

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

SMRD DOCKET No. C15-0006-SC-27-E

**APPLICATION OF WALNUT CREEK MINING COMPANY FOR
ACCEPTANCE OF REPLACEMENT RECLAMATION PERFORMANCE BONDS
SURFACE MINING PERMIT No. 27G, CALVERT MINE
ROBERTSON COUNTY, TEXAS**

ORDER ACCEPTING REPLACEMENT RECLAMATION PERFORMANCE BONDS

Statement of the Case

Walnut Creek Mining Company (Walnut Creek) has applied to the Railroad Commission of Texas (Commission) for acceptance of two replacement reclamation performance bonds for its Calvert Mine, Permit No. 27G, located in Robertson County, Texas.

Walnut Creek requests replacement of the current surety bond for the Calvert Mine, Permit No. 27G, Bond No. 105442461, from Walnut Creek Mining Company, as principal, and Travelers Casualty and Surety Company of America, as surety, in the amount of \$43,198,583 accepted by the Commission on March 8, 2011. The proposed replacement bonds, Surety Bond No. SUR60000217 issued by Ironshore Indemnity, Inc. in the amount of \$22,000,000, and Surety Bond No. 800006518, issued by Atlantic Specialty Insurance Company, in the amount of \$21,198,583, total \$43,198,583, the amount of the currently accepted surety bond. Notice of Commission consideration of this matter has been provided. This order has been circulated to the parties with an opportunity for the filing of exceptions and replies. The parties have filed waivers of the circulation of a Proposal for Decision.

The Commission finds that the two proffered bonds may be accepted and the existing surety bond replaced. Based on the evidence in the record, the Commission makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Walnut Creek Mining Company (Walnut Creek), 10949 North Tidwell Prairie Road, Bremond, Texas 76629 has applied to the Railroad Commission of Texas, Surface Mining and Reclamation Division (Staff) for acceptance of two reclamation performance bonds to replace its currently accepted surety bond. The two bonds are surety bonds and were filed as a part of Revision No. 14 to Walnut Creek's Permit No. 27G, Calvert Mine, the remainder of which was approved administratively. Walnut Creek requests acceptance of the two bonds that total \$43,198,583, the amount of the currently accepted bond. The existing bond proposed for replacement is a surety bond from Walnut Creek Mining Company, as principal, and Travelers Casualty and Surety Company of America, as surety.
2. The request for acceptance of the surety bonds is made pursuant to the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. §134.127 (Vernon Supp. 2014) (Act) and §12.307 of the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE Ch. 12 (Thomson West 2014) (Regulations).

2. The Surface Mining and Reclamation Division (Staff) filed the request with the Hearings Division on December 16, 2014 along with the Staff review documents, with the exception of updated reclamation costs. Staff supplemented its filing with a copy of the approval of the administrative portion of Revision No. 14, including Staff's review memorandum and updated reclamation cost estimate and analysis. The updated reclamation cost estimate is in the amount of \$40,027,698. This amount is less than the sum of the two proffered bonds and is less than the currently accepted bond.
3. The Act and Regulations direct that the Commission shall determine the amount of bond required based on the costs of reclamation and shall periodically adjust the amount of bond required. In accordance with the Regulations §12.304(d), the required amount shall be based on, but not limited to, the estimate submitted by the applicant, and that the Staff shall prepare a reclamation cost estimate. The estimate prepared by Staff is approved.
 - (a). Walnut Creek did not submit a reclamation cost estimate when it submitted the two proffered replacement bonds. Walnut Creek did provide, however, a reclamation cost estimate of \$53,050,935 in its Revision No. 5 approved by letter dated February 10, 2012. Staff had filed its estimate in the processing of that application, \$39,297,680. Staff's estimate, although lower than Walnut Creek's, was approved as the amount required to ensure reclamation of the permit area in that Walnut Creek's

estimate used higher costs for restoration of county roads and used much lower equipment productivity. The estimate filed in the instant docket by Staff, \$40,027,698, is the most up to date and is accepted as the amount required to reclaim areas mined or otherwise disturbed within the permit area. Staff's estimate is an increase from its estimate in Revision No. 5 primarily due to an increased cost of fertilizer. The Staff estimate includes a summary of reclamation costs setting out per-acre costs for mined acreage (any area where spoil is deposited and the active pit and highwall reduction areas). Per-acre costs were calculated separately for Pits 1, 2, 3, and 6 including costs for overburden spoil leveling, topsoil application, and soil preparation, revegetation, and maintenance. In addition, per-acre costs were estimated for disturbed acreage (construction activities for sedimentation ponds, diversion, access roads, haul roads, and facilities where topsoil is removed but the area is not mined). Per-acre costs were estimated separately for Pits 1, 2, 3, and 6 for disturbed area leveling, topsoil application, soil preparation, revegetation, and maintenance. Per-acre costs were also included for ancillary acreage for all mine areas (disturbed areas on which soil preparation and seeding are the only required reclamation activities) for soil preparation, revegetation, and maintenance. The reclamation cost estimate includes an added factor of 10% for administrative costs.

- (b). All acreage figures used were taken from Table 145-1, *Projected Reclamation Acreage and Costs* and Exhibit 142-1, *Bonding Areas*, dated revised November 2,

2011 in Revision No. 5.

4. In the administratively approved Revision No. 14, Walnut Creek Mining Company submitted changes to its ownership and control. Walnut Creek Mining Company was formerly a partnership of Bighorn Walnut LLC, a Delaware limited liability company, and K T Mining, Inc., a Delaware corporation. Bighorn Walnut LLC is now owned by Black Walnut LLC rather than Kiewit Mining Group, Inc., and KT Mining Inc. has been converted to KT Mining LLC, a Delaware limited liability company. Walnut Creek is a limited partnership between Bighorn Walnut LLC and KT Mining LLC. In addition, the operator at the mine is now Kiewit Mining Group, Inc. (KMG). Bighorn Walnut, LLC, KT Mining LLC, and Walnut Creek Mining Company are authorized to transact business in Texas; the registered agent for each is Attorney Service Associates, Inc., Registered Office Street Address 3610-2 N. Josey Ln, Suite 223, Carrollton, TX.
5. All other filings and approvals required for the operations for which bonding is required have been made as set out and as limited in the Staff letter and review memorandum dated January 5, 2015.
6. The replacement bonds are on Commission forms for surety bond. The sureties, Ironshore Indemnity, Inc. and Atlantic Specialty Insurance Company are Minnesota and New York corporations and are licensed as sureties in Texas. Required licensing information has been

obtained from the Texas Department of Insurance. The proffered surety bonds are in the amounts of \$22,000,000 (Ironshore Indemnity, Inc.) and \$21,198,583 (Atlantic Specialty Insurance Company) and total \$43,198,583, the amount estimated by Staff as sufficient to reclaim the bonded areas. The Act and Regulations direct that the Commission shall determine the amount of bond required based on the costs of reclamation and shall periodically adjust the amount of bond required. In accordance with the Regulations §12.304(d), the required amount was based on, but not limited to, the estimate submitted by the applicant.

7. The bond and other documents submitted provide all required information for acceptance of the bond.
 - (a). Approval by the Commission of the proffered surety bond will allow for the bonding of all activities approved by the Railroad Commission for Walnut Creek.
 - (b). A surety bond is an acceptable form of bond under §12.308(a)(1). The replacement bond is properly executed.
 - (1). Each bond is properly signed by Peter DeQuattro, Vice President, Walnut Creek Mining Company, who is authorized to sign the bond. Documentation has been provided to show that Mr. DeQuattro holds the office of Vice

President and is authorized to execute and deliver the surety bonds in the amounts provided.

- (2). The bonds are also properly signed by Brook T. Smith, Attorney-in-Fact for both surety companies. Original powers of attorney containing original corporate seals have been submitted showing appropriate authorization of the signatory. The powers of attorney were executed on September 25, 2012 and further authenticated by a submitted corporate resolution stating that they remained in full force and effect dated October 23, 2014.
- (3). The surety bond forms contain all other provisions required by the Act and Regulations. The bonds are conditioned upon faithful performance of all the requirements of the Act, permit, reclamation plan, and Regulations. The bonds contain a provision that they shall remain in full force and effect for the duration of the reclamation obligation in accordance with §12.309 of the Regulations. The bonds are non-cancelable during their terms.
- (4). The proffered bonds are together in an amount sufficient to cover the costs of reclamation of disturbed lands within the permit area should a third party complete reclamation at the direction of the Commission in the event of permittee forfeiture [Findings of Fact Nos. 3(a) and 6].

- (5). Bond coverage has been continuous and with acceptance of the replacement bonds will continue uninterrupted.
8. Documentation has been submitted to meet all requirements set out in §§12.308 and 12.309 of the Regulations for the acceptance of the surety bonds.
9. Required open meeting notice has been made. Acceptance of the surety bonds is not a release of reclamation obligations; no public notice is required other than notice of the Commission meeting to consider the matter. The proffered bonds, when accepted, will together bond the permit area in the amount required until all reclamation within the permit area has been completed and the principal released from liability or until the bonds are replaced.
10. Walnut Creek and the Staff, the only parties to the proceeding, have filed waivers of the preparation and circulation of a proposal for decision. The proposed order was circulated to the parties for exceptions and replies. The proposed order was also circulated to Travelers Casualty and Surety Company of America, Ironshore Indemnity, Inc. and Atlantic Specialty Insurance Company.
11. KT Mining LLC, Bighorn Walnut LLC, and the permittee, Walnut Creek Mining Company,

are authorized to transact business in Texas. These entities are current in the payment of state franchise taxes as required by TEXAS TAX CODE §171.0001, et seq. (Vernon Supp. 2014).

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

CONCLUSIONS OF LAW

1. The surety bonds supplied by Walnut Creek Mining Company, Ironshore Indemnity, Inc. and Atlantic Specialty Insurance Company comply with requirements for acceptance, are in proper form, and are together in the required amount to ensure reclamation of the permit area. The surety bonds meets the requirements for acceptable reclamation performance surety bonds as set forth in §§12.308-12.309 of the Regulations and §134.121 *et seq.* of the Act.
2. All required notice for consideration of this matter has been made.
3. The Commission is authorized by the Act and Regulations to accept the surety bonds to replace the bond issued by Travelers Casualty and Surety Company.

IT IS THEREFORE ORDERED BY THE RAILROAD COMMISSION OF TEXAS

Walnut Creek Mining Company
Docket No. C15-0006-SC-27-E

that the above Findings of Fact and Conclusions of Law are adopted;

IT IS FURTHER ORDERED that the application for acceptance of the replacement bonds filed by Walnut Creek Mining Company for the Calvert Mine in Robertson County, Texas, is approved;

IT IS FURTHER ORDERED that the proffered surety bonds, for the Calvert Mine, Permit No. 27G, Ironshore Indemnity Inc. Surety Bond No. SUR60000217 in the amount of \$22,000,000 and from Walnut Creek Mining Company as Principal in the same amount, Surety Bond No. 800006515 from Atlantic Specialty Insurance Company in the amount of \$21,198,583 and from Walnut Creek Mining Company as Principal in the same amount, for a total amount of \$43,198,583 are hereby accepted;

IT IS FURTHER ORDERED that the existing surety bond, Reclamation Performance Bond No. 105442461 by Walnut Creek Mining Company and Travelers Casualty and Surety Company of America in the amount of \$43,198,583 is hereby replaced;

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. As authorized by 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 operation of law, is hereby extended until 90 days from the date the parties are notified of the order.

SIGNED AT AUSTIN, TEXAS, this 27th day of January, 2015.

RAILROAD COMMISSION OF TEXAS




CHAIRMAN CHRISTI CRADDICK



COMMISSIONER DAVID PORTER



COMMISSIONER RYAN SITTON

ATTEST:


Secretary, Railroad Commission of Texas

RAILROAD COMMISSION OF TEXAS
Surface Mining and Reclamation Division
Surety Bond for Surface Mining and Reclamation Permit

Permit No.: **27G**
Mine Name: **Calvert**
Permittee: **Walnut Creek Mining Company**
(hereinafter referred to as the "Principal")
Bond No.: **SUR60000217**

This bond ☒ does ☐ does not (check appropriate response) replace an existing bond, described as:
105442461 issued on November 17, 2010

KNOW ALL BY THESE PRESENTS [Note: Recitals may be modified as necessary to address permits revisions, renewals, consolidations]:

WHEREAS, the above bound Principal submitted to the Railroad Commission of Texas, Surface Mining and Reclamation Division, an application for a permit to engage in surface mining, which application included a proposed reclamation plan; and

WHEREAS, the Principal's permit application (including the proposed reclamation plan) was approved by the Railroad Commission of Texas on the 9th day of Feb., **2010**; and

WHEREAS, issuance of a permit pursuant to such approved application (the "Permit") and retention of the Permit are conditioned on the Principal's posting bond to insure faithful performance of all requirements of the Principal under the Texas Surface Coal Mining and Reclamation Act, Texas Natural Resources Code, § 134.001 *et seq.*, (hereinafter referred to as the "Act"); regulations adopted under the Act, 16 TAC § 12.1 *et seq.*; (hereinafter referred to as the "Coal Mining Regulations"); and the Permit;

THAT WE, Walnut Creek Mining Company as Principal, and Ironshore Indemnity Inc., as Surety, are held and firmly bound to the State of Texas in the full sum of Twenty-Two Million And 00/100 United States Dollars (\$22,000,000.00 U.S.), well and truly to be paid to the State of Texas in Austin, Travis County, Texas, and we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally, firmly by these presents.

NOW, THEREFORE, the conditions of this obligation are such that if the above bound Principal shall faithfully and fully perform the requirements set forth in the Act, the Coal Mining Regulations, and the Permit, as now or hereafter amended, revised, renewed or replaced, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Bond No.: SUR60000217

And the Surety to this bond, for value received, agrees that no amendment to existing law, rules or regulations, no adoption of new laws, rules, or regulations, and no amendment, revision, renewal, or replacement of the Permit (including the reclamation plan) shall in any way alleviate its obligation on this bond, and it does hereby waive notice of any such amendment, adoption, revision, renewal, or replacement.

The Surety further agrees to give prompt notice to the Principal and to the Railroad Commission: (1) of any notice received or action filed alleging the insolvency or bankruptcy of the Surety or which could result in suspension or revocation of the Surety's license to do business in the State of Texas; or (2) if it becomes unable, or, for any reason, unwilling, to fulfill its obligations under this bond.

If this is a replacement bond, Surety further agrees that any liability which has accrued against the Principal under the Act, the Coal Mining Regulations, or the Permit as originally issued, amended, revised, renewed, or replaced, is transferred to this bond.

The Surety further represents to the Railroad Commission that it is a corporate surety licensed to do business as a surety in Texas.

It is agreed that this bond shall be in full force and effect, and non-cancellable, for the duration of the reclamation obligation on the land affected by the Permit, as amended, renewed, revised, or replaced, or land substituted therefore, or until the Principal is otherwise relieved of its obligation hereunder by order of the Railroad Commission of Texas.

It is further agreed that upon the incapacity of the Surety by reason of bankruptcy, insolvency or suspension or revocation of its license, or for any other reason, the Principal shall be deemed to be without bond coverage in violation of the Act, the Coal Mining Regulations, and the Permit, and the Principal shall discontinue surface coal mining operations until new performance bond coverage is approved. Notwithstanding the foregoing, however, nothing in this instrument shall be construed as a waiver of the Commission's ability to enforce the Act, the Coal Mining Regulations, or the Permit, or to seek bond forfeiture in accordance with the provisions of the Act, the Coal Mining Regulations, or this instrument.

Bond No.: SUR60000217

IN WITNESS WHEREOF, the Principal and Surety have caused these presents to be duly signed and sealed this 23rd Day of October, 2014.

Walnut Creek Mining Company

Principal

**10949 North Tidwell Prairie Rd., Bremond, TX
76629**

Address

By: 

Signature

Peter Dequattro

Typed Name

Vice President

Title

Attest: 

Accepted: 1-27-15

Ironshore Indemnity Inc.

Surety

One State St. Plaza, New York, NY 10004

Address

By: 

Signature

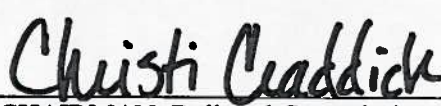
Brook T. Smith

Typed Name

Attorney-In-Fact

Title

Attest: 



CHAIRMAN, Railroad Commission of Texas



COMMISSIONER, Railroad Commission of Texas



COMMISSIONER, Railroad Commission of Texas

ATTEST: 

NOTE: The following documents should be provided to the Commission with the original bond instrument: Principal (1) Original power of attorney, or (2) Certified corporate resolution and certificate of incumbency for signatories; Surety - Original power of attorney for signatory and documentation that surety is licensed to do business in Texas.

RAILROAD COMMISSION OF TEXAS
Surface Mining and Reclamation Division
Surety Bond for Surface Mining and Reclamation Permit

Permit No.: **27G**
Mine Name: **Calvert**
Permittee: **Walnut Creek Mining Company**
(hereinafter referred to as the "Principal")
Bond No.: **800006518**

This bond ☒ does ☐ does not (check appropriate response) replace an existing bond, described as:
105442461 issued on November 17, 2010

KNOW ALL BY THESE PRESENTS [Note: Recitals may be modified as necessary to address permits revisions, renewals, consolidations]:

WHEREAS, the above bound Principal submitted to the Railroad Commission of Texas, Surface Mining and Reclamation Division, an application for a permit to engage in surface mining, which application included a proposed reclamation plan; and

WHEREAS, the Principal's permit application (including the proposed reclamation plan) was approved by the Railroad Commission of Texas on the 9th day of Feb, 2010; and

WHEREAS, issuance of a permit pursuant to such approved application (the "Permit") and retention of the Permit are conditioned on the Principal's posting bond to insure faithful performance of all requirements of the Principal under the Texas Surface Coal Mining and Reclamation Act, Texas Natural Resources Code, § 134.001 *et seq.*, (hereinafter referred to as the "Act"); regulations adopted under the Act, 16 TAC § 12.1 *et seq.*; (hereinafter referred to as the "Coal Mining Regulations"); and the Permit;

THAT WE, Walnut Creek Mining Company as Principal, and Atlantic Specialty Insurance Company, as Surety, are held and firmly bound to the State of Texas in the full sum of Twenty-One Million One Hundred Ninety-Eight Thousand Five Hundred Eighty-Three And 00/100 United States Dollars (\$21,198,583.00 U.S.), well and truly to be paid to the State of Texas in Austin, Travis County, Texas, and we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally, firmly by these presents.

NOW, THEREFORE, the conditions of this obligation are such that if the above bound Principal shall faithfully and fully perform the requirements set forth in the Act, the Coal Mining Regulations, and the Permit, as now or hereafter amended, revised, renewed or replaced, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

And the Surety to this bond, for value received, agrees that no amendment to existing law, rules or regulations, no adoption of new laws, rules, or regulations, and no amendment, revision, renewal, or replacement of the Permit (including the reclamation plan) shall in any way alleviate its obligation on this bond, and it does hereby waive notice of any such amendment, adoption, revision, renewal, or replacement.

The Surety further agrees to give prompt notice to the Principal and to the Railroad Commission: (1) of any notice received or action filed alleging the insolvency or bankruptcy of the Surety or which could result in suspension or revocation of the Surety's license to do business in the State of Texas; or (2) if it becomes unable, or, for any reason, unwilling, to fulfill its obligations under this bond.

If this is a replacement bond, Surety further agrees that any liability which has accrued against the Principal under the Act, the Coal Mining Regulations, or the Permit as originally issued, amended, revised, renewed, or replaced, is transferred to this bond.

The Surety further represents to the Railroad Commission that it is a corporate surety licensed to do business as a surety in Texas.

It is agreed that this bond shall be in full force and effect, and non-cancellable, for the duration of the reclamation obligation on the land affected by the Permit, as amended, renewed, revised, or replaced, or land substituted therefore, or until the Principal is otherwise relieved of its obligation hereunder by order of the Railroad Commission of Texas.

It is further agreed that upon the incapacity of the Surety by reason of bankruptcy, insolvency or suspension or revocation of its license, or for any other reason, the Principal shall be deemed to be without bond coverage in violation of the Act, the Coal Mining Regulations, and the Permit, and the Principal shall discontinue surface coal mining operations until new performance bond coverage is approved. Notwithstanding the foregoing, however, nothing in this instrument shall be construed as a waiver of the Commission's ability to enforce the Act, the Coal Mining Regulations, or the Permit, or to seek bond forfeiture in accordance with the provisions of the Act, the Coal Mining Regulations, or this instrument.

Bond No.: 800006518

IN WITNESS WHEREOF, the Principal and Surety have caused these presents to be duly signed and sealed this 23rd Day of October, 2014.

Walnut Creek Mining Company

Principal

**10949 North Tidwell Prairie Rd., Bremond, TX
76629**

Address

By: 

Signature

Peter Dequattro

Typed Name

Vice President

Title

Attest: 

Accepted: 1-27-15



CHAIRMAN, Railroad Commission of Texas



COMMISSIONER, Railroad Commission of Texas



COMMISSIONER, Railroad Commission of Texas

ATTEST: 

NOTE: The following documents should be provided to the Commission with the original bond instrument: Principal (1) Original power of attorney, or (2) Certified corporate resolution and certificate of incumbency for signatories; Surety - Original power of attorney for signatory and documentation that surety is licensed to do business in Texas.

Atlantic Specialty Insurance Company

Surety

**601 Carlson Parkway, Suite 700, Minnetonka, MN
55305**

Address

By: 

Signature

Brook T. Smith

Typed Name

Attorney-In-Fact

Title

Attest: 