

Buddy Garcia, *Chairman*  
Larry R. Soward, *Commissioner*  
Bryan W. Shaw, Ph.D., *Commissioner*  
Mark R. Vickery, P.G., *Executive Director*



TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

2008 OCT 10 PM 2:19

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY CHIEF CLERKS OFFICE

*Protecting Texas by Reducing and Preventing Pollution*

October 10, 2008

Ms. LaDonna Castañuela, Chief Clerk  
Office of the Chief Clerk  
Texas Commission on Environmental Quality  
P.O. Box 13087, MC-105  
Austin, Texas 78711-3087

Re: TCEQ Docket No. 2007-1828-UCR; Consideration of a request for a Commission order approving a contract designating service areas between the City of Schertz and Green Valley Special Utility District.

Dear Ms. Castañuela:

Enclosed for filing with the Texas Commission on Environmental Quality (Commission) is the original plus eleven copies of the following items to be filed as backup materials for a commission agenda, on a date to be determined, on a request for an order approving a contract designating water service areas between the City of Schertz and Green Valley Special Utility District:

1. Agenda Executive Summary;
2. Caption;
3. Staff memo detailing financial, managerial, and technical capabilities of the City of Schertz to provide continuous and adequate service in the affected area;
4. Request for Commission order approving a Texas Water Code Section 13.248 agreement filed by HLH Development L.P. on August 2, 2007;
5. Texas Water Code section 13.248 agreement between the City of Schertz and Green Valley Special Utility District executed on June 12, 2007;
6. Certificates of Convenience and Necessity (CCN) Nos. 10645 and 10646;
7. Proposed map of the service area subject to the section 13.248 agreement; and
8. Proposed Order.

Please do not hesitate to contact me at 239-0608 if you have any questions regarding this material. Thank you for your attention to this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ron Olson", with a long horizontal flourish extending to the right.

Ron Olson  
Staff Attorney  
Environmental Law Division

Enclosure

# Texas Commission on Environmental Quality

## INTEROFFICE MEMORANDUM

**TO:** Texas Commission on Environmental Quality      **DATE:** October 10, 2008  
**THRU:** LaDonna Castañuela, Chief Clerk  
**FROM:** Ron Olson, Staff Attorney, Environmental Law Division  
**SUBJECT:** **TCEQ Docket No. 2007-1828-UCR.** Consideration of a request for a Commission order approving a contract designating service areas between the City of Schertz and Green Valley Special Utility District.

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### DESCRIPTION OF APPLICATION

Applicant: The City of Schertz  
Regulated Activity: Retail water utility service  
Type of Application: Request for a Commission Order approving a contract  
Commission Action: Hearing regarding approval of the contract  
Authority: Texas Water Code § 13.248 and 30 Texas Administrative Code § 291.117

### FACTUAL BACKGROUND

The City of Schertz, water certificate of convenience and necessity (CCN) No. 10645, and Green Valley Special Utility District (Green Valley), water CCN No. 10646, provide retail water service in Guadalupe County, Texas. On June 12, 2007, the City of Schertz and Green Valley entered into an agreement regarding their respective water service areas pursuant to section 13.248 of the Texas Water Code.

Under the agreement, Green Valley will transfer approximately 33.501 acres of its CCN area to the City of Schertz. There are no customers or facilities in the area being transferred.

### LEGAL AUTHORITY

The Texas Water Code prohibits a utility, a utility operated by an affected county, or a water supply corporation from rendering retail water or sewer utility service directly or indirectly to the

public without first obtaining a CCN.<sup>1</sup> Conversely, a municipality is not required to obtain a CCN to provide retail water service.<sup>2</sup> However, a municipality may not provide service to areas that are outside of its corporate boundaries but within the CCN of another retail public utility without first obtaining written consent from that retail public utility.<sup>3</sup>

The Texas Water Code and TCEQ rules allow retail public utilities to enter into service area agreements and have the Commission affirm the agreements by amending the entities' respective CCNs.<sup>4</sup> A transfer of a water or sewer system that also includes the transfer of customers and/or facilities may, in some cases, also require separate Commission approval for the transfer of customers and/or facilities.<sup>5</sup>

The request to approve a 13.248 agreement is not subject to the notice provisions of section 291.106, Title 30 of the Texas Administrative Code, which apply to applications for new and amended CCNs. The Commission may approve the service area agreement pursuant to section 13.248 of the Texas Water Code with the appropriate notice under the Open Meetings Act. The Executive Director will mail notice of the hearing upon the setting of an Agenda date.

#### BASIS FOR STAFF RECOMMENDATION

The following items were considered in developing the staff's recommendation:

1. Request for a Commission order approving the 13.248 agreement filed by HLH Development L.P. on August 2, 2007 (application no. 35768-C);
2. Agreement between the City of Schertz and Green Valley, executed on June 12, 2007;
3. Map of the service area subject to the 13.248 agreement submitted by the City of Schertz; and

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<sup>1</sup> TEX. WATER CODE ANN. § 13.242(a) (Vernon 2006).

<sup>2</sup> A municipality is a "retail public utility" under section 13.002(19) of the Texas Water Code but is not a "utility" under section 13.002(23). Therefore, the section 13.242(a) requirement that a "utility" must obtain a CCN before providing retail water utility service does not apply to a municipality.

<sup>3</sup> *Id.* § 13.242(b).

<sup>4</sup> *Id.* § 13.248; 30 TEX. ADMIN. CODE § 291.117 (West 2005) (Tex. Comm'n on Env'tl. Quality, Contracts Valid and Enforceable). Section 13.248 states "[c]ontracts between retail public utilities designating areas to be served and customers to be served by those retail public utilities, when approved by the commission after public notice and hearing, are valid and enforceable and are incorporated into the appropriate areas of public convenience and necessity."

<sup>5</sup> TEX. WATER CODE § 13.301. The section requires that some applicants also demonstrate "adequate financial, managerial, and technical capability for providing continuous and adequate service to the service area being acquired and to any areas currently certificated to the person" for the separate transaction relating to the transfer of facilities and/or customers.

4. Financial, Managerial, and Technical analysis of the City of Schertz to operate in the affected area.

#### STAFF RECOMMENDATION

Based on the facts stated in the application and the supporting documentation submitted by the City of Schertz, Staff supports the request for a Commission order approving a contract designating service areas between the City of Schertz and Green Valley. The transfer area includes the proposed Keli Heights Subdivision. HLH Development requested that the 33.501 acres be transfer to the City of Schertz in order for the City to provide retail water service to the proposed subdivision. There are no customers or facilities in the area being transferred. Staff has confirmed that both parties are retail public utilities with active water CCNs and that the area the parties are seeking to transfer is either dually certificated to both parties or abuts the CCN of the entity receiving the CCN. Further, staff is satisfied that the City of Schertz possesses the adequate financial, managerial, and technical capability to provide continuous and adequate service to the area being transferred.

#### STAFF CONTACTS

Ron Olson, Environmental Law Division (239-0608)  
Heidi Graham, Water Supply Division (239-0844)

**CAPTION**  
**CITY OF SCHERTZ**  
**Application No. 35768-C**

**TCEQ Docket No. 2007-1828-UCR.** Consideration of a request for a Commission order approving a contract designating service areas between the City of Schertz, water certificate of convenience and necessity ("CCN") No. 10645, and Green Valley Special Utility District ("Green Valley"), water CCN No. 10646, in Guadalupe County, Texas pursuant to section 13.248 of the Texas Water Code. Currently, Green Valley holds a CCN that includes the proposed Keli Heights Subdivision. Green Valley received a request from HLH Development, L.P. to transfer approximately 33.501 acres of its CCN that covers the proposed subdivision to the City of Schertz. Under the agreement between the three parties, this transfer will occur. No customers or facilities are proposed to be transferred. (Ron Olson, Heidi Graham)

# Texas Commission on Environmental Quality

## INTEROFFICE MEMORANDUM

**To:** Environmental Law Division                      **Date:** December 3, 2007  
**Thru:** Heidi Graham/Tammy Benter  
**From:** Dan Smith  
**Subject:** Contract Service Agreement Pursuant to Texas Water Code, Section 13.248, from the City of Schertz, Certificate of Convenience and Necessity (CCN) No. 10645, to Transfer a Portion of CCN No. 10646 from Green Valley Special Utility District (SUD) in Guadalupe County; Application No. 35768-C

CN: 600676944; RN: 102672581

In my opinion, the City of Schertz has demonstrated adequate financial, managerial and technical capability to provide service to the area contracted for transfer.

Signed:     Dan Smith                          Date: December 3, 2007

I have reviewed an unqualified audit for the City of Schertz for the fiscal year ended 9/30/06, available on the Municipal Advisory Council's website, portions of which are reduced and attached to the original of this memorandum. The balance sheet shows water and sewer system total assets of \$44.2 mil., long-term liabilities of \$6.6 mil., and net assets (equity) of \$35.2 mil. for a debt-to-equity ratio of .19:1. The statement of revenues and expenses showed a net income before transfers and capital contributions, of \$1.9 mil. after covering depreciation expense of \$957,320 and interest expense of \$327,721. So cash available for debt service was \$3.2 mil. and required debt service was \$28.1 mil. for a debt service coverage ratio of 4.1:1.

This information supports a finding of adequate capability to provide service to about 33.5 acres. In fact, it would not have been considered a material addition (more than 10%) to the City of Schertz' present CCN area and would not have received a review of financial and managerial capability in a routine STM application procedure. The City of Schertz presently provides service to about 11,000 water customers and is rated superior by TCEQ.

**RANDALL B. WILBURN**

ATTORNEY AT LAW

7408 RAIN CREEK PARKWAY  
AUSTIN, TEXAS 78759

August 1, 2007

Ms. Lisa Fuentes  
Utilities & Districts Section, MC 153  
Water Supply Division  
P.O. Box 13087  
Austin, Texas 78711-3087

Re: Green Valley SUD - Proposed CCN Release

Dear Ms. Fuentes:

I am filing this request for release and transfer of a Certificate of Convenience and Necessity ("CCN") on behalf of my client, HLH Development, L.P. ("HLH"). Based upon HLH's request, Green Valley Special Utility District ("GVSUD") has agreed to transfer a portion of its water CCN, CCN No. 10646, to the City of Schertz (the "City"), CCN No. 10645, pursuant to Section 13.248 of the Texas Water Code. This transfer does not include the transfer of any existing facilities or customers.

Enclosed you will find the following attachments:

- Letter Agreement between GVSUD, the City, and HLH;
- Map showing the area to be transferred;
- Large scale CCN Map;
- Financial Report for the City of Schertz;
- Metes & Bounds information for transferred area; and
- Required Application Fee

If you require additional information or if you have questions, please call me.

Sincerely,

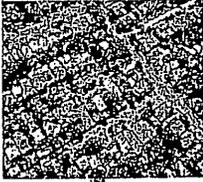


Randall B. Wilburn

Attorney for HLH Development, L.P.

Enclosures

RECEIVED  
TCEQ WATER SUPPLY  
2007 AUG -2 AM 7:59



## HLH DEVELOPMENT, L.P.

13409 NW MILITARY HWY., SUITE 302  
OFFICE: (210) 493-2833  
FAX: (210) 493-6772

June 12, 2007

Mr. Pat Allen, General Manager  
Green Valley Special Utility District  
P.O. Box 99  
Marion, Texas 78124

Mr. Don E. Taylor, City Manager  
City of Schertz  
10 Commercial Place  
Schertz, Texas 78154

RE: Letter Agreement to Transfer CCN Area

Dear Mr. Allen and Mr. Hooks:

Pursuant to our conversations and meeting, I understand Green Valley Special Utility District ("Green Valley") is willing to allow the City of Schertz to provide retail water service to the proposed Keli Heights Subdivision. The area subject to this transaction is located approximately 5 miles northeast of downtown Schertz, Texas and is generally bounded on the north by I.H. 35; on the east by Eckhardt road; on the south by Green Valley Road; and on the west by Farm-to-Market Road 1103. The total area being requested includes approximately 33.501 acres, as described by metes and bounds in Exhibit A and the maps attached as Exhibit B (the "Proposed Transfer Area"). Green Valley is not currently serving any customers located within the Proposed Transfer Area.

I understand the parties agree as follows:

1. HLH Development ("HLH") will pay administrative fees associated with the Section 13.248 transaction of the Texas Commission on Environmental Quality and pay Green Valley SUD a release fee of \$300 per acre, which totals \$10,044.90 as well as Green Valley's attorney fees up to \$1,000.00.

2. Green Valley SUD will prepare and prosecute the application for the USDA Rural Development ("RD") to release the Proposed Transfer Area. The City of Schertz will provide any service guarantees required by RD.

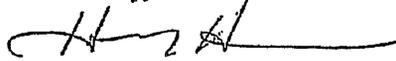
3. HLH on behalf of the City of Schertz will prepare and prosecute a Section 13.301 STM application at TCEQ for the Proposed Transfer Area.

4. In the event the TCEQ or RD refuse to consent to the transfer, all distribution facilities constructed inside Green Valley's CCN will be deeded to Green Valley together with the necessary real property interests. The Proposed Transfer Area will remain GVSUD's CCN and Green Valley will provide service to Mr. Hausman.

5. The parties acknowledge that the transfer of the Proposed Transfer Area is contingent upon the TCEQ and RD's approval. Prior to approval by TCEQ and RD, Green Valley consents for the limited purpose to HLH constructing water utility infrastructure necessary for the development. The parties also acknowledge water service and compensation will not be provided without Green Valley's consent and the approval of the transfer of the Proposed Transfer Area by TCEQ and RD.

I greatly appreciate your cooperation in this matter. If you have any questions, please call me at (210) 495-6410.

Sincerely,

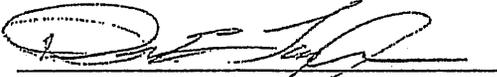


Harry Hausman

Concurrence:



Mr. Pat Allen, General Manager  
Green Valley Special Utility District



Mr. Don E. Taylor, City Manager  
City of Schertz



# Texas Commission On Environmental Quality

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

**City of Schertz**

having duly applied for certification to provide water 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 by this Applicant, is entitled to and is hereby granted this

## **Certificate of Convenience and Necessity No. 10645**

to provide continuous and adequate water utility service to that service area or those service areas in Guadalupe County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Application No. 35768-C 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 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 \_\_\_\_\_

\_\_\_\_\_  
For the Commission



# Texas Commission On Environmental Quality

**By These Presents Be It Known To All That**  
**Green Valley Special Utility District (SUD)**

having duly applied for certification to provide water 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 by this Applicant, is entitled to and is hereby granted this

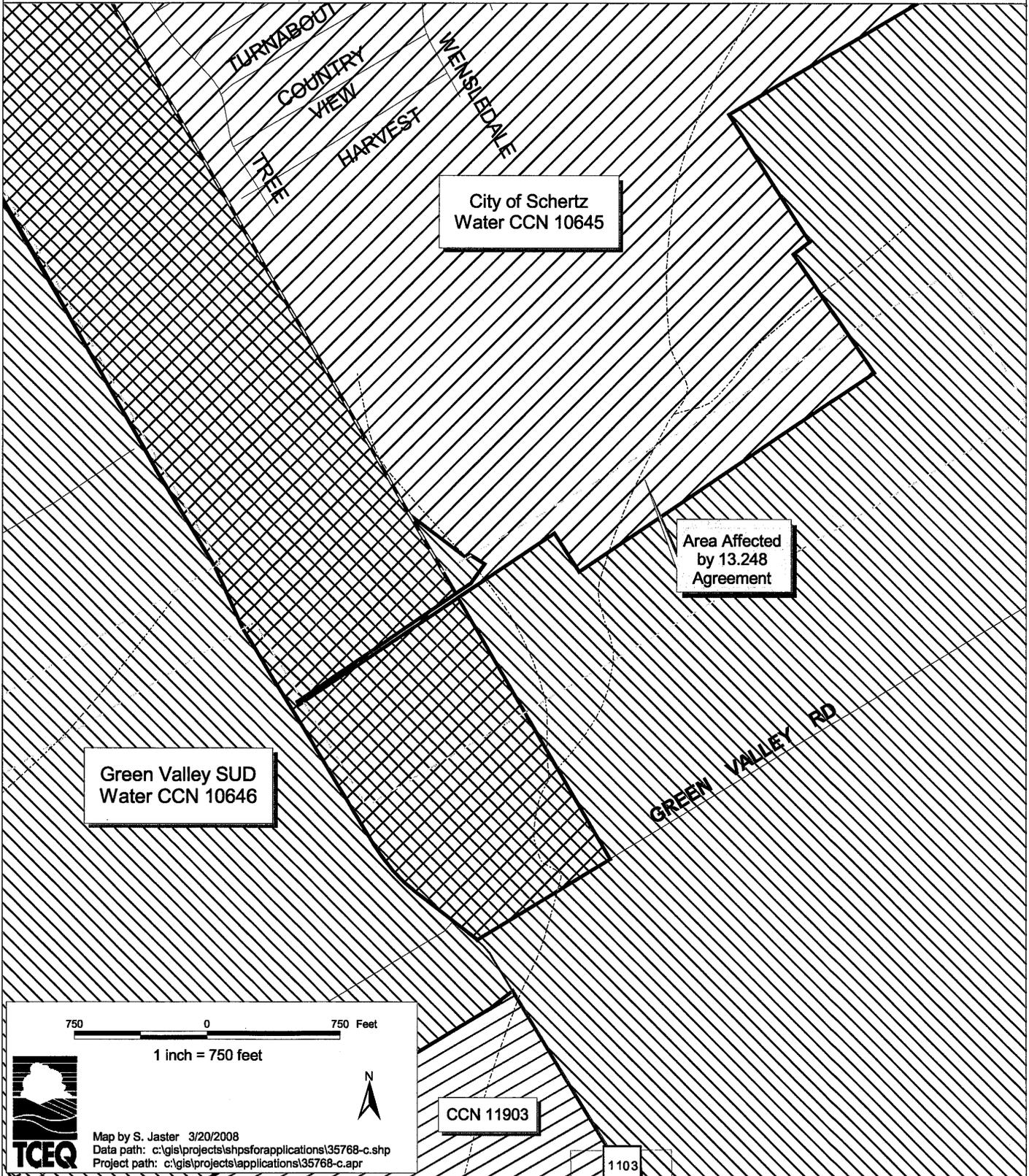
## **Certificate of Convenience and Necessity No. 10646**

to provide continuous and adequate water utility service to that service area or those service areas in Guadalupe County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Application No. 35768-C 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 Green Valley SUD 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 \_\_\_\_\_

\_\_\_\_\_  
For the Commission

City of Schertz / Green Valley SUD 13.248 Agreement  
Portion of Water Service Areas in Guadalupe County  
Application No. 35768-C (Decertified a Portion of Green Valley SUD, CCN No. 10646  
and Amended to Include within City of Schertz, CCN No. 10645)



# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER** approving an agreement designating service areas between the City of Schertz and the Green Valley Special Utility District pursuant to Texas Water Code Section 13.248; TCEQ Docket No. 2007-1828-UCR.

A request for a Commission order approving a contract designating service areas between the City of Schertz (City), Certificate of Convenience and Necessity (CCN) No. 10645, and Green Valley Special Utility District (Green Valley), Certificate of Convenience and Necessity (CCN) No. 10646, in Guadalupe County, Texas, was presented to the Texas Commission on Environmental Quality (TCEQ or Commission) for approval pursuant to Section 13.248 of the Texas Water Code and Title 30 of the Texas Administrative Code, Section 291.117.

On June 12, 2007, the City and Green Valley entered into an agreement (Agreement) regarding their respective water service areas pursuant to Section 13.248 of the Texas Water Code. Under the Agreement, Green Valley will transfer the rights to water service for approximately 33.501 acres of its water CCN area to the City and the City will be the sole retail water service provider in that service area. There are no customers in the area and there will be no transfer of facilities under the Agreement. The Agreement is attached to this Order.

Contracts between retail public utilities that designate areas to be served and customers to be served by those retail public utilities, when approved by the Commission after public notice and hearing, are valid and enforceable and are incorporated into the appropriate areas of public convenience and necessity. TEXAS WATER CODE, §13.248.

On October 10, 2008, the Executive Director of the Commission mailed notice of the hearing date on which the Commission was to consider the request to the representatives for the City of Schertz and Green Valley.

The Commission held a hearing on the request at the October 22, 2008 agenda and found the request had merit.

The City is capable of rendering continuous and adequate water service to every customer in the area, as described by the Agreement. The CCN transfer, which results in the City being the sole retail water service provider in that area, is necessary for the service, accommodation, convenience, or safety of the public.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

The Agreement transferring a portion of Green Valley's CCN No. 10646 to the City, CCN No. 10645, and designating that the City is the sole retail water service provider in that area, is hereby approved.

CCN No. 10645 in Guadalupe County, held by the City of Schertz, is hereby amended in accordance with the Agreement.

CCN No. 10646 in Guadalupe County, held by Green Valley Special Utility District, is hereby amended in accordance with the Agreement.

The Executive Director is directed to redraw the maps of the respective CCNs as provided in the Agreement and as set forth on the map attached to this Order, and to amend the Commission's official water service area map for Guadalupe County, Texas.

The Chief Clerk of the Texas Commission on Environmental Quality shall forward a copy of this Order to the parties.

If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.

Issue Date:

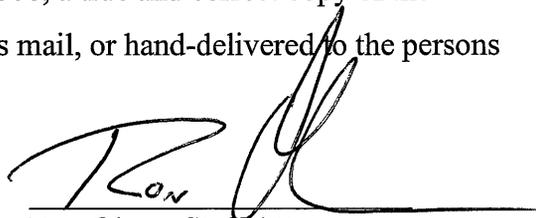
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

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Buddy Garcia, Chairman

**CERTIFICATE OF SERVICE**

I hereby certify that on this 10th day of October 2008, a true and correct copy of the foregoing document has been sent via facsimile, first class mail, or hand-delivered to the persons on the attached Mailing List.



Ron Olson, Staff Attorney  
Environmental Law Division

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

2008 OCT 10 PM 2:20

CHIEF CLERKS OFFICE

**MAILING LIST**

The City of Schertz / Green Valley Special Utility District 13.248 Agreement  
**TCEQ Docket No. 2007-1828-UCR.**

Mr. Pat Allen, General Manager  
Green Valley Special Utility District  
P.O. Box 99  
Marion, Texas 78124

Mr. Mark Zeppa, Attorney  
4833 Spicewood Springs Road, Suite 202  
Austin, Texas 78759-8436

Mr. Don E. Taylor, City Manager  
City of Schertz  
10 Commercial Place  
Schertz, Texas 78154

Mr. Randy Wilburn, Attorney  
7408 Rain Creek Parkway  
Austin, Texas 78759

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