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 AZ CORP COMMISSION
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BEFORE THE ARIZONA CORPORATION COMMISSION

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

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

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

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

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

Arizona Corporation Commission
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IN THE MATTER OF THE APPLICATION
OF MONTEZUMA RIMROCK WATER
COMPANY, LLC FOR APPROVAL OF A
RATE INCREASE.

Docket No. W-04254A-08-0361

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

Docket No. W-04254A-08-0362

MONTEZUMA RIMROCK WATER COMPANY
REPLY BRIEF

September 20, 2013

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1 Montezuma Rimrock Water Company (“MRWC” or “the Company”) hereby
2 submits the following Reply Brief in support of its application for a rate increase and
3 relating to the complaint proceeding in these consolidated dockets, and in response to the
4 closing brief filed by Mr. Dougherty.

5 **I. BRIEF STATEMENT OF THE ISSUES IN DISPUTE.**

6 **A. The Commission Should Adopt Commission Staff’s Rate Case**
7 **Recommendations and Financing Approvals.**

8 At hearing, the Administrative Law Judge (“ALJ”) directed the parties to brief any
9 and all issues in their closing briefs or the ALJ will have considered the parties as having
10 waived unaddressed issues.¹ In his closing brief, Mr. Dougherty addressed only the three
11 legal issues that the ALJ requested the parties to address in their briefs and he raised a few
12 additional allegations relating to the Company incurring long-term debt without
13 Commission approval based on the Company’s annual reports. Mr. Dougherty did not
14 address (i) the Company’s rate case requests, (ii) Commission Staff’s rate case
15 recommendations, or (iii) the financing applications relating to the hydro-pneumatic
16 pressure tank and the storage tanks. As a result, Mr. Dougherty arguably has waived any
17 opposition to those recommendations and issues. In turn, the Commission should adopt
18 Commission Staff’s rate case recommendations and financing approvals relating to the
19 hydro-pneumatic tank and storage tanks.²

20 **B. The Commission Should Summarily Dismiss Complaint Allegations II,**
21 **IV, VII, VIII, X, XI, XII and XV.**

22 In his brief, Mr. Dougherty also didn’t address various allegations contained in his
23 complaint. Specifically, Mr. Dougherty’s brief doesn’t address (i) Allegation II (alleging
24 that the “Company did not disclose material financial information to Commission staff
25 during a 2009 audit – a \$32,000 long-term debt – that was used to calculate a permanent

26 ¹ Tr. V at 1097:11-1098:15 (ALJ Harpring).

² As noted in its initial brief, MRWC does request additional rate case expense above what Commission Staff has recommended in its testimony.

1 rate increase and whether the company could qualify for a \$165,000 WIFA loan.”³); (ii)
2 Allegation IV (alleging that the “Company improperly includes Well No. 4, DWR 55-
3 213141, as part of its “Water Company Plant Description” in its Annual Reports in 2007,
4 2008, 2009 and 2010.”⁴); (iii) Allegation VII (alleging that “Company is in violation of
5 state and federal safe water standards and is operating under an Arizona Department of
6 Environmental Quality (ADEQ) Consent Order (since June 2010) requiring customers to
7 make an appointment to obtain bottled water from the company’s office.”⁵); (iv)
8 Allegation VIII (alleging that the “Company is in violation of Decision No. 71317 in
9 Docket W-04254-09-0361, 0362 since December 31, 2009 by failing to obtain an ADEQ
10 Certificate of Approval for Well No. 4.”⁶); (v) Allegation X (alleging that the “Company
11 provided incomplete and misleading statements to Commission investigators in January
12 2010 concerning its Yavapai County zoning issues related to Well No. 4.”⁷); (vi)
13 Allegation XI (alleging that the “Company improperly billed and collected an ‘arsenic
14 surcharge in December 2009 in violation of Commission Decision No. 71317.”⁸); (vii)
15 Allegation XII (alleging that the “Company improperly billed and collected an ‘arsenic
16 surcharge in April 2011 in violation of Commission Decision No. 71317.”⁹); or (viii)
17 Allegation XV (alleging that the “Company failed to immediately report to the
18 Commission that [the] Company’s records had been stolen during a series of burglaries
19 that allegedly began in October 2009 and continued into 2010.”)¹⁰ Mr. Dougherty did not
20 present any evidence on these allegations at hearing and did not raise them in his brief.

21 In turn, the only complaint issues that remain in dispute are Allegation I (relating to

22 ³ Amended Complaint at 2, ¶ 19.

23 ⁴ Original Complaint at 3-4, ¶ IV.

24 ⁵ *Id.* at 3, ¶ VII.

25 ⁶ Amended Complaint at 3, ¶ 20.

26 ⁷ *Id.* at 4, ¶¶ 21-22.

⁸ Original Complaint at 3, ¶ XI.

⁹ *Id.* at 3, ¶ XII.

¹⁰ *Id.* at 3-4, ¶ XV.

1 the Company's incurring long-term debt for acquisition of Well No. 4) and Allegation
2 XVII (relating to the arsenic leases). On those issues, Mr. Dougherty appears to make
3 three primary arguments in his brief. First, he claims that "Montezuma's failure to obtain
4 Commission approval before encumbering assets and taking on long-term debt renders the
5 approvals granted in Decision 67583 null and void."¹¹ On this issue, Mr. Dougherty
6 contends that the Company improperly entered into three improper loans—a loan for
7 acquisition of the Well No. 4 property,¹² a loan between Ms. Olsen and MRWC relating to
8 payment for the Well No. 4 property "used by Ms. Olsen to make draws against the
9 Company,"¹³ and a "third unapproved long-term debt to repay Ms. Olsen for a company
10 vehicle."¹⁴ Based on those "loans," Mr. Dougherty seeks to revoke MRWC's CC&N and
11 void Ms. Olsen's acquisition of the Company approved by the Commission in 2005.

12 Second, Mr. Dougherty seeks to preclude approval of the debt under the Nile River
13 and Financial Pacific leases by claiming that the Commission does not have authority to
14 grant retroactive approval for long-term debt incurred by a utility.¹⁵ On this claim, Mr.
15 Dougherty asks the Commission to "deny retroactive approval of the long-term debt
16 associated with [the] Nile River and Financial Pacific [c]apital leases."¹⁶ Third and last,
17 Mr. Dougherty argues that the Commission should impose fines against MRWC and/or
18 Ms. Olsen personally for the Company's non-compliance with the ALJ's procedural
19 orders and the financing statutes.¹⁷ The Commission should reject these claims because
20 they aren't supported by this record and are contrary to Arizona law.

21

22

23 ¹¹ Dougherty Closing Brief at 3.

24 ¹² *Id.* at 15.

25 ¹³ *Id.*

26 ¹⁴ *Id.*

¹⁵ *Id.* at 15-18.

¹⁶ *Id.* at 19.

¹⁷ *Id.* at 19-21.

1 **II. MR. DOUGHERTY DOESN'T HAVE AN ACTIONABLE INTEREST**
2 **RELATING TO THE ARSENIC LEASES AND LONG-TERM DEBT.**

3 To say the least, Mr. Dougherty's closing brief is a confusing mess of misstated
4 facts, incorrect citations to applicable law and unsupported argument. Mr. Dougherty's
5 brief is reminiscent of an anecdote about little Johnny. Little Johnny is making his first
6 appearance in his school's marching band. After watching the band march by, Johnny's
7 dad basks in his son's performance, but says: "That band director sure is bad." Johnny's
8 mom is puzzled and asks: "Why do you say that?" Johnny's dad responds: "Isn't it
9 obvious. Everyone is marching out of step but Johnny." The moral of the story is Mr.
10 Dougherty's case in a nutshell. His complaint against MRWC is out of step with the
11 underlying facts, the testimony of the various witness, Commission Staff's
12 recommendations and governing Arizona law and statutes.

13 Before addressing the fatal flaws in Mr. Dougherty's arguments, Mr. Dougherty's
14 complaint should be dismissed because he has failed to establish any actionable interest
15 relating to Allegations I and XVII in his amended complaint. Simply put, Mr. Dougherty
16 has failed to demonstrate that he has suffered any concrete injury resulting from those
17 allegations sufficient to support action against the Company. Mr. Dougherty has a
18 penchant for saying and doing anything in his attempts to put MRWC and Ms. Olsen out
19 of business, even to the point of misstating the evidence and applicable law. What is
20 conspicuously missing from Mr. Dougherty's closing brief, however, is any proof as to
21 how he has been damaged by the alleged loans or arsenic leases. *Mr. Dougherty does not*
22 *demonstrate that he has suffered any direct or indirect injury relating to the long-term*
23 *debt or arsenic lease issues cited in his brief.*

24 **A. Mr. Dougherty Has Failed to Demonstrate That He Was Harmed or**
25 **Impacted by the Brunner Deed of Trust for the Well No. 4 Property or**
26 **the Arsenic Leases and A.R.S. § 40-246(A) Precludes Mr. Dougherty's**
Complaint Relating to Debt Costs Under the Arsenic Leases.

Absent proof of such injury, Mr. Dougherty simply does not have an actionable
interest relating to the alleged long-term debt and arsenic leases sufficient to pursue a

1 complaint against MRWC or seek relief on those issues as stated in Allegations I and
2 XVII of his amended complaint. Mr. Dougherty owns property within MRWC's CC&N,
3 but he is not a customer of MRWC and he is not receiving utility service from MRWC.
4 Incredibly, Mr. Dougherty does not plan on becoming a customer of MRWC unless his
5 well goes dry.¹⁸ As noted by Commission Staff in its brief, that is nothing more than a
6 "hypothetical circumstance that is clearly an inadequate stake in the Company's rates to
7 establish standing to contest rate issues."¹⁹

8 Mr. Dougherty did not even remotely incur any damages or harm resulting from
9 MRWC incurring long-term debt for the Well No. 4 property or the Company entering the
10 Nile River and Financial Pacific leases without Commission approval. The Well No. 4
11 property has been paid in full and MRWC does not have any existing debt obligations for
12 that property, which necessarily means that customers have not suffered any harm from
13 MRWC incurring debt under the deed of trust for the Well No. 4 property. In fact, the
14 testimony from Mr. Scott is *undisputed* that MRWC will benefit from the use and
15 operation of Well No. 4 for back-up water supply and fire flow.²⁰

16 In the unlikely event that Mr. Dougherty becomes a customer of MRWC, he would
17 benefit likewise from use of Well No. 4. *Mr. Dougherty did not present any evidence at*
18 *hearing that MRWC's debt obligation under the deed of trust with Ms. Brunner harmed*
19 *or impacted Mr. Dougherty in any way.* Allegation I of his amended complaint should be
20 dismissed as a matter of law for lack of actionable interest.

21 Mr. Dougherty's lack of interest is even more pronounced relating to the arsenic
22 leases and Allegation XVII in his amended complaint. It is absolutely undisputed that the
23 Nile River and Financial Pacific leases serve the public interests of MRWC and its
24 customers by facilitating installation and operation of necessary Arsenic Treatment

25 _____
26 ¹⁸ Tr. IV at 763:1-10 (Dougherty).

¹⁹ Commission Staff Closing Br. at 26.

²⁰ Tr. II at 712:12-21 (Scott).

1 Facilities (ATF). Mr. Dougherty's attempts to prevent MRWC from financing the ATF
2 are contrary to the interests of MRWC's customers.

3 Obviously, since Mr. Dougherty is not a customer of MRWC, he will not pay any
4 increased rates resulting from retroactive approval of the long-term debt under the arsenic
5 leases. As such, Mr. Dougherty doesn't have any actionable interest relating to the
6 Company incurring long-term debt under the Nile River and Financial Pacific leases.
7 A.R.S. § 40-246(A) provides that any person may file a complaint "setting forth any act or
8 thing done or omitted to be done by any public service corporation in violation , or
9 claimed to be in violation, of any provision of law or any order or rule of the
10 commission..." That language, however, doesn't allow Mr. Dougherty to file claims
11 against MRWC without any interest in the alleged violation.

12 In fact, A.R.S. § 40-246(A) goes on to state that "no complaint shall be entertained
13 by the Commission, except upon its own motion, as to the reasonableness of any rates or
14 charges of any gas, electrical, water or telephone corporation, unless it is signed ... by not
15 less than twenty-five consumer or purchasers, or prospective consumers or purchasers, of
16 the service." In his brief, Mr. Dougherty's Allegation XVII relating to the arsenic leases
17 has morphed into an argument that the Commission should deny approval of the long-
18 term debt under the arsenic leases for the reasons stated in his complaint. In essence, Mr.
19 Dougherty is asking the Commission to prevent MRWC from recovering the debt costs
20 associated with the arsenic leases, which is a challenge to MRWC's proposed rates..

21 Because Mr. Dougherty is not a customer of MRWC, he will not suffer any injury
22 resulting from recognition of that debt in the Company's rate case and, therefore, he does
23 not have standing to pursue Allegation XVII. Even if Mr. Dougherty has standing, A.R.S.
24 § 40-246(A) precludes a complaint challenging rates unless 25 customers sign the
25 complaint. Here, the only person opposing the debt under the ATF leases is Mr.
26 Dougherty—a non-customer. Allegation XVII must be dismissed by statute.

1 **B. Mr. Dougherty's Personal Vendetta Against MRWC and Ms. Olsen Is**
2 **Not an Actionable Interest.**

3 The bottom line is that Mr. Dougherty simply does not have any actionable interest
4 relating to approval of the long-term debt under the Brunner deed of trust or the Nile
5 River and Financial Pacific leases. Mr. Dougherty's only stated interest in opposing those
6 leases is that he was attempting to put the Company in a position where "[t]he company
7 would have violated the ADEQ consent order and we would have been in an entirely
8 different regulatory environment."²¹ Put simply, Mr. Dougherty's "end goal" of voiding
9 MRWC's CC&N and orchestrating Arizona Water Company's takeover of the service
10 territory is not sufficient to pursue a complaint action against MRWC in this case relating
11 to long-term debt under the Brunner deed of trust and the arsenic leases.²²

12 A.R.S. § 40-246(B) provides that "[t]he Commission need not dismiss a complaint
13 because of the absence or direct damage to the complainant." While that statute gives the
14 Commission discretion to consider a complaint even if the complainant has not suffered
15 "direct damage," that statute recognizes that a complainant still must be aggrieved in some
16 fashion, either direct or indirect. "Under the statutory scheme governing the ACC's
17 regulation of public service corporations, *aggrieved parties* have extensive rights to seek
18 administrative remedies, including 'investigations, hearings and appeals,' into whether the
19 public service corporation has violated the law or a rule or order of the ACC."²³ Here,
20 however, Mr. Dougherty is not an aggrieved party in any way. He hasn't suffered any
21 direct, indirect or other concrete damage from the alleged violations relating to the long-
22 term debt under the Brunner deed of trust or the arsenic leases.

23 On page 13 of his closing brief, Mr. Dougherty vaguely cites the need to "serve the
24 public interest and protect ratepayers from unscrupulous operators." Mr. Dougherty's

25 ²¹ Tr. at 813:7-814:6 (Dougherty).

26 ²² Tr. II at 840:10-15 (Dougherty) (emphasis added).

²³ *City of Casa Grande v. Arizona Water Co.*, 199 Ariz. 547, 551, n.3, 20 P.3d 590, 594 (App. 2001) (citing A.R.S. § 40-246)(emphasis added).

1 claims are a charade. As a non-customer of MRWC, Mr. Dougherty is not impacted or
2 aggrieved by the Company incurring long-term debt or the Company's filing errors
3 relating to the leases. Mr. Dougherty's attempt to create an abstract, "public interest"
4 injury out of thin air doesn't give him an actionable interest.

5 Nor can Mr. Dougherty assert the rights or interests of MRWC's existing
6 customers. As stated by Mr. Dougherty at hearing, he is not representing any MRWC
7 customers.²⁴ Nor could Mr. Dougherty represent the legal interests of MRWC customers.
8 As stated in *Tonto Creek Estates*, for example, "[i]n order for a party to assert the
9 constitutional rights of a third person, that party must have a substantial relationship with
10 the third person, the third person must be unable to assert the constitutional right on his or
11 her own behalf, and the failure to grant the party standing must result in a dilution of the
12 third person's constitutional rights."²⁵ Even if Mr. Dougherty was a customer of MRWC,
13 he has failed to demonstrate any harm to customers of MRWC resulting from long-term
14 debt for the Well No. 4 property or the arsenic leases.

15 **III. OTHER THAN RATE CASE EXPENSE, THE RATE CASE ISSUES ARE**
16 **UNDISPUTED.**

17 In terms of the rate case, there are virtually no issues in dispute. The Company is
18 willing to accept the recommendations from Commission Staff and Mr. Becker.²⁶ In his
19 responsive testimony, Mr. Becker recommends a revenue increase of \$27,946 or 27.59%
20 over the test year revenues of \$101,276.²⁷ Mr. Dougherty did not oppose Commission
21 Staff's rate case recommendations in his closing brief except for opposing approval of the

22 ²⁴ Tr. IV at 790:8-13 (Dougherty)("Q. And you are not appearing here today on behalf of
23 any customers of Montezuma Rimrock Water Company? A. No, I am not. Q. You are
24 here appearing on behalf of yourself, agreed? A. Correct.").

25 *Tonto Creek Estates Homeowners Ass'n v. Arizona Corp. Comm'n*, 177 Ariz. 49, 56,
26 864 P.2d 1081, 1088 (App. 1993) (citing *Rasmussen by Mitchell v. Fleming*, 154 Ariz.
27 207, 220, 741 P.2d 674, 687 (1987); *State v. B Bar Enterprises, Inc.*, 133 Ariz. 99, 101 n.
28 2, 649 P.2d 978, 980 n. 2 (1982)).

29 ²⁶ Tr. I at 35:15-36:10 (Olsen); Ex. A-3, Rebuttal Testimony of Patricia Olsen ("Olsen
30 RT") at 2-4, 7-8.

31 ²⁷ Ex. S-2, Responsive Testimony of Gerald Becker ("Becker RT"), at 4.

1 long-term debt under the arsenic leases.

2 Likewise, Commission Staff recommends approval of two surcharges for \$18,541
3 of debt related to an 8,000 gallon hydro-pneumatic pressure tank and \$108,000 in debt for
4 four 20,000 gallon storage tanks.²⁸ Mr. Dougherty did not oppose approval of those
5 financings or the surcharges for those improvements in his closing brief. Commission
6 Staff based its recommendations on a cash flow analysis “that provides the Company
7 adequate cash flow to pay its bills including the full amount due for the Arsenic Treatment
8 System excluding media costs.”²⁹ As such, the Commission should adopt the rate case
9 recommendations proposed by Commission Staff based on that cash flow analysis.

10 In his testimony, Mr. Becker also recommended that the Commission rescind its
11 requirement that MRWC maintain a surety bond as ordered in Decision No. 67583. Mr.
12 Becker explained that “the transfer of the Company occurred in 2005 and the Company
13 continues to provide service under present ownership. Staff believes the original purpose
14 of the bond no longer exists.”³⁰ On those issues, the Company supports Mr. Becker’s
15 recommendation to rescind the requirement for MRWC to post a \$30,000 surety bond.
16 Mr. Dougherty did not oppose that recommendation either and it should be adopted.

17 As noted in the Company’s initial brief, MRWC requests that the Commission
18 grant additional rate case expense under the extenuating circumstances of this case.
19 Commission Staff and Mr. Becker recommend \$57,000 in rate case amortized over four
20 years, or \$14,250 per year.³¹ Unfortunately, the actual rate case expense in these
21 consolidated dockets is much, much higher. As noted on the Summary of Legal and Rate
22 Case Expenses admitted as Exhibit A-56, the rate case expense requested by MRWC is

23
24
25 ²⁸ *Id.* at 5.

26 ²⁹ *Id.* at 5.

³⁰ *Id.* at 4.

³¹ Ex. S-1, Direct Testimony of Gerald Becker (“Becker DT”), at 15.

1 \$92,725.50.³² As such, MRWC requests that the Commission authorize \$92,725.50 in
2 rate case expense, amortized over five years, or \$ 23,181.38 per year. It simply isn't fair
3 or reasonable for MRWC to incur such legal expenses due primarily to Mr. Dougherty's
4 actions against the Company.

5 **IV. MRWC DID NOT VIOLATE DECISION 67583.**

6 On pages 3-15 of his brief, Mr. Dougherty argues that "Montezuma's failure to
7 obtain Commission approval before encumbering assets and taking on long-term debt
8 renders the approvals granted in Decision 67583 null and void." On this argument, Mr.
9 Dougherty misstates the facts, ignores controlling testimony and misapplies Arizona law.

10 **A. Mr. Dougherty Misstates Decision No. 67583.**

11 In his closing brief, Mr. Dougherty argues that MRWC violated "Decision 67583
12 requiring it to obtain prior approval before it borrowed \$32,000 in 2005 to purchase land
13 for Well No. 4..."³³ This argument fails because Decision No. 67583 does not say that
14 the acquisition will be voided if MRWC incurred long-term debt without approval.

15 Rather, in Decision 67583, the Commission ordered that "MRWC shall not
16 encumber the assets of the utility in any way without prior Commission approval."³⁴
17 Decision 67583 went on to state that "IT IS FURTHER ORDERED that Montezuma
18 Rimrock Water Company, LLC shall comply in all respects with Findings of Fact No. 37
19 and Conclusion of Law No. 6 or the approval granted hereinabove shall be null and
20 void."³⁵ This argument is a back-door attempt by Mr. Dougherty to revoke MRWC's
21 CC&N and put the Company out of business.

22 As a matter of undisputed fact, MRWC did not violate Decision 67583 when it
23 executed the deed of trust with Ms. Brunner because that transaction did not encumber

24 ³² The Company's actual rate case expenses are even higher, but MRWC is willing to
25 accept \$92,725.50.

26 ³³ Dougherty Closing Brief at 3.

³⁴ ACC Decision No. 67583 at 9, ¶ 37.

³⁵ *Id.* at 11.

1 any used or useful asset of MRWC. In his brief, Mr. Dougherty doesn't address A.R.S.
2 § 40-285 or the fact that Well No. 4 is not being used by MRWC to provide utility service.
3 Because Well No. 4 is "not necessary or useful" in providing water service to customers,
4 A.R.S. § 40-285(A) and (C) expressly allow MRWC to dispose of or encumber such asset
5 without Commission approval. On these issues, Mr. Dougherty doesn't recognize or
6 understand the distinction between incurring long-term debt under A.R.S. § 40-301 and
7 encumbering a useful or non-useful asset of the utility under A.R.S. § 40-285.

8 In his closing brief, Mr. Dougherty also misconstrues Finding of Fact No. 37 in
9 Decision No. 67583. Mr. Dougherty summarily concludes that the "Commission included
10 Paragraph 37 and Conclusion of Law No. 6 in Decision 67583 to provide future regulators
11 the opportunity to take serious punitive action against Montezuma if it failed to abide by
12 its provisions."³⁶ Mr. Dougherty's suggestion that the Commission included a poison pill
13 in Decision No. 67583 in order to punish MRWC and Ms. Olsen is unsupported and, if
14 true, would be a violation of fundamental due process. Not only is that contention
15 completely unsupported, but it illustrates the true nature of Mr. Dougherty's complaint
16 against MRWC. He is hoping for punitive and retaliatory action against MRWC and Ms.
17 Olsen. That's what Mr. Dougherty's complaint is all about. Nothing more, nothing less.

18 Unfortunately, Mr. Dougherty ignores Ms. Olsen's undisputed testimony at
19 hearing that the statement in Finding of Fact No. 37 that "MRWC shall not encumber the
20 assets of the utility in any way without prior Commission approval" references
21 encumbrances on "the current assets of the water company" at the time of the
22 decision/acquisition.³⁷ When Ms. Olsen acquired the Company, she "requested to take
23 out a loan for the water company in order to purchase it" and "was informed by ACC that
24 I could not – you know, the assets of the water, the current assets of the water company
25

26 ³⁶ Dougherty Closing Brief at 13.

³⁷ Tr. I at 167:18-20, 168:20-25 (Olsen).

1 could not be encumbered.”³⁸ Put simply, Decision No. 67583 and Finding of Fact No. 37
2 prevented the Company from encumbering any used and useful assets of the Company at
3 the time of the acquisition without prior approval. It is undisputed that the deed of trust
4 for the Well No. 4 property did not encumber any used and useful assets of the Company.

5 **B. The Commission Should Ignore Mr. Dougherty’s Misstatements of the**
6 **Underlying Evidence and Testimony Relating to Well No. 4.**

7 On pages 3-8 of his closing brief relating to the Well No. 4 property, Mr.
8 Dougherty makes numerous misstatements of the underlying factual record. As a result, it
9 is necessary to set the record straight on those issues.

10 **1. The Well No. 4 property has been paid in full and MRWC owns**
11 **that property free and clear.**

12 On page 3 of his brief, Mr. Dougherty states that MRWC “borrowed \$32,000 in
13 2005 to purchase land for Well No. 4.” Mr. Dougherty insinuates that MRWC has
14 continuing debt obligations relating to the Well No. 4 property. Mr. Dougherty is wrong
15 on all accounts relating to these issues.

16 Contrary to Mr. Dougherty’s accusation, the Company did not borrow \$32,000 to
17 purchase the Well No. 4 property. Rather, Ms. Brunner conveyed the property to MRWC
18 subject to payment of \$32,000. Originally, Ms. Olsen intended to purchase the Well No. 4
19 property in order to use it as part of the ATF. In 2005, the Company agreed to purchase
20 the property for \$35,000 from property owner Ms. Brunner as the proposed site for Well
21 No. 4. The Company made a down payment of \$3,000 and the property transfer was
22 subject to payment of \$32,000 for the property.³⁹ On or about November 16, 2005, Ms.
23 Brunner recorded a Warranty Deed to MRWC (Yavapai County Recorder No. B-4335 P-
24 428) conveying the property to the Company.

25 ³⁸ Tr. I at 114:7-17 (Olsen).

26 ³⁹ Ex. A-20, Cashier’s check to Yavapai Title dated 8/15/2011; A-21, Deed of Release and
Full Conveyance dated 8/15/2011; Tr. I at 67:22-69:11 (Olsen); Ex. A-2, Olsen DT at 20-
27.

1 It should be noted that Ms. Olsen paid for the Well No. 4 property herself. As
2 noted by Mr. Campbell, the Company's payments to Ms. Brunner for the Well No. 4
3 property were taken out of the Company's drawing account, meaning that those payments
4 reflect Ms. Olsen's personal investments in the Company.⁴⁰ As stated by Mr. Campbell,
5 "I treated it as a personal, a payment of personal, on her part personally, so that's why I
6 took it out of the drawing account. And that's standard accounting practice."⁴¹ Mr.
7 Becker echoed that point by testifying it is appropriate for MRWC to use a "draw" or
8 "capital" account to pay for personal expenses of Ms. Olsen, because a draw account is an
9 accumulation of money that "has flowed back to the company."⁴²

10 On August 15, 2011, Ms. Olsen issued a cashier's check from personal funds to
11 pay off the remaining amount for the Well No. 4 property.⁴³ This evidence shows that Ms.
12 Olsen invested over \$30,000 of her own money on the Well No. 4 property. On August
13 22, 2011, Yavapai Title Agency recorded a Deed of Release and Full Reconveyance with
14 the Yavapai County Recorder (Recorder No. B:4829, P:739) releasing all rights to the
15 property.⁴⁴ Thus, the Company is the owner of the property, there is no existing long-term
16 debt relating to that property and there are no Company debts at issue.

17 On page 6 of his brief, Mr. Dougherty states that "[d]uring her direct examination,
18 Ms. Olsen falsely testified that the property 'was not owned by the water company at the
19 time' and that she 'also testified that she didn't consider it an asset of the company'
20 (citing Tr. I at 114:14-17). Mr. Dougherty misleads the Commission on this issue--what
21 Ms. Olsen actually testified to on page 114 of the transcript was:

22 When I bought the water company, I had requested to take out a loan for the
23 water company in order to purchase it. I was informed by ACC that I could
not – you know, the assets of the water, the current assets of the water

24 ⁴⁰ *Id.* at 596:16-19 (Campbell).

25 ⁴¹ *Id.* at 587 (Campbell):

26 ⁴² Tr. IV at 1042:10-20 (Becker)

⁴³ Ex. A-20; Tr. I at 68:20-69:7 (Olsen); Ex. A-2, Olsen DT at 26.

⁴⁴ Ex. A-21; Ex. A-2, Olsen DT at 26.

1 company could not be encumbered. So I went back and said – there was
2 some back and forth about this. But ultimately I paid cash for the water
3 company. And so when I bought Ms. Brunner’s piece of property, it was
not, I did not consider it an asset of the water company. It was not owned
by the water company at the time.⁴⁵

4 In that testimony, Ms. Olsen explained that she did not consider the Well No. 4 property
5 to be an asset of the water company because it was not owned by the water company “at
6 the time” she acquired the Company in 2005 and, therefore, she did not consider the Well
7 No. 4 property to be an asset of the utility as referenced in Decision No. 67583. That
8 makes perfect sense given that Well No. 4 property was not a “necessary or useful” asset
9 of the Company under A.R.S. § 40-285. These facts do not show any willful intent to
10 avoid the financing statutes, but instead shows that Ms. Olsen was attempting to resolve
11 the arsenic treatment issues in the best interest of the Company and its customers.

12 **2. MRWC has maintained its books in accordance with the NARUC**
13 **System of Accounts.**

14 On page 3 of his brief, Mr. Dougherty claims that Ms. Olsen “provided false
15 information to the Company’s accountant, thereby violating a second requirement in
16 Decision No. 67583 that the Company maintain its books and records in accordance with
17 NARUC Uniform System of Accounts.” That argument is complete fiction.

18 Mr. Dougherty did not present any evidence demonstrating that MRWC failed to
19 maintain its books in accordance with NARUC standards. To the contrary, Mr. Becker
20 testified at hearing that he does not consider MRWC to be non-compliant with the
21 NARUC Uniform System of Accounts, although there is room for improvement.⁴⁶ As
22 such, the evidence is undisputed that MRWC has maintained its books and records in
23 accordance with the NARUC Uniform System of Accounts. Mr. Dougherty’s claims to
24 the contrary are completely unsupported by any facts or testimony.

25
26 ⁴⁵ Tr. I at 114:7-17 (Olsen).

⁴⁶ Tr. IV at 896:1-20 (Becker).

1 3. Mr. Dougherty's reliance on MRWC's utility annual reports is
2 misguided and misplaced.

3 In his brief, Mr. Dougherty insinuates that Ms. Olsen misled Mr. Campbell by
4 telling him that "she had personally paid off the \$28,000 balance on the Brunner loan in
5 2010." Mr. Dougherty then focuses on the Company's utility annual reports and listing or
6 not-listing of the Brunner deed of trust on those annual reports. Mr. Dougherty suggests
7 that the Company was somehow hiding its acquisition of the Well No. 4 property from the
8 Commission. That claim is flawed for several reasons.

9 First and foremost, as noted above, the Brunner deed of trust and associated
10 documents were all recorded with the Yavapai County Recorder as a matter of public
11 record. The notion that MRWC was attempting to hide a publicly recorded transaction is
12 completely unsupported on this record. Second, it was well known to Mr. Dougherty, the
13 Commission and Yavapai County that the Company had acquired the Well No. 4 property
14 for purposes of constructing a new well and using it for arsenic treatment, back-up water
15 supply and fire flow. Again, as testified by Mr. Scott, use of Well No. 4 in utility
16 operations will greatly benefit the Company and its customers.⁴⁷

17 Third, Mr. Dougherty focuses on the annual reports, but the evidence is undisputed
18 that Commission Staff does not use or rely on those annual reports relating to financing
19 approvals or rate cases for small Class D utilities like MRWC.⁴⁸ As a result, the utility
20 annual reports from 2005-2011 are largely irrelevant in this case. Mr. Dougherty simply
21 does not understand how those annual reports are used by Commission Staff relating to
22 rate cases and financing applications.⁴⁹

23 Finally, the Company did not enter any loans as claimed by Mr. Dougherty in his
24 brief. At hearing, Mr. Campbell confirmed that the items listed on the annual report are

25 ⁴⁷ Tr. II at 712:12-21 (Scott).

26 ⁴⁸ Tr. IV at 897:2-16, 899:20-22, 900:8-25 (Becker).

⁴⁹ Tr. IV at 804:10-18 (Dougherty) ("Q. Okay. What do you think is supposed to be done
 with the annual reports? A. I don't know.").

1 not loans, but reflect “personal monies that [Ms. Olsen] put in the company.”⁵⁰ Mr.
2 Campbell was attempting to disclose reimbursement obligations from the Company to Ms.
3 Olsen for personal payments.⁵¹ Put simply, the “loans” listed on the Company’s annual
4 reports—the loan for Well No. 4 between Ms. Olsen and MRWC and the car loan—were
5 not actual loans. Rather, they were listed on the reports to reflect personal payments by
6 Ms. Olsen. What that means is that MRWC did not incur long-term debt on these items
7 without Commission approval. The Commission should disregard Mr. Dougherty’s
8 claims relating to the Company’s prior annual reports from 2005-2011.

9 **4. The Company and Ms. Olsen did not enter a loan for repayment**
10 **of the Well No. 4 payments or for the Company car.**

11 On page 4 of his brief, Mr. Dougherty states that “based on Ms. Olsen’s assertion
12 that she had personally paid off the Brunner loan, Mr. Campbell entered a \$28,000 long-
13 term loan from Ms. Olsen to the Company on to the 2010 Annual Report’s balance sheet.”
14 From there, Mr. Dougherty concludes that Ms. Olsen and the Company entered a loan
15 agreement relating to the Well No. 4 property. Essentially, Mr. Dougherty has read the
16 annual reports and, based solely on those annual reports, concluded that Ms. Olsen and the
17 Company have entered various loan agreements. Mr. Dougherty didn’t make any effort to
18 investigate these claims or determine whether any actual loans exist.

19 As a result, Mr. Dougherty misstates the facts. Ms. Olsen and MRWC did not
20 enter a loan agreement for the Well No. 4 property or any other asset of the Company.
21 Rather, Ms. Olsen invested her personal funds for the acquisition of the Well No. 4
22 property and then she and Mr. Campbell listed those investments on the annual reports in
23 an effort to document Ms. Olsen’s right to reimbursement for those capital investments.

24 A perfect example of Mr. Dougherty’s misstatement of the facts is his arguments
25 relating to the car loan. Mr. Dougherty states that “Mr. Campbell also testified about

26 ⁵⁰ Tr. III at 578:1-3 (Campbell).

⁵¹ *Id.* at 613:5-11 (Campbell).

1 another unapproved \$11,180 long-term loan from Ms. Olsen to the Company identified as
2 Loan #3 in the 2012 Annual Report.”⁵² Mr. Campbell did not testify that Ms. Olsen and
3 the Company entered a loan agreement for the car. Rather, he listed that loan on the
4 annual reports to disclose the Company’s obligation to reimburse Ms. Olsen.

5 Contrary to that assertion by Mr. Dougherty, it’s undisputed that the Company did
6 *not* enter any loan agreement for the car. Rather, Ms. Olsen entered the original car loan
7 personally.⁵³ Ms. Olsen was the original titleholder for the car and she paid off the car
8 loan in full herself, and added MRWC to the title *after* she had paid the car loan in full.⁵⁴

9 The same holds true for Mr. Dougherty’s claim that the Company entered a loan
10 agreement with Ms. Olsen for repayment of the Well No. 4 payments. On pages 13-15 of
11 his brief, Mr. Dougherty concocts an argument that “the Company ‘created’ debt to Ms.
12 Olsen through the unsupported claim by Ms. Olsen that she personally repaid the Brunner
13 loan in 2010” and Mr. Dougherty contends that “the new unapproved long-term debt,
14 known as Loan #2, was then used by Ms. Olsen to make draws against the Company.”⁵⁵

15 This argument is silly for several reasons. Mr. Dougherty’s suggestion that the
16 Company created debt to Ms. Olsen based on telling Mr. Campbell that she repaid the
17 Brunner loan in 2010 is false. As testified by Mr. Campbell, Ms. Olsen made payments to
18 Ms. Brunner for the Well No. 4 property through the Company’s draw account, reflecting
19 personal payments by Ms. Brunner.⁵⁶ As the Company owner, Ms. Olsen is entitled to
20 take money from the Company’s draw or capital accounts, which reflect money to the
21 owner. Here, Ms. Olsen took those draws and used those owner funds to pay for the Well
22 No. 4 property. Ms. Olsen then finally paid off the Well No. 4 property in August 2011.
23 Ms. Olsen did not mislead Mr. Campbell in any way on these issues. The testimony is

24 ⁵² Dougherty Closing Br. at 4.

25 ⁵³ Tr. III at 526:25-527:5 (Olsen).

26 ⁵⁴ *Id.* at 527:6-22 (Olsen); Tr. III at 613:5-11 (Campbell).

⁵⁵ Dougherty Closing Br. at 15.

⁵⁶ Tr. III at 587:1-20 (Campbell):

1 undisputed that Ms. Olsen and MRWC did *not* enter any loan for the Well No. 4
2 payments.⁵⁷ Mr. Dougherty's claims to the contrary are entirely unsupported and contrary
3 to Ms. Olsen's undisputed testimony.⁵⁸

4 C. **Mr. Dougherty Conveniently Ignores the Compelling Testimony of Mr.**
5 **Becker, Mr. Scott and Ms. Burns.**

6 In his brief, Mr. Dougherty conveniently ignores the compelling testimony
7 provided at hearing by Mr. Becker, Mr. Scott and Ms. Burns. Mr. Dougherty's failure to
8 address the testimony of these witnesses is telling.

9 1. **Testimony of Gerry Becker.**

10 Not surprisingly, Mr. Dougherty does not address Mr. Becker's testimony in his
11 closing brief. Mr. Dougherty recognizes that he simply can't overcome Mr. Becker's
12 testimony on many issues. To start, Mr. Becker testified that installation of the ATF "was
13 a good thing for Montezuma's customers" and that Commission Staff is in full support of
14 the Company's efforts to install and construct the ATF.⁵⁹ Mr. Becker testified that
15 MRWC is providing reliable and adequate service to customers.⁶⁰ Mr. Becker supports
16 retroactive approval of the Nile River and Financial Pacific leases, and he testified that the
17 terms and conditions of those leases met the appropriate approval requirements set forth in
18 Arizona statutes.⁶¹ What's more, whether or not those leases were filed in March/April
19 2012 is immaterial to Staff because Mr. Becker would have made the same

20 ⁵⁷ Tr. III at 525:25-526:10 (Olsen) ("Q. Is there any loan agreement in place between you
21 and the company as we sit here today? A. No. Q. And is the Company making any loan
22 payments to you for the Well No. 4 property? A. No.").

23 ⁵⁸ On page 15 of his brief, Mr. Dougherty requests that the Commission deny MRWC's
24 financing application relating to the reimbursement agreement with Ms. Olsen for her
25 personal payments relating to the Well No. 4 property (Docket No. 12-0205). As stated at
26 hearing and in prior pleadings, the Company is not seeking approval of any financing for
the Well No. 4 property in these consolidated dockets. Commission Staff has determined
that Well No. 4 is not currently used and useful and, therefore, the Company is not
seeking to include any financing relating to Well No. 4 in the pending rate case.

⁵⁹ Tr. IV at 887:21-24 (Becker).

⁶⁰ *Id.* at 889:19-22 (Becker).

⁶¹ *Id.* at 888:4-12 (Becker).

1 recommendations for approval as he has done now.⁶²

2 Further, Mr. Becker testified that utility annual reports for smaller Class D and
3 Class E are typically not relied on in rate cases because “typically you have to help them a
4 lot to make sense of things.”⁶³ Thus, Mr. Dougherty’s focus on those prior annual reports
5 is largely irrelevant. Finally, with respect to retroactive approval of the ATF leases, Mr.
6 Becker explained that “when all is said and done and at the end of the day, we put the
7 public safety over getting the paperwork in. And we think that it was more important for
8 the company to get the arsenic treatment plant in when she got it in.”⁶⁴ Mr. Becker’s
9 testimony is compelling and convincing on these issues.

10 **2. Testimony of Marlin Scott.**

11 Mr. Dougherty also did not discuss Mr. Scott’s testimony in his initial brief—again
12 likely because Mr. Dougherty simply doesn’t have any responses to Mr. Scott’s
13 testimony. On the engineering issues, Mr. Scott testified that he did not see anything
14 wrong with what the Company did in regards to Well No. 4 in this case.⁶⁵ Mr. Scott
15 confirmed that the Company has been providing arsenic lab tests and that those lab results
16 show that MRWC is meeting arsenic Safe Drinking Water standards.⁶⁶

17 Mr. Scott testified that MRWC is providing reasonable and adequate water service
18 to its customers.⁶⁷ Based on his prior experience with MEPOA, Mr. Scott agreed that the
19 company had substantial service and operational problems prior to Ms. Olsen’s
20 acquisition of the Company.⁶⁸ Mr. Scott went on to testify that after acquisition of the
21 Company, Ms. Olsen substantially improved the quality of operations and service by the

22
23 ⁶² *Id.* at 888:13-22 (Becker).

24 ⁶³ *Id.* at 882:8-10 (Becker).

25 ⁶⁴ *Id.* at 926:23-927:4 (Becker).

26 ⁶⁵ *Id.* at 692:20-24 (Scott).

⁶⁶ *Id.* at 693:23-694:5 (Scott).

⁶⁷ *Id.* at 696:2-5 (Scott).

⁶⁸ *Id.* at 697:1-17 (Scott).

1 Company.⁶⁹ Mr. Scott agreed that “Ms. Olsen’s ownership of this company has improved
2 the quality of service that the company is providing to its customers.”⁷⁰

3 Finally, Mr. Scott testified that he and Ms. Olsen had been in communication
4 relating to the arsenic leases—proving that Ms. Olsen was not hiding anything from the
5 Commission and demonstrating that Ms. Olsen and MRWC intended for Commission
6 Staff to review and evaluate those leases.⁷¹ Mr. Scott’s testimony dooms many of Mr.
7 Dougherty’s alleged issues and arguments stated in his brief.

8 **3. Testimony of Vivian Burns.**

9 Incredibly, Mr. Dougherty also ignores Ms. Burns’ testimony in his opening brief,
10 which is ironic given that Mr. Dougherty subpoenaed Ms. Burns to testify at hearing. In
11 no uncertain terms, Ms. Burns’ testimony supports MRWC. Like Mr. Scott, Ms. Olsen
12 was in constant communication with Ms. Burns/ADEQ—again showing that Ms. Olsen
13 and MRWC were cooperating and working with state regulatory agencies.⁷²

14 Mr. Dougherty entirely disregards the April 26, 2012 meeting between MRWC,
15 ADEQ and Commission Staff. As testified by Ms. Burns, ADEQ, Commission Staff and
16 Ms. Olsen met on April 26, 2012. According to Ms. Burns, Ms. Olsen advised ADEQ and
17 Commission Staff that she was in the process of getting the ATF installed by June 7, 2012
18 and that Ms Olsen presented “a letter and that there was a lease agreement.”⁷³ Ms. Burns
19 testified that her impression “at the end of that meeting was that the company was moving
20 forward and that the, with the arsenic treatment facility, and it would be installed
21 shortly.”⁷⁴ At that meeting, ADEQ stressed to Ms. Olsen that penalties would be assessed

22
23 _____
24 ⁶⁹ *Id.* at 697:20-698:5 (Scott).

25 ⁷⁰ *Id.* at 748:1-5 (Scott).

26 ⁷¹ *Id.* at 699:1-700:14 (Scott).

⁷² Tr. III at 475:23-476:3 (Burns).

⁷³ *Id.* at 482:15-18 (Burns).

⁷⁴ *Id.* at 483:23-484:3 (Burns).

1 if the Company did not meet the installation deadline of June 7, 2012.⁷⁵ In no uncertain
2 terms, “it was clear to everyone in that [meeting] that the company was moving forward
3 with construction of the arsenic treatment plant and installation.”⁷⁶

4 These facts establish that Commission Staff knew that MRWC was moving
5 forward with leases of the ATF in June 2012. Ms. Burns testified that everyone attending
6 the April 26, 2012 meeting thought it was a good idea to get the ATF in the ground.⁷⁷ Mr.
7 Dougherty’s argument that MRWC was attempting to avoid Commission review of the
8 leases and ATF is belied by this testimony from Ms. Burns.

9 In terms of compliance, Ms. Burns testified that MRWC received an approval of
10 construction for the ATF from ADEQ and that the Company is in “full compliance” with
11 arsenic standards.⁷⁸ Ms. Burns went on to testify that she believes Ms. Olsen and MRWC
12 “made reasonable good faith efforts to comply with the arsenic treatment requirements
13 and installing an arsenic treatment facility for a small water company of [MRWC’s]
14 size.”⁷⁹ Ms. Burns’ testimony undercuts many of Mr. Dougherty’s claims and his failure
15 to address Ms. Burns’ testimony undermines his entire case relating to the arsenic leases.

16 **V. THE COMMISSION CANNOT LAWFULLY AND SHOULD NOT MODIFY**
17 **DECISION NO. 67583 UNDER A.R.S. § 40-252.**

18 Mr. Dougherty apparently asks that the Commission modify Decision 67583
19 pursuant to its powers under A.R.S. § 40-252. As a matter of due process, however, there
20 is not any pending § 40-252 request in the acquisition docket seeking to void Decision
21 67583. Granting such request as part of Mr. Dougherty’s complaint would violate
22 fundamental notions of due process. “Section 40-252 requires that notice and an
23 opportunity to be heard be provided to the ‘corporation’ affected.”⁸⁰ Here, such relief

24 ⁷⁵ *Id.* at 485:3-8 (Burns).

25 ⁷⁶ *Id.* at 485:15-18 (Burns).

26 ⁷⁷ *Id.* at 495:7-11 (Burns).

⁷⁸ *Id.* at 489:19-23, 491:4 -18 (Burns).

⁷⁹ *Id.* at 492:2-21 (Burns).

⁸⁰ *Tonto Creek Estates*, 177 Ariz. at 57, 864 P.2d at 1089.

1 cannot be granted without due notice to both MRWC and MEPOA. Mr. Dougherty's
2 back-door attempts to raise these issues in his complaint proceeding does not satisfy
3 necessary due process. In fact, A.R.S. § 40-252 expressly states that "[i]n all collateral
4 actions or proceedings, the orders and decisions of the commission which have become
5 final shall be conclusive." By statute, Mr. Dougherty cannot collaterally attack Decision
6 No. 67583 as part of his complaint docket.

7 Further, if the Commission voided Decision No. 67583, then the CC&N would
8 revert to MEPOA as the utility provider prior to issuance of Decision 67583. Mr.
9 Dougherty's demand that Decision No. 67583 be voided would mean that MEPOA would
10 have to be prepared to take over utility service, pay just compensation to Ms. Olsen and
11 MRWC for all of the Company's utility facilities, pay for the necessary storage tanks and
12 pressure tanks, take over day to day operations of the Company and refund the \$100,000
13 purchase price paid by Ms. Olsen in 2005 (plus interest).⁸¹ As a matter of law, the
14 Commission cannot void Decision 67583 without notifying MEPOA. What's more, Mr.
15 Dougherty asks the Commission to order that the service rights of a company providing
16 adequate service revert to the prior owner with a history of service problems.

17 Because Ms. Olsen and MRWC have been providing adequate service to customers
18 since 2005, the Commission cannot and should not undo that transaction eight years later.
19 Even if the Commission issued a decision voiding the approvals granted in Decision
20 67583, MRWC and Ms. Olsen still would own all of the utility facilities (wells,
21 distribution lines, pumps, arsenic treatment facility, storage tanks). The Commission does
22 *not* have legal authority to transfer MRWC's property to MEPOA, AWC or anyone else.

23
24 ⁸¹ 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 As a result, MEPOA could not serve customers (or sell the company to AWC)
2 without taking control of MRWC's facilities, in turn requiring payment of just
3 compensation for such taking, including payment for the value of MRWC's service rights,
4 payment for the value of the additional facilities invested by Ms. Olsen and MRWC after
5 Decision 67583 was issued in 2005, payments for the ATF and assumption of MRWC's
6 liabilities. MEPOA also would have to refund the original purchase price of \$100,000
7 paid by Ms. Olsen in 2005. Mr. Dougherty doesn't even mention, let alone address, any
8 of these issues in his closing brief.

9 It bears emphasis that Mr. Dougherty did not make this allegation in his Amended
10 Complaint docketed on February 27, 2013. The only mention of Decision No. 67583 in
11 that Amended Complaint occurred relating to Allegation II where Mr. Dougherty argued
12 that MRWC's failure to disclose the debt for the Well No. 4 property in its 2007 Annual
13 Report was a violation of "Commission Order 67583."⁸² In the Procedural Order dated
14 February 26, 2013, the ALJ ordered that "**Mr. Dougherty shall, by March 1, 2013, file in**
15 **the newly consolidated matter an Amended Complaint** intended to replace, in toto, his
16 prior complaint as modified to date."⁸³ Mr. Dougherty did not allege that the approvals
17 granted in Decision No. 67583 should be revoked in that Amended Complaint. In fact,
18 Mr. Dougherty did not suggest that the approvals in Decision No. 67583 be voided in the
19 consolidated dockets until he filed his responsive testimony on June 6, 2013.⁸⁴ This claim
20 should be dismissed as untimely and procedurally improper for these reasons.

21 Aside from these legal issues, the notion that the Commission should take away the
22 service territory, property and legal rights of a utility that is providing good utility service
23 to customers and, in fact, has dramatically improved utility service is absurd. The
24 Company agrees that it made certain procedural errors and missteps relating to financings

25 _____
⁸² Amended Complaint at 3, ¶ 19.

26 ⁸³ Procedural Order dated 2/26/2013 at 5 (emphasis in original).

⁸⁴ Responsive Testimony of J. Dougherty dated 6/6/2013 at 14-15.

1 and filings before the Commission. But MRWC has acknowledged those errors and
2 accepted Commission Staff's recommendations in the pending rate case, including a
3 recommendation of no operating margin, thereby requiring MRWC to put all earnings and
4 return of capital (*i.e.*, depreciation expense) into the Company in order to pay expenses.
5 That is a more than adequate penalty for MRWC's procedural violations. As a matter of
6 law, the Commission does not have authority to and should not declare the approvals
7 granted in Decision 67583 void based on the evidentiary record in this case.

8 **VI. THE COMMISSION DOES NOT HAVE AUTHORITY TO REVOKE OR**
9 **MODIFY MRWC'S CC&N ON THIS RECORD.**

10 On page 12 of his brief, Mr. Dougherty argues that "[t]here is no dispute that the
11 Commission has the authority to revoke Montezuma's CC&N."⁸⁵ Mr. Dougherty then
12 argues that the Commission should revoke MRWC's CC&N even though MRWC is
13 providing adequate and reliable water service to customers because "simply keeping water
14 running through pipes does not provide a water utility with immunity from penalties
15 imposed for willful violations of state statutes or the terms and conditions included when
16 it acquired the utility and CCN."⁸⁶ In turn, Mr. Dougherty concludes that MRWC "has
17 proven itself not to be a fit and proper entity to hold the utilities assets and CCN."⁸⁷

18 In his complaint and at hearing, Mr. Dougherty has concocted a number of
19 arguments for revocation of MRWC's CC&N and a forced takeover of MRWC by
20 Arizona Water Company. Those arguments have now evolved into an argument that the
21 approvals granted in Decision No. 67583 should be revoked in order to orchestrate
22 revocation of MRWC's CC&N. That is Mr. Dougherty's "end goal" in this case.

23 Contrary to Mr. Dougherty's claims, the Commission can't lawfully revoke
24 MRWC's CC&N *on this record*. As a matter of law, "[o]nce granted, the certificate

25 _____
26 ⁸⁵ Dougherty Closing Br. at 12.

⁸⁶ *Id.* at 13.

⁸⁷ *Id.*

1 confers upon its holder an exclusive right to provide the relevant service for as long as the
2 grantee can provide adequate service at a reasonable rate. ... Only upon a showing that a
3 certificate holder, presented with a demand for service which is reasonable in light of
4 projected need, has failed to supply such service at a reasonable cost to customers, can the
5 Commission alter its certificate. Only then would it be in the public interest to do so.”⁸⁸

6 Put simply, the Commission doesn’t have authority to revoke MRWC’s CC&N
7 without a showing that MRWC is failing to provide reasonable and adequate water
8 service. *Here, the record is undisputed that MRWC is providing reliable and adequate*
9 *water service to customers and Mr. Dougherty does not meet the James Paul standard*
10 *for revocation of MRWC’s CC&N.* Even worse for Mr. Dougherty, the record is
11 *undisputed* that Ms. Olsen has dramatically *improved* water service to customers since
12 her acquisition of the Company in 2005.

13 As stated by the Arizona Supreme Court, as the CC&N holder, MRWC has “a right
14 to provide service in its certificated area until the Commission [has] shown that the
15 certificate holder was unable or unwilling to provide service at a reasonable rate.”⁸⁹
16 “Because there [is] no evidentiary showing that [MRWC] was unable or unwilling to
17 provide service at reasonable rates the Commission [is] without legal authority to amend
18 [MRWC’s] certificate...”⁹⁰ On this record, Mr. Dougherty has *not* shown that MRWC is
19 unable or unwilling to provide service at reasonable rates. As a matter of law, therefore,
20 the Commission cannot lawfully revoke or modify MRWC’s CC&N either directly or
21 indirectly through voiding the approvals granted in Decision No. 67583.

22 Mr. Dougherty’s suggestion that MRWC has proven itself not a fit and proper
23 entity to provide utility service is just plain false and Mr. Dougherty knows it. The
24

25 ⁸⁸ *James P. Paul Water Co. v. Arizona Corp. Comm’n*, 137 Ariz. 426, 429, 671 P.2D 404,
26 407 (1983).

⁸⁹ *Id.* at 430, 671 P.2d at 408.

⁹⁰ *Id.* at 431, 671 P.2d at 409.

1 testimony from Ms. Olsen, Mr. Becker, Mr. Scott and Ms. Burns is undisputed that
2 MRWC is providing adequate and reliable utility service in total compliance with
3 applicable regulatory standards for safe drinking water. Perhaps above all else, not a
4 single customer of MRWC has intervened in this proceeding and requested that MRWC
5 be removed as the utility provider. The *only* person requesting such action is Mr.
6 Dougherty who is *not* a customer of the Company. The notion that the Commission
7 should revoke the CC&N of a utility providing adequate service to customers because a
8 non-customer dislikes the utility and its owner is disingenuous, to the say the least.

9 **VII. THE COMMISSION HAS AUTHORITY TO RETROACTIVELY**
10 **APPROVE THE NILE RIVER AND FINANCIAL PACIFIC LEASES.**

11 In his brief, Mr. Dougherty contends that the Commission does not have authority
12 to grant retroactive approval of the long-term debt incurred by MRWC. *Mr. Dougherty*
13 *does not provide any legal authority in support of that argument.* Instead, Mr.
14 Dougherty argues only that “there is no statutory authority for the Commission to approve
15 long-term debt.”⁹¹ On these issues, Mr. Dougherty misconstrues applicable Arizona
16 statutes and he does not correctly understand the Commission’s rate making powers.

17 **1. The Commission has broad authority under Title 40 to**
18 **retroactively approve long-term debt.**

19 As a matter of law, Ariz. Rev. Stat. §§ 40-301 and 40-302 do not prohibit the
20 Commission from retroactively approving debt under a capital lease for utilities. The
21 reason that those statutes do not prohibit the Commission from retroactively approving
22 long-term debt is that the Commission has plenary constitutional authority over
23 ratemaking for Arizona public service corporations.⁹² In turn, the Commission exercises
24 control over utility expenditures indirectly through financing approvals for capital
25 expenditures under §§ 40-301 and 40-302 and through rate regulation by refusing to

26 ⁹¹ Dougherty Closing Brief at 16-17.

⁹² *Ariz. Corp. Comm’n v. State ex rel. Woods*, 171 Ariz. 286, 294, 830 P.2d 807, 815 (1992).

1 recognize imprudent expenditures in setting rates.⁹³ Here, Mr. Dougherty’s interpretation
2 of § 40-302 to prohibit retroactive review and approval of financing and debt transactions
3 would violate the Commission’s plenary authority over ratemaking.⁹⁴ Neither the
4 legislature nor Mr. Dougherty can override the Commission’s constitutional ratemaking
5 authority—as noted by Commission Staff in its closing brief.⁹⁵

6 For these reasons, the statutes give the Commission sufficient leeway to
7 retroactively approve financing for utilities. A.R.S. § 40-302(A) requires that “*before a*
8 *public service corporation* issues stocks and stock certificates, bond, notes and other
9 evidences of indebtedness, *it* shall first secure from the commission an order authorizing
10 such issue....” (emphasis added). A.R.S. § 40-301(B) contains a similar provision. Those
11 statutes require the *utility* to secure Commission approval, but do not proscribe the
12 *Commission* in any way. Instead, Ariz. Rev. Stat. § 40-302(B) provides that the
13 “Commission may grant or refuse permission for the issue of evidences of indebtedness or
14 grant the permission to issue them in a lesser amount, and may attach permission
15 conditions it deems reasonable and necessary.” That language gives the Commission
16 sufficient authority and discretion to grant retroactive approvals based on whatever
17 “conditions it deems reasonable and necessary.”

18 Likewise, Ariz. Rev. Stat. § 40-302(A) provides that the power to issue debt by
19 public utilities “shall be exercised as provided by law and under rules, regulations and
20 orders of the Commission.” As noted in MRWC’s initial brief and below, the
21 Commission has a long standing practice and precedent of granting retroactive approval of
22 utility financings through orders approving such retroactive requests.

23 Those statutes clearly provide the Commission with sufficient authority to grant

24 _____
⁹³ Ariz. Op. Atty. Gen. No. I79-099, 1979 WL 23168 (1979) at 2.

25 ⁹⁴ *RUCO v. Ariz. Corp. Comm’n*, 199 Ariz. 588, 592, 20 P.3d 1169, 1172 (App.
26 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)).

⁹⁵ Staff Closing Br. at 14-16.

1 retroactive approval of the debt under the capital leases at issue here, as long as the
2 Commission “finds that such issue is for lawful purposes which are within the corporate
3 powers of the applicant, are compatible with the public interest, with sound financial
4 practices, and with the proper performance by the applicant of service as a public service
5 corporation and will not impair its ability to perform that service.”⁹⁶ *Here, it is*
6 *undisputed that the Company satisfies the statutory requirements under A.R.S. §§ 40-*
7 *301 and 40-302 for approval of the long-term debt under the Nile River and Financial*
8 *Pacific leases.* As established at hearing, the proposed financings for the Nile River lease
9 and the Financial Pacific lease are undertaken “for a lawful purpose, within the corporate
10 powers of Montezuma Rimrock Water Company as a public utility.”⁹⁷ And those
11 financings are consistent with the public interest being served by MRWC as a public
12 utility, as well as the terms of those financings being compliant with “sound financial
13 practices as a utility.”⁹⁸ Finally, those financings do not and will not hinder “the
14 Company’s ability to provide utility service to its customers in any way.”⁹⁹ Mr.
15 Dougherty didn’t present any evidence to the contrary.

16 **2. The Commission has a long standing precedent and practice of**
17 **granting retroactive financing approvals.**

18 All of the decisions issued by the Commission retroactively approving financing
19 transactions and debt issuances establish that the Commission has authority under A.R.S.
20 §§ 40-301 and 40-302 to issue such approvals. Mr. Dougherty cites some of these
21 decisions in his closing brief, but he does not fully understand the precedential effect of
22 those prior Commission decisions.
23

24 ⁹⁶ A.R.S.. § 40-301(C). *See also* A.R.S. § 40-302(A).

25 ⁹⁷ Tr. I at 127:2-128:16 (Olsen); Tr. IV at 829:17-22 (Dougherty); Tr. IV at 891:1-20
(Becker).

26 ⁹⁸ *Id.*

⁹⁹ Tr. I at 127:2-128:16 (Olsen).

1 As a matter of law, those decisions clearly establish that the Commission has the
2 authority to retroactively approve long-term debt for utilities. *See, e.g., Columbus Elec.*
3 *Coop., Inc.*, 2012 WL 1996804 (May 18, 2012) at * 1; Decision No. 72667 (Little Park
4 Water Company), November 17, 2011 at 10-11; *Yarnell Water Imp. Ass'n, Inc.*, 2009 WL
5 246452 at *1, 13 (January 20, 2009); *Golden Shores Water Co.*, 2008 WL 622130 at *1-2,
6 4-5; Decision No. 65853 (Bellemont Water Co.), April 25, 2003; *Pinecrest Water Co.*,
7 1993 WL 495133 (October 18, 1993) at *1, 4-5; *Ehrenberg Water Company*, 1996 WL
8 787937 at *1 (October 9, 1996); *McLeod USA Telecom. Serv., Inc.*, 2010 WL 2864942
9 (July 12, 2010); *Park Water Co.*, 2004 WL 3410764 (August 10, 2004). By comparison,
10 Mr. Dougherty fails to cite any case or other legal authority finding that the Commission
11 does not have power to retroactively approve long-term debt.

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

14 Ultimately, the Commission should adopt Commission Staff's and Mr. Becker's
15 recommendations for retroactive approval of the long-term debt under the Nile River and
16 Financial Pacific leases for the ATF. Putting the legal issues aside, there simply is
17 nothing to be gained by denying approval and recognition of the debt for the ATF under
18 the Nile River and Financial Pacific leases. As Mr. Becker testified at hearing, even if the
19 Commission rejects retroactive approval of the long-term debt under those leases, Mr.
20 Becker would recommend approval of the lease payments to Nile River and Financial
21 Pacific because "the objective of Staff's calculation in its revenue requirement is to give
22 the company enough money to continue operating."¹⁰⁰

23 MRWC's failure to seek prior approval of that debt from the Commission did not
24 harm customers or the Commission in any way, shape or form. On the other hand, Mr.
25 Dougherty's demand that the Commission deny recognition of the debt under the leases
26 would harm MRWC's customers because such decision would jeopardize continued

¹⁰⁰ Tr. IV at 1084:15-1085:23 (Becker).

1 operation of the ATF, endangering the health of customers.¹⁰¹

2 **VIII. THE COMMISSION SHOULD NOT FINE THE COMPANY.**

3 On pages 19-24 of his brief, Mr. Dougherty seeks to have the Commission issue
4 fines and penalties against MRWC and Ms. Olsen. On this issue, the Commission does
5 have limited authority to impose fines against MRWC as a public service corporation.
6 But the Commission can't impose fines or penalties against Ms. Olsen personally.¹⁰²

7 On this record, the Commission should not fine or otherwise penalize MRWC.
8 Commission Staff has not suggested that MRWC be found in contempt or fined. The only
9 party proposing such action is Mr. Dougherty as part of his continuing vendetta against
10 MRWC and Ms. Olsen. On these issues, Mr. Dougherty's closing brief is a blatant
11 attempt to impose financial penalties and fines against MRWC to serve Mr. Dougherty's
12 personal goal of putting the Company under. A contempt finding or financial penalty is
13 not warranted because the Company did not have any ulterior or improper motives
14 relating to filing and approvals of the lease agreements and violations of the ALJ's
15 procedural orders. The contempt authority in § 40-424 is not intended for this type of
16 procedural or filing error by a Company. Further, as noted by Mr. Becker, "financial
17 penalties on small, financially weak water utilities are counterproductive."¹⁰³

18 The testimony of Ms. Olsen establishes that the Company was acting in good faith
19 and in an effort to serve the best interests of customers.¹⁰⁴ Both Commission Staff and
20 ADEQ supported MRWC's efforts to install the ATF even without financing approval.
21 Instead of fining MRWC, the Commission should recognize Ms. Olsen and MRWC as a
22 committed and reliable utility operating in the best interests of customers.

23 On the other hand, Mr. Dougherty has stated that his end goal is to put MRWC out
24

25 ¹⁰¹ *Id.* at 926:23-927:15 (Becker); Ex. A-2, Olsen DT at 14-15.

26 ¹⁰² *See* A.R.S. § 40-425(C).

¹⁰³ Tr. V at 1070:9-12 (Becker).

¹⁰⁴ Tr. I at 354:1-20 (Olsen).

1 of business, contrive the takeover of MRWC by Arizona Water Company and that “I’m
2 not stopping until I see [Ms. Olsen] under” and that his “goal is to put this company out of
3 business.”¹⁰⁵ As noted above, Mr. Dougherty will do or say anything to further his grudge
4 against the Company. On page 24, for example, Mr. Dougherty states that “the Company
5 submitted forged lease agreements to make it appear to be in compliance with Procedural
6 Orders.” That statement is patently false. The evidence is uncontroverted that Ms. Olsen
7 signed two leases between herself personally and Nile River Leasing on or about March
8 16, 2012; and that she intended to execute those agreements as operating leases and then
9 enter a water services agreement with MRWC regarding use of the ATF.¹⁰⁶ Those
10 personal leases were provided by Odyssey/Nile River (John Torbenson) and Ms. Olsen
11 received copies signed by someone purporting to represent Nile River. Ms. Olsen
12 believed that those leases were signed by Nile River and, in turn, MRWC docketed those
13 personal leases with the Commission.¹⁰⁷ Further, Mr. Torbenson testified that Nile River
14 and Financial Pacific are not asserting that the actual leases with MRWC are improper in
15 any way.¹⁰⁸ That was the only evidence presented at hearing on those issues.¹⁰⁹

16 In his brief, Mr. Dougherty also insinuates that MRWC implemented a “scheme to
17 avoid Commission approval” of the arsenic leases. Again, Mr. Dougherty simply makes a
18 wild accusation without any supporting facts. Mr. Dougherty claims to be an
19 investigative journalist but apparently makes no effort to corroborate such outlandish
20 claims with evidence or testimony presented at hearing. On this issue, the evidence shows

21 _____
22 ¹⁰⁵ Ex. A-2, Olsen DT at 25; Ex. A-3, Olsen RT at 9; Tr. II at 424:2-15 (Olsen); Letter
from T. Hardy dated 6/23/2013.

23 ¹⁰⁶ Ex. A-2, Olsen DT at 11.

24 ¹⁰⁷ Tr. I at 92:3-93:22 (Olsen).

25 ¹⁰⁸ Tr. V at 973:4-7, 978:17-21 (Torbenson).

26 ¹⁰⁹ Mr. Torbenson and Ms. Richards testified that Ms. Richards did not sign the personal
leases, but they also testified that they provided those personal leases to Ms. Olsen.
Again, one can’t help but wonder why Odyssey provided those personal leases to Ms.
Olsen if Nile River was legally precluded from entering those personal leases with Ms.
Olsen in the first place.

1 that MRWC fully intended that the Commission would review and approve the Nile River
2 and Financial Pacific leases.¹¹⁰ Mr. Dougherty's claims that the Company was attempting
3 to circumvent Commission approval of the Company leases is contradicted by the
4 evidence presented at hearing, including that (i) Ms. Olsen intended for Commission Staff
5 to review and approve the leases; (ii) Commission Staff knew about the leases and
6 approved the Company moving forward with construction of the ATF; (iii) Commission
7 Staff does not have any problem with the Company's filing of the wrong leases with the
8 Commission; and (iv) Commission Staff would have provided the same recommendations
9 for approval if those leases had been docketed in March 2012.

10 The evidence also establishes that the Nile River and Financial Pacific leases were
11 the only financing mechanisms available to MRWC for construction of the ATF—due to
12 Mr. Dougherty's efforts to block the WIFA financing.¹¹¹ Ultimately, those leases were in
13 the best interest of MRWC and its customers by facilitating construction and operation of
14 the ATF. These facts certainly lead one to question why Mr. Dougherty would oppose
15 MRWC's efforts to finance and install an ATF to provide safe drinking water to *other*
16 members of the community. *Almost inconceivably, Mr. Dougherty testified that he*
17 *would rather have had the Company comply with the procedural orders and not install*
18 *an ATF, thereby jeopardizing the health and safety of customers.*¹¹²

19 It also should be noted that issuing fines or penalties against MRWC would not
20 benefit customers or the Commission in any way. Mr. Becker has, in fact, already
21 penalized the Company for failing to seek prior approval of the lease by disallowing an
22 operating margin to the Company, which essentially requires the Company to put
23 depreciation expense (or cash to the owner) back into the business to pay operating
24

25 ¹¹⁰ Ex. A-2, Olsen DT at 33-35; Ex. A-3, Olsen RT at 20-11.

26 ¹¹¹ Ex. A-2, Olsen DT at 13-15.

¹¹² *Id.* at 809:4-7 (Dougherty) (“Q. Would you rather have the company comply with the procedural orders and not install an arsenic treatment facility? A. Absolutely.”).

1 expenses.¹¹³ Imposing additional fines or penalties would do nothing more than
2 jeopardize continued service by MRWC.

3 Issuing fines against MRWC also will not rectify any harms or injuries relating to
4 the arsenic leases or remedy any of Mr. Dougherty's claims. As stated by Commission
5 Staff, "the testimony is uncontroverted that conditions are better than they were when
6 MRWC assumed the operations of the water system and they are improving still."¹¹⁴ The
7 underlying record simply doesn't justify or warrant any fines against MRWC.

8 Mr. Dougherty's grudge against Ms. Olsen and MRWC goes so far that he asks the
9 Commission to "seek all remedies under ARS 40-303(C) that could result in Ms. Olsen
10 being found guilty of a Class 4 felony."¹¹⁵ As a matter of law, neither Ms. Olsen nor the
11 Company violated § 40-303(C)(2-3) under the facts of this case and there is no evidence
12 supporting any such action against MRWC or Ms. Olsen. This claim, however, illustrates
13 the true intent of Mr. Dougherty's involvement in these dockets—he hopes to inflict as
14 much harm on Ms. Olsen as he can. The Commission should put an end to Mr.
15 Dougherty's shenanigans and attempts to harm MRWC and its customers once and for all.

16 **IX. CONCLUSION.**

17 For the reasons stated above, the Commission should issue an order adopting
18 Commission Staff's rate case recommendations as agreed by the Company, including
19 financing approval for the 8,000 gallon hydro-pneumatic pressure tank, the four 20,000
20 gallon storage tanks, the March 22, 2012 lease between MRWC and Nile River for the
21 arsenic building, and the April 2, 2012 lease between MRWC and Financial Pacific for the
22 arsenic treatment facilities. The Commission also should issue an order granting
23 additional rate case expense as requested by the Company. It simply is not fair or
24 equitable for the Company to be responsible for the extensive legal fees incurred in these

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¹¹³ *Id.* at 1087:6-11 (Becker).

26 ¹¹⁴ Commission Staff Opening Br. at 16.

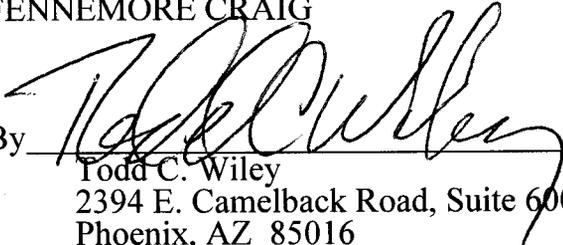
¹¹⁵ Dougherty Closing Br. at 26.

1 consolidated cases due primarily to Mr. Dougherty and his actions against the Company.

2 Further, the Commission should issue an order denying the relief requested by Mr.
3 Dougherty in his complaint and dismissing that complaint (and all allegations contained
4 therein) with prejudice. The Company also requests that the Commission issue an order
5 prohibiting Mr. Dougherty from filing future complaints against the Company without any
6 actionable interest by Mr. Dougherty. The Company simply asks that the Commission
7 recognize that Mr. Dougherty's actions have been intended primarily to harass MRWC
8 and Ms. Olsen and hinder the provision of water service to customers. The Commission
9 should issue an order preventing Mr. Dougherty from misusing the Commission's
10 complaint process in this fashion in the future. Finally, the Commission should dismiss
11 the reconsideration dockets under nos. 08-0361 and 08-0362.

12 Dated: September 20, 2013

13 FENNEMORE CRAIG

14
15 By 

16 Todd C. Wiley
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21
22 An original and 13 copies
23 of the foregoing was filed
24 this 20th day of September, 2013,
25 with:

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

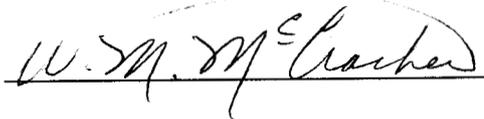
1 A copy of the foregoing
2 was hand delivered/mailed/emailed
3 this 20th day of September, 2013, to:

3 Sarah N. Harpring
4 Administrative Law Judge
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