

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



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In the Matter of the Application of Golden State Water Company (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)

**REPLY BRIEF OF COUNTY OF SUTTER AND SUTTER  
COUNTY WATER AGENCY ON PHASE 1 ISSUES**

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Date: November 4, 2009

**BEFORE THE PUBLIC UTILITIES COMMISSION  
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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.

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Pursuant to Rule 13.11 of the Rules of Practice and Procedure in the August 26, 2009 ruling of the Administrative Law Judge, the County of Sutter and Sutter County Water Agency (jointly hereinafter, “Sutter County” or “the County”) submit the following Reply Brief in the above captioned proceeding.

The instant pleading principally replies to the Opening Brief of the Division of Ratepayer Advocates (“DRA”) with regard to jurisdictional issues. While the County takes the opportunity to reply on those issues, the County finds great merit in other aspects of the DRA Opening Brief.

**THE COMMISSION SHOULD NOT READ TOO MUCH INTO THE *GREAT OAKS* DECISION**

DRA<sup>1</sup> echoes Applicant’s reliance<sup>2</sup> on the *Great Oaks* decision.<sup>3</sup> The

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<sup>1</sup> DRA Opening Brief, pp. 2-4.

<sup>2</sup> Applicant’s Opening Brief, page 4.

<sup>3</sup> *Great Oaks Water Company*, D.91-02-039 (1991) 39 CPUC 2d. 339, Cal. PUC LEXIS 100.

scope of *Great Oaks*, however, is not as sweeping as described by DRA.

DRA correctly cites the provision of *Great Oaks* stating that when a public agency protests a water utility's Certificate of Public Convenience and Necessity ("CPC&N") Application, the agency "to this limited extent, ... can voluntarily submit itself to the Commission's jurisdiction."<sup>4</sup>

The County asks the Commission to note both its use of the word "limited" as well as how it expanded on that term in the *Great Oaks* decision. *Great Oaks* did not hold, as stated by Applicant,<sup>5</sup> that a public agency that protests a CPC&N application has thereby "acknowledged that they are bound by the Commission's decision in this proceeding...." To the contrary, *Great Oaks* stated that:

However, if the [Commission regulated] utility's service is found superior, there will be no attempt to restrain the losing [public agency] party. While the prevailing utility would be authorized to serve the disputed territory, the Commission's order will not exclude the agency. In short, the Commission's order is merely a declaratory decision insofar as its effect on the public agency is concerned. Moreover, the order does not affect other municipal powers to frustrate or interfere with the prevailing utility's plans to serve the territory.<sup>6</sup>

While *Great Oaks* goes on to caution that "the effect of such a declaratory order should not be underestimated,"<sup>7</sup> the appellate court case law<sup>8</sup> cited in support

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<sup>4</sup> *Great Oaks*, supra, (1991) 39 CPUC 2d. 339, \*6.

<sup>5</sup> Applicants Opening Brief, pp. 4,5.

<sup>6</sup> *Great Oaks*, supra, at \*7 (emphasis supplied.)

<sup>7</sup> *Id.*

<sup>8</sup> This portion of *Great Oaks* also relies on the Commission's decision in *Bakman*, addressed in footnote 12 *infra* and accompanying text.

addresses true matters of statewide concern with the most recent case, *Harbor Carriers*,<sup>9</sup> plainly relying on the intercity nature of the service stating:

To the extent that the city's zoning ordinance is applied to prevent establishment of any terminal in Sausalito, it must give way to the Commission's grant of the right to operate a service to and from Sausalito.<sup>10</sup>

Not surprisingly, the cases relied on in *Harbor Carriers* similarly rest on the statewide or regional nature of the authority granted.<sup>11</sup>

Here, of course, no service involving political subdivisions other than Sutter County, which opposes the application, is implicated.

*Great Oaks* (and Applicant) also, of course, rely on the *Bakman* decision.<sup>12</sup>

But, again, a review of the underlying appellate case law counsels caution. The cases cited in *Bakman* standing for the proposition that a public entity is broadly "bound" by a decision in a Commission docket to which it was a party generally do not so hold. The lone California Supreme Court case, *People v. Superior Court (Dyke Water Company, Real Party In Interest)*, 62 Cal. 2d 515, 42 Cal. Rpt. 849 (1965) (*Dyke Water*), turned on the application of Public Utilities Code Section 1759 to a dispute in the Superior Court

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<sup>9</sup> *Harbor Carriers v. Sausalito* (1975) 46 Cal. App. 3d 773.

<sup>10</sup> *Id.* at p. 775.

<sup>11</sup> *Bay Cities Transit v. Los Angeles* (1940) 16 Cal. 2d 772 addressed "a passenger bus line along a route lying partially within the City of Los Angeles and partially within the City of Santa Monica." (16 Cal. 2d 773); *Los Angeles Railroad Corporation v. Los Angeles* (1940) 16 Cal. 2d 779 involved "street railway and motor coach transportation . . . rendering service . . . in and between the cities of Los Angeles, Inglewood, Hawthorne, Huntington Park, Vernon, Maywood, Southgate, Culver City and Bell, and in certain unincorporated areas of the County of Los Angeles. . . ." such that the City of Los Angeles could not adopt an ordinance governing that service.

<sup>12</sup> 5 CPUC 2d 359 (1981).

between private sector parties, the extent to which a political subdivision of the state would be bound to conform its conduct to the parameters of the Commission decision was not addressed at all. *Union City v. Southern Pacific* ((1968) 261 Cal App 2d 277) turned on the plain jurisdiction of the Commission over grade crossings and, again Section 1759. *Pellandini v. Pacific Limestone Products* ((1966) 245 Cal App 2d. 774) involved only private litigants and relied on *Dyke Water*. Only *Union City* involved a matter where the public entity was an active party and in that case the court, notwithstanding the Commission’s decision, examined the question of whether or not the matter at issue was one of statewide concern.

Notwithstanding *Great Oaks* and *Bakman*, therefore, it is far from certain that the outcome of this proceeding will govern the course of events in Sutter County. The County, mindful of the options available to it (to which reference is made in the above-cited text from *Great Oaks*) (1) intends to proceed with its plans to provide water service to the Measure M lands and (2) believes it would be irresponsible for it to elect to proceed otherwise given the great uncertainties that attend the GSWC Application.

**UNCERTAINTIES REGARDING SUPPLY, ADDRESSED IN PART IN THE DRA  
OPENING BRIEF, COUNSEL AGAINST FURTHER ACTION WITH RESPECT  
TO THE APPLICATION**

One of those uncertainties is identified in the DRA Opening Brief. DRA points out that the wording of the water transfer agreement with Natomas Central Mutual Water Company (“Natomas”) “does not provide the type of secure and adequate source

of water that GSWC needs to serve future customers of the Sutter Pointe development.”<sup>13</sup>

In its Opening Brief, Sutter County noted the infirmities of the water transfer agreement that arose from mutual status (which it desires to retain) as a mutual water company.<sup>14</sup>

Until the issues surrounding that agreement are resolved, there is little point in the Commission proceeding with this application.

### **CONCLUSION**

The governing body of the lone political subdivision in which GSWC asks to provide monopoly water service opposes the request. It does so because that governing body believes the GSWC proposal to be adverse to the interests of Sutter County. Since no other cities or counties are affected, deference to the County could not be characterized as elevating the County’s legitimate concerns over “statewide” matters.

Given the County’s opposition and the infirmities in the Water Transfer Agreement identified by DRA in its Reply Brief (and earlier by the County), it makes no sense to proceed with this application. There may be some opportunity for informal resolution amongst the parties, but if no such agreement can be reached, the possible outcomes of this docket are (1) denial of the application or (2) a grant heralding the germination of the myriad of disputes that attend this matter into formal litigation.

The Commission can conclude that the state of affairs surrounding A.08-08-022 precludes the Commission from prudently proceeding now. The Commission

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<sup>13</sup> DRA Opening Brief, p.4.

<sup>14</sup> Sutter County Opening Brief, pp.4-6.

may<sup>15</sup> and should reach that conclusion now.

Dated: November 4, 2009

Respectfully submitted,

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<sup>15</sup> Since certification is categorized by the Commission as “ratesetting,” essentially a legislative act, *Consumers Lobby Against Monopolies (“CLAM”) v. Public Utilities Commission*, (1979) 25 Cal. 3d 891, 603 P.2d 41, GSWC enjoys no constitutionally protected right with regard to the fashion in which A.08-08-022 is handled by the Commission. *Henry Wood v. California Public Utilities Commission*, (1971) 4 Cal. 3d 288, 481 P.2d 823. So long as the requirements of Section 1701.1 *et seq.* are met, the Commission has “proceeded in the manner required by law.” Section 1757(a)(2).

**CERTIFICATE OF SERVICE**

I, Lisa Vieland, certify that I have on this 4th day of November 2009 caused a copy of the foregoing

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AGENCY ON PHASE 1 ISSUES**

to be served on all known parties to A.08-08-022 listed on the most recently updated service list available on the California Public Utilities Commission website, via email to those listed with email and via U.S. mail to those without email service. I also caused courtesy copies to be hand-delivered as follows:

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ALJ Kimberly Kim  
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I declare under penalty of perjury that the foregoing is true and correct.

Executed this 4th day of November 2009 at San Francisco, California.

*/s/ Lisa Vieland*  
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