

TCEQ DOCKET NO. 2021-0421-WR

APPLICATION NO. 13630 BY  
THE PORT OF CORPUS CHRISTI  
AUTHORITY OF NUECES  
COUNTY TO OBTAIN A WATER  
USE PERMIT IN SAN PATRICIO  
COUNTY, TEXAS

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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 the hearing requests filed regarding Application No. 13630 by the Port of Corpus Christi Authority of Nueces County (Applicant) to obtain a water use permit authorizing diversion of 101,334 acre-feet of water from Corpus Christi Bay to use for industrial purposes in San Patricio County. Timely hearing requests were received from:

1. Ingleside on the Bay Coastal Watch Association - Eric Allmon, Esq.;
2. Ingleside on the Bay Coastal Watch Association - Patrick Arnold Nye, Board President;
3. Coastal Conservation Association - Shane Bonnot, Advocacy Director;
4. Payton Gray Campbell;
5. Kellen Chiddix;
6. Adrian Clark;
7. Yves and Patt Coeckelenbergh;
8. Tom Daley;
9. Larry R. Ferrell;
10. Frank Glenn Green;
11. Catherine Hatch;
12. Bruce Harry Henkhaus;
13. Jennifer R. Hilliard;
14. Jeff Howard;
15. Max Paul Keller;
16. Uneeda Laitinen;
17. Charlotte Lawrence;
18. Thomas Mack;
19. Dr. Kathryn Masten;
20. Tom McIver;
21. James T. Miday;
22. Dr. William Norman Milner, Jr.;
23. Sheila Nagy;
24. Ann Nyberg;
25. Emily Christina Nye;
26. Mary Judith Orr;
27. Jacob Oster;
28. Blanca Parkinson;

29. Kristopher Parkinson;
30. Clayton Poenisch;
31. Lynne Porter;
32. Lisa T. Riley;
33. Roy L. Riley;
34. Debra Rowe;
35. Encarnacion Serna;
36. Gary Strickland;
37. Errol Alvie Summerlin;
38. Jim Tucker;
39. Judy Tucker;
40. Sheila Walton;
41. Suzi Wilder;
42. Daniel Patrick Wilkerson;
43. Ira Wesley Williams;
44. Brent Winborne.

Eight untimely requests were received after hearing request period closed:

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|----------------------|---------------------------|
| 1. Deena Henderson   | 5. Jeffrey Douglas Jacoby |
| 2. Jennifer Hilliard | 6. Uneeda Laitinen        |
| 3. Donna L. Hoffman  | 7. Susan Lippman          |
| 4. Wendy Lynn Hughes | 8. Isabel Araiza Ortiz    |

Jennifer Hilliard and Uneeda Laitinen also submitted timely requests. Jeffrey Douglas Jacoby requested a hearing on behalf of the Texas Campaign for the Environment but provided no other information about the group or association. None of the six untimely requestors hold water rights and none identify a personal justiciable interest in this application. The Executive Director will not address the untimely requests further.

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

Several hearing requests include concerns about water quality, discharges from the Applicant's proposed desalination plant, the discharge location and the environmental impact of those discharges. The Executive Director notes that water quality is not regulated under the laws applicable to water rights and that this application requests a water right.

None of the requestors own riparian property. Riparian is defined as "of, relating to, or located on the bank of a river or stream (or occasionally another body of water, such as a lake)." Black's Law Dictionary, 8<sup>th</sup> Ed. Certain interests - recreational use, aesthetic enjoyment, economic interest - have been recognized as sufficient to establish standing if coupled with riparian property ownership. See *Save Our Springs Alliance, Inc. v. City of Dripping Springs*, 304 S.W.3d 871 (Tex. App. - Austin 2010, pet. dism'd). At the agency level, see *In the Matter of the Application by Guadalupe-Blanco River Authority*, Permit No. 12378, TCEQ Docket No. 2014-1658-WR, SOAH Docket No. 582-15-2477.

Some requestors own land that extends to the bay and claim recreational, aesthetic or economic interests they assert will be adversely impacted. However, their land is not riparian because it is not located on the bank of a river, stream, or lake. Instead, the requestors own waterfront property located on bays of the Gulf of Mexico. Their property does not extend to the water itself because of Texas' Open Beaches Act, which allows access to the waters of the Gulf and its bays for the general public via the "wet beach" - land from the mean high tide mark to the water. The State of Texas owns the wet beach. Therefore requestors who own waterfront property do not have any greater right of access to state water than members of the general public. *See* Tex. Nat. Res. Code Chapter 61, specifically Tex. Nat. Res. Code § 11.012(c). *See also Severance v. Patterson*, 370 S.W.3d 705, 715 (Tex. 2012), citing *Lorino v. Crawford Packing Co.*, 175 S.W.2d 410, 419 (Tex. 1943) and *Landry v. Robison*, 219 S.W. 819, 820 (Tex. 1920).

Program staff prepared two maps. One map indicates the location of requestors with waterfront property; the second map indicates the location of requestors without waterfront property. Both maps include the Applicant's proposed water right location; both have a map legend listing requestors whose locations are not mapped because they have Post Office Box addresses or are located too far away. The maps are attached as Attachments A and B.

## I. BACKGROUND

The Applicant seeks authorization to divert and use 101,334 acre-feet of water per year at a diversion rate of 140.12 cubic feet per second (62,890 gallons per minute) from a diversion point on Corpus Christi Bay, in the San Antonio-Nueces Coastal basin for industrial purposes in San Patricio County.

## II. PROCEDURAL HISTORY

The Commission received this application on September 3, 2019. The application was declared administratively complete on May 11, 2020. Technical review was completed on December 4, 2020. Notice of the application was mailed by the Commission's Chief Clerk on February 5, 2021, to water right holders of record in the San Antonio-Nueces Coastal Basin. Notice of the application was published in the Corpus Christi Caller Times on February 26, 2021; the Ingleside Index on March 3, 2021; and the News of San Patricio on March 4, 2021.

The comment period and hearing request period for this application closed on March 29, 2021.

Due to significant public interest in this application and legislative requests for a public meeting, the comment period was re-opened. The hearing request period was not re-opened.

Notice of the virtual public meeting was mailed on June 11, 2021. The public meeting was held virtually on July 13, 2021 and the re-opened comment period closed on July 13, 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 REQUESTS AND RECOMMENDATIONS**

Forty-four requests were filed prior to closing of the hearing request period on March 29, 2021. Eight untimely hearing requests were submitted. As noted earlier, the Executive Director will not address the untimely requests further unless the requestor also filed a timely request.

None of the requestors hold a water right.

The Executive Director recommends denying all hearing requests for the reasons stated below.

#### **GROUPS OR ASSOCIATIONS**

##### **1. Ingleside on the Bay Coastal Watch Association – Eric Allmon, Esq.**

The requestor seeks associational standing and identifies members who have

filed separate hearing requests: Patrick Nye, Encarnacion Serna, Uneeda Laitinen, and Captain Daniel Wilkerson. Identified member Chip Harmon did not file a separate hearing request. As discussed above, these individuals have not shown how they have standing in their own right because they do not hold water rights and do not have a riparian interest in Corpus Christi Bay.

The requestor provides information on its members. The requestor states that the interests it seeks to protect are germane to its purpose; that it is a nonprofit corporation whose purpose is to promote the health, safety, and quality of life for residents, property owners, business operators, volunteers for, or employees of Ingleside on the Bay or in Ingleside Cove, located at the convergence of the Corpus Christi and La Quinta Ship Channels on Corpus Christi Bay; and that participation by its individual members is not required.

Concerns about the application include: failure to comply with 30 TAC 295.5 because “industrial” use lacks specificity and San Patricio County as the place of use is too vague; failure to comply with 30 TAC 295.8 because the application lacks information regarding return and surplus flows; failure to demonstrate consistency with the state and regional water plan; detriment to the public welfare based on adverse impact to the environment and nearby community - including the cumulative impact of multiple proposed desalination facilities within Corpus Christi Bay and threats to public safety posed by currents that will be created around the proposed intake structures; failure to maintain existing uses of the area near the intake, failure to maintain the ecology and productivity of the bay near La Quinta Channel. The requestor states that the TCEQ failed to fulfill a statutory requirement because the TCEQ failed to adopt rules prescribing reasonable measures to minimize impingement and entrainment.

The Executive Director disagrees that the TCEQ failed to fulfill statutory requirements under Tex. Water Code Chapter 18 because the TCEQ promulgated the rules as required.

The Executive Director concludes that the requestor does not meet the requirements for associational standing and recommends that the request be denied.

## **2. Ingleside on the Bay Coastal Watch Association – Patrick Arnold Nye, President of the Board**

Mr. Nye requests a contested case hearing on behalf of the identified association, therefore the Executive Director believes Mr. Nye’s request should be considered with that submitted by Mr. Allmon.

Concerns about the application include: the proposed location; the proposed intake, which will endanger and cause potential harm to individuals and the quality of life in Corpus Christi Bay; potential future changes of ownership of the water right; impact on fishing and recreational activities; location of the Applicant’s proposed intake; danger in the proposed intake area to swimmers, sail and kite boarders, fishermen, sailboats and power boats; impingement and entrainment; brine discharge; location of the proposed project as a whole because a bay water desalination facility within a bay system capped by a massive barrier island does not exist anywhere; no necessity for the permit; and extremely high risk of environmental calamity.

The Executive Director recommends denying the request filed by Mr. Allmon on behalf of Ingleside on the Bay Coastal Watch Association, therefore also recommends denying this request.

Though Mr. Nye does not specifically request a contested case hearing in his own right, he states that he opposes the application. He does not identify a personal justiciable interest, therefore the Executive Director recommends denial in the event that request is interpreted as one submitted in his individual capacity.

### **3. Coastal Conservation Association – Shane Bonnot, Texas Advocacy Director**

The request recommends that the Commission conduct a “public hearing” which the Executive Director analyzes as a request for a contested case hearing.

The requestor states that is a non-profit organization of recreational anglers and outdoor enthusiasts and its purpose is to conserve, promote and enhance the present and future availability of coastal resources for the benefit and enjoyment of the general public. No individual members are identified.

Concerns about the application include: adverse impact on environmental flows, ambient bay salinity and aquatic species through impingement or entrapment; lack of detail; nine recommended demonstrations or incorporations; and water quality.

The Executive Director concludes that the request does not meet the requirements for associational standing, therefore recommends that the request be denied.

## **INDIVIDUALS**

### **4. Payton Gray Campbell**

The requestor does not own waterfront property.

Concerns about the application include: the amount of salty brine that will be discharged; the mix of brine with other waste water from industries in the La Quinta Channel, which can't be good for fish or people; if the fish die, then the birds people love to watch will also die or leave the area.

The Executive Director concludes that the request does not identify a personal justiciable interest and recommends that the request be denied.

### **5. Kellen Chiddix**

The requestor owns waterfront property that is located approximately 48 miles from the proposed diversion point. The request does not identify specific concerns about the application.

The Executive Director concludes that the request does not identify a personal justiciable interest and recommends that the request be denied.

### **6. Adrian Clark**

The requestor does not own waterfront property. The requestor indicates that the requestor lives approximately 3 miles from the proposed diversion point; the requestor and family members hike, run, and go birdwatching along the Portland

shoreline or in Ingleside Cove; the requestor fishes for business and is concerned about loss of income the requestor believes will result when aquatic life in La Quinta Chanel and Corpus Christ Bay is harmed/ destroyed by the proposed permit.

Concerns about the application include: the amount of water requested and the proposed intake rate; aquatic life being trapped or killed in the intake process; intake of larvae which will be sucked up, turned to sludge and deposited in landfills; impairment of fishing; amount of salty brine discharged and mixing it other with waste water from industries in La Quinta Channel, which can't be good for fish or people; if fish die, birds people love to watch will die too or leave the area; health effects from the chemicals used in the desalination process, including pre-treatment; amount of power to operate the pumps and the strain this will place on the electrical grid; cost and who will be responsible for paying it; the proposed location of intake and discharge structures.

The Executive Director concludes that the request does not identify a personal justiciable interest and recommends that the request be denied.

#### **7. Yves and Patt Coeckelenbergh**

The requestors do not own waterfront property. They state that they live approximately 20 miles from the Applicant's proposed diversion point and that they boat recreationally, fish and swim in the Coastal Bend waters.

Concerns about the application include: the amount of water and proposed intake rate; the amount of power needed to operate the pumps; the amount of salty brine mixed with other waste water which cannot be healthy for aquatic life, other species or humans; the proposed intake and discharge locations.

The Executive Director concludes that the request does not identify a personal justiciable interest and recommends that the request be denied.

#### **8. Tom Daley**

The requestor does not own waterfront property. The requestor states that the requestor lives close to the channel and uses it for many types of recreation.

Concerns about the application include: the permit destroying the area and ultimately the bay ecosystem.

The Executive Director concludes that the request does not identify a personal justiciable interest and recommends that the request be denied.

#### **9. Larry R. Ferrell**

The requestor does not own waterfront property. The requestor states that the requestor lives less than a mile from La Quinta Channel.

Concerns about the application include: aquatic life; the active force of the desalination plant and its brine discharge, which will have a detrimental effect on the environment.

The Executive Director concludes that the request does not identify a personal justiciable interest and recommends that the request be denied.



## **10. Frank Glenn Green**

The requestor does not own waterfront property. The requestor states that the requestor and the requestor's family kiteboard, fish, boat, and swim along the Portland shoreline or in Ingleside Cove where the proposed intake structure will be located or where the discharge will flow to.

Concerns about the application include: the small larvae which will be sucked up, turned into sludge, and be deposited into landfills; impairment of fishing in the region.

The Executive Director concludes that the request does not identify a personal justiciable interest and recommends that the request be denied.

## **11. Catherine Hatch**

The requestor does not own waterfront property. The requestor states that she and her husband have lived and fished on Ingleside on the Bay for almost forty years, feet away from La Quinta Channel. The requestor is an avid birdwatcher and fisherperson.

Concerns about the application include: the proposed intake pipe because of the number of small larvae that will be sucked up and deposited into landfills, negatively affecting fishing; amount of salty brine discharged; detrimental impact on the local ecosystem, shrimping industry and fishing guides; the demise of birds; the proposed intake and discharge locations.

The Executive Director concludes that the request does not identify a personal justiciable interest and recommends that the request be denied.

## **12. Bruce Harry Henkhaus**

The requestor does not own waterfront property. The requestor states that the requestor lives one block off the beach of Corpus Christi Bay, less than one quarter mile from the La Quinta Channel; moved to the area 10 years ago; and the requestor and the requestor's family fish/ boat/ swim along the Portland shoreline or in Ingleside Cove.

Concerns about the application include: the impact of industrialization in the area on marine life; the proposed placement of an intake pipe in La Quinta Channel; amount of water requested; the proposed intake rate; aquatic life being trapped or killed in the intake process; small larvae being sucked up, turned to sludge, and deposited into landfills; impairment of fishing; the amount of salty brine discharged and its mixing with other waste water from industries in La Quinta Channel, which cannot be good for fish or people; if fish die, birds people love to watch will also die or leave the area; possible health effects from the chemicals used in the desalination process, including pre-treatment; the amount of power required to operate pumps placing more strain on the electrical grid; cost and who will pay it; the proposed locations of intake and discharge.

The Executive Director concludes that the request does not identify a personal justiciable interest and recommends that the request be denied.

**13. Jennifer R. Hilliard**

The requestor does not own waterfront property. The requestor states that the requestor lives in Ingleside on the Bay, directly on the La Quinta Channel, approximately two miles away from the Applicant's proposed diversion point. The requestor states that the requestor and the requestor's family regularly fish in the area.

Concerns about the application include: placing an intake pipe in the La Quinta Channel; decimation of fish and shellfish in the area; detriment to future sustainability of aquatic life; the proposed intake structure's current design because it will lead to an almost 100% fatality rate of impinged and entrapped species that will lead to habitat destruction and displacement; cost and who will pay; the proposed locations of intake and discharge. The requestor indicates reliance on studies of area waters by experts at the University of Texas Marine Science Institute and Texas A&M University Corpus Christi.

The Executive Director concludes that the request does not identify a personal justiciable interest and recommends that the request be denied.

**14. Jeff Howard**

The requestor does not own waterfront property. The requestor states that the requestor and the requestor's family fish/ boat/ swim along the Portland shoreline or in Ingleside Cove; the requestor fishes for business and is concerned about loss of income when aquatic life in La Quinta Channel and Corpus Christi Bay is harmed/ destroyed by the proposed desalination plant.

Concerns about the application include: the amount of water requested and the proposed intake rate; aquatic life being trapped or killed in the intake process; small larvae being sucked up, turned to sludge, and deposited into landfills; impairment of fishing in the area; the amount of salty brine that will be discharged and mixed with other waste water from industries in the La Quinta Channel, which can't be good for fish or for people; if fish die, then birds people love to watch will also die or leave the area; possible health effects from the chemicals used in the desalination process, including pre-treatment; the amount of power it will take to operate the pumps and the strain it will place on the electrical grid; cost and who will pay; the proposed locations of intake and discharge.

The Executive Director concludes that the request does not identify a personal justiciable interest and recommends that the request be denied.

**15. Max Paul Keller**

The requestor does not own waterfront property. The requestor states that the requestor is a student who lives in Corpus Christi half the time and in Portland half the time, and who boats, fishes and swims in the area.

The request is for a "public hearing" which can be interpreted as meaning a contested case hearing and the Executive Director analyzes it accordingly.

Concerns about the application include: placing an intake pipe in the La Quinta Channel; the amount of salty brine and sludge the desalination plants will put in the bays and the La Quinta Channel, which will the environment and making it

inhospitable for aquatic wildlife.

The Executive Director concludes that the request does not identify a personal justiciable interest and recommends that the request be denied.

#### **16. Uneeda Laitinen**

The requestor does not own waterfront property. The requestor states that she and her husband live within 1 mile of the proposed diversion point, own a boat and fish in the area.

Concerns about the application include: the proposed intake rate; the intake sucking small larvae out of the La Quinta Channel and turning it to sludge; making the channel into an ecological waste land; eliminating fish, crabs, shrimp; destruction of the food chain of the bay/ killing the bay estuary system; birds leaving or dying because of the impact on their food source; negative impact on fish, crabs, shrimp; negative impact on the ecosystem; birds leaving or die because their food source will be gone; the energy demand of the pumps and the additional stress placed on the power grid; negative impact on the local economy which, like other areas along the Gulf coast, largely depends on wildlife tourism; cessation of tourism, loss of jobs.

The Executive Director concludes that the request does not identify a personal justiciable interest and recommends that the request be denied.

#### **17. Charlotte Lawrence**

The requestor does not own waterfront property.

Concerns about the application includes: the impact on water quality so near to homes.

The Executive Director concludes that the request does not identify a personal justiciable interest and recommends that the request be denied.

#### **18. Thomas Mack**

The requestor owns waterfront property that is located approximately 48 miles from the Applicant's proposed diversion point.

The requestor states that the requestor fishes/ boats/ swims along the Portland shoreline or in Ingleside Cove.

Concerns about the application include: the amount of water; intake rate; aquatic life being trapped or killed in the intake process; small larvae being sucked up, turned to sludge, and deposited into landfills; impairment of fishing in the area; the amount of salty brine that will be discharged from the desalination plant and mixed with other waste water from industries in La Quinta Channel, which can't be good for fish or people; if fish die, birds people love to watch will also die or leave the area; possible health effects from chemicals used in the desalination process, including pre-treatment; the amount of power required to operate the pumps, which will place more strain on the electrical grid; cost and who will pay; the proposed intake and discharge locations.

The Executive Director concludes that the request does not identify a personal justiciable interest and recommends that the request be denied.

**19. Dr. Kathryn Masten**

The requestor does not own waterfront property. The requestor states that the requestor is the Executive Director of Ingleside on the Bay Coastal Watch Association.

Concerns about the application include: the lack of need because population growth projected for the Coastal Bend does not justify desalination; conservation efforts by citizens should be sufficient to address needs of the people; area aquifers also have water available to be withdrawn; the Applicant's proposed volume of desalinated water; cost and who will pay; loss of aquatic life; failure to consider impacts of multiple proposed desalination plants in the area; cumulative impacts of all Applicant projects, especially channel deepening; increased load on the electrical grid likely to result if desalinated water becomes readily available for industrial use along the Texas coast; insufficient environmental flow to the Corpus Christi Bay; lack of habitat mitigation; Applicant's failure to submit TWDB surveys of groundwater and surface water use; impact on water-oriented activities; brine discharge buildup in Ingleside Cove Estuary; brine disposal; perpetual nature of water rights; attraction of high-energy high-water-using industries; incomplete application Worksheet 5; destruction of natural resources meant to be enjoyed by all Texans; attracting high-energy and high-water-using wasteful, harmful and polluting industries to the area; altering the hydrology of the Corpus Christi Bay system, potentially endangering coastal communities even further.

The Executive Director concludes that the request does not identify a personal justiciable interest and recommends that the request be denied.

**20. Tom McIver**

The requestor does not own waterfront property.

Concerns about the application include: potential negative impact on marine life due to elevated salinity levels in a system already subject to widely fluctuating critical fresh water inflows; cost and who should pay; proposed locations of intake and discharge facilities.

The Executive Director concludes that the request does not identify a personal justiciable interest and recommends that the request be denied.

**21. James T. Miday**

The requestor owns waterfront property located approximately 48 miles from the Applicant's proposed diversion point. The requestor states that he and his wife have a great view of the bay and its abundant wildlife.

Concerns about the application include: the intake and its detrimental effect on the ecological balance of marine life by killing smaller marine animals which will cause a loss of the larger animals, including game fish, sea birds, shrimp, crabs and dolphins; the proposed desalination plant is not in the best interest of the public.

The Executive Director concludes that the request does not identify a personal justiciable interest and recommends that the request be denied.

**22. William Norman Milner**

The requestor does not own waterfront property.

The request does not identify specific concerns about the application.

The Executive Director concludes that the request does not identify a personal justiciable interest, therefore recommends that the request be denied.

**23. Sheila Nagy**

The requestor owns waterfront property that is located approximately 48 miles from the Applicant's proposed diversion point.

The request does not identify specific concerns about the application.

The Executive Director concludes that the request does not identify a personal justiciable interest and recommends that the request be denied.

**24. Ann Nyberg**

The requestor does not own waterfront property. The requestor states that the requestor is Mayor pro-tem of Ingleside on the Bay and that the requestor's son-in-law supports his family by working as a fishing guide in the area.

Concerns about the application include: proposed placement of intake pipe in La Quinta Channel; impact on fishing; the intake pipe sucking in small fish and larvae and killing larger fish that will be pulled into the intake screen and suffer trauma; impact on local birds, who are dependent on small fish as their food source, so killing the fish will result in loss of the birds; impact on livelihoods and recreation.

The Executive Director concludes that the request does not identify a personal justiciable interest and recommends that the request be denied.

**25. Emily Christina Nye**

The requestor owns waterfront property located approximately 48 miles from the Applicant's proposed diversion point. The requestor states that the requestor enjoys fishing and other recreational activities in the area.

Concerns about the application include: the lack of necessity because it is not to meet current demand but for future industrial needs; environmental impact of two intake structures along La Quinta Channel; an error in the application on Worksheet 5.0 because the flow characteristics of the water body are described as a bay while the requestor believes that the water flow creates a downstream area; application is not in the public interest; amount of water requested; hundreds of thousands of small fish that will be impinged and millions of fish larvae that will be entrained in the system; granting the application would critically deteriorate the quality of the bay waters, the vitality of aquatic life, and the abundant bird population.

The Executive Director concludes that the request does not identify a personal justiciable interest and recommends that the request be denied.

**26. Mary Judith Orr**

The requestor does not own waterfront property. The requestor states that the

requestor and the requestor's family fish/ boat/ swim along the Portland shoreline or in Ingleside Cove.

Concerns about the application include: larvae being sucked up, turned to sludge and deposited in landfills; fishing being badly impaired; amount of salty brine discharged from the desalination plant, mixing with other waste water from industries in the La Quinta Channel, which cannot be good for fish or people; if fish die, the birds people love to watch will also die or leave the area; possible health effects from the chemicals used in the desalination process, including pre-treatment; loss of income for neighbors who fish for business; economic harm to the local community; the amount of energy used for the operating pumps, which will place even more strain on the power grid; cost and who pay; the locations of proposed intake and discharge.

The Executive Director concludes that the request does not identify a personal justiciable interest and recommends that the request be denied.

#### **27. Jacob Oster**

The requestor does not own waterfront property. The requestor states that the requestor lives approximately 11.5 miles from La Quinta Channel on the other side of Corpus Christi Bay.

Concerns about the application include: how the desalination plant may affect the quality of life for residents as well as the animal and plant life in the channel and Corpus Christi Bay; the intake and brine discharge being detrimental to sea grasses and larval fish; importance of recreational fishing in the area; use of public funds to support an initiative for private industries; location of the intake pipe in La Quinta Channel.

The Executive Director concludes that the request does not identify a personal justiciable interest and recommends that the request be denied.

#### **28. Blanca Parkinson**

The requestor does not own waterfront property. The requestor states that the requestor frequently recreates in the bays and bay side parks in the Portland area; that the requestor's sons fish, kayak, and swim near the area where the proposed intake pipe will be placed; that one son is on a running team and trains at a hiking trail located in Portland.

Concerns about the application include: placing an intake pipe in La Quinta Channel; effect it will have on aquatic life; proposed location of intake and discharge; placing an intake pipe in a closed bay; energy required to operate the intake pump and its impact on the energy grid; cost and who will pay; industrial use of the water, which is not in the best interest of area residents though it will benefit industries that will suck the water and life out of local bays.

The Executive Director concludes that the request does not identify a personal justiciable interest and recommends that the request be denied.

#### **29. Kristopher Parkinson**

The requestor does not own waterfront property. The requestor states that the requestor fishes, kayaks, and swims in the waters surrounding Portland and Ingleside,

and the requestor's children practice and train along the shores in those areas.

Concerns about the application include: placement of the intake pipe in a closed bay system, which would be a mistake and cause death of marine wildlife and essentially the death of the bay; further strain on the electrical grid; cost and who will pay; the proposed industrial use of the water.

The Executive Director concludes that the request does not identify a personal justiciable interest and recommends that the request be denied.

### **30. Clayton Poenisch**

The requestor owns waterfront property that is located approximately 47 miles from the Applicant's proposed diversion point. The requestor remembers when the requestor's father could snack on an oyster right out of the Bay decades ago.

Concerns about the application include: pollution increasing year after year in Corpus Christi Bay; placement of an intake pipe for a desalination plant in La Quinta Channel.

The Executive Director concludes that the request does not identify a personal justiciable interest and recommends that the request be denied.

### **31. Lynne Porter**

The requestor does not own waterfront property.

Concerns about the application include: placing an intake pipe for a desalination plant in La Quinta Channel; the amount of water requested; the proposed intake rate and the power it will require; aquatic life being trapped or killed in the intake process; the amount of salty brine that will be discharged, mixing with other waste water from industries in La Quinta Channel, which cannot be good for fish or for people; if the fish die, then the birds people love to watch will also die or leave the area; the operating pumps will take an enormous amount of power, placing more strain on the power grid; industrial use of the water; location of intake and discharge.

The Executive Director concludes that the request does not identify a personal justiciable interest and recommends that the request be denied.

### **32. Lisa T. Riley**

The requestor does not own waterfront property. The requestor states that the requestor and the requestor's family fish/ boat/ swim along the Portland shoreline or in Ingleside Cove.

Concerns about the application include: the amount of water requested and the intake rate; the amount of suction power required; aquatic life being trapped or killed in the intake process; the number of small larvae that will be sucked up, turned to sludge and deposited in landfills; fishing being badly impaired in the area; amount of salty brine discharged from the proposed desalination plant, mixing with other waste water from the industries in La Quinta Channel, which cannot be good for fish or people; if fish die, the birds people love to watch will also die or leave the area; possible health effects from the chemicals used in desalination, including pre-treatment; loss of income for neighbors who fish for business; economic harm to the local community; the amount of energy required for the operating pumps and its

impact on the power grid; cost and who pay; the locations of intake and discharge.

The Executive Director concludes that the request does not identify a personal justiciable interest and recommends that the request be denied.

### **33. Roy L. Riley**

The requestor does not own waterfront property. The requestor states that the requestor and the requestor's family fish/ boat/ swim along the Portland shoreline or in Ingleside Cove.

Concerns about the application include: the amount of water requested and the intake rate; the amount of suction power required; aquatic life being trapped or killed in the intake process; the number of small larvae that will be sucked up, turned to sludge and deposited in landfills; fishing being badly impaired in the area; amount of salty brine discharged from the proposed desalination plant, mixing with other waste water from the industries in La Quinta Channel, which cannot be good for fish or people; if fish die, the birds people love to watch will also die or leave the area; possible health effects from the chemicals used in desalination, including pre-treatment; loss of income for neighbors who fish for business; economic harm to the local community; the amount of energy required for the operating pumps and its impact on the power grid; cost and who pay; the locations of intake and discharge.

The Executive Director concludes that the request does not identify a personal justiciable interest and recommends that the request be denied.

### **34. Debra Rowe**

The requestor does not own waterfront property.

Concerns about the application include: placing an intake pipe for a desalination plant in La Quinta Channel; possible health effects from chemicals used in the desalination process, including pre-treatment.

The Executive Director concludes that the request identifies interests common to members of the general public and recommends that the request be denied.

### **35. Encarnacion Serna**

The requestor owns waterfront property. The requestor states that the requestor's property extends to the shores of Corpus Christi Bay and indicates that the proposed intake structure is approximately 3250 feet away - that the main facility will be located approximately 1 mile from the requestor's home. The requestor states that the requestor has fished by wading, gigging and kayaking for years. The requestor and the requestor's family all recreate in the waters and consume the fish they catch in them because fresh fish at the market is becoming unaffordable. The requestor states that the Applicant's proposed intake structure will interfere with the peaceful enjoyment of the requestor's home and eliminate a food source for the requestor and the requestor's family.

Concerns about the application include: the application being deficient and inadequate in its technical content as to engineering credentials; reliance on a discredited waste water application; misplaced intake, current; unaccounted for channeling impacts; misanalysis of current flow, understatement of discharge flow;



conflicting hydrodynamic statements; unsubstantiated velocity; secondary screen omissions; inapplicable cooling water standard, deflection; screen protections non-existent for marine organisms, process impacts, mortality questions unanswered; misstatement of marine organism protection obligation, protection avoidance; cumulative effects [with other desalination projects in the area]; engineering conundrums, cynical promotion of screening; extraordinary energy consumption questions.

The Executive Director disagrees that all of the interests identified are governed under Tex. Water Code Chapter 11.

Though the requestor's waterfront property is located approximately one mile from the Applicant's proposed diversion point, the Executive Director disagrees that the requestor's location and identified interests establish a personal justiciable interest, therefore recommends that the request be denied.

### **36. Gary Strickland**

The requestor owns waterfront property that is located approximately 48 miles from the Applicant's proposed permit site. The requestor states that the requestor owns a boat docked at the Bahia Marina and the requestor fishes and boats.

Concerns about the application include: placing an intake pipe for a desalination plant in La Quinta Channel; potential harm to marine life; where the concentrate will go; potential deterioration of water quality.

The Executive Director concludes that the requestor's property is located too far away to be adversely impacted by the application and that the request does not identify a personal justiciable interest, therefore recommends that the request be denied.

### **37. Errol Alvie Summerlin**

The requestor does not own waterfront property. The requestor states that the requestor's home is slightly over 2 miles from the Applicant's proposed diversion point and that the requestor has fished and crabbed for many years on Corpus Christi bay, and is an avid birder.

Concerns about the application include: the Applicant has no intention of building or operating the proposed desalination facility; a perpetual water use permit should not be issued to the Applicant because it would be nothing more than speculative permitting; the amount of energy required to operate the proposed desalination facility; the amount of water requested and its diversion rate; aquatic life and its impingement and entrainment; dredging to accommodate the intake pipe; cumulative impacts to aquatic life when this application is considered with other water use permits and waste water discharge permits authorized in the area; water conservation plan inadequacy; and the use of the water, which the requestor believes should be governed by federal requirements.

The Executive Director concludes that the request does not identify a personal justiciable interest and recommends that the request be denied.

**38. Jim Tucker**

The requestor owns waterfront property that is located approximately 48 miles from the Applicant's proposed permit site. The requestor states that the requestor fishes/ boats/ swims along the Portland shoreline or in Ingleside Cove.

Concerns about the application include: the amount of water requested and the intake rate; the amount of suction power required; aquatic life being trapped or killed in the intake process; the number of small larvae that will be sucked up, turned to sludge and deposited in landfills; fishing being badly impaired in the area; amount of salty brine discharged from the proposed desalination plant, mixing with other waste water from the industries in La Quinta Channel, which cannot be good for fish or people; if fish die, the birds people love to watch will also die or leave the area; possible health effects from the chemicals used in desalination, including pre-treatment; loss of income for neighbors who fish for business; economic harm to the local community; the amount of energy required for the operating pumps and its impact on the power grid; cost and who pay; the locations of intake and discharge.

The Executive Director concludes that the request does not identify a personal justiciable interest and recommends that the request be denied.

**39. Judy Tucker**

The requestor owns waterfront property that is located approximately 48 miles from the Applicant's proposed permit site. The requestor states that the requestor fishes/ boats/ swims along the Portland shoreline or in Ingleside Cove.

Concerns about the application include: the amount of water requested and the intake rate; the amount of suction power required; aquatic life being trapped or killed in the intake process; the number of small larvae that will be sucked up, turned to sludge and deposited in landfills; fishing being badly impaired in the area; amount of salty brine discharged from the proposed desalination plant, mixing with other waste water from the industries in La Quinta Channel, which cannot be good for fish or people; if fish die, the birds people love to watch will also die or leave the area; possible health effects from the chemicals used in desalination, including pre-treatment; loss of income for neighbors who fish for business; economic harm to the local community; the amount of energy required for the operating pumps and its impact on the power grid; cost and who pay; the locations of intake and discharge.

The Executive Director concludes that the request does not identify a personal justiciable interest and recommends that the request be denied.

**40. Sheila Walton**

The requestor owns waterfront property that is located approximately 48 miles from the Applicant's proposed permit site. The requestor states that the requestor fishes/ boats/ swims along the Portland shoreline or in Ingleside Cove.

Concerns about the application include: the amount of water requested and the intake rate; the amount of suction power required; aquatic life being trapped or killed in the intake process; the number of small larvae that will be sucked up, turned to sludge and deposited in landfills; fishing being badly impaired in the area; amount of salty brine discharged from the proposed desalination plant, mixing with other waste

water from the industries in La Quinta Channel, which cannot be good for fish or people; if fish die, the birds people love to watch will also die or leave the area; possible health effects from the chemicals used in desalination, including pre-treatment; loss of income for neighbors who fish for business; economic harm to the local community; the amount of energy required for the operating pumps and its impact on the power grid; cost and who pay; the locations of intake and discharge.

The Executive Director concludes that the request does not identify a personal justiciable interest and recommends that the request be denied.

#### **41. Suzi Wilder**

The requestor does not own waterfront property. The requestor states that the requestor and her husband own a pier in Corpus Christi bay next to the La Quinta Channel, and they fish, boat, and swim in the bay.

Concerns about the application include: placing an intake pipe in La Quinta Channel; impact on water quality; amount of water requested and diversion rate; aquatic life being trapped in the intake pipe or killed in the process; killing fish larvae will adversely affect fishing and impact the requestor's quality of life.

The Executive Director concludes that the request does not identify a personal justiciable interest and recommends that the request be denied.

#### **42. Daniel Patrick Wilkerson**

The requestor does not own waterfront property. The requestor states that the requestor owns and operates Family Fishing Charters in Ingleside.

Concerns about the application include: the intake for a desalination plant located on the La Quinta Channel, which is a relatively closed area with four small openings leading to Corpus Christi Bay; locating the proposed desalination plant is not good stewardship of the environment; La Quinta Channel is home of industrial refineries with an unknown amount of soil contamination that could potentially make its way to the community's water system; impact on the requestor's business and the tourism industry in the area; locations of intake and discharge; industrial purpose of use of the water; destruction of the ecosystem.

The Executive Director concludes that the request does not identify a personal justiciable interest and recommends that the request be denied.

#### **43. Ira Wesley Williams**

The requestor owns waterfront property that is located approximately 48 miles from the Applicant's proposed permit site. The requestor states that the requestor operates a small private marina and its associated businesses - rental apartments and a restaurant - located in Ingleside on the Bay approximately 4 miles from the Applicant's proposed discharge area.

Concerns about the application include: the proposed desalination plant possibly devastating the requestor's business; the amount of water and it being sucked out of the Bay by Portland, desalinated, and spit back out into La Quinta as salty brine; fatal impact on fish in Ingleside Cove and Eventually the whole Bay; impact on fishing, boating, swimming and other outdoor recreation; growth and propagation of heavy

industry in the area; super saline slurry and increase in rust, corrosion and infrastructure failure at the requestor's marina, and boat owners not wanting to keep their vessels in that kind of water.

The Executive Director concludes that the request does not identify a personal justiciable interest and recommends that the request be denied.

#### **44. Brent Winborne**

The requestor does not own waterfront property.

Concerns about the application include: placing an intake pipe for a desalination plant in La Quinta Channel; the amount of salty brine discharged from the proposed plant, mixing with other waste water from the industries in La Quinta Channel, which cannot be good for fish or people; if fish die, the birds people love to watch will also die or leave the area; industrial use of the water; the requestor believes it is illogical for additional anthropogenic input of hypersaline compounds into a brackish water biosphere, and the requestor states that it is reasonable to assume that not all variables have been thoroughly examined, therefore unforeseen consequences are probable.

The Executive Director concludes that the request does not identify a personal justiciable interest and recommends that the request be denied.

### **V. CONCLUSION**

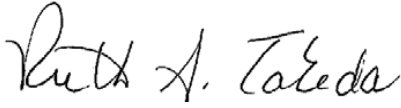
The Executive Director respectfully recommends denying all hearing requests.

Respectfully submitted,

Toby Baker  
Executive Director

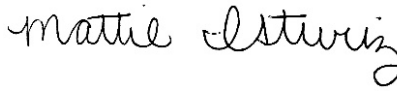
Erin E. Chancellor, Director  
Office of Legal Services

Charmaine Backens, Deputy Director  
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by 

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**CERTIFICATE OF SERVICE**

I certify that on the 27<sup>th</sup> day of June 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.



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