

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UW120

In the Matter of

**CROOKED RIVER RANCH WATER
COMPANY,**

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

MOTION TO DISMISS

I. MOTION

Pursuant to OAR 860-011-0000(3) and ORCP 21, Defendant Crooked River Ranch Water Company (CRRWC) moves to dismiss the Complaint because (1) the Oregon Public Utility Commission (PUC) lacks subject matter jurisdiction; (2) PUC lacks regulatory authority over CRRWC; and (3) a PUC's complaint failed to state a claim.

II. POINTS AND AUTHORITIES

Complainant asserts that Defendants failed to comply with various PUC Orders, including portions of Order No. 07-527, dated November 29, 2007, Order No. 08-177, dated March 24, 2008. Defendants are not bound by those orders because CRRWC is not subject to PUC's regulatory authority.

CRRWC is not a public utility and PUC has never asserted that it is such an entity. PUC has maintained that it has regulatory authority over CRRWC pursuant to ORS

757.063. PUC does not have regulatory authority over CRRWC pursuant to that statute. CRRWC is not subject to ORS 757.063 because CRRWC is, and was, a cooperative organized under ORS Chapter 62. In addition, PUC did not receive valid petitions from 20% of PUC's members. Therefore, PUC lacks subject matter jurisdiction, PUC lacks regulatory authority, and PUC failed to state a claim.

A. PUC does not have regulatory authority under ORS 757.063.

1. CRRWC is not subject to ORS 757.063 because it is a cooperative.

By its express terms, ORS 757.063 does not apply to cooperatives organized under Chapter 62 of the Oregon Revised Statutes.

“(1) Any association of individuals that furnishes water to members of the association is subject to regulation in the same manner as provided by this chapter for public utilities, and must pay the fee provided for in ORS 756.310, if 20 percent or more of the members of the association file a petition with the Public Utility Commission requesting that the association be subject to such regulation.”

“(2) The provisions of this section apply to an association of individuals even if the association does not furnish water directly to or for the public. The provisions of this section do not apply to any cooperative formed under ORS chapter 62 or to any public body as defined by ORS 174.109.”

ORS 757.063. The statute could not be more clear: A cooperative formed under ORS chapter 62 is not subject to PUC regulation.

CRRWC registered with the state as a cooperative July 5, 2006. Declaration of Timothy R. Gassner (“Gassner Decl.”) Ex. 1 and 2. PUC did not assert jurisdiction over CRRWC until November 20, 2006, when PUC issued Order No. 06-642. Therefore, at the time PUC asserted jurisdiction, CRRWC was exempt from the ORS 757.063.

Moreover, CRRWC was a cooperative at the time that PUC issued Order Nos. 07-527 and 08-177, the orders upon which PUC bases its complaint. Those orders were void because, under ORS 757.063, PUC did not have authority to regulate CRRWC at that time.

2. Additionally, PUC did not receive valid petitions from 20 percent of CRRWC's members.

PUC accepted and counted petitions requesting regulation from CRRWC members that did not contain telephone numbers. (Staff Ex. 101 in PUC Case No. WJ 8). Telephone numbers are specifically required by the administrative rule. PUC is bound by its own administrative rule and has no authority to waive the rule.

a. PUC's administrative rule requires that petitions requesting regulation of a water association contain the petitioning members' telephone numbers.

By statute, members of an unregulated water association can petition PUC for regulation. ORS 757.063(1). The statute provides no requirements for the form of the petitions submitted to PUC.

PUC adopted an administrative rule detailing requirements for petitions requesting regulation. OAR 860-036-0412. The rule requires that petitions be from current members of the water association and that the petitions be signed, in writing, state their purpose, and contain certain information from the petitioner - name, address, and telephone number. OAR 860-036-0412(2)&(3). The rule also provides that PUC will consider individual letters submitted if they meet the requirements for petitions and

makes regulation mandatory if PUC receives petitions from 20 percent of the association members. OAR 860-036-0412(4)&(5).

The telephone requirement is explicit in the rule: “Petitions must * * * include the member’s * * * telephone number * * * .” OAR 860-036-0412(3). In this case, the construction is straightforward. The text of the rule is clear – telephone numbers are mandatory.

b. PUC is bound by its administrative rules and is not permitted to “waive” its petition rule in this case.

PUC is bound by its rule and does not have authority to waive the telephone number requirement. “It is axiomatic that an agency must follow its own rules.” *Peek v. Thompson*, 160 Or App 260, 264-65, 980 P2d 178 (en banc), *rev. dismissed*, 329 Or 563 (1999). Once an agency adopts a rule pursuant to its delegated authority, the rule is binding as if the legislature had acted. *Harsh Inv. Corp. v. State*, 88 Or App 151, 157, 744 P2d 588 (1987). An agency continues to be bound by its established rules until it changes them pursuant to procedures required by the Oregon Administrative Procedures Act (“APA”). *Burke v. Children’s Servs. Div.*, 288 Or 533, 538, 607 P2d 141 (1980). PUC has not changed the requirement for petitions through APA rulemaking procedures and it therefore is bound by its rule.

In light of the mandatory terminology that petitions must contain telephone numbers, PUC had no discretion to include petitions that do not meet that requirement when it determines whether the 20 percent threshold has been met.

III. CONCLUSION

PUC lacks regulatory authority over CRRWC. Therefore, the orders upon which PUC's complaint is based were void and PUC lacks the authority or jurisdiction to bring a complaint against CRRWC for alleged violation of those orders. Accordingly, the complaint should be dismissed.

Dated: May 21, 2008.

GLENN SITES REEDER & GASSNER LLP

/s/

Timothy R. Gassner, OSB #023090

CERTIFICATE OF FILING AND SERVICE

I certify that on May 21, 2008, I filed the original of the foregoing MOTION TO DISMISS via e-mail addressed to the following:

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Crooked River Ranch Water Co.
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President, Board of Directors
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Redmond OR 97756

Crooked River Ranch Water Co.
James R. Rooks
General Manager
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Terrebonne, OR 97760

GLENN SITES REEDER & GASSNER LLP

/s/

Timothy R. Gassner, OSB #023090
Of Attorneys for Petitioner, Crooked River
Ranch Water Company

BEFORE THE PUBLIC UTILITY COMMISSION

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UW120

In the Matter of

**CROOKED RIVER RANCH WATER
COMPANY,**

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

**DECLARATION OF TIMOTHY
R. GASSNER IN SUPPORT OF
MOTION TO DISMISS**

I, TIMOTHY R. GASSNER, declare and state as follows:

1. I am an attorney with the firm of Glenn Sites Reeder & Gassner, LLP., attorneys of record for Crooked River Ranch Water Company in the captioned matter.
2. Attached as Exhibit 1 to this declaration is a true and accurate copy of the Restated Articles of Incorporation for Crooked River Ranch Water Cooperative, filed with the Oregon Secretary of State on July 5, 2006.
3. Attached as Exhibit 2 to this declaration is a true and accurate copy of the Oregon Secretary of State's Business Name Search print-out for Crooked River Ranch Water Cooperative.

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

Dated: May 21, 2008.

s/ Timothy R. Gassner
Timothy R. Gassner

Restated

ARTICLES OF INCORPORATION

CROOKED RIVER RANCH WATER COOPERATIVE

FILED

JUL -5 2006

OREGON
SECRETARY OF STATE

PURPOSE FOR WHICH COOPERATIVES MAY BE ORGANIZED

Crooked River Ranch Water Cooperative is a non-profit organization organized for the express purpose of supplying potable and irrigation water to its members.

The Articles of Incorporation are the foundation of this cooperative; the Bylaws are the rules formulated by the Board of Directors and are administered by the management of the cooperative.

GENERAL POWERS

To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the cooperative is organized and in compliance with the Oregon Revised Statutes, now existing or hereafter amended (hereinafter referred to as ORS), and with a perpetual duration.

The Board may set rates regarding water service, water, water related service, and future capital expenditures. The Board may set charges for other services related to the operation of the water system. All members of the Cooperative shall pay their water bills on a monthly basis and such other charges as are due and payable upon receipt of the bill. Members who are owners of rental property shall be billed and responsible for payment of water used by said property.

Other powers may be granted the board as needed and specified in the bylaws.

I. COOPERATIVE NAME

Let it be known that from the date of filing forward, the company name shall be Crooked River Ranch Water Cooperative.

II. BYLAWS

The bylaws of the Crooked River Ranch Water Cooperative may contain any provisions for the regulation and management of the affairs of the cooperative, not inconsistent with the law or the articles of incorporation.

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III. **MEMBERSHIP**

Any person, firm, association, or corporation which owns property within the boundaries of Crooked River Ranch or other adjacent properties then served by the cooperative or must haul water to their property on the Crooked River Ranch, shall be eligible for membership in this cooperative, subject to acceptance of application, payment of the membership fee, and proof of property ownership.

Existing customers at the time the Articles of Incorporation are filed with the State of Oregon, will be considered existing and initial members and will not be required to pay a membership fee.

New customers, applying for membership after the date the Articles of Incorporation are filed with the State of Oregon, will be required to pay a non-refundable membership fee in the amount of \$150.

A certificate of membership will be issued to all members of the Crooked River Ranch Water Cooperative. The certificates will have no monetary value, and will not be transferrable, and this will be stated on the certificate. Each membership certificate entitles the member to one (1) vote, regardless of the number of properties or connections to the water system the member has.

The bylaws may authorize procedures by which the membership fee initially stated in the articles may be changed in accordance with the authority in ORS Chapter 62 without filing amended or restated articles.

IV. **CAPITAL STOCK; MEMBERSHIP STOCK**

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

V. **LIMITATION OF LIABILITY OF MEMBERS**

Except for debts lawfully contracted between a member and the cooperative, no member is liable for the acts or debts of the cooperative to an amount exceeding the sum remaining unpaid on the subscription of the member of the cooperative, and the sum remaining unpaid on such member's membership fee if such fee is required by the cooperative.

VI. **MEETINGS OF MEMBERS**

All meetings of the Crooked River Ranch Water Cooperative will be

held at the principle place of business of the cooperative, unless otherwise provided in the bylaws.

All member and special meetings will only be announced with the monthly billings, except where the ORS's may provide, or as provided for in the bylaws.

Members who abuse the petitioning process, as outlined in the bylaws, will be required to pay for all costs relating to the notification of a meeting and the mail-in ballot process if so required. Payment must be made in advance and the amount will be determined by the management of the cooperative as prescribed in the bylaws.

VII. VOTING BY MEMBERS

Members of the Crooked River Ranch Water Cooperative will be entitled to one (1) vote per membership certificate, regardless of the number of lots or service connections they have.

The board may cause to be submitted by mail-in ballot any question to be voted on at any member meeting, including the election of directors. In such event the secretary shall mail to each member along with the notice of the meeting, the ballot on each such question and a voting envelope. The ballot may be cast only in a sealed envelope which is authenticated by the member's signature. A vote so cast shall be counted as if the member were present and voting in person.

Members shall not vote by proxy; but a member that is a corporation, association or partnership may designate a representative to cast its vote. That designee must be a member of the cooperative.

The bylaws may set forth provisions, not inconsistent with the ORS's, relating to the methods and procedures for voting.

Whenever the articles require the vote of a greater proportion of the members than required by the ORS's, the articles shall control.

VIII. COMMITTEES

No committee may be formed in the cooperative except under the direction of the Articles of Incorporation. Formation of any committee in this cooperative can only be achieved by a mail-in ballot vote with a 51% affirmative vote of the entire membership. If 51% vote to appoint a committee, it is the Board of Directors responsibility to appoint the committee. No committee may exceed three members. Committees are to make all recommendations to the Board of Directors and any and all information is to be held confidential. It is the Board of Directors discretion whether to accept and act upon the committee's recommendation, or to put

it to the vote of the membership.

IX. **QUORUM OF MEMBERS**

In the Crooked River Ranch Water Cooperative, a quorum consists of 51% affirmative vote of the total members in matters of changes to the Articles of Incorporation; formation of committees, and removal of a director by members. For the purposes of amendments to the bylaws, 50% of the total membership must cast a ballot, and 2/3 of those must be in the affirmative in order for the amendment to be adopted. All voting shall take place by mail-in ballot for regular or special meetings.

X. **BOARD OF DIRECTORS**

Directors must be a member of the cooperative and a natural person.

The Board of Directors will consist of not less than three (3) and not more than five (5) directors. The quorum is the majority vote of the directors.

At least one director must be from the commercial district of Crooked River Ranch with an exception allowance as outlined in the bylaws.

A member of the cooperative shall be ineligible to serve on the Cooperative Board of Directors if that member shall at the same time be serving as an officer or director of either the Crooked River Ranch Club and Maintenance Association, the Crooked River Ranch Rural Fire Protection District, the Crooked River Ranch Special Road District, the Crooked River Ranch Chamber of Commerce, or any elected or appointed position with Jefferson County

Any qualified member of the Crooked River Ranch Water Cooperative may apply for a Board of Director position following the process outlined in the bylaws..

The members may remove one or more directors elected by them only with cause, as outlined in the bylaws, and the board member(s) have had an opportunity to respond to the allegations.

A quorum shall be fifty-one percent (51%) affirmative vote of the entire membership of the Cooperative and shall be required at a duly called annual, general or special meeting before transaction of business on which the membership may vote, except for the election of directors, who shall be elected by a majority of mailed-in ballots.

XI. **DIRECTORS' MEETING BY CONFERENCE TELEPHONE OR SIMILAR COMMUNICATIONS EQUIPMENT**

Any meeting held by the Board of Directors or a committee appointed

by the Board of Directors, that is held by means of conference telephone or similar communications equipment, must be held at the principle place of business of the cooperative and may be recorded.

XII **TAKING ACTION WITHOUT MEETING**

Any action taken by the members without a meeting of the members must require a 51% affirmative vote of the entire membership. The voting requirements as outlined in these articles and the bylaws must be followed.

XIII **VOTING REQUIREMENTS OF ARTICLES**

The articles of incorporation of the cooperative requires 51% affirmative vote of all members except for dissolution of company, which will require 2/3 affirmative vote of the entire membership.

XIV **APPORTIONMENT AND DISTRIBUTION OF NET PROCEEDS OR SAVINGS OR NET LOSSES**

No proceeds from this non-profit cooperative will be apportioned to any member as all proceeds will go to the continuing operation of this cooperative.

XV **PAYMENTS IN NAME OF DECEASED OWNER OF CAPITAL CREDITS OR RETAINS IN COOPERATIVE**

Each member who has a membership certificate is entitled to one (1) vote in the cooperative. These memberships are non-transferrable. If, in the event the member should be deceased, their surviving beneficiary must complete a new application form for a new membership certificate. The existing membership will be deleted. If the surviving beneficiary is the spouse or partner or a natural child, the \$150 membership fee will be waived. All other beneficiaries will be required to pay the membership fee. Exceptions may be granted on an individual basis upon application to the Board of Directors, as outlined in the bylaws.

XVI **SALE OR OTHER DISPOSITION OF ENTIRE ASSETS**

A "substantial" part of this company would consist of 75% or more of its assets, and must be voted on and approved by 2/3 of the members, in the event of a sale or disposition of the cooperatives assets.

XVII **AUTHORITY TO INDEMNIFY DIRECTOR**

All directors and employees of this cooperative shall be indemnified as outlined in the ORS's.

ADVANCE FOR EXPENSES

Any or all reimbursements for reasonable expenses incurred by a director may be paid for by this cooperative by resolution of the Board of Directors. Advancement limits and procedures will be identified in the bylaws.

XVIII **RIGHT TO AMEND ARTICLES OF INCORPORATION**

The Board of Directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote of the members of the cooperative following the procedures outlined in the ORS's. A quorum vote of 51% of the entire membership voting in favor of the amendment is required to determine if the amendment shall be adopted.

XIX **RESTATED ARTICLES**

In order to restate the articles of this cooperative, a mail-in ballot vote with a 51% affirmative vote of the entire membership shall be required.

XX **VOLUNTARY DISSOLUTION/REORGANIZATION BY ACT OF COOPERATIVE**

In order for the Crooked River Ranch Water Cooperative to voluntarily reorganize or dissolve, the Board of Directors shall adopt a resolution directing that the question of reorganization/dissolution be submitted to a vote of the members, following the procedures outlined in the ORS's. Adoption of the resolution shall be by affirmative vote of two-thirds (2/3) of the membership.

No part of the net earnings of the cooperative shall inure to the benefit of any member, trustee, officer, or private individual, except that reasonable compensation may be paid for services rendered to or for the cooperative affecting one or more of its purposes, and no member, trustee, officer or any private individual shall be entitled to share in the distribution of any of the cooperative assets on dissolution of the cooperative. If the cooperative should be dissolved, then control of the assets and system shall revert to Deschutes Valley Water District, a domestic water district of the State of

Oregon, for an interim period of time while reorganization of the Crooked River Ranch Water Cooperative is being developed.

CROOKED RIVER RANCH WATER CO.

BOARD OF DIRECTORS

XXI

Rick Keen, Director
PO Box 1963
Redmond, OR 97756

Brian Elliott, President
PMB 313, 1604 S. Hwy 97, #2
Redmond, OR 97756

John Combs, Director
8430 SW Crescent Pl.
Crooked River Ranch, OR 97760

Richard Miller, Secretary/Treasurer
PO Box 1508
Terrebonne, OR 97760


Randy Scott, Director
PO Box 62
Terrebonne, OR 97760

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369998-94


CROOKED RIVER RANCH WATER COOPERATIVE
ARTICLES OF INCORPORATION

SIGNATURE PAGE




Brian Elliott, President

6/29/06
Date



Rick Keen, Vice President

6/29/06
Date



Richard Miller, Secretary/Treasurer

6/29/06
Date



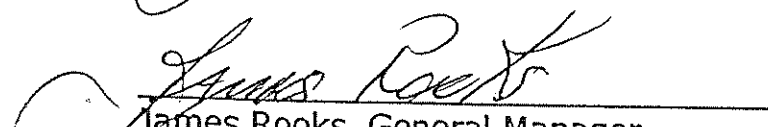
John Combs, Director

6-29-06
Date



Randy Scott, Director

6-29-06
Date



James Rooks, General Manager

6-29-06
Date

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OREGON SECRETARY OF STATE
► Corporation Division

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Business Name Search

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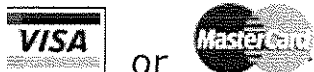
[Printer Friendly](#)

Business Entity Data

05-21-2008
14:39

Registry Nbr	Entity Type	Entity Status	Jurisdiction	Registry Date	Duration Date	Renewal Date
369998-94	DCOOP	ACT	OREGON	07-05-2006		07-05-2008
Entity Name	CROOKED RIVER RANCH WATER COOPERATIVE					
Foreign Name						

This Business Entity is due for renewal and can be renewed online using



or

Online Renewal Instructions:

1. Please verify all information is correct.
2. To change your business's information, use this form: [PDF](#)
3. Then

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[New Search](#)

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Associated Names

Type	PPB	PRINCIPAL PLACE OF BUSINESS		
Addr 1	CROOKED RIVER RANCH			
Addr 2	PO BOX 2319			
CSZ	TERREBONNE	OR	97760	Country UNITED STATES OF AMERICA

Please click here for general information about registered agents and service of process.

Type	AGT	REGISTERED AGENT	Start Date	07-05-2006	Resign Date	
Name	JAMES ROOKS					
Addr 1	13845 SW COMMERCIAL LP					
Addr 2						
CSZ	CROOKED RIVER RANCH	OR	97760	Country	UNITED STATES OF AMERICA	

Type	MAL	MAILING ADDRESS		
Addr 1	PO BOX 1388			
Addr 2				
CSZ	CROOKED RIVER RANCH	OR	97760	Country UNITED STATES OF AMERICA

Type	PRE	PRESIDENT			Resign Date	
Name	BRIAN		ELLIOTT			
Addr 1	PO BOX 2319					
Addr 2						
CSZ	TERREBONNE	OR	97760		Country	UNITED STATES OF AMERICA

Type	SEC	SECRETARY			Resign Date	
Name	RICHARD		MILLER			
Addr 1	PO BOX 2319					
Addr 2						
CSZ	TERREBONNE	OR	97760		Country	UNITED STATES OF AMERICA

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Business Entity Name	Name Type	Name Status	Start Date	End Date
CROOKED RIVER RANCH WATER COOPERATIVE	EN	CUR	07-05-2006	

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Image Date	Action	Transaction Date	Effective Date	Status	Name/Agent Change	Dissolved By
06-27-2007	AMENDED ANNUAL REPORT	06-27-2007		FI		
07-05-2006	RESTATED ARTICLES	07-05-2006		FI		
07-05-2006	ARTICLES OF INCORPORATION	07-05-2006		FI	Agent	

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CERTIFICATE OF FILING AND SERVICE

I certify that on May ___, 2008, I filed the original of the foregoing DECLARATION OF TIMOTHY R. GASSNER IN SUPPORT OF MOTION TO DISMISS via e-mail addressed to the following:

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GLENN SITES REEDER & GASSNER P.C.

/s Timothy R. Gassner
Timothy R. Gassner, OSB #023090
Of Attorneys for Petitioner, Crooked River
Ranch Water Company