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California Public Utilities Commission
505 Van Ness Avenue
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Commissioner John Bohn
California Public Utilities Commission
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Commissioner Dian Grueneich
California Public Utilities Commission
505 Van Ness Avenue
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Commissioner Rachelle Chong
California Public Utilities Commission
505 Van Ness Avenue, Room 5205
San Francisco, CA, 94102

Commissioner Timothy Simon
California Public Utilities Commission
505 Van Ness Avenue, Room 5213
San Francisco, CA, 94102

ALJ Regina DeAngelis
California Public Utilities Commission
Division of Administrative Law Judges
505 Van Ness Avenue, Room 5022
San Francisco, CA, 94102

**Re: Application 06-02-026 by Golden State Water Company (GSWC)
March 3, 2008 Administrative Law Judge's Proposed Decision**

Dear President Peevey, Commissioners Bohn, Grueneich, Chong, Simon and
ALJ DeAngelis:

This letter expresses my concerns with the above referenced Proposed Decision which is based on a single issue and allows an unrestricted subsequent application for approval, without consideration of other issues presented in the course of this proceeding relevant to the original scoping of June 27, 2006.

A.06-02-026 phase II concerns a court settlement agreement ([Stipulation](#)) in the groundwater adjudication¹ and the Proposed Decision (PD) relates only to a single issue (Nipomo pipeline issue) in its consideration. The [Dismiss Motion](#) of October 23, 2007 and the [Comments](#) of March 24, 2008 present Issues that are far more crucial, including those that follow:

¹ Santa Clara Superior Court Case CV770214.

1. Water is the only benefit the public rate payer directly receives from GSWC and this GSWC Stipulation alters rates for such water by adding a surcharge, discriminating against GSWC rate payers in relation to agricultural parties, contrary to California Constitution Article 12, [Section 4](#), to the effect that the urban rate payers assume 80% of Stipulation related costs for using 9% of the groundwater while agricultural parties assume 20% of those costs for using 91% of the groundwater, a net ratio of 40 times more surcharge per water unit². Even though the delivery systems are different, for the parties, the GSWC Stipulation is the single mechanism imposing this discrimination.

2. The superior court awarded GSWC a prescriptive groundwater right which is usufructuary and correlative to the same extent that an overlying owner's right is correlative, and allows GSWC to legally pump water during a court declared water at common law "no surplus" crisis. The GSWC Stipulation, if approved, requires GSWC to forfeit this prescriptive right, placing the public at risk of a loss of its water supply (or under public use doctrine, to damages by landowners)³. PUC Code [§ 851](#) requires approval by the Commission before such a valued property as the prescriptive right to groundwater can be forfeited. Any claim that the GSWC Stipulation provides a substitute for the prescriptive right is totally and unequivocally false⁴

3. This GSWC Stipulation claims to allocate large amounts of groundwater to GSWC and others, referred to as Twitchell Yield, yet, reveals no party or authority responsible for such. While a second GSWC court pleading document, in direct reference to the Stipulation, acknowledges Water Code [§1200](#) and its declared SWRCB License and Water Code limitation to exclude percolating groundwater, GSWC still cites these as Stipulation authority to allocate percolating groundwater rights in a third court pleading document⁵.

² Dismiss Motion § 5a (filed 10/23/08 in this proceeding).

³ Dismiss Motion § 2.

⁴ Dismiss Motion § 1.

⁵ Comments § 3.3.4 (filed 3/24/08 in this proceeding).

The PD's dismissal "without prejudice" allows an immediate application filing without alteration of the GSWC Stipulation as accentuated by GSWC themselves in their (GSWC) Comments of March 24, 2008 with only "supplemental testimony" changes as follows:

..... because GSWC will simply re-file its application with the changes needed to reflect the content of its proposed supplemental testimony

At minimum, three prerequisites should be included in the PD for a future application for Stipulation approval, to insure that such a Stipulation satisfies the following requirements:

1. The GSWC Stipulation must not be discriminatory in any rate surcharge levied, and must be based on the only legitimate benefit received, the units of water, to be consistent with California Constitution Article 12, [Section 4](#).
2. The GSWC Stipulation must allow the superior court granted prescriptive right to groundwater to stand, as necessary property, for continued service to its public, in accordance with PUC Code [§ 851](#), in the event of an adjudicating court declared water at common law "no surplus" condition.
3. The GSWC Stipulation legal flaws of omission, as to the responsible party and its authority for the execution of the allocation of Twitchell Yield groundwater, be corrected to be consistent with California Water Codes §§ [102](#), [1200](#) and [1202](#).

Respectfully submitted,



Gerald D. Trimble

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