

## **Concurring Opinion of Commissioner Susan P. Kennedy**

### **Southern California Water Company Folsom Water Lease**

Colleagues:

I am pleased that we are promptly correcting our erroneous prior decision and confirming that the City of Folsom's title to its leased water rights is protected by Section 851. While our earlier decision has already caused harm to Folsom, forcing it to postpone refinancing of tens of millions of dollars in existing water bonds, by acting today instead of waiting until our first meeting in May, we limit further harm to the city.

But I am appalled that we ever made that prior decision. As the brief filed by the City of Folsom in support of its petition to modify made crystal clear, there was never any real legal doubt that Section 851 protected a good faith purchaser. I have attached the City's brief to this concurrence so that it becomes part of the record of this proceeding and is available to the Commission the next time we have to consider a similar case.

In this case, we never even bothered to ask what the law required of us. We never examined the legislative history or the statement of legislative intent that accompanies the codified part of Section 851. We never researched the case law. In spite of the fact that we were taking actions that had the potential to cause serious, immediate and potentially irreparable financial harm to an innocent party, we didn't examine the possible consequences of our decision beyond its effects on the water company.

D.04-04-069

A.02-11-007

This is an irresponsible way to exercise our power. I sincerely hope we never do it again.

/s/ SUSAN P. KENNEDY

Susan P. Kennedy

Commissioner

April 22, 2004, San Francisco, California

Attachments\*

**\* For copies of Attachments (Decl. Of Derek F. Foran & City of Folsom's Additional Comments on Proposed Draft Decision of Pres. Peevey and Com. Kennedy, copies may be obtained from CPUC's Central Files.**