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# *Public Utility Commission of Texas*

## **Commissioner Memorandum**

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**TO:** Commissioner Arthur C. D'Andrea  
Commissioner Shelly Botkin

**FROM:** Chairman DeAnn T. Walker 

**DATE:** July 15, 2020

**RE:** July 16, 2020 Open Meeting – Item No. 7  
Docket No. 49339 – *Application of Green Valley Special Utility District to Amend a Sewer Certificate of Convenience and Necessity in Guadalupe County.*

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For the reasons discussed below, I recommend that the Commission remand this proceeding to Docket Management on the issue of whether the Commission should dismiss the proceeding without prejudice.

In Docket No. 45798,<sup>1</sup> the Commission removed the 159 acres at issue in this proceeding from Green Valley Special Utility District's certificated sewer service area through a streamlined expedited release proceeding. However, Green Valley filed suit in federal court,<sup>2</sup> and in its final judgment, the district court explicitly invalidated the Commission's order in Docket No. 45798.

The Commission appealed the district court's decision to the United States Court of Appeals for the Fifth Circuit, but the Fifth Circuit has not yet ruled on the appeal. Therefore, the district court's decision currently stands. Because the Commission's order removing the 159 acres from Green Valley's certificated service area has been invalidated, the 159 acres are already still part of Green Valley's certificated service area. The Commission cannot amend a certificate of convenience and necessity to add an area that is already included in the certificated service area.

Therefore, I believe that this proceeding should be dismissed without prejudice under 16 Texas Administrative Code § 22.181 for failure to state a claim for which relief can be granted. However, I believe it is best to remand the proceeding to Docket Management in order to comply with the provisions of the Commission's procedural rules.

I look forward to discussing this matter with you at the open meeting.

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<sup>1</sup> *Petition of Guadalupe Valley Development Corporation to Amend Green Valley Special Utility District's Certificate of Convenience and Necessity in Guadalupe County by Expedited Release*, Docket No. 45798, Order (Jul. 11, 2016) (on appeal).

<sup>2</sup> *Green Valley Special Utility District v. Walker*, 351 F.Supp. 3d 992 (W.D. Tex. 2018).