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**PUC DOCKET NO. 45956**  
**SOAH DOCKET NO. 473-16-5739.WS**

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<b>APPLICATION OF THE CITY OF</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>SCHERTZ TO AMEND A SEWER</b>	<b>§</b>	
<b>CERTIFICATE OF CONVENIENCE</b>	<b>§</b>	<b>OF TEXAS</b>
<b>AND NECESSITY UNDER WATER</b>	<b>§</b>	
<b>CODE SECTION 13.255 AND TO</b>	<b>§</b>	
<b>DECERTIFY A PORTION OF GREEN</b>	<b>§</b>	
<b>VALLEY SPECIAL UTILITY</b>	<b>§</b>	
<b>DISTRICT'S CERTIFICATE RIGHTS</b>	<b>§</b>	
<b>IN BEXAR COUNTY</b>	<b>§</b>	

**ORDER**

This order addresses the application of the City of Schertz, under Texas Water Code (TWC) § 13.255, to remove approximately 405 acres of land located within the city's corporate limits from Green Valley Special Utility District's certificated sewer service area and amend the city's sewer certificate of convenience and necessity (CCN) to include the same land.<sup>1</sup> The Commission grants the city's application; the city's and Green Valley's CCNs are so amended.

This proceeding had two phases. In the first phase, three issues were addressed by the presiding administrative law judge (ALJ) at the State Office of Administrative Hearings (SOAH) in a proposal for decision that was filed on May 9, 2017. The SOAH ALJ filed a letter on June 14, 2017 in which he made modifications to the first-phase proposal for decision. The Commission considered that proposal for decision and, on July 28, 2017, issued an interim order addressing the first-phase issues. The Commission also remanded this proceeding to SOAH to address the remaining issues. All remaining issues were addressed by the SOAH ALJ in a second-phase proposal for decision that was filed on October 18, 2017. On November 9, 2017, the SOAH ALJ filed a letter making modifications to the second-phase proposal for decision. Except as modified and discussed in this order, the Commission affirms and incorporates its interim order on the issues addressed in the first phase and adopts the second-phase proposal for decision, including the SOAH ALJ's letter making modifications to the second-phase proposal for decision.

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<sup>1</sup> Tex. Water Code Ann. § 13.255 (West 2008 and Supp. 2016) (TWC).

## **I. Discussion**

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

In its preliminary order, the Commission divided this matter into two phases and directed SOAH to address three issues during the first phase.<sup>2</sup> Consistent with that direction, the presiding SOAH ALJ issued a proposal for decision on the first-phase issues on May 9, 2017. In the proposal for decision addressing the first-phase issues, 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 answers to those two issues rendered moot the question of whether Green Valley's and city's filed appraisals are limited to valuing transferred and useless or valueless property.

In an interim order, the Commission adopted the proposal for decision issued by the SOAH ALJ regarding the first-phase issues, except for the SOAH ALJ's recommendation that the question regarding the existing appraisals is moot.<sup>3</sup> On that issue, the Commission decided that instead of finding the appraisal issue moot, it was appropriate to analyze the existing, filed appraisals to determine whether they are limited to valuing any transferred property and useless or valueless property.<sup>4</sup> Based on the Commission's adoption of the SOAH ALJ's recommendations that there is no transferred property nor useless or valueless property, the Commission concluded that Green Valley's appraisal is not limited to valuing such property, but the city's existing appraisal is.

#### **1. Existing Appraisals**

When jurisdiction over CCNs for retail water or sewer service was transferred to the Commission from the TCEQ, the Commission inherited the TCEQ's rules and process for handling applications under TWC § 13.255. At TCEQ, there was no determination made by TCEQ regarding what property would be rendered useless or valueless, transferred, or impaired by a decertification before the parties filed appraisals. As a result, if more than one appraisal was

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<sup>2</sup> Preliminary Order at 2, 4 Issues 8-10.

<sup>3</sup> Interim Order (July 28, 2017).

<sup>4</sup> *Id.*

required under the process set forth in TWC § 13.255(l), the filed appraisals could differ greatly from one another, both in the property analyzed and the values that the appraisers determined.

In this proceeding, the parties were required to file appraisals on July 15, 2016. Thereafter, this proceeding was referred to SOAH after the Commission determined in another proceeding that it is appropriate to refer to SOAH applications under TWC § 13.255 in order to first determine whether the requested decertification will result in any useless or valueless property or transferred property.<sup>5</sup> In its preliminary order, the Commission noted that appraisals had already been filed, and included in the issues to be addressed the following issue: “Are the existing appraisals limited to valuing the property that has been determined to have been rendered useless or valueless by decertification and the property that Schertz has requested be transferred?”<sup>6</sup>

In the proposal for decision on the first-phase issues, the SOAH ALJ recommended in part that, because there was no transferred property nor useless or valueless property, the issue regarding the existing appraisals was moot.<sup>7</sup> However, the SOAH ALJ also discussed the items that were appraised in Green Valley’s existing appraisal.<sup>8</sup> Consistent with his other recommendations, the SOAH ALJ concluded that Green Valley was not entitled to compensation for any of the items included in its appraisal because none of the items were property rendered useless or valueless by decertification under TWC § 13.255.<sup>9</sup> In contrast, the City of Schertz submitted an appraisal showing that no property of Green Valley was transferred property and no property was useless or valueless; hence, no compensation would be due to Green Valley.<sup>10</sup> The Commission agreed with the SOAH ALJ that none of the items that were appraised in Green Valley’s existing appraisal were useless or valueless property. In the interest of providing a

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<sup>5</sup> Order of Referral (Aug. 16, 2016); for a more detailed discussion of the Commission’s decision to refer to SOAH applications under Texas Water Code § 13.255, see *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*, Docket No. 43360, Interim Order (June 29, 2017).

<sup>6</sup> Preliminary Order 2, 4 Issue 10.

<sup>7</sup> First-Phase Proposal for Decision at 16, 24 Proposed Finding of Fact 61 (May 9, 2017).

<sup>8</sup> *Id.* at 16-19.

<sup>9</sup> *Id.* at 18-19; see Green Valley’s Ex. 56, Direct Testimony of Joshua M. Korman at Attachment GVSUD-1.

<sup>10</sup> City of Schertz’s Ex. 53, Direct Testimony of Robert F. Adams, D.E., P.E. at Attachment C.

thorough set of decisions in this proceeding, and to be consistent with how the Commission has recently addressed another TWC § 13.255 proceeding,<sup>11</sup> the Commission decided that rather than finding the issue moot, it is better to directly answer the issue. The Commission concluded in part that Green Valley's appraisal was not limited to valuing transferred property or useless or valueless property. To reflect this determination, the Commission deleted proposed finding of fact 61 and proposed conclusion of law 30, and in their places adopted findings of fact 61A through 61C and conclusions of law 30A and 30B.

## **2. Findings and Conclusions Regarding Issues Addressed in the First Phase**

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 those changes discussed above and non-substantive changes for such matters as capitalization, spelling, punctuation, style, grammar, and readability. The findings of fact that address the first-phase issues are findings of fact 1, 2, 3, 4, 5 through 58, and 59 through 61C. The conclusions of law that address the first-phase issues are conclusions of law 1 through 7, 8 through 9, and 10 through 30B.

### **B. 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 three issues that continue to be contested. Regarding the three contested issues, the SOAH ALJ concluded that the city provided the written notice of intent required under TWC § 13.255(b) and 16 Texas Administrative Code (TAC) § 24.120(b);<sup>12</sup> the city waited more than the 180 days required under TWC § 13.255(b) and 16 TAC § 24.120(b) before filing the city's application with the Commission; and the city's application is administratively complete. 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 his letter filed on November 9, 2017. The Commission also makes changes to

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<sup>11</sup> Docket No. 45702, Interim Order at 12 Findings of Fact 55 and 56.

<sup>12</sup> See Second-Phase Proposal for Decision at 2, n. 6 (Oct. 18, 2017). 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).

these findings of fact and conclusions of law for such matters as capitalization, spelling, punctuation, style, grammar, and readability. The findings of fact that address the second-phase issues are findings of fact 2A through 2F, 3A through 3H, 4A, 4B, 58A, 58B, and 62 through 65. The conclusions of law that address the second-phase issues are conclusions of law 2A, 7A through 7D, 9A, 9B, and 31 through 36.

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

## **II. Findings of Fact**

1. On October 22, 2015, the City of Schertz provided notice to Green Valley Special Utility District of its intent to provide sewer service to approximately 405 acres of land (the decertificated area) within the corporate limits of the city.
2. The decertificated area has been certificated to Green Valley for sewer service since approximately 2005 under CCN number 20973.
- 2A. The notice of intent included a map depicting Green Valley's CCN with a dashed purple line, "Area inside corporate limits to be served by City of Schertz" shaded in blue, and "Area subject to development agreements not in City of Schertz Corporate Limits" shaded in olive.
- 2B. In a cover letter for the notice of intent, the city wrote:

In accordance with Texas Water Code § 13.255, the [c]ity hereby provides Green Valley SUD with notice that the [c]ity intends to provide retail sewer service to the areas within its corporate limits that overlap with Green Valley SUD's sewer CCN service area ("Transfer Tracts"), which are depicted as portion [sic] of the blue areas that are within the purple dashed line on the map attached hereto as Attachment A. These areas are generally bounded by Lower Seguin Road to the north, Cibolo Creek to the east, United States Interstate Highway 10 to the south, and Farm to Market Road 1518 to the east. For your convenience, the pertinent portions [sic] annexation ordinances for the Transfer Tracts - the metes and bounds descriptions - are attached as Attachment B.
- 2C. The notice of intent described in four ways the area that the city requested and intended to serve: (1) an area that overlapped the city's corporate limits and Green Valley's CCN service area; (2) an area generally bounded by three identified roads and an identified creek;

- (3) the area shaded blue within a purple line on an attached map; and (4) the area covered by and described by metes and bounds in the city's attached annexation ordinances.
- 2D. The notice of intent also included copies of annexation ordinances for the requested area.
- 2E. The notice of intent stated that the city intended to provide "retail sewer service to the area" and included the city's contact information.
- 2F. March 20, 2016, was 180 days after October 22, 2015.
3. On May 11, 2016, the city submitted an application to the Commission, under TWC § 13.255 and 16 TAC § 24.120, for single sewer certification for the decertificated area.
- 3A. Consistent with the notice of intent letter, the Application seeks decertification of 405 acres of land within Green Valley's sewer CCN number 20973.
- 3B. The city is authorized to operate a public drinking-water system under authorization number TX0940003.
- 3C. The city's public drinking-water system has a compliance history classification of satisfactory.
- 3D. The city's public drinking-water system is designated by the TCEQ as a superior water system.
- 3E. The TCEQ has not revoked the city's public drinking-water authorization number TX0940003.
- 3F. The city has provided information to the Commission of its compliance with TCEQ minimum drinking-water system requirements.
- 3G. The city has no active notices of violations with the TCEQ concerning its public drinking-water system.
- 3H. Commission Staff recommended that the submissions by the city related to its public drinking-water system are sufficient to demonstrate compliance with TCEQ's minimum requirements for public drinking-water systems.
4. The application also asked the Commission to decertificate the decertificated area from Green Valley's CCN No. 20973.

- 4A. Green Valley has submitted to the Commission a written list with the names and addresses of any lienholders and the amount of its debt on May 26, 2016. 16 TAC § 24.120(b)(1).
- 4B. Green Valley notified the lienholders of this decertification process consistent with 16 TAC § 24.120(b)(2).
5. The decertificated area makes up less than 1% of Green Valley's sewer service area.
6. The city did not request transfer of any Green Valley property to the city.
7. On May 26, 2016, Green Valley filed a motion to intervene in this matter.
8. On July 7, 2016, the city's and Green Valley's independent appraisers held their first meeting concerning the proposed decertification.
9. On July 15, 2016, the city filed its appraisal, prepared by Jack E. Stowe (city appraisal) with the Commission.
10. The city appraisal showed no property of Green Valley would be rendered useless or valueless by the decertification.
11. On July 15, 2016, Green Valley filed its appraisal, prepared by Joshua Korman and his associate, John Kostohryz, (Green Valley appraisal) with the Commission.
12. The Green Valley appraisal calculated that its property worth \$331,862 would be rendered useless or valueless by the decertification.
13. Currently, Green Valley provides no retail sewer service in the decertificated area, or anywhere else, under its sewer CCN.
14. Green Valley does not have any retail wastewater customers, contractual obligations to provide retail wastewater service, or requests for retail wastewater service in the decertificated area.
15. Green Valley does not own any real or personal property in the decertificated area.
16. Green Valley has made no physical improvements within the decertificated area, including any wastewater infrastructure.



17. Green Valley has no existing retail sewer infrastructure anywhere within the boundaries of its CCN.
18. Green Valley does not have any wastewater infrastructure outside of the decertificated area that is or could be used to provide wastewater service to the decertificated area.
19. Green Valley does not have a contract with a wholesale wastewater provider to collect or treat wastewater that is generated within the decertificated area.
20. Green Valley does not possess a Texas pollutant-discharge-elimination-system (TPDES) permit from the TCEQ to discharge treated effluent from a wastewater-treatment plant.
21. Green Valley has applied to TCEQ for a TPDES permit, but it has not yet been granted, has been protested, and is currently the subject of a contested case hearing at the SOAH.
22. Green Valley does not have final approval from the TCEQ of its designs for a wastewater-collection system that could be installed to serve the decertificated area.
23. Green Valley has not submitted designs to the TCEQ for a wastewater-collection system that could be installed to serve the decertificated area.
24. Green Valley is not currently capable of providing sewer service to anyone in the decertificated area.
25. Green Valley purchased approximately 65 acres for \$325,000 in 2014 to construct a wastewater-treatment plant outside of the decertificated area.
26. No development has occurred on the 65 acres, and it is not currently used by Green Valley to provide wastewater service of any kind, much less to the decertificated area.
27. Most of the 65 acres is not necessary and could not be used for a wastewater-treatment plant.
28. Approximately 45 of the 65 acres are within a 100-year floodplain, which makes that portion of the land unsuitable for siting a wastewater-treatment plant.
29. Of the remaining 20 acres not in the 100-year floodplain, only about half of those acres would be needed to construct a 5-million-gallon-per-day wastewater-treatment plant with the TCEQ-required buffer zones around the facility.

30. Green Valley would need the same amount of the land for a wastewater-treatment plant, whether the area requested by the city is decertificated or not.
31. Growth is anticipated in Green Valley's sewer CCN area beyond the portion that would be decertificated if the city's application is granted.
32. Green Valley does not contend that the 65 acres of land will be rendered useless or valueless to Green Valley if the city's application is granted, removing the decertificated area from Green Valley's CCN.
33. Green Valley specifically denies that all or a portion of the 65 acres will be rendered useless and valueless upon decertification.
34. The 65 acres for the wastewater treatment plant would not be rendered valueless or useless to Green Valley if the separate 405 acres are decertificated in this case, as the city asks.
35. In its appraisal, Green Valley claims it is entitled to compensation from the city for the following that it claims will be rendered valueless and useless to it if the city's application is granted:
  - a. \$130,715 in compensation as the net present value of revenue Green Valley anticipates that it will receive from future customers within the decertificated area, that Green Valley could use to pay its bonded debt;
  - b. \$1,160 in compensation as a share of the \$209,582 it spent on planning to provide sewer service;
  - c. \$49,831 in compensation as the net present value of higher service fees that Green Valley claims its future customers outside the decertificated area will pay for sewer service if the decertificated area is removed from its CCN; and
  - d. \$148,357 in compensation for legal and appraisal professional fees.
36. Green Valley has no existing loans or other debt obligations secured to or related to the design or construction of sewer infrastructure.
37. Green Valley's debt does not concern sewer service.
38. Because it is not providing sewer service, Green Valley does not need \$130,715, or any other amount, to maintain its integrity as a retail public utility providing sewer service.

39. On August 2, 2016, the city filed notice with the Commission that the parties and their appraisers were unable to agree on an appraisal determination and requested that the Commission appoint a third, qualified, independent appraiser.
40. On August 16, 2016, the Commission referred the application to SOAH for hearing.
41. The city, Green Valley, and Commission Staff were named as parties in this matter.
42. On September 12, 2016, the Commission issued the preliminary order in this case.
43. The preliminary order referred 11 issues to SOAH for consideration, including the following:
  8. What property, if any, will be rendered useless or valueless to Green Valley by the decertification sought by Schertz in this proceeding?
  9. What property of Green Valley, if any, has Schertz requested to be transferred to it?
  10. Are the existing appraisals limited to valuing the property that has been determined to have been rendered useless or valueless by decertification and the property . . . that Schertz has requested be transferred?
44. In the preliminary order, the Commission asked that the Administrative Law Judge (ALJ) first hold a hearing and prepare a proposal for decision on Issues 8–10, so that the Commission could make determinations on them before considering the other issues.
45. On September 14, 2016, a prehearing conference in this matter was held at SOAH.
46. Pursuant to the Commission’s preliminary order, the then-presiding ALJ ordered that the purpose of the first phase of the hearing was to address issues 8–10 in the Preliminary Order.
47. The case was later reassigned by SOAH to another ALJ.
48. On November 17, 2016, the city filed the direct testimony and exhibits of Robert F. Adams, D.E., P.E.
49. On December 15, 2016, Green Valley filed direct testimonies and exhibits of David “Pat” Allen, Joshua M. Korman, Garry Montgomery, P.E., and Stephen H. Blackhurst, P.E.

50. On February 14, 2017, the city filed the rebuttal testimonies and exhibits of Mr. Adams and Mr. Stowe.
51. The parties filed objections to and motions to strike some of the prefiled evidence, and later filed replies to the objections.
52. The ALJ overruled all the objections and admitted all of the prefiled evidence.
53. On March 14, 2017, the city filed a motion for partial summary decision.
54. On March 16, 2017, Green Valley filed a response opposing the city's motion for partial summary decision.
55. On March 22, 2017, Commission Staff filed a statement of position and a response supporting the city's motion for partial summary decision.
56. On March 16, 2017, the city filed a supplement to its motion for partial summary decision.
57. On March 22, 2017, Green Valley filed a reply to Commission Staff's statement of position and a response opposing the city's motion for partial summary decision.
58. On March 24, 2017, the ALJ issued SOAH Order No. 6, which granted the city's motion for partial summary decision and cancelled the hearing on the merits.
- 58A. On May 9, 2017, the ALJ issued a proposal for decision of the first-phase issues (first-phase proposal for decision).
- 58B. After considering the first-phase proposal for decision, the Commission issued an interim order on July 28, 2017, that resolved issues 8, 9, and 10, and, by extension, issues 4a and 4b, and remanded the case to SOAH to address the remaining issues.
59. As to issue 8, no Green Valley property will be rendered useless or valueless to Green Valley by the decertification sought by the city in this proceeding.
60. As to issue 9, the city has not requested Green Valley to transfer any property to the city.
61. DELETED.

- 61A. The city's appraisal was limited to appraising transferred property or property that would be rendered useless or valueless to Green Valley by the decertification, of which there is none.
- 61B. Green Valley's appraisal was not limited to appraising transferred property or property that would be rendered useless or valueless to Green Valley by the decertification. Instead, Green Valley's appraisal improperly included other items that are neither transferred property nor useless or valueless property.
- 61C. Because there is no transferred property nor property that would be rendered useless or valueless to Green Valley by the decertification, no additional appraisals are necessary.
62. At a prehearing conference before the ALJ on August 10, 2017, the parties agreed that a further hearing on the merits was unnecessary and a proposal for decision of the second-phase issues (second-phase proposal for decision) could be issued based on written submissions.
63. Subsequently, the parties filed the following:

Date	Party	Document
8/24/2017	Commission Staff	Commission Staff's Recommendation on Administrative Completeness
9/15/2017	The City	Joint Agreed Stipulations Concerning Remaining Referred Issues (the Stipulations)
9/22/2017	Commission Staff	Initial Brief
9/22/2017	Green Valley	Initial Brief
9/22/2017	The City	Initial Brief
9/26/2017	The City	Second Supplement to Application and First Supplement to Initial Brief (Second Supplement to Application)
9/29/2017	Green Valley	Reply Brief
9/29/2017	Commission Staff	Reply Brief
9/29/2017	The City	Reply Brief

- 63A. On August 24, 2017, Commission Staff recommended that the application be deemed administratively complete.
64. The record closed on September 29, 2017, when reply briefs were due.

65. On October 18, 2017, the ALJ issued the second-phase proposal for decision.

### III. Conclusions of Law

1. The city is a municipality under TWC § 13.002(12).
2. Green Valley is a retail public utility and special utility district under TWC § 13.002(19), chapter 65.
- 2A. The area for which the city seeks single certification is within the service area of Green Valley under sewer CCN No. 20973
3. The Commission has jurisdiction and authority over this matter in accordance with TWC §§ 13.041, 13.255(b) and (c), and 16 TAC § 24.120(b) and (c) (TAC).
4. 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 under the Administrative Procedure Act §§ 2001.058 and 2003.049.<sup>13</sup>
5. All notice has been given as required under APA §§ 2001.051–.052 and TWC § 13.255(b).
6. The city, as the applicant, has the burden of proof in this case in accordance with 16 TAC § 24.12 and 1 TAC § 155.427.
7. TWC § 13.255 governs single certification in an area incorporated or annexed by a municipality that is currently served by a special utility district under a CCN.
- 7A. Rule 16 TAC § 24.120 concerns single certification in incorporated or annexed areas.
- 7B. Effective May 28, 2017, 16 TAC § 24.120 was repealed and replaced. 16 TAC § 24.120 *repealed and replaced* 42 Tex. Reg. 2703 (May 19, 2017).
- 7C. A rule adopted under a code is presumed to be prospective in its operation unless expressly made retrospective and does not affect the prior operation of the rule or any prior action taken under it or any validation, cure, right, privilege, obligation, or liability previously acquired, accrued, accorded, or incurred under it. Tex. Gov't Code §§ 311.002, .022, .031(1), (2).

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<sup>13</sup> Tex. Gov't Code Ann. §§ 2001.058 and 2001.049 (West 2016) (APA).

- 7D. The previous version of 16 TAC § 24.120 applies in this case. 16 TAC § 24.120 *adopted* 39 Tex. Reg. 5903 (Aug. 1, 2014) (eff. Sep. 1, 2014).
8. A municipality and a retail public utility that provides sewer service to all or part of the municipality's incorporated area pursuant to a CCN may agree in writing that all or part of the area may be served by a municipally-owned utility under TWC § 13.255(a).
9. If an agreement is not executed within 180 days after the municipality, in writing, notifies the retail public utility of its intent to provide service to the incorporated or annexed area, the municipality may file an application with the Commission to grant single certification to the municipally owned utility under TWC § 13.255(b).
- 9A. The city provided Green Valley with written notice of the city's intent to provide service to the area for which the city seeks certification, in accordance with TWC § 13.255(b); 16 TAC § 24.120(b).
- 9B. The city waited more than the required 180 days after providing the notice of intent to Green Valley before the city filed its application with the Commission, in accordance with TWC § 13.255(b) and 16 TAC § 24.120(b).
10. The Commission must grant single certification to the municipality under TWC § 13.255(c).
11. Before granting single certification as requested by a municipality, the Commission must first determine whether single certification would result in property of the retail public utility being rendered useless or valueless to the retail public utility in accordance with TWC § 13.255(c).
12. The Commission must also determine the monetary amount that is adequate and just to compensate the retail public utility for its property that would be rendered useless or valueless under TWC § 13.255(c).
13. If the municipality requests transfer of property of the retail public utility to the municipality, the Commission must determine the adequate and just compensation to be paid for such property under TWC § 13.255(c).

14. Words and phrases must be read in context and construed according to the rules of grammar and common usage unless they have acquired a technical or particular meaning by legislative definition or otherwise in accordance with the Code Construction Act § 311.011.<sup>14</sup>
15. The term *property* is not defined in the TWC.
16. The plain meaning of *property* is “something owned or possessed,” “the exclusive right to possess, enjoy, and dispose of a thing,” and “something to which a person or business has legal title.” Merriam-Webster Collegiate Dictionary (11th ed. 2003).
17. In a legal context, *property* is further defined as “any external thing over which the rights of possession, use, and enjoyment are exercised” and reflects “one’s exclusive right of ownership of a thing.” Black’s Law Dictionary (10th ed. 2014).
18. The factors listed in TWC § 13.255(g) are compensation factors used to value personal property found by the Commission to be rendered useless and valueless by decertification, and do not identify types of personal property that may be rendered or valueless.
19. The Commission, on motion by any party, may grant a motion for summary decision on any or all issues to the extent that the pleadings, affidavits, materials obtained by discovery or otherwise, admissions, matters officially noticed, or evidence of record show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision in its favor, as a matter of law, on the issues expressly set forth in the motion under 16 TAC § 22.182(a).
20. There is no genuine issue as to any fact material to issues 8 and 9 of the preliminary order.
21. Dollars expended by Green Valley for engineering and planning to implement Green Valley’s 2006 Wastewater Master Plan are not property and are not compensable under TWC § 13.255(c) and (g).
22. Dollars expended by Green Valley to obtain a TPDES permit from the TCEQ are not property and are not compensable under TWC § 13.255 (c) and (g).

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<sup>14</sup> Tex. Gov’t Code Ann. § 311.011 (West 2016).



23. Dollars expended by Green Valley to purchase the 65-acre tract of land are not property and are not compensable under TWC § 13.255 (c) and (g).
24. TWC § 13.255(g) limits compensation for the impact on the decertificated entity for future lost revenues to such losses from existing customers.
25. Green Valley's lost future revenue from currently non-existing customers is not property and is not compensable under TWC § 13.255(c) and (g).
26. Attorney's fees are not property under TWC § 13.255(c).
27. Appraisal expenses are not property under TWC § 13.255(c).
28. No property of Green Valley will be rendered useless or valueless to Green Valley by the decertification sought by the city in this matter.
29. No property of Green Valley will be transferred from Green Valley to the city by the decertification sought by the city in this matter.
30. DELETED.
- 30A. The city's appraisal is consistent with the requirements of TWC § 13.255 because it is limited to appraising transferred property or property that would be rendered useless or valueless to Green Valley by the decertification, of which there is none.
- 30B. Green Valley's appraisal is inconsistent with the requirements of TWC § 13.255 because it is not limited to appraising transferred property or property that would be rendered useless or valueless to Green Valley by the decertification.
31. Because no property would be rendered useless or valueless to Green Valley by the decertification, no additional appraisals are necessary. TWC § 13.255(l) and 16 TAC § 24.120(m).
32. Because there is no transferred property, no additional appraisals are necessary. TWC § 13.255(1) and 16 TAC § 24.120(m).
33. Because no Green Valley property will be rendered useless or valueless to Green Valley by the decertification sought by the city in this proceeding and the city has not requested the transfer of any Green Valley property to the city, Green Valley is entitled to nothing in

- compensation if the city's single certification application is granted. TWC §§ 13.255(c), (g), (g-1) and (1) and 16 TAC § 24.120(c), (g), (h), and (m).
34. The city complies with TCEQ's minimum requirements for public-drinking-water systems. TWC § 13.255(m); 16 TAC § 24.120(n).
  35. The city's application is administratively complete. 16 TAC § 24.8.
  - 35A. Green Valley provided a list of all lienholders and notified said lienholders of the decertification process in Docket No. 45956, consistent with 16 TAC § 24.120(b)(2).
  36. The city's application for single certification of the decertified area should be granted.

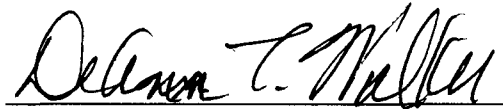
#### **IV. Ordering Paragraphs**

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

1. The application of the City of Schertz is granted.
2. Green Valley's sewer CCN number 20973 is amended to remove the decertified area.
3. The city's sewer CCN number 20271 is amended to include the decertified area.
4. The Commission's official service area boundary maps for Green Valley and the city shall reflect these changes.
5. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or specific relief, if not expressly granted, are denied.

Signed at Austin, Texas the 17<sup>th</sup> day of November 2017.

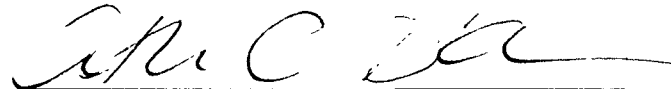
**PUBLIC UTILITY COMMISSION OF TEXAS**



DEANN T. WALKER, CHAIRMAN



BRANDY MARTY MARQUEZ, COMMISSIONER



ARTHUR C. D'ANDREA, COMMISSIONER



# **Public Utility Commission of Texas**

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

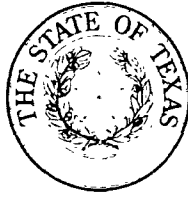
## **Green Valley Special Utility District**

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

### **Certificate of Convenience and Necessity No. 20973**

to provide continuous and adequate sewer utility service to that service area or those service areas in Bexar, Comal and Guadalupe Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 45956 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 17<sup>th</sup> day of November 2017.



# **Public Utility Commission of Texas**

**By These Presents Be It Known To All That**  
**City of Schertz**

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 Schertz is entitled to this

## **Certificate of Convenience and Necessity No. 20271**

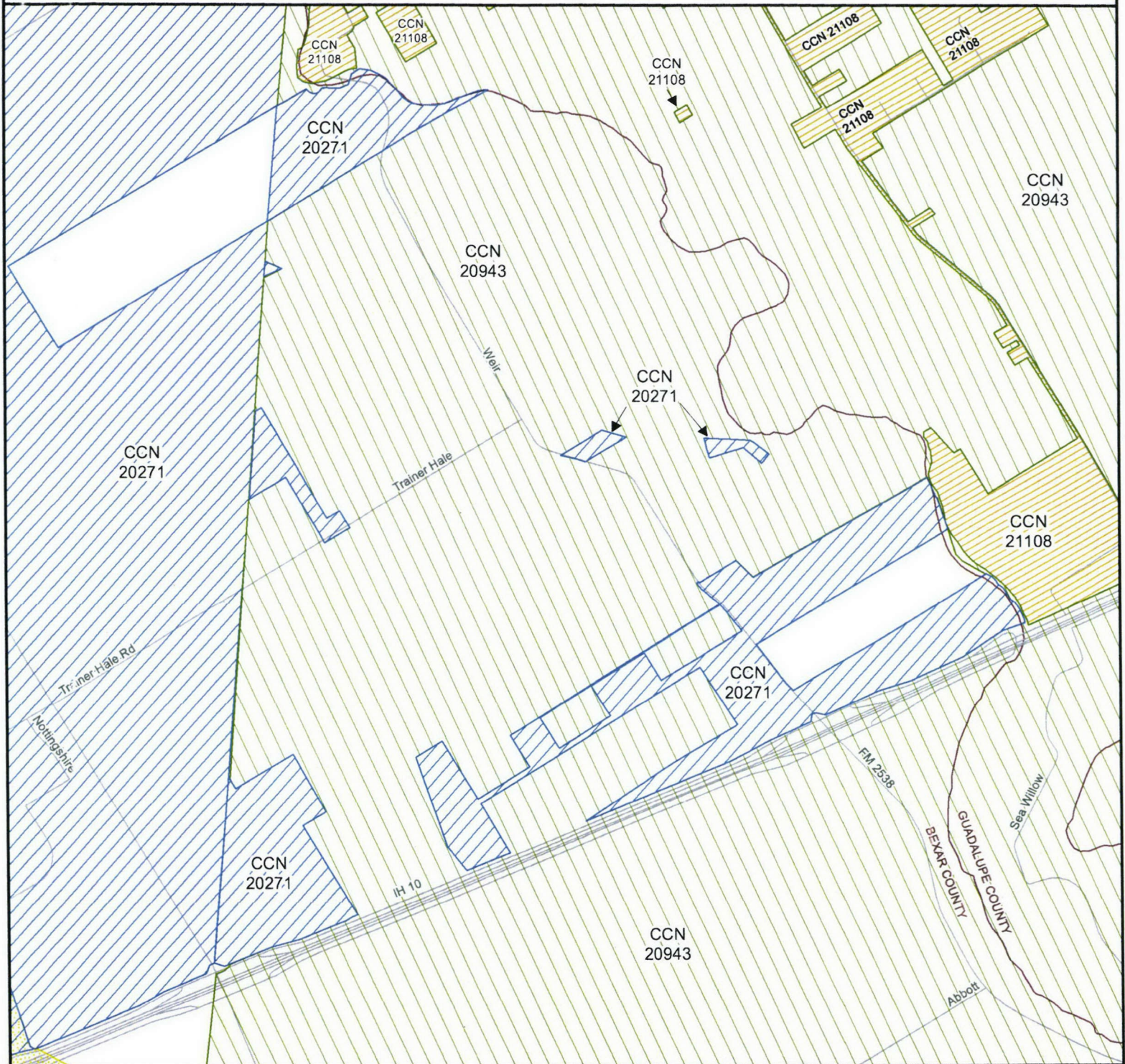
to provide continuous and adequate sewer utility service to that service area or those service areas in Bexar County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 45956 are on file at the Commission offices in Austin, Texas; and are matters 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 Schertz, 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 17<sup>th</sup> day of November 2017.






City of Schertz  
Portion of Sewer CCN No. 20271  
PUC Docket No. 45956

13.255 Agreement to Decertify a Portion of Green Valley Special Utility District, CCN No. 20943 and Amend CCN No. 20271 in Bexar and Guadalupe Counties



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

**Sewer CCN**

-  20271 - City of Schertz
-  20943 - Green Valley SUD
-  21108 - City of Cibolo

0 1,000 2,000  
Feet



Map by: Komal Patel  
Date created: November 16, 2017  
Project Path: n:\finalmapping\45956CityofSchertz.mxd