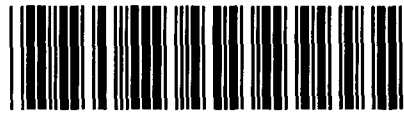


Control Number: 45702



Item Number: 188

Addendum StartPage: 0

Garcia, Desiree

. #45702.

From: Journeay, Stephen
Sent: Wednesday, July 10, 2019 10:13 AM
To: agency_req_rep@oag.texas.gov
Cc: Hubenak, Priscilla; Billings-Ray, Kellie (Kellie.Billings-Ray@oag.texas.gov); Hulme, John; Secord, Linda; Journeay, Stephen; Garcia, Desiree
Subject: Request representation related to Green Valley SUD v. PUC Commissioners, No. 1:16-cv-00627-SS
Attachments: Complaint 2nd amended 1_16-cv-00627-SS.pdf; Summons 1_16-cv-00627-SS.pdf

Mr. Darren L. McCarty, Deputy, Attorney General for Civil Litigation

Re: Green Valley S.U.D. v. Commissioners of the PUC, No. 1:16-cv-00627-SS, W. Dist. Tex.

Dear Mr. McCarty:

Green Valley has amended its complaint in this matter to include the commissioners and executive director of the PUC as defendants. Green Valley is seeking declarations that actions of the Commission violate federal law and an injunctions that would forbid the commissioners from carrying-out duties under state law and command the commission to grant certain relief under state law.

Attached are the summons and amended petition received by the Commission. I have discussed this matter with Mr. John Hulme of your office.

This e-mail is to request representation by the Attorney General in this matter.

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

Stephen Journeay
Commission Counsel

Office of Policy and Docket Management
Public Utility Commission of Texas

stephen.journeay@puc.texas.gov

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

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Texas

Green Valley Special Utility District

Plaintiff(s)

v.

CITY OF CIBOLO, TEXAS; DEANN T. WALKER,
ARTHUR C. D'ANDREA, and SHELLY BOTKIN, in
their official capacities as Commissioners of the
Public Utility Commission of Texas; and JOHN PAUL

Defendant(s)

Civil Action No. 1:16-cv-00627- SS

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* DeAnn T. Walker
Commissioner, Public Utility Commission of Texas
1701 N. Congress Ave.
Austin, Texas 78701

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Green Valley Special Utility District
Paul M. Terrill
G. Alan Waldrop
Terrill & Waldrop
810 West 10th Street
Austin, Texas 78701

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Jeannette J. Clack

CLERK OF COURT

Lencho Damian

Signature of Clerk or Deputy Clerk

Date: 6/28/2019



AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 1:16-cv-00627-ss

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for (name of individual and title, if any)
 was received by me on (date)

DEANN T. WALKER, Commissioner, Public
 Utility Commission of Texas

☐ I personally served the summons on the individual at (place)

on (date) ; or

☐ I left the summons at the individual's residence or usual place of abode with (name)

, a person of suitable age and discretion who resides there,

on (date) , and mailed a copy to the individual's last known address; or

☒ I served the summons on (name of individual)

CYNTHIA GUERRASO, Exec. Asst., who is

designated by law to accept service of process on behalf of (name of organization)

DEANN T. WALKER,

Commissioner, Public Utility Commission of Texas on (date) July 8 2019 ; or

☐ I returned the summons unexecuted because

; or

☐ Other (specify):

My fees are \$ — for travel and \$ 75 for services, for a total of \$ 75.00 .

I declare under penalty of perjury that this information is true.

Date: 07/08/19



Server's signature

KEVIN BENAVENTE, PROCESS SERVER

Printed name and title

Box 937, Austin, Texas 78767

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Texas

Green Valley Special Utility District

Plaintiff(s)

v.

CITY OF CIBOLO, TEXAS; DEANN T. WALKER,
ARTHUR C. D'ANDREA, and SHELLY BOTKIN, in
their official capacities as Commissioners of the
Public Utility Commission of Texas; and JOHN PAUL

Defendant(s)

Civil Action No. 1:16-cv-00627-SS

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Arthur C. D'Andrea
Commissioner, Public Utility Commission of Texas
1701 N. Congress Ave.
Austin, Texas 78701

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Green Valley Special Utility District
Paul M. Terrill
G. Alan Waldrop
Terrill & Waldrop
810 West 10th Street
Austin, Texas 78701

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Jeannette J. Clack

CLERK OF COURT

Lencho Damian

Signature of Clerk or Deputy Clerk

Date: 6/28/2019



AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 1:16-cv-00627-ss

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for (name of individual and title, if any) Arthur C. D'Andrea, Commissioner, Public
 was received by me on (date) July 8, 2019 Utility Commission of Texas

☐ I personally served the summons on the individual at (place)

on (date) _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with (name)

, a person of suitable age and discretion who resides there,

on (date) _____, and mailed a copy to the individual's last known address; or

☒ I served the summons on (name of individual) Cynthia Guzman, Exec. Asst., who is
 designated by law to accept service of process on behalf of (name of organization) Arthur C. D'Andrea,
Commissioner, Public Utility Commission of Texas on (date) July 8, 2019 ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other (specify): _____

My fees are \$ — for travel and \$ 75- for services, for a total of \$ 75.00

I declare under penalty of perjury that this information is true.

Date:

07/08/19

[Signature]
 Server's signature

Kevin Brando, Process Server
 Printed name and title

PO Box 937, Austin, Texas 78767
 Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Texas

Green Valley Special Utility District

Plaintiff(s)

v.

CITY OF CIBOLO, TEXAS; DEANN T. WALKER,
ARTHUR C. D'ANDREA, and SHELLY BOTKIN, in
their official capacities as Commissioners of the
Public Utility Commission of Texas; and JOHN PAUL

Defendant(s)

Civil Action No. 1:16-cv-00627- SS

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Shelly Botkin
Commissioner, Public Utility Commission of Texas
1701 N. Congress Ave.
Austin, Texas 78701

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Green Valley Special Utility District
Paul M. Terrill
G. Alan Waldrop
Terrill & Waldrop
810 West 10th Street
Austin, Texas 78701

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Jeannette J. Clack

CLERK OF COURT

Lencho Damian

Signature of Clerk or Deputy Clerk

Date: 6/28/2019



AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 1:16-cv-00627-ss

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for (name of individual and title, if any)
 was received by me on (date)

*Sherry Potkin, Commissioner, Public Utility
 Commission of Texas*

☐ I personally served the summons on the individual at (place)

on (date) ; or

☐ I left the summons at the individual's residence or usual place of abode with (name)

, a person of suitable age and discretion who resides there,

on (date), and mailed a copy to the individual's last known address; or

☒ I served the summons on (name of individual)

designated by law to accept service of process on behalf of (name of organization)

*Cynthia Guadalupe, Exec. Asst., who is
 Commissioner, Public Utility Commission of Texas*

on (date) ; or

☐ I returned the summons unexecuted because

; or

☐ Other (specify):

My fees are \$ for travel and \$ 75 for services, for a total of \$ 75.00

I declare under penalty of perjury that this information is true.

Date:

07/08/19

Server's signature

Printed name and title

Kevin Brantley, Process Server

Server's address

P.O. Box 937, Austin, Texas 78762

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Texas

Green Valley Special Utility District

Plaintiff(s)

v.

CITY OF CIBOLO, TEXAS; DEANN T. WALKER,
ARTHUR C. D'ANDREA, and SHELLY BOTKIN, in
their official capacities as Commissioners of the
Public Utility Commission of Texas; and JOHN PAUL

Defendant(s)

Civil Action No. 1:16-cv-00627-SS

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) John Paul Urban
Executive Director, Public Utility Commission of Texas
1701 N. Congress Ave.
Austin, Texas 78701

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Green Valley Special Utility District
Paul M. Terrill
G. Alan Waldrop
Terrill & Waldrop
810 West 10th Street
Austin, Texas 78701

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Jeannette J. Clack

CLERK OF COURT

Date: 6/28/2019



Jeannette J. Clack

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 1:16-cv-00627-ss

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for (name of individual and title, if any)
 was received by me on (date)

John Paul Urban, Executive Director, Public
Utility Commission of Texas

☐ I personally served the summons on the individual at (place)

on (date) ; or

☐ I left the summons at the individual's residence or usual place of abode with (name)

, a person of suitable age and discretion who resides there,

on (date) , and mailed a copy to the individual's last known address; or

☒ I served the summons on (name of individual)

designated by law to accept service of process on behalf of (name of organization)

Cynthia Guadalupe, Exec Asst, who is
John Paul Urban,
Executive Director, Public Utility Commission of Texas on (date) July 8, 2019 ; or

☐ I returned the summons unexecuted because

; or

☐ Other (specify):

My fees are \$ for travel and \$ 75.00 for services, for a total of \$ 75.00

I declare under penalty of perjury that this information is true.

Date:

07/08/19

Server's signature

Printed name and title

PO Box 937, Austin, Texas 78767

Server's address

Additional information regarding attempted service, etc:

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

GREEN VALLEY SPECIAL UTILITY §
DISTRICT, §
 Plaintiff, §
 §
vs. §
 §
CITY OF CIBOLO, TEXAS; DEANN T. §
WALKER, ARTHUR C. D'ANDREA, and §
SHELLY BOTKIN, in their official §
capacities as Commissioners of the Public §
Utility Commission of Texas; and JOHN §
PAUL URBAN, in his official capacity as §
Executive Director of the Public Utility §
Commission of Texas, §
 Defendants. §

Civil Action No. 1:16-cv-00627-SS

PLAINTIFF'S SECOND AMENDED COMPLAINT

NOW COMES Green Valley Special Utility District ("Green Valley SUD" or "Plaintiff"), and files this its Second Amended Complaint, and respectfully states and alleges as follows.

Parties

1. 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 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.

2. Defendant City of Cibolo, Texas (“Cibolo” or the “City”) 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 has been served with citation.

3. Defendant DeAnn T. Walker in her official capacity is Chairman and Commissioner of the Public Utility Commission of Texas (the “PUC”), and may be served with citation at the PUC’s business office located at 1701 N. Congress Ave., Austin, TX 78701, or wherever else she may be found within or without the State of Texas.

4. Defendant Arthur C. D’Andrea in his official capacity is a Commissioner of the PUC, and may be served with citation at the PUC’s business office located at 1701 N. Congress Ave., Austin, TX 78701, or wherever else he may be found within or without the State of Texas.

5. Defendant Shelly Botkin in her official capacity is a Commissioner of the PUC, and may be served with citation at the PUC’s business office located at 1701 N. Congress Ave., Austin, TX 78701, or wherever else she may be found within or without the State of Texas.

6. Defendant John Paul Urban in his official capacity is Executive Director of the PUC, and may be served with citation at the PUC’s business office located at 1701 N. Congress Ave., Austin, TX 78701, or wherever else he may be found within or without the State of Texas.

Jurisdiction and Venue

7. This Court has federal question jurisdiction under section 1331 of title 28 of the United States Code because the controversy arises under section 1926 of title 7 of the United States Code, as well as sections 1983 and 1988 of title 42 of the United States Code.

8. Venue in this Court is proper under section 1391(b)(1)-(2) of title 28 of the United States Code because the Defendants are located within this Court’s judicial district, a substantial part of the events or omissions giving rise to the Plaintiff’s claim occurred within this Court’s

judicial district, and a substantial part of the property that is the subject of the action is situated within this Court's judicial district.

Factual and Procedural Background

9. Green Valley SUD provides and makes water and wastewater service available within its certificated service area, which is located within portions of Guadalupe, Comal, and Bexar Counties in Texas. Green Valley SUD provides and makes available water service pursuant to its Certificate of Convenience and Necessity ("CCN") No. 10646 duly issued by the PUC. Green Valley SUD provides and makes available wastewater service pursuant to its CCN No. 20973 duly issued by the PUC.

10. Green Valley SUD owns and operates an integrated utility system consisting of water and wastewater utilities. That integrated water and wastewater utility system is operated by the same employees, controlled by the same board of directors, managed by the same general manager, and funded from the same operating account.

11. Green Valley SUD's integrated utility system does not maintain separate financial accounts for water and wastewater. Funds generated by either subsystem are used for the overall integrated system. Thus, revenues from water customers are deposited into the operating account, allowing for funding to be available for Green Valley SUD's wastewater projects. Similarly, revenues from wastewater customers are deposited into the operating account, allowing for funding to be available for Green Valley SUD's water projects. By operating as an integrated utility, there are efficiencies and economies of scale created by combining water and wastewater services within the same area, which will be lost in all areas for which Green Valley SUD ceases to be the wastewater service provider, thereby impairing the financial security of Green Valley SUD's water system. Accordingly, an impairment of Green Valley SUD's water services impacts Green Valley SUD's wastewater services, and an impairment of Green Valley

SUD's wastewater services impacts Green Valley SUD's water services. Preservation of Green Valley SUD's wastewater service area safeguards the financial security of Green Valley SUD's entire utility system, which in turn encourages Green Valley SUD to invest in both its water and wastewater facilities throughout its service area.

12. Green Valley SUD has provided water service within its CCN service area since the 1960s. Historically, there was no demand for wastewater service, generally because the rural area with the CCN service area lacked the population density typically associated with a wastewater collection system. As a result, rural residents preferred using on-site septic systems, and therefore did not request wastewater service from Green Valley SUD.

13. As population and density increased over the ensuing decades, however, along with approaching suburban development from the City of San Antonio and smaller nearby cities, Green Valley SUD identified the upcoming need for wastewater service within its existing water CCN service area. As a result, Green Valley SUD began the planning and implementation necessary to provide wastewater service within its existing water CCN service area.

14. In October 2005, Green Valley SUD obtained a wastewater CCN from the Texas Commission on Environmental Quality (the "TCEQ")—the predecessor to PUC that had jurisdiction over water and wastewater CCNs at the time. The wastewater CCN was roughly coterminous with its existing CCN certificated water service area and covered approximately 76,000 acres, or 118 square miles.

15. Next, in 2006, Green Valley SUD prepared a "Wastewater Master Plan" (approximately 700 pages) with an engineering firm. The objective of this Wastewater Master Plan was to analyze Green Valley SUD's existing conditions, estimate future wastewater

demands, evaluate opportunities to utilize existing area wastewater service providers, estimate proposed infrastructure costs, and recognize long-term wastewater opportunities.

16. In connection with the implementation of the Wastewater Master Plan, Green Valley SUD began a process many years ago of planning, designing, and permitting a regional wastewater treatment plant that it will own and operate. As part of that process, in 2014, Green Valley SUD purchased approximately 65 acres of land as the location for the regional wastewater treatment plant.

17. In April 2015, after a lengthy planning, design, and engineering process, Green Valley SUD applied to TCEQ for a Texas Pollutant Discharge Elimination System (“TPDES”) permit for a large, regional wastewater treatment plant to authorize the discharge of treated domestic wastewater. The regional wastewater treatment plant was sized and phased to serve Green Valley SUD’s extensive wastewater CCN area.

18. In October 2015, the TCEQ’s Executive Director issued a draft permit to Green Valley SUD. The draft permit issued by the TCEQ Executive Director is significant because it is a formal indicator that the TCEQ technical and legal staff reviewed Green Valley SUD’s TPDES permit application and determined that it complies with the TCEQ’s rules and regulations.

19. Defendant City of Cibolo is a competing city utility that wants to “skim the cream” of its competitor’s protected service territory. Cibolo has never sought to, nor is it capable of, providing wastewater utility service to the entire 118 square miles of service area in Green Valley SUD’s wastewater CCN. Instead, Cibolo wants to cherry-pick the densest, most profitable wastewater service areas in Green Valley SUD’s wastewater service area for itself—though it has no lines or facilities in the service area it wants to poach from Green Valley SUD—

while providing no wastewater service of any kind to the remaining roughly 75,000 acres of Green Valley's CCN area.

20. As part of Cibolo's strategy to harm its competitor—Green Valley SUD—and cherry-pick its service area, Cibolo and another nearby municipality (the City of Schertz) protested Green Valley SUD's TPDES permit application. Cibolo and Schertz had neither the intention nor the capability of serving the entirety—or even the majority—of Green Valley SUD's wastewater service area. Instead, Cibolo and Schertz used the protest process to inflict cost and delay to harm their competitor, while also harming those customers who would be served by Green Valley SUD's regional wastewater treatment plant.

21. Cibolo and Schertz succeeded in inflicting cost and a three-year delay, but after a lengthy contested case at the State Office of Administrative Hearings, the TCEQ granted Green Valley SUD's permit application. On July 25, 2018, the TCEQ issued a TPDES permit to Green Valley SUD for its regional wastewater treatment plant. The TPDES permit authorizes Green Valley SUD to treat and discharge 2.5 million gallons per day ("MGD") at full build out through its regional wastewater treatment facility, which equates to serving about 10,000 customers at full capacity.

22. In addition to interfering in the process relating to Green Valley SUD's TPDES permit for the purposes of delay, inflicting unnecessary cost and expense, and preventing Green Valley SUD from implementing its long-term wastewater treatment plans, Cibolo has also attempted to interfere in Green Valley SUD's application for additional federal funds in the form of a loan from the United States Department of Agriculture, Rural Development (the "USDA") for the purposes of obtaining additional funding for both water and wastewater operations. Cibolo, despite being a stranger to the loan application and having no direct interest in the loan

application process, intentionally interfered with Green Valley SUD's loan application to the USDA by delivering written communications to the USDA objecting to the issuance of the new loans to Green Valley SUD and alleging that the loans should not be approved and issued on numerous spurious and irrelevant bases. Cibolo's purpose, of course, was to continue its attempts to frustrate Green Valley SUD's compliance with its CCN obligations and potentially prevent Green Valley SUD from supplying water and wastewater service in its CCN area. Cibolo's ultimate goal in interfering with Green Valley SUD was to obtain portions of Green Valley SUD's CCN area for itself and harm its competitor.

23. In addition to its permitted regional wastewater treatment plant, Green Valley SUD has also taken other actions to provide and make available retail wastewater service at all times. Green Valley SUD has existing contracts and relationships in place to provide and make available wastewater service to its retail customers. Green Valley SUD has entered into agreements with the City of Marion and the San Antonio River Authority ("SARA") to provide wholesale wastewater treatment. This is similar to the contractual arrangement that Cibolo has with Cibolo Creek Municipal Authority ("CCMA") because Cibolo does not operate a wastewater treatment plant. Instead, Cibolo has a wholesale wastewater treatment contract with CCMA to treat sewage effluent collected by Cibolo from its retail customers.

24. Green Valley SUD is presently providing retail wastewater service to several residential subdivisions within its certificated wastewater service area, with several more in the planning, development, and construction phases. For example, in the past few years, Green Valley SUD received requests for wastewater service from real estate developers for three developments southwest of Cibolo. Green Valley SUD prepared and communicated plans for the provision of the wastewater retail service that was requested. The three developers agreed to

the plans, and today, Green Valley SUD is providing active retail wastewater service to those three developments. Green Valley SUD's provision of retail wastewater service to those three developments continues to expand in accordance with the timing needs of those developments, which are planned to serve a total of 900 residences at full build-out. All homeowners in these three residential subdivisions are receiving retail water and wastewater service from Green Valley SUD. In the past year alone, Green Valley SUD has entered into binding service agreements to provide retail wastewater service to seven additional subdivisions, five of which will be served by Green Valley SUD's permitted regional wastewater treatment plant. When combined with Green Valley SUD's existing sewer customers, Green Valley SUD has committed to serve over 3,100 residential sewer customers. Notably, nearly 2,000 of these customers are located within Cibolo's extra-territorial jurisdiction.

25. To facilitate the provision of retail wastewater service in a portion of Green Valley SUD's CCN area, Green Valley SUD paid for upgrades to the City of Marion's currently-operating wastewater treatment plant and purchased a long-term contractual right for treatment capacity. Green Valley SUD also purchased a long-term contractual right for treatment capacity at SARA's currently-operating wastewater treatment plant. To utilize these long-term contractual rights, Green Valley SUD owns active, operational wastewater collection pipes and related systems to provide retail wastewater service to existing customers and to provide capacity for future retail customers as the need arises.

26. Green Valley SUD has not refused retail wastewater service to any landowner within its certificated wastewater service area. No landowner within the service area has requested wastewater service from Green Valley SUD and yet been unable to obtain wastewater service. Green Valley SUD has never been found by any regulatory authority to have failed to

provide continuous and adequate wastewater service in its CCN service area. To the contrary, Green Water SUD was, is, and remains willing and able to provide retail wastewater service throughout its service area.

Claims

27. Chapter 13 of the Texas Water Code requires that a water and wastewater utility that holds CCNs “shall serve every customer within its certified area and shall render continuous and adequate service within the area or areas.” TEX. WATER CODE § 13.250(a). Green Valley SUD is in full compliance with this statute, and its compliance with this statute has not been challenged in any proceeding before the PUC.

28. Green Valley SUD is the recipient of a loan issued by the USDA, under 7 U.S.C. section 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. section 1926, and was then purchased by the USDA.

29. Section 1926(b) provides protection to recipients of federal funds under section 1926(a). Section 1926(b) provides as follows:

Curtailment or limitation of service prohibited. The service provided or made available through any such association shall not be curtailed or limited by inclusion of the area served by such association within the boundaries of any municipal corporation or other public body, or by the granting of any private franchise for similar service within such area during the term of such loan; nor shall the happening of any such event be the basis of requiring such association to secure any franchise, license, or permit as a condition to continuing to serve the area served by the association at the time of the occurrence of such event.

7 U.S.C. § 1926(b).

30. Section 1926(b) protects Green Valley SUD from having its service area curtailed or limited by various means, including decertification. However, contrary to this federal

statutory protection, which is based on the CCN holder being a borrower under a federal loan program, Defendants DeAnn T. Walker, Arthur C. D'Andrea, Shelly Botkin, and John Paul Urban (the "PUC Officials") have opted to ignore federal law in order to decertify Green Valley SUD's service area.

31. On March 8, 2016, the City of Cibolo filed an application with the PUC to obtain 1,694 acres of Green Valley SUD's wastewater service area within Cibolo's corporate limits, and simultaneously to decertify and curtail that same service area within Green Valley SUD's CCN No. 20973 (the "Disputed Property"). In other words, the application is a request by the City to remove certificated service area from Green Valley SUD's CCN and give it to Cibolo. The City is seeking, pursuant to section 13.255(b)-(c) of the Texas Water Code, authority from the PUC to replace Green Valley SUD as the provider of wastewater service within the Disputed Property. The Disputed Property was properly certificated to Green Valley SUD at the time the City filed its application. The City's application made no allegation that Green Valley SUD has failed to provide continuous and adequate service to its customers within the Disputed Property—or anywhere within its CCN service area, for that matter.

32. Texas Water Code section 13.255 allows a municipality to replace a utility as service provider. Section 13.255 does not require any proof that the utility is failing to meet any statutory obligation, or is delinquent in the provision of service. On the contrary, the utility could be actively providing service to all customers within the area in dispute. Instead, section 13.255 requires only that the municipality disclose its intent to take over the area, file an application with the PUC, and pay the amount determined by the PUC (if any) for any property of the incumbent utility that is determined to be rendered "useless or valueless" as a result of the municipality's takeover. *See* TEX. WATER CODE § 13.255(b)-(c).

33. The City has expressed an intention to file additional applications with the PUC to take certificated service area away from the Green Valley SUD on other properties that are properly certificated to Green Valley SUD, and to replace Green Valley SUD as the provider of wastewater service within those other properties.

34. Green Valley SUD's certificated service area is entitled to protection from section 13.255 curtailment or limitation under 7 U.S.C. section 1926(b). Consequently, the PUC Officials cannot decertify Green Valley SUD's CCN service area under section 13.255 because doing so would violate the federal law. The Supremacy Clause of the United States Constitution states that "the laws of the United States . . . shall be the supreme law of the land; and the judges in every state shall be bound thereby." U.S. CONST. art. VI. Federal law prohibits the PUC Officials from curtailing a federally indebted wastewater service provider's certificated area by allowing another person to provide such service in that area, *see* 7 U.S.C. § 1926(b), and yet the PUC Officials are repeatedly opting to follow state law at section 13.255 in lieu of supreme federal law at section 1926(b) with respect to Green Valley SUD.

35. Before the PUC, Green Valley SUD expressly relied on the protections of section 1926(b). In response, the PUC Officials issued an order refusing to apply the protections of federal law. In doing so, the PUC Officials looked to another section of the Texas Water Code—section 13.254(a-1)—and determined that the Texas Legislature has directed the PUC to ignore supreme federal law. *See* Ex. A. The PUC Officials then referred the docket to the State Office of Administrative Hearings ("SOAH") on state law issues, excluding the issue of whether Green Valley SUD was protected by section 1926(b). On January 10, 2018, the PUC and its Officials granted the City's application, and ruled that Green Valley SUD was entitled to no compensation whatsoever as a result of the decertification of 1,694 acres from its service area. *See* Ex. B. In

other words, the PUC Officials issued a final order ignoring the application of supreme federal law protecting Green Valley SUD's CCN service area, decertified 1,694 acres, and provided \$0 in compensation for that valuable lost service area.

36. Although the proceeds from the Federal Loan were used by Green Valley SUD in connection with its water system, and the Federal Loan is secured by revenues from the water system, section 1926(b) does not limit its protections based on which particular subsystem within Green Valley SUD's integrated utility system—water or wastewater—was funded by the loan or provides the collateral for the loan. If the City succeeds in taking certificated wastewater service area away from Green Valley SUD, then by definition, the service provided or made available through Green Valley SUD—which includes both water service and wastewater service—will have been curtailed or limited by inclusion of the area served by Green Valley SUD within the City's boundaries. *See* 7 U.S.C. § 1926(b).

37. Under federal law, safeguarding Green Valley SUD's financial security by protecting Green Valley SUD's wastewater service area protects the security of the USDA's Federal Loan to Green Valley SUD. The PUC Officials' curtailment and limitation of Green Valley SUD's wastewater service area has the potential to harm Green Valley SUD's ability to repay the Federal Loan, regardless of how the funds from the Federal Loan were actually spent, and regardless of the scope of the USDA's security interest. While the USDA's remedy for a loan default—the security interest—may be limited to water revenues, Green Valley SUD's payments on the Loan can come from any revenues—including wastewater revenues—and thus a curtailment of Green Valley SUD's wastewater service area equates to a curtailment or impairment of the security for the Federal Loan. Moreover, the reduction of Green Valley

SUD's wastewater service area can be expected to impair Green Valley SUD's ability to obtain federal financing under section 1926 in the future.

38. Accordingly, pursuant to 42 U.S.C. section 1983, Green Valley SUD seeks to permanently enjoin the PUC Officials' unlawful deprivation of Green Valley SUD's rights under federal law; pursuant to 28 U.S.C. section 2201, Green Valley SUD seeks declaratory relief from the Court to the effect that the PUC Officials cannot decertify property from Green Valley SUD's certificated area under Texas Water Code section 13.255(b)-(c) during the term of any loan made by the United States Department of Agriculture to Green Valley SUD; and pursuant to 42 U.S.C. section 1988, Green Valley SUD further seeks an award of its attorneys' fees, expenses, and costs incurred in pursuing this action.

39. The City prosecuted its section 13.255 application for single certification in violation of Green Valley SUD's rights under 7 U.S.C. section 1926(b). By virtue of the City's March 8, 2016 application, the City sought to curtail and limit the service provided or made available through Green Valley SUD by inclusion of the Disputed Property within the City's boundaries and by obtaining a single certification for the City to replace Green Valley SUD as the wastewater service provider during the term of Green Valley SUD's USDA loan. Accordingly, pursuant to 7 U.S.C. section 1926(b) and 42 U.S.C. section 1983, Green Valley SUD seeks to permanently enjoin the City's actions to unlawfully deprive Green Valley SUD of its rights under federal law; pursuant to 7 U.S.C. section 1926(b) and 28 U.S.C. section 2201, Green Valley SUD seeks declaratory relief from the Court to the effect that the City cannot provide water or wastewater service within Green Valley's certificated area during the term of any loan made by the United States Department of Agriculture to Green Valley SUD; and pursuant to

42 U.S.C. section 1988, Green Valley SUD further seeks an award of its attorneys' fees, expenses, and costs incurred in pursuing this action.

40. The City wrongfully interfered in Green Valley SUD's application for additional loan funds from the USDA. The City's interference in the USDA loan application process caused Green Valley SUD to incur damage, expense, and unnecessary attorneys' fees. Green Valley SUD is entitled to recover its damages caused by the City's wrongful interference in the process of obtaining additional loan funding from the USDA.

41. Green Valley SUD's CCNs grant Green Valley SUD the exclusive right to provide water and wastewater service within its certificated area. The CCNs obligate Green Valley SUD to provide and make service available to every person who can reasonably and feasibly be served within that certificated area. Green Valley SUD is complying with such obligation.

42. Pursuant to its obligations to serve its exclusive certificated area, Green Valley SUD applied for funding from the USDA. The Federal Loan was issued on August 1, 2003.

43. The PUC Officials, on and after the date of Green Valley SUD's indebtedness, have violated and are continuing to violate Green Valley SUD's rights under 7 U.S.C. section 1926(b) by decertifying or threatening to decertify additional areas of Green Valley SUD's CCN under Texas Water Code section 13.255(b)-(c), thereby attempting to curtail and limit the service provided or made available through Green Valley SUD in favor of an encroaching municipal corporation during the term of Green Valley SUD's loan.

44. The City, on and after the date of Green Valley SUD's indebtedness, has violated and is continuing to violate Green Valley SUD's rights under 7 U.S.C. section 1926(b) by encroaching on Green Valley SUD's protected service area, thereby curtailing or limiting the

service provided or made available through Green Valley SUD during the term of Green Valley SUD's loan.

45. Section 13.255(b)-(c) allows the PUC to curtail a utility's service area without any finding that the utility is failing to provide or make service available to the property. Therefore, such statute is preempted by 7 U.S.C. section 1926(b), which mandates that "the service provided or made available" through a federally-indebted utility "shall not be curtailed or limited."

46. Green Valley SUD is a properly indebted association under the USDA's funding authority provided by 7 U.S.C. section 1926.

47. Green Valley SUD has a lawful right to serve the Disputed Property pursuant to the authority granted by its CCNs.

48. Green Valley SUD provides or makes available water and wastewater service to the Disputed Property and throughout its certificated service area.

49. The actions of the PUC Officials and the City impermissibly curtail and limit Green Valley SUD's federally protected service area.

50. As a result of the conduct of the PUC Officials and the City, Green Valley SUD is being deprived of its right to non-encroachment, non-curtailement, and non-limitation under 7 U.S.C. section 1926(b) and is in danger of permanently losing the Disputed Property from its service area along with the associated revenue stream derived therefrom.

51. The PUC Officials and the City are engaging in such deprivation of rights secured by federal law under color of state law by way of their adherence to Texas Water Code section 13.255.

52. The PUC Officials and the City are engaging in such deprivation of rights secured by federal law under color of state law through the unlawful and unauthorized use of Texas Water Code section 13.255(b)-(c) in violation of 7 U.S.C. section 1926(b).

53. 7 U.S.C. section 1926(b) preempts any conflicting state law, and must be enforced pursuant to the Supremacy Clause of the United States Constitution.

54. Since Green Valley SUD originally filed this lawsuit, there have been multiple developments, all of which confirm Green Valley SUD's entitlement to relief in this lawsuit. As set forth above, Green Valley SUD is presently providing active retail sewer service within its certificated service area, with active pipes in the ground, and the TCEQ in July 2018 issued a permit for Green Valley SUD's wastewater treatment plant.

55. In 2017, the Fifth Circuit in this case affirmed that Green Valley SUD's federal loan secured only by water revenues equally protects Green Valley SUD's sewer service area under 7 U.S.C. section 1926(b), and in 2019 the Supreme Court denied the City's petition for writ of certiorari. *See Green Valley Special Utility District v. City of Cibolo*, 866 F.3d 339 (5th Cir. 2017), *cert. denied*, 139 S. Ct. 783 (2019).

56. On November 28, 2018, in Case No. 1:17-cv-00819-SS, this Court entered judgment in favor of Green Valley SUD on its section 1983 claims against the PUC Officials and the City of Schertz, Texas, invalidating a decertification order that had been entered by the PUC Officials in favor of the City of Schertz, invalidating any order by the PUC Officials that would recertify such property to the City of Schertz, and enjoining the City of Schertz from providing wastewater service on the property, absent Green Valley SUD's consent, for so long as the property remained within Green Valley SUD's sewer CCN. *See Green Valley Special Util. Dist. v. Walker*, 351 F. Supp. 3d 992 (W.D. Tex. 2018).

57. Therefore, in a like manner, pursuant to 42 U.S.C. section 1983 and 28 U.S.C. section 2201, Green Valley SUD requests that the Court declare the continuing conduct of the PUC Officials and the City unlawful, and issue the Court's permanent injunction restoring the status quo with respect to the Disputed Property and prohibiting the PUC Officials' grant of relief—and the City's takeover of service areas—in violation of Green Valley SUD's rights under 7 U.S.C. section 1926(b).

58. Pursuant to 42 U.S.C. section 1988, Green Valley SUD seeks an award of attorneys' fees, expenses, and costs incurred in this action. In addition, Green Valley SUD seeks the recovery of all damages caused by the City in the City's crusade to wrongfully deprive Green Valley SUD of its federal rights and its certificated CCN service area.

PRAYER

WHEREFORE, Plaintiff Green Valley Special Utility District respectfully prays for the entry of judgment against Defendants and in favor of Plaintiff Green Valley Special Utility District as follows:

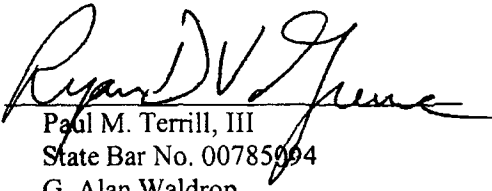
- A. Declaratory relief in the form of a declaration by this Court that decertification by John Paul Urban, DeAnn T. Walker, Arthur C. D'Andrea, and Shelly Botkin (or their successors), in their official capacities as Officials of the Public Utility Commission of Texas, of Plaintiff's certificated service area in reliance on Texas Water Code section 13.255(b)-(c) would violate the United States Constitution and laws as long as Plaintiff's Federal Loan remains outstanding;
- B. Declaratory relief in the form of a declaration by this Court that approval by John Paul Urban, DeAnn T. Walker, Arthur C. D'Andrea, and Shelly Botkin (or their successors), in their official capacities as Officials of the Public Utility Commission of Texas, of any person or entity other than Plaintiff to provide water

or wastewater service in Plaintiff's certificated service area in reliance on Texas Water Code section 13.255(b)-(c) would violate the United States Constitution and laws as long as Plaintiff's Federal Loan remains outstanding;

- C. Permanent injunctive relief prohibiting John Paul Urban, DeAnn T. Walker, Arthur C. D'Andrea, and Shelly Botkin (or their successors), in their official capacities as Officials of the Public Utility Commission of Texas, from decertifying Plaintiff's certificated water or wastewater service area pursuant to Texas Water Code section 13.255(b)-(c), as long as Plaintiff's federal loan remains outstanding;
- D. Permanent injunctive relief prohibiting John Paul Urban, DeAnn T. Walker, Arthur C. D'Andrea, and Shelly Botkin (or their successors), in their official capacities as Officials of the Public Utility Commission of Texas, from permitting or authorizing any entity other than Plaintiff Green Valley Special Utility District to provide or make available water or wastewater service to any area that was decertified from Plaintiff's certificated water or wastewater service area pursuant to Texas Water Code section 13.255(b)-(c) on or after December 31, 2003, as long as Plaintiff's federal loan remains outstanding;
- E. Permanent mandatory injunctive relief requiring John Paul Urban, DeAnn T. Walker, Arthur C. D'Andrea, and Shelly Botkin (or their successors), in their official capacities as Officials of the Public Utility Commission of Texas, to re-certify into Plaintiff Green Valley Special Utility District's CCN No. 20973 the property decertified therefrom by January 10, 2018 order in PUC Docket No. 45702;

- F. Permanent injunctive relief prohibiting the City of Cibolo, Texas, from curtailing or limiting Green Valley Special Utility District's CCN No. 10646 or CCN No. 20973 pursuant to Texas Water Code section 13.255(b)-(c), as long as Plaintiff's federal loan remains outstanding;
- G. Declaratory relief in the form of a declaration that the City of Cibolo, Texas is prohibited from providing any water or sewer service within Green Valley Special Utility District's boundaries or certificated area under CCN No. 10646 or CCN No. 20973 as they existed when the Federal Loan was funded, as long as the Federal Loan remains outstanding;
- H. That Green Valley Special Utility District be awarded its attorneys' fees, expenses, and costs pursuant to 42 U.S.C. sections 1983 and 1988, including post-judgment interest thereon;
- I. That Green Valley Special Utility District have and recover all damages caused by the City of Cibolo in connection with the City's attempts to interfere with Green Valley Special Utility District's compliance with its service obligations under its CCN and Green Valley Special Utility District's application for loans from the USDA;
- J. That Green Valley Special Utility District be awarded costs of court; and
- K. That Green Valley Special Utility District be awarded all other and further legal and/or equitable relief to which it is justly entitled.

Respectfully submitted,

By: 

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ATTORNEYS FOR GREEN VALLEY
SPECIAL UTILITY DISTRICT

CERTIFICATE OF SERVICE

I hereby certify that on June 21, 2019, Plaintiff's Second Amended Complaint was electronically filed with the Clerk of the Court using the CM/ECF system and served on all attorney(s) and/or parties of record, via the CM/ECF service and/or via electronic mail.

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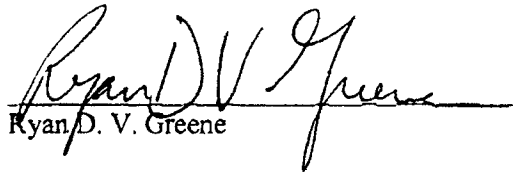

Ryan D. V. Greene

Exhibit A



Control Number: 45702



Item Number: 53

Addendum StartPage: 0

PUC DOCKET NO. 45702 2016 JUL -1 11:13:55

PUBLIC UTILITY COMMISSION

APPLICATION OF CITY OF CIBOLO §
FOR SINGLE CERTIFICATION IN §
INCORPORATED AREA AND TO §
DECERTIFY PORTIONS OF GREEN §
VALLEY SPECIAL UTILITY §
DISTRICT'S SEWER CERTIFICATE §
OF CONVENIENCE AND NECESSITY IN §
GUADALUPE COUNTY §

PUBLIC UTILITY COMMISSION
OF TEXAS

PRELIMINARY ORDER

On March 8, 2016, the city of Cibolo filed an application seeking single certification of a sewer service area within Cibolo's corporate limits and decertification of that portion of Green Valley Special Utility District's sewer certificate of convenience and necessity (CCN), under Texas Water Code (TWC) § 13.255 and 16 Texas Administrative Code (TAC) § 24.120.

On April 22, 2016, Green Valley filed a motion to intervene, and in Order No. 3, issued on April 28, 2016, the Commission administrative law judge (ALJ) granted that motion. On April 29, 2016, Green Valley filed a pleading styled as a plea to the jurisdiction and motion to dismiss, arguing in part that Cibolo's application must be dismissed for lack of jurisdiction because Green Valley holds a United States Department of Agriculture (USDA) rural-development loan, and therefore section 1926(b) of the Federal Consolidated Farm and Rural Development Act bars municipal encroachment of Green Valley's sewer CCN.¹

On May 4, 2016, the Commission issued an order requiring Cibolo and inviting other interested parties to file a list of issues to be addressed in this proceeding. Cibolo, Green Valley, and Commission Staff each timely filed lists of issues. In response to proposed threshold issues, on May 27, 2016, parties were invited to submit initial and reply briefs on two threshold issues. Cibolo, Green Valley, and Commission Staff each filed initial briefs on June 6, 2016. Cibolo,

¹ Green Valley Special Utility District's Plea to the Jurisdiction and Motion to Dismiss at 2-3, citing 7 U.S.C.A. § 1926(b) (Apr. 29, 2016).

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Green Valley, Commission Staff, and the Texas Municipal League filed separate reply briefs or comments on June 14.

I. Threshold Legal/Policy Determinations

Parties filed briefs addressing the following threshold legal and policy questions. After consideration of parties' arguments, the Commission reaches the following determinations.

- 1. May the Commission deny a municipality's application seeking single certification under TWC § 13.255 solely on the basis that a retail public utility that holds a CCN for all or part of the requested service area is also a holder of a federal loan made under section 1926(a) of the Federal Consolidated Farm and Rural Development Act? In answering this issue, please address whether the Commission has authority to determine whether a federal statute preempts state law.**

It is well established that a Texas administrative agency, such as the Commission, may only exercise those specific powers that the Legislature has delegated to it.² Such agency authority may be found in "clear and express"³ statutory language, as well as "whatever power is reasonably necessary to fulfill a function or perform a duty that the [L]egislature has expressly placed in the agency."⁴ However, "reasonably necessary" is not synonymous with expedient. An agency may not "exercise what is effectively a new power, or a power contradictory to the statute" even if it is administratively useful.⁵

² *Subaru of America Inc. v. David McDavid Nissan, Inc.*, 84 S.W.3d 212, 220 (Tex. 2002).

³ *Public Utility Commission of Texas v. Cities of Harlingen*, 311 S.W.3d 610, 615 (Tex. App.-Austin 2010, no pet.).

⁴ *TXU Generation Co. v. Public Utility Commission of Texas*, 165 S.W.3d 821, 829 (Tex. App.-Austin 2005, no pet.).

⁵ *Texas Coast Utilities Coalition v. Rail Road Commission of Texas*, 423 S.W.3d 355, 360 (Tex. 2014) (quoting *Public Utility Commission of Texas v. City Public Service Board of San Antonio*, 53 S.W.3d 310, 316 (Tex. 2001); and citing *Public Utility Commission of Texas v. GTE-Southwest, Inc.*, 901 S.W.2d 401, 407 (Tex. 1995)) (emphasis added).

At issue in this proceeding is the Legislature's explicit directive to the Commission that it "*shall* grant single certification to the municipality" that applies for single certification of an area that has been incorporated or annexed by the municipality.⁶ The Commission must also determine whether the statutorily-mandated grant of single-certification to the municipality will render a certificated retail public utility's property useless and valueless, whether the municipality requests transfer of property, and, if so, set the monetary amount that is adequate and just to compensate the retail public utility for such property.⁷ None of these additional duties, however, are grounds for the Commission to deny a municipality's application, and indeed the only basis for denial set forth in TWC § 13.255 involves a municipality's failure to demonstrate compliance with public-drinking-water requirements set by the Texas Commission on Environmental Quality (TCEQ).

Green Valley argues that, despite the language in TWC § 13.255 stating that the Commission shall grant single certification to the municipality, the judicial doctrine of federal preemption requires the Commission to nevertheless dismiss or deny a municipality's application if the certificated retail public utility is indebted to the federal government under § 1926(a) of the Federal Consolidated Farm and Rural Development Act.⁸ Green Valley goes on to assert it satisfies each element of the tests the federal courts have applied in determining whether a certificated borrower's service area is federally protected from encroachment under § 1926(b) of the Federal Consolidated Farm and Rural Development Act.⁹ Yet, Green Valley's and other parties' arguments regarding the federal judiciary's adjudications of § 1926(b) cases highlight the imprudence of the Commission veering from the straight-forward path laid by the Legislature to instead attempt to navigate the thicket that is judicial interpretation of federal-loan law.

⁶ TWC § 13.255(c) (emphasis added).

⁷ *Id.*

⁸ Green Valley Special Utility District's (Green Valley's) Initial Brief on Threshold Legal/Policy Issues (Initial Brief) at 9 ("[F]ederal preemption of TWC § 13.255 by § 1926(b) applies and requires the Commission deny or dismiss Cibolo's application due to irreconcilable conflict.") (Jun. 6, 2016).

⁹ Green Valley's Initial Brief at 2-9; Green Valley's Reply Brief on Threshold Legal/Policy Issues (Reply Brief) at 4-9 (Jun. 14, 2016).

No party advocating dismissal or abatement of this proceeding cited to a decision – judicial or administrative – requiring the Commission to conduct its own inquiry and application of federal-loan law in a Commission proceeding under TWC § 13.255. Moreover, the Commission has not been able to locate a provision within the Texas Water Code permitting the Commission to abdicate statutory duties regarding service-area certification based upon federal-preemption concerns. In fact, the only TWC certification provisions that make mention of the federal-rural-loan programs expressly *prohibit* the Commission from denying applications to revoke all or part of a CCN (under other provisions of the Texas Water Code) on the basis that a certificate holder is a borrower of a federal loan program.¹⁰

Green Valley is seeking a federal district court ruling on whether § 1926(b) of the Federal Consolidated Farm and Rural Development Act bars Cibolo from applying to this Commission for single certification to provide sewer service in a portion of Green Valley's service area. Unlike the Commission, that forum has the authority to determine whether federal law preempts a statute enacted by the Legislature. Unless Cibolo withdraws its application here – or a court orders otherwise – the Commission must comply with the statutory duties and timelines mandated by the Legislature.

Consistent with the discussion above, the Commission concludes that it does not have authority to determine whether § 1926(b) of the Federal Consolidated Farm and Rural Development act federally preempts TWC § 13.255. Therefore the Commission may not deny an application under TWC § 13.255 solely on the basis that a retail public utility that holds a CCN for all or part of the requested service area is also a holder of a federal loan made under section 1926(a) of the federal act.

- 2. Must a municipality seeking single certification under TWC § 13.255 demonstrate compliance with the TCEQ's minimum requirements for public drinking water systems even if the certification sought is solely to provide sewer service?**

¹⁰ *E.g.* TWC § 13.254(a-1) ("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.")

TWC § 13.255(m) requires the Commission to “deny an application for single certification by a municipality that fails to demonstrate compliance with [TCEQ’s] minimum requirements for public drinking water systems.”¹¹ That prescription is not limited by any other language in the section.

One might argue that it is onerous to require a municipality seeking amendment of its sewer CCN to show that its public-drinking-water systems comply with TCEQ’s minimum requirements. However, the better argument is that the Legislature intended to protect the public interest by requiring a municipality to show it is in compliance with public-drinking-water requirements before the municipality is entitled to expand any of its service areas. Given that the unambiguous language applies to any application under TWC § 13.255, and applying the requirement in this case protects the public health, the Commission declines to ignore TWC § 13.255(m) in sewer CCN proceedings brought under TWC § 13.255.

II. Issues to be Addressed

After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

1. Is the area for which the city of Cibolo seeks single certification currently within the certificated service area of a retail public utility?
2. If so, did Cibolo provide written notice to the retail public utility of Cibolo’s intent to provide service to the area for which Cibolo seeks certification? TWC § 13.255(b) and 16 TAC § 24.120(b).
3. If so, did Cibolo wait more than 180 days after providing the written notice before Cibolo filed its application with the Commission? TWC § 13.255(c) and 16 TAC § 24.120(c).
4. Is Cibolo’s application administratively complete pursuant to 16 TAC § 24.8? In making this determination, the following questions should be addressed:

¹¹ TWC § 13.255(m).

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Preliminary Order

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- a. Has Cibolo demonstrated that no retail public utility facilities will be rendered useless or valueless to the retail public utility? TWC § 13.255(c) and 16 TAC § 24.120(c). If not, has Cibolo included in its application all appraisals required under TWC § 13.255(l) and 16 TAC § 24.120(m)?¹²
- b. Is Cibolo requesting the transfer of specified property of a retail public utility? TWC § 13.255(c) and 16 TAC § 24.120(c). If so, has Cibolo included in its application all appraisals required under TWC § 13.255(l) and 16 TAC § 24.120(m)?
5. Has Cibolo demonstrated that its public-drinking-water systems comply with TCEQ's minimum requirements for public-drinking-water systems? TWC § 13.255(m) and 16 TAC § 24.120(n).
6. Has the retail public utility submitted to the Commission a written list with the names and addresses of any lienholders and the amount of the retail public utility's debt, if any? 16 TAC § 24.120(b)(1).
7. If any lienholders exist, has the retail public utility notified the lienholders of this decertification process consistent with 16 TAC § 24.120(b)(2)?
8. What is the adequate and just compensation to be paid to the retail public utility for any of its facilities that will be useless or valueless to it or that Cibolo requests be transferred? TWC §§ 13.255(c), (g), (g-1), and (l) and 16 TAC § 24.120(c), (g), (h), and (m).

This list of issues is not intended to be exhaustive. The parties and the ALJ are free to raise and address any issues relevant in this docket that they deem necessary, subject to any limitations imposed by the ALJ or by the Commission in future orders issued in this docket. The Commission reserves the right to identify and provide to the ALJ in the future any additional issues or areas that must be addressed.

¹² See *Application of City of Heath to Amend a Certificate of Convenience and Necessity to Decertify a Portion of Forney Lake Water Supply Corporation's Service Area in Rockwall County*, Docket No. 44541, Order on Appeal of Order No. 4 (Aug. 24, 2015).

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Preliminary Order

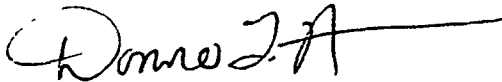
Page 7 of 7

IV. Effect of Preliminary Order

The Commission's discussion and conclusions in this Order regarding threshold legal and policy issues should be considered dispositive of those matters. Questions, if any, regarding threshold legal and policy issues may be certified to the Commission for clarification if the ALJ determines that such clarification is necessary. As to all other issues, this Order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this Order before the ALJ. The ALJ, upon his or her own motion or upon the motion of any party, may deviate from the non-dispositive rulings of this Order when circumstances dictate that it is reasonable to do so. Any ruling by the ALJ that deviates from this Order may be appealed to the Commission. The Commission will not address whether this Order should be modified except upon its own motion or the appeal of an ALJ's order. Furthermore, this Order is not subject to motions for rehearing or reconsideration.

SIGNED AT AUSTIN, TEXAS the 30th day of June 2016.

PUBLIC UTILITY COMMISSION OF TEXAS



DONNA L. NELSON, CHAIRMAN



KENNETH W. ANDERSON, JR., COMMISSIONER



BRANDY MARTY MARQUEZ, COMMISSIONER

Exhibit B

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.¹ 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, 2017.² 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.³ 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'

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

² Proposal for Decision on the First Phase (Apr. 28, 2017).

³ 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.⁴

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.⁵ The Commission is required to grant the municipality's application, with one exception that the parties concede does not apply here.⁶

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.⁷ 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

⁴ TWC § 13.255(j).

⁵ TWC § 13.255(b).

⁶ TWC § 13.255(c), (m).

⁷ 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).⁸ The statute also sets forth a process for appraising any useless or valueless, transferred, or impaired property.⁹ The determination of compensation in certain filed appraisals is binding on the Commission.¹⁰

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(l), 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 § 13.254.¹¹ She noted that the determination of what property was rendered useless or valueless would likely be a fact-intensive question.¹² 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.¹³ The Commission agreed and referred the *Zipp Road* proceeding to SOAH.¹⁴

⁸ *Id.*

⁹ TWC § 13.255(l).

¹⁰ *Id.*

¹¹ *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).

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

¹³ *Id.*

¹⁴ *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.¹⁵ 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.¹⁶ 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.¹⁷

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 13.255.¹⁸ 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.¹⁹

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.²⁰ 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

¹⁵ Supplemental Preliminary Order at 1-2 (July 20, 2016).

¹⁶ *Id.* at 2.

¹⁷ *Id.* at 3.

¹⁸ *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).

¹⁹ *Id.*

²⁰ 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.²¹ 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.²²

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);²³ 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.²⁴ Green Valley excepted to the SOAH ALJ's conclusions on the three other contested issues,

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

²² Interim Order (June 29, 2017).

²³ 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).

²⁴ 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.²⁵ 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 area (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

²⁵ 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.

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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.

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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.

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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 Arizpe 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.

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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.

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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.

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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

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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.

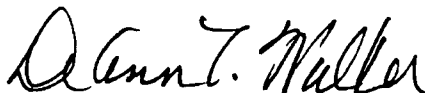
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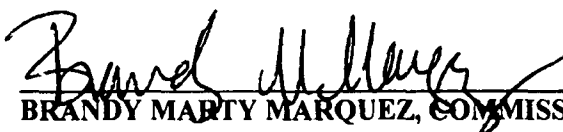
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Signed at Austin, Texas the 10th day of January 2018.

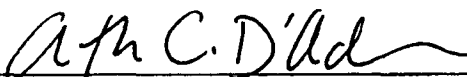
PUBLIC UTILITY COMMISSION OF TEXAS



DEANN T. WALKER, CHAIRMAN



BRANDY MARTY MARQUEZ, COMMISSIONER



ARTHUR C. D'ANDREA, COMMISSIONER

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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 10th day of January ²⁰¹⁸~~2017~~.



Public Utility Commission of Texas

By These Presents Be It Known To All That City of Cibolo

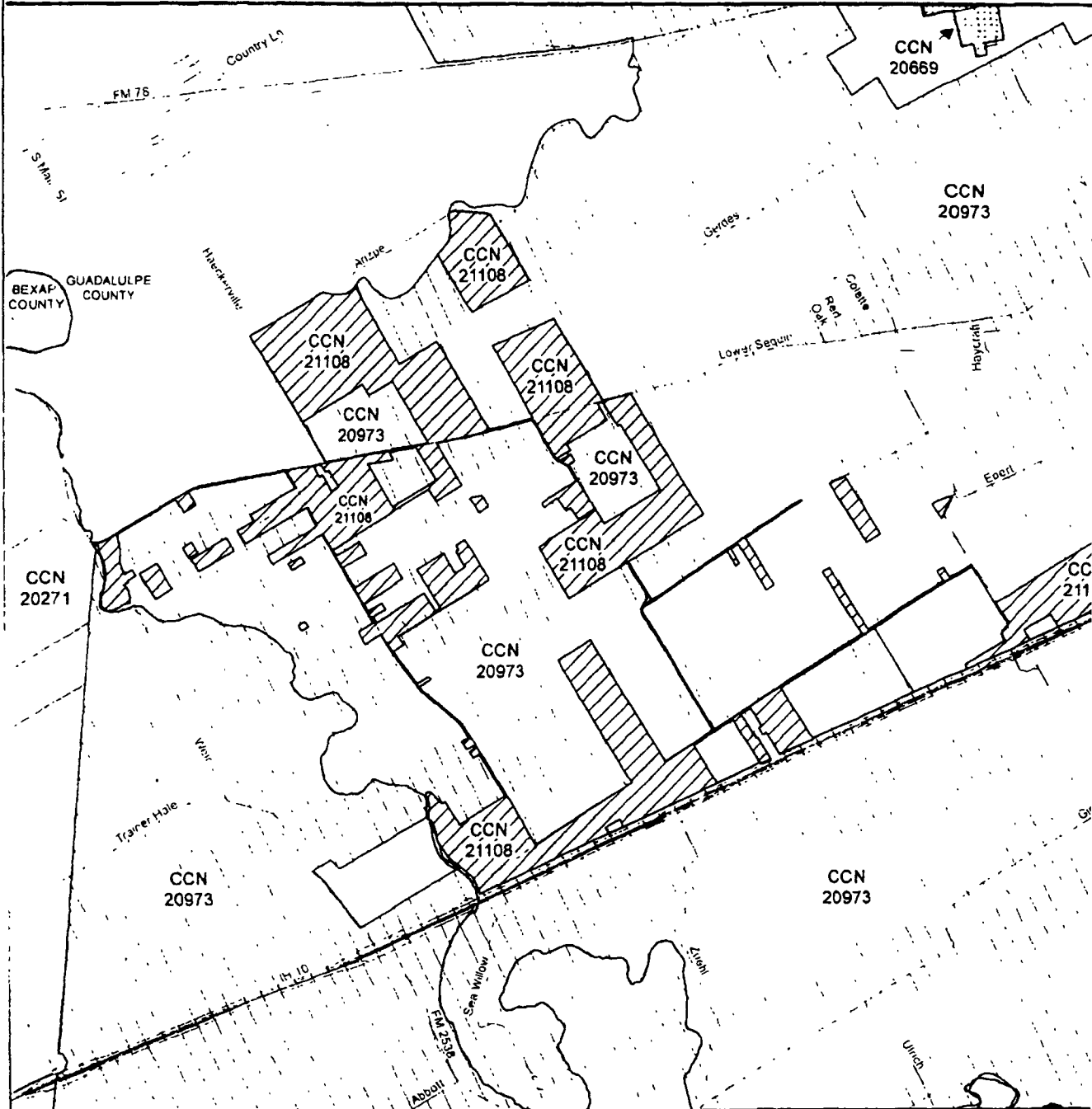
having obtained certification to provide sewer utility service for the convenience and necessity of the public, and it having been determined by this Commission that the public convenience and necessity would in fact be advanced by the provision of such service, City of Cibolo is entitled to this

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 10th day of January 24th 2017.

City of Cibolo
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 Cibolo
-  20973 - Green Valley SUD
-  20271 - City of Schertz
-  20669 - City of Marion

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Feet



Map by Kc
Date created Septembe
Project Path n Vinalmapping\45702CityofC

