RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION

SURFACE MINING DOCKET NO. C20-0018-SC-38-F: APPLICATION BY TEXAS MUNICIPAL POWER AGENCY FOR RELEASE OF PHASE I, II AND III RECLAMATION OBLIGATIONS FOR AN AGGREGATE 751.40 ACRES, PERMIT NO. 38D, GIBBONS CREEK MINE, GRIMES COUNTY, TEXAS

ORDER APPROVING RELEASE OF PHASE I, II AND III RECLAMATION OBLIGATIONS FOR AN AGGREGATE 751.40 ACRES

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 ("Staff"), for Release of Reclamation Obligations on an aggregate 751.40 acres with 180.75 acres for Phase I and II, 2.56 acres for Phase I, II, and III, 551.05 acres for Phase II and III, and 17.04 acres for Phase II within Permit No. 38D, Gibbons Creek Mine, Grimes County, Texas. The Application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, Tex. Nat. Res. Code Ann. Ch. 134 (Vernon Supp. 2020) (Act) and §§12.312-313 of the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 Tex. Admin. Code Ch. 12 (Thomson West 2020) ("Regulations").

Permit No. 38D currently authorizes surface coal mining and reclamation operations at TMPA's Gibbons Creek Mine within its approximate permit area of 3,899.7 acres. Copies of the Application for release were filed in the required county and Commission offices. After public notice, no comments or requests for public hearing were filed. The only parties to the proceeding are TMPA and Staff. There remain no outstanding issues between the parties. Based on the information provided by the Application, Staff's Technical Analysis and the Field Inspection Report of the area, Staff recommends the approval of release of reclamation obligations for various phases of release of reclamation obligations on an aggregate 751.40 acres. By letters dated October 21, 2020, and November 9, 2020, the ALJ noted five issues, including an issue regarding the underburden groundwater evaluation and Staff's assessment thereof, that required further explanation from the parties. Responses were received from TMPA by letters dated November 5 and November 11, 2020, and from Staff by letters dated November 6 and 12, 2020. An informal conference was held on November 18, 2020, to address the continuing issue relating to the underburden aquifer performance standard. The ALJ issued a post-informal conference letter on November 19, 2020, summarizing the remaining issue. A further supplement was filed by TMPA by letter dated November 23, 2020. By letter dated December 18, 2020, Staff filed its assessment of TMPA's November 23, 2020, supplement, providing its revised technical opinion that "the TDS and analyte concentrations do not represent a degradation of the 3325 Underburden Sand" and that the proposed 751.4 acres were eligible for release as proposed. The parties have filed waivers of preparation and circulation of a proposal for decision. The Commission approves the

release as requested and finds that TMPA is eligible to the reduce the amount of bond for the permit in an amount that is attributable to the subject acreage in future bond adjustments.

FINDINGS OF FACT

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

1. By letter dated May 5, 2020, Texas Municipal Power Agency ("TMPA") filed its application ("Application") with the Railroad Commission of Texas ("Commission"), Surface Mining and Reclamation Division ("SMRD" and/or "Staff") requesting various phases of Release of Reclamation Obligations on an aggregate 751.40 acres, as follows: 180.75 acres for Phase I and II release; 2.56 acres for Phase I, II, and III release; 551.05 acres for Phase II and III release; and, 17.04 acres for Phase II release, all within Permit No. 38D, Gibbons Creek Mine, located in Grimes County, Texas.

2. The Application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, Tex. Nat. Res. Code Ann Ch. 134 (Vernon Supp. 2020) ("Act"), and the "Coal Mining Regulations," Tex. Railroad Comm'n, 16 Tex. Admin. Code Ch. 12 (Thomson West 2020) ("Regulations"). The Application was properly certified in accordance with §12.312(a)(3). No filing fee is required for this Application.

3. The Application was filed with the Hearings Division by letter dated May 19, 2020. Staff declared the Application administratively complete on August 3, 2020 and transferred it to the Hearings Division. By letter dated August 10, 2020, Staff filed its Technical Analysis ("TA") and Field Inspection Report ("Inspection Report") dated July 27, 2020, recommending approval of the bond release application with no outstanding comments.

4. The ALJ noted some issues requiring further explanation from the parties by letters dated October 21, 2020, and November 9, 2020. Responses were received from TMPA by letters dated November 5 and November 11, 2020, and from Staff by letters dated November 6 and 12, 2020. An informal conference was held on November 18, 2020, to address a remaining outstanding issue regarding the performance standard as it relates the underburden aquifer. The chronology of Application and action are set out below:

DATE	ACTION
May 5, 2020	TMPA submits Application for release of reclamation obligations for a total acreage of 751.40 acres for Phase I, II, and III.
May 19, 2020	The Application is filed with the Hearings Division.

DATE	ACTION
June 4, 2020	Staff performs a field inspection on the proposed acreage requested for release of reclamation obligations (Inspection Report dated July 27, 2020).
June 10, 2020	TMPA mailed to landowners and interested parties the copies of the public notice.
June 17, 24 and July 1 and 8, 2020	Notice of Application published in newspaper of general circulation in the locality of surface coal mine operation. Notice accurately reflects the current total acreage requested for release (751.40 acres).
August 3, 2020	Staff determines the Application to be administratively complete and transfers the Application to the Hearings Division.
August 10, 2020	Staff issues TA and Inspection Report recommending release of Phase I, II, and III reclamation obligations for an aggregate 751.40 acres.
October 21, 2020 and November 9, 2020	ALJ issues letters to parties requesting additional information regarding specific issues relating to required findings.
November 5 and 11, 2020	TMPA files responses to the ALJ's requests for additional information.
November 6 and 13, 2020	Staff files responses to the ALJ's requests for additional information.
November 18, 2020	Informal Conference held to address the finding necessary with regard to the performance standards for protection of the underburden aquifer.
November 19, 2020	ALJ issues post-informal conference letter regarding needed information as described in the Informal Conference.
November 23, 2020	TMPA files response to concerns identified and discussed at Informal Conference.
November 23, 2020	Staff files response indicating that it will review TMPA responses to concerns identified and discussed at Informal Conference and file an addendum to its TA.
December 18, 2020	Staff files TA addendum containing its review of TMPA response.

5. Permit No. 38D is currently bonded by a collateral bond dated February 19, 2020, and LOC No. IS000117313U, in the amount of $6,500,000 issued by Wells Fargo Bank, N.A., accepted by Order dated May 20, 2020 (Docket No. C20-0015-SC-38-E).

6. Copies of the Application were filed for public review, in compliance with notice requirements, at the main office of the Railroad Commission of Texas at 1701 North

Congress, William B. Travis Building, Austin, Texas, and in the office of the Grimes County Clerk in Anderson, Texas.

7. Notice of application was published once per week for four consecutive weeks in the *Navasota Examiner,* circulated in Grimes County, on June 17, 24 and July 1 and 8, 2020. The newspaper is a paper of general circulation in the area of the requested release area, Grimes County. The notice of application contains all information required by the Act and Regulations for notice of an application requesting release. The published notice is adequate notification of the request for release. The notice includes the elements required by §134.129 of the Act and §12.312(a)(2) of the Regulations: 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 bond approved, 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 notice contains information on the applicant, location and boundaries of the permit area, the Application's availability for inspection, and the address to which comments should be sent. TMPA submitted proof of publication to the Commission by letter dated July 20, 2020.[1]

8. TMPA sent notice of the Application to owners of interests within and adjacent to the areas requested for release. TMPA also sent notice to local governmental bodies, planning agencies, sewage and water treatment authorities and water companies in the locality as required by §12.312(a)(2) of the Regulations.[2] The notice was provided via certified letter in multiple mailings dated June 10, 2020. TMPA mailed notice to the Brazos River Authority, Carlos Lakes LLC, Citi Mortgage Inc., Environmental Protection Agency (District Office in Dallas), Texas General Land Office, Navasota Soil and Water Conservation District, Natural Resources Conservation Service, Pleasant Hill Church Cemetery, State of Texas Senior Resident Engineer, Texas Commission on Environmental Quality, Texas State Soil and Water Conservation Board, U.S. Army Corps of Engineers, Wickson Creek Special Utility District ("SUD"), and Grimes County, Grimes County Judge and Commissioners Court (Precincts 1, 2, 3, and 4), and to several landowners and lessees. The areas requested for release are not located within the territorial boundaries of any municipality that would be notified pursuant to §12.313(c) of the Regulations. Copies of the notification letters were filed with the Commission on July 22, 2020.

9. Staff provided notification of the Application by certified letter dated June 11, 2020, to the Grimes County Judge. Mailing of notification was provided at least 31 days prior to the date of consideration of the docket by the Commission in accordance with §134.133 of the Act. A copy of this letter was provided in Attachment II of Staff's TA.

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[1] Staff's indicated in its TA that the original Publisher's Affidavit and tear sheets of public notices were sent to the ALJ by letter dated July 20, 2020.

[2] Staff's indicates in its TA that the copies of letters from TMPA to landowners and agencies notifying it of TMPA's intention to seek release were sent to the ALJ by letter dated July 22, 2020.

10. No adverse comments or written objections were filed regarding the request for release pursuant to the notification. No requests for hearing or informal conference were filed pursuant to §12.313(d).

11. Pursuant to §12.312(b) of the Regulations, Staff notified owners of interests in lands and lessees of the Application for release and the Tulsa Field Office of the Office of Surface Mining Reclamation and Enforcement ("OSM"), by letters dated May 15, 2020, of the date and time of Staff's field inspection scheduled for June 4, 2020. The notification indicated that a release had been requested and, pursuant to §12.312(b)(1), advised the notice recipients of the opportunity to participate in the on-site inspection. Staff provided copies of the letters, dated May 15, 2020, in Appendix II of Attachment III (Inspection Report) of the TA.

12. The inspection occurred on June 4, 2020, as indicated in Staff's notification letters dated May 15, 2020. A representative from TMPA, from SMRD Inspection and Enforcement Staff, and four landowners were present for the pre-inspection meeting. Following the pre-inspection meeting, the SMRD inspector, accompanied by a representative from TMPA, conducted an inspection of the area requested for release. In the Inspection Report (TA Attachment III), Staff indicated that the four landowners were present for the field inspection of their respective land tracts. Staff also noted in the Inspection Report that Tract Nos. 172B and 172C were inspected with the respective landowners at the beginning of the inspection, and that the landowners expressed concerns regarding erosion and several sparsely vegetated areas of their property; that one of those areas was found to be within the area requested for Phase II and III release of reclamation liability (Appendix IV, General Photos 6-7). Staff further noted that the TMPA representative stated that the area would be repaired as soon as possible. In the Inspection Report (dated July 27, 2020), Staff also noted that the landowners raised concerns at the June 4th inspection regarding several sparsely vegetated areas that have already received Phase III release of reclamation liability (Appendix IV, General Photos 1-3 and 9-10); and that, although it is external to the instant docket, the TMPA representative committed in the field to disking these areas, planting them with permanent vegetation, and mulching the areas as soon as possible. In the Inspection Report, Staff noted that field conditions were dry at the time of the inspection, allowing access to all areas of the mine; that TMPA delineated the boundary of the proposed release are with white PVC boundary markers (Appendix IV, General Photo 5); and, that a random check of boundary markers was conducted during the inspection using a GPS-enabled Trimble Juno 3B handheld device, confirming the accuracy of the markers. Staff noted that the vegetation within the requested release area appeared healthy and self-sustaining. In the Inspection Report, Staff noted that all structures listed in the Application were observed in the field, and that erosion was noted just south of Pond SP-20 at the northeast end of the pond (Appendix IV, General Photo 91). Staff indicated that TMPA's representative committed to repair this eroded area as soon as possible. Staff also noted that vehicular pathways were observed throughout the area requested for Phase II and III release of reclamation

liability (Appendix IV, General Photos 18-19, 23, 44, 74, and 88-89) and, that TMPA agreed to disk and plant the pathways and discontinue their use.

a. Staff noted that, per TMPA, a portion of the former Pond SP-50 emergency spillway unsuitable material stockpile was found to partially extend into Tract No. 68 located south of the pond (Appendix IV, General Photos 126-127), and that TMPA stated that the tract had been sold in the past and that the landowner had not been consulted about the former stockpile or the inspection for phased release of reclamation liability.

b. By letter dated October 21, 2020, the ALJ requested clarification regarding ownership of Tract No. 68. By letter dated November 5, 2020, TMPA responded by providing a chronology as to the ownership for Tract No. 68 showing that SMRD and TMPA sent notice to the landowner of record for that tract by letters dated May 15, 2020, and June 10, 2020, respectively. TMPA provided copies of letters dated May 15, 2020, and June 10, 2020. Tract No. 68 was sold on October 12, 2020. TMPA provided a copy of a general warranty deed dated October 12, 2020, to show that Tract No. 68 was sold on October 12, 2020, and deed recorded on October 13, 2020. By letter dated November 6, 2020, Staff concurred with the response provided by TMPA.

13. The 3,899.7-acre permit area is located approximately 8 miles northwest of Anderson, Texas. The permit area is bordered to the north by State Highway 30 (SH 30). A general location map of the permit area, with the 751.40 acres proposed for release delineated, is provided in Appendix IV within Attachment III (Inspection Report) of Staff's TA.

14. The 751.40 acres requested for release are comprised of multiple parcels in mine areas A2 and A3. A portion of the proposed release area's northeastern boundary is adjacent to Farm-to-Market Road 244 ("FM 244"), the proposed eastern boundary is adjacent to County Road 186 ("CR 186"), and the proposed southern boundary is adjacent to FM 3090.

15. The postmining land uses for the proposed area of release—pastureland, industrial/commercial ("I/C"), and developed water resources ("DWR")—are summarized in the following table:

Proposed Release Phases by Land Use, Acres

Postmine Land Use	Phases I & II	Phases I, II, & III	Phases II & III	Phase II	Total	% of Total
Pastureland	26.75		406.06	17.04	449.85	59.90
I/C		2.56	8.63		11.19	1.50
DWR	154.00		136.36		290.36	38.60
Total	**180.75**	**2.56**	**551.05**	**17.04**	**751.40**	**100.00**

The 449.85 acres of postmine pastureland requested for release lie within four land management units ("LMUs") that were placed into the five-year extended responsibility period ("ERP"), which commenced on either September 30, 2013 (LMUs A2-3, A3-3, and A3-4) or on October 31, 2014 (LMU A2-4).

16. Mining operations and/or mining-related disturbance activities were conducted on the requested 751.40 acres between 1986 and 1996. Mining operations were conducted on 354.94 acres, mining-related disturbed activities on 297.13 acres, including roads and diversions, and ancillary disturbance occurred on 99.33 acres. Final grading was accomplished between 1992 and 2003. Reclamation activities began in 1986, and have continued, as required, for necessary maintenance of the subject areas requested for release.

17. Based upon the Application and Staff's review, Phase I release of reclamation obligations have been met for the requested 183.31 acres in accordance with Phase I requirements for backfilling, regrading, and drainage control as required by §12.313(a)(1). The requested 183.31 acres for Phase I release have a postmining land use of DWR (154.00 acres), I/C (2.56 acres), and pastureland (26.75 acres).

    a. TMPA has backfilled and regraded the area to its approximate original contour [§12.385(a)]; eliminated all highwalls [12.385(b)]; placed suitable topsoil substitute material over regraded spoil; constructed no cut-and-fill terraces; and, accomplished drainage control in accordance with the approved reclamation plan. The area was regraded between 1992 and 2003 in a manner such that erosion and water pollution has been minimized, and the lands proposed for release are not contributing suspended solids outside the permit area in excess of wastewater discharge permit limits.

    b. The soil-testing grids within the 183.31 acres proposed for Phase I release of reclamation liability have met the suitability requirements. TMPA submitted its final soil report for Permit No. 38D by letter dated December 31, 2018. By letter dated January 23, 2019, SMRD indicated that a finding could be made that the data for all sampled areas did not indicate the presence of acid- and toxic-forming materials in the top four feet of postmine soils.

    c. The area requested for Phase I release contains one permanent impoundment, Pond SP-50. Pond SP-50 was approved as a permanent postmine feature by SMRD letter dated August 26, 2003. Ground cover surrounding the pond is sufficient to control erosion. The area has been revegetated and stabilized to reduce runoff and provide effective sediment control.

    d. Runoff from the aggregate 183.31 acres requested for Phase I release flows into final discharge Pond SP- 50. [§12.343].

e. The SP-50 Access Road is located within the areas requested for Phase I release.[3]

f. No stream diversions are located within the areas requested for Phase I release. [§12.341].

g. No disposal of non-coal waste has occurred within the area requested for Phase I release. [§12.375].

18. All 751.40 acres are requested for Phase II release, with a subset of 553.61 acres also requested for Phase III release. A total of 568.09 acres for which Phase II (and, for a portion; Phase III) release is being sought was previously granted Phase I release by the Commission in Docket No. C13-0012-SC-38-F (Order dated October 30, 2018).

19. Based upon the Application and Staff's review, Phase II release of reclamation obligations have been met for an aggregate total of 751.40 acres in accordance with Phase II requirements for revegetation and for quality of surface-water discharges from the area as required at §12.313(a)(2). The lands have been reclaimed and managed in accordance with the approved postmining land use. [§§12.147 and 12.399].

a. TMPA submitted soil fertility data for pastureland in accordance with the approved mine soil testing plan. By letters dated October 27, 2016, June 20, 2017, and March 7, 2018, TMPA reported soil fertility data for the 2009 through 2013 growing seasons. As per Staff's assessment, the soil fertility data indicate that no augmentation had occurred. Copies of approval letters from Staff were provided in Section 5 of the Application and in Staff's TA.

b. Ground-cover standards have been met for all areas requested for Phase II release:

i. For pastureland, permanent revegetation has been established on the regraded areas in accordance with the approved reclamation plan. The area is planted with approved species; photographs contained in the Inspection Report show that vegetation is well established. The area has been revegetated with Hybrid Bermudagrass and mixed bunch grasses with interseeded clover. The bunch grasses include Kleingrass, Alamo Switchgrass, Old World Bluestem, Sideoats grama, and Indiangrass. All species were approved for the respective land uses at the time of planting. The ground-cover evaluation for the 427.6 acres of pastureland within LMUs A2-3 and A3-3 was submitted by letter dated June 1, 2017, and supplemented by letter dated July 12, 2017, for the 2016 growing

[3] Although the exhibits contained in the application identify this road as the SP-50 Service Road, it is identified in the text of the application as the SP-50 Access Road, and it is the only road associated with Pond SP-50 within the requested release area.

season, and approved by SMRD letter dated October 23, 2017. For the 2017 growing season for these LMUs, TMPA submitted on May 25, 2017, and approved by SMRD letter dated June 7, 2018. The ground-cover evaluation for the 43.8 acres of pastureland within LMUs A2-4 and A3-4 were submitted by letter dated April 24, 2019, for the 2018 growing season, and approved by letter dated May 6, 2019.

ii. Of the 751.40 acres proposed for Phase II release of reclamation liability, 290.36 acres have a postmine land use of DWR. The ground-cover performance standard for DWR requires that the cover must be adequate to control erosion. No erosion was observed by SMRD Inspection and Enforcement ("I&E") staff in areas with a DWR land use, and all associated ground cover appeared adequate to control erosion.

iii. Of the 751.40 acres proposed for Phase II release of reclamation liability, 11.19 acres have a postmine land use of I/C. By letter dated November 6, 2020, Staff indicated that 11.19 acres I/C land use includes 5.14 acres Shop Area, 0.05 acres sliver on Rail Spur and 6.00 acres oil/gas pad and access road. Of the 5.41 acres Shop Area, 3.20 acres are vegetated, and the remaining 1.94 acres are buildings, parking area, fuel storage tank areas and lay-down yard. The remaining acres are comprised of 1.94 from the Shop Area, 0.05 acres sliver on the Rail Spur and 6.00 acres from oil/gas pad and access road. The ground-cover performance standard for I/C land use is that the cover be adequate to control erosion. No erosion was observed in areas with an approved I/C land use, and all associated ground cover appeared adequate to control erosion. Ground-cover data for the Shop Area of the Gibbons Creek Mine, covering 3.2 acres of I/C land use, was collected during the 2019 growing season and submitted by letter dated June 17, 2019, and approved by letter dated June 25, 2019. The ground-cover results of this report indicated that the acreage is capable of stabilizing the soil surface from erosion. [§§12.390-12.395].

c. Surface-water monitoring has been conducted in accordance with the requirements of the permit. The Texas Commission on Environmental Quality ("TCEQ") issued Texas Pollutant Discharge Elimination System ("TPDES") Permit No. 02460 to TMPA for wastewater discharges from the Gibbons Creek Mine. TMPA's individual pond long-term monitoring data evaluation was based on information compiled from two ponds that capture runoff from the areas requested for Phase II release from reclamation obligations:

Mine Area	Impoundment
A2	SP-13
A3	SP-20

TMPA's analysis compared the individual ponds' long-term monitoring data to TCEQ/TPDES effluent limitations and to the surface-water quality criteria for Stream Segment Nos. 1209 and 1202. These ponds have varying periods of record ranging from January 18, 1999, to December 21, 2019. The data from TMPA and SMRD include parameters for hydrogen-ion concentrations (pH), flow (Q), total dissolved solids ("TDS"), total suspended solids ("TSS"), settleable solids ("SS/TSM"), total iron (Fe), total manganese (Mn), and sulfate (SO_4^{-2}). Phase II sediment-control requirements are being met for the requested area as required by §12.313(a)(2) of the Regulations based upon monitoring of Ponds SP-13, SP-20, and SP-50. Staff's analysis of TMPA and SMRD data indicated no adverse trends for TSS concentrations and found that TMPA had demonstrated that the areas proposed for Phase II release from reclamation liability obligations are not contributing suspended solids to stream flow or runoff outside of the permit area in excess of effluent limitations set out in the water-quality permit or in excess of stream segment standards.

d. No silt dams are present within the area requested for Phase II release. [§12.344].

e. No rills or gullies were present within the area requested for Phase II release that would require repair. The areas have been stabilized to reduce the potential for contributing suspended solids to streamflow.

f. No prime farmland, for which additional requirements would be applicable, are located within the areas requested for Phase II release.

g. TMPA has met the requirements for Phase II release of reclamation obligations for the requested 751.40 acres.

20. Based upon the Application and Staff's review, Phase III release of reclamation obligations have been met for the 553.61 acres requested for Phase III release, in accordance with Phase III requirements for the completion of the ERP, soil resampling, and vegetation standards as provided in §12.313(a)(3). The SMRD has approved as permanent all structures within the area requested for Phase III release. Surface water and groundwater within and adjacent to areas have been protected in accordance with §§12.313(a)(3), 12.348, and 12.349. The postmining land uses in the area requested for Phase III release consists of 406.06 acres of pastureland, 136.36 acres of DWR, and 11.19 acres of I/C land use. By letter dated November 6, 2020, Staff clarified the location of industrial/commercial postmine land-use areas requested for Phase III release and that these areas have met ground-cover performance standards.

a. There are two permanent impoundments, three erosion control structures, one spillway structure, and 12 roads approved as permanent structures within the 553.61-acre area requested for Phase III release. The Shop Area Facilities were approved as permanent by letter dated July 8, 2020. Staff provided a copy of the Shop Area

approval letter in Attachment IV of its TA. In the table below are listed the structures and their approval dates, as contained in Staff's Inspection Report dated July 27, 2020.

Structure Name	Structure Type	Approval Date
Pond SP-20	Pond	July 12, 1991
Pond SP-13	Pond	February 22, 2013
Pond A2P-2 Spillway	Spillway Structure	May 12, 2005
Drop A3-2	Erosion Control Structure	January 18, 2001
Drop A3-6	Erosion Control Structure	October 28, 2016
A3 Drain 1	Erosion Control Structure	November 13, 2014
SP-13 Access Road	Road	February 22, 2013
SP-20 Access Road	Road	July 12, 1991
SP-20 Access Road Extens.	Road	December 28, 1999
South Access Road	Road	February 22, 2013
A2-SR1	Road	February 22, 2013
A2-SR2	Road	February 22, 2013
A2-SR5	Road	February 22, 2013
A3-SR8	Road	December 30, 2003
A3-SR13	Road	February 22, 2013
A3 Road 1	Road	February 22, 2013
A3 Spoil Road	Road	August 21, 2001
A3-HR6	Road	December 30, 2003
Shop Area	Road	July 8, 2020

Each of these structures has been approved by SMRD as permanent. Copies of Staff's approval letters for the structures were provided in Section 5 of the Application. No depressions exist within the proposed release area. Photographs taken during Staff's field inspection on June 4, 2020, support Phase III release of the acreage requested and are provided in Staff's Inspection Report. [§§12.154, 12.347, 12.400, 12.401]. Staff corrected its delineation of Pond SP-20 in its TA for this docket by letter dated November 6, 2020. TMPA and Staff clarified the portions of Roads A3-SR8 and A3-SR13 that were being requested for phased release by letters dated November 5 and 6, 2020, respectively.

b. Areas that have been previously disturbed have met Phase III requirements for successful completion of the ERP of five years for areas that received 26 or more inches of rainfall annually [§12.395(c)]. The pastureland areas requested for Phase III release are included in four LMUs within two extended responsibility areas ("ERAs").

LMU	ERA	ERA Area, acres
A2-3	September 30, 2013	88.57
A2-4	October 31, 2014	17.05

A3-3	September 30, 2013	358.81
A3-4	September 30, 2013	26.75

Successful revegetation of all acres requested for Phase III has been accomplished in accordance with §12.395 of the Regulations. Pastureland revegetation-success standards must be met in the final year of the ERP to qualify for Phase III release. Revegetation success has been sufficiently addressed by TMPA's Application and Staff's TA.

c. In accordance with resample requirements in the approved soil-testing plan, TMPA submitted data and analysis of a random 10% of soil grid sampling for the September 30, 2013, and October 31, 2014, ERAs. Staff indicated that the data show that there are no substantive differences in the analyzed parameters between the sampled grids during initial sampling and the random 10% sampling. TMPA submitted 2016 and 2017 ground-cover and productivity data for LMUs A2-3 and A3-3 by letters dated June 1, 2017, and May 25, 2018, respectively. By letters dated October 23, 2017, and June 7, 2018, SMRD determined that the 2016 and 2017 ground-cover and productivity data for LMUs A2-3 and A3-3 indicated the ground-cover and productivity data met the performance standards in accordance with §12.395(c)(2) of the Regulations. TMPA submitted the 2018 ground-cover and productivity data for LMUs A2-4 and A3-4 by letter dated April 24, 2019. By letter dated May 6, 2019, SMRD determined that the 2018 ground-cover and productivity data for LMUs A2-4 and A3-4 indicated that the ground-cover and productivity met the performance standards in accordance with §12.395(c)(2). Staff therefore concluded that the data do not reflect postmining soil degradation and are acceptable for the applicable ERAs. Copies of Staff's approval letters for the sampling on the subject acreage were provided in Staff's TA Attachment V and in Section 5 of the Application.

21. TMPA has conducted surface mining activities in a manner that has ensured that surface-water quantity and quality have been protected in accordance with §12.313(a)(2), §12.313(a)(3) and §12.349. Staff examined TMPA's analysis of the surface-water information and discharge data from final discharge Ponds SP-13, SP-20, and SP-50, and water-quality data from five stream-monitoring stations that receive runoff from the areas requested for release.

a. The runoff from the areas proposed for Phase II and/or Phase III release drain to Peach Creek and Gibbons Creek, then to Navasota River TCEQ Stream Segment No. 1209 and its tributaries, thereafter to the Brazos River (TCEQ Stream Segment No. 1202), and ultimately to the Gulf of Mexico. Discharges from the area are regulated by the TCEQ through the Texas Pollutant Discharge Elimination System ("TPDES"). The TCEQ issued TPDES Permit No. 02460 to TMPA for wastewater discharges from the Gibbons Creek Lignite Mine V.

b. In support of the requested release, TMPA submitted a surface-water hydrology report to address the requirements of §12.349 in the application. TMPA's analyses of the surface-water data are based on information compiled from three sedimentation ponds (Ponds SP-13, SP-20, and SP-50), five permanent impoundments (Ponds A2P-1, A2P-2, A3P-1, A3P-2, and A3P-3), and five long-term surface-water monitoring ("LSTM") stations: SWGC1 (Gibbons Creek - Undisturbed), SWPC2 (Peach Creek - Undisturbed), SWNR1 (upstream of Navasota River - Undisturbed), SWGC2 (Gibbons Creek - Disturbed), and SWRN2 (downstream of Navasota River - Disturbed), which receive runoff from upstream and downstream of the areas proposed for Phase II and III release. Staff's surface-water evaluation focuses on the areas proposed for Phase II and III (751.40 acres) release from reclamation obligations, as described in §12.313(a)(2), §12.313(a)(3) and §12.349.

c. TMPA's individual pond long-term monitoring data evaluation is based on information compiled from Ponds SP-13 and SP-20. Ponds SP-13 and SP-20 were approved by the Commission on February 22, 2013, and February 15, 2012, respectively. Discharges from Ponds A2P-1 and A2P-2 flow into permanent sedimentation Pond SP-13, and discharges from Ponds A3P-1, A3P-2, and A3P-3 flow into sedimentation Pond SP-20. Ponds SP-13 and SP-20 are both final discharge points located near the permit boundary.

   i. Data from Pond SP-13 complies with effluent limitations for pH, SS/TSM, TSS, Fe, and Mn under TPDES Permit No. 02460. For Pond SP-13, the average pH [7.7 standard units ("s.u.")], average TDS [299.6 milligrams per liter ("mg/L")], and average SO_4^{-2} (107.3 mg/L) fall within TCEQ stream-segment criteria. There are no TPDES effluent limitations established for TDS and SO_4^{-2}, and no stream-segment criteria established for TSS, SS/TSM, Fe, and Mn.

   ii. Data from Pond SP-20 complies with effluent limitations for pH, SS/TSM, TSS, Fe, and Mn under TPDES Permit No. 02460. The highest pH level (9.6 s.u.) occurred on March 8, 2017; since that time, the pH has been below 9.0 s.u. The highest TSS concentration, 207 mg/L, occurred on April 6, 2015. Since that time, the TSS concentration has been within the TPDES effluent limitation. Although this single sampling on April 6, 2015, indicated a TSS concentration of 207 mg/L, which exceeded the TPDES effluent limitation; however, Staff indicates that the average TSS concentration in Pond SP-20 is 17.0 mg/L, which falls well within the TPDES effluent limitation. The highest Fe concentration, 39 mg/L, occurred on June 6, 2006; since that time, Fe concentrations have been below 3.0 mg/L, with a period-of-record average of 1.4 mg/L. The highest concentration of Mn occurred on April 18, 2015 (4.1 mg/L); since that time, Mn concentration has remained below 2.0 mg/L, averaging 0.7 for the period of record. Staff considers that the average pH (7.5 s.u.), TSS (17.0 mg/L), and TDS (565.3 mg/L) concentrations in Pond SP-20 fall within the respective criteria for the stream segment. TMPA notes that the data

from the ponds demonstrates that Ponds SP-13 and SP-20 are improving the water quality observed in intermediate ponds A2P-1, A2P-2, A3P-1, A3P-2 and A3P-3 prior to discharge from Ponds SP-13 and SP-20, with all but SO_4^{-2} concentrations in Pond SP-20 meeting the applicable stream segment or TPDES discharge standards. Staff notes that the average SO_4^{-2} concentration in discharges from Pond SP-20 is 206.7 mg/L, which exceeds the stream-segment criterion for this parameter (100 mg/L for Navasota River). Staff has indicated that TMPA has demonstrated that the areas proposed for Phase II release from reclamation liability obligations are not contributing suspended solids to stream flow or runoff outside of the permit area exceeding the performance standards at §12.313(a)(2). In response to the ALJ's request for clarification, by letter dated November 5, 2020 TMPA provided a sufficient response that sulfate exceedances from the discharge of Pond SP-20 do not represent an adverse effect to the surface-water hydrologic balance related to past surface mining and reclamation activities and that the concentrations of sulfate in Pond SP-20 are consistent with those of the completely undisturbed Peach Creek system upstream of the proposed release area; and that acidic seep(s) do not represent an adverse effect to surface-water hydrologic balance. By letter November 6, 2020, Staff indicated it concurs with TMPA's response, and provided a revised Figure 1, delineating Pond SP-20.

iii. TMPA has demonstrated that disturbance to the hydrologic balance has been minimized in the permit and adjacent areas, and that material damage has been prevented outside the permit area. Staff's technical review of the report indicates that the discharge data from Ponds SP-13 and SP-20 comply with the effluent limitation for pH under TPDES Permit No. 02460.

d. TMPA provided long-term surface-water monitoring ("LTSM") data for LTSM Stations SWGC1, SWPC2, SWNR1, SWGC2, and SWRN2. Staff's surface-water evaluation focuses on the surface water monitoring data for LTSM Stations SWGC1 and SWGC2, both of which are located on Gibbons Creek and used to monitor upstream and downstream discharges from the areas proposed for Phase III release. LTSM Station SWGC1 is located upstream (undisturbed-area flow) and LTSM Station SWGC2 is located downstream (disturbed-area flow). The approved LTSM plan requires that the LTSM stations be sampled for flow ("Q"), pH, TDS, TSS, Fe, Mn, SO_4^{-2}, and chloride (Cl^-).

i. A comparison of the water quality data collected from undisturbed LTSM station SWGC1 and disturbed LTSM station SWGC2 indicates that: the averages observed for pH and Mn concentrations during the monitoring period are substantially similar; however, the averages observed for TSS and Fe concentrations are slightly higher for the disturbed LTSM Station SWGC2 than the undisturbed LTSM Station SWGC1. The average TDS concentration for

undisturbed LTSM Station SWGC1 is 338.8 mg/L, ranging from 146.0 to 774.0 mg/L, and the highest average observed for TDS concentration (774.0 mg/L) occurred on March 10, 2013. The average TDS concentration for disturbed LTSM Station SWGC2 is 499.4 mg/L, ranging from 150.0 to 1,690.0 mg/L, and the highest average observed for TDS concentration (1,690.0 mg/L) occurred on August 8, 2017. The flow-weighted average TDS concentration (178.6 mg/L) at disturbed LTSM station SWGC2 is lower than the Stream Segment No. 1209 (Navasota River) criterion of 600.0 mg/L and lower than the Stream Segment No. 1202 (Brazos River below Navasota River) criterion of 750 mg/L. The highest SO_4^{-2} concentration (682.0 mg/L) sampled at disturbed LTSM station SWGC2 occurred on August 8, 2017. The average SO_4^{-2} concentration (151.0 mg/L) for disturbed LTSM station SWGC2 is higher than the average SO_4^{-2} concentration (91.7 mg/L) for undisturbed LTSM station SWGC1, and lower than the maximum annual average SO_4^{-2} concentration criterion for Stream Segment No. 1202 (Brazos River below Navasota River) of 200.0 mg/L. The average Cl^- concentration (90.9 mg/L) for disturbed LTSM station SWGC2 is higher than the average Cl^- concentration (56.3 mg/L) for undisturbed LTSM station SWGC1, and lower than the maximum annual average Cl^- concentration criterion for Stream Segment No. 1209 (Navasota River) of 140.0 mg/L.

ii. Staff compared LTSM water-quality monitoring data for disturbed-flow station SWGC2 to baseline surface-water data for the same station. For all monitored parameters, Staff noted that the averages and ranges for the period of record were somewhat higher for the post-baseline period than for the baseline period. However, the average concentrations were less than the stream segment criterion for those parameters for which a criterion has been established by the TCEQ.

iii. Staff and TMPA evaluated the LTSM monitoring data with respect to the anticipate effects predicted in the probable hydrologic consequences (PHC) determination in the approved permit:

A. Surface mine drainage must be routed through a sedimentation pond prior to release and is required to meet TCEQ TPDES-mandated effluent limitations. Dissolved constituents, including TDS, Fe, Mn, and SO_4^{-2}, as well as sediment, are generally predicted to increase during mining when compared to premine conditions, eventually decreasing to or below premine conditions. Average TDS concentrations (499.4 mg/L) and flow-weighted average TDS concentrations (178.6 mg/L) at disturbed LTSM Station SWGC2 are expected to remain near the levels observed in recent water samples and within or lower average TDS concentrations in the baseline surface-water data for the same station. Staff indicates that it and TMPA's evaluation support a conclusion that water quality in comparison to the approved surface-water PHC determination has been protected.

B. TMPA's evaluation of flow data for the LTSM stations includes a discussion of impacts to water quantity relating to its PHC determination, stating that:

> Long-term reliable streamflow records were not available within the project area and vicinity; therefore, the stream-flow records available for the USGS Station 08110100, located on Davidson Creek near Lyons, Texas, were used to estimate average annual runoff from the project area. The drainage area monitored by this gauge is 195 sq. mi. (124,800 acres). Mean monthly stream flow records in acre-feet from 1984 through 2014 were used to develop the long-term average flows shown in Table .146-8. The average monthly stream flows in acre-feet for this station were used to characterize the monthly runoff that may be expected to occur in the project area per acre of drainage area. The average annual runoff was calculated as 0.4 acre-feet per acre, or approximately five inches. [Application, Surface Water Analysis, p. 60]

Staff concluded from TMPA's analysis that with respect to water quantity, the attenuation of storm runoff and increase in sustained flows in the Navasota River Basin will be insignificant when compared to the amount of storm runoff originating within the larger cumulative impact drainage area ("CIDA").

e. No negative impacts to water quality or quantity are anticipated from surface-water flows leaving the requested release area. According to Staff's Cumulative Hydrologic Impact Assessment ("CHIA") for the mine, Staff indicated that the largest percentage (potential) increase in TDS concentration downstream of the confluence of Steele Creek and the Navasota River, is projected at Navasota River Basin Mass-Balance Point No. B (USGS Gauging Station No. 08110500) to be approximately 14.7% (from 155 to 178 mg/L), which is less than the maximum annual average concentration for Stream Segment Nos. 1209 (600 mg/L) and 1202 (750 mg/L). Staff anticipated a reduction in TDS concentration as runoff travels further downstream. The flow-weighted average TDS concentrations (178.6 mg/L) at disturbed LTSM Station SWGC2 is approximately the same as the maximum TDS concentration predicted in the CHIA at Navasota River Basin Mass-Balance Point No. B (USGS Gauging Station No. 08110500), but remains less than the maximum annual average concentration for Stream Segment Nos. 1209 (600 mg/L) and 1202 (750 mg/L). Further, the average TDS concentration (499.4 mg/L) and flow-weighted average TDS concentration (178.6 mg/L) at disturbed LTSM station SWGC2 are expected to remain near the levels observed in recent water samples and therefore within or lower than average TDS concentrations observed during the baseline surface-water monitoring period for the same station. Staff's TA supports a conclusion that water quality in comparison to the approved surface-water PHC determination has been protected.

22. The groundwater hydrologic balance has been protected as required by §12.313(a)(3) and §12.348, and the re-established postmining groundwater system supports the approved postmining uses of the 751.40 acres requested for Phase III release. Staff reviewed the long-term groundwater monitoring ("LTGM") data submitted to the Commission for seven LTGM wells—three overburden monitoring wells, three spoil monitoring wells, and one underburden monitoring well. These data generally showed no deviation in water levels or quality from the measurements obtained in 2016 and early 2017. In addressing the requirements of §12.348, TMPA submitted Hydrologic Balance: Ground-Water Protection report to address the overburden, spoil, and underburden aquifers within and adjacent to the Gibbons Creek Lignite Mine V.

    a. The 4525 Overburden Sand, also known as the Yuma Member of the Manning Formation, is a significant water source, is the only unconfined aquifer in the system, and is monitored by LTGM well MG72A. Below the 4525 Sand is a sedimentary sequence which includes clay units, interbedded sands and clay, and the 4500 Lignite Seam. These units separate the 4525 Sand from the 3525 Sand, which is also known as the Upper Gibbons Creek Sand, and which is a confined aquifer that was dewatered as part of the approved mine-plan operations. This sand is monitored by LTGM wells M142A and MA2B3. Clay and lignite units occurring below the 3525 Sand separate it from the 3325 Sand, which is considered to be an underburden sand in the area of the mine. The 3325 Sand is also a confined aquifer that was depressurized as part of the mining activities, and is monitored by underburden LTGM well MA2B4.

    b. Three spoil monitoring wells were installed, of which two spoil LTGM wells are located in the southern area of the mine (wells MA2S1 and MA2S2) and one spoil monitoring well is in the center of the northern area (well MA3S6) of the acreage proposed for release. All wells within the proposed release area have been plugged except for these three spoil monitoring wells. Hydrographs of the spoil monitoring wells show that a static water level has been established in the spoil, that the groundwater in the spoil is fed by and is in equilibrium with surface-water structures (Ponds A2P-1 and A2P-2 in the south, Ponds A3P-2 and A3P-3 in the center, and Pond A3P-1 in the north). LTGM well MA3S6 shows higher pH early, between 2003 and mid-2005; thereafter, there is a drop in pH and the sulfate to carbonate-bicarbonate ratio rises. Wells MA2S1 and MA2S2 consistently show a pH of about 4.0. s.u. The water levels in spoil LTGM wells MA2S1, MA2S2, and MA3S6 have neared complete resaturation and have reached a static water level, and the water quality has stabilized.

    c. The overburden 3525 Sand is monitored by LTGM wells MA2B3 and M142A. LTGM well MA2B3 is located northwest of the requested release area in the A2 Mineblock.

        i. According to Staff, baseline water levels for LTGM well MA2B3 do not exist. The quarterly reported water levels show some drawdown between 2009 and 2013, probably in response to drought conditions. TDS concentrations in well MA2B3

ranged from 2,000 to 3,300 mg/L through 2015, but have since been generally above 3,500 mg/L; the most recent TDS analysis evaluated was obtained in December 2019 at 4,450 mg/L. The pH for this well has ranged between 3.5 and 4.5 s.u. for the full period of record evaluated, which is lower than any pH recorded for this sand unit in the baseline. Staff was concerned about trace metals in this well because of the low pH measurements. Although apparently most trace metals were removed from the approved LTGM plan in 2016, Staff evaluated aluminum concentrations, along with pH concentrations, but notes that the pH does not exhibit any long-term trend. Staff notes that in 2014, the aluminum concentrations saw a dramatic increase, from concentrations of 10-15 mg/L to concentrations that are now typically over 20 mg/L. These higher concentrations are about twice the concentrations seen in the nearby spoil LTGM well MA2S2, indicating that the aluminum source is unlikely to be originating from the spoil. The only other well with appreciable aluminum concentrations is LTGM well MA3S6, which features even lower aluminum concentrations than that of well MA2S2. Samples from underburden LTGM well adjacent to well MA2B3, for LTGM MA2B4, typically show non-detectable aluminum concentrations. By letter dated November 6, 2020, Staff indicated that although aluminum concentrations in the overburden are significantly higher than those in the spoil, the elevated aluminum concentrations in the overburden do not have an adverse effect to native groundwater as a result of the mining activities and do not preclude a finding of no adverse effect to the ground-water hydrologic balance.

ii. Overburden LTGM well M142A is located southeast of the proposed release area, also in the A2 Mineblock. LTGM well M142A shows recovery from the mining phase in 2000 and 2001. Baseline levels recorded for LTGM well M142A seem to be near 215 ft amsl, postmining static water levels are around 232 ft amsl. Staff postulates that this stabilization may have been the result of the higher transmissivity in the more homogeneous spoils versus the fine-grained strata that originally existed between the 4525 and 3525 Sands, allowing for greater recharge of the deeper units. For well M142A, the average TDS concentration is 1,382.6 mg/L, and ranges from a low of 1,060 mg/L to a high of 2,089 mg/L. TDS concentrations show an initial slight decline before appearing to stabilize around 1,400 mg/L. pH measurements have consistently been between 6.0 and 7.0 s.u. since 2000, except for one measurement of 5.5 s.u. in April 2019.

d. The underburden aquifer of the 3325 Sand is monitored via LTGM well MA2B4, located north of the requested release area in the A2 Mineblock. Water level in this confined underburden sand has remained fairly constant, with a static water level (depth to water) of about 8 feet. TDS concentrations reached magnitudes primarily in the mid-700 to 800 range for the evaluated period of record (2003 through 2019), followed by an increase in TDS concentrations in 2013 to levels that are consistently above 1,000 mg/L since mid-2017.

i. Staff noted in its TA that, in terms of absolute concentrations, TDS and chloride were at higher concentrations than seen before, and that the trend for the sulfate concentrations was also increasing. Irrespective of this increasing trend, Staff did not indicate in its TA that the observed increases in this well represent an impediment to Phase III release of the requested acreage, only noting that monitoring and reporting at this well, located outside the area requested for release, would continue in accordance with the approved LTGM plan.

ii. Staff and TMPA also noted that the approved PHC determination indicates that no impacts are anticipated to occur to domestic water supply wells. Furthermore, TMPA indicated in the Application that should impacts occur, the applicant will mitigate the compromised water use, and that it would continue to monitor all wells in the approved LTGM plan. Staff indicated in its TA that the depressurization activities at the mine ceased with the end of mining activities, at which point water from the spoil has appeared to have entered into the 3325 (underburden) sands, resulting in a low pH and major-ion ratios similar to the spoil ground water (high chloride, very low carbonate + bicarbonate). Nevertheless, Staff did not indicate that these observed chemical increases were an impediment to Phase III release of the requested acreage, only noting that monitoring at this well, located outside the requested release boundary, would continue in accordance with the approved LTGM monitoring plan. Similarly, TMPA indicated that, based on the data available from Well MA2B4, the water quality in the well is as predicted in the PHC determination, and that no negative impacts were expected to occur as a result of water quality in the well. Staff concurred with TMPA's overall assessment.

iii. By initial letter requesting further information dated October 21, 2020, the ALJ noted, among other issues, that Staff had indicated in its TA that the TDS and chloride concentrations were higher in the lone underburden LTGM well (Well MA2B4) than seen previously, and, importantly, that the trend for the TDS, chloride, and sulfate concentrations was also increasing. The ALJ further noted that, given Staff's analysis of the water-quality trends for this underburden well, it was unclear whether there was an indication that an adverse effect to the underburden aquifer due to mining existed that would be an impediment to release. Thus, further explanation from the parties was necessary. The ALJ also requested that Staff provide a copy of the approved groundwater PHC determination in that key references were made to this document.

A. By letter dated November 5, 2020, TMPA provided responses to the ALJ's October 21, 2020, letter. Likewise, by letter dated November 6, 2020, Staff provided responses to the same letter. In both responses, the parties indicating that, with regard to water quality issues for the underburden aquifer as noted by Staff in its TA, the reclamation plan was determined to have been followed, and that TMPA continued to propose to mitigate any water quality

issues that may arise in the future, in accordance with its approved impact monitoring plan.

B. The ALJ requested further information by letter dated November 9, 2020, providing explanation of the performance standard that must be met and the non-viability of the mitigation plan following Phase III release, wherein the performance standard that must be met at the time of release is that the reclamation must have minimized disturbances both on and off site. In addition, to wit, the performance standard does not consider whether the aquifer is currently used, only that it is useable. The ALJ reiterated the necessity that Staff and TMPA indicate whether Phase III release of the subject areas have met all requirements to protect the hydrologic balance, to include providing a sufficiently detailed assessment to support definitive, affirmative findings that the hydrologic balance has been protected and will remain so after release.

C. By letter dated November 11, 2020, TMPA provided statements with regard to the water quality and trends for the underburden aquifer. Likewise, by letter dated November 13, 2020, Staff provided a response indicating that it could not indicate whether the areas proposed for phase III release have met all requirements to protect the hydrologic balance because it believed that "such analysis falls outside the scope of its review of the current application." The ALJ believed that this statement was in contradiction to the specific purpose of application technical review, and therefore held an Informal Conference on November 18, 2020, to allow for discussion by the parties on this subject.

D. Following the Informal Conference, the ALJ issued a letter summarizing the issues discussed and what information remained to be provided to demonstrate that all performance standards have been met for the requested release. By letter dated November 23, 2020, TMPA provided a supplemental evaluation of the underburden baseline water quality (range and mean for specified parameters), and its assessment of the water-quality data with respect to the baseline standards. By letter of the same date, Staff indicated that it was not able to provide an immediate assessment but would provide an assessment of TMPA's response in the immediate future.

E. By letter dated December 18, 2020, Staff provided its evaluation of TMPA's November 23, 2020, supplemental evaluation. Staff concurred with TMPA's conclusion that the elevated TDS and other parameter concentrations described in Staff's TA fell within the range observed in the baseline data. Staff concludes that it "finds that the TDS and analyte concentrations do not represent a degradation of the 3325 Underburden Sand in the vicinity of LTGM Well MA2B4." Staff did not address the import of the current

increasing trends of these chemical parameters as initially noted; however, Staff's concluding statement indicates that it does not consider these trends to be a significant issue at this time.

iv. The groundwater data and evaluation provided by TMPA demonstrate that TMPA has met the groundwater protection requirements at §12.348 for the 751.40 acres proposed for Phase III release.

23. No monitoring wells are located within the requested release area. One former overburden LTGM well, MA2B5, removed from the approved LTGM plan by letter dated March 15, 2017, approving Revision No. 33, had been transferred to TMPA as the landowner. As part of this removal of the well from the LTGM plan, TMPA committed at that time to plug the well in 2016 because of possible deteriorated condition of the well casing and screen. This plugging did not occur; therefore, Staff required TMPA to plug the well prior to processing the Application. TMPA plugged the well on June 16, 2020, and the plugging and abandonment was witnessed by I&E Inspector Scott Engelmann.

24. The areas requested for release of reclamation obligations are capable of sustaining the postmining land uses. Monthly inspections and Staff's inspection on June 4, 2020, demonstrate that the land has been reclaimed to and managed in accordance with the approved postmining land uses.

25. Pursuant to §12.313(a)(3), the Commission may release the remaining portion of the bond attributable to the subject 751.40 acres upon a determination that reclamation has been successfully completed in accordance with the terms of the approved permit and the requirements of the Act and the Regulations. As a result of being granted release of reclamation obligations on an aggregate 751.40 acres, with 180.75 acres for Phase I and II, 2.56 acres for Phase I, II, and III, 551.05 acres for Phase II and III, and 17.04 acres for Phase II, TMPA is eligible to reduce the bond amount for Permit No. 38D. In its TA, Staff calculated an eligible bond reduction amount of $4,548,112.11 in agreement with TMPA's calculated amount, according to the reclamation cost estimate (RCE) approved administratively by letter dated February 25, 2020. The Commission adopted this updated RCE when it accepted the current bonds for the permit by Order dated May 20, 2020 [Docket No. C20-0015-SC-38-E at Finding of Fact No. 3]. As stated by Staff in its TA, a specified reduction amount is only an estimate provided for illustration purposes. The actual amount of any reduction would be calculated based on the costs for reclamation at the time a bond reduction is requested by TMPA; therefore, ensuring the proposed bond amount is sufficient to cover the cost of outstanding reclamation work. TMPA does not request an adjustment to the approved bond in the Application, the accuracy of the amount of the reduction contained in the TA is inconsequential, as any eligible reduction amount based on the current reclamation cost estimate would be superseded once the costs for reclamation are calculated at a future date when TMPA requests a reduction of the bond. Additionally, since the Commission is not required under the Act or the Regulations to

determine an eligible bond reduction amount when approving an application for release, this Order prescribes TMPA is eligible to reduce the amount of bond attributable to the 751.40 acres granted the requested phases of release.

24. All acres requested for release were marked in the field to distinguish them from active mining and reclamation areas.

25. TMPA and Staff, the only parties to the proceeding, filed waivers of the preparation and circulation of a proposal for decision. The proposed order was circulated to the parties with opportunity for comment.

26. Open meeting notice has been posted for Commission consideration of this application in accordance with Tex. Gov't Code Ann. CH. 551 (Vernon Supp. 2020).

CONCLUSIONS OF LAW

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

1. Proper notice of application and notice of consideration by the Commission has been provided for this request for release of reclamation obligations.

2. No public hearing was requested, and none is warranted.

3. TMPA has complied with all applicable provisions of the Act and the Regulations regarding notice for Commission jurisdiction to attach to allow consideration of the matter.

4. TMPA has complied with all applicable provisions of the Act and the Regulations for the acreage requested for release as set out in the Findings of Fact.

5. The Commission may approve a release of reclamation obligations on an aggregate 751.40 acres, with 180.75 acres for Phase I and II, 2.56 acres for Phase I, II, and III, 551.05 acres for Phase II and III, and 17.04 acres for Phase II, as set out in the above Findings of Fact and Conclusions of Law.

6. Pursuant to the Commission's authority for inspection and evaluation of release applications, the Commission may order that TMPA continue marking the area approved for release so that Staff mapping and tracking will be efficient.

7. TMPA is eligible to the reduce the amount of bond for Permit No. 38D by an amount that is attributable to the requested phases for the subject 751.40 acres in future bond adjustments.

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 a release of reclamation obligations on an aggregate 751.40 acres, with 180.75 acres for Phase I and II, 2.56 acres for Phase I, II, and III, 551.05 acres for Phase II and III, and 17.04 acres for Phase II is hereby approved;

IT IS FURTHER ORDERED that all areas released from reclamation obligations shall remain clearly marked in the field with permanent boundary markers maintained to distinguish these areas at all corners and angle points from active mining and reclamation areas in accordance with this Order;

IT IS FURTHER ORDERED that the current bond remains in effect in accordance with its terms until a replacement bond is approved by the Commission;

IT IS FURTHER ORDERED TMPA is eligible to reduce the amount of bond for the permit by the amount that is attributable to requested phases for the 751.40 acres granted release in this Order;

IT IS FURTHER ORDERED that the Commission may vary the total amount of bond required from time to time as affected land acreage is 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 25 days after the Commission's Order is signed, unless the time for filing a motion for rehearing has been extended under Tex. Gov't Code §2001.142, by agreement under Tex. Gov't Code §2001.147, or by written Commission Order issued pursuant to Tex. Gov't Code §2001.146(e). If a timely motion for rehearing is filed by any party at 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. Pursuant to Tex. Gov't Code §2001.146(e), the time allotted for Commission action on a motion for rehearing in this case is 100 days from the date the Commission Order is signed.

SIGNED on January 26, 2021.

RAILROAD COMMISSION OF TEXAS

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Christi Craddick
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CHAIRMAN CHRISTI CRADDICK

DocuSigned by:
Wayne Christian
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