

Decision **DRAFT DECISION OF PRESIDENT MICHAEL R. PEEVEY**

(Mailed 4/6/04)

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

In the Matter of the Application of SOUTHERN CALIFORNIA WATER COMPANY (U 133-W), for an order authorizing it to increase rates for water service by \$19,826,100 or 29.72% in the year 2003; by \$6,327,800 or 7.31% in the year 2004; and by \$6,326,200 or 6.81% in the year 2005 in its Region III Service Area and to increase rates for the General Office Allocation in all of its Customer Service Areas in this Application including: Arden-Cordova, Bay Point, Clearlake, Los Osos, Ojai, Santa Maria, Simi Valley and Metropolitan.

Application 02-11-007  
(Filed November 4, 2002)

**ORDER ON THE COMMISSION'S OWN MOTION  
MODIFYING CERTAIN ASPECTS OF DECISION 04-04-018**

**Summary**

At the Commission's March 16, 2004 meeting, we approved Decision (D.) 04-03-039. One of the issues addressed in that decision was the lease of American River water rights by Southern California Water Company (SCWC) to the City of Folsom (Folsom), beginning in 1994. We held that SCWC violated Pub. Util. Code Section 851 in failing to seek the advance approval of the Commission for this lease. Pursuant to Section 851, we held that, as to SCWC, the lease is void from its inception. (Ordering Paragraph (OP) 7.)

Subsequently, on April 1, 2004, we issued D.04-04-018 that stayed Ordering Paragraph 7 of D.04-03-039. The stay contemplated a schedule that envisions the concurrent resolution of Folsom's water rights and SCWC's Section 851 application. With this order, we modify D.04-04-018 by bifurcating the issue of Folsom's water rights from SCWC's pending Section 851 application.

### **Discussion**

The Commission found that SCWC violated Section 851 when it did not seek Commission approval for the lease of water rights to Folsom (D.04-03-039). The Commission granted retrospective approval of the voided lease agreement, but not prospective use of the water rights. Folsom sought relief and filed a Petition to Stay as well as a Petition to Modify D.04-03-039 because it argues that serious and immediate effects occurred when the Commission did not grant prospective use of the leased water rights.

On March 26, 2004, a "Proposed Draft Decision of Present Peevey and Commissioner Kennedy" addressed Folsom's petition for modification. Also on March 26, 2004, Commissioner Lynch issued an Alternate Draft Decision that stayed Ordering Paragraph 7 of D.04-03-039. The alternate draft decision was adopted at the April 1, 2004 Commission Meeting. There was no action taken on the Peevey and Kennedy draft decision.

The Stay of Ordering Paragraph 7 of D.04-03-039 does not fully clarify Folsom's continuing right to use water under the lease. As a result, it is necessary for the Commission to act swiftly to address Folsom's petition for modification. Such action will remove the cloud over Folsom's prospective use of the leased water. Therefore, the issues raised in

Folsom's petition for modification will be addressed first, separately from the Commission's consideration of SCWC's Section 851 application for prospective approval of the water agreement as described in Ordering Paragraphs 8 and 9 of D.04-03-039. We note that in its March 30, 2004 comments on the Commissioner Peevey and Kennedy draft decision, SCWC indicated that it would shortly file a Section 851 application with the Commission, to seek approval of the lease.

As outlined in the Assigned Commissioner Ruling dated April 2, 2004, we will address Folsom's petition for modification on an accelerated schedule. The ACR also allows for additional comments on the Commissioners Peevey and Kennedy draft decision. The ACR set an oral argument on Folsom's water rights for April 19, 2004.

We now modify Ordering Paragraph 1 of D.04-04-018 as follows:

“As to City of Folsom (Folsom) and its prospective rights under its lease with Southern California Water Company (SCWC), the voiding of the lease pursuant to Ordering Paragraph 7 of Decision 04-03-039 is stayed. SCWC may not stop providing water to Folsom or otherwise interfere with Folsom's use of water under the lease absent a Commission decision on Folsom's water rights that authorizes SCWC to do so.”

### **Comments on the Draft Decision**

The draft decision of President Peevey was mailed to the parties pursuant to Public Utilities Code Section 311(g)(3) and Rule 77.7(f)(9) of the Rules of Practice and Procedure on April 6, 2004. As noted in this decision there is an urgent need to resolve Folsom's water rights. Therefore, it is necessary to shorten the comment period on this draft decision. As a result,

parties to the proceeding may file comments on the enclosed decision no later than April 14, 2004. No reply comments will be accepted.

Comments were filed by \_\_\_\_\_.

**Assignment of Proceeding**

Michael R. Peevey is the Assigned Commissioner and David K. Fukutome is the assigned Administrative Law Judge in this proceeding.

**Findings of Fact**

1. D.04-03-039 was unclear as to whether the decision had any immediate effect on Folsom’s rights to leased water from SCWC.
2. D.04-04-018 stayed Ordering Paragraph 7 of D.04-03-039. That stay contemplated a schedule that envisions the concurrent resolution of Folsom’s water rights and SCWC’s Section 851 application.
3. There is an urgent need to determine Folsom’s water rights.

**Conclusions of Law**

1. Folsom’s water rights should be determined in an expedited manner.
2. SCWC’s Section 851 application, while important, need not proceed in as accelerated a manner as Folsom’s water rights.
3. Due to the expedited manner of this proceeding, comments should be filed on a shortened time period.

**O R D E R**

**IT IS ORDERED** that:

1. We modify Ordering Paragraph 1 of Decision (D.) 04-04-018 by bifurcating the issue of Folsom’s water rights from SCWC’s pending Section 851 application. Ordering Paragraph 1 of D.04-04-018 is modified as follows:

“As to City of Folsom (Folsom) and its prospective rights under its lease with Southern California Water Company (SCWC), the voiding of the lease pursuant to Ordering Paragraph 7 of Decision 04-03-039 is stayed. SCWC may not stop providing water to Folsom or otherwise interfere with Folsom’s use of water under the lease absent a Commission decision on Folsom’s water rights.”

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.