

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Toby Baker, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

September 12, 2022

Laurie Gharis, 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. 2020-1559-WR** regarding Application No. 13676 by the City of Corpus Christi to Obtain a Water Use Permit in Nueces, Kleberg, San Patricio and Aransas Counties, Texas.

Dear Ms. Gharis:

Enclosed for filing are the following backup materials for the **October 5, 2022 agenda** item on the above-referenced matter:

1. Executive Director's Response to Hearing Requests;
2. Mailing List;
3. Map.

Please let me know if you have any questions. I can be reached at 512-239-6635 or ruth.takeda@tceq.texas.gov. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Ruth A. Takeda".

Ruth Takeda, Staff Attorney - Environmental Law Division

Cc: Mailing List

TCEQ DOCKET NO. 2020-1559-WR

APPLICATION NO. 13676 BY	§	BEFORE THE TEXAS
THE CITY OF CORPUS CHRISTI	§	
TO OBTAIN A WATER USE	§	COMMISSION ON
PERMIT IN NUECES, KLEBERG,	§	
SAN PATRICIO AND ARANSAS	§	ENVIRONMENTAL QUALITY
COUNTIES, TEXAS	§	

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 the hearing requests filed regarding Application No. 13676 by the City of Corpus Christi (Applicant) to obtain a water use permit in Nueces, Kleberg, San Patricio and Aransas Counties in the Nueces-Rio Grande River Basin. The permit relates to a proposed desalination project.

One timely hearing request was received:

1. Encarnacion Serna.

Twenty-one untimely hearing requests were received:

- | | |
|--|---|
| 1. Arellano, Yvette for Fenceline Watch; | 13. Manning, Deborah; |
| 2. Campos, Sylvia; | 14. Masten, Kathryn A.; |
| 3. Clark, Adrian; | 15. Muir, Robert; |
| 4. Coeckelenbergh, Yves and Patt; | 16. Perales, Marisa and Gaines, Erin, attorneys representing Hillcrest Residents Association; |
| 5. Denny, Erin; | 17. Rogers, Julie Travis; |
| 6. Dinn, James and Paige; | 18. Rosson, Donna; |
| 7. Duran, Margaret A.; | 19. Villarreal Varner, Clara; |
| 8. Farris, Sally Clark; | 20. Wilkerson, Daniel Patrick; |
| 9. Gallegos, Guillermo; | 21. Zamora, Melissa for Indigenous People of the Coastal Bend. |
| 10. Hoffman, Donna L.; | |
| 11. Laitinen, Uneeda; | |
| 12. Lee, Mary C.; | |

None of the requestors holds a water right, and the Executive Director does not believe that any requestor identified a personal justiciable interest in this application.

The Executive Director recommends granting the application and has prepared a draft permit which includes special conditions.

Staff has prepared a map showing the Applicant’s proposed water right location. Location information on all requestors is provided on the map.

I. BACKGROUND

The Applicant seeks authorization to divert and use 93,148 acre-feet of water per year at a diversion rate of 129 cubic feet per second (57,708 gallons per minute) from a

diversion reach on Tule Lake Channel (a.k.a. Corpus Christi Ship Channel), tributary of Corpus Christi Bay, Nueces-Rio Grande Coastal basin in Nueces County for municipal purposes in Nueces, Kleberg, San Patricio, and Aransas Counties.

The Applicant seeks authorization for an exempt interbasin transfer of 93,148 acre-feet of water to the portions of Nueces County within the Nueces River Basin and the San Antonio-Nueces Coastal Basin within the Applicant's service area.

The Applicant seeks an exempt interbasin transfer of 2,999 acre-feet of water out of the authorized 93,148 acre-feet of water to Aransas County within the San Antonio-Nueces Coastal Basin.

II. PROCEDURAL HISTORY

The Commission received this application on January 22, 2020. The application was declared administratively complete on February 26, 2020. Technical review was completed on August 18, 2020. Notice of the application was mailed by the Commission's Chief Clerk on October 26, 2020, to water right holders of record in the Nueces-Rio Grande River Basin. Notice of the application was published in the *Corpus Christi Caller Times* on November 5 and November 12, 2020.

The comment period and hearing request period for this application closed on December 14, 2020. Due to a legislative request for a public meeting on this application, the comment period was re-opened. The hearing request period was not re-opened.

Notice of a virtual public meeting was mailed on February 11, 2021. The re-opened comment period closed at the conclusion of the public meeting on March 18, 2021, but was extended to April 1, 2021, in response to several requests for a two week extension because of the impact of the winter storm in February 2021. The Executive Director has prepared a separate Response to Comments.

III. LEGAL AUTHORITY

Pursuant to 30 Tex. Admin. Code § 55.251(a), the following may request a contested case hearing on water rights applications: the Commission, the Executive Director; the applicant; and affected persons when authorized by law.

Affected persons are authorized to submit hearing requests for water rights applications under Tex. Water Code § 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 Tex. Admin. Code §§ 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. *Id.*

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). See 30 Tex. Admin. Code § 55.103.

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

- (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) likely impact of the regulated activity on the health, safety, and use of property of the person;
- (5) likely impact of the regulated activity on 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.

A hearing request by a group or association must meet the requirements set forth in 30 Tex. Admin. Code § 55.252(a). There are three requirements. First, at least one member of the group or association would have standing to request a hearing in his or her own right. Second, the interests that the group or association seeks to protect must be germane to its purpose. Third, neither the claim asserted or the relief requested by the group or association requires participation of the individual member(s) in the case.

A hearing request must substantially comply with the four requirements set forth in 30 Tex. Admin. Code § 55.251(c):

- (1) give the name, address, and daytime telephone number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number and, where possible, fax number, who shall be responsible for receiving all official communications and documents for the group.
- (2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the activity that is the subject of the application and how and why the requestor believes he or she will be affected by the activity in a manner not common to members of the general public;
- (3) request a contested case hearing; and

(4) provide any other information specified in the public notice of application.

The request for a contested case hearing must be filed with the Commission's Chief Clerk within the time period specified in the notice. 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 Tex. Admin. Code § 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 filed prior to closing of the hearing request period on December 14, 2020.

Twenty-one untimely hearing requests were submitted during the re-opened comment period. The untimely hearing requests expressed concerns including: impact on aquatic/ marine life; impact on power generation in the area; high energy requirements of desalination; opposition to this permit and three other proposed desalination plants in the area; amount of water; impingement and entrainment of aquatic life at the proposed intake; industrial use of the water; water quality; salty brine discharge on the Corpus Christi bay system/ increased salinity; health effects of the discharge on people and on fish; if fish die, birds will also die or leave the area; economic impact on those who fish for business; location of the proposed intake and discharge facilities; cost; impact on recreational activities - fishing, boating, kayaking, swimming - and tourism; environmental racism (Hillcrest neighborhood); proposed location of intake and discharge structures; alternatives to desalination, such as water conservation technology, groundwater, reuse, and rainwater collection exist and should be utilized instead of desalination; other existing desalination plants do not discharge directly into a bay system; though purpose of use is identified as municipal, it's really industrial, therefore the water conservation analysis on the proposed permit is based on a false pretense; lack of reasonable measures to minimize impingement and entrainment; detriment to the public welfare; emissions and air quality impacts.

The Executive Director will not address the untimely requests further.

The Executive Director recommends denying the timely hearing request and issuing the draft permit.

1. Encarnacion Serna

The requestor's concerns include: other desalination projects drawing water from La Quinta Channel and Corpus Christi Bay and discharging concentrated reject water back to these water bodies need to be transparent and honest and tell the public how these waters will pollute and affect the ecosystems in these water bodies; the need to explain the nature of all streams going into and leaving the reverse osmosis plant, to provide balances showing flows and compositions leaving and entering the processes, including chemicals and MSDS to the proposed processes, and to conduct studies to determine how these quantities of reject water going back to the bays and channel will affect all marine life in these bodies of water.

Program staff mapped the requestor's location. The requestor's property

extends to the high tide mark of the beach along the bay, and the requestor's property is located approximately 8 miles from the proposed diversion point.

The Executive Director concludes that the request identifies interests common to members of the general public, largely related to water quality issues, but does not identify a personal justiciable interest. The Executive Director therefore recommends that the request be denied.

V. CONCLUSION

The Executive Director respectfully recommends that the Commission deny the hearing request and issue the draft permit as prepared by the program.

Respectfully submitted,

Toby Baker
Executive Director

Erin E. Chancellor, Director
Office of Legal Services

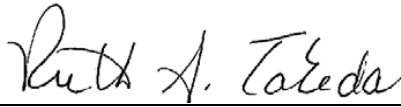
Charmaine Backens, Deputy Director
Environmental Law Division

by 

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CERTIFICATE OF SERVICE

I certify that on the 12th day of September 2022, the foregoing *Executive Director's Response to Hearing Requests* was filed electronically with the Chief Clerk of the Texas Commission on Environmental Quality in Austin, Texas, and that a true and correct copy was delivered as indicated to the persons on the attached Mailing List.



Ruth Ann Takeda, Staff Attorney
Environmental Law Division
Texas Commission on Environmental Quality

Mailing List
City of Corpus Christi
Water Use Permit Application No. WRPERM 13676
TCEQ Docket No. 2020-1559-WR

APPLICANT

Via electronic mail and first-class mail:

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PROTESTANTS

Via first-class mail:

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Attachment A

City of Corpus Christi

 Application No. 13676

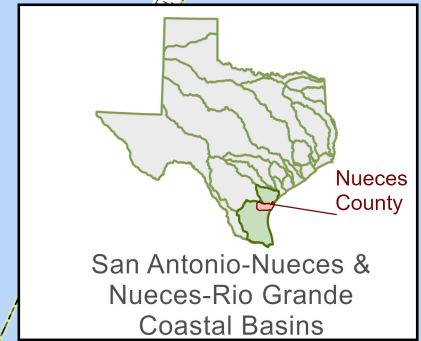
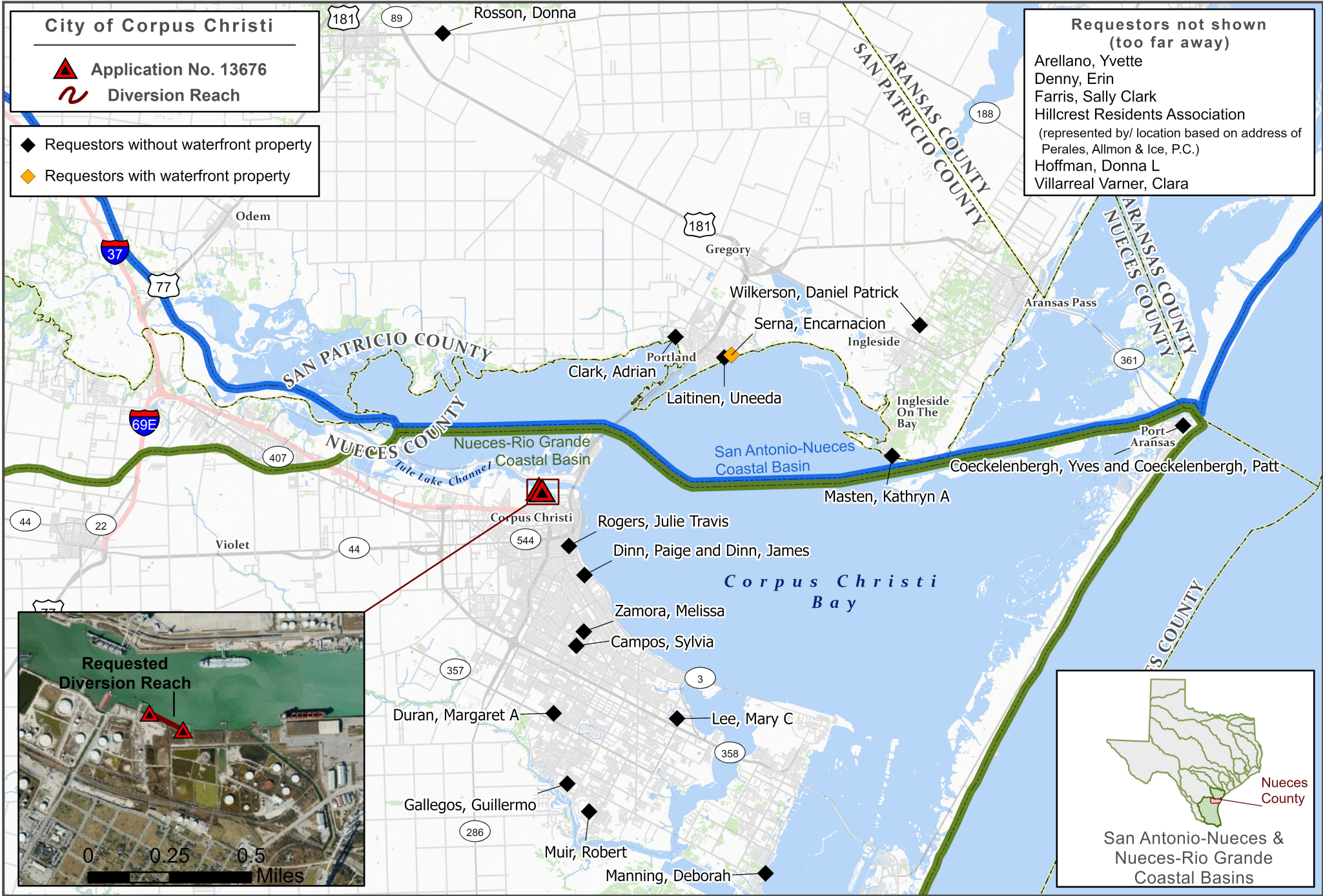
 Diversion Reach

 Requestors without waterfront property

 Requestors with waterfront property

Requestors not shown
(too far away)

- Arellano, Yvette
- Denny, Erin
- Farris, Sally Clark
- Hillcrest Residents Association
(represented by/ location based on address of
Perales, Allmon & Ice, P.C.)
- Hoffman, Donna L
- Villarreal Varner, Clara



This map was generated by the Water Availability Division of the Texas Commission on Environmental Quality. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. For more information concerning this map, contact the Water Availability Division at (512)239-4600.

