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In the Matter of the Application of Golden State Water Company (U 133 W) for an Order pursuant to Public Utilities Code Section 85 1 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)

**THE DIVISION OF RATEPAYER ADVOCATES MOTION TO DISMISS
GSWC'S APPLICATION 06-02-026**

I. INTRODUCTION

Pursuant to Rule 11.2 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission"), the Division of Ratepayer Advocates ("DRA") respectfully requests that the Commission dismiss Golden State Water Company's ("GSWC") Application 06-02-026 without prejudice for the reasons set forth below.

II. BACKGROUND

On February 24, 2006, GSWC filed A. 06-02-026 requesting that the Commission approve GSWC's execution of a stipulation ("Stipulation") entered into by GSWC and other parties to resolve many of the issues pending in the superior court adjudication of the Santa Maria groundwater basin.¹

Among other issues, GSWC asked the Commission to approve its participation in the adjudication and to find that the Stipulation that arose out of the litigation is just, reasonable, and in the public interest. GSWC also asked the Commission for

¹ Santa Maria Groundwater Litigation, Lead Case No. CV 770214, Superior Court of the State of California, County of Santa Clara.

authorization to capitalize, as an addition to utility plant, its share of the construction costs of a pipeline to the Nipomo Mesa area of the Basin, pursuant to the terms of the Stipulation.²

DRA protested the application. Among the concerns raised in DRA's protest were questions about the proposed ratemaking treatment of litigation expenses and GSWC's obligations to purchase and deliver water under the superior court settlement. The Orcutt Area Advisory Group (Orcutt) also protested the application raising concerns about the ratemaking treatment of litigation expenses, pipeline construction costs, water purchase costs, and ongoing operation and maintenance expenses. The Landowner Group Parties contended that the Commission was not required to review the terms of the superior court settlement or the substantive provisions of the settlement.

The assigned Administrative Law Judge ("ALJ") referred this proceeding to mediation and, after several sessions, a number of the parties appeared to be close to a comprehensive agreement of all issues. Before this agreement could be finalized and submitted to the Commission, the Nipomo Community Services District ("NCSD" - one of the major parties to the superior court settlement) announced that it was considering alternatives to the new water supply pipeline, a major component of the superior court Stipulation. This uncertainty about whether the pipeline would be built made it impossible for the parties in the Commission proceeding to conclude a comprehensive settlement.

GSWC, DRA, and Orcutt, however, concluded a partial Settlement Agreement concerning ratemaking treatment for GSWC's past and anticipated attorneys' fees. The parties also agreed that the remaining issues in this proceeding, i.e., those not otherwise addressed in the partial Settlement Agreement, be deferred to a second phase pending further developments concerning the pipeline component of the superior court Stipulation.

² The groundwater adjudication settlement does not resolve all issues pending before the Superior Court. GSWC indicates it must participate in subsequent phases of the adjudication involving claims asserted by water users who did not join the settlement (D.07-05-041, Fn. 1).

The partial Settlement Agreement regarding past and anticipated attorney fees was approved in D. 07-05-041. This decision was issued on May 24, 2007. It authorized a Phase 2 and extended the normal 18-month deadline (calculated from the date of the Scoping Memo) for completing this rate setting case (December 27, 2007) for 60 days, under Public Utilities Code Section 1701.5, to and including February 25, 2008.

As part of the partial Settlement Agreement, the parties agreed that GSWC would provide the Commission, DRA and Orcutt with a status report on the ongoing deliberations concerning the Nipomo Pipeline and Nipomo Supplemental Water issues no later than 30 days after Commission approval of the Settlement Agreement and no less frequently than quarterly thereafter.³ GSWC has provided the Commission, DRA and Orcutt with two status reports since D. 07-05-041 was issued and has done so in a timely manner.

A. GSWC's First Status Report

GSWC's first status report, dated June 22, 2007, states in pertinent part as follows:

"GSWC, Nipomo Community Services District and the City of Santa Maria have held several meetings and telephone conferences to consider alternative methods of making supplemental water available to the Nipomo Mesa area. It appears there are viable alternative(s) that will result in reduced capital costs in comparison to the originally conceived project. Nipomo Community Services District continues to prepare its more comprehensive feasibility study of several alternatives. This study is supposed to be available to the public this summer. The parties are setting up further meetings to discuss the details of one project that appears to hold some significant promise of reducing overall project costs."⁴ (Emphasis added)

Hence, GSWC's first status report indicates that the NCSD (one of the major parties to the superior court Stipulation) is conducting a feasibility study regarding alternatives to the new pipeline, but neither clarifies what the alternatives involve nor

³ See Appendix A of D. 07-05-041, Settlement Agreement, Section E, Paragraph 8.

⁴ GSWC's First Status Report filed and served on June 22, 2007.

when they will be available for review by the Commission, DRA, Orcutt or other parties, if any.

B. GSWC's Second Status Report

GSWC's second status report, dated September 24, 2007, states in pertinent part as follows:

“GSWC, Nipomo Community Services District (NCSD) and the City of Santa Maria have held several meetings to consider alternative methods of making supplemental water available to the Nipomo Mesa area. As a result of these meetings, NCSD was given the primary responsibility to conduct feasibility assessments on several viable alternative(s) that were anticipated to result in reduced capital costs in comparison to the originally conceived project. NCSD did prepare a draft feasibility study of several alternatives. NCSD's Board of Directors elected to pursue as its primary alternative, a connection to the Coastal Branch of the State Water Project. GSWC does not believe this is the most cost-effective alternative. Thus, GSWC intends to evaluate an alternative that will allow it to utilize some of its existing rights granted under the Basin judgment to augment its supplies on the Nipomo Mesa. A more complete financial and hydraulic analysis of this alternative will likely be available within the next 60-90 days.⁵ (Emphasis added)

Thus, it appears that the new pipeline project is no longer a viable option. GSWC's second report does not provide any specific information about how it intends to use its existing rights granted under the Basin judgment to augment its supplies on the Nipomo Mesa. Nor has GSWC provided the financial and hydraulic analysis it refers to above.

In a ruling dated October 22, 2007, ALJ DeAngelis stated as follows:

“To date, no scoping memo has been issued in Phase II of this proceeding and, consistent with Decision (D.) 07-05-041, the Commission continues to wait for developments in the pending civil court litigation regarding the Santa Maria groundwater basin. No significant changes have occurred

⁵ GSWC's Second Status Report filed and served on September 24, 2007.

and, per D.07-05-041, the deadline for completing this rate setting case expires on February 25, 2008. Prior to that date, I intend to issue a ruling recommending the Commission dismiss this case unless the parties provide sufficient justification for a further extension under Section 1701.5.”⁶

By an e-mail dated November 27, 2007, ALJ DeAngelis requested that GSWC provide on or before December 4, 2007, a brief update on the status of the court action related to the Santa Maria groundwater basin as that litigation relates to A.06-02-026. GSWC provided an update by letter on December 4, 2007, stating as follows:

“To date, GSWC’s Application has been delayed by complications relating to the supply of supplemental water to the Nipomo Mesa Management Area. The Stipulation contemplated a particular solution to this problem, which the Stipulating parties subsequently determined to be too costly. GSWC has recently completed an initial “fatal flaw” analysis of an alternative supplemental water project. This initial analysis concludes that the option is technically feasible and considerably less costly than other alternatives. GSWC must now proceed from the initial analysis to a more detailed review of the logistics of implementing the potential solution. If this revised supplemental water project proves efficacious, GSWC would be able to quantify our Nipomo Supplemental Water Project costs.” (Emphasis added)

Again, this report offers no details about GSWC’s alternative supplemental water project. In fact, we have no idea what the alternative is or what it involves.

On January 31, GSWC filed a Motion to Extend Time For Application 06-02-026 and to Set Schedule for Phase II. In its motion, GSWC states that it is completing its engineering, hydrological and cost benefit analyses of an alternative solution for providing supplemental water to the Nipomo Mesa alleging that the alternative solution appears viable. Without disclosing what the alternative solution entails, GSWC represents that the solution involves a new and lower cost water supply source, as well as the construction of a shorter (less costly) pipeline. GSWC states that it will, in Phase II

⁶ Administrative Law Judge’s Ruling Denying The Motion Of Gerald Trimble For Approval Of Exhibits filed 10/22/07.

of this proceeding, present this alternative solution to the Nipomo Mesa supplemental water issue in detail and propose a means of resolving the Phase II issues in light of the alternative solution.⁷

III. DISCUSSION

A. GSWC's Application Should Be Dismissed On Substantive Grounds

GSWC has not provided the Commission, DRA or Orcutt with any details about the supplemental water alternative it has been referring to in its status reports and letter to the ALJ in this proceeding. The Commission, DRA and Orcutt are entitled to first review what GSWC is proposing in regard to the supplemental water alternative, as an alternative to the pipeline proposed in its application, including the costs of the proposal and its potential impact on ratepayers. To date, GSWC has not provided any such information.

This application presents a complex set of issues to the Commission. The Stipulation, including the supplemental water issues, is a complete whole involving all the parties to the Stipulation. NCS D is a major water purveyor involved with the Nipomo Mesa supplemental water issue. It was NCS D's realization that its original plan to build a pipeline would be prohibitively costly that led to the deferral of the supplemental water issues. NCS D hired Boyle Engineering to evaluate and provide cost estimates for short and long term supplemental water alternatives. Originally, NCS D planned to complete its studies of alternatives by mid-2007, however, it is still in the process of evaluating these alternatives.⁸ A recent news article (dated January 26, 2008), reports that NCS D's directors unanimously approved an amendment to the previous agreement with Boyle Engineering that will authorize an update of the project design and cost estimate.

The article states:

“Effectively, what they're doing is developing the project documents for the environmental review,” said Bruce Buel, NCS D general manager.

⁷ Motion, p. 3.

⁸ This report was viewed online on 2/8/08 on the <http://ncsd.ca.gov> web site at [http://ncsd.ca.gov/Library/Supplemental Water/ALTERNATIVES/Supplemental%20Water%20Alts%20-%20TM%203%20-%2011-30-07.pdf](http://ncsd.ca.gov/Library/Supplemental%20Water/ALTERNATIVES/Supplemental%20Water%20Alts%20-%20TM%203%20-%2011-30-07.pdf).)

Buel said Boyle is expected to complete the work in about three months.

NCSO plans to purchase some of Santa Maria's surplus water to supplement the community's dwindling groundwater supply until a desalination facility can be built.

The water supplied by pipeline from Santa Maria will only provide some short-term relief, while the desalination plant will provide long-term supplies.²

Thus, it appears that the NCSO is at least several months away from even a short term solution and several years away from a long term solution. Unless NCSO provides specific plans for the court to consider, DRA does not believe that the court can possibly approve the Stipulation. This leaves the timing of this application extremely uncertain and subject to further delays that are likely to extend indefinitely into the future.

Based on the uncertainty to date about what supplemental water project GSWC will pursue in regard to the Nipomo Mesa, and the fact that the pipeline is a major component of the Stipulation, the Commission can not find that the Stipulation is just, reasonable or in the public interest. Moreover, the question of considering GSWC's share of construction costs in regard to the Nipomo Mesa pipeline is moot. GSWC has not provided the Commission with any details about any new supplemental water alternative in regard to the Nipomo Mesa.

Therefore, the Commission should dismiss this application, which is premature in regard to the supplemental water issue, and no longer accurately represents the current status of the negotiations. GSWC should file a new application when it has specific details about how it will proceed in regard to the supplemental water project in the Nipomo Mesa.

² Exhibit A (Santa Maria Times, January 26, 2008).

B. GSWC's Application Should Be Dismissed On Procedural Grounds

In its Motion To Extend Time and Set A Schedule for Phase 2, GSWC proposes that GSWC file its supplemental testimony on March 15, 2008, intervenors file their Reply Testimony on April 7, 2008, and GSWC file its Rebuttal Testimony on April 21, 2008. Finally, GSWC proposes that hearings be held May 1-5, 2008.

GSWC's proposed expedited schedule would violate DRA's, Orcutt's, and any other intervening parties' right to due process. First, the Commission, DRA and Orcutt (and any potential interveners) must have an adequate opportunity to review any revised proposal and the proposed schedule makes this impossible. Second, DRA and others should have the opportunity to file a protest. Third, the ALJ should have the opportunity to hold a prehearing conference and then to issue a Scoping memo. Fourth, DRA and others should have the opportunity to engage in discovery. Fifth, DRA and others should have the opportunity to go to mediation, if so desired. None of this can happen with GSWC's expedited schedule. Moreover, without knowing what GSWC is proposing, it is impossible to estimate how much time will be needed for Parties' discovery, analysis and report preparation.

III. CONCLUSION

GSWC's application should be dismissed without prejudice and GSWC should file a new application when it can provide the Commission with specific details about its alternative regarding supplemental water in the Nipomo Mesa. It is inappropriate to expect the Commission, DRA, Orcutt, or other potential interveners, to address a vague alternative that is not spelled out in detail. Moreover, given the uncertainty to date about what project will be pursued in regard to the Nipomo Mesa, and the fact that the pipeline was a major component of the Stipulation, there is no way the Commission could reasonably find that the Stipulation is just, reasonable or in the public interest. Based on all of the above, the Commission should dismiss this application without prejudice. GSWC should file a new application when it can provide the Commission with specific details about its alternative regarding supplemental water in the Nipomo Mesa.

Respectfully submitted,

/s/ MARIA L. BONDONNO

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EXHIBIT A

Nipomo district relaunches work on supplemental water pipeline

By Mike Hodgson/Associate Editor

The supplemental water pipeline, or "intertie" project with Santa Maria was relaunched last week by the Nipomo Community Services District.

Directors unanimously approved an amendment to the previous agreement with Boyle Engineering that will authorize an update of the project design and cost estimate.

In addition, Boyle will negotiate changes in the memorandum of understanding for supplemental water with Santa Maria, evaluate the most cost-effective phased project and describe the project for the environmental impact report.

The amendment will increase the cost of the work as much as \$78,605, from \$256,811 to a maximum of \$335,416.

"Effectively, what they're doing is developing the project documents for the environmental review," said Bruce Buel, NCS D general manager.

Buel said Boyle is expected to complete the work in about three months.

NCS D plans to purchase some of Santa Maria's surplus water to supplement the community's dwindling groundwater supply until a desalination facility can be built.

The water supplied by pipeline from Santa Maria will only provide some short-term relief, while the desalination plant will provide long-term supplies.

The district launched the pipeline project almost two years ago, then put it on hold after the estimated costs skyrocketed from \$6 million to \$24 million.

NCS D explored other options, including tying directly into the State Water Project pipeline that runs right along Thompson Road - a proposal Nipomo voters turned down twice during the initial stages of the project.

Those votes also added a requirement that any proposal to tie into state water be brought before voters for approval.

That condition of approval, plus the high cost, low volume and questionable reliability of deliveries, prompted district directors to relaunch the Santa Maria intertie.

But district officials hope a cheaper alternative project can be designed, possibly using an existing NCS D pipeline as part of a phased project.

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January 26, 2008

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of [title of document] in [proceeding number] by using the following service:

E-Mail Service: sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

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Executed on February 28, 2008 at San Francisco, California.

/s/ ALBERT HILL
Albert Hill

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address and/or e-mail address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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