

ORIGINAL

OPEN MEETING ITEM



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BEFORE THE ARIZONA CORPORATION C

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Arizona Corporation Commission
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JUL 20 2011

COMMISSIONERS

GARY PIERCE – Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

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AZ CORP COMMISSION
DOCKET CONTROL

DOCKETED BY

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

**NOTICE OF FILING STAFF'S RESPONSE
TO COMPANY'S APPLICATION FOR
MODIFICATION AND
RECONSIDERATION OF DECISION
NO. 72386**

Arizona Corporation Commission Staff ("Staff") hereby submits its Response to Truxton Canyon Water Company's Application for Modification and Reconsideration of Decision No. 72386. Additionally, Staff has attached a proposed form of order for the convenience of the Arizona Corporation Commission should a rehearing be granted in this matter.

This is only a Staff recommendation, the Commission can decide to accept, amend or reject Staff's proposed order. Comments to the proposed order may be made by filing an original and thirteen (13) copies of the comments with the Commission's Docket Control Center at the Phoenix address listed below by 4:00 p.m. on or before August 3, 2011.

Staff anticipates this matter to be scheduled for Commission deliberation at its Open Meetings scheduled August 16, 2011, at 10:00 a.m. and August 17, 2011, at 10:00 a.m.

RESPECTFULLY SUBMITTED this 20th day of July, 2011.

Kimberly A. Ruht, Attorney
Charles Hains, Attorney
Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007
(602) 542-3402

1 Original and eighteen (18) copies
2 of the foregoing filed this
20th day of July 2011 with:

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

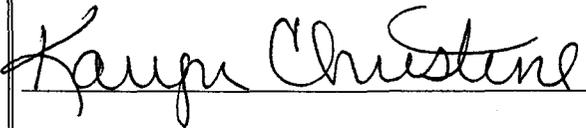
6 Copies of the foregoing mailed this
20th day of July 2011 to:

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

9 Mr. Mike Neal
10 7313 East Concho Drive, Suite B
11 Kingman, Arizona 86401

12 Steve Wene
13 Moyes Sellers & Sims
1850 North Central Avenue
14 Suite 1100
Phoenix, Arizona 85004

15 Valle Vista Property Owners Association, Inc.
16 9686 Concho Drive
Kingman, Arizona 86401

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BEFORE THE ARIZONA CORPORATION COMMISSION

GARY PIERCE
Chairman
BOB STUMP
Commissioner
SANDRA D. KENNEDY
Commissioner
PAUL NEWMAN
Commissioner
BRENDA BURNS
Commissioner

IN THE MATTER OF THE COMMISSON
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. _____

ORDER

Open Meeting
August 16 and 17, 2011
Phoenix, Arizona

BY THE COMMISSION:

PROCEDURAL HISTORY

On June 23, 2010, Staff of the Utilities Division (“Staff”) filed a Complaint and Petition for Order to Show Cause (“OSC”) against Truxton Canyon Water Company (“Truxton” or “Company”). Staff alleged in the OSC that Truxton was, or had been, in violation of Arizona Corporation Commission (“Commission”) rules and regulations, Arizona Revised Statutes (“A.R.S.”), and the Arizona Constitution.

On August 10, 2010, the Commission issued Decision No. 71837, ordering Truxton to appear and show cause as to why its actions did not constitute a violation of Arizona law and Commission rules and regulations.

On September 2, 2010, a Procedural Order was issued by the Hearing Division, presenting the schedule for the case.

1 On November 10, 2010, Direct Testimony was filed by Staff; the Company filed Rebuttal
2 Testimony on December 10, 2010, followed by Staff Surrebuttal Testimony filed on December 23,
3 2010.

4 On, December 21, 2010, Valle Vista Property Owners Association ("Association") filed a
5 motion to intervene and the Motion was granted on January 5, 2011.

6 On January 18, 2011, a full public hearing was scheduled and held. Staff, Truxton, and the
7 Association appeared through counsel and provided testimony and evidence on the issues raised.

8 Truxton and Staff also presented a Stipulated Agreement for the Judge's consideration, in
9 an effort to reduce the hearing time. Another day of hearing was scheduled for February 28, 2011,
10 to allow for additional notice to the customers.

11 On February 28, 2011, the hearing reconvened as scheduled. No additional members of the
12 public appeared to give public comment. However, Truxton did present additional testimony and
13 evidence.

14 On March 25, 2011, Truxton, the Association and Staff filed closing briefs.

15 On May 10, 2011, the Hearing Division issued a Recommended Opinion and Order
16 ("ROO"), incorporating the Stipulated Agreement.

17 On May 10, 2011, the Commission signed Decision No. 72386 after one minor amendment
18 to the timeline.

19 On June 17, 2011, the Company filed an Application for Modification and Reconsideration
20 of Decision No. 72386.

21 FINDINGS OF FACT

22 **I. BACKGROUND INFORMATION**

23 1. Truxton is a public service corporation, providing water to approximately 875
24 residential and commercial customers in Mohave County, Arizona. The Company was granted its
25 Certificate of Convenience and Necessity (CC&N) in Decision No. 41781. Its service territory
26 encompasses approximately five and one half square miles, and is located nine miles north of
27 Kingman, Arizona.

28

1 2. Truxton is a C-Corporation, with its sole shareholder identified as B. Marc Neal. B.
2 Marc Neal is also the President. Currently, Truxton is being managed by Rick Neal and Chris
3 Hopper of Blackhawk Developers based out of Las Vegas, Nevada. Mike Neal is the water
4 operator, overseeing the day to day operations.

5 3. On June 16, 2011, Truxton filed an Application for Modification and
6 Reconsideration of Decision No. 72386 ("Application"). The Application requested that the
7 Commission modify the decision by: clarifying issues related to the Water Supply Agreement
8 between the Claude K. Neal Family Trust and the Association; removing portions of the Stipulated
9 Agreement related to the appointment of an interim manager, claiming it was signed under duress;
10 and it questioned the Commission's authority to appoint an interim manager.

11 4. Staff believes a rehearing is appropriate to resolves all issues contained in the
12 Stipulated Agreement.

13 5. Staff asserts the Stipulated Agreement resolved many issues in the case, not just the
14 potential appointment of an interim manager or the water supply agreement. Because the validity
15 of the Stipulated Agreement is now at issue, there is a question of whether the other compliance
16 matters set out in the Stipulated Agreement will be fulfilled by the Company. The other
17 compliance matters resolved issues directly impacting the public interest in the delivery of safe,
18 adequate and reliable water service at reasonable rates. However, the Company's current manager
19 has made assertions to Staff that the Company does not intend to fulfill the compliance items
20 contained in the Stipulated Agreement.

21 6. Staff believes that not only is a rehearing to litigate the issues contained in the
22 Stipulated Agreement appropriate for the reasons stated above, but the hearing should also include
23 the remedies and disciplinary actions, such as fines or revocation of CC&N, that Staff did not
24 pursue because of the parties entrant into the Stipulated Agreement

25 7. Truxton claims it signed the Stipulated Agreement under duress. (Company's
26 Application for Modification and Reconsideration of Decision No. 72386 at 4).

27 8. Staff cited the definition of duress strictly as "the physical confinement of a person
28 or the detention of a contracting party's property," or more broadly as "a threat of harm made to

1 compel a person to do something against his or her will or judgment” or to “use or threatened use
2 of unlawful force – usually that a reasonable person cannot resist – to compel someone to commit
3 an unlawful act.” Black’s Law Dictionary (9th ed. 2009).

4 9. The Company claims that it was presented with the choice of either having an
5 interim manager appointed immediately or signing the stipulation to resolve the issues before the
6 Commission appoints an interim manager. (Company’s Application for Modification and
7 Reconsideration of Decision No. 72386 at 4:6.5-10.5.)

8 10. Staff disagrees with the Company’s characterization of the circumstance
9 surrounding the signing of the Stipulated Agreement; but even if the characterization is completely
10 accurate, it fails to meet the definition of duress. The purpose of entering into the Stipulated
11 Agreement was to limit the time litigating the issues at the hearing and to present the Commission
12 with a resolution that was both in the Company’s interest and the public interest. Settlement of
13 issues to resolve the litigation prior to the hearing does not remotely constitute duress. Regardless,
14 the matter will be moot if that the Commission grants rehearing and the parties resume the
15 litigation that had been previously resolved by the Stipulated Agreement.

16 11. Despite Truxton’s Application, Decision No. 72386 remains an approved Order by
17 the Commission. Despite the Company’s assertion to Staff that it does not intend to fulfill the
18 requirements contained the Order, the Company has not requested a stay of Decision No. 72386.
19 As the Stipulated Agreement was incorporated into Decision No. 72386 as a final Order of the
20 Commission, the Company is required by law to comply with the Stipulated Agreement.

21 CONCLUSIONS OF LAW

22 1. Truxton Canyon Water Company is a public service corporation within the meaning
23 of Article XV of the Arizona Constitution and A.R.S. §§ 40-246, 40-424, and 40-425.

24 2. The Commission has jurisdiction over Truxton Canyon Water Company and the
25 subject matter requested in the Application.

26 3. A.R.S. § 40-253 allows any party to an action, after a final order or decision has
27 been made by the Commission, to apply for a rehearing on any matter determined in the action and
28 specified in the application for rehearing.

1 4. A.R.S. § 40-253(D) states “[a]n application for rehearing shall not excuse any
2 person from complying with and obeying any order or decision, or any requirements of any order
3 or decision of the commission theretofore made, or operation in any manner to stay or postpone
4 the enforcement thereof, except in such cases and upon such terms as the commission by order
5 directs.”

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ORDER

IT IS THEREFORE ORDERED that Truxton Canyon Water Company's Application for Reconsideration of Decision No. 72386 is granted pursuant to A.R.S. §40-253 for the purposes of rehearing the issues contained in the Stipulated Agreement and whether alternative remedies or disciplinary actions requested in the original Complaint and Petition for Order to Show Cause are appropriate.

IT IS FURTHER ORDERED that the Hearing Division shall schedule further appropriate proceedings.

IT IS FURTHER ORDERED that this decision shall be effective immediately.

BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION

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| CHAIRMAN | COMMISSIONER |
| COMMISSIONER | COMMISSIONER |
| | COMMISSIONER |

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____, 2011.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT: _____

DISSENT: _____

XXX:XXX:XXX/XXX

- 1 SERVICE LIST FOR: Truxton Canyon Water Company
- 2 DOCKET NO. W-02168A-10-0247
- 3 B. Marc Neal
- 4 Cerbat Water Company, Inc.
- 5 7313 East Concho Drive
- 6 Suite 2
- 7 Kingman, Arizona 86401-9707
- 8 Steve Wene, Esq.
- 9 Moyes Sellers & Sims
- 10 1850 North Central Avenue
- 11 Suite 1100
- 12 Phoenix, Arizona 85004
- 13 Mr. Steven Olea
- 14 Director, Utilities Division
- 15 Arizona Corporation Commission
- 16 1200 West Washington
- 17 Phoenix, Arizona 85007
- 18 Janice Alward
- 19 Chief Counsel
- 20 Arizona Corporation Commission
- 21 1200 West Washington
- 22 Phoenix, Arizona 85007
- 23
- 24
- 25
- 26
- 27
- 28