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BEFORE THE ARIZONA CORPORATION COMMISSION

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ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

COMMISSIONERS

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

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

**STAFF'S NOTICE OF FILING UPDATED
SURREBUTTAL TESTIMONY**

Staff of the Arizona Corporation Commission ("Staff") hereby files the Updated Surrebuttal
 Testimony of Elijah Abinah on behalf of the Utilities Division in the above docket.

RESPECTFULLY SUBMITTED this 7th day of February, 2012.

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

Arizona Corporation Commission

DOCKETED

FEB - 7 2012

DOCKETED BY	
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Original and thirteen (13) copies
 of the foregoing filed this
 7th day of February 2012 with:

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

1 Copies of the foregoing mailed this
2 7th day of February 2012 to:

3 Steve Wene
4 Moyes Sellers & Hendricks Ltd.
5 1850 North Central Avenue
6 Suite 1100
7 Phoenix, Arizona 85004

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9
10 Valle Vista Property Owners Association, Inc.
11 9686 Concho Drive
12 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 APPLICATION OF)
THE ARIZONA CORPORATION 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

UPDATED
SURREBUTTAL
TESTIMONY
OF
ELIJAH O. ABINAH
ASSISTANT DIRECTOR
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION

FEBRUARY 7, 2012

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1 **INTRODUCTION**

2 **Q. Please state your name, occupation, and business address.**

3 A. My name is Elijah O. Abinah. My business address is 1200 West Washington Street,
4 Phoenix, Arizona 85007.

5
6 **Q. Where are you employed and in what capacity?**

7 A. I am employed by the Utilities Division (“Staff”) of the Arizona Corporation Commission
8 (“ACC” or “Commission”) as Assistant Director.

9
10 **Q. How long have you been employed with the Utilities Division?**

11 A. I have been employed with the Utilities Division since January 2003.

12
13 **Q. Please describe your educational background and experience.**

14 A. I received a Bachelor of Science degree in Accounting from the University of Central
15 Oklahoma in Edmond, Oklahoma. I also received a Master of Management degree from
16 Southern Nazarene University in Bethany, Oklahoma. Prior to my employment with the
17 ACC, I was employed by the Oklahoma Corporation Commission for approximately eight
18 and half years in various capacities in the Telecommunications Division.

19
20 **Q. What are your current responsibilities?**

21 A. As Assistant Director, I review submissions that are filed with the Commission and make
22 policy recommendations to the Director regarding those filings.

23

1 **PURPOSE OF TESTIMONY**

2 **Q. What is the purpose of your testimony in this proceeding?**

3 A. The purpose of my testimony is to address the issues raised in Truxton Canyon Water
4 Company, Inc.'s ("Truxton" or "Company") rebuttal testimony.

5
6 **Q. Did you previously file testimony in this case?**

7 A. No. Mr. Alexander Igwe previously filed direct and surrebuttal testimony. However,
8 since Mr. Igwe's departure from the Commission, I have since then filed a Staff report as
9 an update to Staff testimony.

10
11 **Q. Have you reviewed the Company's rebuttal testimony?**

12 A. Yes.

13
14 **RESPONSE TO THE REBUTTAL TESTIMONY OF MR. RICK NEAL**

15 **Q. Please state the Company's position on Staff's recommendation that the Commission**
16 **order Truxton to be in full compliance with Commission rules and regulations.**

17 A. The Company states that it "is willing to work on any issue". However, the Company
18 claims "that Staff should identify exactly which rules and regulation they believe the
19 Company is not in compliance with".

20
21 **Q. Can you please comment on the Company's assertion?**

22 A. On June 23, 2010, Staff filed a Complaint and Petition for an Order to Show Cause
23 ("OSC") against the Company, which became a Commission order on August 10, 2010
24 (*See* Decision 71837). In the OSC, Staff clearly stated and listed all the rules and
25 regulations which Commission Staff believes the Company had violated. (*See* Complaint

1 and Petition for Order to Show Cause docketed June 23, 2010). There is no need for Staff
2 to re-list those violations here.

3
4 The pre-filed testimony of Chris Hopper on behalf of the Company conceded that a
5 number of violations had occurred. (See Rebuttal Testimony of Chris Hopper, docketed
6 December 10, 2010).

7
8 Furthermore, the Company signed a stipulated agreement acknowledging that the actions
9 described in the OSC occurred, and that those actions constitute violations of Arizona
10 Revised Statutes and the Arizona Administrative Code (See Staff Exhibit S-1, Hearing
11 January 18, 2011). Staff is perplexed that the Company is once again asking the
12 Commission to identify rules and regulations for which it has violated.

13
14 **Q. Please state the Company's position on Staff's recommendation that the Commission**
15 **order Truxton to repair all leaks within its water system.**

16 **A.** The Company states the following:

17
18 This is not possible. All water systems leak. The main
19 transmission line is approximately 19 miles long and was built
20 almost 70 years ago. Due to its age and length, it would be
21 impossible to fix all of the leaks unless we replaced the line, which
22 would cost millions of dollars. The other transmission lines and
23 distribution lines are buried and are typically over 40 years old, so
24 there are undoubtedly leaks that are not known. We know that
25 leaks will continue to occur, so the Company believes it is
26 reasonable to require the Company to fix any leak within 5 days of
27 discovery, or inform Arizona Corporation Commission Staff why
28 the leak cannot be fixed within that timeframe, in which case, the
29 Company must fix it in a reasonable time frame. For example, if a
30 part needs to be ordered, but it will not arrive for 3 days, then the
31 Company should have 8 days to fix the leak. But to say that the
32 system will not leak at all is impossible.

1 **Q. Can you please comment on the Company's statement?**

2 A. Staff believes that Truxton, as a public service corporation and a Certificate of
3 Convenience and Necessity ("CC&N") holder, has the obligation to provide safe and
4 reliable water service to its customers. This includes proper maintenance and upkeep of
5 the water system so as to provide safe and reliable water service to the ratepayers.

6

7 **Q. Please state the Company's position on Staff's recommendation that the Commission**
8 **order Truxton to maintain no less than 20 pounds per square inch ("psi"), under all**
9 **above conditions within its certificated areas.**

10 A. The Company states that it currently maintains 20 psi at the meters within its system.

11

12 **Q. Please comment on the Company's statement.**

13 A. Staff is willing to accept the Company's response, subject to verification. Staff is also
14 encouraged that the Company is attempting to comply with this Commission requirement.
15 However, at the time the Commissioners voted and directed Staff to initiate an OSC, the
16 Company was in violation of Arizona statutes and Commission rules and regulations as
17 detailed in the OSC.

18

19 **Q. Please state the Company's position on Staff's recommendation that the Commission**
20 **order the Claude K. Neal Family Trust ("Trust") to immediately cease and desist**
21 **from providing water service with Truxton's CC&N.**

22 A. The Company states that the Trust is not serving water to the public. The Trust provides
23 water solely to the Company. The Company asserts that the Trust is not, and will not
24 become a public service corporation.

25

1 **Q. Please comment on the Company's response.**

2 A. To Staff's knowledge, the Trust is no longer providing water to any other entity besides
3 Truxton within Truxton's CC&N. The Commission approved an interim tariff rate for the
4 Valle Vista Property Owners Association ("VVPOA") in Decision 72724. However, at
5 the time the Commissioners voted and directed Staff to initiate an OSC, the Trust was
6 selling water within Truxton's certificated area.

7
8 A Procedural Order dated September 26, 2011, directed Staff to address the issue of
9 whether the Trust is a public service corporation. Staff has filed a separate response to the
10 procedural order addressing the issue.

11
12 **Q. Please state the Company's position on Staff's recommendation that the Commission**
13 **order Truxton to file a rate case.**

14 A. This was done.

15
16 **Q. Please comment on the Company's response.**

17 A. Staff agrees that Truxton filed an application for a permanent rate increase on September
18 30, 2011.

19
20 **Q. Please state the Company's position on Staff's recommendation that the Commission**
21 **order Truxton to be in compliance with the Arizona Department of Environmental**
22 **Quality ("ADEQ").**

23 A. According to the Company, the order should state that the Company should be in material
24 compliance with all ADEQ rules and regulations because, strictly speaking, full
25 compliance with ADEQ rules and regulations is impossible. Further, the order should be

1 consistent with the proposed consent order offered by ADEQ, and no other deadlines
2 should be imposed.

3
4 **Q. Please comment on the Company's response.**

5 A. Truxton should be ordered to be in compliance with ADEQ's rules and regulations. Staff
6 does not understand the argument between full and material compliance. The Company
7 should be in compliance, as compliance is determined by ADEQ.

8
9 **Q. Does Staff have any updated information concerning the Company's compliance
10 status with ADEQ?**

11 A. Yes. Staff has attached ADEQ's Drinking Water Compliance Status Report dated
12 February 1, 2012. (See Attachment A).

13
14 **Q. Please state the Company's position on Staff's recommendation that the Commission
15 order Truxton to refund the deposit of Mr. Bacus.**

16 A. The Company states that it agreed to refund Mr. Bacus his line extension deposit. The
17 Company has paid Mr. Bacus approximately \$10,750. However, the Company will likely
18 no longer be able to make repayments to Mr. Bacus due to the lack of revenue caused by
19 the new rates applicable to the golf course.

20
21 **Q. Please comment on the Company's response.**

22 A. The Company is responsible for fulfilling its obligation for repayment to Mr. Bacus. Staff
23 does not believe that the new tariff rates applicable to VVPOA should have any bearing on
24 the Company's ability to fulfill its obligation to refund Mr. Bacus' deposit. The Company
25 provided an internal spread sheet detailing the payments made to Mr. Bacus. The

1 Company should file with the Commission copies of the checks made to Mr. Bacus or an
2 affidavit from Mr. Bacus stating that the Company has been fulfilling the agreement.

3

4 **Q. What is the Company's position on the requirement to file all main extension**
5 **agreements ("MXA") as required by the Arizona Administrative Code?**

6 A. The Company states that the fire district provided Staff the MXA on March 8, 2010. The
7 Company was copied on the email so it was aware that Staff has the agreement. The ACC
8 also has a copy of the Bacus MXA. There are no other agreements.

9

10 **Q. Please comment on the Company's response.**

11 A. By providing a copy of an MXA through an informal complaint proceeding, or by merely
12 acknowledging that the other party to the MXA provided a copy to Commission Staff,
13 does not fulfill the filing and approval requirements under A.A.C. R14-2-406.

14

15 A.A.C. R14-2-406 states:

16 All agreements under this rule shall be filed, by the water utility, and approved by the
17 Utilities Division of the Commission. Where agreements for main extensions are not filed
18 and approved by the Utilities Division, the refundable advance shall be immediately due
19 and payable to the person making the advance.

20

21 Detailed below is Staff's procedure for filing MXA's.

- 22
- 23 • An MXA shall be formally sent to the Utilities Division by the water utility.
 - 24 • The MXA then goes through a two-stage review process; administrative and technical.
 - 25 • Staff reviews the administrative portion of the filing to assure it is in accordance with
R14-2-406.C, i.e., the refund language, the Approval to Construct, etc. If the MXA

1 does not include all necessary information, it will be returned with a letter advising of
2 the insufficiency.

- 3 • Staff reviews the technical aspect to assure it is in accordance with R14-2-406.H, i.e.,
4 determines storage, capacity issues and reasonableness of the estimated cost provided.
- 5 • If Staff finds all items to be in order, an approval letter will then be issued with a
6 stamped copy of the approved MXA and mailed to the Company.
- 7 • A copy of approved MXA will be filed in the Utilities Division.

8

9 In this instance, per R14-2-406.C.2, the Company provided a signed copy to the customer:
10 however, failed to file the MXA with the Utilities Division as required per R14-2-406.M.

11

12 Additionally, A.A.C. R14-2-406 further details the entire process and obligations for both
13 parties entering into a MXA.

14

15 **Q. Please state the Company's position on Staff's recommendation that the Commission**
16 **order Truxton to transfer the Trust wells and pipeline to the Company.**

17 **A.** The Company states the following:

18

19 It is important remember that the wells and pipeline owned by the
20 Trust were built without any money from the Company. My
21 understanding is that the Trust is willing to transfer its wells and
22 pipeline to the Company for a fair price. This has been expressed
23 to the ACC Staff throughout these proceedings. The Company has
24 suggested several approaches to explore. First, the Company can
25 buy the wells and pipeline outright for a fair value. Second, the
26 Company can lease to own the wells and pipeline. Third, the
27 Company can purchase the wells and pay the Trust to wheel water
28 through the pipeline. The Trust and the Company can arrive at a
29 value, but in the interest of fairness, the Company believes that
30 arriving at a fair value would involve having the Trust's property,
31 both real and personal, appraised by professionals with input from
32 other professionals that understands costs to replace such

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infrastructure and the operational value as well. This will cost thousands of dollars.

Every time we discuss this with ACC staff, the Company either gets no substantive response or Staff states that it will allow the transfer for depreciated value. In other words, knowing the plant is fully depreciated, Staff is telling us that they want the Trust to transfer the wells, pipeline and land to the Company for free. This is not reasonable.

Q. Please comment on the Company's response.

A. Staff disagrees with the Company. The issue of what is the appropriate price or the fair value, will and should be addressed in the current and pending rate case.

Q. Please state the Company's position on its current financial situation.

A. The Company states the following:

The new rates applicable to Valle Vista Property Owners Association Property Owners Association ("VVPOA") will cripple the Company. During one week in December, VVPOA used approximately 50,000 gallons for the golf course. If this is typical during this season, VVPOA will use about 200,000 gallons in a month. Keep in mind that the lowest usage of the year is January. At 200,000 gallons, applying a rate of \$1.45/1,000 gallons, VVPOA will pay \$290 for the month. This means the Company will receive about \$15,000 a month less than it did previously, and \$20,000 less than it was owed under the contract. I hope this does not happen because there is no way the Company can function if this is the case.

Q. Please comment on the Company's position.

A. Staff believes that the rates set by the Commission are just, fair and reasonable for the Company and its ratepayers. In addition, this is an interim rate that is being revisited in the currently pending rate case.

1 **Q. Please state the Company's position on Staff's recommendation that the Commission**
2 **order Truxton to be in compliance with the National Association of Regulatory**
3 **Utility Commissioners ("NARUC").**

4 A. The Company states the following:

5
6 Staff stated that the Company is not in compliance with NARUC,
7 but it did not say why or identify what is incorrect, so I can't
8 address any facts. They just simply conclude the Company is not
9 following NARUC. Yet, our rate case application was found to be
10 sufficient and we had a Certified Public Accountant familiar with
11 NARUC prepare the application. Admittedly, there may be some
12 data entry mistakes or classifications that need to be reconciled,
13 but the Company is following NARUC as we understand it. The
14 Company may need to hire a regulatory accountant periodically to
15 make sure it is in compliance.

16

17 **Q. Please comment on the Company's position.**

18 A. Staff is willing to accept that the Company's books and records are kept in accordance
19 with NARUC standards, subject to verification. However, at the time the Commissioners
20 voted and directed Staff to initiate an OSC, the Company was in violation of Arizona
21 statutes and Commission rules and regulations as detailed in the OSC.

22

23 Staff is surprised that the Company claims that Staff did not identify the portions of its
24 accounting records that were not NARUC complaint. During Staff's visit to the
25 Company's office in Las Vegas, Staff provided the Company with a copy of the NARUC
26 Uniform System of Accounts for water utilities and stated at that time there were
27 deficiencies in the Company's accounts set up pertaining to NARUC.

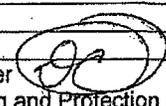
28

29 **Q. Does this conclude your testimony?**

30 A. Yes.

Arizona Department of Environmental Quality
Drinking Water Monitoring and Protection Unit
 Mail Code 5415B-2
 1110 West Washington Street
 Phoenix, AZ 85007

Drinking Water Compliance Status Report

System Name TRUXTON CANYON WATER CO		System Type <input checked="" type="checkbox"/> Community		Is system consecutive? <input type="checkbox"/> Yes,									
System ID # 08035		<input type="checkbox"/> Non-transient Non-community		to PWS #									
		<input type="checkbox"/> Transient Non-community		<input checked="" type="checkbox"/> No									
Overall compliance status		<input type="checkbox"/> No major deficiencies		<input checked="" type="checkbox"/> Major deficiencies									
Monitoring and Reporting status		<input type="checkbox"/> No major deficiencies		<input checked="" type="checkbox"/> Major deficiencies									
<p>Comments: Arsenic: PWS exceeds the arsenic MCL at EPDS 001, and is required to take individual (not composite) quarterly samples at the EPDS until either treatment is installed, or the system meets the MCL for 4 consecutive quarters. The last arsenic sample received was from April 2011 (no 3rd or 4th quarter 2011 samples have been received), with a result of 23.6 mg/L. DBP Stage 1: PWS is required to take 2 disinfection-by-product (DBP) samples per year since 2007, but only turned in one DBP sample for 2008, and one non-compliant sample in 2009. Two DBP samples were submitted for 2010. No 2011 samples have been received. DBP Stage 2: PWS has not submitted the IDSE SMP Report which was due by 7/1/2010. The PWS was granted an extension to finish the four quarters of sampling by 12/5/11. The IDSE Report should have been submitted shortly thereafter. MRDL: PWS is required to sample for the Maximum Residual Disinfection Levels (MRDL) each month and report quarterly, but historically had not submitted the correct number of samples. PWS is required to take the same number of MRDLs as the required number of Total Coliform samples which is two/month since August of 2008. No 3rd or 4th quarter 2010 MRDL reports have been received. The PWS submitted the 1st, 2nd and 3rd quarter 2011 MRDLs; however the results are exactly the same each month, which raises questions on the sampling.</p>													
Operation and Maintenance status		<input type="checkbox"/> No major deficiencies		<input checked="" type="checkbox"/> Major deficiencies									
Date of last Sanitary Survey	4-5-10	Inspector	Craig Beeson, NRO										
<p>Major unresolved/ongoing operation and maintenance deficiencies:</p> <table border="0"> <tr> <td><input type="checkbox"/> unable to maintain 20psi</td> <td><input type="checkbox"/> inadequate storage</td> </tr> <tr> <td><input type="checkbox"/> cross connection/backflow problems</td> <td><input type="checkbox"/> surface water treatment rule</td> </tr> <tr> <td><input type="checkbox"/> treatment deficiencies</td> <td><input type="checkbox"/> ATC/AOC</td> </tr> <tr> <td><input type="checkbox"/> certified operator</td> <td><input type="checkbox"/> other =</td> </tr> </table>						<input type="checkbox"/> unable to maintain 20psi	<input type="checkbox"/> inadequate storage	<input type="checkbox"/> cross connection/backflow problems	<input type="checkbox"/> surface water treatment rule	<input type="checkbox"/> treatment deficiencies	<input type="checkbox"/> ATC/AOC	<input type="checkbox"/> certified operator	<input type="checkbox"/> other =
<input type="checkbox"/> unable to maintain 20psi	<input type="checkbox"/> inadequate storage												
<input type="checkbox"/> cross connection/backflow problems	<input type="checkbox"/> surface water treatment rule												
<input type="checkbox"/> treatment deficiencies	<input type="checkbox"/> ATC/AOC												
<input type="checkbox"/> certified operator	<input type="checkbox"/> other =												
<p>Comments: During the last sanitary survey, significant deficiencies were assigned for monitoring and reporting, and recommendations were made on the distribution system.</p>													
Is an ADEQ administrative order in effect?				<input checked="" type="checkbox"/>	Yes								
				<input type="checkbox"/>	No								
<p>Comments: DW-47-07 Open Consent Order - did not submit monitoring results for residual chlorine in the distribution system for 2004, 2005, 2006 and 1/1/2007 through 1/30/2007. DW-02-11 - arsenic MCL on 9-28-2009, 11-17-2009, 6-30-2010. Did not submit quarterly monitoring results for arsenic between October 2009 through March 2010 and July 2010 through September 2010. No public notice was provided for arsenic MCL 7/08-6/10. On 5-17-11 a NOV was issued regarding missed deadlines for DW-02-11.</p>													
System Information													
Population Served				2205									
Service Connections				960									
Number of Entry Points to the Distribution System				2									
Number of Sources				6									
Initial Monitoring Year				1994									
Monitoring Assistance Program (MAP) System				<input checked="" type="checkbox"/>	Yes								
				<input type="checkbox"/>	No								
Evaluation completed by	Donna Calderon, Manager  Drinking Water Monitoring and Protection Unit												
Phone	602-771-4641	Date	February 1, 2012										
<input type="checkbox"/>	Based upon data submitted by the water system, ADEQ has determined that this system is currently delivering water that meets water quality standards required by 40 CFR 141/Arizona Administrative Code, Title 18, Chapter 4, and PWS is in compliance.												
<input checked="" type="checkbox"/>	Based upon the monitoring and reporting deficiencies noted above, ADEQ cannot determine if this system is currently delivering water that meets water quality standards required by 40 CFR 141/Arizona Administrative Code, Title 18, Chapter 4, and/or PWS is not in compliance.												
<input checked="" type="checkbox"/>	Based upon the operation and maintenance deficiencies noted above, ADEQ cannot determine if this system is currently delivering water that meets water quality standards required by 40 CFR 141/Arizona Administrative Code, Title 18, Chapter 4, and/or PWS is not in compliance.												

This compliance status report does not guarantee the water quality for this system in the future, and does not reflect the status of any other water system owned by this utility company.