



## Filing Receipt

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**PUC DOCKET NO. 51979**

<b>PETITION BY SIG MAGNOLIA LP</b>	<b>§</b>	<b>BEFORE THE</b>
<b>FOR EXPEDITED RELEASE</b>	<b>§</b>	
<b>FROM WATER CCN NO. 11052</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>HELD BY DOBBIN PLANTERSVILLE</b>	<b>§</b>	
<b>WATER SUPPLY CORPORATION</b>	<b>§</b>	<b>OF TEXAS</b>

**DOBBIN PLANTERSVILLE’S CORRECTIONS AND EXCEPTIONS  
TO PROPOSED ORDER**

COMES NOW, Dobbin Plantersville Water Supply Corporation (“Dobbin Plantersville” or “Intervenor”) and files these corrections and exceptions to the Administrative Law Judge’s Proposed Order and would respectfully show the following:

**I. BACKGROUND**

On April 5, 2021, SIG Magnolia LP (“SIG Magnolia”) filed a petition, pursuant to Texas Water Code §13.2541 and 16 Texas Administrative Code (TAC) § 24.245, with the Public Utility Commission of Texas (“PUC” or “Commission”) for streamlined expedited release from Dobbin Plantersville’s water certificate of convenience and necessity (CCN) No. 11052. (“Petition”).

On September 22, 2021, the Administrative Law Judge (“ALJ”) served on all parties a proposed order and set a deadline of October 4 to file corrections and exceptions; therefore, these corrections and exceptions are timely filed.

The ALJ’s proposed order recommends that the Commission release the tract of land described in the Petition (“release property”) from Dobbin Plantersville’s certificated service area and amend Dobbin Plantersville’s CCN number 11052 to reflect the removal of the release property from the water service area.

**II. CORRECTIONS AND EXCEPTIONS TO THE ALJ’S PROPOSED ORDER**

Dobbin Plantersville objects to certain Findings of Facts and Conclusions of Law in the ALJ’s Proposed Order as discussed below. Intervenor disagrees with the ultimate

Conclusion of Law that SIG Magnolia is entitled to a streamlined expedited release of the release property from Intervenor's CCN.

#### **A. CORRECTIONS AND EXCEPTIONS TO PROPOSED FINDINGS OF FACT**

Dobbins Plantersville objects to the following Findings of Fact in the proposed order. Changes that Dobbins Plantersville believes are needed to reflect the factual record more accurately are shown in track-changes.

**3.** Dobbins Plantersville holds CCN number 11052 that obligates the utility to provide retail water service in its certificated service area in Montgomery County and Grimes County.

SUPPORT: See PUC records for the boundaries of the CCN.

REASONING: Although the release property is in Montgomery County, the CCN covers areas in Montgomery and Grimes counties.

**14.** On June 17, 2021, the CCN holder filed a motion to dismiss and on June 25, 2021, the CCN holder filed a supplement to the motion to dismiss.

SUPPORT: See CCN holder's response to petition and motion to dismiss at section IV; and CCN holder's supplement to the motion to dismiss. (*Interchange* Item Nos. 15 and 21, respectively).

REASONING: Rather than renumber the Findings of Fact, Dobbins Plantersville proposes consolidating Nos. 14 and 15 so that No. 15 can be used to add the following proposed Finding of Fact.

**15.** The CCN holder argued that the petition must be dismissed because petitioner is receiving water service from the CCN holder and, in the alternative, that the CCN holder has provided or made service available and enjoys protection under Title 7 United States Code section 1926(b). The motion to dismiss was supported by the affidavits described in Finding of Fact No. 13. ~~On June 25, 2021, the CCN holder filed a supplement to the motion to dismiss.~~

SUPPORT: See CCN holder’s response to petition and motion to dismiss at section IV; and CCN holder’s supplement to the motion to dismiss (*Interchange* Item Nos. 15 and 21, respectively).

REASONING: If the Commissioners decide that the Motion to Dismiss should have been granted, their order will require facts about the bases for the Motion.

**23.** The release property is not receiving actual water service from the CCN holder; however, the CCN holder has adequate facilities to provide service to the release property within a reasonable time after a request for service is made and has the legal right to provide service.

SUPPORT: See CCN holder’s response to petition and motion to dismiss at Duncan Affidavit and Legge Affidavit (*Interchange* Item No. 15). See also, PUC CCN records.

REASONING: If the Commissioners decide to apply the standard articulated in *Green Valley Special Util. Dist. v. City of Schertz, Texas*, 969 F.3d 460, 477 (5th Cir. 2020), their order will require facts that show that the standard was met. See also, “Reasoning” under Dobbin Plantersville’s proposed Conclusion of Law No. 9, below.

Petitioner’s Juanita Orsak and Ryan Wade’s affidavits described in Finding of Fact No. 8 state that the first 300 acres of the release property, located on the western end of the release property, will be developed into 550 lots by 2023. The full build-out of the release property will take between 7 and 10 years and will contain a total of 1500 lots. Because the SIG Magnolia development will be a dense development, the water system must be capable of providing fire flows in addition to potable water service. See Orsak June 23, 2021, affidavit at 5 and 6 and Wade June 24, 2021, affidavit at 4 (*Interchange* at Item No. 19). No other evidence supports these contentions.

SIG Magnolia’s contentions of Ms. Orsak and Mr. Wade are premised on speculation that it will actually build 550 homes (connections) all at once. Although SIG Magnolia contends it “intends” to do so, there is no evidence that SIG Magnolia has the financial ability to actually

construct 550 homes by 2023. Further, the full build-out of 1500 homes is likewise speculation. There is no evidence that in the next 10 years, SIG Magnolia has the financial and other resources to do so. Nonetheless, Ms. Orsak and Mr. Wade use these dates and numbers of completed lots/homes to conclude that water service to these speculative homes would exceed Dobbin Plantersville's ability to satisfy the water demand "within a reasonable period of time." SIG Magnolia's witnesses are making predictions that may never come true. Most residential developments are "phased," so the developer does not have too large of an investment in infrastructure (water and sewer lines, etc.) up front, in case lot sales do not occur as predicted. SIG Magnolia's prediction is merely a wish without evidentiary support and may never come true, and the Commissioners should not release the release property on the basis of wishes and guesswork. It is common for developers to exaggerate anticipated water needs as a means to attempt to remove property from a CCN. On information and belief, this case is no different.

Additionally, SIG Magnolia contends that somehow fire flow needs weigh into its need to be released and to the analysis of whether Dobbin Plantersville can make service available within a reasonable period of time. Under Section 1926(b) and Texas Water Code and PUC rules for determining "providing service," Redbird's anticipated fire flow needs are not factored into the "made service available" analysis. *See Rural Water Sewer & Solid Waste Mgmt., Dist. No. 1, Logan Cty., Oklahoma v. City of Guthrie*, 654 F.3d 1058, 1066–67 (10th Cir. 2011). There is no requirement that Dobbin Plantersville make fire flow available under its CCN. The CCN is designed to ensure the safe and adequate supply of running household water to customers within its boundary. Even if fire flow were a consideration in an SER decision, Steve Duncan has testified that fire flow could be made available. Thus, fire flows must not be considered by the Commission; the Petition must be denied because Dobbin Plantersville is making service available to the SER Property.

As shown by the affidavits of Steve Duncan and Janie Legge found at Exhibits A and B, respectively, to Dobbin Plantersville's Response to SIG Magnolia's Petition for Streamlined Expedited Release, and Motion to Dismiss (*Interchange* at Item No. 15):

(1) A few years ago, Dobbin Plantersville began planning for service to the area, including the release property. *See* Duncan Affidavit at 6; Legge Affidavit at 7 (*Interchange* at Item No. 15).

(2) An additional water plant was to be constructed in the area once development pressure required it. The Water Plant 9 site was dedicated in 2019. With each section of development, the water lines were planned for their future extension into the adjoining undeveloped tracts of the High Meadows area, ultimately connecting the 6-inch existing water lines on Jackson Road and FM 1486 with 6-inch and 8-inch interior lines. The release property is located in the High Meadows area. *See* Duncan Affidavit at 6 and 8 and Attachments 2 and 3; Legge Affidavit at 8 and 10 (*Interchange* at Item No. 15).

(3) Water Plant 9 was originally planned to be part of a larger system-wide project, but because of development pressure within the High Meadows original tracts, primarily SIG Magnolia's, part of the plan was brought forward. This part is referred to as the Water Plant 9 Project which was designed to serve the High Meadows original tracts including the SIG Magnolia tract. To be ready to serve SIG Magnolia under its stated timeline, Dobbin Plantersville could not wait for financing of the entire system-wide plan and therefore had to obtain a \$1,250,000.00 loan from CoBank, which they hope to later roll into a USDA loan to finance the entire system-wide plan. *See* Duncan Affidavit at 7, and Attachment 3; Legge Affidavit at 7 and 8 (*Interchange* at Item No. 15). *See also*, CoBank loan documents at Legge Affidavit, Attachment 3 (*Interchange* at Item No. 15).

(4) Existing 6-inch and 8-inch water lines are available near the release property (Magnolia Crossing); two 6-inch lines terminate just prior to the release property with easements in place for the future extension to the release property; another 6-inch line stops at the parcel to the east of the release property and is planned to continue through that property to the release property when that property develops; the 8-inch line south of the release property running roughly parallel to the southern property line was planned to be extended into the Magnolia Crossing subdivision with routing to be determined by the High Meadows and Magnolia Crossing subdivision layouts; the location of Water Plant 9 was selected for its ability to serve the High Meadows/Magnolia Crossing

area. The plans and specs for the public water supply well have been approved by the Texas Commission on Environmental Quality (TCEQ). The project has been bid and awarded and Dobbin Plantersville is awaiting the availability of the water well driller to begin construction. Dobbin Plantersville has received groundwater permits from Lonestar Groundwater Conservation District. The plans and specs for Water Plant 9 are currently under review by the TCEQ. *See* Duncan Affidavit at 9 and 15 and Attachment 2 (*Interchange* at Item No. 15).

(6) Water Plant 9 provides additional water system capacity that is not currently needed by Dobbin Plantersville if the release property is released. Water Plant 9 will include a public water supply well, ground storage tank, booster pumps, and a pressure tank that will tie into the existing distribution system. The plant design includes components for a minimum capacity of 500 connections and an alternate capacity of 750 connections. Water Plant 9 was specifically located and sized to serve the High Meadows/Magnolia Crossing subdivision areas. *See* Duncan Affidavit at 11 and 13; Legge Affidavit at 10 (*Interchange* at Item No. 15).

(7) There are no outstanding requests for service from the undeveloped portions of the subject CCN area that will use the remainder of the existing capacity. *See* Duncan Affidavit at 14; Legge Affidavit at 10 (*Interchange* at Item No. 15).

Thus, the CCN holder's evidence shows that it has adequate facilities to provide service to the release property within a reasonable time after a request for service is made and has the legal right to provide service.

**24.** The petitioner has not requested that the CCN holder provide water service to the release property; however, if the petitioner requests service from the CCN holder, all facilities are in place to deliver water to active water taps located on the release property once petitioner pays for the improvements needed to hook up its water service taps to existing 6-inch and 8-inch water lines near the release property; two 6-inch lines terminating just prior to the release property; a 6-inch line stopping at the parcel to the east of the release property; the 8-inch line south of the release property running roughly parallel to the southern property line; and Water Plant 9.

SUPPORT: See CCN holder’s response to petition and motion to dismiss at Duncan affidavit and Legge affidavit (*Interchange* at Item No. 15).

REASONING: If the Commissioners decide to apply the standard articulated in *Green Valley Special Util. Dist. v. City of Schertz, Texas*, 969 F.3d 460, 477 (5th Cir. 2020), their order will require facts that show that the standard was met. See also, “Reasoning” under Dobbin Plantersville’s proposed Finding of Fact No. 23, above, and under proposed Conclusion of Law No. 9, below.

**27.** The CCN holder has ~~not~~ committed ~~or~~ and dedicated ~~any~~ funds and facilities or lines to the release property for water service, including the facilities or lines described in Finding of Fact No. 24 and funds including a \$1,250,000.00 loan from CoBank.

SOURCE: See DP Response to Petition and Motion to Dismiss, Duncan Affidavit at 6 – 10; Legge Affidavit at 5 and Attachment 3 (*Interchange* at Item No. 15).

REASONING: The testimony of Steve Duncan, the CCN holder’s expert engineering consultant, details the many ways that the CCN holder has prepared for serving the release property. If the Commissioners decide to apply the standard articulated in *Green Valley Special Util. Dist. v. City of Schertz, Texas*, 969 F.3d 460, 477 (5th Cir. 2020), their order will require facts that show that the standard was met. See also, “Reasoning” under Dobbin Plantersville’s proposed Finding of Fact No. 23, above, and under proposed Conclusion of Law No. 9, below.

~~**29.** The CCN holder has not performed any acts for or supplied anything to the release property.~~

SOURCE: See DP Response to Petition and Motion to Dismiss, Duncan Affidavit at 6 – 10; Legge Affidavit at 5 (*Interchange* at Item No. 15).

REASONING: If Dobbin Plantersville’s proposed changes to Finding of Fact No. 27 are made, Finding of Fact No. 29 should be deleted because it would contradict the changed No. 27.



### **Motion to Take Official Notice**

31. On July 13, 2021, the CCN holder filed a Motion to Take Official Notice of its lawsuit filed in the United States District Court for the Western District of Texas, Austin Division, in Case 1:21-cv-00612. A copy of the Original Complaint was attached as Exhibit A. The suit challenges the PUC's authority to release the release property due to the protections under 7 United States Code section 1926(b).

32. On August 13, 2021, in Order No. 8, the ALJ denied the Motion to Take Official Notice.

SOURCE: See, *Interchange* Item Nos. 26 and 36.

REASONING: If the Commissioners believe it is relevant to their decision that Dobbin Plantersville has filed a lawsuit in federal court, these Findings of Fact are needed.

### **B. CORRECTIONS AND EXCEPTIONS TO PROPOSED CONCLUSIONS OF LAW**

Dobbins Plantersville objects to the following Conclusions of Law in the ALJ's proposed order. Changes that Dobbin Plantersville believes are needed to more accurately reflect Conclusions of Law based on the factual record are shown in track-changes.

9. The release property is ~~not considered to be~~ receiving water service under TWC §§ 13.002(21) and 13.2541(b) and 16 TAC § 24.245(h), as interpreted in *Texas General Land Office v. Crystal Clear Water Supply Corporation*, 449 S.W.3d 130 (Tex. App.-Austin 2014, pet denied) and *Green Valley Special Util. Dist. v. City of Schertz, Texas*, 969 F.3d 460, 477 (5th Cir. 2020).

SOURCE & REASONING: The record and Dobbin Plantersville's proposed changes to the Findings of Fact support proposed changes to the ALJ's proposed Conclusion of Law Nos. 9 - 11 for the following reasons.

Only property “that is not receiving water service” may be released under Texas Water Code section 13.2541. A determination of whether the release property receives water service from the CCN holder is a fact-specific inquiry and the lack of active water taps or facilities on the release property itself is not determinative.<sup>1</sup> An analysis of the facts begins with the definitions of "service" and “facilities” in the Texas Water Code. “Service” is defined as:

any act performed, anything furnished or supplied, and any facilities or lines committed or used by a retail public utility in the performance of its duties...to its patrons, employees, other retail public utilities, and the public, as well as the interchange of facilities between two or more retail public utilities.

Tex. Water Code § 13.002(21); *see also*, 16 TAC § 24.3(33) (same definition). The term "facilities" is defined as:

the plant and equipment of a retail public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any retail public utility.

Tex. Water Code § 13.002(9); *see also*, 16 Tex. Admin. Code § 24.3(15) (same definition).

Although the release property is not receiving actual water service from the CCN holder, the CCN holder has adequate facilities to provide service to the release property within a reasonable time after a request for service is made and has the legal right to provide service. Under the quoted statutory definitions, a property can “receive water service” even before development and delivery of water to active water taps.<sup>2</sup> In the *Crystal Clear* decision, the court stated that facilities or lines “used” or “committed” to providing such service might cause a property to “receive service” under the statutory and regulatory definition.<sup>3</sup> Dobbin Plantersville has constructed infrastructure and developed water supply “committed” to the Property; therefore, the Property is “receiving service.”

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<sup>1</sup> *See Tex. Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130, 140 - 141 (Tex. App.- Austin 2014, pet. denied).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

The record supports a Conclusion of Law that the release property receives water service from the CCN holder under its proposed Conclusion of Law No. 9, above, and as summarized here. *See*, affidavits of Steve Duncan and Janie Legge, Exhibits A and B, respectively, to Response to Petition and Motion to Dismiss (*Interchange* at Item No. 15):

(1) A few years ago, Dobbin Plantersville began planning for service to the area, including the release property. *See* Duncan Affidavit at 6; Legge Affidavit at 7 (*Interchange* at Item No. 15).

(2) An additional water plant was to be constructed in the area once development pressure required it. The Water Plant 9 site was dedicated in 2019. With each section of development, the water lines were planned for their future extension into the adjoining undeveloped tracts of the High Meadows area, ultimately connecting the 6-inch existing water lines on Jackson Road and FM 1486 with 6-inch and 8-inch interior lines. The release property is located in the High Meadows area. *See* Duncan Affidavit at 6 and 8 and Attachments 2 and 3; Legge Affidavit at 8 and 10 (*Interchange* at Item No. 15).

(3) Water Plant 9 was originally planned to be part of a larger system-wide project, but because of development pressure within the High Meadows original tracts, primarily SIG Magnolia's, part of the plan was brought forward. This part is referred to as the Water Plant 9 Project which was designed to serve the High Meadows original tracts including the SIG Magnolia tract. To be ready to serve SIG Magnolia under its stated timeline, Dobbin Plantersville could not wait for financing of the entire system-wide plan and therefore had to obtain a \$1,250,000.00 loan from CoBank which they hope to later roll into a USDA loan to finance the entire system-wide plan. *See* Duncan Affidavit at 7, and Attachment 3; Legge Affidavit at 7 and 8 (*Interchange* at Item No. 15). *See also*, CoBank loan documents at Legge Affidavit, Attachment 3 (*Interchange* at Item No. 15).

(4) Existing 6-inch and 8-inch water lines are available near the release property (Magnolia Crossing); two 6-inch lines terminate just prior to the release property with easements in place for the future extension to the release property; another 6-inch line stops at the parcel to the east of the

release property and is planned to continue through that property to the release property when that property develops; the 8-inch line south of the release property running roughly parallel to the southern property line was planned to be extended into the Magnolia Crossing subdivision with routing to be determined by the High Meadows and Magnolia Crossing subdivision layouts; the location of Water Plant 9 was selected for its ability to serve the High Meadows/Magnolia Crossing area. The plans and specs for the public water supply well have been approved by the Texas Commission on Environmental Quality (TCEQ). The project has been bid and awarded and Dobbin Plantersville is awaiting the availability of the water well driller to begin construction. Dobbin Plantersville has received groundwater permits from Lonestar Groundwater Conservation District. The plans and specs for Water Plant 9 are currently under review by the TCEQ. *See* Duncan Affidavit at 9 and 15 and Attachment 2 (*Interchange* at Item No. 15).

(6) Water Plant 9 provides additional water system capacity that is not currently needed by Dobbin Plantersville if the release property is released. Water Plant 9 will include a public water supply well, ground storage tank, booster pumps, and a pressure tank that will tie into the existing distribution system. The plant design includes components for a minimum capacity of 500 connections and an alternate capacity of 750 connections. Water Plant 9 was specifically located and sized to serve the High Meadows/Magnolia Crossing subdivision areas. *See* Duncan Affidavit at 11 and 13; Legge Affidavit at 10 (*Interchange* at Item No. 15).

(7) There are no outstanding requests for service from the undeveloped portions of the subject CCN area that will use the remainder of the existing capacity. *See* Duncan Affidavit at 14; Legge Affidavit at 10 (*Interchange* at Item No. 15).

Thus, the CCN holder's evidence shows that it has adequate facilities to provide service to the release property within a reasonable time after a request for service is made and has the legal right to provide service.

While the Commission has granted SER petitions in the past unless the CCN holder had actual infrastructure on the release property, this precedent may be changing under the new commissioners. During deliberations in Docket No. 51352, Commissioners Lake and McAdams

discussed a “bright-line” rule to assess whether to grant a SER petition seeking release of property from an existing CCN, stating that the petitioner has the obligation of showing it is entitled to the release. Commissioner McAdams stated that he wanted a clear rule for determining whether a CCN holder “has sufficient facilities committed to providing service to warrant a determination that a tract of land was receiving service in this context.” Both Commissioners agreed that in order to avoid a release, it must be shown that the CCN holder is capable of providing reliable service in a timely manner.<sup>4</sup> The standard articulated during the discussion reflects the current law as established in *Green Valley Special Util. Dist. v. City of Schertz, Texas*, 969 F.3d 460, 477 (5th Cir. 2020).

The record shows that the CCN holder has performed various acts and supplied funds in furtherance of service to the release property and its CCN No. 11052 area that includes the release property, including the acts and funding that are detailed in the record and in Dobbin Plantersville’s proposed Findings of Fact, above. The CCN holder’s facilities - and the acts planning, funding, installing, and maintaining them - are all plainly "committed" or "used" by the CCN holder in the performance of its duties to supply water service to the release property. The release property “receives water service” from the CCN holder through its commitments to serve, and its existing facilities and capacity sized to serve, the release property. Mr. Duncan's affidavit, Exhibit A, and Ms. Legge’s affidavit, Exhibit B to the CCN holder’s response to petition and motion to dismiss, describes all the different ways Dobbin Plantersville has served the release property through its various acts and funds. Under these facts, the Commission must deny the Petitioner's request to release the property from Dobbin Plantersville's CCN No. 11052 because such a release would violate Texas Water Code section 13.2541.

**10.** The petitioner is not entitled under TWC § 13.2541(6) to the release of the release property from the CCN holder's certificated service area.

SOURCE: See discussion following proposed Conclusion of Law No. 9, above.

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<sup>4</sup> See Public Utility Commission of Texas Open Meeting Broadcast (May 21, 2021), Admin Monitor, [http://www.adminmonitor.com/tx/puct/open\\_meeting/20210421/](http://www.adminmonitor.com/tx/puct/open_meeting/20210421/).

REASONING: See discussion following proposed Conclusion of Law No. 9, above.

11. After the date of this Order, the CCN holder ~~has no obligation~~ continues to be obliged under TWC §13.254(h) to provide retail water service to the petitioner's release property.

Dobbin Plantersville excepts to Conclusion of Law Nos. 14 and 15 because they are not appropriate in an order that denies release of petitioner's release property.

### C. ALTERNATIVE CORRECTIONS AND EXCEPTIONS TO PROPOSED CONCLUSIONS OF LAW

In the alternative, Dobbins Plantersville objects to the following Conclusions of Law in the proposed order. Changes that Dobbin Plantersville believes are needed to more accurately reflect conclusions of law based on the factual record are shown in track-changes.

9. Under the *Green Valley Special Utility District v. City of Schertz*, 969 F.3d 460 (5<sup>th</sup> Cir, 2020) the CCN holder is shielded from decertification by the State of Texas because it has adequate facilities to provide service to the release property within a reasonable time after a request is made and has the legal right to provide service. The ALJ erred in denying Dobbin Plantersville's Motion to Dismiss. The release property is not receiving water service under TWC §§ 13.002(21) and 13.2541(b) and 16 TAC § 24.245(h), as interpreted in *Texas General Land Office v. Crystal Clear Water Supply Corporation*, 449 S.W.3d 130 (Tex. App. Austin 2014, pet denied).

SOURCE AND REASONING: The record supports Dobbin Plantersville's proposed changes to the ALJ's proposed Conclusion of Law Nos. 9 – 11 for the following reasons. In the recent decision *Green Valley Special Utility District v. City of Schertz*, 969 F.3d 460, 475 - 477 (5<sup>th</sup> Circuit, 2020), the Fifth Circuit made a paradigm shift in interpretation of 7 United States Code section 1926(b) and whether it shields a CCN holder from decertification by the Public Utility Commission of Texas. While its decision to overrule *North Alamo Water Supply Corporation v. City of San Juan* (5<sup>th</sup> Cir. 1996) is significant, the *Green Valley* case does not repeal the benefits that section 1926(b) provides to a CCN holder in protecting its service area. What *Green Valley* accomplishes is a change to the standard by which such protection is judged. The new standard is

a physical capability test. Under *Green Valley*, the questions the Public Utility Commission must ask are as follows: Does the borrower CCN holder have (1) adequate facilities to provide service to the area within a reasonable time after a request for service is made, and (2) the legal right to provide service? In fact, Commissioners Lake and McAdams have discussed the application of this standard with favor as discussed above in section II.B. Dobbin Plantersville's legal right to provide service to the release property is not in dispute; the release property falls inside Dobbin Plantersville's certificated area. Thus, the issue is whether Dobbin Plantersville has adequate facilities to provide service to the area within a reasonable time after a request for service is made.

So, what does this mean to the SER being considered in this docket? The Petitioner has never requested service from the CCN holder; however, the utility has adequate facilities to provide service and could provide water service to the release property as soon as a request for service is made by Petitioner. After such a request is received, the next step would be for Petitioner to pay for improvements needed to hook up its water service taps to the nearby lines. Unlike the utility in the *Green Valley* case, the CCN holder has much more than an intention and plan to serve the area to be decertified; the CCN holder has adequate facilities to provide service to the area within a reasonable time after request for service is made. For these reasons, the Petition must be denied.

10. The petitioner is not entitled under TWC § 13.2541(6) to the release of the release property from the CCN holder's certificated service area.

SOURCE AND REASONING: See discussion following Dobbin Plantersville's proposed Conclusion of Law No. 9, above.

11. After the date of this Order, the CCN holder ~~has no obligation~~ continues to be obliged under TWC §13.254(h) to provide retail water service to the petitioner's release property.

Dobbin Plantersville excepts to Conclusion of Law Nos. 14 and 15 because they are not appropriate in an order that denies release of petitioner's release property.

**D. EXCEPTIONS TO PROPOSED ORDERING PROVISIONS**

Intervenor objects to all Ordering Paragraphs for the reasons provided above and proposes in their place a single Ordering Paragraph as follows:

- 1. The Commission denies the petition to release the water CCN release property from the CCN holder's service area under CCN number 11052.

**III. CONCLUSION AND PRAYER**

Dobbin Plantersville respectfully requests the ALJ to revise his proposed order as set out in Section II, and further, that the Commission deny the Petition because it cannot lawfully be granted under *Tex. Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130 (Tex. App.- Austin 2014, pet. denied) and *Green Valley Special Utility District v. City of Schertz*, 969 F.3d 460 (5<sup>th</sup> Cir, 2020).

Respectfully submitted,  
*Mary K. Sahs*  
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**ATTORNEY FOR DOBBIN  
PLANTERSVILLE WATER  
COMPANY**

**CERTIFICATE OF SERVICE**

Pursuant to Docket No. 50664, Second Order Suspending Rules (July 16, 2020) the undersigned hereby certifies that a copy of foregoing Corrections and Exceptions to Proposed Order was served on all parties of record in this proceeding on September 30, 2021, by electronic mail.

*Mary K. Sahs*  
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Mary K. Sahs