

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

**SURFACE MINING DOCKET NO. C13-0012-SC-38-F
APPLICATION BY TEXAS MUNICIPAL POWER AGENCY
FOR RELEASE OF PHASE I RECLAMATION OBLIGATIONS FOR 655.9 ACRES
PERMIT NO. 38D, GIBBONS CREEK LIGNITE MINE V, GRIMES COUNTY, TEXAS**

**ORDER APPROVING RELEASE OF PHASE I RECLAMATION OBLIGATIONS
FOR 654.0 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 (SMRD or Staff), for a release of Phase I reclamation obligations on 655.9 acres within Permit No. 38D, Gibbons Creek Lignite Mine V, Grimes County, Texas. The original application requested release of 617.3 acres but approximately 41.7 acres were added to area proposed for release and approximately 3.0 acres were removed from the original request in Supplement No. 1 filed in May 2016. The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, Tex. Nat. Res. Code Ann. Ch. 134 (Vernon Supp. 2018) (Act) and §§12.312-313 of the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 Tex. Admin. Code Ch. 12 (Thomson West 2018) (Regulations).

Permit No. 38D currently authorizes surface coal mining operations at TMPA's Gibbons Creek Lignite Mine V. Copies of the application for release were filed in the required county and Commission offices. After public notice, no comments or requests for hearing were filed. The only parties to the proceeding are TMPA and the Commission's Surface Mining and Reclamation Division (Staff). There remain no outstanding issues between the parties. Based on the information provided by the application, Staff analyses and the inspections of the area, Staff recommends the approval of Phase I release for 654 acres. Staff does not recommend release of 1.9 acres due to the absence of soil-testing data within two grids located in the Seep 1 area. TMPA concurs with Staff's recommendation and indicates the 1.9-acre area will be addressed separately after the remediation of Seep 1 is completed. The parties have filed waivers of preparation and circulation of a proposal for decision.

After consideration of the application and the Findings of Fact and Conclusions of Law, the Commission approves the release of reclamation obligations as recommended by Staff. TMPA does not request adjustment to the approved reclamation bond at this time and no new bond has been submitted. The Commission determines an eligible bond reduction amount of \$5,689,535.41 as calculated by Staff.

FINDINGS OF FACT

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

1. By letter dated February 25, 2013, Texas Municipal Power Agency (TMPA) filed its application with the Railroad Commission of Texas' (Commission) Surface Mining and Reclamation Division (SMRD and/or Staff) for a release of Phases I reclamation obligations for 617.3 acres within the Gibbons Creek Lignite Mine V, Permit No. 38D, located in Grimes County, Texas. By letter dated May 3, 2016, TMPA filed Supplement

- No. 1; revising the total acreage requested for release to 655.9 acres by adding approximately 41.7 acres and subtracting approximately 3.0 acres. By letter dated March 9, 2018, TMPA filed Supplement No. 2; providing a revised list of permanent structures and structures and groundwater and surface water monitoring map.
2. The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, Tex. Nat. Res. Code Ann. Ch. 134 (Vernon Supp. 2018) (Act), and the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 Tex. Admin. Code Ch. 12 (Thomson West 2018) (Regulations). The application was properly certified in accordance with §12.312(a)(3) [Finding of Fact No. 11, *infra*].
 3. Staff declared the application administratively complete on June 11, 2013. Staff's technical analysis (TA) and field inspection report were filed in the docket on January 16, 2014. In its TA, Staff did not recommend release of Phase I reclamation obligations for numerous reasons; including those related to structures and soil-testing data. Staff filed Addendum No. 1 to its TA on April 13, 2018 (TA Addendum); recommending Phase I release of 654.0 acres and denial of Phase I release for 1.9 acres. The chronology of application and action are set out below:

DATE	ACTION
February 23, 2013	TMPA submits application for release of reclamation obligations for 617.3 acres
March 21, 2013	Staff performs field inspection (Inspection Report dated December 13, 2013; SMRD notification letters regarding the inspection mailed March 6, 2013)
May 11, 18, 25 and June 1, 2013	Notice of Application published in newspaper of general circulation in the locality of surface coal mine operation
June 11, 2013	Application declared administratively complete following proof of publication and notification to landowners filed on June 10, 2013
January 16, 2014	Staff issues Technical Analysis recommending denial of Phase I release for the subject 617.3 acres
January 23, 2014	TMPA requests processing of the application be suspended
January 27, 2014	Administrative Law Judge (ALJ) suspends the application indefinitely
November 13, 2015	TMPA letter to ALJ stating it intends to conduct a conference call with Staff to discuss and develop a schedule to respond to the

	deficiencies identified in the TA
March 23, 2016	Email correspondence from TMPA to ALJ requesting confirmation of landowner notice requirements for acreage added to the request for release in Supplement No. 1
April 4, 2016	ALJ letter directing TMPA to send a copy of the published notice to landowners affected by the inclusion of the additional acreage and activating processing of the docket
May 3, 2016	TMPA submits Supplement No. 1 revising the number of acres requested for release to 655.9 (copies of notification letters dated April 30, 2016 that were sent to landowners affected by the increase in acreage were included in the submittal)
June 2, 2016	Staff conducts a re-inspection of the 655.9 acres proposed for release (Inspection Report dated August 3, 2016; SMRD notification letters regarding the inspection mailed May 10, 2016)
October 19, 2016	Docket reassigned to ALJ within the Hearings Division
May 16, August 25 and October 11, 2017	TMPA submits and supplements soil-testing data to address concerns noted in the TA
November 14, 2017	Staff's evaluation of the soil-testing data identifies seven outstanding concerns
December 12 and 27, 2017	TMPA responds to Staff's review of the soil testing data
February 2, 2018	TMPA submits soil-testing data for remediated Grid AD22NW-1 pursuant to the remediation plan approved by Staff letter dated December 22, 2017
February 15, 2018	Staff's review of soil-testing data obtained from the subject area indicates that the top four feet of postmine soils does not contain acid- and/or toxic-forming materials
March 9, 2018	TMPA submits Supplement No. 2 to address structures within the requested release area and the structures and groundwater and

	surface water monitoring map provided in the application (Exhibit 4; Supplement No.2)
April 13, 2018	Staff files Addendum No. 1 to its TA recommending approval of Phase I release for 654.0 acres and denial of 1.9 acres [Addendum No. 1 includes Staff's Inspection Report, dated August 3, 2016, (Attachment II) and an addendum to its Inspection Report, dated March 12, 2018, that details the steps TMPA has taken to address the issues previously identified (Attachment III)]
April 17, 2018	Staff files revised TA Addendum No. 1 to correct the eligible bond reduction amount
April 17, 2018	TMPA indicates it concurs with Staff's recommendations as stated in TA Addendum No. 1
May 2, 2018	TMPA submits draft public notice that addresses the additional acreage included in Supplement No. 1
May 4, 2018	ALJ letter reviewing draft notice and ruling a copy of the public notice should be mailed to any new landowners within or adjacent to the requested release area that are identified since the submittal of Supplement No. 1 in May 2016
July 10, 2018	TMPA submits revised draft public notice and identifies affected landowners, dates notification was mailed to required persons and changes in ownership since the submittal of Supplement No. 1 in May 2016
July 12, 2018	ALJ letter approving the draft notice for publication and ruling a copy of the approved notice should be sent according to TMPA landowner review provided on July 10, 2018
July 18, 25 and August 1, 8, 2018	Notice of Application published in newspaper of general circulation in the locality of surface coal mine operation that accurately reflects the application subsequent the submittal of Supplement No. 1
August 8, 2018	TMPA mails notice of the requested release to five adjacent landowners in accordance with

	ALJ ruling on July 12, 2018
August 14, 2018	TMPA submits proof of publication and copies of notification letters to newly identified landowners

4. Permit No. 38D is currently bonded by a self-bond in the amount of \$8,900,000 and a collateral bond with letter of credit in the amount of \$9,600,000 that provide bonding in a total amount of \$18,500,000 [Docket No. C18-0008-SC-38-E].
5. Notice of the application was initially published once each week for four consecutive weeks in *The Eagle*, a newspaper of general circulation in the vicinity of the Gibbons Creek Lignite Mine V in Grimes County, the locality of surface mine. Dates of publication in *The Eagle* were May 11, 18, 25 and June 1, 2013. Following the submittal of Supplement No. 1 that proposed to increase the number acres requested for release to 655.9, notice of application was published once each week for four consecutive weeks in the *Navasota Examiner*, a newspaper of general circulation in the vicinity of the Gibbons Creek Lignite Mine V in Grimes County, the locality of surface mine. Dates of publication in the *Navasota Examiner* were July 18, 25 and August 1, 8, 2018. The notice of application contains all information required by §134.129 of the Act and §12.312(a)(2) of the Regulations for notice of application for release of reclamation obligations. The notice contains a statement that the applicant does not seek a reduction in the approved bond, but that an eligible bond reduction amount may be determined. 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. TMPA submitted affidavits of publication with news clippings from the *Navasota Examiner* by letter dated August 14, 2018.
6. 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).
7. 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.
8. By letter dated April 30, 2013, TMPA submitted copies of letters notifying adjoining landowners and lessees, the Brazos River Authority, Carlos Water Supply, Texas General Land Office, U.S. Army Corps of Engineers, Fort Worth District, Navasota Soil and Water Conservation District, Texas State Soil and Water Conservation Board, Texas

Commission on Environmental Quality, Environmental Protection Agency's District Office in Dallas, Natural Resources Conservation Service, and the Grimes County Judge and Commissioners Court of the application for release in accordance with §12.312(a)(2) of the Regulations. The area proposed for release is not located within the boundary of any municipality that would be notified pursuant to §12.313(c) of the Regulations. By letter dated April 4, 2016, the ALJ ruled notice of the application was to be mailed to landowners affected by the inclusion of the additional acreage requested for release in Supplement No. 1. TMPA sent notice by certified mail pursuant to the ALJ's ruling on April 30, 2016 and submitted copies of the notification letters in Section 2 of Supplement No. 1. The docket was subsequently reassigned to a different ALJ within the Commission's Hearings Division in October 2016. By letter dated May 4, 2018, the ALJ ruled notice of application was to be mailed to any newly identified landowners within or adjacent to the requested release area. By letters dated August 8, 2018, TMPA sent notice by certified mail to five landowners who did not own an interest in the subject acreage in 2016 when notification to interest owners was mailed pursuant to §12.312(a)(2). Copies of the 2018 notification letters were submitted to the Commission by letter dated August 14, 2018.

9. Pursuant to §12.312(b) of the Regulations, Staff notified owners of interests in lands and lessees of the application for release and the Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office by letters dated March 6, 2013, of the date and time of Staff's field inspection scheduled for March 21, 2013. The notification stated that a release had been requested and, pursuant to §12.312(b)(1), advised them of the opportunity to participate in the on-site inspection. Staff provided copies of the letters in Appendix II within Attachment III of the TA. By letters dated May 10, 2016, Staff sent notification in accordance with the Regulations to required persons of the re-inspection of the area scheduled for June 2, 2016. Copies of 2016 letters were provided in Appendix II within Attachment II of Staff's TA Addendum filed on April 13, 2018. SMRD notified the Grimes County Judge of the application as required by §134.133 of the Act by certified letter dated May 6, 2013.
10. The initial inspection occurred on March 21, 2013 as scheduled. Following a pre-inspection meeting with representatives from TMPA and four landowners who elected to attend the inspection, SMRD Inspection and Enforcement staff, accompanied by representatives from TMPA and the landowners, conducted its inspection of the area requested for release that included field visits to the respective owner's tracts. The field report, dated December 10, 2013, noted several issues; including those related to structures and soil-testing data. The re-inspection of the area following the submittal of Supplement No. 1 occurred on June 2, 2018 as scheduled. SMRD Inspection and Enforcement staff, again accompanied by representatives from TMPA and four landowners, conducted a re-inspection of the acreage initially requested for release and an initial inspection of 41.7 acres added in Supplement No. 1. The field report, dated August 3, 2016, noted issues further addressed in Findings of Fact Nos. 15(b), 15(d), 15(f), and 18, *infra*. Addendum 1 to the August 2016 inspection report, dated March 12, 2018 and provided as Attachment III to Staff's TA Addendum, details the steps TMPA has taken to address the issues previously identified and found the area proposed release was eligible for Phase I release, pending Staff review.
11. The application contains a notarized statement signed by Mr. Murphy Hawkins, Permitting Specialist, TMPA, dated February 25, 2013. Supplement No. 1 contains a

notarized statement signed by Dr. Jan Horbaczewski, Regulatory and Compliance Manager, TMPA, dated May 3, 2016. Pursuant to §12.312(a)(3), both statements certify that all applicable reclamation activities have been accomplished in accordance with the requirements of the Act, the regulatory program and the approved reclamation plan.

12. The permit area is comprised of approximately 3,899.7 acres located roughly 8 miles northwest of Anderson, Texas. The 655.9 acres proposed for release are located in Areas A2 and A3 in the central and southwest portions of the permit area. A general location map of the permit area, with the 655.9 acres proposed for release distinguished, is found in Appendix I of Staff's August 3, 2016 Inspection Report. The area is depicted in photographs taken during Staff inspections that occurred in 2013, 2016 and 2017 (Attachments II and III; TA Addendum). The application, photographic evidence, Staff Inspection Report, and addendum thereto, TA and TA Addendum provide support for release of Phase I reclamation obligations for 654.0 acres.
13. The areas requested for release were mined or otherwise disturbed from 1986 to 2007. Final grading occurred from 1987 to 2012, and vegetation was planted from 1988 to 2012. Routine monthly inspections of the operations and/or reclamation work covering the proposed release area occurred from 1987 to the present.
14. The approved postmining land uses for the subject 655.9 acres are as follows: Pastureland, 443.3 acres; Developed Water Resources (DWR), 206.5 acres; and, Industrial/Commercial (I/C), 6.0 acres. There is a 0.1-acre area within the proposed release boundary that was not disturbed by mining related activities. Completion of the five-year extended responsibility period (ERP) is not required for Phase I release of postmine pastureland acreage. The ERP is not applicable to DWR or I/C acreage.
15. TMPA has accomplished reclamation on 654.0 acres requested for release in accordance with Phase I requirements for backfilling, regrading and drainage control as required by §12.313(a)(1) of the Regulations. TMPA has not demonstrated compliance with §12.386 for a 1.9-acre area due to a lack of soil-testing data to support a finding that the top four feet of postmine soil is absent of acid- and/or toxic-forming materials [Finding of Fact No. 15(b), *infra*]. TMPA may in the future apply for Phase I release for the 1.9 acres denied release in this Order.
 - a. The areas requested for Phase I release have been backfilled and graded to approximate original contour [§12.385(a)], and vegetation has been planted. All highwalls and spoil piles were eliminated in accordance with §12.384(b)(1) of the Regulations, and suitable substitute material was placed over the regraded spoil. No cut-and-fill terraces were constructed. Backfilled material has been placed to minimize erosion, to minimize water pollution both on and off the site, and to support the approved postmining land uses [§12.384(b)(2)]. The areas have been regraded to approximate original contour. Drainage patterns approximating premine drainage have been established. All areas requested for release meet Phase I release have been stabilized to control drainage and erosion [§12.389].
 - b. The 655.9 acres requested for release contain 174 soil-testing grids. TMPA provided a list of soil-testing grids and dates of sampling in Supplement No. 1. Soils within the proposed release area were sampled for suitably utilizing the approved postmine soil monitoring plan in Section .145 of Permit No. 38D. The

Commission determined that data for 146 grids indicated that all are free of acid-forming and toxic-forming materials and meet the applicable physicochemical postmine soil performance standards according to approved postmine soil monitoring plan (SMRD letters dated May 15, 1996; February 6, 1998; July 11, 2002; July 16, 2003; April 1, 2004; September 15, 2004; and, January 11, 2005) (Section 4; Supplement No. 1). When Supplement No. 1 was submitted on May 3, 2016, 28 soil grids within the proposed release area had not been sampled. The unsampled grids were submitted to the Commission in a 2017/2018 initial postmine soil report by letter dated May 16, 2017 that was supplemented by letters dated August 25 and October 11, 2017. By letter dated November 14, 2017, Staff approved all of the grids submitted in the report except for seven and provided a list of outstanding soil-testing concerns related to Permit No. 38D. TMPA responded by letters dated December 12, 2017, December 27, 2017, and February 2, 2018. By letter dated February 15, 2018, Staff determined that data for 26 of the 28 grids that were not sampled prior to the submittal of Supplement No. 1 indicates the absence of acid- and/or toxic-forming materials in the top four feet of postmine soils in compliance with §12.386 of the Regulations [Attachment 6 to Attachment III (Inspection Report Addendum); TA Addendum No. 1]. The 172 soil-grids that have been approved by Staff are within the 654.0 acres approved for Phase I release in this Order. Two soil grids, X22SW-1 and X22SE-1, within the proposed Phase I release area are located within the area of Seep 1 and comprise the 1.9 acres that Staff does not recommended for release. In its November 14, 2017, letter, Staff indicated that the data for these two grids were invalid. By letter dated December 12, 2017, TMPA indicated that the two grids were removed from the database and would be addressed separately after completion of remediation of Seep 1. Therefore, the subject 1.9-acre area located in the Seep 1 area is not approved for Phase I release of reclamation obligations due to the lack of soil-testing data for soil-grids X22SW-1 and X22SE-1.

- (c). There are no diversions located in the area proposed for Phase I release of reclamation liability [§12.341].
- (d). The area requested for release contains all or portions of the following six permanent impoundments and two associated appurtenances: Pond SP-13; Pond SP-20; Pond A2P-1; Pond A2P-2; Pond A3P-1; Pond A3P-2; Pond A2P-2 Spillway Modification; and, Pond A2P-2 Modification. Pond SP-13 was approved by letter dated February 22, 2013. Pond SP-20 was approved by letter dated July 12, 1991. Ponds A2P-1 and A2P-2 were approved on September 3, 1999 and modified by letters dated August 23, 2001, May 12, 2005 and January 22, 2010. The Pond A2P-2 Modification and the Pond A2P-2 Spillway Modification were approved by letters dated January 22, 2010 and January 14, 2013, respectively. Ponds A3P-1 and A3P-2 were approved by letter dated September 3, 1999. A copy of the letters approving these structures as permanent is included in Section 4 of Supplement No. 1, except for the Pond A2P-2 Modification and Pond A2P-2 Spillway Modification that were submitted in Supplement No. 2 along with a revised structure table that includes these features (Table 3-1; Supplement No. 2). In its inspection of the area conducted on June 2, 2016 (Inspection Report dated: August 3, 2016), Staff noted that an area east of Pond A3P-2 was eroded and required further reclamation. To address the issue, TMPA

submitted a design for Erosion Control Structure A3-6 as part of Revision No. 34, approved by letter dated October 28, 2016 [Finding of Fact No. 15(f), *infra*]. The completed structure was first inspected by Staff on February 16, 2017 [Photos 5-6, Attachment 2 to Attachment III (Inspection Report Addendum); TA Addendum No. 1]. In its Inspection Report Addendum, Staff noted the structure has remained stable since its construction and withstood large amounts of runoff experienced during Hurricane Harvey in 2017. Since TMPA successfully remediated the area through construction of Erosion Control Structure A3-6, the acreage east of Pond A3P-2, previously an impediment to the release sought, is eligible for Phase I release.

- (e). All or portions of the following twelve permanent roads are located within the 655.9-acre area proposed for Phase I release: SP-20 Access Road (approved: February 22, 2013); SP-20 Access Road Extension (approved: December 28, 1999); A2-SR1 (approved: February 22, 2013); A2-SR2 (approved: February 22, 2013); A2-SR5 (approved: February 22, 2013); A3 Road 1 (approved: February 22, 2013); A3-HR6 (approved: December 30, 2003); A3-SR8 (approved: December 30, 2003); A3-SR13 (approved: February 22, 2013); SP-13 Access Road (approved: February 22, 2013); South Access Road (approved: February 22, 2013); and, A3 Spoil Road (approved: August 21, 2001). The A3 Spoil Road was approved by Commission Order as part of the most recent renewal application for the permit. A copy of the letters approving all other permanent roads is included in Section 4 of Supplement No. 1. All of the permanent roads within the release area were found to be structurally intact and stable during Staff's inspection of the area on June 2, 2016 (Attachment II; TA Addendum). A limited-use vehicular pathway (LUV) is located in the southern portion of the proposed release area that follows the original path of reclaimed road A2-SR7. This pathway is not classified as a road given it meets all six conditions required for a LUV under Section III.C. of SMRD Advisory Notice IN-EN-3(149). The presence of this LUV is not an impediment to Phase I release, but Staff notes this pathway must be reclaimed prior to submittal of applications for Phase II and/or III release of reclamation liability given the revegetation requirements described at §12.313(a)(2) and (3) [Attachment II (Inspection Report); TA Addendum]. During a partial inspection of the area in July 2016, Staff observed that all rock and other surfacing material has been removed from this LUV, as confirmed by Photo 1 provided in Attachment 7 to Staff's Inspection Report Addendum, and believes that the pathway will likely grass over through a period of non-use but may require additional reclamation prior to approval of Phase II and/or III release of reclamation liability [Attachment III (Inspection Report Addendum); TA Addendum].
- (f). The area requested for Phase I release contains the following five drainage control structures: Drop A2-1 (approved: July 22, 2005); Drop A2-2 (approved: August 23, 2001); Drop A3-2 (approved: August 21, 2001); A3 Drain 1 (approved: November 13, 2014); and, Erosion Control Structure A3-6 (approved: October 28, 2016). The A3 Drain 1 was not listed in Supplement No. 1 as a permanent structure. In Supplement No. 2, TMPA revised Table 3-1 to include A3 Drain 1 and submitted the approval letter dated November 13, 2014. The approval letter for Erosion Control structure A3-6 was also provided in Supplement No. 2 and included in the revised structures table. Approval letters

for all other drainage control structures were submitted in Section 4 of Supplement No. 1. In its inspection of the area conducted on June 2, 2016 (Inspection Report dated: August 3, 2016), Staff noted that an area east of the A3 Drain 1 was eroded and required further reclamation. During an inspection of the area conducted in August 2017, and confirmed through monthly inspections since, Staff verified that TMPA has successfully reclaimed the area in accordance with the requirements for Phase I release [Attachment III (Inspection Report Addendum); TA Addendum].

- (g). Surface water runoff from the proposed Phase I release area flows into sedimentation ponds SP-13 and SP-20 [§12.344].
- (h). No acreage within the requested release area is approved for disposal of non-coal waste [§12.375].

16. The eligible bond reduction amount is \$5,689,535.41 as set out below:

Phase Requested	Area Acres	Disturbance Category	Bonded Per Acre	Eligible Reduction Per Acre	Eligible Reduction
Phase I	427.9	Mined	\$17,744	\$10,646.40	\$4,555,594.56
Phase I	226.1	Disturbed	\$4,546	\$2,727.60	\$616,710.36
Subtotal	654				\$5,172,304.92
Admin. Costs (10%)					\$517,230.49
Total					\$5,689,535.41

- 17. The eligible bond reduction amount, based upon the Findings of Fact contained in this Order and Staff calculations, with which TMPA agrees, is \$5,689,535.41. No reduction of the self-bond and collateral bond with letter of credit totaling \$18,500,000 that were accepted by Order dated March 20, 2018 is requested in this application.
- 18. The area requested for Phase I release has been marked in the field with permanent boundary markers to distinguish the area from active mining and reclamation. In its August 3, 2016 Inspection Report (Attachment II; TA Addendum), Staff noted that the 655.9 acres were not marked prior to the inspection that occurred on June 2, 2016. Prior to Staff's filing of its TA Addendum, TMPA marked the area as evidenced by photos transmitted to Staff on March 8, 2018 that were provided as Attachment 1 to the Inspection Report Addendum dated March 12, 2018. The continued clear identification of this area will assist future inspection of this area and adjacent areas.
- 19. 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. No exceptions to the proposed order were filed.
- 20. Open meeting notice has been posted for Commission consideration of this Application in accordance with TEX GOV'T CODE §551.048.

CONCLUSIONS OF LAW

Based on the 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. A public hearing on the request is not 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 release of reclamation obligations for the areas requested for release as set out in the Findings of Fact.
5. The Commission may approve a release of Phase I reclamation obligations for 654.0 acres as set out in the Findings of Fact.
6. An eligible bond reduction amount of \$5,689,535.41 for use in reclamation cost estimates may be determined.

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

IT IS FURTHER ORDERED that a release of Phases I reclamation obligations for 654.0 acres is hereby approved;

IT IS FURTHER ORDERED that a release of Phase I reclamation obligations for 1.9 acres is hereby denied without prejudice so that TMPA may reapply for Phase I release for the 1.9 acres in the future;

IT IS FURTHER ORDERED that an eligible bond reduction amount of \$5,689,535.41 is determined;

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

IT IS FURTHER ORDERED that the current bonds remain in effect according to their terms until otherwise ordered by the Commission;

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

IT IS FURTHER ORDERED by the Commission that this order shall not be final and effective until 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 this 30th day of October, 2018.

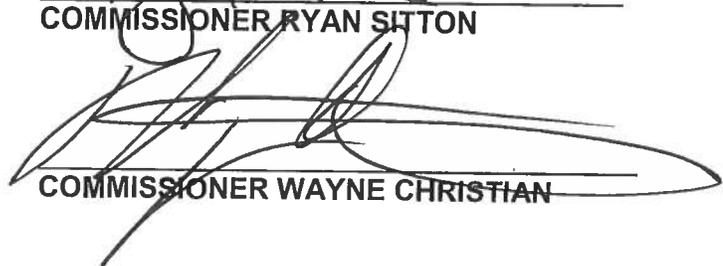
RAILROAD COMMISSION OF TEXAS



CHAIRMAN CHRISTI CRADDICK

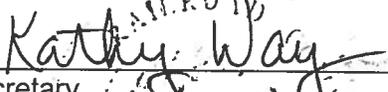


COMMISSIONER RYAN SITTON



COMMISSIONER WAYNE CHRISTIAN

ATTEST:


Secretary
Railroad Commission of Texas