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

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PUBLIC UTILITY COMMISSION  
BEFORE THE STATE OFFICE  
OF  
ADMINISTRATIVE HEARINGS

**GREEN VALLEY SPECIAL UTILITY DISTRICT'S  
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Green Valley Special Utility District submits the following proposed Findings of Fact and Conclusions of Law.

**I. FINDINGS OF FACT**

**Procedural History**

1. On August 18, 2015, the City of Cibolo (Cibolo) provided a notice to Green Valley Special Utility District (Green Valley) of intent to provide sewer service. Green Valley contests the sufficiency of that notice for purposes of a TWC § 13.255 application.
2. On March 8, 2016, Cibolo submitted to the Commission the Application of the City of Cibolo for Single Certification in Incorporated Area and to Decertify Portions of Green Valley Special Utility District's Sewer Certificate of Convenience and Necessity (CCN) No. 20973 in Guadalupe County (Application). The Application was styled as a TWC § 13.255 application.
3. On April 12, 2016, a Commission Administrative Law Judge (ALJ) issued Order No. 2, finding Cibolo's application and notice to be deficient, establishing a deadline for further submissions by Cibolo, and establishing a deadline for Staff comments on administrative completeness of the application.
4. On April 22, 2016, Green Valley filed a motion to intervene, which the Commission ALJ granted on April 28, 2016 in Order No. 3.
5. On April 29, 2016, Green Valley filed a Motion to Dismiss and Plea to the Jurisdiction.

6. On May 11, 2016, Cibolo designated NewGen Strategies & Solutions, LLC and Mr. Jack E. Stowe, Jr. as its independent appraiser.
7. On May 12, 2016, Green Valley responded to Cibolo's purported designation of an appraiser, asserting that the designation was premature because the Commission had not made a finding of administrative completeness and other Commission deadlines had not yet occurred.
8. On May 13, 2016, the Commission ALJ issued Order No. 4, establishing a deadline for agreement of the parties on an independent appraiser.
9. On May 27, 2016, the Commission ALJ issued an order directing the parties to provide briefing on threshold issues regarding Green Valley's plea to the jurisdiction and whether the City must demonstrate compliance with TCEQ's minimum public drinking water standards in this docket.
10. On May 27, 2016, the parties submitted filings indicating lack of agreement regarding the appointment of an independent appraiser.
11. On June 2, 2016, Green Valley filed an emergency motion to abate, in which it opposed the City's unilaterally proposed procedural schedule and moved to abate based on a pending federal lawsuit in Cause No. 1:16-cv-00627; *Green Valley Special Utility District v. City of Cibolo, Texas*; before the United States District Court Western District of Texas.
12. On June 3, 2016, the Commission ALJ issued Order No. 5, denying Green Valley's motion to abate and establishing a deadline for Green Valley to appoint an independent appraiser.
13. On June 6, 2016, Green Valley, Cibolo and Staff submitted briefing on threshold issues in compliance with Order No. 4.
14. On June 7, 2016, Green Valley submitted its selection of Mr. Joshua Korman as an independent appraiser.
15. On June 14, 2016, the Commission ALJ issued Order No. 6, establishing deadlines regarding the statutorily-required meeting of the appraisers for the purpose of attempting to reach agreement on compensation under TWC § 13.255.
16. On June 22, 2016, the Commission ALJ issued Order No. 7, correcting the deadlines set forth in Order No. 6.
17. On June 28, 2016, Green Valley and Cibolo submitted their respective appraisal reports to the Commission.
18. On June 30, 2016, the Commission issued its Preliminary Order.

19. On July 20, 2016, the Commission issued its Supplemental Preliminary Order establishing a phased hearing process and identifying the following issues for SOAH to address in the first phase hearing:
  9. What property, if any, will be rendered useless or valueless to Green Valley by the decertification sought by Cibolo in this proceeding? TWC § 13.254(c). (*sic*).
  10. What property of Green Valley, if any, has Cibolo requested be transferred to it? TWC § 13.254(c). (*sic*).<sup>1</sup>
  11. Are the existing appraisals limited to valuing the property that has been determined to have been rendered useless or valueless by decertification and the property that Cibolo has requested be transferred?
20. On July 26, 2016, the Commission issued an Order of Referral, referring this matter to the State Office of Administrative Hearings (SOAH) requesting the assignment of an ALJ to conduct a hearing and issue a proposal for decision (PFD), if necessary.
21. On August 17, 2016, the parties attended an initial prehearing conference before the SOAH ALJs.
22. On September 2, 2016, the parties filed an agreed proposed procedural schedule, which was adopted in SOAH Order No. 3, issued on September 9, 2016.
23. On October 19, 2016, Cibolo filed its direct testimony.
24. On November 2, 2016, Green Valley filed its direct testimony.
25. On November 8, 2016, Cibolo filed a Motion for Partial Summary Decision.
26. On November 15, 2016, the SOAH ALJs Issued SOAH Order No. 4, establishing a prehearing conference date, if requested (and a deadline for requesting same), and a deadline for Green Valley to respond to Cibolo's Motion for Partial Summary Decision.
27. On November 16, 2016, Commission Staff (Staff) informed the ALJ that it would not file testimony in this docket.
28. On November 22, 2016, the ALJs issued SOAH Order No. 5, ruling on the parties' objections to and motions to strike direct testimony.
29. On December 7, 2016, Cibolo filed its rebuttal testimony.
30. On December 9, 2016, the SOAH ALJs issued SOAH Order No. 7, granting in part Cibolo's Motion for Partial Summary Decision as to Preliminary Issue No. 10, which

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<sup>1</sup> The above references in that order to TWC § 13.254 are typographical errors and should refer to TWC § 13.255.

Green Valley agreed was an uncontested issue in this proceeding, and denying Cibolo's Motion for Partial Summary Decision in all other respects.

31. On December 30, 2016, the ALJs issued SOAH Order No. 8, ruling on Green Valley's objections to and motion to strike Cibolo's rebuttal testimony.
32. On January 10, 2017, Commission Staff filed a statement of position.
33. On January 17, 2017, the hearing on the merits on phase one of the proceeding was held in which Cibolo, Green Valley, and Staff participated.
34. On February 9, 2017, Cibolo and Green Valley submitted a list of agreed stipulations concerning the procedural history, the parties' contentions regarding identification of property to be rendered useless or valueless, and Green Valley's identification of property, and certain facts.
35. On February 10, 2017, all parties filed their initial post-hearing briefs on closing arguments.
36. On February 28, 2017, all parties filed their replies to post-hearing briefs and proposed findings of fact and conclusions of law. The record closed on that day.

#### **Appraisals**

37. Green Valley filed an appraisal report for the portions of its CCN area that Cibolo's application seeks to decertify prepared by KOR Group and Texas state-licensed appraiser Joshua M. Korman.
38. Green Valley's appraisal report was prepared by Mr. Korman in accordance with the *Uniform Standards of Professional Appraisal Practice*, 2016-2017 (USPAP) and the Texas Water Code (TWC) § 13.255 compensation factors in place of USPAP where applicable.
39. USPAP provides appraisal standards which may be used by licensed appraisers to value tangible, intangible, real, and personal property.
40. Failure to require Texas state-licensed appraisers to prepare TWC § 13.255 appraisals could result in CCN holders not receiving complete just and adequate compensation upon decertification.
41. Cibolo filed a report prepared by NewGen Strategies & Solutions, LLC and its director, Mr. Jack E. Stowe, Jr., who is not a licensed appraiser, and who did not perform his appraisal in accordance with USPAP.
42. A "third party" appraisal report has not been filed.

43. The two appraisals are different in terms of the property identified that would be rendered useless or valueless if Cibolo's application for single certification is granted.
44. Green Valley's appraisal identified the following property items that Green Valley contends will be rendered useless or valueless upon grant of Cibolo's applications:
- (a) Dollars expended by Green Valley for engineering and planning to implement Green Valley's 2006 Wastewater Master Plan allocable to the proposed decertification area;
  - (b) Dollars expended by Green Valley to obtain a Texas Pollutant Discharge Elimination System (TPDES) permit from the Texas Commission on Environmental Quality (TCEQ) allocable to the proposed decertification area;
  - (c) Dollars expended by Green Valley to purchase an approximate 65-acre tract of land allocable to the proposed decertification area;
  - (d) Dollars expended by Green Valley for legal fees and appraiser expenses in this docket; and
  - (e) Lost expected net revenues allocable to the proposed decertification area.
45. The Green Valley appraisal also identifies increased costs to customers measured by the effect of Cibolo's decertification approach on customer impact fees as a compensable item under TWC § 13.255(g), but does not contend that this is necessarily a property item for identification purposes in the first hearing phase.
46. Cibolo's appraisal contends that there is zero property rendered useless or valueless to Green Valley by the decertification sought by Cibolo in this proceeding.

#### **Green Valley's Compensable Property**

47. Green Valley does not have any wastewater infrastructure in the area to be decertified by Cibolo in this proceeding.
48. Green Valley has not adopted retail sewer rates.
49. Green Valley has not adopted sewer impact fees.
50. Green Valley does not have any retail wastewater customers in the area to be decertified by Cibolo in this proceeding.
51. Green Valley obtained its sewer CCN in October 2005.
52. Green Valley invested in a 2006 Wastewater Master Plan and continued to make investments to serve its entire sewer CCN area pursuant to the Wastewater Master Plan.

53. Developing and engaging in master planning is an essential element of providing wastewater service to an area.
54. Green Valley invested in a 65-acre tract of real property to site a proposed wastewater treatment plant.
55. Obtaining property rights in a physical location is an essential element of providing wastewater service to an area.
56. In April 2015, Green Valley submitted an application to the TCEQ for a TPDES permit.
57. The TCEQ Executive Director issued a draft TPDES permit to Green Valley in 2016.
58. In 2016, the TCEQ Commissioners referred Green Valley's TPDES permit application to SOAH for a contested case hearing. That proceeding remains pending.
59. Cibolo's regionalization theory presented in this docket is negated by: (1) the TCEQ Executive Director's analysis presented in the September 22, 2016 Response to Public Comment (Ex. GVSUD-4); (2) evidence that Green Valley's proposed TPDES permit would be for discharge of treated effluent to Santa Clara Creek; and (3) testimony by Cibolo witnesses that Cibolo may provide retail public sewer utility service within the area proposed to be decertificated.
60. Obtaining required permits is an essential planning step in designing physical wastewater treatment facilities to serve a sewer CCN area, including the area sought to be decertificated.
61. Green Valley made dollar investments in professional engineering and legal services to serve its entire sewer CCN area, including the area that Cibolo seeks to have decertificated.
62. Active service cannot occur in an area without investing in permitting and other planning within or outside the area.
63. The area that Cibolo seeks to decertificate is in a high growth area.
64. Cibolo's proposed decertification takes a piecemeal approach that will result in a checkerboard pattern of decertificated tracts surrounded by tracts that will remain in Green Valley's sewer CCN area.
65. Green Valley incurred necessary legal expenses and professional fees in this docket as a result of Cibolo's application.
66. Green Valley will incur economic losses consisting of increased costs to serve remaining customers in the remaining parcels interspersed with the areas sought to be decertificated.

67. Net lost revenues are an accurate and reasonable method for measuring Green Valley's economic losses resulting from decertification.
68. Green Valley's remaining customers will incur increased costs after decertification, which are reasonably measured by an estimated increase in customer impact fees.
69. All money Green Valley spent on permitting, planning, and design activities to serve its sewer CCN area will be rendered useless or valueless to Green Valley on an allocable basis to the area proposed to be decertified as a result of the proposed decertification.
70. All money Green Valley spent on reasonable and necessary legal expenses and professional fees incurred in this docket will be rendered useless or valueless to Aqua as a result of the proposed decertification.
71. Decertification will render useless or valueless Green Valley's economic opportunity to recover net revenues from customers within its decertified CCN area.
72. Green Valley's appraisal is limited to property that will be rendered useless or valueless if Cibolo's application for decertification is granted.
73. Cibolo's appraisal fails to include property that will be rendered useless or valueless if Cibolo's application for decertification is granted.

## II. CONCLUSIONS OF LAW

1. Cibolo and Green Valley are retail public utilities as defined in Texas Water Code § 13.002(19). Cibolo is a home rule municipality. TEX. LOC. GOV'T CODE § 5.004. Green Valley is a special utility district. Texas Water Code § 65.001 *et seq.*
2. The Commission has jurisdiction and authority over this docket under Texas Water Code §§ 13.041 and 13.255(c)-(e), (g), (g-1).
3. The Commission does not have jurisdiction to decide Texas Water Code, Chapter 26 water quality permitting matters, such as a TPDES permit application or Cibolo's regionalization theory presented in this docket, and that authority lies with the TCEQ. TEX. WATER CODE §§ 26.011, 26.027.
4. Retail public utilities that possess a sewer CCN are required to prepare for continuous and adequate service to consumers within their certified area and are allowed to sell retail sewer utility service to such consumers. TWC §§ 13.002(19)-(21), 13.242 and 13.250(a).
5. SOAH has jurisdiction over matters related to the hearings of this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to Texas Government Code §§ 2001.058 and 2003.049.
6. Cibolo has the burden of proof in this case. 16 TEX. ADMIN. CODE § 24.12 and 1 TEX. ADMIN. CODE § 155.427.

7. Texas Water Code §13.255(c) and 16 Texas Administrative Code §24.120(c) prohibit a retail public utility from providing service to an area that has been decertified under that section without providing just and adequate compensation for any property that the Commission determines is rendered useless or valueless to the decertified retail public utility as a result of the decertification.
8. Texas Water Code §§ 13.255(c) requires that the Commission determine the amount of monetary compensation, if any, that must be paid when a retail public utility seeks to provide service to an area that is decertified.
9. Texas Water Code § 13.255(g) requires the value of personal property to be determined according to the following factors to ensure that the compensation to a retail public utility is just and adequate: (1) the impact on the existing indebtedness of the retail public utility and its ability to repay that debt; (2) the value of the service facilities of the retail public utility located within the area in question; (3) the amount of any expenditures for planning, design, or construction of service facilities outside the incorporated or annexed area that are allocable to service to the area in question; (4) the amount of the retail public utility's contractual obligations allocable to the area in question; (5) any demonstrated impairment of service or increase of cost to consumers of the retail public utility remaining after the single certification; (6) the impact on future revenues lost from existing customers; (7) necessary and reasonable legal expenses and professional fees; (8) factors relevant to maintaining the current financial integrity of the retail public utility; and (9) other relevant factors.
10. The compensation factors in TWC §13.255(g) inform, but do not limit, the types of property that may be rendered useless or valueless as a result of a CCN decertification under TWC §13.255(c).
11. The non-exclusive list of compensation factors used to value personal property under TWC § 13.255(g) include multiple items that are not necessarily tied to constructed or physical facilities, such as planning and design expenditures.
12. Unless there is specific statutory authority otherwise, the ordinary meaning of property must be broadly interpreted and “. . . extends to ‘every species of valuable right and interest.’ It is ‘commonly used to denote everything to which is the subject of ownership, corporeal or incorporeal, tangible or intangible, visible or invisible . . . .’” *State v. Public Utility Commission of Texas*, 883 S.W.2d 190, 199-200 (Tex. 1994).
13. Texas Water Code §§ 13.255(c) and (g) must be read consistent with a broad interpretation of property.
14. The Federal and Texas Constitutions require just compensation when the government takes, damages, or destroys property of any variety for public use whether that property is real, personal, tangible, or intangible without limit.

15. A narrow view of “property” under the Texas Water Code could result in decertified CCN holders not receiving complete just and adequate compensation.
16. Green Valley’s money and investments are its personal property.
17. Green Valley’s money spent on planning and design expenses remained Green Valley’s property.
18. Green Valley’s money spent on legal and professional fees remained Green Valley’s property.
19. Under Texas Water Code § 13.255(g), Green Valley has a property interest in any expenditure for the planning or design of service facilities allocable to the Tract.
20. Under Texas Water Code § 13.255(g), Green Valley has a property interest in necessary and reasonable legal expenses and professional fees.
21. The terms “useless or valueless” should be given their ordinary or plain meaning.
22. A narrow view of the terms “useless or valueless” under the Texas Water Code could result in decertified CCN holders not receiving complete just and adequate compensation.
23. As in the eminent domain context, partial decertification may result in allocable portions of property being rendered useless or valueless.
24. The Texas Water Code has established a system that permits partial decertification of CCN areas.
25. All money Green Valley spent on permitting, planning, and design activities to serve its sewer CCN area constitutes property that will be rendered useless or valueless to Green Valley on an allocable basis to the area proposed to be decertified as a result of the proposed decertification. TEX. WATER CODE §§ 13.255(c) and (g).
26. All money Green Valley spent on reasonable and necessary legal expenses and professional fees incurred in this docket constitutes property that will be rendered useless or valueless to Aqua as a result of the proposed decertification. TEX. WATER CODE §§ 13.255(c) and (g).
27. “Property” rendered useless or valueless as a result of decertification may include the lost economic opportunity to recover lost net revenues from customers within the decertified CCN areas, a relevant compensation consideration. TEX. WATER CODE §§ 13.255(c) and (g).
28. Green Valley’s lost economic opportunity interest as allocable to the area proposed to be decertified constitutes property that will be rendered useless or valueless to Green Valley as a result of the proposed decertification. TEX. WATER CODE §§ 13.255(c) and (g).

29. Green Valley's appraisal is limited to property that will be rendered useless or valueless if Cibolo's application for decertification is granted. TEX. WATER CODE §§ 13.255(c) and (g).
30. Cibolo's appraisal fails to include property that will be rendered useless or valueless if Cibolo's application for decertification is granted. TEX. WATER CODE §§ 13.255(c) and (g).
31. A second hearing must be held to ensure that Green Valley receives just and adequate compensation for Green Valley's: (1) planning, design, and permitting activity incurred to serve its entire sewer CCN area and allocable to the area to be decertificated, including money invested to obtain and implement its Wastewater Master Plan, obtain a final TPDES permit, and acquire 65 acres of real property to site its proposed wastewater treatment plant; (2) necessary and reasonable legal expenses and professional fees incurred in this docket; (3) lost economic opportunity interest within the area to be decertificated; and (4) increased customer costs resulting from Cibolo's piecemeal decertification approach.
32. The date that the evidence on property identification was admitted into evidence at the hearing on the merits is the earliest reasonable date to determine what property will be rendered useless or valueless upon decertification because the date of trial is consistent with the approach taken in inverse condemnation proceedings. *Edwards Aquifer Auth. v. Bragg*, 421 S.W.3d 118, 147 (Tex. App. –San Antonio, 2013) (pet. denied) (citing TEX. PROP. CODE § 21.042). Evidence on compensation amounts for those property interests should be determined when evidence is admitted during the second phase hearing on the merits.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby CERTIFY that on February 28, 2017, a true and complete copy of the above was sent by the method indicated to counsel of record at the following addresses in accordance with P.U.C. PROC. R. 22.74:

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