

Dissent of Commissioner Geoffrey F. Brown

This Commission's earlier decision (D. 04-03-039, 2004 Cal. PUC LEXIS 95) found that the Southern California Water Company leased useful water rights that it might well need, without getting our permission, as required by Public Utilities Code §851. *This* case was to determine how to get water to replace the improperly leased water, to determine the rate-making treatment of the lease revenues, and to determine what is needed to assure that ratepayers aren't adversely affected by the unapproved lease of the water rights to the City of Folsom.

The ALJ who heard the evidence issued a decision that finds that the water company failed to justify that lease of the water rights was in the public interest. This finding is consistent with our earlier finding *and* with the evidence adduced at hearing.

The alternate finds, on no new evidence, that the water company has sufficient water supplies and therefore the rights leased in perpetuity were not useful. In fact, the utility has undertaken substantial new expenses, supported by a surcharge, to substitute for the water rights that were leased in perpetuity. The alternate decision then finds that the lease in perpetuity was in the public interest and gives the proceeds to the shareholders for reinvestment, even though the water rights were purchased entirely with ratepayer money. Shareholders invested not a single dime to get these water rights, yet the alternate will give them a return on the value of the lease so long as it is reinvested.

What the alternate does, in effect, is re-litigate the factual questions previously decided. Public Utilities Code §1708 permits us to change our minds, but it requires that there be a new hearing with an opportunity for former parties to appear. The alternate did not do this.

The other thing the alternate does is, essentially, say that black is now white. What we found to have been useful and therefore subject to our approval process in 2004 now becomes unneeded, notwithstanding *no new evidence*. This is sophistry. It won't wash. The alternate demonstrates no respect for continuity, regulatory certainty, due process, or consistency.

For the sake of simplicity, let me state my position. Water rights are water utilities' stock in trade. If utilities can willy-nilly sell off their inventory of the commodity they sell to ratepayers without our permission in advance, the possibilities for accounting shell games are virtually endless. The alternate's retrospective revision of our earlier findings, without new evidence, shows a manifest disrespect for the rule of law and due process. On this basis alone, it should be rejected.

Dated April 13, 2006, at San Francisco, California.

/s/ GEOFFREY F. BROWN

Geoffrey F. Brown
Commissioner