

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

WJ8, UW 120, UM1381 & UCR 100

In the Matters of

CROOKED RIVER RANCH WATER COMPANY

An Investigation Pursuant to ORS 756.515 to Determine  
Jurisdiction (WJ 8)

and

Request for rate increase in the total annual revenues from  
\$806,833 to \$868,453, or 8.13 percent.  
(UW 120)

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THE PUBLIC UTILITY COMMISSION OF OREGON,

Complainant,

v.

CROOKED RIVER RANCH WATER COMPANY; and  
JAMES R. ROOKS, Director, RANDOLPH M. SCOTT,  
Director, BRIAN ELLIOT, President, RICHARD A.  
KEEN, Vice President, and RICHARD MILLER,  
Secretary/Treasurer, in their capacities as the CROOKED  
RIVER RANCH WATER COMPANY BOARD OF  
DIRECTORS,

Defendants. (UM 1381)

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G.T. & T.T.,

Complainants,

v.

CROOKED RIVER RANCH WATER COMPANY,

Defendant. (UCR 100)

**CROOKED RIVER RANCH  
WATER COMPANY'S  
OBJECTIONS TO  
COMMISSION'S NOTICE OF  
CERTAIN ALLEGED FACTS**

Pursuant to OAR 860-014-0050(2), Crooked River Ranch Water Company (“CRRWC”) objects to the Commission’s “taking of official notice” of a Department of Justice investigation report and all of its files in UW 120 and UCR 100, as set out in PUC Order No. 09-026. The Commission’s action is objectionable for the following reasons:

**1. Taking notice of new evidence exceeds the scope of the Court of Appeals’ remand in Court of Appeals case no. A134177.**

In the Court of Appeals’ decision in case number A134177, dated December 24, 2008, the court concluded that the Commission erroneously interpreted applicable law when it asserted jurisdiction over CRRWC. *Crooked River Ranch Water Company v. Public Utility Commission of Oregon*, \_\_\_ Or App \_\_\_ (2008) (slip opinion). In disposing of the appeal, the Court of Appeals “remanded for reconsideration.” Slip Op. at 8. The Commission exceeded the scope of the Court of Appeals’ remand by considering new evidence. *See* Attorney General’s Administrative Law Manual at 168-69 (“Reconsideration occurs when, *based on the existing record* in the case, an agency examines the factual or legal basis for its order or reexamines the adequacy of its findings. \* \* \* Rehearing occurs when an agency either holds an entirely new hearing and re-decides the case based solely on the new hearing record, or the agency holds a supplementary hearing and re-decides the case based on the original record and the record developed at the supplementary hearing.”) (emphasis added).

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**2. The Commission is not permitted to take evidence after the conclusion of taking evidence without providing notice to the affected parties and opportunity to respond.**

The taking of evidence in the jurisdiction case concluded at some point prior to the entry of the original jurisdiction order. State law prohibits the Commission from reopening the record after the taking of evidence is concluded unless the Commission gives the parties a reasonable opportunity in which to respond. ORS 756.558(1) (“At the conclusion of the taking of evidence, the Public Utility Commission shall declare the taking of evidence concluded. Thereafter no additional evidence shall be received except upon the order of the commission and a reasonable opportunity of the parties to examine any witnesses with reference to the additional evidence and otherwise rebut and meet such additional evidence.”). The Commission erred by issuing an order without complying with ORS 756.558(1) with respect to the newly accepted evidence.

**3. CRRWC disputes the Commission’s averments of improper conduct by CRRWC personnel.**

The Commission’s decision to take notice of voluminous documents, without providing copies to CRRWC or making specific findings of fact with respect to specific

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allegations, prevents any meaningful rebuttal. Nevertheless, CRRWC notes for the record that it disputes any averments of improper conduct by CRRWC personnel that the Commission intends to suggest by citing those documents.

Dated: February 12, 2009

**GLENN SITES REEDER & GASSNER LLP**  
Timothy R. Gassner, OSB #023090

**HARRANG LONG GARY RUDNICK P.C.**



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C. Robert Steringer OSB #98351  
Of Attorneys for Crooked River Ranch Water  
Company

## CERTIFICATE OF FILING AND SERVICE

I certify that on February 12, 2009, I filed the foregoing **CROOKED RIVER WATER COMPANY'S OBJECTIONS TO COMMISSION'S NOTICE OF CERTAIN ALLEGED FACTS** on the Public Utility Commission by email and first class mail, postage prepaid, addressed as follows:

Public Utility Commission of Oregon  
Attn: Filing Center  
P.O. Box 2148  
Salem, OR 97308-2148  
[PUC.FilingCenter@state.or.us](mailto:PUC.FilingCenter@state.or.us)

I further certify that on February 12, 2009, I served a true and accurate copy of the foregoing document by email and first class mail, postage prepaid, addressed as follows:

Steven Cook  
P.O. Box 1111  
Terrebonne, OR 97760  
[sewfab4u@hotmail.com](mailto:sewfab4u@hotmail.com)

Craig Soule  
11953 SW Horny Hollow  
Terrebonne, OR 97760  
[cby\\_64@yahoo.com](mailto:cby_64@yahoo.com)

Charles G. Nichols  
P.O. Box 1594  
Redmond, OR 97756  
[charlien@blazerind.com](mailto:charlien@blazerind.com)

Brian Elliott  
PMP 313 – 1604 S Hwy 97 #2  
Redmond, OR 97756

James R. Rooks  
P.O. Box 2319  
Terrebonne, OR 97760  
[jr@crrwc.com](mailto:jr@crrwc.com)

Jason Jones, Assistant Attorney General  
OREGON DEPARTMENT OF JUSTICE  
1162 Court Street NE  
Salem, OR 97301  
[jason.w.jones@state.or.us](mailto:jason.w.jones@state.or.us)

G.T. & T.T.  
13454 Golden Mantel  
Terrebonne, OR 97760

Timothy R. Gassner, OSB #023090,  
GLENN SITES REEDER & GASSNER LLP  
205 SE 5th St.  
Madras, OR 97741  
[timgassner@gmail.com](mailto:timgassner@gmail.com)


Michael Dougherty  
Public Utility Commission of Oregon  
P.O. Box 2148  
Salem, OR 97308-2148  
[michael.dougherty@state.or.us](mailto:michael.dougherty@state.or.us)

Frank Wood  
P.O. Box 151  
Clackamas, OR 97015  
[frank@imfd.com](mailto:frank@imfd.com)

David C. Glenn  
205 SE 5<sup>th</sup> Street  
Madras, OR 97741  
[gsr.dcg@gmail.com](mailto:gsr.dcg@gmail.com)

Rolf C. Moan, Acting Solicitor General  
Judy Lucas, Assistant Attorney General  
OREGON DEPARTMENT OF JUSTICE –  
APPELLATE DIVISION  
1162 Court Street NE  
Salem, OR 97301  
Of Attorneys for Public Utility  
Commission of Oregon

**HARRANG LONG GARY RUDNICK P.C.**

  
C. Robert Steringer, OSB #983514  
Of Attorneys Crooked River Ranch Water  
Company

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

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CROOKED RIVER RANCH WATER COMPANY

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Request for rate increase in the total annual revenues  
from \$806,833 to \$868,453, or 8.13 percent.  
(UW 120)

**DECLARATION OF JAMES  
ROOKS IN SUPPORT OF  
OBJECTION TO COMMISSION'S  
NOTICE OF CERTAIN ALLEGED  
FACTS**

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THE PUBLIC UTILITY COMMISSION OF  
OREGON,

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v.

CROOKED RIVER RANCH WATER COMPANY;  
and JAMES R. ROOKS, Director, RANDOLPH M.  
SCOTT, Director, BRIAN ELLIOT, President,  
RICHARD A. KEEN, Vice President, and RICHARD  
MILLER, Secretary/Treasurer, in their capacities as  
the CROOKED RIVER RANCH WATER  
COMPANY BOARD OF DIRECTORS,

Defendants. (UM 1381)

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G.T. & T.T.,

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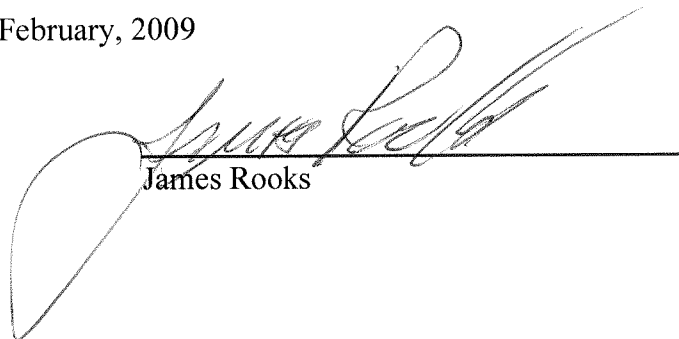
I, JAMES ROOKS, declare and state as follows:

1. I am the General Manager for the Crooked River Ranch Water Company (“CRRWC”) and I make this declaration based upon my personal knowledge and in support of CRRWC’s Objection to Commission’s Notice of Certain Alleged Facts.

2. In PUC Order No. 09-026, the Commission purports to take official notice of a Department of Justice Investigation Report and all of its files in UW 120 and UCR 100. Although the Commission fails to identify or make a finding on any alleged fact within those documents, making it impossible to respond to the Commission’s “official notice” of those voluminous documents, I dispute for the record any insinuation by the Commission that any employee, manager or director of CRRWC engaged in any form of wrongdoing against CRRWC or its members.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty of perjury.

Dated this 11<sup>th</sup> day of February, 2009



James Rooks



## CERTIFICATE OF FILING AND SERVICE

I certify that on February 12, 2009, I filed the foregoing **DECLARATION OF JAMES ROOKS IN SUPPORT OF OBJECTIONS TO COMMISSION'S NOTICE OF CERTAIN ALLEGED FACTS** on the Public Utility Commission by email and first class mail, postage prepaid, addressed as follows:

Public Utility Commission of Oregon  
Attn: Filing Center  
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Steven Cook  
P.O. Box 1111  
Terrebonne, OR 97760  
[sewfab4u@hotmail.com](mailto:sewfab4u@hotmail.com)

Craig Soule  
11953 SW Horny Hollow  
Terrebonne, OR 97760  
[cby\\_64@yahoo.com](mailto:cby_64@yahoo.com)

Charles G. Nichols  
P.O. Box 1594  
Redmond, OR 97756  
[charlien@blazerind.com](mailto:charlien@blazerind.com)

Brian Elliott  
PMP 313 – 1604 S Hwy 97 #2  
Redmond, OR 97756

James R. Rooks  
P.O. Box 2319  
Terrebonne, OR 97760  
[jr@crrwc.com](mailto:jr@crrwc.com)

Jason Jones, Assistant Attorney General  
OREGON DEPARTMENT OF JUSTICE  
1162 Court Street NE  
Salem, OR 97301  
[jason.w.jones@state.or.us](mailto:jason.w.jones@state.or.us)

G.T. & T.T.  
13454 Golden Mantel  
Terrebonne, OR 97760

Timothy R. Gassner, OSB #023090,  
GLENN SITES REEDER & GASSNER LLP  
205 SE 5th St.  
Madras, OR 97741  
[timgassner@gmail.com](mailto:timgassner@gmail.com)

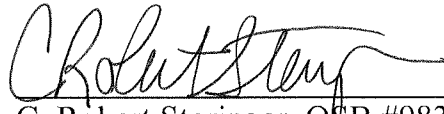
Michael Dougherty  
Public Utility Commission of Oregon  
P.O. Box 2148  
Salem, OR 97308-2148  
[michael.dougherty@state.or.us](mailto:michael.dougherty@state.or.us)

Frank Wood  
P.O. Box 151  
Clackamas, OR 97015  
[frank@imfd.com](mailto:frank@imfd.com)

David C. Glenn  
205 SE 5<sup>th</sup> Street  
Madras, OR 97741  
[gsr.dcg@gmail.com](mailto:gsr.dcg@gmail.com)

Rolf C. Moan, Acting Solicitor General  
Judy Lucas, Assistant Attorney General  
OREGON DEPARTMENT OF JUSTICE –  
APPELLATE DIVISION  
1162 Court Street NE  
Salem, OR 97301  
Of Attorneys for Public Utility  
Commission of Oregon

**HARRANG LONG GARY RUDNICK P.C.**



C. Robert Steringer, OSB #983514  
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