

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

**SURFACE MINING DOCKET NO. C18-0001-SC-26-F
APPLICATION BY TEXAS MUNICIPAL POWER AGENCY
FOR RELEASE OF RECLAMATION OBLIGATIONS FOR 6.7 ACRES
PERMIT NO. 26D, GIBBONS CREEK LIGNITE MINE
GRIMES COUNTY, TEXAS**

**ORDER APPROVING APPLICATION FOR RELEASE OF RECLAMATION
OBLIGATIONS**

Statement of the Case

Texas Municipal Power Agency (TMPA), P. O. Box 7000, Bryan, Texas 77805, applied to the Railroad Commission of Texas (Commission), Surface Mining and Reclamation Division (SMRD or Staff), for a release of reclamation obligations on an aggregate of 6.7 acres within Permit No. 26D, Gibbons Creek Mine, Grimes County, Texas. Phases I, II, and III release are requested for 4.9 acres, and Phase III release is requested for 1.8 acres. The acreage is located at the far northeastern end of the B2 mine block and include Tracts 112C and 124.

The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. Ch. 134 ((Vernon Supp. 2017) (Act) and §§12.312-313 of the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE Ch. 12 (Thomson West 2017) (Regulations).

Permit No. 26D currently authorizes surface coal mining operations at TMPA's Gibbons Creek Mine. Copies of the application for release were filed in the required county and Commission offices. After public notice, no comments or requests for hearing were filed. The only parties to the proceeding are TMPA and the Commission's Surface Mining and Reclamation Division (Staff). Staff recommends the releases with which TMPA concurs. There remain no outstanding issues between the parties. No mining is ongoing; the mine is in reclamation. On this tract of land, a third-party took actions while the land was still in reclamation. Staff recommends the release based on its Advisory Notice AD-BO-306(e) related to actions taken by third parties not within the control of the permittee; this advisory notice was issued July 24, 2017. The acreage in question had been approved as pastureland; the land use was revised by application for a land use change to industrial/commercial. Staff required that the applicant file an additional application to revise the land use to industrial/commercial – exempt, a land use that is not defined in the Regulations and is further addressed herein.

The parties have filed waivers of preparation and circulation of a proposal for decision for the bond release application. The Commission approves the requested release of reclamation obligations. While TMPA has not requested an adjustment to its accepted reclamation bond at this time and no new bond has been submitted, Staff has calculated an eligible bond reduction amount of \$37,061.31. The eligible amount may be determined by the Commission.

FINDINGS OF FACT

Based on the evidence in the record, the following Findings of Fact are made:

1. By letter dated May 3, 2017, TMPA filed its application with the Commission's Surface Mining and Reclamation Division (SMRD) for Phase I, II, and III release of reclamation liability on 4.9 acres and Phase III release on 1.8 acres in Area B2 within the Gibbons Creek Mine, Permit No. 26D. Processing of the application was suspended twice during processing by SMRD, first, in order that Advisory Notice AD-BO-306(e) could be finalized and second, so that an alternative land use application might be filed and approved to change the land use from industrial/commercial to industrial/commercial-Exempt. The application was declared administratively complete by letter dated December 4, 2017. Subsequently, Staff's technical analysis (TA) for the subject application was hand-delivered to the Commission's' Docket Services section on January 2, 2018.
2. The application is made pursuant to Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. Ch. 134 (Vernon Supp. 2017) (Act), and the Coal Mining Regulations, Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE Ch. 12 (Thomson West 2017). The application was properly certified in accordance with §12.312(a)(3).
3. The current reclamation performance bond is a collateral bond with letter of credit in the amount of \$11,100,000 that was accepted by Commission Order dated April 4, 2017.
4. Notice of the application was published once each week for four consecutive weeks in the *Navasota Examiner*, a newspaper of general circulation in the vicinity of the Gibbons Creek Mine in Grimes County, the locality of surface mine. Dates of publication were October 11, 18, and 25, 2017 and November 1, 2017. The notice of application contains all information required by §134.129 of the Act and §12.312(a)(2) of the Regulations for notice of application for release of reclamation obligations. The notice contains a statement that the applicant does not seek a reduction in the approved bond, but that an eligible bond reduction amount may be determined. TMPA submitted affidavits of publication with news clippings by letter dated November 30, 2017. The published notice is adequate notification of the request for release. The notice included the name of the permittee, the precise location of the land affected, the number of acres, permit number at the time of application and date approved, the amount of approved bond, the type and appropriate dates reclamation work was performed, and a description of the results achieved as they relate to the approved reclamation plan. The notices contained information concerning the applicant, the location and boundaries of the permit area, the availability of the application for inspection and the address to which comments should be sent. The notice included a map showing sufficient notice of the boundaries of the areas requested for release.
5. No persons requested a hearing on the application.
6. Copies of the application were filed for public review in the offices of the County Clerk of Grimes County, Texas and in the offices of the Surface Mining and Reclamation Division, Railroad Commission of Texas at 1701 North Congress Avenue, William B. Travis Building, Austin, Texas.
7. By letter dated November 30, 2017, TMPA submitted copies of letters notifying adjoining landowners and lessees, the Brazos River Authority, Wickson Water Supply, Texas General Land Office, U.S. Army Corps of Engineers, Fort Worth District, Navasota Soil and Water Conservation District, Texas State Soil and Water Conservation Board, Texas

Commission on Environmental Quality, Natural Resources Conservation Service, and the Grimes County Judge and Commissioners Court of the application for release in accordance with §12.312(a)(2) of the Regulations. The area proposed for release is not located within the boundary of any municipality.

8. SMRD notified the Grimes County Judge of the application as required by §134.133 of the Act by certified letter dated December 5, 2017.
9. SMRD's Inspection and Enforcement Section sent letters dated September 15, 2017 to the Office of Surface Mining Reclamation and Enforcement and to the landowner of Tracts 112C and 124, Mr. Billy Kolbachinski. Notifications were in accordance with §12.312(b)(1) of the Regulations. Commission inspectors were accompanied by TMPA representatives and a TMPA contractor. No OSM representative attended. Mr. Billy Kolbachinski met with the attendees briefly on his property prior to the inspection. The 6.7 acres proposed for release are shown on TMPA's Exhibit 3 contained in the application. A portion of this exhibit shows Tracts 124, 112C and 122A owned by Mr. Kolbachinski.
10. The application contains a notarized statement signed by Dr. Jan Horbaczewski, Regulatory and Compliance Manager, TMPA, May 3, 2017, certifying that all applicable reclamation activities have been accomplished in accordance with the requirements of the Act, the regulatory program and the approved reclamation plan.
11. The area proposed for release has been affected by activities conducted by the Texas Department of Transportation (TxDOT). The landowner entered into an agreement with TxDOT whereby TxDOT would construct a pond (that is located on the central portion of the areas requested for release) with the excavation material (Photos 7-11, inspection report, Appendix IV) providing TxDOT with materials for use in a nearby highway construction project at the intersection of US 30 and FM 244. In addition, the landowner received road base material from the highway construction area (stockpiled, Photos 5-6, inspection report, Appendix IV). The permittee, TMPA, was not involved with the agreement. The activities were beyond the control of the permittee, TMPA.
12. Pastureland was the initial approved postmine land use for the acreage. The 4.9-acre portion of the area has been requested for Phases I-III release. All reclamation activities, other than maintenance, occurred while the land use pastureland was the intended use. This area was not mined; it was disturbed by mining related activities. The area was regraded and revegetated. Soil testing was performed on the acreage, and results of testing reflect that the soils within the 4.9 acres met the soil performance standards and indicate no acid-forming, toxic-forming or combustible materials. Phase I requirements are met. The areas were revegetated with approved species for pastureland; drainage control was established prior to the third-party activities. Drainage flowed through reclaimed Pond SP-1 prior to the pond's release from surface water control (Phase II). Two applications for alternative postmine land use were approved administratively for the area, first to the alternative postmine land use, industrial/commercial, then to a use not defined in the Act or Regulations, "industrial/commercial – Exempt." Staff created an advisory notice, AD-BO-306(e) addressing "industrial/commercial – Exempt" and setting out requirements for meeting this use. Although Staff describes the land use as industrial/commercial – Exempt; the land use is industrial/commercial. Inspection and the photographs taken indicate that,

except for the third-party constructed pond and some areas surrounding this pond, constructed by TxDOT, not the permittee, other areas are revegetated sufficient to control erosion. Coal Mining Regulation §12.306(e) provides, in part, "Actions of third parties which are beyond the control of the operator and for which the operator is not responsible under the permit need not be covered by the bond." There is no requirement in the Act or Regulations that the permittee must be responsible for actions of third parties whom the operator does not control or with whom the permittee has not contracted. This section of the Regulations may be interpreted to cover such situations where a landowner has contracted with a third-party for work done on his property without the consent of the permittee. (TMPA is also the operator for this permit.) The currently accepted bond map does cover this acreage; however, in that the bond does not need to cover disturbances caused by the third-party pursuant to the Regulation, costs for revegetation and maintenance, upon which the bond is partially based are not applicable. For industrial/commercial land use, the revegetation standard is sufficient to control erosion. Because of §12.306(e), revegetation need not be sufficient to control erosion for this acreage. No small area depressions exist within the areas requested for release. Other reclamation requirements for protection of surface water and groundwater have been met (Findings of Fact No. 15 and 16, *infra*, incorporated herein). The 4.9-acre area may be released from Phases I-III requirements. The amount of bond attributable to the 4.9 acres may be included in the eligible bond reduction amount.

13. SMRD required TMPA to submit an application for an alternative land use change from industrial/commercial to "industrial/commercial – Exempt," pursuant to a new SMRD advisory notice, AD-BO-306(e). The Division approved the land use administratively. Industrial/commercial-Exempt is a use of land not defined as a land use in §12.3(99) of the Regulations. Regulation §12.3(99) provides that an alternative land use application be submitted for approval by the Commission for changes from one defined land use to another. The approved land use was industrial/commercial; therefore, no change from industrial/commercial was required to industrial/commercial-Exempt, not a Regulation-defined land use category. Although the information addressed by the advisory is necessary to show that §12.306(e) applies, the land use revision application itself was not necessary; the information addressed in the advisory and provided by TMPA should have been filed with the bond release application. The advisory creates a land use category, and the result allows approval of the land use administratively without required review in the bond release application by Commissioners.
14. An area of 1.8 mined acres is requested for Phase III release. Phases I and II releases were approved for the acreage by Commission Order dated December 7, 1999. Phase III requirements have been met for the 1.8 acres. As indicated for the 4.9 acres, the currently accepted bond map for the 1.8 acres does cover this acreage; however, in that the bond does not need to cover disturbances caused by the third-party pursuant to the Regulation, costs for revegetation and maintenance, upon which the bond is partially based are not applicable. Revegetation need not be sufficient to control erosion for this acreage [§12.306(e)]. No small area depressions exist within the area requested for release. Other reclamation requirements for protection of surface water and groundwater have been met (Findings of Fact No. 15 and 16, *infra*, incorporated herein). The 1.8-acre area may be released from Phases III requirements. The amount of bond attributable to the 1.8 acres may be included in the eligible bond reduction amount.

15. Surface water monitoring occurred in accordance with the approved permit. For the Phase III release requested for the aggregate 6.7 acres, data provided by TMPA and information provided by Staff demonstrate that Phase III requirements for protection of surface water have been met. The acreage drains to Gibbons Creek and its tributary, Rock Creek, thence to the Navasota River (TCEQ Stream Segment No. 1209), thence to the Brazos River (TCEQ Stream Segment No. 1202). TMPA's consultant's *Surface Water Hydrology Report* was provided. TMPA provided data from nine ponds (5A, 6A, 7A, B2P-2, B2P-3, B2P-5, B2P-6, B2P-7, and DP-1), as well as six long-term surface water monitoring stations, SWGC1, SWRL3, SWNR1, SWGC2, SWRL4, and SWNR2. Staff bases its recommendation regarding surface water protection on TMPA's data and analysis of the four long-term stations in the vicinity of the areas proposed for release, the Texas Commission on Environmental Quality Permit No. 00246 for the mining and reclamation area, and Staff's technical evaluation. Based upon the information provided by TMPA and Staff review, surface waters have been protected in accordance with § 12.313(a)(3).
- (a). The two ponds that capture runoff from the areas proposed for release are Ponds B2P-3 and B2P-5. TCEQ's permit does not include these ponds in those for which effluent limitations apply. TMPA's evaluation included a comparison of the water quality of nine ponds to the stream segment standards for Segments 1202 and 1209. This report provided by TMPA indicates that the requirements for Segments 1209 (Navasota River) and 1202 (Brazos River) for pH and TDS are met for Ponds B2P-3 and B2P-5. Staff compared the water quality of the two ponds receiving runoff from the areas proposed for release to effluent requirements contained in the TCEQ permit for other ponds. Staff's comparison reflects the following for pH, TDS, TSS, and Fe: the averages for all parameters comply with the requirements of the TCEQ permit that were applicable to other ponds. For Pond B2P-3 for the period of record, 2009 - 2012, average pH, 8.1 standard units (s.u.) was within the range required for pH, 6.0 - 9.0 s.u.; average TDS concentrations measured 400 mg/L, meeting the requirement of less than 600 mg/L for the TCEQ permit requirement; the range of TSS was 16.4 mg/L, meeting both the allowable daily average and the allowable daily maximum for TSS, 35mg/L and 70 mg/L, respectively; and average Fe (total iron), 0.7 mg/L, met both the allowable daily average and the allowable daily maximum, 3.0 and 6.0, respectively. The following results for Pond B2P-5 for the period of record 2009 - 2011 also met the same requirements of the TCEQ permit listed in this paragraph: average pH, 7.3 s.u., average TDS, 75.2 mg/L, average TSS, 5.8, and average Fe, 0.3 mg/L. Based upon this data, the ponds receiving drainage from the areas proposed for release are not contributing excess solids to runoff or streamflow outside the permit area in accordance with §12.313(a)(2).
- (b). Although TMPA provided data from six long-term surface water monitoring stations, Staff made its recommendation on the stations that are in the vicinity of the areas proposed for release: undisturbed stations SWGC1 (Gibbons Creek) and SWRL3 (Rock Lake Creek), and disturbed stations SWGC2 (Gibbons Creek) and SWRL4 (Rock Lake Creek). The parameters for which monitoring occurred and for which there are stream segment standards are pH, TDS, SO₄, sulfate, and Cl (chloride). The period of record for the paired stations on Gibbons Creek are: SWGC1 (undisturbed), 9/15/12 - 5/16/17, and SWGC2 (disturbed), 9/26/12 - 5/23/17. The period of record for the paired stations on Rock Lake Creek are:

SWRL3 (undisturbed), 9/26/12 – 5/23/17, and SWRL4 (disturbed), 9/30/12 - 5/16/17. For pH, minimum, maximum, and average concentrations were within the required range for the stream segments of 6.5-9.0, with the average pH of 7.7 s.u. for the upstream station SWGC1 and 7.6 for the downstream station SWGC2 (Gibbons Creek), and an average pH of 7.4 s.u. for the upstream station SWRL3 and 7.7 s.u. for the downstream station SWRL4 on Rock Lake Creek. For TDS, the average for the upstream station on Gibbons Creek, SWGC1, 346.3 mg/L, meets the criterion for the two stream segments, Segments 1209 and 1212. The average for the downstream station on Gibbons Creek, SWGC2, 461.7 mg/L, also meets the stream segment standard for TDS. For TDS on Rock Lake Creek, the average for the upstream station SWRL3, 254.4 mg/L meets the stream segment standards; the downstream station's average, 1,782.8, does not meet either standard. The flow-weighted average, however, meets both standards. The flow-weighted average for the disturbed downstream station is only slightly higher than Stream Segment 1209, 621.0 mg/L, compared to 600 mg/L for Stream Segment 1209 and meets the standard for Stream Segment 1202, 750 mg/L. For SO₄, the downstream averages do not meet the stream segment standards; the downstream average for Station SWGC2 is lower than the baseline average; however, the average for downstream Station SWRL4 is much higher than the stream segment criteria and much higher than the baseline value. For Cl, the averages for stations SWGC1, SWGC2, and SWRL3 are all lower than the baseline average; however, the average for Station SWRL4 is higher than the baseline, although it still meets the criteria for the stream segments.

- (c). Based upon the surface water monitoring and comparisons from upstream to downstream stations and the comparisons of downstream stations to baseline monitoring results for the same stations for similar periods of record as set out in the application, staff review, and Finding of Fact No. 15(b), *supra*, the results reflect the predicted effects on water quality contained in the probable hydrologic consequences determination in the permit. TMPA indicates that although TDS concentrations at disturbed long-term monitoring station SWGC2 are expected to remain near current levels, they will gradually decrease. For water quantity, TMPA indicates that water quantity is not expected to be significantly impacted and that runoff and consumptive losses from postmine ponds appear to be consistent with TMPA's revised probable hydrologic consequences determination in Revision No. 35, administratively approved January 18, 2017. Staff indicates that because of increased capture in postmine ponds, losses due to evaporation will occur; however, because of attenuation of runoff in ponds, sustained flows will increase. The overall effect is expected to be insignificant when compared to the large levels of storm runoff within the cumulative impact drainage area (Navasota River Basin).
- (d). Staff's Cumulative Hydrologic Impact Assessment (CHIA) required by the Act and Regulations that includes effects from the Gibbons Creek Lignite Mine, as well as the Gibbons Creek Lignite Mine V, the Jewett Mine, and the Kosse Mine is contained in Staff's Addendum No. 2 dated December 16, 2011 to the Technical Analysis document for Docket No. C7-0026-SC-50-C. The CHIA evaluated the Navasota River Basin, the cumulative impact drainage area. The greatest potential increase in TDS concentration (the indicator parameter) was anticipated at Navasota River Basin Mass Balance Point No. B, USGS Gauging

Station No. 08110500, downstream of the confluence of Steele Creek and the Navasota River. This increase in TDS (from 155 to 178 mg/L) is estimated as 14.7%. Even with this increase, the resulting value is well within acceptable drinking water standards (500 mg/L) and is well below the maximum annual average for TDS concentration for Stream Segments No. 1209 and No. 1202, (600 mg/L) and (750 mg/L).

16. TMPA has addressed the requirements of §12.348 to protect the groundwater hydrologic balance (for Phase III areas) through the submission of groundwater information on the overburden and underburden aquifers at the Gibbons Creek Lignite Mine.
 - (a). Permit No. 26D lies within the outcrop of the Manning Formation, one of four formations comprising the Eocene Jackson Group. The Manning Formation is about 800 feet thick in Grimes County and is characterized as having four blanket sands sandwiching layers of mud-rich sediments and lignite.
 - (b). TMPA provided quarterly groundwater monitoring data from four monitoring wells near the B2 Mine block, monitoring wells MAMA4, MOBB2, MOAB4-R4 and MBUTT, for the periods of record, 1988-2016, 1987-2014, 1987-2016, and 1989-2016, respectively. These wells are located southwest of the proposed release areas. TMPA shows the locations of the monitoring wells on its Exhibit 4, *Structures and Ground and Surface Water Monitoring*. These four monitoring wells will remain as part of the long-term groundwater monitoring (LTGM) plan until the B2 mine block is fully released. TMPA provided summary data for the wells for various constituents, along with a graph showing trends for the water-table elevation, total dissolved solids (TDS) concentration, electrical conductivity (EC) and pH values of the well water for the period of record. These wells are located two miles or more from the areas requested for release depending upon the specific well. In addition, Staff review states that none of these wells are positioned to capture any spoil water migrating from the 6.7-acre proposed bond release area. No monitoring wells or groundwater wells are located within the areas requested for release or closer than two miles away. No water supply wells are located within the B2 mine block. Two monitoring wells are screened across an interburden sand (Unit 3055) (Well MOAB4-R4) located above a lignite seam), and an underburden sand (Unit 2355) (Well MOBB2) located below a lignite seam, respectively. Both sand units were disturbed by mining in the B2 mine block. Although none of these wells are positioned to capture any spoil water migrating from the 6.7-acre proposed bond release area, Staff has evaluated the four wells in the general vicinity to evaluate protection of groundwater. Staff analysis states that water levels in the four wells have stabilized. The PHC determination included in Permit No. 26D (Revision 35) indicates that most of the sand units (aquifers) would be marginally suitable as a water supply for limited agricultural and industrial purposes. Analysis of the data from baseline conditions supports this assessment. Based on the above-mentioned data, Staff found that no negative impacts to the groundwater hydrologic balance have occurred and that no negative impacts are expected to occur in the future.
17. The applicable regulatory requirements of Chapter 12, including §§12.312-12.313 in accordance with §12.306(e) have been met for the release of 6.7 acres.

18. The eligible bond reduction amount is \$37,061.31 as set out below:

Phase Requested	Area Acres	Disturbance Category	Bonded Per Acre	Eligible Reduction Per Acre	Eligible Reduction
Phases I-III	4.9	Disturbed	\$6,513	\$ 6,513	\$31,913.70
Phase III	1.8	Mined	\$ 988	\$ 988	\$ 1,778.40
Subtotal					\$33,692.10
Admin. Costs (10%)					3,369.21
Total					\$37,061.31

19. No reduction to the bond instrument is recommended for approval at this time. TMPA and the Staff have submitted waivers for the proposed Order as provided for in §2001.062(e) of the Administrative Procedure Act, TEX. GOV'T CODE ANN. Ch. 2001 (Vernon Supp. 2017). Open meeting notice of consideration of this application has been provided in compliance with TEX GOV'T CODE §551.048.

CONCLUSIONS OF LAW

Based on the Findings of Fact, the following Conclusions of Law are made:

1. Required public notice and other notices required were provided for this request for release of reclamation obligations, and the Commission properly posted the docket for consideration.
2. A public hearing on the request is not warranted.
3. Regulation §12.306(e) provides, in part, "Actions of third parties which are beyond the control of the operator and for which the operator is not responsible under the permit need not be covered by the bond." An alternative postmine land use application was not required; the bond release application contains all information needed for approval.
4. TMPA has complied with all applicable provisions of the Act and the Regulations for the release of Phases I – III for 4.9 acres and Phase III release of 1.8 acres, totaling 6.7 acres of land within the Gibbons Creek Lignite Mine.
5. An eligible bond reduction amount of \$37,061.31 may be determined.

IT IS THEREFORE ORDERED BY THE RAILROAD COMMISSION OF TEXAS that the above Findings of Fact and Conclusions of Law are adopted;

IT IS FURTHER ORDERED that a release of Phases I – III reclamation obligations for 4.6 acres is hereby approved;

IT IS FURTHER ORDERED that a release of Phase III reclamation obligations for 1.8 acres is hereby approved;

IT IS FURTHER ORDERED that an eligible bond reduction amount of \$ \$37,061.31 is determined;

IT IS FURTHER ORDERED that all areas released from reclamation obligations shall remain clearly marked in the field with permanent boundary markers to distinguish these areas from other reclamation areas in accordance with this Order;

IT IS FURTHER ORDERED that the current bond remains in effect according to its terms until otherwise ordered by the Commission;

IT IS FURTHER ORDERED that the Commission may vary the total amount of bond required from time to time as affected land acreages are increased or decreased or where the cost of reclamation changes; and

IT IS FURTHER ORDERED by the Commission that this order shall not be final and effective until 20 days after a party is notified of the Commission's order. A party is presumed to have been notified of the Commission's order three days after the date on which the notice is mailed. If a timely motion for rehearing is filed by any party of interest, this order shall not become final and effective until such motion is overruled, or if such motion is granted, this order shall be subject to further action by the Commission. In accordance with TEX. GOV'T CODE §2001.146(e), the time allotted for Commission action on a motion for rehearing in this case prior to its being overruled by operator of law, is hereby extended until 100 days from the date the parties are notified of the order.

SIGNED this 27th day of February 2018.

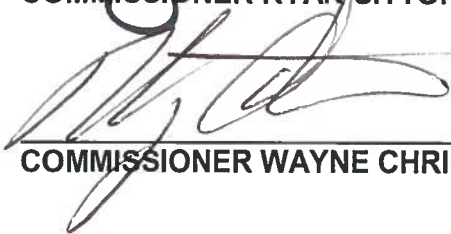
RAILROAD COMMISSION OF TEXAS



CHAIRMAN CHRISTI CRADDICK



COMMISSIONER RYAN SITTON



COMMISSIONER WAYNE CHRISTIAN

ATTEST:



**deputy Secretary
Railroad Commission of Texas**