

EXCEPTION OPEN MEETING AGENDA ITEM



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AZ CORP COMMISSION
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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

9 BOB STUMP, CHAIRMAN
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13 BOB BURNS

Arizona Corporation Commission

DOCKETED

NOV - 7 2014

DOCKETED BY nr

14 IN THE MATTER OF THE APPLICATION
15 OF TRUXTON CANYON WATER
16 COMPANY, INC. FOR APPROVAL OF A
17 RATE INCREASE.

DOCKET NO. W-02168A-11-0363

18 IN THE MATTER OF THE APPLICATION
19 OF TRUXTON CANYON WATER
20 COMPANY, INC. FOR APPROVAL OF A
21 REVISION OF THE COMPANY'S
22 EXISTING TERMS AND CONDITIONS OF
23 WATER SERVICE.

DOCKET NO. W-02168A-13-0309

24 IN THE MATTER OF THE APPLICATION
25 OF TRUXTON CANYON WATER
26 COMPANY, INC. FOR AUTHORITY TO
27 INCUR LONG-TERM DEBT.

DOCKET NO. W-02168A-13-0332

**EXCEPTIONS TO THE
RECOMMENDED OPINION AND
ORDER**

I. Introduction.

28 On or about October 21, 2014, Administrative Law Judge Yvette B. Kinsey issued
a 66-page recommendation (the "Recommendation") in Docket Nos. W-02168A-11-0363
(the "Rate Docket"); W-02168A-13-0309 (the "Terms and Conditions Docket"); and W-

1 02168A-13-0332 (the "Finance Docket"). Truxton Canyon Water Company, Inc.
2 ("Truxton" or the "Company") objects to the Recommendation because it purports to
3 require Truxton to: (1) acquire private assets of a third-party for zero compensation in
4 violation of the United States Constitution and Arizona Constitution, which the third-
5 party has understandably refused to permit; (2) comply with an unenforceable stipulated
6 agreement that does not bind the Trust, has an unfulfilled condition precedent and that the
7 Staff and the Recommendation rendered impractical to perform, was procured from
8 Truxton through duress, lacks any consideration, and is substantively and procedurally
9 unconscionable; (3) comply with Arizona Department of Environmental Quality
10 ("ADEQ") regulations by December 31, 2014 and complete an arsenic treatment plant by
11 December 31, 2015 without granting Truxton adequate time to obtain financing or
12 complete construction of an arsenic treatment plant, and simultaneously rejecting
13 Truxton's request to obtain financing for the treatment plant from the Water
14 Infrastructure Finance Authority ("WIFA"); and (4) abide by the removal of Truxton's
15 owner as its manager and concede to the appointment of an interim manager despite the
16 Commission's lack of authority for such an appointment, and the fact that the interim
17 manager would face the same operational constraints and problems complying with the
18 Recommendation as does Truxton's current manager. The Recommendation's positions
19 on these issues are patently unfair and unreasonable, especially for Truxton as a
20 financially destitute public service corporation that has suffered heavy losses in 2011
21 (\$170,000) and 2012 (\$250,000), and 2013 (\$19,745). Truxton simply cannot address the
22 issues that the Commission wants it to address without financing, but the
23 Recommendation would refuse Truxton's requests for approval to obtain the financing it
24 desperately needs to comply with the Commission's and ADEQ's requirements and to
25 continue providing water service to its customers. The Arizona Corporation
26 Commission's ("Commission") adoption and enforcement of the Recommendation would
27 not comport with the public interest because it would almost certainly drive Truxton into
28

1 a position where it cannot provide adequate water services to its approximately 924
2 residential and commercial customers.

3 **II. The Recommendation Violates Constitutional and Private Property Rights.**

4 Under its CC&N, Truxton provides water service to approximately 924 residential
5 and commercial customers in an approximately 5.5 square mile area north of Kingman,
6 Arizona. *Id.* at ¶¶ 1-2. The Claude K. Neal Family Trust (“Trust”) owns and manages
7 assets of the Neal family, most of which relate to historic ranching operations that are no
8 longer conducted. *See, e.g.*, Recommendation at ¶¶ 3 and 210. The Trust was
9 established to pass inter-generational assets without incurring excessive taxes. *Id.* at ¶
10 210. The Trust is not before the Commission on the Rate Docket, Terms and Conditions
11 Docket, or Finance Docket (collectively, the “Dockets”). *Id.* at ¶¶ 95, 201, 203. There is
12 no dispute that the Trust owns six water wells; a 500,000 gallon storage tank; a 40,000
13 gallon storage tank; 5,211,760 feet of distribution main; and 15 miles of 14-16-inch
14 transmission lines (collectively, the “Water Assets”). *Id.* at ¶ 10, fn. 9 and ¶ 32; *see also*
15 *id.* at ¶ 35 (“It is undisputed in this case that the Trust owns the 15 miles of main
16 transmission line, the wells . . . and the storage tanks”); *id.* at ¶ 92 (“no evidence was
17 presented contradicting that the Trust owns the 15-mile transmission line ‘free and clear’
18 and that the wells were purchased by the Trust.”). The Trust has historically managed
19 Truxton under a management agreement. *Id.* at ¶ 33. The Trust has also historically sold
20 water to Truxton, but it does not sell water or water services directly to the public or have
21 other characteristics of a public service corporation.¹

22
23 Staff believed that Truxton needed to acquire the Water Assets to provide water
24 service to its customers, and estimated that the reconstruction cost new value of the
25

26
27 ¹ Staff and the Recommendation have threatened to issue an order to show cause
28 why the Trust should not be treated as a public service corporation. The Trust has
previously advised Truxton that it is willing to cease selling water to Truxton
immediately if the Commission so desires.

1 Water Assets was \$2,186,485. *Id.* at ¶ 45. Paradoxically, however, Staff asserted that the
2 useful life of the Water Assets had expired. *Id.* at ¶ 46. To the contrary, Truxton's expert
3 witness presented testimony and evidence that established the Water Assets have a
4 replacement cost fair market value in excess of \$11.5 million. *Id.* at ¶¶ 32. To account
5 for the age and condition of the Water Assets, the Trust has agreed to sell and Truxton
6 has agreed to buy the Water Assets for \$1.4 million, or less than 10% of the replacement
7 cost. *Id.* at ¶ 32.

8
9 Further, the characterization that Truxton presented no evidence to support the
10 value of the Water Assets and that Truxton just picked a number is simply wrong.
11 Truxton presented expert testimony relating to the value of the Water Assets and valued
12 the plant at \$11,532,385. As testified at the hearing, using replacement value
13 methodology, the market value established for these facilities is \$11,532,385. *See*
14 Exhibit A-7, Schedule 1 of Matt Rowell's Rejoinder Testimony. Knowing the value of
15 the Water Assets, as Mr. Neal testified, he proposed the \$1.4 million acquisition cost as a
16 compromise that he believed both the Trust and the Commission might accept. It was not
17 "out of the blue".

18 As part of the Finance Docket, Truxton sought approval to finance the \$1.4
19 million purchase of the Water Assets through WIFA. *Id.* at ¶¶ 7 and 30. The
20 Recommendation agreed with Staff that "it is in the public interest to have the Company
21 own the assets necessary to provide its services" (i.e., the Water Assets). *Id.* at ¶ 151. In
22 fact, the Recommendation contends that "Truxton's failure to acquire the assets has been
23 the underlying source for most of the disputes/issues raised in this case." *Id.* at ¶ 89.
24 Truxton and the Trust believe that \$1.4 million is a reasonable, fair market value for the
25 Water Assets based on their replacement cost after taking into account the Water Assets'
26 age and condition. Despite Staff's estimate that the reconstruction cost new value of the
27 Water Assets was \$2,186,485, and Truxton's replacement cost fair market value in excess
28 of \$11.5 million, the Recommendation rejected Truxton's request to finance the purchase

1 of the Water Assets for the lesser amount of \$1.4 million as “unreasonable.” *Id.* at ¶¶ 32,
2 45, 90, and 98; *see also id.* at p. 61.

3 Nevertheless, the Recommendation purports to require the Trust to transfer the
4 Water Assets and various other property and assets to Truxton without consideration,
5 including some additional land and a building. *Id.* at ¶¶ 100, 107. No legitimate basis
6 exists for such a transfer of assets for no consideration, and quite understandably, the
7 Trust will not agree to such a transfer. Either the Water Assets are necessary and useful
8 for Truxton to provide water service and thus have some fair market value, or the Water
9 Assets are not necessary and useful and thus have no value, but Staff and the
10 Recommendation cannot have it both ways.

11 In an attempt to support its inconsistent position, the Recommendation quotes
12 NARUC guidelines that provide:

13 Generally, the transfer of assets from an affiliate to the Utility should be at
14 the lower of prevailing market price or net book value, except as otherwise
15 required by law or regulation.

16 Recommendation at ¶ 43 (emphasis added). The Commission, however, has not adopted
17 the NARUC guidelines. *Id.* at ¶ 41, fn 48. And the Recommendation fails to recognize
18 that the NARUC guidelines permit for exceptions when applying the guidelines would
19 result in an absurd result like the one argued for by Staff and the Recommendation. Staff
20 and the Recommendation go too far (and prove too much) by applying the general
21 guideline in the face of indisputable evidence that the assets have substantial value
22 notwithstanding their fully depreciated net book value being zero. No reasonable person
23 would conclude that Coca-Cola’s bottling plant is worth nothing and Coca-Cola should
24 give it away for free just because the plant was fully depreciated on its books. Nor would
25 Coca-Cola’s customers be entitled to claim they had long ago bought the plant because
26 their collective purchases of Coca-Cola’s products covered the amount of Coca-Cola’s
27 original cost of acquiring or building the plant. Yet the Recommendation stakes its
28

1 position on those precise theories. *Id.* at ¶¶ 46-49, and 94.² The Recommendation's
2 suggestion that the Trust, which is not before the Commission, should transfer the Water
3 Assets to Truxton for no consideration offends not only common sense, but also well-
4 established constitutional rights.

5 In particular, the Takings Clause of the Fifth Amendment to the United States
6 Constitution states: "nor shall private property be taken for public use, without just
7 compensation." It "applies against the states through the Fourteenth Amendment."
8 *Williamson County Reg'l Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S.
9 172, 175 n. 1 (1985). Similarly, Article 2, Section 17 of the Arizona Constitution
10 provides that "[p]rivate property shall not be taken for private use" and "[n]o private
11 property shall be taken or damaged for public or private use without just compensation
12 having first been made" A private party is entitled to just compensation when the
13 government insists that the party dedicate its property to public use. *See, e.g., Nollan v.*
14 *California Coastal Comm'n*, 483 U.S. 825, 841-42, 107 S.Ct. 3141, 3151 (1987) (unless
15 the California Coastal Commission compensated a property owner, it could not require
16 the owner to grant a public easement across his beachfront property as a condition for a
17 land use permit.); *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 538-39, 125 S.Ct. 2074,
18 2081-82 (2005) (regulatory taking occurs when the government impermissibly limits an
19 owner's free use of his property.). The private property owner is constitutionally entitled
20 to the fair market value of the taken property. *See Kirby Forest Indus., Inc. v. United*
21 *States*, 467 U.S. 1, 9-10, 104 S.Ct. 2187, 2194 (1993) (providing that the term just
22 compensation "means in most cases the fair market value of the property on the date it is
23 appropriated" based on "what a willing buyer would pay in cash to a willing seller.")
24 (citations and quotations omitted); *Phelps Dodge Corp. v. Ariz. Electric Power Coop.,*
25 *Inc.*, 207 Ariz. 95, 101, 113-14, 83 P.3d 573, 579, 591-92 (App. 2004) (permitting
26
27

28
2 Staff may argue that Coca-Cola is not a regulated utility, which is true, but the

1 transfer of electric generation assets to corporate affiliates “for a fair and reasonable
2 value” under Ariz. Admin. Code § 14-2-1615, but rejecting Commission’s attempt to
3 require such divestiture). In Arizona, the government must pay just compensation for
4 takings of real or personal property. *State v. Leeson*, 84 Ariz. 44, 50, 323 P.2d 692,
5 697 (1958).

6 The Trust’s constitutional rights that prohibit a public or private taking of its assets
7 without just compensation fall within the “except as otherwise required by law” language
8 of the NARUC guideline quoted above. The Commission simply cannot order the Trust,
9 which is not before it, to transfer the Water Assets to Truxton for public or private
10 benefit, use, and regulation without just compensation, which is in violation of the Trust’s
11 constitutional rights. It is no answer to the “just compensation” requirement to say that
12 the Trust and/or Truxton kept poor historical records regarding the Water Assets’
13 acquisition, repair, and maintenance costs, which the Recommendation apparently used
14 to support a zero valuation for the Water Assets. Recommendation at ¶¶ 47-48. To use
15 another analogy, a carpenter may not be able to produce a receipt for the hammer he
16 purchased years ago and continues to own and use for work, but that does not compel the
17 conclusion the hammer is worthless. Rather, consistent with United States Supreme
18 Court precedent, the private party is entitled to receive fair market value for the assets
19 based on what a willing buyer would pay a willing seller in cash. The
20 Recommendation’s suggestion that the Commission order Truxton to acquire the Water
21 Assets for no consideration would impose an impossible task on Truxton that it could
22 never complete, and constitutes a back-door attempt to evade the just compensation
23 requirements of the United States Constitution and Arizona Constitution. The
24 Commission should therefore reject the Recommendation on this issue.
25

26 **II. The Stipulated Agreement Is Unenforceable.**
27

28 Trust is not a regulated utility and is not before the Commission on the Dockets.

1 Staff argued that Decision No. 72386 required Truxton to acquire all water system
2 assets necessary to provide service from the Trust by no later than June 30, 2011, and that
3 “Truxton signed a Stipulated Agreement whereby it agreed to acquire the assets from the
4 Trust.” Recommendation at ¶¶ 9 and 95. The Stipulated Agreement is unenforceable
5 because it does not bind the Trust, it was procured from Truxton through duress, it lacks
6 consideration and Staff has failed to fulfill its duties to act in good faith thereby excusing
7 Truxton’s performance, and it is unenforceable.

8 A valid contract requires an offer, acceptance, and consideration. *See, e.g.,*
9 *Savoca Masonry Co. v. Homes & Son Constr. Co.*, 112 Ariz. 392, 394, 542 P.2d 817, 819
10 (1975). The Trust is neither a party to nor third-party beneficiary of the Stipulated
11 Agreement. The Trust did not make or accept an offer related to the Stipulated
12 Agreement. The Trust did not receive any consideration for the Stipulated Agreement.
13 Accordingly, the Stipulated Agreement does not bind the Trust.

14 At best, the Stipulated Agreement was conditional on the Trust agreeing to sell the
15 Water Assets to Truxton, and Truxton agreeing to buy the Water Assets. Truxton and the
16 Trust agreed on a purchase price for the Water Assets, but the Recommendation rejected
17 the purchase price and refused to authorize Truxton to finance the cost of acquiring the
18 Water Assets. Consequently, a condition precedent to enforcement of the Stipulated
19 Agreement has not occurred, and/or the Recommendation’s requirement that the Trust
20 transfer the Water Assets for no consideration frustrated Truxton’s performance and
21 made it impracticable. *See, e.g., Connor v. Cal-Az Props., Inc.*, 137 Ariz. 53, 54-55, 668
22 P.2d 896, 897-98 (App. 1983) (finding that failure of a condition precedent permitted
23 cancellation of a contract); *Garner v. Ellingson*, 18 Ariz. App. 181, 182, 501 P.2d 22, 23
24 (1972) (holding that “the doctrine of commercial frustration is not necessarily limited to
25 strict impossibility, but include impracticability caused by extreme or unreasonable
26 difficulty or expense.”).

1 Moreover, “Arizona courts have long held that contracts procured under duress are
2 unenforceable.” *USLife Title Co. v. Gutkin*, 152 Ariz. 349, 356, 732 P.2d 579, 586 (App.
3 1986). “Duress is an act or threat that results in the preclusion of the exercise of free will
4 and judgment.” *Id.* at 357, at 587; *see also Dunbar v. Dunbar*, 102 Ariz. 352, 355-56,
5 429 P.2d 949, 952-53 (1967) (noting that a wrongful threat via conduct or words
6 constitutes duress if it places the contracting party “in such fear as to preclude the
7 exercise by him of free will and judgment.”). In this case, Staff used its authority to
8 compel Truxton to meet with them regarding the Stipulated Agreement in the absence of
9 Truxton’s attorney even though Staff knew Truxton was represented and that its attorney
10 had advised Truxton to not sign the Stipulated Agreement. Staff then used its superior
11 knowledge and authority to pressure Truxton to enter into the Stipulated Agreement
12 under threat of adverse action against Truxton. The duress renders the Stipulated
13 Agreement voidable, and Truxton has not affirmed or ratified the terms of the Stipulated
14 Agreement. Indeed, Truxton has not performed thereunder because Staff forced Truxton
15 to enter into the Stipulated Agreement by duress.
16

17 Further, Truxton received no consideration for the Stipulated Agreement. “Valid
18 consideration consists of either a benefit to the promisor or detriment to the promisee.”
19 *USLife Title Co.*, 152 Ariz. at 354, 732 P.2d at 584; *see also Federal Rubber Co. v.*
20 *Pruett*, 55 Ariz. 76, 79, 98 P.2d 849, 850 (1940) (“There is no consideration for a promise
21 where no benefit is conferred on the promisor nor detriment suffered by the promisee.”).
22

23 Finally, the Stipulated Agreement is unenforceable due to procedural and/or
24 substantive unconscionability. “Procedural unconscionability addresses the fairness of
25 the bargaining process” such as unfair surprise, mistakes, ignorance of pertinent facts, or
26 other irregularities whereas “substantive unconscionability addresses the fairness of the
27 terms of the contract itself.” *Clark v. Renaissance West, LLC*, 232 Ariz. 510, 512, 307
28 P.3d 77, 79 (App. 2013). Procedural unconscionability considers, among other things,
the parties’ experience, relative bargaining power, who drafted the agreement, whether

1 the terms were adequately explained, and similar issues. *Steinberger v. McVey*, 234 Ariz.
2 125, 143, 318 P.3d 419, 437 (App. 2014). Substantive unconscionability looks at the
3 fairness of the obligations assumed and whether the terms are so one-sided that they
4 oppress or unfairly surprise an innocent party. *Id.* In this case, Staff used its authority,
5 experience, and superior bargaining power to force Truxton into signing the agreement or
6 have its property taken from it through the appointment of an interim manager. The
7 Stipulated Agreement is thus void for procedural unconscionability.

8 **III. The Recommendation Would Not Permit Construction of a Treatment Plant.**

9 Truxon submits public notice, arsenic monitoring reports, and status reports under
10 a Consent Order with ADEQ. Recommendation at ¶ 19. Truxton obtained an approval to
11 construct an arsenic treatment plant from ADEQ on March 28, 2013, and has three years
12 from that date to obtain an approval of construction (i.e., until March 28, 2016). *Id.* at
13 ¶ 19, fn. 21. As part of the Finance Docket, Truxton sought approval to finance the
14 construction of an arsenic treatment plant and make other necessary improvements in the
15 amount of \$419,208. *Id.* at ¶¶ 7 and 30. Truxton based its request on a real world bid
16 from an independent, third-party contractor that provided plans that ADEQ has approved.
17 *Id.* at ¶¶ 61, 66, and 69. Truxton sought financing because its customers could not absorb
18 the cost of the treatment plant and improvements. *Id.* at ¶ 60.

19 Without obtaining any bids of its own, Staff argued that the arsenic treatment plant
20 should only cost \$156,500. *Id.* at ¶¶ 68-69. The Recommendation agreed with Staff. *Id.*
21 at ¶ 102; *see also id.* at p. 61. If Staff has a licensed contractor that is competent, ready,
22 willing, and able to provide the necessary materials and perform the necessary work for
23 that amount, or if Staff can provide the materials and perform the work itself at that cost,
24 then Truxton would have no objection to incurring a lesser amount to build an equivalent
25 arsenic treatment plant. Truxton, however, has not found a contractor ready, willing, and
26 able to build the arsenic treatment plant at Staff's estimate of the cost.
27
28

1 Similarly, the Company is seeking to convert its gas powered pumps to electric
2 power, which will cost approximately \$127,000. *See Id.* at ¶ 69. Typically, the Hualapai
3 pumps are only used when VVPOA's golf course demands so much water for irrigation
4 that the wells in Hackberry cannot produce enough water. *Id.* The diesel engines at
5 Hualapai are not remotely reliable and replacement parts are no longer available. These
6 engines are very likely to fail this summer and neither the Trust nor the Company has the
7 money to make the necessary repairs.

8 Perhaps even more troubling, the Recommendation would not approve the arsenic
9 treatment plant or financing for the same unless the Trust transferred the Water Assets to
10 Truxton. *Id.* at ¶¶ 101-102; *see also id.* at p. 61. Truxton has no problem with acquiring
11 the Water Assets at fair market value, but for the reasons discussed above, Truxton
12 cannot acquire the Water Assets from the Trust for no consideration. Yet the
13 Recommendation also will not allow Truxton to obtain financing to acquire the Water
14 Assets or to build the arsenic treatment plant. The Recommendation simply binds
15 Truxton's hands and puts it in a box from which it cannot escape.

16 Further, the Recommendation purports to require Truxton to build the arsenic
17 treatment plant without any financing in approximately one year (i.e., by December 31,
18 2015). *Id.* at p. 62. The Recommendation would also require Truxton to comply with all
19 ADEQ requirements by December 31, 2014 at the risk of having an interim manager
20 appointed. *Id.* at p. 61. The proposed deadlines are unreasonable even assuming Truxton
21 had adequate financing or other resources to start building the arsenic treatment plant.
22 ADEQ, for example, recognizes that construction of an arsenic treatment plant requires
23 substantial time and thus provides a period of three years between "approval to construct"
24 and "approval of construction." *Id.* at ¶ 19, fn. 21. Truxton has until March 2016 to
25 obtain ADEQ's approval of construction, and at a minimum, the Commission should
26 adopt the same timeframe for Truxton's compliance.

27
28 **IV. The Commission Cannot Assume Managerial Control of Truxton.**

1 Contrary to the Recommendation (*see, e.g.*, ¶¶ 192-193 and p. 61), Staff and the
2 Commission have no authority to remove Truxton's owner as its manager, appoint their
3 own hand-picked interim manager, and thereby assume control over Truxton's business.
4 The Arizona Supreme Court has held that the "Commission's powers do not exceed those
5 to be derived from a strict construction of the Constitution and implementing statutes."
6 *Williams v. Pipe Trades Indus. Program of Ariz.*, 100 Ariz. 14, 17, 409 P.2d 720, 722
7 (1966). Under Ariz. Const. Art. 15 § 3, the Commission has authority to "prescribe just
8 and reasonable classifications to be used and just and reasonable rates and charges to be
9 made and collected;" "make reasonable rules, regulations, and orders" with respect to
10 those classifications and rates;³ "prescribe the forms of contracts and the systems of
11 keeping accounts;" and "make and enforce reasonable rules, regulations, and orders for
12 the convenience, comfort, and safety, and the preservation of the health" of a public
13 service corporation's employees and patrons. Nowhere is the Commission authorized to
14 directly or indirectly operate public service corporations through its agents. Nowhere is
15 the Commission authorized to cause the involuntary transfer of a public service
16 corporation's ownership.
17

18 The Commission simply lacks the power to control Truxton's management absent
19 Truxton's permission. *See Phelps Dodge Corp. v. Ariz. Electric Power Coop.*, 207 Ariz.
20 95, 113, 83 P.3d 573, 591 (App. 2004) (stating that Commission cannot engage in
21 "unauthorized managerial interference" and that purported "rules that attempt to control
22 the corporation" are "impermissible."). In addition to exceeding the Commission's
23 authority, wresting control of Truxton's ownership and management from the Trust
24
25
26

27
28 ³ *Williams*, 100 Ariz. at 17, 409 P.2d at 722 ("We have repeatedly held that the
power to make reasonable rules and regulations and orders . . . refers to the power to
prescribe just and reasonable classification and just and reasonable rates and charges.").

1 without permission would also constitute an unconstitutional taking requiring the
2 payment of just compensation.⁴

3 **V. The Recommendation Would Cut Truxton's Rates Last Set 13 Years Ago.**

4 The Commission last set Truxton's rates 13 years ago in Decision No. 63713.
5 Despite Truxton's precarious financial position, and the Recommendation's rejection of
6 Truxton's request to obtain financing to make critical improvements to comply with the
7 Commission's and ADEQ's requirements, the Recommendation adopted the Staff's
8 proposal to reduce Truxton's rates. Recommendation at ¶ 169. It is difficult to fathom
9 the justification for such a decision in light of the foregoing facts; reducing Truxton's
10 rates will only compound—not solve—the problems that the Recommendation purports
11 to address.

12
13 Staff and the Recommendation have also apparently ignored the undeniable effects
14 of inflation over the last 13 years. For example, the United States' average annual CPI
15 for water, sewer, and trash collection in 2001 was 109.6. See
16 www.bls.gov/cpi/cpid01av.pdf at p. 2. For September 2014, the most recently available
17 public data, that same figure was approximately 88% higher (i.e., 206.363). See
18 <http://www.bls.gov/cpi/cpid1409.pdf> at p. 5.

19 **VI. The Recommendation Improperly Reduces Truxton's Revenue Requirement.**

20 What seems lost in this battle for the Water Assets is the fact that the
21 Recommendation's proposed rates will cripple the Company and leave it unable to
22

23
24 ⁴ To be clear, Truxton never said that VVPOA agrees with its argument regarding interim
25 management. In its post-hearing brief, Truxton pointed out that VVPOA's attorney was
26 making the same argument as Truxton in another case. See *id.* at p. 8 ("The attorney for
27 VVPOA agrees with this argument. In another matter, addressing the interim
28 management issues, VVPOA's attorney represented to this court, '[i]f the Commission
ordered such involuntary transfer, it would result in a regulatory taking of [the water
company's] property, in turn exposing the Commission ... to payment of just
compensation for such taking.'" Montezuma Rimrock Water Company Closing Brief at p.
62 (Aug. 30, 2013))".

1 provide safe and reliable water to its customers. The current rates were established in
2 2001. Staff recommends a 22.79% decrease, so the typical residential customer would
3 pay less than \$20.00 a month for water. *See Id.* at ¶ 163. This simply will not work.

4 As Truxton points out in its post-hearing brief, this substantial reduction was
5 achieved by excluding \$202,891 in outside service expenses that went to the Trust to
6 manage and operate the Company. If this adjustment is adopted, there will not be enough
7 revenue to pay the expenses to maintain reliable water service to its customers. *See*
8 Exhibit A-5, Rebuttal Testimony of Sonn Rowell at p. 2-3.

9
10 Truxton sought a reasonable revenue requirement of \$855,924 to serve its
11 approximately 924 customers, including a large golf course and park. Adjusting
12 Truxton's purchased water expense of \$147,409 would be appropriate if the Commission
13 approved Truxton's acquisition of the Water Assets from the Trust for \$1.4 million, but
14 the Commission cannot expect the Trust to provide Truxton with free water if the
15 Commission rejects Truxton's request to finance the acquisition of the Water Assets.
16 Truxton has purchased water from the Trust for decades with the Commission's
17 knowledge and approval. *See, e.g.* Decision No. 63713 at 2:7-89 and 3:24-28. Without
18 either purchasing the Water Assets or purchasing water, Truxton will be unable to serve
19 its customers. Again, the Recommendation cannot have it both ways.

20 **VII. Conclusion.**

21 Adopting the Recommendation would set Truxton up for failure, and leave over
22 900 customers without water service in Mohave County, Arizona. Truxton cannot
23 acquire the Water Assets for zero compensation, and the Recommendation would deny
24 Truxton the ability to obtain any financing to acquire the Water Assets. The
25 Recommendation would also deny Truxton financing to build an arsenic treatment plant
26 unless Truxton acquired the Water Assets, which it cannot acquire for no consideration
27
28

1 and without financing. But even if the Trust immediately transferred the Water Assets to
2 Truxton for no consideration, Truxton still could not comply with the Recommendation's
3 requirements that Truxton complete the arsenic treatment plant by the end of next year at
4 only half the cost of the competitive bid that Truxton received from an independent,
5 third-party contractor. The Recommendation apparently believes that the Commission
6 could appoint an interim manager over Truxton to comply with these inherently unfair
7 and unreasonable requirements (*id.* at ¶¶ 192-193 and p. 61), but an interim manager of
8 Truxton could not compel the Trust to transfer assets for no consideration any more than
9 the interim manager could compel the Commissioners to transfer their house and car
10 titles to Truxton. Reducing Truxton's revenue requirement and the rates, which the
11 Commission last set 13 years ago, will only compound these problems. In short, the
12 Commission's adoption of the Recommendation would spell doom for Truxton (and its
13 customers) in direct contradiction of the public interest. For these and the foregoing
14 reasons, the Commission should reject the Recommendation.
15

16 RESPECTFULLY SUBMITTED this 7th day of November, 2014.

17
18 **MOYES SELLERS & HENDRICKS LTD.**

19 

20 _____
21 Steve Wene

22
23 Original and thirteen (13) copies
24 of the foregoing filed this
25 7th day of November, 2014 with:

26 Docket Control
27 Arizona Corporation Commission
28 1200 West Washington Street
Phoenix, Arizona 85007

1 Copy of this foregoing mailed this
2 7th day of November 2014 with:

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