

Control Number: 45702



Item Number: 186

Addendum StartPage: 0

## Garcia, Desiree

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**From:** Journeay, Stephen  
**Sent:** Wednesday, March 14, 2018 10:05 AM  
**To:** agency\_req\_rep@oag.texas.gov  
**Cc:** Hubenak, Priscilla; Preister, David; Billings-Ray, Kellie (Kellie.Billings-Ray@oag.texas.gov); Secord, Linda; Journeay, Stephen; Garcia, Desiree; Pemberton, Margaret; Commissioners Offices  
**Subject:** Request representation related to PUC Docket No. 45702; Green Valley SUD v. PUC, No. D-1-GN-18-001164  
**Attachments:** 45702\_GreenValley (Cibolo)\_petition and citations.pdf

Mr. Jim Davis, Deputy, Attorney General for Civil Litigation

Re: Green Valley Special Utility District v. PUC, No. D-1-GN-18-001164, 261st District Court, Travis County

Dear Mr. Davis:

The Public Utility Commission of Texas was served with a citation in the above referenced cause number on March 12, 2018. This letter is to request representation by the Attorney General in this matter. A copy of the petition and citation are attached.

This lawsuit relates to 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.

If you need further information, please call me at 512-936-7215

Stephen Journeay, Director

Commission Advising and Docket Management  
Public Utility Commission of Texas

[stephen.journeay@puc.state.tx.us](mailto:stephen.journeay@puc.state.tx.us)  
[stephen.journeay@puc.texas.gov](mailto:stephen.journeay@puc.texas.gov)

(512) 936-7215  
(512) 936-7208 (fax)

C I T A T I O N  
T H E   S T A T E   O F   T E X A S  
C A U S E   N O .   D - 1 - G N - 1 8 - 0 0 1 1 6 4

GREEN VALLEY SPECIAL UTILITY DISTRICT

, Plaintiff

vs.

PUBLIC UTILITY COMMISSION OF TEXAS; DEANN T. WALKER, ARTHUR C. D' ANDREA, and BRANDY MARTY MARQUEZ, in their official capacities as Commissioners of the Public Utility Commission of Texas; BRIAN H. LLOYD, in his official capacity as Executive Director of the Public Utility Commission of Texas, or his successor; and the CITY OF CIBOLO, TEXAS

, Defendant

TO: BRIAN H. LLOYD, EXECUTIVE DIRECTOR OF THE PUBLIC UTILITY COMMISSION  
1701 NORTH CONGRESS AVENUE  
AUSTIN, TEXAS 78701

Defendant, in the above styled and numbered cause:

YOU HAVE BEEN SUED. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 A.M. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

Attached is a copy of the ORIGINAL PETITION of the PLAINTIFF in the above styled and numbered cause, which was filed on MARCH 7, 2018 in the 61ST JUDICIAL DISTRICT COURT of Travis County, Austin, Texas.

ISSUED AND GIVEN UNDER MY HAND AND SEAL of said Court at office. March 09, 2018.

REQUESTED BY:  
PAUL MATTHEWS TERRILL III  
810 W 10TH ST  
AUSTIN, TX 78701 2005  
BUSINESS PHONE: (512) 474-9100 FAX: (512) 474-9888



*Valerie L. Price*  
Valerie L. Price  
Travis County District Clerk  
Travis County Courthouse  
1000 Guadalupe, P.O. Box 679003 (78767)  
Austin, TX 78701

PREPARED BY: JIMENEZ CHLOE

--- -- -- -- -- R E T U R N --- -- -- -- --  
Came to hand on the 12 day of March, 2018 at 11:00 o'clock A M., and  
executed at 1701 North Congress Avenue, Suite 7-110 within the County of  
Travis on the 12 day of March, 2018 at 1:31 o'clock P M.,  
by delivering to the within named BRIAN H. LLOYD, EXECUTIVE DIRECTOR OF PUC, each  
in person, a true copy of this citation together with the PLAINTIFF'S ORIGINAL PETITION  
accompanying pleading, having first attached such copy of such citation to such copy of pleading  
and endorsed on such copy of citation the date of delivery.

Service Fee: \$ \_\_\_\_\_  
*\*PUBLIC UTILITY COMMISSION  
BY DELIVERY TO AND  
ACCEPTED BY TERRILL*

Sworn to and subscribed before me this the \_\_\_\_\_ day of \_\_\_\_\_, 2018  
*Public, Green Assistant*

Sheriff / Constable / Authorized Person

*Paul (EP 01/12/18)*  
*Kevin Burroughs*  
Printed Name of Server

Notary Public, THE STATE OF TEXAS

County, Texas

D-1-GN-18-001164

SERVICE FEE NOT PAID

P01 - 000062463

☒ Original ☐ Service Copy

C I T A T I O N  
T H E   S T A T E   O F   T E X A S  
C A U S E   N O .   D - 1 - G N - 1 8 - 0 0 1 1 6 4

GREEN VALLEY SPECIAL UTILITY DISTRICT

, Plaintiff

vs.  
PUBLIC UTILITY COMMISSION OF TEXAS; DEANN T. WALKER, ARTHUR C. D' ANDREA, and BRANDY MARTY MARQUEZ, in their official capacities as Commissioners of the Public Utility Commission of Texas; BRIAN H. LLOYD, in his official capacity as Executive Director of the Public Utility Commission of Texas, or his successor; and the CITY OF CIBOLO, TEXAS

, Defendant

TO: DEANN T. WALKER, COMMISSIONER OF THE PUBLIC UTILITY COMMISSION  
1701 NORTH CONGRESS AVENUE  
AUSTIN, TEXAS 78701

Defendant, in the above styled and numbered cause:

YOU HAVE BEEN SUED. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 A.M. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

Attached is a copy of the ORIGINAL PETITION of the PLAINTIFF in the above styled and numbered cause, which was filed on MARCH 6, 2018 in the 261ST JUDICIAL DISTRICT COURT of Travis County, Austin, Texas.

ISSUED AND GIVEN UNDER MY HAND AND SEAL of said Court at office. March 09, 2018.

REQUESTED BY:  
PAUL MATTHEWS TERRILL III  
810 W 10TH ST  
AUSTIN, TX 78701-2005  
BUSINESS PHONE: (512) 474-9100 FAX: (512) 474-9888



*[Signature]*  
Valerie L. Price  
Travis County District Clerk  
Travis County Courthouse  
1000 Guadalupe, P.O. Box 679003 (78767)  
Austin, TX 78701

PREPARED BY: JIMENEZ CHLOE

--- -- -- -- -- R E T U R N --- -- -- -- --  
Came to hand on the 12 day of March, 2018 at 11:00 o'clock A M., and  
executed at 1701 North Congress Avenue, Suite 7-110 within the County of  
Travis on the 12 day of March, 2018, at 1:34 o'clock P M.,  
by delivering to the within named DEANN T. WALKER, COMMISSIONER OF THE PUBLIC UTILITY each  
in person, a true copy of this citation together with the PLAINTIFF'S ORIGINAL PETITION  
accompanying pleading, having first attached such copy of such citation to such copy of pleading  
and endorsed on such copy of citation the date of delivery.

Service Fee: \$

Sworn to and subscribed before me this the

day of

*[Signature]*  
Notary Public / Authorized Person

By: Brian (02/07/31/10)

Kevin Blum  
Printed Name of Server

Notary Public, THE STATE OF TEXAS

Travis County, Texas

D-1-GN-18-001164

SERVICE FEE NOT PAID

P01 - 000062460

☐ Original

☐ Service Copy

C I T A T I O N  
T H E   S T A T E   O F   T E X A S  
C A U S E   N O .   D - 1 - G N - 1 8 - 0 0 1 1 6 4

GREEN VALLEY SPECIAL UTILITY DISTRICT

, Plaintiff

vs.

PUBLIC UTILITY COMMISSION OF TEXAS; DEANN T. WALKER, ARTHUR C. D' ANDREA, and BRANDY MARTY MARQUEZ, in their official capacities as Commissioners of the , Defendant  
Public Utility Commission of Texas; BRIAN H. LLOYD, in his official capacity as Executive Director of the Public Utility Commission of Texas, or his successor; and the CITY OF CIBOLO, TEXAS

TO: ARTHUR C. D'ANDREA, COMMISSIONER OF THE PUBLIC UTILITY COMMISSION  
1701 NORTH CONGRESS AVENUE  
AUSTIN, TEXAS 78701

Defendant, in the above styled and numbered cause:

YOU HAVE BEEN SUED. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 A.M. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

Attached is a copy of the ORIGINAL PETITION of the PLAINTIFF in the above styled and numbered cause, which was filed on MARCH 6, 2018 in the 261ST JUDICIAL DISTRICT COURT of Travis County, Austin, Texas.

ISSUED AND GIVEN UNDER MY HAND AND SEAL of said Court at office. March 09, 2018.

REQUESTED BY:  
PAUL MATTHEWS TERRILL III  
810 W 10TH ST  
AUSTIN, TX 78701-2405  
BUSINESS PHONE: 512 474-9100 FAX: 512 474-9888



Verna L. Price  
Travis County District Clerk  
Travis County Courthouse  
1000 Guadalupe, P.O. Box 679003 (78767)  
Austin, TX 78701

PREPARED BY: JIMENEZ CHLOE

R E T U R N

Came to hand on the 12 day of March, 2018 at 11:00 o'clock A M., and executed at 1701 North Congress Avenue, Suite 7-110 within the County of Travis on the 12 day of March, 2018, at 1:34 o'clock P M., by delivering to the within named ARTHUR C. D'ANDREA, Commissioner of the Public each in person, a true copy of this citation together with the PLAINTIFF'S ORIGINAL PETITION accompanying pleading, having first attached such copy of such citation to such copy of pleading and endorsed on such copy of citation the date of delivery.

Service Fee: \$ \_\_\_\_\_

\* UTILITY COMMISSION  
BY RETURN TO AND RECEIVED  
BY TANISHA HARRIS,  
CLERK ASSISTANT

Sworn to and subscribed before me this the \_\_\_\_\_

\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

Sheriff / Constable / Authorized Person

By: Brian (Ex/01/31/18)

Printed Name of Server

Notary Public, THE STATE OF TEXAS

\_\_\_\_\_  
County, Texas

D-1-GN-18-001164

SERVICE FEE NOT PAID

P01 - 000062461

☐ Original

☐ Service Copy

C I T A T I O N  
T H E   S T A T E   O F   T E X A S  
CAUSE NO. D-1-GN-18-001164

GREEN VALLEY SPECIAL UTILITY DISTRICT

, Plaintiff

vs.

PUBLIC UTILITY COMMISSION OF TEXAS; DEANN T. WALKER, ARTHUR C. D' ANDREA, and BRANDY MARTY MARQUEZ, in their official capacities as Commissioners of the Public Utility Commission of Texas; BRIAN H. LLOYD, in his official capacity as Executive Director of the Public Utility Commission of Texas, or his successor; and the CITY OF CIBOLO, TEXAS

, Defendant

TO: PUBLIC UTILITY COMMISSION OF TEXAS  
BY SERVING ITS EXECUTIVE DIRECTOR, BRIAN LLOYD  
1701 NORTH CONGRESS 7TH FLOOR #110  
AUSTIN, TEXAS 78701

Defendant, in the above styled and numbered cause:

YOU HAVE BEEN SUED. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 A.M. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

Attached is a copy of the ORIGINAL PETITION of the PLAINTIFF in the above styled and numbered cause, which was filed on MARCH 6, 2018 in the 261ST JUDICIAL DISTRICT COURT of Travis County, Austin, Texas.

ISSUED AND GIVEN UNDER MY HAND AND SEAL of said Court at office. March 09, 2018.

REQUESTED BY:  
PAUL MATTHEWS TERRILL III  
810 W 10TH ST  
AUSTIN, TX 78701-2005  
BUSINESS PHONE: (512) 474-9100 FAX: (512) 474-9888



*Valerie L. Price*  
Valerie L. Price  
Travis County District Clerk  
Travis County Courthouse  
1000 Guadalupe, P.O. Box 670003 (78787)  
Austin, TX 78701

PREPARED BY: JIMENEZ CHLOE

R E T U R N

Came to hand on the 12 day of March, 2018 at 11:00 o'clock 1 M., and executed at 1701 North Congress Avenue, Suite 7-110 within the County of Dallas on the 12 day of March, 2018, at 11:34 o'clock 1 M., by delivering to the within named PUBLIC UTILITY COMMISSION OF TEXAS BY SERVING TO each in person, a true copy of this citation together with the ORIGINAL PETITION accompanying pleading, having first attached such copy of such citation to such copy of pleading and endorsed on such copy of citation the date of delivery. & ITS EXECUTIVE DIRECTOR.

Service Fee: \$ \_\_\_\_\_

Sworn to and subscribed before me this the Assistant

*Tamara Harris*  
Tamara Harris, Clerk Sheriff / Constable / Authorized Person

By: 18024 (EX-007/31/20)

*Karen Bunofom*  
Printed Name of Server

Notary Public, THE STATE OF TEXAS

Dallas County, Texas

D-1-GN-18-001164

SERVICE FEE NOT PAID

P01 - 000062459

☐ Original

☐ Service Copy

C I T A T I O N  
T H E   S T A T E   O F   T E X A S  
CAUSE NO. D-1-GN-18-001164

GREEN VALLEY SPECIAL UTILITY DISTRICT

, Plaintiff

vs.

PUBLIC UTILITY COMMISSION OF TEXAS; DEANN T. WALKER, ARTHUR C. D' ANDREA, and BRANDY MARTY MARQUEZ, in their official capacities as Commissioners of the Public Utility Commission of Texas; BRIAN H. LLOYD, in his official capacity as Executive Director of the Public Utility Commission of Texas, or his successor; and the CITY OF CIBOLO, TEXAS

, Defendant

TO: BRANDY MARTY MARQUEZ, COMMISSIONER OF THE PUBLIC UTILITY COMMISSION  
1701 NORTH CONGRESS AVENUE  
AUSTIN, TEXAS 78701

Defendant, in the above styled and numbered cause:

YOU HAVE BEEN SUED. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 A.M. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

Attached is a copy of the ORIGINAL PETITION of the PLAINTIFF in the above styled and numbered cause, which was filed on MARCH 6, 2018 in the 261ST JUDICIAL DISTRICT COURT of Travis County, Austin, Texas.

ISSUED AND GIVEN UNDER MY HAND AND SEAL of said Court at office, March 09, 2018.

REQUESTED BY:  
PAUL MATTHEWS TERRILL III  
810 W 10TH ST  
AUSTIN, TX 78701-2005  
BUSINESS PHONE: (512) 474-9100 FAX: (512) 474-9888



*[Signature]*  
Valerie L. Price  
Travis County District Clerk  
Travis County Courthouse  
1000 Guadalupe, P.O. Box 679003 (78767)  
Austin, TX 78701

PREPARED BY: JIMENEZ CHLOE

R E T U R N

Came to hand on the 12 day of March, 2018 at 11:00 o'clock A M., and executed at 1701 North Congress Avenue, Suite 7-110 within the County of Travis on the 12 day of March, 2018, at 1:34 o'clock P M., by delivering to the within named BRANDY MARTY MARQUEZ, COMMISSIONER OF THE P.U.C., each in person, a true copy of this citation together with the PLAINTIFF'S ORIGINAL PETITION accompanying pleading, having first attached such copy of such citation to such copy of pleading and endorsed on such copy of citation the date of delivery.

Service Fee: \$ \_\_\_\_\_

\* PUBLIC UTILITY COMMISSION OF TEXAS  
DELIVERY TO AND ACCEPTANCE

Sworn to and subscribed before me this the \_\_\_\_\_

BY TAMEKA HARRIS,  
Clerk Assistant

Sherriff / Constable / Authorized Person

By: *[Signature]* \_\_\_\_\_

Printed Name of Server

Notary Public, THE STATE OF TEXAS

County, Texas

D-1-GN-18-001164

SERVICE FEE NOT PAID

P01 - 000062462

☐ Original

☐ Service Copy

3/6/2018 5:08 PM

Velva L. Price  
District Clerk  
Travis County  
D-1-GN-18-001164  
Carrisa Escalante

CAUSE NO. **D-1-GN-18-001164**

GREEN VALLEY SPECIAL UTILITY	§	IN THE DISTRICT COURT OF
DISTRICT,	§	
<i>Plaintiff.</i>	§	
	§	
v.	§	
	§	
PUBLIC UTILITY COMMISSION OF	§	
TEXAS; DEANN T. WALKER, ARTHUR C.	§	TRAVIS COUNTY, TEXAS
D'ANDREA, and BRANDY MARTY	§	
MARQUEZ, in their official capacities as	§	
Commissioners of the Public Utility	§	
Commission of Texas; BRIAN H. LLOYD, in	§	
his official capacity as Executive Director of the	§	
Public Utility Commission of Texas, or his	§	
successor; and the CITY OF CIBOLO, TEXAS.	§	
<i>Defendants.</i>	§	<b>261ST</b> JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION**

TO THE HONORABLE TRAVIS COUNTY DISTRICT JUDGE:

NOW COMES Green Valley Special Utility District ("Green Valley SUD" or "Plaintiff") and files this Original Petition against Defendants the City of Cibolo, Texas ("Cibolo"), the Public Utility Commission of Texas (the "PUC"), and DeAnn T. Walker, Arthur C. D'Andrea, Jr., Brandy Marty Marquez, and Brian H. Lloyd (or his successor) in their official capacities as Commissioners or Executive Director of the Public Utility Commission of Texas (the "Officials"), and would respectfully show the Court as follows.

**I. INTRODUCTION**

1. This case involves an appeal from a final Order issued by the PUC and its Officials granting Cibolo's application for single certification of approximately 1,694 acres to be removed from Green Valley SUD's certificated sewer service area pursuant to Texas Water Code section 13.255. Green Valley SUD files this appeal and seeks judicial review of the Order granting Cibolo's application. Green Valley SUD also seeks injunctive relief and declarations



regarding the constitutionality, construction, and application of certain federal statutes and sections of the Texas Water Code. In addition, to the extent Green Valley SUD has its sewer service area curtailed or limited and is refused compensation therefor from Cibolo, Green Valley SUD asserts a takings claim against Cibolo.

## **II. DISCOVERY CONTROL PLAN**

2. Discovery in this matter will be conducted under Level 3 of the Discovery Control Plan set forth in Texas Rule of Civil Procedure 190.4.

## **III. PARTIES**

3. Plaintiff Green Valley SUD is a special utility district created under the authority of Texas Water Code chapter 65, with its principal place of business in Marion, Guadalupe County, Texas, and with a service area covering portions of Guadalupe, Comal, and Bexar Counties. Green Valley SUD was originally incorporated as a Texas water supply corporation in 1964. In 1992, Green Valley SUD was converted to a special utility district operating under chapter 65 of the Texas Water Code, as confirmed by the voters in the district at an election held for that purpose on May 2, 1992.

4. Defendant, the PUC, is a state governmental agency. The PUC may be served with process by serving its Executive Director, Brian Lloyd (or his successor), at the PUC's business office located at 1701 North Congress Avenue, Austin, Travis County, Texas 78701, or wherever else he may be found within or without the State of Texas.

5. Defendants DeAnn T. Walker, Arthur C. D'Andrea, Jr., and Brandy Marty Marquez are sued in their official capacities as Commissioners of the PUC. Each of the Commissioners may be served with process at the PUC's business office located at 1701 North

Congress Avenue, Austin, Travis County, Texas 78701, or wherever else they may be found within or without the State of Texas.

6. Defendant Brian H. Lloyd (or his successor) is sued in his official capacity as Executive Director of the PUC. The Executive Director may be served with process at the PUC's business office located at 1701 North Congress Avenue, Austin, Travis County, Texas 78701, or wherever else he may be found within or without the State of Texas.

7. Defendant, the City of Cibolo, Texas, is located in Guadalupe and Bexar Counties, was incorporated as a Type A General Law City in 1965, and adopted a home rule municipal charter on May 24, 2004. The City of Cibolo may be served with citation on the City's mayor at City Hall, 200 South Main Street, Cibolo, Texas 78108.

8. Because this suit challenges the constitutionality of the second sentence of Texas Water Code section 13.254(a-1) and/or (a-6), the Attorney General of Texas is notified of this proceeding pursuant to section 37.006(b) of the Texas Civil Practice and Remedies Code. The Attorney General may be served with process by serving the Honorable Ken Paxton at the business office located at 209 West 14th Street, 8th Floor, Austin, Travis County, Texas 78701.

#### **IV. JURISDICTION AND VENUE**

9. This Court has subject matter jurisdiction over this action because Green Valley SUD seeks to vindicate its rights under the Texas Constitution, and because Green Valley SUD seeks judicial review of an Order issued by the PUC. The District Court has jurisdiction to hear this suit pursuant to Texas Utilities Code section 15.001, Texas Water Code sections 13.381 and 13.255(e), and Texas Government Code sections 2001.038 and 2001.171.

10. Green Valley SUD requests declarations regarding the validity, construction, and applicability of provisions of the Texas Water Code. The principal office of the PUC and its

Officials is in Travis County. Venue is proper in Travis County, Texas, pursuant to Texas Civil Practice and Remedies Code sections 15.002(3), 15.004, and 15.016, Texas Water Code section 13.255(e), and Texas Government Code sections 2001.038 and 2001.171.

#### **V. RULE 47 STATEMENT**

11 The damages sought by Green Valley SUD are within the jurisdictional limits of the court. Green Valley SUD seeks monetary relief of \$100,000 or less and non-monetary relief. Green Valley SUD does not waive by this paragraph its right to an award of monetary relief in excess of \$100,000. Green Valley SUD also demands a judgment for all the other relief to which it deems itself entitled.

#### **VI. CONDITIONS PRECEDENT**

12. All conditions precedent to this suit have been performed or have occurred.

#### **VII. BACKGROUND**

13. Green Valley SUD provides wastewater services pursuant to a Certificate of Convenience and Necessity (“CCN”) granted by the PUC, under which Green Valley SUD is the exclusive wastewater utility services provider within its certificated service area. Such wastewater services are also provided in accordance with Texas Water Code chapter 65.

14. On March 3, 2016, Cibolo filed with the PUC an application for single certification of property within Green Valley SUD’s certificated sewer service area (the “Property”). Under Texas Water Code section 13.255, the PUC shall grant single certification to a municipality of an area that is incorporated or annexed by the municipality. However, the PUC must also determine in its order the adequate and just compensation to be paid to the incumbent utility. *See* TEX. WATER CODE § 13.255(c).

15. In addition, the PUC's order under Texas Water Code section 13.255 must comply with governing federal law. Green Valley SUD is the recipient of a loan issued by the United States Department of Agriculture, Rural Development under 7 U.S.C. §§ 1921 *et seq* (the "Federal Loan"). The debt was issued in 2003, and remains outstanding. The Federal Loan was in the original amount of \$584,000 from the United States to Green Valley SUD, under the authority of 7 U.S.C. § 1926, and was then purchased by the USDA.

16. Section 1926(b) states: "The service provided or made available through any such [federally indebted] association shall not be curtailed or limited by inclusion of the area served by such association within the boundaries of any municipal corporation." 7 U.S.C. § 1926(b). Green Valley SUD is making wastewater service available on the Property. Green Valley SUD is currently capable of providing sewer service to the Property. However, by its application, Cibolo sought, pursuant to section 13.255 of the Texas Water Code, authority from the PUC to have Green Valley SUD replaced as the provider of wastewater service on the Property. At the time Cibolo filed its section 13.255 application, the Property was properly certificated to Green Valley SUD and the Federal Loan had been properly issued to Green Valley SUD. Therefore, federal law prohibits the PUC and its Officials from granting Cibolo's section 13.255 application.

17. Rather than apply section 1926(b) to Cibolo's application, the PUC and its Officials declined to apply or even consider the federal law. This is because, contrary to the supremacy of federal law, the Texas Legislature has enacted section 13.254(a-1) and (a-6), each of which provide that "the fact that a certificate holder is a borrower under a federal loan program is not a bar to" decertification by the PUC. The PUC and its Officials took the position that Texas law, on its face, instructs the PUC to ignore and violate federal law. If section

13.254(a-1) or (a-6) is applied in this fashion, it violates the Supremacy Clause of the United States Constitution.

18. On January 10, 2018, the PUC and its Officials granted Cibolo's application, and ruled that Green Valley SUD was not entitled to any compensation as a result of the decertification of 1,694 acres from its service area. *See* Exhibit A (PUC Order). Such decertification and such ruling on compensation were contrary to federal law set forth in 7 U.S.C. § 1926(b) and contrary to Texas law set forth in Texas Water Code section 13.255.

19. On February 2, 2018, Green Valley SUD filed a motion for rehearing. On February 7, 2018, the PUC and its Officials overruled Green Valley SUD's motion for rehearing. Green Valley SUD hereby appeals the PUC's Order and asserts additional causes of action.

#### **VIII. CAUSES OF ACTION**

##### **A. Judicial Review of an Agency Order – Against the PUC.**

20. The Texas Water Code provides that any party to a proceeding before the PUC is entitled to judicial review under the substantial evidence rule. *See* TEX. WATER CODE § 13.381. The Texas Utilities Code also provides that any party to a proceeding before the PUC is entitled to judicial review under the substantial evidence rule. *See* TEX. UTIL. CODE § 15.001. Pursuant to Texas law, Green Valley SUD seeks judicial review of the PUC's Order granting Cibolo's application for single certification, and requests that this Court reverse the PUC's Order.

21. The PUC's Order must be reversed because Green Valley SUD's sewer CCN area is protected from curtailment pursuant to federal law by virtue of Green Valley SUD's Federal Loan. The PUC's Order must be reversed because the PUC failed to consider or apply such federal law. The PUC erroneously concluded that it lacked authority to follow the law and then expressly directed the Administrative Law Judge ("ALJ") to also ignore federal law. Such

actions are contrary to the Supremacy Clause of the United States Constitution. In addition, the PUC erred by applying provisions of Texas Water Code section 13.254(a-1) and/or (a-6) in a proceeding governed by Texas Water Code section 13.255. Given the federal law, it was also error to curtail Green Valley SUD's service area through a procedure that does not require proof and did not include proof by the applicant that Green Valley SUD is failing to provide service or make service available. The PUC refused to allow Green Valley SUD to prove it could provide service. This is error, and a violation of Green Valley SUD's constitutional right to due process.

22. In the event the PUC's Order granting Cibolo's request for decertification of Green Valley SUD's service sewer area is not reversed, then the PUC's Order must be reversed on the amount of compensation determined to be due to Green Valley SUD. The PUC erred in concluding that Green Valley SUD was entitled to \$0 in compensation for 1.694 acres.

23. The PUC's Order must be reversed because the PUC erroneously determined that costs incurred in planning and design of facilities allocable to the Property did not constitute property rendered useless or valueless under Texas Water Code section 13.255. First, the PUC's Order erroneously required that physical facilities be constructed within the Property or Green Valley SUD's sewer CCN. On the contrary, section 13.255 requires compensation for "property" rendered useless or valueless. The Texas Water Code specifically defines "facilities" to include "all tangible and intangible real and personal property without limitation." PUC rules also broadly include all types of planning acts that necessarily lead up to physical construction in defining "service." Costs incurred by Green Valley SUD in planning and design of facilities constitute compensable property under section 13.255.

24. Second, the PUC's Order erroneously is predicated on the proposition that money, once invested, is no longer compensable property. There is no legal basis for such a view. Money invested in design and planning are exchanged for other valuable property interests, namely, the design and planning, which are themselves prerequisites to obtaining permits and regulatory approvals necessary to implement a wastewater system. Indeed, as recognized by ALJs in a separate PUC docket proceeding, such a position would mean that money expended by a retail public utility enters a sort of "property purgatory," transformed into non-property until some form of actual property (a physical facility) attaches to and rescues it.

25. Third, the PUC's Order erroneously determined that the non-exclusive factors set forth in section 13.255(g) do not inform the identification of compensable property. The unambiguous statutory language in section 13.255(g) dictates that the PUC "shall, at a minimum, include" these factors in order to ensure "that the compensation to a retail public utility is just and adequate" for personal property.

26. Fourth, the result of the PUC's finding that investments in planning and design activities for the Property are not compensable property is an unconstitutional taking. The PUC is required to interpret a statute as intended to be consistent with the state and federal constitutions pursuant to the Code Construction Act. The PUC is further obligated to interpret a statute in a manner in which the entire statute is rendered effective and a just and reasonable result is intended. Instead, the PUC ordered the taking of property without providing for adequate compensation.

27. The PUC's Order must be reversed because the PUC erroneously determined that Green Valley SUD is not entitled to compensation for necessary and reasonable legal expenses and professional fees. Green Valley SUD did not initiate the PUC proceedings, but was

compelled to defend itself against Cibolo's attempted decertification and to be made whole in light of Cibolo's position that it should be able to take over a significant portion of what the parties agreed was Green Valley SUD's high-growth area at zero cost. The Texas Water Code specifically contemplates such compensation, and Green Valley SUD's expert appraiser identified such costs as compensable property items incurred by Green Valley SUD to defend its other categories of property interests. Yet, the PUC again wrongly employed an artificial construct, such that property and its value were supposedly mutually exclusive, to deny any compensation for these expenditures. The result of the PUC's finding that legal and professional fees are not compensable property is also an unconstitutional taking.

28. The PUC's Order must be reversed because the PUC erroneously determined that lost net revenues resulting from decertification are not compensable property. The evidentiary record demonstrated that Green Valley SUD will lose the economic opportunity to recoup its expenditures from the Property. At the same time, Green Valley SUD's costs to serve the remaining service area will increase as the direct result of Cibolo's piecemeal, checkerboard approach to decertification. The right to these lost net revenues is a relevant intangible personal property interest that is compensable under section 13.255(g), which mandates that the PUC consider "other relevant factors" in determining compensation. The PUC's determination that lost revenue from future customers is not property and therefore not compensable depends on effectively reading the terms "at a minimum" and "other relevant factors" out of the statute. A plain reading of these provisions directs that the PUC's approach must ensure that the CCN holder is made whole upon decertification. Such an approach is also mandated by constitutional requirements and is consistent with compensation for partial takings in other contexts, such as eminent domain proceedings.



29. The PUC's Order must be reversed because the PUC erroneously failed to address and account for Green Valley SUD's claim for compensation for net increased costs. While the PUC's Order recognizes that Green Valley SUD's claim for compensation resulting from Cibolo's decertification included the net present value of higher service fees that will result to its remaining customers, the Order fails to reach any conclusion regarding Green Valley SUD's claim and fails to award compensation as a result. As a political subdivision, Green Valley SUD has an obligation, for the benefit of its constituents, to keep its fees reasonable. Green Valley SUD employed a reasonable method to measure the cost impact to the remaining parcels resulting from Cibolo's piecemeal decertification approach, which will directly cause these increased costs. Moreover, as the result of the PUC's untenable ad hoc dual hearing process, Green Valley SUD was denied any meaningful opportunity to present evidence on this compensation item because the PUC's Phase 1 interim decision was to deny compensation altogether and, similarly, deny Green Valley SUD a Phase 2 property valuation hearing.

30. The PUC's Order must be reversed because the PUC engaged in improper rulemaking through its adjudicative decision. The new evidentiary standards and procedures that the PUC adopted in the docket below were implemented well after this docket had commenced and after the PUC had ordered appraisals. Implementation of these standards constituted improper ad hoc rulemaking under the Administrative Procedures Act ("APA") because these standards are plainly intended to be generally applicable to all CCN holders, yet were adopted and implemented in this contested case proceeding without the required notice, publication, and public participation. When an agency promulgates a rule without complying with the proper rule-making procedures, the rule is invalid. In a rulemaking proceeding, blanket notice must be given to the public at large, and contested case procedures and rulemaking procedures simply

cannot be mixed in one hybrid proceeding. The PUC established a unique bifurcated hearing process midway through a contested case proceeding without the required advanced notice and public participation, and in so doing has created new requirements of general applicability to decide pending and future decertification proceedings. The PUC has also announced new standards for how to apply the terms “property” and “useless or valueless” in the section 13.255 context even though these terms have been part of section 13.255 for many years and have never been interpreted or applied in this manner with proper notice to Green Valley SUD. Section 13.255(g-1) requires that the PUC “adopt rules governing the evaluation of these [section 13.255(g)] factors.” The PUC’s decision to assess whether property had been rendered useless or valueless before and separately from deciding the value of that property came after the parties had engaged appraisers to assess that value. Similarly, the PUC’s new standards for what constitutes “property . . . rendered useless or valueless” did not come until the PUC’s Phase 1 Interim Order.

31. The new PUC process interjected into the middle of this proceeding increased legal and professional fees by imposing a new contested case hearing procedure on the parties. The PUC’s new process delayed the administrative completeness finding until after the conclusion of the entire contested case process while simultaneously requiring filed appraisals at the beginning of the process. This caused significant costs incurred by Green Valley SUD, and the PUC erred by refusing to compensate Green Valley SUD for such costs.

32. The above errors prejudiced substantial rights of Green Valley SUD, and constitute findings, inferences, conclusions, and decisions that are in violation of constitutional or statutory provisions, in excess of the agency’s statutory authority, made through unlawful procedure, affected by other error of law, not reasonably supported by substantial evidence

considering the reliable and probative evidence in the record as a whole, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. Therefore, this Court should vacate and/or reverse the PUC's Order decertifying the Property from Green Valley SUD's CCN, or vacate and/or reverse the PUC's Order awarding no compensation to Green Valley SUD.

**B. Claims under 42 U.S.C. section 1983 – Against the Officials and Cibolo**

33. Green Valley SUD also seeks relief under 42 U.S.C. section 1983.

34. By acting pursuant to the second sentence of section 13.254(a-1) or (a-6), and/or by independently determining that the PUC would not or could not determine questions of federal law, and or by decertifying Green Valley SUD's service area, the Officials have deprived Green Valley SUD of clearly established rights under federal statute of which a reasonable person should have known. These deprivations were effected under color of state law, for which redress is provided by 42 U.S.C. section 1983. Green Valley SUD is entitled to a permanent injunction against the Officials' adherence to the second sentence of section 13.254(a-1) or (a-6) and against the Officials' and Cibolo's refusal to apply and comply with 7 U.S.C. section 1926(b).

35. The United States Fifth Circuit Court of Appeals—in a federal suit between Green Valley SUD and Cibolo—recently construed section 1926(b) in a manner that establishes Green Valley SUD is entitled to protection from Cibolo's application for single certification in these district court proceedings. The Fifth Circuit held that because of Green Valley SUD's Federal Loan, its sewer service area is entitled to protection from encroachment. It is not relevant whether Green Valley SUD's Federal Loan was used only to fund water services or is secured

only by water revenues. Both water and sewer services receive the protection of section 1926(b). See *Green Valley Special Util. Dist. v. City of Cibolo*, 866 F.3d 339, 342-44 (5th Cir. 2017).

36. Green Valley SUD is entitled to a permanent injunction against the Officials' curtailment or limitation of Green Valley SUD's service area pursuant to water code section 13.255 for so long as Green Valley SUD's Federal Loan remains outstanding. Green Valley SUD is also entitled to a permanent injunction against Cibolo's providing any sewer service to the Property. Green Valley SUD also seeks declaratory relief regarding its rights under 7 U.S.C. § 1926(b).

37. Green Valley SUD also requests judgment against the Officials and Cibolo for all of Green Valley SUD's reasonable and necessary attorneys' fees and costs under 42 U.S.C. section 1988(b). Green Valley SUD seeks a conditional award of its attorneys' fees, expenses, and costs incurred in any appeal of this matter. Green Valley SUD seeks recovery of all pre-judgment, post-judgment, and or other interest allowed by law on any and all sums Green Valley SUD seeks in this lawsuit.

### **C. Declaratory Judgment Claim – Against the PUC**

38. Pursuant to Texas Government Code section 2001.038, Green Valley SUD seeks a declaratory judgment that the PUC's rules establishing standards for how to apply the statutory terms "property" and "useless or valueless" are invalid. Such rules were made without the required advanced notice and public participation, or any of the procedural requirements for agency rulemaking. Implementation of these standards constituted improper ad hoc rulemaking under the APA. When an agency promulgates a rule without complying with the proper rule-making procedures, the rule is invalid. In a rulemaking proceeding, blanket notice must be given to the public at large, and contested case procedures and rulemaking procedures simply cannot

be mixed in one hybrid proceeding. Texas Water Code section 13.255(g-1) requires that the PUC “adopt rules governing the evaluation of these [section 13.255(g)] factors.” Yet, instead of adopting rules pursuant to the statutory rulemaking procedures, the PUC imposed rules in this individual proceeding below without public notice or comment.

**D. Takings Claims – Against Cibolo**

39 In the alternative, in the event this Court declines to reverse the PUC’s Order pursuant to 7 U.S.C. § 1926(b), and to the extent this Court affirms the PUC’s findings and conclusions that certain property owned by Green Valley SUD is not compensable under Texas Water Code section 13.255, Green Valley SUD is entitled to compensation for the taking of its property by Cibolo under article I, section 17 of the Texas Constitution. Green Valley SUD is entitled to adequate compensation for Cibolo’s actions that have taken, damaged, or destroyed Green Valley SUD’s property for public use. Green Valley SUD seeks recovery of such adequate compensation in this suit.

**IX. PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiff Green Valley Special Utility District respectfully requests the following relief:

- a. That Defendants the Public Utility Commission of Texas; DeAnn T. Walker, Arthur C. D’Andrea, Jr., and Brandy Marty Marquez in their official capacities as Commissioners of the Public Utility Commission of Texas; Brian H. Lloyd (or his successor) in his official capacity as Executive Director of the Public Utility Commission of Texas; and the City of Cibolo (collectively, “Defendants”) be cited to appear and answer herein;

- b. That the Court reverse the Public Utility Commission of Texas's Order, and either render judgment that the Property is not removed from Green Valley Special Utility District's CCN and is not certificated to the City of Cibolo, render judgment on the amount of compensation to which Green Valley Special Utility District is entitled under Texas Water Code section 13.255, or remand to the Public Utility Commission of Texas for further proceedings consistent with the judgment of the district court;
- c. That Plaintiff Green Valley Special Utility District have judgment against Defendants declaring that:
  - 1. Texas Water Code section 13.254(a-1)'s requirement that "The fact that a certificate holder is a borrower under a federal loan program is not a bar to a request under this subsection for the release of the petitioner's land and the receipt of services from an alternative provider," is unconstitutional, void, and of no effect;
  - 2. Texas Water Code section 13.254(a-6)'s requirement that "The utility commission may not deny a petition received under Subsection (a-5) based on the fact that a certificate holder is a borrower under a federal loan program," is unconstitutional, void, and of no effect;
  - 3. The Public Utility Commission of Texas and its Commissioners have no authority to ignore the fact that a certificate holder is a borrower under a federal loan program when adjudicating an application under Texas Water Code section 13.255(b);

4. The Public Utility Commission of Texas and its Commissioners cannot decertify the service area of a borrower under a federal loan program absent a proceeding that determines, under applicable Texas law, that the borrower is neither providing service nor making service available to the service area; and
  5. The Property is not removed from Green Valley Special Utility District's sewer CCN No. 20973, and Green Valley Special Utility District's sewer CCN No. 20973 is not amended to remove the Property from the certificated service area for sewer CCN No. 20973;
- d. That the Court enter a permanent injunction against the Commissioners' and Executive Director's adherence to the second sentence of section 13.254(a-1) or (a-6);
  - e. That the Court enter a permanent injunction against the Commissioners and Executive Director from curtailing or limiting Green Valley Special Utility District's service area under sewer CCN No. 20973 pursuant to an application by the City of Cibolo under Texas Water Code section 13.255(b) for so long as Green Valley Special Utility District's federal loan remains outstanding;
  - f. That the Court enter a permanent injunction against the Commissioners and Executive Director from certificating any property to the City of Cibolo under Texas Water Code section 13.255(b) for so long as Green Valley Special Utility District's federal loan remains outstanding;
  - g. That the Court enter a permanent injunction against the City of Cibolo from providing any sewer service to any property that has been certificated to the City

of Cibolo from, or that has otherwise been decertificated from, Green Valley Special Utility District's sewer service area pursuant to an application by the City of Cibolo under Texas Water Code section 13.255(b):

- h. That Green Valley Special Utility District have judgment against the City of Cibolo that the City of Cibolo's actions have taken, damaged, or destroyed Green Valley Special Utility District's property, and that Green Valley Special Utility District have judgment against the City of Cibolo for adequate compensation for the City of Cibolo's actions which have taken, damaged, or destroyed Green Valley Special Utility District's property;
- i. That Plaintiff Green Valley Special Utility District have judgment against the Public Utility Commission of Texas under Texas Government Code section 2001.038 declaring that:
  - 1. The rule providing that dollars expended for engineering and planning are not property and are not compensable under Texas Water Code section 13.255(c) and (g) is invalid and unenforceable;
  - 2. The rule providing that dollars expended to obtain a TPDES permit from the TCEQ are not property and are not compensable under Texas Water Code section 13.255(c) and (g) is invalid and unenforceable;
  - 3. The rule providing that dollars expended to purchase real property are not property and are not compensable under Texas Water Code section 13.255(c) and (g) is invalid and unenforceable;
  - 4. The rule providing that Texas Water Code section 13.255(g) limits compensation for the impact on the decertified entity for future lost



revenues to such losses from existing customers is invalid and unenforceable;



5. The rule providing that lost future revenue from currently non-existing customers is not property and is not compensable under Texas Water Code section 13.255(c) and (g) is invalid and unenforceable;
6. The rule providing that attorneys' fees are not property under Texas Water Code section 13.255(c) is invalid and unenforceable; and
7. The rule providing that appraisal expenses are not property under Texas Water Code section 13.255(c) is invalid and unenforceable;

j. That Green Valley Special Utility District have judgment for reasonable and necessary attorneys' fees and costs;

k. That Green Valley Special Utility District be awarded pre-judgment and post-judgment interest as provided by law; and

l. That Green Valley Special Utility District be awarded all other relief to which it may be entitled.

Respectfully submitted.

By:    
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**ATTORNEYS FOR PLAINTIFF GREEN VALLEY  
SPECIAL UTILITY DISTRICT**



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

2018 JUN 10 PM 3:18  
PUBLIC UTILITY COMMISSION  
CLERK  
OF TEXAS

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 §

### ORDER

This order addresses an application by the City of Cibolo, under Texas Water Code (TWC) § 13.255, to remove approximately 1,694-acres of land located within the city's corporate limits from Green Valley Special Utility District's certificated sewer service area and amend the city's sewer certificate of convenience and necessity (CCN) to include the same land.<sup>1</sup> The Commission grants the city's application; the city's and Green Valley's sewer-service CCNs are so amended.

This proceeding was bifurcated into two phases. In the first phase, the presiding administrative law judge (ALJ) at the State Office of Administrative Hearings (SOAH) addressed three issues in a proposal for decision that was filed on April 28, 2017.<sup>2</sup> The SOAH ALJ filed a letter on May 31, 2017 in which she modified the first-phase proposal for decision. The Commission considered that proposal for decision and parties' exceptions and replies to it and, on June 29, 2017, issued an interim order addressing the first-phase issues.<sup>3</sup> In that interim order, the Commission also remanded this proceeding to SOAH to address all of the remaining issues. The remaining issues were addressed by the SOAH ALJ in a second-phase proposal for decision that was filed on November 21, 2017. The SOAH ALJ filed letters on December 11 and 12, 2017 in which she made modifications to the second-phase proposal for decision based on parties'

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<sup>1</sup> Tex. Water Code Ann. (TWC) § 13.255 (West 2008 and Supp. 2017).

<sup>2</sup> Proposal for Decision on the First Phase (Apr. 28, 2017).

<sup>3</sup> Interim Order (June 29, 2017)

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exceptions and replies. Except as modified and discussed in this order, the Commission affirms and incorporates its interim order on the issues decided in the first phase and adopts the second-phase proposal for decision, including findings of fact and conclusions of law as modified by the SOAH ALJ in her letters filed on December 11 and 12, 2017.

## **I. Discussion**

### **A. Texas Water Code § 13.255**

Section 13.255 of the Texas Water Code (TWC) governs single certification in an area incorporated or annexed by a municipality that is currently in the certificated service area of certain types of entities, including a special utility district organized under chapter 65 of the TWC, such as Green Valley.<sup>4</sup>

Under TWC § 13.255(a), a municipality and a special utility district that provides water or sewer service to all or part of an area that is annexed or incorporated by the municipality may agree in writing that all or part of the area may be served by a municipally-owned utility, a franchised utility, or the special utility district. If a written agreement is not executed within 180 days after the municipality has notified the special utility district of the municipality's intent to provide service to the annexed or incorporated area, and the municipality still intends to serve the area, the municipality must file an application for single certification with the Commission.<sup>5</sup> The Commission is required to grant the municipality's application, with one exception that the parties concede does not apply here.<sup>6</sup>

The Commission's duties in a proceeding under TWC § 13.255 include determining what property of the special utility district, if any, would be rendered useless or valueless to the special utility district as a result of single certification to the municipality (commonly referred to as useless or valueless property) and what monetary amount is just and adequate to compensate the special utility district for such property.<sup>7</sup> If the municipality has requested that property of the special utility district be transferred to the municipality, the Commission must also determine the just and

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<sup>4</sup> TWC § 13.255(j).

<sup>5</sup> TWC § 13.255(b).

<sup>6</sup> TWC § 13.255(c), (m).

<sup>7</sup> TWC § 13.255(c).

adequate compensation for the requested property (transferred property), and an award for damages to property that will continue to be owned by the special utility district (impaired property).<sup>8</sup> The statute also sets forth a process for appraising any useless or valueless, transferred, or impaired property.<sup>9</sup> The determination of compensation in certain filed appraisals is binding on the Commission.<sup>10</sup>

As part of the transfer of jurisdiction over CCNs for retail water or sewer service from the Texas Commission on Environmental Quality (TCEQ), the Commission inherited TCEQ's rules and process for handling applications under TWC § 13.255. At TCEQ, there was no TCEQ determination of what property would be rendered useless or valueless, transferred, or impaired before the parties filed their appraisals. As a result, if more than one appraisal was required under the process set forth in TWC § 13.255(1), those appraisals could differ greatly, both in the property analyzed and the compensation that the appraisers determined. Consistent with that process, in this proceeding, parties filed appraisals on June 28, 2016.

On the same day the appraisals were filed in this proceeding, in another case, *Zipp Road*, former Commission Chairman Nelson filed a memo discussing the difficulties that the Commission faced with implementing the appraisal process in a different, but somewhat similar CCN-amendment-related proceeding under TWC § 13.254.<sup>11</sup> She noted that the determination of what property was rendered useless or valueless would likely be a fact-intensive question.<sup>12</sup> She also observed that the Commission, which is statutorily tasked with determining whether a single-certification application will result in any useless or valueless property, should make that determination before parties agree on an appraiser or select their own appraisers.<sup>13</sup> The Commission agreed and referred the *Zipp Road* proceeding to SOAH.<sup>14</sup>

<sup>8</sup> *Id.*

<sup>9</sup> TWC § 13.255(1)

<sup>10</sup> *Id.*

<sup>11</sup> *Zipp Road Utility Company LLC's Notice of Intent to Provide Sewer Service to Area Decertified from Guadalupe-Blanco River Authority in Guadalupe County (Zipp Road)*, Docket No. 45679, Memorandum from Chairman Donna L. Nelson (June 28, 2016)

<sup>12</sup> *Zipp Road*, Docket No. 45679, Memorandum from Chairman Donna L. Nelson at 1.

<sup>13</sup> *Id.*

<sup>14</sup> *Zipp Road*, Docket No. 45679, Preliminary Order (July 20, 2016)

In a supplemental preliminary order in this proceeding, the Commission noted its then-recent decision to refer the *Zipp Road* proceeding to SOAH.<sup>15</sup> The Commission concluded that its reasoning for referring valuation proceedings under TWC § 13.254 to SOAH equally applies to proceedings under TWC § 13.255: the Commission is bound to comply with applicable law; and determining what property, if any, is rendered useless and valueless by decertification will likely be fact intensive, lending itself to the contested-case process at SOAH.<sup>16</sup> The Commission also noted that, under TWC § 13.255(c), the Commission must also determine the adequate and just compensation to be paid for transferred property.<sup>17</sup>

Although not binding on this proceeding, the Commission notes that after referring the *Zipp Road* proceeding, this proceeding, and another TWC § 13.255 proceeding to SOAH, the Commission adopted new rules regarding proceedings under Texas Water Code §§ 13.254 and 13.255.<sup>18</sup> Under those new rules, proceedings under TWC § 13.255 will continue to be referred to SOAH when appropriate to determine whether there is any useless or valueless, transferred, or impaired property, as was done in this matter.<sup>19</sup>

#### **B. Issues Addressed in the First Phase**

In its supplemental preliminary order, the Commission phased this proceeding and directed the SOAH ALJ to address three issues in the first phase.<sup>20</sup> Consistent with that direction, the SOAH ALJ issued a proposal for decision on the first-phase issues on April 28, 2017. In the first-phase proposal for decision, the SOAH ALJ concluded in part that the city had not requested any transferred property; no property would be rendered useless or valueless to Green Valley by the decertification; and the appraisal that Green Valley had filed is not limited to valuing useless or

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<sup>15</sup> Supplemental Preliminary Order at 1-2 (July 20, 2016)

<sup>16</sup> *Id.* at 2.

<sup>17</sup> *Id.* at 3.

<sup>18</sup> *Project to Amend 16 Tex. Admin. Code Section 24.113 Relating to Revocation or Amendment of a Water or Sewer Certificate and Section 24.120 Relating to Single Certification in Incorporated or Annexed Areas*, Project No. 46151, Order Adopting the Repeal of § 24.113 and § 24.120 and New § 24.113 and § 24.120 Adopted at the May 4, 2017 Open Meeting (May 4, 2017)

<sup>19</sup> *Id.*

<sup>20</sup> Supplemental Preliminary Order at 4-5, Issues 9-11 (July 20, 2016), *see also* SOAH Order No. 2 at 1 (Aug. 19, 2016).

valueless property, but Cibolo's existing appraisal is so limited.<sup>21</sup> In an interim order, the Commission adopted the proposal for decision issued by the SOAH ALJ regarding the first-phase issues and directed that SOAH address the remaining issues.<sup>22</sup>

The Commission affirms its interim order and incorporates into this order all of the findings of fact and conclusions of law that were included in the proposal for decision on the first-phase issues, except for non-substantive changes for such matters as capitalization, spelling, punctuation, style, grammar, and readability. The findings of fact that were adopted in the interim order are incorporated into this order as findings of fact 1 through 20, 21 through 35, and 36 through 56. The conclusions of law that were adopted in the interim order are incorporated into this order as conclusions of law 1 through 19 and 20.

### C. Issues Addressed in the Second Phase

In the proposal for decision addressing the second-phase issues, the SOAH ALJ made findings consistent with the parties' agreed resolution of several issues and addressed four issues that were contested. Regarding those four issues, the SOAH ALJ concluded that the city provided a written notice of intent to Green Valley that satisfied the requirements of TWC § 13.255(b) and 16 Texas Administrative Code (TAC) § 24.120(b);<sup>23</sup> the city waited more than the 180 days required under TWC § 13.255(b) and 16 TAC § 24.120(b) before filing the city's application with the Commission, the city's application is administratively complete; and the city satisfied the requirements of TWC § 13.255(m) and 16 TAC § 24.120(n) by demonstrating the city's compliance with TCEQ's minimum requirements for public drinking-water systems. In its exceptions to the second-phase proposal for decision, Green Valley conceded that the city has proven its compliance with TCEQ's minimum requirements for public drinking-water systems.<sup>24</sup> Green Valley excepted to the SOAH ALJ's conclusions on the three other contested issues,

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<sup>21</sup> Proposal for Decision on the First-phase Issues (Apr. 28, 2017).

<sup>22</sup> Interim Order (June 29, 2017).

<sup>23</sup> After the city filed its application and the Commission issued a preliminary order in this proceeding, the Commission repealed and replaced its substantive rule 24.120. All references to rule 24.120 in this order are to the prior version of the rule, 16 TAC § 24.120 *adopted* 39 Tex. 5903 (Aug. 1, 2014) (repealed and replaced eff. May 28, 2017). *see* Proposal for Decision on the Second Phase Issues at 3, n. 4 (Nov. 21, 2017).

<sup>24</sup> Green Valley's Exceptions to the Proposal for Decision at 8 (Dec. 4, 2017).

however, and continued to assert that the Commission lacks authority to grant the city's application.

The Commission agrees with the SOAH ALJ's recommendations on all of the second-phase issues and adopts the SOAH ALJ's proposed findings of fact and conclusions of law on these issues, including the changes made by the SOAH ALJ in her letters filed on December 11 and 12, 2017. The Commission also makes changes to these findings of fact and conclusions of law for such matters as capitalization, spelling, punctuation, style, grammar, and readability. For example, the Commission deletes proposed finding of fact 20A and modifies finding of fact 21 for readability by removing an unnecessary recitation of the issues that the Commission determined should be addressed in this proceeding.<sup>25</sup> The findings of fact that address the second-phase issues are findings of fact 35A through 35J, and 57 through 71. The conclusions of law that address the second-phase issues are conclusions of law 19A and 21 through 32.

The Commission adopts the following findings of fact and conclusions of law:

## II. Findings of Fact

### Procedural History

1. On August 18, 2015, the City of Cibolo provided notice to Green Valley Special Utility District of its intent to provide sewer service to portions of land within the corporate limits of Cibolo.
2. On March 8, 2016, Cibolo filed at the Commission an application under Texas Water Code (TWC) § 13.255 relating to certificates of convenience and necessity (CCNs) to provide wastewater utility service in Guadalupe County. The Application requests single sewer certification and decertification of 1,694 acres of arca (decertification area) to which Green Valley holds sewer CCN No. 20973.
3. Notice of the application was published in the March 25, 2016 issue of the *Texas Register*.
4. On April 12, 2016, a Commission administrative law judge (ALJ) issued an order finding the application materially deficient, requiring Cibolo to serve Green Valley with notice of

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<sup>25</sup> For the lists of these issues, see Preliminary Order at 5-6 (July 1, 2016) and Supplemental Preliminary Order at 4-5 (July 20, 2016).

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the application, and establishing deadlines for filings by Cibolo and the Commission staff regarding those matters.

5. On April 13, 2016, Cibolo served Green Valley with a copy of the application.
6. On April 22, 2016, Green Valley filed a motion to intervene. On April 28, 2016, a Commission ALJ granted the motion.
7. On April 29, 2016, Green Valley filed a plea to the jurisdiction and motion to dismiss.
8. On May 11, 2016, Cibolo filed its designation of Jack E. Stowe, Jr., of NewGen Strategies & Solutions, LLC as its independent appraiser.
9. On May 12, 2016, Green Valley filed a pleading arguing that Cibolo's designation of its appraiser was premature because the Commission had not yet made a determination of administrative completeness and other events had not yet occurred.
10. On May 13, 2016, a Commission ALJ issued an order setting a May 13, 2016 deadline for the parties to indicate whether they had reached agreement on an independent appraiser.
11. On May 27, 2016, the Commission issued an order requesting that the parties brief threshold issues, including matters raised in Green Valley's plea to the jurisdiction.
12. On May 27, 2016, the parties filed documents stating that they failed to agree on the appointment of an independent appraiser.
13. On June 2, 2016, Green Valley filed an emergency motion to abate based on its May 27, 2016 filing of a lawsuit in Cause No. 1:16-cv-00627, *Green Valley Special Utility District v. City of Cibolo, Texas*, before the United States District Court for the Western District of Texas.
14. On June 3, 2016, the Commission ALJ issued Order No. 5 denying Green Valley's motion to abate and establishing a deadline for Green Valley to appoint an independent appraiser.
15. On June 6, 2016, Cibolo, Green Valley, and Staff filed briefs on threshold issues in response to the Commission's May 27, 2016 order.
16. On June 7, 2016, Green Valley filed its designation of Joshua Korman of KOR Realty Consultants, LLC d/b/a KOR Group as its independent appraiser.

17. On June 14, 2016, a Commission ALJ issued Order No. 6, establishing deadlines relating to the appraisers meeting in an effort to agree on compensation under TWC § 13.255. On June 22, 2016, the ALJ issued an order revising the deadlines.
18. On June 22, 2016, Cibolo filed a sur-reply to Green Valley's plea to the jurisdiction and motion to dismiss.
19. On June 28, 2016, Cibolo and Green Valley filed their appraisals.
20. On June 30, 2016, the Commission issued its preliminary order, ruling on threshold issues and listing issues 1 through 8 to be addressed in this case.
- 20A [DELETED].
21. On July 20, 2016, the Commission filed its supplemental preliminary order, establishing a phased process, concluding that administrative completeness and certain other issues would not be addressed until after the first phase, and listing issues 9 through 11 to be addressed in the first phase.
22. On July 26, 2016, the Commission referred this proceeding to the State Office of Administrative Hearings (SOAH) and requested the assignment of a SOAH ALJ to conduct a hearing and issue a proposal for decision, if necessary.
23. In accordance with the supplemental preliminary order and an agreement the parties reached at an August 17, 2016 prehearing conference, SOAH Order No. 2 provided that the first phase of this case will address issues 9 through 11. SOAH Order No. 2 also assigned the burden of proof to Cibolo.
24. On September 2, 2016, the parties filed an agreed proposed procedural schedule, which was adopted in SOAH Order No. 3, issued September 9, 2016.
25. SOAH Order Nos. 1, 2, and 3, the preliminary order, and the supplemental preliminary order provide a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statute and rules involved; and a short, plain statement of the factual matters asserted.
26. On November 8, 2016, Cibolo filed a motion for partial summary decision.

27. On November 22, 2016, the SOAH ALJ issued SOAH Order No. 5 concluding that (1) the Commission did not refer to SOAH the issue of whether Cibolo's appraisal is an appraisal required under TWC § 13.255(l) and 16 Texas Administrative Code (TAC) § 24.120(m); and (2) for purposes of issue 11, the ALJ would assume that Cibolo's appraisal is an existing appraisal.
28. On December 9, 2016, the SOAH ALJ issued SOAH Order No. 7 granting in part and denying in part Cibolo's motion for partial summary decision. The order granted the motion with respect to issue 10 and denied it with respect to issue 9. Regarding issue 10, the order accepted the parties' agreement that Cibolo has not requested Green Valley to transfer any Green Valley property to Cibolo.
29. SOAH Order No. 7 also stated that, as the party with the burden of proof, Cibolo has the burden of persuasion, which never shifts, and the burden of production, and that, if Cibolo makes a prima facie case that Green Valley has no property that the decertification will render useless or valueless to Green Valley, then the burden of production shifts to Green Valley to show that it has such property.
30. As a result of SOAH Order No. 7, the contested issues remaining in the first phase were the following:
  9. What property, if any, will be rendered useless or valueless to Green Valley by the decertification sought by Cibolo 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?
31. On January 17, 2017, the hearing on the merits was held at SOAH's hearing facility in Austin, Texas. Cibolo, Green Valley, and Staff appeared through their attorneys.
32. On February 9, 2017, the parties filed agreed stipulations regarding the procedural history, the parties' contentions, and certain facts.
33. The record closed on February 28, 2017 when the parties filed their reply briefs and Cibolo and Green Valley filed proposed findings of fact and conclusions of law.

34. In its proposed findings of fact and conclusions of law, Cibolo proposed that it and Green Valley split evenly the costs of the transcript at the rate for non-expedited service, and that Cibolo pay all additional costs to obtain the transcript on an expedited basis. Green Valley did not address that issue.
35. Cibolo's proposal regarding the cost of the transcript is reasonable and should be adopted.
- 35A. On April 28, 2017, the SOAH ALJ issued a proposal for decision in the first phase of this proceeding which addressed 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 through 8 to SOAH to address in the second phase of this proceeding.
- 35C. On August 10, 2017, the SOAH ALJ convened a prehearing conference, at which the parties agreed to stipulate as to issues 1 through 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 for issues 1, 4a, 4b, 6, 7, and 8. The remaining contested issues were issues 2, 3, 4 (excluding issues 4a and 4b), and 5.
- 35E. The parties filed initial briefs on the remaining contested issues 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 through 8 should be included in the evidentiary record.
- 35G. The record of 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 into evidence and officially noticing certain documents and uncontested facts.
- 35I. On August 24, 2017, Commission Staff filed a recommendation that Cibolo's application be deemed administratively complete.
- 35J. On August 31, 2017, Green Valley submitted a response disagreeing with Commission Staff's recommendation on administrative completeness.

**Issue No. 9: What Green Valley Property, If Any, Will the Decertification Render Useless or Valueless to Green Valley?**

36. Green Valley obtained its sewer CCN in October 2005. The decertification area is approximately 1.694 acres, or 2.2%, of Green Valley's 76,000-acre sewer CCN area.
37. The decertification area is within the corporate limits of Cibolo, 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 Anzpe Road; and on the east by the court-decreed extraterritorial jurisdiction boundary of Cibolo and the City of Marion, as well as the boundaries of Guadalupe County Appraisal District parcels numbered 70979 and 71064.
38. As stated in the agreed stipulations, Green Valley contends that the following items are its property that the decertification will render useless or valueless to Green Valley:
  - a. dollars expended by Green Valley for engineering and planning to implement Green Valley's 2006 wastewater master plan allocable to the decertification area;
  - b. dollars expended by Green Valley to obtain a Texas pollutant-discharge-elimination system permit from the Texas Commission on Environmental Quality (TCEQ) allocable to the decertification area,
  - c. dollars expended by Green Valley to purchase an approximately 65-acre tract of land allocable to the decertification area,
  - d. dollars expended by Green Valley for legal fees and appraiser expenses in this docket; and
  - e. lost expected net revenues allocable to the decertification area.
39. As stated in the agreed stipulations, Cibolo contends that Green Valley has no property that the decertification will render useless or valueless to Green Valley. Staff agrees with that position.
40. Green Valley has not adopted either retail sewer rates or sewer-impact fees.
41. Green Valley does not have any wastewater infrastructure in the decertification area.
42. Green Valley does not have any retail wastewater customers in the decertification area.
43. Green Valley does not have a Texas pollutant-discharge-elimination system permit to construct or operate a wastewater-treatment plant.

44. On April 1, 2015, Green Valley filed at TCEQ an application for a pollutant-discharge elimination system permit.
45. In 2016, the TCEQ executive director issued a draft pollutant-discharge-elimination system permit to Green Valley and the TCEQ Commissioners referred the matter to SOAH for a contested case hearing on several issues. The TCEQ executive director disagreed with Cibolo's position that Green Valley's pollutant-discharge-elimination system permit application was inconsistent with Cibolo Creek Municipal Authority's status as the regional wastewater provider. The hearing in that case is set for September 12 through 14, 2017.
46. The estimated construction schedule in Green Valley's pollutant discharge-elimination system permit application contemplates phased construction of the wastewater-treatment facility, with the final phase being constructed in 2044. The schedule allows Green Valley to reevaluate whether it needs more capacity before constructing the additional phases.
47. Green Valley does not have, and has not applied for, TCEQ approval of designs for a wastewater-collection system or a wastewater-treatment facility.
48. Green Valley purchased the approximately 65-acre tract of land in order to construct a wastewater treatment plant on it. The land is currently undeveloped.
49. The decertification will not affect Green Valley's ability to sell the approximately 65-acre tract of land or to use it for a wastewater treatment plant to serve the rest of its sewer CCN area.
50. Green Valley's 2006 wastewater master plan is a high-level planning document that does not address specific areas, but rather discusses Green Valley's sewer CCN area as a whole. It would require substantial updates in order to be used.
51. Green Valley concedes that the decertification will not result in the dollars it expended on the 2006 wastewater master plan, a pollutant-discharge-elimination-system permit (if obtained), or the approximately 65-acre tract of land having no use or value to Green Valley.

52. The evidence does not show that Green Valley's decertification from 2.2% of its sewer CCN area will (1) reduce the usefulness or value of money Green Valley expended on the 2006 wastewater master plan, a pollutant-discharge-elimination system permit (if obtained), or the approximately 65-acre tract of land; or (2) reduce the usefulness or value of such expended money or expected net revenues by approximately 2.2%.
53. None of the items are Green Valley property that the decertification will render useless or valueless to Green Valley
- 53A. Green Valley is not a party to any wholesale-wastewater-treatment agreements that are currently in effect
- 53B. Green Valley has not submitted to TCEQ designs for a wastewater-treatment facility or wastewater-collection system and does not have final approval from TCEQ for such a facility or system.
- 53C. As of January 17, 2017, Green Valley had no existing retail sewer customers within the boundary of its sewer CCN.
- 53D. Green Valley will have to go through the permitting process and make the associated expenditures in order to obtain a pollutant-discharge-elimination system permit, regardless of whether the decertification area is removed from Green Valley's service area

**Issue No. 10: What Green Valley Property, If Any, Has Cibolo Requested Be Transferred to Cibolo?**

54. Cibolo has not requested that Green Valley transfer any Green Valley property to Cibolo.

**Issue No. 11: Are the Existing Appraisals Limited to Valuing Green Valley Property that the Decertification Will Render Useless or Valueless?**

55. Cibolo's existing appraisal is limited to valuing Green Valley's property that will be rendered useless or valueless by the decertification because it concludes that Green Valley has no such property.
56. Green Valley's existing appraisal is not limited to valuing Green Valley's property that will be rendered useless or valueless by the decertification.

**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, under sewer CCN number 20973.

**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 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 part:
- 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 , 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. (Emphasis removed.)
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 findings of fact 36 to 53D and 55, Cibolo demonstrated that the application will not render any of Green Valley's 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 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 of Green Valley's facilities useless or valueless to Green Valley and Cibolo does not request that any of Green Valley's facilities be transferred to Cibolo, the amount of adequate and just compensation to be paid to Green Valley is zero

**III. Conclusions of Law**

- 1 Cibolo and Green Valley are retail public utilities as defined in TWC § 13.002(19).
- 2 The Commission has jurisdiction and authority over this case under TWC §§ 13.041 and 13.255(c).
3. SOAH has jurisdiction over matters related to the hearing of this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to Texas Government Code §§ 2001.058 and 2003.049.
4. Notice of the hearing was provided in compliance with Texas Government Code § 2001.052 and 16 TAC § 24.106.
5. As the applicant, Cibolo has the burden of proof in this case, including the burden of persuasion, which never shifts. Through its direct case, Cibolo made a prima facie showing that Green Valley has no property that the decertification will render useless or valueless. As a result, the burden of production shifted from Cibolo to Green Valley to show that it has such property 16 TAC § 24.12; 1 TAC § 155.427.
6. TWC § 13.255(c) provides that the Commission shall grant single certification to the municipality. TWC § 13.255(c) further provides that the Commission shall 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 if so,

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

7. As used in TWC § 13.255(c), the words *property*, *useless*, and *valueless* should be given their ordinary or plain meaning. Tex. Gov't Code §§ 311.011, .002; *Tex. Dept. of Protective & Reg. Svcs. v. Mega Child Care, Inc.*, 145 S.W.3d 170, 177 (Tex. 2004); *State v. Pub. Util. Comm'n of Texas*, 883 S.W.2d 190, 200 (Tex. 1994).
8. The word *property* in TWC § 13.255 includes all property, real and personal, and tangible or intangible. *City of Celina's Notice of Intent to Provide Water and Sewer Service to Area Decertified from Aqua Texas, Inc. in Denton County*, PUC Docket No. 45848, SOAH Docket No. 473-16-5011.WS, Order at conclusion of law 10 (April 13, 2017) (*Celina*).
9. TWC § 13.255(g) sets forth factors for the Commission to consider if a retail public utility decertified as a result of single certification has personal property that is rendered useless or valueless by the decertification. The factors the Commission shall consider to ensure that the compensation to the retail public utility is just and adequate at a minimum include: the impact on the existing indebtedness of the retail public utility and its ability to repay that debt; the value of the service facilities of the retail public utility located within the area in question; the amount of any expenditures for planning, design, or construction of service facilities outside the incorporated or annexed area that are allocable to service to the area in question; the amount of the retail public utility's contractual obligations allocable to the area in question; any demonstrated impairment of service or increase of cost to consumers of the retail public utility remaining after the single certification; the impact on future revenues lost from existing customers; necessary and reasonable legal expenses and professional fees; factors relevant to maintaining the current financial integrity of the retail public utility; and other relevant factors.
10. The factors listed in TWC § 13.255(g) are limited to determining the value of personal property, if any, rendered useless or valueless by the decertification and are not themselves property interests. TWC § 13.255(c) and (g); *Celina* at Conclusion of Law No. 8A.
11. A CCN is not property and thus loss of CCN area is not itself a loss of property. 16 TAC §§ 24.113(a) and 24.116; TWC § 13.255(c); *Celina* at Conclusion of Law No. 11.

12. Expenditures are not property. TWC § 13.255(c); *Celina* at Conclusion of Law No. 7A.
13. Green Valley's expenditures on permitting, planning, and design activities to provide wastewater service are not property. TWC § 13.255(c); *Celina* at Conclusion of Law No. 7B.
14. Green Valley's expenditures on reasonable and necessary legal expenses and professional fees, including, but not limited to appraisal expenses, incurred in this docket are not property. TWC § 13.255(c); *Celina* at Conclusion of Law No. 7C.
15. TWC § 13.255(g) limits recovery for the impact on future revenues to losses from existing customers. Green Valley's lost future revenues from currently non-existing customers are not property and are not compensable under TWC § 13.255(c) and (g). TWC § 13.255(c) and (g); *Celina* at Conclusion of Law No. 19.
16. As used in TWC § 13.255(c), *useless* means having or being of no use and *valueless* means having no monetary worth.
17. There is no property of Green Valley that will be rendered useless or valueless to Green Valley by the decertification sought by Cibolo in this matter. TWC § 13.255(c).
18. Cibolo's appraisal is limited to property that will be rendered useless or valueless by the decertification. TWC § 13.255(c) and (g).
19. Green Valley's appraisal is not limited to property that will be rendered useless or valueless by decertification. TWC § 13.255(c) and (g).
- 19A. Rule 16 TAC § 24.120 addresses single certification in incorporated or annexed areas.
20. Green Valley's expenditures to purchase the approximately 65-acre tract of land are not property. TWC § 13.255(c); *Celina* at Conclusion of Law No. 7A.
21. Effective May 28, 2017, 16 Texas Administrative Code (TAC) § 24.120 was 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 in accordance with Texas Government Code §§ 311.002, 311.022, 311.031(1)-(2).

23. The version of 16 TAC § 24.120 in effect when Cibolo filed its application applies in this case 16 TAC § 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 TAC § 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 under TWC § 13.255(c) and 16 TAC § 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 in accordance with TWC §§ 13.255(c) and (l) and 16 TAC §§ 24.120(c) and (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 under TWC §§ 13.255(c), (g), (g-1) and (l) and 16 TAC §§ 24.120(c), (g), (h) and (m).
28. Cibolo's application is administratively complete under 16 TAC § 24.8
29. As TCEQ has determined, Cibolo's public drinking water system complies with TCEQ's minimum requirements for public drinking water systems under TWC § 13.255(m), 16 TAC § 24.120(n), and 30 TAC, 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 under 16 TAC § 24.120(b)(1).
31. Green Valley notified any lienholders of this decertification process consistent with 16 TAC § 24.120(b)(2).

32. Cibolo met its burden to prove its application should be granted under TWC § 13.255 and 16 TAC § 24.120.

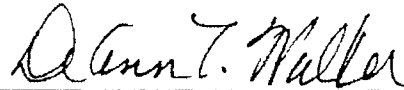
#### **IV. Ordering Paragraphs**

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders:

1. The application of the City of Cibolo is granted.
2. Green Valley's sewer CCN number 20973 is amended to remove the decertification area identified in findings of fact 36 and 37.
3. A copy of Green Valley's amended sewer CCN number 20973 is attached to this order.
4. Cibolo's sewer CCN number 21108 is amended to include the decertification area identified in findings of fact 36 and 37.
5. A copy of Cibolo's amended sewer CCN number 21108 is attached to this order.
6. The Commission's official service area boundary maps for Green Valley and Cibolo shall reflect these changes, as shown in the attached map.
7. Cibolo and Green Valley shall split evenly the costs for the hearing transcript at the rate for non-expedited service, and Cibolo shall pay for all of the additional costs to obtain the transcript on an expedited basis.
8. All other motions and any other requests for general or specific relief, if not expressly granted, are denied.

Signed at Austin, Texas the 10<sup>th</sup> day of January 2018.

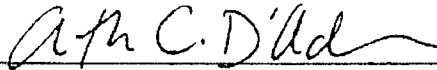
PUBLIC UTILITY COMMISSION OF TEXAS



DEANN T. WALKER, CHAIRMAN



BRANDY MARTY MARQUEZ, COMMISSIONER



ARTHUR C. D'ANDREA, COMMISSIONER



# Public Utility Commission of Texas

## By These Presents Be It Known To All That Green Valley Special Utility District

having obtained certification to provide sewer utility service for the convenience and necessity of the public, and it having been determined by this Commission that the public convenience and necessity would in fact be advanced by the provision of such service, Green Valley Special Utility District is entitled to this

### Certificate of Convenience and Necessity No. 20973

to provide continuous and adequate sewer utility service to that service area or those service areas in Bexar, Comal and Guadalupe Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 45702 are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of the Green Valley Special Utility District, to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

Issued at Austin, Texas, this

10<sup>th</sup>

day of

January 2018

2017.





# Public Utility Commission of Texas

**By These Presents Be It Known To All That**

**City of Cibolo**

having obtained certification to provide sewer utility service for the convenience and necessity of the public, and it having been determined by this Commission that the public convenience and necessity would in fact be advanced by the provision of such service, City of Cibolo is entitled to this

## **Certificate of Convenience and Necessity No. 21108**

to provide continuous and adequate sewer utility service to that service area or those service areas in Bexar and Guadalupe Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 45702 are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of the City of Cibolo, to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

Issued at Austin, Texas, this

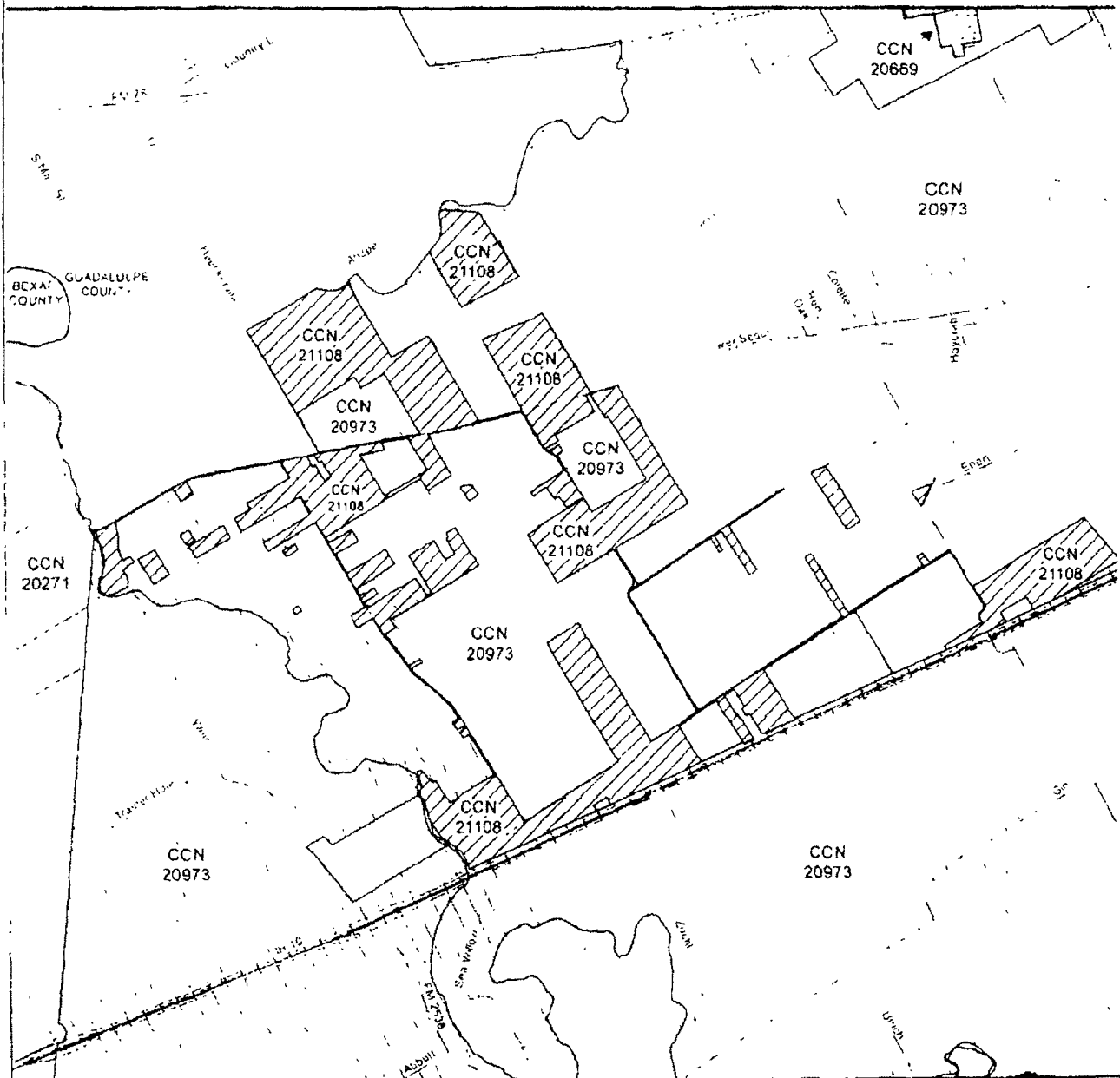
10<sup>th</sup>

day of

January





24<sup>th</sup>  
2017

City of Cibola  
 Sewer CCN No. 21108  
 PUC Docket No. 45702  
 13.255 Contract Service Agreement to Decertify a Portion of  
 Green Valley Special Utility District, CCN No. 20943 and Amend CCN No. 21108 in Guadalupe County



Public Utility Commission of Texas  
 1701 N. Congress Ave  
 Austin, TX 78701

**Water CCN**

-  21108 - City of Cibola
-  20973 - Green Valley SUD
-  20271 - City of Schertz
-  20669 - City of Marion

Map by: Komal Patel  
 Date created: September 14, 2017  
 Project Path: n:\vinalmapping\45702CityofCibola.mxd

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