

ORIGINAL

OPEN MEETING ITEM



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BEFORE THE ARIZONA CORPORATION C
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Arizona Corporation Commission
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JUN 23 2010

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COMMISSIONERS

KRISTIN K. MAYES - Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

2010 JUN 23 P 4: 08

AZ CORP COMMISSION
DOCKET CONTROL

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IN THE MATTER OF THE COMMISSION ON
ITS OWN MOTION INVESTIGATING THE
FAILURE OF TRUXTON CANYON WATER
COMPANY TO COMPLY WITH
COMMISSION RULES AND REGULATIONS.

DOCKET NO. W-02168A-10-0247

DECISION NO. _____

**COMPLAINT AND PETITION FOR AN
ORDER TO SHOW CAUSE**

Staff of the Utilities Division ("Staff") of the Arizona Corporation Commission ("Commission"), for its Complaint and Petition for Order to Show Cause against Truxton Canyon Water Company ("Truxton") an Arizona Public Service Corporation, alleges:

JURISDICTION

1. The Commission has jurisdiction to hear complaints against public service corporations pursuant to A.R.S. § 40-246. The Commission has jurisdiction to supervise and regulate public service corporations pursuant to Article XV of the Arizona Constitution and Title 40 of the Arizona Revised Statutes.

2. Truxton is a public service corporation as defined by Article XV, § 2 of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

FACTUAL BACKGROUND

3. Pursuant to Decision No. 41781, issued December 15, 1971, Truxton received a Certificate of Convenience and Necessity ("CC&N") to provide water service in Mohave County. As a condition of its CC&N, Truxton is required to comply with Arizona law, Commission Orders, Rules, and Regulations.

4. Truxton's current rates and charges were established by Decision Order No. 63713 on June 6, 2001.

1 5. Truxton's Public Water System (PWS) #0-035 has six wells that provide water for
2 Truxton's customers. Truxton's Annual Reports state that it owns one of the wells servicing the
3 system. According to Decision No. 63713 (June 6, 2001), the Claude K. Neal Family Trust ("Trust")
4 owns the other five, as well as the majority of the transmission and distribution facilities. Truxton has
5 a management agreement with the Trust for the management of the water company, as well as a
6 purchase water agreement that includes a charge to be paid per 1,000 gallons and a "wheeling fee" to
7 transport the water from the Trust's well sites to Truxton's service area. The purchase water
8 agreement between Truxton and the Trust dictates that Truxton only pays for water actually billed to
9 the customer, and not for the amount of water that enters Truxton's system from the Trust's
10 transmission lines. This allows for the Trust, and not Truxton, to absorb all water loss during
11 transmission to the customers of Truxton.

12 6. Truxton has a history of non-compliance with ADEQ. On May 24, 2007. The Arizona
13 Department of Environmental Quality ("ADEQ") issued a Compliance Order with Civil
14 Administrative Penalty to Truxton for being in violation of the Arizona Revised Statutes or the rules
15 adopted by ADEQ. The violations included:

- 16 • Violation of A.A.C. R14-5-502(B) for failure to maintain a pressure of at least 20
17 pounds per square inch (psi) at ground level at all points in the potable water
18 distribution system under all conditions of flow;
- 19 • Violation of A.A.C. R18-5-5050(B) for failure to obtain an Approval to Construct
20 from ADEQ prior to making alterations;
- 21 • Violation of A.A.C. R18-4-124 for failure to maintain and keep in proper
22 operating condition a facility used in the production, treatment, or distribution of a
23 water supplier
- 24 • Violation of R18-4-214.02 for failure to monitor TTHMs (trihalomethanes) and
25 HAA5s (halo acetic acids) under the requirements of R18-4-214.01 or R18-4-
26 214.02 on a quarterly or more frequent basis. The Company also failed to monitor
27 TTHMs and HAA5s during 2004 and 2005.

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- 1 • Violation of A.A.C. R18-4-105(E)(1)(Table 3)(2) for failure to provide public
2 notification for failure to monitor TTHMs and HAA5s. The Company also failed
3 to provide notice for failure to monitor TTHMs and HAA5s in 2004 and 2005.
- 4 • Violation of A.A.C. R18-4-104(L) for failure to notify ADEQ within 48 hours of
5 the discovery of a failure to comply with a monitoring requirement. The Company
6 also failed to comply with this requirement in 2004 and 2005.
- 7 • Violation of A.A.C. R18-4-214.02(I)(1) for failure to monitor for chlorine in the
8 distribution system when total coliform are sampled. The Company failed to
9 monitor for residual chlorine on a monthly basis over the period of January 2004
10 through September 2006.
- 11 • Violation of A.A.C. R18-4-105(E)(1)(Table3)(2) for failure to provide public
12 notification for failure to monitor residual chlorine, from January 2004 to
13 September 2006.
- 14 • Violation of A.A.C. R18-4-104(L) for failure to notify ADEQ within 48 hours of
15 the discovery of a failure to comply with a monitoring requirement.
- 16 • Violation of A.A.C. R18-4-214.02(E) for failure to collect disinfection by-product
17 and residual disinfection level samples at sites that are representative of water
18 throughout the distribution system according to a written monitoring plan. ADEQ
19 concluded that the samples have not been collected because no plan was developed
20 and/or made available for review.

21 7. ADEQ issued a Consent Order (No. DW-49-07) against Truxton on September 10,
22 2007. The Consent Order incorporates, supersedes, and replaces the Compliance Order from May 24,
23 2007. The Consent Order was acknowledged and signed by then President Marc Neal on August 24,
24 2007.

25 8. In December of 2008, Truxton was issued Notices of Violation by ADEQ – one for
26 exceeding the arsenic limit and another for not providing public notice of exceeding the arsenic limit.

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1 9. According to ADEQ System Reviews, Truxton did not perform quarterly monitoring
2 for arsenic or disinfection by-product (chlorine), and did not provide public notice that it was not
3 appropriately monitoring for arsenic or disinfection by-product.

4 10. ADEQ issued an Inspection Report on April 21, 2009. ADEQ cited Truxton for failure
5 to maintain a minimum of 20 pounds per inch throughout the water system (A.A.C. R14-5-502(B)),
6 air gaps needed for standpipes at both Colorado and Apache Roads locations, and failure to submit
7 and/or have a Backflow Prevention Plan.

8 11. ADEQ issued a Sanitary Survey Report dated October 14, 2009, listing Truxton as
9 non-compliant with ADEQ requirements in the categories of Physical Facilities and Monitoring and
10 Reporting. Major deficiencies included:

- 11 • failure to maintain a pressure of at least 20 pounds per square inch (psi) at ground
12 level at all points in the potable water distribution system under all conditions of
13 flow;
- 14 • continued violation of the maximum contaminant levels for arsenic since 2007;
- 15 • no acceptable quarterly monitoring or sampling methodology to resolve the arsenic
16 violation;
- 17 • no monitoring samples submitted in 2007, 2008 or 2009 for disinfection by-
18 products (chlorination);
- 19 • a continued outstanding violation for radio chemicals, and
- 20 • the existence of at least twenty (20) separate leaks or potential cross connections
21 within the distribution system. ADEQ noted the leaks are a potential source of
22 contamination due to backflow and fluctuating pressure and requests that they be
23 repaired immediately.

24 12. During the end of 2009 and the beginning of 2010, Staff requested that Truxton repair
25 all reported leaks as soon as possible, and to provide a detailed explanation if certain leaks would take
26 more time. Truxton has repeatedly stated it will have the leaks repaired by a date certain, but then does
27 not fix them and/or does not provide Staff with any explanation. Many of the twenty leaks listed on
28

1 the ADEQ report have been repaired. However, other leaks have been uncovered in the process. To
2 date Truxton still has numerous leaks in the system.

3 13. ADEQ has indicated plans to issue a new Consent Order and require Truxton to have a
4 comprehensive overall system evaluation by an engineer.

5 14. On February 5, 2010, Commission Staff sent Truxton a letter requesting the Company
6 submit documentation within ten (10) days demonstrating it is in compliance with ADEQ standards,
7 or if it is not in compliance, it must submit a detailed plan that addresses and proposes remedies for
8 the deficiencies in the ADEQ Sanitary Survey Report dated October 14, 2009.

9 15. On February 17, 2010, Staff received Truxton's response letter, in email form, which
10 provided minimal explanation. Staff contacted Truxton to verify if the remaining documentation that
11 was originally requested was included in the mailed version of the letter. Truxton indicated it was not.

12 16. Staff concluded that Truxton's response was inadequate because it did not provide any
13 documentation to substantiate the claims nor did it provide a plan. Therefore on February 24, 2010,
14 Staff requested additional documentation to verify what Truxton has done and what it plans to do to
15 remedy the deficiencies listed in the ADEQ Sanitary Report. The requested documentation would
16 include invoices or photographs for work completed on leaks, estimates for work to be completed,
17 correspondence with consultants for arsenic and pressure issues, as well as scheduled time frames for
18 the testing.

19 17. Truxton responded that it would send the requested documentation to Staff by Friday,
20 February 26, 2010. On February 26, Truxton contacted Staff claiming it was having trouble collecting
21 certain documents, but would provide them to Staff during Staff's visit the following Monday, March
22 1, 2010.

23 18. Truxton did not provide the documents to Staff on March 1, 2010. To date, Staff still
24 has not been provided with the requested documentation, or an adequate explanation as to why
25 Truxton has not been able to provide it.

26 19. Staff cannot determine water loss for the Truxton water system because Truxton has
27 failed to provide accurate water pumped/purchased and water sold data in its Utility Annual Report
28 filings for 2001 through 2009. For some years, the data contained in the Utility Annual Report shows

1 the amount of water purchased from the Trust is the exact amount of water sold to the customers, with
2 no data for water pumped, suggesting zero percent water loss. In other years, the data has been
3 recorded so that Truxton listed the amount of water purchased, pumped and sold as the same number,
4 which if accurate, would suggest a fifty percent water loss. Likewise, in the Annual Report, companies
5 are asked to list the arsenic level for each well *in its system*. Truxton every year since at least 2002 has
6 only provided this information for one well, despite having six wells servicing its system.

7 20. Truxton has included a line of credit from the Trust as long-term debt in its Annual
8 Reports. The outstanding amount has been recorded as high as \$498,361. There is no record of
9 Commission approval for Truxton to obtain debt from the Trust.

10 21. Truxton's accounting system does not conform to the National Association of
11 Regulatory Utility Commissioners ("NARUC") accounting practices. The Accounts do not reflect
12 proper NARUC account classification and NARUC account numbers.

13 22. Truxton's accounting system does not conform to Generally Accepted Accounting
14 Principles ("GAAP") principles. Customer deposits have been recorded as revenue. A loan repayment
15 was recorded as an expense. The financial transactions are not booked into their proper account
16 classes.

17 23. The Trust's financial information has been segregated from Truxton's, but Truxton's
18 has not been segregated from the Trust's. Costs relating to upkeep and maintenance of Trust assets
19 were billed, charged or paid by the Company; and costs relating to the upkeep and maintenance of
20 Truxton's assets were billed, charged or paid by the Trust. For example, the repairs and maintenance
21 cost related to a water tanker (used for hauling water) which is owned by the Trust was charged to
22 Truxton.

23 24. Additionally, it appears Truxton has made it a practice for almost ten (10) years of
24 comingling Truxton's revenue from ratepayers with the finances of the Trust.

25 25. Since the beginning of 2007 until the present, there have been a multitude of customer
26 complaints filed with Consumer Services. The majority of the complaints center on the concern for the
27 adequacy of the water and water service. Complaints include, but are not limited to: low pressure
28 issues, safety of water, and the numerous leaks within the system.

1 26. In addition to the numerous complaints, the timeliness and adequacy of the
2 Company's responses to inquiries by Consumer Services on behalf of customers, has been inadequate.
3 Based on the records kept by Consumer Services, there have been numerous recorded instances of
4 customers and Staff having difficulty getting into contact with or obtaining answers from Truxton, and
5 its manager Mike Neal. Truxton does not return calls promptly, sometimes taking weeks, and does not
6 produce the information or results when promised.

7 27. Mr. James Baccus, a customer of Truxton, allegedly advanced \$24,800 to Truxton on
8 May 3, 2007 for a main extension. Staff has no record of Truxton filing or seeking approval for the
9 main extension agreement. To date, the main extension has not been constructed and Mr. Baccus has
10 not been refunded his advance.

11 28. On December 4, 2008, the Northern Arizona Consolidated Fire District ("NACFD")
12 provided an advance of \$13,440.00 to Truxton for the installation of three (3) fire hydrants. Staff has
13 no record of Truxton filing or seeking approval for its installation. To date, the fire hydrants have not
14 been installed and the NACFD has not been refunded its advance.

15 29. An informal complaint was brought by the NACFD because Truxton has taken the
16 advance for the installation of three fire hydrants but has never installed them. Mike Neal presented a
17 \$13,440 invoice for the hydrants to NACFD board members on December 4, 2008, which the NACFD
18 paid the same day. The invoice description lists three fire hydrants and the intersections where they
19 are to be installed. The amount for each hydrant is listed as \$4,480.00. Mike Neal represented to the
20 NACFD Board that the money was necessary at that time because equipment and/or parts necessary to
21 construct the installation had already been ordered or obtained and payment on them was necessary.

22 30. As of December 2009, no work had taken place on the installation of the hydrants, and
23 NACFD contacted Consumer Services to lodge an informal complaint. A mediation was held over the
24 phone between NACFD and Truxton, where a deadline of May 15, 2010 for all the hydrants to be
25 installed was set. If the deadline was not met, the Company was required to reimburse NACFD the
26 \$13,440 already paid. This agreement was written and signed by both parties. The hydrants were not
27 installed by May 15, 2010, and the Company did not refund NACFD's money. To date, the hydrants
28 have still not been installed.

COMPLAINT**Count One****(Violation of A.R.S. §40-321(A))**

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4 31. Staff incorporates the foregoing allegations as if they were fully set forth herein.

5 32. A.R.S. §40-321(A) provides: “[w]hen the commission finds that the equipment,
6 facilities or service of any public service corporation, or the methods of manufacturer, distribution,
7 transmission, storage or supply employed by it are unjust, unreasonable, unsafe, improper, inadequate
8 or insufficient, the commission shall determine what is just, reasonable, safe, proper, adequate or
9 sufficient, and shall enforce its determination by order or regulation.

10 33. ADEQ has issued numerous reports and orders citing the deficiencies in Truxton’s
11 system over the years, and Truxton has not rectified these problems. The Company does not follow
12 the rules and regulations of the Commission. Truxton has been unable to maintain compliance with
13 ADEQ standards or follow the rules and regulations of the Commission, its equipment and facilities
14 are inadequate, insufficient and unsafe. Therefore the Commission should order the Company to make
15 its system safe, proper and adequate.

Count Two**(Violation of R-14-2-407(A))**

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18 34. Staff incorporates the foregoing allegations as if they were fully set forth herein.

19 35. A.A.C. R-14-2-407(A) provides that, “[e]ach utility shall be responsible for providing
20 potable water to customer’s point of delivery.”

21 36. Truxton has failed to perform adequate testing, monitoring, or reporting to
22 demonstrate that it is providing potable water to the customer’s point of delivery. Truxton’s water
23 pressure has intermittently been below 20 psi for some customer for multiple years. The arsenic level
24 in the water system has consistently exceeded the maximum level of contamination set by the
25 Environmental Protection Agency (“EPA”). Finally, Truxton’s numerous leaks, coupled with the low
26 pressure, could lead to back flow and/or additional contamination issues. Water served under these
27 conditions is not considered potable and therefore Truxton is in violation of A.A.C. R-14-2 407(A).
28

1 45. Truxton lists long-term debt on its Annual Report every year, in the form of a line of
2 credit from the Trust. The Commission Docket does not have a record of a financing application ever
3 being approved. Truxton is in violation of A.R.S. §40-301(B).

4 **Count Six**

5 **(Violation of A.R.S. §40-302(A))**

6 46. Staff incorporates the foregoing allegations as if they were fully set forth herein.

7 47. A.R.S. §40-302(A) states that, “[b]efore a public service corporation issues stocks
8 and stock certificates, bonds, notes and other evidences of indebtedness, it shall first secure from the
9 commission an order authorizing such issue and stating the amount thereof, the purposes to which the
10 issue or proceeds thereof are to be applied, and that, in the opinion of the commission, the issue is
11 reasonably necessary or appropriate for the purposes specified in the order, pursuant to §40-301, and
12 that, except as otherwise permitted in the order, such purposes are not, wholly or in part, reasonably
13 chargeable to operative expenses or to income.”

14 48. Truxton lists long-term debt on its Annual Report every year, in the form of a line of
15 credit from the Trust. The Commission Docket does not have a record of a financing application ever
16 being approved. Truxton is in violation of A.R.S. §40-301(B).

17 **Count Seven**

18 **(Violation of A.R.S. §40-221, A.R.S. §40-221(C) and A.A.C. R14-2-411(D)(2))**

19 49. Staff incorporates the foregoing allegations as if they were fully set forth herein.

20 50. Pursuant to A.R.S. §40-221, “the Commission is authorized to prescribe the record
21 keeping methods and accounts of public service corporations.” Pursuant to A.A.C. R14-2-411(D)(2),
22 “[e]ach utility shall maintain its books and records in conformity with the NARUC Uniform System of
23 Accounts for Class A, B, C, and D Water Utilities.”

24 51. The Commission has the authority to prescribe how a public service corporation must
25 keep its books and records. The Commission’s Rule requires utilities to conform to NARUC Uniform
26 System of Accounts when maintaining its records. Truxton does not maintain its books and records in
27 accordance with the NARUC System. Truxton is in violation of A.R.S. §40-211 and A.A.C. R14-2-
28 411(D)(2).

Count Nine**(Violation of A.A.C. R14-2-411(A)(1) and A.A.C. R14-2-411(A)(2))**

57. Staff incorporates the foregoing allegations as if they were fully set forth herein.

58. Pursuant to A.A.C. R14-2-411(A)(1), “[e]ach utility shall make a full and prompt investigation of all service complaints made by its customers, either directly or through the Commission.” Pursuant to A.A.C. R14-2-411(A)(1), “[t]he utility shall respond to the complaint and/or the Commission representative within five (5) working days as to the status of the utility investigation of the complaint.”

59. Numerous complaints have been lodged with Consumer Services, and many of them include the lack of a timely response from Truxton. Consumer Services has requested information or investigations by Truxton and has received untimely or inadequate responses, or in some instances no response. On numerous occasions, Truxton has not responded to the Consumer Service representatives or customers within five (5) working days. Truxton is in violation of A.A.C. R14-2-411(A)(1) and A.A.C. R14-2-411(A)(2).

Count Ten**(Violation of A.A.C. R14-2-406(G))**

60. Staff incorporates the foregoing allegations as if they were fully set forth herein.

61. R14-2-406(G) requires that “[a]ll agreements entered into under this rule shall be evidenced by a written statement, and signed by the Company and the parties advancing the funds for advances in aid under this rule of the duly authorized agents of each.”

62. Truxton has collected funds from customers for main extensions, and therefore has entered into main extension agreements. No written copy of any main extension agreement has been filed with the Commission; based on belief and information, Truxton has not evidenced its main extension agreements with a written statement, signed by Truxton and the parties advancing the funds. Truxton is in violation of A.A.C. R14-2-406(G).

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Count Eleven**(Violation of A.A.C. R14-2-406(M))**

63. Staff incorporates the foregoing allegations as if they were fully set forth herein.

64. According to R14-2-(406)(M), “[a]ll agreements under this rule shall be filed with and approved by the Utilities Division of the Commission. No agreement shall be approved unless accompanied by a Certificate of Approval to Construct as issued by the AZ Department of Health Services. Where agreements for main extension are not filed with the Utilities Division, the refundable advance shall be immediately due and payable to the person making the advance.”

65. The Commission does not have a copy of any main extension agreement entered into by Truxton, nor has the Utilities Division approved any such agreement. Truxton has not refunded any advances by customers for main extensions that were not approved by the Utilities Division. Truxton is in violation of A.A.C. R14-2-406(G).

Count Twelve**(Violation of A.A.C. R14-2-409(D)(1))**

66. Staff incorporates the foregoing allegations as if they were fully set forth herein.

67. A.A.C. R14-2-409(D)(1) states that, “[e]ach customer shall be billed under the applicable tariff indicated in the customer’s application for service.”

68. Truxton’s Tariff, Part One, Section IV. PERMITTED COSTS provides for how services provided “at cost” will be estimated, invoiced, and collected. The Company did not provide the customer with the estimated cost of the main extension, which would have included cost for labor, materials, other charges and overhead. The Company would be unable to fulfill the remaining obligations under the tariff if it did not calculate and document the estimate correctly. The Company has not billed the customers under the applicable tariff and is in violation of R14-2-409(D)(1).

Count Thirteen**(Violation of A.R.S. §40-202(L))**

69. Staff incorporates the foregoing allegations as if they were fully set forth herein.

70. A.R.S. §40-202(L) “A public service corporation shall comply with every order, decision, rule or regulation made by the commission in any matter relating to or affecting its business

1 as a public service corporation and shall do everything necessary to secure compliance with and
2 observance of every such order, decision, rule or regulation.”

3 71. The Company is in violation of numerous Commission rules and regulations and has
4 not done everything necessary to secure compliance. Truxton is in violation of A.R.S. §40-202(L).

5 **Count Fourteen**

6 **(Violation of A.R.S. §40-204(A))**

7 72. Staff incorporates the foregoing allegations as if they were fully set forth herein.

8 73. A.R.S. §40-204(A) “Every public service corporation shall furnish to the commission,
9 in the form and detail the commission prescribes, tabulations, computations, annual reports, monthly
10 or periodical reports of earnings and expenses, and all other information required by it to carry into
11 effect the provisions of this title and shall make specific answers to all questions submitted by the
12 commission. If a corporation is unable to answer any question, it shall give a good and sufficient
13 reason therefore.”

14 74. Truxton does not maintain its accounts and records in accordance with NARUC or
15 GAAP principles. Truxton has been comingling funds with the Trust. Truxton is unable to produce
16 documentation verifying labor expenses or material costs incurred by Truxton concerning repairs
17 required by ADEQ and Staff. Truxton does not provide specific answers or sufficient explanations to
18 questions submitted by Staff. Truxton has consistently not provided accurate information in its Utility
19 Annual Reports so as to allow Staff to determine actual water loss. Truxton is in violation of A.R.S.
20 § 40-204(A).

21 **Count Fifteen**

22 **(Violation of A.R.S. §40-204(B))**

23 75. Staff incorporates the foregoing allegations as if they were fully set forth herein.

24 76. A.R.S. §40-204(B) “When required by the commission, a public service corporation
25 shall deliver to the commission copies of any maps, profiles, contracts, franchises, books, papers and
26 records in its possession, or in any way relating to its property or affecting its business, and also a
27 complete inventory of all its property in the form the commission directs.”

28

- 1 • Why its actions do not represent a violation of A.R.S. §40-302(A);
- 2 • Why its actions do not represent a violation of A.R.S. §40-221;
- 3 • Why its actions do not represent a violation of A.A.C. R-14-2-411(D)(1);
- 4 • Why its actions do not represent a violation of A.A.C. R-14-2-411(D)(2);
- 5 • Why its actions do not represent a violation of A.R.S. §40-221(C);
- 6 • Why its actions do not represent a violation of A.A.C. R-14-2-411(A)(1);
- 7 • Why its actions do not represent a violation of A.A.C. R-14-2-411(A)(2);
- 8 • Why its actions do not represent a violation of A.A.C. R14-2406(G);
- 9 • Why its actions do not represent a violation of A.A.C. R-14-2-406(M);
- 10 • Why its actions do not represent a violation of A.A.C. R-14-2-409(D)(1);
- 11 • Why its actions do not represent a violation of A.R.S. §40-202(L);
- 12 • Why its actions do not represent a violation of A.R.S. §40-204(A);
- 13 • Why its actions do not represent a violation of A.R.S. §40-204(B);
- 14 • Why its actions do not represent a violation of Arizona Constitutional Article XV
- 15 §3;
- 16 • Why a qualified Interim Manager should not be appointed, as selected by Staff;
- 17 and
- 18 • Why other relief deemed appropriate by the Commission should be ordered.

19 82. Staff further requests that after the conclusion of appropriate proceedings, a final

20 **OPINION AND ORDER** be entered:

- 21 • Finding that Truxton has violated A.R.S. §40-321(A);
- 22 • Finding that Truxton has violated of A.A.C. R-14-2-407(A);
- 23 • Finding that Truxton has violated A.A.C. R-14-2-407(C);
- 24 • Finding that Truxton has violated A.A.C. R-14-2-407(E);
- 25 • Finding that Truxton has violated of A.R.S. §40-301(B);
- 26 • Finding that Truxton has violated of A.R.S. §40-302(A);
- 27 • Finding that Truxton has violated A.R.S. §40-221;
- 28 • Finding that Truxton has violated A.A.C. R-14-2-411(D)(1);

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- Finding that Truxton has violated A.A.C. R-14-2-411(D)(2);
- Finding that Truxton has violated A.R.S. §40-221(C);
- Finding that Truxton has violated A.A.C. R-14-2-411(A)(1);
- Finding that Truxton has violated A.A.C. R-14-2-411(A)(2);
- Finding that Truxton has violated A.A.C. R14-2406(G);
- Finding that Truxton has violated A.A.C. R-14-2-406(M);
- Finding that Truxton has violated A.A.C. R-14-2-409(D)(1);
- Finding that Truxton has violated A.R.S. §40-202(L);
- Finding that Truxton has violated of A.R.S. §40-204(A);
- Finding that Truxton has violated A.R.S. §40-204(B);
- Finding that Truxton has violated Arizona Constitutional Article XV §3;
- Ordering the appointment of a qualified Interim Manager, selected by Staff, if the Company cannot demonstrate to the Commission's satisfaction that it has taken all actions necessary to remedy the violations.
- Imposing fines and penalties pursuant to Article XV, Section 19 of the Arizona Constitution and A.R.S. §§ 40-424 and 40-425; and
- Ordering such other relief as the Commission may find just and reasonable.

RESPECTFULLY SUBMITTED this 23rd day of June, 2010.


Kimberly A. Ruht
Charles Hains
Legal Division
Arizona Corporation Commission
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Phoenix, Arizona 85007
(602) 542-3402

1 SERVICE LIST FOR: Truxton Canyon Water Company
2 DOCKET NO. W-02168A-10-

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4 7313 East Concho Drive, Suite B
5 Kingman, Arizona 86401

6 Mr. Mike Neal
7 7313 East Concho Drive, Suite B
8 Kingman, Arizona 86401

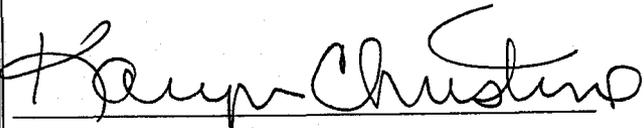
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Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 KRISTIN K. MAYES - Chairman
4 GARY PIERCE
5 PAUL NEWMAN
6 SANDRA D. KENNEDY
7 BOB STUMP

8 IN THE MATTER OF THE COMMISSION ON
9 ITS OWN MOTION INVESTIGATING THE
10 FAILURE OF TRUXTON CANYON WATER
11 COMPANY TO COMPLY WITH
12 COMMISSION RULES AND REGULATIONS.

DOCKET NO. W-02168A-10-0247

DECISION NO. _____

ORDER TO SHOW CAUSE

13
14 **OPEN MEETING:**

15 **PHOENIX, ARIZONA**

16 **BY THE COMMISSION:**

17 On June 23, 2010, the Staff of the Utilities Division ("Staff") of the Arizona Corporation
18 Commission ("Commission"), filed a Complaint and Petition for Order to Show Cause against
19 Truxton Canyon Water Company ("Truxton" or "Company"), an Arizona Public Service
20 Corporation. Staff seeks an Order to Show Cause against Respondent Truxton.

21 Staff asserts that Truxton has violated numerous provision of Arizona law, including
22 Commission Rules and Regulations, provisions of the Arizona Revised Statutes, and the Arizona
23 Constitution. Staff seeks various relief, including the issuance of an Order to Show Cause against the
24 Respondent, issuance of an interim manager, and any other penalties or fines the Commission
25 concludes is appropriate.

26 Count I of Staff's Complaint alleges that Truxton's system is not safe, proper, or adequate in
27 violation of A.R.S. §40-321(A). Count II of Staff's Complaint alleges that Truxton is not providing
28 potable water in violation of A.A.C. R14-2-407(A). Count III of Staff's Complaint alleges that
Truxton does not maintain a minimum delivery pressure of 20 psi in violation of R-14-2-407(E).
Count IV of Staff's Complaint alleges that Truxton is not supplying its customers with satisfactory

1 and continuous service in violation of R14-2-407(C). Count V of Staff's Complaint alleges that
2 Truxton obtain long term debt without Commission approval in violation A.R.S. §301(B).

3 Count VI of Staff's Complaint alleges that Truxton obtain long term debt without
4 Commission approval in violation of A.R.S. §40-302(A). Count VII of Staff's Complaint alleges that
5 Truxton does not maintain its books and records in accordance with the prescribed methods in
6 violation of A.R.S. §40-221, §40-221(C), and A.A.C. R14-2-411(D)(2). Count VIII of Staff's
7 Complaint alleges that Truxton does not maintain accurate accounts and records in violation of
8 A.A.C. R14-2-411(D)(1). Count IX of Staff's Complaint alleges that Truxton does not adequately
9 respond or investigate complaints made by customers or through Consumer Services Division in
10 violation of A.C.C. R14-2-411(A)(1) and R14-2-411(A)(2). Count X of Staff's Complaint alleges
11 that Truxton has not created written agreements evidencing main extension agreements with
12 customers in violation of A.A.C. R14-2-406(G).

13 Count XI of Staff's Complaint alleges that Truxton has not had its main extension agreements
14 approved by the Commission, nor has it refunded advances to customers in violation of A.A.C. R14-
15 406(M). Count XII of Staff's Complaint alleges that Truxton has not billed under its tariff on certain
16 occasions in violation of A.A.C. R14-2-409(D)(1). Count XIII of Staff's Complaint alleges that
17 Truxton is not in compliance with Commission orders, decision, rules or regulations in violations of
18 A.R.S. §40-202(L). Count XIV of Staff's Complaint alleges that Truxton does not consistently
19 provide accurate information to the Commission in violation of A.R.S. §40-204(A). Count XV of
20 Staff's Complaint alleges that Truxton does not provide information or documentation to Staff when
21 requested in violation of A.R.S. §40-204(B). Count XI of Staff's Complaint alleges that a
22 Commission order is necessary for the safety and preservation of the health of Truxton's customers,
23 as is authorized under Article XV, §3 of the Arizona Constitution.

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1 b. Violation of A.A.C. R18-5-5050(B) for failure to obtain an Approval to
2 Construct from ADEQ prior to making alterations;

3 c. Violation of A.A.C. R18-4-124 for failure to maintain and keep in proper
4 operating condition a facility used in the production, treatment, or distribution of a water supplier.

5 d. Violation of R18-4-214.02 for failure to monitor TTHMs (trihalomethanes)
6 and HAA5s (halo acetic acids) under the requirements of R18-4-214.01 or R18-4-214.02 on a
7 quarterly or more frequent basis. The Company also failed to monitor TTHMs and HAA5s during
8 2004 and 2005.

9 e. Violation of A.A.C. R18-4-105(E)(1)(Table 3)(2) for failure to provide public
10 notification for failure to monitor TTHMs and HAA5s. The Company also failed to provide notice
11 for failure to monitor TTHMs and HAA5s in 2004 and 2005.

12 f. Violation of A.A.C. R18-4-104(L) for failure to notify ADEQ within 48 hours
13 of the discovery of a failure to comply with a monitoring requirement. The Company also failed to
14 comply with this requirement in 2004 and 2005.

15 g. Violation of A.A.C. R18-4-214.02(I)(1) for failure to monitor for chlorine in
16 the distribution system when total coliform are sampled. The Company failed to monitor for residual
17 chlorine on a monthly basis over the period of January 2004 through September 2006.

18 h. Violation of A.A.C. R18-4-105(E)(1)(Table3)(2) for failure to provide public
19 notification for failure to monitor residual chlorine, from January 2004 to September 2006.

20 i. Violation of A.A.C. R18-4-104(L) for failure to notify ADEQ within 48 hours
21 of the discovery of a failure to comply with a monitoring requirement.

22 j. Violation of A.A.C. R18-4-214.02(E) for failure to collect disinfection by-
23 product and residual disinfection level samples at sites that are representative of water throughout the
24 distribution system according to a written monitoring plan. ADEQ concluded that the samples have
25 not been collected because no plan was developed and/or made available for review.

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1 5. ADEQ issued a Consent Order (No. DW-49-07) against Truxton on September 10,
2 2007. The Consent Order incorporates, supersedes, and replaces the Compliance Order from May 24,
3 2007. The Consent Order was acknowledged and signed by then President Marc Neal on August 24,
4 2007.

5 6. In December of 2008, Truxton was issued Notices of Violation by ADEQ – one for
6 exceeding the arsenic limit and another for not providing public notice of exceeding the arsenic limit.

7 7. According to ADEQ System Reviews, Truxton did not perform quarterly monitoring
8 for arsenic or disinfection by-product (chlorine), and did not provide public notice that it was not
9 appropriately monitoring for arsenic or disinfection by-product.

10 8. ADEQ issued an Inspection Report on April 21, 2009. ADEQ cited Truxton for failure
11 to maintain a minimum of 20 pounds per inch throughout the water system (A.A.C. R14-5-502(B)),
12 air gaps needed for standpipes at both Colorado and Apache Roads locations, and failure to submit
13 and/or have a Backflow Prevention Plan.

14 9. ADEQ issued a Sanitary Survey Report dated October 14, 2009, listing Truxton as
15 non-compliant with ADEQ requirements in the categories of Physical Facilities and Monitoring and
16 Reporting. Major deficiencies included: failure to maintain a pressure of at least 20 pounds per square
17 inch (psi) at ground level at all points in the potable water distribution system under all conditions of
18 flow; continued violation of the maximum contaminant levels for arsenic since 2007; no acceptable
19 quarterly monitoring or sampling methodology to resolve the arsenic violation; no monitoring samples
20 submitted in 2007, 2008 or 2009 for disinfection by-products (chlorination); a continued outstanding
21 violation for radio chemicals, and the existence of at least twenty (20) separate leaks or potential cross
22 connections within the distribution system. ADEQ noted the leaks are a potential source of
23 contamination due to backflow and fluctuating pressure and requests that they be repaired
24 immediately.

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2 10. During the end of 2009 and the beginning of 2010, Staff requested that Truxton repair
3 all reported leaks as soon as possible, and to provide a detailed explanation if certain leaks would take
4 more time. Truxton has repeatedly stated it will have the leaks repaired by a date certain, but then does
5 not fix them and/or does not provide Staff with any explanation. Many of the twenty leaks listed on
6 ...

7 11. the ADEQ report have been repaired. However, other leaks have been uncovered in
8 the process. To date Truxton still has numerous leaks in the system.

9 12. ADEQ has indicated plans to issue a new Consent Order and require Truxton to have a
10 comprehensive overall system evaluation by an engineer.

11 13. On February 5, 2010, Commission Staff sent Truxton a letter requesting the Company
12 submit documentation within ten (10) days demonstrating it is in compliance with ADEQ standards,
13 or if it is not in compliance, it must submit a detailed plan that addresses and proposes remedies for
14 the deficiencies in the ADEQ Sanitary Survey Report dated October 14, 2009.

15 14. On February 17, 2010, Staff received Truxton's response letter, in email form, which
16 provided minimal explanation. Staff contacted Truxton to verify if the remaining documentation that
17 was originally requested was included in the mailed version of the letter. Truxton indicated it was not.

18 15. Staff concluded that Truxton's response was inadequate because it did not provide any
19 documentation to substantiate the claims nor did it provide a plan. Therefore on February 24, 2010,
20 Staff requested additional documentation to verify what Truxton has done and what it plans to do to
21 remedy the deficiencies listed in the ADEQ Sanitary Report. The requested documentation would
22 include invoices or photographs for work completed on leaks, estimates for work to be completed,
23 correspondence with consultants for arsenic and pressure issues, as well as scheduled time frames for
24 the testing.

25 16. Truxton responded that it would send the requested documentation to Staff by Friday,
26 February 26, 2010. On February 26, Truxton contacted Staff claiming it was having trouble collecting
27 certain documents, but would provide them to Staff during Staff's visit the following Monday, March
28 1, 2010.

1 17. Truxton did not provide the documents to Staff on March 1, 2010. To date, Staff still
2 has not been provided with the requested documentation, or an adequate explanation as to why
3 Truxton has not been able to provide it.

4 18. Staff cannot determine water loss for the Truxton water system because Truxton has
5 failed to provide accurate water pumped/purchased and water sold data in its Utility Annual Report
6 filings for 2001 through 2009. For some years, the data contained in the Utility Annual Report shows
7 the amount of water purchased from the Trust is the exact amount of water sold to the customers, with
8 no data for water pumped, suggesting zero percent water loss. In other years, the data has been
9 recorded so that Truxton listed the amount of water purchased, pumped and sold as the same number,
10 which if accurate, would suggest a fifty percent water loss. Likewise, in the Annual Report, companies
11 are asked to list the arsenic level for each well *in its system*. Truxton every year since at least 2002 has
12 only provided this information for one well, despite having six wells servicing its system.

13 19. Truxton has included a line of credit from the Trust as long-term debt in its Annual
14 Reports. The outstanding amount has been recorded as high as \$498,361. There is no record of
15 Commission approval for Truxton to obtain debt from the Trust.

16 20. Truxton's accounting system does not conform to the National Association of
17 Regulatory Utility Commissioners ("NARUC") accounting practices. The Accounts do not reflect
18 proper NARUC account classification and NARUC account numbers.

19 21. Truxton's accounting system does not conform to Generally Accepted Accounting
20 Principles ("GAAP") principles. Customer deposits have been recorded as revenue. A loan repayment
21 was recorded as an expense. The financial transactions are not booked into their proper account
22 classes.

23 22. The Trust's financial information has been segregated from Truxton's, but Truxton's
24 has not been segregated from the Trust's. Costs relating to upkeep and maintenance of Trust assets
25 were billed, charged or paid by the Company; and costs relating to the upkeep and maintenance of
26 Truxton's assets were billed, charged or paid by the Trust. For example, the repairs and maintenance
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1 cost related to a water tanker (used for hauling water) which is owned by the Trust was charged to
2 Truxton.

3 23. Additionally, it appears Truxton has made it a practice for almost ten (10) years of
4 comingling Truxton's revenue from ratepayers with the finances of the Trust.

5 24. Since the beginning of 2007 until the present, there have been a multitude of customer
6 complaints filed with Consumer Services. The majority of the complaints center on the concern for the
7 adequacy of the water and water service. Complaints include, but are not limited to: low pressure
8 issues, safety of water, and the numerous leaks within the system.

9 25. In addition to the numerous complaints, the timeliness and adequacy of the
10 Company's responses to inquiries by Consumer Services on behalf of customers, has been inadequate.
11 Based on the records kept by Consumer Services, there have been numerous recorded instances of
12 customers and Staff having difficulty getting into contact with or obtaining answers from Truxton, and
13 its manager Mike Neal. Truxton does not return calls promptly, sometimes taking weeks, and does not
14 produce the information or results when promised.

15 26. Mr. James Baccus, a customer of Truxton, allegedly advanced \$24,800 to Truxton on
16 May 3, 2007 for a main extension. Staff has no record of Truxton filing or seeking approval for the
17 main extension agreement. To date, the main extension has not been constructed and Mr. Baccus has
18 not been refunded his advance

19 27. On December 4, 2008, the Northern Arizona Consolidated Fire District ("NACFD")
20 provided an advance of \$13,440.00 to Truxton for the installation of three (3) fire hydrants. Staff has
21 no record of Truxton filing or seeking approval for its installation. To date, the fire hydrants have not
22 been installed and the NACFD has not been refunded its advance.

23 28. An informal complaint was brought by the NACFD because Truxton has taken the
24 advance for the installation of three fire hydrants but has never installed them. Mike Neal presented a
25 \$13,440 invoice for the hydrants to NACFD board members on December 4, 2008, which the NACFD
26 paid the same day. The invoice description lists three fire hydrants and the intersections where they
27 are to be installed. The amount for each hydrant is listed as \$4,480.00. Mike Neal represented to the
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1 NACFD Board that the money was necessary at that time because equipment and/or parts necessary to
2 construct the installation had already been ordered or obtained and payment on them was necessary.

3 29. As of December 2009, no work had taken place on the installation of the hydrants, and
4 NACFD contacted Consumer Services to lodge an informal complaint. A mediation was held over the
5 phone between NACFD and Truxton, where a deadline of May 15, 2010 for all the hydrants to be
6 installed was set. If the deadline was not met, the Company was required to reimburse NACFD the
7 \$13,440 already paid. This agreement was written and signed by both parties. The hydrants were not
8 installed by May 15, 2010, and the Company did not refund NACFD's money. To date, the hydrants
9 have still not been installed.

10 30. Staff requests the appointment of an interim manager. Staff remains mindful that the
11 appointment of an interim manager is an extraordinary remedy which should only be employed when
12 no other option is viable. Staff finds this Standard is satisfied in this case.

13 31. Staff believes that grounds exist to assess civil penalties against Truxton pursuant to
14 A.R.S. §40-424 and §40-425, in an amount not less than \$100 nor more than \$5,000 for each day of
15 violation of Commission Statutes, Rules, Regulations or Order and such other relief as discussed below
16 or as determined by the Commission.

17 32. Staff requests that the Commission issue an Order to Show Cause directing Truxton to
18 show cause:

- 19 a. Why its actions do not constitute a violation of A.R.S. §40-321(A);
- 20 b. Why its actions do not represent a violation of A.A.C. R-14-2-407(A);
- 21 c. Why its actions do not represent a violation of A.A.C. R-14-2-407(E);
- 22 d. Why its actions do not represent a violation of A.A.C. R-14-2-407(C);
- 23 e. Why its actions do not represent a violation of A.R.S. §40-301(B);
- 24 f. Why its actions do not represent a violation of A.R.S. §40-302(A);
- 25 g. Why its actions do not represent a violation of A.R.S. §40-221;
- 26 h. Why its actions do not represent a violation of A.A.C. R-14-2-411(D)(1);
- 27 i. Why its actions do not represent a violation of A.A.C. R-14-2-411(D)(2);
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- 1 j. Why its actions do not represent a violation of A.R.S. §40-221(C);
2 k. Why its actions do not represent a violation of A.A.C. R-14-2-411(A)(1);
3 l. Why its actions do not represent a violation of A.A.C. R-14-2-411(A)(2);
4 m. Why its actions do not represent a violation of A.A.C. R14-2406(G);
5 n. Why its actions do not represent a violation of A.A.C. R-14-2-406(M);
6 o. Why its actions do not represent a violation of A.A.C. R-14-2-409(D)(1);
7 p. Why its actions do not represent a violation of A.R.S. §40-202(L);
8 q. Why its actions do not represent a violation of A.R.S. §40-204(A);
9 r. Why its actions do not represent a violation of A.R.S. §40-204(B);
10 s. Why its actions do not represent a violation of Arizona Constitutional Article
11 XV §3;
12 t. Why a qualified Interim Manager should not be appointed, as selected by Staff;
13 and
14 u. Why other relief deemed appropriate by the Commission should be ordered.
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16 CONCLUSIONS OF LAW

17 1. The Commission has jurisdiction to hear complaints against public service
18 corporations pursuant to A.R.S. § 40-246. The Commission has jurisdiction to supervise and regulate
19 public service corporations pursuant to Article XV of the Arizona Constitution and Title 40 of the
20 Arizona Revised Statutes.

21 2. Truxton is a public service corporation as defined by Article XV, § 2 of the Arizona
22 Constitution and A.R.S. §§ 40-281 and 40-282.

23 3. The Commission has jurisdiction over the subject matter of Staff's Complaint and
24 Petition for Order to Show Cause.

25 4. A.R.S. §40-321(A) provides: "[w]hen the commission finds that the equipment,
26 appliances, facilities or service of any public service corporation, or the methods of manufacture,
27 distribution, transmission, storage or supply employed by it are unjust, unreasonable, unsafe,
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1 5. improper, inadequate or insufficient, the commission shall determine what is just,
2 reasonable, safe, proper, adequate or sufficient, and shall enforce its determination by order or
3 regulation.”

4 6. Under Article XV §3 of the Arizona Constitution, the Commission may enter “orders
5 for the convenience, comfort, and safety, and preservation of health” of the customers of public
6 service corporations.

7 7. Pursuant to A.R.S. §§40-202, 40-203, 40-321, 40-322, and Under Article XV §3 of the
8 Arizona Constitution, the Commission may prohibit unjust and unreasonable service.

9 8. Pursuant to A.R.S. §§40-331 and 40-332, the Commission may require addition and
10 improvements to the facilities of a public service corporation.

11 9. Pursuant to A.R.S. §§40-424 and 40-425, the Commission may impose fines.

12 10. It is lawful and in the public interest to issue the requested Order to Show Cause
13 against the Respondents as alleged in Staff’s June 23, 2010 petition and described in the Finding of
14 Fact.

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RELIEF

IT IS THEREFORE ORDERED that Truxton Canyon Water Company shall appear and show cause at a time and place designated by the Hearing Division to explain:

- a. Why its actions do not constitute a violation of A.R.S. §40-321(A);
- b. Why its actions do not represent a violation of A.A.C. R-14-2-407(A);
- c. Why its actions do not represent a violation of A.A.C. R-14-2-407(E);
- d. Why its actions do not represent a violation of A.A.C. R-14-2-407(C);
- e. Why its actions do not represent a violation of A.R.S. §40-301(B);
- f. Why its actions do not represent a violation of A.R.S. §40-302(A);
- g. Why its actions do not represent a violation of A.R.S. §40-221;
- h. Why its actions do not represent a violation of A.A.C. R-14-2-411(D)(1);
- i. Why its actions do not represent a violation of A.A.C. R-14-2-411(D)(2);
- j. Why its actions do not represent a violation of A.R.S. §40-221(C);
- k. Why its actions do not represent a violation of A.A.C. R-14-2-411(A)(1);
- l. Why its actions do not represent a violation of A.A.C. R-14-2-411(A)(2);
- m. Why its actions do not represent a violation of A.A.C. R14-2406(G);
- n. Why its actions do not represent a violation of A.A.C. R-14-2-406(M);
- o. Why its actions do not represent a violation of A.A.C. R-14-2-409(D)(1);
- p. Why its actions do not represent a violation of A.R.S. §40-202(L);
- q. Why its actions do not represent a violation of A.R.S. §40-204(A);
- r. Why its actions do not represent a violation of A.R.S. §40-204(B);
- s. Why its actions do not represent a violation of Arizona Constitutional Article XV §3;
- t. Why a qualified Manager should not be appointed, as selected by Staff; and
- u. Why other relief deemed appropriate by the Commission should be ordered.

IT IS FURTHER ORDERED that if Truxton intends to appear and show cause as ordered above, it shall file within ten (10) days effective of this Order, a preliminary statement describing

1 how it will make the showing of cause. Said filing shall include an Answer to Staff's Complaint if the
2 Respondent has not yet filed an Answer.

3 IT IS FUTHER ORDERED that the Hearing Division shall schedule further appropriate
4 proceedings.

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6 IT IS FUTHER ORDERED that this Decision shall become effective immediately.

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8 **BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

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CHAIRMAN

COMMISSIONER

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COMMISSIONER

COMMISSIONER

COMMISSIONER

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15 IN WITNESS WHEREOF, I, ERNEST JOHNSON,
16 Executive Director of the Arizona Corporation
17 Commission, have hereunto, set my hand and caused the
18 official seal of this Commission to be affixed at the
Capitol, in the city of Phoenix, this ____ day of
_____, 2010.

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22 Ernest Johnson
Executive Director

23 DISSENT: _____
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