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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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BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

**GREEN VALLEY'S REPLY BRIEF ON
CONTESTED SECOND PHASE HEARING ISSUES**

COMES NOW Green Valley Special Utility District ("Green Valley" or "GVSUD") and submits this Reply Brief on Contested Second Phase Issues. Pursuant to SOAH Order No. 13, this Reply Brief is timely filed.¹ In support Green Valley shows as follows:

I. SUMMARY OF ARGUMENT

The City of Cibolo's ("Cibolo" or the "City") Initial Brief arguments affirm Green Valley's contention that the identical maps accompanying both the City's 180-day notice of intent to decertify a portion of Green Valley's certificated sewer service area and the City's Application were defective. Similarly, Cibolo's Initial Brief actually confirms, rather than controverts, the fact that Cibolo currently has outstanding active violations of the Texas Commission on Environmental Quality ("TCEQ") minimum public drinking water system standards. Both sets of facts are grounds for Application rejection and denial.

¹ SOAH Order No. 13 Granting Motion for Extension of Deadlines (Sep. 11, 2017).

II. ARGUMENT

A. Cibolo's Arguments Bolster Green Valley's Position that Cibolo's 180-Day and Application Notice Maps were Inadequate to Provide Proper Notice (Preliminary Order Issue Nos. 2 and 4).

The City of Cibolo ("Cibolo" or the "City") has correctly stated Green Valley's position regarding the adequacy of the maps accompanying both its pre-Application 180-day notice and Application correspondence: "the map attached to the Notice...identified not just tracts that the City sought by this single certification that have already been annexed or incorporated, but also tracts that are subject to annexation in the foreseeable future."² Rather than disagreeing with Green Valley's fundamental position that Cibolo's maps were not limited to depicting the specific tracts Cibolo sought (and still seeks) to decertify, Cibolo concedes this point while attempting to justify its non-specific maps through its additional actions and narrative explanations Cibolo claims were undertaken to clarify its intent for Green Valley.³

Why were all those explanations required? The answer is because the maps are defective on their face. Contrary to Cibolo's assertion that it has gone "above and beyond" to respond to Green Valley requests for clarification of Cibolo's notice maps, the fact is that for two years Cibolo has failed to provide adequate written notice to Green Valley or the Commission of its Application intent via a proper map that specifically identifies *only* the areas subject to the City's requested single certification.

In its Initial Brief, Cibolo directly acknowledges that it referenced other tracts on its maps, but then astonishingly attempts to justify its actions by arguing that its maps *intentionally* included other areas not subject to its requested certification just in case Green Valley may "want to transfer

² Cibolo Initial Brief at 8.

³ *Id.* at 6-9.

other areas.”⁴ Cibolo claims this is “contemplated by TWC §§ 13.255(a) and 13.2551(a).”⁵ Neither of those claims is true.

TWC § 13.255(a) only contemplates negotiations over “all or part” of annexed areas.⁶ Additional areas, such as non-annexed areas, are not contemplated by TWC § 13.255(a).⁷ Similarly, TWC § 13.2551(a) has no application here.⁸ That statutory provision states as follows:

(a) As a condition to decertification or single certification under Section 13.254 or 13.255, and *on request by an affected retail public utility*, the utility commission may order: (1) the retail public utility seeking to provide service to a decertified area to serve *the entire service area* of the retail public utility that is being decertified; and (2) the transfer of *the entire certificate of public convenience and necessity* of a partially decertified retail public utility to the retail public utility seeking to provide service to the decertified area.⁹

By its plain words, this provision is only applicable when a retail public utility such as Green Valley *requests* that the utility seeking decertification take over its *entire service area* and *transfer its entire CCN*. That type of complete takeover of Green Valley’s sewer CCN service area is not contemplated in Cibolo’s defective maps describing the “City of Cibolo Requested Decertification from GVSUD Sanitary Sewer” nor has Cibolo ever raised such a notion as a possibility.¹⁰ Yet, it seems the City is actually trying to justify its inaccurate and misleading maps on the basis that it simply thought, perhaps, Green Valley might just want to voluntarily hand over its entire 76,000 acres sewer CCN area to Cibolo.¹¹ This facially-absurd *post-hoc* justification must be rejected.

⁴ *Id.* at 9.

⁵ *Id.*

⁶ TWC § 13.255(a).

⁷ *Id.*

⁸ TWC § 13.2551(a).

⁹ *Id.* (emphasis added).

¹⁰ See map, Cibolo Ex. 1 at Attachment B; Cibolo Initial Brief at Attachment A, page 2 of 3.

¹¹ Presumably, by now, all are aware that Green Valley would strongly object to such a proposal.

Cibolo should be required to restart its application process by providing a correct, accurate notice of intent. Upon the expiration of 180 days, Cibolo should be required to comply with the 16 TAC § 24.120(e)(2)(I) mandate that “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.” Until Cibolo takes these actions, its Application should be rejected as administratively incomplete.

With respect to Cibolo’s 180-day notice letter, Commission Staff takes the position that Cibolo’s verbal description of the decertification area should be deemed sufficient to overcome any inaccuracies in the map, and, inexplicably, that the burden was on Green Valley to make further inquiries about the map.¹² First, Cibolo bears the burden of proof in this proceeding to show compliance with applicable Commission standards,¹³ which includes providing a 180-day notice of “its intent to provide service to *the* incorporated or annexed area.”¹⁴ The ALJ should reject Staff’s attempt to shift the burden from the applicant. Second, Staff is incorrect on the merits of its assertion that Green Valley did not “request clarification” from Cibolo.¹⁵ As noted in Cibolo’s Initial Brief, Green Valley sent letters to Cibolo seeking clarification as early as September 1, 2015.¹⁶

¹² Staff Initial Brief at 5-6.

¹³ SOAH Order No. 2 (Aug. 19, 2016) at 1 (assigning “the burden of proof in both stages of this case to the City, because it is the applicant in this proceeding.”).

¹⁴ TWC § 13.255(b) (emphasis added).

¹⁵ Staff Initial Brief at 5-6.

¹⁶ See Cibolo Initial Brief at 8.

Regarding the Application notice, Staff asserts that “GVSUD has not challenged the adequacy of this notice.”¹⁷ That is false and Green Valley has repeatedly raised this issue throughout this proceeding without receiving a ruling on the merits.¹⁸

Green Valley does not know precisely why Cibolo has refused to refine the maps of its requested areas in this proceeding to eliminate areas it does not seek to certify. This seems like an issue the City could have easily corrected many months ago. Regardless, the fact remains that Cibolo has yet to provide a map detailing precisely the areas the City seeks to decertify without extraneous “decertification” areas. This is an essential part of valid TWC § 13.255 notices and applications without which the Application should be rejected or denied.

B. Cibolo Has Failed to Satisfy its Burden of Proof of Compliance with the TCEQ Minimum Public Drinking Water System Standards.

Cibolo acknowledges in its Initial Brief that “[a] review of TCEQ’s records indicate that there are currently three moderate outstanding notices of violation (‘NOVs’) relating to the City’s drinking water system.”¹⁹ While Cibolo asserts that the issues have been resolved and submitted some TCEQ communications with its Initial Brief related to same, those communications do not indicate that TCEQ considers the current violations resolved. As shown in Exhibit A to Green Valley’s Initial Brief and confirmed in Cibolo’s Initial Brief at Attachment E, the TCEQ Central Registry database still reflects outstanding active Notice of Violations.²⁰ The classification of those violations is irrelevant. The City’s past history of compliance is irrelevant. To date, Cibolo has not demonstrated fulfillment of the TWC § 13.255(m) mandate that the City’s water system

¹⁷ Staff Initial Brief at 6.

¹⁸ See Green Valley’s Plea to Jurisdiction and Motion to Dismiss with Debt Information Listing (Apr. 29, 2016) at 1; Green Valley’s Consolidated Reply to Response to its Plea to the Jurisdiction and Motion to Dismiss (May 26, 2016) at 2-4; Green Valley’s Response to Commission Staff’s Recommendation on Administrative Completeness (Aug. 31, 2017) at 1-4.

¹⁹ Cibolo Initial Brief at 13.

²⁰ Green Valley Initial Brief at **Exhibit A**; Cibolo Initial Brief at Attachment E, p. 5 of 23.

be in compliance with the TCEQ's "minimum requirements for public drinking water systems" according to TCEQ as a condition for the Public Utility Commission of Texas ("PUCT") granting the Application.²¹ Accordingly, the plain language of TWC § 13.255(m) requires denial of Cibolo's Application.²²

Finally, Staff's Initial Brief on this issue consists solely of the declarative statement that "Cibolo has demonstrated compliance with the Commission's minimum requirements for public drinking water systems pursuant to TWC § 13.255(m)."²³ Staff cites no authority, no record evidence, and provides no reasoning for its conclusion. Staff's apparent belief that the PUCT has the authority to determine Cibolo's compliance is also troubling. As Green Valley explained in its Initial Brief, the authority to determine compliance with TCEQ minimum drinking water standards lies with TCEQ and not the PUCT.²⁴ The only official TCEQ indication of compliance or noncompliance with TCEQ drinking water standards documented by Cibolo indicates current unresolved violations for the City of Cibolo public-drinking-water system.²⁵

III. CONCLUSION

For the reasons set out above, Green Valley respectfully requests that the Honorable Administrative Law Judge issue a Proposal for Decision on Second Phase issues recommending that Cibolo's Application be rejected as administratively incomplete and/or denied because: (1) Cibolo's 180-day notice of intent and notice of application are inadequate, precluding the Application from being found administratively incomplete and, therefore, not even "filed"; and (2)

²¹ TWC § 13.255(m) ("The utility commission *shall deny* an application for single certification by a municipality that fails to demonstrate compliance with the commission's minimum requirements for public drinking water systems.") (emphasis added).

²² *Id.*

²³ Staff Initial Brief at 6.

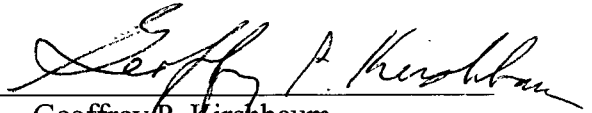
²⁴ Green Valley Initial Brief at 3-4.

²⁵ *Id.* at Exhibit A and Cibolo Initial Brief at Attachment E, page 5 of 23.

Cibolo has failed to meet its burden of proof to establish that it is in compliance with the TCEQ state minimum requirements for public-drinking-water systems. Green Valley SUD further requests that it be granted all other relief to which it is justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby CERTIFY that on September 29, 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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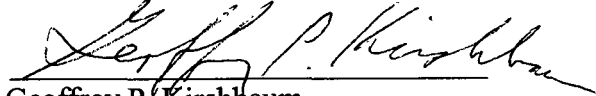
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