

Thank you for your interest in buying our home and 40 acres located at 4749 Rockwood Dr, legal description Tracts R2 and R3, Riverwood Estates subdivision, Tom Green County Texas.

We are providing this disclosure regarding an open citation from TCEQ for the unauthorized dam located on Tract R2. Attached you will find the following documents:

1. A copy of the TCEQ citation and letter that we received with it.
2. The document TCEQ provided in response to our denial of ownership of the dam, questioning their authority to require us to do anything with a dam that was legally constructed in 1904, and request for information regarding what would be required to permit.
3. Documentation of the costs to comply with what TCEQ is requiring and a calculation of the NPV of the cash flows. Please note the dramatic increase in the cost between 2018 and 2024.
4. An email from the Watermaster confirming the citation is still active and TCEQ's requirements to permit the dam remain unchanged as of July 2024. If I hear anything that changes that, I will update this document.
5. Letters from local real estate attorney and part owner of First Title Company Greg Gossett opining that the dam is part of the property and as such you will be purchasing it.
6. A transcript produced using AI of testimony given by Austin water rights attorney Russ Johnson who represents Quicksand Golf Course in the case addressing the TCEQ Citation and relevant laws. The recording itself may be accessed at:
https://drive.google.com/file/d/1o9cYBz6pYMQTr5TC_4wmPO4ZoATQtEJP

I have other supporting documentation such as deeds, case law, certificates of adjudication, etc. If you would like them, just let us know.

None of this is to be considered legal advice. If you are still interested in purchasing the property, we recommend you consult with competent legal counsel experienced in water rights litigation and real estate law. We will not discuss it further. Don't claim otherwise. If you or someone else thinks it's not an issue, that's on you or them. The only representations we are making about it are those in this disclosure.

We are providing this information for the purpose of avoiding liability from claims for Negligence By Failure to Disclose, Statutory Fraud, Common Law Fraud and/or DTPA.

If you plan to finance the property, this information must also be provided to your lender and your appraiser to avoid state and/or federal mortgage fraud charges.

The property will only be shown to potential buyers who provide evidence of adequate liquid funds to purchase it and/or a preapproval from a lender who acknowledges receipt and review of this disclosure along with a letter from the lender stating they have reviewed the disclosure regarding the TCEQ issue, and will accept the property as collateral with an appraisal that doesn't address the cost of the impairment.

Buyer(s) acknowledge receipt of all 44 pages of this disclosure, agree to provide it to their lender and appraiser at the beginning of the loan process, and if they proceed with the purchase of the property agree not to pursue Martin J or Marla D Farris or their agents for claims relating to the dam and/or TCEQ citation on grounds of Negligence By Failure to Disclose, Statutory Fraud, Common Law Fraud, DTPA or any other legal theory.

Buyer _____ Date _____

Buyer _____ Date _____

Bryan W. Shaw, Ph.D., P.E., *Chairman*
Toby Baker, *Commissioner*
Zak Covar, *Commissioner*
Richard A. Hyde, P.E., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

February 28, 2014

CERTIFIED MAIL 91 7199 9991 7032 8260 7034
RETURN RECEIPT REQUESTED

Martin Farris
4749 Rockwood
San Angelo, Texas 76905

Re: Field Citation No. 12400
Dam on Concho River East of Hwy 306

Dear Mr. Farris:

A Texas Commission on Environmental Quality (TCEQ) investigator conducted an investigation at the above-referenced regulated entity to evaluate compliance with applicable requirements. During the investigation, certain outstanding alleged violations were documented. Enclosed is a Field Citation which lists the alleged violation(s) and associated administrative penalty. This letter is to notify you that you can settle these alleged violation(s) and penalty through the TCEQ's Field Citation Process.

Please read the Field Citation form enclosed and information page titled *I Received A Field Citation. What Happens Next?* to assist you in determining if you want to settle the alleged violation(s) using the Field Citation process. **If you decide to settle the Field Citation, please be aware that you have 30 days from the investigation date listed on the Field Citation to submit both the Field Citation form with an original signature AND payment for the total assessed penalty amount to the address listed on the enclosed Field Citation form.** A white copy of the Field Citation form was provided on-site (if possible) and a canary yellow copy is enclosed as a courtesy copy. Please sign and return the white copy. After the 30th day, the alleged violation(s) will be referred to the TCEQ's Enforcement Division for development of an Agreed Order and an increased administrative penalty.

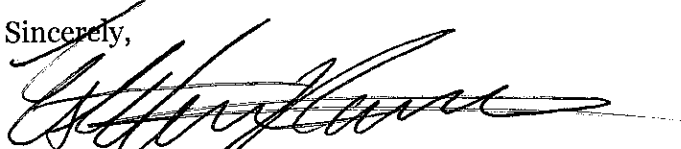
If you choose to pay this Field Citation, the alleged violation(s) must also be corrected within 45 days from the investigation date. Please submit written certification of completed corrective action for each alleged violation to the TCEQ region address circled on the back of the enclosed Field Citation form. Receipt of payment and your signed form within the 30 day payment period, indicates that you will correct the alleged violation(s) within 45 days. If the alleged violation(s) have not been certified as corrected within 45 days (even if payment has been

Martin Farris
Page 2
February 28, 2014

received), the alleged violations will be referred to the TCEQ's Enforcement Division for development of an Agreed Order and an increased administrative penalty. *If you are unable to correct the alleged violation(s) within 45 days, please do not pay the Field Citation as this Field Citation offer cannot be retained without completed corrective action.*

If you have any questions, please feel free to contact the Concho Watermaster Steve Ramos at (210) 403-4040.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steve Ramos', with a long horizontal flourish extending to the right.

Esteban (Steve) Ramos, Concho Watermaster
Watermaster Section
Water Availability Division
Texas Commission on Environmental Quality

Enclosures: Field Citation Form
I Received A Field Citation. What Happens Next?



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ)

WATER FIELD CITATION

Field Citation No.
12400

Investigation Date: 11, 14, 2013 Time: 2:40 ☐ AM ☒ PM Region 8 Docket No.: _____
Investigator Name: John Walton Investigator Signature: [Signature] Investigation No.: _____
for John Walton

Responsible Party (RP): <u>Martin J + Marla D. Fairis</u>	CN No.
Regulated Entity: <u>DAM ON CONCHO RIVER East of HWY 306</u>	RN No. <u>107127607</u>
Physical Address: <u>6749 Rockwood</u> County: <u>Tom Green</u>	Additional ID No.

ALLEGED VIOLATION	Rules Cited TEX. ADMIN. CODE (TAC)	ASSESSED PENALTY	
		MAJOR	MINOR
Failure, by an installer, to ensure that an authorization to construct has been issued prior to beginning construction of an On-site Sewage Facility (OSSF)	30 TAC §285.61(4)	<input type="checkbox"/>	<input type="checkbox"/> \$ 175
Impounding, diverting, or using state water without a required permit	TEX. WATER CODE §11.081 TEX. WATER CODE §11.121	<input type="checkbox"/> >0.5 to 10 acre/feet (Penalty: \$ 875)	<input type="checkbox"/> 0 to 0.5 acre/feet (Penalty: \$ 350)
Any unauthorized diversions or use of state water (permitted or not permitted) where water diversion curtailments/suspensions have been ordered by the Executive Director (including Watermaster)	TEX. WATER CODE §11.053	<input checked="" type="checkbox"/> >0.5 to 10 acre/feet (Penalty: \$ 1,050)	<input type="checkbox"/> 0 to 0.5 acre/feet (Penalty: \$ 420)
Failure to obtain a Construction General Permit (stormwater)	30 TAC §281.25(a)(4)	<input type="checkbox"/> \$ _____	<input type="checkbox"/> \$ 875
Failure to obtain a Multi-Sector General Permit (stormwater)	30 TAC §281.25(a)(4)	<input type="checkbox"/> \$ _____	<input type="checkbox"/> \$ 875
All forms of advertisement of landscape irrigation installation, maintenance, alteration, and repair must include the irrigator's license number in the form of LI _____. This includes vehicles, written and electronic advertisements, business cards, and estimates. (repeat only)	30 TAC §344.70(a) 30 TAC §344.70(b)	<input type="checkbox"/>	<input type="checkbox"/> \$ 175
Failure to comply with local landscape irrigation regulations for permitting or inspections as required by the city, town, county, special purpose district, public water supply, or political subdivision of the state.	30 TAC §344.24(a) 30 TAC §335.35(d)(2) 30 TAC §335.35(d)(3)	<input type="checkbox"/>	<input type="checkbox"/> # instances ____ x \$175
Failure to obtain a required occupational license (Program: _____)	30 TAC §30.5(a)	<input type="checkbox"/>	<input type="checkbox"/> \$ 175
Investigator Comments: (including corrective action) <u>Unauthorized dam identified - Compliance to be obtained by obtaining a permit or modifying structure to prevent impounding</u>		TOTAL ASSESSED PENALTY: <u>\$ 1,050.00</u>	

IF YOU CHOOSE TO SETTLE the alleged violation(s) within **30 days** from the investigation date noted above, please submit this form with the Authorized Representative's original signature AND check or money order for the total assessed penalty to the address below. Please include the Field Citation No. on your payment method.

Financial Administration Division, MC 214, Texas Commission on Environmental Quality, PO Box 13088, Austin, Texas 78711-3088

Certification of completed corrective action for each alleged violation must be submitted to the TCEQ region address circled on the back of this form within **45 days** from the investigation date. Your signature below and penalty payment within 30 days from the investigation date indicates that you will correct the alleged violation(s). Failure to provide documentation of completed corrective action within 45 days may result in additional penalties.

The RP named above generally denies the alleged violation(s) with an assessed penalty above. Payment of the penalty is made only in the interest of settlement.

As an Authorized Representative, I understand that by signing this citation and agreeing to pay the administrative penalty, I waive certain procedural rights, including the right to formal notice of violation(s) alleged in this citation, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal.

Authorized Representative Signature

Printed Name

Title

Date

FOR COMMISSION USE ONLY

Commission Signature

Date

IF YOU CHOOSE TO CONTEST the alleged violation(s) in this citation, notify the investigator named above. The alleged violation(s) above will be referred to the TCEQ's Enforcement Division. Please be aware this Field Citation total assessed penalty amount will no longer be available.

FAILURE TO RESPOND TO THIS CITATION: If you fail to pay the assessed penalty, the TCEQ Enforcement Division will pursue further enforcement action including assessment of increased administrative penalties. Financial inability to pay the penalty does not excuse failure to respond to and correct the alleged violation(s).

This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.

☒ Water (CWTR) ☐ Waste/Multimedia (CWST) ☐ Air (CAIR) ☐ Dry Cleaner (CDRY)

Johnson Dam #1

Johnson Dam #1 is located in Tom Green County on the Mainstem of the Concho River. The dam is located within the jurisdiction of the Concho River Watermaster program. The owners of the structure have been identified as Mr. Martin Farris and Ethicon, Inc. The estimated volume for the impoundment is 241.10 acre-feet.

Timeline

- October 25, 2013 – Complaints received from two individuals.
- November 14, 2013 – Site investigation conducted by Concho Watermaster and Watermaster staff.
- February 28, 2014 – Field citation issued for unpermitted impoundment.
- April 2014 – Dam Safety staff conducted an onsite investigation of Johnson Dam #1.
- 2014 – 2016 – Multiple meetings were held to discuss ownership issues and permitting options.

Is a water right permit required?

Mr. Farris and Ethicon are required to obtain a water right permit from the TCEQ to allow state water to be impounded by the dam built on their property in 1904.

Irrigation Acts of 1895 and 1913

The Irrigation Act of 1895 required any person who constructed a dam or lake and who takes water from that dam or lake to record a sworn statement in the county clerk's office. See Act of March 9, 1895, 24th Leg., R.S., Ch. 21, § 6, 1895 Tex. Gen. Laws 21 (Vernon). When the dam on Mr. Farris and Ethicon's property was constructed in 1904, the person owning the land the dam was located on should have recorded a sworn statement with the Tom Green County Clerk's Office regarding the dam and the impoundment created by the dam. In addition to filing with the County Clerk's Office, the Irrigation Act of 1913 further required someone that takes or diverts water prior to January 1, 1913 to file a sworn statement with the Board of Water Engineers. See Act of April 9, 1913, 33rd Leg., R.S., Ch. 171, §§ 12 and 14, 1913 Tex. Gen. Laws 358 (Vernon). In addition to filing with the County Clerk's Office, the 1913 Act required the owner of the land that the dam is located on to file a sworn statement with the Board of Water Engineers.

Water Rights Adjudication Act

The Water Rights Adjudication Act of 1967 required all water rights claimants, except domestic and livestock claimants to file sworn claims by September 1, 1969. Tex. Water Code § 11.303(a) and (c) and 30 Tex. Admin. Code § 86.12(d). The following claims were required to go through the adjudication process:

- 1) Claims of riparian water rights;
- 2) Claims under Texas Water Code Section 11.143 to impound, divert, or use state water for other than domestic and livestock purposes, for which no permit has been issued;
- 3) Claims of water rights under the Irrigation Acts of 1889 and 1895 which were not filed with the State Board of Water Engineers in accordance with the Irrigation Act of 1913; and
- 4) Other claims of water rights except claims under permits or certified filings.

Tex. Water Code § 11.303(a)

The purpose of the Water Rights Adjudication Act was to “require recordation with the commission of claims of water rights which are presently unrecorded, to limit the exercise of these claims to actual use, and to provide for the adjudication and administration of water rights.” Tex. Water Code § 11.302. All claims of water rights, including the impoundment on Mr. Farris’s property, were required to go through the adjudication process. See Tex. Water Code § 11.303(a)(3), (a)(4), and (c).

If a water right was not recognized in the adjudication process, a permit would have to be obtained to authorize the use of state water. See Tex. Water Code §§ 11.322(e) and 11.121. Since the water right was never adjudicated, Mr. Farris and Ethicon as the current owners of the property that the dam is on, are required to obtain a water right permit to lawfully impound state water. The Irrigation Acts of 1895 and 1913 did not grandfather the dam on Mr. Farris’s property; these Acts required sworn statements to be filed with the County Clerk’s Office and the Board of Water Engineers. Subsequently, when the Water Rights Adjudication Act of 1967 was passed, the water right should have gone through the adjudication process. Because the water right was never permitted through the adjudication process, Mr. Farris and Ethicon as the current dam landowners are required to permit the impoundment.

Texas Water Code § 11.142

The impoundment on Mr. Farris’s property is not exempt under Texas Water Code Section 11.142 because the impoundment is located on the Concho River, a navigable stream, and is greater than 200 acre-feet. Texas Water Code Section 11.142 states that “a person may construct on the person’s own property a dam or reservoir with normal storage of not more than 200 acre-feet of water for domestic and livestock purposes.” Tex. Water Code § 11.142. “Reservoirs on navigable streams are not exempt under TWC, § 11.142.” 30 Tex. Admin. Code § 297.15. The impoundment on Mr. Farris and Ethicon’s property is on a navigable stream and is greater than 200 acre-feet; therefore it is not exempt under Tex. Water Code § 11.142. Because the impoundment is not exempt under Texas Water Code Section 11.142, Mr. Farris and Ethicon are required to obtain a water right permit to authorize the use of state water in the impoundment.

Is there currently a water right associated with the dam/impoundment?

No. Staff has reviewed all relevant documents to determine whether a water right was associated to this impoundment. The information reviewed includes all certificates of adjudication or water right permits in the area of the impoundment, both upstream and downstream. Staff also reviewed the maps that were created as part of the adjudication process. Finally, staff researched the *Final Determination of Claims of Water Rights in the Concho River Segment of the Colorado River Basin* (Final Determination). The Final Determination includes a record of all claims submitted during the Water Rights Adjudication and the disposition of those claims. Staff found that although the reservoir was mentioned in one of the claims, the reservoir was determined to be downstream of the claimant’s ownership and the reservoir was not recognized for that claim. There was no other claim associated with the impoundment.

Who currently owns the dam/impoundment?

The dam and impoundment are owned jointly by Martin Farris and Ethicon.

Based on Ethicon's Limited Chain of Title Search, the supplemental deed information provided by Ethicon, other information provided by Ethicon, and the email and information provided by Mr. Farris, there is not enough information to conclude that Mr. Farris and Ethicon, Inc. do not own the dam located on their respective properties. Although, Mr. Farris and Ethicon, Inc. argue that J. Gordon McGill owns the dam, there is no information to show that Mr. McGill owns the dam. In order for the dam to be owned by Mr. McGill, it would have to have been excepted in one of the deeds transferring the property. None of the deeds provided show that the dam was excepted from transfer. Ethicon and Mr. Farris, as the landowners where the dam is located, are in the best position to remove or permit this impoundment.

What options do the owners have available to resolve the issue?

- The Owners could apply for a permit for the impoundment. Options for permitting the impoundment are discussed below.
- The Owners could breach or remove the dam. Note that the TCEQ is unaware of any evidence demonstrating the dam is impounding polluted sediment.

Who has to permit the dam/impoundment?

- The Owners of the dam would need to permit the impoundment. The Owners would also have to provide consent from all upstream property owners whose property is inundated by the impoundment.
- In the alternative, one or both of the Owners can provide an easement or consent for another party to permit the dam.
- The water right permit holder would be responsible for maintaining the dam and for ensuring that operation of the impoundment complies with any provisions in the water right permit.

How can the dam/impoundment be permitted?

- TCEQ Dam Safety staff performed a detailed field evaluation in April 2014 to determine how much water is impounded by the dam. The detailed field evaluation was based on field measurements of the size and depth of the stream behind the impoundment. Mr. Farris provided information from the National Inventory of Dams indicating that the capacity of the dam was 106 acre-feet. TCEQ staff does not have information about how that value was calculated; however, staff's detailed field evaluations based on actual on-site measurements determined that the dam impounds 241.1 acre-feet of water.
- There is no water available for appropriation to permit the impoundment. Options include contract water from another water right holder or purchase of an existing water right.
- If existing water rights are purchased, those water rights would need to be amended to move them to the impoundment. The amount of water moved must be sufficient to compensate for evaporation from the reservoir during dry times. TCEQ would also look to see whether moving the water right could affect other water rights or the environment.

- The prior appropriation doctrine governs water rights in Texas. This means that more senior water rights get water before more junior water rights. If a very senior water right is moved, less water may be needed because the senior water right would be there all the time, including during drought. If a more junior water right is moved, more water would likely be needed because water would not be available all the time, especially during droughts. Therefore more water would be needed to keep the reservoir full during wetter times so that water would remain in storage during dry times when water was not available.

What major permit requirements would we anticipate in the permit?

- Any permit issued for the impoundment would include provisions to protect other water rights and the environment. Texas Water Code 11.122(b) requires that any amendment issued must be conditioned so there is no greater impact on other water rights or the environment than there would be if the impoundment was not there.
- These provisions would require that water be passed downstream to more senior water rights and to ensure that water continues to flow in the stream.
- There are several ways that water can be passed downstream. One option would be to rehabilitate the existing outlet to make it functional. The other option would be to install a siphon at the dam which could pump water over when needed for other water rights or the environment.
- The permit would also require full basin mailed and published notice under the Texas Water Code and TCEQ's rules. The notice would allow other water right holders to determine whether the proposed impoundment would affect their water rights.

Next Steps

- TCEQ issued the filed citation in February 2014. Under TCEQ rules/practice these are sent through the normal enforcement process (typically higher penalties) if not resolved and paid in 30 to 45 days. We have held this field citation as we attempt to work with the parties to find a resolution.
- TCEQ reviewed water rights Mr. Farris proposed for permitting the dam. Staff looked at 100 acre-feet of water rights under Certificate of Adjudication 14-1329 (Sonnenberg) and varying amounts of the water rights under Certificate of Adjudication 14-1330 (Quicksand). Both of these water rights have relatively junior priority dates compared to other water rights in the Concho River watershed. Based on staff's review, permitting the impoundment would require all (100 acre-feet) of the water authorized under Certificate 14-1329 (Sonnenberg) and at least 200 acre-feet of the water rights authorized under Certificate of Adjudication 14-1330 (Quicksand).
- Notify Mr. Farris and Ethicon, Inc. regarding TCEQ's review of water rights proposed for permitting the dam. TCEQ will need to establish a timeframe for Mr. Farris and Ethicon, Inc. to take action on permitting. If Mr. Farris and Ethicon, Inc. do not take action, TCEQ will need to refer this case to enforcement.

Subject: RE: Need Some Numbers
From: "Chuck Brown"
Date: 2/27/2018 11:29 AM
To: mfarris

Martin,

Sorry, I forgot to email you back. Below are the pricing we came up with at our last meeting.

250 acre feet of water at \$100/acre foot = \$25,000.00
Monitoring equipment = \$15,000.00
Annual maintenance = \$10,000.00
Potential dam engineering and work = \$20,000.00

The monitoring equipment and potential dam engineering work would be a one-time cost. The cost of water and annual maintenance would be a reoccurring cost each year.

Chuck

Chuck Brown
Director of Operations
UCRA
512 Orient
San Angelo, Texas 76903
<http://www.ucratx.org/>
325 655 0565 office
325 234 8017 mobile

From: Martin James Farris
Sent: Thursday, February 22, 2018 2:28 PM
To: Chuck Brown
Subject: Need Some Numbers

Chuck,

Hope you are well. Can you help me out with some numbers for complying with TCEQ's permitting requirements? I'm disputing the appraised value of my property with TGCAD, and need something in writing to show them the cost of this problem which needs to be accounted for when taxing the property.

Cost per acre-foot you would sell us water, and the rate at which you anticipate that cost will increase in the future.

Cost for the equipment TCEQ is requiring (flow meters at inlet and dam, siphon or gate, installation, etc.).

If you know them, cost to monitor and balance the flow as required on a daily basis and maintain/replace the equipment.

An email response should suffice. Let me know if you have any questions.

Thanks,
Martin

Subject: UCRA Water Sales
From: Scott McWilliams
Date: 1/25/2024, 12:39 PM
To: Martin James Farris

Hi Martin,

UCRA currently set price for water sold to new UCRA customers is \$420/acre foot. The UCRA Board of Directors sets the price for water sales annually.

Best,
-Scott

Scott McWilliams, P.G.
General Manager/CEO
Upper Colorado River Authority
Office (325) 655-0565
Cell (325) 650-8560

West Texas Water Partnership

The West Texas Water Partnership (WTWP) is a unique collaborative effort by the cities of [Abilene](#), [Midland](#) and San Angelo to address long-term water needs. The WTWP will explore opportunities to maximize local supplies, continue to support conservation and develop new long-term water supplies for the region.

The best way to offset the drought's crippling effects and to prepare for growth is to work together develop several long-term cooperative water management strategies to address future water demands, part of which may include bringing more water to the region. No one city can bear the cost of bringing water in alone, and whether the source is groundwater or surface water, many questions and valid concerns will arise, ranging from environmental to the effect on the source and its inhabitants.

To share these burdens and minimize potential impacts to the environment, Abilene, Midland and San Angelo have joined hands as the West Texas Water Partnership (WTWP). This partnership acknowledges water resource development in the region can best be achieved by working together. It eliminates the adverse effects that competing for water would have.

Each city has funded the engineering, legal and organizational needs of an effort to evaluate and develop water management strategies, maximize existing water resources and acquire future groundwater or surface water supplies, if necessary.

Fort Stockton Holdings water project

News release: May 12, 2020 - [West Texas Water Partnership secures long-term source](#)

Securing Water for Future Generations ...



FAQ

- **Where is Fort Stockton Holdings (FSH) water located?** FSH water is located in the Fort Stockton area. FSH owns a groundwater production and transport permit that allows FSH to produce and use 28,400 acre-feet of Edwards-Trinity groundwater each year.
- **Will we own the rights?** No, the agreement is for the purchase of untreated groundwater on a take-or-pay basis. The cities will pay for their proportionate share of the total volume.
- **How much water is allocated to the City of San Angelo?** The total volume contracted with Fort Stockton Holdings is for 28,400 acre-feet per year. This volume will be broken down as follows between the three cities:
 - Midland: 15,000 acre-foot per year
 - Abilene: 8,400 acre-foot per year
 - San Angelo: 5,000 acre-foot per year

Population, current supplies, and variety of factors drive the allocation between the three cities. One acre-foot is equivalent to 325,851 gallons. San Angelo's annual average water usage is around 14,000 acre-feet.

- **How much are we paying for the water?**

- From the date the contract goes into effect until January 1, 2025, the City will pay \$0.30625 per 1,000 gallons. The payment for 2020 will be prorated for the calendar year, for a total of about \$489,959 per year.
- The rate increases to \$0.3425 per 1,000 gallons on January 1, 2025 and will remain the same through December 31, 2029, for a total of about \$558,020 per year.
- Beginning January 1, 2030, the rate increases to \$0.55 per 1,000 gallons for a total of about \$896,090 per year
- On January 1, 2031, and through the remainder of the contract term, the rate increases by 0.5% of the rate in effect for the previous year.

- **How will the City pay for the water?** The City has identified a funding source for the water through the San Angelo Development Corporation. 72% of that corporation's revenue is restricted for future water supply and that revenue stream could support the cost associated with the payment for 5,000 acre-feet of water.
- **How much will developing this project cost?** The engineer's total project estimate for the wellfield, pipeline, associated transmission infrastructure and treatment facility is \$300 million. With the City's portion of the total volume, this would put the City's split of the capital infrastructure at \$52.8 million. As a comparison to the Hickory groundwater project, the FSH project cost is approximately 29% less based on the capital cost per volume. Operating costs have been projected to be very similar to the operating costs of the Hickory system.
- **Why are we contracting now versus when we need it?** As long as drought does not drive this project, the expected timeline for developing this supply is in the range of 2035 to 2040. Similar to the 1970s acquisition of the Hickory groundwater rights, securing these sources happens many years in advance. If the partnership were to wait until a source was needed, there is a high possibility the source would no longer be available to serve the citizens of West Texas.
- **Will we stop pursuing the Concho River Water Project?** The City of San Angelo is still pursuing the Concho River Water Project. Both projects are an effort to diversify the City's water portfolio and expand San Angelo's future water supply to meet the demand of generations to come.

Wednesday, February 28, 2018

To: Martin Farris

From: Don Searles

Subject: Cost estimate for dredging a 1.5 miles section of the Concho River per the specifications I received.

Based on the following outline of the project I estimate the cost to be \$15 to \$20 per cubic yard of in-situ material removed from the river. Thus, I suggest that \$17.50 per cubic yard be used as an estimate.

The following is an outline of your dredging project.

- 1) Locate a parcel of ground that you can acquire to be used as the containment area for the dredged material. It is called a spoil area in the dredging trade.
 - a) The spoil area must have levees around it, make from compacted earth that will contain the dredge material without the levees leaking or failing.
 - b) To accommodate the in-situ material that will swell because of dredging, the spoil area must be 1.4 times the volume of material dredged from the river. $300,000 \times 1.4 = 420,000$ cubic yards + 1 feet of freeboard. If the mud in the spoil area is 5.5 feet deep the spoil area will cover approximately 50 acres. Most likely it will take 5 to 10 years for the mud to consolidate sufficiently for a tractor to drive on it.
 - c) The slurry that is pumped from the river with the dredge, to the spoil area will contain approximately 85% carriage water and 15% in-situ material. In the spoil area, the solids will settle, and the clear water must be returned to the river with a pump or by gravity flow.
- 2) You will need a civil engineering firm knowledgeable in dredging for the following activities.
 - a) Design the spoil area and the means to return the clear water to the river.
 - b) Develop the specifications to build the spoil area.
 - c) Develop a safety plan, have the safety plan approved by the owner and the regulatory agencies, make inspections and submit reports to assure the owner and the regulatory agencies that the safety plan is being followed.
 - d) Assist your attorney in drafting the contract to build the spoil area and develop the bid package.
 - e) Assist the owner in getting the required permits from the government regulatory agencies.
 - f) Advertise the project, qualify the bidders, open the bids, assist the owners in selecting the contractor, conduct progress meetings with the contractor and owner.
 - g) Inspect the work as the spoil area is being built to assure it is built to the specifications and the contractor is in compliance with the permits.
 - h) Develop and manage an erosion control plan for the spoil area, which would include seeding the levee slopes.
 - i) Assist in obtaining the required permits from the state EPA, Fish & Wildlife and the U.S. Army Corps of Engineers and others that may be required.

- j) Assist in recovering samples of mud and have the samples tested to determine if the mud contains hazardous materials. If the mud is classified as a hazardous material the cost of the project could escalate to over \$100.00 per cubic yard the specifications must include a dispute resolution method.
- 3) Now you are ready to start dredging.
- a) The method I strongly recommend to determine how the dredging contractor is paid is based on the number of cubic yards of material removed from the lake. Plus, a price for mobilization and de-mobilization of the contractor's dredge, tugboat, booster pumps, pipeline and other equipment.
To determine the number of cubic yards that the contractor has removed from the lake, a before dredging and an after dredging survey of the river must be made. The survey should be made by a reputable and experienced hydrographic surveying company.
 - b) The dredging contractor will need land to be used for an office trailer, supply and workshop trailer, to store and launch more than 6,000 feet of pipeline, assemble and launch the dredge, launch a dredge tender tugboat, possibly a booster pump on a barge, and a fuel barge. The contractors cost for the setup and storage yard is added to his mobilization price
 - c) Develop a safety plan, have the safety plan approved by the owner and the regulatory agencies, make inspections and submit reports to assure the owner and the regulatory agencies that the safety plan is being followed.
 - d) Your civil engineer will prepare the specifications for dredging, develop a contract, which must include a dispute resolution procedure, advertise the project, supervise the bidding process, assist the owner in selecting the best dredging contractor for the project, inspect the dredging work as it is being done to assure the contractor is following the specifications, and complying with the permits, conduct progress meetings with the contractor and owner, work with the surveyor and certify the pay quantities.

If your project progresses, my recommendations follow

I have been an expert witness in 27 lawsuits involving dredging. In two of those lawsuits, people were killed when their boat hit a floating dredge pipeline at high speed. One lawsuit was when a man dove off a dock and broke his neck when his head on a submerged dredge pipeline. He is now a paraplegic. I recommend that you use my consulting service to assist in developing a safety plan for dredging.

Most civil engineers are not knowledgeable about dredging. Thus, I recommend that you use my consulting service to train the civil engineering firm you select in dredging

I recommend that you use my consulting service to review the contracts for building the spoil area and for dredging.

To avoid expensive litigation, I recommend that disputes be resolved by binding arbitration.

Best regards,

Don Searles



ESTIMATE

ENVIRODREDGE

PO Box 35
New Summerfield, Texas 75780
United States

Mobile: 903-541-6766
www.envirodredge.com

BILL TO
Martin Farris

Estimate Number: Martin Farris -
Dredging

Estimate Date: March 7, 2024

Valid Until: September 30, 2024

Estimate Total \$9,076,000.00
(USD):

Product/Service	Quantity	Price	Amount
Sediment Removal	300000	\$20.00	\$6,000,000.00

A portable sediment removal system will be used to pump silt and sediment materials through a temporary/portable pipeline into sediment containment bags staged at a suitable onsite location.

Dredge Area: 33.66 surface acres
Estimated Soft Sediment Volume: 300,000 cubic yards (in situ)

Notes:

- Sediment volume calculations based on data from customer.
- Areas of clay, rock and impermeable surfaces may affect the estimated total volume of removable sediment.
- Shrinkage in geo textile dewatering bags does not correlate to in situ cubic yards.
- Pricing based on In Situ cubic yards, not dredge depth, water depth, or dewatered cubic yards.
- Cubic yards removed does not guarantee or imply specific water depth.

Sediment Dewatering	300000	\$10.00	\$3,000,000.00
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A Geo Textile dewatering bag will be used to dewater sediment.

Includes:

- * Polymer injection
- * Geotextile dewatering bag material
- * Return water management



ESTIMATE

ENVIRODREDGE
PO Box 35
New Summerfield, Texas 75780
United States

Mobile: 903-541-6766
www.envirodredge.com

Product/Service	Quantity	Price	Amount
Materials Water containment and erosion control.	1	\$35,000.00	\$35,000.00
**Doesn't include imported materials (wood chips) or soil grading as maybe required for leveling the dewatering pad.			
Site Prep Setup dewatering area.	1	\$25,000.00	\$25,000.00
Equipment Mobilization and Demobilization Mobilize and demobilize equipment and crew.	2	\$4,500.00	\$9,000.00
Dredge Launch & Removal Crane service to launch and remove dredge.	2	\$3,500.00	\$7,000.00
Subtotal:			\$9,076,000.00
Total:			\$9,076,000.00
Estimate Total (USD):			\$9,076,000.00

Notes / Terms

This estimate is for the work scope and materials as defined above. Any other site activity, additions or inclusions will be at an additional cost to the customer. Thank you. We appreciate your business.

SALES TAX NOT INCLUDED

EXCLUSIONS:

- * Haul off/disposal of dewatered sediment materials
- * Restoration of dewatering area
- * "Unknown" underwater structures, lines, cables, etc.
- * Permitting

**A pre-dredge site survey by an authorized Envirodredge representative will be required prior to mobilization to verify sediment depths, volume, dewatering areas and other project logistics.

Thank you for your business.

Year	Permitting Cost				Total Cost	NPV of Cash Flows	Dredging/ Removal Cost
	Water Inflation Rate	Cost of Water	Labor Inflation Rate	Cost of Labor			
1	11.84%	\$105,000	3%	\$11,940	\$136,500	\$253,440	\$4,148,866
2	0.00%	\$117,432	3%	\$12,298		\$129,730	\$9,076,000
3	0.00%	\$117,432	3%	\$12,667		\$130,099	
4	0.00%	\$117,432	3%	\$13,047		\$130,479	
5	0.00%	\$117,432	3%	\$13,439		\$130,871	
6	60.58%	\$117,432	3%	\$13,842		\$131,274	
7	0.50%	\$188,572	3%	\$14,257		\$202,829	
8	0.50%	\$189,515	3%	\$14,685		\$204,200	
9	0.50%	\$190,463	3%	\$15,125		\$205,588	
10	0.50%	\$191,415	3%	\$15,579		\$206,994	
11	0.50%	\$192,372	3%	\$16,046		\$208,418	
12	0.50%	\$193,334	3%	\$16,528		\$209,862	
13	0.50%	\$194,301	3%	\$17,024		\$211,324	
14	0.50%	\$195,272	3%	\$17,534		\$212,806	
15	0.50%	\$196,249	3%	\$18,060		\$214,309	
16	0.50%	\$197,230	3%	\$18,602		\$215,832	
17	0.50%	\$198,216	3%	\$19,160		\$217,376	
18	0.50%	\$199,207	3%	\$19,735		\$218,942	
19	0.50%	\$200,203	3%	\$20,327		\$220,530	
20	0.50%	\$201,204	3%	\$20,937		\$222,141	
21	0.50%	\$202,210	3%	\$21,565		\$223,775	
22	0.50%	\$203,221	3%	\$22,212		\$225,433	
23	0.50%	\$204,237	3%	\$22,878		\$227,115	
24	0.50%	\$205,258	3%	\$23,565		\$228,823	
25	0.50%	\$206,285	3%	\$24,272		\$230,556	
26	0.50%	\$207,316	3%	\$25,000		\$232,316	
27	0.50%	\$208,353	3%	\$25,750		\$234,102	
28	0.50%	\$209,394	3%	\$26,522		\$235,917	
29	0.50%	\$210,441	3%	\$27,318		\$237,759	
30	0.50%	\$211,494	3%	\$28,137		\$239,631	
31	0.50%	\$212,551	3%	\$28,982		\$241,533	
32	0.50%	\$213,614	3%	\$29,851		\$243,465	
33	0.50%	\$214,682	3%	\$30,746		\$245,428	
34	0.50%	\$215,755	3%	\$31,669		\$247,424	
35	0.50%	\$216,834	3%	\$32,619		\$249,453	
36	0.50%	\$217,918	3%	\$33,598		\$251,516	
37	0.50%	\$219,008	3%	\$34,605		\$253,613	
38	0.50%	\$220,103	3%	\$35,644		\$255,747	
39	0.50%	\$221,203	3%	\$36,713		\$257,916	
40	0.50%	\$222,309	3%	\$37,814		\$260,124	
41	0.50%	\$223,421	3%	\$38,949		\$262,370	
42	0.50%	\$224,538	3%	\$40,117		\$264,655	
43	0.50%	\$225,661	3%	\$41,321		\$266,982	
44	0.50%	\$226,789	3%	\$42,560		\$269,349	
45	0.50%	\$227,923	3%	\$43,837		\$271,760	
46	0.50%	\$229,063	3%	\$45,152		\$274,215	
Total		\$9,019,296		\$1,152,227	\$136,500	\$10,308,023	

Water inflation rate based on % increase in West Texas Water Partnership contract. UCRA buys water from COSA so it stands to reason the cost to buy water from them will increase at the same rate as COSA's cost to acquire the water.

Initial Cost of Water Supplied By UCRA, 2024 rate = \$420 per acre foot for 250 acre-feet

Discount Rate: 4.25%

NPV of permitting cost exceeds the market value of the house after just 10 years, and our entire net worth after just 17 years. The permit requires water to be purchased forever. Even in the final year shown above the discounted cost is approx. \$40K per year, so the NPV of an infinite number of years is quite substantially higher than the \$4 million shown for the 46 years I could obtain cost increase data for. As a result the home is a substantial liability, not an asset.

Subject: Field Citation No. 12400
From: Angela Sander
Date: 7/8/2024, 6:47 PM
To: "mfarris@dreamhomefundin .com"
CC: Larry Butler

Mr. Farris,

You requested a status update of Field Citation No. 12400 issued in November 2013 for an unauthorized dam on the Concho River in Tom Green County. There have been no updates and TCEQ's requirements to permit the reservoir are unchanged.

Sincerely,



Angela Sander
South Texas & Concho Watermaster
TCEQ - 14250 Judson Rd, San Antonio, TX 78233
210-416-3997 (Cell)

**GOSSETT, HARRISON
MILLICAN & STIPANOVIC**

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BOARD CERTIFICATION IS
BY THE TEXAS BOARD OF
LEGAL SPECIALIZATION

*BOARD CERTIFIED - COMMERCIAL REAL ESTATE LAW

October 31, 2024

Martin Farris
4749 Rockwood Drive
San Angelo, Texas 76905

Dear Mr. Farris,

You have inquired about the status of ownership of the dam which crosses the Concho River, east of San Angelo and beginning on the north property line of your property, being the Surface estate in Tract R-3 and R-2, Riverwood Estates, Tom Green County, Texas. I have also reviewed the letter dated August 20, 2024, of Wayne K. Olson of Taylor Olson Adkins Sralla Elam of Fort Worth.

I think all parties can agree:

- 1) That the north property boundary line of the subject property is adjusted to align with the south bank of the Concho River, as the meander line of the bank may change from time to time.
- 2) That the State of Texas maintains ownership of the Concho River from bank to bank.
- 3) That water rights (ie, the right to draw water or irrigate from the Concho River) are not an issue.

I am advised that the main issue is ownership of the dam. The Olson letter on page 4 states: "Farris has no ownership in the dam" and in the next paragraph states "this opinion does not reach a conclusion as to the legal ownership of the dam."

The dam was built by J. Willis Johnson in 1904, who owned the land on both sides of the river where the dam is located and constructed. We assume that subsequent deeds to the real estate on the north and south bank of the Concho River made no mention of the dam. If Johnson built the dam, he was the owner of the dam. When the Johnson Estate (McGill) conveyed the land at the north end of the dam, one half ownership of the dam would have passed as appurtenant to the land on the north bank. Likewise when the Johnson Estate (McGill) conveyed the land at the south end of the dam, one half ownership of the dam would have passed as appurtenant to the land on the south bank.

Like easements, party walls and fences, these are rights appurtenant to the ownership of the fee simple absolute. These rights pass automatically without being set out in a deed of conveyance. So in the absence of a special exception, subsequent deeds would have conveyed one-half of the dam as an interest appurtenant to the adjoining surface.

As for any ownership rights the State of Texas may have, although as a general rule any improvements of a permanent nature to real property become part of the real property, there apparently is an exception to this general rule. If title to real property is divested in favor of the State of Texas, title to any improvements thereon remain in the name of the prior owner. So if title to the south bank of the Concho River moves, ownership of the dam as connected to the land on the south bank would remain the same.

The same principal applies with the shore line in the Gulf of Mexico on the Texas coast, when it moves and divests owners of their beach front house. The owner loses title to the land, but retains ownership in the building itself. In *Severance v Patterson*, 370 SW3d 705, (Tex Sup 2012), Texas Supreme Court stated that: "When beachfront property recedes seaward and becomes part of the wet beach or submerged under the ocean, a private property owner loses that property to the public trust" 370 Sw3d at 718. But the Court noted that the Texas Open Beach Act provided that the State could sue to seek forcible removal of any structures located on the land now owned by the State. The Texas Open Beach Act (Tex Natural Resources Act, Section 61) requires the seller of property adjacent to the Gulf coast to give notice that if their property becomes owned by the State, they could be ordered to remove any structure.

To rephrase the issue: if natural events cause the property or boundary line to change and an owner of improvements is divested of title to the real property upon which the improvements are situated, the ownership of the improvement remain vested in the original owner.

Olson's letter makes several statements that, in my opinion, that are not relevant to the issue of ownership:

- 1) The Farris deed did not include any rights or interest in the Concho River;
- 2) The physical presence of the dam on neighboring property does not impart any property interest to the land owner;
- 3) Neighboring property owners do not gain any ownership rights as a result of their proximity to a dam or a portion of the dam encroaching onto their property;
- 4) McGill expressly reserved water rights he possessed in the Concho River;
- 5) McGill did not convey ownership of the bed of the Concho River.

One other issue: Olson suggests requiring proof of ownership by appropriate documentation such as invoice, bill of sale or other means of ownership. While such evidence can be very relevant, the absence of such evidence is not determinative. This dam was built over 120 years ago. There are not going to be any invoices, bills of sale, etc. The same problem can arise with joint boundary fences and party walls. In a conflict between adjoining property owners, the evidence to prove ownership of an ancient joint boundary fence or party wall is going to be non-existent. In the absence of such documentation or other evidence, the courts well presume joint ownership.

Based on the foregoing assumptions, it is my opinion that as the owner of said Tracts R-3 and R-2, Riverwood Estates, Tom Green County, Texas, you are the owner of one-half of the subject dam.

With warmest regards, I remain

Very truly yours,

**GOSSETT, HARRISON,
MILLICAN & STIPANOVIC, P.C.**



Greg Gossett

Resume
Greg Gossett

Greg Gossett is a west Texas native, born 1945. He attended undergraduate school at Southern Methodist University and received his Juris Doctor degree from the University of Texas at Austin in 1969. Greg served as briefing attorney for the Amarillo Court of Appeals. Since 1970 he has practiced in San Angelo with Gossett, Harrison, Millican & Stipanovic, P.C. The principals of the lawfirm also own and manage First Title Company. His practice has concentrated in real estate and probate. Greg is Board Certified in Commercial Real Estate Law.

Greg has served as President of the Tom Green County Bar Association and Chairman of the State Bar District Grievance Committee. He is a member of the Texas Bar Foundation, the College of the State Bar of Texas and Council of the General Practice Section of the State Bar (chair 2016-2017). He has served on the San Angelo Lake Board, the City of San Angelo Charter Review Committee (Chair) and on several local charitable organizations.

**GOSSETT, HARRISON
MILLICAN & STIPANOVIC**

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BOARD CERTIFICATION IS
BY THE TEXAS BOARD OF
LEGAL SPECIALIZATION

*BOARD CERTIFIED - COMMERCIAL REAL ESTATE LAW

January 9, 2025

Martin Farris
4749 Rockwood Drive
San Angelo, Texas 76905

Dear Mr. Farris,

By letter dated October 31, 2024, I wrote you regarding the issues involving the dam across the Concho River of the Farris property in Tom Green County, Texas. By letters dated August 20, 2024, and January 3, 2025, Wayne K. Olson of Taylor Olson Adkins Sralla Elam of Fort Worth has also commented on these issues. Mr. Olson and I both agree that the Concho River itself is owned by the State of Texas. We also agree that when the bank of the river changes, the property line of the adjoining tracts are adjusted to align with the relocated bank of the river, as the meander line of the bank may change from time to time.

The issue is ownership of the dam itself. I am still of the opinion that ownership of the dam is currently one-half by Martin James Farris and Marla Denise Farris, as owners of the adjacent property on the south bank and one-half by the owner of the adjacent property on the north bank of the Concho River.

While I cannot find any cases exactly on point, general property case law dictates this conclusion.

- 1) An incorporeal right appurtenant to real property passes with said land without the requirement of being mentioned in the document of conveyance. In *Van De Putte v Cameron County Water Control & Improv Dist*, 35 SW2d 471 at 473 (Tex Civ App 1931), cited Thompson on Real Property:

“It passes by deed of such person to his grantee and follows the land without any mention whatever. An appurtenant easement, being an incorporeal right, is incapable of existence separate and apart from the corporeal property to which it is appurtenant, and is a necessary concomitant, and must pass with the land upon conveyance thereof.”

“These rights of the owners of estates under the civil law are appurtenant to and a part of the land itself, and pass to them with the grants.” *Miller v. Letzerich*, 121 Tex 248, 254 (Tex Sup 1932) citing Thompson of Real Property.

“A deed passes to the grantee all the rights, appurtenances, and interests the grantor

holds in the property being conveyed unless there is language in the instrument that clearly shows an intention to convey a lesser interest.” *Mehan v Babbel*, 2018 Tex App Lexis 2570 (Tex Civ App Amarillo 2018).

In practical reality, deeds never state or expressly convey the numerous appurtenants to the conveyed land, such as utility lines, access easements, etc.

The courts often state that there are a bundle of rights (or sticks) to real property. There is no legal requirement to itemize these incorporeal rights in a deed of conveyance.

2) “Strip and gore doctrine” : When a narrow strip of land adjoins a larger tract of land which is conveyed and the narrow strip ceases to be of use or benefit to the grantor, it is presumed that the grantor did not intend to reserve the strip.

“Where it appears that a grantor has conveyed all land owned by him adjoining a narrow strip of land that has ceased to be of any benefit or importance to him, the presumption is that the grantor intended to include such strip in such conveyance; unless it clearly appears in the deed, by plain and specific language, that the grantor intended to reserve the strip.” *Crawford v. XTO Energy, Inc.*, 509 SW3d 906 (Tex Sup 2017); see *In re Kappmeyer*, 668 SW3d 651 (Tex Sup 2023) foot note 5.

A court must conclude that under the reasoning of the strip and gore doctrine, McGill did not presume to reserves the dam itself as the dam itself would be of no use or benefit to McGill. Nor would McGill have an easement to the dam or ability to access the dam from the adjoin banks.

3) Fixtures: Generally when property is attached to real property it loses its nature as personalty and becomes part of the realty. When McGill conveyed the south bank land, his deed would have included by implication the attached dam.

“Absent a contrary agreement, a vendor may not remove items he or she permanently affixes to realty before the vendor executes a purchase contract or conveyance, these items pass to the vendee even though they are not mentioned in the deed . . .” Fixtures Tex Jur3d Sec 14; *Herrin v Bunge*, 336 SW2d 281 (Tex Civ App Houston 1960).

If there had been no relocation of the Concho River Bank, I do not believe any party would contend that McGill still owned the dam. And if the south bank of the Concho River has meandered, it would not divest Farris of his ownership of the dam.

4) Failure to file with TCEQ or Army Corps of Engineers: I think general principles of constitutional and property law is that one is not automatically divested of title to property by failing to file a bureaucratic form.

5) Texas Open Beach Act: Texas recognizes that if the shore line of beaches meanders, title to real estate will change. The same principal applies to rivers. But when

such occurs, the former landowner is not divested to title to the fixtures or personal property of the real estate, nor is such personal property acquired by the State of Texas..

With warmest regards, I remain

Very truly yours,

**GOSSETT, HARRISON,
MILLICAN & STIPANOVIC, P.C.**


Greg Gossett

Russ Johnson Witness Testimony

Meeting date: August 14, 2019

Overview

- In the recent witness testimony meeting, attorney Russell S. Johnson, a partner at McGinnis and Lochridge, detailed his extensive experience in water and environmental law, particularly in representing Quicksand Golf Course concerning the Johnson Dam case that has been ongoing since 2014. He explained that the Texas Commission on Environmental Quality (TCEQ) mandates dam ownership be assigned to adjacent landowners and emphasized that the unpermitted dam must either be legalized through permitting which involves substantial costs and complicated requirements or removed entirely. Johnson highlighted the potential legal ramifications of TCEQ's enforcement actions, revealing that owners could face significant fines and legal fees without assurance of permit approval, despite the high costs associated with compliance. He discussed the daunting challenges posed by sediment accumulation behind the dam, the financial impracticality of dredging, and the protracted nature of TCEQ's permitting process, which can take years. Additionally, he warned that TCEQ's ongoing scrutiny and potential liability could severely compromise property values, making property ownership burdensome. The meeting concluded with a clear understanding of the legal options and risks involved.

Notes

- **Legal Representation and Experience (00:02 - 01:44)**
 - Russell S. Johnson is a partner at McGinnis and Lockridge in Austin, Texas
 - Practices water and environmental law for 42 years
 - Represents Quicksand Golf Course in the Johnson Dam matter
 - Involved in the case since 2014
- **Dam Ownership and Regulations (01:46 - 03:34)**
 - TCEQ assigns dam ownership to adjacent landowners
 - Dam is not permitted and must be permitted or removed
 - Permitting requires 300 acre-feet of water rights or 250 acre-feet annually
 - Dam must be outfitted with siphon, gate, and measurement equipment
 - Upper Colorado River Authority willing to assist for \$35,000 initial cost and \$35,000 annual cost (these numbers have now increased dramatically)
- **Enforcement and Legal Consequences (03:35 - 05:33)**

- TCEQ can fine property owners and require dam removal
- No guarantee of permit approval
- Contested case likely, costing \$25,000 to \$100,000 in legal fees
- Permit may still be denied after legal proceedings
- **Legal Options and Costs (05:36 - 07:17)**
 - Fighting TCEQ enforcement action could cost \$25,000 to \$100,000
 - Odds of success against TCEQ are low
 - Dam removal requires permits
 - Cannot simply blow up the dam or release sediment
- **Dam Removal Challenges (07:18 - 09:02)**
 - 100 years of accumulated sediment behind the dam
 - Sediment removal and disposal required before dam removal
 - Cost of dredging exceeds property value
 - No guarantee of permit issuance for dam removal
 - TCEQ can undertake removal and charge property owners
- **TCEQ Process and Timeframes (09:03 - 10:44)**
 - TCEQ pursuing multiple unpermitted dams
 - Severely understaffed water permitting section
 - Years can pass without action from TCEQ
 - Example: Lake Deerwood dam reclassification took two years
- **Property Value and Liability (10:57 - 12:20)**
 - TCEQ's inaction doesn't indicate lack of seriousness
 - Potential liability associated with the dam offsets property value
 - Contingent liability could exceed property value
 - State could essentially own the property due to liability



Russ Johnson - 00:02

This is Russ.



Ruth Ann McLean - 00:03

Russ, this is Ruth Ann McLean with the Tom Green County Appraisal Review Board. And Mr. Martin Farris has asked that we call you.



Russ Johnson - 00:13

Excellent.



Martin Farris - 00:14

Thank you, Russ.



Russ Johnson - 00:16

Good afternoon.



Martin Farris - 00:18

All right, so I'm going to run through some questions here, and first, please state your name for the record.



Russ Johnson - 00:26

My name is Russell S. Johnson.



Martin Farris - 00:28

Who is your employer?



Russ Johnson - 00:31

I am a partner in the law firm of McGinnis and Lochridge in Austin, Texas.



Martin Farris - 00:36

And what do you do for them?



Russ Johnson - 00:39

I practice law primarily in the water environmental area.



Martin Farris - 00:46

So that was my next question. What type of law do you practice?



Russ Johnson - 00:51

I practice primarily in water, both transactional litigation and regulatory.



Martin Farris - 01:00

How long have you been representing clients in matters before TCEQ and their previous iterations?



Russ Johnson - 01:08

Since I started practicing law literally in 1977. Okay, so is that like 42 years, something like that? Yes.



Martin Farris - 01:18

All right. You represent Quicksand Golf Course in the matter involving Johnson Dam #1, correct?



Russ Johnson - 01:24

Yes. Quicksand Golf Course owns property, I believe, adjacent to your property. And yes, I did represent.



Martin Farris - 01:33

You do not represent me in that matter though, do you?



Russ Johnson - 01:36

I did not.



Martin Farris - 01:39

And you got involved in the matter at the beginning of it back in 2014, correct?



Russ Johnson - 01:44

That is correct.



Martin Farris - 01:45

You participated in all the conference calls related to this matter with TCEQ?



Russ Johnson - 01:50

I did.



Martin Farris - 01:51

You were also present at the meeting that we had with Chuck Brown at Upper Colorado River Authority?



Russ Johnson - 01:56

Yes.



Martin Farris - 01:58

As a result, do you consider yourself qualified to comment on the facts of this case?



Russ Johnson - 02:03

I do, yes.



Martin Farris - 02:06

And because of your experience, you're well versed in TCEQ's procedures and how they operate?



Russ Johnson - 02:11

I am, yes.



Martin Farris - 02:13

When it comes to ownership of these dams, isn't it true that TCEQ assigns ownership of the dam to the owners of the land adjacent to each end of the dam in the absence of a reservation from the deed indicating the prior owner retained ownership?



Russ Johnson - 02:27

That is correct.



Martin Farris - 02:29

Okay. Therefore, as far as the state of Texas is concerned, I jointly own this dam along with the owner of the property across the river. Assuming there's no reservation on their deed?



Russ Johnson - 02:38

That is also correct.

Martin Farris - 02:40



And TCEQ has been consistent from the beginning that this dam is not permitted and must either be permitted or removed, correct?



Russ Johnson - 02:47

That is correct.



Martin Farris - 02:50

All right. So one of our options is to permit the dam. And to do that we have to obtain a certain amount of water and do certain other things. Assuming we obtain the water from the Upper Colorado River Authority to permit the dam, TCEQ is requiring that we either obtain 300 acre feet of water rights or that we purchase at least 250 acre feet of water every year, correct?



Russ Johnson - 03:19

That is correct, yes.



Martin Farris - 03:21

They are also requiring that we outfit the dam with a siphon or operable gate and equipment to measure the inflows and outflows of the impoundment and adjust the gate or siphon so the same amount of water flowing in is flowing out, correct?



Russ Johnson - 03:33

That is also correct.



Martin Farris - 03:35

Now, Upper Colorado River Authority is willing to assist but wants the dam owners to cover the costs, which are an initial \$35,000 for equipment and engineering, plus annual cost of \$35,000 to cover the water, monitoring and maintenance, correct?



Russ Johnson - 03:49

That is also correct.



Martin Farris - 03:52

And if we failed to comply with the permit requirements, what would happen to us?



Russ Johnson - 03:56

TCEQ has threatened enforcement action against you in connection with the dam.



Martin Farris - 04:05

Which would include what, sir? What would the enforcement be?



Russ Johnson - 04:10

The TCEQ has the option in the enforcement action of doing two things. Fining the property owner for the illegal structure and in addition, requiring the landowner to address the unpermitted dam by removal.



Martin Farris - 04:36

And there's no guarantee that the permit for the dam would be granted, is there?



Russ Johnson - 04:40

No, there is certainly no guarantee. It would be a process.



Martin Farris - 04:45

If anybody in the watershed objected, then we could wind up in a contested case to get the permit, correct?



Russ Johnson - 04:50

That is correct. Any person claiming they are adversely affected could trigger a contested case.



Martin Farris - 04:59

Do you think that's likely in this case?



Russ Johnson - 05:01

I think it is highly likely.



Martin Farris - 05:05

So how much are the attorney fees typically for a contested case of that type?



Russ Johnson - 05:11

I would. If a client called me and asked me to represent them. And in this instance, you would be the applicant, I would say a minimum of 25,000, but upwards of 100,000.



Martin Farris - 05:27

And after all that, the permit still may not be issued, correct?



Russ Johnson - 05:33

That, unfortunately, is correct, yes.



Martin Farris - 05:36

Another option we'd have is to fight TCEQ over this whole matter, Correct?



Russ Johnson - 05:41

You can. Yes. Defend their enforcement action, yes.



Martin Farris - 05:47

And how much would you estimate the attorney fees would be if that were the case?



Russ Johnson - 05:54

I would expect a similar cost estimate. 25,000 kind of minimum. Perhaps not as high as 100,000, but certainly it could exceed the 25,000.



Martin Farris - 06:07

That would be at each level if we chose. If we lost at the first level, we'd have to appeal it and then be another 25 and another 25 if we kept taking it up the chain.



Russ Johnson - 06:15

Yes, you have. Any party has the option of appealing the decision of the TCEQ to the Travis County District Court and from there to the Court of Appeals and from there to the Texas Supreme Court. At each stage would likely cost close to that amount.



Martin Farris - 06:33

Right. Knowing what you know about this case. How would you assess the odds of success if we tried that?



Russ Johnson - 06:41

In my opinion, the TCEQ and the state has the upper hand in the enforcement action, since the law is clear that this type of dam would require a permit, and it does not have a permit.



Martin Farris - 06:58

Okay. Our other option is to remove the dam, however. You aren't allowed to just go out there and blow it up, are you?



Russ Johnson - 07:04

No, quite the contrary.



Martin Farris - 07:06

So, yeah, you have to. Removing it requires a permit then, correct?



Russ Johnson - 07:11

You would need to get a permit from the Corps of Engineers, among other things, yes.



Martin Farris - 07:16

And this dam has over 100 years of sediment accumulated behind it that contains everything that's washed off the city streets or been dumped by its citizens over the last. Over the course of the last century. Would the relevant state and federal agencies typically allow us to just let that sediment be washed down the river?



Russ Johnson - 07:34

No. That is a major concern in connection with the potential removal of this dam and downstream property owners would likely protest and attempt to prevent any such downstream migration.



Martin Farris - 07:51

So, in fact, they require that. They would require the sediment to be removed and properly disposed before we remove the dam then, correct?



Russ Johnson - 07:59

That is my opinion, yes. If you were to seek authority to remove the dam, you'd be required to remove and dispose of the contaminated settlement.



Martin Farris - 08:12

And you've seen the cost estimates just for the dredging, correct?



Russ Johnson - 08:16

I have, yes.



Martin Farris - 08:17

And the cost for that greatly exceeds the value of basically all of my property and the property owner on the other side of the river, correct?



Russ Johnson - 08:25

It does, yes.



Martin Farris - 08:27

And there's also no guarantee that the permit to remove the dam would be issued either.



Russ Johnson - 08:32

No, there is no assurance that the permit would be issued.



Martin Farris - 08:35

If we can't do that, then what would happen? If we can't either permit the dam or a get permit to remove it, where would we be then?



Russ Johnson - 08:43

You'd be staring at that enforcement action by the TCEQ. They have some authority to undertake the removal and charge your property with the cost of that removal.



Martin Farris - 08:56

And this isn't the only unpermitted dam that TCEQ is pursuing right now, is it?



Russ Johnson - 09:03

No. There are other unpermitted dams that TCEQ has attempted to obtain removal of.



Martin Farris - 09:12

Do you have rough idea how many there are?



Russ Johnson - 09:14

I know it's over a dozen.



Martin Farris - 09:18

So approximately how many people work in the water permitting section that's handling those cases?



Russ Johnson - 09:27

They have a staff, but it is severely overworked.



Martin Farris - 09:35

So would you consider it unusual for a couple of years to go by without any action from them? Especially when another agency like Upper Colorado River Authority has intervened and asked for time to study this.



Russ Johnson - 09:46

It's not uncommon at all.



Martin Farris - 09:49

In fact, it could take them a couple of years to do something as simple as formally reclassifying a dam to high risk after it's failed an inspection, as happened with the dam at Lake Deerwood, correct?



Russ Johnson - 10:01

That is correct. They tend to move in geologic time.



Martin Farris - 10:04

Just in case you guys aren't familiar, there's a dam at Lake Deerwood. The state only regulates dams that are considered high risk. And they'll bump a dam up if there's development below it. And they go from being a low risk dam to a high risk dam. They do periodic inspections to decide if it's something they regulate. Well, the dam at Lake Deerwood, they went out, their inspector went out, looked at it, said, yeah, now it's a high risk dam. And it took TCEQ two years just to change, formally change the classification in their system to high risk. Just to do that. Took them another two years to get an inspector back out there. And that dam eventually partially failed, by the way.



Martin Farris - 10:43

So to conclude, in your experience, just because TCEQ has not done anything for a couple of years, is that any way an indication that they are not serious about this issue or more an indication that they're understaffed?



Russ Johnson - 10:56

It's more of an indication that they are understaffed. And there is absolutely no indication that they're not serious about this problem.



Martin Farris - 11:05

At no point have they told us that we don't have to worry about this anymore.



Russ Johnson - 11:10

No, they have not.



Martin Farris - 11:11

And even if they did that tomorrow, it would be pretty much meaningless because they could come back in the future and demand that we permit it or remove it again, correct?



Russ Johnson - 11:20

Yes. They are not, governments are not estopped from enforcing their laws, even if they decline to do so initially.



Martin Farris - 11:31

So if you're advising a client who is considering purchasing my property, knowing what you know about the situation, what would you advise them to do?



Russ Johnson - 11:38

Well, my advice to a client considering purchasing that property would be to consider the potential liability associated with that dam as an offset to the value of that property. And I would advise the purchaser that the potential cost of that contingent liability could be substantial.



Martin Farris - 12:05

Would you say, it's probably in just about any case, it actually exceeds the value of the property, doesn't it?



Russ Johnson - 12:11

It could easily exceed the value of the property. In that event, in essence, the state would own the property.



Martin Farris - 12:19

That's all I've got.



Russell Johnson

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Russell has a multifaceted water law practice, with an emphasis on matters involving land use, water rights and the Endangered Species Act (ESA). His clients are generally landowners, industries, mineral owners and developers seeking to acquire, safeguard, develop or convey water resources. Russ advocates on their behalf before the courts, the Texas Legislature and administrative agencies.

Navigating the rules and regulations imposed on landowners by governmental agencies can be a major challenge. Because Russ holds a B.A. in biology and chemistry, in addition to his law degree, he fully understands the technical and scientific complexities his clients face and can help them work more effectively towards achieving their goals.

Over the years, Russ has participated extensively in legislation related to groundwater management. Prior to joining the firm, he represented a large municipal water system in a variety of matters, including legislative efforts to create the Edwards Aquifer Authority, modernize Texas water law with Senate Bill 1 (1997) and Senate Bill 2 (2001) and subsequent legislation related to groundwater management. He continues these efforts at each legislative session.

Practice Areas

Water Law
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St. Mary's University School of Law,
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