

Bryan W. Shaw, Ph.D., P.E., *Chairman*
Toby Baker, *Commissioner*
Jon Niermann, *Commissioner*
Richard A. Hyde, P.E., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

January 25, 2016

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

Re: Boasso America Corporation's Application No. 12949 for a Water Use Permit, TCEQ
Docket No. 2015-1564-WR

Dear Ms. Bohac:

Enclosed for filing with the Texas Commission on Environmental Quality (Commission) is the original plus seven copies of the Executive Director's Response to Hearing Requests on the above referenced matter.

Please do not hesitate to contact me at (512) 239-0676 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 "LH", written over the printed name "Linda Horng".

Linda Horng
Staff Attorney
Environmental Law Division

Enclosure

cc: Mailing List

TCEQ DOCKET NO. 2015-1564-WR

**APPLICATION BY BOASSO
AMERICA CORPORATION
PERMIT NO. 12949**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

The Executive Director of the Texas Commission on Environmental Quality (TCEQ or Commission) respectfully submits this response to hearing requests filed in the application by Boasso America Corporation for new Water Use Permit No. 12949. One hearing request was filed by the City of Houston.

The Executive Director respectfully recommends that the Commission deny the hearing request.

Staff has prepared a map showing the location of the water rights of the hearing requestor located in the San Jacinto River Basin. Staff's map is attached as Attachment A.

I. BACKGROUND

Boasso America Corporation filed an application, for a water use permit to divert and use 10 acre-feet (AF) of water per year from Carpenters Bayou, tributary of the San Jacinto River, San Jacinto River Basin at a diversion rate of 0.1114 cfs (50 gpm) for industrial purposes at their plant facilities in Harris County.

II. PROCEDURAL HISTORY

The Commission received this application on December 3, 2012. The application was declared administratively complete on January 2, 2014. Notice of the application was mailed by the Commission's Chief Clerk on July 15, 2014 to water right holders of record in the San Jacinto River Basin. The notice of application was published in the Houston Chronicle on July 31, 2014.

The hearing request period for this application closed on September 2, 2014. One hearing request for a contested case hearing was timely received.

III. LEGAL AUTHORITY

Pursuant to 30 Texas Administrative Code Section 55.251(b), the following may request a contested case hearing on water rights applications: 1) the Commission; 2) the Executive Director; 3) the applicant; and 4) affected persons when authorized by law. Affected persons are authorized to submit hearing requests for water rights applications

under Texas Water Code Section 11.132(a). The Commission, on the request of any affected person shall hold a hearing on a water rights application. The procedures for determining whether a hearing requestor is an affected person and whether the hearing request is valid are set forth in 30 Texas Administrative Code Sections 55.250-55.256, which apply to water rights applications such as this one that were declared administratively complete after September 1, 1999.

An affected person is “one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application.” 30 Tex. Admin. Code § 55.256(a). An interest “common to members of the general public does not qualify as a personal justiciable interest.” 30 Tex. Admin. Code § 55.256(a).

Governmental entities with authority under state law over issues contemplated by the application may be considered affected persons. 30 Tex. Admin. Code § 55.256(b).

To determine whether a hearing requestor is an affected person, all relevant factors must be considered. 30 Tex. Admin. Code § 55.256(c). These factors include but are not limited to the following:

1. whether the interest claimed is one protected by the law under which the application will be considered;
2. distance restrictions or other limitations imposed by law on the affected interest;
3. whether a reasonable relationship exists between the interest claimed and the activity regulated;
4. the likely impact of the regulated activity on the health, safety, and use of property of the person;
5. the likely impact of the regulated activity on the use of the impacted natural resource by the person; and
6. for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 Tex. Admin. Code § 55.256(c).

The request for a contested case hearing must be filed with the Commission’s Chief Clerk during the public comment period. 30 Tex. Admin. Code § 55.251(d).

The Commission must grant a request for a contested case hearing made by an affected person if the request complies with the requirements of 30 Texas Administrative Code Section 55.251; is timely filed with the Chief Clerk; and is pursuant to a right to hearing authorized by law. 30 Tex. Admin. Code § 55.255(b)(2).

IV. HEARING REQUEST AND RECOMMENDATION

A total of one hearing request was timely filed. The hearing requestor substantially complied with the procedural requirements of Section 55.251. However, it did not show that it was an affected person.

City of Houston

The City of Houston alleges that the proposed permit may directly injure or impact the City's water rights, particularly rights below Lake Houston, associated contracts, and the health, safety and well-being of the people and environment reliant on the San Jacinto River Basin.

The Executive Director recommends that the City of Houston's hearing request be denied because it failed to explain how its water rights may be affected by a diversion of only 10 acre-feet per year downstream of its water rights. Additionally, the City's hearing request did not demonstrate how its concern for the San Jacinto River Basin is distinguishable from an interest common to the general public.

V. CONCLUSION

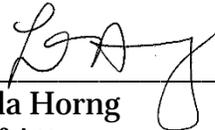
The Executive Director respectfully recommends that the Commission deny the hearing request of the City of Houston.

Respectfully submitted,

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Richard A. Hyde, P.E.
Executive Director

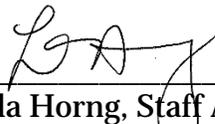
Robert Martinez, Director
Environmental Law Division

By  _____

Linda Horng
Staff Attorney
Environmental Law Division
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MC-173, P.O. Box 13087
Austin, Texas 78711-3087
Phone: (512) 239-0676
Fax: (512) 239-0606

CERTIFICATE OF SERVICE

I certify that on January 25, 2016, the original and seven copies of the "Executive Director's Response to Hearing Requests" for Boasso America Corporation. Water Rights Permit No. 12949, were filed with the TCEQ's Office of the Chief Clerk and a complete copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, inter-agency mail, electronic submittal, or by deposit in the U.S. Mail.

By  _____
Linda Horng, Staff Attorney
Environmental Law Division
SBN: 24078690

MAILING LIST
BOASSO AMERICA CORPORATION
DOCKET NO. 2015-1564-WR; WRPERM 12949

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**FOR ALTERNATIVE DISPUTE
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FOR THE CHIEF CLERK:

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REQUESTER(S):

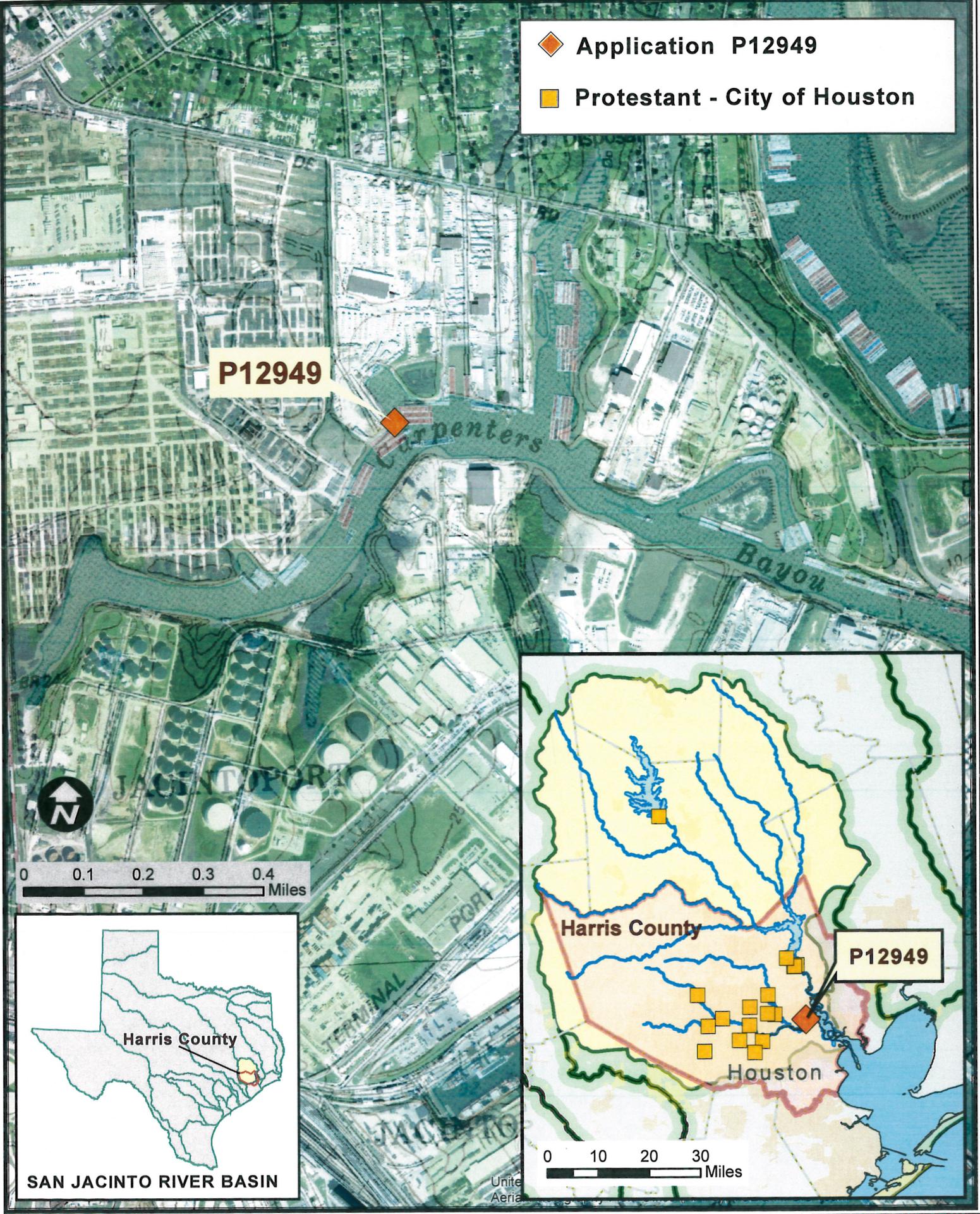
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INTERESTED PERSON(S):

Mr. Harry L. Price
Arrowhead Lakes Property Owners
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ATTACHMENT A

◆ Application P12949
■ Protestant - City of Houston



P12949

Carpenters

Bayou

JACINTO RIVER BASIN

TERMINAL PORT

Harris County

P12949

Houston

Harris County

SAN JACINTO RIVER BASIN

0 10 20 30 Miles

0 0.1 0.2 0.3 0.4 Miles

United Aerial