

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



Garrett T. Arthur, *Public Interest Counsel*

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

September 12, 2022

Laurie Gharis, Chief Clerk  
Texas Commission on Environmental Quality  
Office of the Chief Clerk (MC-105)  
P.O. Box 13087  
Austin, Texas 78711-3087

RE: **City of Corpus Christi (Applicant)**  
**Docket No. 2020-1559-WR**

Dear Ms. Gharis:

Enclosed for filing is the Office of Public Interest Counsel's Response to Hearing Requests in the above-entitled matter.

Sincerely,

A handwritten signature in cursive script that reads "Eli Martinez".

Eli Martinez, Attorney  
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

**TCEQ DOCKET NO. 2020-1559-WR**

**APPLICATION BY THE CITY OF § BEFORE THE**  
**CORPUS CHRISTI FOR WATER § TEXAS COMMISSION ON**  
**RIGHTS PERMIT NO. 13676 § ENVIRONMENTAL QUALITY**

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S**  
**RESPONSE TO HEARING REQUESTS**

TO THE HONORABLE MEMBERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

COMES NOW, the Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (Commission or TCEQ) and files this Response to Hearing Requests in the above-referenced matter. OPIC recommends denying the requests for a contested case hearing filed by Fenceline Watch, Hillcrest Residents Association, Sylvia Campos, Adrian Clark, Patt & Yves Coeckelenbrgh, Erin Denny, James & Paige Dinn, Margaret Duran, Sally Clark Farris, Guillermo Gallegos, Donna Hoffman, Uneeda Laitinen, Mary Lee, Deborah Manning, Dr. Kathryn Masten, Robert Muir, Julie Travis Rogers, Donna Rosson, Clara Villareal Varner, Daniel Patrick Wilkerson, and Melissa Zamora because they were not timely submitted. OPIC recommends denying the hearing requests of Encarnacion Serna because they fail to identify a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest not common to members of the general public. OPIC respectfully submits the following:

**I. INTRODUCTION**

The City of Corpus Christi (Applicant or the City) seeks a water use permit to authorize the diversion and use of not to exceed 93,148 acre-feet of water per year, at a maximum diversion rate of 129 cubic feet per second (57,708 gallons per minute), from a diversion reach on Tule Lake Channel (Corpus Christi Ship Channel), Nueces-Rio Grande Coastal Basin in

Nueces County for municipal purposes in Nueces, Kleberg, San Patricio, and Aransas counties. Applicant also seeks an exempt interbasin transfer to the portions of Nueces County within the Nueces River Basin and the San Antonio-Nueces Coastal Basin, to the portions of Nueces and San Patricio counties within the San Antonio-Nueces Coastal Basin and to Aransas County within the San Antonio-Nueces Coastal Basin.

The City's application was received on January 22, 2020. Additional information was received on February 4, 2020. The application was declared administratively complete on February 26, 2020. On October 26, 2020, the TCEQ Chief Clerk mailed notice to the water rights holders of record in the Nueces-Rio Grande Coastal Basin. Applicant published notice of the application in the *Corpus Christi Caller Times* on November 5, 2020, and November 12, 2020. The original comment period ended thirty days after publication of the notice on December 14, 2020.<sup>1</sup> A virtual public meeting was held on March 18, 2021, and the comment period was extended until April 1, 2021. The deadline to request a contested case hearing was December 14, 2020.

## **II. REQUIREMENTS OF APPLICABLE LAW**

### **A. Requirements to Obtain Affected Person Status**

This application was declared administratively complete after September 1, 1999, and is subject to Chapter 55, Subchapter G, sections 55.250 - 55.256. According to these rules, an

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<sup>1</sup> 30 TAC Section 295.171: A request for contested case hearing on an application for a water use permit or amendment made by the applicant, the executive director, or an affected person who objects to the application must be made in writing, must comply with the requirements of Chapter 55, Subchapter G, of this title (relating to Requests for Reconsideration and Contested Case Hearings; Public Comment), and specifically §55.251 of this title (relating to Requests for Contested Case Hearing, Public Comment), and must be submitted to the commission within 30 days after the publication of the notice of application. The commission may extend the time allowed for submitting a request for contested case hearing.

“affected person” must submit a timely contested case hearing request in writing and in compliance with Commission requirements for making a request.<sup>2</sup> In addition, the request must identify the person’s personal justiciable interest affected by the application, including a brief, specific explanation regarding “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 the members of the general public.”<sup>3</sup>

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” in a manner not common to members of the general public.<sup>4</sup> Relevant factors considered in determining a person’s affected person status include:

- (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 the 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.<sup>5</sup>

A contested case hearing should be granted if an affected person’s hearing request meets all requirements of applicable law. A request for hearing shall be granted if the request is made

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<sup>2</sup> 30 TEX. ADMIN. CODE (“TAC”) §§ 55.251 *et seq.* and 30 TAC § 295.171.

<sup>3</sup> 30 TAC § 55.251(c)(2).

<sup>4</sup> 30 TAC § 55.256(a). “This standard does not require parties to show that they will ultimately prevail on the merits; it simply requires them to show that they will potentially suffer harm or have a justiciable interest that will be affected.” *United Copper v. TNRCC*, 17 S.W.3d 797, 803 (Tex.App. - Austin 2000).

<sup>5</sup> 30 TAC § 55.256(c).

by the applicant or the executive director.<sup>6</sup> The Commission may also refer an application to the State Office of Administrative Hearings if the Commission determines that a hearing would be in the public interest.<sup>7</sup>

## **B. Requirements for a Water Use Permit**

Section 11.022 of the Texas Water Code (TWC) provides that “the right to the use of state water may be acquired by appropriation in the manner and for the purposes provided in this chapter.” Section 11.134(b) provides in pertinent part that the Commission shall grant an application to use state water only if:

- (2) unappropriated water is available in the source of supply;
- (3) the proposed appropriation:
  - (A) is intended for a beneficial use;
  - (B) does not impair existing water rights or vested riparian rights;
  - (C) is not detrimental to the public welfare;
  - (D) considers the assessments performed under Sections 11.147(d) and (e) and Sections 11.150, 11.151, and 11.152; and
  - (E) addresses a water supply need in a manner that is consistent with the state water plan and the relevant approved regional water plan for any area in which the proposed appropriation is located, unless the commission determines that conditions warrant waiver of this requirement.

## **III. DISCUSSION**

### **A. Determination of Affected Persons**

#### **1. Untimely Requests**

Untimely requests for a contested case hearing were submitted by Fenceline Watch, Hillcrest Residents Association, Sylvia Campos, Adrian Clark, Patt & Yves Coeckelenbrgh, Erin

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<sup>6</sup> 30 TAC § 55.255(b)1

<sup>7</sup> 30 TAC § 55.255(c).

Denny, James & Paige Dinn, Margaret Duran, Sally Clark Farris, Guillermo Gallegos, Donna Hoffman, Uneeda Laitinen, Mary Lee, Deborah Manning, Dr. Kathryn Masten, Robert Muir, Julie Travis Rogers, Donna Rosson, Clara Villareal Varner, Daniel Patrick Wilkerson, and Melissa Zamora after the December 14, 2020 contested case hearing request period had expired. OPIC therefore recommends that these requests be denied.

## 2. Encarnacion Serna

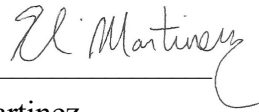
Timely requests for a contested case hearing were received from Encarnacion Serna on June 30, 2020 and July 16, 2020. Mr. Serna is identified in the map created by the executive director for this matter as owning waterfront property. However, while Mr. Serna's requests generally express the desire for additional studies and a hearing to determine impacts on the local ecosystem and material flows and balances, he fails to identify a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest not common to members of the general public. OPIC must therefore recommend his requests be denied.

## **IV. CONCLUSION**

OPIC respectfully recommends that the Commission deny the untimely requests of Fenceline Watch, Hillcrest Residents Association, Sylvia Campos, Adrian Clark, Patt & Yves Coeckelenbrgh, Erin Denny, James & Paige Dinn, Margaret Duran, Sally Clark Farris, Guillermo Gallegos, Donna Hoffman, Uneeda Laitinen, Mary Lee, Deborah Manning, Dr. Kathryn Masten, Robert Muir, Julie Travis Rogers, Donna Rosson, Clara Villareal Varner, Daniel Patrick Wilkerson, and Melissa Zamora. OPIC additionally recommends that the Commission deny the requests of Encarnacion Serna.

Respectfully submitted,

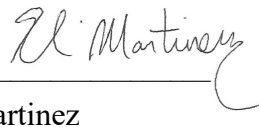
Garrett T. Arthur  
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By: 

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 12, 2022, the original of the Office of the Public Counsel's Response to Hearing Requests was filed with the Chief Clerk of the TCEQ and a copy was served on all persons listed on the attached mailing list via electronic mail and/or by deposit in the U.S. Mail.

By:   
Eli Martinez

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TCEQ DOCKET NO. 2020-1559-WR**

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