

Control Number: 45956



Item Number: 106

Addendum StartPage: 0

**PUC DOCKET NO. 45956  
SOAH DOCKET NO. 473-16-5379.WS**

**APPLICATION OF CITY OF SCHERTZ §  
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 §**

2017 AUG 21 PM 1:21  
**BEFORE THE PUBLIC UTILITY  
COMMISSION OF TEXAS**

**GREEN VALLEY'S RESPONSE TO COMMISSION STAFF'S  
RECOMMENDATION ON ADMINISTRATIVE COMPLETENESS**

COMES NOW Green Valley Special Utility District ("Green Valley" or "GVSUD") and, subject to Green Valley's August 9, 2017 Supplemental Plea to the Jurisdiction, Motion to Dismiss and, in the alternative, Motion to Abate ("Supplemental Plea") and Green Valley's August 21, 2017 Interim Appeal of SOAH Order No. 8 ("Interim Appeal"), submits this Response to the Commission Staff ("Staff") Recommendation on Administrative Completeness.<sup>1</sup> This response is timely filed.<sup>2</sup> In support, Green Valley shows as follows.

**I. RESPONSE TO STAFF RECOMMENDATION**

Green Valley respectfully disagrees with Staff's recommendation to find the City of Schertz's ("Schertz" or the "City") Texas Water Code Section 13.255 (PUC SUBST. R. 24.120) single certification application ("Application") administratively complete despite a clear deficiency.<sup>3</sup> The City's October 22, 2015 180-day notice letter to GVSUD, including a map of areas it intends to serve and decertify from GVSUD, improperly included both annexed and non-annexed tracts rendering that notice defective.<sup>4</sup> The 180-day notice required for the Application

<sup>1</sup> Commission Staff's Recommendation on Administrative Completeness (August 24, 2017) (Docket Item No. 102) ("Staff Recommendation").

<sup>2</sup> 16 TAC § 22.78(a).

<sup>3</sup> Staff Recommendation.

<sup>4</sup> See **Exhibit A**.

106

was therefore deficient under both PUC SUBST. R. 24.120 as it existed at the time of the defective notice and under the recently-amended PUC SUBST. R. 24.120.

TWC § 13.255 and PUC SUBST. R. 24.120 require a 180-day notice of intent to serve an annexed or incorporated area before filing a single certification application such as the Application at issue here.<sup>5</sup> The October 22, 2015 map received by GVSUD identifies both annexed and non-annexed tracts within a targeted portion of GVSUD's sewer CCN outlined in purple.<sup>6</sup> The same small scale map was included in the Application and in the notice of this proceeding GVSUD received May 16, 2016.<sup>7</sup> However, unlike its October 22, 2015 letter, the Application and May 16, 2016 notice also includes an additional map delineating specifically the annexed areas the City seeks to take away from the District through decertification.<sup>8</sup>

TWC § 13.255 is based upon annexation or incorporation at a specific point in time. It is not a sliding, moving target. Without knowing exactly which properties Schertz sought to serve, the statutorily-required 180-day notice was insufficient, and the District was adversely impacted in its efforts to protect its service area.

Although, under the Commission's hearing process implemented for this case, a number of issues were determined by the Commission in its July 28, 2017 Interim Order, the September 12, 2016 Preliminary Order issues of proper notice and administrative completeness are before the ALJ and the Commission for the first time. Here, the pre-Application 180-day notice was deficient, and the Application should not be found administratively complete or even filed.<sup>9</sup>

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<sup>5</sup> TEX. WATER CODE §13.255(b); P.U.C. SUBST. R. 24.120(b).

<sup>6</sup> **Exhibit A.**

<sup>7</sup> **Exhibit B.**

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

<sup>9</sup> P.U.C. SUBST. R. 24.8(b), (d).

While the City's October 22, 2015 letter accompanying the defective notice attempted to clarify the City's intent, Schertz should have used a correct map identifying only the annexed tracts it intended to serve if it hoped to start the 180-day single certification process contemplated by TWC §13.255 or P.U.C. SUBST. R. 24.120 in October 2015. Failing to separately delineate the specific properties intended for City sewer service without combining them with other properties resulted in a confused notice to Green Valley.

Since the transfer of jurisdiction in 2014, Commission Staff has been very particular with respect to notice maps in CCN application processing. This level of heightened scrutiny of notice maps is appropriate because notice is jurisdictional.<sup>10</sup> This Application should be subject to the same heightened scrutiny as other Commission applications, and the Commission should not condone the City's presented map as sufficient here. Indeed, the recently-amended PUC SUBST. R. 24.120 now makes crystal clear that written notice of intent to provide service in an incorporated or annexed area "*shall specify... (1) the municipality's requested area.*"<sup>11</sup> Similarly, the amended rule mandates:

The application *shall* identify the municipality's requested area by providing mapping information *to clearly identify* the area the municipality is seeking in accordance with §24.119 of this title relating to Mapping Requirements for Certificate of Convenience and Necessity Application.<sup>12</sup>

Schertz's notice did not meet these jurisdictional requirements and, subject to Green Valley's Supplemental Plea and Interim Appeal, the Commission should require Schertz to restart the 180-day notice portion of the application process by providing sufficient, accurate notice. In

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<sup>10</sup> *Appeal of Pelican Bay Util. Co. from the Rate Ordinance of the City of Pelican Bay*, 11 PUC Bull. 704 (Sep. 1985) ("Under Texas law, when a statute requires notice, the requirement is jurisdictional, and lack of notice renders an order void.") (citing *Kerrville Bus Co. v. Continental Bus System*, 208 S.W.2d 586, 589 (Tex. Civ. App – Austin 1947, writ ref'd n.r.e.)).

<sup>11</sup> PUC SUBST. R. 24.120(c)(1) (emphasis added). The prior version of PUC SUBST. R. 24.120 similarly required that notice be provided 180 days in advance of intent to serve the annexed or incorporated area.

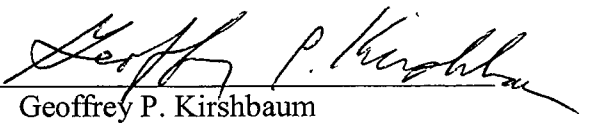
<sup>12</sup> PUC SUBST. R. 24.120(e)(2)(I) (emphasis added).

addition to the grounds discussed in Green Valley's Supplemental Plea and Interim Appeal for rejecting the Application, the Application should be rejected for lack of administrative completeness. On that point, Green Valley respectfully disagrees with Staff's recommendation.

## **II. CONCLUSION AND PRAYER**

Subject to its Supplemental Plea and Interim Appeal, Green Valley SUD respectfully requests the Honorable Administrative Law Judge issue an order or propose an order for Commission approval that: (1) finds the Application administratively deficient; (2) denies the Application; and (3) grants Green Valley SUD all other and further relief to which it is justly entitled at law or in equity.

Respectfully submitted,

By:   
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Shan S. Rutherford  
State Bar No. 24002880  
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srutherford@terrillwaldrop.com

**ATTORNEYS FOR GREEN VALLEY SPECIAL  
UTILITY DISTRICT**

**CERTIFICATE OF SERVICE**

I hereby CERTIFY that on August 31, 2017, 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

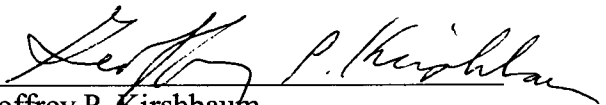
*via fax to: (512) 472-0532*

**ATTORNEY FOR APPLICANT**

Alexander Petak  
Public Utility Commission of Texas  
1701 N Congress PO Box 13326  
Austin, Texas 78711-3326

*via fax to: (512) 936-7268*

**ATTORNEY FOR COMMISSION STAFF**

  
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Geoffrey P. Kirshbaum

# "Attachment A"



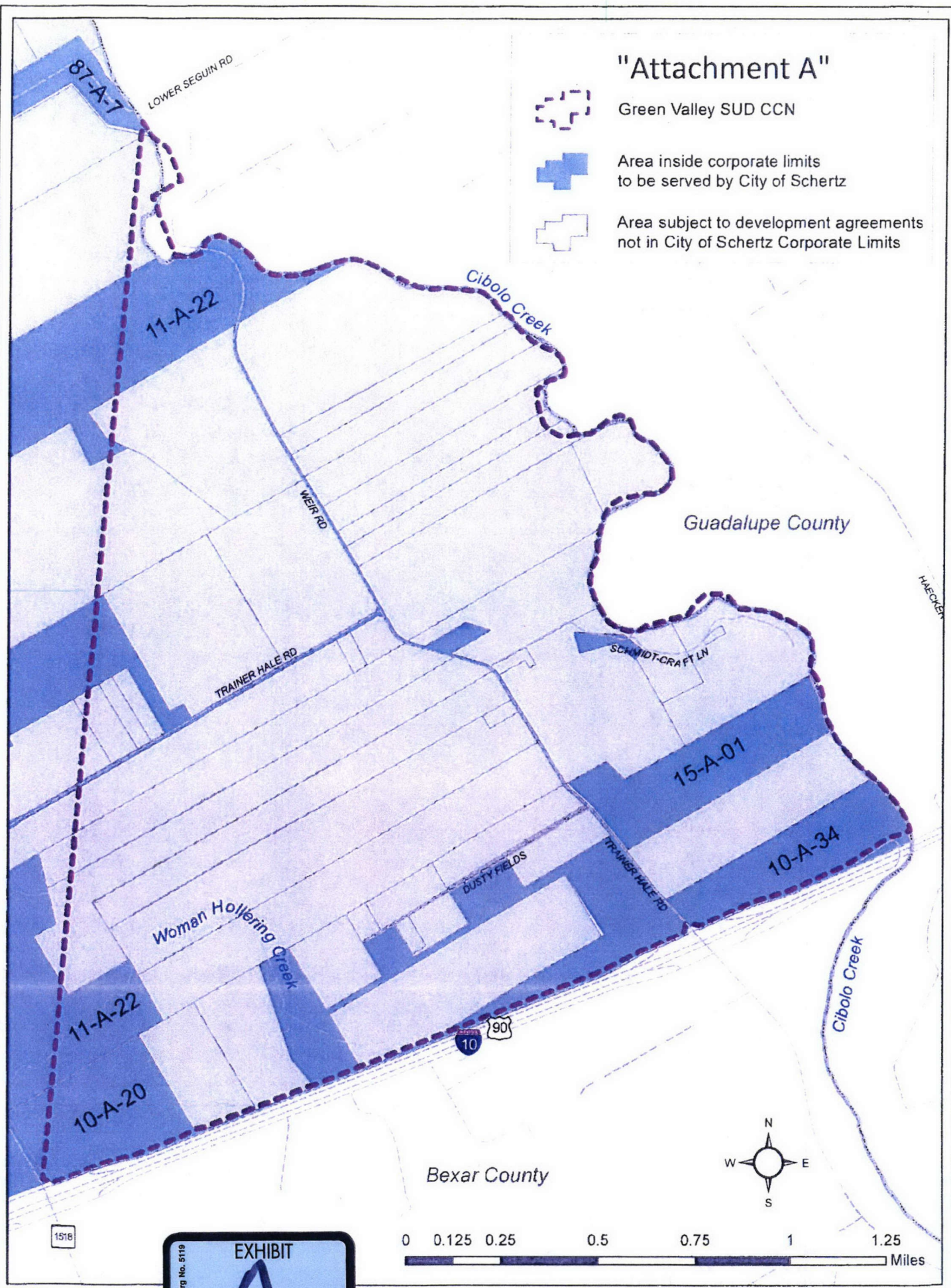
Green Valley SUD CCN



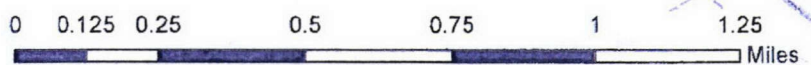
Area inside corporate limits  
to be served by City of Schertz



Area subject to development agreements  
not in City of Schertz Corporate Limits



Bexar County



Blumberg No. 5119

EXHIBIT

**A**



# "Attachment A"



Green Valley Sewer CCN



City of Schertz requested decertification from Green Valley Sewer CCN

