

# EXCEPTION



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AZ CORP COMMISSION  
DOCKET CONTROL

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- 4 DOUG LITTLE, Commissioner
- 5 TOM FORESE, Commissioner

**ORIGINAL**

## BEFORE THE ARIZONA CORPORATION COMMISSION

8 IN THE MATTER OF THE APPLICATION  
9 OF TRUXTON CANYON WATER  
10 COMPANY, INC. FOR APPROVAL OF A  
11 RATE INCREASE.

DOCKET NO. W-02168A-11-0363

12 IN THE MATTER OF THE APPLICATION  
13 OF TRUXTON CANYON WATER  
14 COMPANY, INC. FOR APPROVAL OF A  
15 REVISION OF THE COMPANY'S  
16 EXISTING TERMS AND CONDITIONS OF  
17 WATER SERVICE.

DOCKET NO. W-02168A-13-0309

18 IN THE MATTER OF THE APPLICATION  
19 OF TRUXTON CANYON WATER  
20 COMPANY, INC. FOR AUTHORITY TO  
21 INCUR LONG-TERM DEBT.

DOCKET NO. W-02168A-13-0332

Arizona Corporation Commission

**DOCKETED**

JUN 04 2015

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## EXCEPTIONS TO STAFF'S PROPOSED

## FORM OF ORDER

26

1 **INTRODUCTION**

2 Valle Vista Property Owners Association (“VVPOA”) hereby submits these  
3 Exceptions to the Staff Report and Proposed Form of Order (“Staff Report”), dated May  
4 29, 2015, concerning its recommendations regarding refunds and/or credits owed to  
5 VVPOA by Truxton Canyon Water Company (“Truxton”), pursuant to Decision No.  
6 74835 (November 14, 2014). VVPOA strongly opposes Staff’s recommendations to  
7 adopt Truxton’s proposal of a 60-month refund period, especially in light of the fact that  
8 Truxton and its owners continue to ignore and violate the Commission’s orders  
9 concerning the transfer of assets from the Claude K. Neal Family Trust (“Trust”).  
10 VVPOA’s objections are further supported by the following:

- 11 1. The Staff Report does not explain why Truxton’s proposal to refund the  
12 \$141,874 owed to VVPOA via bill credits over a 60-month period is any  
13 more reasonable than VVPOA’s proposal to receive the entire credit over a  
14 24-month period.
- 15 2. The Staff Report fails to mention that of the \$141,874 owed to VVPOA,  
16 \$40,000 was provided to Truxton in the form of a security deposit  
17 (“Deposit”) in 2012. Rather than hold the Deposit as security for the  
18 payment of water bills,<sup>1</sup> Truxton used the funds to pay operating expenses  
19 in direct violation of Decision 72724.
- 20 3. Continued mismanagement of Truxton has resulted in the delivery of water  
21 that is unsafe for drinking due to high arsenic levels, a condition that  
22 Truxton was aware of as early as 2010. Now, customers are forced to go to  
Truxton’s main office and collect their 1 gallon of drinking water, each and  
every day, until Truxton complies with a consent order entered into with the  
Arizona Department of Environmental Quality and constructs the necessary  
arsenic treatment facilities to ensure safe drinking water for all its  
customers.<sup>2</sup>

23 The substance and basis for VVPOA’s objections are more fully addressed in the  
24 discussion below.

25 <sup>1</sup> Since providing the Deposit, VVPOA has paid its water bill in a timely matter to date.

26 <sup>2</sup> A copy of the notice regarding the quality of water is attached hereto as Exhibit A.

1 DISCUSSION

2 **I. Truxton Has Failed to Comply with Decisions Nos. 72386, 72724 and 74835.**

3 A. Truxton has Failed to Fully Transfer From the Trust Assets That Are  
4 Necessary for The Provision of Water Service.

5 One of the central issues in this proceeding has been the use of Trust assets for  
6 public use. In Decision No. 72386, Truxton entered into a Stipulated Agreement to  
7 acquire the assets needed to provide water service, but never finalized such an  
8 acquisition. In its Initial Closing Brief in this proceeding, Staff argued that the Trust  
9 could be a public service corporation based on the eight factors discussed by the Arizona  
10 Supreme Court in *Natural Gas Serv. Co. v. Serv-Yu Co-op.*, 70 Ariz. 235, 219 P.2d 324  
11 (1950). However, because the Trust was not a party to this proceeding, the Commission  
12 instead granted Staff the authority to bring an action to determine whether the Trust is a  
13 public service corporation in the event such transfer of assets did not occur by December  
14 31, 2014.<sup>3</sup> (Decision No. 74835 at p.62).

15 On December 31, 2014, Truxton filed with the Commission a bill of sale from the  
16 Trust for certain assets; specifically, some wells and related facilities. However, there  
17 was no evidence to suggest that these well assets had been transferred from the Trust to  
18 Truxton pursuant to Arizona Department of Water Resource well identification numbers.  
19 Also absent were any easement and/or right of way documents that would allow Truxton  
20 access to these sites. Finally, the assets that Truxton has yet to fully acquire did not  
21 include the building housing the company's chlorinization facilities (and future arsenic  
22 treatment facilities), which the Commission specifically determined should be transferred  
23 because it "has been used in the provision of Truxton's water services." (Decision No.  
24 74835 at p. 34).

25 \_\_\_\_\_  
26 <sup>3</sup> This includes the power to appoint an interim manager.

1           Because Truxton has not fully complied with the transfer requirements set forth in  
2 Decision Nos. 72386 and 74385, VVPOA believes that it is appropriate for Staff and the  
3 Commission to initiate proceedings to determine that the Trust has been, and continues to  
4 act, as a public service corporation.

5           B.     Hualapai 1 Well and Transmission System Detailed Plan

6           Decision No. 74835 requires Truxton to file, within 60 days of the Order, a more  
7 detailed plan to upgrade the Hualapai 1 Well and replace the one mile of transmission line  
8 that shall include: the exact 1-mile portion that will be replaced, the type of replacement  
9 pipe, whether improvements will require permits, whether there will be an infringement  
10 on the Indian Reservation and whether improvements will interfere with the Tributary  
11 Flood Plan. As the Commission is aware, the Hualapai 1 Well is the main water source  
12 for the irrigation and maintenance of VVPOA's golf course, which in turn provides vital  
13 revenue for the association and its members.

14           This well has failed on several occasions, costing VVPOA hundreds of thousands  
15 of dollars in repairing the resulting damage to the golf course. In fact, during the  
16 mediation conducted by Staff over the refunding of the true-up amount, Mr. Neal  
17 indicated that it was very likely the well would fail again, and that the company did not  
18 have a back-up plan to address this contingency. Truxton did not file any information or  
19 detail plan required by Decision No. 74835 until May 8, 2015, and only after Staff  
20 prompted the company for such information. Furthermore, rather than repairing and  
21 upgrading the well during the winter months, Truxton instead chose to perform such work  
22 at the beginning of June 2015 – when VVPOA needs the water the most. Due to  
23 permitting delays with Mohave County, VVPOA's retention ponds are not yet complete.  
24 And despite VVPOA's reasonable request to Truxton for a delay in the repairs and  
25 upgrades to the Hualapai 1 well, Truxton nevertheless has moved forward with the  
26

1 project. This type of poor planning and lack of accommodation by Truxton just further  
2 illustrates VVPOA's frustration.

3 C. Truxton Failed to Refund VVPOA's Security Deposit When Due.

4 The first ordering paragraph of Decision No. 72724 states in pertinent part that  
5 "Valley Vista Property Owners Association shall pay a \$20,000 deposit on January 1,  
6 2012; and that deposit shall be refunded with interest, with the August 2012 bill, if the  
7 Valle Vista Property Owners Association remains current on its bills." VVPOA provided  
8 the initial \$20,000 in January 2012, and another \$20,000 later in 2012 in order to avoid  
9 any potential rate shock as a result of the rate case.<sup>4</sup> VVPOA has remained current on its  
10 water bills since the beginning of 2012, yet the \$40,000 has been spent by the company.

11 In light of this fact alone, VVPOA cannot understand why Staff would recommend  
12 that these funds – which were essentially taken by Truxton in violation of a Commission  
13 order and rules and regulations governing security deposits – should not be immediately  
14 refunded to VVPOA with interest. If the concern is that Truxton has no funds to pay the  
15 money back, then Staff should look to where Truxton's owners have been diverting  
16 money to the detriment of Truxton's customers – the Trust. The Commission has granted  
17 Staff the ability to bring an action to find the Trust is a public service corporation; only  
18 upon such a finding will the Commission have direct access to the deep pockets built on  
19 the backs of Truxton's ratepayers.

20  
21 **II. The Staff Report Does Not Explain Why Truxton's Refund/Credit Proposal is  
22 More Reasonable Than VVPOA's Proposal.**

23 As stated in the Staff Report, during the mediation Staff presented both parties  
24 with a sensitivity analysis showing the effects on Truxton's cash flow when the

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26 <sup>4</sup> In its May 8, 2015 compliance status update report, Truxton indicates that the additional  
\$20,000 was provided because Truxton had no funds to perform a pump repair.

1 overpayment is refunded over 2.5 years, 3 years, 3.5 years, 4 years and 5 years. The  
2 mediation occurred on April 17, 2015. On April 24, 2015, Staff asked Truxton to provide  
3 documentation to support its five-year repayment proposal. Truxton responded by  
4 directing Staff to review Decision No. 74385, stating that an annual revenue requirement  
5 of \$489,106 was “simply not enough money to operate a water company with nearly  
6 1,000 customers.”

7 In Decision No. 74385, the Commission approved an annual revenue requirement  
8 of \$489,106 based on Staff’s determination that this would provide the company with an  
9 annual cash flow of \$59,579, operating income of \$50,000 and an operating margin of  
10 10.22 percent. Decision No. 74385 at p. 42.<sup>5</sup> According to Truxton’s May 8, 2015  
11 Compliance Report, the company has cut all expenses possible and is down to one office  
12 and one field employee. These actions alone should increase the company’s operating  
13 margin and cash flow. Also attached to Truxton’s Compliance Report is a list of  
14 projected and actual billings and expenses for 2015, attached hereto as Exhibit B. Were  
15 these numbers audited by Staff, or was Truxton taken at its word that these figures  
16 accurately reflect the true operating costs for the company? Again, given the history of  
17 this matter and Truxton’s previous actions to date, VVPOA is at a loss as to why Staff is  
18 willing to simply adopt Truxton’s proposal (albeit with an interest component) to refund  
19 the amount owed over 60 months. Was any consideration given as to the reasonableness  
20 of 3.5 years?

21 \_\_\_\_\_  
22 <sup>5</sup> This recommendation was highlighted by the fact that Truxton’s ratepayers had been  
23 paying approximating \$147,409 annually from the Trust for water from assets that should  
24 have been owned by Truxton in the first place. At Staff’s recommendation, the  
25 Commission disallowed this expense. Additionally, Outside Services expenses of  
26 \$202,891 was disallowed, which Truxton ratepayers had been paying for “management”  
of the water company by the Trust; namely, the Neals. In all, Truxton’s ratepayers had  
been paying nearly \$350,000 in water supply and management fees that Staff had  
determined was not supported by the company as reasonable expenses.

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CONCLUSION

Time and again, Truxton has shown an unwillingness to comply with Commission orders, rules and regulations. Now, VVPOA's elderly residents must wait in line at Truxton's offices to obtain 1 gallon of drinking water, despite the company being on notice about its arsenic issues as early as 2010. To make matters worse, Truxton has delayed making any substantive repairs to the Hualapai 1 well until the beginning of summer (early June), when VVPOA can most ill-afford to withstand a major outage. Given the facts and history of this case, VVPOA does not understand why this matter comes before the Commission with Staff's recommendation to adopt Truxton's refund proposal, rather than a request by Staff to (i) initiate a proceeding to find the Trust has, and continues to act, as a public service corporation, (ii) pursue any remedy available to require Truxton to comply with all previous Commission orders, and (iii) provide notice of an appointment of an interim operator as authorized in Decision No. 74385. The VVPOA Board and its individual members believe that the Commission has failed to hold Truxton and its owners accountable for their actions and/or inactions, to the detriment of VVPOA, in addition to failing to protect residential customers' health and safety brought about by Truxton unwillingness to make the necessary improvements to ensure safe drinking water.

RESPECTFULLY SUBMITTED this 14<sup>th</sup> day of June, 2015.

FENNEMORE CRAIG

By 

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Attorneys for Valle Vista Property Owners  
Association, Inc.

1 ORIGINAL and 13 copies  
of the foregoing was filed  
2 this 4<sup>th</sup> day of June, 2015,  
with:

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

6 COPY of the foregoing  
was hand-delivered/mailed/emailed this  
7 4<sup>th</sup> day of June, 2015, to:

8 Bridget Humphrey  
Legal Division  
9 Arizona Corporation Commission  
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10 Phoenix, AZ 85007

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**EXHIBIT A**

**IMPORTANT INFORMATION ABOUT AN  
ALTERNATE SOURCE OF WATER**

**Truxton Canyon Water Company- Public Water System #08035  
Alternate Source of drinking water is offered at the water office**

Due to an arsenic exceedance in drinking water served by Truxton Canyon Water Company (Truxton Canyon), as of June 1, 2015, an alternate source of drinking water is being offered to customers of the water system.

One gallon-per day -per person-per household of Reverse Osmosis (RO) water will be available at the Truxton Canyon office located at 7313 E. Concho Dr., between the hours of 8:30 AM and 4:30 PM, Monday -Friday. Customers are responsible for furnishing their own containers, and each customer will sign in each time they receive water.

Providing RO water as an alternate source of drinking water has been approved by the Arizona Department of Environmental Quality (ADEQ), and the RO water will be made available until arsenic treatment has been installed on a permanent basis, and arsenic monitoring levels are below the maximum contaminant level. For more information, please contact our office at (928) 757-2205.

*Please share this information with all the other people who drink this water, especially those who may not have received this notice directly (for example, people in apartments, nursing homes, schools, and businesses). You can do this by posting this notice in a public place or distributing copies by hand or mail.*

This notice is being sent to you by Truxton Canyon Water Company  
Public Water System ID# 04-08035. Date distributed: 05/1/2015

**EXHIBIT B**

Truxton-VV  
2015

May 1st, 2015

	A	B	C	D	E	F
1	MONTHS	PROJ. BILLINGS	ACTUAL	VV PAYOUT	EXPENSES	DIFFERENCE
2	JANUARY	21,970	27,589	500	26,615-ACUAL	974
3	FEBUARY	25,403	23,705	500	24,558-ACUAL	-853
4	MARCH	27,498	27,124	1000	25,389-ACUAL	1735
5	APRIL	29,004	28,212	1000	27,947-ACUAL	265
6	MAY	41,421	52,151	3000	46,940-PROJECT	
7	JUNE	49,471		4000	53,113-PROJECT	
8	JULY	48,214		5000	49,729-PROJECT	
9	AUGUST	43,012		5000	47,708-PROJECT	
10	SEPTEMBER	41,791		4000	44,551-PROJECT	
11	OCTOBER	44,741		3000	42,552-PROJECT	
12	NOVEMBER	36,176		500	32,363-PROJECT	
13	DECEMBER	27,543		500	25,465-PROJECT	

TRUXTON CANYON WATER  
7313 E. CONCHO DRIVE-SUITE B  
KINGMAN, ARIZONA