

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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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 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

**GOLDEN STATE WATER COMPANY'S OPPOSITION TO THE MOTION OF
GERALD TRIMBLE, RATE PAYER ACCOUNT #317879-5
SEEKING DISMISSAL OF THE APPLICATION OF GOLDEN STATE WATER
COMPANY FOR AN ORDER PURSUANT TO PUBLIC UTILITIES CODE SECTION
851 APPROVING A SETTLEMENT IN A WATER RIGHTS ADJUDICATION**

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November 7, 2007

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I. INTRODUCTION

Pursuant to Rule 11.1 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission"), Golden State Water Company ("GSWC") objects to the Motion of Gerald Trimble Seeking Dismissal of the Application of Golden State Water Company for an Order Pursuant to the Public Utilities Code Section 851 Approving a Settlement in a Water Rights Adjudication ("Motion to Dismiss"), filed on October 23, 2007. Gerald Trimble's motion is premature, as Administrative Law Judge ("ALJ") DeAngelis has yet to issue a Scoping Memo pertaining to Phase II of this proceeding. Gerald Trimble's Motion to Dismiss seeks a resolution of the merits of Phase II of this proceeding, which has yet to begin. Additionally, Gerald Trimble has not met the burden required to prevail on a motion to dismiss. GSWC respectfully requests that Gerald Trimble's Motion to Dismiss be denied. GSWC further requests that the Commission instruct Gerald Trimble not to file any additional motions prior to

the start of Phase II of this proceeding, as the repeated premature motions in this proceeding are a drain on the resources of both the Commission and GSWC.

II. DISCUSSION

A. Background

On February 24, 2006, GSWC initiated this proceeding with an application seeking approval of (i) a stipulation entered into by GSWC and other parties that resolved many issues pending in a superior court action relating to the Santa Maria groundwater basin ("Stipulation") and (ii) proposed ratemaking treatment of the costs incurred in the litigation. On May 24, 2007, the Commission issued Decision 07-05-041, approving a partial settlement in this proceeding involving the ratemaking treatment of certain of GSWC's litigation costs. The Commission recognized that certain issues in this proceeding (namely, whether the Commission should approve the Stipulation) could not be resolved until various underlying issues related to the Stipulation were addressed. Accordingly, the Commission divided this proceeding into two phases, the first of which was resolved in Decision 07-05-041 and the second of which (to consider the unresolved issues) would be initiated in the future.¹

After the completion of the first phase, Mr. Trimble filed the equivalent of a motion for party status, which the Commission granted. Mr. Trimble then filed fourteen (14) exhibits with the Commission along with a Motion to Approve the exhibits. GSWC objected to Mr. Trimble's Motion to Approve as premature because a scoping memo had not yet been approved in the proceeding. ALJ DeAngelis denied Mr. Trimble's Motion to Approve as premature in light of the fact that Phase II of this proceeding had not yet begun.²

¹ D. 07-05-041 at 1.

² Administrative Law Judge's Ruling Denying the Motion of Gerald Trimble for Approval of Exhibits, at 2.

B. The Motion To Dismiss Is Premature

Gerald Trimble's most recent motion, the Motion to Dismiss, is also premature. The Motion to Dismiss seeks to dismiss GSWC's Application for Approval of the Settlement, which the Commission stated in Decision 07-05-041 would be the subject of Phase II of this proceeding.³ ALJ DeAngelis' ruling denying Mr. Trimble's Motion to Approve further reiterated the need to wait until Phase II, stating that consistent with Decision 07-05-041, the Commission is waiting for developments in the pending civil litigation before proceeding with Phase II. Nevertheless, Mr. Trimble continues to file motions prior to the issuance of a scoping memo.

The scoping memo will define with greater clarity the issues to be presented to the Commission in Phase II. ALJ DeAngelis has matters in this proceeding under her control, and GSWC will respond to and provide ALJ DeAngelis with the status of this case when she requests such a status report. The Motion to Dismiss, however, seeks a ruling on the merits of Phase II before Phase II has even begun. Until the scope of this proceeding has been determined, the issues have been defined, and the parties have been allowed to conduct discovery, GSWC cannot respond to the multitude of allegations contained in Mr. Trimble's Motion to Dismiss. Thus, GSWC respectfully requests that the Commission deny Gerald Trimble's Motion to Dismiss and instruct Gerald Trimble to not file any additional motions prior to the commencement of Phase II.

C. Gerald Trimble Has Not Met His Burden For A Motion to Dismiss

Gerald Trimble has not met his burden for the Motion to Dismiss, and the Motion to Dismiss should be denied. All motions brought before the Commission must "concisely state the

³ D.07-05-041 at 1.

facts and law supporting the motion and the specific relief or ruling requested."⁴ Additionally, a motion to dismiss requires the Commission to determine whether the party bringing the motion wins based solely on undisputed facts and on matters of law. The Commission will grant a motion to dismiss if, after assuming all the facts asserted in the application are true, the Commission will nevertheless reject the application as inconsistent with law or current Commission policy.⁵ The Commission must first assume "that the applicant will be able to prove everything the applicant alleged in its application."⁶ After accepting the facts as stated and taking official notice of appropriate public information, the Commission next will consider whether "the Commission and the parties would be squandering their resources by proceeding to an evidentiary hearing when the outcome is a foregone conclusion under the current law and policy of the Commission."⁷

In this case, Mr. Trimble has not met his burden for a Motion to Dismiss. Mr. Trimble has not demonstrated that, even assuming all of the facts stated in GSWC's application are true, Mr. Trimble nevertheless prevails as a matter of law. Indeed, Mr. Trimble has not cited any law, policy or authority that entitles him to prevail on his Motion to Dismiss. Further, Mr. Trimble has not stated with specificity the basis for the relief he is seeking. Thus, Mr. Trimble's Motion to Dismiss should be denied.

III. CONCLUSION

Thus, for the reasons stated above, GSWC respectfully requests that the Commission deny Mr. Trimble's Motion to Dismiss. GSWC further requests that the Commission instruct Mr. Trimble to cease filings in this proceeding until after the ALJ has issued a Scoping Memo.

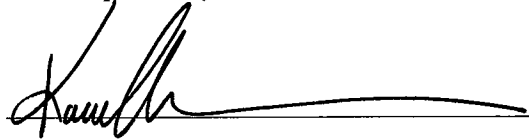
⁴ Rule 11.1(d).

⁵ D.99-11-023, 1999 WL 1957992, *3.

⁶ *Id.* at *3.

⁷ *Id.*

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Karp", followed by a long horizontal line extending to the right.

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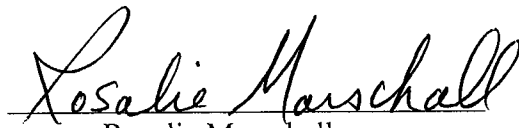
Certificate of Service

I hereby certify that I have this day served a copy of the

Golden State Water Company's Opposition to the Motion of Gerald Trimble, Rate Payer Account #317879-5 Seeking Dismissal of the Application of Golden State Water Company for an Order Pursuant to Public Utilities Code Section 851 Approving a Settlement in a Water Rights Adjudication

on all known parties to A.06-02-026 by sending a copy via electronic mail and by mailing a properly addressed copy by first-class mail with postage prepaid to each party named in the official service list without an electronic mail address.

Executed on November 7, 2007 at San Francisco, California.


Rosalie Marschall



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