

Executive Summary – Enforcement Matter – Case No. 63704

Michael G. MacDougall

RN111594289

Docket No. 2023-1673-MLM-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

MLM – WR, WQ

Small Business:

No

Location(s) Where Violation(s) Occurred:

Ranches at Lost Draw, 1686 U.S. Highway 290 West, Johnson City, Blanco County

Type of Operation:

Residential construction site

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: The complainant has expressed an interest in this matter but does not wish to speak at Agenda.

Texas Register Publication Date: April 19, 2024

Comments Received: No

Penalty Information

Total Penalty Assessed: \$17,945

Amount Deferred for Expedited Settlement: \$3,588

Total Paid to General Revenue: \$14,357

Total Due to General Revenue: \$0

Payment Plan: N/A

Compliance History Classifications:

Person/CN - N/A

Site/RN - N/A

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: January 2021

Investigation Information

Complaint Date(s): July 21, 2022

Complaint Information: Alleged unauthorized construction of dams impounding state water on Flat Creek on ('Property') at 1686 U.S. Highway 290 west of Johnson City. Further, alleged land clearing with soil disturbance was a concern for sediment discharge to the creek.

Date(s) of Investigation: September 1, 2022

Date(s) of NOE(s): December 13, 2022

Executive Summary – Enforcement Matter – Case No. 63704

Michael G. MacDougall

RN111594289

Docket No. 2023-1673-MLM-E

Violation Information

1. Failed to obtain authorization prior to diverting, impounding, storing, taking, or using state water. Specifically, the Respondent constructed five impoundments on Flat Creek without prior authorization [30 TEX. ADMIN. CODE § 297.11 and TEX. WATER CODE § 11.121].

2. Failed to obtain authorization to discharge stormwater associated with construction activities. Specifically, the Respondent was performing construction activities prior to obtaining authorization under Texas Pollutant Discharge Elimination System Construction General Permit No. TXR150000 [30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(c)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Respondent implemented the following corrective measures:

a. By November 11, 2022, exempted the five impoundments on Flat Creek from water rights permitting requirements by withdrawing the plat application for Ranches at Lost Draw from the City of Johnson City; and

b. By May 4, 2023, achieved final stabilization of the portion of the Site disturbed by unauthorized construction activities.

Technical Requirements:

N/A

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Nancy Sims, Enforcement Division, Enforcement Team 1, MC R-12, (512) 239-5053; Michael Parrish, Enforcement Division, MC 219, (512) 239-2548

Respondent: Michael G. MacDougall, Sole Member, 2431 Woolridge Drive, Austin, Texas 78703-2533

Respondent's Attorney: Stefanie Albright, Bickerstaff Heath Delgado Acosta LLP, 3711 South MoPac Expressway, Suite 300, Austin, Texas 78746



Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

DATES	Assigned	19-Dec-2022	Screening	6-Mar-2023	EPA Due	
	PCW	12-Mar-2024				

RESPONDENT/FACILITY INFORMATION

Respondent	Michael G. MacDougall PCW No. 1 of 2		
Reg. Ent. Ref. No.	RN111594289		
Facility/Site Region	11-Austin	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	63704	No. of Violations	1
Docket No.	2023-1673-MLM-E	Order Type	1660
Media Program(s)	Water Rights	Government/Non-Profit	No
Multi-Media	Water Quality	Enf. Coordinator	Nancy Sims
		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%	Adjustment	Subtotals 2, 3, & 7	\$0
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Notes: No adjustment for compliance history.

Culpability	No	0.0%	Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0%	Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$126
Estimated Cost of Compliance: \$125
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$1,500
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OTHER FACTORS AS JUSTICE MAY REQUIRE	408.4%	Adjustment	\$6,126
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement (\$126) added to capture the avoided costs of a Water Rights permit application submittal. Recommended 400% enhancement because the impoundment occurred during extreme drought conditions (U.S. Drought Monitor Intensity Level D3).

Final Penalty Amount	\$7,626
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$7,626
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DEFERRAL	20.0%	Reduction	Adjustment	-\$1,525
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY	\$6,101
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Screening Date	6-Mar-2023	Docket No.	2023-1673-MLM-E	PCW
Respondent	Michael G. MacDougall PCW No. 1 of 2			
Case ID No.	63704			
Reg. Ent. Reference No.	RN111594289			
Media	Water Rights			
Enf. Coordinator	Nancy Sims			

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Number	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%
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 6-Mar-2023 Respondent Michael G. MacDougall PCW No. 1 of 2 Case ID No. 63704 Reg. Ent. Reference No. RN111594289 Media Water Rights Enf. Coordinator Nancy Sims	Docket No. 2023-1673-MLM-E <div style="text-align: right;"> <i>Policy Revision 5 (January 28, 2021)</i> <i>PCW Revision February 11, 2021</i> </div>	PCW
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Violation Number	1	
Rule Cite(s)		30 Tex. Admin. Code § 297.11 and Tex. Water Code § 11.121
Violation Description		Failed to obtain authorization prior to diverting, impounding, storing, taking, or using state water. Specifically, the Respondent constructed five impoundments on Flat Creek without prior authorization.

Base Penalty	\$5,000
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>> Environmental, Property and Human Health Matrix

OR		Release	Harm	Major	Moderate	Minor	
		Actual					
		Potential					
							Percent 0.0%

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
		X			Percent 10.0%

Matrix Notes	100% of the rule requirement was not met.
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Adjustment	\$4,500
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	\$500
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Violation Events

Number of Violation Events	3	186	Number of violation days
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	daily						
	weekly						
	monthly						
	quarterly	X					Violation Base Penalty \$1,500
	semiannual						
	annual						
	single event						

Three quarterly events are recommended from the investigation date (September 1, 2022) to the screening date (March 6, 2023).

Good Faith Efforts to Comply

	0.0%	
		Reduction \$0

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer	
Extraordinary			
Ordinary			
N/A	x		

Notes	The Respondent does not meet the good faith criteria for this violation.
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Violation Subtotal	\$1,500
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Economic Benefit (EB) for this violation

Estimated EB Amount	\$126
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Statutory Limit Test

Violation Final Penalty Total	\$7,626
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This violation Final Assessed Penalty (adjusted for limits)	\$7,626
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Economic Benefit Worksheet

Respondent Michael G. MacDougall PCW No. 1 of 2
Case ID No. 63704
Reg. Ent. Reference No. RN111594289
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	Costs Saved	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				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							

Avoided Costs

ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)	\$125	1-Sep-2022	11-Nov-2022	0.19	\$1	\$125	\$126
Notes for AVOIDED costs	Estimated Other cost to apply (\$100 application fee and \$25 filing fee) for authorization of a new impoundment of up to 100 acre feet. The Date Required is the investigation date and the Final Date is the date the impoundments were exempted from water rights permitting requirements by withdrawal of the plat application for Ranches at Lost Draw from the City of Johnson City.						

Approx. Cost of Compliance \$125

TOTAL \$126



Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

DATES	Assigned	19-Dec-2022			
	PCW	12-Mar-2024	Screening	6-Mar-2023	EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent	Michael G. MacDougall PCW No. 2 of 2				
Reg. Ent. Ref. No.	RN111594289				
Facility/Site Region	11-Austin		Major/Minor Source	Minor	

CASE INFORMATION

Enf./Case ID No.	63704	No. of Violations	1
Docket No.	2023-1673-MLM-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media	Water Rights	Enf. Coordinator	Nancy Sims
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$7,500
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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%	Adjustment	Subtotals 2, 3, & 7	\$0
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Notes	No adjustment for compliance history.			
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Culpability	No	0.0%	Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.			
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0%	Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$2,987	<i>*Capped at the Total EB \$ Amount</i>
Estimated Cost of Compliance	\$7,750	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$7,500
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OTHER FACTORS AS JUSTICE MAY REQUIRE	37.6%	Adjustment	\$2,819
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	Enhancement to capture the avoided cost of compliance.		
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Final Penalty Amount	\$10,319
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$10,319
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DEFERRAL	20.0%	Reduction	Adjustment	-\$2,063
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes	Deferral offered for expedited settlement.		
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PAYABLE PENALTY	\$8,256
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Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Number	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%
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.
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Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7)

0%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100%

0%

Screening Date	6-Mar-2023	Docket No.	2023-1673-MLM-E	PCW	
Respondent	Michael G. MacDougall PCW No. 2 of 2			<i>Policy Revision 5 (January 28, 2021)</i>	
Case ID No.	63704			<i>PCW Revision February 11, 2021</i>	
Reg. Ent. Reference No.	RN111594289				
Media	Water Quality				
Enf. Coordinator	Nancy Sims				
Violation Number	<input type="text" value="1"/>				
Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 281.25(a)(4) and 40 Code of Federal Regulations § 122.26(c)"/>				
Violation Description	<input type="text" value="Failed to obtain authorization to discharge stormwater associated with construction activities. Specifically, the Respondent was performing construction activities prior to obtaining authorization under Texas Pollutant Discharge Elimination System Construction General Permit No. TXR150000."/>				
Base Penalty				<input type="text" value="\$25,000"/>	
>> Environmental, Property and Human Health Matrix					
OR	Release	Harm			
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="0.0%"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>		
>> Programmatic Matrix					
	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input type="text" value="X"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="10.0%"/>
Matrix Notes	<input type="text" value="100% of the rule requirement was not met."/>				
Adjustment				<input type="text" value="\$22,500"/>	
				<input type="text" value="\$2,500"/>	
Violation Events					
Number of Violation Events		<input type="text" value="3"/>	<input type="text" value="186"/>	Number of violation days	
	daily	<input type="text"/>			
	weekly	<input type="text"/>			
	monthly	<input type="text"/>			
	quarterly	<input type="text" value="X"/>			
	semiannual	<input type="text"/>			
	annual	<input type="text"/>			
	single event	<input type="text"/>			
<input type="text" value="Three quarterly events are recommended from the investigation date (September 1, 2022) to the screening date (March 6, 2023)."/>					
Good Faith Efforts to Comply		<input type="text" value="0.0%"/>	Reduction	<input type="text" value="\$0"/>	
		Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer		
	Extraordinary	<input type="text"/>	<input type="text"/>		
	Ordinary	<input type="text"/>	<input type="text"/>		
	N/A	<input type="text" value="x"/>			
	Notes	<input type="text" value="The Respondent does not meet the good faith criteria for this violation."/>			
Violation Subtotal				<input type="text" value="\$7,500"/>	
Economic Benefit (EB) for this violation					
Statutory Limit Test					
Estimated EB Amount		<input type="text" value="\$2,987"/>	Violation Final Penalty Total	<input type="text" value="\$10,319"/>	
This violation Final Assessed Penalty (adjusted for limits)				<input type="text" value="\$10,319"/>	

Economic Benefit Worksheet

Respondent Michael G. MacDougall PCW No. 2 of 2
Case ID No. 63704
Reg. Ent. Reference No. RN111594289
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	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				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)	\$5,000	1-Sep-2022	4-May-2023	0.67	\$168	n/a	\$168
Notes for DELAYED costs	Estimated cost to achieve final stabilization of the portion of the Site disturbed by unauthorized construction activities. Date Required is the investigation date and Final Date is the date of compliance.						

Avoided Costs

ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)	\$2,750	1-Sep-2022	6-Mar-2023	0.51	\$69	\$2,750	\$2,819
Notes for AVOIDED costs	Estimated cost to obtain a construction general permit: to submit an NOI to obtain authorization to discharge stormwater (\$225), to develop and implement a stormwater pollution prevention plan, post a site notice, and submit a copy of the NOI to the receiving municipal separate storm sewer system (\$2500). The Date Required is the investigation date and the Final Date is the screening date.						

Approx. Cost of Compliance	\$7,750	TOTAL	\$2,987
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Compliance History Report

Compliance History Report for CN606072262, RN111594289, Rating Year 2023 which includes Compliance History (CH) components from September 1, 2018, through August 31, 2023.

Customer, Respondent, or Owner/Operator: CN606072262, Michael G. MacDougall **Classification:** NOT APPLICABLE **Rating:** N/A

Regulated Entity: RN111594289, RANCHES AT LOST DRAW **Classification:** NOT APPLICABLE **Rating:** N/A

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

CH Group: 14 - Other

Location: 1686 United States Highway 290 West, Johnson City, Blanco County, Texas

TCEQ Region: REGION 11 - AUSTIN

ID Number(s):

WATER RIGHTS REGION ID NUMBER R1111594289

Compliance History Period: September 01, 2018 to August 31, 2023 **Rating Year:** 2023 **Rating Date:** 09/01/2023

Date Compliance History Report Prepared: January 11, 2024

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: January 11, 2019 to January 11, 2024

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

Name: Nancy Sims

Phone: (512) 239-5053

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 |

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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
MICHAEL G. MACDOUGALL
RN111594289

§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2023-1673-MLM-E

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Michael G. MacDougall (the "Respondent") under the authority of TEX. WATER CODE chs. 7, 11, and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent, represented by Stefanie Albright of the law firm of Bickerstaff Heath Delgado Acosta LLP, together stipulate that:

1. The Respondent owned and operated a residential construction site located at 1686 United States Highway 290 West in Johnson City, Blanco 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). The site is near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5).
2. The Executive Director and the Respondent agree that the TCEQ has jurisdiction to enter this Order pursuant to TEX. WATER CODE §§ 7.002, 7.051, 7.073, and 11.0842 and that the Respondent is subject to TCEQ's jurisdiction. The TCEQ has jurisdiction in this matter pursuant to TEX. WATER CODE §§ 5.013 and 11.0842 because it alleges violations of TEX. WATER CODE ch. 11 and 26 and the rules of the TCEQ.
3. The occurrence of any violation is in dispute and the entry of this Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
4. An administrative penalty in the amount of \$17,945 is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent paid \$14,357 of the penalty and \$3,588 is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Order. The deferred amount shall be waived only upon full compliance with all the terms and conditions contained in this Order. If the Respondent fails to timely and satisfactorily comply with any of the terms or requirements contained in this Order, the Executive Director may demand payment of all or part of the deferred penalty amount.
5. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a). 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 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 the Respondent has not complied with one or more of the terms or conditions in this Order.
7. This Order represents the complete and fully integrated agreement of the parties. 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.
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 Executive Director recognizes that the Respondent implemented the following corrective measures at the Site:
 - a. By November 11, 2022, exempted the five impoundments on Flat Creek from water rights permitting requirements by withdrawing the plat application for Ranches at Lost Draw from the City of Johnson City; and
 - b. By May 4, 2023, achieved final stabilization of the portion of the Site disturbed by unauthorized construction activities.

II. ALLEGATIONS

During an investigation at the Site conducted on September 1, 2022, an investigator documented that the Respondent:

1. Failed to obtain authorization prior to diverting, impounding, storing, taking, or using state water, in violation of 30 TEX. ADMIN. CODE § 297.11 and TEX. WATER CODE § 11.121. Specifically, the Respondent constructed five impoundments on Flat Creek without prior authorization.
2. Failed to obtain authorization to discharge stormwater associated with construction activities, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(c). Specifically, the Respondent was performing construction activities prior to obtaining authorization under Texas Pollutant Discharge Elimination System Construction General Permit No. TXR150000.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

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

1. The Respondent is assessed a penalty as set forth in Section I, Paragraph No. 4. The payment of this penalty and the 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 action 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: Michael G. MacDougall, Docket No. 2023-1673-MLM-E" to:

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

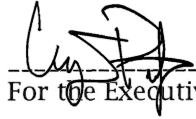
2. All relief not expressly granted in this Order is denied.
3. The duties and provisions imposed by this Order shall apply to and be binding upon the Respondent.
4. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. This Order, issued by the Commission, shall not be admissible against the 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 the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
6. 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.
7. The effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date



5/7/2024

For the Executive Director

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, if any, 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 submitted;
- Referral of this case to the OAG 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 OAG of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

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



Signature

03/19/2024

Date

Michael MacDougall

Name (Printed or typed)
Authorized Representative of
Michael G. MacDougall

Sole Member

Title

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

Instructions: Send the original, signed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Ordering Provision 1 of this Order.