



Control Number: 45702



Item Number: 27

Addendum StartPage: 0

RECEIVED

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

PUBLIC UTILITY COMMISSION

2016 JUNE 11: 28
 PUBLIC UTILITY COMMISSION
 FILING CLERK
 OF TEXAS

**GREEN VALLEY SPECIAL UTILITY DISTRICT'S EMERGENCY MOTION TO
 ABATE AND RESPONSE TO CITY OF CIBOLO'S MOTION TO ESTABLISH A
 PROCEDURAL SCHEDULE**

COMES NOW Green Valley Special Utility District ("GVSUD" or the "District") and files this Emergency Motion to Abate ("District Motion") and Response to the City of Cibolo's ("Cibolo" or "City") Motion to Establish a Procedural Schedule. In support, GVSUD would show as follows.

I. Background

A number of events have recently transpired in this case that require an emergency expedited ruling on this motion and the City's Motion to Establish a Procedural Schedule ("Cibolo Motion") in this docket involving the City's TWC §13.255 (P.U.C. Subst. R. 24.120) single certification application ("Application"):

1. On May 27, 2016, the City filed the Cibolo Motion.¹ The District is opposed to that schedule and had no input toward its development. The first deadline in the City's requested schedule is Tuesday, June 7, 2016.
2. On May 27, 2016, GVSUD filed its Plaintiff's Original Complaint ("Complaint") in the United States District Court Western District of Texas.² The summons for the Complaint was issued yesterday, June 1, 2016, and service is in process.

¹ Response to Order No. 4 and Motion to Establish a Procedural Schedule (May 27, 2016).

² Cause No. 1:16-cv-00627; *Green Valley Special Utility District v. City of Cibolo, Texas*; before the United States District Court Western District of Texas, Plaintiff's Original Complaint (May 27, 2016) (attached hereto as **Exhibit A**) (all exhibits are hereafter attached and incorporated by reference).

3. On May 27, 2016, that same date, the Commission issued its Order Requesting Briefing on Threshold Legal/Policy Issues (“Order”) that include a specific question related to the 7 U.S.C.A. §1926(b) issue raised by GVSUD in its Plea to the Jurisdiction and Motion to Dismiss and addressed in its federal Complaint.³ The first of these briefs is due Monday, June 6, 2016.
4. On May 31, 2016, the City served GVSUD with a lengthy first set of discovery requests.⁴

II. Response to Cibolo Motion and Motion to Abate

A threshold jurisdictional issue that must be decided before further appraisal work or discovery takes place in this case is the effect of 7 U.S.C.A. §1926(b) on the City’s Application proceedings and ability to serve within GVSUD’s District or CCN boundaries. Such is the topic of the District’s federal Complaint now under consideration in federal district court. This is also pertinent to the briefing requested by the Commission in the Order that would not be ruled upon until at least June 29, 2016 under the current schedule. The District also points out that the City’s Application is still not even considered “filed” at this point and should not be considered so if it is prohibited by 7 U.S.C.A. §1926(b).⁵

In contrast, the Cibolo Motion requests deadlines for GVSUD to appoint an appraiser and meet with Cibolo’s appointed appraiser within the month of June 2016.⁶ Similarly, Cibolo’s discovery requests appear to relate to appraisal/compensation issues.⁷ All this is premature at

³ Order Requesting Briefing on Threshold Legal/Policy Issues (Item No. 23) (May 27, 2016).

⁴ City of Cibolo’s First Requests for Admission and Requests for Information to Green Valley Special Utility District (Item No. 26) (May 31, 2016).

⁵ P.U.C. SUBST. R. 24.8(a), (b), and (d).

⁶ Response to Order No. 4 and Motion to Establish a Procedural Schedule (May 27, 2016).

⁷ City of Cibolo’s First Requests for Admission and Requests for Information to Green Valley Special Utility District (Item No. 26) (May 31, 2016).

this juncture without resolution of the 7 U.S.C.A. §1926(b) issue. Therefore, the Commission should deny the Cibolo Motion in its entirety.

Instead, docket abatement is now appropriate. The District hereby moves for abatement of the entire procedural schedule in this docket until GVSUD's federal Complaint is decided. The District requests that the abatement be ordered to include but not limited to: (1) briefing deadlines; (2) appraisal appointment/negotiation deadlines requested in the Cibolo Motion; (3) obligations to perform or file appraisals; (4) obligations to respond to Cibolo discovery requests served as part of this docket; and (5) any other deadlines that could be potentially imposed upon the District as part of this docket in response to the City's Application at the Commission level. Any other approach at this juncture would result in a tremendous waste of resources for all involved and the federal forum is the most appropriate venue to decide the federal 7 U.S.C.A. § 1926(b) issue.

GVSUD conferred with counsel for Commission Staff and made reasonable attempts to confer with the City's counsel about this motion. Commission Staff's counsel indicated Staff would not agree to the relief the District seeks in this motion unless the City agreed. The City's counsel has not responded to GVSUD's request to agree conveyed by e-mail,⁸ and follow-up attempts to confer by telephone have failed.

III. Request for Emergency Expedited Action

The presiding officer has the ability take action on a pleading before the deadline for filing responsive pleadings when necessary "to prevent or mitigate imminent harm or injury to persons or to real or personal property."⁹ Given the imminent deadlines in this case, the first

⁸ **Exhibit B** (June 1, 2016 E-mail) (attachment omitted).

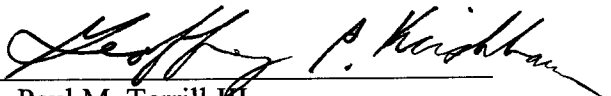
⁹ P.U.C. Proc. R. 22.78(a) and (c).

being June 6, 2016, this motion requires a quick ruling to mitigate harm to District resources required to respond to the City's Application that will likely be completely unnecessary following a decision on its federal Complaint.

Conclusion and Prayer

Green Valley Special Utility District hereby respectfully requests: (1) complete abatement of this docket without any further deadlines until there is a final federal decision on the Complaint; (2) in the alternative, abatement of appraisal-related deadlines and discovery in this proceeding until threshold jurisdictional issues are decided by the Commission; (3) denial of the Cibolo Motion; and (4) all other and further relief to which GVSUD is justly entitled at law or in equity.

Respectfully submitted,

By: 
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Geoffrey P. Kirshbaum
State Bar No. 24029665
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(512) 474-9888 (fax)

**ATTORNEYS FOR GREEN VALLEY SPECIAL
UTILITY DISTRICT**

CERTIFICATE OF SERVICE

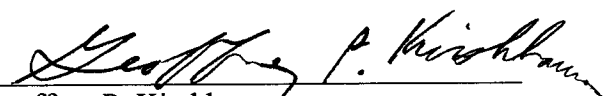
I hereby CERTIFY that on June 2, 2016, a true and complete copy of the above was sent by the method indicated to counsel of record at the following addresses in accordance with P.U.C. PROC. R. 22.74:

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

via fax to: (512) 472-0532

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

via fax to: (512) 936-7268



Geoffrey P. Kirshbaum



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

GREEN VALLEY SPECIAL UTILITY
DISTRICT,
Plaintiff,

vs.

CITY OF CIBOLO, TEXAS,
Defendant.

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Civil Action No. 1:16-cv-00627

PLAINTIFF'S ORIGINAL COMPLAINT

NOW COMES Green Valley Special Utility District ("Green Valley SUD" or "Plaintiff"), and files this its Original Complaint against the defendant City of Cibolo, Texas ("the City" or "Defendant"), 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 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. Defendant may be served with citation on the City's mayor at City Hall, 200 South Main Street, Cibolo, Texas, 78108.

Jurisdiction and Venue

3. 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.

4. Venue in this Court is proper under section 1391(b)(1)-(2) of title 28 of the United States Code because the Defendant is 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.

Claims

5. 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 water service pursuant to its Certificate of Convenience and Necessity ("CCN") No. 10646 duly regulated by the Public Utility Commission of Texas (the "PUC"). Green Valley SUD provides wastewater service pursuant to its CCN No. 20973 duly regulated by the PUC.

6. Green Valley SUD is the recipient of a loan issued by the United States Department of Agriculture, Rural Development (the "USDA"), under 7 U.S.C. section 1921 *et seq.* The debt was issued in 2003, and remains outstanding. The 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. The loan is secured by revenues from Green Valley SUD's water system.

7. On March 8, 2016, the City filed an application for single certification of an area within its corporate limits and within Guadalupe County, and simultaneously to decertify that

same area within Green Valley SUD's CCN No. 20973 (the "Disputed Property"). The application is a request by the City to remove certificated service area from Green Valley SUD's CCN. The City is seeking, pursuant to section 13.255 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 is properly certificated to Green Valley SUD, and was properly certificated to Green Valley SUD at the time its USDA loan was funded.

8. The City has expressed an intent 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.

9. The City prosecutes 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 its March 8, 2016 application, the City seeks 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 42 U.S.C. section 1983, Green Valley SUD seeks to preliminarily and permanently enjoin the City's 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 City cannot provide water or wastewater service within Green Valley's certificated area; 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.

10. 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.

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

12. Green Valley SUD contends that the City, on and after the date of Green Valley SUD's indebtedness, is violating and is continuing to violate Green Valley SUD's rights under 7 U.S.C. section 1926(b) by inclusion of the area served by Green Valley SUD within the City's municipal boundaries and by seeking state-based relief under Water Code section 13.255, thereby attempting to curtail and limit the service provided or made available through Green Valley SUD, and thereby seeking the grant of a private franchise for similar service within such area during the term of Green Valley SUD's loan.

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

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

15. Green Valley SUD provides or makes available water and wastewater service to the Disputed Property.

16. The City's section 13.255 administrative application seeks to impermissibly encroach on Green Valley SUD's federally protected service area with respect to the Disputed Property.

17. As a result of the City's conduct, 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.

18. The City is engaging in such deprivation of rights secured by federal law under color of state law by way of its Water Code section 13.255 application.

19. 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.

20. Pursuant to 42 U.S.C. section 1983 and 28 U.S.C. section 2201, Green Valley SUD requests that the Court declare the City's continuing conduct unlawful, and issue the Court's preliminary and permanent injunction maintaining the status quo with respect to the Disputed Property and prohibiting the City's pursuit of relief from the PUC in violation of Green Valley SUD's rights under 7 U.S.C. section 1926(b).

21. Pursuant to 42 U.S.C. section 1988, Green Valley SUD seeks and award of attorneys' fees, expenses, and costs incurred in this action.

PRAYER

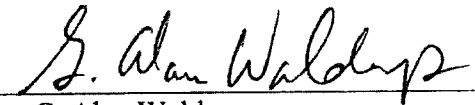
WHEREFORE, Green Valley Special Utility District respectfully prays for the entry of judgment against Defendant City of Cibolo, Texas and in favor of Green Valley Special Utility District as follows:

- A. That preliminary and permanent injunctions be granted and writs of injunction issue commanding the City of Cibolo, Texas to dismiss its application in PUC Docket No. 45702;
- B. That preliminary and permanent injunctions be granted and a writs of injunction issue commanding the City of Cibolo, Texas not to seek any relief from any

governmental entity that has the effect of altering the physical area or exclusive nature of Green Valley Special Utility District's CCN No. 10646 or CCN No. 20973;

- C. That the Court declare that the City of Cibolo is not entitled to commence providing—or seek or apply to the PUC to commence providing—any water service within Green Valley Special Utility District's boundaries or certificated area under CCN No. 10646, as long as any debt remains outstanding on a loan subject to 7 U.S.C. section 1926;
- D. That the Court declare that the City of Cibolo is not entitled to commence providing—or seek or apply to the PUC to commence providing—any wastewater service within Green Valley Special Utility District's boundaries or certificated area under CCN No. 20973, as long as any debt remains outstanding on a loan subject to 7 U.S.C. section 1926;
- E. 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;
- F. That Green Valley Special Utility District be awarded costs of court; and
- G. 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

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Green Valley Special Utility District

(b) County of Residence of First Listed Plaintiff Guadalupe
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Terrill & Waldrop, 810 W. 10th Street
Austin, Texas 78701, (512) 474-9100

DEFENDANTS

City of Cibolo, Texas

County of Residence of First Listed Defendant Guadalupe
(IN U.S. PLAINTIFF CASES ONLY)

NOTE IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|---------------------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input checked="" type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 890 Other Statutory Actions <input checked="" type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity)
 7 U.S.C.A. § 1926; 42 U.S.C.A. § 1983, 1988

Brief description of cause

Plaintiff is indebted to US Dept. of Agriculture. Defendant has applied to decertify portion of Plaintiff's service area.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions)

JUDGE

DOCKET NUMBER

DATE
05/27/2016

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG JUDGE _____



From: Geoff Kirshbaum
To: David Klein; landon.lill@puc.texas.gov
Cc: Christie Dickenson; Paul Terrill; Beckie Figg; drachal@lglawfirm.com
Subject: Cibolo 13.255 Application - PUC Docket No. 45702
Date: Wednesday, June 01, 2016 11:26:00 AM
Attachments: 2016-5-27 GVSUD's Original Complaint.pdf

David/Landon,

GVSUD filed the attached original complaint in federal court on Friday against Cibolo. There is a briefing deadline on Monday June 6, 2016 in the PUC Cibolo 13.255 application docket (45702). GVSUD also received Cibolo's 1st RFIs yesterday in the PUC docket that appear to primarily address compensation issues.

Would the parties be willing to agree to jointly seek abatement in this docket pending resolution of the 1926(b) issue in the federal case? This would allow the 1926(b) issue to be determined in the appropriate forum before focusing on other application issues (e.g., compensation) in this PUC docket if necessary.

I appreciate your prompt response to this inquiry. Please feel free to contact me for further discussion.

Thank you.

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Austin, Texas 78701
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Fax: (512) 474-9888

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