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7 **BEFORE THE ARIZONA CORPORATION COMMISSION**

9 **COMMISSIONERS**

10 GARY PIERCE, CHAIRMAN
11 PAUL NEWMAN
12 SANDRA D. KENNEDY
13 BOB STUMP
14 BRENDA BURNS

Arizona Corporation Commission
DOCKETED

MAR - 9 2012

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15 **IN THE MATTER OF THE**
16 **COMMISSION ON ITS OWN MOTION**
17 **INVESTIGATING THE FAILURE OF**
18 **TRUXTON CANYON WATER**
19 **COMPANY TO COMPLY WITH**
20 **COMMISSION RULES AND**
21 **REGULATIONS**

Docket No. W-02168A-10-0247

**MEMORANDUM RE CLAUDE K.
NEAL FAMILY TRUST**

22 Pursuant to the court instructions, Truxton Canyon Water Company, Inc.

23 (“Company” or “Truxton”) hereby files its memorandum re the issue of whether or not
24 the Claude K. Neal Family Trust (“Trust”) is a public service corporation.¹

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27
28 ¹ This memorandum is being submitted by the Company as directed by the Court. The Company agrees with Staff that the Trust is not a party in this matter. Further, this filing by the Company is not intended to make any representations on behalf of the Trust by either the Company or the Company’s counsel.

1 Long ago the Arizona Supreme Court recognized “[f]ree enterprise and
2 competition is the general rule. Governmental control and legalized monopolies are the
3 exception... Such invasion of private right cannot be allowed by implication or strained
4 construction.” Ariz. Corp. Com’n v. Nicolson, 108 Ariz. 317, 321 497 P.2d 815, 819
5 (1972). Under this context, the Arizona Corporation Commission determines if an entity
6 is a public service corporation by applying the following eight factors set forth in Natural
7 Gas Serv. Co. v. Serv-Yu Coop., 70 Ariz. 237, 219 P.2d 324 (1950):
8

- 9 1. What the corporation actually does.
- 10 2. A dedication to public use.
- 11 3. Articles of incorporation, authorization, and purposes.
- 12 4. Dealing with the service of a commodity in which the public has been
13 generally held to have an interest.
- 14 5. Monopolizing or intending to monopolize the territory with a public service
15 commodity.
- 16 6. Acceptance of substantially all requests for service.
- 17 7. Service under contracts and reserving the right to discriminate is not always
18 controlling.
- 19 8. Actual or potential competition with other corporations whose business is
20 clothed with public interest.

21 Southwest Gas Corp. v. Ariz. Corp. Comm’n, 169 Ariz. 279, 286, 818 P.2d 714, 721

22 (Ariz. Ct. App. 1991.). As explained below, applying these eight factors demonstrates
23 the Trust is not a public service corporation.
24

25 **1. What the corporation actually does.**

26 The Company understands that the Trust was established to pass Neal family
27 assets from one generation to the next without incurring excessive taxes. The primary
28

1 assets in the Trust included a cattle operation and real property. Part of the real property
2 assets included wells on the property as well as the 19-mile pipeline. The two water
3 companies also owned by the Neal family were also added to the Trust assets.
4

5 Historically, the Trust sold water from its wells to the water companies and the
6 Valle Vista Property Owners Association because it was the lowest cost alternative. Now
7 the Trust only sells water to Truxton. Truxton has the ability to own its own wells and
8 supply water to its customers without the use of the Trust's assets. Cerbat Water
9 Company now owns the water supply well and all assets needed to provide water to its
10 customers. The Trust has stated that it will transfer the wells and plant to Truxton at a
11 reasonable cost.
12
13

14 **2. A dedication to public use.**

15 The Trusts property is not dedicated to a public use. The Trust owns thousands of
16 acres of land, buildings, land improvement equipment, and historically owned cattle and
17 related ranching personal property. This property is not dedicated to public use. While it
18 is true that the Trust did provide water to the water companies, it never dedicated its
19 wells or other infrastructure to public use. To be clear, if the Commission so desires, the
20 Trust is more than willing to stop providing water to Truxton.²
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22

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28 ² The Trust presumes that such direction from the Commission would occur only after Truxton has secured wells and plant able to ensure water service to customers is not interrupted.

1 **3. Articles of incorporation, authorization, and purposes.**

2 The Trust was established for tax purposes. The Trust's purpose was to minimize
3 the amount of intergenerational tax liability. It was never intended to be a public service
4 corporation.
5

6 **4. Dealing with the service of a commodity in which the public has been**
7 **generally held to have an interest.**

8 The issue here is whether the water provided by the Trust is sufficiently essential
9 for it to be characterized as a commodity which the public has an interest. The Trust does
10 not serve any water users. While the public has an interest in water as a commodity, the
11 Trust is not the regulated provider of that commodity. Truxton is that provider. As stated
12 before, the Company is willing to acquire wells and plant to provide the water to its
13 customers.
14

15 **5. Monopolizing or intending to monopolize the territory.**

16 The Trust has never sought to monopolize a territory.
17

18 **6. Acceptance of substantially all requests for service.**

19 The Trust has never accepted substantially all requests for service.
20

21 **7. Service under contracts and reserving the right to discriminate.**

22 Providing service under contract and reserving the right to discriminate is a factor
23 supporting the conclusion that an entity is not a public service corporation. The Trust has
24 provided water service under contract to the water companies and VVPOA. The Trust
25 has provided only a few entities.
26

27 ////
28

1 **8. Competition with other corporations whose business is clothed with public**
2 **interest.**

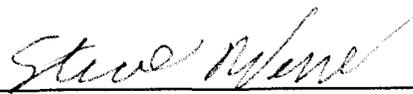
3 The Trust does not compete with any public service corporation. It does not sell
4 water to any entity except the Company. In doing so, it is helping to Company to provide
5 water service.

6 **Conclusion**

7
8 As the application of the Serv-Yu test illustrates, the Trust is not a public service
9 corporation.

10 Dated this 9th day of March, 2012.

11 **MOYES SELLERS & HENDRICKS LTD.**

12
13 
14 Steve Wene

15
16 Original and 13 copies of the foregoing
17 filed on this 9th day of March, 2012 with:

18 Docket Control
19 Arizona Corporation Commission
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21 Copy of the foregoing electronically
22 mailed this 9th day of March, 2012, to:

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