TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
INTEROFFICE MEMORANDUM

TO: Chief Clerk DATE: June 28, 2007

THRU: Kellye Rila, Team Leader
Water Rights Permitting Team

FROM: Iliana Delgado, Project Manager
Water Rights Permitting Team

SUBJECT: Texas Municipal Power Agency
Docket # 2007-0973-WR
WRPERM 5858
CN600127567, RN102811874, RN102812518, RN104380886, RN104380894
RN102812708, RN102811973, RN104380951, RN104380969, RN102637048,
N104380993, RN102813086, RN102081338, RN102813292, RN104381009,
RN104381082, RN104381116, RN104381132, RN104381140, RN104381157,
RN104381173, RN104381181, RN104381207, RN104381215, RN104381223
RN104381231, RN104381249
Application No. 5858 for a Water Use Permit
TWC §11.121, Requiring a Permit
TWC §11.132, 30 TAC §§ 291.151-153, Requiring Mailed and Published Notice
Navasota River Watershed, Brazos River Basin
Grimes County

An application was received from the Texas Municipal Power Agency seeking a Water Use Permit pursuant to Texas Water Code Section (§) 11.121 and Texas Commission on Environmental Quality Rules, Title 30 of the Texas Administrative Code (TAC) §§ 295.1, *et seq.*

The application was received on August 9, 2004. The application was declared administratively complete and filed with the Office of the Chief Clerk on October 21, 2004. The notice of the application was filed with the Chief Clerk on February 1, 2005 and was subsequently published and mailed to the water right holders of record in the Brazos River Basin. Two requests for a public hearing were received, from Douglas G. Caroom (representing the Brazos River Authority) and Lawrence L. Bellatti (representing Chocolate Bayou Water Company). The hearing request by Chocolate Bayou Water Company has been withdrawn.

Because this application was declared administratively complete after September 1, 1999, 30 TAC §§ 55.250 - 55.256 apply. The Chief Clerk shall mail notice to the applicant, executive director, public interest counsel, and timely hearing requestors not later than 35 days prior to the agenda setting. Applicants, the public interest counsel, and the executive director may file a response no later than 23 days before agenda, and the hearing requestors may reply no later than nine days before agenda.

The application is now technically complete and the staff has recommended that the application be granted based on findings. Therefore, we request that the application be set on the August 8, 2007 Commission's Contested agenda.

Below is the caption for this application:

Consideration of an application by Texas Municipal Power Agency to authorize 26 existing on-channel reservoirs in the Brazos River Basin. Applicant also seeks to impound a combined amount of 3,515 acre-feet of water for recreational, domestic, livestock, parks and wildlife, and game preserve purposes in Grimes County. No diversion of water has been requested. Applicant had previously requested authorization to maintain 31 existing on-channel reservoirs in the Brazos River Basin and impound a combined amount of 8,487.80 acre-feet of water for recreational, domestic, livestock, parks and wildlife, and game preserve purposes. Since the original request, the Applicant has shown that 5 of the 31 reservoirs are off-channel and will not impound state water, hence the requested authorization for 26 on-channel reservoirs. This authorization sought would be subject to all superior and senior water rights in the Brazos River basin. The commission will consider any hearing requests and filings. (Iliana Delgado, Pinar Dogru)

Attached is a draft notice for you to send.

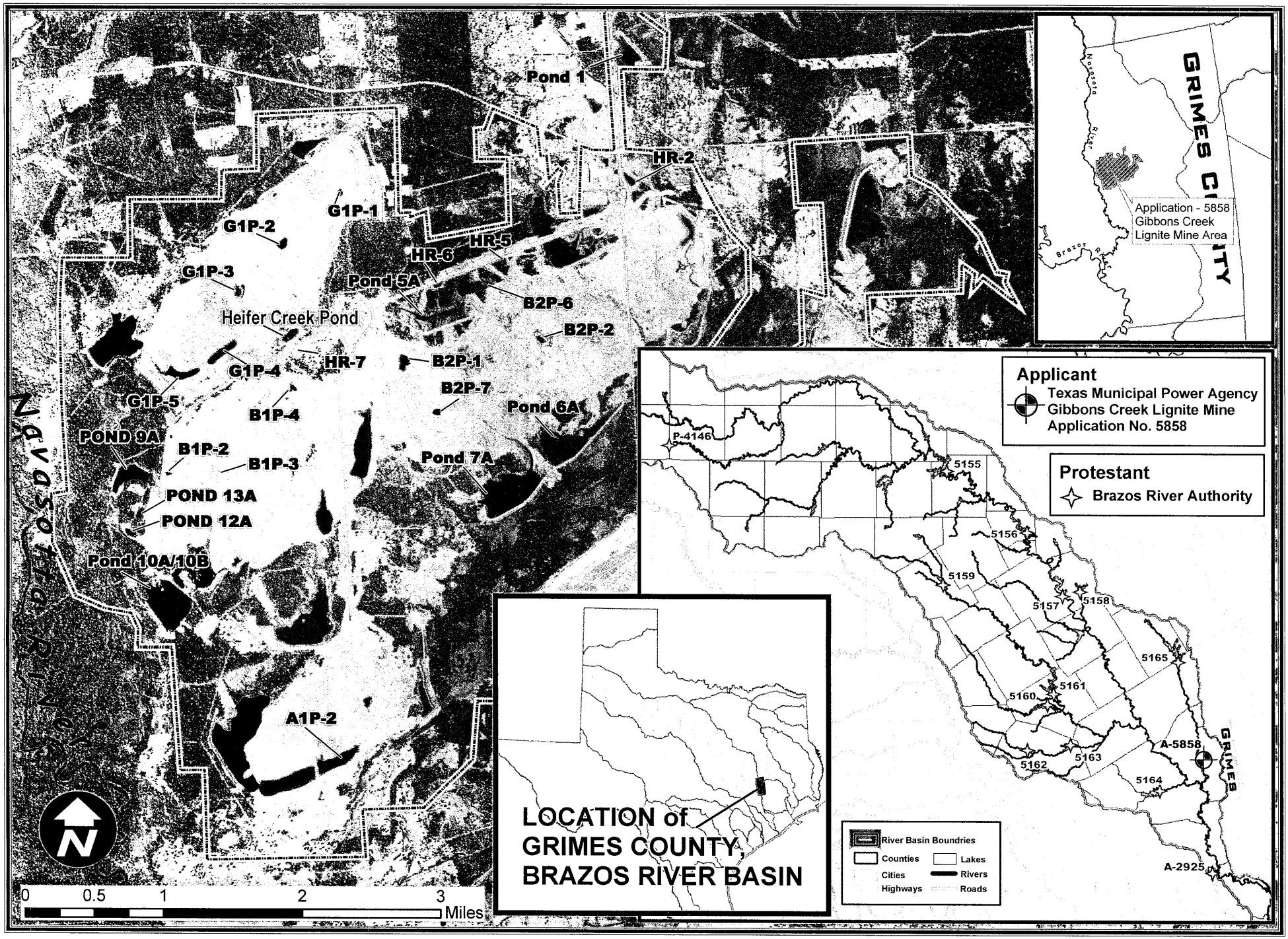
Iliana Delgado, Project Manager
Water Rights Permitting Team

Enclosure

cc: Todd Chenoweth, TCEQ
Lann Bookout, TCEQ
Kellye Rila, TCEQ
Bill Billingsley, TCEQ
Stephen Densmore, TCEQ
Chris Loft, TCEQ
Robin Smith, TCEQ
Pinar Dogru, TCEQ
Scott Swanson, TCEQ

DOCKET NO. 2007-0973-WR

TEXAS MUNICIPAL POWER AGENCY - GIBBONS CREEK LIGNITE MINE - APPLICATION NO. 5858



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

NOTICE OF WATER RIGHTS APPLICATION
APPLICATION NO. 5858

SUMMARY. Texas Municipal Power Agency has applied for a Water Use Permit for authorization to maintain 31 existing on-channel reservoirs on multiple watercourses in the Brazos River Basin, Grimes County and impound therein a combined amount of 8,487.80 acre-feet of water for recreational, domestic, livestock, parks and wildlife, and game preserve purposes. More information on the application and how to participate in the permitting process is given below.

APPLICATION. Texas Municipal Power Agency, applicant, P.O. Box 7000, Bryan, TX, 77805, seeks a permit pursuant to Texas Water Code §11.121, and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code (TAC) §§295.1, *et seq*. Notice is being published and mailed to the water right holders in the Brazos River Basin pursuant to 30 TAC §295.151.

Texas Municipal Power Agency has applied for a Water Use Permit for authorization to maintain 31 existing on-channel reservoirs in the Brazos River Basin and impound therein a combined amount of 8,487.80 acre-feet of water for recreational, domestic, livestock, parks and wildlife, and game preserve purposes in Grimes County. No diversion of water has been requested.

Pond 1 is on Big Branch Creek, tributary of Gibbons Creek, tributary of the Navasota River, tributary of the Brazos River, in the Philip Goodbread Survey, Abstract 223 (the "Goodbread Survey). The principal spillway is located N44°E, 5530 feet from the southwest corner of the Goodbread Survey, also being at Latitude 30.6047°N, Longitude 96.0831°W, with a capacity of 82 acre-feet of water and a surface area of 16.8 acres.

Pond 5A is on Dry Creek, tributary of Gibbons Creek, tributary of the Navasota River, tributary of the Brazos River, in the James W. Tuttle Survey, Abstract 448 (the "Tuttle Survey") and the Joseph T. Robinson Survey, Abstract 390 (the "Robinson Survey"). The principal spillway is located N4°E, 7950 feet from the southwest corner of the Tuttle Survey, also being at Latitude 30.5772°N, Longitude 96.1061°W, with a capacity of 343 acre-feet of water and a surface area of 69.4 acres.

Pond 6A is on an unnamed tributary of Gibbons Creek, tributary of the Navasota River, tributary of the Brazos River, in the Tuttle Survey. The principal spillway is located N61°E, 4800 feet from the southwest corner of the Tuttle Survey, also being at Latitude 30.5611°N, Longitude 96.0944°W, with a capacity of 391 acre-feet of water and a surface area of 73.6 acres.

Pond 7A is on Dry Creek, tributary of Gibbons Creek, tributary of the Navasota River, tributary of the Brazos River, in the Tuttle Survey. The principal spillway is located N79°E, 1850 feet from the southwest corner of the Tuttle Survey, also being at Latitude 30.5558°N, Longitude 96.1028°W, with a capacity of 862 acre-feet of water and a surface area of 79.7 acres.

Pond 9A is on an unnamed tributary of the Navasota River, tributary of the Brazos River, in the Thomas Williams Survey, Abstract 479 (the "Williams Survey"). The principal spillway is located N66°E, 2200 feet from the southwest corner of the Williams Survey, also being at Latitude 30.5625°N, Longitude 96.1478°W, with a capacity of 150 acre-feet of water and a surface area of 21.8 acres.

Pond 10A/B is on an unnamed tributary of the Navasota River, tributary of the Brazos River, in the Barton Baker Survey, Abstract 115 (the "Baker Survey"). The principal spillway is located N35°E, 2570 feet from the southwest corner of the Baker Survey, also being at Latitude 30.5478°N, Longitude 96.1444°W, with a capacity of 954 acre-feet of water and a surface area of 108 acres.

Pond 12A is on an unnamed tributary of the Navasota River, tributary of the Brazos River, in the E. Fuqua Survey, Abstract 204 (the "Fuqua Survey"). The principal spillway is located N2°W, 1350 feet from the southwest corner of the Fuqua Survey, also being at Latitude 30.5564°N, Longitude 96.1472°W, with a capacity of 18.2 acre-feet of water and a surface area of 3.2 acres.

Pond 13A is on an unnamed tributary of the Navasota River, tributary of the Brazos River, in the Fuqua Survey. The principal spillway is located N11°E, 2060 feet from the southwest corner of the Fuqua Survey, also being at Latitude 30.5581°N, Longitude 96.1456°W, with a capacity of 16.2 acre-feet of water and a surface area of 2.8 acres.

Heifer Creek Pond is on Heifer Creek, tributary of the Navasota River, tributary of the Brazos River, in the Robinson Survey. The emergency spillway is located N30°W, 4810 feet from the southwest corner of the Robinson Survey, also being at Latitude 30.5753°N, Longitude 96.1269°W, with a capacity of 18.8 acre-feet of water and a surface area of 7.0 acres.

Pond HR-2 is on an unnamed tributary of Gibbons Creek, tributary of the Navasota River, tributary of the Brazos River, in the Tuttle Survey. The emergency spillway is located S86°E, 8210 feet from the northwest corner of the Tuttle Survey, also being at Latitude 30.5914°N, Longitude 96.0839°W, with a capacity of 16.0 acre-feet of water and a surface area of 3.4 acres.

Pond HR-5 is on an unnamed tributary of Rock Lake Creek, tributary of Gibbons Creek, tributary of the Navasota River, tributary of the Brazos River, in the Tuttle Survey. The emergency spillway is located S42°E, 4890 feet from the northwest corner of the Tuttle Survey, also being at Latitude 30.5833°N, Longitude 96.1000°W, with a capacity of 16.6 acre-feet of water and a surface area of 1.6 acres.

Pond HR-6 is on Dry Creek, tributary of Gibbons Creek, tributary of the Navasota River, tributary of the Brazos River, in the Tuttle Survey. The emergency spillway is located S8°E, 5000 feet from the northwest corner of the Tuttle Survey, also being at Latitude 30.5803°N, Longitude 96.1086°W, with a capacity of 8.2 acre-feet of water and a surface area of 1.4 acres.

Pond HR-7 is on Heifer Creek, tributary of the Navasota River, tributary of the Brazos River, in the Robinson Survey. The emergency spillway is located N26°W, 4220 feet from the southwest corner of the Robinson Survey, also being at Latitude 30.5742°N, Longitude 96.1264°W, with a capacity of 12.4 acre-feet of water and a surface area of 2.0 acres.

Pond A1P-2 is on an unnamed tributary of Heifer Creek, tributary of the Navasota River, tributary of the Brazos River, in the L.J.F. Mannuel Survey, Abstract 341 (the "Mannuel Survey"). The emergency spillway is located N1°E, 760 feet from the southwest corner of the Mannuel Survey, also being at Latitude 30.5297°N, Longitude 96.1250°W, with a capacity of 316.0 acre-feet of water and a surface area of 20.3 acres.

Pond A2P-1 is on an unnamed tributary of Gibbons Creek, tributary of the Navasota River, tributary of the Brazos River, in the Charles O. Edwards Survey, Abstract 189 (the "Edwards Survey"). The emergency spillway is located N21°E, 8300 feet from the southwest corner of the Edwards Survey, also being at Latitude 30.5417°N, Longitude 96.0969°W, with a capacity of 436.0 acre-feet of water and a surface area of 22.3 acres.

Pond A2P-2 is on an unnamed tributary of Gibbons Creek, tributary of the Navasota River, tributary of the Brazos River, in the Edwards Survey. The emergency spillway is located N29°E, 10800 feet from the southwest corner of the Edwards Survey, also being at Latitude 30.5450°N, Longitude 96.0903°W, with a capacity of 1083.0 acre-feet of water and a surface area of 47.5 acres.

Pond B1P-2 is on an unnamed tributary of the Navasota River, tributary of the Brazos River, in the Williams Survey 479. The emergency spillway is located N77°W, 1450 feet from the southeast corner of the Williams Survey, also being at Latitude 30.5619°N, Longitude 96.1422°W, with a capacity of 1.6 acre-feet of water and a surface area of 0.4 acres.

Pond B1P-3 is on an unnamed tributary of the Navasota River, tributary of the Brazos River, in the George Mason Survey, Abstract 345 (the "Mason Survey"). The emergency spillway is located N20°E, 2000 feet from the southwest corner of the Mason Survey, also being at Latitude 30.5617°N, Longitude 96.1350°W, with a capacity of 1.2 acre-feet of water and a surface area of 0.5 acres.

Pond B1P-4 is on an unnamed tributary of Heifer Creek, tributary of the Navasota River, tributary of the Brazos River, in the Mason Survey. The emergency spillway is located N22°W, 4980 feet from the southeast corner of the Mason Survey, also being at Latitude 30.5700°N, Longitude 96.1258°W, with a capacity of 6.8 acre-feet of water and a surface area of 1.9 acres.

Pond B2P-1 is on Dry Creek, tributary of the Navasota River, tributary of the Brazos River, in the Robinson Survey. The emergency spillway is located N18°W, 3380 feet from the southeast corner of the Robinson Survey, also being at Latitude 30.5733°N, Longitude 96.1117°W, with a capacity of 29.8 acre-feet of water and a surface area of 5.4 acres.

Pond B2P-2 is on an unnamed tributary of Rock Lake Creek, tributary of Gibbons Creek, tributary of the Navasota River, tributary of the Brazos River, in the Tuttle Survey. The emergency spillway is located N30°E, 8400 feet from the southwest corner of the Tuttle Survey, also being at Latitude 30.5739°N, Longitude 96.0961°W, with a capacity of 38.7 acre-feet of water and a surface area of 10.6 acres.

Pond B2P-6 is on an unnamed tributary of Gibbons Creek, tributary of the Navasota River, tributary of the Brazos River, in the Tuttle Survey. The emergency spillway is located S30°E, 5430 feet from the northwest corner of the Tuttle Survey, also being at Latitude 30.5800°N, Longitude 96.1025°W, with a capacity of 20.1 acre-feet of water and a surface area of 5.2 acres.

Pond B2P-7 is on Dry Creek, tributary of Gibbons Creek, tributary of the Navasota River, tributary of the Brazos River, in the Robinson Survey. The emergency spillway is located N5°W, 1365 feet from the southeast corner of the Robinson Survey, also being at Latitude 30.5672°N, Longitude 96.1089°W, with a capacity of 0.2 acre-feet of water and a surface area of 0.7 acres.

Pond A3P-1 is on an unnamed tributary of Gibbons Creek, tributary of the Navasota River, tributary of the Brazos River, in the Uriah Sanders Survey, Abstract 408 (the "Sanders Survey") and the B.B.B. & C.R.R. Survey, Abstract 119. The emergency spillway is located S3°W, 260 feet from the southwest corner of the Sanders Survey, also being at Latitude 30.5603°N, Longitude 96.0639°W, with a capacity of 1574 acre-feet of water and a surface area of 53.8 acres.

Pond A3P-2 is on an unnamed tributary of Gibbons Creek, tributary of the Navasota River, tributary of the Brazos River, in the Tuttle Survey and the Edwards Survey. The emergency spillway is located N48°W, 1500 feet from the southeast corner of the Tuttle Survey, also being at Latitude 30.5589°N, Longitude 96.0672°W, with a capacity of 1862 acre-feet of water and a surface area of 59.9 acres.

Pond A3P-3 is on an unnamed tributary of Gibbons Creek, tributary of the Navasota River, tributary of the Brazos River, in the Tuttle Survey. The emergency spillway is located N81°W, 3475 feet from the southeast corner of the Tuttle Survey, also being at Latitude 30.5581°N, Longitude 96.0744°W, with a capacity of 17.4 acre-feet of water and a surface area of 4.3 acres.

Pond G1P-1 is on Dinner Creek, tributary of the Navasota River, tributary of the Brazos River, in the Robinson Survey. The emergency spillway is located S61°E, 12330 feet from the northwest corner of the Robinson Survey, also being at Latitude 30.5914°N, Longitude 96.1197°W, with a capacity of 3.4 acre-feet of water and a surface area of 1.1 acres.

Pond G1P-2 is on Heifer Creek, tributary of the Navasota River, tributary of the Brazos River, in the Robinson Survey. The emergency spillway is located S45°E, 12120 feet from the northwest corner of the Robinson Survey, also being at Latitude 30.5844°N, Longitude 96.1272°W, with a capacity of 25.3 acre-feet of water and a surface area of 3.9 acres.

Pond G1P-3 is on an unnamed tributary of Dinner Creek, tributary of the Navasota River, tributary of the Brazos River, in the Robinson Survey. The emergency spillway is located S34°E, 12120 feet from the southwest corner of the Robinson Survey, also being at Latitude 30.5800°N, Longitude 96.1328°W, with a capacity of 9.2 acre-feet of water and a surface area of 3.4 acres.

Pond G1P-4 is on an unnamed tributary of Dinner Creek, tributary of the Navasota River, tributary of the Brazos River, in the Robinson Survey. The emergency spillway is located S24°E, 14000 feet from the northwest corner of the Robinson Survey, also being at Latitude 30.5733°N, Longitude 96.1367°W, with a capacity of 70.7 acre-feet of water and a surface area of 8.9 acres.

Pond G1P-5 is on an unnamed tributary of Dinner Creek, tributary of the Navasota River, tributary of the Brazos River, in the Williams Survey. The emergency spillway is located S70°W, 1660 feet from the northeast corner of the Williams Survey, also being at Latitude 30.5736°N, Longitude 96.1431°W, with a capacity of 104 acre-feet of water and a surface area of 10.3 acres.

Ownership of the innundated lands is evidenced by documents recorded in the official Grimes County records as volume 382, page 285; volume 378, page 722; volume 386, page 584; volume 742, page 819; volume 399, page 371; volume 582, page 431; volume 1065, page 337; volume 554, page 138; volume 371, page 953; volume 381, page 363; volume 652, page 390; volume 673, page 319; volume 485, page 229; volume 493, page 393; volume 371, page 948; volume 494, page 412; volume 470, page 317; volume 493, page 399; volume 327, page 451; volume 553, page 680; volume 944, page 734; volume 862, page 759; volume 349, page 857; volume 350, page 59; volume 332, page 908; volume 765, page 681; volume 381, page 801; volume 580, page 838; and volume 938, page 605.

The Commission will review the application as submitted by the applicant and may or may not grant the application as requested.

The application was received on August 9, 2004, and additional information was received on September 23, September 29, and October 15, 2004. The application was declared administratively complete and filed with the Office of the Chief Clerk on October 21, 2004.

PUBLIC COMMENT / PUBLIC MEETING. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

CONTESTED CASE HEARING. The TCEQ may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[*I/we*] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

INFORMATION. Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

Issued: February 4, 2005

WATER USE PERMIT

APPLICATION NO. 5858 PERMIT NO. 5858 TYPE §11.121

Permittee:	Texas Municipal Power Agency	Address:	P.O. Box 7000 Bryan, TX 77805
Filed:	October 21, 2004	Granted:	
Purpose:	Recreation, Domestic, Livestock Public Parks, Wildlife Management, and Game Preserves	County:	Grimes
Watercourse:	Unnamed tributary of Rock Lake Creek, tributary of Gibbons Creek; Unnamed tributaries of Gibbons Creek and Big Branch Creek and Dry Creek, tributaries of Gibbons Creek, tributary of the Navasota River; Unnamed tributary of Heifer Creek and Heifer Creek, tributary of the Navasota River; Unnamed tributary of Dinner Creek and Dinner Creek, being a tributary of the Navasota River; and an Unnamed tributary of the Navasota River, tributary of the Brazos River	Watershed:	Brazos River Basin

WHEREAS, Texas Municipal Power Agency, applicant, originally applied for authorization to maintain 31 existing on-channel reservoirs in the Brazos River Basin and impound therein a combined amount of 8,487.80 acre-feet of water for recreational, domestic, livestock, parks and wildlife, and game preserve purposes in Grimes County; and

WHEREAS, the applicant has provided a signed, sealed engineer's statement that five of the 31 reservoirs, being Reservoirs A2P-1, A2P-2, A3P-1, A3P-2, A3P-3, are off-channel and will not impound any state water; and

WHEREAS, the applicant now seeks to authorize 26 existing on-channel reservoirs in the Brazos River Basin and impound therein a combined amount of 3,515.4 acre-feet of water for recreational, domestic, livestock, parks and wildlife, and game preserve purposes in Grimes County; and

WHEREAS, no diversion of water has been requested; and

WHEREAS, ownership of the innundated lands is evidenced by documents recorded in the official Grimes County records as volume 382, page 285; volume 378, page 722; volume 386, page 584; volume 742,

page 819; volume 399, page 371; volume 582, page 431; volume 1065, page 337; volume 554, page 138; volume 371, page 953; volume 381, page 363; volume 371, page 948; volume 327, page 451; volume 553, page 680; volume 944, page 734; volume 862, page 759; volume 349, page 857; volume 350, page 59; volume 332, page 908; volume 765, page 681; volume 381, page 801; volume 580, page 838; and volume 938, page 605; and

WHEREAS, the Texas Commission on Environmental Quality finds that jurisdiction over the application is established; and

WHEREAS, the Executive Director recommends special conditions be included in the permit for the protection of instream uses; and

WHEREAS, the Commission has complied with the requirements of the Texas Commission on Environmental Quality in issuing this permit;

NOW, THEREFORE, this Water Use Permit No. 5858 is issued to the Texas Municipal Power Agency, subject to the following terms and conditions:

1. IMPOUNDMENTS

Permittee is authorized to maintain 26 existing on-channel reservoirs in the Brazos River Basin and impound therein a combined amount of 3,515.4 acre-feet of water. The reservoirs are described as follows:

Pond 1 is on Big Branch Creek, tributary of Gibbons Creek, tributary of the Navasota River, tributary of the Brazos River, in the Philip Goodbread Survey, Abstract 223 (the "Goodbread Survey). The principal spillway is located N44°E, 5,530 feet from the southwest corner of the Goodbread Survey, also being at Latitude 30.6047°N, Longitude 96.0831°W, with a capacity of 82 acre-feet of water and a surface area of 16.8 acres.

Pond 5A is on Dry Creek, tributary of Gibbons Creek, tributary of the Navasota River, tributary of the Brazos River, in the James W. Tuttle Survey, Abstract 448 (the "Tuttle Survey") and the Joseph T. Robinson Survey, Abstract 390 (the "Robinson Survey"). The principal spillway is located N4°E, 7,950 feet from the southwest corner of the Tuttle Survey, also being at Latitude 30.5772°N, Longitude 96.1061°W, with a capacity of 343 acre-feet of water and a surface area of 69.4 acres.

Pond 6A is on an unnamed tributary of Gibbons Creek, tributary of the Navasota River, tributary of the Brazos River, in the Tuttle Survey. The principal spillway is located N61°E, 4,800 feet from the southwest corner of the Tuttle Survey, also being at Latitude 30.5611°N, Longitude 96.0944°W, with a capacity of 391 acre-feet of water and a surface area of 73.6 acres.

Pond 7A is on Dry Creek, tributary of Gibbons Creek, tributary of the Navasota River, tributary of the Brazos River, in the Tuttle Survey. The principal spillway is located N79°E, 1,850 feet from the southwest corner of the Tuttle Survey, also being at Latitude 30.5558°N, Longitude 96.1028°W, with a capacity of 862 acre-feet of water and a surface area of 79.7 acres.

Pond 9A is on an unnamed tributary of the Navasota River, tributary of the Brazos River, in the Thomas Williams Survey, Abstract 479 (the "Williams Survey"). The principal spillway is located N66°E, 2,200 feet from the southwest corner of the Williams Survey, also being at Latitude 30.5625°N, Longitude 96.1478°W, with a capacity of 150 acre-feet of water and a surface area of 21.8 acres.

Pond 10A/B is on an unnamed tributary of the Navasota River, tributary of the Brazos River, in the Barton Baker Survey, Abstract 115 (the "Baker Survey"). The principal spillway is located N35°E, 2,570 feet from the southwest corner of the Baker Survey, also being at Latitude 30.5478°N, Longitude 96.1444°W, with a capacity of 954 acre-feet of water and a surface area of 108 acres.

Pond 12A is on an unnamed tributary of the Navasota River, tributary of the Brazos River, in the E. Fuqua Survey, Abstract 204 (the "Fuqua Survey"). The principal spillway is located N2°W, 1,350 feet from the southwest corner of the Fuqua Survey, also being at Latitude 30.5564°N, Longitude 96.1472°W, with a capacity of 18.2 acre-feet of water and a surface area of 3.2 acres.

Pond 13A is on an unnamed tributary of the Navasota River, tributary of the Brazos River, in the Fuqua Survey. The principal spillway is located N11°E, 2,060 feet from the southwest corner of the Fuqua Survey, also being at Latitude 30.5581°N, Longitude 96.1456°W, with a capacity of 16.2 acre-feet of water and a surface area of 2.8 acres.

Heifer Creek Pond is on Heifer Creek, tributary of the Navasota River, tributary of the Brazos River, in the Robinson Survey. The emergency spillway is located N30°W, 4,810 feet from the southwest corner of the Robinson Survey, also being at Latitude 30.5753°N, Longitude 96.1269°W, with a capacity of 18.8 acre-feet of water and a surface area of 7.0 acres.

Pond HR-2 is on an unnamed tributary of Gibbons Creek, tributary of the Navasota River, tributary of the Brazos River, in the Tuttle Survey. The emergency spillway is located S86°E, 8,210 feet from the northwest corner of the Tuttle Survey, also being at Latitude 30.5914°N, Longitude 96.0839°W, with a capacity of 16.0 acre-feet of water and a surface area of 3.4 acres.

Pond HR-5 is on an unnamed tributary of Rock Lake Creek, tributary of Gibbons Creek, tributary of the Navasota River, tributary of the Brazos River, in the Tuttle Survey. The emergency spillway is located S42°E, 4,890 feet from the northwest corner of the Tuttle Survey, also being at Latitude 30.5833°N, Longitude 96.1000°W, with a capacity of 16.6 acre-feet of water and a surface area of 1.6 acres.

Pond HR-6 is on Dry Creek, tributary of Gibbons Creek, tributary of the Navasota River, tributary of the Brazos River, in the Tuttle Survey. The emergency spillway is located S8°E, 5,000 feet from the northwest corner of the Tuttle Survey, also being at Latitude 30.5803°N, Longitude 96.1086°W, with a capacity of 8.2 acre-feet of water and a surface area of 1.4 acres.

Pond HR-7 is on Heifer Creek, tributary of the Navasota River, tributary of the Brazos River, in the Robinson Survey. The emergency spillway is located N26°W, 4,220 feet from the

southwest corner of the Robinson Survey, also being at Latitude 30.5742°N, Longitude 96.1264°W, with a capacity of 12.4 acre-feet of water and a surface area of 2.0 acres.

Pond A1P-2 is on an unnamed tributary of Heifer Creek, tributary of the Navasota River, tributary of the Brazos River, in the L.J.F. Mannuel Survey, Abstract 341 (the "Mannuel Survey"). The emergency spillway is located N1°E, 760 feet from the southwest corner of the Mannuel Survey, also being at Latitude 30.5297°N, Longitude 96.1250°W, with a capacity of 316.0 acre-feet of water and a surface area of 20.3 acres.

Pond B1P-2 is on an unnamed tributary of the Navasota River, tributary of the Brazos River, in the Williams Survey 479. The emergency spillway is located N77°W, 1,450 feet from the southeast corner of the Williams Survey, also being at Latitude 30.5619°N, Longitude 96.1422°W, with a capacity of 1.6 acre-feet of water and a surface area of 0.4 acre.

Pond B1P-3 is on an unnamed tributary of the Navasota River, tributary of the Brazos River, in the George Mason Survey, Abstract 345 (the "Mason Survey"). The emergency spillway is located N20°E, 2,000 feet from the southwest corner of the Mason Survey, also being at Latitude 30.5617°N, Longitude 96.1350°W, with a capacity of 1.2 acre-feet of water and a surface area of 0.5 acre.

Pond B1P-4 is on an unnamed tributary of Heifer Creek, tributary of the Navasota River, tributary of the Brazos River, in the Mason Survey. The emergency spillway is located N22°W, 4,980 feet from the southeast corner of the Mason Survey, also being at Latitude 30.5700°N, Longitude 96.1258°W, with a capacity of 6.8 acre-feet of water and a surface area of 1.9 acres.

Pond B2P-1 is on Dry Creek, tributary of the Navasota River, tributary of the Brazos River, in the Robinson Survey. The emergency spillway is located N18°W, 3,380 feet from the southeast corner of the Robinson Survey, also being at Latitude 30.5733°N, Longitude 96.1117°W, with a capacity of 29.8 acre-feet of water and a surface area of 5.4 acres.

Pond B2P-2 is on an unnamed tributary of Rock Lake Creek, tributary of Gibbons Creek, tributary of the Navasota River, tributary of the Brazos River, in the Tuttle Survey. The emergency spillway is located N30°E, 8,400 feet from the southwest corner of the Tuttle Survey, also being at Latitude 30.5739°N, Longitude 96.0961°W, with a capacity of 38.7 acre-feet of water and a surface area of 10.6 acres.

Pond B2P-6 is on an unnamed tributary of Gibbons Creek, tributary of the Navasota River, tributary of the Brazos River, in the Tuttle Survey. The emergency spillway is located S30°E, 5,430 feet from the northwest corner of the Tuttle Survey, also being at Latitude 30.5800°N, Longitude 96.1025°W, with a capacity of 20.1 acre-feet of water and a surface area of 5.2 acres.

Pond B2P-7 is on Dry Creek, tributary of Gibbons Creek, tributary of the Navasota River, tributary of the Brazos River, in the Robinson Survey. The emergency spillway is located N5°W, 1,365 feet from the southeast corner of the Robinson Survey, also being at Latitude 30.5672°N, Longitude 96.1089°W, with a capacity of 0.2 acre-foot of water and a surface area of 0.7 acre.

Pond G1P-1 is on Dinner Creek, tributary of the Navasota River, tributary of the Brazos River, in the Robinson Survey. The emergency spillway is located S61°E, 12,330 feet from the northwest corner of the Robinson Survey, also being at Latitude 30.5914°N, Longitude 96.1197°W, with a capacity of 3.4 acre-feet of water and a surface area of 1.1 acres.

Pond G1P-2 is on Heifer Creek, tributary of the Navasota River, tributary of the Brazos River, in the Robinson Survey. The emergency spillway is located S45°E, 12,120 feet from the northwest corner of the Robinson Survey, also being at Latitude 30.5844°N, Longitude 96.1272°W, with a capacity of 25.3 acre-feet of water and a surface area of 3.9 acres.

Pond G1P-3 is on an unnamed tributary of Dinner Creek, tributary of the Navasota River, tributary of the Brazos River, in the Robinson Survey. The emergency spillway is located S34°E, 12,120 feet from the northwest corner of the Robinson Survey, also being at Latitude 30.5800°N, Longitude 96.1328°W, with a capacity of 9.2 acre-feet of water and a surface area of 3.4 acres.

Pond G1P-4 is on an unnamed tributary of Dinner Creek, tributary of the Navasota River, tributary of the Brazos River, in the Robinson Survey. The emergency spillway is located S24°E, 14,000 feet from the northwest corner of the Robinson Survey, also being at Latitude 30.5733°N, Longitude 96.1367°W, with a capacity of 70.7 acre-feet of water and a surface area of 8.9 acres.

Pond G1P-5 is on an unnamed tributary of Dinner Creek, tributary of the Navasota River, tributary of the Brazos River, in the Williams Survey. The emergency spillway is located S70°W, 1,660 feet from the northeast corner of the Williams Survey, also being at Latitude 30.5736°N, Longitude 96.1431°W, with a capacity of 104 acre-feet of water and a surface area of 10.3 acres.

2. USE

Permittee is authorized to use impounded water for recreational, domestic, livestock, public parks, wildlife management, and game preserve purposes with no right of diversion.

3. TIME PRIORITY

The time priority of this water right is October 21, 2004.

4. SPECIAL CONDITIONS

A. Permittee shall maintain a riparian buffer zone of at least 50 feet around the reservoirs with the exception of reasonable access points.

B. Permittee shall continue to follow and implement the mining operation and reclamation plans for the Gibbons Creek Lignite Mine Area as approved by the Railroad Commission of Texas in order to minimize disturbance and adverse impacts on the environment.

C. The system of dams authorized herein shall have a means to release or pass all inflows of State water that the permittee is not authorized to store.

This permit is issued subject to all superior and senior water rights in the Brazos River Basin.

Permittee agrees to be bound by the terms, conditions, and provisions contained herein and such agreement is a condition precedent to the granting of this permit.

All other matters requested in the application which are not specifically granted by this permit are denied.

This permit is issued subject to the Rules of the Texas Commission on Environmental Quality and to the right of continuing supervision of State water resources exercised by the Commission.

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

_____
For the Commission

Date issued:

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Iliana Delgado
Water Rights Permitting Team

April 24, 2007

Through: Lann Bookout, Team Leader
Surface Water Availability & Interstate Compacts Team

From: Stephen Densmore
Surface Water Availability & Interstate Compacts Team

Subject: Texas Municipal Power Agency (TMPA)
WRPERM5858
CN600127567
Navasota River Watershed,
Brazos River Basin

WATER AVAILABILITY ANALYSIS ADDENDUM

Application Summary

The applicant, Texas Municipal Power Agency, has provided additional information on 5 of the 31 pre-existing reservoirs. The reservoirs are: Pond A2P-1, A2P-2, A3P-1, A3P-2 and A3P-3. Because the information provided certifies that these reservoirs are off channel and will only capture diffused surface water, percolating groundwater and/or groundwater seepage and not impound any state water, they will not be considered part of the application.

Conclusion

Since it has been certified that reservoirs A3P2, A3P3, A2P1, A2P2 and A3P1 will not store any state water and are not part of the application, staff can recommend granting of this application authorizing the impoundment of state water in 26 pre-existing reservoirs with a combined capacity of 3,515.4 acre-feet for in place recreational, domestic and livestock, and wildlife uses.

Stephen Densmore, Hydrologist

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Iliana Delgado
Water Rights Permitting Team

October 25, 2006

Through: Lann Bookout, Team Leader
Surface Water Availability & Interstate Compacts Team

From: Stephen Densmore
Surface Water Availability & Interstate Compacts Team

Subject: Texas Municipal Power Agency (TMPA)
WRPERM5858
CN600127567
Navasota River Watershed,
Brazos River Basin

WATER AVAILABILITY ANALYSIS

Application Summary

The applicant, Texas Municipal Power Agency, seeks authorization to impound state water in 32 pre-existing impoundments with a combine capacity of 8,487.8 acre-feet for in place recreational, domestic and livestock, wildlife use. The reservoirs were constructed during mining operations and are located in watersheds of the Navasota River a tributary of the Brazos River in Grimes County. The reservoirs are as follow:

Pond 1 is on Big Branch Creek, tributary of Gibbons Creek, tributary of the Navasota River, tributary of the Brazos River. It is located at Latitude 30.6047°N, Longitude 96.0831°W, with a capacity of 82 acre-feet of water and a surface area of 16.8 acres.

Pond 5A is on Dry Creek, tributary of Gibbons Creek, tributary of the Navasota River, tributary of the Brazos River. It is located at Latitude 30.5772°N, Longitude 96.1061°W, with a capacity of 343 acre-feet of water and a surface area of 69.4 acres.

Pond 6A is on an unnamed tributary of Gibbons Creek, tributary of the Navasota River, tributary of the Brazos River. It is located at Latitude 30.5611°N, Longitude 96.0944°W, with a capacity of 391 acre-feet of water and a surface area of 73.6 acres.

Pond 7A is on Dry Creek, tributary of Gibbons Creek, tributary of the Navasota River, tributary of the Brazos River. It is located at Latitude 30.5558°N, Longitude 96.1028°W, with a capacity of 862 acre-feet of water and a surface area of 79.7 acres.

Pond 9A is on an unnamed tributary of the Navasota River, tributary of the Brazos River. It is located at Latitude 30.5625°N, Longitude 96.1478°W, with a capacity of 150 acre-feet of water and a surface area of 21.8 acres.

Pond 10A/B is on an unnamed tributary of the Navasota River, tributary of the Brazos River. It is located at Latitude 30.5478°N, Longitude 96.1444°W, with a capacity of 954 acre-feet of water and a surface area of 108 acres.

Pond 12A is on an unnamed tributary of the Navasota River, tributary of the Brazos River. It is located being at Latitude 30.5533°N, Longitude 96.1472°W, with a capacity of 18.2 acre-feet of water and a surface area of 3.2 acres.

Pond 13A is on an unnamed tributary of the Navasota River, tributary of the Brazos River. It is located at Latitude 30.5581°N, Longitude 96.1456°W, with a capacity of 16.2 acre-feet of water and a surface area of 2.8 acres.

Heifer Creek Pond is on Heifer Creek, tributary of the Navasota River, tributary of the Brazos River. It is located at Latitude 30.5753°N, Longitude 96.1269°W, with a capacity of 18.8 acre-feet of water and a surface area of 7.0 acres.

Pond HR-2 is on an unnamed tributary of Gibbons Creek, tributary of the Navasota River, tributary of the Brazos River. It is located at Latitude 30.5914°N, Longitude 96.0839°W, with a capacity of 16.0 acre-feet of water and a surface area of 3.4 acres.

Pond HR-5 is on an unnamed tributary of Rock Lake Creek, tributary of Gibbons Creek, tributary of the Navasota River, tributary of the Brazos River. It is located at Latitude 30.5833°N, Longitude 96.1000°W, with a capacity of 16.6 acre-feet of water and a surface area of 1.6 acres.

Pond HR-6 is on Dry Creek, tributary of Gibbons Creek, tributary of the Navasota River, tributary of the Brazos River. It is located at Latitude 30.5803°N, Longitude 96.1086°W, with a capacity of 8.2 acre-feet of water and a surface area of 1.4 acres.

Pond HR-7 is on Heifer Creek, tributary of the Navasota River, tributary of the Brazos River. It is located at Latitude 30.5742°N, Longitude 96.1264°W, with a capacity of 12.4 acre-feet of water and a surface area of 2.0 acres.

Pond A1P-2 is on an unnamed tributary of Heifer Creek, tributary of the Navasota River, tributary of the Brazos River. It is located at Latitude 30.5297°N, Longitude 96.1250°W, with a

capacity of 316.0 acre-feet of water and a surface area of 20.3 acres.

Pond A2P-1 is on an unnamed tributary of Gibbons Creek, tributary of the Navasota River, tributary of the Brazos River. It is located at Latitude 30.5417°N, Longitude 96.0969°W, with a capacity of 436.0 acre-feet of water and a surface area of 22.3 acres.

Pond A2P-2 is on an unnamed tributary of Gibbons Creek, tributary of the Navasota River, tributary of the Brazos River. It is located at Latitude 30.5450°N, Longitude 96.0903°W, with a capacity of 1083.0 acre-feet of water and a surface area of 47.5 acres.

Pond B1P-2 is on an unnamed tributary of the Navasota River, tributary of the Brazos River. It is located at Latitude 30.5619°N, Longitude 96.1422°W, with a capacity of 1.6 acre-feet of water and a surface area of 0.4 acres.

Pond B1P-3 is on an unnamed tributary of the Navasota River, tributary of the Brazos River. It is located at Latitude 30.5617°N, Longitude 96.1350°W, with a capacity of 1.2 acre-feet of water and a surface area of 0.5 acres.

Pond B1P-4 is on an unnamed tributary of Heifer Creek, tributary of the Navasota River, tributary of the Brazos River. It is located at Latitude 30.5700°N, Longitude 96.1258°W, with a capacity of 6.8 acre-feet of water and a surface area of 1.9 acres.

Pond B2P-1 is on Dry Creek, tributary of the Navasota River, tributary of the Brazos River. It is located at Latitude 30.5733°N, Longitude 96.1117°W, with a capacity of 29.8 acre-feet of water and a surface area of 5.4 acres.

Pond B2P-2 is on an unnamed tributary of Rock Lake Creek, tributary of Gibbons Creek, tributary of the Navasota River, tributary of the Brazos River. It is located at Latitude 30.5739°N, Longitude 96.0961°W, with a capacity of 38.7 acre-feet of water and a surface area of 10.6 acres.

Pond B2P-6 is on an unnamed tributary of Gibbons Creek, tributary of the Navasota River, tributary of the Brazos River. It is located at Latitude 30.5800°N, Longitude 96.1025°W, with a capacity of 20.1 acre-feet of water and a surface area of 5.2 acres.

Pond B2P-7 is on Dry Creek, tributary of Gibbons Creek, tributary of the Navasota River, tributary of the Brazos River. It is located at Latitude 30.5672°N, Longitude 96.1089°W, with a capacity of 0.2 acre-feet of water and a surface area of 0.7 acres.

Pond A3P-1 is on an unnamed tributary of Gibbons Creek, tributary of the Navasota River, tributary of the Brazos River. It is at Latitude 30.5603°N, Longitude 96.0639°W, with a capacity of 1574 acre-feet of water and a surface area of 53.8 acres.

Pond A3P-2 is on an unnamed tributary of Gibbons Creek, tributary of the Navasota River, tributary of the Brazos River. It is located at Latitude 30.5589°N, Longitude 96.0672°W, with a capacity of 1862 acre-feet of water and a surface area of 59.9 acres.

Pond A3P-3 is on an unnamed tributary of Gibbons Creek, tributary of the Navasota River, tributary of the Brazos River. It is located at Latitude 30.5581°N, Longitude 96.0744°W, with a capacity of 17.4 acre-feet of water and a surface area of 4.3 acres.

Pond G1P-1 is on Dinner Creek, tributary of the Navasota River, tributary of the Brazos River, in the Joseph T. Robinson Survey, Abstract 390. It is located S61°E, 12330 feet from the northwest corner of the Robinson Survey, also being at Latitude 30.5914°N, Longitude 96.1197°W, with a capacity of 3.4 acre-feet of water and a surface area of 1.1 acres.

Pond G1P-2 is on Heifer Creek, tributary of the Navasota River, tributary of the Brazos River. It is located at Latitude 30.5844°N, Longitude 96.1272°W, with a capacity of 25.3 acre-feet of water and a surface area of 3.9 acres.

Pond G1P-3 is on an unnamed tributary of Dinner Creek, tributary of the Navasota River, tributary of the Brazos River. It is located at Latitude 30.5800°N, Longitude 96.1328°W, with a capacity of 9.2 acre-feet of water and a surface area of 3.4 acres.

Pond G1P-4 is on an unnamed tributary of Dinner Creek, tributary of the Navasota River, tributary of the Brazos River. It is located at Latitude 30.5733°N, Longitude 96.1367°W, with a capacity of 70.7 acre-feet of water and a surface area of 8.9 acres.

Pond G1P-5 is on an unnamed tributary of Dinner Creek, tributary of the Navasota River, tributary of the Brazos River. It is located at Latitude 30.5736°N, Longitude 96.1431°W, with a capacity of 104 acre-feet of water and a surface area of 10.3 acres.

The application was declared administratively complete on October 21, 2004.

Water Availability Analysis

The Commission's water availability model (WAM) for the Brazos River Basin protects existing water rights based on the prior appropriation doctrine. Hydrology staff modeled this application using the full authorization simulation of the Brazos WAM, where all water rights use their maximum authorizations and return flows are not included. TCEQ Resource Protection staff determined that the application would have negligible effects on aquatic and riparian habitats and recommend no streamflow restrictions. Because of the method used in the model to estimate evaporation effects for small reservoirs and that many of the reservoirs were on the same

tributaries, staff was able to combine a number of the reservoirs for modeling purpose. Table 1 shows the reservoirs that were combined, the combined capacities, the combined drainage areas and results from the model simulation. Many of the reservoirs or combinations of reservoirs were 75 percent full over 50 percent of the time however three reservoir groups were full less than 5 percent of the time (see table 1). Groups 5 and 6 and reservoir A3P1 also did not refill after being drawn down during the "56" drought thus the percent of time that they are full could be influenced by the model assumption of starting reservoirs full. Also because the reservoirs do not refill, the reservoirs would have an effect on downstream senior water rights if they were allowed to fill, i.e. would require taking of already appropriated water. The amount of water needed to fill the lakes is 4,972.4 acre-feet and to keep them full would require an annual maximum amount of 3,243 acre-feet.

Conclusion

Staff can recommend granting of this application authorizing the impoundment of state water in 27 of the 32 pre-existing reservoirs with a combine capacity of 3,515.4 acre-feet for in place recreational, domestic and livestock, and wildlife use. Because of the potential to affect downstream senior water rights, staff recommends that the request to impound water in reservoirs A3P2, A3P3, A2P1, A2P2 and A3P1 should be denied. The permit needs to contain the following special conditions:

1. The dams should have a means to release or pass all inflows of State water that permittee is not authorized to store.

Stephen Densmore

Table 1.

Group No	Reservoirs	Sum Capacity Acre-feet	Sum Drainage Sq. miles	100% Full Mo.	75% Full	Average Evap. Acre-feet/yr	Max Evap Acre-feet/yr
1	5A,6A,7A,B2P1, B2P2,B2P6, B2P7, HR6	1693	2.6125	40%	92%	381.4	662.7
2	9A,10A,12A,13A, B1P3, B1P2	1141.2	1.283	21%	68%	235.6	436.6
3	G1P1,G1P2,G1P3, G1P4, G1P5	212.6	1.178	33%	68%	60.5	108.7
4	B1P4, HR7, Heifer	38	0.652	80%	98%	17.7	31.3
5	A3P2, A3P3	1879.4	0.63	2%	14%	243	480.6
6	A2P1,A2P2	1519	0.439	0.1%	4%	57.3	356.6
7	A3P1	1574	0.7375	0.9%	9%	143.3	404.9
8	1	82	0.1475	22%	56%	24.9	44.7
9	A1P2	316	0.514	24%	66%	80.2	149.7
10	HR2	16	0.3109	38%	64%	6.9	12.4
11	HR5	16.6	0.033	21%	47%	6.1	12.0

HYDROLOGY UNIT ANALYSIS FACT SHEET

Applicants:	TMPA
Water Right:	WRPERM 5858
Stream:	Unnamed Tributaries
Basin:	Brazos River Basin
County:	Grimes County
Request Amount:	8,487.4 acre-feet of storage for in place recreational, domestic and livestock, wildlife use.

Input :

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**App 5858 TXU

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FD585830 BRHE68   0 BRBR59 YCSO62 DCLY63 NABR67
FD585831 BRHE68   0 BRBR59 YCSO62 DCLY63 NABR67
FD585832 BRHE68   0 BRBR59 YCSO62 DCLY63 NABR67
FD585833 BRHE68   0 BRBR59 YCSO62 DCLY63 NABR67
FD585834 BRHE68   0 BRBR59 YCSO62 DCLY63 NABR67
FD585835 BRHE68   0 BRBR59 YCSO62 DCLY63 NABR67
FD585836 BRHE68   0 BRBR59 YCSO62 DCLY63 NABR67
FD585837 BRHE68   0 BRBR59 YCSO62 DCLY63 NABR67
FD585838 BRHE68   0 BRBR59 YCSO62 DCLY63 NABR67
FD585839 BRHE68   0 BRBR59 YCSO62 DCLY63 NABR67
FD58583A BRHE68   0 BRBR59 YCSO62 DCLY63 NABR67
WP585830  1.178
WP585831  .1475
WP585832  2.6125
WP585833  .7375
WP585834  .63
WP585835  .033
WP585836  .3109
WP585837  .439
WP585838  .514
WP585839  1.283
WP58583A  .646
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*CPID D/S CPDT(1) CPDT(2) INMETHOD CPIN EWA CL INWS

** App 5858 TMPA 10/21/04 SD

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CP585839 557011 6 375931 0.0000

CP58583A 024604 6 375931 0.0000

** CPID AMT USE PRIORITY RETURN_PARAMS WRID WRID2 OWNER STREAM RIVER_ORDER_NUMBER CPID TERM SUBAREA

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9

**APP 5858

WR585830 000. IND340041021 1 0 0.0000 A585800 A5858 TEXAS MUNICIPAL POWER AGENCY UNNAMED TRIB

WSR58580 212.5 0.5228 0.8206 0 0

WR58583I 000. IND340041021 1 0 0.0000 A585801 A5858 TEXAS MUNICIPAL POWER AGENCY UNNAMED TRIB
WSR58581 82. 0.5228 0.8206 0 0

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WR585837 000. IND340041021 1 0 0.0000 A585807 A5858 TEXAS MUNICIPAL POWER AGENCY UNNAMED TRIB
WSR58587 1519. 0.5228 0.8206 0 0

WR585838 000. IND340041021 1 0 0.0000 A585808 A5858 TEXAS MUNICIPAL POWER AGENCY UNNAMED TRIB
WSR58588 316.0 0.5228 0.8206 0 0

WR585839 000. IND340041021 1 0 0.0000 A585809 A5858 TEXAS MUNICIPAL POWER AGENCY UNNAMED TRIB

WSR58589 1141.2 0.5228 0.8206 0 0

WR58583A 000. IND340041021 1 0 0.0000 A585810 A5858 TEXAS MUNICIPAL POWER AGENCY UNNAMED TRIB
WSR5858A 38.0 0.5228 0.8206 0 0

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Iliana Delgado, Project Manager
Water Rights Permitting Team
Water Rights Permitting and
Availability Section

Date: April 25, 2005

Thru: CL 4/25/05 Chris Loft, Aquatic Scientist
Resource Protection Team
Water Rights Permitting and Availability Section

Bill Billingsley, Team Leader BB 4/25/05
Resource Protection Team
Water Rights Permitting and Availability Section

From: Adam Cohen, Aquatic Scientist
Resource Protection Team
Water Rights Permitting and Availability Section

Subject: Texas Municipal Power Agency
WR PERM 5858
CN600127567
Water Right Application No. 5858
Navasota River Watershed, Brazos River Basin
Grimes County

Environmental reviews of water right applications are conducted in accordance with §11.147, §11.1491, §11.150, and §11.152 of the Texas Water Code and with TCEQ administrative rules which include 30 TAC §297.53 through §297.56. These statutes and rules require the TCEQ to consider the possible impacts of the granting of a water right on the fish and wildlife habitat, water quality, and the instream uses associated with the affected body of water. In addition, possible impacts to bays and estuaries are addressed.

APPLICATION SUMMARY

Applicant seeks a permit to maintain 31 existing on-channel reservoirs on multiple watercourses in the Brazos River Basin, Grimes County and impound therein a combined amount of 8,487.8 acre-feet of water for in-place recreational, domestic, livestock, parks and wildlife, and game preserve purposes. The reservoirs are located on the Gibbons Creek Lignite Mine and most are the result of cessation of mining activity which left deep pits. However, other reservoirs were constructed for sedimentation control. The reservoir' capacities vary in size from 0.2 acre-foot to 1,862 acre-feet. No diversions are requested.

INSTREAM USES

Aquatic and Riparian Habitats

The applicant's project site is located in the Navasota River watershed and includes reservoirs on various streams including Big Branch Creek, Dry Creek, Heifer Creek, and Dinner Creek. The Navasota River confluences with the Brazos River approximately 26 miles after flowing past the applicant's mining site. These reservoirs were constructed between 1981 and 2001, and range in size from 0.7 acre to 59.9 acres (Table 1).

Table 1. Reservoir summary data compiled from data provided by the applicant.

pond name	year of const	drain area (acr)	volume (acr-ft)	surf area (acr)	watercourse
1	1981	94.4	82	16.8	Big Branch Creek
5A	1981	490	343	69.4	Dry Creek
6A	1983	472	391	73.6	unnamed tributary of Gibbons Creek
7A	1982	1200	862	79.7	Dry Creek
9A	1982	181	150	21.8	unnamed tributary of Navasota River
10A/10B	1983	667	954	108	unnamed tributary of Navasota River
12A	1982	17	18.2	3.2	unnamed tributary of Navasota River
13A	1982	17.6	16.2	2.8	unnamed tributary of Navasota River
Heifer Creek Pond	1981	167	18.8	7	Heifer Creek
HR-2	1981	199	16	3.4	unnamed tributary of Gibbons Creek
HR-5	1981	21	16.6	1.6	unnamed tributary of Rock Lake Creek
HR-6	1981	7.6	8.2	1.4	Dry Creek
HR-7	1981	194	12.4	2	Heifer Creek
A1P-2	1994	329	316	20.3	unnamed tributary of Heifer Creek
B1P-2	1991	56	1.6	0.4	unnamed tributary of Navasota River
B1P-3	1991	72	1.2	0.5	unnamed tributary of Navasota River
B1P-4	1987	56	6.8	1.9	unnamed tributary of Heifer Creek
B2P-1	1984	57.8	29.8	5.4	Dry Creek
B2P-2	1987	72	38.7	10.6	unnamed tributary of Rock Lake Creek
B2P-6	1987	24	20.1	5.2	unnamed tributary of Gibbons Creek
B2P-7	1985	91	0.2	0.7	unnamed tributary of Gibbons Creek
G1P-1	1989	18.6	3.4	1.1	Dinner Creek
G1P-2	1990	27	25.3	3.9	Heifer Creek
G1P-3	1991	63	9.2	3.4	unnamed tributary of Dinner Creek
G1P-4	1994	210	70.7	8.9	unnamed tributary of Dinner Creek
G1P-5	1994	436	104	10.3	unnamed tributary of Dinner Creek
A2P-1	2001	NA	436	22.3	unnamed tributary of Gibbons Creek
A2P-2	2001	281	1083	47.5	unnamed tributary of Gibbons Creek
A3P-1	2000	472	1574	53.8	unnamed tributary of Gibbons Creek
A3P-2	2000	368	1862	59.9	unnamed tributary of Gibbons Creek
A3P-3	1994	36	17.4	4.3	unnamed tributary of Gibbons Creek

Based on USGS topographical maps covering the project area, photorevised in 1980 and 1989, these streams are intermittent. However, it should be noted that since the revision of these maps, the topography of the land has been altered significantly by mining activities and could potentially alter natural flow regimes historically associated with these creeks. The applicant indicates that land in the vicinity of these ponds will continue to be used for mining purposes until mining is completed pursuant to a permit issued by the Railroad Commission of Texas. According to the applicant, it has been proposed that some of this land be eventually used as a regional park for the citizens of Grimes County

after mining has ceased.

According to the Texas Parks and Wildlife Department (TPWD) publication, *An Analysis of Texas Waterways*, the Navasota River is a natural, free-flowing, narrow stream enclosed by dense hardwood forests of oak, hickory, elm, pecan, sweetgum, and redbud. Photos of the applicant's project area, submitted by the applicant, show the ponds to have mostly grass-lined banks, but many are lined with patches of dense shrubby vegetation as well. Some ponds have large areas of shallow marshy habitat while others have steep banks and offer little shallow-water habitat. A letter from TPWD, dated October 22, 2004, makes no recommendations regarding this application.

Resource Protection Staff are of the opinion that maintenance of these existing reservoirs will have minimal impacts on aquatic and riparian habitats as they currently exist. However, to promote a healthy aquatic and riparian ecosystem, staff recommend that the applicant maintain a 50 foot-wide vegetated area around the perimeter of each reservoir, with the exception of reasonable access points.

Water Quality

The nearest downstream segment to the applicant's site that has been studied for water quality is the Navasota River below Lake Limestone which has been designated as segment number 1209 in the *State of Texas Water Quality Inventory, 305(b)/303(d) Report*. Based on data collected during the assessment period for the 2002 305(b)/303(d) Report, aquatic life, public water supply, and general uses are fully supported. The fish consumption use was not assessed. Contact recreation use is not supported in some parts of this reach due to elevated bacteria concentrations. For this reason segment number 1209 has been placed on the 303 (d) list of impaired waters. Resource Protection Staff are of the opinion that the maintenance of a riparian vegetated zone as described above will also serve to protect water quality in the reservoirs and downstream.

Recreational Uses

According to *An Analysis of Texas Waterways*, the Navasota River below Lake Mexia and Lake Limestone has insufficient flows to support extensive recreational use except during periods of consistent rainy weather. As the river nears the Brazos River, it maintains a better flow, and recreational usage is more feasible. Recreational use of the streams in the project area is limited due to their intermittent nature, however these reservoirs may eventually increase recreational opportunities by the eventual construction of a recreational park in the area around the reservoirs. Resource Protection Staff are of the opinion that these reservoirs will have minimal negative impacts on recreation in the vicinity and downstream of the project site and have no recommendations regarding recreational uses.

Bays and Estuaries

Freshwater inflows are critical for maintaining the historical productivity of bays and estuaries along the Gulf Coast. The proposed project is located more than 200 river miles of the Gulf of Mexico. As an individual event, the proposed impoundments should have minimal impact on the Brazos

River Estuary. However, the cumulative effects of all diversions and impoundments in the Brazos River Basin upon the receiving estuaries are unknown at this time. A freshwater inflow study for the Brazos River Estuary is scheduled for completion by August 31, 2006.

SUMMARY AND CONCLUSIONS

Applicant seeks a permit to maintain 31 existing on-channel reservoirs on multiple watercourses in the Brazos River Basin, Grimes County and impound therein a combined amount of 8,487.8 acre-feet of water for in-place recreational, domestic, livestock, parks and wildlife, and game preserve purposes. The reservoirs vary in size from 0.2 acre-foot to 1,862 acre-feet.

Instream Uses staff recommend that the following special conditions be included in the permit if granted:

1.Permittee shall maintain a riparian buffer zone of at least 50 feet around the reservoirs with the exception of reasonable access points.

2.Permittee shall continue to follow and implement the mining operation and reclamation plans for the Gibbons Creek Lignite Mine Area as approved by the Railroad Commission of Texas in order to minimize disturbance and adverse impacts on the environment.

This instream assessment was conducted using current TCEQ operating procedures and policies and available data and information. The recommendations in this environmental analysis are intended for the protection of instream uses and do not necessarily provide protection to downstream senior water rights. Authorizations granted to the permittee by the water rights permit shall comply with all rules of the Texas Commission on Environmental Quality, and other applicable State and Federal authorizations.

LITERATURE CITED

TCEQ. 2002. State of Texas 20002 Clean Water Act Section 303(d) List and Schedule for Development of Total Maximum Daily Loads. Texas Commission on Environmental Quality. Austin, Texas.

TCEQ. 2002. State of Texas Water Quality Inventory. Pub. No. SFR-50. Texas Commission on Environmental Quality. Austin, Texas.

TPWD. 1979. An Analysis of Texas Waterways. Texas Parks and Wildlife Department. Austin, Texas.

4/25/2005

Adam Cohen
Resource Protection Team

cc: Stephen Densmore, Surface Water Availability and Interstate Compacts Team, TCEQ

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Iliana Delgado, Project Manager
Water Rights Permitting Team
Water Supply Division

Date: August 26, 2004

Thru: Scott Swanson, Water Conservation Specialist
Resource Protection Team
Water Supply Division

ESS 8/26/04

From: Dean Minchillo, Water Conservation Specialist
Resource Protection Team
Water Supply Division

DM 8/26/04

Subject: Texas Municipal Power Agency
WRPERM5858
CN600127567
Review for Consistency with State and Regional Water Plans

Applicant Seeks a permit to maintain multiple existing on-channel reservoirs on multiple watercourses in the Brazos River Basin, in Grimes County, and impound therein a combined amount of 8,529.50 acre-feet of water for in-place recreation, domestic and livestock, parks and wildlife, and game preserve purposes.

A water conservation and drought contingency plan is required to be submitted with an application for the consumptive use of state water per 30 TAC Chapter 295.9(3). However, there is no consumptive use associated with this requested appropriation. The water conservation and drought contingency plan requirement is therefore not applicable with this application. This is consistent with historical reviews for non-consumptive uses of state water.

The requested 8,529.50 acre-feet of water, for non-consumptive use, is not inconsistent with the approved 2002 State Water Plan and the January 2001 Region "G" Water Plan.

No further review is required by the Water Conservation Staff of the Resource Protection Team.

cc: Bill Billingsley, Resource Protection Team