



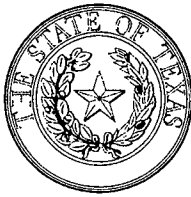
Control Number: 45702



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# State Office of Administrative Hearings



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Lesli G. Ginn  
Chief Administrative Law Judge

November 21, 2017

**TO:** Stephen Journeay, Director  
Commission Advising and Docket Management  
William B. Travis State Office Building  
1701 N. Congress, 7th Floor  
Austin, Texas 78701

**VIA EMAIL**

**RE:** SOAH Docket No. 473-16-5296.WS  
PUC Docket No. 45702

*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*

Enclosed is the Proposal for Decision-Phase 2 (PFD) in the above-referenced case. By copy of this letter, the parties to this proceeding are being served with the PFD.

Please place this case on an open meeting agenda for the Commissioners' consideration. There is no deadline, but in its Supplemental Preliminary Order the Commission previously requested that the case be expedited to the extent possible. Please notify me and the parties of the open meeting date, as well as the deadlines for filing exceptions to the PFD, replies to the exceptions, and requests for oral argument.

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth Drews".

Elizabeth Drews  
Administrative Law Judge

Enclosure

xc: All Parties of Record

170



Year	United States (%)	Japan (%)	Germany (%)
1950	7	7	15
1960	8	8	16
1970	9	10	17
1980	10	13	17
1990	11	16	17
2000	12	18	17
2010	13	19	17
2020	14	20	17
2030	14	20	18
2040	15	20	18
2050	15	20	18

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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

## PROPOSAL FOR DECISION—PHASE 2

### I. PROCEDURAL HISTORY AND JURISDICTION

On March 8, 2016, pursuant to Texas Water Code § 13.255, the City of Cibolo (Cibolo) filed an application with the Public Utility Commission of Texas (Commission). The application requested single certification of an area (decertification area) within Cibolo's incorporated area in Guadalupe County and decertification of Green Valley Special Utility District (Green Valley) from the decertification area. The certificates of convenience and necessity (CCNs) at issue are for retail sewer service. Green Valley opposes Cibolo's application; Staff does not oppose it.

On July 26, 2016, the Commission referred this case to the State Office of Administrative Hearings (SOAH) to conduct a hearing and issue a proposal for decision (PFD).

SOAH Order No. 2, issued August 19, 2016, assigned the burden of proof to Cibolo.

Pursuant to Commission and SOAH orders, this case was processed in two phases.<sup>1</sup> After an evidentiary hearing on the Phase 1 issues, on April 28, 2017, the Administrative Law Judge (ALJ) issued a PFD. The Phase 1 PFD recommended the Commission find that the decertification would not render any Green Valley property useless or valueless to Green Valley, that Cibolo was not requesting transfer of any Green Valley property to Cibolo, and that no additional appraisals are necessary. In its Interim Order, issued June 29, 2017, the Commission

<sup>1</sup> The Phase 1 issues are issues 9-11 in the Commission's Supplemental Preliminary Order (July 20, 2016). The Phase 2 issues are issues 1-8 in the Commission's Preliminary Order (July 1, 2016).

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

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

**PROPOSAL FOR DECISION—PHASE 2**

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adopted the Phase 1 PFD with minor changes and referred the remaining issues (Phase 2 issues) to SOAH. This PFD supplements the Phase 1 PFD.

On August 9, 2017, Green Valley filed a Supplemental Plea to the Jurisdiction, Motion to Dismiss, and in the Alternative, Motion to Abate. At the August 10, 2017 prehearing conference, the parties waived any further evidentiary hearing and agreed to the Phase 2 issues being determined after filing of briefs and stipulations about those issues. On August 14, 2017, the ALJ issued SOAH Order No. 12, stating the agreed filing deadlines and denying the motion because it raised issues the Commission had addressed in its Preliminary Order and did not refer to SOAH. Green Valley appealed the ALJ's denial of the motion. In an August 31, 2017 notice, the Commission informed the parties it would not hear Green Valley's appeal.

On September 15, 2017, Cibolo, Green Valley, and Staff filed stipulations regarding the Phase 2 issues (stipulations).<sup>2</sup> As the stipulations indicate, for purposes of this PFD, four Phase 2 issues are contested and the rest have been resolved.

SOAH Order No. 14, issued September 27, 2017, asked the parties to clarify whether they agreed to the ALJ admitting in evidence or taking official notice of documents included or referenced in the parties' Phase 2 filings but not yet part of the evidentiary record. The parties reached agreements on those matters, which were described in an October 4, 2017 joint response. Based on that response, SOAH Order No. 15, issued October 9, 2017, clarified that evidence admitted at the Phase 1 hearing is also evidence for purposes of Phase 2, admitted additional exhibits in evidence, and took official notice of certain documents and uncontested facts.<sup>3</sup> The record in this case closed when the joint response was filed on October 4, 2017.

The Commission has jurisdiction over this proceeding pursuant to Texas Water Code chapter 13. SOAH has jurisdiction over matters relating to the conduct of the hearing and issuance of the PFD pursuant to Texas Government Code § 2003.049.

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<sup>2</sup> Joint Agreed Stipulations Concerning Remaining Referred Issues (Sep. 15, 2017). References to stipulations in this PFD refer to the Phase 2 stipulations.

<sup>3</sup> SOAH Order No. 15 (Oct. 9, 2017).

## II. SUMMARY OF ALJ'S RECOMMENDATIONS ON PHASE 2 ISSUES

The ALJ's recommendations are consistent with the stipulations on the resolved Phase 2 issues, and the ALJ finds in Cibolo's favor on the contested Phase 2 issues.

In summary, regarding contested issues 2-5, the ALJ concludes that:

2. On August 18, 2015, Cibolo provided to Green Valley written notice of Cibolo's intent to provide service to the decertification area (notice of intent) in compliance with Texas Water Code § 13.255(b) and 16 Texas Administrative Code § 24.120(b).<sup>4</sup>
3. As required in Texas Water Code § 13.255(c) and 16 Texas Administrative Code § 24.120(c), Cibolo waited more than 180 days after providing its August 18, 2015 notice of intent to Green Valley before Cibolo filed the application with the Commission on March 8, 2016.
4. The application is administratively complete as required in 16 Texas Administrative Code § 24.8.
5. As required by Texas Water Code § 13.255(m) and 16 Texas Administrative Code § 24.120(n), Cibolo demonstrated that its public drinking water systems comply with the Texas Commission on Environmental Quality's (TCEQ's) minimum requirements for public drinking water systems.

## III. RESOLVED ISSUES 1, 4a, 4b, AND 6-8

In this PFD, "resolved" means the issue either was determined in the Commission's Interim Order or has been agreed to by the parties. The resolved Phase 2 issues (in boldface) and stipulations regarding them are set out below.<sup>5</sup> Those issues are further addressed only in the Findings of Fact and Conclusions of Law, which are consistent with the stipulations.

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<sup>4</sup> Unless expressly stated otherwise, references in this PFD to 16 Texas Administrative Code (TAC) § 24.120 are to the version in effect on March 8, 2016, when Cibolo filed its application.

<sup>5</sup> In the PFD's lists of contested and resolved Phase 2 issues (Preliminary Order issues 1-8) and stipulations, the ALJ made non-substantive changes to conform to abbreviations and style used in the PFD, omit redundant words, and state the stipulated facts but omit references to documents attached to the stipulations.

1. **Is the area for which Cibolo seeks single certification currently within Green Valley's certificated service area?**

STIPULATION: The area for which Cibolo seeks single sewer certification in the application is currently within the boundaries of Green Valley's sewer CCN No. 20973, a retail public utility.

4. *[Note: issue 4 is contested and is discussed later in the PFD; issues 4a and 4b are resolved.]*

- a. **Has Cibolo demonstrated that no Green Valley facilities will be rendered useless or valueless to Green Valley? Texas Water Code § 13.255(c) and 16 Texas Administrative Code § 24.120(c). If not, has Cibolo included in its application all appraisals required under Texas Water Code § 13.255(l) and 16 Texas Administrative Code § 24.120(m)?**
- b. **Is Cibolo requesting the transfer of specified property of Green Valley? Texas Water Code § 13.255(c) and 16 Texas Administrative Code § 24.120(c). If so, has Cibolo included in its application all appraisals required under Texas Water Code § 13.255(l) and 16 Texas Administrative Code § 24.120(m)?**

STIPULATION: The Commission already determined issues 4a and 4b in its Interim Order, dated June 29, 2017, concerning Supplemental Preliminary Order issues 9-11.

6. **Has Green Valley submitted to the Commission a written list with the names and addresses of any lienholders and the amount of Green Valley's debt, if any? 16 Texas Administrative Code § 24.120(b)(1).**

STIPULATION: Green Valley has submitted to the Commission a written list with the names and addresses of any lienholders and the amount of Green Valley's debt on April 29, 2016.

7. **If any lienholders exist, has Green Valley notified the lienholder of this decertification process consistent with 16 Texas Administrative Code § 24.120(b)(2)?**

STIPULATION: Green Valley notified the lienholders of this decertification process consistent with 16 Texas Administrative Code § 24.120(b)(2).



8. **What is the adequate and just compensation to be paid to Green Valley for any of its facilities that will be useless or valueless to it or that Cibolo requests be transferred? Texas Water Code §§ 13.255(c), (g), (g-1), and (l) and 16 Texas Administrative Code § 24.120(c), (g), (h), and (m).**

STIPULATION: The Commission's determinations concerning Supplemental Preliminary Order issues 9-11 in its Interim Order, dated June 29, 2017, render issue 8 moot.

**IV. CONTESTED ISSUES NOS. 2-4: SUFFICIENCY OF NOTICE OF INTENT, TIMING OF APPLICATION FILING, AND ADMINISTRATIVE COMPLETENESS**

Contested issues 2-4 and the stipulations regarding them are set forth below:

2. **If the area for which Cibolo seeks single certification is currently within Green Valley's certificated service area, did Cibolo provide written notice to Green Valley of Cibolo's intent to provide service to the area for which Cibolo seeks certification? Texas Water Code § 13.255(b) and 16 Texas Administrative Code § 24.120(b).**

STIPULATION: Cibolo did provide a written notice letter to Green Valley on August 18, 2015, of Cibolo's intent to provide service. While Cibolo and Staff contend that such notice letter demonstrated Cibolo's intent to provide sewer service to the area for which Cibolo seeks certification in this application, the Parties cannot stipulate to such contention.

3. **If so, did Cibolo wait more than 180 days after providing the written notice before Cibolo filed its application with the Commission? Texas Water Code § 13.255(c) and 16 Texas Administrative Code § 24.120(c).**

STIPULATION: Cibolo waited more than 180 days after providing a written notice letter to Green Valley on August 18, 2015, before Cibolo submitted the application to the Commission. Cibolo submitted its application to the Commission on March 8, 2016. The start date of the 180 days will be determined by the outcome of the subsequent briefing on issue 2.

**4. Is Cibolo's application administratively complete pursuant to 16 Texas Administrative Code § 24.8?**

STIPULATION: Staff recommended the application be deemed administratively complete pursuant to 16 Texas Administrative Code § 24.8 on August 24, 2017. While Cibolo and Staff contend that Cibolo's application should be deemed administratively complete pursuant to 16 Texas Administrative Code § 24.8, Green Valley disagrees.

Green Valley's position that Cibolo did not meet the requirements referenced in issues 3 and 4 depends on Green Valley's position regarding issue 2 that the August 18, 2015 notice of intent Cibolo provided to Green Valley was defective. Green Valley argues that Cibolo therefore did not wait 180 days after providing the required notice of intent before filing its application with the Commission and that the application was not administratively complete. Cibolo and Staff contend the August 18, 2015 notice of intent to Green Valley was sufficient, Cibolo filed its application more than 180 days after that notice, and the application was administratively complete. As discussed below, regarding issues 2-4, the ALJ agrees with Cibolo and Staff.

**A. Issue 2: Sufficiency of the Notice of Intent**

Cibolo and Staff argue Cibolo's August 18, 2015 notice of intent was sufficient.<sup>6</sup> The notice of intent comprises a cover letter and attached map and metes and bounds description.

The cover letter states:

In accordance with Texas Water Code § 13.255, the City hereby provides Green Valley SUD with notice that the City intends to provide retail sewer service to the areas within its corporate limits that overlap with Green Valley SUD's sewer CCN service area ("*Transition Areas*"), which are more specifically depicted in light blue on the attached map, attached hereto as Attachment A. The yellow areas on Attachment A are additional tracts that are currently subject to

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<sup>6</sup> Because Texas Water Code (TWC) § 13.255(b) required Cibolo to provide Green Valley the notice of intent at least 180 days before filing its application, Cibolo cannot satisfy the requirements raised in issues 2-3 with documents it supplied to Green Valley later than that. Because only the August 18, 2015 notice of intent was submitted to Green Valley at least 180 days before the application was filed, it is the only document the ALJ considered regarding issues 2-3.

annexation agreements with the City, and the City anticipates annexing these tracts in the near future. For your convenience, attached hereto as Attachment B, are field notes for the entire light blue and yellow shaded areas, which are bounded on the south by U.S. Interstate Highway 10, on the west by Cibolo Creek, on the north by Lower Seguin Road, Haeckerville Road, and Arizpe Road; and on the east by the Court Decreed ETJ [extra-territorial jurisdiction] Boundary of the City and the City of Marion, as well as the boundaries of GCAD Parcel Nos. 70979 and 71064.<sup>7</sup>

Texas Water Code § 13.255(b) states:

If an agreement is not executed within 180 days after the municipality, in writing, **notifies the retail public utility of its intent to provide service to the incorporated or annexed area**, and if the municipality desires and intends to provide retail utility service to the area, the municipality, prior to providing service to the area, shall file an application with the utility commission to grant single certification to the municipally owned water or sewer utility or to a franchised utility. . . .<sup>8</sup>

When the notice of intent was issued, the pertinent part of 16 Texas Administrative Code § 24.120(b) was identical to Texas Water Code § 13.255(b).<sup>9</sup> Thus, the required content of the notice of intent was minimal: “intent to provide service to the incorporated or annexed area.”

The August 18, 2015 notice of intent met that standard. It described in three ways the area Cibolo requested and intended to serve: (1) an area that overlapped Cibolo’s corporate limits and the certificated service area for Green Valley’s sewer CCN No. 20973; (2) an area generally bounded by identified legal boundaries, identified roads, and an identified creek, and further described by an attached metes and bounds description; and (3) “more specifically,” the area shaded in light blue on the attached map.

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<sup>7</sup> Joint Ex 1, att. A at 1 (emphasis in original). The letter defines “the City” as Cibolo. The notice of intent is Joint Exhibit 1.

<sup>8</sup> Emphasis added. The current version of 16 TAC § 120 did not take effect until May 28, 2017. 16 TAC § 24.120, *adopted* 42 Tex. Reg. 2703 (May 19, 2017) (eff. May 28, 2017). Because its requirements apply only prospectively, they do not apply to Cibolo’s notice of intent and application. Tex. Gov’t Code ch. 311 (Code Construction Act) §§ 311.002, .022, .031(a)(1)-(2); TWC § 1.002(a) (applicability of the Code Construction Act).

<sup>9</sup> Compare TWC § 13.255(b) with 16 TAC § 24.120(b) *adopted* 39 Tex. Reg. 5903 (Aug. 1, 2014) (eff. Sep. 1, 2014).

Green Valley argues Cibolo improperly included both annexed and non-annexed tracts in its notice of intent, rendering that notice defective. In the notice of intent letter and attached map, Cibolo identified additional tracts of land that were subject to annexation agreements and that Cibolo anticipated annexing in the future. The letter said those additional tracts of land were shown in yellow on the attached map. The letter clearly stated, however, that the areas for which Cibolo was providing that notice of intent, relating to Cibolo's current request for single certification of Cibolo and decertification of Green Valley, were the areas "more specifically depicted in light blue on the attached map."<sup>10</sup> Neither Texas Water Code § 13.255 nor 16 Texas Administrative Code § 24.120 prohibited Cibolo from providing additional information with the notice of intent. That additional information did not render the notice of intent confusing or defective.

**B. Issue 3: 180-Day Waiting Period between Notice of Intent and Filing of Application**

As stated above, Texas Water Code § 13.255(b) required Cibolo to wait 180 days after providing Green Valley its notice of intent before Cibolo filed its application with the Commission. Based on its position that the August 18, 2015 notice of intent was defective, Green Valley contends Cibolo did not wait 180 days after sending the required notice before filing the application. Cibolo and Staff disagree.

As discussed above, the August 18, 2015 notice of intent was not defective. As the parties stipulated, Cibolo filed its application on March 8, 2016, more than 180 days after providing Green Valley that notice of intent. Regarding issue 3, therefore, Cibolo complied with Texas Water Code § 13.255(b) and 16 Texas Administrative Code § 24.120(b).

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<sup>10</sup> Joint Ex. 1, att. A at 1-2.

**C. Issue 4: Administrative Completeness of the Application under 16 Texas Administrative Code § 24.8**

In pertinent part, 16 Texas Administrative Code § 24.8 states:

- (b) If the commission determines that any deficiencies exist in an application, statement of intent, or other requests for commission action addressed by this chapter, the application or filing may be rejected and the effective date suspended, as applicable, until the deficiencies are corrected.

...

- (d) Applications under subchapter G of chapter 24 [concerning water and sewer CCNs] are not considered filed until the commission makes a determination that the application is administratively complete.

On April 12, 2016, a Commission ALJ ordered Cibolo to provide notice of its application to Green Valley, as Staff had recommended, and to file proof of service on or before May 11, 2016.<sup>11</sup> On April 13, 2016, Cibolo filed that proof of service.<sup>12</sup>

Cibolo and Staff argue the application and notice to Green Valley of the application were sufficient, for the same reasons as regarding issue 2. Green Valley argues the application was not administratively complete under 16 Texas Administrative Code § 24.8 because the application and the notice to Green Valley of the application contained the same map as that

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<sup>11</sup> Order No. 2 (Apr. 12, 2016).

<sup>12</sup> The documents that, as agreed by the parties, were officially noticed in SOAH Order No. 15 included:

- Cibolo's April 13, 2016 filing providing such proof of service to Green Valley and attaching Cibolo's April 12, 2016 cover letter to Green Valley with the attached application;
- Staff's August 24, 2017 recommendation that Cibolo's application be found to be administratively complete and that Cibolo's notice of intent to Green Valley and notice to Green Valley of the application be found sufficient; and
- Green Valley's August 31, 2017 response to the above Staff recommendation.

Regarding the first bullet above, the cover letter states that the copy of the application served on Green Valley was file-stamped. The ALJ infers that the copy served on Green Valley included a color copy of the map attached to the notice of intent (which was an attachment to the application), because the copies in evidence of the map attached to the notice of intent and to the application are in color. See Joint Ex. 1, att. A at 2 (color map); Cibolo Ex. 1 (Klein direct) at 42-44 (ex. B (application), att. A (notice of intent) at 2 (color map)).

attached to Cibolo's notice of intent, which Green Valley argues was confusing and defective.<sup>13</sup> As discussed above, however, that the map contained additional, unrequired, clear information about tracts Cibolo plans to annex in the future did not render the map insufficient or confusing. The ALJ concludes the application was administratively complete under § 24.8.

## V. CONTESTED ISSUE 5: PUBLIC DRINKING WATER SYSTEM COMPLIANCE

Contested issue 5 and the stipulations regarding it are set forth below:

5. **Has Cibolo demonstrated that its public drinking water systems comply with the Texas Commission on Environmental Quality's (TCEQ) minimum requirements for public drinking water systems? Texas Water Code § 13.255(m) and 16 Texas Administrative Code § 24.120(n).**

STIPULATION: The Parties cannot stipulate that Cibolo has demonstrated that its public drinking water systems comply with TCEQ's minimum requirements for a public drinking water system.

Cibolo and Staff argue Cibolo has demonstrated that its public drinking water systems comply with TCEQ's minimum requirements for public drinking water systems. Green Valley disagrees. The ALJ finds Cibolo made the required showing.

As agreed by the parties, in SOAH Order No. 15 the ALJ took official notice of the following uncontested facts relating to issue 5:<sup>14</sup>

- TCEQ has granted Cibolo Public Drinking Water System No. TX0940018.
- As of September 29, 2017, TCEQ's online records indicated Cibolo has a satisfactory compliance history rating.
- TCEQ's online records indicated Cibolo's public drinking water system has been determined to be a "superior water system."

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<sup>13</sup> The entire notice of intent (including the cover letter and attached map) was attached to the application. See Cibolo Ex. 1 (Klein direct) at 42-44 (ex. B (application), att. A (notice of intent)).

<sup>14</sup> The PFD lists the facts officially noticed in SOAH Order No. 15 without the URLs for the referenced TCEQ website documents, which were also officially noticed in that order.

- As of September 22, 2017, the TCEQ website indicated Cibolo’s public drinking water system had three active violations.
- As of September 29, 2017, TCEQ’s online records indicated Cibolo’s public drinking water system had no active violations.

The applicable statutory and rule provisions relating to issue 5 differ. Texas Water Code § 13.255(m) requires the Commission to “deny an application for single certification by a municipality that **fails to demonstrate compliance with [TCEQ’s] minimum requirements** for public drinking water systems.” (emphasis added). The version of 16 Texas Administrative Code § 24.120(n) in effect when the application was filed required the Commission to “deny an application for single certification by a municipality that **fails to obtain a finding from TCEQ that it is [sic] will demonstrate compliance with the TCEQ’s minimum requirements** for public drinking water systems, pursuant to 30 Texas Administrative Code Chapter 290, Subchapter D (relating to Rules and Regulations for Public Water Systems).” (emphasis added). That difference in wording raises the question, what is the TCEQ finding the Commission rule required Cibolo to obtain? For reasons discussed below, the ALJ concludes Cibolo made the required showing.

The parties stipulated TCEQ has determined Cibolo’s public water supply system is a “superior system.” TCEQ’s rules indicate that means TCEQ has determined Cibolo’s public water supply system complies with TCEQ’s minimum requirements. 30 Texas Administrative Code § 290.47(a) appendix A (part of subchapter D) explains:

Requirements. Public water supply systems which achieve and maintain recognition **must exceed the minimum acceptable standards of the commission** [TCEQ] in these sections.

- (1) To attain recognition as a “Superior Public Water System,” the following **additional** requirements must be met: . . .

. . .

Inspections. To receive or maintain recognition as a superior or approved water system, the system must be inspected and evaluated by commission personnel as to physical facilities, appearance and operation. Systems which fail to meet the above requirements in this section will be denied recognition or will have their recognition revoked. . . .<sup>15</sup>

A September 21, 2015 letter from TCEQ to Cibolo states:

As a result of the Texas Commission on Environmental Quality's (TCEQ) recent Comprehensive Investigation (CCI) and review of records concerning the City of Cibolo, it has been determined that the public water system (PWS) meets the TCEQ's Superior Public Water System recognition requirements in accordance with 30 Texas Administrative Code § 290.47.<sup>16</sup>

The ALJ concludes the superior rating of Cibolo's public drinking water system means TCEQ has found that Cibolo's system not only meets, but exceeds, TCEQ's minimum requirements for such systems.

In addition, TCEQ website documents dated June 13, 2016, and July 26, 2016, show that on those dates as well, Cibolo's public drinking water system held a system recognition rating of "superior" and did not have outstanding compliance issues.<sup>17</sup> Moreover, as the parties stipulated, TCEQ's online records for September 29, 2017, indicated that on that date, Cibolo's public drinking water system had a satisfactory compliance history rating and no active violations.

Regarding issue 5, the ALJ concludes Cibolo has made the demonstrations required by Texas Water Code § 13.255(m) and 16 Texas Administrative Code § 24.120(n).

## VI. RECOMMENDATION

The ALJ recommends the Commission adopt the findings of fact and conclusions of law below in addition to those it adopted in its Interim Order. The proposed findings and

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<sup>15</sup> Emphasis added.

<sup>16</sup> Joint Ex. 4 at 269.

<sup>17</sup> Joint Ex. 3 at 203-05; Joint Ex. 4 at 264-66.



conclusions are numbered to fit between those in the Interim Order.<sup>18</sup> Anticipating the Commission will want to adopt in its Final Order ordering paragraphs different from those in the Interim Order, the ALJ also suggests ordering paragraphs below.

## VII. FINDINGS OF FACT

20A. Issues 1 through 8 are:

1. Is the area for which Cibolo seeks single certification currently within the certificated service area of a retail public utility?
2. If so, did Cibolo provide written notice to the retail public utility of Cibolo's intent to provide service to the area for which Cibolo seeks certification? Texas Water Code § 13.255(b) and 16 Texas Administrative Code § 24.120(b).
3. If so, did Cibolo wait more than 180 days after providing the written notice before Cibolo filed its application with the Commission? Texas Water Code § 13.255(c) and 16 Texas Administrative Code § 24.120(c).
4. Is Cibolo's application administratively complete pursuant to 16 Texas Administrative Code § 24.8? In making this determination, the following questions should be addressed:
  - a. Has Cibolo demonstrated that no retail public utility facilities will be rendered useless or valueless to the retail public utility? Texas Water Code § 13.255(c) and 16 Texas Administrative Code § 24.120(c). If not, has Cibolo included in its application all appraisals required under Texas Water Code § 13.255(1) and 16 Texas Administrative Code § 24.120(m)?
  - b. Is Cibolo requesting the transfer of specified property of a retail public utility? Texas Water Code § 13.255(c) and 16 Texas Administrative Code § 24.120(c). If so, has Cibolo included in its application all appraisals required under Texas Water Code § 13.255(1) and 16 Texas Administrative Code § 24.120(m)?
5. Has Cibolo demonstrated that its public drinking water systems comply with TCEQ's minimum requirements for public drinking water systems? Texas Water Code § 13.255(m) and 16 Texas Administrative Code § 24.120(n).

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<sup>18</sup> Because Phase 2 is broader than Phase 1, the ALJ also recommends that in its final order, the Commission change Conclusion of Law No. 2 from the Interim Order to state: "The Commission has jurisdiction and authority over this case under TWC §§ 13.041 and 13.255."

6. Has the retail public utility submitted to the Commission a written list with the names and addresses of any lienholders and the amount of the retail public utility's debt, if any? 16 Texas Administrative Code § 24.120(b)(1).
  7. If any lienholders exist, has the retail public utility notified the lienholders of this decertification process consistent with 16 Texas Administrative Code § 24.120(b)(2)?
  8. What is the adequate and just compensation to be paid to the retail public utility for any of its facilities that will be useless or valueless to it or that Cibolo requests be transferred? Texas Water Code §§ 13.255(c), (g), (g-1), and (1) and 16 Texas Administrative Code § 24.120(c), (g), (h), and (m).
- 35A. On April 28, 2017, the SOAH ALJ issued a proposal for decision in the first phase of the proceeding, addressing issues 9, 10, and 11.
  - 35B. On June 29, 2017, the Commission issued its Interim Order, deciding issues 9, 10, and 11, and referred issues 1-8 to SOAH to address in the second phase of the proceeding.
  - 35C. On August 10, 2017, the SOAH ALJ convened a prehearing conference, at which the parties agreed to stipulate as to issues 1-8 to the extent they could, and to address the remaining contested issues through briefing.
  - 35D. On September 15, 2017, the parties filed agreed stipulations, stipulating as to issues 1, 4a, 4b, 6, 7, and 8. The remaining contested issues were issues 2, 3, 4 (excluding 4a and 4b), and 5.
  - 35E. The parties filed initial briefs on September 22, 2017, and reply briefs on September 29, 2017.
  - 35F. On September 27, 2017, the SOAH ALJ issued SOAH Order No. 14, asking the parties to clarify their intent regarding whether certain documents attached to or referenced in their pleadings regarding issues 1-8 should be included in the evidentiary record.
  - 35G. The record in the second phase closed on October 4, 2017, when the parties filed their joint response to SOAH Order No. 14.
  - 35H. Consistent with the parties' joint response, on October 9, 2017, the SOAH ALJ issued SOAH Order No. 15, admitting certain documents in evidence and officially noticing certain documents and uncontested facts.

**Issue No. 1: Is the Area for which Cibolo Seeks Single Certification Currently within the Certificated Service Area of a Retail Public Utility?**

57. The 1,694-acre area for which Cibolo seeks single certification is within the certificated sewer service area of one retail public utility, Green Valley.

**Issue No. 2: If So, Did Cibolo Provide Written Notice to the Retail Public Utility of Cibolo's Intent to Provide Service to the Area for which Cibolo Seeks Certification?**

58. The notice described in Finding of Fact No. 1 (notice of intent) included a map of the tracts to be decertificated and a general metes and bounds description of the tracts to be decertificated.

59. The notice of intent included a cover letter that stated:

In accordance with Texas Water Code § 13.255, the City [Cibolo] hereby provides Green Valley SUD with notice that the City intends to provide retail sewer service to the areas within its corporate limits that overlap with Green Valley SUD's sewer CCN service area ("**Transition Areas**"), which are more specifically depicted in light blue on the attached map, attached hereto as Attachment A. The yellow areas on Attachment A are additional tracts that are currently subject to annexation agreements with the City, and the City anticipates annexing these tracts in the near future. For your convenience, attached hereto as Attachment B, are field notes for the entire light blue and yellow shaded areas, which are bounded on the south by U.S. Interstate Highway 10, on the west by Cibolo Creek, on the north by Lower Seguin Road, Haeckerville Road, and Arizpe Road; and on the east by the Court Decreed ETJ [extra-territorial jurisdiction] Boundary of the City and the City of Marion, as well as the boundaries of GCAD Parcel Nos. 70979 and 71064.

60. The notice of intent clearly identified the land, which is both within Cibolo's corporate limits and within Green Valley's sewer certificated service area, for which Cibolo intended to request single certification of Cibolo and decertification of Green Valley in the application Cibolo planned to file at the Commission. The land was depicted in light blue on the map included in the notice of intent.

**Issue No. 3: If So, Did Cibolo Wait More than 180 Days after Providing the Notice of Intent before Cibolo Filed Its Application with the Commission?**

61. Cibolo filed its application with the Commission on March 20, 2016, which is more than 180 days after August 18, 2015, when Cibolo provided its notice of intent to Green Valley.

**Issue No. 4: Is Cibolo's Application Administratively Complete pursuant to 16 Texas Administrative Code § 24.8?**

62. Cibolo's application is administratively complete and has no outstanding deficiencies.

**Issue No. 4a: Has Cibolo Demonstrated that No Retail Public Utility Facilities Will Be Rendered Useless or Valueless to the Retail Public Utility? If Not, Has Cibolo Included in its Application All Appraisals Required under Texas Water Code § 13.255(l) and 16 Texas Administrative Code § 24.120(m)?**

63. As discussed in Finding of Fact Nos. 36 to 53D and 55, Cibolo demonstrated that the application will not render any Green Valley facilities useless or valueless to Green Valley and no additional appraisals are required.

**Issue No. 4b: Is Cibolo Requesting the Transfer of Specified Property of a Retail Public Utility? If So, Has Cibolo Included in Its Application All Appraisals Required under Texas Water Code § 13.255(l) and 16 Texas Administrative Code § 24.120(m)?**

64. As discussed in Finding of Fact No. 54, Cibolo is not requesting the transfer of any specified property of Green Valley and no additional appraisals are required.

**Issue No. 5: Has Cibolo Demonstrated that Its Public Drinking Water Systems Comply with TCEQ's Minimum Requirements for Public Drinking Water Systems?**

65. TCEQ has authorized Cibolo to operate a public drinking water system under authorization number TX 0940018, and has not revoked that authorization.
66. TCEQ has no active notices of violations concerning Cibolo's public drinking water system.
67. TCEQ rates the compliance history of Cibolo's public drinking water system as satisfactory.
68. TCEQ has found that Cibolo's public drinking water system is a superior water system.

**Issue No. 6: Has the Retail Public Utility Submitted to the Commission a Written List with the Names and Addresses of any Lienholders and the Amount of the Retail Public Utility's Debt, if Any?**

69. On April 29, 2016, Green Valley submitted to the Commission a written list of the names and addresses of any lienholders and the amount of Green Valley's debt.

**Issue No. 7: If Any Lienholders Exist, Has the Retail Public Utility Notified the Lienholders of this Decertification Process Consistent with 16 Texas Administrative Code § 24.120(b)(2)?**

70. Green Valley notified the lienholders of this decertification process and requested that they provide information to the Commission sufficient to establish the amount of compensation necessary to avoid any impairment of debt allocable to the decertification area.

**Issue No. 8: What Is the Adequate and Just Compensation to be Paid to the Retail Public Utility for Any of Its Facilities that Will be Useless or Valueless to It or that Cibolo Requests Be Transferred?**

71. Because the decertification will not render any Green Valley facilities useless or valueless to Green Valley and Cibolo does not request that any Green Valley facilities be transferred to Cibolo, the amount of adequate and just compensation to be paid to Green Valley is zero.

**VIII. CONCLUSIONS OF LAW**


21. Effective May 28, 2017, 16 Texas Administrative Code § 24.120 was repealed and replaced. 16 Texas Administrative Code § 24.120, *repealed and replaced* 42 Tex. Reg. 2703 (May 19, 2017).
22. A rule adopted under a code is presumed to be prospective in its operation unless expressly made retrospective and does not affect the prior operation of the rule or any prior action taken under it or any validation, cure, right, privilege, obligation, or liability previously acquired, accrued, accorded, or incurred under it. Tex. Gov't Code §§ 311.002, .022, .031(1), (2).
23. The version of 16 Texas Administrative Code § 24.120 in effect when Cibolo filed its application applies in this case. 16 Texas Administrative Code § 24.120, *adopted* 39 Tex. Reg. 5903 (Aug. 1, 2014) (eff. Sep. 1, 2014).
24. The notice of intent Cibolo provided to Green Valley on August 18, 2015, met the requirements of Texas Water Code § 13.255(b) and 16 Texas Administrative Code § 24.120(b).
25. Cibolo waited more than the required 180 days after providing the notice of intent to Green Valley before Cibolo filed its application with the Commission. Texas Water Code § 13.255(c); 16 Texas Administrative Code § 24.120(c).
26. Because the decertification will not render any of Green Valley's property useless or valueless to Green Valley and Cibolo has not requested that any Green Valley property be transferred to Cibolo, no additional appraisals are necessary. Texas Water Code § 13.255(c), (l); 16 Texas Administrative Code § 24.120(c), (m).
27. Because the decertification will not render any of Green Valley's property useless or valueless to Green Valley and Cibolo has not requested that any Green Valley property be transferred to Cibolo, Green Valley is not entitled to any compensation if Cibolo's application is granted. Texas Water Code §§ 13.255(c), (g), (g-1), (1); 16 Texas Administrative Code § 24.120(c), (g), (h), (m).

28. Cibolo's application is administratively complete. 16 Texas Administrative Code § 24.8.
29. As TCEQ has determined, Cibolo's public drinking water system complies with TCEQ's minimum requirements for public drinking water systems. Texas Water Code § 13.255(m); 16 Texas Administrative Code § 24.120(n); 30 Texas Administrative Code chapter 290.
30. Green Valley submitted to the Commission a written list with the names and addresses of any lienholders and the amount of Green Valley's debt, if any. 16 Texas Administrative Code § 24.120(b)(1).
31. Green Valley notified any lienholders of this decertification process consistent with 16 Texas Administrative Code § 24.120(b)(2).
32. Cibolo met its burden to prove its application should be granted. Texas Water Code § 13.255; 16 Texas Administrative Code § 24.120.

#### IX. ORDERING PARAGRAPHS

1. The application of the City of Cibolo is granted.
2. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or specific relief, if not expressly granted, are denied.

**SIGNED November 21, 2017.**

  
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**ELIZABETH DREWS**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

