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BEFORE THE
PUBLIC UTILITY COMMISSION
CLERK

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

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PUBLIC UTILITY COMMISSION

OF TEXAS

**CITY OF CIBOLO'S SURREPLY TO GREEN VALLEY SPECIAL UTILITY
DISTRICT'S PLEA TO THE JURISDICTION AND MOTION TO DISMISS/
SUPPLEMENTAL REPLY TO BRIEF AND REPLY BRIEF
OF GREEN VALLEY SPECIAL UTILITY DISTRICT ON THRESHOLD
LEGAL/POLICY ISSUES**

COMES NOW the City of Cibolo (the "City"), by and through its undersigned attorneys of record, and files this Surreply to Green Valley Special Utility District's Plea to the Jurisdiction and Motion to Dismiss/ Supplemental Reply to the Brief of Green Valley Special Utility District ("District") on Threshold Legal/Policy Issues in this matter ("Surreply"). Relevant and critical dispositive evidence has subsequently been produced by the District in this matter, undermining the very basis of the District's Plea to the Jurisdiction and Motion to Dismiss ("Motion"), and therefore the City submits this Surreply to ensure that the Administrative Law Judge ("ALJ") and Commission have the opportunity to consider the previous filings in light of *all* pertinent facts in this matter. In support of its Surreply, the City respectfully shows the following:

I. SURREPLY

As discussed in more detail herein, the District's Motion should be denied and the open meeting scheduled for June 29, 2016 should be canceled because a letter from the United States Department of Agriculture – Rural Development ("USDA") to the attorney for the District, dated May 3, 2016, indicates that the District's USDA Loan does not have a security interest in the District's sewer CCN. The City did not receive a copy of this letter until June 20, 2016.

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However, given the May 3rd date of the USDA letter, the City has strong concerns as to whether arguments and allegations contained in the District's (i) May 26, 2016 Reply to the Motion; (ii) June 2, 2016, Emergency Motion to Abate; (iii) June 6, 2016 Brief on Threshold Legal/Policy Issues, and/or June 14, 2016 Reply Brief on Threshold Legal/Policy Issues, were brought in bad faith, for the purpose of harassment, or to cause unnecessary delay or needless increase in the cost of the proceeding.

A. May 3, 2016 correspondence from USDA indicates that the District does not hold a qualifying federal loan made under 7 U.S.C.A. § 1926(a)

Again, after the parties filed their briefs regarding the Motion, on May 27, 2016, the Commission ordered briefing on two threshold legal/policy issues, one of which was:

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

The Commission's consideration of its authority to deny the City's application (the "Application") for single sewer certificate of convenience and necessity ("CCN") certification under Texas Water Code ("TWC") § 13.255 solely on the basis that the District, the sewer CCN holder, is also a holder of a federal loan from the USDA-RD (the "USDA Loan") made under § 1926(a) of the Federal Consolidated Farm and Rural Development Act (the "Act") hinges on the District actually being a holder of a qualifying federal loan.

As the City demonstrated in its previously filed briefs on this issue, the District had, up to that point, provided woefully inadequate information to prove that it holds a qualifying federal loan. Simply put, it had never provided the loan document itself.

Indeed, it was not until June 20, 2016 – almost a week after the Commission ordered reply briefs be submitted – that the District provided any information whatsoever regarding the scope of its federal debt and whether the District’s sewer CCN was pledged as collateral to secure its USDA Loan. Specifically, in its June 20, 2016 response to the City’s discovery requests, the District provided the City with a letter from the USDA to the attorney for GVSUD, *dated May 3, 2016, explicitly stating that the District’s USDA Loan is only payable from revenues from its water system, and that the USDA did not have a security interest in the District’s sewer CCN service area.* A copy of this letter from the USDA is attached hereto as Attachment 1.

As the first paragraph of the USDA letter makes clear, the Green Valley Special Utility District Water System Revenue Bonds, Series 2003 are “payable solely from the revenues from the Issuer’s [District’s] Water System... and no tax revenues shall ever be used to service the debt of the Bonds.”¹ More importantly, the letter also explicitly states that “[a]t present, the Agency has not taken any security against the SUD’s sewer CCN No. 20973 service area.”² This correspondence verifies that the District’s USDA Loan is not a qualifying loan, and this unsolicited clarification of the scope of the USDA Loan further suggests that USDA does not believe that it has a security interest in the District’s sewer CCN or that it considers the District’s sewer CCN to be relevant in matters relating to the USDA Loan.

Because the District’s USDA Loan is not secured by the District’s sewer CCN, the District cannot sufficiently plead facts to demonstrate that it meets the elements of a claim under § 1926(b). Again, a claim under § 1926(b) contains three elements: (1) the utility is an association within the meaning of 1926(b); (2) the utility has a qualifying federal loan outstanding; and (3) the utility provided or made [service] available to the disputed area.³ The

¹ Attachment 1.

² This is consistent with the terms of the loan, the relevant portion of which is attached hereto as Attachment 2, which defines “water system” to exclude “any special Project, sanitary sewer system or drainage system of the District.”

³ *Creedmoor-Maha Water Supply Corp. v. Tex. Comm’n on Env’tl. Quality*, 307 S.W.3d 505, 519 (Tex. App. —Austin 2010, no pet.).

City reasserts that whether the District's sewer CCN is pledged for the USDA Loan is a dispositive factor in determining whether the District has a qualifying loan; and the United States Court of Appeals - Eighth Circuit has squarely addressed this very issue.⁴ In other words, contrary to the District's unsupported assertions, the mere holding of debt authorized under § 1926(a) does not provide the holder of that debt unlimited protection under § 1926(b); the protection only extends as far as the infrastructure or other assets used to secure that debt.

In addition to the other arguments previously made by the City in this matter, it is now uncontroverted by the City and the USDA that the District's sewer CCN is clearly not used to secure the District's USDA Loan. As the District does not have and cannot prove that it has a qualifying federal loan, the issue of whether the Commission may deny the City's Application on the basis of § 1926(b) is irrelevant in this case. Consequently, the District's Plea to the Jurisdiction and Motion to Dismiss should be denied, and an open meeting on this issue on June 29, 2016 is unnecessary.

B. The District's filings after May 3, 2016 failed to disclose relevant facts to the Commission.

The District's (i) May 26, 2016 Reply to the Motion; (ii) June 2, 2016, Emergency Motion to Abate; (iii) June 6, 2016 Brief on Threshold Legal/Policy Issues, and/or (iv) June 14, 2016 Reply Brief on Threshold Legal/Policy Issues all failed to disclose the May 3, 2016 letter from USDA indicating that District's USDA Loan was not a qualifying loan and/or that the USDA did not consider the District's sewer CCN as a secured asset under such loan. While it is unclear when the District received the May 3, 2016 letter, it is clear that the letter was addressed to the attorney for the District at the attorney's address of record in this matter; and, although the letter was provided to the City within the time required by the City's request for information, the District failed to disclose the contents thereof in the relevant portions of its aforementioned filings, thereby preventing the Commission from being able to make a well-reasoned decision on

⁴ *Public Water Supply Dist. No. 3 of Laclede County, Mo. v. City of Lebanon, Mo.*, 605 F.3d 511 (8th Cir. 2010).

this matter. Said another way, the District possessed the May 3, 2016 letter, and if it were not for the City's discovery request, then the Commission would never have known about this letter, prior to making a decision on the Motion.

Given that the District's entire argument to dismiss the City's Application is premised on preemption by an alleged applicable federal law arising from the USDA Loan, the failure to disclose facts that the USDA Loan was not collateralized to the sewer CCN (including from the view of the lender), and making assertions and arguments to the contrary in light of such facts has caused unnecessary delay and needless increase in the cost of this proceeding, calling into question Commission rule 16 Tex. Admin. Code § 22.161. Regardless, any further discussion regarding the Motion would certainly be in bad faith, for the purpose of harassment, or to cause unnecessary delay or needless increase in the cost of the proceeding.

II. CONCLUSION AND PRAYER

WHEREFORE, PREMISES CONSIDERED, the City of Cibola respectfully requests that (i) the Administrative Law Judge deny the Motion; (ii) the Administrative Law Judge recommend that the Commission deny the Motion; (iii) the Commission deny the Motion; (iv) the Commission process and approve the Application in accordance with TWC § 13.255 and 16 Tex. Admin. Code § 24.120; and (v) the City be granted such further relief to which it is entitled, including any relief under 16 Tex. Admin. Code § 22.161.

Respectfully submitted,

**LLOYD GOSSELINK ROCHELLE &
TOWNSEND, P.C.**

816 Congress Avenue, Suite 1900
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(512) 322-5800
(512) 472-0532 (Fax)



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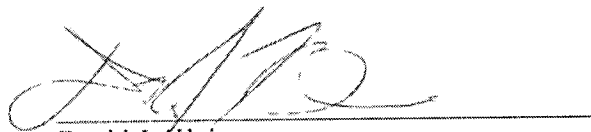
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ATTORNEYS FOR THE CITY OF CIBOLO

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was transmitted by fax, hand-delivery and/or regular, first class mail on this 22nd day of June, 2016 to the parties of record.



David J. Klein



May 3, 2016

Mr. Geoffrey P. Kirshbaum
Terrill & Waldrop
810 West 10th Street
Austin, TX 78701

RE: PUC Docket No. 45702; Green Valley Special Utility District Water System Revenue Bonds, Series 2003

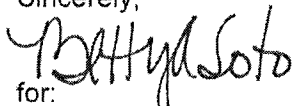
Dear Mr. Kirshbaum:

In response to your letter dated April 29, 2016 in regard to the outstanding debt obligation to the Agency, we note that Green Valley Special Utility District issued Bonds to the United States of America entitled "Green Valley Special Utility District Water System Revenue Bonds, Series 2003. These Bonds are payable solely from the revenues from the Issuer's Water System as described in the Bond Order, and no tax revenues shall ever be used to service the debt of the Bonds.

At present, the Agency has not taken any security against the SUD's sewer CCN No. 20973 service area.

If additional information is needed, please do not hesitate to contact this office at (830) 372-1043 extension 4.

Sincerely,


for:
JOE E. De OCHOA, III
Area Director

cc: Mr. Pat Allen, GM, GVSUD, Marion
Joe E. De Ochoa, III, Area Director, Uvalde
Community Programs Section, Temple

Rural Development

3251 N. Hwy 123 Bypass, Seguin Texas 78155
Voice (830) 372-1043 x 123 • Fax (844) 496-8091

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GVSUD 001379

Dist

\$584,000
GREEN VALLEY SPECIAL UTILITY DISTRICT
WATER SYSTEM REVENUE BONDS
SERIES 2003

GVSUD 000948

"Special Project" shall mean, to the extent permitted by law, any waterworks or property, improvement or facility declared by the District not to be part of the Water System and substantially all of the costs of acquisition, construction, and installation of which is paid from proceeds of a financing transaction other than the issuance of bonds payable from Net Water System Revenues, and for which all maintenance and operation expenses are payable from sources other than revenues of the Water System, but only to the extent that and for so long as all or any part of the revenues or proceeds of which are or will be pledged to secure the payment or repayment of such costs of acquisition, construction and installation under such financing transaction.

"Water System" shall mean all properties, facilities, improvements, equipment, interests and rights constituting the Water System of the District, including all future extensions, replacements, betterment, additions and improvements to the Water System. The Water System shall include the District's Water System only, and shall not include any special Project, sanitary sewer system or drainage system of the District.

SECTION 2. FORM OF BONDS AND CERTIFICATES.

A. FORMS GENERALLY. The Bonds, the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Certificate of Registration, and the form of Assignment to be printed on the Bonds, shall be substantially in the forms set forth in this Order with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Order, and may have such letters, numbers, or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and such legends and endorsements (including any reproduction of an opinion of counsel) thereon as may, consistently herewith, be established by the Issuer or determined by the officers executing such Bonds as evidenced by their execution thereof. If bond insurance is obtained, the Bonds may bear an appropriate legend as provided by the insurer. Any Portion of the text of any of the Bonds may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Bond.

The definitive Bonds shall be printed, lithographed, laser printed, engraved, or produced by any combination of these methods, or photocopied or produced in any other similar manner, all as determined by the officers executing such Bonds as evidenced by their execution thereof, and the initial Bonds submitted to the Attorney General of Texas may be typewritten or photocopied or otherwise reproduced.

B. MATURITY SCHEDULE AND INTEREST RATES. The Bonds will bear interest at the rate of 4.25% per annum and are payable on September 15th in the years and maturities stated in the maturity schedule set forth below:

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