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## Judge orders halt at barge docks

**Dan Parker**

News editor



Tugboats and barges line up at moorings in Lydia Ann Channel in March 2015. A federal judge this week ordered that the mooring operations stop, but the moorings company has filed a request that the judge hold off on the order while the firm appeals to a higher court. Staff photo by Dan Parker

A federal judge has ordered that a firm stop operating its barge moorings in Lydia Ann Channel, but the company is asking the judge to hold off on the order while it appeals to a higher court.

Senior U.S. District Judge Janis Jack signed a preliminary injunction on Monday, March 13, to bar a limited liability corporation called Lydia Ann Channel Moorings (LACM) from continuing the operations, according to court records.

The Monument Group, a public relations firm representing LACM, issued a statement.

“Lydia Ann Channel Moorings will comply with Judge Jack’s order,” the statement said. “The company has already filed an

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appeal from the order, and an emergency motion to stay preliminary injunction based on the merits of the case and the strong likelihood of the success of an appeal.”

LACM is appealing to the Fifth Circuit U.S. Court of Appeals.

The court action grew out of a lawsuit filed in December 2015 against the U.S. Army Corps of Engineers by a Port Aransas-based citizens’ group called Friends of the Lydia Ann Channel (FLAC).

FLAC wanted a judge to declare that the corps’ issuance of a permit to build the moorings violated federal law. The organization wants the structures removed, saying that mooring barges there threatens the environment and human safety, among other things.

LACM has argued that the barges don’t constitute any real threat and that the moorings have prevented tugboats from having to nose barges into the sandy shallows of San Jose Island, and keep the boat engines running, spewing exhaust into the air for many hours at a time.

The judge’s order on Monday stayed further litigation in the court case until the Corps of Engineers finishes a review it’s conducting or the court orders otherwise. The review is examining proposals to remove the moorings and restore the area to its original condition.

LACM has presented the corps with a written plan with various options for how the moorings could be removed. The firm also proposed an option that would mean not removing the moorings at all.

The company has said removing them “would result in the lack of regulated barge fleeting facility capacity in Corpus Christi Bay or the Lydia Ann Channel,” according to a public notice issued by the corps.

A letter of permission (LOP) granted by the corps (before



The advertisement for the Port Aransas Art Center features a blue border. At the top, "PORT ARANSAS" is written in a blue, serif font. Below that, "ART CENTER" is written in large, bold, colorful letters: "A" is pink, "R" is yellow, and "T" is blue. Underneath, "CENTER" is written in a blue, sans-serif font. The main heading "Workshops/ classes" is written in a large, bold, black font. Below the heading, there are four bullet points, each describing a different workshop or class. The first bullet point is "Drop in and Draw with Pat Donohue. Tuesdays, 9:30 a.m. - 12:30 p.m. \$18 members, \$20 non-members. Learn to draw or improve your skills. Bring drawing supplies." The second bullet point is "Soft Pastels with Laura Griffith. Thursdays, 9:30 a.m. to 12:30 p.m. \$18 members, \$20 non-members. Learn this fun and artistic medium. Laura has a different lesson plan each week or complete something of your own. Use our pastels to get started if you don't have a set. No class March 16." The third bullet point is "Beginning/Intermediate Watercolor with Kay Barnebey/ Nancy Buskey. Fridays, 10 a.m. to 1 p.m. \$25 each session. Learn to paint or advance your skills. Supply list available. The art center has paints/brushes you can use to get started; you also may purchase paper at the art center." The fourth bullet point is "Sketchbook Journaling Workshop with Brenda Staresnick. Saturday, March 25, from 10 a.m. to 2 p.m. For the beginning sketcher using a sketchbook, pen and watercolor-washes. Bring a sack lunch. The class will go outside, weather permitting. \$30 plus supplies. Supply list available. Pre-register and pre-pay." The background of the advertisement is a light yellow color.

FLAC's lawsuit) allowed installation of 82 steel mooring pilings 24 inches wide in water 12 feet deep, according to court records. After that, 67 moorings were built along the east side of the channel, and dozens of barges at a time have been moored along the channel.

The moorings consist of concrete-filled steel casings that extend to a depth of 30 feet below the mud line, according to documents.

The FLAC lawsuit alleges violations of the Endangered Species Act, National Environmental Policy Act Administrative Procedures Act, Marine Mammal Protection Act and the National Historic Preservation Act.

A news release issued by FLAC at the time the lawsuit was filed said people were being subjected to health and safety threats posed by massive amounts of toxic, explosive and otherwise hazardous chemicals stored in barges in the channel as a result of the corps' alleged failure to follow federal law.

The corps suspended the LOP on March 23 last year "as a first step in its re-evaluation of the project," the corps said in the filing.

"The corps has completed its re-evaluation and determined the project's purpose and need as stated by Lydia Ann Channel Moorings LLC, to temporarily moor barges and tugs to (moorings) does not accurately describe the scope of the applicant's actual operations or address the underlying need for the project from a public interest review perspective," the filing states.

"As a result, the (moorings) constructed pursuant to the letter of permission are no longer authorized and must be removed," the filing said.

Jack wrote that the Corps of Engineers maintains that it cannot enforce its instructions to remove the structures, despite its revocation of the LOP.

•Wine, Whine and Design with Karen Winship, Sunday, March 26, from 5 to 8 p.m. Paint a scarlet macaw one-step-at-a-time. \$40 donation to the land and building fund. Pre-register and pre-pay.

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“A facility must not be allowed to operate in an environmentally sensitive area if its lease to function there is in default and its permission to use the structures has been revoked,” Jack’s order states.

“In sum, LACM is operating a large-scale, unpermitted fleeting operation in an environmentally sensitive area with its lease in default,” the judge wrote. “It is unacceptable that LACM can continue operating under these circumstances without any sort of consequences. Accordingly, LACM must cease conducting operations in the Lydia Ann Channel from the date of entry of this order until further order by the court.”

On Tuesday, March 14, attorneys for LACM filed an emergency motion to stay the preliminary injunction, pending appeal.

“The preliminary injunction causes irreparable harm not only to (the firm’s) business but also to (its) 29 employees, who are out of work, and their families,” the motion said.

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