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BEFORE THE ARIZONA CORPORATION C

**COMMISSIONERS**

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

Arizona Corporation Commission

DOCKETED

AUG 10 2010

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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. 71837

**ORDER TO SHOW CAUSE**

Open Meeting:  
July 27 and 28, 2010  
Phoenix, Arizona

**BY THE COMMISSION:**

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

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

Count I of Staff's Complaint alleges that Truxton's system is not safe, proper, or adequate in violation of A.R.S. § 40-321(A). Count II of Staff's Complaint alleges that Truxton is not providing 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 A.A.C. R-14-2-407(E). Count IV of Staff's Complaint alleges that Truxton is not supplying its customers with

...

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

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

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

25 \* \* \* \* \*

26 Having considered the entire record herein and being fully advised in the premises, the  
27 Commission finds, concludes and orders:

28 ...



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

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

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

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

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

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

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

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

24 5. ADEQ issued a Consent Order (No. DW-49-07) against Truxton on September 10,  
25 2007. The Consent Order incorporates, supersedes, and replaces the Compliance Order from May  
26 24, 2007. The Consent Order was acknowledged and signed by then President Marc Neal on August  
27 24, 2007.

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

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

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

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

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

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

28

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

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

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

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

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

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

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

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

7 19. 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 20. 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 21. Truxton's accounting system does not conform to Generally Accepted Accounting  
14 Principles ("GAAP") principles. Customer deposits have been recorded as revenue. A loan  
15 repayment was recorded as an expense. The financial transactions are not booked into their proper  
16 account classes.

17 22. 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 23. 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 24. 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  
27 the 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           25. 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,  
5 and its manager Mike Neal. Truxton does not return calls promptly, sometimes taking weeks, and  
6 does not produce the information or results when promised.

7           26. 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           27. 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           28. 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  
18 NACFD paid the same day. The invoice description lists three fire hydrants and the intersections  
19 where they are to be installed. The amount for each hydrant is listed as \$4,480.00. Mike Neal  
20 represented to the NACFD Board that the money was necessary at that time because equipment  
21 and/or parts necessary to construct the installation had already been ordered or obtained and payment  
22 on them was necessary.

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

1 installed by May 15, 2010, and the Company did not refund NACFD's money. To date, the hydrants  
2 have still not been installed.

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

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

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

- 12 a. Why its actions do not constitute a violation of A.R.S. § 40-321(A);
- 13 b. Why its actions do not represent a violation of A.A.C. R-14-2-407(A);
- 14 c. Why its actions do not represent a violation of A.A.C. R-14-2-407(E);
- 15 d. Why its actions do not represent a violation of A.A.C. R-14-2-407(C);
- 16 e. Why its actions do not represent a violation of A.R.S. § 40-301(B);
- 17 f. Why its actions do not represent a violation of A.R.S. § 40-302(A);
- 18 g. Why its actions do not represent a violation of A.R.S. § 40-221;
- 19 h. Why its actions do not represent a violation of A.A.C. R-14-2-411(D)(1);
- 20 i. Why its actions do not represent a violation of A.A.C. R-14-2-411(D)(2);
- 21 j. Why its actions do not represent a violation of A.R.S. § 40-221(C);
- 22 k. Why its actions do not represent a violation of A.A.C. R-14-2-411(A)(1);
- 23 l. Why its actions do not represent a violation of A.A.C. R-14-2-411(A)(2);
- 24 m. Why its actions do not represent a violation of A.A.C. R14-2406(G);
- 25 n. Why its actions do not represent a violation of A.A.C. R-14-2-406(M);
- 26 o. Why its actions do not represent a violation of A.A.C. R-14-2-409(D)(1);
- 27 p. Why its actions do not represent a violation of A.R.S. § 40-202(L);
- 28 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 Interim Manager should not be appointed, as selected by Staff; and
- u. Why other relief deemed appropriate by the Commission should be ordered.

### CONCLUSIONS OF LAW

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.

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

4. A.R.S. § 40-321(A) provides: "[w]hen the commission finds that the equipment, appliances, facilities or service of any public service corporation, or the methods of manufacture, distribution, transmission, storage or supply employed by it are unjust, unreasonable, unsafe,

5. Improper, inadequate or insufficient, the commission shall determine what is just, reasonable, safe, proper, adequate or sufficient, and shall enforce its determination by order or regulation."

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

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

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

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



1 IT IS FURTHER ORDERED that if Truxton intends to appear and show cause as ordered  
2 above, it shall file within ten (10) days effective of this Order, a preliminary statement describing  
3 how it will make the showing of cause. Said filing shall include an Answer to Staff's Complaint if  
4 the Respondent has not yet filed an Answer.

5 IT IS FUTURE ORDERED that the Hearing Division shall schedule further appropriate  
6 proceedings.

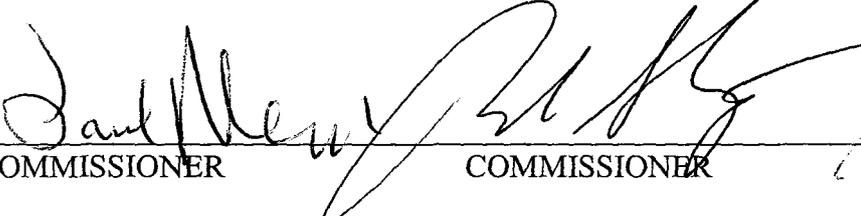
7 IT IS FUTURE ORDERED that this Decision shall become effective immediately.

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

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11 CHAIRMAN

COMMISSIONER

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14 COMMISSIONER

COMMISSIONER

COMMISSIONER

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17 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,  
18 Executive Director of the Arizona Corporation  
19 Commission, have hereunto, set my hand and caused the  
20 official seal of this Commission to be affixed at the  
21 Capitol, in the City of Phoenix, this 10<sup>th</sup> day of  
August, 2010.

22  
23 

24 ERNEST G. JOHNSON  
EXECUTIVE DIRECTOR

25 DISSENT: \_\_\_\_\_

26  
27 DISSENT: \_\_\_\_\_

1 SERVICE LIST FOR: Truxton Canyon Water Company  
2 DOCKET NO. W-02168A-10-0247

3 Mr. B. Marc Neal  
4 7313 East Concho Drive, Suite B  
Kingman, Arizona 86401

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

7 Steve Wene  
8 Moyes Sellers & Sims  
9 1850 North Central Avenue  
10 Suite 1100  
Phoenix, Arizona 85004

11 Ernest Johnson  
12 Executive Director  
13 Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

14 Steve Olea  
15 Director, Utilities Division  
16 Arizona Corporation Commission  
1200 West Washington  
17 Phoenix, Arizona 85007

18 Lyn Farmer  
19 Administrative Law Judge  
20 Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

21 Janice Alward, Chief Counsel  
22 Legal Division  
23 Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

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25  
26  
27  
28