

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE No. 48979
REVELLE PEAK RANCH, L.L.C.
RN107463549
Docket No. 2014-1024-WR-E

Order Type:

Agreed Order

Media:

WR

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

105 County Road 114 in Burnet County

Type of Operation:

outdoor event, adventure, and education venue

Other Significant Matters:

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	None
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	None

Texas Register Publication Date:

November 29, 2019

Comments Received:

Yes, one comment was received from attorney Helen Gilbert, with the law firm of Gilbert Wilburn, PLLC, on behalf of Greensmiths, Inc., an adjoining landowner.

Penalty Information

Total Penalty Assessed:

\$8,000

Total Paid to General Revenue:

\$270

Total Due to General Revenue:

\$7,730

Payment Plan: 34 payments of \$221 each and a final payment of \$216

Compliance History Classifications:

Person/CN – NA
Site/RN – NA

Major Source:

No

Statutory Limit Adjustment:

None

Applicable Penalty Policy:

April 2014

Investigation Information

Complaint Date(s):

April 22, 2014

Complaint Information:

Complainant alleges that state water is being impounded without authorization.

Date(s) of Investigation:

May 9, 2014

Date(s) of NOV(s):

N/A

Date(s) of NOE(s):

July 7, 2014

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE No. 48979
REVEILLE PEAK RANCH, L.L.C.
RN107463549
Docket No. 2014-1024-WR-E

Violation Information

Failed to obtain authorization prior to impounding, diverting or using state water [TEX. WATER CODE § 11.121 and 30 TEX. ADMIN. CODE § 297.11].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

Achieved compliance with 30 TEX. ADMIN. CODE ch. 297 and TEX. WATER CODE § 11.121 on February 1, 2019. On that date, the property on which the impoundment is located was converted to qualified open-space land dedicated to wildlife management.

Technical Requirements:

None

Litigation Information

Date Petition(s) Filed: October 31, 2014; December 4, 2014; January 28, 2015; May 2, 2017; May 23, 2017
Date Green Card(s) Signed: Unclaimed; Unclaimed; Unclaimed; Unclaimed; June 2, 2017
Date Answer(s) Filed: June 15, 2017
Settlement Date: October 18, 2019

Contact Information

TCEQ Attorneys: Jim Sallans, Litigation Division, (512) 239-2053
Garrett Arthur, Public Interest Counsel, (512) 239-6363
TCEQ Litigation Division Agenda Coordinator: Janice Hernandez, (512) 239-2575
TCEQ Enforcement Coordinator: Christopher Moreno, Enforcement Division, (254) 761-3038
TCEQ Regional Contact: Shawn Stewart, Austin Regional Office, (512) 339-2929
Respondent Contact: Vol Montgomery, Director, REVEILLE PEAK RANCH, L.L.C., 450 County Road 143, Burnet, Texas 78611
Respondent's Attorney: Frank Reilly, Attorney, Potts & Reilly, L.L.C., P.O. Box 4037, Horseshoe Bay, Texas 78657-4037

"Comments Received"

Helen S. Gilbert
hgilbert@gwtxlaw.com



Gilbert Wilburn, PLLC
ATTORNEYS AT LAW

Randall B. Wilburn, P.E.
rbw@gwtxlaw.com

January 3, 2020

Via: Facsimile (512) 239-3434 and email james.sallans@tceq.texas.gov

Mr. Jim Sallans
Litigation Division, MC 175
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Re: Reveille Peak Ranch, L.L.C.; TCEQ Docket No. 2014-1024-WR-E; TCEQ ID No. RN107463549

Dear Mr. Sallans:

In accordance with Texas Water Code section 7.075, Greensmiths, Inc. ("Greensmiths") submits public comment on the above-docketed proposed Agreed Order against Reveille Peak Ranch, L.L.C. ("Reveille Peak Ranch") within 30 days of the November 29, 2019 notice publication in the Texas Register.¹ For the reasons set forth below, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") should withdraw or withhold consent to the Reveille Peak Ranch order because its consent is inappropriate, improper, inadequate, or inconsistent with Texas Tax Code section 23.51 and the Commission's water rights rules, title 30 Texas Administrative Code ("TAC") section 297.21(e).²

I. Summary of Comments

In short, over the last 5 years, Reveille Peak Ranch has gamed the system to claim an inapplicable "wildlife management" exemption for the amenity pond it built approximately 20 years ago to store illegally impounded state water at its commercial "outdoor event" operation. Unfortunately, after affording tremendous patience to respondent, the Executive Director now appears to be going along with the scheme. However, because the site is not a qualified open-space land, it is not eligible for a wildlife management exemption under the Tax Code and because it has no other authorization to divert and/or impound state water, it is in flagrant and continuous violation of the Commission's water rights rules and applicable law. The proposed Agreed Order should be rejected and new technical ordering provisions and penalty imposed.

¹ 44 TEX. REG. 7455 (Nov. 29, 2019).

² TEX. WATER CODE ANN. §7.075(b).

Mr. James Sallans
TCEQ Docket No. 2014-1024-WR-E
Page 2 of 6

II. Background

As you know, Greensmiths originally submitted public comment on October 12, 2015 on the then-proposed Default Order.³ However, the proposed Default Order was never adopted because, months later, Reveille Peak Ranch ostensibly agreed to the terms of a proposed “1660” Agreed Order.⁴ Greensmiths provided comments on the proposed “1660” Agreed Order as well, on January 22, 2016. However, Reveille Peak Ranch really never did agree to the terms of the proposed “1660” Agreed Order after all. Now more than 5 years after its first comments, Greensmiths provides public comment again on a proposed Agreed Order that looks vastly different than either of the preceding two versions.

Historical background of the property, the parties, and Reveille Peak Ranch’s illegal impoundment of Clear Creek is instructive. Greensmiths has owned the property immediately adjacent to Reveille Peak Ranch since 2000. As aerial photography shows, the approximately 20-acre private lake on the Reveille Peak Ranch site did not exist prior to 1999.⁵ Neither Reveille Peak Ranch nor its owner, Vol Montgomery, sought nor obtained a water right permit from TCEQ to divert and impound state water as required by law, even a temporary or term permit. As a result, the 20-acre lake is illegal. Also, the lake was never exempt under a domestic/livestock exemption because the Reveille Peak Ranch has and continues to use the pond and the property on which it is located for commercial purposes.⁶ Reveille Peak Ranch’s business purpose is to charge an entrance fee to paying customers to use its facilities for such activities as endurance races (swimming and trail running), weddings, concert venue, and firing range. These activities occur in and around the illegal pond. Reveille Peak Ranch has specifically erected a pavilion next to the pond which it openly advertises on its website for special events and other kinds of celebrations because it has “seating for up to 500, beautiful grounds surrounded by reflecting pools and lush landscaping.”⁷ Reveille Peak Ranch does not invite the general public onto its property for use of the pond and other improvements for free even those activities organized around charitable events but charges specific rates advertised on its website.⁸

The Executive Director’s previous versions of the Agreed Order appeared to acknowledge the commercial nature of the property with the inclusion of then-proposed, ordering provision no. 2.a that required Reveille Peak Ranch to “cease the impounding, diversion or use of state water *for unauthorized commercial operations associated with or connected to the impoundment* at the Site until such time authorization has been obtained. . .” As pointed out by Greensmiths in its previous comments, this proposed ordering provision was unenforceable because it is impossible

³ See 40 TEX. REG. 6190 (Sept. 11, 2015).

⁴ 40 TEX. REG. 9334-9335 (Dec. 18, 2015).

⁵ See Exhibit A, aerial photographs.

⁶ TEX. WATER CODE ANN. §11.142. (“ . . . This exemption does not apply to a commercial operation.”).

⁷ See Exhibit B, <http://www.rprtexas.com> (December 30, 2019).

⁸ *Id.*

Mr. James Sallans
TCEQ Docket No. 2014-1024-WR-E
Page 3 of 6

to “cease impounding state water” without breaching the dam which the Executive Director was not seeking to require. Section II of the current Order correctly alleges that Reveille Peak Ranch “was impounding state water for commercial operations” without authorization. However, as set out more fully below, since the site still continues to operate as a commercial operation that has nothing to do with agricultural or timber use, it is *disqualified* as an exempt qualified open-space land dedicated to wildlife management under the current proposed Agreed Order. As a consequence, the exceptions to the requirement to obtain a water right permit under section 11.121 of the Texas Water Code and chapter 297 of the Commission rules are inapplicable.

III.

Comments on Proposed Agreed Order

A. Open-Space Land Exemption for Wildlife Management is Inapplicable

Stipulation No. 10 of the proposed Agreed Order states:

The Executive Director recognizes that on February 1, 2019, Respondent achieved compliance with 30 Tex. Admin. Code ch. 297 and Tex. Water Code §11.121. On that date, Respondent received approval from Burnet County, to convert the property on which the impoundment is located, to qualified open-space dedicated to wildlife management as defined under Tex. Tax Code §23.51(7) in accordance with 30 Tex. Admin. Code §297.21(e).⁹

For reference, 30 TAC §297.21(e) provides:

In accordance with TWC, §11.142(b), a person may construct on the person’s property a dam or reservoir with normal storage of not more than 200 acre-feet of water for wildlife management as defined in Texas Tax Code (TTC), §23.51(7), and for fish management purposes, excluding aquaculture or fish farming purposes, if the property on which the dam or reservoir will be constructed is qualified open-space land, as defined by TTC, §23.51. For purposes of this subsection, normal storage means the conservation storage of the reservoir, i.e., the amount of water the reservoir may hold before water is released uncontrolled through a spillway or into a standpipe. This exemption does not apply to a commercial operation. For the purposes of this subsection, commercial operation means the use of land for industrial facilities, industrial parks, aquaculture facilities, fish farming facilities, or housing developments. The incidental use of the reservoir in a manner that does not remove the land from the definition of qualified open-space land as defined by TTC, §23.51, including using a photograph in advertising, does not constitute a use for which a permit must be obtained for an otherwise exempt reservoir.¹⁰

The term “qualified open-space land” as used in 30 TAC §297.21(e) and defined in Tex. Tax Code Ann. §23.51(1) means:

⁹ Proposed Agreed Order, Stipulation No. 10, 44 TEX. REG. 7455 (Nov. 29, 2019).

¹⁰ 30 TAC §297.21(e).

Mr. James Sallans
TCEQ Docket No. 2014-1024-WR-E
Page 4 of 6

"Qualified open-space land" means land that is currently devoted principally to agricultural use to the degree of intensity generally accepted in the area and that has been devoted principally to agricultural use or to production of timber or forest products for five of the preceding seven years or land that is used principally as an ecological laboratory by a public or private college or university and that has been used principally in that manner by a college or university for five of the preceding seven years. Qualified open-space land includes all appurtenances to the land. For the purposes of this subdivision, appurtenances to the land means private roads, dams, reservoirs, water wells, canals, ditches, terraces, and other reshaping of the soil, fences, and riparian water rights. Notwithstanding the other provisions of this subdivision, land that is currently devoted principally to wildlife management as defined by Subdivision (7)(B) or (C) to the degree of intensity generally accepted in the area qualifies for appraisal as qualified open-space land under this subchapter regardless of the manner in which the land was used in any preceding year.¹¹

Regardless of what action Burnet County may have taken, the Reveille Peak Ranch property does not comply with 30 TAC ch. 297 or Tex. Water Code §11.121. Specifically, it does not comply with 30 TAC §297.21(e) because it is not a "qualified open-space land." To be a "qualified open space land," the property must be "currently devoted principally to agricultural use to the degree of intensity generally accepted in the area and that has been devoted principally to agricultural use or to production of timber or forest products for five of the preceding seven years." There is no evidence that for 5 of the preceding 7 years, the Reveille Peak Ranch property was devoted to agricultural use or production of timber. On the contrary, the evidence shows that for at least 7 years and certainly longer, the site has been operated as a commercial venue for outdoor events such as concerts, weddings, endurance sports and camping. Indeed there is no evidence that any agricultural or timber use have ever occurred on site.

Moreover, to impound state water without a permit and use the reservoir for wildlife management purposes under Tex. Tax Code Ann. §23.51(7), the property must have been actively used for "wildlife management" at the time it was appraised as qualified open-space land. That is, to gain the wildlife management exemption, it must still have had a 5-7 year prior practice of agriculture or timber use which simply did not happen in this case. Additionally, there is no evidence that Reveille Peak Ranch is claiming that it is actively using land to protect federally listed endangered species under a federal permit in accordance with §23.51(7)(B) or is undertaking a conservation or restoration project under §23.51(7)(C). Thus, the preceding years of use of the property is relevant to whether the exemption applies or not. In this case, it had no prior agricultural or timber use and no prior history of using the impoundment for wildlife management. Reveille Peak Ranch does not qualify for a 30 TAC §297.21(e) exemption because it is not a qualified open-space. Nor does it qualify for any other exemption under 30 TAC §297.21, including for domestic and livestock purposes,¹² because of the commercial nature of the site. Without an exemption, and without having obtained authorization to divert and impound state water, Reveille Peak Ranch is in violation of Tex. Water Code §11.121 as it has been for

¹¹ TEX. TAX CODE ANN. §23.51(1).

¹² Any livestock on site is kept away from the lake/pavilion area and watered from a groundwater well visible from CR 115.

Mr. James Sallans
TCEQ Docket No. 2014-1024-WR-E
Page 5 of 6

approximately 20 years. Nothing in the proposed Agreed Order brings Reveille Peak Ranch into or requires compliance with the Commission's water rights rules or applicable law.

B. Administrative Penalty is Inadequate

The proposed administrative penalty of \$8,000 to be paid in installments over 3 years is a pittance for this individual and company. Reveille Peak Ranch and Vol Montgomery have been in constant daily violation of the Texas Water Code and the rules of the Commission since the willful and intentional construction of the dam in 1999 and its 2007 reconstruction, not the mere one violation event the alleged in the proposed Order. At \$5,000 per day per violation,¹³ the assessed penalty should be significantly more than the \$8,000 sought by the Executive Director. If the Commission could bill its staff attorney's time at prevailing legal rates, it is likely that the Executive Director has already exceeded the amount of the assessed administrative penalty in the more than 5 years this case has been pending. By the time the Commission collects its last payments, this case will have been languishing over 8 years.

C. Impoundment Creates Water Quality Problems

Reveille Peak Ranch's illegal lake is also problematic because it will exacerbate known water quality problems in this watershed. As the Commission well knows, segment 1407(a) on the Colorado River Basin does not meet water quality standards reaching a level of concern for several parameters, including aluminum, pH, total dissolved solids and sulfates. Cutting off flow to/from Clear Creek by virtue of this illegal impoundment will only intensify the water quality problems in this segment. Indeed, Greensmiths has personally documented the little or no flow experienced after even a 4-inch rainfall – an event which would have resulted in significant flow in Clear Creek prior to Reveille Peak Ranch's reconstruction of the dam in 2007. In prior versions of the proposed Agreed Order, the Penalty Calculation Worksheet acknowledges this by recommending a 400% enhancement on the recommended penalty "because the diversion occurred during extreme drought conditions." At this point, the illegal pond has exacerbated the negative impacts on Clear Creek not just during one drought, but multiple droughts – its effects have been felt for years, over a decade. Additionally, Greensmiths, which is a legitimate water rights holder itself in this watershed, is further harmed because it is not able to divert from its downstream diversion point because Reveille Peak Ranch's illegal diversion/impoundment cuts off flow to Clear Creek. Greensmiths' water right goes back to the early 1900's but has basically been rendered useless because of Reveille Peak Ranch's unlawful action.

Finally, it is not only the height of hypocrisy but an insult to the Commission whose repeated outreach for over 5 years Reveille Peak Ranch simply ignored, that Reveille Peak Ranch openly boasts that its facilities, like its 20-acre lake have been "thoughtfully constructed." Its website blatantly advertises outdoor education and tours to "environmentally and geologically sensitive" areas when the centerpiece of this property is state water illegally diverted for an unauthorized private commercial purpose out of a section of the Colorado River watershed identified for its water quality concerns. Accordingly, Greensmiths respectfully requests that the Commission consider the overall health of Clear Creek and reject the Agreed Order as proposed. The Commission should direct the Executive Director to revise the Order to include technical ordering provisions to remove the illegal dam and provide an increased administrative penalty

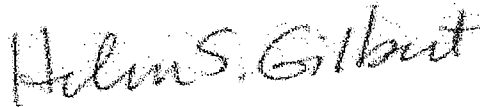
¹³ See TEX. WATER CODE ANN. § 11.0842(b).

Mr. James Sallans
TCEQ Docket No. 2014-1024-WR-E
Page 6 of 6

consistent with the severity of the violation. In the alternative, the Commission should insert a technical ordering provision that requires Reveille Peak Ranch to file a water right application within 30 days of losing its Texas Tax Code §23.51 exemption, and obtain the permit or, if it is unable to obtain a water right permit, breach the dam returning the impounded water to Clear Creek within a time certain.

If you have any questions or need additional information, please do not hesitate to call me.

Sincerely,

A handwritten signature in black ink that reads "Helen S. Gilbert". The signature is written in a cursive, slightly slanted style.

Helen S. Gilbert

Enclosure
cc:

Mr. Jim Montgomery

**GREESMITHS, INC. COMMENTS ON PROPOSED AGREED ORDER
1997 GOOGLE EARTH IMAGE "BEFORE" REVELLE PEAK RANCH LAKE**

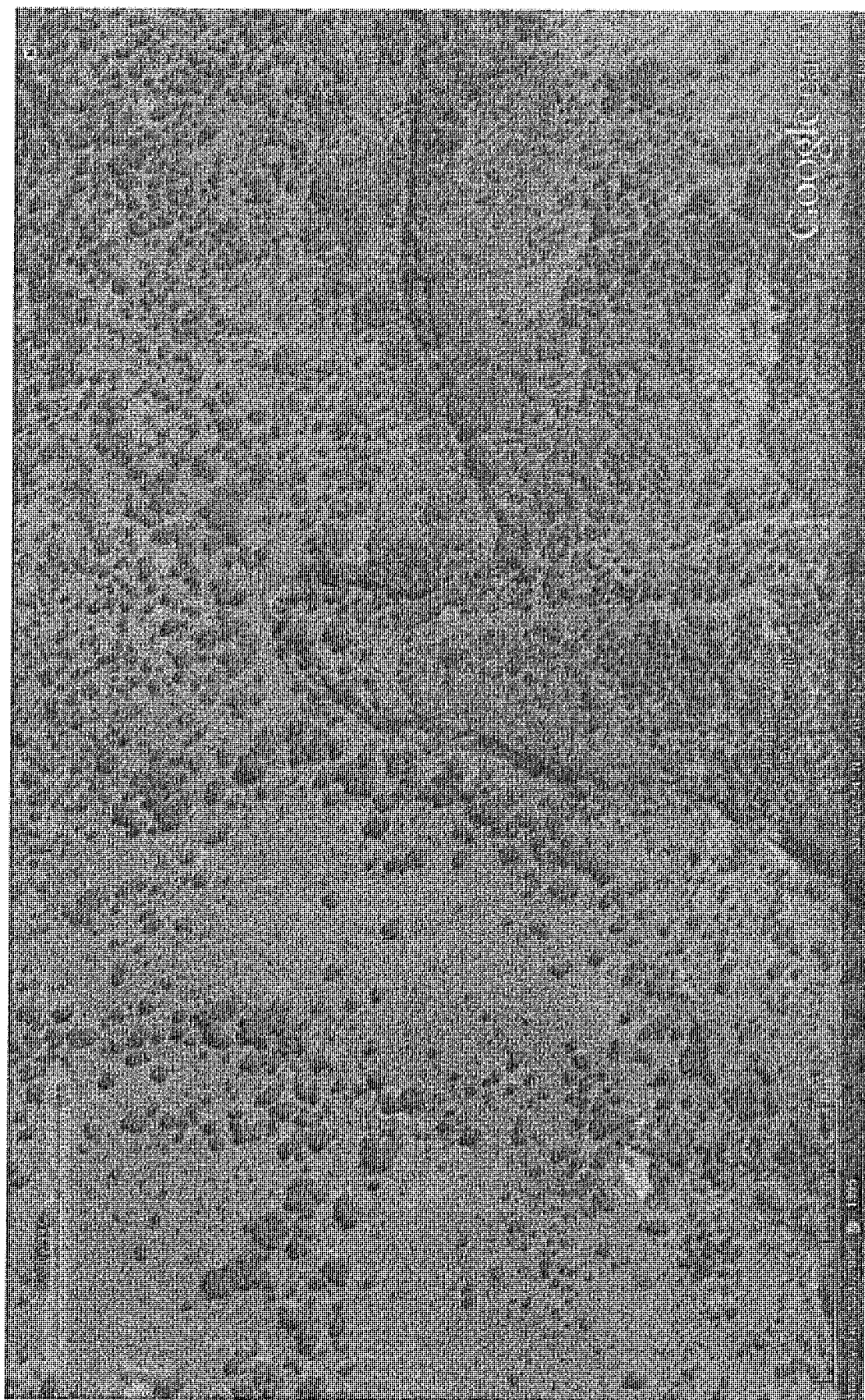


EXHIBIT A
GREENSMITHS, INC. COMMENTS ON PROPOSED AGREED ORDER
2002 GOOGLE EARTH "AFTER" IMAGE OF REVELLE PEAK RANCH LAKE



EXHIBIT D
GREESMITHS, INC. COMMENTS ON PROPOSED AGREED ORDER
REVEILLE PEAK RANCH WEBSITE EXCERPTS



Facilities

From races to group events to expos to training programs to casual R&R, visitors to Reveille Peak Ranch will find exceptional facilities to meet their needs. Described by guests as "elegantly rustic," many of our facilities have been thoughtfully constructed with natural and recycled materials.

PAVILION

The two-story, 10,000-square-foot covered pavilion area overlooking a 20-acre lake can accommodate seating for up to 500 guests, and the surrounding grounds can

EXHIBIT D
GREESMITHS, INC. COMMENTS ON PROPOSED AGREED ORDER
REVEILLE PEAK RANCH WEBSITE EXCERPTS

accommodate up to 5,000 for blanket or lawn chair seating. There is parking space for up to 4,000 vehicles. The pavilion has a covered raised stage and a 2,000-square-foot observation deck perfect for additional entertainment. There are outdoor fire pits and a regulation sand volleyball court.

KITCHEN

Our full-service commercial kitchen in the pavilion features a wood-fired grill, BBQ pit and wood-burning pizza oven. A large, wooden, family-style table and chairs in the Pavilion seats up to 24. Event hosts may work with caterers to create a custom menu and bar.

RESTROOMS/SHOWERS

Near the pavilion, there are men's and women's restrooms/changing rooms, each with two hot showers along with toilets, sinks and mirrors.

TRAILS

Reveille Peak Ranch has almost 100K of trails that provide a wide variety of challenge—from easy to very difficult—for all levels of mountain bikers and trail runners. [Learn more](#)

CAMPING

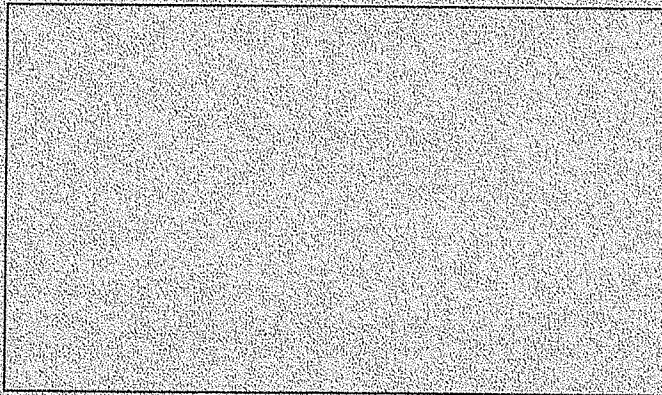
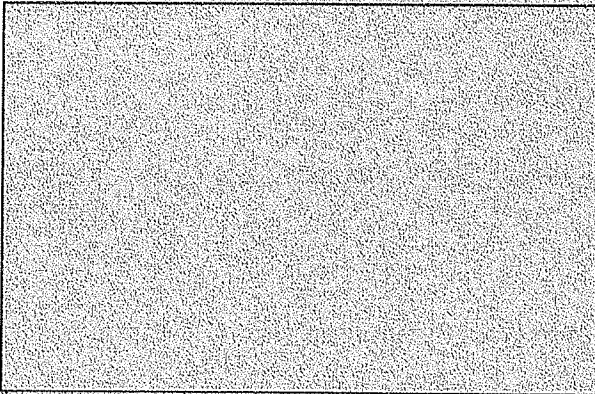
With 250+ primitive campsites and 6 RV hook ups with water and electricity (no grey water/dumping), Reveille Peak Ranch is a great place for individuals, couples, families or groups.

EXHIBIT D
GREESMITHS, INC. COMMENTS ON PROPOSED AGREED ORDER
REVEILLE PEAK RANCH WEBSITE EXCERPTS

[Learn more](#)

SCUBA DIVING

At the Ranch's Quarry Lake, a 15'x20' platform at 22 feet, and two additional stairs and shallow platforms make it easy to enter the water for SCUBA diving. Four shelters provide a spot to get away from the sun and/or wind, and a deck with a grill is available for any group to use. [Learn more](#)



UPCOMING EVENTS

EXHIBIT D
GREESMITHS, INC. COMMENTS ON PROPOSED AGREED ORDER
REVEILLE PEAK RANCH WEBSITE EXCERPTS



Activities

MOUNTAIN BIKING

Some of the best mountain biking in Texas is at RPR. Designed by the Austin Ridge Riders, our single-track and super downhill trails offer a mountain bike experience like no other. From highly technical riding to easy trails, riders of all skill levels will find a fun challenge. [See trail descriptions and map](#)

TRAIL RUNNING

Imagine starting your run on easy trail around a peaceful lake.

EXHIBIT B
GREESMITHS, INC. COMMENTS ON PROPOSED AGREED ORDER
REVEILLE PEAK RANCH WEBSITE EXCERPTS

then taking a cross-country loop where you'll enjoy amazing views, stunning nature and wildlife, all while getting a great workout. [See trail descriptions and map](#)

SCUBA DIVING

Our ultra clear, spring-fed Quarry Lake, over 100 ft. deep, is available for SCUBA diving (pre-arranged with dive professionals). [Learn more](#)

CAMPING

Choose a primitive campsite or RV hookup and enjoy the best of lake breezes and stargazing after a full day on the Ranch. Camping is available Friday and Saturday nights unless otherwise specified for holidays and events. [Learn more here](#).

FITNESS TRAINING

RPR is a perfect place to train for your next athletic endeavor, with permanent features from past obstacle and adventure races on the property. Design your own workout, or bring a group and challenge yourselves.

OUTDOOR EDUCATION AND TOURS

Environmentally and geologically sensitive areas on the Ranch are available for guided tours. Photographers have a field day capturing images of the topography, wildflowers and

**EXHIBIT D
GREESMITHS, INC. COMMENTS ON PROPOSED AGREED ORDER
REVEILLE PEAK RANCH WEBSITE EXCERPTS**

wildlife. Please [contact us](#) for more information.

The nonprofit Upper Highland Lakes Nature Center at Reveille Peak Ranch also provides field-based educational and recreational outreach programs for groups of all ages.

UPCOMING EVENTS

VIEW ALL EVENTS

[Home](#) // [Events](#) // [About](#) // [Activities](#) // [Facilities](#) // [Contact Us](#) /

Copyright © 2019 / Reveille Peak Ranch / 105 CR 114,
Burnet, TX 78611
512-755-4417 / info@uprTexas.com

Site by



EXHIBIT B
GREESMITHS, INC. COMMENTS ON PROPOSED AGREED ORDER
REVEILLE PEAK RANCH WEBSITE EXCERPTS



Hours and Rates

TRAIL HOURS:

- Friday: gates open at 5 pm
- Saturday: dawn - dusk
- Sunday: dawn - dusk

Note: trail availability may be limited during large racing events; please check event listings for updates

EXHIBIT B
GREESMITHS, INC. COMMENTS ON PROPOSED AGREED ORDER
REVEILLE PEAK RANCH WEBSITE EXCERPTS

CHECK-IN:

- Guests will register, pay and complete a waiver when they arrive at the Ranch. Please fold the waiver with your payment inside and put both in the payment box.

RANCH FEES:

Day Use Only

- Adults: \$10/person
- Children under 12: \$5/person

Camping and Day Use

- Adults 1st Night: \$30/person
- Each Additional Night: \$20/person
- Children 1st Night: \$15/person
- Each Additional Night: \$10/person
- RV Outlet: \$25/night

Scout Pricing:

- \$15/day - 1 day camping & day use fee
- \$20/2 day - 2 day camping and day use fee
- Siblings are 1/2 price
- Groups over 40 receive a 20% discount (group payment must be made)

CAMPING:

Camping is available on Friday and Saturday nights (first-

**EXHIBIT D
GREESMITHS, INC. COMMENTS ON PROPOSED AGREED ORDER
REVEILLE PEAK RANCH WEBSITE EXCERPTS**

come, first-served). You may register and pay when you arrive at the Ranch. Online registration for camping is available for some specific events. Groups can reserve by calling 512-914-9411.

UPCOMING EVENTS

VIEW ALL EVENTS

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Site by



Reveille
PEAK RANCH

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Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

DATES	Assigned	7-Jul-2014	Screening	14-Jul-2014	EPA Due	
	PCW	12-Jun-2018				

RESPONDENT/FACILITY INFORMATION	
Respondent	REVEILLE PEAK RANCH, L.L.C.
Reg. Ent. Ref. No.	RN107463549
Facility/Site Region	11-Austin
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	48979	No. of Violations	1
Docket No.	2014-1024-WR-E	Order Type	1660
Media Program(s)	Water Rights	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Claudia Corrales
		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** **\$5,000**

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 **No** **0.0%** Enhancement **Subtotal 4** **\$0**

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments **Subtotal 5** **\$0**

Economic Benefit **0.0%** Enhancement* **Subtotal 6** **\$0**

Total EB Amounts: \$108
 Estimated Cost of Compliance: \$350
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$5,000**

OTHER FACTORS AS JUSTICE MAY REQUIRE **60.0%** **Adjustment** **\$3,000**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement added because the diversions occurred during drought conditions.

Final Penalty Amount **\$8,000**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$8,000**

DEFERRAL **0.0%** Reduction **Adjustment** **\$0**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY **\$8,000**

Screening Date 14-Jul-2014

Docket No. 2014-1024-WR-E

PCW

Respondent REVEILLE PEAK RANCH, L.L.C.

Policy Revision 4 (April 2014)

Case ID No. 48979

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN107463549

Media [Statute] Water Rights

Enf. Coordinator Claudia Corrales

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 judgments 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) 0%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No adjustment for compliance history.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 0%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 0%

Screening Date 14-Jul-2014 **Docket No.** 2014-1024-WR-E **PCW**
Respondent REVEILLE PEAK RANCH, L.L.C. *Policy Revision 4 (April 2014)*
Case ID No. 48979 *PCW Revision March 26, 2014*
Reg. Ent. Reference No. RN107463549
Media [Statute] Water Rights
Enf. Coordinator Claudia Corrales

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

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="5.0%"/>
<input type="text" value="100% of the rule requirements were not met."/>					

Adjustment

Violation Events

Number of Violation Events Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input checked="" type="text" value="x"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

Violation Base Penalty

Good Faith Efforts to Comply Reduction

	Before NOE/NOV	NOE/NOV to EDRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="text" value="x"/>	<input type="text" value="(mark with x)"/>
Notes	<input type="text" value="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 REVEILLE PEAK RANCH, L.L.C.
Case ID No. 48979
Reg. Ent. Reference No. RN107463549
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
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)	\$350	1-Dec-2012	1-Feb-2019	6.17	\$108	n/a	\$108

Notes for DELAYED costs

Estimated cost to prepare and file an application to convert property to qualify as open space land dedicated wildlife management in accordance with TEX. TAX CODE § 23.51. Date required is the violation start date. Final date is 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

\$350

TOTAL

\$108

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 CN604615427, RN107463549, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

Customer, Respondent, or Owner/Operator: CN604615427, REVEILLE PEAK RANCH, L.L.C. **Classification:** N/A **Rating:** N/A
Regulated Entity: RN107463549, REVEILLE PEAK RANCH **Classification:** N/A **Rating:** N/A
Complexity Points: N/A **Repeat Violator:** N/A
CH Group: 14 - Other
Location: 105 COUNTY ROAD 114 IN BURNET COUNTY, TEXAS
TCEQ Region: REGION 11 - AUSTIN
ID Number(s): **WATER QUALITY NON PERMITTED** ID NUMBER R11107463549
Compliance History Period: September 01, 2008 to August 31, 2013 **Rating Year:** 2013 **Rating Date:** 09/01/2013
Date Compliance History Report Prepared: August 26, 2014
Agency Decision Requiring Compliance History: Enforcement
Component Period Selected: August 26, 2009 to August 26, 2014

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

Name: Katelyn Samples

Phone: (512) 239-4728

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? NO
- 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.

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
REVEILLE PEAK RANCH, L.L.C.;
RN107463549**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER

DOCKET NO. 2014-1024-WR-E

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding REVEILLE PEAK RANCH, L.L.C. ("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 Frank Reilly, of Potts and Reilly, LLC, together stipulate that:

1. Respondent owns and operates an outdoor event, adventure, and education venue located on a ranch at 105 County Road 114 in Burnet 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(51).
2. The Executive Director and Respondent agree that TCEQ has jurisdiction to enter this Order pursuant to TEX. WATER CODE §§ 7.002 and 11.0842. The TCEQ has jurisdiction in this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 11 and TCEQ rules.
3. The occurrence of any violation is in dispute and the entry of this Order shall not constitute an admission by Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
4. An administrative penalty in the amount of eight thousand dollars (\$8,000.00) is assessed by the Commission in settlement of the violations alleged in Section II. Respondent paid two hundred seventy dollars (\$270.00) of the penalty. The remaining amount of seven thousand seven hundred thirty dollars (\$7,730.00) shall be paid in thirty-four (34) monthly payments of two hundred twenty-one dollars (\$221.00) each and a final payment of two hundred sixteen dollars (\$216.00). The first monthly payment shall be paid within 30 days after the effective date of this Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until the penalty is paid in full. If Respondent fails to timely and satisfactorily comply with the payment requirements of this Order, including the payment schedule, the Executive Director may 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, Respondent's failure to meet the payment schedule of this Order and/or the acceleration of any remaining balance constitutes the failure by Respondent to timely and satisfactorily comply with all the terms of this Order.

5. 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.
6. The Executive Director and Respondent agree on a settlement of the matters addressed in this Order, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
7. 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 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 provisions of this Order are deemed severable, and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable.
10. The Executive Director Recognizes that on February 1, 2019, Respondent achieved compliance with 30 TEX. ADMIN. CODE ch. 297 and TEX. WATER CODE § 11.121. On that date, Respondent received approval from Burnet County, to convert the property on which the impoundment is located, to qualified open-space land dedicated to wildlife management as defined under TEX. TAX CODE § 23.51(7) in accordance with 30 TEX. ADMIN. CODE § 297.21(e).

II. ALLEGATIONS

During an investigation conducted on May 9, 2014, an investigator documented that Respondent failed to obtain authorization prior to impounding, diverting or using state water, in violation of TEX. WATER CODE § 11.121 and 30 TEX. ADMIN. CODE § 297.11. Specifically, Respondent was impounding state water for commercial operations in one impoundment located on Clear Creek.

III. DENIALS

Respondent generally denies the Allegation in Section II.

IV. ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty as set forth in Section I, Paragraph 4. The payment of this penalty and Respondent's compliance with all of the requirements set forth in this Order resolve only the Allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for violations which are not raised here. Penalty payments shall be made payable to TCEQ and shall be sent with the notation "Re: Reveille Peak Ranch, L.L.C., Docket No. 2014-1024-WR-E" to:

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

2. All relief not expressly granted in this Order is denied.
3. The duties and provisions imposed by 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 Site operations referenced in this Order.
4. 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.
5. If Respondent fails to comply with any of the Ordering Provisions in this 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 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. This 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 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.
7. This Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this 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 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.

8. The effective date of this Order is the date it is signed by the Commission. A copy of the fully executed Order shall be provided to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Margi Sigardo
For the Executive Director

Jan. 31, 2020
Date

I, the undersigned, have read and understand the attached order. I am authorized to agree to the attached Order, 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.

Vol Montgomery
Signature - Vol Montgomery, Director
REVELLE PEAK RANCH, L.L.C.
12700 Park Drive
Austin, Texas 78732

10/18/19
Date

If mailing address has changed, please check this box and provide the new address below:

450 CR 143
BURNET, TX 78611