

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 44989  
Jose Flores Cabazos a/k/a Jose Flores Cavazos  
RN105922645  
Docket No. 2012-1879-PWS-E

**Order Type:**

Default Order

**Media:**

PWS

**Small Business:**

Yes

**Location(s) Where Violation(s) Occurred:**

17601 County Road 2220, Lubbock, Lubbock County

**Type of Operation:**

public water system

**Other Significant Matters:**

Additional Pending Enforcement Actions: 2013-1015-PWS-E (EDFARP filed August 22, 2013)  
Past-Due Penalties: None  
Past-Due Fees: \$237.80 (PHS fees - Account No. 91520269)  
Other: None  
Interested Third-Parties: None

**Texas Register Publication Date:** October 25, 2013

**Comments Received:** None

**Penalty Information**

**Total Penalty Assessed:** \$214

**Total Paid to General Revenue:** \$0

**Total Due to General Revenue:** \$214

**Compliance History Classifications:**

Person/CN – Satisfactory  
Site/RN – Satisfactory

**Major Source:** No

**Statutory Limit Adjustment:** None

**Applicable Penalty Policy:** September 2011

**Investigation Information**

**Complaint Date(s):** N/A  
**Date(s) of Investigation:** February 24, 2012; August 17, 2012  
**Date(s) of NOV(s):** March 9, 2012  
**Date(s) of NOE(s):** September 4, 2012; July 19, 2013

**Violation Information**

1. Failed to submit engineering plans and specifications and receive written approval prior to beginning construction of a new public water system [TEX. HEALTH & SAFETY CODE § 341.035(c) and 30 TEX. ADMIN. CODE § 290.39(e)(1) and (h)(1)].
2. Failed to operate the Facility under the direct supervision of a water works operator who holds a Class "D" or higher license [TEX. HEALTH & SAFETY CODE § 341.033(a) and 30 TEX. ADMIN. CODE § 290.46(e)(4)(A)].

**Corrective Actions/Technical Requirements**

**Corrective Action(s) Completed:**  
None

**Technical Requirements:**

1. Within 30 days, commence operating the Facility under the direct supervision of a water works operator who holds a Class "D" or higher license.
2. Within 60 days, submit accurate, up-to-date, and detailed as-built plans, specifications, and engineering reports for the Facility for review and approval.
3. Within 180 days, obtain approval of the as-built plans and specifications for the Facility.
4. Submit written certification to demonstrate compliance:
  - a. Within 45 days for Technical Requirement No. 1;
  - b. Within 75 days for Technical Requirement No. 2; and
  - c. Within 195 days for Technical Requirement No. 3.

**Litigation Information**

**Date Petition(s) Filed:** June 13, 2013; July 19, 2013  
**Date Green Card(s) Signed:** Unclaimed; July 22, 2013  
**Date Answer(s) Filed:** N/A

**Contact Information**

**TCEQ Attorneys:** Elizabeth Lieberknecht, Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400  
Garrett Arthur, Public Interest Counsel, (512) 239-6363  
**TCEQ Enforcement Coordinator:** Jim Fisher, Enforcement Division, 512-239-2537  
**TCEQ Regional Contact:** Gary Shipp, Lubbock Regional Office, 806-796-7092  
**Respondent:** Jose Flores Cabazos, 5210 County Road 7360, Lubbock, Texas 79424  
**Respondent's Attorney:** N/A



# Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

<b>DATES</b>	<b>Assigned</b>	10-Sep-2012	<b>Screening</b>	14-Sep-2012	<b>EPA Due</b>	
	<b>PCW</b>	14-May-2013				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Jose Flores Cabazos a/k/a Jose Flores Cavazos
<b>Reg. Ent. Ref. No.</b>	RN105922645
<b>Facility/Site Region</b>	2-Lubbock
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	44989	<b>No. of Violations</b>	2
<b>Docket No.</b>	2012-1879-PWS-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Public Water Supply	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Jim Fisher
		<b>EC's Team</b>	Enforcement Team 2
<b>Admin. Penalty \$ Limit Minimum</b>	\$50	<b>Maximum</b>	\$1,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$200
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### ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

<b>Compliance History</b>	7.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$14
<b>Notes</b>	Enhancement for one NOV with a same/similar violation and one dissimilar NOV.		
<b>Culpability</b>	No 0.0% Enhancement	<b>Subtotal 4</b>	\$0
<b>Notes</b>	The Respondent does not meet the culpability criteria.		
<b>Good Faith Effort to Comply Total Adjustments</b>		<b>Subtotal 5</b>	\$0
<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
Total EB Amounts	\$545	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$5,186		

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$214
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

<b>Notes</b>	
	<b>Final Penalty Amount</b>
	\$214

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$214
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<b>DEFERRAL</b>	0.0% Reduction	<b>Adjustment</b>	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

<b>Notes</b>	Deferral not offered for non-expedited settlement.
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<b>PAYABLE PENALTY</b>	\$214
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**Screening Date** 14-Sep-2012

**Docket No.** 2012-1879-PWS-E

**PCW**

**Respondent** Jose Flores Cabazos a/k/a Jose Flores Cavazos

*Policy Revision 3 (September 2011)*

**Case ID No.** 44989

*PCW Revision August 3, 2011*

**Reg. Ent. Reference No.** RN105922645

**Media [Statute]** Public Water Supply

**Enf. Coordinator** Jim Fisher

### Compliance History Worksheet

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	1	5%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%

*Please Enter Yes or No*

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)** 7%

>> **Repeat Violator (Subtotal 3)**

No

**Adjustment Percentage (Subtotal 3)** 0%

>> **Compliance History Person Classification (Subtotal 7)**

Satisfactory Performer

**Adjustment Percentage (Subtotal 7)** 0%

>> **Compliance History Summary**

**Compliance History Notes**

Enhancement for one NOV with a same/similar violation and one dissimilar NOV.

**Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7)** 7%

>> **Final Compliance History Adjustment**

**Final Adjustment Percentage \*capped at 100%** 7%

Screening Date 14-Sep-2012

Docket No. 2012-1879-PWS-E

PCW

Respondent Jose Flores Cabazos a/k/a Jose Flores Cavazos

Policy Revision 3 (September 2011)

Case ID No. 44989

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN105922645

Media [Statute] Public Water Supply

Enf. Coordinator Jim Fisher

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 290.39(e)(1) and (h)(1) and Tex. Health & Safety Code § 341.035(c)

Violation Description

Failed to submit engineering plans and specifications and receive written approval prior to beginning construction of a new public water system. Specifically, the Respondent was operating a public water system that meets the criteria of a community water system without written approval of plans and specifications.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0.0%
Potential				

>> Programmatic Matrix

Falsification	Harm			Percent
	Major	Moderate	Minor	
	x			5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$950

\$50

Violation Events

Number of Violation Events 1 Number of violation days 28

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$50

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$50

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$532

Violation Final Penalty Total \$54

This violation Final Assessed Penalty (adjusted for limits) \$54

# Economic Benefit Worksheet

**Respondent** Jose Flores Cabazos a/k/a Jose Flores Cavazos  
**Case ID No.** 44989  
**Req. Ent. Reference No.** RN105922645  
**Media** Public Water Supply  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction	\$5,000	24-Feb-2012	1-Sep-2013	1.52	\$25	\$507	\$532
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs: The delayed cost includes the estimated amount to have a professional engineer prepare and submit as-built plans and specifications for the existing Facility to the TCEQ for review and approval, calculated from the first date of the investigation when the violation was first documented to the estimated date of compliance.

### Avoided Costs ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs:

Approx. Cost of Compliance	\$5,000	<b>TOTAL</b>	\$532
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**Screening Date** 14-Sep-2012 **Docket No.** 2012-1879-PWS-E  
**Respondent** Jose Flores Cabazos a/k/a Jose Flores Cavazos  
**Case ID No.** 44989  
**Reg. Ent. Reference No.** RN105922645  
**Media [Statute]** Public Water Supply  
**Enf. Coordinator** Jim Fisher

PCW Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

PCW

**Violation Number**

**Rule Cite(s)** 30 Tex. Admin. Code § 290.46(e)(4)(A) and Tex. Health & Safety Code § 341.033(a)

**Violation Description** Failed to operate the Facility under the direct supervision of a water works operator who holds a Class "D" or higher license.

**Base Penalty**

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="15.0%"/>
	Potential	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0.0%"/>

**Matrix Notes** Failure to operate the system under the direct supervision of a licensed water works operator may result in poor system operation which could expose the customers of the Facility to contaminants, which would exceed levels that are protective of human health.

**Adjustment**

Violation Events

Number of Violation Events   Number of violation days

*mark only one with an x*

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text" value="x"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

**Violation Base Penalty**

One monthly event is recommended, calculated from the date of the record review, August 17, 2012, to the date of screening, September 14, 2012.

Good Faith Efforts to Comply

Reduction

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input type="text" value="x"/>	(mark with x)

**Notes** The Respondent does not meet the good faith criteria for this violation

**Violation Subtotal**

Economic Benefit (EB) for this violation

Statutory Limit Test

**Estimated EB Amount**  **Violation Final Penalty Total**

**This violation Final Assessed Penalty (adjusted for limits)**

## Economic Benefit Worksheet

**Respondent** Jose Flores Cabazos a/k/a Jose Flores Cavazos  
**Case ID No.** 44989  
**Req. Ent. Reference No.** RN105922645  
**Media** Public Water Supply  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$186	24-Feb-2012	1-Mar-2013	1.02	\$1	\$13	\$13
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs: The delayed cost includes the estimated amount to obtain a Class "D" license, calculated from the date of the investigation when the violation was first documented to the estimated date of compliance.

### Avoided Costs ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs:

Approx. Cost of Compliance	\$186	<b>TOTAL</b>	\$13
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# Compliance History Report

**PUBLISHED** Compliance History Report for CN603667015, RN105922645, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

**Customer, Respondent, or Owner/Operator:** CN603667015, Jose Flores Cabazos  
**Classification:** SATISFACTORY **Rating:** 4.00  
a/k/a Jose Flores Cavazos  
**Regulated Entity:** RN105922645, CABAZOS HOMES **Classification:** SATISFACTORY **Rating:** 4.00  
**Complexity Points:** 0 **Repeat Violator:** NO  
**CH Group:** 14 - Other  
**Location:** 17601 COUNTY ROAD 2220 , LUBBOCK COUNTY, TEXAS  
**TCEQ Region:** REGION 02 - LUBBOCK

**ID Number(s):** PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 1520269  
**Compliance History Period:** September 01, 2007 to August 31, 2012 **Rating Year:** 2012 **Rating Date:** 09/01/2012  
**Date Compliance History Report Prepared:** May 14, 2013  
**Agency Decision Requiring Compliance History:** Enforcement  
**Component Period Selected:** September 14, 2007 to September 14, 2012  
**TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.**  
**Name:** Jim Fisher **Phone:** (512) 239-2537

## Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? YES
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO
- 3) If YES for #2, who is the current owner/operator? N/A
- 4) If YES for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If YES, when did the change(s) in owner or operator occur? N/A

## Components (Multimedia) for the Site Are Listed in Sections A - J

- A. Final Orders, court judgments, and consent decrees:** N/A
- B. Criminal convictions:** N/A
- C. Chronic excessive emissions events:** N/A
- D. The approval dates of investigations (CCEDS Inv. Track. No.):** N/A

### **E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):**

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

- 1 Date: 03/09/2012 (990029) CN603667015**  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter D 290.39(e)(1)  
30 TAC Chapter 290, SubChapter D 290.39(h)(1)  
5A THSC Chapter 341, SubChapter A 341.035(c)  
Description: Failed to submit engineering plans and specifications and receive written approval prior to beginning construction of a new public water supply system.
- 2 Date: 05/18/2012 (1006545)**  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 330, SubChapter A 330.15(c)  
Description: Failure to prevent the disposal of municipal solid waste at an unauthorized facility.

- F. Environmental audits:** N/A
- G. Type of environmental management systems (EMSs):** N/A
- H. Voluntary on-site compliance assessment dates:** N/A
- I. Participation in a voluntary pollution reduction program:** N/A
- J. Early compliance:** N/A
- Sites Outside of Texas:** N/A

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# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
JOSE FLORES CABAZOS A/K/A  
JOSE FLORES CAVAZOS;  
RN105922645**

§  
§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER**

**DOCKET NO. 2012-1879-PWS-E**

At its \_\_\_\_\_ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition, filed pursuant to TEX. HEALTH & SAFETY CODE ch. 341 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Jose Flores Cabazos a/k/a Jose Flores Cavazos ("Respondent").

The Commission makes the following Findings of Fact and Conclusions of Law:

### **FINDINGS OF FACT**

1. Respondent owns and operates a public water system located at 17601 County Road 2220 in Lubbock, Lubbock County, Texas (the "Facility"). The Facility provides water for human consumption, has approximately 11 service connections, and serves at least 25 people per day for at least 60 days per year. As such, the Facility is a public water system as defined in 30 TEX. ADMIN. CODE § 290.38(66).
2. During an investigation conducted on February 24, 2012, and a record review conducted on August 17, 2012, a TCEQ Lubbock Regional Office investigator documented that Respondent:
  - a. Failed to submit engineering plans and specifications and receive written approval prior to beginning construction of a new public water system. Specifically, Respondent was operating a public water system that meets the criteria of a community water system without written approval of plans and specifications; and
  - b. Failed to operate the Facility under the direct supervision of a water works operator who holds a Class "D" or higher license.
3. Respondent received notice of the violations on or about July 22, 2013.
4. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Jose Flores Cabazos a/k/a Jose Flores Cavazos" (the "EDPRP") in the TCEQ Chief Clerk's office on June 13, 2013.
5. The EDPRP was mailed to Respondent's last known address on June 13, 2013, via certified mail, return receipt requested, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed."
6. The Executive Director re-filed the EDPRP in the TCEQ Chief Clerk's office on July 19, 2013.

7. By letter dated July 19, 2013, sent to Respondent's last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. According to the return receipt "green card," Respondent received notice of the EDPRP on July 22, 2013, as evidenced by the signature on the card.
8. More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing.

#### **CONCLUSIONS OF LAW**

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 341 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2.a., Respondent failed to submit engineering plans and specifications and receive written approval prior to beginning construction of a new public water system, in violation of TEX. HEALTH & SAFETY CODE § 341.035(c) and 30 TEX. ADMIN. CODE § 290.39(e)(1) and (h)(1).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to operate the Facility under the direct supervision of a water works operator who holds a Class "D" or higher license, in violation of TEX. HEALTH & SAFETY CODE § 341.033(a) and 30 TEX. ADMIN. CODE § 290.46(e)(4)(A).
4. As evidenced by Findings of Fact Nos. 4 through 7, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.104(b)(1).
5. As evidenced by Finding of Fact No. 8, Respondent failed to file a timely answer as required by TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director.
6. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
7. An administrative penalty in the amount of two hundred fourteen dollars (\$214.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. HEALTH & SAFETY CODE § 341.049.
8. Tex. Water Code §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

#### **ORDERING PROVISIONS**

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Respondent is assessed an administrative penalty in the amount of two hundred fourteen dollars (\$214.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here.

2. The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Jose Flores Cabazos a/k/a Jose Flores Cavazos; Docket No. 2012-1879-PWS-E" to:

Financial Administration Division, Revenues Section  
Texas Commission on Environmental Quality  
Attention: Cashier's Office, MC 214  
P.O. Box 13088  
Austin, Texas 78711-3088

3. Respondent shall undertake the following technical requirements:

- a. Within 30 days after the effective date of this Order, Respondent shall commence operating the Facility under the direct supervision of a water works operator who holds a Class "D" or higher license, in accordance with 30 TEX. ADMIN. CODE § 290.46;
- b. Within 45 days after the effective date of this Order, Respondent shall submit written certification, in accordance with Paragraph 3.g., below, to demonstrate compliance with Ordering Provision No. 3.a.;
- c. Within 60 days after the effective date of this Order, Respondent shall submit accurate, up-to-date, and detailed as-built plans, specifications, and engineering reports for the Facility for review and approval, in accordance with 30 TEX. ADMIN. CODE § 290.39. The plans, specifications, and reports shall be submitted to:

Water Supply Division  
Utility Creation & Plan Review Team, MC 153  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

Respondent shall respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the as-built plans, specifications, and engineering reports within 30 days after the date of such request, or by any other deadline specified in writing;

- d. Within 75 days after the effective date of this Order, Respondent shall submit written certification, in accordance with Paragraph 3.g., below, to demonstrate compliance with Ordering Provision No. 3.c.;
- e. Within 180 days after the effective date of this Order, Respondent shall obtain approval of the as-built plans and specifications for the Facility;
- f. Within 195 days after the effective date of this Order, Respondent shall submit written certification, in accordance with Paragraph 3.g., below, to demonstrate compliance with Ordering Provision No. 3.e.;
- g. The certifications required by these Ordering Provisions shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be notarized by a State of Texas Notary Public, and shall include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Respondent shall submit the written certifications and supporting documentation necessary to demonstrate compliance with these Ordering Provisions to:

Order Compliance Team  
Texas Commission on Environmental Quality  
Enforcement Division, MC 149A  
P.O. Box 13087  
Austin, Texas 78711-3087

and:

Bob Patton, Jr., Section Manager  
Public Drinking Water Section, MC 155  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

4. All relief not expressly granted in this Order is denied.
5. The provisions of this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

**S I G N A T U R E   P A G E**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF ELIZABETH LIEBERKNECHT**

**STATE OF TEXAS**

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**COUNTY OF TRAVIS**

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"My name is Elizabeth Lieberknecht. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Jose Flores Cabazos a/k/a Jose Flores Cavazos" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on June 13, 2013.

The EDPRP was mailed to Respondent's last known address on June 13, 2013, via certified mail, return receipt requested, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed."

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the EDPRP was re-filed in the TCEQ Chief Clerk's office on July 19, 2013.

The EDPRP was mailed to Respondent's last known address on July 19, 2013, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on July 22, 2013, as evidenced by the signature on the card.

More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing."

*Elizabeth Lieberknecht*  
Elizabeth Lieberknecht, Staff Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Elizabeth Lieberknecht, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 8<sup>th</sup> day of Oct, A.D. 2013.

*Cheryl Arredondo*  
Notary Signature



Notary without Bond