

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**
3 UW 120
4
5

6)
7 In the Matter of)
8) INTERVENOR – CRAIG SOULE
9 CROOKED RIVER RANCH WATER)
10 COMPANY) REPORT ON CONTEMPT
11) PROCEEDING FOR
12 Request for Rate increase resulting in total) DATA REQUESTS
13 annual revenues of \$868,453)
14 .)
15
16

17 Intervenor Craig Soule (Soule) provides this report to the Oregon Public Utility
18 Commission (PUC) concerning the "Contempt Proceeding" entered in Jefferson County
19 Circuit Court (Court) against James Rooks, individually and the Crooked River Ranch
20 Water Company (CRRWC) for data request number 1 to 66 in PUC "Rate Case" UW
21 120 (Contempt Proceeding). Soule also provides information on data request numbers
22 67 to 85. Soule is requesting assistance from the PUC concerning the Contempt
23 Proceeding.

24 **DISCUSSION**

25 Soule was granted intervenor/party status by Administrative Law Judge Patrick
26 Power (ALJ) on June 22, 2007 in UW 120. OAR 860-014-0070 (1) grants a party the
27 authority to request documents/information from any party to the proceeding. Soule has
28 served 8 sets of data requests on CRRWC consisting of 85 separate questions/requests
29 for information. CRRWC failed to provide responses to data requests number 1 to 66 in
30 spite of granted motions to compel. Subsequently, subpoenas were issued and served
31 on the General Manager – James Rooks and Board of Directors of CRRWC (BOD) for

1 data requests numbers 1 to 66. CRRWC, the General Manager, nor the BOD
2 responded to the subpoenas.

3 Concerning data requests number 67 to 85, CRRWC provided limited responses;
4 variably citing relevance, argumentative or not available. CRRWC culminated in a threat
5 to pursue legal action against Soule concerning the data requests and requested an
6 order from the PUC preventing Soule from pursuing additional discovery through data
7 requests.

8 Soule pursued contempt proceedings in the Court against James Rooks,
9 individually and the Crooked River Ranch Water Company relating to data request
10 numbers 1 to 66. The initial filing in the Contempt Proceeding was made January 28,
11 2008. The case number of the Contempt Proceeding is known as CV08-0028.

12 An "Order Appointing Referee" was made by Jefferson County Circuit Court
13 Judge Daniel Ahern on March 20, 2008. (Attached as Exhibit A, Page 1) Pursuant to Oregon
14 Code of Civil Procedure (ORCP) 65, the order appointed Greg Hendrix (Referee) as the
15 referee in this matter with authority limited to *issuing orders(s) on motions filed by*
16 *intervenors*. The referee's authority in this matter ended April 15, 2008. Soule was not
17 notified or made aware by the Court or the Referee, that upon the expiration of the
18 "Order Appointing Referee", that Greg Hendrix's authority in the Contempt Proceeding
19 would be or had been modified.

20 A hearing regarding this matter was held before the Referee on March 20, 2008.
21 The Referee first questioned and admonished Soule for serving subpoenas on the
22 BOD, indicating that it was not the responsibility of the BOD to address the data request
23 issues. The filing in the Contempt Proceeding only included data request numbers 1 to

1 26. The Referee expanded the Contempt Proceeding to include Soule data request
2 numbers 27 to 66. The Referee ultimately¹ ruled that numerous data requests of Soule
3 contained information not relevant to the proceeding before the PUC or available as a
4 matter of public record. Ruling that CRRWC was not required to produce information or
5 responses to numerous data requests. . A written "Order for Production of Documents"
6 signed by the Referee on May 6, 2008 memorialized the verbal rulings made by the
7 Referee during the March 20, 2008 hearing (Order for Production of Documents).
8 (Attached as Exhibit B, Pages 1 & 2) A written "Second Order for Production of Documents"
9 memorialized the March 26, 2008 telephone conference held at the direction of the
10 Referee between Soule and CRRWC and a subsequent phone hearings held with the
11 Referee on May 6, 2008 (Second Order for Production of Documents). (Unsigned copy
12 attached as Exhibit C, Pages 1-3).

13 On April 19, 2008 Soule received a packet of documents/information from
14 CRRWC via their attorney, Tim Gassner, in response to the Order for Production of
15 Documents.

16 CRRWC did not provide all of the documents/information as required by the
17 Order for Production of Documents.

18 The Second Order for Production of Documents directed CRRWC to make PUC
19 Data Request 1 through 139 available to Soule for viewing and reproduction by June 5,
20 2008. On June 12, 2008 Soule and CRRWC met at the Law Offices of Glenn, Sites,
21 Reeder & Gassner, LLP in Madras, Oregon to view and scan the documents produced
22 by the CRRWC in response PUC's Data Requests 1 through 139. CRRWC only made

23
24 ¹ The Court made verbal rulings during the March 20, 2008 hearing and subsequent phone hearing
25 conducted May 6, 2008.

1 PUC Data Request 121 through 136 available for viewing and scanning. (Note: The
2 limited information/documentation made available to Soule for viewing and scanning was six
3 days after the due date of June 5, 2008 stated in the Second Order for Production of
4 Documents.)

5 CRRWC did not make PUC Data Requests 1 through 120 and 137 through 139
6 available for viewing and scanning as required by the Second Order for Production of
7 Documents.

8 In addition, at the June 12, 2008 meeting CRRWC provided Soule with a packet
9 of documents/information responsive to other parts of the Second Order for Production
10 of Documents,.

11 CRRWC did not provide all of the documents/information as required by the
12 Second Order for Production of Documents. (Note: The limited information/documentation
13 provided to Soule was six days after the due date of June 5, 2008 stated in the Second Order
14 for Production of Documents.)

15 On June 17, 2008 a hearing was held before Jefferson County Circuit Court
16 Judge Daniel Ahern regarding the status of the Contempt Proceeding. Based on
17 information provided by Soule, CRRWC and review of the Record, Jefferson County
18 Circuit Court Judge Daniel Ahern directed the Referee to hold a phone hearing. The
19 phone hearing was held before the Referee on July 8, 2008. Soule informed the
20 Referee that CRRWC had failed to comply with the Order for Production of Documents
21 and the Second Order for Production of Documents. The Referee indicated that he was
22 satisfied that the Order for Production of Documents and the Second Order for
23 Production of Documents had been complied with; in that CRRWC had attempted to
24 produce the information/documentation in the Order for Production of Documents and

1 the Second Order for Production of Documents.

2 Soule filed a "Motion for Reconsideration", dated August 7, 2008 (Attached as
3 Exhibit D, Pages 1-10), of the Referee's rulings made during the March 20, 2008 hearing,
4 memorialized as the Order for Production of Documents and the phone hearing
5 conducted May 6, 2008 and memorialized as the Second Order for Production of
6 Documents. By letter, dated August 21, 2008 and by order, dated August 30, 2008, the
7 Referee denied Soule's "Motion for Reconsideration" on August 30, 2008. (Attached as
8 Exhibit E, Pages 1 & 2)

9 CRRWC submitted a "Motion and Order for Dismissal without Prejudice", dated
10 October 31, 2008 to the Court. (Attached as Exhibit F, Pages 1-5) The "Affidavit" of Timothy
11 Gassner attached to the "Motion and Order for Dismissal without Prejudice" cited the
12 presence of an Appeals Court stay in Case No. CA 134177 and the voluntary dismissal
13 of a case against CRRWC filed by the PUC in the Court as basis for the "Motion and
14 Order for Dismissal without Prejudice".

15 On November 3, 2008 a "Petitioner's Response to Respondent's Motion for
16 Dismissal Without Prejudice" was provided to the Referee and the Court. (Attached as
17 Exhibit G, Pages 1-3) Soule was opposed to CRRWC's "Motion for Dismissal Without
18 Prejudice".

19 On November 20, 2008 a phone hearing was scheduled to address CRRWC's
20 "Motion for Dismissal Without Prejudice". Soule did not receive the notice of the phone
21 hearing until after it had occurred. The referee continued the November 20, 2008
22 hearing with counsel for CRRWC. Soule was not notified or provided details of the
23 hearing communication by the Court.

24 On December 1, 2008, Soule contacted the Referee's legal assistant by email

1 notifying the Referee of the circumstances for not attending the November 20, 2008
2 phone hearing and requesting a rescheduling of the phone hearing. (Attached as Exhibit H,
3 Pages 2 & 3) Soule's request for rescheduling was acknowledged by the Referee's legal
4 assistant in a December 2, 2008 email. (Attached as Exhibit H, Page 2) Additionally, the
5 Referee's legal assistant requested from Soule the original pleading in this matter,
6 indicating that the Referee did not have the complete court file at his office. (Attached as
7 Exhibit H, Page 2) Soule fulfilled the request on December 4, 2008 and the Referee's legal
8 assistant acknowledged receipt of documents on the same day. (Attached as Exhibit H,
9 Page 1) On December 17, 2008 by email, Soule inquired into the status of rescheduling
10 the phone hearing with the Referee's legal assistant. (Attached as Exhibit H, Page 1) No
11 reply to the inquiry was received. (Note: Previous to the March 20, 2008 hearing, the
12 Referee's legal assistant requested a complete copy of Soule's filing with the Court in this
13 matter. Soule fulfilled the request on March 17, 2008.)

14 By letter, dated December 22, 2008, the Referee stated, "*I have determined that*
15 *as the underlying case has been stayed it makes no sense to keep the Intervenor action*
16 *open. I have signed the Motion & Order for Dismissal Without Prejudice *****". (Attached as
17 Exhibit I, Page 1) (Note: The Referee also dismissed the matter without prejudice by order, dated
18 December 22, 2008.) (Attached as Exhibit I, Page 2)

19 On January 2, 2009 a "Motion for Reconsideration", of the Referee's December
20 22, 2008 "Order for Dismissal Without Prejudice" was provided to the Referee and the
21 Court. (Attached as Exhibit J, Pages 1-3) The basis for the "Motion for Reconsideration" was
22 the December 24, 2008 Court of Appeals of the State of Oregon (Appeals Court)
23 remand in Case No. CA 134177.

24 On February 6, 2009 a "Supplemental Information to Motion for

1 Reconsideration”, to the January 2, 2009 “Motion for Reconsideration” was provided to
2 the Referee and the Court. (Attached as Exhibit K, Pages 1 & 2) The “Supplemental
3 Information to Motion for Reconsideration” provided information detailing PUC Order
4 Number 09-026; affirming the PUC’s jurisdiction of CRRWC.

5 By phone on March 20, 2009, Soule inquired into the status of the case with the
6 Court. Court staff indicated that the case was closed. Court staff further indicated that
7 they had received a “Response to Petitioner’s Motion for Reconsideration”, that the
8 Court had not rendered a decision in regards to Soule’s January 2, 2009 “Motion for
9 Reconsideration” and that a “General Judgment of Dismissal Without Prejudice” was
10 signed by the Referee on February 27, 2009 and filed with the Court on March 3, 2009.
11 Soule requested a copy of the signed “General Judgment of Dismissal Without
12 Prejudice” from Court staff on March 19, 2009. As of the date of this report, Soule has
13 not received the signed “General Judgment of Dismissal Without Prejudice” from Court
14 staff.

15 **CONCLUSION**

16 Due to the foregoing, Soule’s rights as a legal party (intervenor) to the
17 proceeding before the PUC known as UW 120 have not been protected. Soule has not
18 been able to obtain information through the data request process that would enable him
19 to participate fully in UW 120 as a member and customer of CRRWC. The Court’s
20 rulings in the Contempt Proceeding have set precedence regarding the intervenor
21 process. Therefore, to protect the intervenor process Soule is requesting the following
22 from the PUC:

23
24 The PUC, through the Attorney General of the State of Oregon (AG),

1 initiate appeal proceedings before the Appeals Court of the Contempt
2 Proceeding known as Case No. CV08-0028. This request is supported by the
3 recent representation of a party in PUC UCR 100 by the AG - Oregon
4 Department of Justice – Appellate Division. Further, this request is supported by
5 the AG's intervention in Deschutes Circuit Court Case Number 08CV1027MA.

6
7 The PUC provide a written response to Soule regarding this request.
8 (Note: The Appeals Court requires that an appeal of a case be filed within 30 days of the
9 filing of the Judgment. The "General Judgment of Dismissal Without Prejudice" in the
10 subject case is dated January 27, 2009)

11
12 Soule is of the opinion that the following points are the basis for an appeal to the
13 Appeals Court:

14
15 The Court's intent was to limit the authority of the Referee to protect the
16 democratic process; namely, a circuit court judge being subject to citizens
17 through election and recall. This opinion is supported by the "Order Appointing
18 Referee" signed by Jefferson County Court Judge Daniel Ahern on March 20,
19 2008 (Attached as Exhibit A) and the June 17, 2008 status hearing held before
20 Jefferson County Circuit Court Judge Daniel Ahern regarding the Contempt
21 Proceeding. The Referee exceeded the authority granted by the "Order
22 Appointing Referee" numerous times during the proceeding, culminating in the
23 "General Judgment of Dismissal Without Prejudice" dated February 27, 2009.

24
25 Beyond the Referee exceeding his authority under the "Order Appointing

1 Referee” and ORCP 65, the Referee exceeded the authority granted by ORS
2 756.543(2) by ruling on the relevancy of Soule’s data requests in the proceeding
3 before the PUC and directing Soule to acquire certain information/documents
4 requested in the proceeding before the PUC through public records.

5
6 Beyond the Referee exceeding his authority under the “Order Appointing
7 Referee” and ORCP 65, the Referee should have required CRRWC to provide
8 full and complete answers to all of Soule’s data requests, in that CRRWC had
9 failed to provide input, respond or otherwise plead regarding Soule’s data
10 requests and was therefore in default. CRRWC accepted Soule’s data requests
11 as written/submitted.

12
13 Beyond the Referee exceeding his authority under the “Order Appointing
14 Referee” and ORCP 65, the Referee did not have the authority to overrule or
15 otherwise modify the rulings of the ALJ in the proceeding before the PUC. The
16 authority to overrule or otherwise modify a ruling by the ALJ rests with the
17 Commissioners of the PUC following the provisions stated in OAR 860-014-0091.

18
19 Beyond the Referee exceeding his authority under the “Order Appointing
20 Referee” and ORCP 65, the Referee did not know the specifics of the proceeding
21 before the PUC, that was the basis for this case; nor did the court inquire into
22 specific matters to apprise themselves of the specifics of this proceeding. The
23 Court’s rulings regarding Soule’s data requests where made without being fully
24 aware of Soule’s Intervenor status in the proceeding before the PUC.

1 Beyond the Referee exceeding his authority under the "Order Appointing
2 Referee" and ORCP 65, the Referee did not address the relevancy of the
3 Petitioner's data requests in a recent case brought before the Court that was in
4 all material issues identical to this case, nor did the Court direct the Petitioner in
5 that case to obtain information/documents responsive to the Petitioner's data
6 requests through public records. (Note: The subject case was held before the same
7 Referee.)

8
9 Beyond the Referee exceeding his authority under the "Order Appointing
10 Referee" and ORCP 65, the Referee exceeded it's authority by granting the
11 "Motion for Dismissal Without Prejudice" based on the presence of a stay in
12 Appeals Court Case No. CA 134177.

13
14 Beyond the Referee exceeding his authority under the "Order Appointing
15 Referee" and ORCP 65, the Referee did not make a ruling on Soule's January 2,
16 2009 "Motion for Reconsideration" prior to signing the "General Judgment of
17 Dismissal Without Prejudice".

18
19 Dated and respectfully submitted this 23rd day of March, 2009.

20
21 /s/ Craig Soule

22 _____
23 Intervenor Craig Soule

CERTIFICATE OF SERVICE - UW 120

I certify that on March 23, 2009 I served a true and correct copy of the foregoing "Contempt Proceeding Report for Data Requests w/ Exhibits A to K" 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:

CHARLES G NICHOLS
POB 1594
Redmond, Oregon 97756
charlien@blazerind.com

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

OREGON DEPARTMENT OF JUSTICE
JASON W. JONES - ASSISTANT AG
1162 Court Street NE
Salem, Oregon 97301-4096
jason.w.jones@state.or.us

GLENN, SITES, REEDER & GASSNER, LLP
TIMOTHY GASSNER
205 SE 5th Street
Madras, Oregon 97741
timgassner@gmail.com

CROOKED RIVER RANCH WATER CO.
JAMES ROOKS - GENERAL MANAGER
POB 2319
Terrebonne, Oregon 97760
jr@crrwc.com

HARRANG LONG GARY RUDNICK PC
JONA MAUKONEN
1001 SW Fifth Ave, 16th Floor
Portland, Oregon 97204
jona.maukonen@harrang.com

OR PUBLIC UTILITY COMMISSION
MICHAEL DOUGHERTY
POB 2148
Salem, Oregon 97308-2148
michael.dougherty@state.or.us

HARRANG LONG GARY RUDNICK PC
C. ROBERT STERINGER
1001 SW Fifth Ave, 16th Floor
Portland, Oregon 97204
bob.steringer@harrang.com

&

I certify that on March 23, 2009 I served the following entity, by placing in the US Mail with postage prepaid, a true and correct copy of the foregoing "Contempt Proceeding Report for Data Requests w/ Exhibits A to K":

CROOKED RIVER RANCH WATER COMPANY
BRIAN ELLIOT – PRESIDENT BOARD OF DIRECTORS
PMP 313 – 1604 S Hwy 97 # 2
Redmond, Oregon 97756

/s/ Craig Soule

Intervenor Craig Soule

FILED
APR 21 11:00
STATE OF OREGON

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF JEFFERSON

CRAIG SOULE, through the PUBLIC
UTILITY COMMISSION OF OREGON,
Petitioner,

Case No: CV08-0028

ORDER APPOINTING REFEREE

vs.

JAMES R. ROOKS, individually, and
CROOKED RIVER RANCH WATER
COMPANY,
Respondent.

THIS MATTER having come before this Court on the Petition for Contempt of Court dated January 28, 2008 (the "Petition"), and based upon the records and files herein; now, therefore

IT IS HEREBY ORDERED that pursuant to ORCP 65, Greg Hendrix is appointed Referee in this matter, with authority limited to issuing order(s) on the motions filed by Intervenors. Appointment shall end upon further order of this Court or until April 15, 2008, whichever comes first.

DATED this 20 day of March, 2008.


DANIEL J. AHERN
Circuit Court Judge

HENDRIX, BRINICH & BERTALAN, L.L.P. ATTORNEYS AT LAW
716 NW Harriman St./Bend, Oregon 97701/541.582.4980
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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF JEFFERSON

| | | |
|---|---|-------------------------|
| CRAIG SOULE, through the PUBLIC UTILITY COMMISSION OF OREGON |) | CASE NO.: CV 08 0028 |
| |) | |
| Petitioner |) | |
| |) | ORDER FOR PRODUCTION OF |
| vs |) | DOCUMENTS |
| |) | |
| JAMES R. ROOKS, individually, and CROOKED RIVER RANCH WATER COMPANY |) | |
| |) | |
| Respondent |) | |

THIS MATTER came before the Court on March 20, 2008, for a Show Cause hearing to determine whether Respondent should be held in contempt of court for failing to honor Three Subpoena Duces Tecum issued by Patrick Power, Administrative Law Judge. A copy of these Subpoenas Duces Tecum are attached to this Order as Exhibit 1 and is incorporated herein by reference.

The Court having considered this matter and being fully advised in the premises,

The Court found that the Subpoenas Duces Tecum covered Data Requests 1 through 26, by Petitioner. The Court addressed each Data Request and its sub-parts individually and made the following rulings on those data requests:

CRRWC is hereby ordered to provide information pursuant to the following Data Requests of Petitioner, Craig Soule : 1(a); 2(a); 2(b);2(e); 3(a), (b), (c), (d); 4(a),(b) ,(c), (d), (e); 5(a), (b); 6(a), (b), (c), (d); 9(c); 10(a), (b), (c); 11(a); (b); 19; 20; 22; and 23.

1 The court found the following Data Requests contained information available as a matter of
2 public record and directed Petitioner to acquire the requested information through public records
3 requests: 14(a); (b); (c); (d); (e); (f); (g).

4 The court found the following Data Requests contained information not relevant and ordered
5 that the respondent was not required to produce any information or response: 1(b); 2(c); (d); 3(f);
6 4(f); (g); 5(c); 5(d); 6(e); 9(a); (b); 10(d); (e); 11(c); 13(b); (c); (d); (e); 16(a); (b); 17(a); (b); (c);
7 (d); (e); (f); (g); (h); (i); 18(a); (b); (c); (d); (e); (f); 24; 25(a); (b); 26.

8 Petitioner agreed to withdraw the following Data Requests: 3(e); 7(a); 8(a); 9(d); 12(a); (b);
9 (c); (d); (e); (f); (g); (h); (i); 13(a); 21.

10 With respect to the information ordered to be provided, the Respondent shall produce all
11 responsive documents not later than April 21, 2008.

12 The Court shall deny the Petitioner's contempt motion if the Respondent produces all
13 responsive documents as required by this Order not than April 21, 2008.

14 The Respondent shall be held in contempt of court if they fail to produce all responsive
15 documents as required by this Order by April 21, 2008. If this occurs, Respondent shall be fined
16 \$50,000 plus an additional fine of \$1,000 per day for each day after April 21, 2008, during which
17 Respondents fail to produce all responsive documents.

18 Petitioner shall not release any documents or information subject to the Protective Order in
19 Jefferson County case CV07-0150. A copy of the Protective Order in Jefferson County case No.
20 CV07-0150 is attached to this order as Exhibit 2 and is incorporated herein by reference.

21 DATED this 6th day of May 2008.

22
23 
24 HONORABLE GREG HENDRIX
25 Circuit Court Judge Pro-tempore

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3
4 IN THE CIRCUIT COURT OF THE STATE OF OREGON
5 FOR THE COUNTY OF JEFFERSON

6 CRAIG SOULE, through the PUBLIC
7 UTILITY COMMISSION OF OREGON)

8 Petitioner)

9 vs)

10 JAMES R. ROOKS, individually, and
11 CROOKED RIVER RANCH WATER
COMPANY)

12 Respondent)

CASE NO.: CV 08 0028

SECOND ORDER FOR PRODUCTION
OF DOCUMENTS

13 THIS MATTER initially came before the Court on March 20, 2008 for a Show Cause
14 Hearing to determine whether the respondent should be held in contempt of court for failing to honor
15 Three Subpoena Duces Tecum regarding Petitioner's Data Requests 1-26 issued by Patrick Power,
16 Administrative Law Judge.

17 On March 26, 2008 under the direction of the Court, the Petitioner and Respondent met by
18 telephone conference regarding production of material in response to Petitioner's Data Requests 27-
19 66. A copy of Data Requests 27-66 is attached as "Exhibit 1" and hereinafter incorporated by
20 reference. Petitioner and Respondent agreed to the following:

21 27(a); 27(b); 27(f), 27(g), 27(h), 27(i); 35(a); 39; 47; 49(c); 49(d); 50; 52; 53; 56(a); 60; and
22 63 were addressed at the evidentiary hearing on October 25th and 26th of 2007, and no information
23 is required to be produced by Respondent.

24 27(j); 43 - Lists the information provided to the Public Utility Commission through PUC

25
26 1-SECOND ORDER FOR PRODUCTION OF DOCUMENTS

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1 Data Requests, copies of information provided to the PUC by CRRWC will be furnished to
2 Petitioner by Respondent.

3 28; 37; 38; 56(b); 62 - Relates to information already answered earlier in the proceeding.
4 Respondent is not obligated to provide any response.

5 27(c); 27(d), 27(e); 31; 33; 34; 35(b); 42; 44; 51; 57; 61; 65; 66- Respondent will provide
6 a response to Petitioner.

7 36; 41; 46; 48; 49(b) - Have been answered to the satisfaction of the Petitioner and no
8 response is required to be provided by Respondent.

9 45; 49(a) - Requested information will be acquired by Petitioner through Public Records
10 Requests, no production is necessary by Respondent.

11 The production of the remaining disputed Data Requests of the Petitioner came before the
12 Court on May 6, 2008 by telephone hearing. The Court having considered this matter and being
13 fully advised in the premises made the following rulings:

14 29(a). No documentation is available and Respondent is not responsible for quoting relevant law
15 to Petitioner.

16 29(b). No documents are available.

17 29(c). No documents are available.

18 30(a). No response required.

19 30(b). No documentation exists.

20 32(a)-(d). The Petitioner's inquiry relates to a separate administrative procedure and therefore is
21 not relevant. The Respondent is not required to provide any documentation to the Petitioner.

22 40. Petitioner's inquiry is not relevant and Respondent is not required to provide any
23 documentation.

24 54. No documents exist. Nothing is required to be produced.

25

26 2-SECOND ORDER FOR PRODUCTION OF DOCUMENTS
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1 55. Respondent will provide any and all available documentation.

2 56(c). No contract exists.

3 58(a)-(b). The Petitioner's inquiry is not relevant and Respondent is not required to provide any
4 documentation.

5 59. Respondent will provide well logs for both wells to the Petitioner.

6 By June 5, 2008 the Respondent shall make available to the Petitioner all of the
7 information/documentation provided to the PUC in their Data Requests 1-139 for viewing and
8 reproduction. Photo copying of all documents shall be a cost to ten cents (\$.10) per page to
9 Petitioner due upon receipt. The viewing and reproduction of the information/documents shall take
10 place at the Law Offices of Glenn, Sites, Reeder & Gassner, LLP in Madras, Oregon. Respondent
11 will allow Petitioner to electronically scan documents and will furnish Petitioner with access to an
12 electrical outlet and suitable work space. Petitioner shall provide all necessary equipment for
13 scanning of documents.

14 Respondent shall furnish the required information pursuant to this order not later than June
15 5, 2008.

16 Dated this ____ day of July, 2008.

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18 _____
19 HONORABLE GREG HENDRIX
20 Circuit Court Judge Pro-tempore
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IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF
JEFFERSON

CRAIG SOULE, through the PUBLIC
UTILITY COMMISSION OF OREGON,
Petitioner,

v.

JAMES ROOKS, individually, and
CROOKED RIVER RANCH WATER
COMPANY, Respondents.

Case No. CV08-0028

MOTION FOR RECONSIDERATION

MOTION

Craig Soule (Petitioner) moves for a reconsideration of the Courts rulings, contained in the written "Order for Production of Documents", dated May 6, 2008 ("Written Order") and subsequent verbal rulings¹. The Court ruled that numerous data requests of the Petitioner contained information not relevant to the proceeding before the PUC or available as a matter of public record. Ruling that the Respondent was not required to produce any information or response to the subject data requests.

¹ The Court made verbal rulings during the phone hearings conducted May 6, 2008 and July 8, 2008. The Court directed the Respondent's attorney to write an order containing the verbal rulings. On July 15, 2008 the final version of the written order, reflecting the verbal rulings, was provided to the Court for the Judge's signature. As of the date of this "Motion" the Petitioner has not received a copy of the signed order.

1 Also, additional compelling information is available regarding the Court's verbal rulings
2 on two of the Petitioner's data requests.

3
4 For the reasons set forth below, the Petitioner respectfully requests that the Court
5 reconsider the earlier rulings and order the Respondent to provide full and complete
6 answers/documentation to the subject data requests of the Petitioner.

7
8 **DISCUSSION**

9
10 On March 20, 2008 the matter of production of documents/information by James Rooks
11 and the Crooked River Ranch Water Company (Respondent) in a proceeding before the
12 Oregon Public Utility Commission (PUC) came before the Court for a "Show Cause
13 Hearing for Failure to Obey Subpoenas Duces Tecum".

14
15 The "Written Order" contained a ruling that the following data requests in the proceeding
16 before the PUC contained information that was not relevant and that the Respondent
17 was not required to produce any information or response to the Petitioner:

18
19 1(b), 2(c), 2(d), 3(f), 4(f), 4(g), 5(c), 5(d), 6(e), 9(a), 9(b), 10(d), 10(e), 11(c),
20 13(b), 13(c), 13(d), 13(e), 16(a), 16(b), 17(a), 17(b), 17(c), 17(d), 17(e), 17(f), 17
21 (g), 17(h), 17 (i), 18(a), 18(b), 18(c), 18(d), 18(e), 18(f), 24, 25(a), 25(b), 26.

22
23 The verbal rulings found that the following data requests (inquiries) in a proceeding
24 before the PUC were not relevant and that the Respondent was not required to produce
25 any documentation to the Petitioner:

26 ///

1 32(a), 32(b), 32(c), 32(d), 40, 58(a), 58(b).

2
3 The "Written Order" contained a ruling finding that the following data requests contained
4 information available as a matter of public record, directing the Petitioner to acquire the
5 requested information through public records requests:

6
7 14(a), 14(b), 14(c), 14(d), 14(e), 14(f), 14(g).

8
9 Compelling information is available concerning the verbal rulings by the Court on the
10 following data requests of the Petitioner:

11
12 54 and 56(c)

13
14 **ORS 756.543(2)**

15
16 The Court's rulings determining the relevancy of the Petitioner's data requests
17 (inquiries) in a proceeding before the PUC is not supported by statute. Further, the
18 Court's rulings directing the Petitioner to acquire the requested information in a
19 proceeding before the PUC through public record requests is not supported by statute.

20 ORS 756.543(2) states the following:

21
22 *"If any person fails to comply with any subpoena so issued or any party or witness*
23 *refuses to testify on any matters on which the person may be lawfully interrogated,*
24 *the judge of the circuit court of any county, on the application of the commission, or*
25 *of the party requesting the issuance of the subpoena, shall compel obedience by*
26 *proceedings for contempt as in the case of disobedience of the requirements of a*

1 *subpoena issued from such court or a refusal to testify therein.”*

2
3 The Court exceeded the authority granted by ORS 756.543(2) by ruling on the
4 relevancy of the Petitioner’s data requests in the proceeding before the PUC and
5 directing the Petitioner to acquire the information/documents requested in the
6 proceeding before the PUC through public records.

7
8 **Participation & Failure to Plead**

9
10 The Respondent had the following opportunities during the proceeding before the PUC
11 to provide input or to respond to the Petitioner’s data requests:

12
13 OAR 860-014-0070(1): Provides a party, the data request was directed to, the
14 opportunity to respond with a written objection in lieu of answer to a data request.

15
16 OAR 860-014-0070(3): Provides the parties the opportunity to informally address
17 the disputed data requests prior to seeking a “Motion to Compel”.

18
19 OAR 860-014-0070(3) & 860-013-0025: Provides a party the opportunity to
20 provide a response to a motion to compel an answer to a data request.

21
22 OAR 860-014-0091(1)(a): Provides a party the opportunity to appeal the ruling of
23 an Administrative Law Judge (ALJ) to the Commission of the PUC.

24
25 Oregon Rule of Civil Procedure – Subpoena – Rule 55 B: Provides a party, the
26 data request was directed to, the opportunity to provide a written objection to

1 inspection or copying of any or all of the data requests.

2
3 OAR 860-013-0055(1) in part states the following:

4
5 *"If a party fails to plead or otherwise appear within the time specified in OAR 860-*
6 *013-0050, the party shall be in default. All material allegations of the complaint*
7 *shall be deemed admitted and hearing waived. ****"*

8
9 CRRWC failed to provide input, respond or otherwise plead regarding the Petitioner's
10 data requests and was therefore in default. CRRWC accepted the subject data requests
11 as written/submitted and should be required to provide full and complete answers to all
12 of the Petitioner's data requests.

13
14 **Jurisdiction**

15
16 Administrative Law Judge (ALJ) Patrick Power, by ruling, found the Petitioner's data
17 requests related directly to the subject matter of this proceeding and were highly
18 relevant. CRRWC was ordered to provide full and complete answers. (See Exhibit B, Page
19 5; Exhibit C, Pages 16 & 17; Exhibit E, Page 17 to "Petition for Contempt" and Exhibit A, Page 1 attached
20 hereto)

21
22 A ruling by the ALJ may not be overruled or otherwise modified, except by the
23 Commissioners of the PUC following the provisions stated in OAR 860-014-0091.

24
25 A ruling in the subject proceeding before the PUC, dated June 25, 2008 by ALJ Patrick
26 Power (See Exhibit A, Page 2 & 3 attached hereto) in part stated the following:

1 *"This Commission has exclusive jurisdiction over its ratemaking function, and a*
2 *circuit court has no authority to decide what information is relevant for purposes*
3 *of the Commission's business."* (See Exhibit A, Page 3 attached hereto)

4
5 The Court does not have the authority to overrule or otherwise modify the rulings of the
6 ALJ in this matter.

7
8 **Familiarity with Proceeding Before the PUC**

9
10 The Court does not have a working familiarity with the proceeding that is the grounds for
11 this case, nor did the court inquire into specific matters to apprise themselves of the
12 specifics of this proceeding before the PUC. The Court's rulings regarding the data
13 requests of the Petitioner where made without being fully aware of their relationship to
14 the proceeding before the PUC.

15
16 **Conflict with Recent Rulings/Orders**

17
18 The recent case of the State of Oregon, by and through the Public Utility Commission of
19 Oregon vs. James R. Rooks, individually, and the Crooked River Ranch Water
20 Company – Jefferson County Circuit Court Case Number CV-07-0150 was in all
21 material issues identical to the subject case now before the Court. The Court did not
22 address the relevancy of the PUC's data requests in the proceeding before the PUC nor
23 did the Court direct the PUC to obtain information/documents responsive to the PUC's
24 data requests in the subject proceeding before the PUC through public records.

25 ///

26 ///

1 The Court's rulings in this case are not consistent with earlier rulings and orders made
2 in a similar recent case before the Court. The Petitioner, as a legal party to the
3 proceeding before the PUC, is being treated differently by the Court.

4
5 **Data Request 54**

6
7 The Petitioner's data request number 54, dated October 4, 2007, states the following:

8
9 *"CRRWC's rebuttal testimony Number 6 to Dougherty's Testimony 20/17 & 23/7*
10 *discusses the contract that Mr. Rooks has with the company to perform the repair*
11 *and maintenance of equipment. Please provide a copy of the subject contract."*

12
13 The verbal ruling on data request number 54 stated the following:

14
15 *"No documents exist. Nothing is required to be produced."*

16
17 PUC Order No. 08-347 issued on June 30, 2008 in PUC docket UI 281 (see Exhibit A,
18 Page 4 through 11 attached hereto) in part stated the following:

19
20 *A description of the filing and its procedural history is contained in the Staff*
21 *Report, attached as Appendix A, and incorporated by reference. (see Exhibit A,*
22 *Page 4 attached hereto)*

23
24 Appendix A – Staff Report in part stated the following:

25
26 *At the time of the Commission Order (Note: UW 120 Order No. 07-527, 11/29/07) Mr.*

1 *Rooks also maintained an equipment maintenance contract with CRRWC. (see*
2 *Exhibit A, Page 8 attached hereto)*

3
4 CRRWC's "Post-Hearing Brief", dated June 25, 2008 filed in PUC docket UCR 100 (see
5 Exhibit A, Page 12 through 23 attached hereto) in part stated the following:

6
7 *Furthermore, the costs of supplies was not included in the repair and*
8 *maintenance contract between CRRWC and J.R. Rooks. (see Exhibit A, Page 19 &*
9 *20 attached hereto)(Note: UCR 100 concerns cost involved with a waterline extension done in*
10 *2005)*

11
12 PUC Order No. 08-177 issued on March 24, 2008 in docket UW 120 (see Exhibit A, Page
13 24 through 34 attached hereto) in part stated the following:

14
15 *If it's the Company's point that any contract has not been reduced to writing, it is*
16 *the Company's obligation to offer a narrative statement that explains and defends*
17 *all contract terms. (see Exhibit A, Page 28 attached hereto)*

18
19 The documents referenced above strongly indicate a repair and maintenance contract
20 existed on October 10, 2007; the date data request number 54 was made.

21
22 **Data Request 56(c)**

23
24 The Petitioner's data request number 56(c), dated October 4, 2007, states the following:

25
26 *"CRRWC' s rebuttal testimony Number 6 to Dougherty's Testimony 21/12*

1 states, "Michael Dougherty does not know the qualification of James Rooks, nor
2 does he know the amount of work performed, the quality of work or the skills he
3 possesses." CRRWC's rebuttal testimony Number 6 to Dougherty's Testimony
4 48/3 - states, "The Board of Directors of the CRRWC established his (James
5 Rooks) duties when they developed his employment contract". Please provide a
6 copy of the subject contract and list of duties."

7
8 The verbal ruling on data request number 56(c) stated the following:

9
10 *"No contract exists."*

11
12 A "Resolution of CRRWC's Board of Directors", dated March 31, 2008 (see Exhibit A, Page
13 35 & 36 attached hereto) in part states the following:

14
15 *"When Mr. Rooks was originally hired by CRRWC, a contract was developed*
16 *between Mr. Rooks and the Board of Directors. The PUC, in developing a budget*
17 *for this company, severally reduced the rates which, in effect, canceled the*
18 *employment contract of Mr. Rooks, at least as far as salary is concerned."* (see
19 Exhibit A, Page 35 attached hereto)

20
21 *" *** the employment contract, as far as the monetary amount, was voided by the*
22 *passage of the PUC budget and rates. It was not voided by the Board of*
23 *Directors or Mr. Rooks. Mr. Rooks has continued his employment as*
24 *General/Operations Manager since November 29, 2007 (the date the PUC order*
25 *was signed reducing rates and revenues)." (see Exhibit A, Page 35 attached hereto)*

26 *///*

1 " *** the contract between James Rooks and the CRRWC Board of Directors was
2 not canceled by either party. The contract became a nullity when the PUC
3 severely reduced the revenue for CRRWC and wages/salary for Mr. Rooks." (see
4 Exhibit A, Page 36 attached hereto)
5

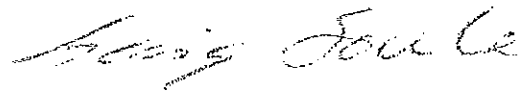
6 The above resolution of the CRRWC Board of Directors clearly indicates a employment
7 contract between CRRWC and Mr. Rooks existed on October 10, 2007, the date data
8 request number 56(c) was made.
9

10 CONCLUSION

11

12 For the foregoing reasons, the Petitioner respectfully requests that the Court order the
13 Respondent to provide full and complete answers/documentation to the subject data
14 requests of the Petitioner.
15

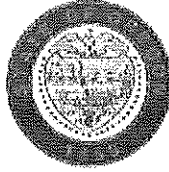
16 DATED this 7th day of August, 2008.
17
18
19

20 
21

22 CRAIG SOULE
23

24 11953 SW Horny Hollow Trail
25 Terrebonne, Oregon 97760
26 (541)504-7516
cby_64@yahoo.com

Crook County Courthouse
300 NE Third Street
Prineville, OR 97754-1990
(541) 447-6541 • Fax (541) 447-5116
Reply to ()



Jefferson County Courthouse
75 SE "G" Street, Suite C
Madras, OR 97741-1750
(541) 447-3317 • Fax (541) 475-3421
Reply to ()

Amy D. Bonkosky
Trial Court Administrator

Twenty-Second Judicial District Trial Courts

August 21, 2008

Mr. Timothy Gassner, Esq.
Glenn, Sites, Reeder & Gassner
205 SE 5th Street
Madras, OR 97741

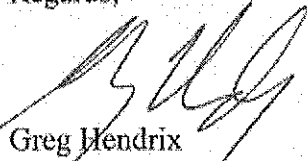
Mr. Craig Soule
11953 SW Horny Hollow Trail
Terrebonne, OR 97760

Re: *Soule thru PUC v. James Rooks CV08 0028*

Hello:

The Motion to Reconsider filed by Mr. Soule is denied. Mr. Gassner should prepare the Order.

Regards,



Greg Hendrix
Judge *Pro Tempore*

c: Jefferson County Circuit Court

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF JEFFERSON

CRAIG SOULE, through the PUBLIC
UTILITY COMMISSION OF OREGON

Petitioner

vs

JAMES R. ROOKS, individually, and
CROOKED RIVER RANCH WATER
COMPANY

Respondent

CASE NO.: CV 08 0028

ORDER (Reconsideration)

THIS MATTER came before the Court on August 7, 2008 for a hearing on the Motion For Reconsideration filed by Plaintiff and the Court having considered the arguments submitted by Plaintiff;

IT IS HEREBY ORDERED that Plaintiff's Motion for Reconsideration is **denied**.

Dated this 30th day of August 2008.



HONORABLE GREG HENDRIX
Circuit Court Judge Pro-tempore

EXHIBIT E, PAGE 2 OF 2

1
2
3
4 IN THE CIRCUIT COURT OF THE STATE OF OREGON
5 FOR THE COUNTY OF JEFFERSON

6 CRAIG SOULE, through the PUBLIC
7 UTILITY COMMISSION OF OREGON)

8 Petitioner)

9 vs)

10 JAMES R. ROOKS, individually, and
11 CROOKED RIVER RANCH WATER
COMPANY)

12 Respondent)

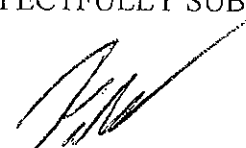
CASE NO.: CV 08 0028

MOTION AND ORDER FOR
DISMISSAL WITHOUT PREJUDICE

13 COMES NOW the Respondent by and through his attorney, TIMOTHY R. GASSNER, and
14 moves this Court for an Order Dismissing the above entitled action without prejudice.

15 This Motion is made in good faith and not for the purposes of delay and is supported by the
16 attached Affidavit of Counsel.

17 RESPECTFULLY SUBMITTED this 31 day of October, 2008.

18
19 
20 _____
TIMOTHY R. GASSNER, OSB #02309
Of Attorneys for Respondent
GLENN, SITES, REEDER & GASSNER, LLP
21 ATTORNEYS AT LAW
22 205 S.E. 5th Street
Madras, OR 97741
PHONE: (541) 475-2272
23 FAX: (541) 475-3944
tingassner@hotmail.com

24 /////

EXHIBIT F, PAGE 1 OF 5

25
26 1- MOTION AND ORDER FOR DISMISSAL WITHOUT PREJUDICE
LATimCRR WaterSoule Craig CV08-0008M&O for Dissal Without Prejudice.wpd

GLENN, SITES, REEDER & GASSNER, LLP
ATTORNEYS AT LAW
205 S.E. Fifth Street, Madras, OR 97741 Ph. (541) 475-2272
Fax: (541) 475-3944

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ORDER

THIS MATTER coming before the Court upon Motion of the Respondent, it is
HEREBY ORDERED that the above matter is hereby dismissed without prejudice.

HONORABLE GREG HENDRIX
Circuit Court Judge Pro-tempore

EXHIBIT F, PAGE 2 OF 5

2- MOTION AND ORDER FOR DISMISSAL WITHOUT PREJUDICE

L:\Tim\CRR Water\Soule Craig CV08-0008M&O for Dismissal Without Prejudice.wpd

GLENN, SITES, REEDER & GASSNER, LLP
ATTORNEYS AT LAW
205 S.E. Fifth Street, Madras, OR 97741 Ph. (541) 475-2272
Fax: (541) 475-3944

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF JEFFERSON

CRAIG SOULE, through the PUBLIC
UTILITY COMMISSION OF OREGON)
)
Petitioner)
)
vs)
)
JAMES R. ROOKS, individually, and)
CROOKED RIVER RANCH WATER)
COMPANY,)
)
Respondent)

CASE NO.:CV 08 0028

AFFIDAVIT

STATE OF OREGON)
) ss.
COUNTY OF JEFFERSON)

I, TIMOTHY R. GASSNER, being first duly sworn, depose and say I am the Attorney for the Respondent in the above referenced matter.

On October 8, 2008, the Court of Appeals for the State of Oregon granted a Stay of all pending Public Utility Commission proceedings against Crooked River Ranch Water Company, a copy of the Order is attached to this Affidavit as Respondent's Exhibit "A".

The other Jefferson County Circuit case based upon jurisdiction of the Public Utility Commission over Crooked River Ranch Water Company, State of Oregon, by and through the Public Utility Commission of Oregon v. Crooked River Ranch Water Company Jefferson County Case No. 08 CV-0073 was dismissed pursuant to Plaintiff's Ex Parte Notice of Dismissal without Prejudice on October 23, 2008.

EXHIBIT F, PAGE 3 OF 5

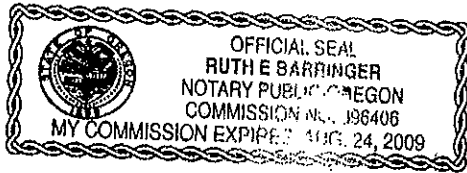
3- MOTION AND ORDER FOR DISMISSAL WITHOUT PREJUDICE
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GLENN, SITES, REEDER & GASSNER, LLP
ATTORNEYS AT LAW
205 S.E. Fifth Street, Madras, OR 97741 Ph. (541) 475-2272
Fax: (541) 475-3944

1 On October 29, 2008, I was contacted by the Jefferson County Circuit Court Clerk who
2 inquired whether or not this action should be continued as a pending matter. I informed the Court
3 Clerk that I would be tendering a Motion for Dismissal Without Prejudice.

4
5 
6 _____
7 TIMOTHY R. GASSNER

8 SUBSCRIBED AND SWORN to before me this 31 of October, 2008.



9 Ruth E. Barringer
10 Notary Public for the State of Oregon
11 My Commission Expires 24 Aug 2009

EXHIBIT F, PAGE 4 OF 5

4- MOTION AND ORDER FOR DISMISSAL WITHOUT PREJUDICE

L:\Tim\CRR Water\Soule Craig CV08-0008\M&O for Dissal Without Prejudice.wpd

GLENN, SITES, REEDER & GASSNER, LLP
ATTORNEYS AT LAW
205 S.E. Fifth Street, Madras, OR 97741 Ph. (541) 475-2272
Fax: (541) 475-3944

IN THE COURT OF APPEALS OF THE STATE OF OREGON

CROOKED RIVER RANCH WATER COMPANY,
Petitioner,

v.

PUBLIC UTILITY COMMISSION OF OREGON
Respondent.

Public Utility Commission of Oregon
WJ 8

A134177

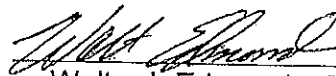
ORDER GRANTING MOTION TO STAY

Petitioner Crooked River Ranch Water Company moves for an order staying the final order of the Public Utility Commission pursuant to ORS 756.610(2) during the pendency of this proceeding in this court. The Commission objects on the ground that petitioner has failed to meet the burden imposed by the statute for "cause shown[.]"

Having reviewed the information submitted by the parties, this court determines that cause has been demonstrated by petitioner that warrants a stay of the Commission's order. It is therefore ordered that the final order of the Commission be stayed during the pendency of the proceedings in this court.

OCT 8 2008

DATE

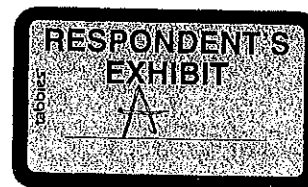


Walter I. Edmonds, Presiding Judge

c: Timothy Richard Gassner
C Robert Steringer
Jona Jolyne Maukonen
Rolf Moan

EXHIBIT F, PAGE 5 OF 5

DB/A134177ORAL081001



ORDER GRANTING MOTION TO STAY

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

Page 1 of 1

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IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF
JEFFERSON

CRAIG SOULE, through the PUBLIC
UTILITY COMMISSION OF OREGON,
Petitioner,
v.
JAMES ROOKS, individually, and
CROOKED RIVER RANCH WATER
COMPANY, Respondents.

Case No. CV08-0028

PETITIONER'S RESPONSE TO
RESPONDENT'S MOTION FOR
DISMISSAL WITHOUT PREJUDICE

Craig Soule (Petitioner) responds to James Rooks and Crooked River Ranch Water Company's (Respondents) Motion and Order for Dismissal without Prejudice, dated October 31, 2008 ("Motion"). The Petitioner is opposed to Respondent's "Motion".

For the reasons set forth below, the Petitioner respectfully requests that the Respondent's Motion for Dismissal without Prejudice, dated October 31, 2008, be denied by the Court.

DISCUSSION

Final Order

1 The Court of Appeals of the State of Oregon has ordered that the final order (order
2 asserting jurisdiction by the Public Utility Commission (PUC) over CRRWC) be stayed
3 during the pendency of Crooked River Ranch Water Company v. Public Utility
4 Commission of Oregon – Case No. CA A134177. Therefore, it would be premature for
5 this Court to address the dismissal of Case No. CV08-0028 until a final ruling
6 addressing the PUC’s jurisdiction over CRRWC has been issued by the Court of
7 Appeals of the State of Oregon in Case No. CA A134177..

8
9 **Relevancy of Cited Case**

10
11 Jefferson County Circuit Court Case - CV08-0073 cited in the Respondent's "Affidavit"
12 attached to the "Motion" was dismissed pursuant to the Plaintiff's (PUC) "Ex Parte
13 Notice of Dismissal without Prejudice". The Respondent did not request nor did this
14 Court address a motion by the Respondent requesting dismissal of Jefferson County
15 Circuit Court Case - CV08-0073. The dismissal of Jefferson County Circuit Court Case -
16 CV08-0073 cited in the "Affidavit" attached to the Respondent's "Motion" is not relevant
17 to this discussion.

18
19 **Relationship of Stay**

20
21 The "Affidavit" attached to the Respondent's "Motion" states the following:

22
23 *"On October 8, 2008, the Court of Appeals of the State of Oregon granted*
24 *a stay of all pending Public Utility Commission proceedings against*
25 *Crooked River Ranch Water Company ***."*

1 Although this case has roots in a proceeding before the PUC, this Court has issued
2 numerous verbal rulings in this case, culminating in two written orders effectively
3 severing any connection to a proceeding before the PUC. Therefore, the Stay issued by
4 the Court of Appeals of the State of Oregon would have no effect on this case, let alone
5 be the basis for the cases' dismissal.

6
7 **CONCLUSION**

8
9 For the foregoing reasons, the Petitioner respectfully requests that the Respondent's
10 Motion for Dismissal without Prejudice, dated October 31, 2008, be denied by the Court.

11
12 DATED this 3rd day of November, 2008.

13
14
15 

16

CRAIG SOULE

17
18 11953 SW Horny Hollow Trail
19 Terrebonne, Oregon 97760
20 (541)504-7516
cby_64@yahoo.com

RE: CV08-0028 Phone Hearing

Wednesday, December 17, 2008 4:52 PM
From: "Craig Soule" <cby_64@yahoo.com>
To: "Sarah Herron" <Sarah@hxbri.com>
Cc: "Tim Gassner" <timgassner@gmail.com>
Sarah,

I had not heard back from you regarding rescheduling the phone hearing, so I thought I would check-in. Let me know when something is setup. All the best!

~ Craig

--- On **Thu, 12/4/08, Sarah Herron <Sarah@hxbri.com>** wrote:

From: Sarah Herron <Sarah@hxbri.com>
Subject: RE: CV08-0028 Phone Hearing
To: cby_64@yahoo.com
Date: Thursday, December 4, 2008, 2:00 PM

Mr. Soule:

I received both your e-mails w/attached documents. Thank you. I will get back to you next week regarding rescheduling the phone hearing.

Sarah

From: Craig Soule [mailto:cby_64@yahoo.com]
Sent: Thursday, December 04, 2008 1:18 PM
To: Sarah Herron
Cc: Tim Gassner
Subject: RE: CV08-0028 Phone Hearing

Sarah,

I was not sure exactly what Judge Hendrix needed so I have attached a copy of the documents I believe were originally filed with the court. Due to the size of the files, the attachments will be sent in two separate emails. The attachment to this email will consist of the following:

CONTEMPT PROCEEDING JC CIRCUIT COURT CV08-0028 CS DR 1 TO 26 PTI - S2

CONTEMPT PROCEEDING JC CIRCUIT COURT CV08-0028 CS DR 1 TO 26 PTII

If this is not adequate, please let me know.

~ Craig Soule

--- On **Tue, 12/2/08, Sarah Herron <Sarah@hxbri.com>** wrote:

From: Sarah Herron <Sarah@hxbri.com>
Subject: RE: CV08-0028 Phone Hearing
To: cby_64@yahoo.com

Date: Tuesday, December 2, 2008, 3:44 PM

Hi Craig:

That would be fine.

Sarah

From: Craig Soule [mailto: cby_64@yahoo.com]
Sent: Tuesday, December 02, 2008 2:39 PM
To: Sarah Herron
Subject: RE: CV08-0028 Phone Hearing
Sarah,

I do not have the hard copies with me or access to a fax machine. I have everything with me on my laptop, so I should be able to attach it to an email to you. Let me know if this will work.

~ Craig

--- On Tue, 12/2/08, Sarah Herron <Sarah@hxbri.com> wrote:

From: Sarah Herron <Sarah@hxbri.com>
Subject: RE: CV08-0028 Phone Hearing
To: cby_64@yahoo.com
Date: Tuesday, December 2, 2008, 1:07 PM

Mr. Soule:

Greg is out of the office until next Wednesday. I will discuss rescheduling the phone hearing w/him when he returns. In the meantime, Greg left me a note that said he needed to see the original pleading in this matter filed by you. Is there anyway you could fax that to us? We do not have the complete court file at our office. FAX: 541-382-9060.

Thank you.

Sarah Herron

From: Craig Soule [mailto: cby_64@yahoo.com]
Sent: Monday, December 01, 2008 5:03 PM
To: Sarah Herron
Cc: Tim Gassner
Subject: CV08-0028 Phone Hearing

Sarah,

I recently received your November 14, 2008 letter in reference to a phone hearing concerning the above case. I have been traveling out of the area over the last month and having my mail forwarded. Unfortunately, until I received your forwarded letter, I was unaware of the hearing scheduled for November 20, 2008. I would like to request that the hearing originally scheduled for November 20, 2008 be rescheduled. Since I am still out of the area, please contact me by email with the new hearing date/time and allow me a few days to respond and provide a phone number where I can be reached for the new phone hearing. The contact email address is:

cby_64@yahoo.com

I apologize for any inconvenience. I look forward to your email. All the best!

~Craig Soule

Crook County Courthouse
300 NE Third Street
Prineville, OR 97754-1990
(541) 447-6541 • Fax (541) 447-5116
Reply to ()



Jefferson County Courthouse
75 SE "C" Street, Suite C
Madras, OR 97741-1760
(541) 447-3317 • Fax (541) 475-3421
Reply to ()

Amy D. Bonkosky
Trial Court Administrator

Twenty-Second Judicial District Trial Courts

December 22, 2008

Mr. Timothy Gassner, Esq.
Glenn, Sites, Reeder & Gassner
205 SE 5th Street
Madras, OR 97741

Mr. Craig Soule
11953 SW Horny Hollow Trail
Terrebonne, OR 97760

Re: *Soule thru PUC v. James Rooks CV08 0028*

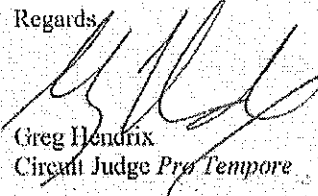
Hello,

Neither party requested a hearing. A hearing was set for November 20th by letter dated November 14th. Mr. Soule indicates he did not get the notice until after the time of the hearing. Mr. Soule did not appear. Mr. Gassner waived further argument. Mr. Soule did respond before and after the hearing date with written materials which I reviewed. Under the circumstances I am not required to allow oral argument.

I am familiar with the issues. I have determined that as the underlying case has been stayed it makes no sense to keep the Intervener action open. I have signed the Motion & Order for Dismissal Without Prejudice and have sent it to Jefferson County Circuit Court.

Mr. Gassner should prepare a General Judgment of Dismissal Without Prejudice to be filed once Mr. Soule has had a chance to review it.


Regards,


Greg Hendrix
Circuit Judge *Pro Tempore*

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ORDER

THIS MATTER coming before the Court upon Motion of the Respondent, it is
HEREBY ORDERED that the above matter is hereby dismissed without prejudice.



HONORABLE GREG HENDRIX
Circuit Court Judge Pro-tempore
12.22.08

EXHIBIT I, PAGE 2 OF 2

2- MOTION AND ORDER FOR DISMISSAL WITHOUT PREJUDICE
L:\Tim\CRR Water\Soule Craig CV08-0908\M&O for Dissal Without Prejudice.wpd

GLENN, SITES, REEDER & GASSNER, LLP
ATTORNEYS AT LAW
205 S.E. Fifth Street, Madras, OR 97741 Ph. (541) 475-2272
Fax: (541) 475-3944

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IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF
JEFFERSON

CRAIG SOULE, through the PUBLIC
UTILITY COMMISSION OF OREGON,
Petitioner,

v.

JAMES ROOKS, individually, and
CROOKED RIVER RANCH WATER
COMPANY, Respondents.

Case No. CV08-0028

MOTION FOR RECONSIDERATION

For the reasons set forth below, Craig Soule (Petitioner) moves for a reconsideration of the Court's ruling, contained in the "Motion and Order for Dismissal without Prejudice", submitted by the Crooked River Ranch Water Company (Respondents) on October 31, 2008 and signed by Judge Hendrix on December 22, 2008.

DISCUSSION

Relationship of Stay

The Court of Appeals of the State of Oregon (Appeals Court) stay of the final order (order asserting jurisdiction by the Public Utility Commission (PUC) over Crooked River

1 Ranch Water Company (CRRWC)) temporarily limited the PUC's further actions
2 involving CRRWC (Exhibit A). Prior to the Appeals Court stay this Court issued
3 numerous rulings in this case, culminating in two written orders effectively severing any
4 connection to a proceeding before the PUC. If this Court believes the Appeals Court
5 stay would have limited further activity in this case, it would have been in the best
6 interest of all parties to this case to take no further action until the Appeals Court
7 issued a final ruling in Crooked River Ranch Water Company v. Public Utility
8 Commission of Oregon – Case No. CA A134177. This Court's decision to deny or
9 grant the Respondent's "Motion and Order for Dismissal without Prejudice" should
10 have been based on the final ruling of the Appeals Court in Appeal Court Case No. CA
11 A134177 and not on the presence of a temporary stay placed by the Appeals Court
12 prior to the final ruling by the Appeals Court in Case No. CA A134177.

13
14 **Current Status of Stay**

15
16 On October 8, 2008 the Appeals Court ordered that the final order (order asserting
17 jurisdiction by the PUC over CRRWC) be stayed during the pendency of Appeal Court
18 Case No. CA A134177. (Exhibit A) On December 24, 2008, the Appeals Court issued a
19 final ruling in Case No. CA A134177. (Exhibit B, Pages 1-5) The PUC's jurisdiction of
20 CRRWC was not overturned by the Appeals Court and the final ruling by the Appeals
21 Court removed the stay that was the basis of this Courts decision to dismiss Case No.
22 CV08-0028.

23
24 **CONCLUSION**

25
26 For the foregoing reasons, the Petitioner respectfully requests that this Court's decision

1 dismissing this case be reversed and that the Respondent's "Motion and Order for
2 Dismissal without Prejudice", dated October 31, 2008, be denied.

3

4 DATED this 2nd day of January, 2009.

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CRAIG SOULE

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11 11953 SW Horny Hollow Trail
12 Terrebonne, Oregon 97760
13 (541)504-7516
14 cby_64@yahoo.com

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EXHIBIT J, PAGE 3 OF 3

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF JEFFERSON

| | | |
|--------------------------------|---|----------------------------|
| CRAIG SOULE through the PUBLIC |) | |
| UTILITY COMMISSION OF OREGON, |) | Case No. CV08-0028 |
| Petitioner, |) | |
| |) | |
| v. |) | SUPPLEMENTAL INFORMATION |
| |) | TO |
| JAMES ROOKS, individually, and |) | MOTION FOR RECONSIDERATION |
| CROOKED RIVER RANCH WATER |) | |
| COMPANY, Respondents |) | |

18

19 Craig Soule (Petitioner) requests the Court attach and make the following supplemental
20 information part of the Petitioner's "Motion for Reconsideration" dated January 2, 2009.
21 The Petitioner moves for a reconsideration, based on the information in the Petitioner's
22 "Motion for Reconsideration" dated January 2, 2009 and this additional information
23 contained herein, of the Court's ruling, contained in the "Motion and Order for Dismissal
24 without Prejudice", submitted by the Crooked River Ranch Water Company
25 (Respondents) on October 31, 2008 and signed by Judge Hendrix on December 22,
26 2008.

27

DISCUSSION

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30 On December 24, 2008 the Court of Appeals of the State of Oregon (Appeals Court)
31 Court issued a final ruling in Case No. CA A134177 (appeal of PUC Order Number 06-
32 642 - asserting jurisdiction by the Oregon Public Utility Commission (PUC) of Crooked

EXHIBIT K, PAGE 1 OF 2

1 River Water Company (CRRWC)). The PUC's jurisdiction of CRRWC was not
2 overturned by the Appeals Court and the Appeals Court remanded the case to the PUC
3 for a final ruling on disposition of the PUC's jurisdiction of CRRWC. On January 28,
4 2009 the PUC issued an order addressing the remand of the case from the Appeals
5 Court. PUC Order Number 09-026 affirmed the PUC's jurisdiction of the CRRWC
6 (Exhibit A attached hereto and made part of).

7

8 The final ruling by the Appeals Court on December 24, 2008 effectively removed the
9 stay that was the basis of this Courts decision to dismiss Case No. CV08-0028. PUC
10 Order Number 09-026 affirmed the removal of the stay that was the basis of this Courts
11 decision to dismiss Case No. CV08-0028.

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CONCLUSION

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15 For the foregoing reasons and the reasons contained in the Petitioner's "Motion for
16 Reconsideration" dated January 2, 2009, the Petitioner respectfully requests that the
17 Court's decision dismissing this case be reversed and that the Respondent's "Motion
18 and Order for Dismissal without Prejudice", dated October 31, 2008, be denied. The
19 Petitioner is ready to move forward with the case now that the jurisdiction of CRRWC by
20 the PUC has been reviewed by the Appeals Court and has been affirmed by PUC.

21

22 DATED this 6th day of February, 2009.

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CRAIG SOULE

11953 SW Horny Hollow Trail
Terrebonne, Oregon 97760
(541)504-7516
cby_64@yahoo.com

EXHIBIT K, PAGE 2 OF 2