TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

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

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

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

FINDINGS OF FACT

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

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

Drought:

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

Suspension and Adjustment of Non- Municipal Water Rights:

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

20. There are two water rights located approximately ten miles upstream of the Donley priority call location. Both of these water rights authorize reservoirs and have priority dates of 1955 and 1974. The Executive Director's staff has determined that additional streamflows could be generated by suspension or adjustment of these two water rights. Appropriative water rights are subordinate to riparian rights for domestic and livestock use.

21. The appropriative water rights suspended in Findings of Fact No. 19 and 20 are listed in Appendix A, which is incorporated by reference in this order and is part of the order.

22. Appendix B, which is incorporated by reference into this Order and is part of this Order, lists the counties that are covered by the suspended junior water rights in Appendix A.

23. If the water rights in Findings of Fact No. 19, 20, and 21 are suspended or adjusted as described above, the resulting change in streamflow conditions should allow Mr. Singleton and Ms. Donley to divert some of the water that these water rights do not take. This is an amount that could be beneficially used by Mr. Singleton and Ms. Donley.

Suspension and Adjustment of Municipal Water Rights:

24. The City of Menard is the only municipality in the area affected by the call.

25. The City of Menard owns Certificate of Adjudication 14-1803. The City indicates it does not have an alternate source of water.

26. The Executive Director is not suspending the City of Menard's water right for municipal use at this time to prevent human health, safety, and welfare concerns.

27. In this order, the Executive Director is requesting information from the City of Menard concerning its water use, needs for public health and welfare issues, and alternative sources, to determine if the order should be modified to suspend or adjust this water right.

Exceptions to Suspensions:

28. If conditions change to cause temporary higher flow levels to occur in the San Saba River watershed, water will be available for suspended water right holders to divert or impound without impairing Mr. Singleton's senior call because at the higher flow levels the water could not all be beneficially used by Mr. Singleton.

29. If conditions change to cause temporary higher flow levels to occur in the San Saba River watershed, water will be available for suspended water right holders to divert or impound without impairing Ms. Donley's senior call because at higher flow levels the water could not all be beneficially used by Ms. Donley.

30. Allowing suspended water right holders to divert or impound surface water under their water rights during certain high flow events will maximize the beneficial use of water, minimize the impact on water right holders, and prevent the waste of water.

31. The Executive Director has identified a representative flow gage on the San Saba River operated by the United States Geological Service and a representative flow gage on the San Saba River operated by the Lower Colorado River Authority which may be used to identify temporary higher flow levels. These gages are:

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

32. The 33rd percentile flow is the streamflow value below which 33 percent of the daily streamflow observations for the period of record available for the above-referenced gage on the San Saba River can be found. Flow levels at or above the 33rd percentile are a reasonable level to allow the diversion or impoundment of water because a stream flow level below the 33rd percentile flow is one of the factors under which a "drought" exists under 30 Texas Administrative Code Chapter 36.

33. The flow values at the gages in Finding of Fact No. 31 will make water available for suspended water right holders during temporary higher flow levels and not impair Mr. Singleton's or Ms. Donley's senior priority call.

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

Conclusion:

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

CONCLUSIONS OF LAW

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

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

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

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

1. The following water rights are suspended:

   Those water rights listed in Appendix A.

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

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

3. If the streamflow levels are below the gage values in the chart in Ordering Provision No. 2 above, the water right holder must immediately cease diverting or impounding water.

4. Any water right holder impounding water under the terms of this order must record the level of water impounded as of the issuance date of this order. The water right holder shall record the streamflow level at the gage when each impoundment is initiated, the time of the gage reading, and the level of impounded water. The water right holder shall record the latter level at the time that diversion and impoundment has ceased based on streamflow conditions outlined in this order or available capacity. The water right holder shall maintain these records for a minimum of two years from the issuance date of this order

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

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

    The Texas Commission Environmental Quality

    12100 Park 35 Circle, Building E, Room 201S

    Austin, Texas
12. This order constitutes notice for that hearing. Any affected water right holder may attend the hearing and provide oral comments.

Issue Date:
8/26/13

Zak Covar
Executive Director
Texas Commission on Environmental Quality

Appendix A

Appendix A: Junior Water Rights Suspended by this Order

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

Appendix A: Junior Water Rights Suspended by this Order

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

Appendix B

Appendix B: Counties Where Suspended Water Rights are Located

County
McCulloch
Menard
Schleicher