

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**  
UW 120

In the Matter of	)	
	)	INTERVENOR
CROOKED RIVER RANCH WATER COMPANY	)	CRAIG SOULE & CHARLES NICHOLS
	)	POST HEARING
Request for Rate increase resulting in total annual revenues of \$868,453.	)	OPENING BRIEF
	)	
	)	
	)	
	)	
	)	
	)	
	)	

---

**INTRODUCTION**

In keeping with the briefing schedule in proceeding UW 120, Intervenors Craig Soule (Soule) and Charles Nichols (Nichols) submit this opening post hearing brief.

Soule and Nichols requests that the Commission adopt the rate and tariff schedule proposed by Public Utility Commission Staff (Staff) with the input contained herein.

**DISCUSSION**

It is clear in the proceeding record that Crooked River Ranch Water Company (CRRWC) has refused and failed to provide complete and full discovery to the other parties in this proceeding. The intent and motivation of CRRWC’s failure to provide discovery is unknown; however, their actions and statements indicate a strong reluctance to participate in a full and forthright manner in setting rates and tariffs that balance the needs of CRRWC and the customers/members of CRRWC.

Soule has served 6 sets of data requests on CRRWC consisting of 66 separate questions/requests for information. CRRWC has failed to provide responses to all 66 data requests in spite of granted motions to compel data requests numbers 1 to 26, and subpoenas for data requests numbers 1 to 15. (Note: Attached is a statement identifying how the failure to provide discovery on each individual data request has unfairly prejudiced Soule)

On October 25, 2007, James Rooks – General Manager of CRRWC was served with a subpoena for data request numbers 16 to 26. The subpoena commands CRRWC to provide the information/documentation in data request 16 to 26 on November 14, 2007 in Madras, Oregon.

On November 5, 2007 Soule filed a “Motion to Compel” data request numbers 27 to 66 to the PUC. As of the date of this filing, CRRWC has not provided input to the “Motion to Compel”.

Nichols has served one set of data requests consisting of three separate data requests on CRRWC. CRRWC has failed to provide responses to the three data requests. Nichols is currently attempting to informally resolve the production of documents/information as required by OAR 860-014-0070(3). Nichols intends to file a motion to compel if the contact with CRRWC is unable to informally resolve the production of the information/documents.

The complete willful disregard for the discovery process by CRRWC has seriously hampered the ability of Soule and Nichols to evaluate, participate and provide input into the rate/tariff setting process. Further, the lack of discovery by the Board of Directors and Management of CRRWC has demonstrated a complete disregard for the membership of CRRWC, who are both the owners and customers of CRRWC.

The ruling granting a motion to compel issued by ALJ Power August 21, 2007 states in part,

*“Staff and intervenors may submit their testimony and ask that the Commission impute whatever values they may consider reasonable or whatever presumptions they believe are fair, where the Company’s data request responses have been deficient.”*

Given the lack of discovery Nichols and Soule will defer to Staff recommendations concerning the rates and tariff schedule for CRRWC. Staff has far greater experience to impute values and make presumptions where discovery has been lacking. However, Soule and Nichols have three areas they would like to provide input to the Commission on. They are:

- ❖ Special Assessment
- ❖ Well
- ❖ General Manager Compensation

**Special Assessment** (note: The current status of special assessment account and expenditures from the special assessment account has not been verified by Soule and Nichols due to lack of discovery and transparency.)

The CRRWC Board of Directors authorized the special assessment (Capital Improvements) by resolution<sup>1</sup> March 24, 2004. The members/customers began paying the \$8.00 special assessment effective with the June 2004 water billing.

The Special Assessment resolution<sup>1</sup> approved the assessment for the following expenditures:

- Drilling of well #3 (Crater Loop and Tower Road) and plumbing to accommodate a chlorination system.
- Upgrading of cistern and building a new pump house.

<sup>1</sup> PUC STAFF TESTIMONY 9/7/07, EXHIBIT 103/ DOUGHERTY/ 11 & 12

- Re-plumb and add a chlorination station to Well #1 (formerly #4, located at Cinder Drive and Lower Ridge).
- Pay off loan on office building.

As of July 25, 2007, CRRWC has indicated, that since inception of the fund, it has collected \$390,206<sup>2</sup>.

Although the special assessment resolution by the CRRWC Board of Directors was clear on the purpose of the fund, CRRWC has expended \$ 248,213.39<sup>2</sup> of the fund for items that were not authorized by the enabling resolution; including expenditures on non-capital legal expenses, payments for land (well #5 (#3)) and equipment (crane) that were previously purchased, non-specified accountant fees, payroll for the PUC and the Crooked River Ranch Club and Maintenance Association, equipment (dump truck/rock hammer), pipe and survey.

The complete willful mismanagement of the special assessment fund by The Board of Directors and Management of CRRWC has demonstrated a complete disregard for the membership of CRRWC. With the exception of the office building loan (note: use of special assessment funds to pay of the office building has not been substantiated due to lack of discovery), none of the items authorized in the enabling resolution have been started. None of the items in the enabling resolution has been completed.

Due to the mismanagement of the special assessment fund established for capital improvements, Soule and Nichols do not support the continuance of the special assessment under the rates and tariffs set by the Commission.

In addition, Soule and Nichols support the conclusions and recommendations of Staff concerning the special assessment. The conclusions of Staff are:

- The majority of the projects in the special assessment resolution are for future construction that CRRWC has not provided total estimated costs for.
- In-service dates for the future construction projects are not within six months.
- CRRWC is under cost of service regulation. In cost of service regulation, CRRWC is allowed an opportunity to earn a return on and recovery of its investment. A special assessment for future projects and associated costs that may or may not come to fruition is not allowed.
- The one non-future construction item in the special assessment resolution is paying off the office building loan. The loan amount is included in the Cost of Capital calculations and depreciation expense was aligned to the term of the loan. This allows for recovery of principal and interest of the loan.

<sup>2</sup> PUC STAFF TESTIMONY 9/7/07, EXHIBIT 103/ DOUGHERTY/ 29

Therefore, Staff does not recommend the continuance of the special assessment under the rates and tariffs set by the Commission.

CRRWC has indicated, as of July 25, 2007, there is \$ 137,945<sup>2</sup> remaining in the special assessment fund. Soule and Nichols recommend that the funds remaining in the special assessment fund be used for the following:

- Pay off the office building loan (Note: Balloon payment (final payment) on the office building loan is due 3/15/08<sup>11</sup>) in full, since this loan is the only item in the enabling resolution that is still viable and has a chance of completion.
- Refund the funds remaining in the special assessment fund, after the office building loan has been paid off in full, to the members/customers of CRRWC in a method that the Commission determines to be fair and equitable.

### Well

A 20 Year Master Plan to guide the future growth of CRRWC's system was accepted and approved by The Oregon Department of Human Services – Drinking Water Division (Drinking Water) in the Fall of 1997.

The approved 20 Year Master Plan indicates there are several long term source alternatives. A new well is one of these alternatives.

The approved 20 Year Master Plan indicates a new well, if the chosen alternative, should be located in the southeastern portion (of Crooked River Ranch) <sup>3,4</sup>.

In April 2001, CRRWC purchased property and began the preliminary development of the new well. Information obtained from CRRWC indicates it has expended approximately \$ 91,000<sup>2, 5, 6</sup> of special assessment funds for the development of the well in this location. CRRWC transferred the point of appropriation to the new well location in September 2004<sup>7</sup>. The location of the property purchased and being developed by CRRWC for the well is not consistent with the recommendation in the approved 20 Year Master Plan.

<sup>2</sup> PUC STAFF TESTIMONY 9/7/07, EXHIBIT 103/ DOUGHERTY/ 29

<sup>3</sup> CRRWC 20 YEAR MASTER PLAN APPROVED BY DHS 10/1/97 (PLAN REVIEW #217-97), SECTION 5.1.2 LONG-TERM ALTERNATIVES, STATES A NEW WELL #5 SITE SHOULD BE LOCATED IN THE SOUTHEAST PORTION OF THE UPPER LEVEL.

<sup>4</sup> CRRWC 20 YEAR MASTER PLAN APPROVED BY DHS 10/1/97 (PLAN REVIEW #217-97), EXHIBIT 6-1, GRAPHICALLY INDICATES A NEW WELL SITE SHOULD BE LOCATED IN THE SOUTHEAST PORTION OF THE UPPER LEVEL.

<sup>5</sup> LETTER FROM CRRWC DIRECTOR JOHN COMBS TO HARRY BROWN 12/13/06

<sup>6</sup> CRRWC SPECIAL ASSESSMENT UPDATE INCLUDED IN DECEMBER 2005 WATER BILLING

<sup>7</sup> OREGON WATER RESOURCES DEPARTMENT, T-9663 FINAL ORDER 9/20/04

<sup>11</sup> CRRWC NOTES TO FINANCIAL STATEMENT - June 30, 1998 - NOTE 3

At the PUC hearing held October 25 & 26, 2007, the CRRWC General Manager testified that the recommended location of the new well in the 20 Year Master Plan was wrong. When questioned on the validity of the statement, the General Manager could not cite a specific study, report, recommendation or plan that offered an alternate location to the well location recommendation in the 20 Year Master Plan. The only information offered by the General Manager to support his testimony was it was the Board of Directors and his opinion. The General Manager testified that there had been no amendments to the 20 Year Master Plan.

Due to the conflict between the recommended location of the new well in the 20 Year Master Plan and the location currently being developed by CRRWC, Soule and Nichols do not support the continued development of the new well under the rates and tariffs set by the Commission.

In addition, Soule and Nichols support the conclusions and recommendations of Staff concerning the new well. The conclusions of Staff are:

- Staff has not performed a prudency review of the well.
- The current wells owned by CRRWC appear to have sufficient capacity and access to water to supply current customers.
- Without associated increased usage to meet the Company's current water permit, the new well would not necessarily result in the Company perfecting its water right at the amount in permit # G-11376.
- A third well would not be used and useful for current customers and would be excluded from rate base as excess capacity.
- The 20-Year Plan also lists two other lower cost options (alternatives) for improving performance of the current wells. Both Staff and member/customers should be able to review these lower cost options (alternatives) before any additional expenditures are made for the new well.

Therefore, Staff does not recommend the rates and tariffs set by the Commission reflect the need for a new well.

### **General Manager Compensation**

Soule and Nichols support the conclusions and recommendations of Staff concerning the compensation of the General Manager of CRRWC. The conclusions and recommendations of Staff are:

- Staff did not include overtime in wages because:
  - It is standard practice for Staff not to include overtime in wages.
  - General manager positions are normally salaried positions, which would be exempt from overtime.

- In addition to being employed by CRRWC, the General Manager also has contracted with CRRWC to perform maintenance and repair of Company equipment. This repair contract results in a \$500 per week payment to the General Manager. As a result, there is a possibility of duplication of time spent on independent contractor duties and time spent performing duties as an employee of the Company.
- In the last 10 years CRRWC's customer to employee ratio has decreased from 392 customers for every 1 employee to 235 customers for every 1 employee. The current staffing should be sufficient and capable of working within a normal workweek without overtime.
- The General Manager annual base pay was shifted slightly upward, after comparing the position with comparable positions.

Drinking Water requires the operator of CRRWC's system to be certified as a Water Distribution Operator (WD) II.

The General Manager of CRRWC currently holds a WD I certification<sup>8</sup>. To meet the requirements of Drinking Water, CRRWC obtains the part-time services of a WD III<sup>9</sup>. Based on information supplied by CRRWC, compensation for the services of the WD III cost CRRWC \$ 5980<sup>9</sup> annually.

The current General Manager of CRRWC acquired his WD I certification 2/17/00<sup>10</sup>. Oregon Administrative Rule (OAR) 333-06100235 requires 3 years of qualifying operating experience to become eligible for certification as WD II. The current general manager has been eligible since 2003. The reason why the current General Manager has failed to obtain a WD II certification is unknown. CRRWC incurs an additional \$ 5980<sup>9</sup> annually to meet the certified operator requirements; an additional and unnecessary expense to CRRWC. The General Manager has not been able to increase his skills and abilities as an operator at CRRWC; therefore, in addition to the compensation issues presented by Staff, Soule and Nichols also support the alternate recommendation of Staff concerning the reduction in compensation of the General Manger of CRRWC. The conclusions of Staff are:

- During the time jurisdiction was asserted and the discovery process, the General Manager has not conducted himself in the manner that his position and scope of responsibility would reasonably require.

<sup>8</sup> RATE TARIFF BRIEF FILING W/ PUC 4/18/07, QUESTION 3

<sup>9</sup> PUC STAFF TESTIMONY 9/7/07, EXHIBIT 100/ DOUGHERTY/ 19

<sup>10</sup> DHS – DRINKING WATER – DAVE LELAND LETTER 8/10/05

- Staff proposes a recommended Account 601- Employee salaries and wages adjustment that would reset the General Manager's pay to the AWWA Weighted Average Pay range of a Senior/Lead Water Treatment Plant (less than 25 employees) of \$44,322.

Therefore, Staff recommends that the rates and tariffs set by the Commission reflect a lower pay scale for the General Manager of CRRWC.

### CONCLUSION

For the foregoing reasons, Intervenors Craig Soule and Charles Nichols respectfully requests that the Commission adopt an order confirming Staff's recommended rates and tariffs for CRRWC incorporating the input provided above.

In addition, Soule and Nichols believe the General Manager's influence as a Board member meets the criteria of Oregon Revised Statute (ORS) 757.015(7) (Affiliated Interest) and request that the Commission open an investigation into General Manager's affiliated interest(s) with CRRWC and regulate the affiliated interest(s) under ORS 757.105 and ORS 757.495.


DATED this 13th day of November 2007.

Respectfully submitted,



---

Craig Soule – Intervenor UW 120



---

Charles G. Nichols – Intervenor UW 120

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON  
UW 120**

In the Matter of	)	
	)	INTERVENOR – CRAIG SOULE
CROOKED RIVER RANCH WATER COMPANY	)	ATTACHMENT TO POST HEARING OPENING BRIEF
	)	~
Request for Rate increase resulting in total annual revenues of \$868,453.	)	STATEMENT REGARDING DATA REQUEST NUMBERS 1 TO 66
	)	
	)	
	)	

---

Intervenor Craig Soule (Soule) has served 6 sets of data requests on Crooked River Ranch Water Company (CRRWC) consisting of 66 separate questions/requests for information. CRRWC has failed to provide responses to all 66 data requests in spite of granted motions to compel data requests numbers 1 to 26, and subpoenas for data requests numbers 1 to 15.

On October 25, 2007, James Rooks – General Manager of CRRWC was served with a subpoena for data request numbers 16 to 26. The subpoena commands CRRWC to provide the information/documentation in data requests 16 to 26 on November 14, 2007 in Madras, Oregon.

On November 5, 2007 Soule mailed a “Motion to Compel” data request numbers 27 to 66 to the PUC. As of the date of this filing, CRRWC has not provided input to the “Motion to Compel”.

The purpose of this statement is to anoint each individual data/information request served on CRRWC; explaining the content of the subject data request and how lack of full and complete discovery has unfairly prejudiced Soule as a party to UW 120.

**STATEMENT**

**Data Request 1** - CRRWC omitted a response to question 36 of the rate filing/tariff application brief submitted to the PUC, dated April 17, 2007. The rate/tariff filing question and the subject data request by Soule pertains to the Oregon Safe Drinking Water Revolving Loan Fund. CRRWC has expressed interest to the Oregon Safe Drinking Water Revolving Loan regarding system infrastructure improvement projects. The presence or absence of funds from the Oregon Safe Drinking Water Revolving Loan Fund has an impact on past, current and future infrastructure projects (plant). The lack of response from CRRWC created unfair prejudice by not allowing Soule to evaluate and provide input on capital improvement project funding.



**Data Requests 2 to 6** - CRRWC did not provide a complete response to the PUC's data request (DR) 46. The subject data requests asks for information to expand on the information submitted by CRRWC in the rate filing/tariff application brief submitted to the PUC, dated April 17, 2007 and CRRWC's partial response to the PUC's DR 46. The rate/tariff filing questions, the PUC's data requests and the subject data requests by Soule pertains to the outstanding loan structure, major equipment assets and special assessment expenditures of CRRWC. The outstanding loan structure, major equipment assets and special assessment expenditures has an impact on the current financial status of CRRWC. The lack of response from CRRWC created unfair prejudice by not allowing Soule to evaluate and provide input on CRRWC's outstanding loan structure, major equipment assets and special assessment expenditures and the impact on current financial status of CRRWC.

**Data Request 7** - The subject data request asks for information to clarify the information submitted by CRRWC in the rate filing/tariff application brief submitted to the PUC, dated April 17, 2007 and prior information provided by CRRWC. The rate/tariff filing questions and the subject data request by Soule pertains to the rate structure of the customer classes CRRWC serves. The lack of response from CRRWC created unfair prejudice by not allowing Soule to evaluate and provide input on the rate structure of the customer classes CRRWC serves.

**Data Request 8** - The subject data request asks for clarification of the discrepancies in the information submitted by CRRWC in their response to the PUC's DR 25 and information published in the local newspaper. The PUC's DR 25 and the subject data request by Soule pertains to work donated by CRRWC to Crooked River Ranch Rural Fire Protection District (CRRRFPD) for the new fire station at Crooked River Ranch (CRR). The donation of company assets to an outside entity potentially has an effect on the financial structure of CRRWC. The lack of response from CRRWC created unfair prejudice by not allowing Soule to evaluate and provide input on the donations effect on the financial structure of CRRWC.

**Data Request 9** - The subject data request asks for information about the donation by CRRWC to CRRRFPD towards the construction of the new fire station at CRR. The donation of company assets to an outside entity potentially has an effect on the financial structure of CRRWC. The lack of response from CRRWC created unfair prejudice by not allowing Soule to evaluate and provide input on the donations effect on the financial structure of CRRWC.

**Data Request 10** - CRRWC did not provide a complete response and omitted information in the response to the PUC's DR 51, 52, 53 & 54. The subject data request also asks for information to expand on the information submitted by CRRWC in the rate filing/tariff application brief submitted to the PUC, dated April 17, 2007. The rate/tariff filing questions, the PUC's data requests and the subject data request by Soule pertains to an ongoing capital improvement program to extend main water lines to additional areas of Crooked River Ranch (CRR). The main water line extensions (plant) are part of the PUC's equation to set rates for CRRWC. The lack of response from CRRWC created unfair prejudice by not allowing Soule to evaluate and provide input on the ongoing capital improvement program to extend main water lines and the effects on the PUC's equation to set rates for CRRWC.

**Data Request 11** - The subject data request asks for information to expand on the information submitted by CRRWC in the rate filing/tariff application brief submitted to the PUC, dated April

17, 2007. The rate/tariff filing questions and the subject data request by Soule pertains to the purpose and utilization of real property (assets) owned by CRRWC. The lack of response from CRRWC created unfair prejudice by not allowing Soule to evaluate and provide input on the purpose and utilization of real property (assets) owned by CRRWC.

**Data Request 12** - The subject data request asks for information to expand on prior information provided by CRRWC. The subject data request by Soule pertains to an ongoing capital improvement program to provide additional infrastructure (deep water well) to CRRWC's system. The acquisition and development of land for the additional well (plant) is part of the PUC's equation to set rates for CRRWC. The lack of response from CRRWC created unfair prejudice by not allowing Soule to evaluate and provide input on the acquisition and development of land for the additional well (plant) and the impact on PUC's equation to set rates for CRRWC.

**Data Request 13 & 14** – The subject data requests asks for information on litigation CRRWC has been a party to. The subject data requests by Soule pertains to the numerous cases of litigation CRRWC has initiated or been a party to. The legal expenses and CRRWC staff time for litigation potentially has an effect on the financial structure of CRRWC. The lack of response from CRRWC created unfair prejudice by not allowing Soule to evaluate and provide input on the legal expenses and CRRWC staff time for litigation and the potentials effect on the financial structure of CRRWC.

**Data Request 15** – The subject data request to obtain copies of CRRWC responses to the PUC's DR 1 to 120 is authorized by Oregon Administrative Rule (OAR) 860-014-0070 (2). The lack of response from CRRWC created unfair prejudice by not allowing Soule to review, evaluate and provide input on CRRWC's responses to the subject PUC data requests.

**Data Request 16** - CRRWC did not provide the documentation concerning the office building loan requested by the PUC in prior data requests. Data request 16a asks for clarification of the inconsistencies in the information provided to the members of CRRWC concerning the office building loan. Data request 16b asks for information concerning the potential to refinance the building loan to secure better loan terms. The outstanding loan structure of CRRWC has a direct impact on the rate of return allowed by the PUC in the rate/tariff setting process. The lack of response from CRRWC created unfair prejudice by not allowing Soule to evaluate and provide input on the office building loans effect on the rate of return allowed in the rate/tariff setting process.

**Data Request 17** - CRRWC did not provide information concerning fire service rates and fire hydrants in the rate filing/tariff application brief submitted to the PUC, dated April 17, 2007. Data request 17 asks for information and clarification of CRRWC's involvement and responsibilities concerning the installation, testing and maintenance of fire hydrant/standpipe facilities on the system. The presence or absence of fire hydrant/standpipe activities could have an impact on the future rate/tariff schedule. The lack of response from CRRWC created unfair prejudice by not allowing Soule to evaluate and provide input on CRRWC's involvement/responsibility for the installation, testing and maintenance of fire hydrant/stand pipe facilities and the impact on the future rate/tariff schedule.

**Data Request 18** - Data request 18 asks for information concerning amendments to the Articles of Incorporation & Bylaws; how each of the amendments were in the best interest of the members of CRRWC and in keeping with the non-profit status of CRRWC. The governing documents and the non-profit status is the basic framework of the corporation, and has a direct bearing on numerous facets of rate/tariff setting process. The lack of response from CRRWC created unfair prejudice by not allowing Soule to evaluate and provide input on amendments to CRRWC's Articles of Incorporation and Bylaws and the impact of the amendments on the rate/tariff setting process.

**Data Request 19, 20 & 21** – The subject data requests asks for copies of CRRWC's non-profit applications and filings with the Internal Revenue Service (IRS). The applications and filings concerning the non-profit status of CRRWC would provide information critical to the rate/tariff setting process. The lack of response from CRRWC created unfair prejudice by not allowing Soule to review and provide input on the IRS non-profit applications and filings and the impact of the non-profit status on the rate/tariff setting process.

**Data Request 22** - Data request 22 asks for an update of employee information provided by CRRWC in the rate filing/tariff application brief submitted to the PUC, dated April 17, 2007. The PUC rate/tariff filing question and data request 22 by Soule pertains to the number and compensation of the employees of CRRWC. The wages/salary and benefits of the employees of CRRWC has a direct impact on the financial structure of CRRWC. The lack of response from CRRWC created unfair prejudice by not allowing Soule to evaluate and provide input on the wages/salary and benefits of the employees of CRRWC and the impact on the financial structure of CRRWC.

**Data Request 23** – Data request 23 asks for documentation of the licenses or certifications held by CRRWC employees that are required, benefit or relevant to the operations of CRRWC. There are statutory license or certification requirements for certain aspects of CRRWC's operations. The absence of licensed/certified employees for certain aspects of CRRWC's operation could impact the financial structure of CRRWC by requiring the hiring or contracting of license/certified individuals/entities. The lack of response from CRRWC created unfair prejudice by not allowing Soule to evaluate and provide input on the licenses and certifications of employees and their impact on the financial structure of CRRWC by requiring the hiring or contracting of license/certified individuals/entities.

**Data Request 24** - Data request 24 requests the minutes and resolution of the CRRWC Board of Directors authorizing certain types of use of company vehicles by employees. The use of company vehicles by employees outside of their official duties could have an impact on the financial structure of CRRWC. The vehicle use could be a form of employee compensation, or if CRRWC were repaid for the vehicle use by the employee it could be reimbursement of an expense. The lack of response from CRRWC created unfair prejudice by not allowing Soule to ascertain and provide input on the use of company assets by employees outside of their employment with CRRWC and the subsequent impact on the financial structure of CRRWC.

**Data Request 25** - Data request 25 asks for an update on a program presented during the February 9, 2002 CRRWC annual member meeting. A joint program between CRRWC and CRRRFPD to replace standpipes on the system with fire hydrants was presented at the Annual

Meeting. The presence of a program to replace standpipes with fire hydrants could have an impact on the future rate/tariff schedule. The lack of response from CRRWC created unfair prejudice by not allowing Soule to evaluate and provide input on the programs impact on the future rate/tariff schedule.

**Data Request 26** – Data request 26 asks for the legal expense payment information on litigation James Harvard Rooks – CRRWC General Manager has been a party to. CRRWC has indicated they are paying Mr. Rooks defense lawyers for one of the subject cases noted in data request 26 by Soule. CRRWC staff time and payment of legal expenses by CRRWC for the subject litigation potentially has an effect on the financial structure of the corporation. The lack of response from CRRWC created unfair prejudice by not allowing Soule to evaluate and provide input on the legal expenses and CRRWC staff time for litigation and the potentials effect on the financial structure of CRRWC.

**Data Request 27 (a)(b)** - Data request 27 (a) & (b) asks for documentation/information to adequately demonstrate that Wesley Price – CPA is qualified and has the familiarity to provide testimony concerning the subject rate/tariff case. The lack of response from CRRWC created unfair prejudice by not allowing Soule to ascertain and provide input that Wesley Price has the qualifications and the familiarity to provide testimony concerning the subject rate/tariff case.

**Data Request 27 (c)** – Data request 27 (c) addresses the issue of member ownership of CRRWC. Clarification of the ownership issue would clearly impact the assets included in plant and the rate of return allowed by the PUC in the rate/tariff setting process. The lack of response from CRRWC created unfair prejudice by not allowing Soule to evaluate and provide input on the ownership issue and how it impacted the assets included in plant and the rate of return allowed by the PUC.

**Data Request 27 (d)(e)** – The subject data requests address the issue of CRRWC’s legal status as an entity and subsequent member capital credits. The legal status of CRRWC would dictate numerous aspects of CRRWC’s operation and relationship with its members, including the retention or dispersion of member capital credits. The lack of response from CRRWC created unfair prejudice by not allowing Soule to evaluate and provide input on the legal status of CRRWC and the subsequent impact on numerous aspects of CRRWC’s operation and relationship with its members.

**Data Request 27 (f)(g)(h)(i)** – The subject data requests concern the “Rebuttal Testimony” of Wesley Price – CPA. The subject rebuttal testimony appears to contain information that is beyond the scope of the accountant’s skills, experiences and qualifications. The information/documentation was requested to ascertain the source and validity of the accountant’s testimony. The lack of response from CRRWC created unfair prejudice by not allowing Soule to ascertain and provide input on the source and validity of the accountant’s testimony.

**Data Request 27 (j)** - Data request 27 (j) asks for information/documentation concerning main waterline extensions. Mainline extensions are capital improvements potentially included in plant. The question of who paid for and the source of funding for the mainline extension is critical to determining if this capital improvement should be included in plant. The lack of response from CRRWC created unfair prejudice by not allowing Soule to evaluate and provide input on the

ongoing capital improvement program to extend main water lines and the effects on inclusion as plant.

**Data Request 28** - Data request 28 asks for clarification of a statement in CRRWC's Rebuttal Testimony that is not consistent with the record. The lack of response from CRRWC created unfair prejudice by not allowing Soule to receive clarification of the subject statement in CRRWC's Rebuttal Testimony.

**Data Request 29** – The subject data requests asks for documents/information concerning the petition to intervene applications submitted by Craig Soule and Charles Nichols, the introduction of irrelevant subjects and the ulterior motives of Soule. Qualifying the parties to the proceeding is critical to the process. The lack of response from CRRWC created unfair prejudice by not allowing Soule to examine and provide input on statements in CRRWC's Rebuttal Testimony concerning the parties to the proceeding.

**Data Request 30** - Data request 30 asks for information on the settlement conferences held by the PUC in August 2007. The subject data request by Soule requests information from CRRWC to support their assertions that the PUC allowed the public to participate in the settlement conferences. The lack of response from CRRWC created unfair prejudice by not allowing Soule to review and provide input on information from CRRWC to support their assertions that the PUC allowed the public to participate in the settlement conferences.

**Data Request 31** – Data request 31 asks for an explanation concerning CRRWC's "Rebuttal Testimony" statement that the PUC has established a budget for individual activities, items or categories. The lack of response from CRRWC created unfair prejudice by not allowing Soule to receive an explanation from CRRWC and provide input concerning their impressions of the PUC establishing a budget.

**Data Request 32** - Data request 32 requests information concerning the Oregon State Bar complaint against Tim Gassner. Although, it is odd that a Bar complaint would be included in rebuttal testimony for a rate/tariff case before the PUC. CRRWC has made the subject part of the rate/tariff case. The lack of response from CRRWC created unfair prejudice by not allowing Soule to evaluate and provide input on the statements in CRRWC's Rebuttal Testimony concerning Oregon State Bar Complaint.

**Data Request 33** - Data request 33 asks for the exhibits that were not included in the emailed rebuttal testimony filing. A hard copy of the subject rebuttal testimony was not received. The lack of response from CRRWC created unfair prejudice by not allowing Soule to receive, evaluate and provide input on the exhibits as they relate to CRRWC's "Rebuttal Testimony".

**Data Request 34** – Data request 34 inquires into the CRRWC's "Rebuttal Testimony" statements concerning the adequacy of the PUC investigation into the financial status of CRRWC and also requests auditing information. The lack of response from CRRWC created unfair prejudice by not allowing Soule to evaluate and provide input on the statements in CRRWC's "Rebuttal Testimony" concerning the adequacy of the PUC investigation into the financial status of CRRWC.

**Data Request 35** - Data request 35 asks for information/documentation concerning income and unpaid accounts of CRRWC. CRRWC income and the status of unpaid accounts would have a direct impact on cash flow and therefore the financial status of CRRWC. The lack of response from CRRWC created unfair prejudice by not allowing Soule to evaluate and provide input on the information/documentation concerning income and unpaid accounts and the impact on the cash flow of CRRWC.

**Data Request 36** - Data request 36 asks for an explanation of a quote the accountant for CRRWC made in CRRWC's "Rebuttal Testimony" concerning how this rate case is proceeding. The lack of response from CRRWC created unfair prejudice by not allowing Soule to evaluate and provide input on the statements in CRRWC's "Rebuttal Testimony" concerning the accounts perception of how the rate case is proceeding.

**Data Request 37** - The subject data request asks for information/documentation concerning the ongoing capital improvement program to provide a new water well to CRRWC's system. The subject data request by Soule pertains to a prudency review of the new well. The lack of response from CRRWC created unfair prejudice by not allowing Soule to analyze and provide input on the various aspects of the development of the new well.

**Data Request 38** - Data request 38 asks for information/documentation concerning CRRWC's satellite phone service. CRRWC's use and need for a specialized communication service would have an impact on the expenses of CRRWC. The lack of response from CRRWC created unfair prejudice by not allowing Soule to evaluate the basis and need for a specialized communication service and provide input on the effect on rates.

**Data Request 39 & 57** - Data requests 39 & 57 inquires into the CRRWC's "Rebuttal Testimony" statements concerning CRRWC year-end financial statements and the rate/tariff setting test year. The lack of response from CRRWC created unfair prejudice by not allowing Soule to evaluate and provide input on the statements in CRRWC's "Rebuttal Testimony" concerning the adequacy of CRRWC's year-end financial statements and the rate/tariff setting test year.

**Data Request 40 & 41** - The subject data requests asks for documentation on the legal claims/expenses CRRWC indicates the Crooked River Ranch Water Watch Dogs have been responsible for. The legal expenses and CRRWC staff time for litigation potentially has an effect on the financial structure of CRRWC. The lack of response from CRRWC created unfair prejudice by not allowing Soule to evaluate the legal expenses and CRRWC staff time for litigation and provide input on the potentials effect on the financial structure of CRRWC.

**Data Request 42** - Data request 42 asks for documentation concerning the SCADA system. Repairs to the SCADA system would impact the financial status of CRRWC. The lack of response from CRRWC created unfair prejudice by not allowing Soule to evaluate the information/documentation and provide input concerning repairs to the SCADA system that would impact the cash flow of CRRWC.

**Data Request 43** - Data request 43 asks for documentation/information concerning CRRWC paying for the liability insurance coverage for equipment not owned by CRRWC. The cost of

liability insurance coverage would impact the financial status of CRRWC. The lack of response from CRRWC created unfair prejudice by not allowing Soule to evaluate the information/documentation and provide input concerning liability insurance coverage that could impact the financial status of CRRWC.

**Data Request 44** - Data request 44 asks for documentation concerning recertification and ongoing training of CRRWC staff. The presence of ongoing training and recertification costs would have a direct effect on the expenses of CRRWC. The lack of response from CRRWC created unfair prejudice by not allowing Soule to evaluate and provide input on the ongoing training and certification needs for staff and their impact on the expenses of CRRWC.

**Data Request 45** - Data request 45 requests documentation concerning property taxes on land owned by CRRWC. Property taxes are an account within the rate/tariff setting process, and the presence of property taxes would have a direct effect on the expenses of CRRWC. The lack of response from CRRWC created unfair prejudice by not allowing Soule to evaluate and provide input on the property tax expenses and the impact on the cash flow of CRRWC.

**Data Request 46** – Data request 46 asks for documentation/information concerning CRRWC’s “Rebuttal Testimony” statements discussing a “15 year plan of improvements”. The presence, status and degree of completion of an improvement plan would impact numerous facets of CRRWC’s system and operation. The lack of response from CRRWC created unfair prejudice by not allowing Soule to evaluate information/documentation concerning the presence, status and degree of completion of the “15 year plan of improvements” and to provide input on the impact on numerous facets of CRRWC’s system and operation.

**Data Request 47, 48, 49, 50 & 62** – Data requests 47, 48, 49, 50 and 62 inquire into numerous facets of the fire flows provided by CRRWC, the underlying issue of the need for a new well, water rights associated with the well and funding to construct the well/infrastructure. The lack of response from CRRWC created unfair prejudice by not allowing Soule to evaluate information/documentation and provide input concerning the adequacy of fire flows and subsequent underlying issues.

**Data Request 51** – Data request 51 asks for documentation concerning written CRRWC policy. The subject data request asks for a copy of the written policy of CRRWC concerning questions from intervenors. Discovery in the rate/tariff setting process is critical. The lack of response from CRRWC created unfair prejudice by not allowing Soule to evaluate the documentation and provide input concerning CRRWC’s policy that is not consistent with State law/rule.

**Data Request 52** – Data request 52 asks for documentation concerning a reserve account established under the provisions of ORS 94 – Homeowners Associations. The requirements of ORS 94 concerning the existence of a reserve fund for the maintenance, repair and replacement of common property would impact the financial position of CRRWC. The lack of response from CRRWC created unfair prejudice by not allowing Soule to ascertain the presence of a reserve account and provide input on subsequent impact on the financial status of CRRWC.

**Data Request 53, 54 & 56** - Data request 53, 54 & 56 asks for documentation/information to substantiate the qualifications of James Rooks - General Manager of CRRWC. Further, the

subject data requests ask for documentation concerning the employment and repair/maintenance contracts between CRRWC and James Rooks. The financial details of the contracts and underlying qualifications to fulfill the contracts would impact the day to day operation and management of CRRWC. The lack of response from CRRWC created unfair prejudice by not allowing Soule to evaluate information/documentation concerning the qualifications of the General Manger and contracts between CRRWC and the General Manager, and provide input on how they would impact the cash flow of CRRWC.

**Data Request 55** – Data request 55 asks for documentation of in-house costs and contrasting outside bids concerning maintenance, repair and construction done in-house. The lack of response from CRRWC created unfair prejudice by not allowing Soule to analyze and provide input on the in-house costs contrasted against outside bids for various construction activities.

**Data Request 58** – The subject data request asks for documentation on CRRWC legal expenses. The subject rebuttal testimony indicates that legal expenses stem from James Rooks employment with CRRWC. The legal expenses and CRRWC staff time for litigation potentially has an effect on the financial structure of CRRWC. The lack of response from CRRWC created unfair prejudice by not allowing Soule to evaluate the legal expenses and CRRWC staff time for litigation and the potentials effect on the financial structure of CRRWC.

**Data Request 59** – Data request 59 asks for documentation concerning the wells owned by CRRWC. The need for equipment to maintain and repair the wells would be considered an asset of CRRWC and would substantiate the used and useful requirement for the asset to be included in the rate/tariff setting process. The lack of response from CRRWC created unfair prejudice by not allowing Soule to substantiate equipment to be considered used and useful and provide input for inclusion in the rate/tariff setting process.

**Data Request 60** – Data request 60 asks for documentation concerning CRRWC’s radio read meter conversion program. Documentation of the studies and evaluations of the subject program would establish the initial costs, cost to benefit ration, payback period and funding source(s). The radio read meter conversion program would impact numerous facets of CRRWC’s system, operation and finances. The lack of response from CRRWC created unfair prejudice by not allowing Soule to evaluate the studies/evaluations and to provide input on the proposed radio read meter conversion program.

**Data Request 61** – The subject data request asks for documentation on the development of the original water system by the developer of Crooked River Ranch. The initial development, development cost and ownership of the water system is a factor in plant; a major component of the rate/tariff setting process. The lack of response from CRRWC created unfair prejudice by not allowing Soule to evaluate the statements in CRRWC’s Rebuttal Testimony and provide input concerning the original development of the water system by the developer.

**Data Request 63** – The subject data request asks for an explanation concerning CRRWC’s “20 Year Master Plan”. The 20 Year Master Plan is a major planning document to guide the development of the water system into the future. An inquiry into why CRRWC believes the plan is outdated/antiquated and asking about amendments to the plan is critical to the future development of the water system. The lack of response from CRRWC created unfair prejudice



by not allowing Soule to evaluate information/documentation and provide input concerning amendments to the plan and why CRRWC considers the plan outdated/antiquated.

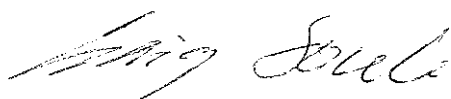
**Data Request 64** – The subject data request to obtain copies of CRRWC responses to the PUC’s DR 121 to 139 is authorized by Oregon Administrative Rule (OAR) 860-014-0070(2). The lack of response from CRRWC created unfair prejudice by not allowing Soule to review, evaluate and provide input on CRRWC’s responses to the subject PUC data requests.

**Data Request 65** - Data request 65 asks for documentation concerning CRRWC’s backflow installation and testing program. CRRWC staff time to monitor and record the backflow program would impact the financial status of CRRWC. The lack of response from CRRWC created unfair prejudice by not allowing Soule to evaluate and provide input on the backflow installation and testing program and the impact on expenses of CRRWC.

**Date Request 66** – Data Request 66 concerns an ongoing investigation by the local District Attorney and Oregon Department of Justice. The lack of response from CRRWC created unfair prejudice by not allowing Soule to evaluate the potential expenses and CRRWC staff time for the on-going investigation and provide input on the potentials effect on the financial structure of CRRWC.

DATED this 13th day of November 2007.

Respectfully submitted,



---

Craig Soule – Intervenor UW 120

## CERTIFICATE OF SERVICE UW 120

I certify that on November 13, 2007, I served a true and correct copy of the foregoing "Post Hearing Opening Brief" on all parties of record in this proceeding by placing in the US Mail with postage prepaid and by delivering a copy by electronic mail to:

**STEVEN COOK**

POB 1111, Terrebonne, Oregon 97760  
sewfab4u@hotmail.com

**CROOKED RIVER RANCH WATER COMPANY**

**JAMES ROOKS - GENERAL MANAGER**

POB 2319, Terrebonne, Oregon 97760  
jr@crrwc.com

**PUBLIC UTILITY COMMISSION OF OREGON**

**MICHAEL DOUGHERTY**

550 Capitol Street NE Suite 215, Salem Oregon 97301  
michael.dougherty@state.or.us

**OREGON DEPARTMENT OF JUSTICE**

**JASON W. JONES - ASSISTANT ATTORNEY GENERAL**

1162 Court Street NE, Salem Oregon 97301-4096  
jason.w.jones@state.or.us


&

I certify that on November 13, 2007, I served the following entity, by placing in the US Mail with postage prepaid, a true and correct copy of the foregoing "Post Hearing Opening Brief":

**CROOKED RIVER RANCH WATER COMPANY**

**BRIAN ELLIOT – PRESIDENT BOARD OF DIRECTORS**

PMP 313 – 1604 S Hwy 97 # 2  
Redmond, Oregon 97756



---

CRAIG SOULE



---

CHARLES NICHOLS