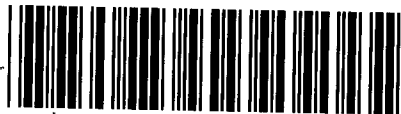




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PUBLIC UTILITY COMMISSION  
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APPLICATION OF THE CITY OF CIBOLO § BEFORE THE STATE OFFICE  
FOR SINGLE CERTIFICATION IN §  
INCORPORATED AREA AND TO §  
DECERTIFY PORTIONS OF GREEN § OF  
VALLEY SPECIAL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

**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**I. FINDINGS OF FACT**

***Application Background***

1. On August 18, 2015, the City of Cibolo ("City") provided notice to Green Valley Special Utility District ("GVSUD") of its intent to provide sewer service to portions of land that were within the corporate limits of the City.
2. On March 8, 2016, the City submitted an application under Texas Water Code § 13.255 for single sewer certificate of convenience and necessity ("CCN") certification with the Commission (the "Application"), decertifying such portions of GVSUD's sewer CCN No. 20973, which is 1.694 acres of land.
3. On April 22, 2016, GVSUD filed motion to intervene.
4. On June 28, 2016, the City and the District filed their appraisals (the "City Appraisal" and "GVSUD Appraisal," respectively) with the Commission.
5. At an open meeting on June 29, 2016, the Commission adopted a preliminary order identifying a list of issues to be addressed in a hearing at SOAH regarding the Application.
6. On July 20, 2016, the Commission filed a Supplemental Preliminary Order providing three additional issues to be addressed in this hearing.
7. On July 26, 2016, the Application was referred by the Commission to the State Office of Administrative Hearings ("SOAH"). The City, GVSUD, and Commission Staff were named as parties in this in this matter.
8. On August 17, 2016, a prehearing conference was held at SOAH.
9. Pursuant to the Commission's July 20, 2016 Supplemental Preliminary Order and the Administrative Law Judge's ("ALJ") Order No. 2 in this matter, the ALJ ordered that the purpose of this first phase of the contested case hearing is to address the three issues listed below, identified in that Supplemental Order as Issue Nos. 9-11:

9. What property, if any, will be rendered useless or valueless to GVSUD by the decertification sought by Cibolo in this proceeding?
  10. What property of GVSUD, if any, has Cibolo requested to be transferred to it?
  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?
10. On November 8, 2016, the City filed a Motion for Partial Summary Decision and on December 9, 2016, the ALJ issued Order No. 7 Granting in Part and Denying in Part the City's Motion for Partial Summary Decision, finding that Cibolo has not requested GVSUD to transfer any GVSUD property to Cibolo. Further, Order No. 7 memorializes that the following two issues are to be addressed in the hearing on the merits in the first phase of this matter:
9. What property, if any, will be rendered useless or valueless to GVSUD by the decertification sought by the City in this proceeding? TWC § 13.255(c).
  11. Are the existing appraisals limited to valuing the property that has been determined to have been rendered useless or valueless by decertification?
- Issues 9 and 11, as memorialized in the ALJ's Order No. 7 in this matter, are collectively referred to herein as the "Referred Issues."
11. On October 19, 2016, the City filed direct testimony.
  12. On November 2, 2016, GVSUD filed direct testimony.
  13. On December 7, 2016, the City filed rebuttal testimony.
  14. On, January 10, 2017, Commission Staff filed a statement of position for this matter.
  15. On January 17, 2017, a hearing on the merits was held at SOAH.
  16. On February 9, 2017, the parties filed Agreed Stipulations, containing the following:
    - "2. The City contends that there is no property rendered useless or valueless to GVSUD by the decertification sought by the City in this proceeding.
    3. GVSUD contends that the following property is rendered useless or valueless to Green Valley by the proposed decertification sought by the City in this proceeding:
      - (a) Dollars expended by GVSUD for engineering and planning to implement GVSUD's 2006 Wastewater Master Plan allocable to the proposed decertification area;
      - (b) Dollars expended by GVSUD to obtain a Texas Pollutant Discharge Elimination System permit from the Texas Commission on Environmental Quality allocable to the proposed decertification area;
      - (c) Dollars expended by GVSUD to purchase an approximate 65 acre tract of land allocable to the proposed decertification area;

- (d) Dollars expended by GVSUD for legal fees and appraiser expenses in this docket; and
  - (e) Lost expected net revenues allocable to the proposed decertification area.
4. GVSUD does not have any wastewater infrastructure in the area to be decertified by the City in this proceeding.
  5. GVSUD has not adopted retail sewer rates.
  6. GVSUD has not adopted sewer impact fees.
  7. GVSUD does not have any retail wastewater customers in the area to be decertified by the City in this proceeding."

***Referred Issue No. 9 - There is no property of GVSUD rendered useless or valueless to GVSUD by the decertification sought by the City in this proceeding***

17. The Decertificated Area is within the corporate limits of the City
18. The Decertificated Area is within the corporate limits of the City, and is generally bounded on the south by U.S. Interstate Highway 10; on the west by Cibolo Creek; on the north by Lower Seguin Road, Hackerville Road, and Arizpe Road; and on the east by the Court Decreed ETJ Boundary of the City and the City of Marion, as well as the boundaries of Guadalupe County Appraisal District Parcel Nos. 70979 and 71064.
19. The state has a policy regarding the regionalization of wastewater systems in Texas under TWC, Chapter 26, which is to encourage and promote the development and use of regional and area wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state.
20. The Texas Commission on Environmental Quality ("TCEQ") is the state agency that implements this policy.
21. There are only 8 TCEQ-authorized regional wastewater entities in the entire state of Texas, which are identified in 30 TAC Chapter 351 of the TCEQ's regulations.
22. The Decertificated Area is within the area of Cibolo Creek Watershed, in the vicinity of the City.
23. The Decertificated Area is within the TCEQ-designated service area of CCMA.
24. GVSUD cannot collect, transport, treat or discharge the wastewater generated by landowners within the Decertificated Area, and any GVSUD property for such purposes must be excluded from the analysis of whether such property is rendered useless or valueless from the decertification of the Decertificated Area because it never could have been used to collect, transport, treat, or discharge wastewater generated by landowners within the Decertificated Area in the first place.
25. A sewer CCN relates to providing retail sewer service to the end user-customer and CCNs are regulated by the Commission. The term "retail water or sewer service" is defined in TWC, Chapter 13, as "potable water service or sewer service, or both, provided by a retail public utility to the ultimate consumer for compensation."

26. Being a TCEQ-approved regional wastewater entity under Chapter 351, means that the regional entity is the only entity that can construct the regional sewerage system to collect and transport the raw wastewater to the WWTP, treat the wastewater at the WWTP, and discharge the treated effluent into a state watercourse, to the extent allowed by the TCEQ in Chapter 351. In other words, a Chapter 351 regional wastewater entity is not necessarily the entity that accepts raw wastewater from the end users- retail customers.
27. GVSUD does not have any other wastewater infrastructure outside of the Decertificated Area that could be used to provide wastewater service to the Decertificated Area.
28. GVSUD does not possess a Texas Pollutant Discharge Elimination System Permit to construct or operate a wastewater treatment plant.
29. GVSUD has not submitted designs for approval to the TCEQ for a wastewater collection system or a wastewater treatment facility and it does not have approval from the TCEQ to construct such infrastructure.
30. GVSUD has filed an application for a Texas Pollutant Discharge Elimination System Permit at the TCEQ. It is currently protested and in a contested case hearing at SOAH on several issues, one of which is the regionalization issue as to whether GVSUD's proposed facility will serve land within CCMA's TCEQ-designated regional area.
31. It is uncertain whether the TPDES permit application will be approved by the TCEQ.
32. GVSUD will need a TPDES permit to collect, treat, and dispose of wastewater generated within its sewer CCN boundaries, regardless of whether the Decertified Area is removed from GVSUD's sewer CCN.
33. A TCEQ draft TPDES permit does not have any real value or usefulness unless and until the TCEQ Commissioner's issue the final Draft Permit and it becomes final and non-appealable. Before it is approved, it is subject to change or denial, and therefore, would not be something that can be relied on for any purpose.
34. GVSUD's TPDES Permit Application contemplates phased construction of the proposed wastewater treatment facility, enabling GVSUD to reevaluate whether it needs the additional capacity before constructing the additional phases.
35. The Draft TPDES permit would not bind GVSUD to any particular wastewater treatment plant construction schedule. The Permit Application only proposes estimated construction start dates for each phase.
36. The TPDES Application does not anticipate constructing the final phase of the wastewater plant until 2044.
37. GVSUD's assumptions and plans will likely change between now and 2044.
38. GVSUD makes no allegation and provides no explanation as to whether removing the decertified land means there will be unused capacity at the plant.
39. GVSUD has purchased a 65 acre tract of land ("Land") to construct a wastewater treatment plant, and this land is currently undeveloped.

40. GVSUD can still utilize the Land for a wastewater treatment plant to serve the rest of its CCN area, regardless of whether the Decertified Area is removed from GVSUD's sewer CCN.
41. Based upon the City's review of Federal Emergency Management Agency ("FEMA") floodplain maps, approximately 45 acres of the Land is within a FEMA 100-year floodplain, which makes a large portion of the Land not suitable for siting the physical wastewater treatment plant. Of the remaining 20 acres not in a floodplain, only about half of those acres would be needed to construct facility 5 million gallons per day wastewater treatment plant with the TCEQ-required buffer zones around the facility. It is likely that the same amount of the Land would be used regardless of whether the area requested by the City is decertified or not.
42. A wastewater master plan is a tool used for planning for future development and the needs of the system. A master plan is a high-level, "living" document that must be reviewed and updated continually.
43. GVSUD's 2006 Wastewater Master Plan states that "This document shall serve as a long-term adaptable guide to be used as needed to manage future service area development and projected wastewater needs."
44. GVSUD's 2006 Wastewater Master Plan is 10 years old and is in need of major updating. Its usefulness or value is already suspect.
45. GVSUD's 2006 Wastewater Master Plan does not address specific areas. Rather the plan looks at the entire sewer CCN area as a whole.
46. GVSUD is not allowed to make a profit from its customers.
47. GVSUD cannot force residents within its sewer CCN boundaries to obtain retail sewer service from GVSUD.
48. Lost net revenues from future sewer customers is synonymous with lost profits from future sewer customers.

*Referred Issue No. 11 – Are the existing appraisals limited to valuing the property that has been determined to have been rendered useless or valueless by decertification?*

49. The City's Appraisal asserts that there is no property of GVSUD rendered useless or valueless to GVSUD by the decertification.
50. GVSUD's Appraisal asserts that there is property of GVSUD rendered useless or valueless to GVSUD by the decertification.

## **II. CONCLUSIONS OF LAW**

1. TWC § 13.255(c) provides that the Commission shall grant single certification to the municipality.
2. TWC § 13.255(c) provides that the Commission shall also determine whether single certification as requested by the municipality would result in property of a retail public utility being rendered useless or valueless to the retail public utility, and shall

determine in its order the monetary amount that is adequate and just to compensate the retail public utility for such property.

3. 30 TAC § 351.62 of the TCEQ's rules expressly states that "The Cibolo Creek Municipal Authority is designated the governmental entity to develop a regional sewerage system in that area of Cibolo Creek Watershed, in the vicinity of the cities of Cibolo, Schertz, Universal City, Selma, Bracken, and Randolph Air Force Base."
4. 30 TAC § 351.65 of the TCEQ's rules expressly states that "All future permits and amendments to existing permits pertaining to discharges of domestic wastewater effluent within the Cibolo Creek regional area shall be issued only to the authority."
5. CCMA is the regional wastewater collection and treatment provider for the Decertificated Land.
6. There is no property of GVSUD rendered useless or valueless to GVSUD by the decertification sought by the City in this matter.
7. The City's Appraisal is limited to valuing the property that has been determined to have been rendered useless or valueless by decertification.
8. GVSUD's Appraisal is not limited to valuing the property that has been determined to have been rendered useless or valueless by decertification.
9. Lost net revenues from future wastewater customers is not property that is rendered useless or valueless under TWC § 13.255
10. Attorneys fees is not property that is rendered useless or valueless under TWC § 13.255.
11. Appraisal expenses are not property that is rendered useless or valueless under TWC § 13.255.

### **III. ORDERING PROVISIONS**

1. The Commission has determined that there is no property of GVSUD rendered useless or valueless to GVSUD by the decertification sought by the City in this matter.
2. The Commission has determined that The City's Appraisal is limited to valuing the property that has been determined to have been rendered useless or valueless by decertification.
3. The Commission has determined that GVSUD's Appraisal is not limited to valuing the property that has been determined to have been rendered useless or valueless by decertification.
4. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law regarding Referred Issues 9-11, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.
5. The City and GVSUD shall split evenly the costs for the transcript at the rate for non-expedited service, and the City shall pay for all of the additional costs to obtain the transcript on an expedited basis.
6. The Effective Date of this Order is the date the Order is final, as provided by Tex. Gov't Code § 2001.144.
7. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

Respectfully submitted,

**LLOYD GÖSSELINK ROCHELLE &  
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**ATTORNEYS FOR THE CITY OF CIBOLO**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was transmitted by fax, hand-delivery and/or regular, first class mail on this 28<sup>th</sup> day of February, 2017 to the parties of record.

