

1 **BEFORE THE PUBLIC UTILITY COMMISSION**  
2 **OF OREGON**

3 UM 1381

4 THE PUBLIC UTILITY COMMISSION OF  
5 OREGON,

6 Complainant,

7 v.

8 CROOKED RIVER RANCH WATER  
9 COMPANY; and JAMES R. ROOKS, Director,  
10 RANDOLPH M. SCOTT, Director, BRIAN  
11 ELLIOTT, President, RICHARD A. KEEN,  
12 Vice President, and RICHARD J. MILLER,  
13 Secretary/Treasurer, in their capacities as the  
14 CROOKED RIVER RANCH WATER  
15 COMPANY BOARD OF DIRECTORS,

16 Defendants.

STAFF'S MOTION FOR SUMMARY  
DISPOSITION

17 **INTRODUCTION**

18 On May 1, 2008, the Public Utility Commission of Oregon ("Complainant") filed a  
19 complaint for civil penalties pursuant to ORS 757.994 ("Complaint"). On May 21, 2008, the  
20 Crooked River Ranch Water Company and its individual members of the board of directors  
21 ("Defendants") served an answer and affirmative defenses to the complaint. On June 11, 2008, a  
22 prehearing conference was held in Redmond, Oregon.

23 **STANDARD OF REVIEW**

24 Summary disposition is appropriate when there are no genuine issues of material fact and  
25 the moving party is entitled to judgment as a matter of law. *See Portland General Elec. Co. v.*  
26 *Oregon Energy Co.*, UC 315, Order No. 98-238, 1998 WL 412484 (OPUC June 12, 1998). In  
motions for summary disposition, the Oregon Rules of Civil Procedure Rule 47 standard shall  
apply. *See In re PacifiCorp*, UE 111, Order No. 00-090, 2000 WL 362998 at 2 (OPUC Feb. 14,  
2000). Summary disposition should be granted where the pleadings, depositions, affidavits,  
declarations, and admissions on file show that there is no genuine issue as to any material fact

1 and that the moving party is entitled to disposition as a matter of law. ORCP 47C; *Advanced*  
2 *Telecom Group Inc. v. U.S. West Communications, Inc.*, UC 425/UC 426, Order No. 99-438.

3 DISCUSSION

4 1. First Alleged Violation

5 Defendants admit allegation 1 of the Complaint. Defendants respond to allegation 2 of  
6 the Complaint by admitting that Crooked River Ranch Water Company (“CRRWC”) is governed  
7 by a collective Board of Directors. However, Defendants deny that CRRWC is operated by  
8 individual members of the Board of Directors and that the Board of Directors is a proper party to  
9 this suit either individually or collectively. Whether the Board and its individual members are a  
10 proper party to this suit is a legal question. Furthermore, the Commission has already found  
11 them to be a proper party. *See* Order No. 08-177 at 7-8.

12 Defendants deny allegation 3 of the Complaint by stating that it is without sufficient  
13 information to either admit or deny the allegation because the content does not conform to the  
14 proper form and substance of an allegation in a civil complaint. Regardless of Defendants’  
15 answer to allegation 3 of the Complaint, the Defendant and counsel for Defendant appeared at  
16 the prehearing conference in this matter. While all of the individual Board members may not  
17 have individually appeared, counsel appeared on behalf of Defendants. There is no issue of  
18 genuine issue of material fact surrounding allegation 3 of the Complaint.

19 Defendants deny allegation 4 of the Complaint, which states that the Commission has  
20 jurisdiction to impose civil penalties on the Defendants pursuant to ORS 757.994. ORS  
21 757.994(1) provides in part that “a person who violates any . . . order of the . . . Commission  
22 related to water utilities is subject to a civil penalty of not more than \$500 for each violation.” In  
23 Order No. 06-642, the Commission asserted jurisdiction over Crooked River Ranch Water  
24 Company.<sup>1</sup> While the Commission decision asserting jurisdiction has been appealed to the

25 \_\_\_\_\_  
26 <sup>1</sup>Pursuant to OAR 860-014-0050, Staff respectfully requests that the Commission take official notice of the  
Commission Orders and filed documents referenced herein.

1 Oregon Court of Appeals, the Crooked River Ranch Water Company remains legally under the  
2 jurisdiction of the Commission. There is no genuine issue of material fact related to allegation 4.

3 The Defendants admit allegations 5 through 9 of the Complaint. Allegation 5 states that,  
4 on November 29, 2007, in Commission Order No. 07-527, the Commission ordered that  
5 Defendants:

6 4. No later than 30 days from the date of this order, Crooked River Ranch Water  
7 Company shall submit any contracts between itself and its General Manager Mr.  
8 Rooks and members of the Rooks' family, along with supporting testimony for  
Commission approval.

9 Allegation 6 states that, on January 28, 2008, Defendants provided a two-page  
10 Declaration of James Rooks. Allegation 7 states that, on March 7, 2008, Commission Staff filed  
11 a Motion alleging that Defendants had not complied with ordering paragraph 4 of Commission  
12 Order No. 07-527. Allegation 8 states that, on March 13, 2008, Defendants filed a response to  
13 Staff's motion and on March 20, 2008, Defendants filed a supplemental response to Staff's  
14 motion regarding violations of Order No. 07-527. Allegation 9 states that, on March 24, 2008, in  
15 Commission Order No. 08-177, the Commission concluded that Defendants failed to comply  
16 with ordering paragraph 4 of Order No. 07-527, and again ordered Defendants to comply with  
17 Order No.07-527.

18 Defendants deny allegation 10 of the Complaint, which states that on April 8, 2008,  
19 Defendants filed a response to Order No. 08-177 and that Defendant's response remains  
20 noncompliant with Commission Order Nos. 07-527 and 08-177. Defendants did file a Response  
21 to Order No. 08-177. There is no issue of genuine fact surrounding the first sentence of  
22 allegation 10 of the Complaint.

23 Defendants' deny the second sentence of allegation 10 of the Complaint. However, the  
24 Commission determined in Order No. 08-243 that Defendants were noncompliant with  
25 Commission Orders Nos. 07-527 and 08-177. The Defendants have not challenged – through  
26 reconsideration or appeal – that Commission decision. As a result, denial of the second sentence

1 of allegation 10 must be considered an inappropriate collateral attack on Orders No. 08-177 and  
2 08-243.

3 Generally, a decision on an issue - in this case noncompliance with Commission orders -  
4 may preclude relitigation of the issue in another proceeding so long as five requirements are met.  
5 Those requirements are: (1) the issue in the two proceedings are identical; (2) the issue was  
6 actually litigated and was essential to a final decision on the merits in the prior proceeding; (3)  
7 the party sought to be precluded has had a full and fair opportunity to be heard on the issue; (4)  
8 the party sought to be precluded was a party or was in privity with a party to the prior  
9 proceeding; (5) the prior proceeding was the type to which the court will give preclusive effect.  
10 *See Nelson v. Emerald People's Utility Dist.*, 318 Or 99, 104, 862 P2d 1293 (1993).

11 These five requirements are met and Defendants should not be allowed to collaterally  
12 attack previous Commission decisions on the identical factual issue now presented in a  
13 complaint. The issue alleged is that Defendants were noncompliant with ordering paragraph 4 of  
14 Commission Order No. 07-527, which has previously been determined. That factual issue was  
15 litigated and essential to the final decision on the merits in the previous orders. Furthermore,  
16 Defendants had a full and fair opportunity to be heard on the issue of compliance and are  
17 certainly in privity. Finally, the previous proceedings are the type that will be given preclusive  
18 effect because: (1) the Commission's previous procedures were "sufficiently formal and  
19 comprehensive;" (2) the Commission's previous procedures were "trustworthy," (3) issue  
20 preclusion would "facilitate prompt, orderly and fair problem resolution;" and (4) the "same  
21 quality of proceedings and the opportunity to litigate is present in both proceedings." *Id.*

22 Defendants deny allegation 11 of the Complaint, which provides that beginning on  
23 December 31, 2007, Defendants were in violation of ordering paragraph 4 of Order No. 07-527.  
24 Allegation 11 further provides that, pursuant to ORS 757.994, Defendants have been in  
25 continuous violation of ordering paragraph 4 of Order No. 07-527 for 121 days and counting  
26 from April 30, 2008, with each day's violation subject to a civil penalty of up to \$500 per day.

1           Since the filing of the Complaint, the Commission entered Order No. 08-243 on May 2,  
2 2008. In that Order, the Commission again found (as they also did in Order No. 08-177) that  
3 Complainant had failed to comply with ordering paragraph 4 of Commission Order No. 07-527.  
4 On May 19, 2008, Defendants filed a response and motion for reconsideration/clarification. On  
5 June 3, 2008, Defendants filed a supplemental response to Order No. 08-243.

6           To the extent that Defendants deny they were in continuous violation of ordering  
7 paragraph 4 of Order No. 07-527 for at least 139 days,<sup>2</sup> they are inappropriately collaterally  
8 attacking Commission Order Nos. 08-177<sup>3</sup> and 08-243. There is no genuine issue of material  
9 fact – without an inappropriate collateral attack on Orders No. 08-177 and 08-243 – on the issue  
10 of Defendants being in violation of ordering paragraph 4 of Order No. 07-527 for at least 139  
11 days.

12           There does remain a factual issue regarding whether Defendants' May 19, 2008, response  
13 and Defendants' June 3, 2008, supplemental response comply with Order No. 08-243. Stated  
14 another way, there remains a factual issue of whether the Defendants became compliant with  
15 ordering paragraph number 4 of Order No. 07-527 on day 140 (May 19, 2008), day 155 (June 3,  
16 2008), or remain noncompliant. Assuming that the Commission does not issue a decision on this  
17 issue prior to the filing of testimony, Staff will file testimony on this factual issue.

18           Defendants deny allegation 12 of the Complaint, which states that, as of May 1, 2008,  
19 Defendants are subject to a civil penalty of up to \$60,500 for violation of ordering paragraph 4 of  
20 Order No. 07-527. Allegation 12 is a derivative calculation from allegation 11. As stated in the  
21 discussion regarding allegation 11, the Commission has found that Defendants have been in  
22 violation of ordering paragraph 4 of Order No. 07-527 for at least 139 days, which would result  
23 in a civil penalty of up to \$69,500 (18 additional days at \$500 per day). There is no genuine

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24 <sup>2</sup> The Complaint states 121 days and counting from April 30, 2008. The first filing that Defendants could argue was  
25 responsive was on May 19, 2008, at least an additional 18 days of violation.

26 <sup>3</sup> The Commission granted partial reconsideration of certain aspects of Order No. 08-177 regarding the distribution  
of the special assessment fund monies. That portion of the partial reconsideration is not pertinent to the discussion  
here.

1 issue of material fact – without an inappropriate collateral attack on Orders No. 08-177 and  
2 08-243 – on whether Defendants are subject to a civil penalty of \$69,500 for violation of  
3 ordering paragraph 4 of Order No. 07-527. Staff will file testimony on the factual issue of  
4 whether the Defendants were, or remain, in violation for a longer period of time subjecting them  
5 to further civil penalties.

6 The Defendants deny allegation 13 of the Complaint, which states that, as stated in Order  
7 No. 08-177 and based upon the unique corporate structure of Crooked River Ranch Water  
8 Company, the Board of Directors members are jointly and severally liable for payment of this  
9 penalty amount, which is now updated to at least \$69,500, as discussed above. The Commission  
10 very clearly stated that the Board Members themselves are jointly and severally responsible for  
11 payment of any penalties. *See* Order No. 01-177 at 7-8. Again, there is no genuine issue of  
12 material fact without an inappropriate collateral attack on Order No. 08-177 (which also cites  
13 Order No. 07-527). Furthermore, any arguments regarding jurisdiction to hold Board Members  
14 jointly and severally responsible for penalties is purely a legal issue involving the construction of  
15 ORS 757.994 and ORS 756.010.

16 Defendants deny allegation 14 of the Complaint, which states that, as provided for in  
17 ORS 757.994, the penalties sought under this complaint should be used for the benefit of the  
18 customers of Crooked River Ranch Water Company. ORS 757.994 unambiguously allows the  
19 Commission to use the penalties for the benefit of the customers of Crooked River Ranch Water  
20 Company. There are no issues of fact, only law. To the extent that Defendants deny allegation  
21 14 for the purpose of arguing that the Commission should not use its legal authority to employ  
22 the penalties for the benefit of the customers, Staff will provide testimony on why it is  
23 appropriate to use the penalties for the benefit of the customers.

24 Defendants deny allegation 15 of the Complaint, which re-alleges allegations 1-4 of the  
25 Complaint. Staff incorporates its discussion, above, regarding allegations 1-4.

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1           2. Second Alleged Violation

2           The Defendants admit allegations 16 through 20 of the Complaint. Allegation 16 states  
3 that, on November 29, 2007, in Commission Order No. 07-527, the Commission ordered that  
4 Defendants:

5           5. No later than 30 days from the date of this order, Crooked River Ranch Water  
6 Company shall file an accounting of its collection of funds through its special  
7 assessment surcharge and the disposition of such funds, from the inception of the  
fund to the present.

8           Allegation 17 states that on January 28, 2008, Defendants provided a two-page  
9 Declaration of James Rooks. Allegation 18 states that, on March 7, 2008, Commission Staff  
10 filed a Motion alleging that Defendants had not complied with ordering paragraph 5 of  
11 Commission Order No. 07-527. Allegation 19 states that, on March 13, 2008, Defendants filed a  
12 response to Staff's motion, and on March, 20, 2008, Defendants filed a supplemental response to  
13 Staff's motion regarding violations of Order No. 07-527. Allegation 20 states that, on March 24,  
14 2008, in Commission Order No. 08-177, the Commission concluded that Defendants failed to  
15 comply with ordering paragraph 5 of Order No. 07-527, and again ordered Defendants to comply  
16 with Order No.07-527.

17           Defendants deny allegation 21 of the Complaint, which states that, on April 8, 2008  
18 Defendants filed a response to Order No. 08-177, and that Defendants' response remains  
19 noncompliant with Commission Order Nos. 07-527 and 08-177. Defendants did file a Response  
20 to Order No. 08-177, on April 8, 2008. There is no genuine issue of material fact surrounding  
21 the first sentence of allegation 21 of the Complaint.

22           Defendants deny the second sentence of allegation 21 of the Complaint. However, the  
23 Commission determined in Order No. 08-243 that Defendants were noncompliant with  
24 Commission Orders Nos. 07-527 and 08-177. The Defendants have not challenged that  
25 Commission decision through reconsideration or appeal. As a result, denial of the second  
26

1 sentence of allegation 21 must be considered an inappropriate collateral attack on Orders No. 08-  
2 177 and 08-243.

3 Generally, a decision on an issue - in this case noncompliance with Commission orders -  
4 may preclude relitigation of the issue in another proceeding so long as five requirements are met.  
5 *See* above at pg. 4.

6 The five requirements are met and Defendants should not be allowed to collaterally  
7 attack previous Commission decisions on the identical factual issue now presented in a  
8 complaint. The issue alleged is that Defendants were noncompliant with ordering paragraph 4 of  
9 Commission Order No. 07-527, which has previously been determined. That factual issue was  
10 litigated and essential to the final decision on the merits in the previous orders. Furthermore,  
11 Defendants had a full and fair opportunity to be heard on the issue of compliance and are  
12 certainly in privity. Finally, the previous proceedings are the type that will be given preclusive  
13 effect. *See* above.

14 Defendants deny allegation 22 of the Complaint, which provides that beginning on  
15 December 31, 2007, Defendants were in violation of ordering paragraph 5 of Order No. 07-527.  
16 Allegation 22 further provides that, pursuant to ORS 757.994, Defendants have been in  
17 continuous violation of ordering paragraph 5 of Order No. 07-527 for 121 days and counting  
18 from April 30, 2008, with each day's violation subject to a civil penalty of up to \$500 per day.

19 Since the filing of the Complaint, the Commission entered Order No. 08-243 on May 2,  
20 2008. In that Order, the Commission again found (as they also did in Order No. 08-177) that  
21 Defendant had failed to comply with ordering paragraph 5 of Commission Order No. 07-527.  
22 On May 19, 2008, Defendants filed a response and motion for reconsideration/clarification. On  
23 June 3, 2008, Defendants filed a supplemental response to Order No. 08-243.

24 To the extent that Defendants deny they were in continuous violation of ordering  
25 paragraph 5 of Order No. 07-527 for at least 139 days,<sup>4</sup> they are inappropriately collaterally

26 <sup>4</sup> The Complaint states 121 days and counting from April 30, 2008. The first filing that Defendants could argue was responsive was on May 19, 2008, at least an additional 18 days of violation.



1 attacking Commission Order Nos. 08-177 and 08-243. There is no genuine issue of material fact  
2 – without an inappropriate collateral attack on Orders No. 08-177 and 08-243 – on whether  
3 Defendants were in violation of ordering paragraph 5 of Order No. 07-527 for at least 139 days.

4 There does remain a factual issue regarding whether Defendants’ May 19, 2008, response  
5 and Defendants’ June 3, 2008, supplemental response comply with Order No. 08-243. Stated  
6 another way, there remains a factual issue of whether the Defendants became compliant with  
7 ordering paragraph number 5 of Order No. 07-527 on day 140 (May 19, 2008), day 155 (June 3,  
8 2008), or remain noncompliant. Assuming that the Commission does not issue a decision of this  
9 issue prior to the filing of testimony, Staff will file testimony on this factual issue.

10 Defendants deny allegation 23 of the Complaint, which states that, as of May 1, 2008,  
11 Defendants are subject to a civil penalty of up to \$60,500 for violation of ordering paragraph 5 of  
12 Order No. 07-527. Allegation 23 is a derivative calculation from allegation 22. As stated in the  
13 discussion regarding allegation 22, the Commission has found that Defendants have been in  
14 violation of ordering paragraph 5 of Order No. 07-527 for at least 139 days, which results in a  
15 civil penalty of up to \$69,500 (18 additional days at \$500 per day). There is no genuine issue of  
16 material fact – without an inappropriate collateral attack on Orders No. 08-177 and 08-243 – that  
17 Defendants are subject to a civil penalty of \$69,500 for violation of ordering paragraph 5 of  
18 Order No. 07-527. Staff will file testimony on the factual issue of whether the Defendants were,  
19 or remain, in violation for a longer period of time subjecting them to further civil penalties.

20 The Defendants deny allegation 24 of the Complaint, which states that, as stated in Order  
21 No. 08-177, and based upon the unique corporate structure of Crooked River Ranch Water  
22 Company, the Board of Directors members are jointly and severally liable for payment of this  
23 penalty amount, which is now updated to at least \$69,500, as discussed above. The Commission  
24 very clearly stated that the Board Members themselves are jointly and severally responsible for  
25 payment of any penalties. *See* Order No. 08-177 at 7-8. Again, there is no genuine issue of  
26

1 material fact without an inappropriate collateral attack on Order No. 08-177 (which also cites  
2 Order No. 07-527). Furthermore, any arguments regarding jurisdiction to hold Board Members  
3 jointly and severally responsible for penalties is purely a legal issue involving the construction of  
4 ORS 757.994 and ORS 756.010.

5 Defendants deny allegation 25 of the Complaint, which states that, as provided for in  
6 ORS 757.994, the penalties sought under this complaint should be used for the benefit of the  
7 customers of Crooked River Ranch Water Company. ORS 757.994 unambiguously allows the  
8 Commission to use the penalties for the benefit of the customers of Crooked River Ranch Water  
9 Company. There are no issues of fact, only law. To the extent that Defendants deny allegation  
10 25 for the purpose of arguing that the Commission should not use its legal authority to employ  
11 the penalties for the benefit of the customers, Staff will provide testimony on why it is  
12 appropriate to use the penalties for the benefit of the customers.

13 3. Third Alleged Violation

14 Defendants neither admit nor deny allegation 26 of the Complaint, which re-alleges  
15 allegations 1-4 of the Complaint. For purposes of the third alleged violation, Defendants should  
16 be found to have admitted allegation 26 by its failure to deny. Alternatively, Staff incorporates  
17 its discussion, above, regarding allegations 1-4.

18 The Defendants admit allegations 27 through 32 of the Complaint. Allegation 27 states  
19 that, on November 29, 2007, in Commission Order No. 07-527, the Commission ordered that  
20 Defendants:

21 6. No later than 30 days from the date of this order, Crooked River Ranch Water  
22 Company shall file a report stating its need for funds for new capital  
23 improvements, including the intended projects, the estimated costs of each such  
project, and the time that each investment would be required.

24 Allegation 28 states that, on January 28, 2008, Defendants provided a two-page  
25 Declaration of James Rooks. Allegation 29 states that, on March 7, 2008, Commission Staff  
26 filed a motion alleging that Defendants had not complied with ordering paragraph 6 of

1 Commission Order No. 07-527. Allegation 30 states that, on March 13, 2008, Defendants filed a  
2 response to Staff's motion and on March, 20, 2008, Defendants filed a supplemental response to  
3 Staff's motion regarding violations of Order No. 07-527. Allegation 31 states that, on March 24,  
4 2008, in Commission Order No. 08-177, the Commission concluded that Defendants failed to  
5 comply with ordering paragraph 6 of Order No. 07-527 in a timely manner and explicitly did not  
6 excuse the fact that Defendants' filing was 28 days late. Allegation 32 states that, on April 8,  
7 2008, Defendants filed a response to Order No. 08-177.

8 Defendants deny allegation 33 of the Complaint, which states that, from December 31,  
9 2007 through January 28, 2008, Defendants were in violation of ordering paragraph 6 of Order  
10 No. 07-527. In spite of Defendants' denial of allegation 33, Defendants admitted allegation 31  
11 of the Complaint, which reiterated the conclusion of Order No. 08-177 – that Defendants have  
12 failed to comply with ordering paragraph 6 of Order No. 07-527 in a timely manner and  
13 Defendants' filing was 28 days late. The Defendants have not challenged that Commission  
14 decision through reconsideration or appeal. As a result, denial of allegation 33 must considered  
15 be an inappropriate collateral attack on Order No. 08-177.

16 As stated above, a decision on an issue - in this case noncompliance with Commission  
17 orders - may preclude relitigation of the issue in another proceeding so long as five requirements  
18 are met.

19 The five requirements are met and Defendants should not be allowed to collaterally  
20 attack previous Commission decisions on the identical factual issue now presented in a  
21 complaint. The issue alleged is that Defendants were noncompliant with ordering paragraph 6 of  
22 Commission Order No. 07-527, which has previously been determined. That factual issue was  
23 litigated and essential to the final decision on the merits in the previous orders. Furthermore,  
24 Defendants had a full and fair opportunity to be heard on the issue of compliance and are  
25 certainly in privity. Finally, the previous proceedings are the type that will be given preclusive  
26 effect.

1 Defendants deny allegation 34 of the Complaint, which provides that, pursuant to ORS  
2 757.994, Defendants violated ordering paragraph 6 of Order No. 07-527 for 28 days and that  
3 each day's violation is subject to a civil penalty of up to \$500 per day. As stated above, there is  
4 no genuine issue of material fact because the Commission has already concluded that Defendants  
5 violated ordering paragraph 6 of Order No. 07-527 for 28 days. To the extent that the  
6 Defendants deny each day's violation is subject to a civil penalty of up to \$500 per day, that is a  
7 legal question and resolved by the unambiguous language of ORS 757.994.

8 Defendants deny allegation 35 of the Complaint, which states that Defendants are subject  
9 to a civil penalty of up to \$14,000 for violation of ordering paragraph 6 of Order No. 07-527.  
10 Allegation 35 is a derivative calculation from allegation 34. As stated in the discussion  
11 regarding allegation 34, the Commission has found that Defendants were in violation of ordering  
12 paragraph 6 of Order No. 07-527 for 28 days, which results in a civil penalty of up to \$14,000.  
13 There is no genuine issue of material fact – without an inappropriate collateral attack on Order  
14 No. 08-177– that Defendants are subject to a civil penalty of \$14,000 for violation of ordering  
15 paragraph 6 of Order No. 07-527.

16 The Defendants deny allegation 36 of the Complaint, which states that, as stated in Order  
17 No. 08-177, and based upon the unique corporate structure of Crooked River Ranch Water  
18 Company, the Board of Directors members are jointly and severally liable for payment of this  
19 penalty amount, \$14,000. The Commission very clearly stated that the Board Members  
20 themselves are jointly and severally responsible for payment of any penalties. *See* Order No.  
21 08-177 at 7-8. Again, there is no genuine issue of material fact without an inappropriate  
22 collateral attack on Order No. 08-177 (which also cites Order No. 07-527). Furthermore, any  
23 arguments regarding jurisdiction to hold Board Members jointly and severally responsible for  
24 penalties is purely a legal issue involving the construction of ORS 757.994 and ORS 756.010.

25 Defendants deny allegation 37 of the Complaint, which states that, as provided for in  
26 ORS 757.994, the penalties sought under this complaint should be used for the benefit of the

1 customers of Crooked River Ranch Water Company. ORS 757.994 unambiguously allows the  
2 Commission to use the penalties for the benefit of the customers of Crooked River Ranch Water  
3 Company. There are no issues of fact, only law. To the extent that Defendants deny allegation  
4 37 for the purpose or arguing that the Commission should not use its legal authority to employ  
5 the penalties for the benefit of the customers, Staff will provide testimony on why it is  
6 appropriate to use the penalties for the benefit of the customers.

7 Defendants deny that, under allegation 38, ORS 757.994(1) allows for imposition of civil  
8 penalties against the named Defendants. The Defendants further deny that under ORS 757.994  
9 “the commission may require that penalties imposed under this section be used for the benefit of  
10 the customers of water utilities effected by the violation.” The unambiguous statute determines  
11 this issue and there is no genuine issue of material fact.

12 Defendants deny allegation 39 of the Complaint, which states that the Defendants are  
13 subject to civil penalties of up to at least \$153,000 [updated amount as discussed above] for  
14 violating paragraphs 4, 5, and 6 of Order No. 07-527. For ordering paragraphs 4 and 5 of Order  
15 07-527, the Defendants were noncompliant for at least an additional 18 days, as discussed above.  
16 As allegation 39 stated, and as this motion also discusses, an additional civil penalty of \$500 per  
17 violation (\$1000 per day) will be added to the total civil penalty until the Defendants comply  
18 with ordering paragraphs 4 and 5 of Order No. 07-527.<sup>5</sup> These calculations and conclusions are  
19 derivatives of the allegations of the Complaint. For the reasons discussed above, there are no  
20 genuine issues of material fact, except where specifically noted.

21 Defendants deny allegation 40 in “that the status of CRRWC as an association subject to  
22 the provisions of ORS 757.994(1) is an issue currently before the Court of Appeals and  
23 adjudication of this issue is not timely at the administrative level.” Defendants’ denial presents  
24 no issues of fact, only law.

25 \_\_\_\_\_

26 <sup>5</sup> As discussed within this motion, Staff will file testimony regarding whether Defendants’ May 19, 2008, or June 3, 2008, filings were compliant with ordering paragraphs 4 and 5 of Order No. 07-527.

1 Defendants deny allegation 41, which provides that, pursuant to ORS 757.994(1), the  
2 Commission should use the penalties imposed under this section for the benefit of the customers  
3 of Crooked River Ranch Water Company. Whether the Commission can employ the penalties  
4 imposed under this section for the benefit of the customers is a matter of law resolved by the  
5 unambiguous words of ORS 757.994. As discussed above, Staff will provide testimony on why  
6 the Commission should exercise its discretion in this proceeding and use the penalties for the  
7 benefit of the customers.

8 Defendants deny allegation 42, which provides that, the Board of Director members are  
9 jointly and severally liable for civil penalties of at least up to \$153,000 (updated as discussed  
10 above), plus an additional \$1,000 per day for each day's continuance of violations of ordering  
11 paragraphs 4 and 5 of Order No. 07-527. As discussed above, the Commission has already  
12 found that the Board members are jointly and severally liable. *See* Order No. 07-527 at 7-8.  
13 Further, the remaining portions of allegation 42 are the results of the combined allegations  
14 discussed above for which there are no genuine issues of material fact.

15 **CONCLUSION**

16 For the forgoing reasons, Staff respectfully requests that the Commission grant Staff's  
17 motion for summary disposition.

18 DATED this 1<sup>st</sup> day of July 2008.

19 Respectfully submitted,

20 **HARDY MYERS**  
21 Attorney General

22  
23 s/ Jason W. Jones  
24 Jason W. Jones, #00059  
25 Assistant Attorney General  
26 Of Attorneys for Staff of the Public Utility  
Commission of Oregon

1 **CERTIFICATE OF SERVICE**

2  
3 I certify that on July 1, 2008, I served the foregoing upon all parties of record in this  
4 proceeding by delivering a copy by electronic mail and by mailing a copy by postage prepaid  
5 first class mail or by hand delivery/shuttle mail to the parties accepting paper service.

6 STEVEN COOK  
7 PO BOX 1111  
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9 sewfab4u@hotmail.com

10 CHARLES G NICHOLS  
11 PO BOX 1594  
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18 **CROOKED RIVER RANCH WATER CO**  
19 BRIAN ELLIOTT  
20 PRESIDENT, BOARD OF DIRECTORS  
21 PMP 313 - 1604 S HWY 97 #2  
22 REDMOND OR 97756

23 **CROOKED RIVER RANCH WATER**  
24 **COMPANY**  
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1 **CERTIFICATE OF SERVICE**

2  
3 I certify that on July 1, 2008, I served the foregoing Staff Motion for Summary  
4 Disposition upon all parties of record in this proceeding by delivering a copy by electronic mail  
5 and by mailing a copy by postage prepaid first class mail or by hand delivery/shuttle mail to the  
6 parties accepting paper service.

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