to MRWC's financing for the 8,000 gallon pressure tank.¹⁶³

13 Mr. Scott testified that MRWC is providing reasonable and adequate water service
14 to its customers.¹⁶⁴ Based on his prior experience with MEPOA, Mr. Scott agreed that the
15 company had substantial service and operational problems prior to Ms. Olsen's
16 acquisition of the Company.¹⁶⁵ Mr. Scott went on to testify that after acquisition of the
17 Company, Ms. Olsen substantially improved the quality of operations and service by the
18 Company.¹⁶⁶ Mr. Scott agreed that "Ms. Olsen's ownership of this company has
19 improved the quality of service that the company is providing to its customers."¹⁶⁷

20 Finally, Mr. Scott testified that he and Ms. Olsen had been in communication
21

22 ¹⁵⁹ *Id.* at 1053:23-1054:2 (Becker).

23 ¹⁶⁰ *Tr.* III at 692:20-24 (Scott).

24 ¹⁶¹ *Id.* at 693:23-694:5 (Scott).

25 ¹⁶² *Id.* at 695:8-12 (Scott).

26 ¹⁶³ *Id.* at 695:13-696:3 (Scott).

¹⁶⁴ *Id.* at 696:2-5 (Scott).

¹⁶⁵ *Id.* at 697:1-17 (Scott).

¹⁶⁶ *Id.* at 697:20-698:5 (Scott).

¹⁶⁷ *Id.* at 748:1-5 (Scott).

1 relating to the arsenic leases, which necessarily means that Ms. Olsen was not hiding
2 anything from the Commission and further supports the notion that Ms. Olsen and MRWC
3 intended for Commission Staff to review and evaluate those leases.¹⁶⁸ All in all, Mr.
4 Scott's testimony speaks for itself relating to the ATF:

5 Q. And you would also recall that the DEQ was taking a position that
6 they were requiring that the system be installed, agreed?

7 A. Yes.

8 Q. Okay. And would you also agree that the Commission Staff was in
9 support of installing the arsenic treatment system and getting the plant in the
ground and operational for the benefit of customers?

10 A. Yes, we were.¹⁶⁹

11 Mr. Scott discussed the concept of leases with Ms. Olsen during one of his first site
12 visits as well as a discussion on or about September 28, 2012.¹⁷⁰ Mr. Scott also testified
13 that "leasing" came up during the April 26, 2012 meeting with ADEQ.¹⁷¹ Obviously,
14 Commission Staff did not take the position that MRWC could not move forward with
15 installation of the ATF pending financing approval for the debt under the leases.

16 Mr. Scott also testified that it would be beneficial for the Company to bring Well
17 No. 4 into service for fire flow, back up water supply and operational efficiencies.¹⁷²
18 Finally, Mr. Scott testified that AWC could not simply construct a pipeline to MRWC's
19 system and begin serving Company customer; rather, AWC likely would need an
20 additional water source and other operational items.¹⁷³

21 **H. Testimony of Vivian Burns.**

22 In no uncertain terms, Ms. Burns' testimony supports MRWC. MRWC was one of
23

24 ¹⁶⁸ *Id.* at 699:1-700:14 (Scott).

25 ¹⁶⁹ *Id.* at 699:15-700:14 (Scott).

26 ¹⁷⁰ *Id.* at 715:23-716:6 (Scott).

¹⁷¹ *Id.* at 716:22-23 (Scott).

¹⁷² *Id.* at 712: 12-21 (Scott).

¹⁷³ *Id.* at 743:18-744:4 (Scott).

1 68 systems for which Ms. Burns issued notices of violations.¹⁷⁴ A dozen companies
2 besides MRWC faced the prospect of providing drinking water to customers through
3 bottled water.¹⁷⁵ ADEQ issued an NOV in the spring of 2012 based on a consent order
4 dated June 7, 2010.¹⁷⁶ Put simply, MRWC was just one of many small water companies
5 struggling with the arsenic compliance. Like Mr. Scott, Ms. Olsen was in constant
6 communication with Ms. Burns and ADEQ—again showing that Ms. Olsen and MRWC
7 were cooperating and working with state regulatory agencies.¹⁷⁷

8 Members of ADEQ and ACC met on April 17, 2012 to discuss the MRWC
9 compliance issues, including Ms. Burns, Ms. Colquitt and Ms. Cross of ADEQ and Mr.
10 Scott, Mr. Michlik and Ms. Scott of the Commission.¹⁷⁸ ADEQ, ACC and Ms. Olsen then
11 met on April 26, 2012. According to Ms. Burns, Ms. Olsen advised ADEQ and
12 Commission Staff that she was in the process of getting the ATF installed by June 7, 2012
13 and that Ms Olsen presented “a letter and that there was a lease agreement.”¹⁷⁹ Ms. Burns
14 testified that her impression “at the end of that meeting was that the company was moving
15 forward and that the, with the arsenic treatment facility, and it would be installed
16 shortly.”¹⁸⁰ At that meeting, ADEQ stressed to Ms. Olsen that penalties would be
17 assessed if the Company did not meet the installation deadline of June 7, 2012.¹⁸¹ In no
18 uncertain terms, “it was clear to everyone in that [meeting] that the company was moving
19 forward with construction of the arsenic treatment plan and installation.”¹⁸²

20 On May 1, 2012, Mr. Dougherty then sent an email to Ms. Burns noting that the
21

22 ¹⁷⁴ Tr. II at 464:22-465:3 (Burns).

23 ¹⁷⁵ *Id.* at 468:4-8 (Burns).

24 ¹⁷⁶ *Id.* at 475:13-16 (Burns).

25 ¹⁷⁷ *Id.* at 475:23-476:3 (Burns).

26 ¹⁷⁸ *Id.* at 479:5-15 (Burns).

¹⁷⁹ *Id.* at 482:15-18 (Burns).

¹⁸⁰ *Id.* at 483:23-484:3 (Burns).

¹⁸¹ *Id.* at 485:3-8 (Burns).

¹⁸² *Id.* at 485:15-18 (Burns).

1 Commission had not yet approved financing for an ATF.¹⁸³ Ms. Burns forwarded that
2 email to ADEQ Director Fulton who, in turn, forwarded that email to Utilities Division
3 Director Steve Olea and ultimately to Staff attorney Charles Hains.¹⁸⁴ These facts
4 establish that Commission Staff knew that MRWC was moving forward with leases of the
5 ATF in June 2012. Ms. Burns testified that everyone attending the April 26, 2012
6 meeting thought it was a good idea to get the ATF in the ground.¹⁸⁵

7 In terms of compliance, Ms. Burns testified that MRWC received an approval of
8 construction for the ATF from ADEQ and that the Company is in “full compliance” with
9 arsenic standards.¹⁸⁶ Ms. Burns went on to testify that she believes Ms. Olsen and
10 MRWC “made reasonable good faith efforts to comply with the arsenic treatment
11 requirements and installing an arsenic treatment facility for a small water company of
12 [MRWC’s] size.”¹⁸⁷ As testified by Ms. Burns, the ADEQ Consent Orders issued to
13 MRWC requires the Company to install the ATF “no matter what happens with the
14 funding” and “no matter whether the ACC approves the funding.”¹⁸⁸ That authority stems
15 from ADEQ’s status as “the responsible agency by statute for compliance with Safe Water
16 Drinking standards for potable water provided to customers or citizens of Arizona.”¹⁸⁹

17 **I. It Is Undisputed That MRWC Is Providing Reasonable and Adequate**
18 **Water Service to Customers.**

19 On these issues, Mr. Dougherty simply can’t overcome the testimony of Mr.
20 Becker, Mr. Scott, Ms. Burns and Ms. Olsen relating to utility service and regulatory

21 ¹⁸³ Ex. C-52, email from J. Dougherty to V. Burns dated 5/1/2012.

22 ¹⁸⁴ Tr. II at 488:23-489:3 (Burns).

23 ¹⁸⁵ *Id.* at 495:7-11 (Burns).

24 ¹⁸⁶ *Id.* at 489:19-23, 491:4 -18 (Burns).

25 ¹⁸⁷ *Id.* at 492:2-21 (Burns).

26 ¹⁸⁸ *Id.* at 493:16-22 (Burns).

¹⁸⁹ *Id.* at 494:3-7 (Burns). *See also* A.R.S. § 49-351(A) (“The Department of Environmental Quality is designated as the responsible agency for this state to take all actions necessary or appropriate to ensure that all potable water distributed or sold to the public through public water systems is free from unwholesome, poisonous, deleterious or other foreign substances...”)

1 compliance. It is **undisputed** that MRWC is providing reasonable and adequate water
2 service to its customers and that there aren't any customers of the Company who have
3 complained about water service or the arsenic leases. In addition to Mr. Becker, Mr. Scott
4 and Ms. Burns, Ms. Olsen's testimony is equally undisputed on these issues:

5 Q. Okay. And as we sit here today, Ms. Olsen, is the company providing
6 reasonable and adequate water service to its customers?

7 A. Yes.

8 Q. And are you aware of any customer that has complained as part of any of
9 this, of these consolidated dockets with respect to inadequate water service?

10 A. If -- no, I am not aware. But I have not gone into the docket, E-Docket, to
11 read if there were any.

12 Q. And have any customers -- are you aware of any customers complaining
13 about the lease arrangements with Nile River or Financial Pacific?

14 A. No, not that I am aware of.

15 Q. And are you aware of any customers that have complained about the fact
16 that the company didn't file those leases for approval with the Commission?

17 A. No.

18 Q. Okay. And has the company's failure to file those lease agreements with
19 the Commission before the company entered those agreements caused any
20 harm to customers?

21 A. No.

22 Q. And, in fact, those leases benefited customers, as you stated earlier, by
23 providing water service to the utility, is that correct?

24 A. Correct.¹⁹⁰

25 **J. Testimony of John Campbell.**

26 At hearing, Mr. Dougherty subpoenaed Mr. Campbell to testify as the Company's
accountant. To say the least, Mr. Campbell's testimony was largely irrelevant to any
disputed issues. The few relevant points of Mr. Campbell's testimony are as follows.

Mr. Campbell's testimony relating to the Company's utility annual reports

¹⁹⁰ Tr. I at 117:2-118:5 (Olsen). See also Ex. A-2, Olsen DT at 37.

1 undermines Mr. Dougherty's claims on those issues. To start, Mr. Campbell confirmed
2 that the deed of trust obligation for the Well No. 4 property was not listed on the annual
3 reports for 2006-2009 because of Ms. Olsen's belief that such agreement did not
4 encumber any utility assets of the Company.¹⁹¹ Mr. Campbell also acknowledged that the
5 Company does not own the pressure tank.¹⁹² And he testified that the annual reports
6 reflect amounts owed by the Company to Ms. Olsen for personal capital contributions
7 made by Ms. Olsen in the Company.¹⁹³ That testimony illustrates that Ms. Olsen has
8 invested substantial personal funds in Company operations. This testimony begs the
9 question as to why the ACC would want to penalize a utility owner providing adequate
10 utility service and investing her own personal funds in the Company.

11 Mr. Campbell listed those payments on the annual reports as a "method to account
12 for monies that she, personal monies that [Ms. Olsen] put into the company that she
13 wanted reimbursed for."¹⁹⁴ Again, Mr. Campbell confirmed that the items listed on the
14 annual report are not loans, but reflect "personal monies that [Ms. Olsen] put in the
15 company."¹⁹⁵ Mr. Campbell was attempting to disclose reimbursement obligations from
16 the Company to Ms. Olsen for personal payments.¹⁹⁶

17 Mr. Campbell also noted that the Company's payments to Ms. Brunner for the
18 Well No. 4 property were taken out of the Company's drawing account, meaning that
19 those payments reflect Ms. Olsen's personal investments in the Company.¹⁹⁷ As stated by
20 Mr. Campbell, "I treated it as a personal, a payment of personal, on her part personally, So
21 that's why I took it out of the drawing account. And that's standard accounting
22

23 ¹⁹¹ Tr. II at 569:13-14 (Campbell).

24 ¹⁹² *Id.* at 572:22-25 (Campbell).

25 ¹⁹³ *Id.* at 575:7-13 (Campbell).

26 ¹⁹⁴ *Id.* at 576:8-10 (Campbell).

¹⁹⁵ *Id.* at 578:1-3 (Campbell).

¹⁹⁶ *Id.* at 613:5-11 (Campbell).

¹⁹⁷ *Id.* at 596:16-19 (Campbell).

1 practice.”¹⁹⁸ Mr. Becker echoed that point by testifying it is appropriate for MRWC to use
2 a “draw” or “capital” account to pay for personal expenses of Ms. Olsen, because a draw
3 account is an accumulation of money that “has flowed back to the company.”¹⁹⁹ Ms.
4 Olsen also made the lease payments to Nile River and Financial Pacific through her
5 personal funds until October 2012.²⁰⁰ Mr. Campbell’s testimony doesn’t even remotely
6 support any of Mr. Dougherty’s claims.

7 **K. Testimony of John Torbenson and Robin Richards.**

8 Mr. Dougherty also subpoenaed Mr. Torbenson and Ms. Richards to testify at
9 hearing. The few relevant points of their testimony support the Company’s positions in
10 this docket on several fronts. As testified by Mr. Torbenson, there were discussions
11 between Odyssey Financial and Ms. Olsen in March of 2012 relating to personal leases
12 for the ATF.²⁰¹ Ms. Olsen requested personal leases and Mr. Torbenson subsequently
13 consulted Odyssey’s attorney and determined that Odyssey could not do personal leases
14 for an ATF.²⁰² Even so, Odyssey and Mr. Torbenson had provided copies of the personal
15 leases to Ms. Olsen. Mr. Torbenson testified that Odyssey is responsible for drafting the
16 various leases and he acknowledged that he sent the personal leases to Ms. Olsen.²⁰³

17 After advising Ms. Olsen that Odyssey could not do the personal leases, Odyssey
18 then provided unsigned copies of the Nile River and Financial Pacific leases with MRWC
19 to Ms. Olsen.²⁰⁴ Those leases were returned to Odyssey as signed by Ms. Olsen.²⁰⁵ Mr.
20 Torbenson then signed the lease between Nile River and MRWC, and Odyssey sent the
21

22 _____
¹⁹⁸ *Id.* at 587 (Campbell):

23 ¹⁹⁹ Tr. IV at 1042:10-20 (Becker)

24 ²⁰⁰ Tr. II at 614:22-615:8 (Campbell).

25 ²⁰¹ Tr. V at 965:6-13 (Torbenson).

26 ²⁰² *Id.* at 965:9-13 (Torbenson).

²⁰³ *Id.* at 975:1-8 (Torbenson).

²⁰⁴ *Id.* at 966:7-17 (Torbenson).

²⁰⁵ *Id.* at 966:21-23 (Torbenson).

1 signed lease between Financial Pacific/MRWC to Financial Pacific.²⁰⁶ As a policy,
2 Odyssey returns signed copies of the lease to the lessee/company “if they request it.”²⁰⁷

3 As testified by Mr. Torbenson, the effective lease with Nile River is dated March
4 22, 2012 and Nile River is not making any claim of fraud relating to MRWC.²⁰⁸ Both the
5 Company leases and the personal leases were drafted by Odyssey as the broker and sent to
6 Ms. Olsen and MRWC.²⁰⁹ Ms. Richards confirmed that the personal leases were sent to
7 Ms. Olsen.²¹⁰ Ms. Olsen testified that she received signed copies of the personal leases
8 from Nile River in the mail.²¹¹ Neither Mr. Torbenson nor Ms. Roberts could explain the
9 purported signature for Nile River on the March 17, 2012 personal leases. Of course, they
10 also didn’t explain why Odyssey sent personal leases on behalf of Nile River to Ms. Olsen
11 if Nile River could not legally enter personal leases. Mr. Torbenson testified that the
12 effective lease with Financial Pacific is dated April 2, 2012 and Financial Pacific is not
13 making any claim of fraud relating to MRWC.²¹²

14 **L. Testimony of John Dougherty.**

15 Mr. Dougherty’s testimony at hearing was largely an exercise in hyperbole,
16 innuendo and misstatement. His testimony and actions in this case clearly demonstrate a
17 personal vendetta against Ms. Olsen and MRWC. *Incredibly, Mr. Dougherty is not a*
18 *customer of MRWC and he does not plan on becoming one unless his well goes dry.*²¹³
19 Yet he has undertaken extensive actions designed to prevent MRWC from providing
20 service to its customers.
21

22 _____
23 ²⁰⁶ *Id.* at 967:2-11 (Torbenson).

24 ²⁰⁷ *Id.* at 968:1-2 (Torbenson).

25 ²⁰⁸ *Id.* at 973:4-7 (Torbenson).

26 ²⁰⁹ *Id.* at 975:4-15, 985:22-986:3 (Torbenson).

²¹⁰ Tr. V at 993:20-24 (Richards).

²¹¹ Tr. I at 156:15-157:10 (Olsen).

²¹² Tr. V at 978:17-979:5 (Torbenson).

²¹³ Tr. IV at 763:1-10 (Dougherty).

1 1. Mr. Dougherty did not establish any actual, concrete injury
2 suffered by any party as a result of the Company's actions.

3 At hearing, Mr. Dougherty did not allege, let alone prove any actual or concrete
4 injury resulting from the Company's actions relating to the leases or other debt. Mr.
5 Dougherty attempted to concoct an injury out of thin air by claiming "[t]he harm that I am
6 suffering directly because of the activities of Montezuma Rimrock Water Company is
7 from a public citizen point of view. I expect public service corporations to comply with
8 the statutes and regulatory orders of this Commission. And if they are allowed to ignore
9 those and allowed to go forward without any kind of enforcement, then that sets a terrible
10 standard not only for the particular company but for public service corporations in
11 general. It is damaging to the Commission. It is damaging to the citizens of Arizona.
12 And it is damaging to me as a citizen."²¹⁴

13 Mr. Dougherty's claim of injury is a sham. As a non-customer of MRWC, Mr.
14 Dougherty is not impacted by the Company incurring long-term debt or the Company's
15 annual reports or the Company's filing errors relating to the leases. Mr. Dougherty's
16 attempt to create an abstract, "public interest" injury out of thin air in order to serve his
17 personal opposition to Well No. 4 should be rejected.

18 2. The Commission should prevent Mr. Dougherty from using
19 administrative processes to harm MRWC and Ms. Olsen.

20 Mr. Dougherty's actions and efforts against MRWC do not even remotely serve the
21 public interests served by the Commission, especially given that Mr. Dougherty isn't a
22 water customer of the Company. Mr. Dougherty's conduct has gone well beyond any
23 measure of good faith opposition to MRWC's operations:

- 24 • Mr. Dougherty filed a citizen's complaint with WIFA relating to
25 issuance of a categorical exclusion for the WIFA financing.²¹⁵
- Mr. Dougherty filed objections and complaint with ADEQ relating to

26 ²¹⁴ *Id.* at 842:3-19 (Dougherty).

²¹⁵ Tr. II at 760:11-14 (Dougherty).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

issuance of the approval to construct for the ATF.²¹⁶

- Mr. Dougherty filed objections with WIFA and/or ADEQ regarding MRWC's construction of the water line from Well No. 4 to Well No. 1 with the Company's system.²¹⁷
- Mr. Dougherty has intervened in three dockets before the Commission relating to MRWC.²¹⁸
- Mr. Dougherty contacted the Center for Biological Diversity requesting "any ideas [they] have to increase pressure on this Company..."²¹⁹
- Mr. Dougherty wrote in emails to the Commission and ADEQ that he was "spearheading" an effort to stop MRWC's operation of Well No. 4.²²⁰
- Mr. Dougherty testified that WIFA withdrew the categorical exemption under NEPA and approval of financing "based on [his] various arguments about the impact of Well No. 4 on Montezuma Well and Beaver Creek."²²¹
- Mr. Dougherty filed complaints with Yavapai County relating to zoning and use permits pertaining to Well No. 4.²²²
- Mr. Dougherty filed comments in MRWC's 2008 rate case.²²³
- Mr. Dougherty contacted the property owners (the Burches) adjacent to Well No. 4 relating to granting an easement to MRWC for setback requirements under the Yavapai County zoning code.²²⁴
- Mr. Dougherty has been in contact with Ivo Buddeke regarding Mr. Buddeke's justice court complaint against MRWC and Ms. Olsen.²²⁵
- Mr. Dougherty contacted the National Park Service regarding operation of Well No. 4 and filing objections with WIFA and the

²¹⁶ *Id.* at 760:15-18 (Dougherty).
²¹⁷ *Id.* at 760:19-23 (Dougherty).
²¹⁸ *Id.* at 760:23-761:4 (Dougherty).
²¹⁹ *Id.* at 774:5-775:5 (Dougherty); Ex. A-43, emails from J. Dougherty re: Battle in Verde Valley.
²²⁰ Tr. II at 777:12-778:23 (Dougherty); Ex. A-45, email from J. Dougherty to Commission Staff dated 5/23/2012.
²²¹ Tr. II at 780:9-20 (Dougherty).
²²² *Id.* at 782:1-24 (Dougherty).
²²³ *Id.* at 790:24-791:2 (Dougherty).
²²⁴ *Id.* at 791:21-25 (Dougherty).
²²⁵ *Id.* at 792:1-4 (Dougherty).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Commission.²²⁶

- Mr. Dougherty sent numerous issues to RUCO and its former director Jodi Jerich requesting that RUCO intervene in the pending rate case and when RUCO withdrew its intervention, Mr. Dougherty opposed RUCO's withdrawal from the rate case.²²⁷
- Mr. Dougherty mailed flyers to customers of MRWC raising issues about the operation of the Company, including termination of service without notice.²²⁸ Mr. Dougherty acknowledged at hearing that "I don't have a complete conclusive proof that that in fact occurred. I just heard from that folks that this had happened to them. So I raised the question in the flyer."²²⁹ Mr. Dougherty also refused to name those alleged individuals at hearing.
- In May 2012, Mr. Dougherty filed a "motion with this Commission requesting an injunction to stop construction of the arsenic treatment facility" because there was no approval of the financing.²³⁰ ***So, in other words, a non-customer of MRWC filed a motion to prevent construction of an ATF in order to provide safe drinking water to MRWC customers.***
- Mr. Dougherty composed and filed on line petitions opposing the Company's operation of Well No. 4.²³¹
- Mr. Dougherty posted various editorials in local newspapers opposing the Company and its efforts to install the ATF and operate Well No. 4.²³²
- Mr. Dougherty sent various emails and communications to Yavapai County Supervisors relating to issuance of the CUP for Well No. 4.²³³

In no uncertain terms, the Commission should put a stop to Mr. Dougherty's attempts to bludgeon MRWC and Ms. Olsen with administrative proceedings once and for all.

At hearing, Mr. Dougherty also made a number of misleading statements relating to the underlying facts. For example, Mr. Dougherty claims that MRWC was unable to

²²⁶ *Id.* at 792:9-11 (Dougherty).

²²⁷ *Id.* at 792:13-24 (Dougherty).

²²⁸ *Id.* at 793:1-7946-22 (Dougherty).

²²⁹ *Id.* at 797:21-24 (Dougherty); Ex. A-34, Flyer to Montezuma Rimrock Company Customers.

²³⁰ Tr. II at 655:8-12 (Dougherty).

²³¹ *Id.* at 801:1-6 (Dougherty).

²³² *Id.* at 801:7-11 (Dougherty).

²³³ *Id.* at 801:12-21 (Dougherty).

1 obtain private financing for the ATF.²³⁴ Again, Mr. Dougherty plays fast and loose with
2 the truth. As testified by Ms. Olsen, Sun West Bank had approved private financing for
3 the ATF, but the Commission did not approve the private financing option.²³⁵ Mr.
4 Dougherty also stated that his conclusions about Well No. 4 impacting Montezuma Well
5 “are based in large part upon the recommendations from WIFA to require an EIS.”²³⁶
6 That statement is misleading because WIFA issued that decision only after Mr. Dougherty
7 made those arguments and demanded an EIS be conducted. Mr. Dougherty suggests that
8 MRWC drilled well no. 4 without County approval. In fact, the County approved a site
9 plan for the well and issued a CUP for the well dated March 15, 2010.²³⁷

10 Incredibly, Mr. Dougherty testified that he would rather have had the Company
11 comply with the procedural orders and not install an ATF, thereby jeopardizing the health
12 and safety of customers.²³⁸ To say Mr. Dougherty has acted against the interest of
13 MRWC, its customers and the Rimrock community is an understatement.

14 **3. Mr. Dougherty’s actions and end-goals are against the public**
15 **interest of this Commission and MRWC’s customers.**

16 On cross examination, Mr. Dougherty explained his ultimate goal in this case:

17 If the company had filed the proper leases, the real leases on March 22nd, or
18 if the company had disclosed those in an April 27th brief, the company had
19 raised those at the April 30th procedural conference, this Commission then
20 would have had the opportunity to review those leases, not in a rate case
21 setting, but as an operational setting, as the Staff had filed in the docket that
22 the leases are not a rate case item. And if that had been done, this would
23 have taken months, well into the summer. The company would have
24 violated the ADEQ consent order and we would have been in an entirely
25 different regulatory environment. And I believe that the customers of
26 Montezuma Rimrock Water Company would greatly benefit from the
consolidation of that water company with a much larger company -- let me
finish -- that provides water at lower rates than being proposed in this rate
case, that provides water that is arsenic free, and that has long expressed
interest in that service area. I don't know what would have happened if the

²³⁴ *Id.* 648:15-22; Ex. C-106, letter from Sunwest Bank to P. Olsen dated 6/10/2011.

²³⁵ Tr. I at 89:24-90:2 (Olsen).

²³⁶ Tr. II at 780:3-5 (Dougherty).

²³⁷ Tr. I at 254:22-255:5 (Olsen).

²³⁸ *Id.* at 809:4-7 (Dougherty).

1 company had complied with the law and the orders of this court. It is
2 impossible to say. But in the long run, if they had, there is a good possibility
3 that the ratepayers in Montezuma Rimrock wouldn't be looking at \$80 to
4 \$100 a month water bills.²³⁹

5 Mr. Dougherty went on to say that “[t]his company is not fit to be a public service
6 corporation. And the CC&N, and the sale and transfer of the company, should be declared
7 null and void. *That’s my end goal.*”²⁴⁰ Boiled down, Ms. Olsen and MRWC are victims
8 of Mr. Dougherty’s bad faith efforts to place the Company in a position of defaulting on
9 its regulatory obligations—a fact recognized by Mr. Becker when he testified that “it is
10 just not in everybody’s best interest to set a company up to basically have a problem or
11 avoidable distress, in our opinion.”²⁴¹

12 Whether or not the Company filed the Company leases in March or April 2012
13 does not have any material impact on the issue of whether MRWC is fit to be a public
14 utility or whether the Company is providing adequate water service. *The evidence is
15 undisputed that MRWC is providing reliable and adequate water service at reasonable
16 rates.* MRWC acknowledges it violated the procedural orders of this Court and

17 ²³⁹ Tr. at 813:7-814:6 (Dougherty). Like much of Mr. Dougherty’s testimony, his
18 statements relating to MRWC’s water rates being significantly higher than AWC’s water
19 rates are false. As recommended by Mr. Becker, and agreed to by MRWC, the Staff
20 recommended rates for a 5/8” meter is \$30.00 per month for the usage charge along with
21 \$2.50 per 1,000 gallons for 0-3,000 gallons; \$4.17 per 1,000 gallons for 3,001-9,000
22 gallons; and \$6.67 per 1,000 gallons for over 9,000 gallons. Becker RT, Schedule GWB-
23 7, p. 2. By comparison, AWC’s existing tariff for its Verde Valley System (including
24 Pinewood and Rimrock) includes a minimum charge of \$23.10 for a 5/8” meter, along
25 with commodity rates of \$3.3891 per 1,000 gallons for 0-3,000 gallons; \$4.2361 per 1,000
26 gallons for 3,001-10,000 gallons; and \$5.2954 per 1,000 gallons for over 10,000 gallons.
ACC Decision No. 71845, Arizona Water Company Tariff WG-286 filed August 30,
2010, Water Rates – General Service for Verde Valley System. That’s not to mention that
AWC has a rate case currently pending for its Northern Division (including the Verde
Valley system). In that case, the parties filed a settlement agreement on April 15, 2013,
including proposed rates for the Verde Valley (Rimrock/Pinewood) system of a \$25.33
monthly charge for a 5/8” meter with commodity rates of \$2.1210 for 0-3,000 gallons;
\$3.5527 for 3,001-10,000 gallons; and \$4.4860 for over 10,000 gallons. Staff Notice of
Filing Settlement Agreement dated April 15, 2013, Docket No. W-01445A-12-0348,
Settlement Schedule H-3, p. 13. That settlement agreement also included authorization of
an Arsenic Cost Recovery Mechanism for AWC’s Navajo and Verde Valley systems—an
additional charge not present for MRWC.

²⁴⁰ Tr. II at 840:10-15 (Dougherty) (emphasis added).

²⁴¹ Tr. IV at 1022:6-10 (Becker).

1 apologizes. Ms. Olsen explained that she was working 20 hours a day on the ATF issues
2 and simply did not keep up with all of the paperwork issues.²⁴² That does not mean that
3 the Company is not fit to provide service to customers in any way, shape or form.

4 As admitted in his testimony, Mr. Dougherty wanted the Commission to spend
5 several months reviewing the leases before allowing construction of the ATF in order to
6 put MRWC in violation of the ADEQ Consent Order in the hopes that MRWC would go
7 out of business and be taken over by AWC. In his opening, Mr. Dougherty stated that
8 “my main concern here is that the ratepayers are being fleeced by an operation that has
9 been basically been given a green light to engage in excessive spending by [Commission]
10 Staff that has not done, in my view, any kind of suitable due diligence to look at the
11 situation.”²⁴³ These statements by Mr. Dougherty are a pretense. He is not a customer of
12 MRWC and he is not representing customers. Almost everything that Mr. Dougherty has
13 done in opposition to the Company is against the interest of MRWC’s customers.

14 Mr. Dougherty did not present any evidence that the Company is seeking increased
15 rates based on excessive spending. Unfortunately, Mr. Dougherty has asserted a variety
16 arguments that have no basis in fact and are largely a creation of Mr. Dougherty’s desire
17 to put MRWC and Ms. Olsen out of business. For example, Mr. Dougherty raised a
18 number of issues relating to what he called unauthorized “loans” entered by the Company
19 without Commission approval. The sole basis for Mr. Dougherty’s allegations was line
20 items in certain MRWC annual reports. The underlying facts do not support these claims.

21 On these issues, there are several controlling facts that are undisputed following
22 Ms. Olsen’s redirect testimony and Mr. Campbell’s testimony. To start, the various
23 “loans” listed on the Company’s annual reports—the loan for Well No. 4, the loan for the
24 pressure tank, the car loan and the loan for construction of the pipeline from Well No. 1 to
25 Well No. 4—were not actual loans. Rather, they were listed on the public reports to

26 ²⁴² Tr. II at 338:17-25 (Olsen).

²⁴³ Tr. I at 44:10-15 (Dougherty).

1 reflect personal payments by Ms. Olsen for such items. What that means it that MRWC
2 did not incur long-term debt on these items without Commission approval.

3 In terms of the Well No. 4 property, the evidence is clear that Well No. 4 is not a
4 used and useful asset of the utility; that Ms. Olsen paid off the balance owed on the Well
5 No. 4 property; that the Company owns the Well No. 4 property free and clear of any
6 encumbrances; and, the loan was listed on the annual reports “in an effort to obtain
7 reimbursement from the company for the personal payments” made by Ms. Olsen.²⁴⁴
8 There is no loan agreement currently in place relating to Well No. 4 and the Company is
9 not making any loan payments.²⁴⁵

10 The second loan alleged by Mr. Dougherty relates to the 8,000 gallon pressure
11 tank. As noted above, MRWC has an agreement with Mr. Arias to purchase the tank
12 subject to Commission approval, Mr. Arias continues to own the tank, and MRWC does
13 not have any payment obligations for the tank. Again, MRWC did not incur any long-
14 term debt for the pressure tank without Commission approval.

15 The third loan referenced by Mr. Dougherty as being listed on the annual reports
16 was an \$11,000 loan for a PT Cruiser. Again, it’s undisputed that the Company did not
17 enter any loan agreement for that car. Rather, Ms. Olsen entered the original car loan
18 personally.²⁴⁶ Further, Ms. Olsen was the original titleholder for the car and she paid off
19 the car loan in full herself; the car is used mainly for Company business, and, she added
20 MRWC to the title for the car after she had paid the car loan in full.²⁴⁷ Again, Ms. Olsen
21 listed that loan on the annual reports in an effort to acknowledge the Company’s
22 reimbursement obligations for the car and it is beyond dispute that the Company did not
23 enter any improper loan agreement for the car.²⁴⁸

24 ²⁴⁴ Tr. III at 525:3-24 (Olsen).

25 ²⁴⁵ *Id.* at 526:1-4 (Olsen).

26 ²⁴⁶ *Id.* at 526:25-527:5 (Olsen).

²⁴⁷ *Id.* at 527:6-22 (Olsen).

²⁴⁸ *Id.* at 527: 17-25 (Olsen).

1 Finally, Mr. Dougherty raised certain issues relating to construction of the water
2 line from Well No. 1 to Well No. 4 and he went so far as to suggest that the Company has
3 entered a loan agreement with Rask Construction relating to that line. Unfortunately, Mr.
4 Dougherty again drastically misstates the facts. It is undisputed that MRWC did not sign
5 or enter any loan agreement with Rask Construction.²⁴⁹ The Company included an
6 unsigned agreement with Rask in a Commission filing “to show that there was an amount
7 due that need to be reimbursed at some point.”²⁵⁰ Put simply, Rask installed the water line
8 for \$67,000 and Ms. Olsen gave Rask a down payment of \$7,000 from her personal funds
9 for the work, leaving approximately \$60,000 in amounts owed to Rask.²⁵¹ The contract
10 with Rask did not encumber any asset of the Company and is not a loan.²⁵²

11 **IV. MR. DOUGHERTY’S COMPLAINT SHOULD BE DISMISSED IN ITS**
12 **ENTIRETY.**

13 Mr. Dougherty filed an Amended Complaint on February 27, 2013. In numbered
14 paragraph 15 of the Amended Complaint, Mr. Dougherty states that “Complainant hereby
15 withdraws Allegations III, V, VI and XVI from the Formal Complaint without
16 prejudice.”²⁵³ As such, Allegations III, V, VI and XVI are no longer at issue in this
17 proceeding and should be dismissed. In numbered paragraph 16 of the Amended
18 Complaint, Mr. Dougherty states that “Complainant hereby withdraws Allegations VII,
19 IX, XIII, XIV with prejudice.”²⁵⁴ As such, Allegations VII, IX, XIII and XIV are no
20 longer at issue in this proceeding and should be dismissed with prejudice. By process of
21
22
23

24 ²⁴⁹ *Id.* at 529:7-13 (Olsen).

25 ²⁵⁰ *Id.* at 529:12-13 (Olsen).

26 ²⁵¹ *Id.* at 529: 7-530:16 (Olsen).

²⁵² *Id.* at 529:23-530:3 (Olsen).

²⁵³ Amended Complaint at 2, ¶ 15.

²⁵⁴ *Id.* at 2, ¶ 16.

1 elimination, the following allegations remain at issue in this docket: Allegations I, II, IV,
2 VII, VIII, X, XI, XII, XV and XVII.²⁵⁵

3 **A. Allegation I Should Be Dismissed: Acquisition of the Well No. 4**
4 **Property Does Not Warrant Any Action Against MRWC.**

5 For Allegation I, Mr. Dougherty alleges that “the Company did not seek or obtain
6 Commission approval to enter into a long-term, \$32,000 debt in 2005 to acquire property
7 for Well No. 4 in violation of A.R.S. § 40-30 and A.R.S. § 40-302.”²⁵⁶ Mr. Dougherty
8 alleges that “the Company has willfully encumbered or spent ratepayer funds to pay for
9 the undisclosed loan from 2005 through 2011 in violation of A.R.S. § 40-423 and A.R.S.
10 § 40-424.”²⁵⁷ The Commission should deny this allegation for the reasons stated above
11 relating to the factual circumstances underlying acquisition of the Well No. 4 property.

12 As a matter of law, MRWC did not unlawfully encumber any utility asset relating
13 to the purchase of the Well No. 4 property. With respect to incurring long-term debt
14 under the Deed of Trust with Ms. Brunner, the purchase price for the subject property has
15 been paid in full and there is not any outstanding long-term debt or encumbrances against
16 utility property from this transaction. As a result, the Company is the owner of the
17 property, there is no existing long-term debt relating to that property and there are no
18 Company funds at issue.²⁵⁸ Under these circumstances, any alleged violation of
19 Commission statutes relating to incurring debt did not result in any harm to the Company
20 or its ratepayers and this allegation should be dismissed.

21
22
23
24 ²⁵⁵ To the extent that either Mr. Dougherty or the Commission believes that any other
25 issues from Mr. Dougherty’s complaint are at issue, the Company oppose those
allegations based on the evidence presented at hearing and for the reasons stated in the
Company’s answers filed with the Commission.

26 ²⁵⁶ Amended Complaint at 3, ¶ 18.

²⁵⁷ Id.

²⁵⁸ Ex. A-2, Olsen DT at 26-27.

1 **B. Allegation II Should Be Dismissed Because the 2009 Staff Audit Is a**
2 **Non-Issue.**

3 In Allegation II, Mr. Dougherty claims that the “Company did not disclose material
4 financial information to Commission staff during a 2009 audit – a \$32,000 long-term debt
5 – that was used to calculate a permanent rate increase and whether the company could
6 qualify for a \$165,000 WIFA loan. ... The failure to disclose the debt to staff when the
7 Company submitted its 2007 annual report is a violation [of] A.R.S. § 40-301, A.R.S. §
8 40-302, R14-2-411(D)(1,2) and Commission Order 67583.”²⁵⁹ This allegation should be
9 dismissed for the reasons noted above relating to Allegation I.

10 Further, Commission Staff has not raised any issues relating to that 2009 audit and
11 Mr. Becker testified that he does not rely on utility annual reports for Class D utilities like
12 MRWC when evaluating rate cases.²⁶⁰ On this issue, the 2009 Staff audit is not at issue,
13 and the Company did not violate A.A.C. R14-2-411(D)(1,2) or Decision No. 67583.

14 **C. Allegation IV Should Be Dismissed: Well No. 4 Is Excluded from the**
15 **Rate Case.**

16 In Allegation IV of the original Complaint, Mr. Dougherty alleged that the
17 “Company improperly includes Well No. 4, DWR 55-213141, as part of its “Water
18 Company Plant Description” in its Annual Reports in 2007, 2008, 2009 and 2010. Well
19 No. 4 has never been approved for operation by Yavapai County and the Company does
20 not have a ‘Certificate of Compliance’ to operate the well because it was built in violation
21 of the Yavapai County Water Code and encroaches on neighboring property rights.”²⁶¹
22 Mr. Dougherty did not present any evidence on this allegation at hearing and the factual
23 record does not support any action against the MRWC on this issue. Further, as noted
24 above, MRWC executed an easement agreement with the property owner adjacent to Well
25 No. 4 and the Company is in the process of seeking a use permit from the County. That’s

26 ²⁵⁹ Amended Complaint at 2, ¶ 19.
 ²⁶⁰ Tr. IV at 882:5-21 (Becker).
 ²⁶¹ Original Complaint at 3-4, ¶ IV.

1 not to mention that Well No. 4 is excluded from the rate case and inclusion of that well as
2 utility plant on prior annual reports has no bearing on any issues in this case.

3 **D. Allegation VII Should Be Dismissed Because MRWC Is In Compliance**
4 **With State and Federal Safe Water Standards.**

5 In Allegation VII, Mr. Dougherty alleges that the “Company is in violation of state
6 and federal safe water standards and is operating under an Arizona Department of
7 Environmental Quality (ADEQ) Consent Order (since June 2010) requiring customers to
8 make an appointment to obtain bottled water from the company’s office.”²⁶² The
9 undisputed evidence presented at hearing demonstrates that MRWC is compliant with
10 state and federal safe water standards, including arsenic. ADEQ issued an Approval of
11 Construction Partial Approval on November 21, 2012 authorizing the Company to begin
12 operation of the ATF. The Company is currently operating the ATF through use of Well
13 No. 1 and has complied with applicable arsenic standards for drinking water.²⁶³ Mr.
14 Dougherty did not present any contrary evidence at hearing. Obviously, because the ATF
15 is operational, customers are not required to make appointments for bottled water.

16 Further, Mr. Dougherty does not have standing to assert the issues raised in
17 Allegation VII. Mr. Dougherty is not a current customer of the Company and Mr.
18 Dougherty has undertaken a number of actions in an effort to prevent the Company from
19 constructing and operating an ATF, including motions to prevent construction of the
20 Arsenic Treatment Plant and filing of complaints and objections with Yavapai County and
21 ADEQ. Mr. Dougherty has unclean hands on these issues.

22 **E. Allegation VIII Should Be Dismissed Because Well No. 4 Is Not Being**
23 **Used By MRWC To Provide Water Service.**

24 In Allegation VIII, Mr. Dougherty alleges that the “Company is in violation of
25 Decision No. 71317 in Docket W-04254-09-0361, 0362 since December 31, 2009 by
26

²⁶² Original Complaint at 3, ¶ VII.

²⁶³ Ex. A-2, Olsen DT at 4-5, 28-29; Ex. A-3, Olsen RT at 9.

1 failing to obtain an ADEQ Certificate of Approval for Well No. 4.”²⁶⁴ This allegation is
2 immaterial because Well No. 4 is not being used by the Company. Further, Mr.
3 Dougherty did not present any evidence on this issue at hearing or any impacts to MRWC
4 customers and it should be dismissed for that reason alone.

5 As established at hearing, the Company is undertaking all reasonable efforts to
6 obtain ADEQ and County approvals for Well No. 4. Well No. 4 is not currently being
7 used by the Company and the Company’s failure to obtain an AOC for Well No. 4 did not
8 harm any customers of the Company and does not justify any complaint action against the
9 Company.²⁶⁵ Mr. Dougherty also does not have standing to seek relief on this item. Mr.
10 Dougherty is not a current customer of the Company and Mr. Dougherty has undertaken a
11 number of actions in an effort to prevent the Company from constructing and operating
12 Well No. 4. Allegation VIII should be denied.

13 **F. Allegation X Should Be Dismissed For Lack of Evidence.**

14 In Allegation X, Mr. Dougherty alleges that the “Company provided incomplete
15 and misleading statements to Commission investigators in January 2010 concerning its
16 Yavapai County zoning issues related to Well No. 4. The Company’s incomplete and
17 misleading statements to ACC investigators is [sic] a violation of R14-2-411.” Mr.
18 Dougherty did not present any evidence on this issue at hearing and it should be dismissed
19 for that reason alone. Further, A.A.C. R14-2-411 addresses administrative and hearing
20 requirements relating to customer service complaints and other administrative issues. Mr.
21 Dougherty is not a customer of the Company.

22 **G. Allegations XI and XII Should Be Dismissed.**

23 In Allegation XI, Mr. Dougherty alleges that the “Company improperly billed and
24 collected an ‘arsenic surcharge in December 2009 in violation of Commission Decision
25

26 ²⁶⁴ Amended Complaint at 3, ¶ 20.

²⁶⁵ Ex. A-2, Olsen DT at 30.

1 No. 71317.”²⁶⁶ In Allegation XII, Mr. Dougherty alleges that the “Company improperly
2 billed and collected an ‘arsenic surcharge in April 2011 in violation of Commission
3 Decision No. 71317.”²⁶⁷ The Company acknowledges that it improperly invoiced
4 customers for arsenic surcharges. Mr. Dougherty did not present any evidence on this
5 issue at hearing and did not suggest or request any relief. Further, Mr. Dougherty does
6 not have standing to seek any such relief because he is not a customer of MRWC. Ms.
7 Olsen explained these surcharges in her testimony and the underlying record does not
8 support any action against MRWC on this issue.²⁶⁸

9 **H. Allegation XV Is Frivolous and Should be Dismissed.**

10 In Allegation XV, Mr. Dougherty alleges that the “Company failed to immediately
11 report to the Commission that [the] Company’s records had been stolen during a series of
12 burglaries that allegedly began in October 2009 and continued into 2010. Despite the
13 serious impact to the Company from records being stolen, the Company failed to notify
14 the police and make formal reports of the thefts.” Mr. Dougherty did not present any
15 evidence on this issue at hearing and it should be dismissed for that reason alone.

16 On this claim, the Company does not have any obligation to report such burglaries
17 to the Commission or the police as alleged by Mr. Dougherty in this allegation.²⁶⁹ The
18 Company’s failure to report such incidents to the Commission or the police is not an
19 actionable complaint item and the Company did not violate any Commission statutes,
20 rules or regulations as alleged by Mr. Dougherty.

21
22
23
24 ²⁶⁶ Original Complaint at 3, ¶ XI.

25 ²⁶⁷ Original Complaint at 3, ¶ XII.

26 ²⁶⁸ Tr. I at 124:1-125:10 (Olsen); Ex. A-19, letter from MRWC to customers dated 5/1/2011; Tr. II at 285:1-25, 290:2-10 (Olsen); Tr. II at 438:8-15 (Olsen); Ex. A-2, Olsen DT at 31.

²⁶⁹ Ex. A-2, Olsen DT at 32.

1 **I. Allegation XVII Relating to the Arsenic Leases Does Not Warrant Any**
2 **Action Against MRWC.**

3 In Allegation XVII, Mr. Dougherty asserts a variety of claims relating to the lease
4 agreements for the arsenic treatment facility. This allegation does not warrant any actions
5 or sanctions against MRWC for the reasons noted in detail above.

6 On this issue, Mr. Dougherty claims that “Montezuma knowingly and willfully
7 violated the January 4, 2012, March 12, 2012 and April 9, 2012 Procedural Orders in
8 Docket W-2454A-08-0361, W-4254A-08-0362 by failing to docket a March 22, 2012
9 Capital Lease agreement between Montezuma and Nile River Leasing, LLC for an arsenic
10 treatment building. Instead, the Company docketed a purported March 16, 2012 lease
11 agreement between Ms. Patricia Olsen, personally, and Nile River leasing for the building.
12 This action was undertaken to circumvent Commission approval of capital leases in
13 violation of A.R.S. § 40-301, A.R.S. § 40-301, ARSS40-424 and A.R.S. § 40-425.”²⁷⁰

14 The Company acknowledges that it violated the ALJ’s procedural for the reasons
15 explained above. In her testimony, Ms. Olsen explained the circumstances leading to
16 those procedural violations. Contrary to Allegation XVII, the evidence shows that
17 MRWC did not intentionally violate those orders and, to the contrary, fully intended that
18 the Commission would review and approve the Nile River and Financial Pacific leases.²⁷¹
19 The evidence also shows that Commission Staff supported the Company’s decision to
20 install the ATF prior to financing approval for the leases.

21 Mr. Dougherty’s claims that the Company was attempting to circumvent
22 Commission approval of the Company leases is contradicted by the evidence presented at
23 hearing, including that (i) Ms. Olsen intended for Commission Staff to review and
24 approve the leases; (ii) Commission Staff knew about the leases and approved the
25 Company moving forward with construction of the ATF; (iii) Commission Staff does not

26 ²⁷⁰ Amended Complaint at 4-5, ¶ 27(A-E).

²⁷¹ Ex. A-2, Olsen DT at 33-35; Ex. A-3, Olsen RT at 20-11.

1 have any problem with the Company's filing of the wrong leases with the Commission;
2 and (iv) Commission Staff would have provided the same recommendations for approval
3 if those leases had been docketed in March 2012. As noted in her testimony, Ms. Olsen
4 focused the Company's attention on protecting the health of customers and installing the
5 ATF and she believed that it was necessary to enter the lease agreements for the ATF.
6 Further, neither the Commission nor any customers have suffered any harm as a result of
7 this lease agreement with Nile River and, in fact, customers have benefitted from
8 construction and operation of the ATF. The evidence also establishes that the Nile River
9 and Financial Pacific leases were the only financing mechanisms available to the
10 Company for construction of the ATF.²⁷² Ultimately, those leases were in the best interest
11 of MRWC and its customers by facilitating construction and operation of the ATF.²⁷³

12 In the Amended Formal Complaint, Mr. Dougherty also alleges that the Company
13 docketed a fraudulent lease agreement with Financial Pacific by docketing the May 2
14 lease agreement rather than the April 3 lease agreement.²⁷⁴ This allegation isn't supported
15 by any evidence. Ms. Olsen explained the reasons for the April and May leases, the April
16 and May leases are identical, and Mr. Torbenson testified that Financial Pacific is not
17 asserting any claim of fraud.²⁷⁵ Mr. Dougherty's suggestion that the Company committed
18 fraud is silly and based on a misunderstanding of fraud under Arizona law.

19 In the Amended Formal Complaint, Mr. Dougherty next alleges that the "Company
20 has willfully spent or encumbered Ratepayer funds in connection with the execution of the
21 unauthorized Capital Leases for the Arsenic Treatment building and Arsenic treatment
22 equipment entered into by the Company in violation of A.R.S. § 40-423, A.R.S. § 40-424
23 and A.R.S. § 40-425."²⁷⁶ Mr. Dougherty did not present any evidence on that issue at

24 ²⁷² Ex. A-2, Olsen DT at 13-15.

25 ²⁷³ *Id.* at 15.

26 ²⁷⁴ Amended Complaint at 4-5, ¶ 27(C).

²⁷⁵ *Id.* at 35-36.

²⁷⁶ Amended Complaint at 5, ¶ 27(D).

1 hearing. Further, the Company is a private water utility and ratepayers do not possess any
2 ownership interest in any Company funds or property.²⁷⁷

3 All things considered, MRWC is a small water utility with limited resources and
4 any action against the Company relating to the arsenic leases would not benefit the
5 Commission or customers. Commission Staff and Mr. Becker do not support the adverse
6 actions requested by Mr. Dougherty because any such actions would be counterproductive
7 and against the public interest.²⁷⁸ Any alleged violations of procedural orders in this
8 docket do not warrant sanctions against MRWC. Mr. Dougherty's contention that
9 MRWC was employing a fraudulent scheme to avoid Commission review of the lease
10 agreement is false and contrary to the underlying facts. Ms. Olsen was in contact with
11 Commission Staff relating to the lease agreements and MRWC docketed the lease
12 agreements on October 26, 2012. The fact that MRWC docketed those agreements in
13 October 2012 shows that the Company intended for the Commission to review the leases.

14 **V. LEGAL ISSUES.**

15 **A. The Commission Cannot Lawfully Grant the Relief Requested by Mr.**
16 **Dougherty.**

17 In his complaint and at hearing, Mr. Dougherty attempted to fabricate a number of
18 arguments for revocation of MRWC's CC&N, a forced takeover of MRWC by Arizona
19 Water Company and other relief designed to put MRWC out of business. That has been
20 Mr. Dougherty's "end goal" throughout these dockets. The relief sought by Mr.
21 Dougherty is that "the Company, Ms. Olsen and Montezuma's Counsel be held in
22 Contempt of the Commission and for the revocation of the Company's CC&N."²⁷⁹ Mr.
23 Dougherty also requests that the Commission "declare the sale and transfer of the CC&N
24 to Montezuma null and void based on violations of Findings of Fact No. 37 in Decision
25 No. 67583 and to consolidate Montezuma's service territory area with Arizona Water

26 ²⁷⁷ Bd. of Pub. Utility Comm'rs v. New York Tele. Co., 271 U.S. 23, 32 (1926).

²⁷⁸ Tr. V at 1070:9-13 (Becker).

²⁷⁹ Dougherty DT at 20:25-27.

1 Company as recommended by Staff in 2004.”²⁸⁰ On this factual record, those remedies
2 can’t be granted in this case as a matter of law.

3 1. **The Commission cannot lawfully revoke MRWC’s CC&N in this**
4 **case because MRWC is providing adequate and reliable water**
5 **utility service to customers.**

6 The Commission can’t revoke MRWC’s CC&N on this record. As a matter of law,
7 “[o]nce granted, the certificate confers upon its holder an exclusive right to provide the
8 relevant service for as long as the grantee can provide adequate service at a reasonable
9 rate. ... Only upon a showing that a certificate holder, presented with a demand for
10 service which is reasonable in light of projected need, has failed to supply such service at
11 a reasonable cost to customers, can the Commission alter its certificate. Only then would
12 it be in the public interest to do so.”²⁸¹ Put simply, the Commission doesn’t have
13 authority to revoke MRWC’s CC&N without a showing that MRWC is failing to provide
14 reasonable and adequate water service. Here, the record is undisputed that MRWC is
15 providing reliable and adequate water service to customers and Mr. Dougherty can’t meet
16 the *James Paul* standard for revocation of MRWC’s CC&N. Even worse for Mr.
17 Dougherty, the record is *undisputed* that Ms. Olsen has dramatically *improved* water
18 service to customers since her acquisition of the Company in 2005.

19 As stated by the Arizona Supreme Court, as the CC&N holder, MRWC has “a right
20 to provide service in its certificated area until the Commission [has] shown that the
21 certificate holder was unable or unwilling to provide service at a reasonable rate.”²⁸²
22 “Because there [is] no evidentiary showing that [MRWC] was unable or unwilling to
23 provide service at reasonable rates the Commission [is] without legal authority to amend
24 [MRWC’s] certificate...”²⁸³ On this record, Mr. Dougherty has *not* shown that MRWC

25 ²⁸⁰ Responsive Testimony of John Dougherty (“Dougherty RT”) at 25:21-24.

26 ²⁸¹ *James P. Paul Water Co. v. Arizona Corp. Comm’n*, 137 Ariz. 426, 429, 671 P.2D 404,
407 (1983).

²⁸² *Id.* at 430, 671 P.2d at 408.

²⁸³ *Id.* at 431, 671 P.2d at 409.

1 is unable or unwilling to provide service at reasonable rates. As a matter of law, therefore,
2 the Commission cannot lawfully revoke or modify MRWC's CC&N.

3 **2. The Commission Cannot lawfully transfer MRWC's CC&N or**
4 **service rights to Arizona Water Company.**

5 Mr. Dougherty also demands that the Commission transfer MRWC's CC&N to
6 Arizona Water Company ("AWC"). That claim is flawed for several reasons. To start,
7 AWC is not interested in taking over the service territory unless MRWC is willing to sell
8 its system to AWC. At hearing, the evidence established that AWC "has historically
9 engaged in such discussions where we have been approached by a willing seller seeking a
10 transfer of its assets to Arizona Water Company....If the utility is not a willing seller, the
11 company normally does not proceed with any due diligence, negotiations or further
12 discussions."²⁸⁴ MRWC will not agree to any such sale or transfer.²⁸⁵

13 Further, even if the Commission revoked MRWC's CC&N and unlawfully
14 transferred the service rights to AWC (or if AWC was appointed as interim operator),
15 MRWC and Ms. Olsen still would own all of the utility facilities (wells, distribution lines,
16 pumps, arsenic treatment facility, storage tanks). As a result, AWC could not serve
17 customers without taking control of MRWC's facilities—a fact noted by the ALJ at
18 hearing.²⁸⁶ If the Commission ordered such involuntary transfer, it would result in a
19 regulatory taking of MRWC's property, in turn exposing the Commission and/or AWC to
20 payment of just compensation for such taking. That's not to mention that AWC would
21 need to install additional facilities to connect MRWC's water system to AWC's water
22 system, in turn increasing the likely rates to be paid by MRWC's customers.²⁸⁷

23 ²⁸⁴ Ex. A-24, email from B. Garfield (AWC) dated 6/20/2013. Further, Mr. Dougherty's
24 questioning of Ms. Olsen at hearing established that AWC was interested in acquiring the
25 water company from MEPOA only if MEPOA was interested in selling it to AWC (Tr. I
at 166:1-10), but that MEPOA was not interested in selling the company to AWC (Tr. I at
164:12-22).

26 ²⁸⁵ Tr. I at 129:5-8 (Olsen); Tr. IV at 701:1-18 (Scott).

²⁸⁶ Tr. IV at 856:10-19 (Dougherty).

²⁸⁷ Tr. IV at 743:15-744:6 (Scott).

1 Those issues aside, it is established Arizona law that issuance of CC&N by the
2 Commission “is a legislative power delegated to the Commission subject to restrictions as
3 the legislature deems appropriate.”²⁸⁸ With respect to Mr. Dougherty’s request that the
4 Commission transfer MRWC’s CC&N to AWC, the Court of Appeals expressly rejected
5 that argument in *Tonto Creek Estates*: “Reviewing Title 40, we can find no statute that
6 specifically grants the Commission power to order the transfer of a certificate of
7 convenience and necessity from one corporation to another.”²⁸⁹ As a matter of law, the
8 Commission simply does not have legal authority to transfer MRWC’s service territory
9 and assets to AWC as requested by Mr. Dougherty. Mr. Dougherty’s attempts to
10 orchestrate a takeover of MRWC should be rejected.

11 **B. The Commission Cannot Lawfully Rescind Ms. Olsen’s Acquisition of**
12 **the Company As Requested by Mr. Dougherty.**

13 At hearing, the ALJ asked the parties to brief whether MRWC's not having
14 obtained prior Commission approval before encumbering assets of the utility or taking on
15 long-term debt renders the approvals granted in Decision No. 67583 null and void or
16 otherwise does or should impact the approvals granted therein, including Montezuma's
17 CC&N.²⁹⁰ The answers to those questions are a resounding NO on all accounts.

18 **1. MRWC did not violate Decision No. 67583.**

19 To start, the premise of those questions needs to be clarified. On this issue, the
20 premise of Mr. Dougherty’s argument is that MRWC violated Finding of Fact No. 37 in
21 Decision No. 67583 by entering the Deed of Trust with Ms. Brunner for the acquisition of
22 the Well No. 4 property. In turn, Mr. Dougherty contends that MRWC violated Finding
23 of Fact No. 37 by acquiring the Well No. 4 property and encumbering assets of the utility
24 in 2006 without Commission approval. That argument fails for the simple reason that the

25 ²⁸⁸ *Tonto Creek Estates Homeowners Ass’n v. Arizona Corp. Comm’n*, 177 Ariz. 49, 56,
864 P.2d 1081, 1088 (App. 1993), citing *Corp. Comm’n v. Pacific Greyhound Lines*, 54
26 Ariz. 149, 177, 94 P.2d 443, 450 (1939).

²⁸⁹ *Tonto Creek Estates*, 177 Ariz. at 56, 864 P.2d at 1088.

²⁹⁰ Tr. V at 1096:21-1097:1 (ALJ Harpring).

1 Deed of Trust with Ms. Brunner did not encumber any used and useful asset of MRWC.
2 That distinction is critical under Decision 67583 and controlling Arizona law.

3 It's important to understand what Decision No. 67583 says and what it doesn't say.
4 In Decision 67583, the Commission ordered that "MRWC shall not encumber the assets
5 of the utility in any way without prior Commission approval."²⁹¹ Decision 67583 went on
6 to state that "IT IS FURTHER ORDERED that Montezuma Rimrock Water Company,
7 LLC shall comply in all respects with Findings of Fact No. 37 and Conclusion of Law No.
8 6 or the approval granted hereinabove shall be null and void."²⁹² Decision No. 67583
9 does *not* say that the approvals granted would be null and void in the event that MRWC
10 incurs long-term without prior approval by the Commission. Thus, any attempt to void
11 Ms. Olsen's acquisition of the Company based on incurring debt without prior
12 Commission approval would violate the express terms of Decision 67583 itself.

13 Mr. Dougherty also misconstrues Finding of Fact No. 37. As stated by Ms. Olsen
14 at hearing, the sentence in Finding of Fact No. 37 that "MRWC shall not encumber the
15 assets of the utility in any way without prior Commission approval" references
16 encumbrances on "the current assets of the water company" at the time of the decision.²⁹³
17 When Ms. Olsen acquired the Company, she "requested to take out a loan for the water
18 company in order to purchase it" and "was informed by ACC that I could not – you know,
19 the assets of the water, the current assets of the water company could not be
20 encumbered."²⁹⁴ That is explanation for Staff's recommendation that the Company not
21 encumber any assets of the Company without Commission approval in Finding of Fact 37.
22 Ms. Olsen's testimony was not contested at hearing.

23 That testimony makes perfect senses because, under A.R.S. § 40-285, Ms. Olsen's
24

25 ²⁹¹ ACC Decision No. 67583 at 9, ¶ 37.

26 ²⁹² *Id.* at 11.

²⁹³ Tr. at 167:18-20, 168:20-25.

²⁹⁴ Tr. I at 114:7-17 (Olsen).

1 ability to encumber any future assets of the Company without Commission would depend
2 on whether those assets are used in providing utility service to customers. In fact, the
3 Commission could not issue an order preventing a utility or its owner from encumbering
4 any future assets of the Company that are not used and necessary for utility service
5 without violating the express provisions of A.R.S. § 40-285(A,C).

6 On this issue, A.R.S. § 40-285(A) provides:

7 A public service corporation shall not sell, lease, assign, mortgage or
8 otherwise dispose of or encumber the whole or any part of its railroad, line,
9 plant, or system ***necessary or useful in the performance of its duties to the***
10 ***public***, or any franchise or permit or any right thereunder, nor shall such
11 corporation merge such system or any part thereof with any other public
12 service corporation without first having secured from the commission an
13 order authorizing it so to do. Every such disposition, encumbrance or
14 merger made other than in accordance with the order of the commission
15 authorizing it is void. (emphasis added).

12 That statute prevents a utility from encumbering an asset that is “necessary or useful” in
13 providing utility service. As stated above, Well No. 4 is ***not*** being used to provide service
14 to customers A.R.S. § 40-285(C) goes on to state:

15 ***Nothing in this section shall prevent the sale, lease or other disposition by***
16 ***any such corporation of property which is not necessary or useful in the***
17 ***performance of its duties to the public***, and any sale of its property by such
18 corporation shall be conclusively presumed to have been of property which
19 is not useful or necessary in the performance of its duties to the public as to
20 any purchaser of the property in good faith for value. (emphasis added).

19 That statute expressly allows a utility to encumber (“other disposition”) property “which
20 is not necessary or useful” in providing utility service (i.e., the Well No. 4 property).

21 As a matter of undisputed fact, when MRWC and Ms. Olsen executed the Deed of
22 Trust with Ms. Brunner, they did not encumber any used or useful asset of MRWC
23 because Well No. 4 and its associated property have not been used by MRWC to provide
24 utility service. Mr. Dougherty’s attempt to create a violation of Decision 67583 based on
25 the Deed of Trust for the Well No. 4 property is unlawful and contrary to the plain
26 language of § 40-285. MRWC’s acquisition of the Well No. 4 property did not violate
Decision 67583 because that transaction did not encumber any used or useful asset of the

1 Company. Not only did Ms. Olsen and MRWC not violate that decision, but the Deed of
2 Trust for the Well No. 4 property has been paid in full and there are no encumbrances or
3 loan obligations against that property.

4 With respect to Nile River and Financial Pacific leases, the Company did not
5 encumber any assets of the utility as noted in Decision No. 67583. Under *James Paul*, the
6 Company is providing reliable and adequate water service and, therefore, the Commission
7 doesn't have authority to alter MRWC's CC&N. Further, on April 12, 2013, the
8 Company filed an application seeking retroactive approval of the debt under those leases.
9 On this record, MRWC did not violate Decision 67583.

10 **2. The Commission cannot lawfully and should not modify Decision**
11 **No. 67583 under A.R.S. § 40-252.**

12 Mr. Dougherty presumably asks that the Commission modify Decision 67583
13 pursuant to its powers under A.R.S. § 40-252. As a matter of due process, however, there
14 is not any pending § 40-252 proceeding before this Commission seeking to void Decision
15 67583 and granting this request would violate fundamental notions of due process.

16 "Section 40-252 requires that notice and an opportunity to be heard be provided to
17 the 'corporation' affected."²⁹⁵ Here, such relief cannot be granted without due notice to
18 both MRWC and MEPOA. If the Commission voided Decision No. 67583, then the
19 CC&N would revert to MEPOA as the utility provider prior to issuance of Decision
20 67583. Mr. Dougherty's demand that Decision No. 67583 be voided would mean that
21 MEPOA would have to be prepared to take over utility service, pay just compensation to
22 Ms. Olsen and MRWC for all of the Company's utility facilities, pay for the necessary
23 storage tanks and pressure tanks, take over day to day operations of the Company and
24
25
26

²⁹⁵ *Tonto Creek Estates*, 177 Ariz. at 57, 864 P.2d at 1089.

1 refund the \$100,000 purchase price paid by Ms. Olsen in 2005 (plus interest).²⁹⁶

2 What's more, any decision by the Commission to void that decision and transfer
3 the CC&N back to MEPOA would defy common sense given that MEPOA had a history
4 of service problems prior to Ms. Olsen's acquisition of the Company in 2006, including
5 service outages, high water loss and water pressure problems. In essence, Mr. Dougherty
6 asks that the Commission to order that the service rights of a company providing adequate
7 service revert to the prior utility provider with a history of service problems.

8 Because Ms. Olsen and MRWC have been providing adequate service to customers
9 since 2005, it is virtually impossible to unwind that transaction eight years later. Even if
10 the Commission issued a decision voiding the approvals granted in Decision 67583,
11 MRWC and Ms. Olsen still would own all of the utility facilities (wells, distribution lines,
12 pumps, arsenic treatment facility, storage tanks). The Commission does *not* have legal
13 authority to transfer MRWC's property to MEPOA, AWC or anyone else.

14 As a result, MEPOA could not serve customers (or sell the company to AWC)
15 without taking control of such facilities, in turn exposing the Commission (for a
16 regulatory taking of MRWC's service rights), MEPOA (for a taking of MRWC's property
17 rights), and/or AWC (for a taking of MRWC's property rights) to payment of just
18 compensation for such taking, including payment for the value of MRWC's service rights,
19 payment for the value of the additional facilities invested by Ms. Olsen and MRWC after
20 Decision 67583 was issued in 2005, payments for the ATF and assumption of MRWC's
21 liabilities. MEPOA also would have to refund the original purchase price of \$100,000
22 paid by Ms. Olsen in 2005. It is highly doubtful that the Commission, AWC and/or
23

24 ²⁹⁶ On July 2, 2013, Rose Mary Barnes docketed a letter in these consolidated dockets as
25 the "only sitting member of Montezuma Estates Property Owners Association
26 (MEPOA)." Letter from Rose Mary Barnes dated 6/30/2013. As noted in that letter,
"[N]o membership dues have been collected [by MEPOA] since 2009 and at this time
there is only approximately \$3,500 left in our accounts. Because I am the only
participating member, it is impossible to have a voting quorum. Buying back MRWC is a
ludicrous and impossible consideration for our community." *Id.*

1 MEPOA and its members are willing to or even capable of taking on such substantial
2 financial obligations to pay for such facilities and service rights.

3 Aside from these legal issues, the notion that the Commission should take away the
4 service territory, property and legal rights of a utility that is providing good utility service
5 to customers and, in fact, has dramatically improved utility service is absurd. The
6 Company agrees that it made certain procedural errors and missteps relating to financings
7 and filings before the Commission. But MRWC has owned up to those errors and
8 accepted Commission Staff's recommendations in the pending rate case, including a
9 recommendation of no operating margin, thereby requiring MRWC to put all earnings and
10 return of capital (*i.e.*, depreciation expense) into the Company in order to pay expenses.
11 That is a more than adequate penalty for MRWC's procedural violations.

12 As a matter of law, the Commission does not have authority to and should not
13 declare the approvals granted in Decision 67583 void based on the evidentiary record in
14 this case. That's not to mention that any attempt to void Ms. Olsen's and MRWC's
15 acquisition of the utility would embroil the Commission, MEPOA and AWC in a hornet's
16 nest of legal issues relating to regulatory takings, just compensation and illegal actions.

17 **C. The Commission Has Authority to Retroactively Approve the Nile**
18 **River and Financial Pacific Leases.**

19 At hearing, the ALJ also asked the parties to brief the issues of whether the
20 Commission has the authority to grant retroactive approval of long-term debt incurred by
21 a public service corporation with citation to laws or case law providing such authority.²⁹⁷
22 On that issue, the Commission has authority under the Arizona Constitution, Title 40 of
23 the Arizona Statutes and controlling precedent to retroactively approve the ATF leases.
24
25
26

²⁹⁷ Tr. V at 1097:2-5 (ALJ Harpring).

1 1. **The Commission Has Broad Authority Under Title 40 to**
2 **Retroactively Approve Long-Term Debt.**

3 As a matter of law, Ariz. Rev. Stat. §§ 40-301 and 40-302 do not prohibit the
4 Commission from retroactively approving a capital lease under the standards set forth in
5 those statutes. Those statutes are not one-strike statutes forever penalizing a utility that
6 fails to initially comply with sections 301 and 302.

7 As Commission Staff routinely states, the Commission has plenary authority over
8 ratemaking for Arizona public service corporations. In turn, the Commission exercises
9 control over utility expenditures indirectly through financing approvals for capital
10 expenditures under §§ 40-301 and 40-302 and through rate regulation by refusing to
11 recognize imprudent expenditures in setting rates.²⁹⁸ Here, interpreting § 40-302 to
12 prohibit retroactive review and approval of financing and debt transactions would violate
13 the Commission's plenary authority over ratemaking.²⁹⁹ The legislature, let alone Mr.
14 Dougherty, cannot override the Commission's constitutional ratemaking authority.

15 Rather, the statutes give the Commission sufficient leeway to retroactively approve
16 financing for utilities. Ariz. Rev. Stat. § 40-302(A) requires that "before a public service
17 corporation issues stocks and stock certificates, bond, notes and other evidences of
18 indebtedness, it shall first secure from the commission an order authorizing such issue...."
19 But the statute does not prohibit the Commission from retroactively reviewing and
20 approving such transactions. Instead, Ariz. Rev. Stat. § 40-302(B) provides that the
21 "Commission may grant or refuse permission for the issue of evidences of indebtedness or
22 grant the permission to issue them in a lesser amount, and may attach permission
23 conditions it deems reasonable and necessary." That language gives the Commission
24 sufficient authority and discretion to grant retroactive approvals based on whatever

25 ²⁹⁸ Ariz. Op. Atty. Gen. No. I79-099, 1979 WL 23168 (1979) at 2.

26 ²⁹⁹ *RUCO v. Ariz. Corp. Comm'n*, 199 Ariz. 588, 592, 20 P.3d 1169, 1172 (App. 2001)("...the Commission's authority to prescribe rates is plenary.")(citing *Tucson Elec. Power. Co. v. Ariz. Corp. Comm'n*, 132 Ariz. 240, 645 P.2d 231 (1982)).

1 “conditions it deems reasonable and necessary.” Likewise, Ariz. Rev. Stat. § 40-302(A)
2 provides that the power to issues debt by public utilities “shall be exercised as provided by
3 law and under rules, regulations and orders of the Commission.” As noted below, the
4 Commission has a long standing practice and precedent of granting retroactive approval of
5 utility financings through orders approving such retroactive requests.

6 Those statutes clearly provide the Commission with sufficient authority to grant
7 retroactive approval of the capital leases at issue here, as long as the Commission “finds
8 that such issue is for lawful purposes which are within the corporate powers of the
9 applicant, are compatible with the public interest, with sound financial practices, and with
10 the proper performance by the applicant of service as a public service corporation and will
11 not impair its ability to perform that service.”³⁰⁰

12 **2. The Commission Has A Long Standing Precedent and Practice of**
13 **Granting Retroactive Financing Approvals.**

14 The Commission’s authority to grant retroactive financing approvals is evidenced
15 and supported by its long-standing precedent and practice of doing exactly that. As noted
16 by the ALJ and legal counsel for Commission Staff, the Commission has issued many,
17 many decisions retroactively approving financing transactions and debt issuances under
18 Ariz. Rev. Stat. §§ 40-301 and 40-302.

19 These decisions clearly establish that the Commission has the authority to
20 retroactively approve long-term debt for utilities. *See, e.g., Columbus Elec. Coop., Inc.*,
21 2012 WL 1996804 (May 18, 2012) at * 1 (retroactively approving three secured loans and
22 related mortgages); Decision No. 72667 (Little Park Water Company), November 17,
23 2011 at 10-11 (retroactively approving \$140,000 financing request for a bridge loan not
24 previously approved by the Commission and noting that “Little Park is not in compliance
25 with A.R.S. § 40-301 with respect to the promissory note issued to Big Park.”); *Yarnell*
26 *Water Imp. Ass’n, Inc.*, 2009 WL 246452 at *1, 13 (January 20, 2009) (retroactively

³⁰⁰ Ariz. Rev. Stat. § 40-301(C). *See also* Ariz. Rev. Stat. § 40-302(A).

1 approving financing of \$19,827 for purchase of truck); *Park Water Co.*, 2004 WL
2 3410764 (August 10, 2004) (retroactively approving \$37,519 in financing to cover
3 operating costs and plant improvements); *Golden Shores Water Co.*, 2008 WL 622130 at
4 *1-2, 4-5 (involving promissory note to Bank One for loan in amount of \$286,200 for new
5 well and storage tank, stating that “GSWC acknowledges that approval of the loan should
6 have been obtained from the Commission prior to executing the transaction” under § 40-
7 302 and ordering that “Golden Shores Water Company, Inc. is hereby retroactively
8 authorized to borrow \$286,200 from Bank One”); Decision No. 65853 (*Bellefont Water*
9 *Co.*), April 25, 2003 (granting retroactive approval of a \$22,792 loan to Bellefont from
10 shareholder for drilling of well and pump); *Pinecrest Water Co.*, 1993 WL 495133
11 (October 18, 1993) at *1, 4-5 (finding that company “has issued stock without
12 Commission approval” and retroactively approving stock issuance used to fund
13 installation of new main); *Ehrenberg Water Company*, 1996 WL 787937 at *1 (October 9,
14 1996)(approving utility request for the “Commission’s retroactive approval of a \$92,100
15 loan which [the utility] received on April 19, 1994 from the Farmer’s Home
16 Administration...”); *McLeod USA Telecom. Serv., Inc.*, 2010 WL 2864942 (July 12,
17 2010) (granting retroactive approval of debt financing for \$700,000,000); *Park Water Co.*,
18 2004 WL 3410764 (August 10, 2004) (granting retroactive approval of long-term debt for
19 \$37,519 advanced by shareholder to cover operating costs and plant improvements).³⁰¹
20 Obviously, any decision here that the Commission does not have authority to grant
21 retroactive approval of utility financing would mean that all such decisions (and others)
22 are contrary to law and would need to be rescinded and modified by the Commission.

23 **D. The Commission Has Limited Authority to Impose Fines Against**
24 **MRWC.**

25 Finally, the ALJ asked the parties to brief whether the Commission has the
26

³⁰¹ This is not an all-inclusive list of Commission decisions. Rather, this is a persuasive sampling of orders by the Commission granting retroactive approval of long-term debt.

1 authority to and should impose fines or other penalties on MRWC or Ms. Olsen
2 personally for noncompliance with statutes, Commission decisions and/or Commission
3 procedural orders.³⁰² On this issue, the Commission does have limited authority to
4 impose fines against MRWC, but it does not have authority to impose fines or penalties on
5 Ms. Olsen personally because the Commission only has jurisdiction and authority over
6 Arizona public service corporations as expressly stated in Article 15, § 2 of the Arizona
7 Constitution and because the consolidated dockets in this case involved the Company and
8 not Ms. Olsen personally.³⁰³

9 A.R.S. § 40-424(A) provides that “[i]f any corporation or person fails to observe or
10 comply with any order, rule or requirements of the commission or any commissioner, the
11 corporation or person shall be in contempt of the commission and shall, after notice and
12 hearing before the commission, be fined by the commission in an amount not less than
13 one hundred nor more than five thousand dollars, which shall be recovered as penalties.”
14 A.R.S. § 40-425 contains similar penalty provisions.

15 For the reasons noted above, the Commission should not fine or otherwise penalize
16 MRWC on this record. Commission Staff has not suggested that MRWC be found in
17 contempt or fined. The only party proposing such action is Mr. Dougherty as part of his
18 continuing vendetta against MRWC and Ms. Olsen. A contempt finding or financial
19 penalty is not warranted because the Company did not have any ulterior or improper
20 motives relating to filing and approvals of the lease agreements and violations of the
21 ALJ’s procedural orders. The contempt authority in § 40-424 is not intended for this type
22 of procedural or filing error by a Company. Further, as noted by Mr. Becker, “financial
23 penalties on small, financially weak water utilities are counterproductive.”³⁰⁴

24 Ultimately, the testimony of Ms. Olsen established that the Company was acting in
25

26 ³⁰² Tr. V at 1097:6-10 (ALJ Harpring).

³⁰³ See A.R.S. § 40-425(C).

³⁰⁴ Tr. V at 1070:9-12 (Becker).

1 good faith and in an effort to serve the best interests of customers.³⁰⁵ The Commission
2 should *not* sanction or fine MRWC under the extenuating circumstances of this case. Ms.
3 Olsen's testimony clearly shows that MRWC was acting in the public interest and not
4 with any ill intent justifying any penalties against the Company:

5 Q. What is your understanding in terms of the water utility's obligation to
6 comply with Commission decisions?

7 A. I believe that I am to comply to the degree that I can and still meet the
8 obligations that are required by other federal agencies like ADEQ, EPA.

9 Q. So is it your understanding that other regulatory agencies' requirements
10 essentially trump the requirements of the Commission and their decisions?

11 A. No, I don't necessarily believe that. However, it's hard to try to meet both
12 ends, such as I'm talking about the arsenic treatment system. And I
13 understand that the wheels of government turn slowly. However, how can I
14 do what's required of ADEQ and then try to comply with the ACC to meet
15 that end, as far as like the arsenic treatment system is concerned.

16 Q. When you have been presented with a situation where you found a
17 conflict in your ability to comply with both DEQ requirements and ACC
18 requirements, what has been your decision in terms of the action to take?

19 A. I have tried to comply with ACC to the best that I could. I've also had to
20 comply with ADEQ, which left me with no alternative but to still move
21 forward with the arsenic treatment system.

22 Q. Would you say that you selected DEQ's requirements as your priority?

23 A. *I selected my obligations to my customers' health, safety and welfare as
24 my obligation.*

25 Q. And you're speaking to actually being able to supply water that met safe
26 drinking water standards?

A. Yes.³⁰⁶

The Commission simply should not fine or penalize MRWC for its action under the
extenuating and difficult circumstances of this case. Rather, the Commission should
recognize Ms. Olsen and MRWC as a committed and reliable utility operating in the best
interests of utility customers. On the other hand, Mr. Dougherty has stated that his end

³⁰⁵ Tr. I at 354:1-20 (Olsen).

³⁰⁶ Tr. I at 426:10-427:15 (Olsen) (emphasis added).

1 goal is to put MRWC out of business, contrive the takeover of MRWC by Arizona Water
2 Company and that "I'm not stopping until I see [Ms. Olsen] under" and that his "goal is to
3 put this company out of business."³⁰⁷ The Commission should prevent Mr. Dougherty
4 from abusing the Commission complaint process in that fashion.

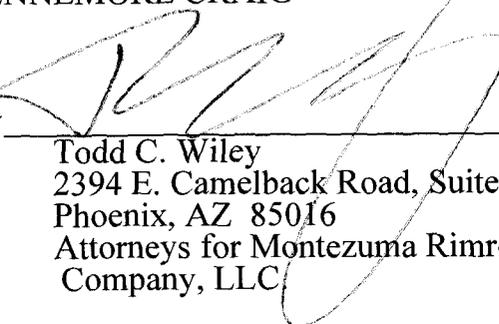
5 **VI. CONCLUSION.**

6 For the reasons stated above, the Commission should issue an order adopting
7 Commission Staff's rate case recommendations as agreed by the Company, including
8 financing approval for the 8,000 gallon hydro-pneumatic pressure tank, the four 20,000
9 gallon storage tanks, the March 22, 2012 lease between MRWC and Nile River for the
10 arsenic building, and the April 2, 2012 lease between MRWC and Financial Pacific for the
11 arsenic treatment facilities. The Commission also should issue an order granting
12 additional rate case expense as requested by the Company.

13 Further, the Commission should issue an order denying the relief requested by Mr.
14 Dougherty in his complaint and dismissing that complaint with prejudice. Finally, the
15 Commission should dismiss the reconsideration dockets under nos. 08-0361 and 08-0362.

16 Dated: August 30, 2013

17 FENNEMORE CRAIG

18
19 By 

20 Todd C. Wiley
21 2394 E. Camelback Road, Suite 600
22 Phoenix, AZ 85016
23 Attorneys for Montezuma Rimrock Water
24 Company, LLC

25 ³⁰⁷ Ex. A-2, Olsen DT at 25; Ex. A-3, Olsen RT at 9; Tr. II at 424:2-15 (Olsen). That
26 sentiment is evidenced in Mr. Dougherty's request for relief against MRWC and his
express testimony at hearing. Further, on June 23, 2013, Tim Hardy docketed a letter
noting that he observed and witnessed Mr. Dougherty threatening Ms. Olsen including
stating that "I won't stop until I see you under." See letter from T. Hardy dated
6/23/2013.

EXHIBIT A

WHEN RECORDED RETURN TO:

Montezuma Rimrock Water Company, LLC
P.O. Box 10
Rimrock, AZ 86335

EASEMENT AGREEMENT

July THIS EASEMENT AGREEMENT (this "Agreement") is made as of this 23rd day of July, 2013 ("Effective Date") by and between, **JOSHUA AND ALICIA BURCH**, husband and wife (collectively "Grantor") and **MONTEZUMA RIMROCK WATER COMPANY LLC**, an Arizona limited liability company ("MRWC").

RECITALS:

A. Grantor owns that real property having a street address of 5245 N. Kramer Dr., Rimrock, Arizona 86335 and legally described as Lots 486 and 487, Lake Montezuma Estates Unit 2, identified in Book 13 of Maps, Page 30 in the records of Yavapai County, Arizona located in Section 36, Township 15 North, Range 5 East of the Gila & Salt River Base & Meridian (the "Grantor Property").

B. MRWC owns adjacent real property having a street address of 4645 E. Tiemann Ln., Rimrock, Arizona 86335 and legally described as Lot 500 Lake Montezuma Estates Unit 2, identified in Book 13 of Maps, Page 30 in the records of Yavapai County, Arizona located in Section 36, Township 15 North, Range 5 East of the Gila & Salt River Base & Meridian (the "Montezuma Property").

C. MRWC desires a perpetual non-exclusive easement in, on, over, through, under and across a portion of the Grantor Property more particularly described on Exhibit A attached hereto (the "Easement Area"), on the terms and conditions stated in Agreement for purposes of obtaining a fifty (50) foot setback there from for the installation, construction, maintenance, operation, use, repair and replacement of a water well and related facilities and appurtenances on the Montezuma Property.

NOW, THEREFORE, in consideration of the premises above and the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, covenant and agree for themselves and their successors and assigns as follows:

1. Grant of Easement. Grantor, as the Grantor of the Easement Area, hereby grants to MRWC, for the use and benefit of MRWC and its successors and assigns, and their partners, members, shareholders, officers, directors, employees, agents, contractors, customers, invitees, licensees, a perpetual, nine (9) foot wide non-exclusive easement (the "Utility Easement") in, on, over, through, under and across the Easement Area for purposes of obtaining a fifty (50) foot setback from the installation, construction, maintenance, operation, use, repair and replacement of a water well on the Montezuma Property.

2. MRWC Use of the Easement Area. MRWC will have no right to place any physical improvements on or within the Easement Area and will have no right of entry onto the Easement Area without the prior written approval of Grantor.

3. Grantor Use of Easement Area. The Grantor use of the Easement Area shall not unreasonably interfere with MRWC's use and enjoyment of the Utility Easement for the purposes described herein. Without limiting the foregoing, Grantor may install landscaping, fencing, or paving within the Easement Area but may not locate any septic or other waste water system tank, treatment or disposal system (i.e., leach field) on the Grantor Property within one hundred (100) feet of a water well on the Montezuma Property.

4. Indemnity. MRWC shall indemnify, defend and hold harmless Grantor and its successors and assigns, for, from and against any and all third party claims, liabilities, and expenses which may be claimed or asserted against MRWC or their successors or assigns for bodily injury, death or property damage or any mechanics' or materialmen's liens on account of the exercise by MRWC of the rights granted under this Agreement (and to discharge of record, by bond or otherwise, any such mechanics' or materialmen's liens or claims of lien); provided, however, in no event shall MRWC be responsible to Grantor for any claims, liens, liabilities, and expenses which may be claimed or asserted against Grantor relating to: the gross negligence or willful misconduct of Grantor, its successors or assigns, or any of its employees, directors, officers, trustors, trustees, agents, affiliates, or personal representatives.

5. No Public Rights. Nothing in this Agreement is intended to create, nor shall be deemed or construed to create, any rights in the general public to use the Easement Area.

6. Term. The term of the Utility Easement shall commence upon the date of recordation of this instrument in the official records of Yavapai County, Arizona, and shall be perpetual.

7. Miscellaneous Provisions.

(a) Notices and Communications. All notices, approvals and other communications provided for herein or given in connection herewith shall be validly given, made, delivered or served, if in writing and sent by either: (i) in person (i.e., by personal delivery); (ii) facsimile; (iii) e-mail transmission; (iv) United States Postal Service, postage prepaid, certified, return receipt requested; or (v) nationally recognized overnight courier (e.g., Federal Express, Airborne, UPS), to the address of the intended recipient as set forth below, or to such other addresses as Grantor and MRWC may from time to time designate in writing and deliver in a like manner:

If to Grantor:

Joshua and Alicia Burch
4702 Marlin
Bay City, TX
Phone No. 979-997-1030

If to MRWC:

Montezuma Rimrock Water Company, LLC
P.O. Box 10
Rimrock, AZ 86335
Phone No. 928-592-9211

Notices, approvals and other communications provided for herein shall be deemed delivered and received upon the earliest of personal delivery, one (1) business day after confirmed facsimile or e-mail transmission, three (3) business days following deposit with the United States Postal Service with postage prepaid, or one (1) business day following deposit with a nationally recognized overnight courier, as herein above provided, prepaid and addressed as set forth above. Any notices delivered and received after 5:00 p.m., Arizona time, or on a Saturday, Sunday or federal or Arizona state holiday shall be deemed delivered and received on the business day immediately following the day such notice would have otherwise been deemed delivered hereunder. The inability to deliver notice because of a changed address of which no notice was given, or the rejection or other refusal to accept any notice, shall be deemed to be the effective receipt of the notice as of the date of such inability to deliver or rejection or refusal to accept.

(b) **Headings.** The headings, captions, numbering system, etc., are inserted only as a matter of convenience and may not be considered in interpreting the provisions of this Agreement.

(c) **Severability of Provisions.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be valid under applicable law, but if any provision of this Agreement shall be invalid or prohibited under this Agreement, such provision shall be ineffective to the extent of such prohibition or invalidation, which shall not invalidate the remainder of such provision or the remaining provisions of this Agreement.

(d) **Counterparts.** This Agreement may be executed in counterparts, any one of which will be deemed an original and all of which, taken together, will constitute one and the same instrument. Facsimile and electronic signatures will be effective as original signatures with regard to this Agreement. Each party represents to the other that execution and delivery of this Agreement has been properly authorized and that all signatures hereon are genuine.

(e) **Governing Law.** This Agreement shall be construed and interpreted and the rights of the parties determined in accordance with the laws of the State of Arizona, without reference to the choice of law provisions of Arizona law.

(f) **Business Day.** If the final day of any period or any date of performance under this Agreement falls on a Saturday, Sunday, or legal holiday, then the final day of the period or the date of performance shall be extended to the next day that is not a Saturday, Sunday or legal holiday.

(g) **Attorneys' Fees.** If either party hereto brings an action or proceeding against the other party to enforce or interpret any of the covenants, conditions, agreements or provisions of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover all costs and expenses of such action or proceeding, including, without limitation, reasonable attorneys' fees, expert witness fees, court costs, and all other reasonable litigation-related expenses.

(a) **Waivers.** No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provisions, whether or not similar, nor shall any waiver be a continuing waiver. Except as expressly provided in this Agreement, no waiver shall be binding unless executed in writing by the party making the waiver. Either party may waive any provisions of this Agreement intended for its benefit; provided, however, such waiver shall in no way excuse the other party from the performance of any of its other obligations under this Agreement.

8. **Binding Effect: Runs with the Land.** This Agreement shall run with the land, shall be a burden upon the Easement Area and every part thereof, shall be binding upon and enforceable against Grantor, and its successors and assigns, including any person or entity having or acquiring any title to or interest in the Easement Area or any part thereof. This Agreement shall run to the benefit of the MRWC Property, and shall inure to the benefit of MRWC, its successors and assigns, and to any person or entity having or acquiring any title to or interest in the MRWC Property. All obligations of Grantor, its successors and assigns, contained in this Agreement may be enforced by MRWC, or its successors and assigns, and by any person or entity with any title to or interest in the MRWC Property. All obligations of MRWC and its successors and assigns under this Agreement may be enforced by Grantor, or its successors and assigns, and by any person or entity having or acquiring any title to or interest in the Easement Area.

[Signatures appear on attached pages]

IN WITNESS WHEREOF, this Agreement is executed as of the day and year first above written.

JOSHUA BURCH, a married man

By: [Signature]
Name: Joshua Burch
Its: _____

ALICIA BURCH, a married woman

By: [Signature]
Name: Alicia Burch
Its: _____

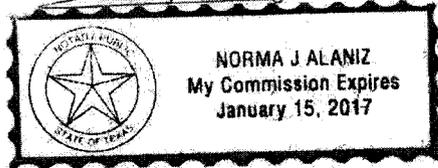
STATE OF TEXAS)
County of NUECES) ss.

The foregoing instrument consisting of 7 pages was acknowledged before me on July 1st, 2013, by Joshua Burch.

[Signature]
Notary Public

My Commission Expires:

01/15/2017



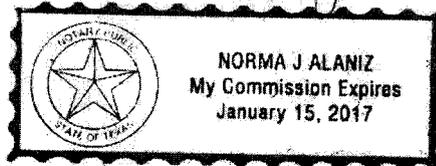
STATE OF TEXAS)
County of NUECES) ss.

The foregoing instrument consisting of 7 pages was acknowledged before me on July 1st, 2013, by Alicia Burch.

[Signature]
Notary Public

My Commission Expires:

01/15/2017



**MONTEZUMA RIMROCK WATER COMPANY
LLC, an Arizona limited liability company**

By: *Patricia Olsen*
Name: Patricia D. Olsen
Title: Manager

STATE OF ARIZONA)
County of Yavapai) ss

The foregoing instrument consisting of 7 pages was acknowledged before me on 23rd of July, 2013, by Patricia Olsen, the Authorized Signatory of Montezuma Rimrock Water Company LLC, an Arizona limited liability company, on behalf of the company.

Sandra Lee Herlund
Notary Public

My Commission Expires:
June 16, 2013

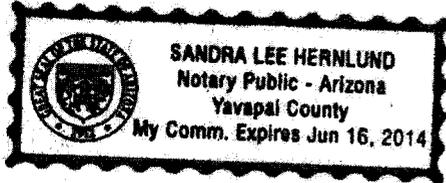


EXHIBIT A
EASEMENT AREA

The Easterly Nine Feet (9') of Lot 486, Lake Montezuma Estates Unit 2, as recorded in Book 13 of Maps, Page 30, Yavapai County, Arizona records.