



Control Number: 45702



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DOCKET NO. 45702

RECEIVED

APPLICATION OF CITY OF CIBOLO §
FOR SINGLE CERTIFICATION IN §
INCORPORATED AREA AND TO §
DECERTIFY PORTIONS OF GREEN §
VALLEY SPECIAL UTILITY DISTRICT §
SEWER CERTIFICATE OF §
CONVENIENCE AND NECESSITY IN §
GUADALUPE COUNTY §

PUBLIC UTILITY COMMISSION

2016 APR 29 PM 3:25

PUBLIC UTILITY COMMISSION
OF TEXAS
FILING CLERK

**GRASS VALLEY SPECIAL UTILITY DISTRICT'S PLEA TO JURISDICTION
AND MOTION TO DISMISS WITH DEBT INFORMATION LISTING**

COMES NOW Green Valley Special Utility District ("GVSUD" or the "District") and files this Plea to the Jurisdiction and Motion to Dismiss with Debt Information Listing in the above referenced docket and would in support show as follows.

I. Background

The City of Cibolo ("Cibolo" or the "City") submitted a Section 13.255 (P.U.C. SUBST. R. 24.120) single certification application for Commission review on March 8, 2016 ("Application"), but did not notify GVSUD of this proceeding. Cibolo attempted to cure that issue with a notification letter dated April 12, 2016, which GVSUD received on Friday, April 22, 2016. However, Cibolo claims that it also gave notice to GVSUD over six months ago on August 18, 2015 (as required by TWC §13.255) of the City's intent to serve in newly incorporated portions of the City inside the District's service area.

The August 18, 2015 map received by GVSUD indicated a number of tracts purportedly annexed to the City as well as a number of other tracts Cibolo claimed were subject to development agreements and which would be annexed into the City. The same small scale map was included in the Application submitted to the Commission on March 8, 2016 that initiated this docket ("Application") and in the notice of this proceeding provided to GVSUD dated April

States Department of Agriculture (USDA) Rural Development loan that makes GVSUD indebted to the United States of America. Consequently, the City's Application cannot proceed because GVSUD's certificated sewer service area is "sacrosanct" and federally protected from municipal encroachment under 7 U.S.C.A. §1926(b).² Granting portions of the District's sewer CCN to the City will operate to block GVSUD from fulfilling service obligations in those areas located within its GVSUD's own District boundaries.³

GVSUD (1) is an "association" within the meaning of §1926; (2) has a qualifying federal loan outstanding; and (3) has made service available to the disputed area sought by the City.⁴ Therefore, the Commission must dismiss the City's Application and this proceeding for lack of jurisdiction.⁵ The Honorable Administrative Law Judge may wish more detailed briefing on this issue. If so, Green Valley SUD respectfully requests establishment of such a briefing schedule before this Application proceeds further as this is a threshold issue. In the interim, GVSUD

² 7 U.S.C.A §1926(b) states, "The service provided or made available through any such association [as described in §1926(a)] shall be not be curtailed or limited by inclusion of the area served by such association within the boundaries of any municipal corporation or other public body, or by the granting of any private franchise or similar service within such area during the term of such loan; nor shall the happening of any such event be the basis of requiring such association to secure any franchise, license, or permit as a condition to continuing to serve the area served by the association at the time of the occurrence of such event." The "sacrosanct" service area holding comes from the leading federal case on this subject in the Fifth Circuit, which is *North Alamo Water Supply Corp. v. City of San Juan, Tex.*, 90 F.3d 910, 915-916 (5th Cir 1996). The *North Alamo* decision and others on the 7 U.S.C.A §1926(b) topic are discussed in detail in *El Oso Water Supply Corp. v. City of Karnes City*, 2011 U.S. Dist. LEXIS 156348 (W.D. Tex., Aug. 30, 2011) (Mem. Op.), at, *10-26, *aff'd* 2012 U.S. Dist. LEXIS 147760 (W.D. Tex., April 10, 2012) (finding that the entire El Oso Water Supply Corporation's CCN service area was federally protected under 1926(b) from encroachment actions by the City of Karnes that included a TWC §13.255 application because of the water supply corporation's outstanding federal loan).

³ TEX. WATER CODE §13.242(a); GVSUD notes that single certification under TWC §13.255 does not operate to alter its district boundaries.

⁴ A utility's state law duty to provide service is the legal equivalent to "making service available" under §1926(b). *North Alamo*, 90 F.3d at 915-916. Similarly, TWC §13.002(21) includes a broad definition of "service" ("any act performed, anything furnished or supplied, and any facilities or lines committed or used by a retail public utility in the performance of its duties under [TWC Chapter 13] to its patrons, employees, other retail public utilities, and the public, as well as the interchange of facilities between two or more retail public utilities.")

⁵ P.U.C. PROC. R. 22.181(a)(1)(A).

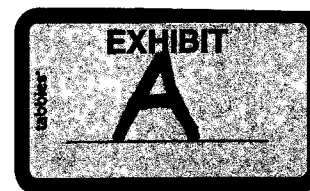
SUD has adequately complied with P.U.C. SUBST. R. 24.120(b)(1)-(2) subject to its plea to the jurisdiction and motion to dismiss; and (3) grants Green Valley SUD all other and further relief to which it is justly entitled at law or in equity.

Respectfully submitted,

By: 

Paul M. Terrill III
State Bar No. 00785094
Geoffrey P. Kirshbaum
State Bar No. 24029665
TERRILL & WALDROP
810 W. 10th Street
Austin, Texas 78701
(512) 474-9100
(512) 474-9888 (fax)

**ATTORNEYS FOR GREEN VALLEY SPECIAL
UTILITY DISTRICT**



DOCKET NO. 45702

APPLICATION OF THE CITY OF	§	BEFORE THE PUBLIC UTILITY
CIBOLO FOR SINGLE CERTIFICATION	§	
IN INCORPORATED AREA AND TO	§	
DECERTIFY PORTIONS OF GREEN	§	COMMISSION OF TEXAS
VALLEY SPECIAL UTILITY DISTRICT'S	§	
SEWER CERTIFICATE OF	§	
CONVENIENCE AND NECESSITY IN	§	
GUADALUPE COUNTY	§	

AFFIDAVIT OF PAT ALLEN

1. My name is Pat Allen. I am of sound mind, over the age of twenty-one years, have never been convicted of a felony or other crime involving moral turpitude, and am capable of making this Affidavit. I am fully competent to testify to the matters stated herein. I have personal knowledge of each of the matters stated herein, and they are true and correct.

2. I am currently employed as the General Manager of Green Valley Special Utility District ("Green Valley SUD") which is a position that I have held since 2007.

3. I have read P.U.C. SUBST. R. 24.120(b)(1) and I am making a good faith effort to provide the list in the manner described in that rule regarding outstanding Green Valley SUD debt after a review of Green Valley SUD records. Green Valley SUD has outstanding debt with the lienholders listed below in the amounts shown. The mailing addresses I have located for those lienholders are also provided.

- a. Green Valley Special Utility District Water System Revenue Bonds, Series 2003; \$500,000 outstanding debt amount at end of fiscal year 9/30/2015; Lienholder Name (purchaser of these bonds): United States of America; Lienholder Address: United States of America Department of Agriculture (USDA) Rural Development--Rural Utilities Service (RUS), Attn: Gilberto Menendez, Assistant Area Manager, USDA-Seguin Local Office, 3251 N Highway 123 Bypass, Seguin, TX 78155
- b. Green Valley Special Utility District Water System Revenue Bonds, Series 2010 - TWDB Reserve Fund; \$2,725,000.00 outstanding debt balance; Series

TERRILL & WALDROP

ATTORNEYS and COUNSELORS

810 West 10th Street
Austin, Texas 78701
Tel (512) 474-9100
Fax (512) 474-9888

April 29, 2016

Kevin Patteson
Executive Administrator
Texas Water Development Board
1700 North Congress Avenue
Austin, TX 78701

Re: PUC Docket No. 45702; Green Valley Special Utility District Water System Revenue Bonds, Series 2011 – TWDB; Paying Agent/Registrar Bank: Bank of Texas, Account GREE1211WSR, Loan 600024642.

Dear Mr. Patteson:

I am writing to you on behalf of Green Valley Special Utility District (“Green Valley SUD”) because Texas Water Development Board (“TWDB”) is a lienholder of a Green Valley SUD outstanding debt obligation. Pursuant to Public Utility Commission of Texas (“PUC”) SUBST. R. 24.120(b)(2), the PUC has directed that Green Valley SUD notify TWDB that the City of Cibolo (“City”) has commenced a Texas Water Code § 13.255 CCN decertification proceeding against Green Valley SUD before the PUC. This matter is assigned PUC Docket No. 45702. PUC SUBST. R. 24.120(b)(2) further directs Green Valley SUD to “request that the lienholder provide information to the commission sufficient to establish the amount of compensation necessary to avoid impairment of any debt allocable to the area in question.” The decertification proceeding involves an application seeking single certification to the City for a portion of Green Valley SUD’s sewer CCN No. 20973 service area.

Green Valley SUD is not aware what specific information the Commission may require from TWDB with respect to this proceeding. For more detail, please contact the Public Utility Commission directly through its Legal Department at (512) 936-7260. Alternatively, the assigned PUC Staff Attorney for this matter is Landon Lill, and he may be contacted via his direct phone number at (512) 936-7228.

Sincerely,



Geoffrey P. Kirshbaum
For the Firm

cc: Les Trobman
TWDB General Counsel
Carleton Wilkes
TWDB Team Lead for Financial Compliance

TERRILL & WALDROP

ATTORNEYS and COUNSELORS

810 West 10th Street
Austin, Texas 78701
Tel (512) 474-9100
Fax (512) 474-9888

April 29, 2016

Gilberto Menendez
Assistant Area Manager
USDA-Seguin Local Office
3251 N Highway 123 Bypass
Seguin, TX 78155

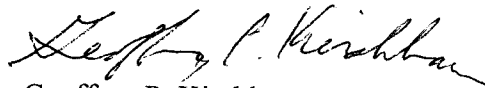
Re: PUC Docket No. 45702; Green Valley Special Utility District Water System
Revenue Bonds, Series 2003.

Dear Mr. Menendez:

I am writing to you on behalf of Green Valley Special Utility District ("Green Valley SUD") because the United States of America ("USA") is a lienholder of a Green Valley SUD outstanding debt obligation. Pursuant to Public Utility Commission of Texas ("PUC") SUBST. R. 24.120(b)(2), the PUC has directed that Green Valley SUD notify the USA that the City of Cibolo ("City") has commenced a Texas Water Code § 13.255 CCN decertification proceeding against Green Valley SUD before the PUC. This matter is assigned PUC Docket No. 45702. PUC SUBST. R. 24.120(b)(2) further directs Green Valley SUD to "request that the lienholder provide information to the commission sufficient to establish the amount of compensation necessary to avoid impairment of any debt allocable to the area in question." The decertification proceeding involves an application seeking single certification to the City for a portion of Green Valley SUD's sewer CCN No. 20973 service area.

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Sincerely,



Geoffrey P. Kirshbaum
For the Firm