

OPEN MEETING AGENDA ITEM



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

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ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

ARIZONA CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission
DOCKETED

APR 04 2014

DOCKETED BY

9 COMMISSIONERS

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

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

W-04254A-12-0204

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

W-04254A-12-0205

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

W-04254A-12-0206

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

W-04254A-12-0207

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

W-04254A-11-0323

45
46
47
48
49

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

W-04254A-08-0361

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

W-04254A-08-0362

10
11 **EXCEPTIONS TO THE**
12 **RECOMMENDED OPINION**
13 **AND ORDER**
14

15 I. INTRODUCTION
16

17 Intervenor/Complainant concurs with the Recommended Opinion and Order's (ROO)
18 description of Montezuma's water system, the Procedural History and Statement of Facts
19 except for the items enumerated below. Intervenor/Complainant commends the
20 Administrative Law Judge for fairly addressing many of the complex nuances of this case
21 and laying out the facts in an accurate and understandable manner.
22

23 Intervenor/Complainant, however, strongly disagrees with the ROO's remedies as they
24 fall far short of addressing Montezuma's flagrant and repeated violations of Commission
25 regulations and state statutes.
26

27 The public interest and Montezuma's ratepayers would be irreparably harmed by the
28 recommended Order in that it provides no serious punitive action against the Company.
29

30 Montezuma's unlawful acts include multiple violations of ARS SS 40-301, 302 and what
31 clearly appears to be a felony violation of ARS S40-303(C). The latter violation should
32 result in the Commission making a criminal referral to the Attorney General's Office and,
33 pending the outcome of the criminal matter, installing an Interim Manager to operate the
34 Company.
35

36 Montezuma engaged in a lengthy and determined effort to avoid disclosing to the
37 Commission and Intervenor/Complainant the true and accurate Capital leases it signed on
38 March 22, 2012. (ROO, Page 90, Line 17—Page 93, Line 7.) The Company's scheme,
39 however, was just the latest in a series of false statements and misrepresentations
40 Montezuma has made to various government entities and judicial bodies for many years.
41

42 Not only has Montezuma repeatedly deceived the Commission as clearly documented in
43 the ROO, but the Company and/or Ms. Patricia Olsen have submitted false and
44 misleading documents and made misleading assertions to Yavapai County Justice Court,
45 Yavapai County Development Services, the Arizona Department of Environmental
46 Quality and the Water Infrastructure Financing Authority.

1 A mere warning, as the ROO requests as a remedy, is completely inadequate. Montezuma
2 was already warned in Decision No. 67583 in February 2005 when it acquired the water
3 company and CCN that it must abide by Commission regulations and statutes or the sale
4 and transfer of the CCN “shall” be declared “null and void”. (Decision No. 67583,
5 Conclusion of Law No. 6; Findings of Fact 37.)
6

7 FOF 37 in Decision No. 67583 states: “MRWC shall not encumber the assets of the
8 utility in any way without prior Commission approval”; and “MRWC shall maintain its
9 books and records in accordance with the NARUC Uniform System of Accounts”.
10 Conclusion of Law No. 6 states the “conditions as set forth in Findings of Fact No. 37 are
11 reasonable and should be adopted.”
12

13 Furthermore, Decision No. 67538 ordered that Montezuma “shall comply in all respect
14 with Findings of Fact No. 37 and Conclusion of Law No. 6 or the approval *granted*
15 *herein shall be null and void.*” (Emphasis added.)
16

17 The ALJ concludes Montezuma violated FOF 37 in Decision No. 67583 by not disclosing
18 it had acquired long-term debt and failing to report the debt to Commission staff when it
19 was preparing the Company’s 2008-2009 rate case and therefore failed to maintain its
20 books according NARUC standards. (ROO, Allegation II, Page 123, Line 25-26, Page
21 124, Line 1-2.)
22

23 Not only did the ALJ find the company violated Decision 67538 in Allegation II, but the
24 ROO states Montezuma violated ARS SS 40-301, 302 by substantiating Allegation I
25 which disclosed the company entered into a \$32,000 in long term debt without prior
26 Commission approval. (ROO, Allegation I, Page 122, Line 8-10.)
27

28 The ALJ also determined Montezuma violated Decision NO. 67583 by failing to
29 maintain its books according to NARUC by substantiating Allegation IV concerning the
30 false disclosure of company assets in its annual reports. (ROO, Allegation IV, Page 125,
31 Lines 6-9.)
32

33 The ALJ’s determination the Company repeatedly violated FOF 37 in Decision No.
34 67538 would appear to require the Commission to impose the penalty stated in Decision
35 No. 67583 by declaring the sale and transfer of the CCN to Montezuma “null and void.”
36

37 The ROO, however, does not include any reference to the penalty provisions included in
38 Decision No. 67583 for Montezuma’s clear violation of FOF 37 and the plain wording
39 that such a a violation *shall* declare the approvals null and void.
40

41 That notable absence doesn’t diminish the clear fact that Montezuma has already been
42 put on notice that it must abide by Commission Orders and failed to do so. So far, no
43 penalty whatsoever has resulted, or has even been suggested, for the Company’s multiple
44 violations of FOF 37 in Decision No. 67583.
45
46

1 Montezuma's unlawful actions in regard to Allegation I, II and IV have only become
2 more egregious as clearly displayed in its illegal conduct in connection with the Capital
3 Leases for the Arsenic Treatment Facility. As the ROO clearly describes, Montezuma
4 knowingly engaged in a persistent pattern of unlawful and deceptive actions that spanned
5 more than a year.

6
7 The ROO concludes: "Montezuma provided false and misleading information to the
8 Commission under circumstances that indicate it was done willfully and with knowledge
9 of the falsity/misleading nature of the information, specifically to avoid the requirement
10 for Commission approval of the long-term debt represented by the leases." (ROO, Page
11 133, Lines 20-23.)

12
13 The ROO further states in footnote 109 on page 133: "Knowingly making false
14 statements or representations to the Commission in relation to a financing can be a felony
15 under A.R.S. S. 40-303(C). Any criminal prosecution would occur in a venue other than
16 the Commission."

17
18 But just as the ROO is silent on Montezuma's violations of Decision No. 67583 that calls
19 for the sale and transfer of the CNN to be declared null and void, the ROO recommends
20 no penalty for Montezuma's unlawful actions that include a violation of ARS S40-303(c),
21 a Class 4 Felony.

22
23 The ROO suggests yet another empty warning to Ms. Olsen to behave or she *may* be
24 subject to a Show Cause Hearing and other penalties.

25
26 The recommended Order states Montezuma "is hereby put on notice that future
27 misconduct will result in adverse actions against it, and may include initiation of an
28 Order to Show Cause proceeding to explore what would best serve the public interest,
29 including whether Montezuma Rimrock Water Company, LLC and or its owner should
30 be fined and whether Montezuma Rimrock Water Company LLC's ratepayers would be
31 better served by having its system operated by an interim operator." (ROO, Page 161,
32 Lines 20-24.)

33
34 This is simply repeating the same threat the Commission made in 2005 in Decision No.
35 67583 and has to date failed to do anything despite clear violations of FOF 37. The time
36 for mere warnings must come to an end.

37
38 Refusing to take serious punitive action against the Company and its owner is only
39 empowering Ms. Olsen and Montezuma to act with even greater impunity than they have
40 in the past, putting ratepayers and the general public at serious risk of being subjected to
41 further unlawful acts, false allegations and malicious prosecutions.

42
43 Intervenor/Complainant suggests the Corporation Commission's integrity is at stake in
44 this matter by simply slapping the wrist of a corrupt Public Service Corporation.

1 The fundamental issue is whether the Commission is going to enforce its Decisions,
2 regulations and statutes and impose meaningful penalties when serious allegations of
3 unlawful actions **repeatedly** have been substantiated, or is the Commission going to
4 ignore Montezuma's series of unlawful acts because the Company finally installed an
5 Arsenic Treatment System eight years after acquiring the water company but
6 accomplished this task only by committing a series of illegal acts including a Class 4
7 Felony.

8
9 Intervenor/Complainant respectfully argues that to do the latter is to send a signal to
10 every Public Service Corporation in Arizona that the Corporation Commission does not
11 enforce its regulations and statutes, including felony violations, as long as the water
12 companies deliver water, the electric companies deliver power and the gas companies
13 deliver gas.

14
15 How the company operates, whether it commits felonies in the course of its business
16 operations, whether it repeatedly lies to the Commission, whether it submits false and
17 misleading documents, including forged and "doctored" capital lease agreements,
18 whether it repeatedly violates Procedural Orders, whether the company and its counsel
19 act in a dishonorable way, whether it attacks the integrity of Citizens with malicious
20 statements, whether it instigates frivolous, but expensive, civil and criminal prosecutions
21 against its critics, matters not.

22
23 To adopt this position is to completely undermine the Commission's authority and is to
24 throw the sacred concept of the Rule of Law out the door. I respectfully submit that
25 James P. Paul (*James P. Paul Water Co. v. Arizona Corp. Comm'n*, 137 Ariz. 426, 429,
26 671 P.2d 404, 407 (1983)) does not immunize Public Service Corporations from unlawful
27 actions and that this Commission has the Constitutional authority to revoke the CC&N of
28 a Public Service Corporation that is providing adequate service, but is doing so in an
29 unlawful manner. To argue otherwise, leads to the absurd position that a CC&N cannot
30 be revoked in the face of repeated unlawful actions by a Public Service Corporation.

31
32 To be certain, this is not a case where a Public Service Corporation simply made a
33 mistake. This is a case where a Public Service Corporation set out on a deliberate path to
34 knowingly mislead the Commission in issuance of debt in violation of ARS S 40-303(c).
35 This is not a case of an isolated error or single act of poor judgment. Montezuma has
36 proven itself time and again that it cannot be trusted. The ROO repeatedly states Ms.
37 Olsen's sworn testimony is not credible.

38
39 If Ms. Olsen is willing to provide false and misleading testimony under oath, how can she
40 be trusted to honestly execute the privilege of holding a CCN that bestows enormous
41 powers upon her including a monopoly, guaranteed rate of return and authority to seek
42 condemnation of private property?

43
44 The ROO states that documents submitted to the commission appear to have been altered.
45 How can Ratepayers be assured that Ms. Olsen is not changing water quality reports to
46 avoid having to make expensive alterations to the water system? After all, Ms. Olsen had

1 no problem on two occasions of unlawfully collecting arsenic treatment fees from
2 Montezuma's ratepayers when she apparently needed extra cash as substantiated in
3 Allegations XI and XII. (ROO, Page 127, Line 16 through Page 129, Line 15.)
4

5 Ms. Olsen installed Well No. 4 on a residential lot without first obtaining a Yavapai
6 County Use Permit that would have required notification of neighbors within 300 feet,
7 including Montezuma Well National Monument. Ms. Olsen filed a misleading
8 application with WIFA stating Well No. 4 would have no impact on "cultural resources"
9 that resulted in her losing a \$165,000 federally subsidized, low-interest loan that is now
10 proposed to be replaced with Capital Leases carrying interest rates of 28 and 35 percent.
11 How is this in the best interest of the Ratepayer?
12

13 There is no question that Montezuma and Ms. Olsen are not "Fit and Proper" entities to
14 receive a CC&N under any reasonable definition of "Fit and Proper". Unfortunately, as
15 far as Intervenor/Complainant can determine, the Commission has not defined a "Fit and
16 Proper" entity, although it relied on such a term in Decision No. 67583 when it approved
17 the sale of the water and transfer of the CCN to Montezuma. Intervenor/Complainant
18 firmly believes that if and when the Commission defines a "Fit and Proper" entity,
19 Montezuma will not fall within that standard.
20

21 For all the reasons clearly expounded in the ROO and in Intervenor/Complainant's
22 Exceptions detailing Montezuma's willful, unlawful actions, Intervenor/Complainant
23 respectfully requests the following course of action by the Commission:
24

25 1. Denial of the Capital Leases, and as a result, denial of the rate docket, financing
26 requests and all attorney fees.
27

28 2. Acknowledgement that the prescribed penalty for violating Findings of Fact 37 in
29 Decision No. 67583 declares the sale and transfer of the CNN to Montezuma "shall " be
30 declared "null and void". This provision provided prior warning to the Company that
31 serious consequences will result from violation of Commission statutes, regulations and
32 Decisions.
33

34 3. A criminal referral to the Attorney General for prosecution of Ms. Olsen for violating
35 ARS S40-303-C.
36

37 4. Immediate installation of an Interim Manager to run all aspects of Montezuma's
38 operation until the criminal matter is settled, or Montezuma's service area is taken over
39 by a legitimate entity through that sale of Montezuma's assets.
40

41 5. Find Montezuma and Ms. Olsen each in Contempt of the Commission.
42

43 6. Extend the interim/emergency rate increase approved in Decision No. 74382 to ensure
44 that Ratepayers continue to have access to safe drinking water.
45

1 7. Require the Interim Manager by May 1, 2014 to submit to the Commission a rate
2 application for Montezuma to obtain a \$108,000 WIFA loan to purchase and install four,
3 20,000-gallon water tanks in order to provide adequate water supplies and fire protection
4 for ratepayers and non-Montezuma customers.

5
6 8. Require Staff to expedite the Interim Manager's application for financing approval of
7 the water storage tanks so it can be brought before the Commission for consideration at
8 the soonest possible date.

9
10 9. Montezuma's requirement for a \$30,000 surety bond shall be waived upon
11 appointment of an Interim Manager.

12
13 This recommended course of action would accomplish far-reaching goals including:

- 14
15 • Securing an adequate and safe drinking water supply and fire protection
16 for Montezuma's ratepayers and area residents.
- 17 • Removing Ms. Olsen from management of the Company pending
18 resolution of the criminal matter and/or the sale of the company to
19 another entity.
- 20 • Protecting the integrity of the Commission by pursuing fair and just
21 enforcement of its Decisions, Regulations and Statutes.
- 22 • Sending a clear signal to Public Service Corporations that they must
23 lawfully operate at all times.
- 24 • Relieving Staff from having to micro-manage a corrupt water company.

25
26 I respectfully request the Commission to adopt the above measures that provide a
27 reasonable, fair and just resolution to this matter that has been contested for more than
28 four years.

29 30 II. EXCEPTIONS

31
32 Requested additions in **bold** and deletions indicated by ~~strikethrough~~.

33 34 A. Exceptions to System Generally

35
36 Page 7, Lines 16-19:

37 Montezuma's active system consists of Well No. 1, with a pump yield of 55 gallons per
38 minute ("GPM"); a centralized 150 GPM arsenic treatment system (discussed extensively
39 below); three storage tanks with a combined capacity of 25,200 gallons; two booster
40 systems; and a distribution system that was serving 210 service connections at the end of
41 2011. (Ex. S-1 at att. A at 5, 6.) **Montezuma has voluntarily placed Well No. 2 on**
42 **standby status.**

1 B. Exceptions to Procedural History

2
3 1. Page 19, Line: 11-13:

4 On March 2, 2010, at the Commission's regular Open Meeting, Mr. Dougherty provided
5 public comment opposing the Recommended Order issued in the 40-252 Docket. The
6 Commission did not approve the Recommended Order. **As a result, Montezuma was**
7 **and remains in violation of Decision No. 71317 for failing to obtain the AOC for**
8 **Well No. 4 by Dec. 31, 2009.**
9

10
11 2. Page 36, Lines 17-28, Page 37, Lines 1-5:

12 On February 21, 2012, in the 40-252 Docket, Ms. Olsen made a filing, **while**
13 **represented by counsel in violation of a Jan. 11, 2012 Procedural Order,** that
14 included a January 27, 2012, cover letter from Kevlor Design Group, LLC, ("Kevlor") to
15 Ms. Olsen regarding Proposal ID KDGO12712, along with an unexecuted "Contract for
16 Arsenic Treatment System With Patricia Olsen Owner/Operator of Montezuma Rimrock
17 Water Company, LLC" showing a total project cost of \$46,000 for design;
18 manufacturing; delivery; and installation of an arsenic removal system up to the wellhead
19 at Well No. 1, with installation including tie-ins with shut-off valves, manual by-pass
20 valves, and coupling spools or tees. The filing also included an unexecuted Water Service
21 Agreement between Ms. Olsen and Montezuma, under which Montezuma would pay Ms.
22 Olsen for arsenic treatment (including installation, maintenance, and ownership of the
23 facilities) for 20 year and would be required to buy the arsenic treatment system for \$1 at
24 the end of the 20-year period. The monthly payments to Ms. Olsen under the Water
25 Services Agreement would be \$1,500 per month as a "Monthly Standby Fee" to recover
26 the cost of constructing the facilities, plus a \$400 per foot treatment fee and, to the extent
27 more than 42 acre feet of water were treated in a year, another \$400 additional treatment
28 fee per acre-foot. The filing also included four pages of an unexecuted "5 Page Lease
29 Agreement" form showing Financial Pacific Leasing, LLC ("Financial Pacific") as
30 Lessor, not identifying a Lessee, and bearing the identifier "App# 365512, 092007C" in
31 its footer.
32

33 3. Page 37, Lines 14-23:

34 On March 19, 2012, Ms. Olsen made a filing in the 40-252 Docket, **while represented**
35 **by counsel in violation of the Jan. 11, 2012 Procedural Order,** this time including an
36 email sent to Ms. Olsen; a "Statement to the Arizona Corporation Commission" from
37 "Gregory S. Olsen, Hydrologist"; two executed one-page lease agreements between Ms.
38 Olsen and Nile River, one a 36-month lease for arsenic building plant and the other a 60-
39 month lease for arsenic removal water treatment system, and both apparently signed by
40 Ms. Olsen and "Robin Richards" on March 16, 2012; an unexecuted Water Services
41 Agreement between Ms. Olsen and Montezuma, with the same material terms as filed in
42 the previous filing by Ms. Olsen; and a Kevlor "Contract for: Arsenic Treatment System
43 With Patricia Olsen Owner/Operator of Montezuma Rimrock Water Company, LLC"
44 regarding Proposal ID KDG012712 with an executed Contract Acceptance Form
45 apparently signed on January 27, 2012, by Kelvin Duffy for Kevlor and on February 28,
46 2012, by Ms. Olsen.

1 4. Page 46, Lines 8-11:

2 On October 25, 2012, in the Consolidated R&F Docket, Ms. Olsen filed an affidavit
3 stating that the Statements in Support of Rate Request, Current and Proposed Rates and
4 Charges, and narrative Description of Application for Rate Adjustment pages from its
5 amended application had been mailed to Montezuma's customers on October 12, 2012.

6 **The filing included two incomplete lease agreement signed by Ms. Olsen between**
7 **Montezuma and Nile River and Montezuma and Financial Pacific. The lease**
8 **agreements were not filed in the appropriate 40-252 Docket, where Ms. Olsen was**
9 **represented by counsel. The filing did not show that other parties were provided**
10 **copies.**

11
12 5. Page 55, Lines 5-7

13 Mr. Dougherty also stated that Ms. Olsen had made a filing on October 25, 2012, **that**
14 **included the incomplete lease agreements between Montezuma and Nile River and**
15 **Montezuma and Financial Pacific** and had failed to provide service of the
16 filing on the other parties.

17
18 6. Page 92, Lines 9-13

19 On October 25, 2012, in the Consolidated R&F Docket, Ms. Olsen filed Insufficiency
20 Submittals & Amendments to its rate application, including an affidavit regarding the
21 notice to its customers of its amended rate application, and an attachment labeled
22 "Lease Agreement," including a copy of the Nile River lease signed by Ms. Olsen for
23 Montezuma on March 22, 2012, and by Mr. Torbenson for Nile River on March 23,
24 2012, but omitting Rider No. 2, and a copy of the Financial Pacific lease signed by Ms.
25 Olsen **for Montezuma** on May 2, 2012, with no first payment due date on page 1 of 5
26 and no page 5 of 5. The document did not include a service list, and it was not filed by
27 counsel.

28
29 7. Page 104, Line 25 through Page 105, Line 5.

30 In this case, ~~although~~ Montezuma and its owner have been not been honest with the
31 Commission, and have taken spurious positions through counsel as well. ~~we conclude~~
32 ~~that the public health benefits to Montezuma's ratepayers from Montezuma's obtaining~~
33 ~~financing of the arsenic treatment system and associated building outweigh~~
34 ~~Montezuma's failure to comply with its obligation to obtain Commission approval prior~~
35 ~~to taking long term debt. Thus, although~~ **Therefore, we conclude** Montezuma violated
36 A.R.S. SS 40-301, 40-302 **and 40-303 (c)** and find that retroactive approval of a portion
37 of the financing is **not** appropriate.

38
39 8. Page 105, Line 6-15. Strike all.

40
41 C. Exceptions to Findings of Fact:

42
43 3. In Decision No. 67583, the Commission approved the sale of MEPOA's utility assets
44 and the transfer of its CC&N to Montezuma. Although Staff had recommended denial
45 and expressed the belief that MEPOA's utility assets should instead be acquired by AWC,
46 which operates a nearby system. AWC did not take any action to purchase the system or

1 to prevent its sale to Montezuma. The Commission required Montezuma to procure a
2 performance or surety bond in the amount of \$30,000 to maintain the bond, and to file
3 copies of the bond annually with the Commission on the effective date of the Decision
4 and until further order of the Commission.

5
6 **3A. Findings of Fact 37 of the Decision No. 67583 states: “MRWC shall not**
7 **encumber the assets of the utility in any way without prior Commission approval”**
8 **and “MRWC shall maintain its books and records in accordance with the NARUC**
9 **Uniform System of Accounts”. Conclusion of Law No. 6 states the “conditions as set**
10 **forth in Findings of Fact No. 37 are reasonable and should be adopted.” The**
11 **decision ordered that Montezuma “shall comply in all respect with Findings of Fact**
12 **No. 37 and Conclusion of Law No. 6 or the approval granted herein shall be null**
13 **and void.”**

14
15 4. Montezuma’s active system consists of Well No. 1, with a pump yield of 55 GPM; a
16 centralized 150 GPM arsenic treatment system; three storage tanks with a combined
17 capacity of 25,200 gallons; two booster systems; and a distribution system that was
18 serving 210 service connections at the end of 2011. **Montezuma voluntarily ceased use**
19 **of Well No. 2.** Staff has determined that Montezuma does not have sufficient storage
20 capacity to serve its present customer base and accommodate reasonable system growth
21 and fire protection.

22
23 7. John E. Dougherty, III owns a home within Montezuma’s service area, but is not a
24 Montezuma customer. Mr. Dougherty’s property is served by a private well. Mr.
25 Dougherty became involved with Montezuma after observing in October 2009 that Well
26 No. 4 and associated structures had been installed on a residential property located across
27 from his home in Rimrock. Mr. Dougherty first became involved with Montezuma’s
28 proceedings before the Commission in February 2010 in relation to a Recommended
29 Order **that would have granted Montezuma an extension of the Dec. 31, 2009**
30 **deadline to obtain the AOC for Well No. 4 in Decision No. 71317.**

31
32 Strike Findings of Fact Paragraphs: 22-25 and 31-36 and 48.

33
34 Replace FOF 48 with the following:

35
36 **48. The Commission has the legal authority to impose fines upon Montezuma and**
37 **has the discretion not to impose fines if the imposition of fines is not believed to be in**
38 **the public interest. In this case the Commission believes that the public interest, and**
39 **the interests of Montezuma’s ratepayers, would best served by the Commission’s**
40 **imposition of fines at this time. The Commission finds that Montezuma and Ms.**
41 **Olsen are each held in Contempt of the Commission in Violation of ARS SS. 40-424,**
42 **40-425 and each fined \$500.**

43
44 Strike Paragraph 49

45
46 Insert the following Findings of Fact Paragraphs before Paragraph 50.

1 I. Decision No. 67583 ordered that Montezuma “shall comply in all respect with
2 Findings of Fact No. 37 and Conclusion of Law No. 6 or the approval granted herein
3 shall be null and void.”

4
5 II. Montezuma violated FOF 37 by failing to obtain Commission approval for a
6 \$32,000 long-term debt (Allegation I) and failing to maintain its books according to
7 NARUC standards (Allegation II, IV).

8
9 III. Montezuma’s repeated actions of knowingly submitting false and misleading
10 documents and making false and misleading statements to the Commission that
11 includes an ARS S. 40-303(c) felony violation, in connection with the Capital Leases
12 agreements make it just, reasonable and appropriate for the Commission to deny
13 retroactive approval of the Capital Lease agreements between Montezuma and Nile
14 River Leasing signed on or about March 22, 2012 and Montezuma and Financial
15 Pacific Leasing signed on or about March 22, 2012.

16
17 IV. Denying approval of the Capital Leases places Montezuma in violation of ARS
18 SS 40-301 and 40-302. Thus, the Company is not in good standing and ineligible for
19 a rate increase. Therefore the rate increase, financing requests and attorney fees
20 requested in this combined docket are denied.

21
22 V. Montezuma’s unlawful conduct in violating ARS SS 40-301, 302, 303 in
23 connection with the Capital Leases makes it just, reasonable and appropriate for the
24 Commission to take the following actions to ensure Ratepayers are protected from
25 unlawful management:

26
27 1) The Commission shall make a criminal referral to the Attorney General’s Office
28 in connection with the ARS S. 40-303(c) violation.

29
30 2) The Commission shall install an interim manager to operate Montezuma until the
31 criminal matter is concluded or new ownership assumes control of Montezuma’s
32 service area.

33
34 VI. To ensure that Montezuma’s ratepayers continue to have access to safe drinking
35 water, it is just, reasonable and appropriate for the Commission to extend the
36 \$10/month emergency surcharge earmarked to paying the Capital Leases for the
37 Arsenic Treatment Facility that was approved by the Commission in Decision No.
38 74382 on March 19, 2014 until further action by the Commission.

39
40 VII. The Interim Manager shall by May 1, 2014, submit a Rate Application for
41 approval of a \$108,000 WIFA loan to purchase and install four, 20,000-gallon water
42 tanks. Staff shall assist the interim manager with the preparation of the financing
43 application for the \$108,000 WIFA loan financing to bring the application before
44 the Commission for consideration at the soonest possible date.

45
46 VIII. Appointment of an Interim Manager to operate Montezuma shall relieve the

1 **Company of the requirement to maintain a \$30,000 surety bond as stated in**
2 **Decision No. 67583 until further action by the Commission.**

3
4 D. Exceptions to Conclusions of Law

5
6 Strike Paragraphs 7, 8, 9 and 11.

7
8 Replace Paragraph 11 with the following:

9
10 **11. It is just and reasonable and in the public interest to take the actions described**
11 **in Findings of Fact No. 11-12, 16, 18-21, 26-30, 37-39, 42-47, amended 48 as stated**
12 **above followed by New FOF Paragraphs I, II, III, IV, V, VI, VII, VIII and 50.**

13
14 E. Exceptions to the Order

15
16 Strike The Entire Recommended Order and Replace with the following:

- 17
18 1. Allegation I is substantiated to the extent that it alleged Montezuma's failure to
19 obtain approval from the Commission before entering into the long-term debt was
20 a violation of A.R.S. SS 40-301 and 40-302.
21
22 2. Allegation II is substantiated to the extent that it alleged Montezuma failed to
23 maintain its books and records in compliance with the NARUC USOA, which
24 was a violation of Decision No. 67583 as well as A.A.C. R14-2-41 I(D)(1) and (2).
25
26 3. Allegation IV is substantiated to the extent that Montezuma failed to maintain its
27 Annual Reports, which are company records, in compliance with the NARUC
28 USOA, which was a violation of Decision No. 67583 as well as A.A.C. R14-2-41
29 I(D)(1) and (2).
30
31 4. Allegation VII has been rendered moot, and it is dismissed with prejudice.
32
33 5. Mr. Dougherty has failed to meet the burden of proof as to Allegation X, and it is
34 dismissed with prejudice.
35
36 6. Allegation XI is substantiated. The evidence establishes that an arsenic surcharge
37 of \$10.11 per account was invoiced in and collected from the December 2009
38 billing, unlawfully and in violation of Decision No. 71317.
39
40 7. Allegation XII is substantiated. The evidence establishes that an arsenic surcharge
41 of \$15.00 per account was invoiced in and collected from the April 2011 billing,
42 unlawfully and in violation of Decision No. 71317.
43
44 8. Allegation XV is dismissed with prejudice because there is insufficient evidence
45 to establish that the theft of its records resulted in Montezuma's failure to
46 maintain its records in accordance with the NARUC USOA and thus in a

1 violation of Decision No. 67583.

- 2
3 9. Allegation XVII is substantiated to the extent that it alleged a violation of A.R.S.
4 SS 40-301, 40-302 and a violation of the Procedural Order issued on April 9,
5 2012. **The violation of ARS Section 40-303(c) is referred to the Arizona**
6 **Attorney General's Office for prosecution.** The remaining provisions of the
7 Allegation are dismissed with prejudice.

8
9 IT IS FURTHER ORDERED Montezuma Rimrock Water Company LLC is in violation
10 of Decision No. 67583 FOF 37 and Conclusion of Law 6 for failing to obtain
11 Commission approval for a \$32,000 long-term debt and failing to maintain its books
12 according to NARUC standards.

13
14 IT IS FURTHER ORDERED the Commission denies retroactive approval of the Capital
15 Lease agreements between Montezuma Rimrock Water Company LLC and Nile River
16 Leasing signed on or about March 22, 2012 and Montezuma Montezuma Rimrock Water
17 Company LLC and Financial Pacific Leasing signed on or about March 22, 2012.

18
19 IT IS FURTHER ORDERED the Montezuma Rimrock Water Company LLC's rate
20 increase, financing requests and attorney fees in this combined docket are denied.

21
22 IT IS FURTHER ORDERED that the Commission shall make a criminal referral to the
23 Attorney General's Office in connection with Montezuma Rimrock Water Company
24 LLC's and Ms. Olsen's ARS S. 40-303(c) violation as set forth in the Recommended
25 Order and Opinion's Narrative and Statement of Facts.

26
27 IT IS FURTHER ORDERED that Montezuma Rimrock Water Company LLC and its
28 owner, Ms. Patricia Olsen, are each found in Contempt of the Commission and each fined
29 \$500.

30
31 IT IS FURTHER ORDERED Staff shall immediately install an interim manager to
32 operate Montezuma Rimrock Water Company LLC until the criminal matter is resolved
33 or new ownership assumes control of Montezuma's service area.

34
35 IT IS FURTHER ORDERED that the Interim Manager shall no later than May 1, 2014
36 submit to the Commission a Rate Application for approval of a \$108,000 WIFA loan for
37 the purchase and installation of four, 20,000 gallon water storage tanks to ensure
38 Ratepayers have an adequate water supply and fire protection.

39
40 IT IS FURTHER ORDERED that Staff shall assist the interim manager in the preparation
41 of the applications for financing of the \$108,000 WIFA loan for the water storage tanks
42 and the retroactive approval of the Nile River and Financial Pacific leases and to bring
43 the applications to the Commission for consideration at the soonest possible date.

44
45 IT IS FURTHER ORDERED the \$10/month emergency surcharge earmarked in Decision
46 No. 74382 to paying the Capital Leases for the Arsenic Treatment Facility is extended

1 until further notice by the Commission.

2
3 IT IS FURTHER ORDERED that Montezuma Rimrock Water Company, LLC shall, in
4 its first billing after the effective date of this Decision, provide each of its customer
5 accounts a credit of \$10.11, which shall be listed separately on each customer bill as a
6 “2009 unlawful arsenic surcharge fund.”

7
8 IT IS FURTHER ORDERED that Montezuma Rimrock Water Company, LLC shall,
9 within 60 days after the effective date of this Decision, file with the Commission’s
10 Docket Control, as a compliance item in this docket, documentation demonstrating that
11 all of its customers have received the \$10.11 “2009 unlawful arsenic surcharge
12 refund“ credit in their bills as required herein.

13
14 IT IS FURTHER ORDERED that upon the appointment of an Interim Manager to
15 Montezuma Rimrock Water Company LLC, the Company shall be relieved of its
16 requirement to maintain the \$30,000 surety bond as stated in Decision No. 67583 until
17 further Order by the Commission.

18
19
20 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

21
22 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

23
24
25 _____
26 CHAIRMAN

27
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29 _____
30 COMMISSIONER

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33 _____
34 COMMISSIONER

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36
37 IN WITNESS WHEREOF, I, JODI JERICH, Executive
38 Director of the Arizona Corporation Commission, have
39 hereunto set my hand and caused the official seal of the
40 Commission to be affixed at the Capitol, in the City of
41 Phoenix, this day of 2014.

42
43 JODI JERICH
44 EXECUTIVE DIRECTOR
45
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DISSENT

DISSENT

DECISION

NO. _____

RESPECTFULLY SUBMITTED this 4th Day of April, 2014


By John E. Dougherty
Complainant/Intervenor

An original and 13 copies of the foregoing was filed
this 4th day of April, 2014, with:

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

A copy of the foregoing was hand delivered/mailed/emailed
this 4th Day of April, 2014 to:

Sarah N. Harpring
Administrative Law Judge
Arizona Corporation Commission
1200 W. Washington
Phoenix, Arizona 85007

Brian Bozzo
Utilities Division
Arizona Corporation Commission
1200 W. Washington
Phoenix, Arizona 85007

Wes Van Cleve/Charles Hains
Legal Division
Arizona Corporation Commission
1200 W. Washington
Phoenix, Arizona 85007

Patricia Olsen
MRWC
3031 E. Beaver Creek Rd.
Rimrock, AZ 86335

Steve Olea
Utilities Division
Arizona Corporation Commission
1200 W. Washington
Phoenix, Arizona 85007

Todd Wiley
Fennemore Craig
2394 E. Camelback Rd.
Phoenix, AZ 85016