

TCEQ DOCKET NO. 2016-0048-WR

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| APPLICATION BY | § | BEFORE THE |
| NUSTAR TERMINALS | § | TEXAS COMMISSION ON |
| PARTNERS TX L.P. | § | ENVIRONMENTAL QUALITY |
| PERMIT NO. WRPERM 12866 | § | |

APPLICANT'S RESPONSE TO HEARING REQUEST

NuStar Terminals Partners TX L.P. (NuStar) respectfully submits this response to a hearing request filed by the City of Houston in NuStar's application for Water Rights Permit No. WRPERM 12866. NuStar respectfully requests that the Commission deny the hearing request.

I. BACKGROUND

NuStar filed an application for a water use permit to divert and non-consumptively use not to exceed 62 acre-feet (AF) of water per year at a maximum diversion rate of 3.34 cfs (1,500 gpm) from a point on the tidally influenced Lower Galveston Bay, San Jacinto-Brazos Coastal Basin, for non-consumptive industrial purposes in Galveston County. Staff recommended approval in accordance with the draft permit.

The water will be used for legally required hydrostatic testing of petroleum storage tanks and associated piping and then will be returned to the Lower Galveston Bay, San Jacinto-Brazos Coastal Basin in Galveston County via six discharge points authorized pursuant to a Texas Pollution Discharge Elimination System permit.

The diversion and return of the water will be downstream of the City of Houston. The Commission Hydrology Review found the application should not impair freshwater inflows to the tidally influenced briny Galveston Bay. Under the draft permit, NuStar will implement a water conservation plan, install and maintain a measuring device, maintain records, allow access for inspections and understands the Commission may adjust the conditions to provide for protections of in stream flows or beneficial inflows.

II. PROCEDURAL HISTORY

The application was declared administratively complete on January 11, 2013. The City of Houston requested a contested case hearing.

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).

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. DENIAL OF HEARING REQUEST

The City of Houston has failed to show that it is an affected person. Similar to a previous hearing request by the City of Houston in Boasso America Corporation’s Application No. 12949 for a Water Use Permit, TCEQ Docket No. 2015-1564-WR, the City of Houston’s hearing request must be denied in this case. The City’s written request for a hearing is nearly identical to the one denied in the in Boasso America Corporation’s Application, which was for consumptive use in Harris County.

In addition, the City’s request should be denied because it failed to explain how its water rights may be affected by a diversion, non-consumptive use and return of only 62 acre-feet per year of briny water from a tidally influenced water body further downstream of the City’s water rights.

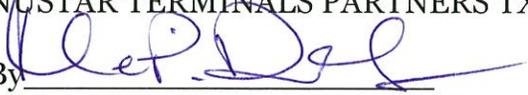
The City’s hearing request also did not demonstrate how its concern for the basin is distinguishable from an interest common to the general public. Based on the City’s proposed reasons for a hearing, they would be entitled to a hearing for any water right permit application, no matter the size, either consumptive or non-consumptive, whether upstream or downstream, fresh or briny, tidally influenced or not, essentially anywhere in the basin, or even beyond. This type of general or cumulative impacts argument fails to meet the requirements of 30 Tex. Admin. Code § 55.256(c). To not deny the City’s request will result in a slippery slope where essentially any request for a contested case hearing would have to be approved if made by any water right holder in a basin.

V. CONCLUSION

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

Respectfully submitted,

NUSTAR TERMINALS PARTNERS TX L.P.

By 

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CERTIFICATE OF SERVICE

I certify that on April 4, 2016, the original and seven copies of the “Applicant’s Response to Hearing Request” for NuStar Terminals Partners TX L.P. Water Rights Permit No. 12866 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.



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