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**PUC DOCKET NO. 45702
SOAH DOCKET NO. 473-16-5296.WS**

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**APPLICATION OF 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 OF TEXAS

**GREEN VALLEY'S RESPONSE TO COMMISSION STAFF'S
RECOMMENDATION ON ADMINISTRATIVE COMPLETENESS**

COMES NOW Green Valley Special Utility District ("Green Valley" or "GVSUD") and, subject to Green Valley's August 9, 2017 Supplemental Plea to the Jurisdiction, Motion to Dismiss and, in the alternative, Motion to Abate ("Supplemental Plea") and Green Valley's August 21, 2017 Interim Appeal of SOAH Order No. 12 ("Interim Appeal"), submits this Response to the Commission Staff ("Staff") Recommendation on Administrative Completeness.¹ This response is timely filed.² In support, Green Valley shows as follows.

I. RESPONSE TO STAFF RECOMMENDATION

Green Valley respectfully disagrees with Staff's recommendation to find the City of Cibolo's ("Cibolo" or the "City") Texas Water Code Section 13.255 (PUC SUBST. R. 24.120) single certification application ("Application") administratively complete despite a clear deficiency.³ The City's August 18, 2015 180-day notice letter to GVSUD, including a map of areas it intends to serve and decertify from GVSUD, improperly included both annexed and non-annexed tracts rendering that notice defective.⁴ The 180-day notice required for the Application

¹ Commission Staff's Recommendation on Administrative Completeness (August 24, 2017) (Docket Item No. 150) ("Staff Recommendation").

² 16 TAC § 22.78(a).

³ Staff Recommendation.

⁴ See **Exhibit A**.

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was therefore deficient under both PUC SUBST. R. 24.120 as it existed at the time of the defective notice and under the recently-amended PUC SUBST. R. 24.120. Further, Cibolo used the same deficient map for its Application notice.

TWC § 13.255 and PUC SUBST. R. 24.120 require a 180-day notice of intent to serve an annexed or incorporated area before filing a single certification application such as the Application at issue here.⁵ The August 18, 2015 map received by GVSUD identifies both annexed and non-annexed tracts within a targeted portion of GVSUD's sewer CCN outlined in purple.⁶ The same small scale map was included in the Application and in the notice of this proceeding GVSUD received April 13, 2016.⁷ To date, a correct map specifically identifying the tracts Cibolo intends to decertify has not been submitted.

TWC § 13.255 is based upon annexation or incorporation at a specific point in time. It is not a sliding, moving target. Without knowing exactly which properties Cibolo sought to serve, the statutorily-required 180-day notice was insufficient, and the District was adversely impacted in its efforts to protect its service area. Cibolo's Application notice was similarly deficient.

Although, under the Commission's hearing process implemented for this case, a number of issues were determined by the Commission in its June 29, 2017 Interim Order, the July 1, 2016 Preliminary Order issues of proper notice and administrative completeness are before the ALJ and the Commission for the first time. Here, the pre-Application 180-day notice and Application notices were deficient, and the Application should not be found administratively complete or even filed.⁸

⁵ TEX. WATER CODE §13.255(b); P.U.C. SUBST. R. 24.120(b).

⁶ **Exhibit A.**

⁷ **Exhibit B.**

⁸ P.U.C. SUBST. R. 24.8(b), (d).

While the City's August 18, 2015 letter accompanying the defective notice attempted to clarify the City's intent, Cibolo should have used a correct map identifying only the annexed tracts it intended to serve if it hoped to start the 180-day single certification process contemplated by TWC §13.255 or P.U.C. SUBST. R. 24.120 in August 2015. The same holds true for Cibolo's Application notice. Failing to separately delineate the specific properties intended for City sewer service without combining them with other properties resulted in a confused notice to Green Valley.

Since the transfer of jurisdiction in 2014, Commission Staff has been very particular with respect to notice maps in CCN application processing. This level of heightened scrutiny of notice maps is appropriate because notice is jurisdictional.⁹ This Application should be subject to the same heightened scrutiny as other Commission applications, and the Commission should not condone the City's presented maps as sufficient here. Indeed, the recently-amended PUC SUBST. R. 24.120 now makes crystal clear that written notice of intent to provide service in an incorporated or annexed area "*shall specify... (1) the municipality's requested area.*"¹⁰ Similarly, the amended rule mandates:

The application *shall* identify the municipality's requested area by providing mapping information *to clearly identify* the area the municipality is seeking in accordance with §24.119 of this title relating to Mapping Requirements for Certificate of Convenience and Necessity Application.¹¹

Cibolo's notice did not meet these jurisdictional requirements and, subject to Green Valley's Supplemental Plea and Interim Appeal, the Commission should require Cibolo to restart

⁹ *Appeal of Pelican Bay Util. Co. from the Rate Ordinance of the City of Pelican Bay*, 11 PUC Bull. 704 (Sep. 1985) ("Under Texas law, when a statute requires notice, the requirement is jurisdictional, and lack of notice renders an order void.") (citing *Kerrville Bus Co. v. Continental Bus System*, 208 S.W.2d 586, 589 (Tex. Civ. App – Austin 1947, writ ref'd n.r.e.)).

¹⁰ PUC SUBST. R. 24.120(c)(1) (emphasis added). The prior version of PUC SUBST. R. 24.120 similarly required that notice be provided 180 days in advance of intent to serve the annexed or incorporated area.

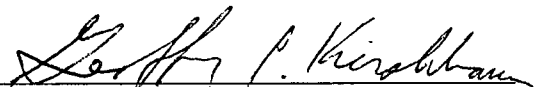
¹¹ PUC SUBST. R. 24.120(e)(2)(I) (emphasis added).

the Application process, including the 180-day notice portion, by providing sufficient, accurate notice. In addition to the grounds discussed in Green Valley's Supplemental Plea and Interim Appeal for rejecting the Application, the Application should be rejected for lack of administrative completeness. On that point, Green Valley respectfully disagrees with Staff's recommendation.

II. CONCLUSION AND PRAYER

Subject to its Supplemental Plea and Interim Appeal, Green Valley SUD respectfully requests the Honorable Administrative Law Judge issue an order or propose an order for Commission approval that: (1) finds the Application administratively deficient; (2) denies the Application; 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: 

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**ATTORNEYS FOR GREEN VALLEY SPECIAL
UTILITY DISTRICT**

CERTIFICATE OF SERVICE

I hereby CERTIFY that on August 31, 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:

David Klein
Christie Dickenson
Lloyd Gosselink
816 Congress Ave., Suite 1900
Austin, Texas 78701

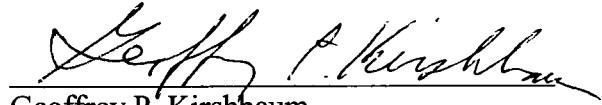
via fax to: (512) 472-0532

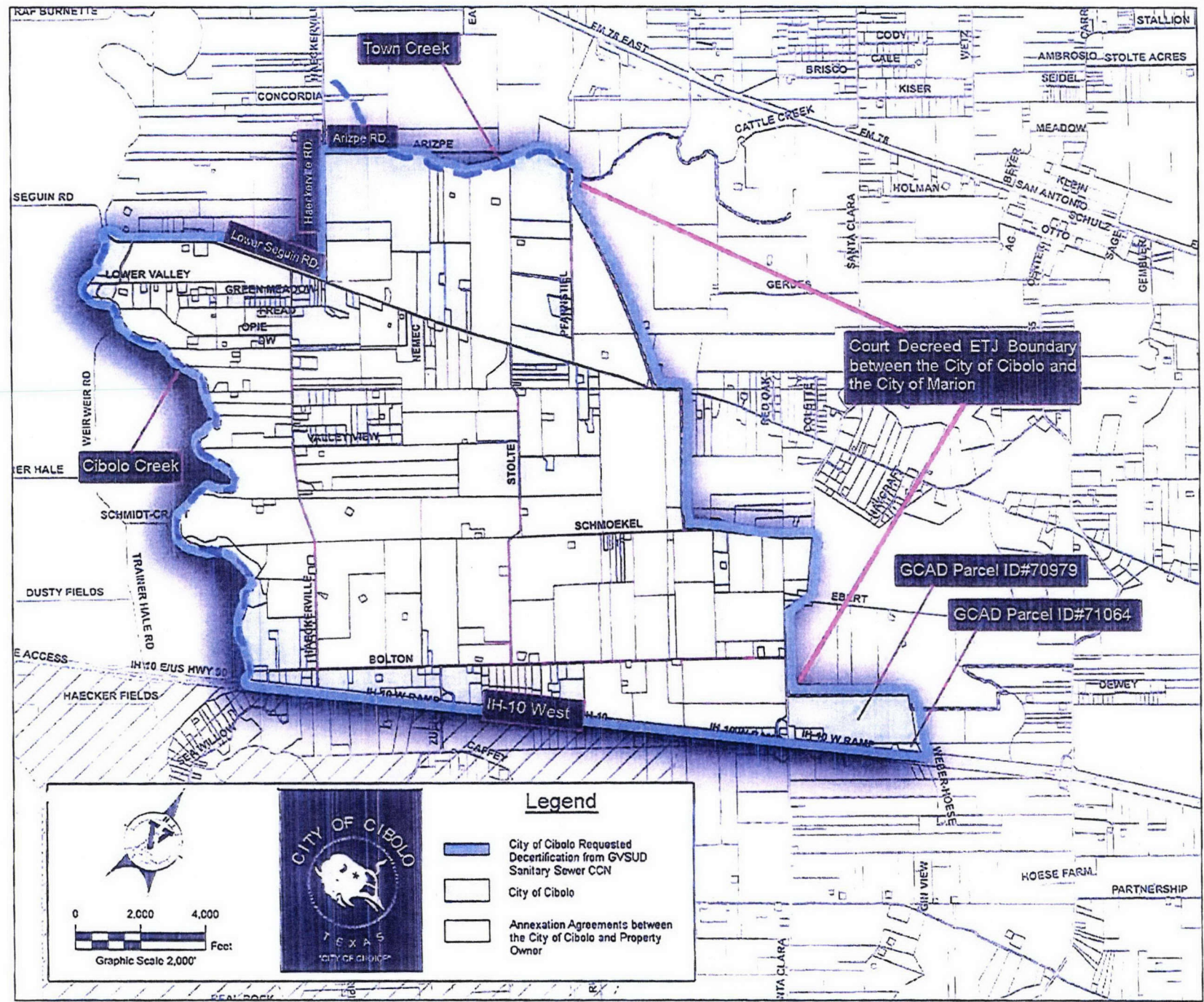
ATTORNEY FOR APPLICANT

Landon Lill
Public Utility Commission of Texas
1701 N Congress PO Box 13326
Austin, Texas 78711-3326

via fax to: (512) 936-7268

ATTORNEY FOR COMMISSION STAFF

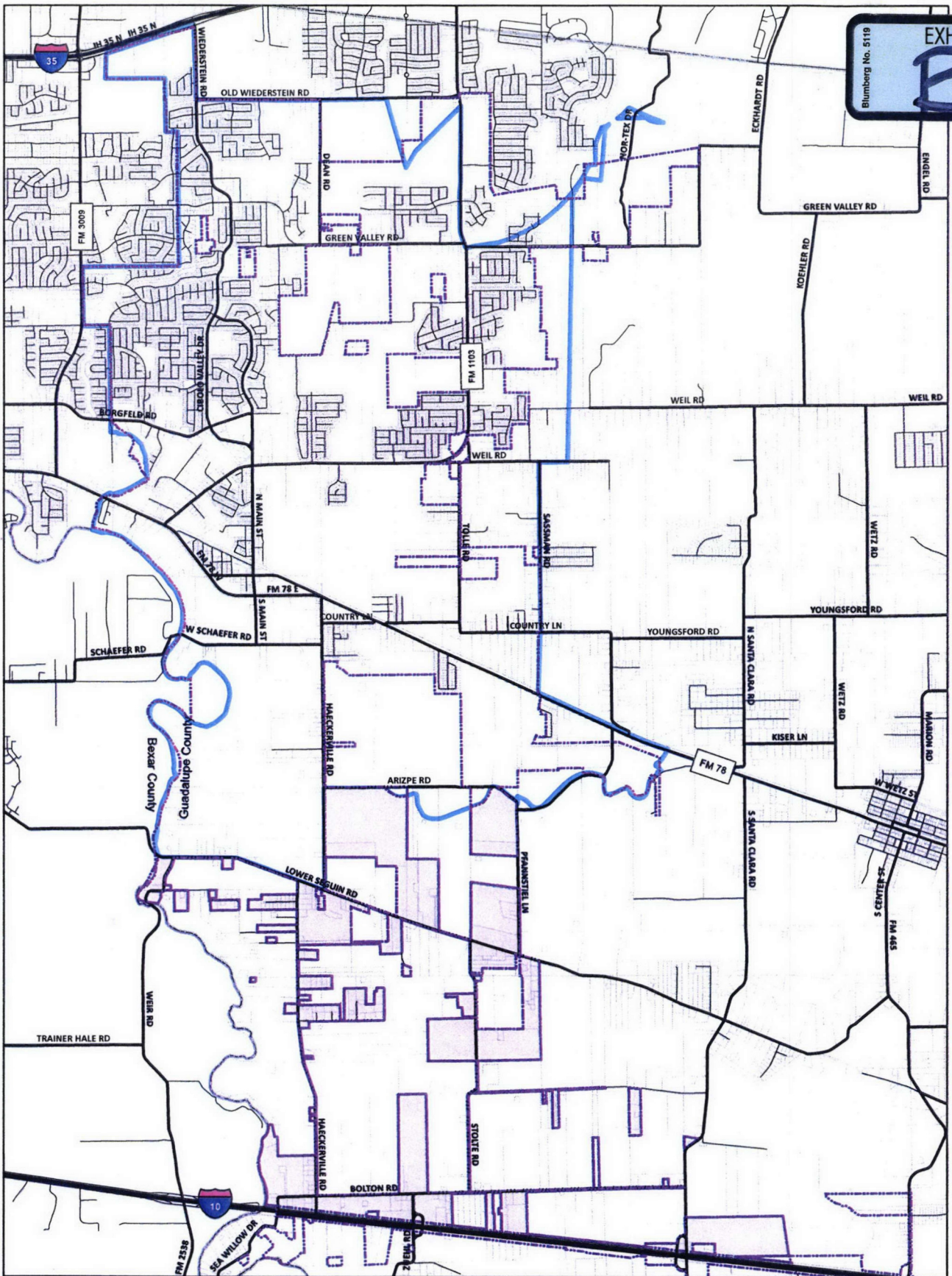

Geoffrey P. Kirshbaum



Blumberg No. 5119

EXHIBIT

B



City of Cibolo Proposed Wastewater CCN Boundaries

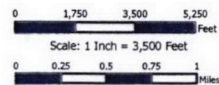
Requested Decertification from
Green Valley SUD Sanitary Sewer CCN
March 7, 2016

City of Cibolo
200 S. Main Street, Cibolo, Texas 78108
210-658-9900 Ext. 3139



Information about the City of Cibolo's Geographic Database and Maps:
The information used in these applications were derived from digital databases in the Cibolo GIS. Although we strive to provide the best data we can, we sometimes use data developed by sources outside the City. Therefore, the City of Cibolo cannot accept any responsibility for any errors, omissions, or positional accuracy, and therefore, there are no warranties which accompany this product. Although information from Land Surveys may have been used in the creation of this product, in no way does this product represent or constitute a Land Survey. Users of the information displayed in this map service are strongly cautioned to verify all information before making any decisions.

GIS Standard Map Disclaimer:
This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.



EXPLANATION	
	Cibolo City Limits
	City of Cibolo Requested Decertification from GVSUD Sanitary Sewer CCN
	Current City Cibolo Sewer Service Area