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**BEFORE THE ARIZONA CORPORATION COMMISSION**

**COMMISSIONERS**  
GARY PIERCE, CHAIRMAN  
PAUL NEWMAN  
SANDRA D. KENNEDY  
BOB STUMP  
BRENDA BURNS

Arizona Corporation Commission  
**DOCKETED**  
MAR 25 2011  
DOCKETED BY [Signature]

**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  
**POST-HEARING POSITION PAPER  
RE THE ASSIGNMENT OF THE  
GOLF COURSE AGREEMENT AND  
RATE**

Truxton Canyon Water Company ("Truxton" or "Company"), hereby files its  
position re the proposed assignment of the Agreement between the Claude K. Neal  
Family Trust and the Valle Vista Property Owners Association, Inc. ("Water Supply  
Agreement"), and what has been referred to in this hearing as the proposed Golf Course  
Rate.

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1 **Preliminary Statement**

2 First and foremost, this is not a rate case. This is a proceeding intended to address  
3  
4 alleged violations by the Company. The Company currently has rates that apply to its  
5 customers, and those rates are not at issue here. Before those rates are changed in any  
6 matter, Truxton is entitled to due process in a ratemaking proceeding and the  
7  
8 Commission is obligated to set new rates supported by substantial evidence in a non-  
9 arbitrary manner. *Simms v. Round Valley Light & Power Co.*, 80 Ariz. 145, 149, 154,  
10 294 P.2d 378, 380, 384 (Ariz.1956).

11  
12 Second, it is the intervening Valle Vista Property Owners Association  
13 (“Association”) who is using this proceeding to seek extremely low rates for water to  
14 irrigate a golf course. If the Association succeeds, the golf course will be paying rates  
15 significantly less than the lowest rate paid by homeowners.

16  
17 **Truxton Agreed to an Assignment of the Water Supply Agreement.**

18 In an effort to work together and resolve alleged violations of Arizona Corporation  
19 Commission (“Commission”) rules, Truxton and Commission staff (“Staff”) entered into  
20 a Stipulated Agreement (“Stipulation”) identifying 22 recommendations. The Stipulation  
21 expressly states:  
22

- 23 5. Truxton agrees to receive assignment of the Water Supply Agreement between  
24 the Trust and the Association within 30 (thirty) days from the effective date of  
25 the Commission Order provided the Association agrees to the assignment.  
26 6. Truxton will charge to the Association the Agreement’s prevailing rate at the  
27 time of the Agreement transfer, the rate will be referred to as the Golf Course  
28 Rate.  
7. Truxton will no longer adjust the Golf Course Rate based on the annual  
Consumer Price Index.

1 See Ex. S-1, Stipulation Agreement (Jan. 18, 2011), Attachment 1. The Stipulation  
2 further requires Truxton to file a “revised tariff or a special contract rate” for the  
3 Agreement. *See id.*

4  
5 These provisions make it absolutely clear that Truxton and Staff agreed to the  
6 following: (1) Truxton agrees to an assignment of the Water Supply Agreement from the  
7 Trust; (2) the Association has to agree to the assignment; and (3) Truxton will charge the  
8 Association the rate at the time of the transfer and will no longer make CPI adjustments.

9 Thus, if the Association agrees to the transfer, it will no longer be charged CPI  
10 adjustments. Staff has already recommended approval of the assignment of the  
11 Agreement without modification to other provisions of the Agreement. *See, e.g.,*

12 Surrebuttal Testimony of Alexander Ibhade Igwe, at p. 8. Nowhere in the Stipulation  
13 does it state that the Agreement will no longer be valid or that any other terms will be  
14 changed; it only mentions those modifications listed above.

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18 **Company’s Position on the Golf Course Rate.**

19 The Company believes the Stipulation is clear and so are the Association’s  
20 options. The first option is that the Association can decide to reject the assignment. If  
21 the Association does reject the assignment, the Trust will continue to fulfill its obligations  
22 under the Agreement (provided the Association does the same) until the Agreement term  
23 ends.<sup>1</sup> The second option is that the Association agrees to the Agreement assignment. If  
24 this option is taken, Truxton will honor the Agreement and charge the Association the  
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<sup>1</sup> The Company is taking no position on what action Staff may take under this scenario.

1 rate at the time of the transfer with no further CPI adjustments. The third option is for the  
2 Association and Truxton to come to mutually agreeable terms and amend the Agreement  
3 accordingly, which the Commission may approve under a special contract rate.  
4

5 RESPECTFULLY SUBMITTED this 25<sup>th</sup> day of March, 2011.  
6

7 **MOYES SELLERS & SIMS**

8 

9 Steve Wene

10 Attorneys for Truxton Canyon Water Company  
11

12 Original and 13 copies of the foregoing  
13 filed this 25<sup>th</sup> day of March, 2011 with:

14 Docket Control  
15 Arizona Corporation Commission  
16 1200 West Washington  
17 Phoenix, Arizona 85007

18 Copy of the foregoing mailed this  
19 25<sup>th</sup> day of March, 2011 to:

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