

TCEQ DOCKET NO. 2016-0048-WR

APPLICATION BY NUSTAR TERMINALS PARTNERS TX L.P. PERMIT NO. 12866	§ § §	BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
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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 NuStar Terminals Partners TX L.P. for new Water Use Permit No. 12866. 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-Brazos Coastal Basin. Staff's map is attached as Attachment A.

I. BACKGROUND

NuStar Terminals Partners TX L.P. filed an application, for a water use permit to divert and use 62 acre-feet (AF) of water per year from a point on the Lower Galveston Bay, San Jacinto-Brazos Coastal Basin at a diversion rate of 3.34 cfs (1,500 gpm) for non-consumptive industrial purposes.

II. PROCEDURAL HISTORY

The Commission received this application on June 8, 2012. The application was declared administratively complete on July 11, 2013. Notice of the application was mailed by the Commission's Chief Clerk on January 30, 2015 to water right holders of record in the San Jacinto-Brazos Coastal Basin. The notice of application was published in the Galveston County Daily News on February 11, 2015.

The hearing request period for this application closed on March 13, 2013. 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

One hearing request was timely filed by the City of Houston. The hearing requestor substantially complied with the procedural requirements of Section 55.251. However, it did not show that it was an affected person.

The City of Houston alleges that the proposed permit may directly injure or impact the City's water rights. The City of Houston states that it relies upon the San Jacinto-Brazos Coastal Basin for its municipal water supplies to provide water to Houston and its environs. The City is concerned about fresh water inflows to Galveston Bay and its estuaries, and the economic well-being and quality of life for the City of Houston. The City owns water rights that are upstream of the proposed diversion point.

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 62 acre feet per year downstream of its water rights. The City's concerns about freshwater inflows into Galveston Bay are common to the general public. Additionally, potential impact to freshwater inflows is minimal, because the diversion point is tidally influenced and the non-consumed water will be returned via discharge. Therefore, the City's hearing request should be denied.

V. CONCLUSION

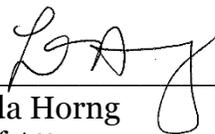
The Executive Director respectfully recommends that the Commission deny the hearing request of the City of Houston.

Respectfully submitted,

TEXAS COMMISSION ON
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By  _____
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CERTIFICATE OF SERVICE

I certify that on April 4, 2016, the original and seven copies of the "Executive Director's Response to Hearing Requests" for NUSTAR TERMINALS PARTNERS TX L.P., Permit No. 12866 was 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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DOCKET NO. 2016-0048-WR; WRPERM 12866

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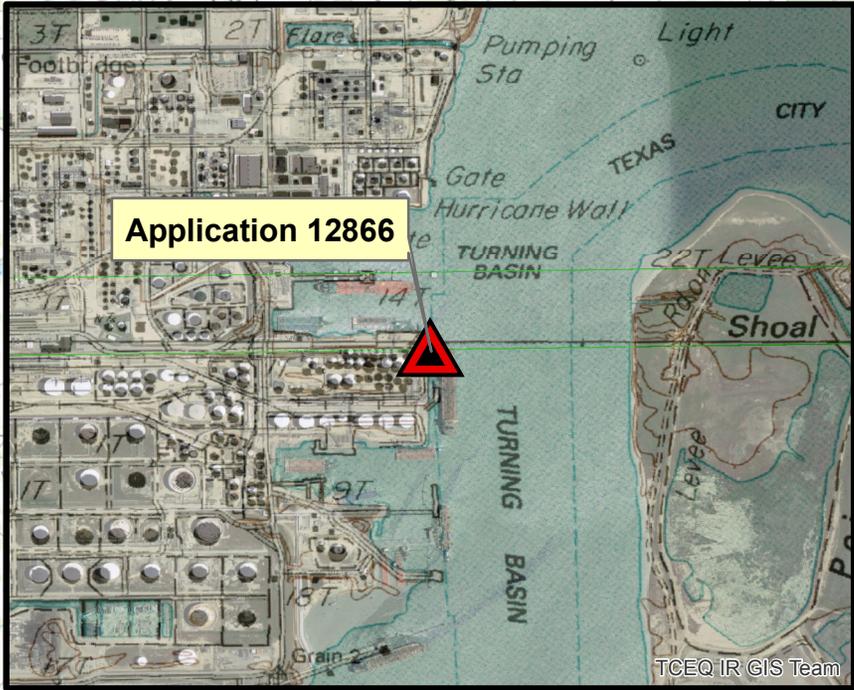
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ATTACHMENT

A



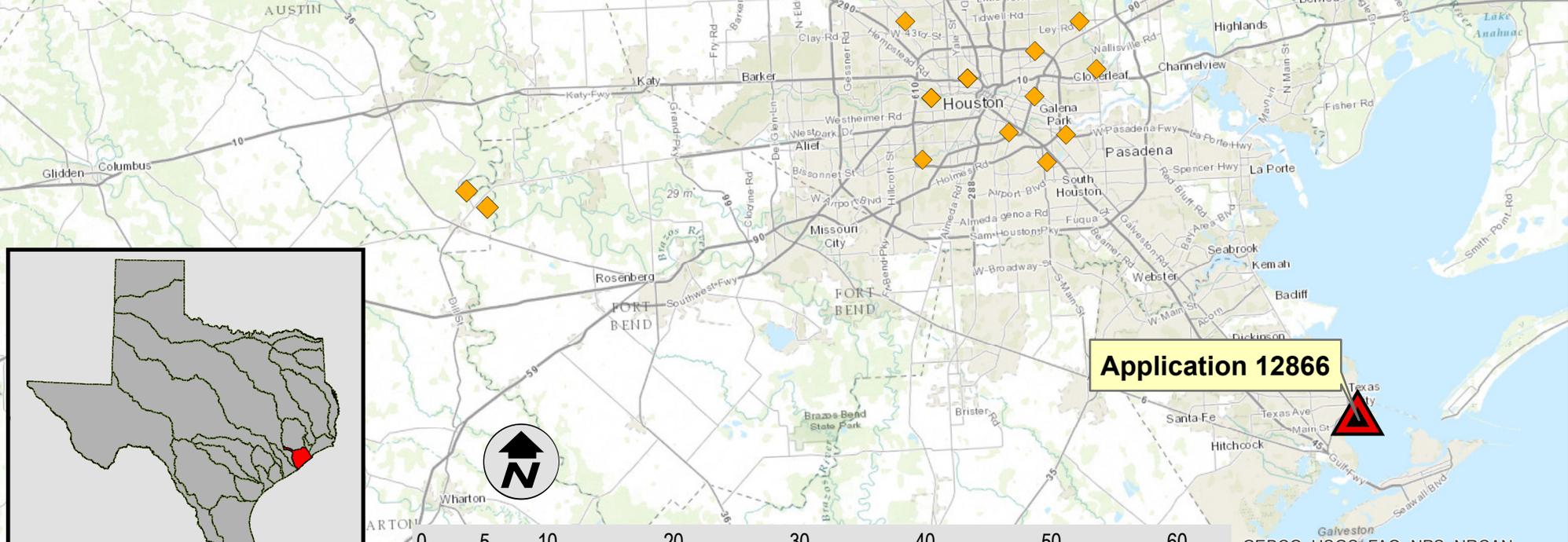
Application 12866

NuStar Terminals Partners TX, LP

 Application No. 12866

Protestant - City of Houston

-  Diversions Authorized by
- P5807
- P5808
- P5826
- P5827
- P2925
- 10-4965
- 10-4963



Application 12866



San Jacinto-Brazos Coastal Basin



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