



Oregon

Theodore R. Kulongoski, Governor

Public Utility Commission

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FEB 16 2010

Public Utility Commission of Oregon
Administrative Hearings Division

February 16, 2010

OREGON PUBLIC UTILITY COMMISSION
ATTENTION: FILING CENTER
PO BOX 2148
SALEM OR 97308-2148

RE: **Docket No. WJ 8** - In the Matter of CROOKED RIVER RANCH WATER
COMPANY Investigation Pursuant to ORS 756.515 to Determine
Jurisdiction.

Enclosed for electronic filing in the above-captioned docket is the Public Utility
Commission Staff's Initial Testimony.

/s/ Lois Meerdink

Lois Meerdink

Regulatory Operations Division

Filing on Behalf of Public Utility Commission Staff

(503) 378-8959

Email: lois.meerdink@state.or.us

c: WJ 8 Service List - parties

CERTIFICATE OF SERVICE

WJ 8

I certify that I have this day served the foregoing document upon all parties of record in this proceeding by delivering a copy in person or by mailing a copy properly addressed with first class postage prepaid, or by electronic mail pursuant to OAR 860-13-0070, to the following parties or attorneys of parties.

Dated at Salem, Oregon, this 16th day of February, 2010.

Is/Lois Meerdink

Lois Meerdink
Public Utility Commission
Regulatory Operations
550 Capitol St NE Ste 215
Salem, Oregon 97301-2551
Telephone: (503) 378-8959

WJ 8
Service List (Parties)

CROOKED RIVER RANCH HOA FRANK FERRARO PRESIDENT	5195 SW CLUBHOUSE RD CROOKED RIVER OR 97760 info@crookedriverranch.com
CROOKED RIVER RANCH WATER CO BRIAN ELLIOTT PRESIDENT, BOARD OF DIRECTORS	PMP 313 - 1604 S HWY 97 #2 REDMOND OR 97756
DEPARTMENT OF JUSTICE JASON W JONES ASSISTANT ATTORNEY GENERAL	REGULATED UTILITY & BUSINESS SECTION 1162 COURT ST NE SALEM OR 97301-4096 jason.w.jones@state.or.us
GLENN SITES & REEDER LLP DAVID C GLENN ATTORNEY	205 SE 5TH ST MADRAS OR 97741-1632 gsr.dcg@gmail.com
GLENN, SITES, REEDER & GASSNER, LLP TIMOTHY GASSNER	205 SE 5TH ST. MADRAS OR 97741 timgassner@gmail.com
HARRANG LONG GARY RUDNICK PC C. ROBERT STERINGER	1001 SW FIFTH AVENUE 16TH FLOOR PORTLAND OR 97204 bob.steringer@harrang.com
PUBLIC UTILITY COMMISSION OF OREGON MICHAEL DOUGHERTY	PO BOX 2148 SALEM OR 97308-2148 michael.dougherty@state.or.us

**PUBLIC UTILITY COMMISSION
OF OREGON**

WJ 8

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Public Utility Commission of Oregon
Administrative Hearings Division

STAFF INITIAL TESTIMONY OF

Michael Dougherty

**In the Matter of
CROOKED RIVER RANCH WATER COMPANY
Investigation Pursuant to ORS 756.515 to Determine
Jurisdiction.**

February 16, 2010

CASE: WJ 8
WITNESS: Michael Dougherty

**PUBLIC UTILITY COMMISSION
OF
OREGON**

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Public Utility Commission of Oregon
Administrative Hearings Division

STAFF EXHIBIT 300

Direct Testimony

February 16, 2010

1 **Q. PLEASE STATE YOUR NAME, OCCUPATION, AND BUSINESS**
2 **ADDRESS.**

3 A. My name is Michael Dougherty. I am the Program Manager for the Corporate
4 Analysis and Water Regulation Section of the Public Utility Commission of
5 Oregon (Commission). My business address is 550 Capitol Street NE Suite
6 215, Salem, Oregon 97301-2551.

7 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND WORK**
8 **EXPERIENCE.**

9 A. My Witness Qualification Statement is found in Exhibit Staff/301.

10 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

11 A. The purpose of my testimony is two-fold. First, the testimony will describe why
12 Crooked River Ranch Water Company, also known as Crooked River Ranch
13 Water Cooperative (CRRWC or Company), is an association that furnishes
14 water to its members and is not a cooperative for the purposes of
15 ORS 757.063(2). I am also familiar with Department of Justice (DOJ) Wayne
16 Trucke sponsored testimony, which further demonstrates that CRRWC is not
17 operating as a cooperative. Second, I discuss why there are sufficient reasons
18 to provide oversight of the Company.

19 **Q. DID YOU PREPARE AN EXHIBIT FOR THIS DOCKET?**

20 A. Yes. I prepared Exhibit Staff/302, consisting of 547 pages.

21 **Q. HOW IS YOUR TESTIMONY ORGANIZED?**

22 A. My testimony is organized as follows:

23 Issue 1, Why CRRWC is not a Cooperative..... 2

1 Issue 2, There are sufficient reasons to provide oversight of CRRWC 30

2 **ISSUE 1, WHY CRRWC IS NOT A COOPERATIVE**

3 **Q. PLEASE SUMMARIZE STAFF AND DOJ TESTIMONY WHICH**
4 **DEMONSTRATES THAT CRRWC IS AN ASSOCIATION OF INDIVIDUALS**
5 **THAT FURNISHES WATER TO MEMBERS OF THE ASSOCIATION AND**
6 **IS NOT OPERATED AS A COOPERATIVE.**

7 A. Fundamentally, Staff and DOJ testimony demonstrates that CRRWC's claim
8 that it became a cooperative is simply based upon its self-serving position that
9 all that is required to change from a corporation to a cooperative is a name
10 change with the Secretary of State. CRRWC is not and has not been a
11 cooperative. A cooperative is:

- 12 1. A democratically governed organization;
- 13 2. A financially transparent organization; and
- 14 3. An organization that "holds" money for its members.

15 The people who purported to serve as directors of Crooked River Ranch Water
16 Company filed articles of dissolution with the Secretary of State on July 5, 2006.
17 Those same people, together with James Rooks filed articles of incorporation of
18 a cooperative, named Crooked River Ranch Water Cooperative on
19 July 5, 2006, after Staff sent the Notice of Intent to Assert Financial and Service
20 Regulatory Authority to CRRWC on April 28, 2006.¹ The bylaws of the
21 cooperative are substantially the same as the bylaws of the Company.

¹ The Company Board Dissolution and Secretary of State filing are included in Exhibit Staff 302.

1 The persons purporting to serve as directors of the Company were not
2 directors. They did not follow the law to dissolve the Company. No assets
3 were transferred from the Company to the cooperative. The Company's
4 financial "books" were not closed. No new "books" were started for the
5 cooperative as the "books" of the Company were continued. Federal tax
6 returns were filed for the year 2006 in the name of and using the taxpayer
7 identification number of the Company. Federal tax returns were filed for 2007
8 and 2008 changing the name from Crooked River Ranch Water *Company* to
9 Crooked River Ranch Water *Cooperative*, but using the taxpayer identification
10 number of Crooked River Ranch Water Company.

11 CRRWC operates today as it did as a mutual benefit company in the years
12 preceding the Commission's assertion of jurisdiction. The Company serves the
13 same customers using the same assets, controlled by the same management,
14 with substantially the same bylaws, using the same set of books, and filing tax
15 returns using the same taxpayer identification number as it always has. In fact,
16 at a February 9, 2010, deposition, page 48, General Manager J.R. Rooks
17 (Rooks) admitted "*We really didn't dissolve anything. We just changed the*
18 *name.*"²

19 CRRWC is not democratically governed, either as its bylaws provide or in
20 practice. As admitted by Rooks at the February 9, 2010, deposition, pages
21 46-48 and 162-163, there were no member meetings that the Board discussed
22 the dissolution of the Company and formation of a cooperative; there was no

² Included in Exhibit Staff 302.

1 vote by members on the dissolution of the Company; and no plan on the
2 dissolution was provided to members.

3 CRRWC has not been financially transparent as the Company has
4 maintained closely held and inaccurate books, while denying members' access
5 to these books.

6 CRRWC admits it has never maintained member accounts as stated by
7 Rooks in the February 9, 2010, deposition (page 109). That is, there has never
8 been any accounting for any member's interest or equity in the Company. No
9 patronage dividends or the like were ever calculated, declared or booked.

10 **Q. WAS THE COMPANY ORIGINALLY ESTABLISHED AS A NON-PROFIT**
11 **CORPORATION?**

12 A. Yes. The Company was registered as a Nonprofit Corporation, Mutual Benefit
13 with Members, Secretary of State File No. 120921.³ The Company originally
14 filed its Articles of Incorporation as a Nonprofit Corporation, Mutual Benefit with
15 Members in 1977⁴ pursuant to Oregon Revised Statutes 61, Nonprofit
16 Corporations.⁵ CRRWC's claim that the Company always acted as a
17 cooperative is curious because its Articles of Incorporation clearly state
18 (emphasis added):

19 The corporate name cannot contain any word or phrase
20 which indicates or implies that it is organized for any purpose
21 other than one or more of the purposes contained in its
22 articles of incorporation; and **cannot contain the word**
23 **"cooperative"**.

³ Included in Exhibit Staff 302.

⁴ Included in Exhibit Staff 302.

⁵ ORS 61 was repealed in 1989 and replaced with ORS 65, Nonprofit Corporations, Corporations and Partnerships.

1
2 The Articles of Incorporation also state that the duration of the Company is
3 "perpetual". This status as a Nonprofit Corporation, Mutual Benefit with
4 Members was in effect:

- 5 • When Members of CRRWC petitioned the Commission to regulate
- 6 CRRWC; and
- 7 • When Staff sent a Notice of Intent to Assert Financial and Service
- 8 Regulatory Authority to CRRWC on April 28, 2006.⁶

9 **Q. WAS THE COMPANY LAWFULLY DISSOLVED?**

10 A. No. The Company Bylaws and ORS 65.621 *et seq.* provide the process by
11 which the Company can voluntarily dissolve. As can be seen from the
12 information presented below, the Company Board (Board) did not follow the
13 procedures as stated in Company Bylaws or statutes.

14 Bylaws

15 According to the 2001 CRRWC Bylaws, a quorum of three directors was
16 necessary for the dissolution of the Company. The 2004 Bylaws also
17 maintains the requirement for a quorum of three directors. Additionally, the
18 2004 CRRWC Bylaws state that membership and office of director terminates
19 on sale of CRR property of such member or director.⁷ The following flowchart
20 and additional explanation clearly demonstrates that the persons purporting to
21 serve as directors voting for dissolution were not directors. As a result, the
22 alleged dissolution of the Company is not valid.

⁶ Included in Staff Exhibit 302.

⁷ Rooks admitted to these membership requirements in CRRWC's Responses to the State's First Request For Admissions, Nos. 2 through 6. Included in Exhibit Staff 302.

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2000

The Company does not have Board Minutes that record the appointment of Board Members Keen and Scott.

Board member Combs served on the Board from 2000 through 2007. There is no record of Combs being appointed to the Board or re-elected after he fulfilled the first term.

2002

Board member Scott sold his CRR property in 2002. Sale should have ceased membership.

2005

Board member Keen sold his CRR property in 2005. Sale should have ceased membership.

Board member Elliott was appointed by Board members Keen, Sutton, and Combs. Not a valid appointment.

Company Manager James Rooks (Rooks) conveyed a property to himself, Keen, and Scott. Lot was vacant.

Board approves Resolution allowing Board members who no longer maintain a residence on CRR to continue to serve and run for reelection. Not a valid change to the long-standing Bylaw requirement.

2006

Board member Miller was appointed by Board members Keen, Sutton, and Combs. Not a valid appointment.

Board Members Keen, Scott, Miller, Elliott, and Combs voted for dissolution. Not a valid dissolution.

1 As the flowchart reflects:

- 2 • The Company does not have Board Minutes that record the appointment
3 of Board Member Keen and Scott.

- 4 • Board member Combs served on the Board from 2000 through 2007.

5 There is no record of Combs being appointed to the Board or re-elected
6 after he fulfilled the first term. CRRWC, in its Responses to the State's
7 First Request For Admissions, No. 11 admitted that Combs was not
8 elected or re-elected as a director of the Company by the membership
9 after August 7, 2002.⁸

- 10 • Board member Scott sold his CRR property in 2002 as shown on the April
11 24, 2002, Deed of Sale.⁹

- 12 • Board member Keen sold his CRR property in 2005 as shown on the June
13 29, 2005, Deed of Sale.¹⁰ Rooks admitted that Keen's status as a Board
14 member terminated on or about June 29, 2005, to in CRRWC's
15 Responses to the State's First Request For Admissions, No. 8.¹¹

- 16 • The September 21, 2005, Board Minutes¹² indicate that Board member
17 Elliott was appointed by Board members Keen, Sutton, and Combs.
18 Because the 2004 CRRWC Bylaws required the termination of a director
19 upon sale of CRR property, Keen could not be a director and as such, a
20 quorum was not present. Additionally, without any records of Combs'

⁸ Included in Staff Exhibit 302.

⁹ Included in Staff Exhibit 302.

¹⁰ Included in Staff Exhibit 302.

¹¹ Included in Staff Exhibit 302.

¹² Included in Staff Exhibit 302.

1 appointment or election after the first term, it is questionable if Combs was
2 a valid director. Since a quorum was not present for the appointment, the
3 appointment of Board member Elliott was not valid.

- 4 • After the sale of properties by Scott and Keen, on November 1, 2005,
5 Company Manager James Rooks (Rooks) conveyed a property to himself,
6 Keen, and Scott. The property, in 2005, was a vacant lot.¹³ I cannot
7 locate a billing to Scott and Keen at this or any other address in the
8 Company's 2007 billings previously submitted to Staff. I also could not
9 locate Scott and Keen on the customer list provided to Commission Staff
10 that was used to verify petitions.¹⁴ Because Scott and Keen were not
11 using the services of the Company, these two individuals were not
12 members of the Company and therefore could not be valid members of
13 the Board.¹⁵ As previously mentioned, Rooks admitted that Keen's status
14 as a Board member terminated on or about June 29, 2005, in CRRWC's
15 Responses to the State's First Request For Admissions, No. 8.

- 16 • On December 29, 2005, Rooks drafted a resolution that noted:

17 "Our current by-laws state that 'termination of a Director's
18 membership in the Corporation shall terminate automatically
19 that Director's membership on the Board of Directors.'
20 (Bylaw 4.5)"¹⁶
21

¹³ Included in Staff Exhibit 302.

¹⁴ Included in Staff Exhibit 302.

¹⁵ 2004 Bylaw 2.3(b) states in part "Membership shall be terminated by the Board of Directors at any time that the Board finds that a member has discontinued use of the Corporation's service, or for any reason is not qualified for membership." Included in Staff Exhibit 302.

¹⁶ Included in Staff Exhibit 302.

1 The resolution, signed by Keen, Combs, Elliott, and Scott, approved
2 amending the bylaws to allow any existing Board member who was
3 elected or appointed to the Board while they were a member of the
4 Company and who establishes a residence other than CRR, to remain as
5 a Board member and run for reelection. As explained above, Keen was
6 not a valid director because he was not a member of the Company; Elliott
7 was not a valid director because he was not voted on the Board by a valid
8 quorum; and Combs was not valid member of the Board because his term
9 expired and was not re-elected to the position. As such there was no valid
10 quorum to take this action to change the Bylaw.

- 11 • The March 14, 2006, Board Minutes¹⁷ indicate that Board member Miller
12 was appointed by Board members Keen, Sutton, and Combs. Because
13 the 2004 CRRWC Bylaws required the termination of a director upon sale
14 of CRR property, Keen was not a valid director. As previously mentioned,
15 Combs was not valid member of the Board because his term expired and
16 was not re-elected to the position. Because a quorum was not present for
17 the appointment, the appointment of Board member Miller was not valid.
- 18 • The June 29, 2006, CRRWC Board Minutes¹⁸ show those voting for
19 dissolution were Board Members Keen, Scott, Miller, Elliott, and Combs.
20 Because Keen, Elliott, Scott, Combs, and Miller were not valid members of
21 the Company Board, the necessary quorum of three directors was not

¹⁷ Included in Staff Exhibit 302.

¹⁸ Included in Staff Exhibit 302.

1 present when the vote was taken to dissolve the Company resulting in an
2 invalid action of dissolution.

3 Statutes
4

5 ORS 65.621 *et seq.* require a non-profit corporation to, among other things, to
6 provide notice to its membership prior to considering a resolution that would
7 dissolve the corporation, to develop a dissolution plan that is shared with the
8 membership, and to have a vote by the Board and the membership to approve
9 the dissolution. The Board never provided notice to the membership at any
10 meeting where the topic of dissolution of the corporation would be discussed.¹⁹
11 Additionally, the Board never developed a dissolution plan. The Board also
12 failed to provide to the membership either a copy of or a summary of a plan for
13 dissolution. As previously mentioned, these requirements were never
14 performed as admitted by Rooks at the February 9, 2010, deposition, pages
15 46-48 and 162-163.

16 Additionally, the Board violated ORS 65.624 as the Board never submitted
17 the dissolution to the membership for a vote, even though dissolution of a non-
18 profit corporation with members requires the members to vote on a voluntary
19 dissolution. The Board had ample opportunity to alert the membership of
20 possible dissolution. On June 3, 2006, a little more than three weeks before
21 the decision to dissolve the Company came before the Board, CRRWC held its
22 annual meeting. There is no record that the Board or any CRRWC employee
23 had discussed with the membership the possibility that the Company might

¹⁹ Please see response to Staff WJ 8 Data Request Nos. 1 and 2. Included in Staff Exhibit 302 and CRRWC's response to DOJ's First Request For Admissions Nos. 18 and 19.

1 dissolve. Despite not having followed the required statutory procedures, on
2 June 29, 2006, the Board claims to have enacted a resolution to dissolve the
3 Company.

4 On July 5, 2006, articles of dissolution were filed with the Secretary of State.
5 The articles of dissolution improperly stated that the vote of the membership
6 was not required for dissolution. ORS 65.624 provides that dissolution of
7 nonprofit requires approval by the board of directors, vote by the members
8 entitled to vote, and written authorization by any third-person required to
9 approve amendments under the Articles of Incorporation. ORS 65.624(2).²⁰

10 The parties may argue that what Miller, Combs, Scott, Keen, and Elliot
11 purported to do should be characterized as a merger or as a disposition of
12 substantially all of the assets of the Company other than in the usual and
13 regular course of its activities. However, the statutes governing these things,
14 ORS 65.487 and ORS 65.534, have the same provisions as the statute
15 governing dissolution. They require a vote by the members entitled to vote.²¹

²⁰ **ORS 65.624 Dissolution by directors, members and third persons.** (1) Unless this chapter, the articles, bylaws or the board of directors or members, acting pursuant to subsection (3) of this section, require a greater vote or voting by class, dissolution is authorized if it is approved:

(a) By the board;

(b) By the members entitled to vote on dissolution, if any, by at least two-thirds of the votes cast or a majority of the voting power, whichever is less; and

(c) In writing, by any person or persons whose approval is required for an amendment of the articles or bylaws, as authorized by ORS 65.467, or for dissolution.

(2) If the corporation does not have members entitled to vote on dissolution, dissolution must be approved by a vote of a majority of the directors in office at the time the transaction is approved. In addition, the corporation shall provide notice of any meeting of the board of directors at which such approval is to be considered in accordance with ORS 65.344 (2). The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolution of the corporation and contain or be accompanied by a copy or summary of the plan of dissolution.

²¹ **ORS 65.487 Action on plan by board, members and third persons.** (1) Unless this chapter, the articles, bylaws or the board of directors or members, acting pursuant to subsection (3) of this section, require a greater vote or voting by class, adoption of a plan of merger requires, with respect

1 Based on the above reasons CRRWC was not lawfully dissolved. It is
2 interesting to note that although the Company states that vote of the
3 membership was not required to dissolve the Company, the Cooperative
4 Articles of Incorporation require a 2/3 member vote to dissolve the
5 cooperative!²²

6 **Q. DO THE ARTICLES OF INCORPORATION OF CROOKED RIVER RANCH**
7 **WATER COMPANY REQUIRE THE RETURN OF ASSETS IF THE**
8 **COMPANY IS DISSOLVED?**

9 A. Yes, the Articles of Incorporation required the return of assets upon dissolution
10 of the Company. The 1977 Articles of Incorporation clearly state (emphasis
11 added):

12 If the corporation should be **dissolved**, said system shall
13 revert to Crooked River Ranch, a limited partnership.

14 Additionally, on January 1, 1980, a Bill of Sale, which sold, transferred, and
15 conveyed the water system from the Crooked River Ranch Club and
16

to each corporation party to the merger, approval:

- (a) By the board;
- (b) By the members entitled to vote on the merger, if any, by at least two-thirds of the votes cast or a majority of the voting power, whichever is less; and
- (c) In writing, by any person or persons whose approval is required for an amendment to the articles or bylaws by a provision of the articles, as authorized by ORS 65.467.

ORS 65.534 Sale of assets other than in regular course of activities. (1) A corporation may sell, lease, exchange or otherwise dispose of all or substantially all of its property, with or without the goodwill, other than in the usual and regular course of its activities, on the terms and conditions and for the consideration determined by the corporation's board of directors if the proposed transaction is authorized by subsection (2) of this section.

(2) Unless this chapter, the articles, bylaws or the board of directors or members, acting pursuant to subsection (4) of this section, require a greater vote or voting by class, the proposed transaction to be authorized must be approved:

- (a) By the board;
- (b) By the members entitled to vote on the transaction by at least two-thirds of the votes cast or a majority of the voting power, whichever is less; and
- (c) In writing by any person or persons whose approval is required for an amendment to the articles or bylaws by a provision of the articles as authorized by ORS 65.467.

²² Included in Staff Exhibit 302.

1 Maintenance Association (CRR) to CRRWC was signed between CRR and
2 CRRWC. The Bill of Sale stated (emphasis added):

3 Provided, however, if the above-described water system
4 does not qualify for a tax exemption or later is disqualified for
5 tax exemption or **dissolved**, said system will revert to
6 Grantor.²³
7

8 A June 28, 1991, Articles of Amendment to the Articles of Incorporation also
9 state (emphasis added):

10 Upon the **dissolution of the Corporation**, if the Corporation
11 has gains from the sale of an appreciated asset, it shall
12 distribute to the extent practical, the gains as well as other
13 funds, to all persons who were members during the period
14 and time which the asset was purchased and owned by the
15 Corporation in proportion to the amount of business done by
16 such member during that period.²⁴
17

18 Under the tenure of Rooks, a May 2, 2001, Articles of Amendment to the
19 Articles of Incorporation states in part (emphasis added):

20 If the cooperation should be **dissolved**, then the assets and
21 system shall revert to Deschutes Valley Water District, a
22 domestic water district of the State of Oregon, or to any
23 other domestic water district formed pursuant to Oregon
24 Revised States Chapter 264.²⁵
25

26 This reversion to the Deschutes Valley Water District (District) is interesting for
27 two reasons. First, it appears to unlawfully and without a vote of the
28 membership change the relationship between CRR and CRRWC. Second,
29 there is no physical tie-in between CRRWC and the District.
30

²³ Included in Exhibit Staff 302.

²⁴ Included in Exhibit Staff 302.

²⁵ Included in Exhibit Staff 302.

1 **Q. DID CRRWC RETURN THE ASSETS AS DIRECTED IN THE 1977**
2 **ARTICLES OF INCORPORATION, THE 1980 BILL OF SALE, THE 1991**
3 **AMENDED ARTICLES OF INCORPORATION OR THE 2001 AMENDED**
4 **ARTICLES OF INCORPORATION?**

5 A. No. When the Article of Dissolution were filed by CRRWC on June 29, 2006,²⁶
6 the assets were not disposed of in the manner as required by the 1977 Articles
7 of Incorporation, the 1980 Bill of Sale, the 1991 Amended Articles of
8 Incorporation or the 2001 Amended Articles of Incorporation. These
9 documents required the assets to be returned to CRR (or the District) upon
10 dissolution and any gains from the sale of assets to be returned to members.
11 This did not occur with the newly-formed "cooperative". Management is taking
12 the position, consistent with these facts, that, "*We really didn't dissolve*
13 *anything. We just changed the name.*" If the Company was dissolved, you
14 have a dissolved, but not yet wrapped up corporation with members. The
15 assets are in limbo. They are not the assets of the Cooperative. In essence,
16 you have an association, dissolved, but furnishing water to members of the
17 association.

18 It is important to note that CRR has filed and maintains a claim with the
19 Jefferson County Court, #06CV0028, asserting ownership of the water
20 system.²⁷ Because the Company did not follow its Articles of Incorporations
21 concerning the return of assets to members, CRRWC did not correctly dissolve
22 the Company.

²⁶ Included in Exhibit Staff 302.

²⁷ Included in Exhibit Staff 302.

1 **Q. WHAT POSITION DID CRRWC TAKE WITH THE INTERNAL REVENUE**
2 **SERVICE (IRS) CONCERNING THE DISSOLUTION OF THE COMPANY?**

3 A. In filing its returns for the last three years, CRRWC management took the
4 position with the IRS that no dissolution of the corporation occurred. In the
5 Company's 2006 tax return, the Company checked the "No" box to the IRS
6 question on Line 77 of Part VI, Other Information, which states:

7 "Were any changes made in the organizing or governing
8 documents but not reported to the IRS?"²⁸

9
10 It wasn't until October 30, 2008 (over two years after the cooperative filing with
11 the Oregon Secretary of State), that the Company's accountant, Harrigan Price
12 Fronk & Co. LLP, filed a letter to the IRS notifying the IRS of the purported
13 change in status of CRRWC from a corporation to a cooperative.²⁹ It appears
14 that the intent of the accountant's letter was a request to the IRS to maintain
15 the tax-exempt status of CRRWC that was granted as a Nonprofit Corporation,
16 Mutual Benefit with Members. The letter specifically states:

17 To comply with IRS regulations mandating cooperative
18 status for 501(c)12 organizations, the attorney for the
19 Organization dissolved and reformed the entity under the
20 laws of the State of Oregon as a cooperative not-for-profit
21 entity. (pg. 1)

22
23 Additionally:

24 The operation of the Organization remained the same after
25 the reorganization. The only reason for the reorganization
26 was to comply with IRS regulations. (pg. 2)
27

²⁸ Included in Staff Exhibit 302.

²⁹ Included in Staff Exhibit 302. The 2007 Return checked "Yes", but did not provide a conformed copy of the changes.

1 As of February 2, 2010, the Company has not received a reply from the IRS on
2 the dissolution from a Nonprofit Corporation, Mutual Benefit with Members to a
3 Cooperative.³⁰ Although the Company makes the above statement concerning
4 the dissolution and reorganization, Staff in WJ 8, Staff/200, Dougherty/5,
5 stated:

6 Although the Company is able to file taxes under IRC
7 501(c)(12), the Internal Revenue Service (IRS) has never
8 distinguished the terms "mutual" or "cooperative" for
9 purposes of IRC 501(c)(12).³¹ Additionally, the IRS does not
10 require a cooperative to organize under a state cooperative
11 statute to file under I.R.C. 501(c)(12).³² As a result, the
12 Company was able to file its taxes under IRC 501(c)(12)
13 because it is a Nonprofit Corporation, Mutual Benefit with
14 Members and not because it is a cooperative.
15

16 As stated above, the IRS does not require a cooperative to organize under a
17 state cooperative statute to file under IRC 501(c)(12); and as a result, the
18 Company did not need to be dissolved and then reformed as a cooperative to
19 comply with IRS regulations. However, when the Company was allegedly
20 "dissolved", proper and timely notification on the exempt status should have
21 been made with the IRS. It should be noted that maintaining the exempt status
22 of CRRWC was crucial because as previously mentioned, the 1980 Bill of Sale
23 specifically states (emphasis added):

24 Provided, however, if the above-described water system
25 does not qualify for a tax exemption or later is **disqualified**
26 **for tax exemption** or dissolved, said system will revert to
27 Grantor.³³

³⁰ CRRWC's response to Staff Data Request No. 6. Included in Exhibit Staff 302.

³¹ GENERAL SURVEY OF I.R.C. 501(c)(12) COOPERATIVES AND EXAMINATION OF CURRENT ISSUES, Michael Seto and Cheryl Chasin, 2002 EO CPE Text.

³² Id. Included in Staff Exhibit 302.

³³ Included in Staff Exhibit 302.

1
2 It appears that decision to reform as a cooperative in addition to violating both
3 Company bylaws and statutes was performed incorrectly and without proper
4 research or consideration of the potential consequences (loss of exempt
5 status) that could occur from the change in corporate status. If organized
6 correctly, the Company would have taken the proper steps with the IRS prior to
7 the time the Company was incorporated as a cooperative. As noted above, the
8 accountant's letter states that the only change was a "reorganization." There is
9 no evidence that new books and records were established for a cooperative or
10 other actions were taken to clearly demonstrate that the cooperative was a
11 different entity than the pre-existing company.

12 **Q. A COOPERATIVE IS REQUIRED TO BE A DEMOCRATICALLY**
13 **GOVERNED ORGANIZATION. HAVE YOU FOUND THAT CRRWC HAS**
14 **ACTED AS A DEMOCRATICALLY GOVERNED ORGANIZATION?**

15 A. No, CRRWC has not acted as a democratically governed organization. The
16 Company, by any name, lacks the essential characters of a cooperative. The
17 evidence suggests that CRRWC lacks democratic control and voting.^{34 35} The
18 following sequence highlights Company actions that indicate CRRWC has not
19 acted as a democratically governed organization; and has limited customer

³⁴ "Cooperative associations are distinguished from other business structures, generally, by the features of democratic control and voting." (*Lambert v. Fisherman's Dock Co-op, Inc.*, 1115 N.J. Super 424).

³⁵ A cooperative association, on the other hand, has been defined as a democratic association of persons organized to furnish themselves an economic service under a plan that eliminates entrepreneur profit and that provides for substantial equality of ownership and control. In general, each shareholder has equal ownership and exercises an equal share in the control of the association, regardless of the number of shares of stock he holds. (*Lambert v. Fisherman's Dock Co-op., Inc.*, 115 N.J. Super 424, 431-32, 280 A.2d 193 (1971)).

1 input by placing arbitrary requirements on Board membership preventing
2 members from having an equal share in the control of the Company.

- 3 • Minutes of May 21, 2001, Board Meeting stated that Directors may be
4 removed only for cause. This action prevents members from removing a
5 Director who, on the opinion of the majority of members, is not acting in
6 the best interest of the membership.³⁶
- 7 • Minutes of December 19, 2003, Board Meeting signed only by Sutton,
8 Keen, and Scott, required any person desiring to run for the Board to
9 complete an application, to be screened by the General Manager, and
10 then if approved by the General Manager, interviewed by the Board.³⁷

11 This did not adhere to the 2001 Bylaw requirement that stated:

12 For consideration as an applicant for the Board of
13 Directors all candidates will complete the application form
14 for the Board of Directors and will submit a written
15 resume to the Board of Directors no less than 90-days
16 prior to the ballots mailed out.³⁸

17
18 This action allowed Rooks to decide who could and who could not be on
19 the Board. This action was not democratic and allowed Rooks to pick and
20 chose who could be eligible to be a member of the Board. Presumably, If
21 Rooks liked the applicant, the applicant was cleared and if Rooks looked
22 upon with disfavor on an applicant, then the applicant was not passed on
23 for a vote (please see list of names not allowed to be on the ballot below).

³⁶ Included in Exhibit Staff 302.

³⁷ Included in Exhibit Staff 302.

³⁸ Included in Exhibit Staff 302.

- 1 • The 2004 Bylaws as amended September 24, 2004, required that any
2 person desiring to serve on the Board submit an application to the Board
3 and obtain approval from the Board before having their name placed on
4 the ballot (Bylaw 4.3(d)).³⁹ Essentially, no write-in candidates were
5 allowed. By preventing write-in candidates, Rooks and the Board
6 basically prevented members, who were not in Rooks' good graces, from
7 having the opportunity to serve on the Board. This is not democratic
8 because members do not have free choice to choose among who they
9 would like to see as Board members. Voting is restricted to candidates
10 approved by the existing Board, such as it is "screened" by the General
11 Manager. In other words, a slate of candidates for the Board in opposition
12 to the current Board would be impermissible, unless the Board allowed
13 such a slate of candidates to be on the Ballot. That is not democracy as
14 even if a majority of members supported a certain candidate, that
15 candidate could not be a Board member unless the existing Board allowed
16 the candidate to be on the ballot. While it may be reasonable for a Board
17 to review potential candidates to ensure they are members, the review by
18 the Board was not for this purpose as valid members were declined the
19 opportunity to appear on the ballot.
- 20 • Minutes of December 29, 2005, Board Meeting allows any existing Board
21 member who was elected or appointed to the Board while they are a
22 member of the Company, who establishes a residence other than CRR to

³⁹ Included in Exhibit Staff 302. The "no write-in" requirement is also referred to in the August 6, 2008, Department of Justice Report, page 7 of 36.

1 remain as a Board member and run for re-election. This reversed years of
2 a standing requirement to live on CRR to serve as a Board member.⁴⁰

- 3 • Board Resolution of April 20, 2006, prevents any member serving on the
4 CRR Association, CRR Rural Fire Protection District, or the CRR Special
5 Road District Board of Directors from serving on the CRRWC Board.⁴¹

6 The reasons stated in the resolution referred to the “current climate that
7 exists on Crooked River Ranch”. The resolution does not define “current
8 climate”. To exclude certain members from Board membership due to the
9 General Manager’s own personal agenda is not democratic.

- 10 • Minutes of June 29, 2006, Board Meeting adopting Bylaws of the new
11 “cooperative” continued the provision of not allowing write-in candidates
12 (Bylaw 4.3(d)).⁴² Thus again, even if the majority of members supported a
13 candidate and submitted the name as a write-in, the majority vote would
14 not carry the day as write-in candidates are not allowed.
- 15 • The Bylaws of the new cooperative also allow the Board to terminate
16 anyone’s membership for displaying “ill will” toward the Cooperative, its
17 employees or its board of directors (Bylaw 2.3(e)).
- 18 • Annual Membership meeting minutes of June 27, 2007, stated that
19 applicants have to provide social security numbers and other financial
20 information.⁴³ Copy of application showing information required is
21 included in Exhibit Staff 302. While the application requires financial

⁴⁰ Included in Exhibit Staff 302.

⁴¹ Included in Exhibit Staff 302.

⁴² Included in Exhibit Staff 302.

⁴³ Included in Exhibit Staff 302.

1 information, including bankruptcy information, to ensure applicants have
2 the financial wherewithal and integrity to serve on the Board, Rooks, the
3 General Manager and "cooperative" Board member, had filed for two
4 bankruptcies (Alaska and Oregon).⁴⁴

- 5 • To further cement control, Rooks drafted a Board Resolution (February
6 27, 2007) that allowed him, an employee, to serve on the Board to fill the
7 unexpired (never elected) term of Combs. This violated a long-standing
8 bylaw (Bylaw 6.10 of both the Company and "cooperative") that prevented
9 employees from serving on the Board.⁴⁵

- 10 • The following members applying to serve as directors have been turned
11 down by the Board:

- 12 ▪ Bryan Morgan
- 13 ▪ Lynelle Morgan
- 14 ▪ William Hobbs
- 15 ▪ Darlene Quiriconi
- 16 ▪ W. Anderson
- 17 ▪ Barbara Roberts
- 18 ▪ Harry Brown
- 19 ▪ Norm Edmiston
- 20 ▪ Bob Randis
- 21 ▪ Clinton Gorbett
- 22 ▪ Mary Jo Crossley
- 23 ▪ Craig Soule

24
25 It is significant to note that many of the above individuals have been
26 involved in the Commission jurisdiction process or other actions against
27 the Company. Although stringent application requirements were set for

⁴⁴ Oregon bankruptcy decision included in Exhibit Staff 302.

⁴⁵ Included in Exhibit Staff 302

1 the above members, the August 8, 2008, Department of Justice Report
2 (DOJ Report) stated on pages 7 and 8 that:

3 "Board member, John COMBS, stated that he has never
4 seen an application for the Board and did not fill one out.
5 He was appointed to the Board and never elected."
6

7 Board member Combs served on the Board from 2000 to 2007, which is
8 greater than five years. As a result, Combs served for over five years and
9 should have been elected at least once. It appears that certain rules are
10 not followed if the Board member agrees with Rooks; and barriers are put
11 in place against members who do not agree with Rooks.

- 12 • According to the DOJ Report, page 7, members were frequently excluded
13 from attended meetings based on the size of the room. This is
14 problematic because the April 20, 2006, Resolution required a quorum of
15 51 percent of the entire membership of CRRWC to vote on any
16 transaction of business. If 51 percent of the members cannot fit in the
17 selected forum, than a sufficient vote of the members would never be
18 achieved to transact business. This is not democratic.
- 19 • As previously mentioned, although the Company states that vote of the
20 membership was not required to dissolve the Company, the Cooperative
21 Articles of Incorporation require a 2/3 member vote to dissolve the
22 cooperative. Again this is another means in which the Company appears
23 to prevent the members from having a voice in the oversight and operating
24 practices of the Company.

1 **Q. HAS THE COMPANY BEEN FINANCIALLY TRANSPARENT?**

2 A. No. The following information highlights Company actions that indicate

3 CRRWC has not been financially transparent.

- 4 • Commission Jurisdiction - UW 120 Staff/100, Dougherty/9-13 and UW 120

5 Staff/200, Dougherty/11-15⁴⁶ thoroughly discuss the problems Staff and

6 Intervenors experienced concerning requests for information. What is

7 disturbing is that one Company member, Craig Soule was routinely denied

8 access to information. As with Staff, Mr. Soule also was required to file

9 with the Jefferson County Circuit Court to obtain information. Additionally,

10 the Company has been non-responsive to Staff data requests, which

11 request financial or other information in this docket.⁴⁷

- 12 • The DOJ Report noted:

- 13
- 14 ■ When members requested to view or copy the records, in most
- 15 cases they were not allowed to do so. They were told by Rooks
- 16 that they did not have a right to the records. (pg. 7)
- 17
- 18 ■ The business records were kept by Rooks' wife Jacque. Rooks
- 19 Daughter Michelle Comstock worked in the office and has access
- 20 to the records. No one else handles the money or the books. (pg.
- 21 11)
- 22
- 23 ■ Substantial company money was paid to Board members. As with
- 24 Rooks and his family, no contracts exist that might show what the
- 25 obligations of the parties were. No records were kept to document
- 26 any party's performance. (pgs. 10-11)
- 27
- 28 ■ Three different versions of records purporting to be the Company's
- 29 financial records were provided to the investigator, at different
- 30 times. The versions changed, by tens of thousands of dollars, once
- 31 by over a hundred thousand dollars. (pgs. 16-17, pg. 19)
- 32

⁴⁶ Included in Staff Exhibit 302.

⁴⁷ Included in Staff Exhibit 302.

- 1 ▪ Items that should have been income were kept as expenses and
2 vice versa. (pg. 18)
- 3
- 4 ▪ Documentation of work done or services performed did not exist.
5 (pg. 20)
- 6
- 7 ▪ Contracts, to show what the obligations of Rooks or his family were,
8 or what the obligations of the Company were, were not required by
9 the Board, the CPA, or the lawyers. Contracts were not executed.
10 (pg. 20)
- 11
- 12 • On November 14, 2003, the Company's accountant adjusted numerous
13 entries in the CRWC's books, some by tens of thousands of dollars.⁴⁸
- 14 • On August 13, 2004, the Company's accountant adjusted numerous
15 entries in the CRWC's books, some by tens of thousands of dollars.⁴⁹
- 16 • On May 11, 2007, the Company's accountant adjusted numerous entries
17 in the CRWC's books, some by tens of thousands of dollars. He sent
18 those to Rooks on May 29, 2007.⁵⁰
- 19 • On February 22, 2008, the Company's accountant adjusted numerous
20 entries in the CRWC's books, some by tens of thousands of dollars. He
21 sent those to Rooks on November 4, 2008.⁵¹ It is important to note that
22 the Rooks family, based on the DOJ Report, were the only members
23 handling books, records, and money.
- 24 • Accountant cover letters with financial statements clearly state "*We have*
25 *not audited or reviewed the accompanying financial statements....*" As
26 such, the accountant relied on the numbers provided by the Company,

⁴⁸ Included in Exhibit Staff 302.

⁴⁹ Included in Exhibit Staff 302.

⁵⁰ Included in Exhibit Staff 302.

⁵¹ Included in Exhibit Staff 302.

1 with no verification on the accuracy of these numbers. As highlighted
2 above, the Company's accountant was required to make substantial
3 changes to the Company's books in order to reconcile the books. The
4 cover letter on each financial statement states:

5 "A compilation is limited to presenting in the form of financial
6 statements information that is the representation of
7 management. We have not audited or reviewed the
8 accompanying financial statements and, accordingly, do not
9 express an opinion or any other form of assurance on them."

10
11 "Management has elected to omit substantially all of the
12 disclosures required by the modified cash basis of
13 accounting. If the omitted disclosures were included in the
14 financial statements, they might influence the user's
15 conclusions about the Company's financial position, results
16 of operation and cash flows."⁵²

- 17
18 • The existence of court records (Jefferson County #08CV0051) that
19 demonstrate that members were required to sue CRRWC to see the
20 books.⁵³

- 21 • The Company also appeared to have taken adverse action against
22 members who question Rooks about finances including:

- 23 ▪ Minutes of December 8, 2005, Board Meeting, the Board dismisses
24 director Sutton after he questions Rooks about Rooks family
25 working for the Company and Rooks financial practices.⁵⁴
26
27 ▪ In 2007 after approving a connection by the Turnbows for \$8,000,
28 Rooks and Board denies Turnbows a connection at any price when
29 they questioned the reasonableness of \$8,000. (Please see
30 UCR 100)
31
32 ▪ On October 16, 2001, Rooks tells a member and water customer,
33 Gloria Elliott, who questioned Rooks' financial management, "Any

⁵² Included in Exhibit Staff 302.

⁵³ Included in Exhibit Staff 302.

⁵⁴ Included in Exhibit Staff 302.

1 property you may purchase in the future will also not be allowed on
2 the water system. At the time you purchase another property on
3 the water service that property will be disconnected immediately
4 and not restored until the property is sold."⁵⁵

- 5
6 ■ Meeting June 12, 2007, discussion of terminating Hal Robbins'
7 membership for criticizing the board.⁵⁶
8

9 **Q. DOES THE COMPANY HOLD ITS MONEY FOR ITS MEMBERS AS**
10 **REQUIRED BY A COOPERATIVE?**

11 A. No. There is no evidence that the Company held "member accounts" as
12 required by a cooperative. In fact, at a February 9, 2010, deposition, the
13 General Manager admitted that there have never been members' accounts
14 (pg. 109). Additionally, members' financial rights were not recognized during
15 the "dissolution". As previously discussed, a June 28, 1991, Articles of
16 Amendment to the Articles of Incorporation state (emphasis added):

17 Upon the ***dissolution of the Corporation***, if the Corporation
18 has gains from the sale of an appreciated asset, it shall
19 distribute to the extent practical, the gains as well as other
20 funds, to all persons who were members during the period
21 and time which the asset was purchased and owned by the
22 Corporation in proportion to the amount of business done by
23 such member during that period.
24

25 There does not appear to be any attempt to allocate money to its members, or
26 obtain the members consent prior to transferring their money to the purported
27 "cooperative", or even to have a member vote on the issue. Additionally, the
28 Cooperative Articles of Incorporation, purportedly adopted on June 29, 2006,
29 and filed with the Oregon Secretary of State on July 5, 2006, do not provide for

⁵⁵ Included in Exhibit Staff 302.

⁵⁶ Included in Exhibit Staff 302.

1 member accounts.⁵⁷ The Cooperative Articles of Incorporation, Article IV,
2 Capital Stock; Membership Stock actually state (emphasis added):

3 Crooked River Ranch Water Cooperative, a **non-profit**
4 **company**, will issue no capital or membership stock. There
5 will be no par value shares in Crooked River Ranch Water
6 Cooperative. There is no transferrable stock or shares in the
7 Crooked River Ranch Water Cooperative.
8

9 Additionally, the Bylaws of the "Cooperative" state in Bylaw 2.2(c):

10 Membership in the Cooperative shall vest only voting rights
11 and shall not vest in the member any financial interest in the
12 Cooperative or its assets.
13

14 As shown later in testimony, money collected including the special assessment
15 fund was and is basically collected by the Company and spent by the Company
16 with no apparent regard to the purpose for which the charge was collected.

17 **Q. HAVE YOU FOUND THAT CRRWC'S CHANGE REORGANIZATION WAS**
18 **ANY MORE THAN A NAME CHANGE?**

19 A. No. Based on my review and for all the reasons stated above, the only
20 "change" to the Company was a name change.

- 21 • At a February 9, 2010, deposition, Rooks admitted that the dissolution
22 was a mere name change and nothing else.
- 23 • The Company operates today as it did before the "reorganization"
24 serving the same customers using the same assets.
- 25 • The Company is using the same set of books as it was as a Nonprofit
26 Corporation, Mutual Benefit with Members.

⁵⁷ By its very nature a cooperative is not designed to make a profit, and the return on capital, if authorized, is limited. Usually, such profits as may be realized from the association's activities are proportionately divided among the shareholders on the basis of the amount of their patronage during the period the profit was earned." (*Lambert v. Fisherman's Dock Co-op, Inc.*, 1115 N.J. Super 424).

- 1 • The tax identification was not changed and the request to maintain the
2 tax identification number did not occur for over two years after the
3 name change.
- 4 • There was no change in the membership of the Company Board or
5 change in Company management.
- 6 • There is no evidence that the Company acts like a democratic
7 governed organization, ether as its bylaws provide or in practice.
- 8 • The Company is not financially transparent.
- 9 • The Company does not hold money for its members as admitted by
10 Rooks at a February 9, 2010, deposition (pg. 109). That is, there has
11 never been any accounting for any members' interest or equity in the
12 Company.
- 13 • No patronage dividends or the like were ever calculated, declared or
14 booked.

15 As previously mentioned, the Company's accountant clearly stated that the
16 *"operation of the Organization remained the same after the reorganization"*.

17 As a result, the organization essentially remained the same and is subject to
18 regulation pursuant to ORS 757.063.

19 As a contrast to CRRWC, included in Exhibit Staff 302, are documents
20 obtained from Salem Electric's Website.⁵⁸ The documents demonstrate that
21 cooperatives are guided by certain principles including:

⁵⁸ Included in Exhibit Staff 302 is information obtained from Salem Electric's website, including Annual Report and Frequently Asked Questions that demonstrates the characteristics of a cooperative.

1
2
3
4
5
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9
10
11

1. Voluntary and Open Membership;
2. Democratic Member Control;
3. Members' Economic Participation including a program for returning equity to its members; and
4. Autonomy and Independence.

Q. DOES THIS CONCLUDE YOUR TESTIMONY ON WHY CRRWC IS NOT A COOPERATIVE?

A. Yes.

1 **Q. WERE AN ADEQUATE NUMBER OF MEMBER PETITIONS RECEIVED**
2 **BY THE COMMISSION TO ASSERT JURISDICTION?**

3 A. Yes. In WJ 8 Staff/100, Miller/8, Staff provided the following count of petitions:

- | | | |
|---|---|-----|
| 4 | • Petitions Received: | 603 |
| 5 | • No. of Petitions Required to Meet 20 Percent: | 312 |
| 6 | • Valid Petitions: | 397 |
| 7 | • Questionable Petitions (not counted): | 14 |
| 8 | • Rejected Petitions (not counted): | 22 |

9
10 The member count used in WJ 8 was 1,552. Because 397 divided by 1,552
11 equals 26 percent, the 20 percent requirement of ORS 757.063 was met.

12 Additionally, what is impressive about the number of petitions received is that
13 103 members live out of state and an additional 195 members do not live in the
14 Central Oregon areas of Madras, Bend, Sisters, or Prineville. As a result,
15 many of these members may not have been available to sign petitions. This
16 indicates significant support by members for regulation of the Company.

17 The Oregon Court of Appeals in its decision A 134177, dated December 24,
18 2008, accepted the petitions by stating in endnote 2:

19 The first pertains to the fact that some of the petitions did not
20 contain a telephone number, as required by PUC rule. See
21 OAR 860-036-0412(3) ("Petitions must be in writing, state
22 the purpose of the petition, and include the member's name,
23 address, telephone number, and signature."). However,
24 given that the PUC was otherwise able to verify that each of
25 the petitions was, in fact, signed by an actual member of the
26 association, the petitions and the PUC's review of the
27 petitions substantially complied with the statutes and rules
28 governing petitions.
29

1 Because a sufficient number of petitions were received from members
 2 requesting the Company to be regulated by the Commission met the twenty
 3 percent threshold requirements of ORS 757.063, and given the concerns
 4 raised by customers, asserting jurisdiction over CRRWC is in the public
 5 interest.

6 **Q. HAS THE COMPANY BEEN RESPONSIBLE WITH MEMBER MONEY?**

7 A. No. The Company has not been responsible with member money. The
 8 following applies:

- 9 1. Recent years show a significant diminishment of investment and other
 10 funds.
- 11 2. Not using the Capital Assessment Funds for its intended purposes.
- 12 3. Questionable capital expenditures that displace funds for the
 13 establishment of member accounts.
- 14 4. Excessive legal expenses.
- 15 5. Excessive payment to management and directors.

16 *Recent years show a significant diminishment*
 17 *of investment and other funds*

18
 19
 20 The following table compares CRRWC's funds in January 2007 to September
 21 2009:

22 **Table 1 – CRRWC Funds**

Accounts	January 2007	September 2009
CDs		
8000003266 - Columbia River Bank	\$26,155.00	\$0.00
8000003355 - Columbia River Bank	\$12,656.12	\$0.00

Accounts	January 2007	September 2009
50511082 - Community First Bank	\$45,749.65	\$46,986.23
50511098 - Community First Bank	\$12,976.10	\$0.00
50511090 - Community First Bank	\$13,157.33	\$0.00
50511106 - Community First Bank	\$13,105.06	\$0.00
Sub-total CDs	\$123,799.26	\$46,986.23
Money Markets		
Capital (MMDA) - Community First - 57015933	\$47,990.21	\$0.00
Capital (MMDA) - Community First - 57022077	\$0.00	\$332.01
Chase Contingency Account	\$34,813.80	\$16,238.78
Sub-total MMDAs	\$82,804.01	\$16,570.79
Operating Account	\$127,120.94	\$55,991.85
Cashier's Check - Treasury	\$0.00	\$130,656.26
Total Funds	\$333,724.21	\$250,205.13

1
2 The table highlights various significant aspects of the Company's funds. These
3 are:

- 4
- 5 • Based on information provided; five of six Certificate of Deposit
6 Accounts have been closed in the 21-month period.
 - 7 • The Capital accounts originally established to be funded by the Capital
8 Assessment Surcharge were closed out to allow for the Cashier's
9 Check held at Treasury. The \$130,656 does not come close to the
10 amount collected in the surcharge as calculated by Staff at \$477,938.⁵⁹
 - 11 • The Chase (formerly Washington Mutual) Contingency Account after
12 years of holding steady actually decreased in 2009 due to two \$10,000
withdrawals (February and July).

⁵⁹ Worksheet included in Exhibit Staff 302.

- 1 ▪ Re-plumb and add a chlorination station to Well No. 1 (formally Well
- 2 No. 4); and
- 3 ▪ Pay-off the loan on the office building.

4 The following table examines the revenues and expenditures concerning the
5 \$8 per month Capital Assessment Fund. Exhibit Staff 302 contains a specific
6 breakdown of funds.

7 **Table 2 – Capital Assessment Fund**

Funds	Amount
<i>Revenue</i>	
2004	\$64,906
2005	\$135,234
2006	\$136,741
2007	\$141,056
<i>Revenue Total</i>	<i>\$477,938</i>
<i>Assessment Expenditures (stated purpose)</i>	
Easement Rights	\$40,477
Engineering	\$29,643
Building	\$108,903
<i>Assessment Expenditures (per purpose) Total</i>	<i>\$179,022</i>
<i>Assessment Expenditures (not stated purpose)</i>	
Accounting	\$7,653
Maintenance	\$143
Assessment Booklets	\$3,728
Piping	\$35,503
Excavator Hammer	\$23,400
<i>Assessment Expenditures (not stated purpose) Total</i>	<i>\$70,427</i>
<i>Pre-Assessment Expenditures (allocated to Assessment Funds)</i>	
Pipe – 2004	\$9,336
Assessment Booklets	\$7,562
Building	\$35,601
Land	\$30,477
Crane	\$14,860
<i>Pre-Assessment Expenditures Total</i>	<i>\$97,836</i>

Funds	Amount
Total Expenditures	\$347,285
Funds Remaining (Revenue – Expenditures)	\$130,653

1
2 Although the Board was quite clear on the purpose of the fund, the Company
3 used funds for non-capital accounting fees, allocated payments for land and
4 equipment (cranes) that were previously purchased by the Company, allocated
5 the funds towards previous payments for the building, purchase of a hammer
6 for the excavator that is owned by the General Manager, and pipe not
7 associated with the purpose of the assessment fund. On or about March 12,
8 2008, the Company paid-off the building loan.

9 In Commission Order No. 08-243, the Company was ordered to return
10 \$130,656 of the capital assessment fund to customers; however, the Company
11 requested the Oregon Court of Appeals stay the Commission refund
12 requirements. Although initially denied, the Court of Appeals granted a
13 temporary stay on May 18, 2008, on the condition that the Company posts a
14 bond for that amount. On June 5, 2008, the Company deposited a cashier's
15 check with the Oregon State Treasury for the refund amount.

16 The amount, \$130,656.26 is significantly lower than the balance the fund
17 would have been if the Company did not use the funds for purposes not
18 intended by the Resolution and for activities that occurred prior (pre-
19 assessment expenditures) to the Resolution. If CRRWC strictly used the funds
20 for its intended purposes, the balance would have been \$298,916 (\$477,938 -
21 \$179,022).

1 It is important to note that a stated purpose of the fund was drilling of Well
2 No. 3, and plumbing to accommodate a chlorination system. In UW 120, I
3 pointed out that the well did not appear to be necessary. UW 120 Staff/100,
4 Dougherty/44 stated:

5 However, as previously mentioned, Staff has not performed
6 a prudency review of the well. The current two wells appear
7 to have sufficient capacity and access to water to supply
8 current customers. Additionally, the new well without
9 associated increased usage to meet the Company's current
10 water permit, would not necessarily result in the Company
11 perfecting its water right at the amount in permit No. G-
12 11376 (5 cfs, 3.23 MGD).⁶¹ As a result, a third well would
13 probably not be used and useful for current customers and
14 be excluded from rate base as excess capacity.

15
16 It is also important to note that the 20-Year Plan also lists
17 two other lower cost options for improving performance of
18 the current wells. Both Staff and member customers should
19 be able to review these lower cost options before any
20 additional expenditures are made for this new well.

21
22 Questionable capital expenditures that displace funds

23 for the establishment of member accounts

24 In UW 120 Staff/200, Dougherty/33-34, I outlined numerous capital
25 expenditures that were completed by the Company after the initial, October
26 2007, UW 120 Hearing and before the scheduled, but postponed, October
27 2008, UW 120 Hearings. The following capital expenditures appeared
28 excessive and not the best use of member money.

- 29 1. Purchase of a 8' x 40' storage container in February 2008 (\$2,000);
30 2. Installation of window tint in January 2008 (\$1,140);

⁶¹ Based on information received from OWRD, the Company can perfect its water right at the October 1, 2008, date specified in OWRD Order T-9663, but to an amount lower than 5.0 cfs and 3.23 MGD.

- 1 3. Overhauls on two backhoes that occurred in June 2007 (Serial No.
- 2 JYG0285111 - \$14,840) and March 2008 (Serial No. JYG0285141 -
- 3 \$18,607);
- 4 4. Overhaul on a dump truck that occurred in March 2008 (\$11,473);
- 5 and
- 6 5. Purchase of a boom in June 2007 (\$8,405).

7 My UW 120 Staff/200 testimony focuses on the two backhoes and dump truck
8 stating:

9 Although I added the overhauls of backhoe (Serial No.
10 JYG0285111) and the dump truck, the prudence of these
11 costs is suspect considering the net book value of these two
12 pieces of equipment is \$325 and \$367, respectively. In
13 addition, the Company's plant schedule indicates both an
14 additional backhoe (Serial No. JYG0285141) and dump truck
15 that have more recent "placed in service dates." I requested
16 information on these costs in Staff Data Requests 178, 181,
17 187, and 188. The Company did not answer data requests
18 178 and 181. However, the Company admitted in response
19 to data requests 187 and 188, that no cost benefit analyses
20 of these expensive repairs were performed.

21
22 The purchase of the storage container is also questionable because the
23 Company already had a storage building and storage shed. In a September 5,
24 2008, visit to the Company, Rooks explained to me that he will purchase pipe
25 and other items at surplus prices and needed storage for these items.

26 Although this may sound reasonable, the problem with this approach is that
27 member money is tied up in inventory that may or may not be used. Common
28 problems with excessive inventory include:

29

- 1 • Increased labor cost;
- 2 • Uses capital that could otherwise be dedicated to members;
- 3 • Increased space cost (storage shed);
- 4 • Material aging; and
- 5 • Risk of material obsolescence.⁶²

6 Additionally, during my visit, Rooks could not produce an accurate inventory of
7 pipe and other supplies in the shed. I also consider the boom a questionable
8 purchase because the Company has two backhoes as compared to other
9 Class B water utilities in Central Oregon (Agate, Cline Butte, Roats, and
10 Sunriver), which only maintain one backhoe.⁶³ As a result, one backhoe with
11 one boom should be sufficient for a water utility the size of CRRWC.

12 As previously mentioned there is no record of the Company ever establishing
13 member accounts. As previously mentioned, the Cooperative Articles of
14 Incorporation clearly indicate that money is not held for members. Article IV,
15 Capital Stock; Membership Stock actually state (emphasis added):

16 Crooked River Ranch Water Cooperative, a **non-profit**
17 **company**, will issue no capital or membership stock. There
18 will be no par value shares in Crooked River Ranch Water
19 Cooperative. There is no transferrable stock or shares in the
20 Crooked River Ranch Water Cooperative.

21
22 Additionally, the Bylaws of the "Cooperative" state in Bylaw 2.2(c):

23 Membership in the Cooperative shall vest only voting rights
24 and shall not vest in the member any financial interest in the
25 Cooperative or its assets.
26

⁶² http://www.managementsupport.com/nl/7excess_inventory.htm

⁶³ This info was obtained from the stated companies in 2008 in preparation for the UW 120 October 28, 2008 Hearing. Included in Exhibit Staff 302.

1 As can be seen from the above (and later in testimony), it appears that money
2 is collected by Rooks and spent by Rooks for whatever he wants and not
3 always in the interest of the members.

4 Excessive Legal Expenses

5 As highlighted in UW 120 Staff/100, Dougherty/28-29 and UW 120 Staff/200,
6 Dougherty/24-26, the Company's legal expenses are extraordinary high
7 amount for a Class "B" water utility.⁶⁴ The following table highlights the
8 excessive legal expenses. More detail is contained in Exhibit Staff 302.

9 **Table 3 – CRRWC Legal Expenses by Year**

Year	Amount
2000	\$3,732
2001	\$4,249
2002	\$22,061
2003	\$16,078
2004	\$12,894
2005	\$19,353
2006	\$40,597
2007	\$56,742
2008	\$149,001
2009 (Jan – Aug)	\$83,950
Total	\$408,657
10-Year average	\$40,867
4-Year average (2006-2009)	\$82,573

10 Legal costs prior to 2006 were high for a Class "B" water utility and greatly
11 accelerated in 2006. Specific examples of excessive legal expenses include:
12

⁶⁴ In UW 119 – Agate (Commission Order No. 07-359) \$745 was included in legal costs; in UW 107 – Roats (Commission Order No. 05-811) \$2,362 was included in legal costs; and in UW 118 – Sunriver (Commission Order No. 06-678), \$220 was included in legal costs.

- 1 • The Company has paid lawyers for some 32 cases during Rooks
2 tenure.
- 3 • The Company has spent \$408,657 for legal fees between July 2000
4 and August 2009.
- 5 • The Company has sued the Crooked River Ranch Association, the
6 same members that they serve, twice.⁶⁵ In yet a third lawsuit, Mr.
7 Rooks is suing the CRR Association and the individuals managing the
8 Association, and the company is paying for it!⁶⁶ CRRWC has spent
9 \$103,864.66 suing the CRR Association and its board.⁶⁷
- 10 • In the last two years, August 2007 through August 2009, the Company
11 has spent \$260,999 on attorneys, out of a total income, excluding any
12 special assessment that may still have been collected in 2007 of
13 \$1,123,282, approximately 23 percent.
- 14 • The Company has provided and paid for Rooks' legal fees in certain
15 civil or criminal cases.
- 16 • The Company has maintained Rooks as General Manager even
17 though they can no longer obtain liability insurance due to the number
18 of claims filed against Rooks and the Company.

⁶⁵ Jefferson County cases #00CV0025 filed May 9, 2000 and #06CV0028 filed May 16, 2006.

⁶⁶ Jefferson County case #08CV1011ST filed 11/17/2008.

⁶⁷ That is just the amount paid since November 2005 to Cooney & Crew, Balyeat & Eager and Glenn, Sites, Reeder & Gassner on bills clearly for work against the Association. Additional money was paid to Glenn, Sites Reeder & Gassner on bills mixing services against the association and other matters on the same bill making it difficult for the directors to determine what the company was paying lawyers for.

- 1 ▪ Minutes of a Board of Directors meeting on November 20, 2002,
2 state the Company cannot find insurance coverage for general
3 liability due to prior claims.⁶⁸
4
5 ▪ Minutes drafted by Rooks, dated February 15, 2005, notes the
6 company has "deleted" insurance policies.⁶⁹
7

8 The excessive legal expenses have a detrimental effect on the Company for
9 the various reasons:

- 10 • The amounts undoubtedly contributed to the decrease in Company
11 funds as shown in Table 1.
12 • These excessive expenditures may cause a lack of funds for
13 necessary purposes including required (versus optional) repairs,
14 planned and preventative maintenance, operations, and hiring
15 personnel to the level (6.625 Full Time Equivalents) authorized by the
16 Commission in Order No. 07-527.
17 • These excessive expenditures also prevent the Company from holding
18 money for its members.

19 *Excessive payments to management and directors*

20 The DOJ Report and UW 120 Staff/100 write extensively on excessive
21 payments to management and directors. Notable highlights include:

- 22 • Payment to Rooks, family members and Rooks' companies was
23 approximately \$167,519 per year.

⁶⁸ Included in Exhibit Staff 302.

⁶⁹ Included in Exhibit Staff 302.

- 1 • Rooks used company funds to buy things for himself, 138 times
2 between January 12, 2000, and November 29, 2006. (DOJ Report,
3 pgs. 24-30)
- 4 • The largest expenditure was \$25,000, on September 23, 2005, to
5 make the down payment on a track hoe he bought for himself. (*Id*)
- 6 • The total of personal purchases was \$77,058.62. (*Id*). The Company
7 admitted to these purchases at the February 9, 2010, deposition.
- 8 • These purchases were not noted by the Board, the Company's CPA or
9 attorney. These expenditures were discovered by the Attorney
10 General's investigator, who sorted through the books.⁷⁰
- 11 • After the investigator's discovery concerning the expenditures, Rooks
12 changed the financial records to treat the money he had taken as a
13 "loan."⁷¹
- 14 • In order to pay the purchases, Rooks changed his pay stubs to show
15 he worked 20 hours per week overtime, had the books reflect that he
16 was being paid time and a half, \$37.50/hour, and credited that to
17 repayment, without interest, of the "loan." Although there are time
18 sheets for Rooks, there is no documentation of what his time was

⁷⁰ The Attorney General's investigator turned up the transaction and asked about it. When questioned by the Attorney General's investigator in September 2006, the board members did not know much about the purchase. Keen said Rooks asked to use the company's name to purchase the Track hoe so he could get a discount. He did not know that the company put up the down payment. Combs said he did not know about the purchase. Scott said he believed the company put up the money for the track hoe and that Rooks repaid it. Sutton said (in March 2006) that he told Rooks the company could rent such track hoe as it needed.

⁷¹ It is interesting to note that the DOJ Report on page 28 states: "Although ROOKS stated on October 25, 2005, March 29, 2006, and October 27, 2006 that the CRRWC does not and cannot make loans, ROOKS has used CRRWC funds to purchase equipment and supplies for his personal business and is making payments to the CRRWC by having funds withheld from his paycheck."

1 spent doing. As a result, there is no means to determine if he actually
2 worked these herculean hours (40 hours regular, 20 hours overtime,
3 and approximately 20 hours maintenance services (\$500 divided by
4 \$25 per hour) – please see below). Additionally, the overtime paid to
5 Rooks is problematic because a general manager position is normally
6 a salaried position, which would be exempt from overtime. Examples
7 of water utility management personnel that are exempt from overtime
8 are Agate Water System, Avion Water Company, Sunriver Water LLC,
9 Roats Water System, and Cline Butte Utility Company.

- 10 • As stated above, at the same time he was working 60 hours per week,
11 Rooks was paying his company, Rooks Enterprises, \$500 per week for
12 maintenance services. At the rate of \$25 per hour, this would equal
13 20 hours per week. Rooks is the only employee of Rooks Enterprises.
- 14 • In UW 120 Staff/100, Dougherty/25-26, I adjusted from rates \$1,298 in
15 meals and entertainment expenses that were reflected in Visa
16 statements. I removed these costs because CRRWC Bylaws do not
17 address these types of charges, and because, in many cases, the
18 expenses occurred outside of Crooked River Ranch and in the cities of
19 Terrebonne, Madras, and Redmond. It was not clear or well
20 documented that these meal costs were for work-related activities and
21 consistent with sound business practices.
- 22 • The practice of using member money to purchase meals for Rooks
23 continued in 2008 and 2009 (to-date October 2, 2009) as Rooks and

1 Office Staff Oakley charged a total of \$1,240.25 in meals for 2008 and
2 approximately \$702.12 for meals in 2009.⁷²

3 Beyond the obvious failure to properly oversee the actions by Rooks, certain
4 directors were also receiving payments and contracts from the Company as
5 highlighted in the DOJ Report (pgs. 10-11):

- 6 • Between August 15, 2000, and August 12, 2004, some \$74,577.64 of
7 Company money was paid to Keen's business, Star Excavation. No
8 contracts exist that might show what the obligations of the parties
9 were. No records have been provided to document any party's
10 performance. No bids were solicited. The Company admitted to these
11 payments in CRRWC's Responses to the State's First Request For
12 Admissions, No. 25.
- 13 • Between February 28, 2001, and February 11, 2005, some \$13,314.81
14 of Company money was paid to Scott's business, Scott Enterprises.
15 No contracts exist that might show what the obligations of the parties
16 were. No records have been provided to document any party's
17 performance. No bids were solicited. The Company admitted to these
18 payments in CRRWC's Responses to the State's First Request For
19 Admissions, No. 26.
- 20 • On or about April 2005, some \$3,805.00 of Company money was
21 spent to purchase pipe for Combs' personal use. This was admitted by
22 Rooks at the February 9, 2010, deposition, pgs. 104-105.

⁷² Visa bills for three March 2009 meals purchases do not show the cost, and as such actual costs would be higher than the stated \$702.12.

- 1 • Board minutes do not reflect the transactions with the directors, even
2 though the Company has conflict of interest provisions that require
3 such transactions to be voted on by the un-conflicted directors.⁷³

4 Because CRRWC has not been responsible with member money resulting in
5 harm to members, asserting jurisdiction over CRRWC is in the public interest.

6 **Q. IS THE COMPANY'S BOARD PROVIDING ADEQUATE OVERSIGHT OF**
7 **THE COMPANY?**

8 A. No. The Company's Board is not providing adequate oversight of the
9 Company. On August 6, 2008, the DOJ Report detailed lack of oversight on
10 page 9 and pages 17-18. The DOJ Report on page 9 states:

11 All Board members readily admit that they do very little
12 oversight into the operations of the company, the finances of
13 the company, or the overall operation of the water company,
14 leaving this to ROOKS, his wife Jacquie, and to the CPA
15 firm. All the Board members interviewed indicated that they
16 did not monitor the finances other than to receive a copy of
17 the yearly financial report prepared by the accounting firm.
18 the accounting firm relied on records provided by Jacquie
19 ROOKS to do the year-end financial statements and
20 company's tax return. Board members did not do a thorough
21 review of the year-end statements or the Form 990s sent to
22 the IRS. They did not know how much money was coming
23 in or going out.

24
25 The DOJ Report goes on to state on page 18:

26 They believed that if there were any irregularities the
27 accountant would catch them. None seemed to know that
28 the records used by the accountant were provided by
29 Jacquie and that the accountant did not do an audit of the
30 records. The accountant relied on the records provided to
31 him by Jacquie.
32

⁷³ Employment Policy Outline-Conditions of Employment as of January 1, 2000.

1 Other than SUTTON, who was the secretary/treasurer, they
2 did not look at the bills paid.

3
4 The lack of oversight continues. The director who serves as Treasurer and is
5 required by the bylaws to sign all checks; however, it appears that numerous
6 checks were signed using a rubber stamp. The use of a rubber stamp was
7 verified by Rooks during the February 9, 2010, deposition, pgs. 107-108.

8 Because CRRWC's Board has not provided adequate oversight of the
9 Company resulting in harm to members, asserting jurisdiction over CRRWC is
10 in the public interest.

11 **Q. IN UW 120 STAFF NOTED THE HIGH LEVEL OF COMPLAINTS**
12 **RECEIVED FROM CUSTOMERS OF THE COMPANY. CAN YOU**
13 **PROVIDE A SUMMARY OF COMPLAINTS?**

14 A. Yes. The following information was provided by the Commission's Consumers
15 Services Section (CSS).

16 **Table 4 – Consumer Complaints**

Category	2007	2008	2009
Rate Protest	3	0	2
Service	4	2	2
Disconnect	3	4	0
Credibility	21	33	0
Customer Service	3	3	0

17

Category	2007	2008	2009
Line Extension	4	3	0
Billing	12	11	0
Misc	3	2	0
Totals	53	58	4

1
2 CSS ceased taken complaints in 2009 when jurisdiction was stayed by the
3 Court of Appeals. According to CSS, the large numbers of complaints under
4 credibility refer to the legitimacy of Board elections and Rooks' suitability to
5 lead the Company. Many called for a regent to be appointed. In UW 120
6 Staff/100, Dougherty/7-8, I made a comparison of the number of complaints
7 received between the Company and two other water utilities of comparable
8 size to CRRWC. I stated:

9 As a comparison, the Commission Consumer Services has
10 only received two customer complaints for Roats Water
11 System (Roats - 1,432 customers) for 2006 and 2007. As
12 Staff reported in UW 119, Agate Water System (Agate -
13 1,116 customers), the Commission's Consumer Services has
14 only received only four service complaints in 2006; and to
15 date in 2007, Consumers has received only one service
16 complaint.

17
18 Because of the large number of customer complaints resulting in harm to
19 members, asserting jurisdiction over CRRWC is in the public interest.

20 **Q. PLEASE SUMMARIZE WHY YOU BELIEVE THE COMMISSION'S**
21 **SHOULD PROVIDE OVERSIGHT OF CRRWC.**

22 A. There are sufficient reasons for the Commission to provide oversight of
23 CRRWC:

- 24 1. The large amount of customer petitions received by the Commission met
25 the petition requirement of ORS 757.063.

- 1 2. The Company has not been responsible with member money resulting in
2 harm to members.
- 3 a. Recent years show a significant diminishment of investment and
4 other funds.
- 5 b. Not using the Capital Assessment Funds for its intended purposes.
- 6 c. Questionable capital expenditures that displace funds for the
7 establishment of member accounts.
- 8 d. Excessive legal expenses.
- 9 e. Excessive payments to management and directors.
- 10 3. The Company's Board is not providing adequate oversight of the
11 Company resulting in harm to members.
- 12 4. The significant amount of customer complaints resulting in harm to
13 members.

14 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

15 A. Yes.

CASE: WJ 8
WITNESS: Michael Dougherty

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OF
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STAFF EXHIBIT 301

Witness Qualification Statement

February 16, 2010

DOCKETED

WITNESS QUALIFICATION STATEMENT

NAME: MICHAEL DOUGHERTY

EMPLOYER: PUBLIC UTILITY COMMISSION OF OREGON

TITLE: PROGRAM MANAGER, CORPORATE ANALYSIS AND WATER REGULATION

ADDRESS: 550 CAPITOL ST. NE, SALEM, OR 97308-2148

EDUCATION: Master of Science, Transportation Management, Naval Postgraduate School, Monterey CA

Bachelor of Science, Biology and Physical Anthropology, City College of New York

EXPERIENCE: Employed with the Oregon Public Utility Commission from June 2002 to present, currently serving as the Program Manager, Corporate Analysis and Water Regulation. Also serve as Lead Auditor for the Commission's Audit Program.

Performed a five-month job rotation as Deputy Director, Department of Geology and Mineral Industries, March through August 2004.

Employed by the Oregon Employment Department as Manager - Budget, Communications, and Public Affairs from September 2000 to June 2002.

Employed by Sony Disc Manufacturing, Springfield, Oregon, as Manager - Manufacturing, Manager - Quality Assurance, and Supervisor - Mastering and Manufacturing from April 1995 to September 2000.

Retired as a Lieutenant Commander, United States Navy, April 1995. Qualified naval engineer.

Member, National Association of Regulatory Commissioners Staff Sub-Committee on Accounting and Finance.