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AZ CORP COMMISSION
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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

AUG 3 2011

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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

**REPLY RE APPLICATION FOR
MODIFICATION AND
RECONSIDERATION OF
DECISION NO. 72386**

Truxton Canyon Water Company ("Truxton" or "Company") hereby files its reply to Arizona Corporation Commission ("Commission") Staff's Response to Company's Application for Modification and Reconsideration of Decision No. 72386. In its original application, the Company requested the Commission to modify Decision No. 72386 ("Decision") in two ways. The Company requested the Commission clarify that the Agreement between the Trust and the Valle Vista Property Owners' Association will not be reformed when it is transferred to the Company. Second, the Company asserted that

1 the law does not allow the Commission to appoint an interim manager to control the
2 Company.

3
4 Procedurally, citing A.R.S. § 40-253 and A.A.C. R14-3-101, *et seq.*, Staff argues
5 that Cerbat is improperly relying on the rules of civil procedure in seeking
6 “reconsideration” rather than “rehearing”. But A.A.C. R14-3-111 is directly on point,
7 and it expressly refers to “applications filed under A.R.S. § 40-253 for further hearings,
8 rehearings, re-arguments, **reconsideration or modification** of orders issued in
9 proceedings.” (Emphasis added). Thus, Staff’s argument that the Company’s application
10 may not fall within the rules is misplaced.
11

12
13 Substantively, Staff did not address most of Truxton’s legal arguments regarding
14 the transfer of the agreement or the appointment of the interim manager. See
15 Application, page 2, line 5 through page 5, line 6 (excluding page 4, lines 5-13). Staff’s
16 failure to respond to the substantive legal arguments constitutes a waiver and these issues
17 cannot be raised on appeal. *State v. Gendron*, 168 Ariz. 153, 154, 812 P.2d 626, 627
18 (1991) (“Absent a finding of fundamental error, failure to raise an issue at trial ... waives
19 the right to raise the issue on appeal.”).
20
21

22 The only substantive argument Staff addressed is the duress issue. In reply, the
23 Company points out that it is claiming economic duress, not physical duress. See
24 Williston on Contracts, p. 665, § 1603 (3rd ed.). But the Company agrees that an
25 evidentiary rehearing as suggested by Staff could remedy the issue.
26
27
28

1 Accordingly, the Company agrees that a rehearing is appropriate, and thereafter
2 the Commission should amend the Decision, at a minimum, by clarifying that the
3 agreement between the Trust and the Valle Vista Property Owners' Association will not
4 be reformed when it is assigned to the Company and by striking the provision ordering
5 Staff to appoint an interim manager. Truxton also disputes that the remedies proposed by
6 Staff, including fines and revocation of CC&N are entirely inappropriate and the
7 Commission should not raise such issues in this proceeding. Finally, the Company
8 moves to stay the Decision until the decisions raised herein have been decided.
9
10

11 RESPECTFULLY SUBMITTED this 3rd day of August, 2011.

12
13 **MOYES SELLERS & HENDRICKS LTD.**

14
15 
16 Steve Wene

17 Original and 15 copies filed
18 this 3rd day of August, 2011 with:

19 Copy of the foregoing mailed this
20 3rd day of August, 2011 to:

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