

1 **BEFORE THE PUBLIC UTILITY COMMISSION**

2 **OF OREGON**

3 WJ 8, UCR 100

4 In the Matters of

5 CROOKED RIVER RANCH WATER
6 COMPANY

7 An Investigation Pursuant to ORS 756.515
8 to Determine Jurisdiction

9 (WJ 8)

10 And

11 G. T. & T. T.,

12 v.

13 CROOKED RIVER RANCH WATER
14 COMPANY (UCR 100)

CROOKED RIVER RANCH WATER
COMPANY'S STATUS REPORT

15 On December 3, 2010, Administrative Law Judge ("ALJ") Powers issued a
16 memorandum directing the parties in this matter to report on two issues:

- 17 1. Is there reason for the Commission to provide oversight over
- 18 Crooked River Ranch Water Company (CRRWC or Company);
- 19 and
- 20 2. Is Crooked River Ranch Water Company a cooperative exempt
- 21 from jurisdiction?

22 Crooked River Ranch Water Company ("CRRWC") addresses below the two issues
23 identified by the ALJ, but in the opposite order.

24 **Background**

25 The current matters were initially set for hearing on July 20, 2010. During the same
26 time period, a civil action pending in the Jefferson County Circuit Court directly addressed the
corporate status of CRRWC. Specifically, that civil case (*Nichols et al. v. Crooked River Ranch
Water Company, et al.*, 09 CV-0049) challenged CRRWC's status as a cooperative. In order to

1 accommodate settlement discussion in the *Nichols* case, and ultimate resolution of those issues,
2 Staff for the Public Utility Commission (“PUC”) requested and received an order cancelling the
3 hearing in this matter.

4 Prior to the settlement discussions in the *Nichols* case, the Jefferson County Circuit
5 Court had determined at summary judgment that the dissolution of CRRWC as a non-profit
6 corporation was invalid. On August 20, 2010, the court then entered a limited judgment
7 (“Limited Judgment”) setting aside the purported dissolution and directing that CRRWC shall
8 continue its corporate existence as a non-profit corporation as if the dissolution had never
9 occurred.

10 The Limited Judgment also established a process whereby the CRRWC membership
11 would hold an election to elect five members to the CRRWC Board of Directors. As agreed to
12 by the parties in the *Nichols* case, the election was overseen by retired Lane County Judge
13 Gregory Foote. The election ended during the first week of November. On or about November
14 9, 2009, the new Board of Directors was seated, and all CRRWC employees, including the
15 general manager, resigned.

16 **CRRWC Is Not a Cooperative**

17 Based on the summary judgment ruling and the Limited Judgment by the Jefferson
18 County Circuit Court, CRRWC is not currently a cooperative. The Company continues to
19 operate only as a non-profit corporation organized under ORS Chapter 65.

20 On December 8, 2010, the CRRWC Board of Directors expressly considered whether it
21 would pursue reorganization as a cooperative. By a vote of 5-0, the new Board of Directors
22 declined to develop a plan of dissolution for the non-profit entity or to reorganize as a
23 cooperative.

24 Based on the foregoing, CRRWC believes that it is not exempt from PUC jurisdiction if
25 all other jurisdictional requirements are satisfied.
26

1 **The PUC Should Provide Oversight of CRRWC**

2 The basis for the PUC’s potential oversight of CRRWC stems from ORS 757.063,
3 which allows the PUC to exercise jurisdiction over an association that furnishes water if 20
4 percent of the association’s members petition the PUC to do so. CRRWC does not believe that
5 the number of CRRWC members that petitioned the PUC for oversight is in dispute.

6 CRRWC believes that reasons remain for the PUC to exercise jurisdiction over
7 CRRWC. CRRWC acknowledges that many of the reasons the PUC identified as reasons that it
8 *should* provide oversight were based on several actions of CRRWC’s previous management and
9 the potentially lax oversight exercised by CRRWC’s previous Board of Directors. However,
10 the specific intent of each of the nearly 400 individuals that petitioned the PUC cannot be
11 known, and the only conclusion to be drawn is that the requisite number of individuals believed
12 that oversight is necessary.

13 As noted above, the new CRRWC Board of Directors declined to pursue reorganization
14 as a cooperative. During deliberation of that issue, individual directors expressed a belief that
15 PUC oversight is still necessary. This belief is based in part on the fact that CRRWC is,
16 essentially, starting many aspects of its operations from scratch. The long-term financial
17 stability of the company is still unknown and the new Board of Directors continues to encounter
18 challenges in maintaining the water system as a result of the condition in which it was left by
19 the prior management.

20 CRRWC’s new Board of Directors feels strongly that it is in the best interest of the
21 CRRWC’s *members* if the water system is operated in the reasonable and prudent manner the
22 PUC requires. PUC oversight will serve to create the framework for ensuring such reasonable
23 and prudent operations as the company continues to transition to new management. PUC
24 oversight will also ensure a long-term approach to responsible management that will endure
25 even as the make-up of the new Board of Directors changes over the coming years. Finally,
26

1 PUC oversight will instill confidence in the CRRWC membership that oversight of their water
2 system is a constant and real aspect of the system each member pays into.

3 **Conclusion**

4 As noted above, CRRWC believes that there are reasons for the PUC to exercise
5 jurisdiction over the company and that the company is not immune from such jurisdiction on the
6 formerly-alleged basis that it is a cooperative. CRRWC requests that it be given the opportunity
7 to work with PUC Staff to resolve this matter without a hearing and in a spirit of cooperation
8 that will benefit the CRRWC members and the PUC.

9
10 DATED: December 30, 2010

11
12 Respectfully Submitted,

13 CABLE HUSTON BENEDICT
14 HAAGENSEN & LLOYD

15 /s/ Tommy A. Brooks
16 Tommy A. Brooks
17 Attorneys for Crooked River
18 Ranch Water Company

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing to be served via electronic mail and, where paper service is not waived, via postage-paid first class mail upon the following parties of record:

<p>CROOKED RIVER RANCH HOA</p> <p>Frank Ferraro President 5195 SW Clubhouse Road Crooked River, OR 97760</p>	<p>CROOKED RIVER RANCH WATER CO</p> <p>Brian Elliot President, Board of Directors PMP 313 – 1604 S Hwy 97, #2 Redmond, OR 97756</p>
<p>DEPARTMENT OF JUSTICE</p> <p>Jason W. Jones Assistant Attorney General Business Activities Section 1162 Court Street, NE Salem, OR 97301-4096</p>	<p>HARRANG LONG GARY RUDNICK</p> <p>C. Robert Steringer 1001 SW Fifth Avenue, 16th Floor Portland, Oregon 97204</p>
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DATED: December 30, 2010

CABLE HUSTON BENEDICT
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/s/ Tommy A. Brooks _____
Tommy A. Brooks, OSB No. 076071
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