Decision **PROPOSED DECISION OF ALJ KIM** (Mailed 11/19/2013)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Golden State Water Company (U133W) for a Certificate of Public Convenience and Necessity to Construct and Operate a Water System in Sutter County, California; and to establish Rates for Public Utility Water Service in Sutter County, California.	Application 08-08-022 (Filed August 29, 2008)

DECISION GRANTING UTILITY A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND APPROVING THE SETTLEMENT AGREEMENT WITH MODIFICATIONS

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DECISION GRANTING UTILITY A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND APPROVING THE SETTLEMENT AGREEMENT WITH MODIFICATIONS

1. Introduction

Pursuant to Public Utilities Code Section 1001, we grant Golden State Water Company a certificate of public convenience and necessity to construct and operate a municipal and industrial water system, and to establish a new non-contiguous service area and rates in the southern and unincorporated portion of Sutter County, known as the Sutter Pointe Specific Plan area, subject to the terms and conditions set forth in the Ordering Paragraphs. This decision orders Golden State to develop a general rate case for filing,[1] consistent with the requirements set forth in Decision 07-05-062 and to file a detailed general rate case filing using its first year of service as the proposed test year, before commencement of construction of the distribution or "in tract" infrastructure associated with the South Sutter County Service Area (SSCSA). This decision also approves the Settlement Agreement (attached hereto as Appendix A), as modified by the all-party stipulations, as outlined in this decision. Finally, this decision certifies the Focused Tiered Environmental Impact Report (Appendix B) for the Proposed Project and authorizes the issuance of a Notice of Determination for the Project pursuant to the California Environmental Quality Act.

[1] The detailed filing for SSCSA's initial general rate case, ordered in this decision, is a stand-alone general rate case filing, separate and apart from Golden State's regular company-wide general rate case filing and must follow the 14 month rate case plan schedule under D.07-05-062 for single district application. *Id.* at Appendix A, A-5.

2. Background and Procedural History

On August 29, 2008, Golden State Water Company ("Golden State") filed the Application (A.) 08-08-022[2] ("Application") for a certificate of public convenience and necessity ("CPCN") to construct and operate a municipal and industrial ("M&I") water system and to establish a new non-contiguous service area and rates in the southern portion of Sutter County ("Proposed Project"), within a new South Sutter County Service Area ("SSCSA" or "Project Site") to be established within the Natomas corporate boundaries of Sutter County, known as the Sutter Pointe Specific Plan ("SPSP") Area.

Before the filing of the Application, Natomas and American States Water Company ("ASWC"), Golden State's parent company, entered into the Water Transfer Agreement[3] ("WTA") pursuant to which Natomas agreed to transfer up to 30,000 acre-feet of water per year to Golden State, which Golden State would distribute to Golden State's future M&I water service customers within the SSCSA.[4] In exchange, Golden State agreed to apply to the Commission for a CPCN to establish the SSCSA.[5]

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[2] On September 2, 2008, A.06-05-034 (Golden State's previously filed application for a CPCN, filed in June of 2006) was dismissed without prejudice because Golden State failed to submit the required proponent's environmental assessment document which caused that application to remain dormant and unprocessed. A.08-08-022 supersedes A.06-05-034.

[3] ASWC and Natomas entered into the WTA, on February 4, 2005. Since then, the WTA has been amended on various occasions between November 20, 2009 and September 20, 2010 to extend certain deadlines. *See* Exhibit JP-01 (Kruger and Moore) at 11.

[4] Exhibit GSWC-01 (Kruger, adopting Floyd Wicks' Opening Testimony) at 8.

[5] WTA at 10 ("Conditions to Natomas' Obligation to Transfer Water to ASWC in the Sutter M&I Service Area").

The County of Sutter and Sutter County Water Agency (collectively the County) and the Division of Ratepayer Advocates[6] (DRA) protested the Application on various grounds.[7] On January 7, 2009, the Robbins Ad-Hoc Committee ("Robbins") submitted a request seeking party status in this proceeding and indicated that it supports the Application.[8]

The Scoping Memo for this proceeding was issued on July 9, 2009 ("Scoping Memo"), which divided consideration of the Application into two separate but parallel tracks. Track 1 comprised the formal CPCN proceeding ("Track 1"), and Track 2 comprised the Commission's required environmental review ("Track 2"). The Scoping Memo further divided Track 1 into two phases. Phase 1 comprised fundamental issues not dependent on environmental analysis (reviewed under Track 2), and Phase 2 comprised project cost, ratemaking, compliance with General Order 103-A, the California Environmental Quality Act[9] (CEQA) compliance determination and consideration of remaining Public Utilities Code[10] Section 1002 factors (thus converging the environmental review from Track 2 into the formal CPCN proceeding, Track 1).

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[6] As of September 26, 2013, the governor of State of California has signed Senate Bill (SB) 96, which among other things, changed the name of DRA, to Office of Ratepayer Advocates (ORA). In this decision, we will continue to use the name DRA for continuity and consistency.

[7] Protest of County of Sutter and Sutter County Water Agency to Golden State's Application, A.08-08-022; DRA's Protest to Golden State's Application.

[8] Robbins Ad Hoc Committee's Amended Prehearing Conference ("PHC") Statement (Jan. 7, 2009) at 3.

[9] Cal. Pub. Res. Code §§ 21000 *et seq*.

[10] All references to Code in this decision refer to Public Utilities Code, unless otherwise specified.

As to Phase 1 of Track 1, the Scoping Memo found that issues relating to the need for the project were material disputed issues and were the fundamental issues the Commission must resolve in this proceeding. In addition, it also enumerated eight (8) issues to be addressed in Phase 1 of Track 1, CPCN proceeding:

1. Are Sutter County and Sutter County Water Agency subject to the Commission's jurisdiction in this proceeding?
2. What is the present or future convenience and necessity for a project such as Golden State's Proposed Project at the Project Site? If a need exists or is expected, (a) what would be the boundary of the service area meeting such need?; (b) when would such need arise?; and (c) what would be the expected demand?
3. Does Golden State possess the financial resources, technical competence, and operational experience to provide the service and to construct the proposed facility?
4. What are all of the regulatory requirements (local, state, and federal) that Golden State must satisfy before it can begin this project? What is Golden State's plan to satisfy each requirement? What is the time frame within which Golden State expects to secure all of the regulatory clearance to begin construction on the Proposed Project?
5. If the Water Transfer Agreement is successfully challenged or Golden State otherwise loses its anticipated access to the water supply under the terms of the Water Transfer Agreement with Natomas Central Mutual Water Company, does Golden State have an alternate plan to provide adequate service to meet the present or future convenience and necessity under Code § 1001?
6. Is the Sutter County Water Agency ready, willing and able to better serve the territory which Golden State seeks to serve?
7. Is Golden State the superior utility (under the general utilities comparison factors adopted in Bakman (Fresno)

(1979) 1 CPUC2d 364) and Great Oaks Water Company (City of San Jose) 39 CPUC2d 339 (1991)?

8. What are the community values the Commission should consider in evaluating Golden State's Application?

On August 10, 2009, Golden State filed its opening brief and served written testimony addressing each of the above-outlined Track 1 issues. On August 17, 2009, Golden State served supplemental direct testimony.

On September 24, 2009, DRA and the County filed their opening briefs, and DRA served written testimony. On September 28, 2009, the Sutter Pointe Landowners/Developers ("Sutter Pointe Developers") filed a motion to join the proceeding as a party. That motion was granted on October 22, 2009.

On November 4, 2009, Golden State and County filed reply briefs and served rebuttal testimonies. Thereafter and in the interest of facilitating settlement discussions, all of the active parties (including DRA) stipulated to and requested several extensions of the scheduled evidentiary hearing dates. Each request was granted upon showing of good cause and evidentiary hearing dates were accordingly rescheduled.

Meanwhile and as part of Track 2 environmental process, the Commission's Energy Division staff ("Staff") has completed the environmental review of the Proposed Project in compliance with the CEQA and prepared a Focused Tiered Environmental Impact Report ("FT EIR"), as detailed in Section 7 of this decision.

On September 16, 2010, Golden State served a notice of an official Rule 12.1(b) all-party settlement conference for October 7, 2010. Golden State, DRA, the County, and the Sutter Pointe Developers participated in several settlement conferences both before and after the official Rule 12.1(b) settlement conference.

On January 4, 2011, DRA filed a motion to dismiss the Application ("DRA's Motion"). The Commission held a hearing on DRA's Motion on January 27, 2011. On March 3, 2011, the Administrative Law Judge denied DRA's Motion.[11]

Golden State, the County, the Sutter Pointe Developers, and the Robbins (all of the foregoing collectively "Joint Parties") reached a comprehensive settlement of all issues arising from the Application, and memorialized the settlement in an agreement ("Settlement Agreement"). The Settlement Agreement is attached to this decision as Appendix A. DRA is the only party to this proceeding that did not join in the Settlement Agreement.

The Joint Parties submitted a Motion for Adoption of the Settlement Agreement ("Joint Motion") to the Commission for approval on March 14, 2011. The Settlement Agreement purports to resolve all disputes amongst parties relating to the Application, with the exception of DRA. The Settlement Agreement also purports to resolve all of the disputed issues in contention in Phases 1 and 2 of Track 1, the formal CPCN proceeding.

On March 14, 2011, ASWC, Golden State, and the Sutter Pointe Developers executed a Water Wholesale Agreement ("WWA") which supersedes and replaces the WTA.[12] Among other changes, WWA substitutes Golden State for ASWC as the transferee of water.[13]

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[11] *See* ALJ's Ruling Denying DRA's Motion to Dismiss Application for CPCN (Mar. 3, 2011).

[12] Settlement Agreement, Ex. D (Water Wholesale Agreement) at § 1.1 ("Cancellation of Water Transfer Agreement").

[13] WWA at § 2.1 ("Water Quantity"). The WWA has been amended three times, most recently on October 4, 2011. *See* Exhibit JP-03.

On April 13, 2011, DRA filed comments in opposition to the Joint Motion and requested an evidentiary hearing be held in this proceeding. On June 14, 2011, the ALJ issued a ruling directing all parties to file an updated PHC statement.

The Joint Parties and DRA filed their respective updated PHC statements on June 27, 2011. On August 18, 2011, the ALJ issued a ruling setting evidentiary hearings and the related briefing schedule and ordering the Joint Parties and DRA to meet and confer and to file a joint case management statement ("August 18, 2011 Ruling"). DRA served testimony setting forth its objections to the Settlement Agreement on August 29, 2011 (the "DRA Report"). The Joint Parties served the rebuttal testimony on September 16, 2011.

In accordance with the August 18, 2011 Ruling, the Joint Parties and DRA met and conferred on September 22, 2011 ("September 22, 2011 Meet and Confer") and jointly submitted their case management statement on September 30, 2011 ("Joint Case Management Statement"), which explains that eight issues identified in the Scoping Memo have been settled, as set forth in Section 4 below.

On October 6, 2011, Golden State filed a motion to strike certain testimony related to Natomas, which was later withdrawn in accordance with a stipulation reached with DRA, as set forth in Section 4 below.

Evidentiary hearings were held on October 10, 11, and 12, 2011, on the remaining disputed issues. All opening and reply briefs were filed by November 16, 2011.

The Joint Parties and DRA timely requested a Final Oral Argument which was held on February 15, 2012.

Based on questions raised during the Final Oral Argument, ALJ issued a ruling to reopen the proceeding record and solicit additional comments from the

parties to supplement the record of this proceeding on the alternatives to the Golden State's proposed initial rates that would alleviate or otherwise mitigate the potential rate shock to the ratepayers for the SSCSA.[14] Golden State timely filed the ordered proposal for alternative initial rates for the SSCSA ("Golden State's Alternative Initial Rates Proposal") on April 27, 2012. On May 11, 2012, DRA filed its response ("DRA Response") to Golden State's Alternative Initial Rates Proposal. On May 25, 2012, Golden State filed its reply comment.

3. Overview of the Application, the Proposed Project, the Project Site, and the Settlement Agreement

3.1. The Application and the Proposed Project

The Application seeks a CPCN to construct and operate an M&I water system and to establish a new non-contiguous service area and rates in the unincorporated southern portion of Sutter County. Golden State proposes to provide M&I water service to a proposed service area in South Sutter County known as the SPSP or Sutter Pointe Area. The future development plans under the SPSP includes a mixture of land uses on approximately 7,538 acres including employment centers, several different housing densities, retail, recreational facilities, schools, community services, supporting on- and off-site infrastructure, and roadway improvements. Generally, the SPSP would permit a maximum of 17,500 residential units and up to 49.706 million square feet of commercial/ industrial space. The SPSP also anticipates parks, schools (six K–8 and one comprehensive high school), a library, a civic center, other civic buildings and

[14] *See* April 24, 2012 ALJ Ruling. Golden State was ordered to file a proposed alternative to its proposed initial rates that would alleviate or otherwise mitigate the potential rate shock to the ratepayers; and parties other than Golden State were permitted to file a proposed alternative to the Golden State's proposed initial rates that would alleviate or otherwise mitigate the potential rate shock to the ratepayers.

public services, and supporting infrastructure within the boundaries of SPSP Area.

An EIR for the SPSP (State Clearing House # 2007032157) was certified by the Sutter County Board of Supervisors on June 30, 2009. The SPSP EIR included a programmatic assessment of development of the entire SPSP Area and a project-level analysis for certain aspects of the first phase of development. The SPSP EIR stated that it was the intent of the County to form a community services district or other County-related entity to provide water utility service for the SPSP Area but also identified the intent of Golden State to provide water service for the SPSP Area. The SPSP EIR analysis of impacts associated with water service assumed that such service could be provided either by a County-related entity or by Golden State, and that regardless of the entity that provides the service, the same sources of water supply would be used. Therefore, SPSP EIR analysis of the physical water availability for the SPSP Area remains unchanged, as applied to the Application and the Proposed Project.

To meet projected demand at build-out of the SPSP (estimated to be approximately 25,000 acre-feet per year, Golden State would implement a conjunctive (groundwater and surface water) water supply program that includes a network of water extraction, transmission, storage, and treatment facilities, as proposed in the Application.

3.2. The Project Site

The Project Site, illustrated in Figure 1 below, is located in southern Sutter County and is generally bordered on the west by the Sacramento River, on the east by the Natomas East Main Drainage Canal, on the north by the Natomas Cross Canal, and on the south by the Sacramento County line. Natomas Road and Powerline Road are located along the eastern and western boundaries of the

Project Site, respectively. The southern boundary of the Project Site is the Sacramento/Sutter County line. State Route 99/70 divides the southern portion of the Project Site and serves as the western boundary of the northern portion of the Project Site.

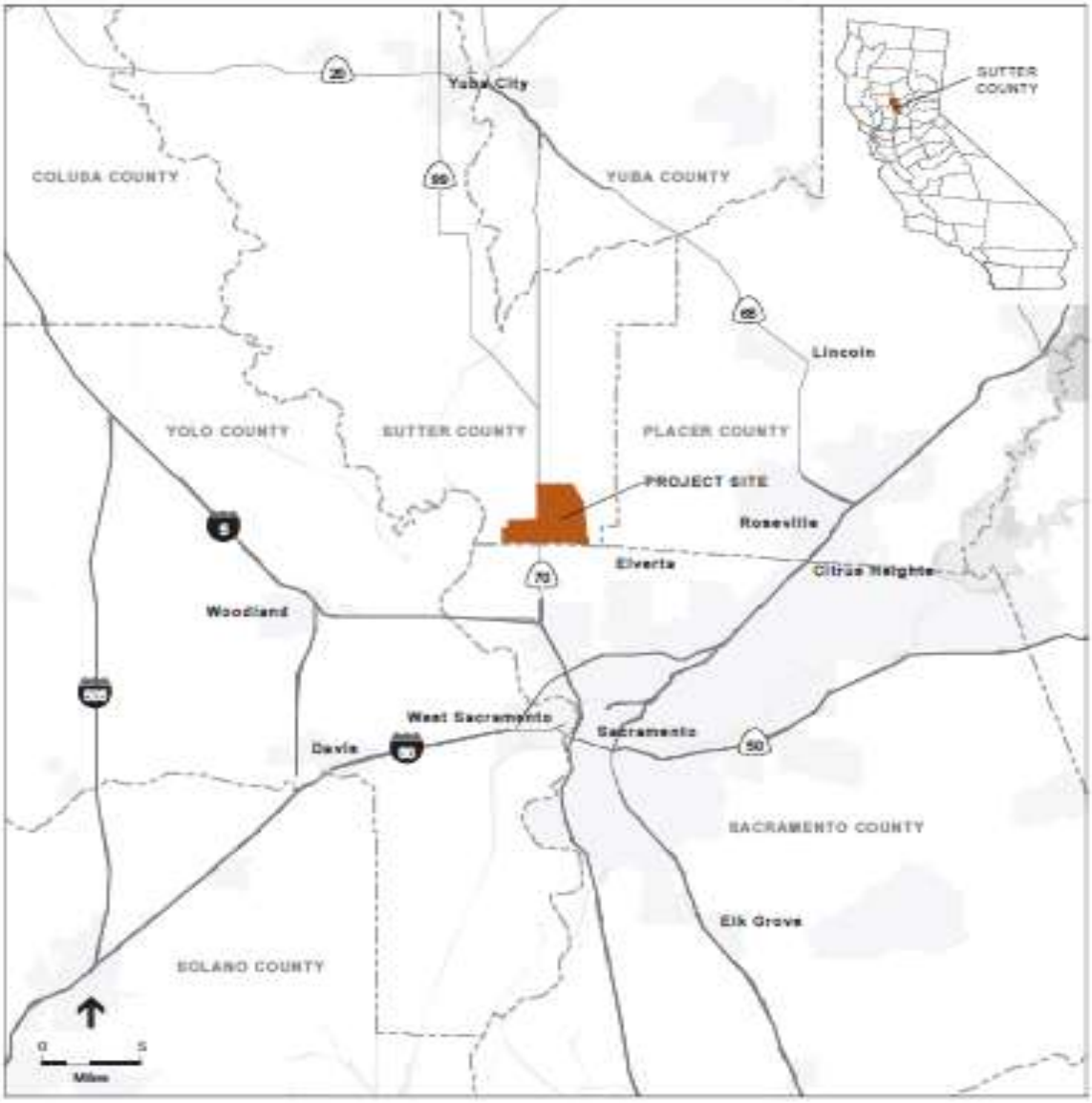

Figure 1: Project Site

The Project Site is characterized by agricultural (primarily rice fields) and industrial uses, including the approximately 50-acre Sysco Corporation warehouse and distribution center, a Holt\Tractor manufacturing facility, and an

approximately 30-acre area occupied by A&N Auto Repair and AR Readymix. Existing surrounding land use is primarily agriculture. Sacramento International Airport and the proposed Metro Air Park (an industrial and business park) are located approximately two miles southwest of the Project Site.

The Project Site is also located within the general boundaries of the Natomas Basin Habitat Conservation Plan ("NBHCP") area. The NBHCP establishes a multispecies conservation program to mitigate the expected loss of habitat values and incidental take of protected species that would result from urban development, operation of irrigation and drainage systems, and rice farming. The goal of the NBHCP is to preserve, restore, and enhance habitat in the Natomas Basin while allowing urban development to proceed according to local adopted land use plans, including SPSP. Designated NBHCP habitat reserve areas are located south and west of the Project Site, primarily along the Sacramento River, and are managed by the Natomas Basin Conservancy.

3.3. The Settlement Agreement

The Settlement Agreement was made and entered into as of March 14, 2011 by and between the Joint Parties:

> … to settle all protests, disputes and claims related to the Application 08-08-022, the provision of water service to the South Sutter County Service Area and the Water Transfer Agreement, to meet the goal of safe, reliable and affordable water supply for the Sutter Pointe Specific area, and to provide terms and conditions upon which the CPUC will grant CPCN for GSWC to provide water service to the South Sutter County Service Area.[15]

[15] Settlement Agreement, Article 1, Section 1.1.

The Joint Parties agreed to enter into the Settlement Agreement which provides, in notable parts, that if the Commission approves the Settlement Agreement in its entirety:

1. County and the Sutter Developers agree not to oppose the Golden State's Application for CPCN;
2. Golden State would provide water utility service to the SSCSA;
3. Golden State and the Sutter Pointe Developers would design and construct backbone water infrastructure necessary to provide water service to the SSCSA to meet the goal of safe, reliable and affordable water supply for the SPSP Area consistent with the SPSP – Water Supply Master Plan dated December 17, 2008;
4. Golden State and the Sutter Pointe Developers would comply with the most stringent of the design standards amongst those set forth by the County, the Commission's General Order 103-A or the California Department of Public Health;
5. Subject to the Commission's future review and approval, Golden State would seek the Commission's review and authorization to acquire and merge Robbins Water System (the water system owned and operated by County Water Works District No. 1 in the Robbins community) into the SSCSA for ratemaking purposes, subject to protests, if any, by the Sutter Pointe Developers and any then-existing customers in SSCSA in a separate and future anticipated Commission proceeding; and
6. The Sutter Pointe Developers will pay for design and construction of all water infrastructure for serving Sutter Pointe, subject to reimbursement by Golden State or third parties as provided in the Settlement Agreement, as follows:

   (a) Infrastructure cost reimbursement, for the backbone infrastructure, to the Sutter Pointe Developers will involve combination of the following three (3) options:

(1) Reimbursement by Golden State to the Sutter Pointe Developers under Rule 15;

(2) Reimbursement by Golden State to the Sutter Pointe Developers by way of incremental acquisition of water infrastructure according to occupancy of Sutter Pointe, upto Eighty-One Million Dollars ($81,000,000); or

(3) Reimbursement by builders to the Sutter Pointe Developers from hook-up fees through a collection process in which those fees are collected by the County or other means agreed to by the Sutter Pointe Developers.

(b) Infrastructure cost reimbursement, for the "in tract" infrastructure, to the Sutter Pointe Developers will involve combination of the following two (2) options:

(1) Reimbursement by Golden State to the Sutter Pointe Developers under Rule 15; or

(2) Reimbursement by Golden State to the Sutter Pointe Developers by way of incremental acquisition of water infrastructure according to occupancy of Sutter Pointe, upto Eighty-One Million Dollars ($81,000,000).

4. Summary of Settled Issues – All-Party Stipulations

DRA continues to oppose certain aspects of the Application and the Joint Motion. However, the Joint Parties and DRA have resolved several issues by stipulations, as set forth below.

4.1. Joint Case Management Statement

The Joint Case Management Statement, filed by and on behalf of all of the parties to this proceeding, including DRA, confirms that the following eight issues identified in the Scoping Memo have been resolved by stipulations. Thus, the below issues are no longer contested by DRA as part of its opposition to the Application:

Issue	Parties' Position
1. Are Sutter County and Sutter County Water Agency subject to the Commission's jurisdiction in this proceeding?	All parties, including DRA, contend that this issue is moot because Sutter County and Sutter County Water Agency support the issuance of the CPCN for the SSCSA to Golden State, as set forth in the Joint Motion, and during the September 22, 2011 Meet and Confer, DRA confirmed that this issue is not in dispute.
2. Does Golden State possess the financial resources, technical competence, and operational experience to provide the service and to construct the proposed facility?	All parties, including DRA, agree that the record demonstrates that Golden State possesses each of these qualifications, as set forth in the Joint Motion, and during the September 22, 2011 Meet and Confer, DRA confirmed that this issue is not in dispute and that Golden State does possess the financial resources, technical competence, and operational experience to provide the service and to construct the proposed facility.
3. What are all of the regulatory requirements (local, state, and federal) that Golden State must satisfy before it can begin this project? What is Golden State's plan to satisfy each requirement? What is the time frame within which Golden State expects to secure all of the regulatory clearance to begin construction on the Proposed Project?	All parties, including DRA, agree that Golden State has properly assessed the regulatory requirements for becoming the water service provider to the SSCSA and has proposed a satisfactory plan for meeting these requirements, and during the September 22, 2011 Meet and Confer, DRA confirmed that this set of issues is not in dispute and that Golden State has properly assessed the regulatory requirements for becoming the water service provider to the SSCSA and has proposed a satisfactory plan for meeting these requirements.
4. If the Water Transfer Agreement is successfully challenged or Golden State otherwise loses its anticipated access to the water supply under the terms of the Water Transfer Agreement with Natomas Central	All parties, including DRA, agree that this issue as phrased is now moot because the WTA is no longer a part of the Application; the WTA has been superseded and replaced by the WWA.[16]

[16] Exhibit JP-01 (Kruger and Moore) at 11.

Mutual Water Company, does Golden State have an alternate plan to provide adequate service to meet the present or future convenience and necessity under Code § 1001?	In addition, all parties, including DRA, agree that aside from water that could potentially be available from Natomas pursuant to the WWA, alternative sources of water supply exist which Golden State may access to meet the water supply needs of the proposed SSCSA.17 Therefore, this set of issues is not in dispute.
5. Is the Sutter County Water Agency ready, willing and able to better serve the territory which Golden State seeks to serve?	All parties, including DRA, agree that this issue is moot because Sutter County Water Agency is no longer seeking to serve the proposed SSCSA which Golden State seeks to serve, and during the September 22, 2011 Meet and Confer, DRA confirmed that this issue is not in dispute.
6. Is Golden State the superior utility (under the general utilities comparison factors adopted in Bakman (Fresno) (1979) 1 CPUC2d 364) and Great Oaks Great Oaks Water Company (City of San Jose) 39 CPUC2d 339 (1991)?	All parties, including DRA, agree that this issue is moot because currently no party—other than Golden State—is seeking authority from the Commission to become the water purveyor to the proposed SSCSA, and during the September 22, 2011 Meet and Confer, DRA confirmed that this issue is not in dispute.
7. What are the community values the Commission should consider in evaluating Golden State's Application?	All parties, including DRA, agree that the community values the Commission should consider in evaluating the Application are those outlined and discussed in the Joint Parties testimony and Joint Motion, and during the September 22, 2011 Meet and Confer, DRA confirmed that this issue is not in dispute.
8. What is the boundary of the proposed SSCSA?	All parties, including DRA, agree that the boundary of the proposed SSCSA is described in the Master Planning Infrastructure Planning Study ("MIAPS") included in the Application, which sets forth the boundary and provides maps for the SSCSA, and during the September 22,

[17] Exhibit JP-01 (Gisler) at 15-18; Exhibit DRA-02 (Han) at 3-9.

	2011 Meet and Confer, DRA confirmed that this issue is not in dispute.

4.2. Other Settled, Stipulated or Otherwise Uncontested Issues

Issue	Parties' Position
1. **Stipulation Regarding Interim Fees**: In the DRA Report, DRA had originally taken the position that certain interim fees that are to be paid to Natomas in connection with the surface water supply procured for the SSCSA under the WWA are unreasonable.[18] DRA's objection was premised on its assumption that Golden State would pay these fees; in fact, under the WWA, Golden State will not pay the interim fees.[19]	DRA and the Joint Parties have stipulated that the interim fees would not be paid by Golden State, and DRA withdrew those portions of the DRA Report objecting to the interim fees.[20] As such, the interim fees issue is not in dispute.
2. Stipulation Regarding the Regulatory Status of Natomas:	Following the evidentiary hearing, on October 18, 2011, the Joint Parties and DRA reached a stipulation in connection with the issue relating to the regulatory status of Natomas. Specifically, they confirmed that, (1) notwithstanding Section 5.4 of the Settlement Agreement, the Joint Parties are withdrawing their request that the Commission make any finding regarding the public utility status of Natomas;[21] (2) the Joint Parties are

[18] *See e.g.* Exhibit DRA-02 (Han) at 3-7.

[19] Exhibit JP-02 (Kruger) at 26.

[20] Tr. Vol. 1 at 103 (explaining that DRA has agreed to withdraw the following excerpts from Exhibit DRA-02 (Han) at 3-7, lines 5-18; at 5-1, line 25 (starting with the word "GSWC") through and including 5-2, line 2.

[21] Under the WTA, Natomas had an express right to terminate the WTA if the Commission were to conclude that Natomas is subject to the Commission's jurisdiction. The Joint Motion mistakenly states that the WWA provides the same right to Natomas. However, the provision of the WTA that provided this right to Natomas was not included in the WWA. DRA's Comments on the Joint Motion also mistakenly state that

Footnote continued on next page

	withdrawing the request that the Commission make a finding that "Natomas is not a public utility by virtue of the transactions contemplated in the WWA, under which Natomas will deliver water to Golden State for M&I service in the SSCSA"; and (3) DRA has agreed not to assert in this proceeding that Natomas is a public utility subject to the Commission's jurisdiction.[22] Based on the foregoing stipulation, Natomas' mutual status pursuant to the WWA is no longer in dispute.
3. Agreement Regarding the Initial Rate for the SSCSA:	On April 27, 2012, the Golden State filed an Alternative Initial Rates Proposal and proposed alternative initial rates (based on Simi Valley County Service Area) that would alleviate or otherwise mitigate the potential rate shock to the ratepayers for the SSCSA. On May 11, 2012, DRA filed its response to Golden State's Alternative Initial Rates Proposal indicating that

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the WWA provides this termination right to Natomas. Per the stipulation, the Joint Parties and DRA agreed to withdraw these mistaken references (Joint Motion at Section II.A.5.d at 50 and DRA Comments on Joint Motion at 3-4). They also agreed to withdraw the following: (1) Golden State's Motion in Limine (Oct. 6, 2011), (2) certain identified portions of Exhibit DRA-01 (Han, adopting Paige) (at 6, lines 6-18); (3) certain identified portions of Exhibit DRA-02 (Sekhon) (at 1-11, lines 9-16; at 1-12, line 4 (starting at the word "and") through line 6 (ending at the word "jurisdiction"); at 3-7, line 19 through p. 3-8, line 3; all of Chapter 5), (4) certain identified portions of Exhibit JP-02 (at 29: the entirety of the first question and answer under Section D; at 30: the portions of the second full answer from the top of the page reading: "as the only relevant issue here is whether or not the WWA subjects Natomas to regulation as a public utility. The Commission has all the information it needs to make the requested finding."); (5) certain excerpts from the Reporter's Transcripts (Tr. Vol. 2 (Kruger) at 257, line 1 through 259, line 25; Tr. Vol. 3 (DRA-Han) at 448, line 6 through 452, line 3 and the words "and 5.4" from at 379, line 9); and (6) the words "and 5.4" from Exhibit GSWC-11.

[22] Joint Parties' Opening Brief at 11, 12.

	"DRA supports Golden State's proposal to use its existing Simi Valley water rates as a[n initial] proxy for future water rates at Sutter Pointe."[23] Based on the foregoing agreement, issue of appropriate proxy initial rates for SSCSA is no longer an issue in controversy.

5. Discussion

As reflected in the above summary, the Settlement Agreement and all-party stipulations and agreements, resolved many of the previously disputed issues amongst all of the parties, including those between the Joint Parties and DRA. However, several issues still remain in dispute between the Joint Parties and DRA, as follows:

(1) whether there is a present or future convenience and necessity for a project such as Golden State's Proposed Project at the Project Site making the SSCSA viable;

(2) whether certain terms of the WWA and the Settlement Agreement are reasonable and in public interest;

(3) whether the Golden State's proposed financing for the SSCSA is reasonable;

(4) whether Rule 15 applies here and preclude the Joint Parties' funding proposal for the SSCSA;

(5) whether Golden State's request for a revenue requirement balancing account for the SSCSA is reasonable; and

(6) whether DRA's requests relating to the future acquisition of the Robbins Water System are relevant and reasonable.

The Joint Parties' and Golden State's positions with respect to the outstanding disputed issues, with one exception, are persuasive and are supported by the record. We find that CPCN should be granted. We find the

[23] DRA's Response at 4.

Settlement Agreement, as augmented by the all-party stipulations and agreement as outlined in this decision, is reasonable, consistent with the law and in the public interest. Based thereon, we approve the Settlement Agreement (attached hereto as Appendix A), as modified by the all-party stipulations, as outlined in this decision and issue an order that grants to Golden State the CPCN for the SSCSA. Golden State's positions with respect to the balancing account are not persuasive. We find that revenue requirement balancing account is unnecessary and not the ideal method of protecting the future ratepayers' interest. Instead, we require that Golden State fully document and justify all of the underlying sources of data and assumptions it relies on in order to develop a general rate case for filing, consistent with the requirements set forth in D.07-05-062, and it must file a detailed general rate case filing[24] using its first year of service as the proposed test year, before commencement of construction of the distribution or "in tract" infrastructure associated with the SSCSA.

5.1. Viability and future convenience and necessity have been adequately demonstrated.

The Joint Parties, including Golden State, have presented persuasive evidence that there is a future convenience and necessity for the Proposed Project at the Project Site and that SSCSA will likely be a viable water system. DRA contends that the future necessity of the Proposed Project at the Project Site is uncertain, with very modest housing demand projections, and as such, SSCSA

[24] The detailed filing for SSCSA's initial general rate case, ordered in this decision, is a stand-alone general rate case filing, separate and apart from Golden State's regular company-wide general rate case filing and must follow the 14 month rate case plan schedule under D.07-05-062 for single district application. *Id.* at Appendix A, A-5.

will not be a viable water system. DRA's contentions are flawed and unpersuasive.

We note, inherent in all of DRA's contentions is an implicit argument that there is not an adequate and certain current or foreseeable necessity and housing demand for the SSCSA water system development. This argument is entirely premised on DRA's projections of modest housing market growth rate of approximately 250 homes per year in this area. Based on that forecast combined with a narrow set of assumptions and arguments, DRA then contends as follows:

(1) Golden State will not have a sufficient number of customers in the SSCSA to support the costs of the proposed water system infrastructure; and

(2) The water rates in the SSCSA would be approximately $273 per month and thus unreasonably high compared to water rates in surrounding areas.[25]

DRA also raises a related argument against the viability of SSCSA water system development based on Resolution M-4708, including the legal memorandums attached thereto, and related Commission decisions.[26]

5.1.1. The need for SSCSA is not in Dispute.

For the Commission to issue a CPCN, Code § 1001 does not require demonstration of viability. It requires that, the applicant demonstrate that, *inter alia*, "… present or future public convenience and necessity require or will require such construction." Here, DRA does not contest there is future public convenience and necessity for the SSCSA water system. DRA's only argument is

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[25] Exhibit DRA-02 (Han) at 7-12.

[26] *See generally* Exhibit DRA-02 (Sekhon) at Ch. 2.

that its projections indicate the housing demand in the area would likely be modest in the foreseeable future.

The Joints Parties have demonstrated that there is reasonably foreseeable future necessity for the SSCSA water system development based on housing market demand looking at the 30-year housing cycle and projected demand in the general area.

5.1.2. The Joint Parties' evidence, reasoning and analysis support the conclusion that SSCSA would be viable.

The Joint Parties and DRA respectively argue that the assumptions and basis for the other side's housing demand growth rate projections at the Project Site are wrong. The Joint Parties forecast a relatively positive future housing demand in the SSCSA area along with economic recovery, and DRA does not. In turn, each side argues that the other side's projections are too high or too low.

On balance, we are persuaded by the Joint Parties' expert's housing market forecast offered in this proceeding. The Joint Parties' expert, who testified on the issue of housing demand projections, had far more land use planning experience in the local area near County of Sutter and the City of Roseville, than DRA's in-house witness. The Joint Parties' expert also had demonstrated extensive experience in evaluating land development and project feasibility as well as providing extensive advice on various land development projects; and DRA's in-house witness did not.

The Joint Parties presented a well-reasoned analysis which took into consideration the region specific historic data combined with the cyclical and long term real estate market performances to examine the regional need forecast for the Propose Project. The Joint Parties' expert explained that "the Commission should look at how the housing market has performed over a longer period for

any prediction as to the future rate of development" and that "[o]n average, over the last 30 years, the Sacramento region has supported 10,000 new single family units per year."[27] And, based on those historic cycle and patterns and looking specifically at SSCSA, he testified that "generally I feel pretty confident about our projections, because we've looked at them over the long term."[28]

Leading economists disagree about how soon the real estate market will recover. These same experts disagree on their respective forecasts and predictions of the timing and rate of housing market growth. That is because there are multitude of local, regional, national and even global economic, social and market variables that affect these forecasts. Both sides in this proceeding offered competing expert witnesses offering competing opinion testimony for their respective projections and bases. Neither side presented a definitively certain and precise future housing demand projections for the Sutter Pointe area.

However, there is persuasive evidence in the record regarding the cyclical nature of the housing market, that the housing market has been in a trough but also that "[o]n average, over the last 30 years, the Sacramento region has supported 10,000 new single family units per year."[29] We believe therefore that, in the near future, there is a high likelihood of the housing cycle taking an upswing and the regional housing demand near the Project Site would increase, consistent with the Joint Parties' forecast.[30]

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[27] Exhibit JP-02 (Carpenter) at 3-4.

[28] *Ibid*.

[29] Exhibit JP-02 (Carpenter) at 3-4.

[30] JP's Opening Brief at 14.

We are therefore persuaded by the Joint Parties' overall evidence, reasoning and the position that there is a future need and the SSCSA is viable, as proposed. We also note, contrary to DRA's assumption, the Sutter Pointe Developers expressly have indicated that they are not proposing to begin construction until the market conditions signal that there will be sufficient demand for housing in Sutter Pointe to justify development. The Sutter Pointe Developers, a business operation, are motivated by profit. Understandably, the development proposal here is not to break ground and further invest in the for-profit development unless there are sufficient market conditions/signals and foreseeable housing market demands in the area to support the project and begin constructing new homes in Sutter Pointe with sales projections that lead to probability of profit.

Specifically, the Sutter Pointe Developers' witness testified that "we anticipate that we could start as soon as 2014, but we are also realistic about the economy and understand that it could be much longer than that."[31] Similarly, the Sutter Pointe Developers' witness explained: "Our decision to build infrastructure and build the community is economy driven. So if we see the signs that the housing market is beginning to go up, then we will make a decision about whether to build the infrastructure for a new community and actually start."[32] As such, the Sutter Pointe Developers have requested that the Commission promptly issue the CPCN in this proceeding because they want to be ready to move quickly once the housing market turns around, not because

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[31] Tr. Vol. 1 (Carpenter) at 112, line 19 through 113, line 25.

[32] *Id.* at 135.

they plan on beginning construction immediately. As the Sutter Pointe Developers' witness explained:

> Developing a community like Sutter Pointe takes years of planning to bring the project from an idea to homes ready for occupancy. The Developers must actively be seeking and securing approvals now for all the infrastructure components that will ultimately be required to serve the community so that Sutter Pointe will be ready to meet the demand for new housing that will arise in the future.[33]

It is the Sutter Pointe Developers' anticipation that ". . . when the housing market becomes hot, it becomes hot quickly."[34] Because it takes on average 18-24 months for the Commission to grant a CPCN,[35] the Sutter Pointe Developers' witness explained that "Sutter Pointe has a greater likelihood of success if it is completely planned and permitted during this lull in the real estate market and is ready to break ground as the market dictates."[36]

The Sutter Pointe Developers' witness therefore explained that by granting the CPCN at this time, the Commission will "enable a critical piece of infrastructure to be finalized, thereby facilitating the planning, permitting, and construction of other infrastructure components," such that the Sutter Pointe Developers can "invest in other components necessary to get the project off the ground."[37]

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[33] Exhibit JP-01 (Carpenter) at 8.

[34] Tr. Vol. 1 (Carpenter) at 112-113.

[35] DRA's witness, Mr. Han, acknowledged that that a complex CPCN proceeding similar to this one should expect a lengthy processing time. *See* Tr. Vol. 2 (DRA-Han) at 443, line 26 through p. 444.

[36] Exhibit JP-02 (Carpenter) at 7.

[37] *Id.* at 6-7.

DRA's contention that the SSCSA is not viable is flawed in yet another way. It makes several significant assumptions, which are contrary to the evidence in this proceeding. It assumes that the Sutter Pointe Developers will begin constructing Sutter Pointe without regard to the housing demand in the area. It then assumes that Golden State will acquire infrastructure and put the cost of that infrastructure immediately into rates, regardless of the speed at which the SSCSA develops, which would vary and be dependent of actual housing demand at the Project Site. It also assumes that Golden State would include those same infrastructure costs in water rates without any consideration for the actual number of customers Golden State serves. These assumptions are evidenced in DRA's witness testimony.[38]

The above analysis, and particularly the underlying assumptions, by DRA incorrectly reflect the plans of either Golden State or the Sutter Pointe Developers, as proposed here. According to the Golden State's witness and contrary to DRA's contentions, infrastructure costs are not fixed here; rather, they vary because the infrastructure ultimately planned, built and included in rate base will necessarily reflect and change depending on the number of customers that Golden State will serve. And that number is unknown at this time and remains undetermined, as the Sutter Pointe Developers monitor the current economy and housing market cycles to track the regional housing demand and determine the optimal timing to proceed with construction with the development that responds to and is consistent with the actual demands.

We also note, Golden State or the Sutter Pointe Developers both offered testimony that the Sutter Pointe Developers will not proceed with constructing

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[38] Exhibit DRA-02 (Han) at 7-5.

Sutter Pointe "until such time as the real estate market can support between 800 and 1000 customers per year."[39]

In light of the foregoing, we find that DRA's objection, including its underlying assumptions and analysis leading to unreasonably high water rate projections, unpersuasive. Likewise, we also find DRA's overall argument, stemming from that flawed water rate projections, that the SSCSA will not be viable, unpersuasive.

The fact is the Sutter Pointe Developers have indicated unequivocally that it will not build, and Golden State will not acquire and include in its rate base, the SSCSA water system infrastructure as currently engineered if there are only 250 new customers per year. Moreover, the Settlement Agreement requires that the Sutter Pointe Developers and Golden State work together to ensure delivery of a viable water system that serves Golden State's SSCSA customers at competitive rates. Section 4.2.3 of the Settlement Agreement provides:

> [Golden State] and the Sutter Pointe Developers will develop a method to ensure timely infrastructure delivery. The Party that designs and constructs the water infrastructure will provide the other Party an opportunity to review, comment on and approve the design before it is finalized, for purposes of: (1) ensuring compliance with the design standards set forth in Section 4.2.2; (2) minimizing life cycle costs of the water infrastructure, considering capital, operations, maintenance, repair and replacement costs; (3) *maintaining competitive rates*; and (4) ensuring adequate water service quality based on the operating experience of [Golden State].[40]

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[39] Exhibit JP-02 (Switzer) at 47; Exhibit JP-02 (Carpenter) at 4.

[40] Settlement Agreement at Section 4.2.3 (emphasis added).

Golden State has more than eighty years of experience providing water service in California and serves approximately 252,000 water customers and 22,700 electric customers, within 75 communities in 10 counties.[41] In Decision (D.) 00-10-029, the Commission has expressly recognized Golden State's expertise as an established and experienced water utility. In addition, Golden State currently operates 38 water systems in California and has demonstrable and extensive experience in water utility construction, including planning, design and construction of water related facilities.

Knowing what to build and when to build it, in response to the projected demand, is an integral component of Golden State's expertise. Thus, in addition to the expert testimony, the terms of the Settlement Agreement and Golden State's credentials and extensive history as a successful water service provider in California, there is significant assurance that Golden State will not build, nor authorize the Sutter Pointe Developers to build, water system infrastructure that is unviable and too large to be supported by the SSCSA customer base.

Based on the foregoing, we find the SSCSA would be viable.

5.1.3. The Saturation Adjustment Mechanism provides additional assurance for the ratepayers.

The ratepayers are also protected with the saturation adjustment mechanism. A saturation adjustment mechanism is available to protect ratepayers in the unlikely event that DRA's worst case scenario (the modest housing demand growth projections) should occur.

As set forth above, the Sutter Pointe Developers and Golden State have a devised a cautious phased plan for the overall development, including the water

[41] Exhibit GSWC-01 (Kruger) at 37.

system infrastructure, for the SSCSA to coincide with and therefore meet the real estate demand and market growth at the SSCSA. Further, because Golden State plans to incrementally acquire the water system infrastructure as customers move into the service area over the course of the proposed SSCSA build-out,[42] it is unlikely that the amount of infrastructure that Golden State has in its rate base would be disproportionate to the number of SSCSA customers that it is actually serving.

Even if the Sutter Pointe Developers and Golden State mis-projected the market and construction at SSCSA commences before there is an actual and sufficient demand for housing in Sutter Pointe to support the infrastructure constructed (or that they construct the system and the economy thereafter suffers a relapse reducing demand for housing in Sutter Pointe), a saturation adjustment mechanism is available and can be employed to mitigate the impact on Golden State's customers.

Standard Practice U-3-SM provides that if the costs of operating and maintaining a new water system are "higher than reasonable due to there being a small number of customers for the built-out facilities . . .a 'saturation adjustment' . . . should be made to plant in service to include only plant that is used and useful."[43] Appendix B to Standard Practice U-3-SM provides a detailed explanation as to under what circumstances such an adjustment is appropriate and as to how the adjustment should be calculated. Therefore, the Commission already has in place at least one readily available remedial mechanism, the

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[42] Exhibit JP-01 (Switzer) at 33-34.

[43] Standard Practice U-3-SM at ¶ 28.

saturation adjustment, that is already available in the event that the development of the SSCSA is not appropriately timed with respect to market conditions.

In addition, Golden State provides the Commission with added assurance of explicitly agreeing to employ a saturation adjustment mechanism under such unlikely event, to mitigate the cost impacts of the scenario envisioned by DRA of low housing demand and overbuilt infrastructure.

5.1.4. The authorities cited by DRA raising general potential viability concerns are inapposite.

DRA also cites to Resolution M-4708, the legal memorandums attached thereto, and some related Commission decisions.[44] Based thereon, DRA contends that the Commission should not grant a CPCN to Golden State as there are inherent viability concerns the Commission has recognized in issuing CPCNs to new water systems as confirmed in those authorities.[45]

First, we note earlier that we are persuaded by the Joint Parties' overall reasoning and the position that the SSCSA is viable, as proposed. Thus, while viability could be an issue in theory, it is not an issue here. Moreover, Golden State correctly notes the authorities cited by DRA do not apply here, since Golden State is not a start-up utility. Those authorities set forth the Commission's policy, including multitude of concerns, based on which, the Commission should be reticent to grant a CPCN to a Class D water utility for a new development.

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[44] *See generally* Exhibit DRA-02 (Sekhon) at Ch. 2

[45] *See e.g.,* "[D]ue to today's economic and regulatory climate, the Commission should not allow any unviable systems to be created." Resolution M-4708, memo attached thereto at 1.

Here, Golden State is a well-established Class A utility. The Commission has stated explicitly that "[b]y the very terms of the Resolution, [Resolution M-4708] applies only to Class D water corporations."[46] The Commission's use of the word "Class D water *corporations*" rather than "Class D water *systems*" is intentional, as is revealed by the remainder of the paragraph:

> These have less than 500 connections. Applied literally, *no startup water corporation's system*, regardless of its anticipated completion size, could ever be certified as more than a Class D, nor could it be 'viable' financially at start. We must use common sense and look to the reasonableness of expectations and projects based upon up-front investment, plans, market prospects and the financial ability resources and track record of the developer. Financial viability is not determined by the immediate return on investment alone.[47]

A large, experienced, qualified and existing Class A water company such as Golden State would under no circumstances be considered a "start-up water corporation." Even if the above-referenced sentence began "Applied literally, no start-up water system," the rest of the paragraph makes clear that Resolution M-4708 does not apply in this case.

As set forth here, the Sutter Pointe Developers will not proceed with constructing Sutter Pointe "until such time as the real estate market can support between 800 and 1000 customers per year,"[48] and the numerous reasons set forth in the authorities cited by DRA for the Commission's reluctance to issue CPCNs

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[46] D.99-08-016, *Re McCanna Ranch Water Co.*, 1999 WL 702274 (Cal.P.U.C.) at *20.

[47] *Id.* (emphasis added).

[48] Exhibit JP-02 (Switzer) at 47; Exhibit JP-02 (Carpenter) at 4.

to Class D water utilities are inapplicable given the facts of Golden State's Application, expertise and plan for the SSCSA.

In sum, we are not persuaded by DRA's housing demand projections, analysis and contentions that SSCSA is unviable, and we conclude there is adequate future need for the Proposed Project and the SSCSA is viable. We also find the authorities cited by DRA, raising potential viability concerns with start-up water systems, are inapposite.

5.2. The terms of the WWA and the Settlement agreement are reasonable and in the public interest.

DRA objects to certain terms of the WWA and the Settlement Agreement. As discussed below, we are not persuaded by DRA's objections. Instead, we find the terms at issue are reasonable and in the public interest.

5.2.1. Water supply to be procured under the WWA is necessary, reliable and safe.

DRA argues that the water supply to be procured under the WWA is unnecessary and unreliable. The Joint Parties disagree and instead contend that DRA's objections: (a) fail to consider the requirements of California law, (b) ignore Natomas' very senior Sacramento River water rights and history of providing reliable water service to its shareholders for nearly a century; (c) are premised upon fundamental misinterpretations of the provisions of the WWA; and (d) do not accurately reflect the roles that Natomas and Golden State will play with respect to delivery of surface water to Golden State's customers in the SSCSA.

5.2.1.1. California law requires Golden State to secure sufficient water supplies to serve the SSCSA at full build-out before undertaking the first phase of development.

DRA asserts that the water supply Golden State secured under the WWA is excessive and unnecessary because "[t]he Joint Testimony demonstrates that [Golden State] has a sufficient supply of water to serve the eventual Sutter Pointe community for many years before it would have any need for surface water."[49] Citing the availability of water transfers from water right holders other than Natomas, DRA then contends that "[w]ith the gradual growth of Sutter Pointe of 40 years, [Golden State] should have ample opportunity to tap into these additional sources, if required."[50] As such, DRA suggests that Golden State therefore need not obtain sufficient water supplies to serve the SSCSA at full build-out before undertaking the first phase of development, but, to the contrary, can begin serving the SSCSA with groundwater and obtain additional supplies on an as-needed basis in the future.

DRA's proposal violates California law. California law requires Golden State to secure sufficient water supplies to serve the SSCSA at full build-out before proceeding with the SSCSA. Under California Water Code §§ 10901 *et seq*. and California Government Code § 66473.7, Golden State is required to secure a firm water supply for the SSCSA at full build-out before proceeding with the project.[51] These California code provisions apply to the SSCSA because

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[49] Exhibit DRA-02 (Han) at 3-9.

[50] *Ibid.*

[51] Exhibit JP-02 (Kruger) at 11.

Sutter Pointe is a new residential development that will have more than 500 dwelling units.[52]

As Golden State's witness explained, although there is sufficient groundwater to serve the SSCSA through the first phase of development, Golden State "has never stated, and does not believe, that it can serve the entire Sutter Pointe project solely with groundwater supplies."[53] Further, she explained that Golden State's projections regarding water requirements for the SSCSA take into account conservation measures, and thus Golden State could not foresee a scenario in which they would require less water than they plan to procure under the WWA.[54]

Moreover, the California Supreme Court has established several general principles for analyzing the sufficiency of water supplies for new development under California Water Code §§ 10901 *et seq*. and the CEQA.[55] First, water planning efforts cannot simply ignore or assume a solution to any water supply constraint or limitation. Second, the planning for a large project to be built over a period of years cannot limit its analysis to water supplies needed for the first stage or first few years, but must assume the entire project will be built and analyze the impacts of supplying water to the entire project. Third, future water supplies must bear a likelihood of actually proving available; speculative sources

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[52] Tr. Vol. 2 (Kruger) at 284; Cal. Gov. Code § 66473.7 (defining "subdivision" as "a proposed residential development of more than 500 dwelling units, except that for a public water system that has fewer than 5,000 service connections").

[53] Exhibit JP-02 (Kruger) at 10-11.

[54] Tr. Vol. 1 (Kruger) at 195.

[55] Cal. Pub. Res. Code §§ 21000 *et seq*.

and unrealistic allocations are generally insufficient.[56] An analysis of alternative supplies is not necessary if it is clear that future water supplies will likely be available.[57]

If Golden State followed DRA's suggested strategy of waiting to secure unidentified surface water supplies in the future, Golden State would be in violation of California law. Instead, Golden State complied with California law by calculating the amounts to be procured under the WWA to meet the projected full build-out needs of the SSCSA and secured a firm surface water supply before proceeding with the SSCSA. Upon review, we find DRA's objection here to be unreasonable and contrary to California law.

5.2.1.2. The WWA provides a reliable source of surface water to serve the SSCSA because Natomas holds senior water rights.

DRA contends that WWA fails to provide a reliable source of surface water to serve the SSCSA. However, this ignores that fact that Natomas holds senior water rights. In fact, because of Natomas' seniority of Sacramento River water rights, the water supply committed by Natomas in the WWA is very reliable and desirable. As Golden State's witness explained:

> [T]he Natomas rights are secure, senior rights, under a settlement contract with the U.S. Bureau of Reclamation ("USBR"). All surface water diversions and deliveries by Natomas are based on water rights and/or USBR settlement contract entitlements owned solely by Natomas. Natomas possesses several surface water

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[56] *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova*, 40 Cal.4th 412, 430-32 (2007).

[57] *See Santa Clarita Organization for Planning the Environment v. County of Los Angeles*, 157 Cal. App. 4th 149, 162-63 (2007).

> rights on the Sacramento River. The company owns several appropriative rights recognized by the State Water Resources Control Board ("SWRCB") pursuant to licenses or permits. Those rights established prior to 1964 were recognized by USBR in a Settlement Contract. The Settlement Contract allows Natomas to divert 98,200 acre-feet per year ("AFR") pursuant to its state water rights as "Base Supply," and also 22,000 AFY pursuant to the USBR's rights as "Project Water." Both the Base Supply and Project water are firm entitlements of Natomas, and they can only be limited when USBR designates a "critical year" according to a set of objective criteria set forth in the Settlement Contract. Even in a critical year, deliveries of water to Natomas may be reduced by only 25 percent. Thus, the Natomas supply will always be either 100 percent delivery or 75 percent delivery, making it one of the most reliable water rights in the Sacramento River system.[58]

Golden State also reviewed Natomas' permits "to ensure that [Natomas' water rights] are as solid as Natomas said they were, and we were very satisfied that they have very senior water rights."[59]

Golden State reviewed the Natomas' historic water supplies and notes that since 1906, Natomas' water supplies have been reduced to 75 percent only 13 percent of the time (during some critical dry years.)[60] The rest of the 87 percent of the time, Natomas has been entitled to 100 percent of its Sacramento River water supplies.

DRA also raised an issue of a pending litigation (regarding endangered species and the exercise of water rights in the Sacramento-San Joaquin River Delta) and how the outcome of that litigation may negatively affect Natomas'

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[58] Exhibit JP-02 (Kruger) at 8-9.

[59] Tr. Vol. 2 (Kruger) at 234.

[60] *Id.* at 281. (During her testimony, Ms. Kruger inadvertently referred to the Integrated Water Resources Management Plan as the Integrated Regional Water Management Plan.)

water rights and reliability of water supplies under the WWA. Golden State explained that, if the environmental groups that have instituted that litigation prevail, "Natomas still has their underlying water rights" and would still be required to deliver water under the WWA.[61] In addition, the Natomas' underlying rights are not the subject of that litigation nor does that litigation call into question or challenge Natomas' water rights.[62] Thus, it is unlikely that the outcome of that litigation would affect the reliability of the Natomas' surface water supplies under the WWA.

Moreover, Golden State also provided testimony that the only potential impact the litigation has on the SSCSA is that Natomas surface water supplies might be cut back by more than 25 percent during the months of July and August.[63] However, because the cut backs could only occur during these two months, Golden State would be able to make up the supplies in real time via enhanced groundwater pumping.[64] Thus, the pending litigation and its outcome will have no foreseeable impact on the reliability of water supplies to SSCSA that Golden State would be providing.

In addition, this contingency is the reason that Golden State employs the conjunctive use of groundwater and surface water; conjunctive use allows for operational adjustments between groundwater and surface water to accommodate conditions such as critical dry years.[65] Perhaps most significantly,

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[61] Tr. Vol. 1 (Kruger) at 203.

[62] *Ibid.*

[63] *Id.* at 209.

[64] *Ibid*.

[65] *Id.* at 210.

Golden State also provided testimony that, with respect to the Sacramento River water supplies litigation, Natomas is in no worse position than any other state water contractor in the state, and "[i]n fact, they're probably in a better position than some of the wholesalers that [ ] [Golden State] purchase[s] water from in the context of this litigation because their rights are so senior."[66]

The record demonstrates that surface water supplies will be required to serve the SSCSA, and given the proximity of Sutter Pointe to the river, Sacramento River water is the logical supply, a fact which DRA witness also acknowledged.[67] Moreover, in light of the pending litigation regarding endangered species and the importance of water rights in the Sacramento-San Joaquin River Delta, it is particularly appropriate and desirable for Golden State to secure Sacramento River water supplies from a person with exceptionally senior rights, which is superior to many other water rights holders. With its exceptionally senior water rights dating back to the early 1920s and pre-dating development of both the federal Central Valley Project and the State Water Project, Natomas is just such a supplier that will provide a reliable source of water supply.

We are not persuaded by DRA's position here. Instead, we find that the pending litigation and its outcome will not have significant foreseeable impact on the reliability of water supplies to SSCSA that Golden State would be providing, and even the potential reduction of Natomas' surface water supply, Golden State's plan to employ conjunctive use of groundwater and surface water

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[66] *Ibid.*

[67] Tr. Vol. 3 (DRA-Sekhon) at 477.

will provide the necessary operational adjustments between groundwater and surface water to accommodate such situations.

5.2.1.3. Various terms of the WWA do not compromise or otherwise jeopardize the reliability of surface water necessary to serve the SSCSA.

DRA objects to various terms of the WWA. The objections are that certain terms of WWA compromise or otherwise jeopardize the reliability of surface water to serve the SSCSA. However, the record here demonstrates that DRA's objections lack merit because the WWA and its terms create reliable and firm obligation for Natomas to deliver surface water to Golden State in the amounts committed to Golden State.

One of the terms DRA objects to is Section 2.11 of the WWA. DRA contends that it creates a conditional obligation, instead of a firm obligation to deliver water. The Joint Parties have provided testimony explaining that DRA misunderstands and therefore mischaracterizes this provision. The Joint Parties contend that the statement in Section 2.11 that the water to be provided by Natomas is "surplus" to the needs of its shareholders is not a contractual term giving rise to a conditional obligation, as objected to by DRA, but a standard representation provision.

Specifically, the WWA, at Section 2.1 and Exhibit B, sets forth the specific amount of water that Natomas has committed to deliver to Golden State, both in normal years and in critical dry years. DRA argues that because Section 2.11 of the WWA states that "[t]he Parties acknowledge and agree that Natomas' sale of water pursuant to this Agreement is of water that is surplus to the needs of Natomas' shareholders," Natomas does not have a firm obligation to deliver any

water to Golden State unless Natomas determines that, after the needs of Natomas' shareholders are met, Natomas has surplus water.[68]

We disagree with DRA's interpretation here. First, this provision is not a stand-alone provision but is one of several provisions that describe the nature of what the parties bargained for in their negotiation and thus cannot be interpreted without looking at other provisions. For instance, there is an unequivocal language in Section 2.1 of WWA on Water Quantity, which sets out with particularity the water quantity being supplied under the WWA and Sections 2.3 further explains what the parties would do in the unlikely instance of certain water supply shortage conditions. Additionally, Golden State's witness testified: "That designation of surplus water has already been determined by Natomas. They've already designated that the water they are supplying under the [WWA] is surplus. So that water is available. It has already been determined to be surplus and available."[69] Golden State's witness also explained that "Natomas hired an expert to do an analysis of their available supplies to declare that they did have the surplus. And we had that report and are confident and comfortable with the analysis done by an engineer, hydro-geologist who declared they do have a surplus available."[70] Thus, the representation, Section 2.11, included in the WWA is supported by an engineer's report such that it is reasonable for Golden State to accept, acknowledge and agree with the representation (Section 2.11) as accurate and that Natomas will not breach the WWA as a result of a latter determination of its water supplies.

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[68] Exhibit DRA-02 (Han) at 3-2.

[69] Tr. Vol. 1 (Kruger) at 183.

[70] *Id.* at 234, 235.

Second, the explicit language of the section further confirms that Section 2.11 is an acknowledgement of the description of the water supply bargained for by the parties. As the Joint Parties explained, it is part of Natomas' representation of various foundational facts that underlie the understanding and final contractual terms of the agreement.[71]

Third, DRA's interpretation of Section 2.11 would mean that this section creates a conditional obligation on the part of Natomas: "a legal or moral duty to do or not to do something . . . that depends on an uncertain event."[72] For that to be the case, there would necessarily be a companion provision in the WWA that states that Natomas would be released from its water delivery obligations if Natomas later determines that its shareholders need the water that has been committed to Golden State. No such provision exists anywhere in the WWA.

We are persuaded that WWA sets out an adequately firm obligation for Natomas to supply a specific quantity of surface water to Golden State and that Section 2.11 of the WWA is a representation and does not create a conditional obligation that undermines Natomas' firm obligation to deliver to Golden State the amounts of surface water set forth in the WWA to the Settlement Agreement. We therefore conclude that DRA's interpretation of Section 2.11 is not reasonable based on the language of the provision or any other facts in the record.

Another term DRA objects to is Section 2.10 of the WWA. DRA contends that, Section 2.10 of the WWA, the "No Public Use Clause," "would insulate Natomas from the responsibility of water supply interruptions and would allow

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[71] Black's Law Dictionary (9th ed. 2009), definition of "representation."

[72] *Id.*, definition of "conditional obligation."

it to terminate the agreement."[73] The Joint Parties and Golden State contend DRA's argument is flawed because DRA has misinterpreted Section 2.10. Section 2.10 states:

> The Parties acknowledge and agree that Natomas is willing to supply water to [Golden State] as a corporation on a wholesale basis and not to [Golden State's] customers other than as the water may be supplied by [Golden State] to its customers' through [Golden State's] own distribution system and under its own exclusive control, and that Natomas does not hereby dedicate its water supplies to public use.[74]

On this issue, the Golden State's witness testified, "[n]othing about [Section 2.10 of the WWA] 'insulates Natomas' from failing to fulfill its contractual obligations under the WWA or allows Natomas to terminate the agreement; in either case it would be in breach and subject to paying damages."[75] The Golden State's witness explained that (i) this language "is based on a similar clause that was approved by the California Supreme Court in *Marin Water and Power Co. v. Town of Sausalito*, 168 Cal. 587 (1914), as one factor in determining that the selling entity was not a public utility," and (ii) "numerous other Commission-approved contracts include similar provisions, including SCE's 2011 Pro Forma Renewable Power Purchase and Sale Agreement (*see* Section 10.12 "Nondedication"), and PG&E's 2011 Renewable Portfolio Standard Form of Power Purchase Agreement (see Section 10.5(c), "No dedication") and Standard Offer contracts approved by the Commission during

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[73] Exhibit DRA-02 (Han) at 3-4.

[74] WWA at § 2.10.

[75] Exhibit JP-02 (Kruger) at 18.

the 1980s for energy sales by Qualifying Facilities."[76] Golden State also notes that this language is commonly found in Commission-approved form agreements, which is indicative of the Commission's approval of such language as giving sufficient certainty of contractual obligations.

Golden State explains that its purpose of Section 2.10 is to clarify that by entering into and performing under the WWA, Natomas is not dedicating its water supplies to public use in a manner that would make it a public utility. Currently, Natomas is not regulated by the Commission and does not wish to become regulated by operation of the WWA, and Section 2.10 merely affirms that Natomas is not offering any water to the public as a result of agreeing to supply water to Golden State on a wholesale basis.

We conclude that DRA's interpretation of Section 2.10 is not reasonable based on the language of the provision or any other facts in the record.

DRA also objects to certain limited termination provisions set forth in the WWA and argues that those provisions jeopardize the reliability of water supplies to Golden State customers. DRA argues that "[t]he Commission should not approve a water supply agreement that makes a new service territory at least 2/3 dependent on a water supply contract that can be terminated at the supplier's discretion."[77] DRA argues that the water supply from Natomas is so critical to SSCSA that the certain limited termination provisions included in Sections 2.15(1) and 2.15(3) "are not in the public interest and threaten the continuity of service for the Sutter Pointe customers."[78]

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[76] *Id.* at 18-19.

[77] Exhibit DRA-02 (Han) at 3-4.

[78] *Ibid.*

However, the Joint Parties and Golden State assure the Commission that the WWA includes only few limited termination rights. In fact, each of those rights would accrue before there are any customers relying on Natomas' water. For instance, Section 2.15(1) of the WWA states that the Settlement Agreement is subject to early termination if (a) Natomas does not obtain certain regulatory approvals to use its surface water rights for municipal and industrial purposes or (b) if this Commission does not grant the CPCN to Golden State for the SSCSA. These limited termination rights would apply only in the circumstance that relevant governmental authorities did not approve use of the Natomas water supplies for the SSCSA. Since such governmental approvals are legally required before Natomas can transfer water to Golden State, termination of the WWA under those circumstances would not prejudice Golden State or its future customers. A clear example of the impact of this clause would be if the Commission does not to approve a CPCN for the SSCSA. In such instance, the termination of WWA would occur. But there would be no need for the water supply under the WWA; thus, the termination of the WWA would have no negative impact to any ratepayers. Specifically, Golden State would have neither any customers in Sutter County nor any use for water from Natomas.

The only other extant termination provision is set forth in Section 2.15(3) of the WWA. This provision permits Natomas to terminate the WWA if, by December 31, 2026, a date which is thirteen years from now, at least $10 million has not been committed to the water supply infrastructure for Sutter Pointe (either through a sale of community facilities district bonds to be used for grading or backbone infrastructure or through grading or construction work actually performed at a cost exceeding that amount). However, as Golden State's witness testified, the reality is that if $10 million has not been so committed by that date, then "the Sutter Pointe development will not have come to fruition and

would be unlikely to do so."[79] Thus, Golden State would have no customers and surface water supply need from Natomas without the development.

We agree with the Joint Parties and Golden State that these limited termination rights provisions of WWA do not jeopardize the reliability of water supplies to any future Golden State customers. The WWA water supply is a reliable source of surface water for the SSCSA; even if it were not, the evidence in this proceeding shows that Golden State has the ability to make up for any shortfalls via groundwater and supplemental surface water purchases. We therefore conclude that DRA's argument that "[t]he Commission should not approve a water supply agreement that makes a new service territory at least 2/3 dependent on a water supply contract that can be terminated at the supplier's discretion"[80] is unpersuasive.

DRA objects to Section 2.7(a) of the WWA and argues that it compromises the reliability of the surface water supply for the SSCSA because under that provision, Natomas would be operating the Sankey Diversion. DRA's particular concern is that Natomas, not Golden State, will control the pumps at the extraction facility when Golden State should own and control all these facilities instead.[81] DRA contends that "Natomas would control nearly all aspects of the water supply" and states that Golden State should have its own source of water supply without relying on others as well as "full control over all facilities and equipment.[82] DRA however does acknowledge that Golden State will operate its

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[79] Exhibit JP-02 (Kruger) at 20.

[80] Exhibit DRA-02 (Han) at 3-4.

[81] Exhibit GSWC-29 (DRA response to Data Request 52).

[82] Exhibit DRA-02 (Sekhon) at 4-2.

own groundwater wells to serve the SSCSA; thus, DRA's concerns are limited to the surface water to be provided by Natomas under the WWA.[83]

The Golden State argues that Natomas' operation of the Sankey Diversion does not, in any manner, jeopardize the reliability of the surface water supply for the SSCSA.

Under Section 2.7(a) of the WWA, "Natomas will be responsible for owning, operating and maintaining the Conveyance Facilities"[84] used to deliver surface water to the point of delivery. ("Conveyance Facilities" is defined as "the Sankey Diversion, or the Bennet Pumping Plant if the Sankey Diversion has not been constructed and placed into operation."[85])

Here, we are not persuaded by DRA's objection for several reasons. First, the evidence in this proceeding demonstrates that "Natomas has been in business for over 90 years and has delivered water reliably to its shareholders during that period."[86] DRA has not presented evidence that would suggest that Natomas will fail to operate the pumps at the extraction facility (or any other Conveyance Facilities) reliably.

Second, in the unlikely event that Golden State is dissatisfied with Natomas' operation of the Conveyance Facilities, the WWA expressly provides a remedy. Under Section 2.7(b), if Golden State believes that Natomas' operation or maintenance of the Conveyance Facilities is below industry standards or otherwise jeopardizes reliable water deliveries, Golden State has the right to

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[83] Exhibit GSWC-28 (DRA response to Data Request 53).

[84] WWA § 2.7(a).

[85] WWA § 8.1.1.

[86] Exhibit JP-02 (Kruger) at 14.

issue a demand requiring Natomas to promptly correct the problem identified, and Natomas is obligated to meet and confer with Golden State regarding the demand within 48 hours of its receipt.[87]

If Natomas and Golden State are unable to resolve the problem during this meet and confer, then the dispute is subject to mandatory arbitration under the Expedited Procedures of the American Arbitration Association ("AAA"), and the AAA Optional Rules for Emergency Measures of Protection apply to the proceedings.[88] Perhaps most critically, Natomas and Golden State have agreed that the arbitrator may select "a neutral third party with expertise in water operations to step in and assume temporary responsibility for operation and maintenance of the Conveyance Facilities until Natomas is able to do so."[89]

In short, given Natomas' experience of extracting and conveying Sacramento River water for nearly a century and given the lack of any evidence in the record suggesting otherwise, there is adequate assurance in the record that Natomas will maintain and operate the Conveyance Facilities effectively and reliably. In addition, Golden State has explicit corrective remedy under Section 2.7(b) in the unlikely event if Natomas' operation or maintenance of the conveyance facilities falls below industry standards or otherwise jeopardizes reliable water deliveries to SSCSA and the corrective remedy under Section 2.7(b) sets forth safeguard for Golden State to ensure that those concerns would be promptly addressed by Natomas.

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[87] WWA § 2.7(b).

[88] WWA § 7.8.5.

[89] WWA § 7.8.5.

Third, we also agree with Golden State that under the WWA, it would maintain sufficient control over all facilities necessary to ensure a safe water supply to the SSCSA customers. Specifically, Golden State, which has experience of operating four surface water treatment plants, "each treating different sources of water with varying water quality parameters"[90] will control all facilities necessary to ensure the safety of surface water delivered to the SSCSA under the terms of the WWA.[91]

As to the particular concern DRA notes concerning the safety of the water supply and that the water supply will be at risk because Natomas will be operating the pumps at the extraction facility upstream of Golden State's water treatment plant, the concern lacks merit. DRA contends that "as a purveyor of potable water, Golden State has experience and knowledge how to handle [contamination problems],"[92] and that Golden State's operation of the treatment plant provides an insufficient safeguard because, according to DRA, contamination "should be detected at the point of origin where [an extraction facility is] taking water from the Sacramento River."[93] However, DRA witness agreed that it would be just as effective if Golden State were to install a contamination monitoring system upstream of the treatment system, or at the

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[90] Exhibit GSWC-01 (Kruger) at 40.

[91] *See* Exhibit JP-02 at 14: "Natomas will have control over the water supply for the short distance between the Sankey Diversion and the point of delivery, which will be on the land side of the Sacramento River levee near the Sankey Diversion. [Golden State] will own and control all facilities from that point to the customers, including all water treatment and distribution facilities. Thus, [Golden State] will control all facilities to ensure a safe water supply for its customer, free from harmful contaminants."

[92] Tr. Vol. 3 (DRA-Sekhon) at 492.

[93] *Id.* at 493.

treatment system itself, and could thereby close a valve to stop the intake of surface water from the diversion facility if contamination were detected.[94]

This portion of the hearings raised questions regarding whether any technology currently exists that can detect all of the various types of potential contaminations.[95] However, this is beside the point because, if the technology does not exist to detect certain contamination upstream of or at the treatment plant such that the treatment facility intake valve can be closed, the technology does not exist to detect that same contamination at the Sacramento River extraction facility, and it makes no difference whether Natomas controls the extraction facility or whether Golden State controls the extraction facility.

In fact, this very point illustrates that the critical issue is that all surface water must be effectively treated to ensure that both detected and undetected contaminants are removed before water is delivered to Golden State's customers; DRA's focus on Natomas' handling of surface waters for the short distance between the Sankey Diversion and the point of delivery under the WWA is thus misplaced. Because Golden State will have full control over all water treatment and distribution facilities for the SSCSA combined with Golden State's ample expertise in water treatment and distribution, it will be able to ensure that the water it provides to its customers is free from harmful contaminants, detected and undetected forms of contaminations delivered through the conveyance facilities operated by Natomas.

Procuring water extracted and diverted by Natomas and Golden State's treatment of that water prior to its delivery to Golden State's customers would be

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[94] *Id.* at 499.

[95] *Id.* at 500.

entirely consistent with Golden State's past and current practices in its existing service territories. Currently, Golden State "has a variety of water supply contracts across the state for which [Golden State] purchases water and receives delivery from wholesalers without owning all methods of diversion and conveyance. In some cases, [Golden State] has no contract at all, and has no control whatsoever over supply it must rely upon for customers."[96]

In addition, as Golden State's witness explained:

> If [Golden State] were to construct a new point of diversion to take water from the Sacramento River, it would be required to bear both the increased monetary costs and be required to address the otherwise unnecessary environmental costs. The increased construction costs for diversion and preparation of the necessary environmental analysis under the California Environmental Quality Act would inevitably be passed on to [Golden State]'s customers in the area and would result in higher rates.[97]

Instead, Golden State contends the WWA would allow Golden State to reduce its investment by avoiding the cost of constructing the Sankey diversion, which is "a significant avoided capital cost,"[98] which would mean lower rates. In addition to the cost, Golden State also notes the permitting necessary to construct a new diversion facility by Golden State may be difficult and ultimately prove infeasible from regulatory permitting perspective. As Golden State's witness explained:

> Numerous federal and state agencies, including the U.S. Fish and Wildlife Service, National Marine Fisheries Service, U.S. Army Corps of Engineers ("USACE"), USBR, California Department of

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[96] Exhibit JP-02 (Kruger) at 16.

[97] *Id.* at 15.

[98] *Id.* at 16.

> Fish and Game ("DFG") and California Department of Water Resources, have been implementing the Sacramento River Fish Screen Program for the past decade in order to consolidate diversions from the stream and install state-of-the-art fish screens. It is not feasible for [Golden State] to construct a new diversion facility at this time, because construction of such a facility would interfere with the multi-agency, multi-year effort on the Sacramento River. In order to build a new diversion facility, [Golden State] would need to obtain permits from both the USACE (Clean Water Act § 404) and DFG (streambed alteration), neither of which is expected to be receptive to such a request.[99]

Furthermore, DRA has not proposed any realistic alternative to Golden State procuring water that has been extracted and diverted from the Sacramento River by Natomas.[100] In fact, although DRA has argued that the water supply to be provided under the WWA may be somehow unsafe because of Natomas' operation of the extraction facility upstream of Golden State's treatment plant, the only alternative surface water supply that DRA has identified with any specificity is 5,000 AFY for which American States Utility Services, Inc. ("ASUS"), another subsidiary of ASWC, has contracted with Natomas.[101] In reality, the evidence in the proceeding shows this water supply has already been committed

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[99] *Id.* at 15-16.

[100] *Id.* at 16: "DRA has proposed a vague alternative whereby [Golden State] obtains water supplies from the Sacramento River. However, DRA's proposed alternative is unworkable for two reasons. First, it does not include any mechanism for access to diversion facilities, and therefore does not address one of the problems DRA claims it was developed to solve. Second, the only existing, permitted diversion facilities in the Sutter Pointe vicinity are owned by Natomas, and the only way to gain access to those rights is by agreement with Natomas, which is what [Golden State] has obtained in the WWA."

[101] Exhibit DRA-02 (Han) at 3-9; (Sekhon) at 4-3.

elsewhere and thus is not available to serve the SSCSA.[102] We do note, however, the fact that DRA proposes that this could have been a suitable alternative water supply for the SSCSA certainly contradicts its position that Golden State "should have full control from the point of origin to the end use."[103] Golden State would have no more control of the ASUS water "from the point of origin" than it does the water to be procured under the WWA.

Based on the foregoing, DRA's criticism of the WWA water supply on the grounds that Natomas will operate the extraction facility is misguided and unreasonable. Furthermore, to require Golden State to build its own intake facility to divert river water to its planned treatment plant, as DRA has proposed,[104] would result in much higher costs to Golden State's customers, without discernable ratepayer benefits. We therefore conclude that DRA's objection is unpersuasive.

5.2.2. Absence of liquidated damages clause in the WWA does not weaken Natomas' delivery obligation under the WWA.

DRA contends that the fact that Golden State and Natomas did not include a liquidated damages provision in the WWA weakens Natomas' delivery obligations under the WWA.[105] The Joint Parties disagree and contend that the WWA provides sufficient protection to Golden State in the event of any breach by Natomas.

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[102] Exhibit JP-01 (Gisler) at 15.

[103] Exhibit DRA-02 (Sekhon) at 4-2.

[104] Exhibit DRA-01 (Han, adopting Paige) at 4.

[105] Exhibit DRA-02 (Han) at 3-3.

The Joint Parties argue that DRA's concerns associated with the absence of liquidated damages clause in the WWA lacks merit for the following reasons: (1) the contract damages provide an adequate remedy; (2) the WWA provides for equitable relief such that Natomas can be required to perform its obligations; (3) DRA's contention fails to consider that a liquidated damages provision can prove highly detrimental if damages are underestimated, and because of the manner in which water prices fluctuate, Golden State cannot estimate what its cost to replace the Natomas supply would be at some unknown time in the future; (4) DRA's contention fails to consider that a liquidated damages provision can actually provide incentives for a party to breach if the price of a given commodity increases substantially; and (5) DRA's contention suggests that DRA's experience with liquidated damages provisions in the context of civil litigation is quite limited.

Golden State's witness explained:

> If Natomas were to breach the agreement, and [Golden State] had to seek other water supplies to cure the default, the difference in price between replacement and Natomas water supplies would be the standard contractual measure of damages, and that would be easily determined at the time of breach. A liquidated damages clause would provide no value in such a situation. Liquidated damages provisions may also prove detrimental because they may underestimate the damages to the non-breaching party.[106]

Moreover, Golden State's witness explained that the "certainty" that a liquidated damages provision provides with respect to the amount of damages a party is due is not necessary with contracts like the WWA because "the damages

[106] Exhibit JP-02 (Kruger) at 22.

will be able to be identified specifically."[107] In fact, under these circumstances, a liquidated damages clause is undesirable because "you don't want to limit yourself to what the damages are."[108] While the witness acknowledged that a liquidated damages clause could prove satisfactory if it provided a sufficient amount of money, she explained that she "couldn't tell you today what amount of money that would be because the price of water is not fixed. What it is today isn't going to be what it is in 10 years or in 20 years."[109]

A liquidated damages provision that underestimates damages actually provides incentives for a party to breach. For instance, if the price of a given commodity rises substantially, a supplier may be able to breach its contract with its original counterparty, pay that counterparty liquidated damages, and earn additional revenues under a contract with a new counterparty that are greater than the liquidated damages that the supplier must pay the original counterparty. DRA's witness acknowledged that, under such circumstances the supplier would have an incentive to breach.[110]

DRA's argument that a liquidated damages provision is a superior remedy appears to stem from a mistaken belief that parties do not have to file a lawsuit to collect damages if a contract includes a liquidated damages provision.[111] DRA's witness testified that "it's very likely" that if one party claims that another

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[107] Tr. Vol. 2 (Kruger) at 213.

[108] *Id.* at 213.

[109] *Id.* at 215.

[110] Tr. Vol. 3 (DRA-Han) at 429-432.

[111] Exhibit GSWC-24 (DRA response to Data Request 26): "…[w]ithout a liquidated damages provision, [Golden State] would have to file a law suit to seek any remedies or to recover any damages against Natomas in the event Natomas does not follow through with its obligations under the WWA."

has breached a contract, the second party will simply agree to pay the liquidated damages amount.[112] It also became evident during the evidentiary hearings that the DRA's witness' experience with liquidated damages provisions in water supply contracts may be limited. When asked how many water supply agreements he is familiar with that contain liquidated damages provisions, he responded that he did not recall and that he "didn't really pay too much attention to that provision."[113]

The DRA's objection concerning the absence of liquidated damages clause in the WWA, was based on its witness' testimony that the inclusion of a liquidated damages provision in a contract eliminates the need to file a lawsuit in order to collect those liquidated damages. This objection and the basis for the objection are not consistent with the realities of civil litigation. While a liquidated damages provision relieves uncertainty with respect to the amount of damages to be paid if a party in fact proves that the other party has breached a contract, it does not relieve the non-breaching party of its obligation to prove breach before it is entitled to collect the liquidated damages amount and it certainly does not eliminate litigation costs or other uncertainties associated with litigations.

To that end, filing a lawsuit is generally necessary, unless settlement is reached, and Golden State's witness explained her understanding that Golden State would in fact have to go to court to pursue collection of liquidated damages if a liquidated damages provision had been included in the WWA and Natomas were in fact to breach.[114] Moreover, as the Golden State's witness testified,

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[112] Tr. Vol. 3 (DRA-Han) at 424.

[113] *Id.* at 427.

[114] Tr. Vol. 2 (Kruger) at 285.

Natomas would have defenses, including challenging the propriety of the liquidated damages clause, and would have an opportunity to bring those defenses to court.[115]

Under the circumstances, contract damages at law provide greater protection than would a liquidated damages provision. As the Golden State's witness explained, "Section 2.12 of the WWA prohibits Natomas from transferring any water rights that would preclude its ability to perform its obligations under the contract. Other Sections of the WWA like 7.3 and 7.4 also allow [Golden State] to seek legal and equitable remedies against Natomas, which would include a preliminary injunction to stop Natomas from taking such an action."[116]

The Golden State's witness also explained that "section 7.3 expressly allows [Golden State] to seek the remedy that best serves the public interest, specific performance of the agreement, i.e., water deliveries, from Natomas,"[117] whereas "a liquidated damages clause would not force Natomas to deliver water to [Golden State], but would simply predetermine the amount of money that Natomas would need to pay [Golden State] to remedy the default."[118] If the cost of replacing the Natomas water supply were higher than the liquidated damages amount, Golden State's right to require Natomas to perform its obligations under the WWA would be a far superior remedy. Moreover, as explained in Section IV.B.4 above, if Natomas were to breach the WWA by failing to reliably

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[115] *Id.* at 286.

[116] Exhibit JP-02 (Kruger) at 22.

[117] *Ibid.*

[118] *Id.* at 21.

maintain or operate the Conveyance Facilities, the WWA provides that a neutral third party with expertise in water operations may be brought in to undertake those obligations until Natomas is able to do so.[119]

As the Golden State's witness stated, Golden State made a conscious and calculated business decision based on its experience and expertise "not to include a liquidated damages provision in the WWA because it is unnecessary and potentially harmful under the circumstances. The WWA contains ample remedies to protect [Golden State]'s interests in the event of breach."[120] We agree with Golden State and find no merit in DRA's objection that the absence of a liquidated damages clause in WWA in any way weakens Natomas' delivery obligations thereunder. We also find, on balance, the remedies included in the WWA provide ample protection to Golden State and its customers, despite the absence of a liquidated damages provision.

5.2.3. DRA's objection to the terms of the WWA relating to the surface water price lacks merit.

DRA objects to various terms of the WWA relating to the price of the surface water under the WWA. DRA's objection is directed at the total cost of surface water under the WWA as being unreasonable as well as several other negotiated components of the total cost. The Joint Parties contend that the total cost of surface water under the WWA is reasonable compared to the cost of procuring comparable surface water supplies and several provisions to which DRA objects are merely negotiated components of that overall total cost which is reasonable. The Joint Parties also note DRA has not identified any alternate

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[119] WWA § 7.8.5.

[120] Exhibit JP-02 (Kruger) at 21.

source of surface water that would be more cost effective to show that the total cost of the surface water under WWA is unreasonable.

5.2.3.1. The cost of surface water under the WWA is reasonable compared to other potentially available water supplies.

Golden State will obtain surface water supplies for use in the SSCSA from Natomas pursuant to the terms of the WWA, which provides a reliable and safe water supply for the SSCSA at a reasonable price, as testified to by Golden State's witness evidencing Golden State's overall cost analysis and that alternative water supplies are more expensive than the WWA water:

> In looking at the [WWA] and the settlement as a whole, we looked at what the price of the water was for that agreement as compared to other water supplies that are available. The price of that water is a very good price of water for customers in the Sutter Pointe area. [We] looked at the water that we purchased in Sacramento, water that we purchased in Southern California, and the price of this water is very reasonably priced.[121]

Under the WWA, Golden State would obtain delivery of surface water at the price of $59.24 per acre-foot, with no charges assessed until Golden State actually provides service to at least 11,000 equivalent dwelling unit ("EDUs"). In accordance with the Settlement Agreement, the minimum charge would be equal to $130,328 at 11,000 EDUs or $11.85 per EDU with annual minimums that increase over time pursuant to the anticipated water needs of the SSCSA, plus an availability payment of $4.61 per EDU per month assessed starting from the first

[121] Tr. Vol. 1 (Kruger) at 181.

EDU served.[122] As such, the initial water charge under the WWA is around $150 an acre-foot.[123]

In comparison, water sold under the Drought Water Bank organized by the California Department of Water Resources during 2009 was $275 per acre-foot, plus additional conveyance costs.[124] Likewise, the surface water supply that Golden State purchases from the Sacramento Municipal Utility District to serve its Arden-Cordova service territory is a little over $230 an acre-foot. And, these two comparisons are actually relatively low compared to the current price of purchasing water rights in the Sacramento area. Golden State's witness testified on the water pricing issue as follows:

> [I]n the Sacramento area, water rights are being purchased around $4,000 dollars an acre-foot. That is pretty expensive water. I haven't done the math myself, but in talking to our experts in the company acquiring a water right in that regard would result in the higher cost to our customer per acre-foot charge, somewhere around $500 an acre-foot . . . .[125]

Further, the Natomas water is less than a third of the price that Golden State is forced to pay to procure Tier 1 untreated water from the

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[122] Exhibit JP-01 (Kruger and Moore) at 12-13; WWA § 2.5(c). Both components of the water price would be adjusted annually for inflation per an Adjustment Index that combines various indexes defined by the U.S. Bureau of Labor Statistics, provided that the annual adjustment would be capped at 1.05 times the water price for the preceding fiscal year. *See* Exhibit JP-03 (Third Amendment to WWA, modifications to §§ 2.5(c), (d)). In addition, should certain governmental charges be imposed on the Natomas water supply, those charges would be passed on to Golden State in proportion to the amount of Natomas water supply delivered or committed to Golden State. *See* Exhibit JP-03 (Third Amendment to WWA) at §§ 2.5(f).

[123] Tr. Vol. 1 (Kruger, adopting Wicks) at 190.

[124] Exhibit GSWC-03 (Kruger) at 8.

[125] Tr. Vol. 1 (Kruger) at 190.

Metropolitan Water District of Southern California ("Metropolitan").[126] Specifically, Golden State currently pays Metropolitan $527 per acre-foot, with a planned increase to $560 in 2012;[127] thus, as Golden State's witness explained, "Natomas water will cost approximately 30¢ per $1.00 of Metropolitan water that Golden State and other regulated utilities purchase regularly with Commission approval."[128]

In light of these comparisons, DRA's concern regarding the unreasonableness of the cost of surface water under the WWA lacks merit. Instead, we conclude that the total cost of the water to be procured under the WWA is reasonable.

5.2.3.2. The availability payment component of the Water price is necessary and reasonable.

As set forth above, the water price under the WWA includes an availability component of $4.61 per EDU per month.[129] DRA objects to this portion of the water price, stating that "the Joint Parties have failed to justify the need for and amounts of the availability payment included in the Natomas agreement. As such they cannot be said to be reasonable and should be rejected."[130]

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[126] Exhibit JP-02 (Kruger) at 10.

[127] *Ibid.*

[128] *Ibid.*

[129] Exhibit JP-01 (Kruger and Moore) at 12-13.

[130] Exhibit DRA-02 (Han) at 3-7.

However, Golden State contends and has provided supporting testimony that other parties have approached Natomas to purchase water,[131] such that it is in fact reasonable to pay Natomas to forego selling the WWA water to other purchasers and thereby ensure that the supply will remain available to serve the SSCSA.

Moreover, as Golden State's witness notes, when looking at the total water price, "that [combined] rate is cheaper than what [Golden State is] currently paying Sacramento [Municipal Utilities District] just down the highway."[132] Golden State also points out that the availability payment is consistent with, and even more favorable to Golden State, than industry standards:

> Because Natomas is reserving 19,500 acre-feet per year for the exclusive use of [Golden State], the WWA provides that [Golden State] will purchase a minimum amount from Natomas based on the level of development that has occurred. That minimum amount is based upon 95 percent of the projected surface water demands of [Golden State] at a series of development steps. The minimum amounts will be adjusted downward in critical dry years when less water is available to [Golden State] under the WWA. This take-or-pay arrangement is consistent with water industry common practices when a water supply is reserved for exclusive use by one party.
>
> The WWA is more favorable to [Golden State] than many take-or-pay arrangements, in that the take-or-pay amount (17,800 acre-feet at buildout of Sutter Pointe) is less than the maximum amount of water available (19,500 acre-feet at buildout), and the take-or-pay amount is reduced in years when there are supply restrictions. These terms stand in contrast to, for example, State Water Project contracts, which provide that the contractor will pay for the full contract amount every year, regardless of use, and regardless of the

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[131] Tr. Vol. 2 (Kruger) at 219.

[132] *Id.* at 242.

> fact that the project's water supplies are considerably less than 100 percent reliable. The WWA compares favorably to such other contracts, while providing assurances to Natomas that the reserved water supply will be purchased, used and paid for by [Golden State].[133]

We agree that the availability cost provision under the WWA adds value to Golden State's customers because of the firm obligation that it creates for Natomas to deliver the water committed to Golden State. To illustrate this added value, Golden State's witness stated that water supply contracts that Golden State has with various Metropolitan member agencies in Southern California "are take-or-pay contracts where the Met[ropolitan member] agency has absolutely no obligation to provide supply at all."[134] Golden State's witness thus explained:

> So when I look at the Natomas contract and I look at the availability, the guarantee that they deliver the water and what we're paying for the water, and I compare that to the contract I have with Metropolitan, where I'm paying a whole lot more and it's take-or-pay and there's no obligation on their end to even deliver the water, I look at the [WWA] as a terrific value for the customers in Sutter Pointe.[135]

In light of the total value of the WWA to Golden State's future SSCSA customers and the consistency of the availability payment with industry standards, we conclude that the availability payment here is a reasonable component of an overall attractive surface water supply price. Moreover, DRA's argument that "paying availability fees for a water supply that the Sutter Pointe

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[133] Exhibit JP-02 (Kruger) at 13-14.

[134] Tr. Vol. 2 (Kruger) at 249.

[135] *Id.* at 250.

customers will not need or utilize for decades is not prudent or reasonable"[136] is is unpersuasive.

Under the WWA, Golden State would only pay the availability fee incrementally as it adds EDUs to the SSCSA. Specifically, Golden State provided testimony that the availability payment "correlates to the number of EDUs that are being built. And so as more EDUs are built, the availability payment goes up."[137] In short, Golden State will only be paying availability fees for water supplies that it actually needs to serve actual customers, which is necessary, prudent and reasonable.

5.2.3.3. The price to be paid by Natomas to Golden State for groundwater is reasonable because it is part of the WWA package.

Under Section 3.1 of the WWA, Natomas may utilize excess capacity in Golden State's groundwater wells to meet the reasonable needs of its shareholders and to facilitate temporary (one-year or less) groundwater substitution-based transfers conducted by Natomas, subject to certain limitations.[138] Natomas would bear all operating and maintenance costs associated with use of the wells for all purposes and must comply with all applicable laws, including obtaining any permits required for its use of the wells or the water.[139]

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[136] Exhibit DRA-02 (Han) at 3-5.

[137] Tr. Vol. 2 (Kruger) at 246.

[138] WWA §§ 3.1.1, 3.1.2.

[139] WWA § 3.1.3.

DRA objects to these provisions. In particular, DRA contends that Natomas should be required to pay more than the operating and maintenance expenses of the wells and that Natomas should be required to pay for return on the capital costs and wear and tear of the facilities.[140]

Golden State and Joint Parties contend DRA's objection to Section 3.1 lacks merit. As Golden State's witness explained, Section 3.1 is a negotiated term related to the acquisition of water supplies from Natomas that facilitates Natomas' reliable delivery of water to Golden State under the WWA.[141] As such, similar to the availability payment, this provision is part of the complete package that allows Natomas to deliver a firm supply of surface water to Golden State at an attractive price, as discussed above. Were Natomas required to bear greater costs associated with its use of Golden State's groundwater wells, Natomas' costs of performing its firm delivery obligations under the WWA would necessarily be higher, and, as a consequence, the water price that Golden State would be required to pay for the water supply guaranteed under the WWA would undoubtedly rise as well.

We believe the provisions concerning the overall of cost of the water under the WWA must be considered as a whole and must be examined together as part of an overall cost package. By separating and questioning individual components of that overall cost package here would be imprudent and illogical and completely ignores the overall attractive cost package that has been presented by the WWA which will ultimately benefit the Golden State's customers. We agree with the Joint Parties and Golden State that, as a whole, the

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[140] Exhibit DRA-02 (Han) at 3-9.

[141] Exhibit JP-02 (Kruger) at 27-28.

WWA sets forth an attractive overall of cost of the water for Golden State's future customers.

5.2.3.4. The cost escalation provisions of the WWA are reasonable.

Under the Third Amendment to the WWA, the water price will be adjusted annually based on a blended index that is limited to an increase of between two and five percent in any given year.[142] This index consists of: the Consumer Price Index, All Urban Consumers, Area: West – Size Class A (50 percent); Employment Cost Index – Total Compensation, Sector: Private Industry, Industry: Utilities (25 percent); Producer Price Index – Commodities, Group: Fuels and Related Products and Power, Item: Industrial Electric Power (18 percent); and Producer Price Index – Commodities, Group: Fuels and Related Products and Power, Item: No. 2 Diesel Fuel (seven percent).[143] Golden State's witness testified that the blended index selected "was constructed to approximately track the components of Natomas' typical annual budget."[144]

DRA contends these escalation provisions setting forth annual adjustment are unreasonable because it argues that "water costs are largely unrelated to the overall rate of inflation in the economy."[145] Golden State contends, however, that DRA's suggestion that the water price under the WWA should be tied to changes in the market price for water rather than to general indices of inflation would result in a higher price to Golden State and its ratepayers. Golden State's witness explained that while there are different approaches to escalation provisions,

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[142] Exhibit JP-02 (Kruger) at 27.

[143] Exhibit JP-03 (Third Amendment to WWA, modifications to §§ 2.5(c), (d)).

[144] Exhibit JP-02 (Kruger) at 28.

[145] Exhibit DRA-02 (Han) at 3-8.

Golden State and the Sutter Pointe Developers specifically negotiated the approach that is more advantageous to the SSCSA ratepayers and creates more certainty for them as buyers:

> First, escalation may be tied to an objective index related to the general economy of the United States or a specific region. Common indices include the Consumer Price Index, which tracks general inflation, i.e., the value of money or purchasing power, and the Producer Price Index, which tracks the cost of various inputs for manufacturers. This approach is typically favored by buyers because of its objectivity and historical record of normal variation between approximately 2 and 5 percent.
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> Second, water prices may be tied to the "market" for water transfers. This approach is typically requested by sellers who expect the price of water to increase much more quickly than general inflation. The market price of water is determined by comparison to similar transactions, based on defined characteristics. This approach is normally disfavored by buyers because of its uncertainty and potential for large upward jumps based on changes in the water transfer market. It is also difficult to administer and frequently leads to disputes between the contracting parties based on what qualifies as a comparable transaction.

On balance, [Golden State] and the Sutter Pointe Developers as buyers preferred use of an objective index, and Natomas agreed.[146]

We are not persuaded by DRA's argument that "water costs are largely unrelated to the overall rate of inflation in the economy" nor DRA's suggestion that the water price under the WWA should be tied to changes in the market price for water rather than to general indices of inflation would result in a higher price to Golden State and its ratepayers, as explained above. Golden State and the Joint Parties negotiated an escalation factor that, based on their industry

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[146] *Id.* at 28-29.

expertise, would give them more certainty and be more advantageous to them and future SSCSA ratepayers than the other common approach to escalation in the WTA.

Although DRA contends that water supply contracts do not typically include escalation provisions, when asked to provide examples of water sales contracts that do not include escalations (which both would have served to support DRA's assertions and would have provided an opportunity to compare the relative total costs of such contracts), DRA was unable to provide one.[147] DRA has not proffered any evidence to support its contention that the escalation provision is unreasonable. To the contrary, all evidence in the record illustrates that the total water price—of which the escalation is one negotiated component—is attractive given the value that the WWA provides to Golden State's future SSCSA customers.

We therefore conclude that the cost escalation provisions here are reasonable.

5.2.3.5. Natomas' profit and any comparison of the water price under the WWA to water price paid by Natomas' shareholders are not relevant.

As part of its argument that the water price under the WWA is unreasonably high, DRA notes concerns of Natomas' profit under the WWA as being too high and also objects to the water supply price under the WWA as higher compared to the water price that DRA alleges is paid by Natomas' shareholders.[148] Golden State contends both of these points are irrelevant.

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[147] Exhibit GSWC-19 (DRA response to Data Request 43).

[148] Exhibit DRA-02 (Han) at 3-4 through 3-5.

Golden State also contends DRA's comparisons are inaccurate evidencing a number of fundamental miscomprehensions on the part of DRA.[149]

Specifically, as Golden State's witness explained "Natomas is entitled to transfer water according to whatever commercial terms it desires and is not limited to the amount it charges its shareholders. The relevant question is whether the price in the WWA is reasonable and prudent in light of the fair market value of water"[150] and "[t]he appropriate point of reference for the cost charged to [Golden State] is the price that [Golden State] would pay to procure water from an alternative provider."[151] Even DRA admitted that Golden State should procure water from whatever water supplier offers its supply to Golden State at the lowest price, regardless of whether that supplier's profits may be higher than those of other suppliers.[152]

Here, given that Natomas is in no way obligated to transfer water at the amount it charges its shareholders, given that Natomas is entitled to transfer water at whatever commercial terms it desires and at whatever amount it desires, and given that the record shows that the WWA price is far lower than

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[149] For example, DRA contends that Natomas shareholders pay $50 per acre-foot for water. (Exhibit DRA-02 (Han) at 3-5). However, Natomas shareholders do not purchase water on a per acre-foot basis. Rather, they pay a water toll on a per acre basis that varies depending on the type of crop grown. Exhibit GSWC-23 (Golden State's Data Response to SBH-13, Q1.) Further, DRA bases its calculations on the number of EDUs that it estimates Golden State will have in the SSCSA at full build-out of 7500 acres. (Exhibit DRA-02 (Han) at 3-4.) Ms. Kruger explained that the comparison falters because "the availability payments are paid as the EDUs come on .. . as the water is needed, that's when it's being paid for." (Tr. Vol. 2 (Kruger) at 247.)

[150] Exhibit JP-02 (Kruger) at 24.

[151] Exhibit JP-02 (Tanner) at 56.

[152] Tr. Vol. 3 (DRA-Sekhon) at 505.

comparable alternative supplies in the market,[153] it is apparent that Golden State acquired water at a competitive price for its future ratepayers.

There is no evidence in the record to suggest there is a more reasonably priced water supply available to serve the SSCSA, as set forth below in Section 5.2.3.6. The price under WWA is reasonable, and the prices paid by Natomas' shareholders are not relevant here.

5.2.3.6. DRA has not presented any alternate source of surface water that is more cost effective than the price under the WWA.

While objecting to the water price under the WWA as being too high, DRA has not presented evidence of any available alternative water source that would be cheaper than the WWA surface water supply. Instead, DRA proposes that Golden State can procure "free" surface water to serve the SSCSA by simply requiring developers to pay a facilities fee when a new customer is hooked up.[154]

In support of this proposition, DRA includes a list of ten municipal water systems that charge a "water connection fee,"[155] and a list of four Commission-regulated water utilities that charge a "facilities fee," but thirteen of these fourteen examples are inapposite because the fees are not collected in order to purchase any water supply.

In each case, the fees cited by DRA are used to pay for plant and infrastructure. Specifically, DRA admits that the ten municipal systems included in its list use the water connection fee "for plant only."[156] With respect to the

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[153] *See* Section IV.C.1, supra.

[154] Exhibit DRA-02 (Sekhon) at 4-2.

[155] Exhibit DRA-02 at Appendix D.

[156] Tr. Vol. 3 (DRA-Sekhon) at 512.

regulated utilities: the San Gabriel Water Company fee was approved to upgrade the Sandhill plant and for new wells, new reservoirs and equipment;[157] the California Water Service Company fee was approved for new well construction;[158] and the California-American Water Company fee was approved for the construction of new plant.[159] Only the Apple Valley Ranchos Water Company ("Apple Valley") fee is partially apportioned for acquisition of water, and that is pursuant to a very specific provision of Apple Valley's Main Extension Rule No. 15[160] that is not included in Golden State's corollary rule. Therefore, DRA has not provided applicable support for its proposition that there is an actual water system or utility that charges facilities fee.

In short, DRA has not identified any surface water supply that would be cheaper than the water to be procured under the WWA, and DRA has not presented any evidence that supports its assertion that its facilities fee proposition would ultimately "be the least cost to ratepayers."[161] In fact, as Golden State's witness explained:

> [Golden State] considered obtaining a surface water source from an owner other than Natomas, but the WWA provides a superior option . . . . The WWA was negotiated with Natomas by [Golden State] and the Sutter Pointe Developers through a lengthy process, and there is no guarantee or indication that the Sutter Pointe Developers could negotiate better business terms than they have in

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[157] D.07-04-046 at 67.

[158] D.08-07-008 at 42.

[159] D.02-06-054 at 3.

[160] Exhibit DRA-02 at Appendix E; *see* Apple Valley's Main Extension Rule 15 at Section C.1.f.

[161] Tr. Vol. 3 (DRA-Sekhon) at 417.

> the WWA. Thus, the DRA proposal does not seem to offer any advantages over, and in fact is less favorable than, the WWA.[162]

Ultimately, no matter how it is charged, be it in water rate or facilities fees, customers will pay. Here, Golden State's SSCSA customers will pay for their surface water supply in one form or another. They will either pay directly through their water rates, or if the Sutter Pointe Developers are required to pay a facilities fee for the surface water supply, through increased housing costs, because the developers will need to recoup their costs, and developers typically recoup their costs through the price of housing.

Because DRA has been unable to identify even one water supplier that would provide a firm surface water supply to serve the SSCSA at a lower price than Natomas has agreed to under the WWA and because DRA's proposition for facilities fees does not present an actual fix to DRA's overall objection to shield ratepayers from the costs of water supply, we are not persuaded by DRA's contention that the water price under the WWA is unreasonable.

Instead, we find that the water price comparisons undertaken and presented by Golden State are persuasive and reveal that the water price under the WWA is quite favorable and good value for Golden State's future customers.

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[162] Exhibit JP-02 (Kruger) at 12.

5.3. The proposed financing for the SSCSA by Golden State is reasonable.

5.3.1. The Joint Parties' proposal to use a combination of advances, contributions and incremental acquisition is consistent with Commission policies regarding funding new infrastructure, and the proposed $81 million worth of infrastructure is a fair portion to include in rates.

As Golden State's witness explained, the capital cost for the proposed SSCSA water system infrastructure is forecasted to be approximately $365 million. Eventually, Golden State will, as the water service provider take ownership of the entire water system infrastructure.[163] The Joint Parties propose the use of a combination of three funding mechanisms to construct the SSCSA: (1) refundable advances paid to Golden State by the Sutter Pointe Developers pursuant to Golden State's Main Extension Rule No. 15 ("Rule 15"), (2) non-refundable contributions provided to Golden State by the Sutter Pointe Developers, the cost of which the developers will recoup through "hook-up" fees levied by the County, and (3) incremental acquisition by Golden State of the portions of the water system infrastructure that were not advanced or contributed.[164]

The Joint Parties explained that through this combination, they seek to address four overarching concerns with respect to financing the SSCSA water system infrastructure: (i) ensuring that rates for water service are competitive with surrounding areas, (ii) ensuring that housing prices are not adversely affected by the cost of the water system infrastructure, (iii) insulating Golden

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[163] Exhibit JP-01 (Switzer) at 28.

[164] *Id.* at 28-29.

State from development risk, and (iv) allowing for timely recovery of capital costs.[165]

The use of the three funding mechanisms, as proposed by the Joint Parties, satisfies these concerns and is consistent with the Commission's long standing policies and principles, as set forth below. Moreover, DRA does not object to the proposed use of refundable advances or non-refundable contributions. Thus, with respect to the SSCSA financing plan, DRA's only dispute here is with Golden State's proposal to incrementally acquire water system infrastructure at a cost not to exceed $81 Million.

5.3.2. Golden State's incremental acquisition of no more than $81 million in water system infrastructure makes development of the SSCSA more economically feasible and as consistent with numerous Commission policies.

As Golden State's witness explained, the Joint Parties' proposal that Golden State incrementally acquire $81 million in SSCSA water system infrastructure from the Sutter Pointe Developers as customers move into the SSCSA would make this development more economically feasible and is consistent with numerous Commission policies, including providing transparency in water rates, encouraging conservation, and eliminating subsidization between initial and subsequent development.[166]

Regarding transparency, Golden State's witness testified: "[T]he utility's acquisition of the water system's infrastructure would cause rates to more

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[165] *Id.* at 28.

[166] Exhibit JP-01 (Switzer) at 32.

accurately reflect the actual cost of water service in the proposed SSCSA."[167] This is the case because relying solely on advances and contributions would shift the costs of water out of rates and into the purchase prices of homes in Sutter Pointe (and thus also into property taxes).

For example, if the Sutter Pointe Developers were forced to fund the entire water system infrastructure through advances, Golden State's witness testified that the developers "would be forced to absorb between $219 million and $288 million of infrastructure costs in South Sutter County", and "faced with a shortfall of this magnitude, the Sutter Pointe Developers would be forced to seek recovery elsewhere."[168] As the Golden State's witness testified, "[m]ost likely, that shortfall would be passed on to future homeowners and businesses in the proposed SSCSA through increased home and business prices."[169] In fact, in another proceeding, DRA's own analyst explained that when water plant infrastructure is paid for by developers "their costs are being recovered in the price charged for the homes."[170] Indeed, DRA had concluded in that proceeding that such infrastructure costs "must have been included in the price of homes sold because a developer is not in business to lose money."[171]

Similarly, because the infrastructure costs funded through contributions would be recouped through "hook-up" fees that the County would charge to subsequent developers on a per-lot basis and then pay to the Sutter Pointe

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[167] *Ibid.*

[168] *Id.* at 30.

[169] *Ibid.*

[170] D.93-09-079, *Re Jess Ranch Water Co.*, 51 CPUC 2d 406, 1993 WL 773710 at *6.

[171] *Id.* at *8.

Developers, these costs would also be shifted from SSCSA customers' water bills and into the purchase prices of their homes.[172] As the Golden State's witness explained, the portion of the infrastructure incrementally purchased by Golden State would be included in rate base, causing rates "to more accurately reflect the actual cost of water in the proposed SSCSA."[173]

And, the transparency that would result from Golden State's incremental acquisition of water system infrastructure would promote the Commission's water conservation policies[174] because the water rates would more accurately reflect the true cost of water service.[175] In turn, this ultimately encourages conservation because water use is priced according to its cost, rather than being subsidized through home prices.[176] This is consistent with the policy objectives of the Commission in the Water Action Plan.[177]

In addition, the incremental acquisition approach furthers the Commission's policy that existing customers should not subsidize new development. The additional revenue stream for the Sutter Pointe Developers

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[172] Exhibit JP-01 (Switzer) at 31-32.

[173] *Id.* at 32.

[174] *Id.* at 33.

[175] *Id.* at 32-33: "… low-volume water users do not subsidize high-volume water users. This transparent approach to the actual cost of water service provides a mechanism by which customers can better control their water costs through their actual water use, which is impossible when water costs are embedded in home prices and property taxes."

[176] *Id.* at 33.

[177] *See* Water Action Plan (Dec. 15, 2005) at 20 ("Currently, the Commission focuses more on short-term rate impacts and far less on the longer term benefits of infrastructure investment and water conservation. The Commission will seek a more balanced approach that takes into account investment and conservation benefits, as well as rate impacts").

created by Golden State's acquisition of a portion of the SSCSA would "accelerate repayment of their capital outlays, which in turn would lower their borrowing costs and eliminate subsidization between initial and subsequent development."[178] This was cogently explained by the Golden State's witness, as follows:

> To the extent that [Golden State's] proposal allows the Sutter Pointe Developers to recoup their capital outlays more quickly, they would be able to offer housing to the initial home buyers in Sutter Pointe at a lower cost. If, however, the Sutter Pointe Developers must carry a debt obligation for the entire water system infrastructure constructed to serve the SSCSA, they would pass those costs on to the initial home buyers in Sutter Pointe. But, developers who add homes to the SSCSA at a later date would only be required to fund their proportional cost of the water system infrastructure and would therefore pass on a much smaller premium to their purchasers. The net effect would be that initial homeowners would ultimately subsidize the water costs of later home buyers; they would simply be doing it through the costs paid for their homes rather than through water rates. This inequity between initial homeowners and later buyers would be inconsistent with the Commission's policy that existing customers should not subsidize new development. Simply put, [Golden State's] proposal would benefit its future customers because the proposal would lower the costs that they pay for housing in Sutter Pointe. And, because the initial home buyers in Sutter Pointe would become [Golden State's] "existing customers," [Golden State's] proposal is consistent with the Commission's policy that existing customers should not subsidize new development.[179]

We are persuaded by the Joint Parties and Golden State that the incremental acquisition proposal here promotes the Commission's well

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[178] Exhibit JP-01 (Switzer) at 32.

[179] Exhibit JP-02 (Switzer) at 40-41.

established policy that existing customers should not subsidize new development.[180]

5.3.3. Golden State's incremental acquisition of no more than $81 million in SSCSA water system infrastructure is reasonable because it appropriately balances ensuring that plant in rate base is used and useful with the Commission's policy that utilities are responsible for providing certain water system infrastructure.

Golden State's proposed incremental acquisition of no more than $81 million in SSCSA infrastructure is reasonable because it strikes an appropriate balance between (1) ensuring that Golden State does not purchase water system infrastructure that could turn out to be uneconomic with (2) the Commission's policy that utilities are responsible for installing certain portions of water system infrastructure and may include the costs of that infrastructure in rate base.

With respect to ensuring that Golden State does not purchase "uneconomic" infrastructure, Golden State's witness explained that the incremental approach to the acquisition of the infrastructure is designed specifically to make certain that Golden State does not purchase unneeded infrastructure resulting in excessive rates or stranded development.[181] First, the amount of infrastructure that Golden State will acquire is capped at $81 million,[182] and that $81 million is "comparable with what [Golden State has

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[180] *See e.g.*, D.08-07-008, 2008 WL 2955549 (Cal.P.U.C.) at *18; *see also* D.06-07-018, 2007 WL 5377598 (Cal.P.U.C.) at *9.

[181] Exhibit JP-01 (Switzer) at 33.

[182] *Ibid.*

in Golden State's] other ratemaking areas on a rate base per customer basis."[183] Second, Golden State will not make the acquisition all at once but will instead "purchase the infrastructure periodically as customers move into the service area over the course of the proposed SSCSA's build-out."[184] This concept was illustrated as follows:

> Assume for purposes of this example that the Sutter Pointe Developers choose to use the incremental acquisition approach only for Backbone Infrastructure. As noted above, the Backbone Infrastructure is expected to cost approximately $227 million. Assume for purposes of this example that service will be provided to 31,500 connections.[185]
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> The cost of the Backbone Infrastructure, on a per-connection basis, would therefore be $7,206 per connection. Given that [Golden State] will only purchase up to $81 million of the Backbone Infrastructure under this hypothetical, [Golden State's] per-connection cost for its Backbone Infrastructure purchases will therefore be approximately $2,571 per connection ($81 million/31,500 units). Accordingly, under this example, the Sutter Pointe Developers would turn the Backbone Infrastructure over to [Golden State] and, for each connection established in the SSCSA, would recover approximately $4,635[186] of its costs through the County hook-up fee. The Sutter Pointe Developers would then recover the remainder of each connection's cost ($2,571) through the incremental purchases of Backbone

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[183] Tr. Vol. 2 (Switzer) at 313.

[184] Exhibit JP-01 (Switzer) at 33-34.

[185] For illustrative purposes, a generic "connection" is being used to determine the pace of acquisition. In reality, the proposed SSCSA will have a mix of residential, commercial, industrial, and mixed-use connections.

[186] This figure assumes that all of the Backbone Infrastructure will be contributed to Golden State, not advanced to Golden State subject to refund. If the Sutter Pointe Developers instead fund a portion of the Backbone Infrastructure through advances, this amount would be reduced and the Sutter Pointe Developers would recover the advanced portion under Golden State's Rule 15.

> Infrastructure by [Golden State], which would occur periodically over the course of the build-out. Therefore, by purchasing water system infrastructure on an incremental basis and capping such purchases at $81 million in the aggregate, [Golden State] can forego development risk, provide the Commission with increased certainty on the cost of the water system infrastructure, and protect ratepayers from stranded infrastructure costs and unreasonable rates while at the same time giving the Sutter Pointe Developers the needed flexibility to make development economically feasible.[187]

Therefore, the proposed incremental acquisition, with per-connection cost of $2,571, provides significant protection to Golden State's future SSCSA customers by creating certainty that there will be no more infrastructure in rate base than is required to support the actual number of customers in the SSCSA. It is "only after development actually materializes and ratepayers move into the water system would [Golden State] (and the county through its imposed hook-up fee) begin to compensate the developers for a portion of the backbone infrastructure that had been contributed. As such, [Golden State] would, at most, spend $81,000,000 [at increments of $2,571 per-connection] to develop a new, stand-alone water system actually worth $365,000,000."[188] Such protections would not exist if Golden State simply installed this infrastructure itself at the outset.

Golden State's acquisition of this infrastructure is also consistent with the Commission's policy regarding a water utility's role in developing new water infrastructure. Specifically, in D.93-09-070, the Commission made clear that utilities are responsible for installing certain portions of water system

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[187] Exhibit JP-01 (Switzer) at 34-35.

[188] *Id.* at 37-38.

infrastructure and may include the associated costs as part of the utility's rate base. In that decision, the Commission determined—in a CPCN context—that the applicant was entitled to rate base treatment for its investment in the new water system infrastructure as utilities are normally responsible for the installation of "back-up facilities," and that recovery of such costs in rate base is appropriate, because a utility should be afforded the opportunity to earn a return on property dedicated to the public use.[189]

Here, through the incremental acquisition approach, Golden State is taking responsibility for ensuring that the infrastructure needed to serve its customers is constructed. As explained by Golden State's witness:

> [Golden State's] proposal to compensate the developers for a portion of the water system infrastructure that they financed and built is no different than [Golden State] hiring a third-party contractor to drill a new well. Under both scenarios, [Golden State] is "purchasing" infrastructure from a third-party that it financed and constructed on [Golden State's] behalf.[190]

Golden State is simply purchasing the infrastructure in a manner that is protective of its future SSCSA customers.[191] We find this approach to be prudent and reasonable.

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[189] D.93-09-079, *Re Jess Ranch Water Co.*, 51 CPUC 2d 406, 1993 WL 773710 at *9.

[190] Exhibit JP-02 (Switzer) at 36.

[191] Notwithstanding the statements in the DRA Report that all infrastructure for a new development must be contributed or advanced, Mr. Sekhon acknowledged that some portion of infrastructure may be installed by a water utility and included in rate base. Tr. Vol. 3 (DRA-Sekhon) at 509.

5.4. Rule 15 does not apply here, and it does not preclude the joint parties' funding proposal for the SSCSA.

Notwithstanding the aforementioned clear precedent illustrating that a utility normally shoulders the cost of building the backbone infrastructure for a new, stand-alone water system and putting the associated costs into rate base, DRA asserts that "Rule 15 requires that all facilities needed to serve new subdivisions be either contributed or advanced."[192] Thus, according to DRA, Golden State should not be permitted to incrementally acquire any portion of the SSCSA water system infrastructure.

Golden State responds to DRA and notes two errors in DRA's position. First, DRA incorrectly asserts that Rule 15 applies with respect to all new subdivisions, irrespective of whether those new developments are located in an existing customer service area or form a new customer service area, as is the case with the SSCSA, a brand-new, stand-alone water system.[193] Second, DRA incorrectly asserts that Rule 15 requires that all new infrastructure be contributed or advanced.

Golden State's witness explained that DRA's conclusion that Rule 15 applies to a brand new customer service area like the SSCSA is erroneous, as follows:

> Rule 15 applies to extension of mains from a utility's existing water system infrastructure; it does not apply to the construction of new, stand-alone water systems. As set forth in Section A.1.a of Rule 15, Rule 15 applies to "[a]ll extensions of distribution mains, *from the utility's basic production and transmission system or existing distribution system*[.]" Accordingly, Rule 15 only applies

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[192] Exhibit DRA-02 (Sekhon) at 6-3.

[193] *Id.* at 6-3 through 6-6.

> to extensions from a utility's *existing* system or network in an *existing* customer service area. In addition, other provisions in Rule 15 confirm its non-applicability to the construction of new, stand-alone water systems. For example, the language of Section15.C.1.a states that the applicant for service to a new subdivision or housing tract shall pay the estimated reasonable costs of the extension "from the utility facility". Again, this language indicates that these provisions are applicable to extensions from existing utility infrastructure, not the creation of the utility infrastructure.[194]

DRA acknowledges that the SSCSA is a brand new development that will not interconnect to any existing pipes or system.[195] The SSCSA is not contiguous to any existing Golden State ratemaking area and will not interconnect with any existing Golden State production, transmission, or distribution system and there are no existing customers.[196] The SSCSA will be a stand-alone ratemaking district and a stand-alone water system.

Given these circumstances, the plain language of Rule 15.A.1.a reveals that Rule 15 is not applicable to the SSCSA.[197] In fact, Golden State's proposal to use advance and contribution mechanisms to finance portions of the SSCSA water system infrastructure that are analogous to those included in Rule 15 is not the result of any obligation to use Rule 15.

Golden State provided testimony that these mechanisms were proposed "because Rule 15 is a familiar mechanism to developers, utilities and the Commission and provides a cost-effective and reasonable way to finance a

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[194] Exhibit JP-02 (Switzer) at 33 (quoting Tariff Rule No. 15).

[195] Tr. Vol. 3 (DRA-Sekhon) at 507.

[196] Exhibit JP-02 (Switzer) at 33.

[197] *Ibid.*

portion the water system's infrastructure."[198] In addition, "because of the Commission's familiarity with Rule 15, [Golden State] concluded that using these mechanisms to fund a portion of the new water system would provide the Commission with operational efficiencies and easier oversight over the reimbursement process."[199]

With respect to its assertion that Rule 15 requires that all infrastructure needs to be contributed or advanced, DRA's position is again contrary to the plain language of the rule. As explained by Golden State's witness, "Rule 15 is a financing mechanism that utilities *may* use to help finance the interconnection of homes and developments to its existing backbone infrastructure."[200] The language of Rule 15 is clear that its use is permissive, not mandatory. Rules 15.C.1.b. and 15.C.1.d. state that "the cost of such special facilities [*i.e.,* elements that augment the backbone infrastructure] *may* be included in the advance" and if "it appears to the utility that a main extension contract would place an excessive burden on customers, the utility *may* require non-refundable contributions of plant."

Moreover, as Golden State's witness explained, there is not a single provision in Rule 15 that requires Golden State to collect advances or contributions from a developer.[201] In D.90-02-042, the Commission explained this explicitly. Specifically, D.90-02-042 held that the use of the word "may" in Rule 15 means that the rule is permissive and that "under its tariff [the utility] *has*

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[198] *Id.* at 36.

[199] *Ibid.*

[200] *Id.* at 37.

[201] *Ibid.*

discretion not to demand advances for construction from developers" for plant that augments the utility's backbone infrastructure.[202] Therefore, DRA's assertion that Rule 15 requires that new development be funded through advances and contributions is contrary to Rule 15's plain language and to D.90-02-042.

Further, as Golden State's witness testified, DRA's assertion that Rule 15 requires that all infrastructures be contributed or advanced is entirely inconsistent with the accepted business model for investor-owned utilities:

> Fundamentally, if the developers were to fund the entire build-out of the SSCSA water infrastructure through refundable advances and non-refundable contributions, [Golden State] would assume ownership and control of a water system with virtually no rate base on which to earn a return. It would therefore run the SSCSA, effectively, as a non-profit, tying up the resources of the utility and earning no return for its investors.
>
> Although such an arrangement may be desirable for a municipal water utility, it does not make sense for a private, investor-owned water utility. Investor-owned utilities, by definition, finance the up-front costs and assume the risk of developing a water system in exchange for a rate of return on the capital they invest in those activities.[203]

Unlike DRA's position, Golden State's witness presented testimony that is consistent with the Commission's conclusions in D.93-09-070 that utilities are responsible for installing certain portions of water system infrastructure and may include the associated costs as part of the utility's rate base.

DRA's assertions are also incongruous with the Commission's Standard Practice U-3-SM. In connection with DRA's contention that "Rule 15 requires that all facilities need to serve new subdivisions be either contributed or

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[202] D.90-02-042, 35 CPUC 2d 428 at *22 (emphasis added).

[203] Exhibit JP-02 (Switzer) at 34.

advanced,"[204] DRA has stated that if a facility is contributed or advanced, "the book value of [the facilities] are mostly zero. That means no increase or change in the rate base even though these are part of the rate base."[205] Thus, according to DRA, there would be no rate base associated with the primary or backbone facilities constructed to serve new development. However, as DRA acknowledges, the Commission's Standard Practice U-3-SM includes a mechanism called a saturation adjustment that may be employed to ensure that overbuilt infrastructure does not result in unreasonably high rates.[206]

Specifically, Standard Practice U-3-SM states: "A saturation adjustment is a procedure whereby excess or overbuilt utility plant, financed or installed with equity capital, is excluded from rate base in determining the rates a utility is authorized to charge for service."[207] Appendix B to Standard Practice U-3-SM sets forth the procedure for the saturation adjustment mechanism, and makes clear that the mechanism applies to infrastructure that has been constructed by developers.[208] Appendix B explains:

> The first unit of a new development when a water system is certificated by the Commission has customarily been financed with equity capital. Most of these developments are soon fully developed with homes; and additional tracts are added with the

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[204] Exhibit DRA-02 (Sekhon) at 6-3.

[205] Tr. Vol. 3 (DRA-Sekhon) at 508.

[206] Exhibit DRA 2 (Sekhon) at 7-16.

[207] Standard Practice U-3-SM at 23 (Appendix B).

[208] Specifically, Appendix B states: "Even if the developer has left the scene, it is reasonable to assume that most developers would attempt to recover development costs including the water system in the sale of the lots. The fact that there is an extensive water system with a resulting large capital investment per customer should not be allowed to result in excessive rate base and rates." *Id.*

> extension of the water system being financed under the water main extension rule . . . .When this occurs, there is no basis for a saturation adjustment. However, in some cases, water systems have been initially installed in large tracts with equity capital; and have not subsequently been fully developed, resulting in a large rate base per customer.[209]

If, as DRA asserts, Rule 15 applies to a brand new, stand-alone system like the SSCSA and requires everything be either contributed or advanced, it would be impossible for the large rate base per customer to get into rate base in the first place, and there would never be a need for a saturation adjustment. Thus, the plain language of Standard Practice U-3-SM evidences that DRA's contentions are erroneous.

DRA's interpretation of Rule 15 is also unrealistic given that, as DRA itself acknowledges, Rule 15 requires that advances are refunded over a 40-year time horizon with zero interest.[210] As explained by Golden State's witness:

> [T]he implication of applying zero interest on the refundable advance is that, in present value terms, the refunds to the developers represent about 20 to 40 percent of the dollar value of the advance. Given the magnitude of the water infrastructure proposed for the SSCSA (approximately $365 million), DRA's suggestion that the developers should advance the infrastructure costs consistent with Rule 15 would effectively mean that the developers get back only $75 to $150 million of a $365 million advance.[211]

As noted above, DRA itself acknowledges that "a developer is not in business to lose money."[212] Yet, if DRA's interpretation of Rule 15 were correct,

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[209] *Id*.

[210] Exhibit DRA-02 (Sekhon) at 6-3.

[211] Exhibit JP-02 (Switzer) at 35.

[212] D.93-09-079, Re Jess Ranch Water Co., 51 CPUC 2d 406, 1993 WL 773710 at *6.

it would be virtually impossible for the first developers in any new area to do anything but lose money. Thus, were the Commission to adopt DRA's position, it may have a chilling effect on new development and the associated economic growth. As Golden State's witness points out: "if the effect of the Commission's decisions is that water rates are held artificially low through high home prices, but developing and buying homes in California becomes unaffordable, the Commission will not have served the public interest."[213] Indeed, he explained that "the Commission is an agency of the state, and the state has a vested interest in seeing development occur."[214]

In fact, the California Supreme Court has explained that the Commission has a duty to consider the economic impact of its decisions. Specifically, in *United States Steel Corporation v. Public Utilities Commission* (hereinafter "*U.S. Steel*"), the Court stated:

> This court has recognized that the [C]ommission must consider the economic effects of alternative rules. Because it "may and should consider sua sponte every element of public interest affected by facilities which it is called upon to approve," the [C]ommission must, for example, consider antitrust implications of contracts if a utility seeks a certificate of public convenience and necessity for construction and operation of geothermal, steam-electric generating units. When special devices are required by telephone companies for connection of privately manufactured devices that may be competitive with similar utility devices, the [C]ommission must carefully weigh competitive factors. There is no duty to allocate markets among competing producers, but there is a duty to

[213] Exhibit JP-02 (Switzer) at 35.

[214] Tr. Vol. 2 (Switzer) at 307.

consider economic effects of alternative approaches.[215]

In *U.S. Steel*, the Commission had recognized that its decision exempting private-vessel commodities from its motor carrier minimum rate regulations "would give foreign producers an improper advantage" but stated that the extent of the advantage was "not a material fact in this proceeding inasmuch as it is not the function or duty of this [C]ommission to attempt to allocate markets between competing producers, or to equalize variations in production and distribution costs of different producers of the same commodity through the establishment of freight rates on that commodity."[216] The Court disagreed, explaining: "If exemption would have the effect of driving shippers out of business (with attendant loss of jobs) that result would be material and conceivably be controlling."[217] Therefore, the Court annulled the Commission's decision.[218]

That outcome is consistent with a number of California Supreme Court decisions holding that the Commission has a duty to consider the economic impact of its decisions.[219] As such, the Commission's obligation to serve the

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[215] *U.S. Steel Corp. v. Pub. Util. Comm'n*, 29 Cal.3d 603, 609 (1981) (internal citations omitted).

[216] *Id.* at 608.

[217] *Id.* at 610.

[218] *Id.* at 614.

[219] *See Indus. Comm. Systems, Inc. v. Pub. Util. Comm'n*, 22 Cal.3d 572, 583 (1978) (holding that approval of a particular one-way radio-paging service was unlawful because the Commission had failed to consider and make findings regarding the possible anticompetitive effect of an agreement not to compete allegedly entered into between certain telephone companies); *see also Northern Cal. Power Agency v. Pub. Util. Comm'n*, 5 Cal.3d 370, 381 (1971) (annulling a Commission decision granting a CPCN on the

Footnote continued on next page

public interest does not equate to single-mindedly adopting those positions or policies that result in the lowest water rates possible for Golden State's future SSCSA customers, irrespective of how those positions or policies impact housing prices and development more generally.

Rather, the Commission must consider the broader ramifications of its decisions and, as *U.S. Steel* makes clear, it must issue a decision that adequately weighs all material issues, including the "economic effects of alternative approaches." The Court in *U.S. Steel* explained that this duty is "inherent" in the requirement of [the Code] Section 1705 that a decision of the Commission "contain, separately stated, findings of fact and conclusions of law . . . on all issues material to the order or decision."[220]

Moreover, DRA has agreed that the Commission should not ignore the effect of its decisions on housing prices.[221] DRA has also concurred that the Commission has an obligation to act in the public interest and that, while the Commission's "first obligation . . . is toward the customers," the public interest also involves "the effect of various policies and proposals on housing prices".[222] And, here, the Commission's obligation "toward the customers" is inextricably linked to the impact of its decisions on housing prices because Golden State's future SSCSA customers will bear the burden of higher home prices—whether those increased housing costs result from including water infrastructure costs in

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grounds that the Commission failed to take into account aspects of contracts between the applicant and its steam suppliers).

[220] *Id.* at 609.

[221] Tr. Vol. 3 (DRA-Sekhon) at 466-467.

[222] *Id.* at 467.

home prices or from eventual housing shortages that result because the capital costs required to undertake a new development become oppressively high.

Moreover, even if we were to decide that Rule 15 should apply here, the Joint Parties provide a persuasive argument that exception or deviation should be made in this instance. As Golden State's witness explained, "the Commission has approved deviations from Rule 15 when appropriate, especially in the context of the build-out of an undeveloped area as is being proposed here."[223] Such a deviation would be warranted here because, as explained in detail above, incremental acquisition creates greater transparency with respect to water costs and prevents early—or "existing"—customers from subsidizing later development.

As noted earlier, the Joint Parties' proposal provides substantial protections to Golden State's future SSCSA customers by enabling Golden State to develop a new, stand-alone water system worth $365,000,000, with the developers financing the vast majority of its costs and bearing the development risk. Thus, the "deviation" from Rule 15 would, in reality, serve the very same policies that underlay Rule 15.

Based on the foregoing, we conclude that Rule 15 does not apply here and that Rule 15 does not preclude the Joint Parties' funding proposal for the SSCSA. We also reject DRA's argument that we revisit the interpretation of Rule 15. Rather such review of Rule 15 interpretation, if it were to occur, should occur in a separate rulemaking proceeding.[224] The Joint Parties set forth in the Joint

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[223] Exhibit JP-02 (Switzer) at 38.

[224] Exhibit DRA-02 (Sekhon) at 6-5.

Motion, their supporting testimony and their rebuttal testimony, the CPCN for the SSCSA is needed now.[225]

We are not persuaded by DRA's argument and find that Rule 15 does not prevent the Commission from issuing the CPCN today.

5.5. Golden State's proposal for revenue requirement balancing account is unnecessary; therefore, the potential need for saturation adjustment and alternate initial rates, Simi Valley Rates, as the proxy rates for the SSCSA are now moot.

Golden State has requested a revenue requirement balancing account to track the revenues collected from customers and the actual revenue requirement incurred by Golden State until actual costs for the SSCSA can be determined during a general rate case, and thereafter until it is determined to no longer be necessary.[226] Golden State however does acknowledge that the Commission has not previously granted a balancing account to Golden State for exactly this purpose.[227]

Here, we are not convinced that such a mechanism is needed or appropriate. We recognize there is no recorded data to use to forecast a trend for this proposed new service area, SSCSA. However, in lieu of the actual recorded data, here we have the expertise and experience of Golden State. We note, Golden State confidently forecasted potential interim proxy rates, in this

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[225] Exhibit JP-02 (Switzer) at 39: "[Golden State] cannot wait for the results of a generic rulemaking to see if the Commission will change its long-standing and sound policy on the build-out of new, stand-alone water systems and instead direct [Golden State] to use its Rule 15 tariff as interpreted by DRA, which, if adopted, would prevent [Golden State] from earning any rate of return with respect to such activities."

[226] Exhibit JP-01(Switzer) at 26, 27.

[227] Tr. Vol. 2 (Switzer) at 333.

proceeding,[228] and we have found affirmatively in this and other decisions that Golden State brings ample expertise as an experienced water corporation and is a competent water operator.

Moreover, the representations by Golden Gate and the Joint Parties throughout the proceeding have been that the construction will only begin upon a reasonably certain indication of demands at some unknown time in the future, which is largely the reason why they cannot, at this time, accurately forecast the costs and expenditures. However, those uncertainties and unknown variables become mostly moot once Golden State and Sutter Pointe Developers determine, at that later time, that there is reasonably foreseeable market demand, which includes the attendant water service demand, at the Project Site to begin the construction. And, at that time, Golden State would be in a position to make a reasonable forecast and expertly develop a full and complete rate case forecast of all expenses and capital expenditures as well as a proposed cost allocation and rate design suitable to use at the start of service.

Based on the foregoing, we find Golden State's balancing account proposal unnecessary and unreasonable here. Instead, Golden State must fully document and justify all of the underlying sources of data and assumptions it relies on in order to develop a general rate case for filing, consistent with the requirements

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[228] In this proceeding, with minimal recorded data, Golden State conducted its comparative analysis and confidently presented Arden-Cordova rates as the proposed reasonable proxy rates. Also in this proceeding, Golden State presented alternate initial rates for SSCSA using its Simi Valley rates, which is higher than the Arden-Cordova rates, concluding that such rates are probably a conservative estimate for the eventual cost-based rates that will be adopted in the proposed SSCSA. *See* Exhibit JP-01 (Switzer) at 24.

set forth in D.07-05-062, and it must file a detailed general rate case filing using its first year of service as the proposed test year, before commencement of construction of the distribution or "in tract" infrastructure associated with the SSCSA. In developing the initial general rate case for filing for SSCSA, Golden State's new service territory, SSCSA, must have cost-based and stand-alone rates, distinct from Golden State's other districts in the region, in order to recover from these new customers the forecast cost of service including all expenses and a reasonable return on investment.

In conjunction with its proposal to use the SSCSA revenue requirement balancing account described above, Golden State proposes using proxy rates, Golden State's Simi Valley rates, as its initial rates for the SSCSA. DRA agrees with the usage of the initial rates, based on Simi Valley rates, but contends that the Commission should abandon cost-based rates entirely for the SSCSA and recommends that saturation adjustment should be used such that the proposed initial rates are maintained until the SSCSA has 5,000 customers.[229]

Here, we find, in foregoing Section 5.5 of this decision, SSCSA revenue requirement balancing account is unnecessary and inappropriate and therefore Golden State is required to file a general rate case. This conclusion, which ultimately leads to the requirement that a general rate case be filed, makes it unnecessary now to estimate the interim proxy rates nor determine whether saturation adjustment should be used, as DRA proposes here. We therefore find these issues moot.

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[229] Exhibit DRA-02 (Sekhon) at 7-16 through 7-17.

5.6. DRA's requests related to the future acquisition of the Robbins Water System are irrelevant and unreasonable.

5.6.1. Section 6.3 of the Settlement Agreement is an integral component of the Settlement and DRA provides no Justification for its removal.

Golden State contends the future acquisition of the Robbins Water System will be addressed in a separate and subsequent proceeding. Specifically, Section 6.3 of the Settlement Agreement provides that Golden State, after receipt of a CPCN in this proceeding, will submit a request to the Commission for approval of its acquisition of the Robbins Water System ("Robbins") from Sutter County Water Works District 1.[230] DRA objects to the inclusion of this provision in the Settlement Agreement and argues that the Commission's approval of the Settlement Agreement (effectively granting Golden State a CPCN) with such provision, would later be interpreted as the Commission's preapproval of Golden State's anticipated request for authority to acquire Robbins, in a separate and subsequent proceeding.[231]

The Joint Parties contend the inclusion of this provision in the Settlement Agreement was critical to the County's support of the Settlement Agreement and withdrawing its protest to the Application.[232] This provision, like all other provisions of the Settlement Agreement, is subject to the heightened standard of review for a contested settlement which requires the Commission to consider the proposed settlement as a whole as well as its individual elements, in order to determine whether it balances the various interests at stake, and to ensure that

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[230] Settlement Agreement § 6.3.

[231] Tr. Vol. 3 (DRA-Sekhon) at 460.

[232] Exhibit JP-01 (Peterson) at 54.

each element is consistent with the Commission's policy objectives and the law.[233] Section 6.3 of the Settlement Agreement, the future acquisition of Robbins by Golden State, passes muster under this heightened level of review.

5.6.2. Overview of Robbins

Robbins is currently owned and operated by Sutter County Water Works District 1 (Water Works District 1), which is a dependent district of the County of Sutter. The water system operates one active (primary) groundwater well, one backup groundwater well, a water treatment plant, and a potable water distribution system that together provide the community of Robbins with potable water.[234] The Robbins community served by the system has approximately 350 residents and 93 water connections.[235]

Although the voters have recently approved rate increases, the County has been restricted by Proposition 218 in its efforts to set water rates for Robbins to a sufficient level to fully recover all of its expenses.[236] The current $70 per month per EDU became effective on January 1, 2014 but does not cover all of the current operation and maintenance expenses for the water system or allow it to contribute towards paying off past debt or accrue funds for future capital improvements.[237] Over the next ten years, extensive capital improvements need to be made to Robbins to bring the system into compliance with state and federal

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[233] D.10-12-035 at 27.

[234] Exhibit JP-01 (Peterson) at 45.

[235] *Id.* at 46.

[236] *Id.* at 48. Proposition 218 requires the local government to conduct a vote of the affected property owners for any proposed new or increased assessment before it can be levied.

health regulations.[238] The primary capital improvement needed is the building of a new water treatment plant so as to enable the arsenic concentration in the potable water to be reduced in compliance with state and federal standards for arsenic concentrations.[239]

In addition, the arsenic concentrations at the primary well for Robbins average approximately 20 ppm, rendering the system out of compliance with both state and federal health regulations.[240] As a result, in January 2009, the Robbins water program received a Compliance Order for Arsenic Exceedance from California Department of Public Health.[241] The cost of building a new water treatment facility in order to ensure compliance with California Department of Public Health requirements and the California Code of Regulations, as well as other changes necessary to shore up the aging Robbins infrastructure, has been estimated to be $3.6 million,[242] which the Robbins community has represented that it cannot afford.[243]

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[238] *Id.* at 49.

[239] *Id.* at 49-50.

[240] *Id.* at 49.

[241] *Ibid.*

[242] *Ibid.*

[243] The Rural Community Assistance Corporation conducted an income survey pursuant to both State and Federal protocols, and found the community of Robbins to be economically challenged with a mean average annual income of $30,500 per household.

5.6.3. Golden State's commitment to seek Commission approval for acquisition of the Robbins Water System is integral to the Settlement Agreement.

In order to assess that a settlement balances the various interests at stake, the Commission has used a comparison of the original positions of the parties to the recommended outcomes in the proceeding as well as assessing the validity of the opposition raised by contesting parties to various elements of a settlement agreement.[244] Here, it should be noted that at the onset of this proceeding, the County sought denial of Golden State's CPCN application based on the County's intent to create a county water district to be the municipal and industrial water service provider for the Sutter Pointe Development.[245]

The County's plan to create a water district would, among other things, enable the County to spread the costs of operating the Robbins system, as well as the necessary capital improvements, over a larger number of customers, thereby reducing the per customer costs substantially. Issuance of the CPCN to Golden State for the Sutter Pointe Development would displace the County's best means of operating Robbins in an economically viable manner – as part of a county water district also serving the much larger Sutter Pointe Development.

The settlement process allowed for a reconciliation of Golden State's and the County's positions and interests. In the process, Golden State committed to seek Commission approval to purchase the Robbins system (if the Commission grants its current request for a CPCN). The Joint Parties believe such acquisition by Golden State would result in operation of the Robbins system by an entity

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[244] D.11-04-031 at 21.

[245] Protest of County of Sutter and Sutter County Water Agency to Golden State's Application.

that possesses the operational experience, technical competence and financial resources necessary to bring the system into compliance with all applicable state and federal laws and provide safe and reliable water to the residents of the Robbins community,[246] thereby assuring that Robbins customers could continue to receive reliable and affordable water service, as consistent with Commission objectives and allowing the County to achieve an effective resolution of its litigation position.

In contrast, DRA objects to the inclusion of the provision regarding the Robbins acquisition in the Settlement Agreement, and requests that any reference to the acquisition be removed from the Settlement Agreement.[247] DRA's basis for opposition is that should the Commission approve the Settlement Agreement (effectively granting Golden State its CPCN), then later, when Golden State seeks authority from the Commission to acquire Robbins "someone might get the impression that it is somewhat preapproved."[248]

DRA's foregoing objection is unpersuasive. First, both the Joint Motion and the accompanying testimony clearly state that the Joint Parties are not seeking the Commission's approval for the Robbins acquisition, nor asking the Commission to review the acquisition as part of this proceeding.[249] Accordingly, the Joint Parties clearly understand that any Commission decision in this proceeding would not and should not contain a conclusion of law or ordering paragraph addressing the merits of Golden State's acquisition of Robbins. Under

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[246] Exhibit GSWC-1 (Kruger) at 37-38 (attesting to the operational, technical and financial competence of Golden State).

[247] Exhibit DRA-02 (Sekhon) at 8-2.

[248] Tr. Vol. 3 (DRA-Sekhon) at 460.

[249] Joint Motion at 60-61; Exhibit JP-2 (Peterson) at 54.

these circumstances, the Commission decision and the underlying record in this proceeding would not provide a source of confusion as to whether the Robbins acquisition was in any manner "preapproved." To the contrary, the record would evidence that the Commission intends to review such acquisition and related issues in a separate subsequent proceeding when Golden State comes before the Commission seeking review of said matter.

Second, the Settlement Agreement explicitly provides that with the exception of the Joint Parties, anyone (including DRA) can protest the acquisition, and the Commission would make a determination thereon.

Third, without the benefit of Golden State's anticipated future filing (re acquisition of Robbins Water System), it is premature to evaluate the merits and prejudge the matter.

Finally, in exchange for Golden State's agreement to seek the Commission's approval of acquiring Robbins Water System, the County has withdrawn its protest and had allowed for the Settlement Agreement. This appears to be a reasonable provision that avoids further protracted litigation between Golden State and the County and expressly acknowledge that the Commission would have to review the Robbins acquisition in a separate and subsequent proceeding.

Based on the foregoing, DRA's objection and basis for removing the provision regarding the acquisition of Robbins from the Settlement Agreement is without foundation and is unpersuasive.

5.6.4. It is premature for the Commission to predetermine the appropriate procedural vehicle for a future acquisition of the Robbins Water System.

While arguing that the Commission should remove and ignore the provision in the Settlement Agreement regarding the Robbins acquisition, DRA

also takes the position that the Commission, as part of its decision in this proceeding, should direct Golden State, in this decision, to use an application (rather than an advice letter) as the procedural vehicle to seek Commission approval of the Robbins acquisition.[250] DRA's basis for this request is the purported "complex" nature of the Robbins acquisition.[251] DRA's request is premature and therefore it is denied.

The Settlement Agreement provides that Golden State "will submit an appropriate request" to the Commission for its approval of Robbins. The Settlement Agreement does not specify the procedural vehicle. Whether such vehicle is an application or an advice letter filing will be determined by the parties consistent with applicable Commission's laws, policies, practices and procedures, at the time the submittal is to be made. There is no basis to prejudge that determination now in this proceeding.

First, DRA's assertions as to the complexities of the Robbins acquisition are not supported by any analysis undertaken by DRA. Second, even if the transaction did raise a number of unique issues, the Commission has in the past undertaken evaluation of substantive issues surrounding the acquisition of water systems in the advice letter process.[252] Finally, should Golden State determine to file an advice letter to request the acquisition of Robbins and should the Commission determine, at that time, having all the appropriate and necessary

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[250] Exhibit DRA-02 (Sekhon) at 8-2 through 8-3.

[251] *Id.* at 8-2.

[252] *See e.g.,* Resolution W-4622 (April 22, 2004) California Water Service Company filed an advice letter for Commission approval of the acquisition of two water companies Indian Springs Mutual Water Company and Country Meadows Mutual Water Company whose customers it had already been serving, for five years and two years respectively at rates that had not been approved by the Commission.

facts before it (which it does not have at present) that the advice letter process was insufficient, it could direct Golden State to withdraw the advice letter and submit an application.[253]

We note, General Order 96-B provides guidance here. For instance, General Order 96-B, Rule 5.1 provides "The advice letter process provides a quick and simplified review of the types of utility requests that are expected neither to be controversial nor raise important policy questions." The same rule goes on to state "The primary use of the advice letter process is to review a utility's request to change its tariffs." In addition, Rule 5.2 provides that an application is required when a "utility seeks Commission approval of a proposed action that the utility has not been authorized by statute, by this General Order, or by other Commission order, to seek by advice letter."

Moreover, we also remind Golden State that it refer to and consider the implications of some of the potentially related policy issues currently being reviewed in docket Rulemaking (R.) 11-11-088 and comply with the Commission's disposition and directions therein, as necessary, before it files any future filings relating to the Robbins acquisition. At this time, we conclude that there is no basis in the record of this proceeding for the Commission to grant DRA's request.

6. CPCN

Golden State requests a CPCN to construct and operate a municipal and industrial water system and to establish a new non-contiguous service area and rates in the southern and unincorporated portion of Sutter County, within a new South Sutter County Service Area to be established within the Natomas

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[253] Tr. Vo1. 3 (DRA-Sekhon) at 464.

corporate boundaries of Sutter County, known as the Sutter Pointe Specific Plan area, pursuant to Code § 1001 et seq. The applicable statutory provisions are set forth below.

6.1. Public Utilities Code Section 1001

Section 1001 states, in relevant part:

> No … water corporation … shall begin the construction of a street railroad, or of a line, plant, or system, or of any extension thereof, without having first obtained from the commission a certificate that the present or future public convenience and necessity require or will require such construction.

Here, as discussed in foregoing Section 5.1.1., the need for SSCSA or the Proposed Project is not in dispute. While DRA argues that its projections on housing demand in the area are modest, DRA does not contest there is an overall future public convenience and necessity for the SSCSA water system. Moreover, the Joints Parties have adequately demonstrated that there is reasonably foreseeable future necessity for the SSCSA water system development based on a well-reasoned housing market demand projections looking at the 30- year housing cycle and longer term demand in the general area.

For these reasons, we conclude that public convenience and necessity require the construction of the Proposed Project.

6.2. Public Utilities Code Section 1002(a)

Section 1002(a) states as follows:

> The commission, as a basis for granting any certificate pursuant to Section 1001 shall give consideration to the following factors:
>
> (1) Community values.
>
> (2) Recreational and park areas.
>
> (3) Historical and aesthetic values.

> (4) Influence on environment, except that in the case of any line, plant, or system or extension thereof located in another state which will be subject to environmental impact review pursuant to the National Environmental Policy Act of 1969 (Chapter 55 (commencing with Section 4321) of Title 42 of the United States Code) or similar state laws in the other state, the commission shall not consider influence on the environment unless any emissions or discharges therefrom would have a significant influence on the environment of this state.

The Joint Parties, including Golden State, provided the following information regarding these factors:

6.2.1. Community Values

The record fully demonstrates that approval of the CPCN for the SSCSA has the support of and is consistent with the values of the community that Golden State will serve. Golden State has diligently and proactively worked with the County officials, elected leaders, community members as well as the Natomas to ensure that four key local objectives are met: protection and preservation of the local agricultural economy; provision of the best possible M&I service within the Natomas service area; enhancement of regional job creation efforts and respect to taxpayers; and a proven commitment to Sutter County.[254]

And Golden State has presented substantial evidence that a varied and growing segment of South Sutter County supports the Application, including residents, elected officials, community leaders, farmers and non-profit organizations.[255] In large part, Golden State has gained the support of Natomas,

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[254] Golden State's Opening Testimony (Tanner) at 60.

[255] *See generally*, Golden State's PHC Statement, dated December 30, 2008 at 5-7.

California Alliance to Protect Private Property Rights, as well as a coalition of family farmers and community and taxpayer advocates, based upon Golden State's thoughtful planning and strategies that have been specifically designed to support the local farming community.[256]

6.2.2. Recreational and Park Areas

The potential impacts of the Golden State's Proposed Project on recreation and park areas have been reviewed during the environmental review process and the *Golden State Water Company – Sutter Pointe Certificate of Public Convenience and Necessity Project, Focused Tiered Environmental Impact Report, dated April 2010,* ("FT EIR") has been prepared in as part of Track of this proceeding. FT EIR found that there are no local or regional parks or bikeways within the Proposed Project Site. None of the Golden State's Proposed Project is expected to cause any change in conditions relating to recreation nor have any effect on this resource.[257]

6.2.3. Historical and Aesthetic Values

The FT EIR found that the Proposed Project would not affect the identified structures with historic value, and that mitigation measures would reduce any potential damage to unidentified archaeological resources and unidentified human remains during project construction to a less-than-significant level.[258]

Likewise, FT EIR also looked at the aesthetic impacts, such as visible construction work, above-ground water facility infrastructure, and night time

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[256] FT EIR at B-56.

[257] *Id.*

[258] *Id.* at B-22, B-23.

lighting and provides mitigation measures that will reduce these aesthetic impacts to a less-than-significant level.[259]

6.2.4. General Influence on the Environment

The Joint Parties, including Golden State, contend that the Proposed Project will not have a significant adverse influence on the environment for the reasons set forth in the FT EIR. We agree and we discuss the environmental impact issue further below, in Section 7 of this decision.

6.3. General Order 103-A

The Commission's General Order 103-A sets the minimum standards to be followed in the design, construction, location, maintenance and operation of the facilities of water and wastewater utilities operating under the Commission's jurisdiction. Here, the Joint Parties, including Golden State, provide ample evidence in the form of Settlement Agreement terms as well as testimony to demonstrate that the water infrastructures for SSCSA will be designed to meet or exceed the requirements of the Commission's General Order 103-A.[260]

Specifically, the Settlement Agreement, Section 4.2.2., provides that the design of all infrastructure constructed or acquired for the proposed SSCSA comply with, *inter alia*, the Commission's General Order 103-A as well as County's design standards.

6.4. CPCN Granted

We find pursuant to § 1002(a) that the Proposed Project is consistent with community values; will not adversely affect recreational and park areas; is consistent with historical uses of the Project Site and community aesthetic values;

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[259] *See e.g.*, FT EIR at B-3 to B-5, 3.2-1 to 3.2-7.

[260] *See e.g.,* Joint Motion at 20 (citing Joint Testimony (Gisler) at 41).

and will not have a significant adverse influence on the environment. Our finding is consistent with, and informed by, the FT EIR that is discussed below and is adopted by this decision.

We conclude that Golden State should be granted a CPCN pursuant to § 1001 and § 1002(a) to construct and operate the Proposed Project. The CPCN is subject to several conditions that are discussed below, including the requirement ordering Golden State to develop a general rate case for filing, consistent with the requirements set forth in D.07-05-062 and to file a detailed general rate case filing using its first year of service as the proposed test year, before commencement of construction of the distribution or "in tract" infrastructure associated with the SSCSA as well as to carry out the mitigation measures set forth in the FT EIR adopted by this decision.

7. Environmental Review

The Commission is required by the CEQA, California Public Resources Code §§ 2100 *et seq.* to consider the environmental consequences before acting on the Proposed Project.[261] Under CEQA, the Commission must act as either the Lead Agency or a Responsible Agency. The Lead Agency is the public agency with the most responsibility for supervising or approving the project as a whole.[262] Here, the Commission is the Lead Agency.

7.1. Background to Environmental Review

Golden State filed its Application, A.08-08-022 along with a Proponent's Environmental Assessment ("PEA") pursuant to Rule 2.4(b). The PEA provided

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[261] California Code of Regulations, Title 14, Chapter 3, (CEQA Guidelines), Section 15050(b).

[262] CEQA Guidelines, Section 15050(b).

a description of the Proposed Project, an evaluation of the environmental impacts of the Proposed Project, and measures to mitigate the potentially significant environmental impacts.[263] The PEA concluded that with mitigation, the Proposed Project would have either a less than significant impact or no impact on every resource category for which CEQA requires an analysis. We consider all of the PEA-proposed mitigation measures to be a part of the Proposed Project and the Application. Our approval of the Proposed Project and the Application in this decision incorporates by reference every mitigation measure in the PEA.

The Proposed Project Site is in the South Sutter County, commonly referred to as Sutter Pointe Specific Plan Area or SPSP Area. Thus, the EIR for the SPSP Area, which was certified by the Sutter County Board of Supervisors on June 30, 2009 ("SPSP EIR"), is instructive to the Proposed Project. The SPSP EIR included a programmatic assessment of development of the entire specific plan area and a project-level analysis for the first phase of development. The SPSP EIR stated that it was the intent of the County to form a community services district or other County-related entity to provide water utility service for the SPSP Area but also identified the intent of Golden State to provide water service for the SPSP Area. The SPSP Plan EIR analysis of impacts associated with water services assumed that such services could be provided either by a County-related entity or by Golden State, and that, "[r]egardless of the entity that provides the service, ...the same sources of water supply would be used, therefore the analysis of the physical water availability would not change..."

In July 2009, a Memorandum of Agreement ("MOA") was signed between the County and Golden State. In the MOA, it was agreed that it would be

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[263] PEA, Chapter 1, Table ES-1.

appropriate for the Commission to tier from and incorporate by reference information to the extent relevant and appropriate from the Water Supply Assessment ("WSA") prepared for the Sutter Pointe Specific Plan (adopted June 30, 2009) and the SPSP EIR in the environmental review document prepared for A.08-08-022. In addition, the County reaffirmed its interpretation that the WSA and SPSP EIR adequately analyzed the impacts of providing water service to the Proposed Project Site whether such water service is by a County-related entity or by Golden State.

7.2. Notice, Public Review and Preparation of Focused Tier Environmental Impact Report

Based thereon and in compliance with CEQA, the Commission's Energy Division staff ("Staff") reviewed the PEA and prepared an Initial Study to address environmental issues related to the Proposed Project. The Staff has since prepared a Draft FT EIR, specifically examining and addressing the environmental impacts associated with the construction and operation of new water supply infrastructure to support development of the SPSP Area, and has released the FT EIR for public review on January 14, 2010, the Commission published a Notice of Preparation ("NOP") of the FT EIR for the Golden State's Proposed Project. This NOP was circulated for a public response period beginning January 14, 2010 and ending February 12, 2010, and at least two public scoping meetings were held by the Staff to invite and receive comments on the NOP. No comments have been received on the NOP and the public review and comment period for NOP is closed.

On April 28, 2010 the Commission published a Notice of Availability of a FT Draft EIR. The 45-day public review period for this FT Draft EIR was extended from April 28, 2010 through June 14, 2010, and no comments have been

received by the Staff on the FT Draft EIR. Thus, FT Draft EIR is now final, as FT EIR, with no changes since FT Draft EIR.

7.3. Mitigation Monitoring, Compliance, and Reporting Program

As required by CEQA, the FT EIR included a Mitigation Monitoring, Compliance, and Reporting Program ("MMCRP") that describes the mitigation measures Golden State must implement for the Proposed Project, the actions required to implement each mitigation measure, how implementation will be monitored, and the timing of each mitigation measure. The Commission uses the MMCRP as a guide for expected performance and requires Commission-designated environmental monitors to record such performance. Golden State has agreed to each mitigation measure in the MMCRP. Consistent with CEQA, we adopt the final MMCRP as part of our approval of the Proposed Project.

7.4. Focused Tier EIR and Statement of Overriding Considerations

As part of Track 2 (environmental review process) of this proceeding, the Staff along with the consultant, Environmental Science Associates, prepared the FT EIR in compliance with the CEQA, California Public Resources Code Sections 21000 *et seq.* On February 27, 1022, FT EIR was marked and received into the record of this proceeding as Commission Exhibit #01 and attached to this decision as Appendix B.

The FT EIR found that the Proposed Project will have a significant impact on the environment even after all reasonable mitigation measures are applied. As such, CEQA requires that any CPCN that is granted must be accompanied by a statement of overriding considerations explaining why the project should still be approved. And the Commission's authorization and CPCN that is finally issued must be conditioned on completion of any adopted mitigation measures.

Pursuant to Public Resources Code § 21080 and CEQA Guidelines § 15091(a), we may not approve or carry out a project for which an EIR has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless we make one or more of the following findings with respect to each significant effect:

(i) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment;
(ii) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency; or
(iii) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.

In compliance with CEQA, here we make the required findings with respect to each significant effect identified in the FT EIR, recognizing that some significant and unavoidable impacts will result from implementation of the Proposed Project. However, for the reasons discussed below, we also find that the Proposed Project is necessary to this region and will promote numerous local and regional economic and community benefits to promote the safety, health, comfort, and convenience of the public. As discussed below, these benefits constitute overriding considerations which justify approval of the Proposed Project despite its unavoidable environmental effects.

In addition, the findings required pursuant to CEQA Guidelines § 15091(a)(iii) above with respect to overriding considerations are provided below.

CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits, including region-wide or

statewide environmental benefits, of a proposed project against its unavoidable environmental risks when determining whether to approve the project. CEQA Guidelines § 15093. If the specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable."

Having (i) adopted all feasible mitigation measures for the Proposed Project, (ii) rejected as infeasible other alternatives to the Proposed Project, (iii) recognized all significant, unavoidable impacts of the Proposed Project, and (iv) balanced the benefits of the Proposed Project against the Proposed Project's significant and unavoidable impacts, the Commission hereby finds that specific economic, legal, social, technological and other benefits, detailed below, outweigh and override the significant unavoidable environmental impacts.

We find that the Proposed Project's unavoidable significant environmental impacts are acceptable in light of these substantial benefits. Each benefit set forth above constitutes an overriding consideration warranting approval of the Proposed Project, independent of the other benefits, despite each and every significant unavoidable impact.

The conditions we impose on the CPCN, including compliance with the MMCRP we adopt as part of our approval of the Proposed Project, will ensure that the Proposed Project can be constructed and operated in a way that protects the safety of workers and the general public. The design, construction, and operation of the Proposed Project will be subject to a comprehensive array of safety regulations at both the federal and state level, including the Commission's applicable General Orders.

The FT EIR, adopted in this decision, thoroughly examined the Proposed Project's environmental impacts and concludes that the only unavoidable

environmental impacts are short-term nitrogen oxide ("NOx") emission associated with construction activities and the conversion of farmland to non-agricultural use.[264]

The mitigation measures required for implementation during the construction phase for NOx are consistent with the requirements of the Feather River Air Quality Management District as well as SPSP EIR and will help reduce the short term NOx impacts the the extent feasible. The unmitigable, remaining and temporary NOx impacts do warrant a statement of overriding considerations in light of the temporary and already mitigated nature of the impacts, the critical local need for the Proposed Project as evidenced by the community support for the Proposed Project, and the important local and regional economic and community objectives that are promoted by the Proposed Project, as discussed in foregoing Section 6.2.1 of this decision.

As for the permanent conversion of farmland to non-agricultural use, this is also an unmitigable impact. However, we recognize the critical economic and social needs of this region that are being met by the Proposed Project, as evidenced throughout this proceeding with the cooperation between the community and Golden State, as evidenced in the Settlement Agreement and in the filings. We agree with the Joint Parties' contention that this Proposed Project would help this community to preserve its agricultural community values by preventing the prices that farmers pay for their water from spiraling to unavoidable levels.[265]

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[264] *Id.* at ES-7.

[265] Joint Parties' Testimony (Franck and Krueger) at 44-45.

In light of these important regional and community benefits of this Proposed Project, the unmitigable impacts of permanently converting some of this community's farm lands to non-agricultural use do warrant a statement of overriding considerations.

Based on the foregoing, we conclude that the Final environmental document for the Proposed Project, FT EIR, was prepared in compliance with CEQA and its guidelines. We further find that there is adequate demonstration in the record to support a statement of overriding considerations, as discussed above, to the unmitigable and temporary NOx impacts and the impacts of permanently converting some of this community's farm lands to non-agricultural use. Finally, we find that the FT EIR addresses all applicable environmental impacts of the Proposed Project and also includes the required Final MMCRP.

FT EIR has set forth written findings for each significant effect associated with the Proposed Project and prepared a Statement of Overriding Considerations, which explains that the benefits of the Proposed Project far outweigh the limited unavoidable impacts of the Proposed Project on the environment. We agree with the FT EIR's Statement of Overriding Considerations and adopt it here.

The FT EIR reflects the Commission's independent judgment and analysis.[266] Our order today certifies and adopts the FT EIR for the Proposed Project and authorizes the issuance of a Notice of Determination for the Project pursuant to the CEQA, subject to all the conditions therein. Before starting construction of the Proposed Project, Golden State must secure all required permits, easements, and any other legal authorization to develop the Project.

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[266] CEQA Guidelines Section 15074(b).

The FT EIR is attached to this decision and can be viewed at the Commission's Central File office or at: http://www.cpuc.ca.gov/Environment/info/esa/gswc_sp/index.html.

8. The Settlement Agreement, including all disputed provisions, is consistent with law and in the public interest.

The Settlement Agreement is subject to Rule 12.1(d), which states: The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest.

As set forth below, we find that the Settlement Agreement is reasonable in light of the record of this proceeding, is consistent with the law, and in the public interest. We therefore approve the Settlement Agreement.

8.1. Consistent with Law

As discussed in this decision, we find the Settlement Agreement is consistent with the Code, prior Commission decisions, and other applicable laws. One clarification would be that the Commission maintains its authority to revise the Settlement Agreement, once adopted, is set forth in Code § 1708, which states as follows:

> The commission may at any time, upon notice to the parties, and with opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made by it. Any order rescinding, altering, or amending a prior order or decision shall, when served upon the parties, have the same effect as an original order or decision.

Pursuant to Code § 1708, our power to modify, revise, or eliminate the Settlement Agreement is not limited to situations where one of the Settling Parties has filed a formal petition. Under Code § 1708, we may rescind, alter, or

amend the Settlement Agreement adopted by today's decision after providing notice to the parties. We will adopt the Settlement Agreement with this understanding.

8.2. Reasonable and in the Public Interest

As discussed in this decision and in light of the entire record of this proceeding, we find the Settlement Agreement, including all of the disputed provisions as well as the all-party stipulations as outlined in this decision, is reasonable and in the public interest.

The Commission has held that a settlement that "commands broad support among participants fairly reflective of the affected interests" and "does not contain terms which contravene statutory provisions or prior Commission decisions" serves the public interest.[267]

Here, the reasonableness of the terms of the Settlement Agreement, including all of the disputed provisions as well as the all-party stipulations as outlined in this decision, have been amply discussed throughout Section IV of this decision.

Moreover, there has been no persuasive evidence presented to show that any terms of the Settlement Agreement, including all of the disputed provisions as well as the all-party stipulations as outlined in this decision, either contravenes statutory provisions or prior Commission decisions.

Likewise, in this proceeding, the primary public interest is in the delivery of safe and reliable water service at reasonable rates. The Settlement Agreement, including all of the disputed provisions as well as the all-party stipulations as outlined in this decision, advances this interest by providing for the construction

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[267] Re San Diego Gas & Elec., D.92-12-019, 46 CPUC 2d 538, 552.

of a safe and reliable water system to serve the proposed SSCSA, and establishes a reasonable and fair methodology for setting rates for the customers of this future water system.

In addition, the project facilitated by the Settlement Agreement enjoys broad support from the community it will serve. Golden State has presented substantial evidence that a varied and growing segment of South Sutter County supports its Application, including residents, elected officials, community leaders, farmers and non-profit organizations.[268] This support is not surprising given that Golden State has worked with Natomas to ensure that four key local objectives are met: protection and preservation of the local agricultural economy; provision of the best possible M&I service within the Natomas service area; enhancement of regional job creation efforts and respect to taxpayers; and a proven commitment to Sutter County.

We also view Joint Parties' support for the Settlement Agreement as a strong indication that the Settlement Agreement is indeed in the regional public interest.

8.3. The Settlement Agreement Approved

Upon review of the Settlement Agreement, in light of the entire record of this proceeding, we find the Settlement Agreement, including the all-party stipulations as outlined in this decision, is reasonable, consistent with the law and in the public interest.

Based on all of the foregoing, the Commission approves the Settlement Agreement, including all of the disputed provisions as well as the all-party

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[268] *See generally*, Golden State's PHC Statement (Dec. 30, 2008) at 5-7.

stipulations as outlined in this decision and issues the CPCN for the SSCSA to Golden State.

9. Proceeding Category and Need for Hearings

In Resolution ALJ 176-3220, dated September 4, 2008, the Commission preliminarily categorized this proceeding as ratesetting and preliminarily determined that hearings were needed.

10. Comments on the Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311 and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Timely comments and reply comments have been filed by DRA and Golden State. We have considered them, and we made a few necessary clarifications, corrections, and revisions to the proposed decision, where appropriate, as discussed below.

DRA's comment does not add more than what DRA already argued during the proceeding. The main issues reiterated by DRA in the comment are that DRA disagrees with the proposed decision's conclusions and that DRA believes: (a) the proposed decision improperly accepts the Joint Parties' forecast of demand for housing in Sutter Pointe; (b) the proposed decision misinterprets the Water Wholesale Agreement and the Agreement itself violates the concept of cost-based rates; (c) the proposed decision's failure to properly consider the economic impacts of the Water Wholesale Agreement and the proposed $81 million incremental acquisition scheme violates *U.S. Steel v. Public Utilities Commission*; (d) DRA's proposal for water rights does not violate California Law; and (e) the reasonableness of the proposed $81 million incremental acquisition scheme is not supported by the record and not consistent with the Commission precedent.

Each of the forging issues re-raised by DRA in its comment has been exhaustively examined, discussed and dismissed in the proposed decision. For instance, the evidence, reasoning and analysis supporting the rejection of DRA's housing forecast and adoption of Joint Parties' housing forecast is discussed in great detail in section 5.1 of the proposed decision, spanning nearly ten pages. The proposed decision reviewed each and every objection by DRA to the Water Wholesale Agreement terms in section 5.2, more than 30 pages, to consider, discuss, analyze and ultimately reject DRA's interpretations and related argument to each of those terms and the Water Wholesale Agreement. Section 5.4 discusses, in part, the Commission's consideration and compliance with *U.S. Steel v. Public Utilities Commission* and our review of the broader economic impacts of the settlement agreement.

Section 5.2.1.1 of the proposed decision thoroughly sets forth the record evidence and reasoning for our rejection of DRA's water rights acquisition proposal as inadequate and unpersuasive. Section 5.3 of the proposed decision reviews, analyzes and concludes that the record supports the reasonableness of the proposed $81 million scheme and overall consistency with the Commission's policies. Thus, we decline to neither further revisit these issues nor reiterate our reasoning at this juncture.

DRA's reply yet again reiterates its arguments in its comment, which requires no additional treatment here, and DRA's reply additionally requests that (1) the Commission should clarify the language in the proposed decision with respect to the settlement agreement; and (2) the Commission should reject the Golden State's request in its comments to the proposed decision for a balancing account.

We generally agree with DRA's additional requests in its reply. We agree that the Commission, under Rule 12.4, "may reject the settlement whenever it

determines that the settlement is not in the public interest." Based thereon, however, DRA makes an erroneous assumption and argues that the Commission should therefore accept DRA's alternative proposed terms, to the settlement agreement terms, here. While we agree with DRA's reading of the Rule 12.4, we disagree with DRA's conclusion. The proposed decision's adoption of the settlement is explicitly predicated, in part, on the finding that the settlement package, as a whole, was in the public interest, as discussed in section 8.2. It was not based on individual cherry-picked terms.

Some terms could be altered to increase theoretic public interest in certain areas, and we certainly have the authority to do so. However, we had to be fully mindful of the many years of difficult negotiations that preceded the settlement agreement by the local and regional interests leading to the settlement agreement, which at times appeared as though there would never be a settlement. The record in this proceeding also included testimony that confirmed the tenuousness of the settlement agreement, if some terms are altered. Based thereon, we did consider the real likelihood that the settlement agreement could be jeopardized with such change. In such instance, no public interest would be served. As discussed in section 8.2 and as reflected in the record of this proceeding, this settlement agreement results from many years of tireless planning and negotiation and comes with broad local and regional support from the community it will help serve, including residents, elected officials, community leaders, farmers, non-profit organizations, and local community.

Here, DRA errors in assuming that the proposed decision's adoption of the settlement agreement, in whole, was predicated the legal misunderstanding that the Commission assumed that it had no choice but to adopt or reject the settlement in its entirety. We found, after thorough consideration of the record

and evidence in this proceeding, the settlement agreement, as a whole, is in the public interest. Thus, we affirm that there is no basis to reject it, in part or whole.

As for its argument that the Commission should reject Golden State's newly proposed balancing account mechanism, DRA recites certain excerpts from section 5.5, *supra*. DRA is correct. In Golden State's comment to the proposed decision, Golden State requests that the Commission authorize a balancing account mechanism even before filing its general rate case. We reject this request at the present time, without prejudice. We opine that by the time Golden State files the detailed general rate case, it will be in a far better position to explain, based on the then-existing exigent circumstances, and justify what mechanism is/are needed at that time under the then-existing and known circumstances. That is when Golden State should prove up the need for the balancing account, if any.

Aside from its new request for the balancing account, Golden State's comment and reply comment are generally supportive of the proposed decision and proposes some minor clarifications, which have been incorporated in this decision.

In addition, we also provide some additional clarifications concerning any future review of the Robbins Water System in the foregoing section 5.6.

Finally, a few minor clerical or stylistic revisions and corrections have also been made throughout the decision.

11. Assignment of the Proceeding

President Michael R. Peevey is the assigned Commissioner for A.08-08-022 and Kimberly H. Kim is the assigned ALJ.

Findings of Fact

1. Golden State, in the Application, (a) seeks a CPCN to construct and operate a M&I water system and to establish a new non-contiguous service area and rates in the unincorporated southern portion of Sutter County; and (b) proposes to provide M&I water service to a proposed service area in south Sutter County known as the SPSP Area or Sutter Pointe, a new service area to-be-certified SSCSA area.

2. The Project Site is characterized by agricultural (primarily rice fields) and industrial uses, including the approximately 50-acre Sysco Corporation warehouse and distribution center, a Holt\Tractor manufacturing facility, and an approximately 30-acre area occupied by A&N Auto Repair and AR Readymix.

3. Existing surrounding land use of the Project Site is primarily agriculture, and Sacramento International Airport and the proposed Metro Air Park (an industrial and business park) are located approximately two miles southwest of the Project Site.

4. The future development plans under the SPSP includes a mixture of land uses on approximately 7,538 acres including employment centers, several different housing densities, retail, recreational facilities, schools, community services, supporting on- and off-site infrastructure, and roadway improvements. Generally, the SPSP would permit a maximum of 17,500 residential units and up to 49.706 million square feet of commercial/industrial space. The SPSP also anticipates parks, schools (six K–8 and one comprehensive high school), a library, a civic center, other civic buildings and public services, and supporting infrastructure within the boundaries of SPSP Area.

5. The County and DRA protested the Application on various grounds.

6. The Robbins became a party to the proceeding and asserted its support for the Application.

7. On September 16, 2010, Golden State served a notice of an official Rule 12.1(b) all-party settlement conference for October 7, 2010.

8. Aside from DRA, all of the other parties including Golden State, the County, the Sutter Pointe Developers, and the Robbins (collectively referred to as "Joint Parties") continued in the settlement discussions and reached a comprehensive compromise agreement arriving at the Settlement Agreement resolving all disputed issues arising from the Application.

9. The Joint Parties submitted a Motion for Adoption of the Settlement Agreement to the Commission for approval on March 14, 2011.

10. On April 13, 2011, DRA filed comments in opposition to the Joint Motion and requested an evidentiary hearing be held in this proceeding; and the evidentiary hearings were held on the remaining disputed issues.

11. Final Oral Argument was held on February 15, 2012.

12. Based on questions raised during the Final Oral Argument and a ruling that followed, Golden State filed a revised proposal for alternative initial rates for the SSCSA, and DRA filed its response.

13. There is a future public convenience and necessity for the Proposed Project.

14. The public convenience and necessity will be served by establishment of SSCSA and Golden State's construction and operation of a water system to provide M&I water service to the SSCSA.

15. The construction of the proposed water system and its operation, as set forth in the Application, are reasonably required to serve Golden State's to-be-certificated SSCSA.

16. Golden State will need to construct facilities outside of the SSCSA in order to support service in the SSCSA.

17. The community values, recreation and park areas, historical and aesthetic values, and influence on the environment have been sufficiently considered by the Commission as required by Public Utilities Code Section 1002.

18. Golden State is entitled to recover past, present and future costs in rates in connection with the proposed water system, subject to further prudence review by the Commission.

19. Golden State's balancing account proposal is unnecessary and unreasonable here.

20. It is unnecessary now to estimate the interim proxy rates nor determine whether saturation adjustment should be used.

21. The Commission is required by CEQA to consider the environmental consequences before acting on the Proposed Project, and under CEQA, the Commission must act as either the Lead Agency or a Responsible Agency.

22. Under CEQA, the Lead Agency is the public agency with the most responsibility for supervising or approving the project as a whole; and here, the Commission is the Lead Agency.

23. Along with its Application, Golden State filed the PEA pursuant to Rule 2.4(b); and the PEA-proposed mitigation measures are deemed a part of the Proposed Project and the Application.

24. Our approval of the Proposed Project and the Application in this decision incorporates by reference every mitigation measure in the PEA and the FT EIR adopted by this decision.

25. Because the Proposed Project Site is in the South Sutter County, commonly referred to as Sutter Pointe Specific Plan Area or SPSP Area, the EIR for the SPSP Area, which was certified by the Sutter County Board of Supervisors on June 30, 2009 ("SPSP EIR"), is instructive to the Proposed Project.

26. The SPSP EIR included a programmatic assessment of development of the entire specific plan area and a project-level analysis for the first phase of development.

27. The SPSP EIR stated that it was the intent of the County to form a community services district or other County-related entity to provide water utility service for the SPSP Area but also identified the intent of Golden State to provide water service for the SPSP Area.

28. The SPSP EIR analysis of impacts associated with water services assumed that such services could be provided either by a County-related entity or by Golden State, and that, "[r]egardless of the entity that provides the service, ...the same sources of water supply would be used, therefore the analysis of the physical water availability would not change..."

29. In compliance with CEQA, the Staff has prepared a Draft FT EIR, specifically examining and addressing the environmental impacts associated with the construction and operation of new water supply infrastructure to support development of the SPSP Area.

30. On April 28, 2010 the Commission published a Notice of Availability of a FT Draft EIR, and despite the extended public review period, no comments have been received by the Staff on the FT Draft EIR.

31. The FT Draft EIR is now final, as FT EIR (Appendix B to this decision), with no changes since FT Draft EIR.

32. As required by CEQA, the FT EIR included a MMCRP that describes the mitigation measures Golden State must implement for the Proposed Project, the actions required to implement each mitigation measure, how implementation will be monitored, and the timing of each mitigation measure.

33. The FT EIR found that the Proposed Project will have a significant impact on the environment even after all reasonable mitigation measures are applied.

34. If there is a significant impact on the environment, CEQA requires that any CPCN that is granted must be accompanied by a statement of overriding considerations explaining why the project should still be approved, and the Commission's authorization and CPCN that is finally issued must be conditioned on completion of any adopted mitigation measures.

35. The conditions we impose on the CPCN, including compliance with the MMCRP we adopt as part of our approval of the Proposed Project, will ensure that the Proposed Project can be constructed and operated in a way that protects the safety of workers and the general public; and the design, construction, and operation of the Proposed Project will be subject to a comprehensive array of safety regulations at both the federal and state level, including the Commission's applicable General Orders.

36. The FT EIR, adopted in this decision, thoroughly examined the Proposed Project's environmental impacts and concludes that the only unavoidable environmental impacts are short-term ("NOx") emission associated with construction activities and the conversion of farmland to non-agricultural use.

37. The mitigation measures required for implementation during the construction phase for NOx are consistent with the requirements of the Feather River Air Quality Management District as well as SPSP EIR and will help reduce the short term NOx impacts to the extent feasible.

38. The unmitigable, remaining and temporary NOx impacts warrant a statement of overriding considerations in light of the temporary and already mitigated nature of the impacts, the critical local need for the Proposed Project as evidenced by the community support for the Proposed Project, and the important local and regional economic and community objectives that are promoted by the Proposed Project.

39. In light of the important regional and community benefits of this Proposed Project, the unmitigable impacts of permanently converting some of this community's farm lands to non-agricultural use do warrant a statement of overriding considerations.

40. The Proposed Project is necessary to this region and will promote numerous local and regional economic and community benefits to promote the safety, health, comfort, and convenience of the public, and these benefits constitute overriding considerations which justify approval of the Proposed Project despite its unavoidable environmental effects.

41. In compliance with CEQA, we find that the economic, legal, social, technological and other benefits of the Propose Project outweigh and override the significant unavoidable environmental impacts.

42. The Final environmental document for the Proposed Project, FT EIR, was prepared incompliance with CEQA and its guidelines.

43. The FT EIR addresses all applicable environmental impacts of the Proposed Project, includes the required Final MMCRP, and sets forth written findings for each significant effect associated with the Proposed Project and a Statement of Overriding Considerations, which explains that the benefits of the Proposed Project far outweigh the limited unavoidable impacts of the Proposed Project on the environment.

44. The Settlement Agreement and all-party stipulations and agreements, resolved many of the previously disputed issues amongst all of the parties, including those between the Joint Parties and DRA; and the Joint Parties' positions, as opposed to DRA's opposing position, with respect to each of the outstanding disputed issues concerning the Settlement Agreement are persuasive and are supported by the record.

45. The Settlement Agreement is subject to Rule 12.1(d), which states: The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest.

46. The terms of the WWA and the Settlement Agreement are reasonable and in the public interest.

47. DRA's objection to terms of the WWA relating to the surface water price lacks merit.

48. It is premature for the Commission to predetermine the appropriate procedural vehicle for a future acquisition of the Robbins Water System.

Conclusions of Law

1. Public convenience and necessity require the construction of the Proposed Project.

2. The Proposed Project is consistent with community values, will not adversely affect recreational and park areas, is consistent with historical uses of the Project Site and community aesthetic values, and will not have a significant adverse influence on the environment.

3. The Commission should certify and adopt the FT EIR, Appendix B to this decision.

4. The Commission's findings are consistent with, and informed by, the FT EIR that is certified and adopted by this decision.

5. The CPCN should be subject to several conditions that are discussed in this decision, including the requirement to file a general rate case prior to commencement of construction of the distribution or "in tract" infrastructure associated with the SSCSA and the mitigation measures in the FT EIR certified and adopted by this decision.

6. In compliance with CEQA, the Commission must make the required findings with respect to each significant effect identified in the FT EIR, recognizing that some significant and unavoidable impacts will result from implementation of the Proposed Project.

7. The Proposed Project's unavoidable significant environmental impacts are acceptable in light of these substantial benefits, and each benefit set forth in this decision constitutes an overriding consideration warranting approval of the Proposed Project, independent of the other benefits, despite each and every significant unavoidable impact.

8. The conditions we impose on the CPCN, including compliance with the MMCRP we adopt as part of our approval of the Proposed Project, will ensure that the Proposed Project can be constructed and operated in a way that protects the safety of workers and the general public; and the design, construction, and operation of the Proposed Project will be subject to a comprehensive array of safety regulations at both the federal and state level, including the Commission's applicable General Orders.

9. The mitigation measures required for implementation during the construction phase for NOx are consistent with the requirements of the Feather River Air Quality Management District as well as SPSP EIR and will help reduce the short term NOx impacts the the extent feasible.

10. The Final environmental document for the Proposed Project, FT EIR, complies with CEQA and its guidelines and addresses all applicable environmental impacts of the Proposed Project, includes the required Final MMCRP, and sets forth written findings for each significant effect associated with the Proposed Project and prepared a Statement of Overriding Considerations, which explains that the benefits of the Proposed Project far

outweigh the limited unavoidable impacts of the Proposed Project on the environment.

11. The Settlement Agreement is consistent with the provisions of the Public Utilities Code, prior Commission decisions, and other applicable laws.

12. The proposed financing for the SSCSA by Golden State is reasonable.

13. The Joint Parties' proposal to use a combination of advances, contributions and incremental acquisition is consistent with Commission policies regarding funding new infrastructure, and the proposed $2,571 per-connection amounting to no more than $81 million worth of infrastructure is a fair portion to include in rates.

14. Golden State's proposed incremental acquisition of no more than $81 million in water system infrastructure makes development of the SSCSA more economically feasible and is consistent with the Commission's policies.

15. Golden State's proposed incremental acquisition of no more than $81 million in SSCSA water system infrastructure is reasonable.

16. Golden State's proposed purchase of surface water at the price of $59.24 per acre-foot, with no charges assessed until Golden State actually provides service to at least 11,000 EDUs is reasonable.

17. Golden State's proposed availability payment of $4.61 per EDU per month assessed starting from the first EDU served is reasonable.

18. Rule 15 should not apply here and should not preclude the Joint Parties' funding proposal for the SSCSA.

19. Golden State's request for a revenue requirement balancing account for the SSCSA is unreasonable as it is unnecessary.

20. Golden State should fully document and justify all of the underlying sources of data and assumptions it relies on in order to develop its initial general rate case for filing for SSCSA, as a stand-alone general rate case filing (separate

and apart from Golden State's regular company-wide general rate case filing) and comply with the requirements set forth in D.07-05-062.

21. Golden State should file a detailed general rate case filing using its first year of service as the proposed test year, before commencement of construction of the distribution or "in tract" infrastructure associated with the SSCSA.

22. Golden State's detailed general rate case filing should follow and be processed under the 14 month rate case plan schedule under D.07-05-062 for single district application.

23. In developing the general rate case for filing, Golden State's new service territory, SSCSA, should have cost-based and stand-alone rates, distinct from Golden State's other districts in the region.

24. The issues of interim proxy rates and potential use of saturation adjustment are now moot.

25. This decision does not "preapprove" the future acquisition of the Robbins Water System. The Commission intends to review such acquisition and related issues in a separate subsequent proceeding when Golden State comes before the Commission seeking review of said matter. Therefore, DRA's requests related to the future acquisition of the Robbins Water System are irrelevant and unreasonable.

26. Under Public Utilities Code Section 1708, the Commission may rescind, alter, or amend any order or decision made by it, including today's decision, after providing notice to the parties.

27. The Settlement Agreement, including the all-party stipulations as outlined in this decision, is consistent with the law.

28. The Settlement Agreement, including all of the disputed provisions as well as the all-party stipulations as outlined in this decision, is reasonable and in the public interest.

O R D E R

IT IS ORDERED that:

1. Pursuant to Public Utilities Code Section 1001, we grant Golden State Water Company a certificate of public convenience and necessity to construct and operate a municipal and industrial water system, and to establish a new non-contiguous service area and rates in the southern and unincorporated portion of Sutter County, within a new South Sutter County Service Area to be established within the Natomas' corporate boundaries of Sutter County, known as the Sutter Pointe Specific Plan area, subject to the terms and conditions set forth in the Ordering Paragraphs.

2. The Settlement Agreement (attached to this decision as Appendix A), as modified by the all-party stipulations, as outlined in this decision, is approved.

3. This decision certifies and adopts the Focused Tiered Environmental Impact Report for the Proposed Project (attached to this decision as Appendix B), subject to the terms and conditions set forth in the Ordering Paragraphs and authorizes the issuance of a Notice of Determination for the Project pursuant to the California Environmental Quality Act.

4. The Proposed Project's Statement of Overriding Considerations is adopted.

5. The proposed financing and use of a combination of advances, contributions and incremental acquisition to fund new infrastructure, as proposed, are approved, and Golden State Water Company is authorized to incrementally acquire at a per-connection cost of $2,571 no more than $81 million in water system infrastructure of the South Sutter County Service Area.

6. Golden State Water Company is authorized to purchase surface water at the price of $59.24 per acre-foot, with no charges assessed until Golden State

Water Company actually provides service to at least 11,000 equivalent dwelling units.

7. Golden State Water Company is authorized to make payments of $4.61 per equivalent dwelling unit per month assessed starting from the first equivalent dwelling unit served.

8. Golden State Water Company's request for a revenue requirement balancing account for the South Sutter County Service Area is denied.

9. Before starting construction of the distribution or "in tract" infrastructure associated with the South Sutter County Service Area, Golden State Water Company must file its initial general rate case filing for South Sutter County Service Area which includes full documentation and justifications of all of the underlying sources of data and assumptions it relies on in order to develop its initial general rate case for filing, as a detailed stand-alone general rate case filing (separate and apart from Golden State's regular company-wide general rate case filing).

10. In filing its initial general rate case for filing for its new service territory, South Sutter County Service Area, Golden State Water Company must file it in a new proceeding using its first year of service as the proposed test year and comply with the requirements set forth in Decision 07-05-062.

11. Golden State Water Company must follow the 14 month rate case plan schedule under Decision 07-05-062 for single district application when filing its initial general rate case for filing for its new service territory, South Sutter County Service Area.

12. In developing the general rate case for filing for its new service territory, South Sutter County Service Area, Golden State Water Company must develop cost-based and stand-alone rates, distinct from its other districts in the region.

13. Before starting construction of the Proposed Project, Golden State Water Company must secure all required permits, easements, and any other legal authorization to develop the Project.

14. The final Mitigation Monitoring, Compliance, and Reporting Program, as part of our approval of the Proposed Project, is adopted.

15. Application 08-08-022 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

Attachment 1:

A0808022 Kim Appendix A.pdf

Attachment 2:

A0808022 Kim Appendix B.pdf

Attachment 3:

A0808022 Appendix C.pdf

Attachment 4:

A0808022 Kim Information of Service Service List 11-19-13.doc