

Decision **PROPOSED DECISION OF ALJ DEANGELIS** (Mailed 3/3/2008)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of Golden State Water Company (U133W) for an Order pursuant to Public Utilities Code Section 851 approving a Settlement in a Water Rights Adjudication, and for an Order pursuant to Section 454 approving the proposed Ratemaking Treatment of the costs of the Adjudication and Settlement.

Application 06-02-026  
(Filed February 24, 2006)

**OPINION DISMISSING APPLICATION WITHOUT PREJUDICE**

This decision dismisses Application (A.) 06-02-026 without prejudice. Golden State Water Company's (Golden State) motion to extend the statutory deadline for resolving A.06-02-026 and to set a schedule for Phase II (Motion to Extend) is denied. The motion of Gerald Trimble (Trimble) seeking dismissal of A.06-02-026 with prejudice is denied.

**Summary**

On February 24, 2006, Golden State initiated this proceeding with an application seeking approval of (1) the proposed ratemaking treatment of the costs incurred in the superior court action related to the Santa Maria groundwater basin<sup>1</sup> and (2) the stipulation entered into by Golden State and

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<sup>1</sup> *Santa Maria Valley Water Conservation District v. City of Santa Maria, et al.*, Lead Case No. CV 770214, Superior Court of the State of California, County of Santa Clara.

other parties that resolved virtually all of the issues pending in this civil litigation.

On May, 24, 2007, the Commission issued Decision (D.) 07-05-041 which ruled on the ratemaking issues and, as permitted by § 1701.5(a) of the Pub. Util. Code,<sup>2</sup> extended the statutory deadline for completing Phase II until February 25, 2008.

On October 23, 2007, Trimble filed a motion for dismissal of A.06-02-026 with prejudice. Trimble's motion sought an order from this Commission finding that the stipulation is, among other things, legally flawed. Golden State responded in opposition to Trimble's motion on November 7, 2007. On February 14, 2008, the Division of Ratepayer Advocates (DRA) filed a motion seeking dismissal of the application without prejudice.

On January 31, 2008, Golden State filed the Motion to Extend. The Motion to Extend sought additional time to resolve issues in A.06-02-026 and requested the Commission to set a schedule for Phase II. Trimble filed a response in opposition to the Motion to Extend on February 4, 2008. On February 14, 2008, Donald Ward for the Orcutt Area Advisory Group also filed a response in opposition. On this same date, DRA filed a response in opposition to Golden State's request. Golden State replied to these filings on February 20, 2008.

Golden State's Motion to Extend suggested that reasons existed to further extend the statutory deadline for resolving Phase II of this proceeding. However, Golden State failed to provide any assurances to the Commission that the delays surrounding final approval of the stipulation would be addressed

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<sup>2</sup> All subsequent section references are to the Public Utilities Code unless otherwise noted.

within any particular time frame. No such assurances existed in Golden State's prior filing, entitled *Second Status Report<sup>3</sup> on the Nipomo Pipeline and Nipomo Supplemental Water Issues in the Santa Maria Groundwater Basin Litigation<sup>4</sup>* dated September 24, 2007 or in a subsequent status report provided by letter dated December 4, 2007 to the assigned ALJ.

On February 28, 2008, we extended the statutory deadline in this proceeding to April 28, 2008 to allow time to receive comments on this proposed decision and for Commission consideration of this matter.

### **Discussion**

Section 1701.5(a) requires the Commission to resolve issues identified in a proceeding categorized as ratesetting within 18 months of the date the Commission issued its scoping memo in the proceeding. In certain circumstances, § 1701.5 authorizes the Commission to deviate from this 18-month time frame. The Commission may either extend this time frame in its scoping memo or extend this time frame by written order.

The Commission issued the scoping memo in this proceeding on June 27, 2006. This scoping memo confirmed the categorization of this proceeding as "ratesetting." Accordingly, as set forth in § 1701.5, the 18-month time frame would expire on December 27, 2007.

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<sup>3</sup> Golden State filed its First Status Report on June 25, 2007.

<sup>4</sup> Golden State filed Status Reports in compliance with Section E.8 of the Settlement Agreement (February 16, 2007), approved by the Commission in D.07-05-041, between Golden State, the Division of Ratepayer Advocates and the Orcutt Area Advisory Commission. Section E.8 requires that such reports be submitted when certain milestones are met in the Santa Maria groundwater basin litigation and no less frequently than quarterly.

In D.07-05-041, as permitted by § 1701.5(a), the Commission extended this statutory deadline by 60 days. The Commission issued this extension on the basis that additional time would allow for the “uncertainties in the superior court settlement to be removed, while avoiding the time and expense of a new proceeding to address these same issues.” D.07-05-041, *mimeo.*, p. 6.

During this 60-day extension, the status of the litigation and the reasons for the delays have not changed substantially. Golden State’s Motion to Extend does not provide any assurance that change will occur in the near future. On February 28, 2008, we issued a decision to extend the statutory deadline for a limited amount of time to permit consideration of this proposed decision. We find no reason to further extend the statutory deadline in this proceeding. While we would prefer to resolve this matter in this pending proceeding, the provisions of § 1701.5 do not favor keeping proceedings open in these circumstances. At the appropriate time in the future, Golden State may ask the Commission to consider the entire stipulation, including the issue that remains unresolved here, by filing an application.

Accordingly, we dismiss A.06-02-026 without prejudice. Golden State’s Motion to Extend is denied. The motion of Trimble seeking dismissal of A.06-02-026 with prejudice is denied. This proceeding is closed.

### **Comments on Proposed Decision**

The proposed decision of the Administrative Law Judge in this matter was mailed to the parties in accordance with § 311 of the Pub. Util. Code and comments were allowed under Rule 14.3 of the Commission’s Rules of Practice and Procedure. DRA filed comments and reply comments in support of the proposed decision on March 24, 2008 and April 1, 2008, respectively. Golden State filed comments in opposition to the proposed decision based on the same

arguments set forth in its Motion to Extend. Trimble filed comments and reply comments on the proposed decision on March 24, 2008 and March 28, 2008, respectively. Trimble appears to be requesting the Commission to address certain “uncontested” issues related to the stipulation. The Commission will not review this matter in a piecemeal fashion. The Commission will address the stipulation in its entirety when Golden State refiles.

### **Assignment of Proceeding**

John A. Bohn is the assigned Commissioner and Regina DeAngelis is the assigned Administrative Law Judge in this proceeding.

### **Findings of Fact**

1. On February 24, 2006, Golden State initiated this proceeding by filing an application.
2. The Commission issued a scoping memo in this proceeding on June 27, 2006. This scoping memo confirmed the categorization of this proceeding as “ratesetting.”
3. The Commission addressed the ratemaking issues in D.07-05-041 during Phase I of this proceeding and designated Phase II for consideration of the stipulation as presented in the application.
4. A provision of the stipulation is now subject to uncertainty, specifically this unresolved issue is the means by which Golden State and certain other stipulating parties will provide supplemental water to the Nipomo Mesa Management Area.
5. In D.07-05-041, the Commission relied upon § 1701.5(a) to extend the statutory deadline for resolving the remaining issues in this proceeding related to the stipulation until February 25, 2008.

6. On January 31, 2008, Golden State filed a motion to further extend the statutory deadline for this application and set a schedule for Phase II. Three parties filed motions in opposition to Golden State's Motion to Extend.

7. The status of the litigation and the reasons for the delays have not changed substantially, and no party has provided evidence that the unresolved issue causing the delay in this proceeding will be resolved in the near future.

### **Conclusions of Law**

1. Section 1701.5(a) requires the Commission to resolve issues identified in a proceeding categorized as "ratesetting" within 18 months of the date the Commission issued its scoping memo in the proceeding.

2. In certain circumstances, § 1701.5 authorizes the Commission to deviate from this 18-month time frame.

3. The Commission may either extend this time frame in its scoping memo or extend this time frame by written order.

4. The provisions of § 1701.5 do not favor keeping proceedings open in the circumstances of this proceeding.

5. At the appropriate time in the future, Golden State may ask the Commission to consider the entire stipulation, including the issue that remains unresolved here, by filing an application.

### **O R D E R**

**IT IS ORDERED** that:

1. Application (A.) 06-02-026 is dismissed without prejudice.
2. Golden State Water Company's motion to extend time for A.06-02-026 and to set a schedule for Phase II is denied.

3. The motion of Gerald Trimble seeking dismissal of A.06-02-026 with prejudice is denied.

4. A.06-02-026 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.