

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 UW 120

4 THE PUBLIC UTILITY COMMISSION OF
5 OREGON,

6 Complainant,

7 v.

8 CROOKED RIVER RANCH WATER
9 COMPANY; and JAMES R. ROOKS, Director,
10 RANDOLPH M. SCOTT, Director, BRIAN
11 ELLIOTT, President, RICHARD A. KEEN,
12 Vice President, and RICHARD J. MILLER,
13 Secretary/Treasurer, in their capacities as the
14 CROOKED RIVER RANCH WATER
15 COMPANY BOARD OF DIRECTORS,

16 Defendants.

COMPLAINT FOR CIVIL PENALTIES
PURSUANT TO ORS 757.994

1. This proceeding is initiated by the Public Utility Commission of Oregon (hereinafter

14 “Commission”) to determine whether civil monetary penalties should be assessed as provided in
15 ORS 757.994. The Commission maintains its office at 550 Capitol Street NE, Suite 215, Salem,
16 Oregon 97301-2551.

2. Crooked River Ranch Water Company, which is operated by its individual Board of

19 Directors (jointly “Defendants”), maintains its office at 13845 SW Commercial Loop,
20 Terrebonne, Oregon 97760.

3. We are informed and have reason to believe that these listed Board members are Crooked

23 River Ranch Water Company’s current Board members based upon a purported resolution dated
24 March 31, 2008, which is attached as Exhibit A. Mr. Keen is not listed on the March 31, 2008,
25 purported resolution. It remains unclear whether Mr. Keen remains a Board member or has been
26

1 replaced. In any event, this complaint has also been served on Crooked River Ranch Water
2 Company's registered agent, who is responsible for accepting service on behalf of the current
3 Board members and apprising them of the complaint.

4 4.

5 The Commission has jurisdiction to impose civil penalties on the Defendants pursuant to
6 ORS 757.994.

7 5.

8 FIRST ALLEGED VIOLATION

9 On November 29, 2007, in Commission Order No. 07-527, the Commission ordered that
10 Defendants:

11 4. Not later than 30 days from the date of this order, Crooked River Ranch Water
12 Company shall submit any contracts between itself and its General Manager
13 Mr. Rooks and members of the Rooks' family, along with supporting
14 testimony to this Commission for approval.

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16 On January 28, 2008, Defendants provided a two-page signed Declaration of James
17 Rooks.

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19 On March 7, 2008, Commission Staff filed a Motion alleging that Defendants had not
20 complied with ordering paragraph 4 of Commission Order No. 07-527.

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22 On March 13, 2008, Defendants filed a response to Staff's motion and on March 20,
23 2008, Defendants filed a supplemental response to Staff's motion regarding violations of Order
24 No. 07-527.

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26 On March 24, 2008, in Commission Order No. 08-177, the Commission concluded that
27 Defendants failed to comply with ordering paragraph 4 of Order No. 07-527, and again ordered
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10.

On April 8, 2008, Defendants filed a response to Order No. 08-177. Defendants’ response remains noncompliant with Commission Order Nos. 07-527 and 08-177.

11.

Beginning December 31, 2007, Defendants were in violation of ordering paragraph 4 of Order No. 07-527. Pursuant to ORS 757.994, Defendants have been in continuous violation of ordering paragraph 4 of Order No. 07-527 for 121 days (and counting from April 30, 2008). Each day’s violation is subject to a civil penalty of up to \$500 per day.

12.

As of May 1, 2008, Defendants are subject to a civil penalty of \$60,500 for violation of ordering paragraph 4 of Order No. 07-527.

13.

As stated in Order No. 08-177, and based upon the unique corporate structure of Crooked River Ranch Water Company, the Board of Directors members are jointly and severally liable for payment of this penalty amount up to \$60,500.

14.

As provided for in ORS 757.994, the penalties sought under this complaint should be used for the benefit of the customers of Crooked River Ranch Water Company.

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SECOND ALLEGED VIOLATION

The Commission re-alleges allegations 1-4.

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On November 29, 2007, in Commission Order No. 07-527, the Commission ordered that Defendants:

- 5. Not later than 30 days from the date of this order Crooked River Ranch Water Company shall file an accounting of its collection of funds through its special assessment surcharge and the disposition of such funds, from the inception of the fund to the present.

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On March 7, 2008, Commission Staff filed a Motion alleging that Defendants had not complied with ordering paragraph 5 of Commission Order No. 07-527.

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On April 8, 2008, Defendants filed a response to Order No. 08-177. Defendants' response remains noncompliant with Commission Order Nos. 07-527 and Order 08-177.

22.

Beginning December 31, 2007, Defendants were in violation of ordering paragraph 5 of Order No. 07-527. Pursuant to ORS 757.994, Defendants have been in continuous violation of ordering paragraph 5 of Order No. 07-527 for 121 days (and counting from April 30, 2008). Each day's violation is subject to a civil penalty of up to \$500 per day.

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3 River Ranch Water Company, the Board of Director members are jointly and severally liable for
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14 6. Not later than 30 days from the date of this order, Crooked River Ranch Water
15 Company shall file a report stating its need for funds for new capital
16 improvements, including the intended projects, the estimated costs of each
such project, and the time that each investment would be required.

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3 Defendants failed to comply with ordering paragraph 6 of Order No. 07-527 in a timely manner.
4 In Order No. 08-177, the Commission explicitly did not excuse the fact that the Defendants'
5 filing was 28 days late.

6 32.

7 On April 8, 2008, Defendants filed a response to Order No. 08-177.

8 33.

9 From December 31, 2007 through January 28, 2008, Defendants were in violation of
10 ordering paragraph 6 of Order No. 07-527.

11 34.

12 Pursuant to ORS 757.994, Defendants violated ordering paragraph 6 of Order No. 07-527
13 for 28 days. Each day's violation is subject to a civil penalty of up to \$500 per day.

14 35.

15 Defendants are subject to a civil penalty of \$14,000 for violation of ordering paragraph 6
16 of Order No. 07-527.

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18 As stated in Order No. 08-177, and based upon the unique corporate structure of Crooked
19 River Ranch Water Company, the Board of Director members are jointly and severally liable for
20 payment of this penalty amount up to \$14,000.

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38.

CONCLUSION

ORS 757.994(1) provides jurisdiction to seek civil penalties against the Defendants. That statute provides:

In addition to all other penalties provided by law, a person who violates any statute, rule or order of the Public Utility Commission related to water utilities is subject to a civil penalty of not more than \$500 for each violation. The commission may require that penalties imposed under this section be sued for the benefit of the customers of water utilities affected by the violation.

39.

The Defendants are subject to civil penalties of up to \$135,000 for violation of ordering paragraphs 4, 5, and 6 of Order 07-527. For ordering paragraphs 4 and 5 of Order 07-527, the Defendants continue to violate Order No. 07-527 for each day they are noncompliant after April 30, 2008. Therefore, an additional civil penalty of \$500 per violation (\$1,000 per day) should be added to the total civil penalty until Defendants have complied with ordering paragraphs 4 and 5 of Order No. 07-527.

40.

As noted in Order No. 08-177, ORS 757.994(1) allows the Commission to assess penalties against “a person who violates any . . . order of the Public Utility Commission related to water utilities.” ORS 756.010 defines “person” to include “corporations and associations of their officers. . .”

41.

Pursuant to ORS 757.994(1), the Commission should use the penalties imposed under this section for the benefit of the customers of Crooked River Ranch Water Company.

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1 42.

2 The Board of Director members are jointly and severally liable for civil penalties of up to
3 \$135,000, plus an additional \$1,000 per day for each day's continuance of violations of ordering
4 paragraphs 5 and 6 of Order No. 07-527.

5 WHEREFORE, the Commission directs the defendant to file a verified answer to this
6 complaint within twenty (20) days from the date this complaint is mailed to the defendant. If no
7 verified answer or other written appearance raising a question of fact or law is filed with the
8 Commission at its office in Salem, Oregon, within the 20-day period, the allegations of the
9 complaint shall be deemed admitted, and a penalty shall be imposed in the amount stated in this
10 complaint for each violation alleged, for a total of up to \$135,000, plus an additional \$1,000 per
11 day from April 30, 2008, forward, for continuing violations of ordering paragraphs 4 and 5 of
12 Order No. 07-527, until Defendants comply with the order.

13 You are entitled to a hearing. If you want a hearing, you must file a written request for
14 hearing with the Commission no later than 20 days from the date this notice was first served on
15 you. You may mail a request for hearing to 550 Capitol St. SE, Suite 215, PO Box 2148,
16 Salem, OR 97308-2148. If a request for hearing is not received within this 20-day period, your
17 right to a hearing shall be considered waived.

18 If you request a hearing, you will be notified of the time and place of the hearing. You
19 will also be given information on the procedures, right of representation and other rights of
20 parties relating to the conduct of the hearing before commencement of the hearing.

21 If you do not request a hearing within this 20-day period, or if you fail to appear at a
22 scheduled hearing, or if you withdraw a hearing request, the Commission may issue a final order
23 by default imposing a civil penalty of up to \$135,000 plus an additional \$1,000 per day from
24 April 30, 2008, forward, until compliance has occurred. If the Commission issues a final order
25 by default, it designates its file on this matter, including any material submitted by you that relate
26

1 to this matter, as the record for the purpose of proving a prima facie case. To withdraw a hearing
2 request you must notify the Commission that you will not appear.

3 DATED this 1st day of May 2008.

4 Respectfully submitted,

5 HARDY MYERS
6 Attorney General

7
8 s/ Jason W. Jones
9 Jason W. Jones, #00059
10 Assistant Attorney General
11 Of Attorneys for Public Utility Commission of
12 Oregon Staff
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GLENN, SITES, REEDER & GASSNER, LLP
ATTORNEYS AT LAW
205 S. E. Fifth Street, Madras, OR 97741-1632
Telephone: (541) 475-2272
Fax: (541) 475-3944

RECEIVED

APR 14 2008

Department of Justice
General Counsel-Salem

DAVID C. GLENN
EDWARD E. SITES
DONALD V. REEDER
TIMOTHY R. GASSNER

BOYD OVERHULSE
1934-1966 (Deceased)
SUMNER RODRIGUEZ
1949-2005 (Deceased)

April 10, 2008

Attn: Carol Hulse
PUC Filing Center
PO Box 2148
Salem, OR 97308-2148

RE: In the Matter of Crooked River Ranch Water Company
Docket No.: UW 120

Dear Ms. Hulse:

Pursuant to our telephone conversation of April 10, 2008, enclosed, please find a copy of the Crooked River Ranch Water Company Board of Directors' Resolution dated March 31, 2008, as well as the pay stubs for James Rooks. Please send back the second copy of Jacquie Rooks' pay stubs at your earliest convenience.

Very truly yours,
GLENN, SITES, REEDER & GASSNER, LLP


TIMOTHY R. GASSNER OSB 02309

TRG:skk

H:\Tim\CRR Water\PUC APPEAL\UW120\LT-Hulse-pay stubs-resolutions.wpd

cc: All Interested Parties

Exhibit A
Page 1 of 3

DATE: March 31, 2008

TO: Board of Directors
Crooked River Ranch Water Company

FROM: James H. Rooks
General Manager/Operations Manager

SUBJECT: RESERVE FUND/STATUS and ROLE OF JAMES ROOKS

Issue: This resolution is addressing three separate issues:

1) The PUC, in order 08-177, ordered CRRWC to return \$118,028 in collected assessment funds to the members. We were granted a temporary stay in order 08-181, but need to establish the need to retain the monies. In addition to the amount listed above, the PUC has identified CD's that have been scheduled to meet the company needs, as part of this fund, bringing the total balance to \$233,889. If the company were to disburse all this money back to the customers, it would leave CRRWC with absolutely no reserves to meet any future emergency needs.

2) PUC order 08-181 put into question the status of James Rooks as the General Manager of CRRWC. When Mr. Rooks was originally hired by CRRWC, a contract was developed between Mr. Rooks and the Board of Directors. The PUC, in developing a budget for this company, severely reduced the rates which, in effect, canceled the employment contract of Mr. Rooks, at least as far as the salary is concerned. The PUC is now saying that they question the status of Mr. Rooks as General Manager and his authority to speak for the company.

3) As stated in #2 above, the employment contract, as far as the monetary amount, was voided by the passage of the PUC budget and rates. It was not voided by the Board of Directors or Mr. Rooks. Mr. Rooks has continued his employment as General/Operations Manager since November 29, 2007 (the date the PUC order was signed reducing rates and revenues). There has been no change in employment status requested by Mr. Rooks or ordered by the Board of Directors.

Order No. 08-181 requires a response by April 8, 2008.

Recommendation: The following resolution is recommended to the Board of Directors in response to the above issues:

1) The elected Board of Directors of the Crooked River Ranch Water Company, do hereby state in this resolution that the sum of \$233,889 are placed in an emergency reserve status that will not be distributed except in extreme emergencies (i.e., includes, but not limited to, to prevent the co-op from total bankruptcy, to preserve integrity of the system in case of a catastrophic failure, or in case of extreme health hazard, such as contamination of the system.)

A signed resolution by the CRRWC Board of Directors will be required before any of these monies may be distributed in any manner.

2) It is hereby stated by the Board of Directors of the Crooked River Ranch Water Company that James H. Rooks, as the General Manager and elected Board of Director member, holds the complete confidence of the entire Board of Directors in all matters concerning the administration and operations of the Crooked River Ranch Water Company. All communications between the Public Utility Commission and the CRRWC will be directed through James H. Rooks, General Manager of CRRWC.

3) As stated in issue #3, the contract between James Rooks and the CRRWC Board of Directors was not canceled by either party. The contract became a nullity when the PUC severely reduced the revenue for CRRWC and wages/salary for Mr. Rooks. The Board of Directors, in no manner, have changed the expectations of Mr. Rooks job duties, which include his role as General Manager of Crooked River Ranch Water Company. Mr. Rooks current status is as an "at will" employee of the CRRWC, with his primary duties being the General Manager and Operations Manager of the Company. Mr. Rooks receives an annual salary, He is not paid overtime. Mr. Rooks receives medical and dental benefits. Mr. Rooks does not receive vision, retirement or any other benefits. He continues to perform all duties as required by the Board of Directors.

Resolution: The Board of Directors of CRRWC accept the recommendations as stated above and resolve that they become effective immediately.

APPROVED:

Brian Elliott, President

Date: _____



Richard Miller, Secretary/Treasurer

Date: 4/21/08



James Rooks, Director

Date: 4/4/08



Randy Scott, Director

Date: 4/3/08

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As of May 1, 2008, Defendants are subject to a civil penalty of \$60,500 for violation of ordering paragraph 4 of Order No. 07-527.

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As stated in Order No. 08-177, and based upon the unique corporate structure of Crooked River Ranch Water Company, the Board of Directors members are jointly and severally liable for payment of this penalty amount up to \$60,500.

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As provided for in ORS 757.994, the penalties sought under this complaint should be used for the benefit of the customers of Crooked River Ranch Water Company.

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SECOND ALLEGED VIOLATION

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THIRD ALLEGED VIOLATION

The Commission re-alleges allegations 1-4.

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Defendants:

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Pursuant to ORS 757.994, Defendants violated ordering paragraph 6 of Order No. 07-527 for 28 days. Each day's violation is subject to a civil penalty of up to \$500 per day.

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Defendants are subject to a civil penalty of \$14,000 for violation of ordering paragraph 6 of Order No. 07-527.

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1 38.

2 CONCLUSION

3 ORS 757.994(1) provides jurisdiction to seek civil penalties against the Defendants. That
4 statute provides:

5 In addition to all other penalties provided by law, a person who violates
6 any statute, rule or order of the Public Utility Commission related to water
7 utilities is subject to a civil penalty of not more than \$500 for each violation. The
8 commission may require that penalties imposed under this section be sued for the
9 benefit of the customers of water utilities affected by the violation.

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9 The Defendants are subject to civil penalties of up to \$135,000 for violation of ordering
10 paragraphs 4, 5, and 6 of Order 07-527. For ordering paragraphs 4 and 5 of Order 07-527, the
11 Defendants continue to violate Order No. 07-527 for each day they are noncompliant after April
12 30, 2008. Therefore, an additional civil penalty of \$500 per violation (\$1,000 per day) should be
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17 penalties against “a person who violates any . . . order of the Public Utility Commission related
18 to water utilities.” ORS 756.010 defines “person” to include “corporations and associations of
19 their officers. . .”

20 41.

21 Pursuant to ORS 757.994(1), the Commission should use the penalties imposed under
22 this section for the benefit of the customers of Crooked River Ranch Water Company.

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The Board of Director members are jointly and severally liable for civil penalties of up to \$135,000, plus an additional \$1,000 per day for each day's continuance of violations of ordering paragraphs 5 and 6 of Order No. 07-527.

WHEREFORE, the Commission directs the defendant to file a verified answer to this complaint within twenty (20) days from the date this complaint is mailed to the defendant. If no verified answer or other written appearance raising a question of fact or law is filed with the Commission at its office in Salem, Oregon, within the 20-day period, the allegations of the complaint shall be deemed admitted, and a penalty shall be imposed in the amount stated in this complaint for each violation alleged, for a total of up to \$135,000, plus an additional \$1,000 per day from April 30, 2008, forward, for continuing violations of ordering paragraphs 4 and 5 of Order No. 07-527, until Defendants comply with the order.

You are entitled to a hearing. If you want a hearing, you must file a written request for hearing with the Commission no later than 20 days from the date this notice was first served on you. You may mail a request for hearing to 550 Capitol St. SE, Suite 215, PO Box 2148, Salem, OR 97308-2148. If a request for hearing is not received within this 20-day period, your right to a hearing shall be considered waived.

If you request a hearing, you will be notified of the time and place of the hearing. You will also be given information on the procedures, right of representation and other rights of parties relating to the conduct of the hearing before commencement of the hearing.

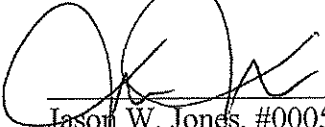
If you do not request a hearing within this 20-day period, or if you fail to appear at a scheduled hearing, or if you withdraw a hearing request, the Commission may issue a final order by default imposing a civil penalty of up to \$135,000 plus an additional \$1,000 per day from April 30, 2008, forward, until compliance has occurred. If the Commission issues a final order by default, it designates its file on this matter, including any material submitted by you that relate

1 to this matter, as the record for the purpose of proving a prima facie case. To withdraw a hearing
2 request you must notify the Commission that you will not appear.

3 DATED this 1st day of May 2008.

4 Respectfully submitted,

5
6 HARDY MYERS
7 Attorney General

8 
9 Jason W. Jones, #00059
10 Assistant Attorney General
11 Of Attorneys for Public Utility Commission of
12 Oregon Staff

GLENN, SITES, REEDER & GASSNER, LLP
ATTORNEYS AT LAW
205 S. E. Fifth Street, Madras, OR 97741-1632
Telephone: (541) 475-2272
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RECEIVED

APR 14 2008

Department of Justice
General Counsel-Salem

DAVID C. GLENN
EDWARD E. SITES
DONALD V. REEDER
TIMOTHY R. GASSNER

BOYD OVERHULSE
1934-1966 (Deceased)
SUMNER RODRIGUEZ
1949-2005 (Deceased)

April 10, 2008

Attn: Carol Hulse
PUC Filing Center
PO Box 2148
Salem, OR 97308-2148

RE: In the Matter of Crooked River Ranch Water Company
Docket No.: UW 120

Dear Ms. Hulse:

Pursuant to our telephone conversation of April 10, 2008, enclosed, please find a copy of the Crooked River Ranch Water Company Board of Directors' Resolution dated March 31, 2008, as well as the pay stubs for James Rooks. Please send back the second copy of Jacquie Rooks' pay stubs at your earliest convenience.

Very truly yours,
GLENN, SITES, REEDER & GASSNER, LLP


TIMOTHY R. GASSNER OSB 02309

TRG:skk

H:\Tim\CRR Water\PUC APPEAL\UW120\LT-Hulse-pay stubs-resolutions.wpd

cc: All Interested Parties

Exhibit A
Page 1 of 3

DATE: March 31, 2008

TO: Board of Directors
Crooked River Ranch Water Company

FROM: James H. Rooks
General Manager/Operations Manager

SUBJECT: RESERVE FUND/STATUS and ROLE OF JAMES ROOKS

Issue: This resolution is addressing three separate issues:

1) The PUC, in order 08-177, ordered CRRWC to return \$118,028 in collected assessment funds to the members. We were granted a temporary stay in order 08-181, but need to establish the need to retain the monies. In addition to the amount listed above, the PUC has identified CD's that have been scheduled to meet the company needs, as part of this fund, bringing the total balance to \$233,889. If the company were to disburse all this money back to the customers, it would leave CRRWC with absolutely no reserves to meet any future emergency needs.

2) PUC order 08-181 put into question the status of James Rooks as the General Manager of CRRWC. When Mr. Rooks was originally hired by CRRWC, a contract was developed between Mr. Rooks and the Board of Directors. The PUC, in developing a budget for this company, severely reduced the rates which, in effect, canceled the employment contract of Mr. Rooks, at least as far as the salary is concerned. The PUC is now saying that they question the status of Mr. Rooks as General Manager and his authority to speak for the company.

3) As stated in #2 above, the employment contract, as far as the monetary amount, was voided by the passage of the PUC budget and rates. It was not voided by the Board of Directors or Mr. Rooks. Mr. Rooks has continued his employment as General/Operations Manager since November 29, 2007 (the date the PUC order was signed reducing rates and revenues). There has been no change in employment status requested by Mr. Rooks or ordered by the Board of Directors.

Order No. 08-181 requires a response by April 8, 2008.

Recommendation: The following resolution is recommended to the Board of Directors in response to the above issues:

1) The elected Board of Directors of the Crooked River Ranch Water Company, do hereby state in this resolution that the sum of \$233,889 are placed in an emergency reserve status that will not be distributed except in extreme emergencies (i.e., includes, but not limited to, to prevent the co-op from total bankruptcy, to preserve integrity of the system in case of a catastrophic failure, or in case of extreme health hazard, such as contamination of the system.)

A signed resolution by the CRRWC Board of Directors will be required before any of these monies may be distributed in any manner.

2) It is hereby stated by the Board of Directors of the Crooked River Ranch Water Company that James H. Rooks, as the General Manager and elected Board of Director member, holds the complete confidence of the entire Board of Directors in all matters concerning the administration and operations of the Crooked River Ranch Water Company. All communications between the Public Utility Commission and the CRRWC will be directed through James H. Rooks, General Manager of CRRWC.

3) As stated in issue #3, the contract between James Rooks and the CRRWC Board of Directors was not canceled by either party. The contract became a nullity when the PUC severely reduced the revenue for CRRWC and wages/salary for Mr. Rooks. The Board of Directors, in no manner, have changed the expectations of Mr. Rooks job duties, which include his role as General Manager of Crooked River Ranch Water Company. Mr. Rooks current status is as an "at will" employee of the CRRWC, with his primary duties being the General Manager and Operations Manager of the Company. Mr. Rooks receives an annual salary, He is not paid overtime. Mr. Rooks receives medical and dental benefits. Mr. Rooks does not receive vision, retirement or any other benefits. He continues to perform all duties as required by the Board of Directors.

Resolution: The Board of Directors of CRRWC accept the recommendations as stated above and resolve that they become effective immediately.

APPROVED:

Brian Elliott, President

Date: _____




Richard Miller, Secretary/Treasurer

Date: 4/21/08



James Rooks, Director

Date: 4/4/08



Randy Scott, Director

Date: 4/3/08

1 **CERTIFICATE OF SERVICE**

2
3 I certify that on May 1, 2008, I served the foregoing Complaint upon all parties of record
4 in this proceeding by delivering a copy by electronic mail and by mailing a true and exact copy
5 by postage prepaid first class mail or by hand delivery/shuttle mail.

6 STEVEN COOK
7 PO BOX 1111
8 TERREBONNE OR 97760
9 sewfab4u@hotmail.com

10 CHARLES G NICHOLS
11 PO BOX 1594
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13 charlien@blazerind.com

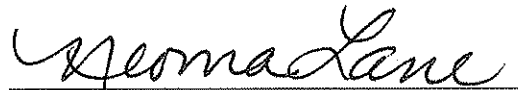
14 CRAIG SOULE
15 11953 SW HORNY HOLLOW
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18 **CROOKED RIVER RANCH WATER CO**
19 BRIAN ELLIOTT
20 PRESIDENT, BOARD OF DIRECTORS
21 PMP 313 - 1604 S HWY 97 #2
22 REDMOND OR 97756

CROOKED RIVER RANCH WATER COMPANY
JAMES R ROOKS
GENERAL MANAGER
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18 

19 Neoma Lane
20 Legal Secretary
21 Department of Justice
22 Regulated Utility & Business Section