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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 §

BEFORE THE PUBLIC UTILITY
COMMISSION
FILING CLERK
COMMISSION OF TEXAS

GREEN VALLEY SPECIAL UTILITY DISTRICT'S
REPLY TO EXCEPTIONS TO THE PROPOSAL FOR DECISION

May 22, 2017

TABLE OF CONTENTS

I.	PROCEDURAL HISTORY, JURISDICTION AND NOTICE	1
II.	SCOPE OF THE ISSUES	1
III.	BACKGROUND ABOUT THE EVIDENCE AND THE APPRAISERS	1
IV.	FACTUAL BACKGROUND	1
A.	Stipulations	1
B.	Other Uncontroverted Facts	2
V.	LEGAL FRAMEWORK	2
A.	<i>Celina</i> Order	2
B.	Burden of Proof	2
C.	TWC Provisions Regarding property Rendered Useless or Valueless	2
D.	Definition of “Property”	2
1.	Whether “Property” Includes Intangible Personal Property	2
2.	Whether the TWC § 13.255(g) Factors Define “Property”	2
3.	Whether a Bill Sponsor’s Statement Defines “Property”	2
E.	Definition of “Useless” or “Valueless”	2
1.	Whether Defining an Item as an Allocable Portion Meets the “Useless or Valueless” Requirement	2
2.	Evidence about Usefulness or Value of the Items after Decertification ..	3
F.	Whether Any Loss of Usefulness or Value Was Caused by the Decertification ..	3
VI.	SPECIFIC ITEMS THAT GREEN VALLEY CLAIMS ARE PROPERTY THAT THE DECERTIFICATION WILL RENDER USELESS OR VALUELESS	3
A.	Allocable Dollars Green Valley Expended for Engineering and Planning to Implement the 2006 Wastewater Master Plan	3

B.	Allocable Dollars Green Valley Expended to Obtain a TPDES Permit from TCEQ	3
C.	Allocable Dollars Green Valley Expended to Purchase the Land	3
D.	Dollars Green Valley Expended for Legal Fees and Appraiser Expenses in this Case	3
E.	Allocable Lost Expected Net Revenues from Future Customers	3
VII.	WHETHER THE APPRAISALS ARE LIMITED TO VALUING PROPERTY THAT THE DECERTIFICATION WILL RENDER USELESS OR VALUELESS	3
VIII.	THE DATE TO USE IN DECIDING WHETHER GREEN VALLEY HAS PROPERTY RENDERED USELESS OR VALUELESS BY THE DECERTIFICATION	3
IX.	FINDINGS OF FACT	4
X.	CONCLUSIONS OF LAW	8
XI.	PROPOSED ORDERING PARAGRAPHS	9
XII.	CONCLUSION	12

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**GREEN VALLEY SPECIAL UTILITY DISTRICT'S REPLY TO EXCEPTIONS
TO THE PROPOSAL FOR DECISION**

Green Valley Special Utility District ("Green Valley") submits its Reply to Exceptions to the Administrative Law Judge's ("ALJ") April 28, 2017 Proposal for Decision ("PFD") in the above-referenced Docket. This Reply is timely filed pursuant to Commission Advising & Docket Management's May 1, 2017 letter to all parties of record establishing deadlines in this proceeding.¹ In support of its Exceptions, Green Valley respectfully submits as follows:

I. PROCEDURAL HISTORY, JURISDICTION AND NOTICE

No other party filed exceptions on this section of the PFD.

II. SCOPE OF THE ISSUES

No party filed exceptions on this section of the PFD.

III. BACKGROUND ABOUT THE EVIDENCE AND THE APPRAISERS

No other party filed exceptions on this section of the PFD.

IV. FACTUAL BACKGROUND

A. Stipulations

No other party filed exceptions on this section of the PFD.

¹ This Reply to Exceptions follows the outline in the PFD. As explained in Green Valley's May 19, 2017 letter to Mr. Journeay, the Roman numerals in Green Valley's Exceptions were inadvertently one numeral off from those used in the PFD, as were internal references back to sections within Green Valley's Exceptions. Internal references in Green Valley's Exception to sections of the PFD were correct.

B. Other Uncontroverted Facts

No party filed exceptions on this section of the PFD.

V. LEGAL FRAMEWORK

A. Celina Order

No other party filed exceptions on this section of the PFD.

B. Burden of Proof

No other party filed exceptions on this section of the PFD.

C. TWC Provisions Regarding property Rendered Useless or Valueless

No other party filed exceptions on this section of the PFD.

D. Definition of “Property”

1. Whether “Property” Includes Intangible Personal Property

No other party filed exceptions on this section of the PFD.²

2. Whether the TWC § 13.255(g) Factors Define “Property”

No other party filed exceptions on this section of the PFD.

3. Whether a Bill Sponsor’s Statement Defines “Property”

No other party filed exceptions on this section of the PFD.

E. Definition of “Useless” or “Valueless”

No other party filed exceptions on this section of the PFD.

1. Whether Defining an Item as an Allocable Portion Meets the “Useless or Valueless” Requirement

No other party filed exceptions on this section of the PFD.

² Green Valley notes that page 7 of its Exceptions contained a typographical error. While the surrounding language gives Green Valley’s argument proper context, the first sentence addressing PFD Section V.D. was intended to read: “Green Valley *accepts* the PFD’s adoption of a broad definition of property and facilities, consistent with the Texas Supreme Court’s mandate in *State v. Public Utility Commission* and the definition of “facilities” in Section 13.002(9) of the Texas Water Code.”

2. Evidence about Usefulness or Value of the Items after Decertification

No other party filed exceptions on this section of the PFD.

F. Whether Any Loss of Usefulness or Value Was Caused by the Decertification

No other party filed exceptions on this section of the PFD.

VI. SPECIFIC ITEMS THAT GREEN VALLEY CLAIMS ARE PROPERTY THAT THE DECERTIFICATION WILL RENDER USELESS OR VALUELESS

A. Allocable Dollars Green Valley Expended for Engineering and Planning to Implement the 2006 Wastewater Master Plan

No other party filed exceptions on this section of the PFD.

B. Allocable Dollars Green Valley Expended to Obtain a TPDES Permit from TCEQ

No other party filed exceptions on this section of the PFD.

C. Allocable Dollars Green Valley Expended to Purchase the Land

No other party filed exceptions on this section of the PFD.

D. Dollars Green Valley Expended for Legal Fees and Appraiser Expenses in this Case

No other party filed exceptions on this section of the PFD.

E. Allocable Lost Expected Net Revenues from Future Customers

No other party filed exceptions on this section of the PFD.

VII. WHETHER THE APPRAISALS ARE LIMITED TO VALUING PROPERTY THAT THE DECERTIFICATION WILL RENDER USELESS OR VALUELESS

No other party filed exceptions on this section of the PFD.

VIII. THE DATE TO USE IN DECIDING WHETHER GREEN VALLEY HAS PROPERTY RENDERED USELESS OR VALUELESS BY THE DECERTIFICATION

No other party filed exceptions on this section of the PFD.

IX. FINDINGS OF FACT

Other than two items,³ Green Valley objects to each of Cibolo's newly-proposed findings of fact in its so-called "exceptions" to the Proposal for Decision for the reasons set forth in Green Valley's May 12, 2017 Exceptions to the PFD, which Green Valley herein incorporates by reference for all purposes. The ALJ previously provided the parties with an opportunity in this docket to submit proposed findings of fact, and Cibolo availed itself of that opportunity.⁴ Now, nearly three months later, Cibolo has submitted an improper pleading in the guise of "exceptions" wherein Cibolo does not take issue with the ALJ's rejection of its originally-submitted proposed findings of fact, but instead suggests an entirely new set of findings.⁵ While Green Valley disagrees with and excepts to much of the PFD's analysis and many of its proposed findings, Green Valley agrees with the ALJ's determination not to include these additional findings; they are largely irrelevant and cumulative of the many related findings already set forth in the PFD. Cibolo's new findings are plainly submitted only to inappropriately bolster its position outside of the established briefing schedule and after the record has closed.⁶

Green Valley briefly addresses each of Cibolo's proposed new findings of fact as follows:

- **Proposed Finding of Fact No. 54:** Green Valley objects to consideration of this newly-proposed finding on the ground that the issue of whether Green Valley has a contract with a wholesale wastewater provider is irrelevant to the issue of whether

³ Green Valley does not object to Cibolo's proposed technical corrections to Finding of Fact Nos. 18 and 51.

⁴ See Cibolo's Proposed Findings of Fact and Conclusions of Law (Feb. 28, 2017).

⁵ Based on Green Valley's review, only Cibolo's proposed Finding of Fact No. 60 was contained in Cibolo's original, timely, proposed findings and conclusions.

⁶ SOAH Order No. 9, Briefing Order and Record Close Date (Jan. 19, 2017).

property items Green Valley's actually identified, and to which the parties *stipulated*, will be rendered useless or valueless upon decertification.⁷

Proposed Finding of Fact Nos. 55 and 56: Green Valley objects to these proposed findings. They improperly incorporate a standard that property must consist of “infrastructure” to be rendered useless or valueless under TWC § 13.255(c) and (g) where no such restriction is imposed by the statute. Green Valley incorporates herein its Exceptions addressing the PFD's adoption of standards that are unsupported by the plain wording of the statute.⁸ Such a reading directly contradicts the PFD's correct determination that a broad interpretation of property must be utilized where, as here, the term is undefined in the statute.⁹ Moreover, proposed Finding of Fact No. 55 directly contradicts the record evidence wherein Green Valley *denied* a request for admission on this very issue.¹⁰ Proposed Finding of Fact No. 55 also disregards the existence of the real property purchased by Green Valley to site its wastewater treatment plant.¹¹ This real property may be considered infrastructure.

Proposed Finding of Fact No. 57: Green Valley objects to this proposed finding on the ground that the issue of whether Green Valley had any sewer customers as of a certain date is completely irrelevant to Green Valley's identified property items, which are the only property items for which Green Valley seeks compensation in this

⁷ Agreed Stipulations (Feb. 9, 2017).

⁸ Green Valley's Exceptions to the PFD (May 12, 2017) at 7, 9.

⁹ PFD at 16 (adopting *State v. Public Util. Comm'n*, 883 S.W.2d 190, 200 (Tex. 1994); *see also* n. 2, *supra*).

¹⁰ *See* Green Valley's Response to Cibolo's First Request for Admission (June 20, 2016) at RFA 1-2 (*denying* that “GVSUD had no existing sewer infrastructure within the boundaries of its sewer CCN No. 20973.”).

¹¹ Ex. GVSUD-1 at GVSUD 100004, 100432-100454.

docket, and which are the property items to which the parties specifically stipulated.¹² Thus, inclusion of this proposed finding will not make any issue of consequence to this proceeding any more or less likely.

Proposed Finding of Fact No. 58: Green Valley objects to this proposed finding for the reasons that it purports to adopt an unduly restrictive view of the terms “useless” and “valueless” found in TWC § 13.255(c). Green Valley did not assert that the entirety of its investment and planning for its sewer CCN area would be rendered useless or valueless, but that, consistent with constitutional mandates,¹³ and consistent with a plain reading of Factor 3 of TWC § 13.255(g) which requires that the Commission consider “the amount of *any* expenditures for planning, design, or construction of service facilities outside the incorporated or annexed area *that are allocable* to the area in question,” an allocable portion of its investments will be rendered useless or valueless upon decertification. Each dollar spent is being rendered useless or valueless. Green Valley incorporates by reference its Exceptions addressing the PFD’s erroneous interpretation of these terms in a manner that (1) raises constitutional concerns; and (2) depends on the *Celina* decision’s unsupportable requirement that the statutory compensation factors in Texas Water Code Chapter 13 must not be utilized to inform the identification of property.¹⁴

Proposed Finding of Fact No. 59: Green Valley objects to the proposed finding that lost net revenues is synonymous with lost profits. The complete transcript does not

¹² Agreed Stipulations (Feb. 9, 2017).

¹³ E.g., *Horne v. Dep’t of Agric.*, 135 S. Ct. 2419, 2425-2426 (2015);

¹⁴ Green Valley Exceptions to the PFD at 10-15.

support such a characterization, nor does the fact that Green Valley Special Utility District is a public and not a for-profit entity. Nor does the fact that Green Valley Mr. Korman's testimony on cross was that Green Valley seeks only lost net operating income.¹⁵ The accuracy of the methodology is a second phase hearing issue, but the ALJs and Commission must recognize there will be a loss of some amount that is not necessarily a "profit" in the context of a public political entity like Green Valley Special Utility District.

Proposed Finding of Fact No. 60: Subject to its objection to Cibolo's newly-proposed Finding of Fact No. 59, Green Valley does not object to the factual accuracy of proposed Finding of Fact No. 60, and agrees that Green Valley may not profit from its customers. However, Green Valley objects to the relevance of this proposed finding and it is not necessary. As stated in its objection to proposed Finding of Fact No. 59, Green Valley is not seeking lost profits, and the finding, which Cibolo also proposed at the *correct* time for submitting proposed findings and conclusions, is therefore irrelevant to the stipulated property items for which Green Valley seeks compensation and properly rejected.

Proposed Finding of Fact Nos. 61 and 62: Green Valley objects to these proposed findings of fact on the ground that they are both irrelevant and unnecessary to any of the ALJ's analysis or findings in the PFD. These findings do not recognize any fact of consequence to the stipulated property items for which Green Valley seeks compensation in this docket.

¹⁵ Tr. at 89:12-90:11 (Korman Testimony).

X. CONCLUSIONS OF LAW

Green Valley objects to Cibolo's newly-proposed conclusions of law in its so-called "exceptions" to the Proposal for Decision for the reasons set forth in Green Valley's May 12, 2017 Exceptions to the PFD, which Green Valley incorporates herein by reference for all purposes. As with its newly proposed findings of fact, Cibolo's new proposed conclusions are untimely-filed and are submitted for the sole purpose of taking a second bite of the apple to bolster its position and add previously rejected conclusions.¹⁶ Green Valley briefly addresses Cibolo's new proposed conclusions of law as follows:

- **Conclusion of Law No. 11:** Green Valley excepts to Conclusion of Law No. 11, and, thus, to the additional language suggested by Cibolo.
- **Conclusion of Law No. 14:** Green Valley excepts to Conclusion of Law No. 14, as reflected in the PFD for the reasons asserted in Green Valley's Exceptions.¹⁷ Green Valley further objects to Cibolo's proposed additional language on the ground that the language, "including, but not limited to appraisal expenses," does nothing to clarify the PFD's language. Rather, Cibolo's proposed additional language could reasonably be read to infinitely expand the scope of the PFD's Conclusion of Law No. 14. Injection of such vague, all-encompassing language unnecessarily introduces uncertainty into the issue that PFD Conclusion of Law No. 14 seems intended to address. Moreover, Cibolo already proposed a similar conclusion of law regarding

¹⁶ Cibolo Proposed Findings of Fact and Conclusions of Law (Feb. 28, 2017).

¹⁷ Green Valley Exceptions to the PFD at 18-20.

appraisals,¹⁸ and the ALJ already considered and rejected that proposed conclusion. Cibolo's proposed language should therefore be rejected.

Proposed Conclusion of Law No. 20: Green Valley objects to Cibolo's proposed conclusion of law that dollars expended to purchase the land for the siting of Green Valley's wastewater treatment plant do not constitute property. Inclusion of the requested conclusion would only serve to magnify the PFD's error in its wholesale adoption of the unsupported and illogical conclusion reached in *Celina* that "spent money" is not property. Green Valley herein incorporates by reference that portion of its Exceptions to the PFD addressing this untenable theory.¹⁹ The PFD correctly finds that money is property.²⁰

Proposed Conclusion of Law No. 21: Cibolo's newly-proposed, and untimely, Conclusion of Law is unduly cumulative of Findings of Fact already contained in the PFD.²¹ Green Valley also disagrees that this proposed addition regarding requested property transfer is properly characterized as a legal conclusion, rather than a fact finding.

XI. PROPOSED ORDERING PARAGRAPHS

Green Valley objects to each of Cibolo's proposed Ordering Paragraphs for the following reasons:

¹⁸ Cibolo Proposed Findings of Fact and Conclusions of Law (Feb. 28, 2017) at proposed CoL No. 11.

¹⁹ Green Valley Exceptions to the PFD at 5-10, 18.

²⁰ PFD at 16 (citing *State v. Public Utility Commission*, 883 S.W.2d at 200). As the PFD correctly notes, Cibolo conceded the point. *Id.*

²¹ PFD at FoF No. 28.

Proposed Ordering Paragraph No. 5: As with Cibolo's similar newly-proposed, and untimely, Conclusion of Law regarding whether Cibolo has requested that any Green Valley property be transferred, Cibolo's proposed Ordering Paragraph No. 5 on the same issue is unduly cumulative of Findings of Fact already contained in the PFD.²² Green Valley also disagrees that this proposed addition regarding property transfer is properly characterized as a Commission directive for inclusion in an ordering paragraph.

Proposed Ordering Paragraph No. 6: Cibolo's proposal to incorporate the legal standard for when a Commission becomes "final" is unnecessary and could establish a dangerous trend wherein it could be argued that the law governing finality of Commission decisions does not apply unless the Commission so states in its decision. Cibolo's proposed Ordering Paragraph No. 6 should be rejected.

Proposed Ordering Paragraph No. 7: Green Valley objects to Cibolo's attempt through proposed Ordering Paragraph No. 7 to attempt to have the Commission adopt a provision regarding the implications of a future court order reversing part of the Commission's decision. There is no language, including that suggested here by Cibolo, that could have any legally binding effect on a future court determination regarding the propriety of the Commission's ultimate decision in this proceeding. Yet Cibolo would seek to impose such standards as if they were the product of some agreement between the Commission and the parties to this proceeding. There is no such agreement. Cibolo's proposed Ordering Paragraph No. 7 must be rejected.

²² PFD at FoF No. 28.

Proposed Ordering Paragraph No. 8: Cibolo's attempt to unilaterally impose requirements upon the Commission regarding future party requirements in this docket should be rejected. Cibolo has offered no explanation as to why its suggested ordering paragraph might be appropriate and, in any event, the Commission is not bound to comply with Cibolo's demands regarding future steps to be taken in this proceeding. The Commission specifically deferred all remaining Preliminary Issues to a second phase hearing. Thus, there is no record upon which the Commission could take action here. The appropriate future course to address the remaining Preliminary Order issues will be established in a future prehearing conference convened by the SOAH ALJ.

Proposed Ordering Paragraph No. 9: Green Valley strenuously objects to Cibolo's attempt to surreptitiously insert the contested issue of whether Cibolo's application is administratively complete into this limited first phase proceeding. First, administrative completeness is a legal determination and would be inappropriate to include in ordering paragraphs here. Second, and more importantly, including such a provision would directly contradict the Commission's prior determination reflected in the Commission's July 20, 2017 Supplemental Preliminary Order specifically providing that: "in light of the Commission's decision that the Commission should first determine what property, if any, must be addressed in any necessary appraisals, the Commission *explicitly notes that administrative completeness should not be addressed by the SOAH ALJ during this phase of the proceeding.*"²³ The PFD reflects the ALJ's recognition of and compliance with this specific Commission

²³ Supplemental Preliminary Order (July 20, 2016) at 3 (emphasis added).

order,²⁴ and thus, Green Valley did not except to that portion of the PFD. Cibolo's subversive attempt to sidestep Commission requirements must be rejected.

XII. CONCLUSION

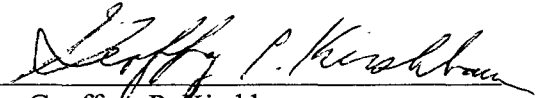
Green Valley respectfully requests that the Commission decline to adopt the Proposal for Decision's analysis, findings of fact, conclusions of law and ordering paragraphs that are inconsistent with its May 12, 2017 Exceptions to the PFD and this Reply to Exceptions. Green Valley further requests that the Commission decline to adopt Cibolo's new proposed findings of fact, conclusions of law and ordering paragraphs. Green Valley further requests that the Commission adopt an order finding that the following Green Valley property will be rendered useless and valueless by Cibolo's proposed decertification:

1. Dollars expended by Green Valley for engineering and planning to implement Green Valley's 2006 Wastewater Master Plan allocable to the proposed decertification area;
2. Dollars expended by Green Valley to obtain a Texas Pollutant Discharge Elimination System permit from the Texas Commission on Environmental Quality allocable to the proposed decertification area;
3. Dollars expended by Green Valley to purchase an approximate 65 acre tract of land allocable to the proposed decertification area;
4. Dollars expended by GVSUD for legal fees and appraiser expenses in this docket; and
5. Lost expected net revenues allocable to the proposed decertification area.

Green Valley further requests that the Commission's order find and conclude that a second hearing must be held to determine the just and adequate compensation owed to Green Valley by Cibolo in the event that decertification is granted and other referred issues. Green Valley further requests that the Commission grant all such other relief to which Green Valley show itself to be justly entitled.

²⁴ PFD at 3, n. 4 ("Green Valley contests the sufficiency, for purposes of a TWC § 13.255 application, of Cibolo's August 2015 notice to Green Valley of Cibolo's intent to provide sewer service. That issue was not referred to SOAH, is not part of this phase, and is not further discussed.") (emphasis added), FoF No. 21.

Respectfully submitted,

By: 

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CERTIFICATE OF SERVICE

I hereby CERTIFY that on May 22, 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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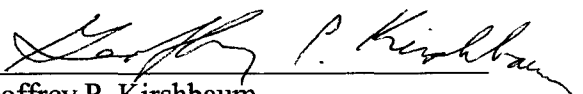
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