

Menard Irrigation Company

RN103927265

Docket No. 2012-2331-WR-E

Order Type:

Agreed Order

Media:

WR

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

east bank of the San Saba River, 1,848 feet from the southwest corner of the Johann G. Vogt Survey, Abstract 791, Menard County

Type of Operation:

irrigation canal

Other Significant Matters:

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	None
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	Friends of the San Saba

Texas Register Publication Date:	May 9, 2014
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Comments Received:	None
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Penalty Information

Total Penalty Assessed:	\$7,500
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Deferred for Financial Inability to Pay:	\$3,900
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Total Paid to General Revenue:	\$100
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Total Due to General Revenue:	\$3,500
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Payment Plan: 35 payments of \$100 each

SEP Conditional Offset:	N/A
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Compliance History Classifications:

Person/CN – N/A

Site/RN – N/A

Major Source:	No
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Statutory Limit Adjustment:	None
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Applicable Penalty Policy:	September 2011
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Investigation Information

Complaint Date(s):	August 29, 2012
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Complaint Information: Alleged that Respondent may have exceeded their annual diversion quota.

Date(s) of Investigation:	September 4 th and 6 th , 2012
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Date(s) of NOV(s):	N/A
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Date(s) of NOE(s):	October 21, 2012
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Menard Irrigation Company

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Docket No. 2012-2331-WR-E

Violation Information

1. Failed to keep a detailed record of daily operations so that the quantity of water taken or diverted each calendar year may be determined [TEX. WATER CODE § 11.032(a)].
2. Failed to accurately report on the annual report titled "Report of Surface Water Used" (the "Report") all water diverted at the authorized diversion point for the year ending December 31, 2011 [TEX. WATER CODE § 11.031(a)].
3. Failed to maintain water use information on a monthly basis during the months a water rights holder uses permitted water [TEX. WATER CODE §§ 11.031(d) and 11.032(a)].

Corrective Actions/Technical Requirements**Corrective Action(s) Completed:**

None

Technical Requirements:

1. Within 30 days:
 - a. Update operational procedures and conduct employee training to ensure that the amounts of water diverted, and used, can be accurately determined and is properly reported; and
 - b. Begin measuring weekly (not to exceed six days between each measurement), at or near the diversion point, the amount of water diverted during each measuring period.

Respondent shall report to the TCEQ the amount of water diverted and used during the initial measuring period within 10 days of the date the measurement is taken. Thereafter, and until completion of the construction project identified below, Respondent shall report the amount of water diverted and used during each subsequent measuring period within 10 days of the date each measurement is taken.
2. Within 45 days, submit written certification to demonstrate compliance with Technical Requirement No. 1.
3. Within 60 days, either:
 - a. Submit to the TCEQ engineering plans and a schedule that includes a specific completion date for the construction and installation of a permanent structure containing a water flow meter and a gate to regulate flow at or near the permitted diversion point in the irrigation canal (the "construction project"); or
 - b. Notify the TCEQ in writing that Respondent will assist the TCEQ in gaining access to the Site to perform the construction project, specifically, to install a permanent structure in the irrigation canal containing a box culvert, a water flow meter, and a gate, to regulate flow at or near the permitted diversion point. The installation costs of the structure under this option shall be funded by the TCEQ.

The Executive Director will provide Respondent an opportunity to review and submit comments on the TCEQ's plans and specifications for the construction project, which shall be submitted to the Executive Director within ten days after Respondent's receipt of the plans and specifications. The Executive Director, may, at his discretion, revise the proposed construction project after consideration of Respondent's comments. Upon completion of the construction project, the Executive Director will provide Respondent certified "as-builts" of the completed structure.

The equipment installed pursuant to the approved plans and specifications of the construction project shall be capable of electronically measuring, recording, and storing the measured flow data on an uniform periodic basis and shall be capable of providing Respondent and/or the TCEQ an electronic means by which to access the recorded data on a periodic basis, not to exceed 30 days. If the equipment is not capable of electronically measuring, recording, and storing water flow data, then the equipment

Menard Irrigation Company
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Docket No. 2012-2331-WR-E

shall be capable of providing Respondent and/or the TCEQ a means to access the recorded data from a remote location.

Respondent shall respond completely, adequately, and to the satisfaction of the Executive Director, to all requests for information concerning Respondent's specific efforts to assist the TCEQ in gaining access to the Site within 15 days after the date of such requests or by any other reasonable deadline specified in writing by the Executive Director.

4. In the event Respondent chooses to proceed with the construction project in accordance with Technical Requirement No. 3.a.:
 - a. Respondent shall respond completely, adequately, and to the satisfaction of the Executive Director, to all requests for information concerning the water flow meter specifications, engineering plans, and construction schedule within 10 days after the date of such requests, or by any other reasonable deadline specified in writing by the Executive Director.
 - b. Within 45 days after Respondent receives notice of the Executive Director's approval of the engineering plans and schedule, Respondent shall implement the engineering plans, as approved by the Executive Director, in accordance with the approved schedule.
 - c. Within 10 working days after Respondent's completion of the construction project, Respondent shall:
 - i. Notify the TCEQ in writing that the construction project has been completed and include a certification that the flow meter is calibrated correctly and is working properly; and
 - ii. Submit written certification that detailed records of daily operations are being maintained in a manner that the quantity of water taken or diverted at the authorized diversion point can be accurately determined for each calendar year.

5. In the event Respondent opts to assist the TCEQ in gaining access to the Site to install a permanent structure in the irrigation canal pursuant to Technical Requirement No. 3.b.:
 - a. Within 30 days of being notified in writing by the TCEQ of completion of the installation of the structure, Respondent shall submit to the Executive Director an insurance policy or other financial arrangement to cover the cost of repair and/or replacement of the structure and flow meter. Respondent shall pay for and maintain the approved insurance policy or other financial arrangement.
 - b. Within 10 working days after the insurance policy or other financial arrangement is approved by the Executive Director, Respondent shall submit written certification that:
 - i. The flow meter is calibrated correctly and is working properly; and
 - ii. That detailed records of daily operations are being maintained in a manner that the quantity of water taken or diverted at the authorized diversion point can be accurately determined for each calendar year.

Litigation Information

Date Petition(s) Filed:	July 19, 2013; July 30, 2013
Date Answer(s) Filed:	August 7, 2013
SOAH Referral Date:	September 10, 2013
Hearing Date(s):	
Preliminary hearing:	October 17, 2013
Evidentiary hearing:	April 24, and 25, 2014 (Scheduled)
Settlement Date:	April 11, 2014

Menard Irrigation Company

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Docket No. 2012-2331-WR-E

Contact Information

TCEQ Attorneys: Jim Sallans, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Blas Coy, Public Interest Counsel, (512) 239-6363

TCEQ Enforcement Coordinator: Lanae Foard, Enforcement Division, (512) 239- 2554

TCEQ Regional Contact: Christopher Mayben, P.G, San Angelo Regional Office, (325) 655-9479

Respondent Contact: Greg Spencer, President, Menard Irrigation Company, 507 West Tennessee Avenue, Midland, Texas 79701

Respondent's Attorney: Patrick Linder, Davidson, Troilo, Ream & Garza, PC, 7550 W IH 10, Suite 800, San Antonio, Texas, 78229-5803



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	29-Oct-2012		
	PCW	14-Nov-2012	Screening	9-Nov-2012
			EPA Due	

RESPONDENT/FACILITY INFORMATION	
Respondent	Menard Irrigation Company
Reg. Ent. Ref. No.	RN103927265
Facility/Site Region	8-San Angelo
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	45485	No. of Violations	3
Docket No.	2012-2331-WR-E	Order Type	1660
Media Program(s)	Water Rights	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Lanae Foard
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$5,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$1,500
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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.		
Compliance History	0.0% Enhancement Subtotals 2, 3, & 7	\$0

Notes: No adjustment for compliance history.

Culpability	Yes	25.0% Enhancement	Subtotal 4	\$375
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Notes: In a letter dated January 4, 2012, from the TCEQ San Angelo Regional Office, the Respondent was notified that the staff gauge located approximately 2.4 miles downstream of the diversion point was not an acceptable method to measure water diverted.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
Total EB Amounts	\$92	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$2,500		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$1,875
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OTHER FACTORS AS JUSTICE MAY REQUIRE	300.0%	Adjustment	\$5,625
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: A 300% enhancement was added because the diversion occurred during severe drought conditions (average U.S. Drought Monitor Level D2).

Final Penalty Amount \$7,500

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$7,500
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DEFERRAL	0.0%	Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: No deferral due to culpability.

PAYABLE PENALTY	\$7,500
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Screening Date 9-Nov-2012

Docket No. 2012-2331-WR-E

PCW

Respondent Menard Irrigation Company

Policy Revision 3 (September 2011)

Case ID No. 45485

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN103927265

Media [Statute] Water Rights

Enf. Coordinator Lanae Foard

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>)	0	0%
	Other written NOVs	0	0%
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%
<i>Please Enter Yes or No</i>			
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)

>> Repeat Violator (Subtotal 3)

Adjustment Percentage (Subtotal 3)

>> Compliance History Person Classification (Subtotal 7)

Adjustment Percentage (Subtotal 7)

>> Compliance History Summary

Compliance History Notes

No adjustment for compliance history.

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

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100%

Screening Date 9-Nov-2012 **Docket No.** 2012-2331-WR-E **PCW**
Respondent Menard Irrigation Company *Policy Revision 3 (September 2011)*
Case ID No. 45485 *PCW Revision August 3, 2011*
Reg. Ent. Reference No. RN103927265
Media [Statute] Water Rights
Enf. Coordinator Lanae Foard

Violation Number 1
Rule Cite(s) Tex. Water Code § 11.032(a)
Violation Description Failed to keep a detailed record of daily operations so that the quantity of water taken or diverted each calendar year may be determined, as documented during an investigation conducted on September 4, and 6, 2012. Specifically, the Respondent's recorded diversions were based on measured flows in the irrigation canal at a location approximately 2.4 miles downstream from the authorized diversion location and recorded return flows were based on measured flows in the irrigation canal at a location approximately 1,500 feet upstream of the point of re-entry of the canal into the San Saba River.

Base Penalty \$5,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0.0%
	Potential				

>> Programmatic Matrix

2000	Falsification	Major	Moderate	Minor	Percent
			x		

Matrix Notes 100% of the rule requirement was not met.

Adjustment \$4,750

\$250

Violation Events

Number of Violation Events 3 66 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$750

Three monthly events are recommended from the investigation date (September 4, 2012) to the screening date (November 9, 2012).

Good Faith Efforts to Comply 0.0% Reduction \$0

	Before NOV	NOV to EDPRP/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 \$750

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$92 **Violation Final Penalty Total** \$3,750

This violation Final Assessed Penalty (adjusted for limits) \$3,750

Economic Benefit Worksheet

Respondent Menard Irrigation Company
Case ID No. 45485
Reg. Ent. Reference No. RN103927265
Media Water Rights
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
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Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$500	4-Sep-2012	12-Apr-2013	0.60	\$15	n/a	\$15
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)	\$2,000	4-Sep-2012	11-Jun-2013	0.77	\$77	n/a	\$77

Notes for DELAYED costs

Estimated costs to update operational procedures and conduct employee training to ensure that the amount of water diverted, consumed, and returned to the San Saba River can be determined and is reported as required; and to either install staff gauges or flow meters, or submit a proposed plan detailing an alternate method to accurately measure flows at the diversion and re-entry points. Final dates are the dates training should be completed and the expected 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 \$2,500

TOTAL \$92

Screening Date 9-Nov-2012
Respondent Menard Irrigation Company
Case ID No. 45485
Reg. Ent. Reference No. RN103927265
Media [Statute] Water Rights
Enf. Coordinator Lanae Foard

Docket No. 2012-2331-WR-E

PCW

Policy Revision 3 (September 2011)
PCW Revision August 3, 2011

Violation Number

Rule Cite(s)

Violation Description

Failed to accurately report all water diverted at the authorized diversion location on the annual report titled "Report of Surface Water Used" for the Year Ending December 31, 2011, as documented during an investigation conducted on September 4, and 6, 2012. Specifically, the report indicates that no diversion occurred from August 8, 2011, through December 31, 2011; however, TCEQ Investigators documented that water was diverted into the canal at the authorized diversion location on August 17, 2011, August 25, 2011, and October 3, 2011. All water diverted at the authorized diversion point must be reported on the annual report.

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="0.0%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="5.0%"/>

Matrix Notes

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"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input checked="" type="text" value="x"/>

Violation Base Penalty

Good Faith Efforts to Comply

Reduction

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

Notes

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 Menard Irrigation Company
Case ID No. 45485
Reg. Ent. Reference No. RN103927265
Media Water Rights
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)				0.00	\$0	\$0	\$0
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

Economic benefit for this violation has been included with Violation No. 1.

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 \$0

TOTAL \$0

Screening Date 9-Nov-2012 **Docket No.** 2012-2331-WR-E **PCW**
Respondent Menard Irrigation Company *Policy Revision 3 (September 2011)*
Case ID No. 45485 *PCW Revision August 3, 2011*
Reg. Ent. Reference No. RN103927265
Media [Statute] Water Rights
Enf. Coordinator Lanae Foard

Violation Number

Rule Cite(s)

Violation Description

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="0.0%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="5.0%"/>

Matrix Notes

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"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input checked="" type="text" value="x"/>

Violation Base Penalty

Good Faith Efforts to Comply Reduction

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

Notes

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 Menard Irrigation Company
Case ID No. 45485
Reg. Ent. Reference No. RN103927265
Media Water Rights
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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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				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

Economic benefit for this violation has been included with Violation No. 1.

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 \$0

TOTAL \$0

The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



Compliance History Report

PUBLISHED Compliance History Report for CN602434219, RN103927265, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

Customer, Respondent, or Owner/Operator: CN602434219, Menard Irrigation Company **Classification:** N/A **Rating:** N/A

Regulated Entity: RN103927265, 61401789001 ADJ 1789 **Classification:** N/A **Rating:** N/A

Complexity Points: N/A **Repeat Violator:** N/A

CH Group: 14 - Other

Location: On the east bank of the San Saba River, 1,848 feet from the southwest corner of the Johann G. Vogt Survey, Abstract 791 in Menard County, Texas

TCEQ Region: REGION 08 - SAN ANGELO

ID Number(s): **WATER RIGHTS** ID NUMBER ADJ 1789

Compliance History Period: September 01, 2007 to August 31, 2012 **Rating Year:** 2012 **Rating Date:** 09/01/2012

Date Compliance History Report Prepared: December 21, 2012

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: December 21, 2007 to December 21, 2012

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Lanae Foard

Phone: (512) 239-2554

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.):

Item 1	September 20, 2011	(956409)
Item 2	October 13, 2011	(958167)
Item 3	January 04, 2012	(976386)

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.

N/A

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
MENARD IRRIGATION COMPANY;
RN103927265**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER

DOCKET NO. 2012-2331-WR-E

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding Menard Irrigation Company ("Respondent") under the authority of TEX. WATER CODE ch. 11. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent, represented by Patrick W. Lindner of the law firm Davidson, Troilo, Ream & Garza, PC, together stipulate that:

1. Respondent operates an irrigation canal located on the east bank of the San Saba River, 1,848 feet from the southwest corner of the Johann G. Vogt Survey, Abstract 791 in Menard County, Texas (the "Site"). The Site adjoins, is contiguous with, surrounds, or is near or adjacent to state water as defined in TEX. WATER CODE § 11.021 and 30 TEX. ADMIN. CODE § 297.1(50).
2. This Agreed Order is entered into pursuant to TEX. WATER CODE § 11.0842. The TCEQ has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 11 and TCEQ rules.
3. The Executive Director and Respondent agree that TCEQ has jurisdiction to enter this Agreed Order, and that Respondent is subject to TCEQ's jurisdiction.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
5. An administrative penalty in the amount of seven thousand five hundred dollars (\$7,500.00) is assessed by the Commission in settlement of the violations alleged in Section II. The Financial Assurance Section of TCEQ's Financial Administration Division reviewed the financial documentation submitted by Respondent and determined that Respondent is unable to pay all or part of the administrative penalty. Therefore, three thousand nine hundred dollars (\$3,900.00) of the administrative penalty is deferred contingent upon Respondent's timely and satisfactory compliance with all the terms of this Agreed Order, and shall be waived only upon full compliance with all the terms and conditions contained in this Agreed Order. If Respondent fails to timely and satisfactorily comply with any requirement contained in this Agreed Order, including any payment schedule, the Executive Director may require Respondent to pay all or part of the deferred administrative penalty.

Respondent paid one hundred dollars (\$100.00) of the three thousand six hundred dollar (\$3,600.00) undeferred administrative penalty. The remaining amount of three thousand five hundred dollars (\$3,500.00) of the undeferred administrative penalty shall be payable in thirty-five (35) monthly payments of one hundred dollars (\$100.00) each. The first monthly payment shall be paid within 30 days after the

effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the acceleration of any remaining balance constitutes the failure by Respondent to timely and satisfactorily comply with all the terms of this Agreed Order and the Executive Director may demand payment of the deferred penalty amount.

6. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
7. The Executive Director and Respondent agree on a settlement of the matters addressed in this Agreed Order, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
8. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions contained in this Agreed Order.
9. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
10. The provisions of this Agreed Order are deemed severable, and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

1. During investigations conducted on September 4, 2012, and September 6, 2012, a TCEQ San Angelo Regional Office investigator documented that Respondent:
 - a. Failed to keep a detailed record of daily operations so that the quantity of water taken or diverted each calendar year may be determined, in violation of TEX. WATER CODE § 11.032(a). Specifically, the recorded diversions of measured flows in the Respondent's irrigation canal were taken at a location approximately 2.4 miles downstream from the authorized diversion point, and recorded return flows to the San Saba River were based on measured flows in the irrigation canal at a location approximately 1,500 feet upstream of the point of return of the canal into the river. These locations did not allow Respondent to accurately measure the quantity of water diverted;
 - b. Failed to accurately report on the annual report titled "Report of Surface Water Used" (the "Report") all water diverted at the authorized diversion point for the year ending December 31, 2011, in violation of TEX. WATER CODE § 11.031(a). Specifically, the Report stated that no diversion occurred from August 8, 2011 through December 31, 2011. However, TCEQ investigators observed on August 17, 2011, August 25, 2011, and October 3, 2011, that Respondent was diverting water from the San Saba River into its canal; and
 - c. Failed to maintain water use information on a monthly basis during the months a water rights holder uses permitted water, in violation of TEX. WATER CODE §§ 11.031(d) and 11.032(a). Specifically, Respondent's diversion records stated that Respondent did not divert water during the period of June 28, 2012 through

September 11, 2012. However, TCEQ investigators observed on July 18, 2012, and July 30, 2012, that Respondent was diverting water from the San Saba River into its canal.

2. Respondent received notice of the violations on or about October 24, 2012.

III. DENIALS

Respondent generally denies each Allegation in Section II.

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Respondent pay an administrative penalty as set forth in Section I, Paragraph 5, above. The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the Allegations in Section II of this Order. The Commission shall not be constrained in any manner from considering or requiring corrective actions or penalties for violations which are not addressed in this Order. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Menard Irrigation Company, Docket No. 2012-2331-WR-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

2. Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, Respondent shall:
 - i. Update operational procedures and conduct employee training to ensure that the amounts of water diverted, and used, can be accurately determined and is properly reported, in accordance with TEX. WATER CODE §§ 11.031(d) and 11.032(a); and
 - ii. Begin measuring weekly (not to exceed six days between each measurement), at or near the diversion point, the amount of water diverted by Respondent during each measuring period.

Respondent shall report to the TCEQ, at the address listed in Ordering Provision No. 2.f., below, the amount of water diverted and used by Respondent during the initial measuring period within 10 days of the date the measurement is taken. Thereafter, and until completion of the construction project described in Ordering Provision No. 2.c., below, Respondent shall report the amount of water diverted and used by Respondent during each subsequent measuring period within 10 days of the dates each measurement is taken.
 - b. Within 45 days after the effective date of this Agreed Order, Respondent shall submit written certification, in accordance with Ordering Provision No. 2.g., below, to demonstrate compliance with Ordering Provision No. 2.a.i. and 2.a.ii.
 - c. Within 60 days after the effective date of this Agreed Order, Respondent shall either:
 - i. Submit to the TCEQ at the address listed in Ordering Provision No. 2.f., below, engineering plans and a schedule that includes a specific completion date for the construction and installation of a permanent structure containing a water flow meter and a gate to regulate flow at or near the permitted diversion point in the irrigation canal (the "construction project"); or

- ii. Notify the TCEQ in writing, at the address listed in Ordering Provision No. 2.f., below, that Respondent will assist the TCEQ in gaining access to the Site to perform the construction project, specifically, to install a permanent structure in the irrigation canal containing a box culvert, a water flow meter, and a gate, to regulate flow at or near the permitted diversion point. The installation costs of the structure under this option shall be funded by the TCEQ.

The Executive Director will provide Respondent an opportunity to review and submit comments on the TCEQ's plans and specifications for the construction project, which shall be submitted to the Executive Director at the address listed in Ordering Provision No. 2.g., below, within ten days after Respondent's receipt of the plans and specifications. The Executive Director, may, at his discretion, revise the proposed construction project after consideration of Respondent's comments. Upon completion of the construction project, the Executive Director will provide Respondent certified "as-builts" of the completed structure.

The equipment installed pursuant to the approved plans and specifications of the construction project shall be capable of electronically measuring, recording, and storing the measured flow data on an uniform periodic basis and shall be capable of providing Respondent and/or the TCEQ an electronic means by which to access the recorded data on a periodic basis, not to exceed 30 days. If the equipment is not capable of electronically measuring, recording, and storing water flow data, then the equipment shall be capable of providing Respondent and/or the TCEQ a means to access the recorded data from a remote location.

Respondent shall respond completely, adequately, and to the satisfaction of the Executive Director, to all requests for information concerning Respondent's specific efforts to assist the TCEQ in gaining access to the Site within 15 days after the date of such requests or by any other reasonable deadline specified in writing by the Executive Director. The responses shall be sent to the address listed in Ordering Provision No. 2.f., below.

- d. In the event Respondent chooses to proceed with the construction project in accordance with Ordering Provision No. 2.c.i.:
 - i. Respondent shall respond completely, adequately, and to the satisfaction of the Executive Director, to all requests for information concerning the water flow meter specifications, engineering plans, and construction schedule within 10 days after the date of such requests, or by any other reasonable deadline specified in writing by the Executive Director. The responses shall be sent to the address listed in Ordering Provision No. 2.f., below.
 - ii. Within 45 days after Respondent receives notice of the Executive Director's approval of the engineering plans and schedule, Respondent shall implement the engineering plans, as approved by the Executive Director, in accordance with the approved schedule.
 - iii. Within 10 working days after Respondent's completion of the construction project, Respondent shall, in accordance with Ordering Provision No. 2.g., below:
 - A. Notify the TCEQ in writing that the construction project has been completed and include a certification that the flow meter is calibrated correctly and is working properly; and
 - B. Submit written certification that detailed records of daily operations are being maintained in a manner that the quantity of water taken or diverted

at the authorized diversion point can be accurately determined for each calendar year, in accordance with TEX. WATER CODE §§ 11.031(a) and (d) and 11.032(a).

- e. In the event Respondent opts to assist the TCEQ in gaining access to the Site to install a permanent structure in the irrigation canal pursuant to Ordering Provision No. 2.c.ii.:
 - i. Within 30 days of being notified in writing by the TCEQ of completion of the installation of the structure, Respondent shall submit to the Executive Director, at the address listed in Ordering Provision No. 2.f., below, an insurance policy or other financial arrangement to cover the cost of repair and/or replacement of the structure and flow meter. Respondent shall pay for and maintain the approved insurance policy or other financial arrangement.
 - ii. Within 10 working days after the insurance policy or other financial arrangement is approved by the Executive Director, Respondent shall submit written certification, in accordance with Ordering Provision No. 2.g., below, that:
 - A. The flow meter is calibrated correctly and is working properly; and
 - B. That detailed records of daily operations are being maintained in a manner that the quantity of water taken or diverted at the authorized diversion point can be accurately determined for each calendar year in accordance with TEX. WATER CODE §§ 11.031(a) and (d) and 11.032(a).
- f. All plans, certificates, policies, reports, responses to requests for information, and notices required by Ordering Provisions Nos. 2.c.i., 2.c.ii., 2.d.i., and 2.e.i. shall be sent to:

Christopher Mayben, P.G, Water Section Manager
San Angelo Regional Office
Texas Commission on Environmental Quality
622 South Oaks, Suite K
San Angelo, Texas 76903-7011

- 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:

Christopher Mayben, P.G, Water Section Manager
San Angelo Regional Office
Texas Commission on Environmental Quality
622 South Oaks, Suite K
San Angelo, Texas 76903-7011

3. All relief not expressly granted in this Agreed Order is denied.
4. The duties and provisions imposed by this Agreed Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
5. If Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondent's failure to comply is not a violation of this Agreed Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed 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. This Agreed Order, issued by the Commission, shall not be admissible against Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within TCEQ's jurisdiction, or of a rule adopted or an order or permit issued by the TCEQ under such a statute.
8. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission" "owner" "person" "writing" and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
9. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand delivery of this Agreed Order to Respondent, or three days after the date on which the Commission mails a copy of the fully executed Agreed Order to Respondent, whichever is earlier.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

5/19/2014

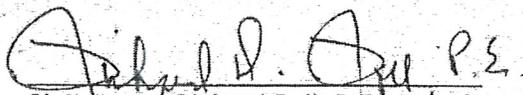
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of Menard Irrigation Company, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions in this order and/or failure to timely pay the penalty amount may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, I understand that any falsification of any compliance documents may result in criminal prosecution.



Signature - Richard Roll, P.E., President
Menard Irrigation Company

04/11/2014

Date