

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

EXECUTIVE SUMMARY

TO: Commissioners DATE: October 9, 2013

THRU: Robert Martinez, Director
Environmental Law Division
Office of Legal Services

FROM: Robin Smith, Attorney
Environmental Law Division
Office of Legal Services

SUBJECT: Executive Summary
Docket No. 2013-1762-WR
San Saba River Suspension Order
TWC §§ 11.053
McCulloch, Menard and Schleicher Counties

Nick Singleton and Pauline Donley made senior calls to the Executive Director on August 19, 2013 and August 21, 2013, respectively, based on their superior domestic and livestock rights on the San Saba River. Under Tex. Water Code § 11.053 and Tex. Admin. Code Chapter 36, the Executive Director, during a time of drought or emergency shortage of water, may issue a temporary Order suspending or adjusting water rights based on a senior (defined in Chapter 36 to include domestic and livestock rights) call for water. The Executive Director issued an Order on August 26, 2013, suspending water rights in the San Saba River watershed with priority dates on or after 1900. Under Tex. Admin. Code § 36.8(b), the Commission must hold a hearing to affirm, modify, or set aside this Order.

Nick Singleton's domestic and livestock right: Mr. Singleton owns real property adjacent to the San Saba River in the Colorado River Basin in Menard County. He uses water from the river for household and garden use. He states that he needs 300 gallons a day at his diversion point for his domestic purposes.

Pauline Donley's domestic and livestock right: Ms. Donley also owns real property adjacent to the San Saba River in the Colorado River Basin in McCulloch County. She diverts and uses water from the river for livestock use. She states that she needs enough water for 50 cows to drink from the river twice a day.

Suspension Rule: Under Chapter 36, the Executive Director may issue an order suspending junior water rights if a senior water right holder makes a call on junior water rights in a time of drought or other emergency shortage of water.

The watershed at Mr. Singleton's and Ms. Donley's diversion points is in a "drought" as defined in 30 Tex. Admin. Code § 36.2(3).

Executive Director's Evaluation: Beginning in early July 2012, TCEQ's San Angelo Regional Office began to receive complaints and comments regarding flow conditions in the San Saba River Basin. In response to conditions in the San Saba and complaints received, TCEQ field investigators began conducting proactive water management in the San Saba River watershed in November 2012. These activities allowed TCEQ to obtain real-time assessment of

potential impacts to surface water and to provide regular flow measurement data and observations of changing conditions at various points in the Basin.

Based on TCEQ region office investigations, the priority date of the call, streamflow conditions, evaporation and channel losses, and the factors in 30 Tex. Admin. Code § 36.5, the Executive Director has determined that suspension of water rights that are junior to 1900 upstream of Mr. Singleton's diversion point could allow Mr. Singleton to divert some of the water that these water rights do not take. This is an amount that could be beneficially used by Mr. Singleton for domestic purposes.

For Ms. Donley, there are two water rights located approximately ten miles upstream of her diversion point. Staff has determined that additional streamflows could be generated at her diversion point if these two rights are suspended. This is an amount that could be beneficially used by Ms. Donley for livestock purposes.

Suspensions: One junior water right upstream of Mr. Singleton is the City of Menard, a municipality. The City is not suspended at this time by the Executive Director due to concerns about public health, safety and welfare. Under Chapter 36, the City has received questionnaires concerning their conservation efforts.

Attached to this Executive Summary are the following:

Attachment A: ED Order dated August 26, 2013.

Attachment B: ED's Evaluation of Mr. Singleton's and Ms. Donley's calls.

Attachment C: Letters to suspended water right holders.

Attachment D: Letters and questionnaires to water right holder not suspended (City of Menard).

Attachment E: Map of Affected Area.

ED Request: Affirm the ED's suspension order.

ATTACHMENT A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



ORDER suspending and adjusting water rights on the San Saba River for a senior call (domestic and livestock riparian call)

The Executive Director of the Texas Commission on Environmental Quality (TCEQ or Commission) received a senior priority call from Nicholas Singleton on August 19, 2013. Mr. Singleton owns property adjacent to the San Saba River in the Colorado River Basin.

On August 21, 2013, Mary Donley made a senior priority call for Ms. Pauline Donley. Ms. Pauline Donley also owns property adjacent to the San Saba River in the Colorado River Basin.

Having considered the facts provided by Mr. Singleton and Ms. Donley, staff investigations and review, and public information, the Executive Director makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Nicholas Singleton owns real property adjacent to the San Saba River in the Colorado River Basin, Menard County, Texas.
2. Mr. Singleton diverts and uses water from the San Saba River for household and garden use, which is defined as "domestic use" in Commission rules.
3. As a riparian right holder, Mr. Singleton has a right to use water from the San Saba River for domestic and livestock purposes under common law. Based on the superiority of domestic and livestock riparian rights under common law, as recognized by Tex. Water Code Sections 11.001, and 11.303(1), Mr. Singleton made a senior call under Tex. Admin. Code Chapter 36, on August 19, 2013.
4. Mr. Singleton is currently unable to divert the amount of water he needs and that he can use under his riparian right due to low flow in the river.
5. Mr. Singleton states that he needs 300 gallons a day at his diversion point for his domestic and livestock purposes.
6. Mr. Singleton has a need for and can beneficially use increased amounts of water in the river that result from suspending upstream junior water rights.
7. Based on water use information submitted by Mr. Singleton, Mr. Singleton's current consumptive demand is 300 gallons a day.

8. Mr. Singleton's priority call location is approximately one mile downstream of potentially suspended water rights.
9. Pauline Donley owns real property adjacent to the San Saba River in the Colorado River Basin, McCulloch County, Texas.
10. Ms. Donley diverts and uses water from the San Saba River for livestock use. She owns 50 cows.
11. As a riparian right holder, Ms. Donley has a right to use water from the San Saba River for livestock purposes under common law. Based on the superiority of domestic and livestock riparian rights under common law, as recognized by Tex. Water Code Sections 11.001, and 11.303(l), Ms. Donley made a senior call under Tex. Admin. Code Chapter 36, on August 21, 2013.
12. Ms. Donley states that she needs enough water for 50 cows to drink twice a day.
13. Ms. Donley has a need for and can beneficially use increased amounts of water in the river that result from suspending upstream junior water rights.
14. Ms. Donley's priority call location is approximately 10 miles downstream of potentially suspended water rights.

Drought:

15. One hundred percent of the watershed at or above the senior call location is in at least moderate drought as classified by the National Drought Mitigation Center.
16. Streamflow at U. S. Geological Survey gaging station 08144500, San Saba River at Menard, Texas, is below the 33rd percentile for the period of record. The period of record for the San Saba River at Menard, Texas gage is October 1, 1915 to present.
17. The precipitation in the watershed or part of the watershed at or above Mr. Singleton's location and Ms. Donley's location was above normal for the months of May and July and below normal for the month of June, as reported in the Texas Climatic Bulletin.
18. The watershed at or above Mr. Singleton's and Ms. Donley's diversion point is in a "drought" as defined in 30 Tex. Admin. Code § 36.2(3).

Suspension and Adjustment of Non- Municipal Water Rights:

19. Based on staff investigations, submitted information, public information and staff review, Executive Director staff has determined that additional streamflows could be generated by suspension or adjustment of non-municipal appropriative water rights with a priority date junior to 1900, above Mr. Singleton's location. Appropriative water rights are subordinate to riparian rights for domestic and livestock use.

20. There are two water rights located approximately ten miles upstream of the Donley priority call location. Both of these water rights authorize reservoirs and have priority dates of 1955 and 1974. The Executive Director's staff has determined that additional streamflows could be generated by suspension or adjustment of these two water rights. Appropriative water rights are subordinate to riparian rights for domestic and livestock use.
21. The appropriative water rights suspended in Findings of Fact No. 19 and 20 are listed in Appendix A, which is incorporated by reference in this order and is part of the order.
22. Appendix B, which is incorporated by reference into this Order and is part of this Order, lists the counties that are covered by the suspended junior water rights in Appendix A.
23. If the water rights in Findings of Fact No. 19, 20, and 21 are suspended or adjusted as described above, the resulting change in streamflow conditions should allow Mr. Singleton and Ms. Donley to divert some of the water that these water rights do not take. This is an amount that could be beneficially used by Mr. Singleton and Ms. Donley.

Suspension and Adjustment of Municipal Water Rights:

24. The City of Menard is the only municipality in the area affected by the call.
25. The City of Menard owns Certificate of Adjudication 14-1803. The City indicates it does not have an alternate source of water.
26. The Executive Director is not suspending the City of Menard's water right for municipal use at this time to prevent human health, safety, and welfare concerns.
27. In this order, the Executive Director is requesting information from the City of Menard concerning its water use, needs for public health and welfare issues, and alternative sources, to determine if the order should be modified to suspend or adjust this water right.

Exceptions to Suspensions:

- 28. If conditions change to cause temporary higher flow levels to occur in the San Saba River watershed, water will be available for suspended water right holders to divert or impound without impairing Mr. Singleton’s senior call because at the higher flow levels the water could not all be beneficially used by Mr. Singleton.
- 29. If conditions change to cause temporary higher flow levels to occur in the San Saba River watershed, water will be available for suspended water right holders to divert or impound without impairing Ms. Donley’s senior call because at higher flow levels the water could not all be beneficially used by Ms. Donley.
- 30. Allowing suspended water right holders to divert or impound surface water under their water rights during certain high flow events will maximize the beneficial use of water, minimize the impact on water right holders, and prevent the waste of water.
- 31. The Executive Director has identified a representative flow gage on the San Saba River operated by the United States Geological Service and a representative flow gage on the San Saba River operated by the Lower Colorado River Authority which may be used to identify temporary higher flow levels. These gages are:

Gage	Affected Area	Streamflow Level (cfs)
USGS Gage 08144500, San Saba River at Menard, Texas,	All water rights on the San Saba River and its tributaries located above the FM 1311 crossing	14
LCRA Hydromet Site Number 1563, San Saba River near Brady, Texas	All water rights on the San Saba River and its tributaries located below the FM 1311 crossing and above the County Road 212 crossing	23

- 32. The 33rd percentile flow is the streamflow value below which 33 percent of the daily streamflow observations for the period of record available for the above-referenced gage on the San Saba River can be found. Flow levels at or above the 33rd percentile are a reasonable level to allow the diversion or impoundment of water because a stream flow level below the 33rd percentile flow is one of the factors under which a “drought” exists under 30 Texas Administrative Code Chapter 36.
- 33. The flow values at the gages in Finding of Fact No. 31 will make water available for suspended water right holders during temporary higher flow levels and not impair Mr. Singleton’s or Ms. Donley’s senior priority call.

34. To ensure that water diverted or impounded during temporary higher flow levels meets the requirements of the suspension and this order, the water right holder must maintain and produce certain information related to gage levels at the time of diversion or impoundment as well as the level of stored water.

Conclusion:

35. This suspension and adjustment order maximizes the beneficial use of water, minimizes the impact on water rights holders, prevents the waste of water, conforms to the order of preferences established by the Texas Water Code § 11.024 to the greatest extent practicable, considers the efforts of the affected water right holders to develop and implement the water conservation plans and drought contingency plans required by Tex. Water Code Chapter 11, and does not require the release of water that is lawfully stored in a reservoir under a valid water right.

CONCLUSIONS OF LAW

1. This order meets the requirements of Texas Water Code Section 11.053 and 30 TAC Chapter 36, including the requirements of Texas Water Code Section 11.053(b)(1)-(3) and 30 TAC Section 36.5(b)(1)-(3) to maximize the beneficial use of water, minimize the impact on water right holders, and prevent the waste of water.
2. Based on the superiority of domestic and livestock riparian rights under common law, as recognized by Tex. Water Code Sections 11.001 and 11.303(l), Mr. Singleton and Ms. Donley have a right to call on water rights that are junior to them if the water can reach their diversion points in an amount that they can beneficially use.
3. Based on Findings of Fact Nos. 1 - 8, due to low flows Mr. Singleton is unable to take water under his riparian right, and suspending the water rights in this order should result in water Mr. Singleton can beneficially use.
4. Based on Findings of Fact Nos. 9 - 14, due to low flows Ms. Donley is unable to take water under her riparian right, and suspending the water rights in this order should result in water she can beneficially use.
5. Based on Finding of Fact Nos. 15-18, the San Saba River in the watershed above Mr. Singleton's location is in a drought as defined by 30 Tex. Admin. Code § 36.2(3).
6. The non-municipal junior water rights in Appendix A should be suspended in order to provide water for Mr. Singleton and Ms. Donley, who have superior riparian rights.
7. The Executive Director may require the junior municipal water rights holder that is not fully suspended, the City of Menard, to 1) provide information demonstrating that it has made reasonable efforts to obtain alternative water supplies to the Executive Director within 14 days of the issuance date of this order, 2) provide its water use data to the Executive Director every 14 days after

that, and 3) provide information on what it has done to identify long-term additional or alternative water sources within 30 days of the issuance date of this order in accordance with 30 TAC § 36.5(c).

8. This Order constitutes notice of the hearing to affected water right holders required by 30 Tex. Admin. Code § 36.8.

NOW THEREFORE, BE IT ORDERED by the Executive Director of the Texas Commission on Environmental Quality that:

1. The following water rights are suspended:

Those water rights listed in Appendix A.

2. In the event of possible temporary higher flow levels in the San Saba River Basin, the water rights listed in Appendix A of this order, any water rights suspended or adjusted by this order, and any subsequently suspended or adjusted water rights may divert and impound water in accordance with the diversion or storage authorization in the water right if the flow level at the following gages in the affected area of the water right at issue is at or above the following streamflow levels:

Gage	Affected Area	Streamflow Level (cfs)
USGS Gage 08144500, San Saba River at Menard, Texas	All water rights on the San Saba River and its tributaries located above the FM 1311 crossing	14
LCRA Hydromet Site Number 1563, San Saba River near Brady, Texas	All water rights on the San Saba River and its tributaries located below the FM 1311 crossing and above the County Road 212 crossing	23

3. If the streamflow levels are below the gage values in the chart in Ordering Provision No. 2 above, the water right holder must immediately cease diverting or impounding water.
4. Any water right holder impounding water under the terms of this order must record the level of water impounded as of the issuance date of this order. The water right holder shall record the streamflow level at the gage when each impoundment is initiated, the time of the gage reading, and the level of impounded water. The water right holder shall record the latter level at the time that diversion and impoundment has ceased based on streamflow conditions outlined in this order or available capacity. The water right holder shall maintain these records for a minimum of two years from the issuance date of this order

and shall provide them to the Executive Director within 48 hours of a written request.

5. Any water lawfully stored prior to suspension or during temporary higher flow levels under the terms of this order are not required to be released.
6. This order shall be in effect until February 21, 2014, unless modified or terminated.
7. This order may be extended once for 90 days.
8. The junior water right not suspended under this order, the City of Menard, must submit the following information to the Executive Director within 14 days of the date of this order concerning efforts to conserve water and obtain addition or alternative sources:
 - 1) water use data indicating the amount, rate of diversion, place and purposes of use on a daily basis must be provided within 14 days of the date of the issuance date this order and every 14 days thereafter during the term of this order;
 - 2) information demonstrating that the water rights holder has made reasonable efforts to obtain alternative water sources within 14 day of the issuance date of this order; and
 - 3) information on what the water rights holder has done to identify long-term additional or alternative water sources within 30 days of the issuance date of this order.
9. This order is subject to modification or termination by the Executive Director based on changed conditions. Changed conditions include, but are not limited to, notification by Mr. Singleton or Ms. Donley that he or she is rescinding or withdrawing his call, determination by the Executive Director that the call is "futile," the Executive Director has information that the call is no longer needed due to higher streamflow, or conditions in the watershed no longer meet the definition of "drought."
10. Nicholas Singleton and Ms. Mary or Pauline Donley shall notify the Executive Director immediately if their need for water can be met without the suspensions. If Mr. Singleton or Ms. Mary or Ms. Pauline Donley notifies the Executive Director in writing that he or she rescinds or withdraws their call, this Order automatically terminates upon receipt by the Executive Director.
11. The commission will hold a hearing to determine whether to affirm, modify, or set aside this Executive Director order at 9:30 a.m. on October 9, 2013, at:

The Texas Commission Environmental Quality
12100 Park 35 Circle, Building E, Room 201S
Austin, Texas
12. This order constitutes notice for that hearing. Any affected water right holder may attend the hearing and provide oral comments.

Issue Date:

8/26/13

A handwritten signature in black ink, appearing to read "Zak Covar", is written over a solid horizontal line. The signature is fluid and cursive.

Zak Covar
Executive Director
Texas Commission on Environmental Quality

Appendix A

Appendix A: Junior Water Rights Suspended by this Order

Water Right Type	Water Right	Owner	County Where Authorization is Located
certificate of adjudication	1765	LIVE OAK PINE ENTERPRISES INC	Schleicher
certificate of adjudication	1766	MOBLEY COMPANY INC	Schleicher
certificate of adjudication	1767	DLH FAMILY LLC	Menard
certificate of adjudication	1768	BOY SCOUTS- CONCHO VALLEY	Menard
certificate of adjudication	1769	HERBERT H MEARS JR	Menard
certificate of adjudication	1770	OLIVIA BEVANS	Menard
certificate of adjudication	1771	OLIVIA BEVANS	Menard
certificate of adjudication	1772	SAMMIE JEANNE ESPY TRUSTEE	Menard
certificate of adjudication	1773	SAMMIE JEANNE ESPY TRUSTEE	Menard
certificate of adjudication	1774	CHARLES A PRATT ET UX	Menard
certificate of adjudication	1774	W L GOODE ET UX	Menard
certificate of adjudication	1775	RR HERRELL PROPERTIES LTD	Menard
certificate of adjudication	1776	CAROLYN DAWSON	Menard
certificate of adjudication	1776	PAULA HUGHES	Menard
certificate of adjudication	1777	MARGARET CARROLL	Menard
certificate of adjudication	1777	ADDISON LEE PFLUGER	Menard
certificate of adjudication	1778	JAMES L POWELL	Menard
certificate of adjudication	1781	JAMES L POWELL	Menard
certificate of adjudication	1783	JOHN & KATHERINE KNIFFEN REV LIVING TRST	Menard
certificate of adjudication	1783	WEST TEXAS REHABILITATION CENTER	Menard
certificate of adjudication	1783	GREGORY S SPENCER	Menard
certificate of adjudication	1783	MAYON GOODRICH NEEL ET AL	Menard
certificate of adjudication	1784	JACQUELYN WHELESS BAKER	Menard
certificate of adjudication	1785	HELEN V S SLAUGHTER ET AL	Menard
certificate of adjudication	1786	JAMES S MCBEE ET UX	Menard
certificate of adjudication	1787	SUSAN H WHELESS	Menard
certificate of adjudication	1788	JAMES W MENZIES	Menard
certificate of adjudication	1789	MENARD IRRIGATION CO	Menard
certificate of adjudication	1792	E A BRADFORD	Menard
certificate of adjudication	1793	GEORGE SULTEMEIER ET UX	Menard
certificate of adjudication	1794	STEVE LEMUEL HOLIFIELD	Menard
certificate of adjudication	1795	THE ESTATE OF WILLIAM A WRIGHT	Menard
certificate of adjudication	1796	LUCINDA E CHESHIER	Menard
certificate of adjudication	1797	STANLEY CLIFTON KOTHMANN ET UX	Menard
certificate of adjudication	1799	CAMERON M & JOANNE C WRIGHT	Menard
certificate of adjudication	1800	BARBARA C GIBSON	Menard
certificate of adjudication	1801	STEVE HELBING	Menard
certificate of adjudication	1802	MENARD COUNTY	Menard
certificate of adjudication	1807	MOBLEY COMPANY INC	Menard
certificate of adjudication	1808	L C DAVIS JR ET UX	Menard
certificate of adjudication	1809	RICHARD F SPENCER ET UX	Menard
certificate of adjudication	1810	AMY LAREE DICKERSON	Menard
certificate of adjudication	1812	HOWELL W PARDUE	Menard
certificate of adjudication	1812	OATUS K GREEN	Menard
certificate of adjudication	1813	SHIRLEY B CHENAULT	Menard
certificate of adjudication	1814	JAMES W MENZIES	Menard
certificate of adjudication	1817	L AND A RANCH COMPANY INC	Menard
certificate of adjudication	1818	RAYMOND C JARAMILLO ET UX	Menard
certificate of adjudication	1818	STAN WILLIAMSON	Menard
certificate of adjudication	1819	DONALD LEE & BOBBY M HUSS	Menard
certificate of adjudication	1820	E JAMES HOLLAND ET AL	Menard

Appendix A: Junior Water Rights Suspended by this Order

Water Right Type	Water Right	Owner	County Where Authorization is Located
certificate of adjudication	1821	ROGER W GILBERT	Menard
certificate of adjudication	1822	JOHN LEE MCWILLIAMS ET AL	Menard
certificate of adjudication	1823	MARVIN RIGGS ET UX	Menard
certificate of adjudication	1823	BILL DOYLE ET UX	Menard
certificate of adjudication	1823	M & M PARTNERSHIP	Menard
certificate of adjudication	1823	WANDA ELLIS	Menard
certificate of adjudication	1823	MCCOLLUM-LEMKE RANCHES LP	Menard
certificate of adjudication	1823	THOMAS HAYRE ET UX	Menard
certificate of adjudication	1824	WILLIAM MENZIES JR ESTATE	Menard
certificate of adjudication	1825	DONALD W RICHARDSON ET UX	Menard
certificate of adjudication	1826	MARK D CLARKE	Menard
certificate of adjudication	1826	THOMAS HAYRE ET UX	Menard
certificate of adjudication	1827	EL SUENO RIVER RANCH LLC	Menard
certificate of adjudication	1828	C MURFF HARDY ET UX	Menard
certificate of adjudication	1829	DOUGLAS PHILLIPS ET UX	Menard
certificate of adjudication	1830	CHAD PHILLIPS ET AL	Menard
certificate of adjudication	1831	LIVE OAK PINE ENTERPRISES INC	Menard
certificate of adjudication	1832	JIMMY L BRAY ET UX	Menard
certificate of adjudication	1833	LONNIE JAMESON ET UX	Menard
certificate of adjudication	1834	LONNIE JAMESON ET UX	Menard
certificate of adjudication	1835	MARTHA ANNE HOLMES ET AL	Menard
certificate of adjudication	1836	BRIAN DAY ET UX	Menard
certificate of adjudication	1836	JERRY DON CRISP	Menard
certificate of adjudication	1837	AMADOR PANDO ET UX	Menard
certificate of adjudication	1838	DOUGLAS PHILLIPS	Menard
certificate of adjudication	1839	GARY B BREWER SR ET AL	Menard
certificate of adjudication	1841	JERRY M BAKER ET UX	Menard
certificate of adjudication	1841	ASHLEY MARTIN	Menard
certificate of adjudication	1842	MARVIN F SHURLEY ET UX	Menard
certificate of adjudication	1843	GRAY T V RANCH LTD	McCulloch
certificate of adjudication	1844	DWIGHT P WILLIAMS ET AL	McCulloch

Appendix B

Appendix B: Counties Where Suspended Water Rights are Located

County
McCulloch
Menard
Schleicher

ATTACHMENT B

TCEQ Interoffice Memorandum

To: Commissioners

Date: August 25, 2013

Thru: Bridget Bohac, Chief Clerk
Zak Covar, Executive Director
L'Oreal W. Stepney, P.E., Deputy Director, Office of Water
Ramiro Garcia, Jr., Deputy Director, Office of Compliance and Enforcement
Kellye Rila, Director, Water Availability Division
Ron Ellis, Manager, Water Rights Permitting and Availability Section

From: Kathy Alexander, Ph.D., Technical Specialist, Water Rights Permitting and Availability Section

Background: The Executive Director (ED) received priority calls from two domestic and livestock users on the San Saba River below the City of Menard on August 19, 2013. Dr. Thomas indicates that he needs approximately 1200 gallons per day to water his cattle (0.0019 cfs). Nicholas Singleton indicated he needs 300 gallons per day (.0005 cfs) for domestic and livestock use. The ED also received a priority call from Mary Donley on August 21, 2013. Ms. Donley indicates that she needs water to water her livestock.

Drought Definition: Staff reviewed conditions in the San Saba River watershed and determined that conditions in the watershed meet the definition of drought in 30 TAC §36.2(3).

30 TAC §36.2(3)(A): One hundred percent of the watershed at or above the senior call locations is in at least moderate drought as classified by the National Drought Mitigation Center.

30 TAC §36.2(3)(B): The 33rd percentile flow at U. S. Geological Survey gaging station 08144500, San Saba River at Menard, Texas, based on a period of record from October 1, 1915 to present, is 14 cfs. Average streamflow for the period July 21, 2013 to August 19, 2013 was 3.6 cfs. Average streamflow for the week of August 13, 2013 to August 19, 2013 was 3.1 cfs.

30 TAC §36.2(3)(C): The precipitation in the watershed for the preceding three month period, as reported in the Texas Climactic Bulletin, was above normal for the months of May and July and below normal for the month of June.

Field Investigations: TCEQ Regional Office staff conducted field investigations in the San Saba River watershed on August 19, 2013 and August 21, 2013. Staff took flow measurements (Table 1) and photographs at each location.

Table 1. Summary of Field Investigations

Date	August 19, 2013	August 21, 2013
5 Mile Crossing	0.28 cfs	
10 Mile Crossing	0	
Singleton Property	0	
FM 1311	0.0	
Blockhouse Ranch	not measurable	
Low water Crossing on BHR	0	
County Road 214 Bridge		0.15 cfs
Donley Property		.03 cfs

Determination: Staff reviewed all water rights above the locations of the calls, separated them into date ranges and compiled permitted diversion amounts and rates, available actual water use during the previous 10-year period (which included the 2009 and 2011 droughts), and estimated loss rates to determine a suspension date that could potentially result in sufficient flows passing the location of the call while impacting the smallest number of water rights. The Singleton and Thomas priority call locations are approximately one and thirteen miles downstream of potentially suspended water rights. The Donley priority call location is approximately 10 miles downstream of potentially suspended water rights.

Loss Adjustment and Declining Flow Trends: Based on datasets used for water rights permitting, loss rates in the watershed are very small, around 1%. However, based on review of watersheds with similar precipitation patterns and current river conditions, as evidenced by the field investigations discussed above, staff determined that an additional 60% adjustment factor to the potentially available flows would be a conservative assumption of the amount of flow that could actually make it to the priority call location.

Water Use Adjustment: Staff reviewed reported water use data for all water rights in the San Saba River watershed during drought conditions. During a previous drought in 2009, the reported diversions for water rights in the San Saba River watershed were 26% of the authorized amount. Conditions in 2009 were similar to the current conditions. Therefore, in order to provide a conservative estimate, staff used a factor of 26% to adjust diversion rates to reflect water usage during drought conditions.

In this watershed, domestic and livestock users are likely using water. Because permits are not required for these superior uses, there is no way to determine actual usage for these water users.

Calculations (for Singleton and Thomas calls):

A # of Water Rights	B Priority Date	C Max. Authorized Diversion Rate (cfs) ¹	D Cumulative Diversion Rate	E Cumulative Diversion Rate Above the Menard Gage	F Cumulative Diversion Rate Below the Menard Gage	G Adjustment for Declining Flow Trends and Intervening Municipal Use ²	H Adjustment for Estimated Actual Diversion Rate (cfs) ³	I Potentially Available Flows After Accounting for Senior Diversions
16	1950- 1976	22	22	8	14	3.8	0.98	0
6	1920- 1949	16	38	16	22	10.2	2.7	0
42	1900- 1919	94	132	70	62	47.8	12.4	8.5
13	1882- 1899	37	169	84	85	62	16.3	16.3

¹ The maximum authorized diversion rate in Column C is based on the actual diversion rate in each permit. Note that diversion rates for eight permits that divert from reservoir storage were reduced by 75% to account for low storage conditions.

² Column G is calculated by applying the 60% loss factor to the potentially available flows and deducting 5 cfs to account for water that may be impounded under Certificate of Adjudication 14-1803.

³ Column H is calculated by applying the 26% adjustment for current use to the adjusted potentially available flows in Column G.

⁴ Note that the values in this table are rounded numbers.

There are two water rights located approximately ten miles upstream of the Donley priority call location. Both of these water rights authorize reservoirs and have priority dates of 1955 and 1974. Although staff's field investigation indicates very low flows and pools in the vicinity of this location, these flows are likely the result of a rainfall event in mid-August. Measured streamflows at the San Saba River at Brady gage were zero before and after this event.

Municipal Water Right

The City of Menard's Certificate of Adjudication 14-1803 authorizes diversion of municipal water from the river and from shallow underflow wells along the river. The certificate authorizes a reservoir that enhances the diversion capability of the City's wells. The certificate has a special condition requiring the City to pass flows from the reservoir to downstream domestic and livestock users. However, requiring the City to pass all inflows would likely impair the City's ability to divert from their shallow wells. There is no available data on reservoir levels for the City's small reservoir. Therefore, staff recommends that the City's certificate not be suspended at this time. Pursuant to 30 TAC §36.5(c), the ED will be monitoring and collecting information on the City's water use if water rights are suspended.

Diversions Under High Streamflow Conditions

High flow events can occur during generally dry conditions as a result of periodic rainfall. At these higher flow levels, Mr. Singleton and Ms. Donley could not beneficially use all of the water in the river. Allowing suspended water right holders to divert and impound surface water under their water right during certain high flow events will maximize the beneficial use of water, minimize the impact on water right holders, and prevent the waste of water.

The 33rd percentile flow is the streamflow value below which 33 percent of the daily streamflow observations for the period of record available for USGS gage 08144500, San Saba River at Menard, Texas, and USGS gage 08144600, San Saba River at Brady/LCRA Hydromet Site Number 1563, San Saba River near Brady can be found. Flows at or above the 33rd percentile are at a reasonable level to allow the diversion and impoundment of water because a streamflow level below the 33rd percentile flow indicates drought conditions. The flow values in the table below will make water available for suspended water right holders during temporary high flow levels and not impair the senior calls.

Gage	Affected Area	Streamflow Level (cfs)
USGS Gage 08144500, San Saba River at Menard, Texas,	All water rights on the San Saba River and its tributaries located above the FM 1311 crossing	14
LCRA Hydromet Site Number 1563, San Saba River near Brady, Texas	All water rights on the San Saba River and its tributaries located below the FM 1311 crossing and above the County Road 212 crossing	23

Conclusion:

Staff's field investigations indicate some flows in the river; however, flows are considerably lower at more downstream locations. Photographic evidence from staff's field investigations indicates dry conditions throughout the watershed. Because of these dry conditions and uncertainty regarding intervening domestic and livestock users, it is not likely that suspension of water rights would result in flows at the location of Mr. Thomas' senior call. Evidence from staff's field investigations and information at intervening locations indicates the presence of dry stretches of the river and isolated pools. Suspension of water rights may not generate sufficient flow to maintain connectivity between these pools at the downstream location and result in increased river flow. Therefore, Mr. Thomas is not likely to get enough water to beneficially use.

This review indicates that a small amount of water would likely be generated at Mr. Singleton's senior call location if water rights junior to 1900 in the watershed above this

location are suspended. In addition, a small amount of water could be generated during and after small rainfall events at Ms. Donley's location if water rights were suspended. However, the actual amount of available streamflow could be less, because dry conditions in the watershed, as evidenced from staff's field investigation, may further reduce any streamflows generated from suspension or adjustment of water rights. Furthermore, any increased flows that could possibly result from suspensions would not be maintained for an appreciable length of time absent rainfall events.

Staff recommends suspending water rights junior to 1900 above Mr. Singleton's location, two water rights above Ms. Donley's location, and including provisions in the Order to allow diversions and impoundment of water by suspended water rights during specific high rainfall events.

ATTACHMENT C

Bryan W. Shaw, Ph.D., *Chairman*
Carlos Rubinstein, *Commissioner*
Toby Baker, *Commissioner*
Zak Covar, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 26, 2013

CERTIFIED MAIL

Re: Water Rights Suspensions in the San Saba River Watershed of the Colorado River Basin

Dear Water Right Holder:

By letter dated April 5, 2013, you were alerted that the Texas Commission on Environmental Quality (TCEQ) may have to suspend or adjust water rights on a priority basis due to drought conditions. The TCEQ has received multiple priority calls on surface water from domestic and livestock water users in the San Saba River watershed of the Colorado River Basin. In accordance with the Texas Water Code (TWC), §5.013(a)(1), the TCEQ is responsible for enforcing water rights, which requires protecting senior and superior surface water rights, and must take action in response to the priority call.

With no immediate relief forecasted, the TCEQ is now suspending or adjusting certain diversions in the San Saba River watershed. Suspended or adjusted water rights include water right permits with a priority date of January 1, 1900 and later and term water right permits as indicated in the enclosed order. Temporary water right permits have also been suspended. Exempt domestic and livestock diversions are not subject to this suspension because they are superior in priority to permitted rights.

At this time, **you are directed to immediately suspend all diversions until further notice.** The enclosed order allows suspended water rights to divert and impound water when flows at certain United States Geological Survey (USGS) gages are above specific levels are temporarily at higher levels. In addition, during this suspension, you may continue to divert your legally stored water, under the terms and conditions of your water right; however, new inflows to impoundments must be passed downstream in order to meet senior or superior needs.

A hearing before the Commission on whether to affirm, modify, or set aside the suspension order is scheduled for consideration at the Commission Agenda on October 9, 2013, at 9:30 a.m. at 12100 Park 35 Circle, Building E, Room 201S, Austin, Texas 78753. A copy of the suspension order is enclosed for your reference.

The TCEQ continues to monitor the situation closely. Should senior or superior needs not be fulfilled as a result of these suspensions, please be aware that TCEQ may take additional actions to protect the priority call. If conditions improve, we may be able to lift the suspensions.

You may find additional drought information on TCEQ's drought web page at: <http://www.tceq.texas.gov/response/drought> or by contacting the TCEQ Drought Hotline at 1-800-447-2827. You may also contact your TCEQ Regional Office or Ms. Jaime Nolasco, Water

Water Right Holder

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August 26, 2013

Rights Liaison, at the TCEQ Central Office in Austin at 512-239-1503 should you have additional questions on this matter.

Sincerely,



Zak Covar
Executive Director

Enclosure

ATTACHMENT D

Bryan W. Shaw, Ph.D., *Chairman*
Carlos Rubinstein, *Commissioner*
Toby Baker, *Commissioner*
Zak Covar, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 26, 2013

CERTIFIED MAIL

City of Menard
P.O. Box 145
Menard, Texas 76859

Re: Certificate of Adjudication No. 14-1803

By letter dated April 5, 2013, you were alerted that the Texas Commission on Environmental Quality (TCEQ) may have to suspend or adjust water rights on a priority basis due to drought conditions. The TCEQ has received multiple priority calls on surface water from domestic and livestock water users in the San Saba River watershed of the Colorado River Basin. In accordance with the Texas Water Code (TWC), §5.013(a)(1), the TCEQ is responsible for enforcing water rights, which requires protecting senior and superior surface water rights, and must take action in response to the priority call.

With no immediate relief forecasted, the TCEQ is now suspending or adjusting certain diversions in the San Saba River watershed. Suspended or adjusted water rights include water right permits with a priority date of January 1, 1900 and later and term water right permits as indicated in the enclosed order. Temporary water right permits have also been suspended. Exempt domestic and livestock diversions are not subject to this suspension because they are superior in priority to permitted rights.

You recently provided information under 30 TAC Chapter 36.5 indicating that you are using your surface water under your water right for municipal purposes.

Based on your response, **your water right is not suspended at this time** even though all or part of your water right is junior to the priority call. However, pursuant to 30 TAC Chapter 36.5, we are requiring that you submit water use data indicating the amount, rate of diversion, place and purposes of use of water on a daily basis.

Please submit this information, to Mr. Jaime Nolasco, TCEQ Water Rights Liaison, by electronic mail at jaime.nolasco@tceq.texas.gov, or by facsimile to 512-239-2249, within 14 days of the date of this letter, with follow-up information provided to TCEQ every 14 days thereafter. Failure to provide this information may result in suspension or adjustment of your water right. You have already provided information on your alternative water sources and long term additional supplies, so you do not have to provide that information again unless it has changed.

A hearing before the Commission will be held to affirm, modify, or set aside the suspension order. This matter is scheduled for consideration at the Commission Agenda on October 9, 2013, at 9:30 a.m. at 12100 Park 35 Circle, Building E, Room 201S, Austin, Texas 78753.

City of Menard
Page 2
August 26, 2013

The TCEQ continues to monitor the situation closely. Should senior or superior needs not be fulfilled as a result of these suspensions, please be aware that TCEQ may take additional actions to protect the priority call. If conditions improve, we may be able to lift the suspensions.

You may find additional drought information on TCEQ's drought web page at: <http://www.tceq.texas.gov/response/drought> or by contacting the TCEQ Drought Hotline at 1-800-447-2827. You may also contact your TCEQ Regional Office or Mr. Jaime Nolasco at the TCEQ Central Office in Austin at 512-239-1503 should you have additional questions on this matter.

Sincerely,



Zak Covar
Executive Director
Texas Commission on Environmental Quality

Enclosure

TCEQ – Questions for Junior Municipal Water Right Holders Affected by a Priority Call

A. Contact Information

1. What is the name of the water right holder?
City of Menard
2. What is the contact information (phone number, address, email) for the primary contact? Sharon L. Key, P.O. Box 145, Menard, Texas 76859 (with assistance of (325) 396-4706 menards4u@yahoo.com Rhome Hill)
3. If the water right provides source water for a public water system (PWS), what is the number of active connections currently served by the PWS?
786
4. In what county is the water right located?
Menard, County
5. Who is the primary contact? Phone number, address, email?
Judge Richard Cordes, P.O. Box 1038, Menard, Texas 76859, (325) 396-4789
6. If a public water system, how many connections do you have?
County is not in charge of a water system.

B. Sources of Water and Use of Water

1. Do you have alternate sources of water? Do you have future plans to acquire additional sources? No alternate source of water, but funding in place to drill a test well in the Hickory. Should be completed by end of this year.
2. What amount of water have you used under your permit(s) to date this year by authorized use? Include the amount and place of use of all surface water diverted under your water right The City has used 131 acre feet for domestic use.
3. How much storage do you currently have? How many days supply is it?
Elevated: 375,000, Ground storage: 250,000 (water plant), Clearwell: 145,000 (water plant) Have approx. 4 day supply.
4. If you have a well, how deep is it? What is your pumping capacity? Can you access additional supply by drilling deeper? We currently have 4 wells at a 25' (depth) average. Our pumping capacity is 650 GPM. It is very questionable if drinking water could be obtained.
5. If applicable: What other PWSs are located nearby?
The closest PSW is in Eden, Texas, 22 miles in distance.

6. Do you have a water supply contract? Do you have a contract to purchase raw or potable water from a water supplier? If the answer is "yes," then please state if it is raw or potable and with whom you have the contract.

N/A

C. System Needs

1. What is the minimum amount your system/customers need for drinking water, fire protection, hospital use, necessary domestic uses, and power generation? Please answer in cubic feet per second (cfs), acre-feet, or another measurement method as appropriate. 160,000 GPD
2. What is your average daily usage?
226,000
3. How many days of water do you have remaining?
If water stops running over the channel dam, our supply will be in trouble.
4. How have any mechanical issues been addressed?
One well is out of service at this time, we are in process of completing repairs.
5. What is your diversion rate from the river or stream? (Be sure to include the units i.e., gpm, cfs, or mgd)
157 GPM

D. Other Information

1. If applicable, provide a reservoir pass through plan to demonstrate compliance with the call. N/A
2. What efforts have you made to conserve water?
Annual city wide leak detection , have been funded for an AMR system to be completed this year.

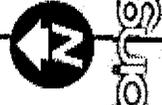
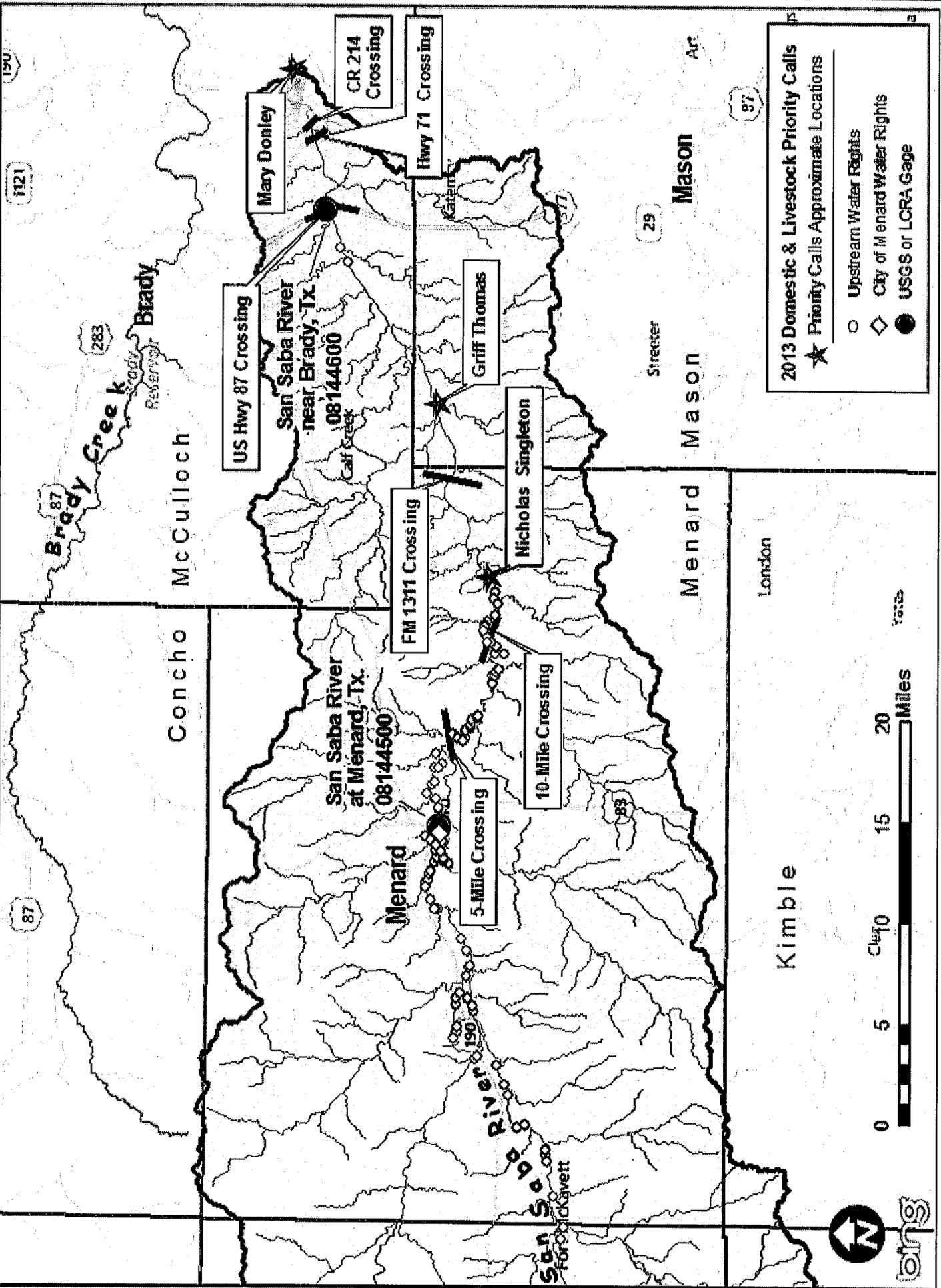
Have you enacted your drought contingency plan? Voluntary or mandatory restrictions? Voluntary
3. Please indicate the stage of drought contingency plan implementation, and describe the restrictions that are in place. Indicate whether and how these restrictions are being enforced. According to our triggers for implementation, we are at the voluntary stage. Citizens are complying by conserving water and the community keeps track of the water situation by TV, paper and radio.

4. Please provide any additional information you believe will assist us in our evaluation.

Population:	1470	1470
use per capita:	<u>100</u>	<u>160</u>
	147,100 GPD	235,360 GPD

ATTACHMENT E

Priority Calls on the San Saba River - August 23, 2013



190

3121

87

283

29

97

87

190

87

Braddy Creek Reservoir

Concho

McCulloch

Menard

Menard

Menard

Menard

Menard

Menard

Menard

Menard

US Hwy 87 Crossing

San Saba River near Brady, Tx

08144600

Calf Creek

Mary Donley

CR 214 Crossing

Hwy 71 Crossing

FM 1311 Crossing

5-Mile Crossing

10-Mile Crossing

Griff Thomas

Nicholas Singleton

Siretter

Mason

Menard

Mason

Mason

Mason

Mason

Mason

Mason

Mason

Mason

London

Kimble

0 5 10 15 20 Miles

0 5 10 15 20 Yards

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