

**RAILROAD COMMISSION OF TEXAS  
HEARINGS DIVISION**

**SMRD DOCKET NO. C14-0007-SC-38-F  
APPLICATION BY TEXAS MUNICIPAL POWER AGENCY  
FOR RELEASE OF RECLAMATION OBLIGATIONS  
PERMIT NO. 38D, GIBBONS CREEK LIGNITE MINE V  
GRIMES COUNTY, TEXAS**

**ORDER APPROVING RELEASE  
OF PHASE I, II, and III RECLAMATION OBLIGATIONS FOR 18.9 ACRES AND  
PHASES II AND III RELEASE FOR 36.4 ACRES (RAIL CORRIDOR BOND  
RELEASE)**

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 for 55.3 acres within Permit No. 38D, Gibbons Creek Mine, Grimes County, Texas. Texas Municipal Power Agency (TMPA) is a municipal power agency created by concurrent ordinances adopted by the Cities of Bryan, Denton, Garland, and Greenville, Texas. TMPA requested Phases I, II, and III release for 18.9 acres and Phases II and III release for 36.4 acres that have previously been approved for Phase I release by the Commission.

Permit No. 38D currently authorizes reclamation operations at TMPA's Gibbons Creek Lignite Mine within its approximate 3,899.7-acre permit area. Copies of the application for release were filed in the required county and Commission offices and distributed to applicable agencies for review and comment. No comments or requests for hearing were filed following public notice. The only parties to the proceeding are TMPA and the Commission's Surface Mining and Reclamation Division (Staff). Staff's initial review indicated that certain acres did not meet requirements for portions of the releases requested.

After Staff review and TMPA's supplementation, Staff recommends the requested releases. One controversy between the parties arose relating to the land use of the areas requested for release. The areas have previously been approved as industrial/commercial postmine land use. Staff's Technical Analysis document indicated that because the land use has not yet been achieved that it should not be approved for Phase III release. The Administrative Law Judge (ALJ) ruled (letter ruling dated August 19, 2015) that the land use has already been approved by the Commission and that documentation is included in the record indicating that the land use, as required by § 12.399(a)(2), is "achievable." Staff did not request

review of this ruling by the Commission, but has predicated its recommendation for release on the ALJ's ruling. All other matters, after TMPA's supplementation with additional technical evidence relating to soil testing, surface water and groundwater, are no longer outstanding. The parties have filed waivers of preparation and circulation of a proposal for decision.

Based on the information provided by the applicant, the inspection of the area, and Staff' and ALJ review, the Commission approves the release of reclamation obligations as requested. TMPA has not requested an adjustment to its accepted reclamation bond instrument at this time and no new bond has been submitted; however an eligible bond reduction amount may be determined. The Commission approves an eligible bond reduction amount of \$458,454.04 as calculated by Staff. The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. Ch. 134 (Vernon Supp. 2015), and the "Coal Mining Regulations" Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE, Ch. 12 (Thomson West 2015).

#### **FINDINGS OF FACT**

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

1. By letter dated October 3, 2013, Texas Municipal Power Agency (TMPA) filed its application with the Surface Mining and Reclamation Division for Phases I, II, and III release of reclamation liability on an aggregate 55.3 acres (as revised) within the Gibbons Creek Lignite Mine V, Permit No. 38D. The acreage initially requested for release was made up of a request for Phases I-III release for 55.4 acres; however, by letter dated February 4, 2015, TMPA revised the acreage to 55.3 acres as a more accurate accounting. In addition, 36.4 acres had already been approved for Phase I release, thereby eliminating the request for Phase I release for the 36.4 acres.
2. The application is made pursuant to Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. Ch. 134 (Vernon Supp. 2015) (Act), and the Coal Mining Regulations, Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE Ch. 12 (Thomson West 2015). The application was properly certified in accordance with § 12.312(a)(3).
3. Staff declared the application administratively complete on September 12, 2014. This application has taken approximately one year and ten months from initial application to the filing of Staff's technical analysis (TA) and field inspection report. Staff's TA and inspection report for the

subject application was filed with the Hearings Division on August 14, 2015. The chronology of application and action are set out below:

DATE	ACTION
October 3, 2013	TMPA submits application for release of reclamation obligations
November 4, 2013	Staff performs field inspection
November 7, 2013	TMPA submits Supplement 1 to application
November 26, 2013	Staff denies approval of ground cover data for 2012 and 2013 growing seasons
January 9, 16, 23, and 30, 2014	publication of notice of application in local newspaper
February 4, 2014	Proof of publication of notice filed by letter dated February 3, 2014
April 10, 2014	Request by ALJ for proof of mailed notice to landowners, adjoining landowners, agencies and water companies and authorities
May 9, 2014	TMPA mails notice to landowners, adjoining landowners, agencies and water companies and authorities
June 30, 2014	TMPA submits new ground cover data
July 25, 2014	TMPA submits Supplement 2, TMPA board's resolution regarding industrial/commercial land use
August 1, 2014	Letter from ALJ ruling that processing of application may continue due to receipt of new ground cover data July 25, 2014
August 25, 2014	TMPA provides copies of notification letters (letters dated May 9, 2014) received by Commission on August 28, 2014
September 11, 2014	Staff approves new ground cover data
September 12, 2014	Staff declares application administratively complete.
February 4, 2015	TMPA sends letter requesting that application be processed and sends a chronology of previous

	relevant dates indicating no action from Staff since Staff's letter dated September 11, 2014 approving ground cover data (five months previous)
February 9, 2015	Letter from ALJ to TMPA indicating that the Hearings Division has not yet received a Staff inspection report or staff analysis for review and indicating that TMPA should address its inquiry to staff. (Copy of examiner's letter sent to Staff.)
July 28, 2015	TMPA sends letter to ALJ stating that it believes it has met requirements for full release and requests that its application be processed.
July 31, 2015	Letter from ALJ acknowledging receipt of July 28, 2015 letter and requesting that Staff file its TA and inspection report on or before August 15, 2015 or file a written formal reply on or before August 15, 2015 and stating that if neither is received on that date the application will be deemed unopposed and ALJ will proceed to draft a final order.
July 31, 2015	Letter from Staff indicating that Staff will file TA and inspection report on or before August 15, 2015.
August 14, 2015	Staff files its TA and inspection report.

4. After review of the supplementary materials filed by TMPA, Staff's TA identified a few remaining deficiencies in the application, including testing of additional soil grids, an evaluation of long-term groundwater monitoring data for monitoring wells M142A, M1424, and MA2B3. In addition, Staff expressed concerns regarding the postmine land use (Staff letter dated August 14, 2015). Staff stated its concern that it did not believe that TMPA had demonstrated to date that the approved postmine land use of industrial/commercial had been achieved because it was approved in 2006 to allow construction of a railroad spur, and the spur has not been constructed. As indicated, the acreage for which the releases are requested has been approved by the Commission as industrial/commercial postmine land use. No revegetation standards apply to such land use other than that the vegetation is sufficient to control erosion. Evidence in the record indicates that this requirement has been met. In the ALJ's opinion, the postmine land use is not an appropriate issue in the docket in that the use has already been approved by the Commission and in that § 12.399(a)(2) requires not that the land use be "achieved" as stated by Staff, but that it is "achievable." It is not required that an industrial/commercial use has been "achieved" (letter

from Mr. Caudle dated August 14, 2014), but only that the land be reclaimed to a higher or better land use that is “achievable.” [§ 12.399(a)(2), Regulations]. The evidence in the record indicates that the use is achievable. The area contains a road that will support heavy equipment. Staff indicated that a change in land use would require narrowing of the road to support a revised land use to pastureland and would obviate certain industrial/commercial land uses such as the use approved, a railroad spur. Based on the approved use as industrial commercial and the plain language of the rule, the ALJ made a ruling by letter dated August 19, 2015 that the land use is achievable as required by § 12.399(a)(2). Staff was notified that it could file an appeal in accordance with § 1.121(d) of the “Practice and Procedure” rules if it wished. No interlocutory appeal was filed.

5. The other deficiencies noted by Staff in its TA related to testing of additional soil grids, an evaluation of long-term groundwater monitoring data for monitoring wells M142A, M1424, and MA2B3. These deficiencies, after supplementation of the application by TMPA and additional Staff analysis, have been sufficiently addressed [Findings of Fact Nos. 14(b) (soil testing), and 16(e)(iii)-(vi)].
6. Permit No. 38D is currently bonded with a self-bond in the amount of \$10,000,000 and a collateral bond and irrevocable Amended and Restated LOC No. NZS564257 (Amendment No. 10) issued by Wells Fargo Bank, N.A., in the amount of \$10,400,000 accepted March 10, 2015.
7. By letter dated February 3, 2014, TMPA provided an affidavit of publication and tear sheets showing publication of notice of application. Notice of the application was published once each week for four consecutive weeks in *The Eagle*, a newspaper published in Brazos County and of general circulation in several counties, including Grimes County, the vicinity of the Gibbons Creek Lignite Mine V, the locality of the permitted acreage. Dates of publication were January 9, 16, 23, and 30, 2014. The notice 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. Although the notice stated that Phases I, II, and III release were requested for all of the acreage, a portion of the acreage had already been approved for Phase I release. This error is not significant. 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. 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.

8. 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.
9. By letter dated May 9, 2014, TMPA sent letters notifying owners and adjoining landowners, lessees, utilities and governmental agencies of the application for release. The letters were submitted to the Commission by letter dated August 25, 2014 received on August 28, 2014. The letters were sent to owners of interests within and adjacent to the areas requested for release, the District Conservationist, USDA Natural Resources Conservation Service in Temple, Texas, the Texas State Soil and Water Conservation Board, Environmental Protection Agency, the Texas Commission on Environmental Quality (TCEQ), the Navasota Soil and Water Conservation District, the Brazos River Authority, to the Grimes County Judge, to the U.S. Army Corps of Engineers, and to the local office of the Texas Department of Transportation. Grimes County is the sewage and water treatment authority. TMPA indicated that there are no known water supply companies in the area of the acreage requested for release. Adequate evidence exists in the record that adequate notice of the request for release has been sent to owners of property and other interests within and adjoining the area requested for release, to local governmental bodies, planning agencies, sewage and water treatment authorities, and to water companies in the locality of the proposed surface mining and reclamation operations [§ 12.312(a)(2), Regulations]. The areas requested for release are not located within the territorial boundaries of any municipality for which notice must be sent pursuant to § 12.313(c) of the Regulations. The Staff sent notice by letter dated December 17, 2013 to the Grimes County Judge by certified mail in accordance with the Act, § 134.133.

10. The areas proposed for release are located within tracts owned by TMPA. There are two individual landowners of one adjoining tract, and the State of Texas and Grimes County are the road authorities.
11. The Commission's Inspection and Enforcement Section mailed letters dated October 9, 2013 to the landowner of the area requested for release, TMPA, and to the U.S.D.I. Office of Surface Mining Reclamation and Enforcement (OSM), Tulsa Field Office, notifying them that a release had been requested and advising them of the opportunity to participate in the on-site inspection scheduled for November 4, 2013 [§ 12.312(b)(1)]. The inspection was conducted as scheduled. A Commission inspector and three representatives of the applicant attended the inspection. No others attended. The inspection report dated April 23, 2014 of the inspection held on November 4, 2013 is included as Attachment III to the Staff's letter dated August 14, 2015 filing the TA and inspection report with the Hearings Division.
12. No persons filed written comments, objections, or requests for hearing [§ 12.313(d)].
13. All or portions of the Pond A2P-1 and A2P-2 spillways/crossings are within the area requested for Phases I-III release. The ponds and their appurtenances have been approved as permanent structures. The ponds were approved by letter dated September 3, 1999 and modified by letters dated August 23, 2001, May 12, 2005, and January 22, 2010. The ponds and appurtenances are structurally intact and stable. Photographs 4 and 5 from the inspection report depict the ponds and appurtenant structures.
14. The 18.9-acre area requested for Phase I release has been reclaimed in accordance with reclamation requirements of § 134.131 of the Act and § 12.313(a)(1) for Phase I release.
  - (a). The 18.9-acre area requested for Phase I release has met Phase I requirements for backfilling, regrading, and drainage control. All highwalls, spoil piles and depressions were eliminated pursuant to § 12.384(b)(1), and mining and backfilling was conducted in a manner to minimize potential for surface and groundwater contamination §12.384(b)(2). All areas have been filled, graded, or otherwise stabilized. The areas requested for release were disturbed as a result of mining-related activities between 1986 and 2005 and final grading occurred from 1986-2012. The areas meet requirements of §12.385(a) for regrading to approximate premine topography. Field staff conducted

routine monthly inspections of the areas requested for release. The acres recommended for release do not contain any underground drains.

- (b). All requirements for covering acid and/or toxic-forming materials (AFM/TFM) and combustible materials have been met. Materials were placed in accordance with the requirements of the permit, § 12.337 (redistribution in a manner to achieve an approximate uniform, stable thickness consistent with the approved postmining land use, contour, and surface water drainage) and § 12.389 of the Regulations (soil stabilization). Based on soil testing results postmine soil performance standards have been met for the acreage requested for Phase I release. Staff had identified 7 of 19 soil testing grids for which sampling results had not been submitted. Proposed locations for the additional soil sampling were submitted by letter from TMPA dated August 20, 2015. After consultation between the parties, related to these locations, the parties agreed upon somewhat revised locations. Two locations were not required to be sampled (an access road embankment and an old railroad grade and access road that were pre-mining structures). The parties agreed upon one additional sampling location for sampling. TMPA submitted the supplementary materials for soil testing by letter dated August 31, 2015, TMPA submitted additional soil testing results for aggregate acreage of 6.1 acres that had not previously been tested. Staff's memorandum dated September 11, 2015 indicated that the parameters analyzed are in accordance with the approved soil-testing plan. TMPA did not submit a banking-acreage accounting balance; however, Staff calculated banking-acreage balances in ten tables for pH, acid-base accounting, and sand and clay for all soil testing data submitted to date: 1,316.5 acres. Although Staff noted that there are negative balances for pH in the 2-3 foot and 3-4 foot depth interval and for ABA in the 0-1 depth interval, a total of 0.3 acres for pH and 1.7 acres for ABA, they affect only two grids, AG12SW, and AE15SE; these grids are not within the areas requested for release. No acid-forming, toxic-forming, or combustible materials have been located in the soil grids sampled for the areas requested for release. All exposed surface areas have been stabilized to control erosion.
- (c). The pond appurtenances, five roads (A3 Road 1, A2-SR-1, A2-SR-5, SP-13 Access Road, and South Access Road), and a portion of the Gibbons Creek Bridge are located within the area proposed for release and have been approved as permanent structures.

- (d). In accordance with § 12.313(a), upon release of Phase I reclamation obligations, 60% of the amount of bond attributable to the Phase I released lands may be approved as eligible for bond reduction.
15. All acreage included in the application for release is requested for Phases II and III release of reclamation obligations. This acreage requested for Phase II release has been reclaimed in accordance with reclamation requirements of § 12.313(a)(2) of the Regulations for industrial/commercial land use.
- (a). Ground cover data had been submitted for the area by letter dated July 23, 2013, revised by letter dated October 8, 2013; however, the results of sampling were not approved by Staff. TMPA again submitted ground cover data by letter dated June 30, 2014. SMRD approved this data by letter dated September 11, 2014. The areas requested for release meet the standard for industrial/commercial land use of vegetation sufficient to control erosion. The vegetation observed within the proposed release areas include hybrid and common Bermudagrass, Alamo Switchgrass, Kleingrass, Wilman Lovegrass, Old World Bluestem, Sideoats Grama, Lomita Indiangrass and Bahiagrass.
- (b). Drainage from the 55.3 acres flow to sedimentation pond SP-13. The areas are located within the watersheds of Permanent Ponds A2P-1 and A2P-2. The vegetation and road surfacing have stabilized the areas and reduced the potential for contribution of excess solids to streamflow. TMPA has complied with surface water monitoring requirements. Effluent discharge records for Sedimentation Pond SP-13 for the period of record 2003-2012 show that all average results for the allowable daily average and allowable daily maximum for iron and total dissolved solids (TDS) for the discharges are within the TCEA outfall limitations (Outfall 008). The average for pH for Pond SP-13 is 7.4 standard units (s.u), meeting the requirement of 6.0-9.0 s.u. Based on grab samples, the average pH of Permanent Ponds A2P-1 and A2P-2 are 7.4 and 7.5 s.u., respectively. Staff expressed no concerns regarding TDS levels in Permanent Ponds A2P-1 and A2P-2; they are not material to the industrial/commercial land use. Based on compliance with the effluent limitation records for SP-13, the areas are not contributing excess suspended solids to streamflow or runoff outside the permit area [§ 12.213(a)(2)].

- (c). There is no prime farmland located within the 55.3-acre area requested for Phase II release for which other requirements would be applicable. There are no silt dams located within the 18-acre area that would require plans for future maintenance.
  
- 16. The 55.3 acre area has met requirements for Phase III release of reclamation obligations. Data provided by TMPA and information provided by Staff demonstrate that Phase III requirements for protection of surface water and groundwater have been met.
  - (a). The acreage drains to Gibbons Creek that discharges to the Navasota River (Stream Segment No. 1209). TMPA provided baseline data and long-term from long-term surface water monitoring stations upstream, Station SWGC1, and downstream, SWGC2, of the release area. The baseline data covers the period 1979-1980, and the long-term surface water monitoring data covers the period March 1985 through March 2015. TMPA did not provide flow measurements on a consistent basis during the period of record. TMPA did calculate estimated flows based on a compilation of flows from field records, rating curves and data from the USGS and Texas Clean Rivers Program. Staff used this data (from Hill Engineering) for the years 2012-2015 and data from monitoring stations and summarized available data for the period of record 2012-2015. Flow-weighted averages indicate an increase in average flows, pH, and TDS from the upstream to the downstream station. No baseline flow measurements were taken, so no comparison can be made between baseline flows and the period of record 2012-2015. Even with the increase in TDS for this period of record, the average concentration still remains within the stream segment standard, 600 mg/L. Measurements of pH at the upstream and downstream stations are similar and only slightly higher than at baseline stations. The average concentrations remain within the stream segment standard, 6.5-9.0 s.u.
  
  - (b). Staff had reviewed the update to the Cumulative Hydrologic Impact Assessment (CHIA) prepared for the Kosse Mine for Permit No. 50A that included Permit No. 38D and others. The mass-balance point reviewed is located at the confluence of the Brazos and Navasota (USGS Station 08111000). Considering TDS as the indicator parameter, TDS concentrations at the mass-balance point were projected to increase 1.1% from 421 mg/L to 426 mg/L after surface mining operations. This TDS concentration is lower than that at Station SWGC2, 541.4mg/L. Both concentrations meet the Stream Segment criteria for TDS: 600 mg/L for Stream Segment 1209 of the Navasota River.

- (c). Water quantity may be slightly affected due to attenuation of storm runoff in ponds; however an increase in sustained flows is expected in the Navasota River Basin. Both effects are expected to be insignificant due to the large levels of storm runoff within the cumulative hydrologic impact area (Navasota River Basin).
- (d). All wells other than groundwater monitoring wells have been plugged.
- (e). Groundwater has been protected. The bond release area is located in the A2 mine block from which lignite was removed between 1992 and 1996 from the 3500 and 4500 lignite seams.
  - (i) TMPA initially provided groundwater monitoring data from eight monitoring wells four to the north and west of the area requested for release in Permit No. 26D (MAMA4, MOBB2, MOAB4, and MBUTT) and four located in Permit No. 38D (MA2B4, MA2B5, MA2S1, and MA2S2). Data included water level elevations, TDS concentrations, electrical conductivity (EC) and pH values. TMPA also provided graphs showing trends for these values.
  - (ii) Staff noted that the four wells located in the Permit No. 26D area are either not located near the proposed release area or are screened in sand units that are stratigraphically below the lignite seams that were mined or are located too far away to have been affected by mining in the area requested for release.
  - (iii) Three of the wells within Permit No. 38D, MA2B4, MA2S1, and MA2S2, are within and adjacent to the release area and provided a good representation of the current groundwater quality; the period of record for these wells is from the third quarter of 2003, after mining, through the first quarter of 2013. Well MA2B4 is screened across sand unit 3325; this unit occurs about 10 feet below the 3500 lignite seam and is the first permeable stratum in the underburden. Staff indicates, based on data for the well, that TDS concentrations are trending downward as the water level has increased, and that pH has been increasing to approximately 7.0 s.u. From the data provided for Monitoring Wells MA2S1 and MA2S2, both spoil wells, Staff indicates that water levels in both wells have been increasing and appear to have stabilized and that TDS concentrations in each well have been decreasing and appear to have stabilized. Field pH levels appear to have stabilized and remain approximately 4.0 s.u. Staff indicates that

these results appear to agree with TMPA's determination of probable hydrologic consequences (PHC).

- (iv) Staff indicated that Well MA2B5 appears to indicate a problem with well construction that has resulted in a mingling of groundwater from two different permeable horizons. TMPA intends to replace this well. Staff suggested that, in place of Monitoring Well MA2B5, that data from Monitoring Well MA2B3 be used for evaluation in that it is completed in the same sand unit, 3525. Based on its review of the data Staff also indicated that these wells are useful to show current groundwater quality, but recommended that TMPA provide data for Monitoring Wells M142A and M1424 completed in 1989 and located southeast and downgradient of the proposed release areas as the most appropriate to provide a more complete record of water quality within the A2 mine block including the period of mining.
- (v) TMPA supplemented the application by letter dated August 31, 2015 to provide data and an evaluation of data for Monitoring Well MA2B3 (period of record September 2003 through June 2015) and Monitoring Wells M142A and M1424 (period of record October 1992 through April 2015). The early years for these wells prior to mining are considered as baseline information. TMPA provided graphs for pH, TDS, sulfate, chloride, Fe, EC, and water levels, as well as a narrative. Staff analysis pH in Monitoring Well M1424 has been stable over time, and that TDS concentrations have stabilized. Staff analysis of Monitoring Well M142A indicates that TDS concentrations have been stable since 1998 at approximately 1,397 mg/L and that pH has increased to 6.5 from lows in the years prior to 1994. Staff indicates that no effects from mining are evident. Although the water quality in both wells is below drinking water standards, the groundwater in the vicinity of the mine is not used as drinking water or stock water so that no users have been or are likely to be affected. Monitoring Well MA2B3 was installed specifically to monitor an acid seep. Staff did not indicate concerns with the results from this well.
- (vi) Although TMPA did not include a full analysis of the results of monitoring as they relate to the probable hydrologic consequences determined in the permit, Staff conducted an independent validation of the PHC determination and concluded that the data appear to agree with the predictions in the PHC

determination that indicated variability among well quality between wells, including wells in the same aquifer and that this variability is greater than the variability between aquifers and between premine and postmine periods. The water quality of groundwater prior to mining was marginal as a water supply. Staff concluded that TMPA has complied with the groundwater hydrologic balance protection requirements for the 55.3 acres.

17. An eligible bond reduction amount for the acreage requested for release that meet requirements for release. The most recent reclamation cost update for Permit No. 38D, dated February 13, 2015, is \$19,975,918. Based on the per-acre unit costs contained in this estimate, Staff calculated an eligible bond reduction amount for Phase I-III release of 18.9 acres (made up of disturbed, mined, and ancillary disturbance categories) and for Phases II and III release for 36.4 acres (made up of mined acreage with approved Phase I release and disturbed acreage with Phase I release), totaling 55.3 acres. The chart below sets out the requested phase of release, the acreage of disturbed, mined, or ancillary acreage, the amount of bond per acre for the disturbance categories, the eligible reduction per acre, and the total eligible reduction, \$458,454.04. No change to the approved bond instrument is requested or approved.

<b>Phase Requested</b>	<b>Area (Acres)</b>	<b>Disturbance Category</b>	<b>Bonded Per Acre</b>	<b>Eligible Reduction Per Acre</b>	<b>Eligible Reduction</b>
Phase I, II, and III	14.3	Disturbed	\$ 5,017	\$ 5,017	\$ 71,743.10
Phase I, II, and III	4.5	Mine	\$19,135	\$19,135	\$ 86,107.50
Phase I, II, and III	0.1	Ancillary	\$ 847	\$ 847	\$ 84.70
Phase II and III	32.9	Mined, Phase I Release	\$ 7,654	\$ 7,654	\$251,816.60
Phase II and III	3.5	Disturbed, Phase I Release	\$ 2,007	\$ 2,007	\$ 7,024.50
<b>Subtotal</b>					<b>\$416,776.40</b>
Admin. Costs (10%)					\$ 41,677.64
<b>Total</b>					<b>\$458,454.04</b>

18. The areas requested for release have been marked in the field with boundary markers at corners and angle points so that these areas can be distinguished from active reclamation areas.
19. TMPA and Commission Staff have waived the preparation and circulation of a proposal for decision as provided for in § 2001.062(e) of the Administrative Procedure Act, TEX. GOV'T CODE Ch. 2001 (Vernon Supp. 2015). Open meeting notice of consideration of this application has been provided (§ 551.048, TEX. GOV'T CODE).

### **CONCLUSIONS OF LAW**

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

1. Proper notice was provided for this request for release of reclamation obligations pursuant to the Act, the Regulations, the Administrative Procedure Act, TEX. GOV'T CODE Ch. 2001 and § 551.048 (Vernon Supp. 2015).
2. A public hearing on the request is not warranted.
3. The postmine land use industrial/commercial has been approved by the Commission in accordance with §12.399(a)(2) of the Regulations that requires that the use be achievable.
4. TMPA has complied with all applicable provisions of the Act and the Regulations for Phase I, II, and III release for 18.9 acres, and for Phases II and III release for 55.3 acres (that includes the 18.9 acres requested for Phase I release) as required by §§ 12.312 and 12.313 of the Regulations and § 134.131(c) of the Act, respectively, and as demonstrated by this application, as supplemented, and Staff analysis. The releases may be approved.
5. The Commission may approve an eligible bond reduction amount of \$458,454.04.

**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 Phase I release of reclamation obligations are approved for 18.9 acres and Phases II and III release of reclamation obligations are approved for 55.3 acres, including the 18.9 acres, as requested pursuant to the Act § 134.131(c) and the Regulations, §§ 12.312-12.313, for the Gibbons Creek Lignite Mine V, Permit No. 38D;

**IT IS FURTHER ORDERED** that the Commission approves an eligible bond reduction amount of \$458,454.04;

**IT IS FURTHER ORDERED THAT** the current bonds remain in effect;

**IT IS FURTHER ORDERED** that all areas released from reclamation obligations shall remain clearly marked in the field with permanent boundary markers to distinguish the released areas from active mining and reclamation areas;

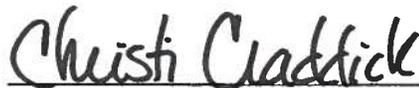
**IT IS FURTHER ORDERED** that the Commission may vary the total bond amount required as affected land acreages are increased or decreased or when the cost of reclamation changes; and

**IT IS FURTHER ORDERED** by the Commission that this order shall not be final and effective until 25 days after a party is notified of the Commission's order. 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 IN AUSTIN, TEXAS**, this 20th day of October, 2015.

RAILROAD COMMISSION OF TEXAS

  
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CHAIRMAN DAVID PORTER

  
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COMMISSIONER CHRISTI CRADDICK

  
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COMMISSIONER RYAN SITTON

ATTEST:  
  
\_\_\_\_\_  
Secretary, Railroad Commission of Texas

