

Maverick County Environmental and Public Health Association

P.O. Box 951
Eagle Pass, TX 78853
June 7, 2022

-WQ
121913

Laurie Gharis, Chief Clerk
TCEQ, MC 105
P.O. Box 13087
Austin, TX 78711-3087

REVIEWED

JUN 14 2022

By GCW

H
RFR

CHIEF CLERK'S OFFICE

2022 JUN 14 PM 2:39

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

RE: Dos Republicas Coal Partnership's Renewal of TPDES Permit No. WQ0003511000
Eagle Pass Mine, 607 County Road 305, Eagle Pass, TX
**Request for Contested Case Hearing and Request for Reconsideration of the
Executive Director's Decision by Maverick County Environmental and
Public Health Association; Gabriel De La Cerda; Dulce Esqueda;
Mike Hernandez; and Walter Herring.**

Dear Ms. Gharis:

In the matter of the proposed renewal of TPDES Permit No. WQ0003511000 ("Permit") filed by Dos Republicas Coal Partnership (DRCP), please accept these requests for a contested case hearing and requests for reconsideration of the Executive Director's decision on behalf of the Maverick County Environmental and Public Health Association (MCEPHA); Gabriel De La Cerda; Dulce Esqueda; Mike Hernandez; and Walter Herring (collectively "Protestants"). Each of the Protestants requesting a hearing have an independent personal interest related to the permit renewal and are therefore "affected persons." Additionally, all these Protestants state that "We request a contested case hearing."

Affected Person Determination.

1. The MCEPHA is an Affected Person. The MCEPHA is a Domestic Nonprofit Corporation created in the State of Texas and registered with the Texas Secretary of State on April 27, 2011. The MCEPHA requests a contested case hearing and reconsideration of the Executive Director's decision. George Baxter is President of MCEPHA and will serve as point of contact for all Protestants for this proceeding. Correspondence to the MCEPHA can be sent to P.O. Box 951, Eagle Pass, TX 78853; daytime telephone number is (830) 773-6480. The MCEPHA was formed to protect the public health of the residents of Maverick County and to protect the air and water quality within the county. A principal focus of the MCEPHA has been on protecting the health of the residents who live or own property adjacent to or near the DRCP open pit coal mine and on preventing the contamination of their air and water by mine operations. The MCEPHA received 6,532 signed letters from the citizens of Maverick County expressing opposition to the mine. Among MCEPHA's current membership are Gabriel De La Cerda, Dulce Esqueda, Mike Hernandez and Walter Herring. Each of these MCEPHA members own property that borders on Elm Creek or Hediondo Creek that is less than one mile from the nearest outfall. These MCEPHA members rely on Elm Creek for recreational purposes and on Hediondo Creek for raising livestock. As outlined below, each of these MCEPHA members are affected persons and

have standing in their own right to request a contested case hearing. The wastewater discharge that will be authorized by this permit presents a threat to their continued use of Elm and Hediondo Creeks for livestock or recreational purposes.

2. Gabriel De La Cerda is an Affected Person. Mr. De La Cerda requests a contested case hearing and reconsideration of the Executive Director's decision. Mr. De La Cerda's address is 307 CR 307, Eagle Pass, TX 78852; his daytime phone number is (830) 968-5107. He is a member of the MCEPHA. He and his family reside on property that he owns bordering Elm Creek. This property is identified as Property No. 33 on the Affected Landowners Map included in the DRCP application for the 2016 TPDES Permit. His property is less than one mile downstream from the nearest DRCP Outfall (008) on Elm Creek. The De La Cerda family routinely use the portion of Elm Creek bordering his property for fishing and birding and observing other wildlife such as beavers, raccoons, ocelots, ducks and herons. Fish caught in Elm Creek include catfish, bass, carp and alligator gar; Mr. De La Cerda and family routinely consume the fish caught in Elm Creek. Consequently, DRCP's request for industrial wastewater discharge is directly tied to Mr. De La Cerda's health and safety, as well as his ability to use his property.

3. Dulce Esqueda is an Affected Person. Ms. Esqueda requests a contested case hearing and reconsideration of the Executive Director's decision. Ms. Esqueda's address is 391 CR 307, Eagle Pass, TX 78852; her daytime phone number is (830) 776-8668. She is a member of the MCEPHA. She and her family reside on property bordering Elm Creek that they own. This property is identified a Property No. 38 on the Affected Landowners Map included in the DRCP application for the 2016 TPDES Permit. Her property is less than one mile downstream from the nearest DRCP Outfall (008) on Elm Creek. The Esqueda family routinely use the part of Elm Creek bordering their property for fishing and observing wildlife; Ms. Esqueda and family routinely consume the fish caught in Elm Creek. Consequently, DRCP's request for industrial wastewater discharge is directly tied to Ms. Esqueda's health and safety as well as her ability to use her property.

4. Mike Hernandez is an Affected Person. Mr. Hernandez requests a contested case hearing and reconsideration of the Executive Director's decision. Mr. Hernandez' address is 2392 Hillcrest Boulevard, Eagle Pass, TX 78852; his daytime telephone number is (830) 499-4818. He is a member of the MCEPHA. He owns property directly adjacent to the DRCP mine boundary that also borders on Elm Creek. This property is identified a Property No. 6 on the Affected Landowners Map included in the DRCP application for the 2016 TPDES Permit. The "unnamed ditch" that serves as the route of discharge from Outfall 003 (SP-2) to Elm Creek runs directly alongside his property and the Outfall 003 discharge enters Elm Creek only about 20 feet upstream of his property. Mr. Hernandez raises livestock (horses, sheep and goats) on this property and maintains a stock pond for them on this property. Mr. Hernandez has concerns that a heavy discharge from Outfall 003 might flow onto his property and contaminate his stock pond. His livestock also drink from Elm Creek on occasion. In addition, Mr. Hernandez' family and friends routinely fish in the part of Elm Creek bordering his property and consume those fish. Therefore, DRCP's request for industrial wastewater discharge is directly tied to Mr. Hernandez' health and safety, the health and safety of his livestock and his ability to use his property.

5. Walter Herring is an Affected Person. Mr. Herring requests a contested case hearing and reconsideration of the Executive Director's decision. Mr. Herring's address is 3959 FM 1588, Eagle Pass, TX 78852; his daytime telephone number is (830) 513-1580. He is a member of the MCEPHA. He owns property directly adjacent to the DRCP mine boundary that also includes part of Hediondo Creek. This property is identified as Property No. 19 on the Affected Landowners Map included in the DRCP application for the 2016 TPDES Permit. The "unnamed tributary" to Hediondo Creek that serves as a discharge route from Outfall 015 (SP-4) runs directly through his property. Mr. Herring raises cattle on this property (about 60 to 100 head at any given time) and these cattle routinely drink the water in Hediondo Creek and in the "unnamed tributary" that serves as discharge route for Outfall 015. Mr. Herring also fishes in Elm Creek less than one mile downstream of Outfall 008 and consumes what he catches. Therefore, DRCP's request for industrial wastewater discharge is directly tied to Mr. Herring's health and safety, the health and safety of his cattle and his ability to use his property.

Issues of fact supporting requests for a contested case hearing and reconsideration of the Executive Director's decision regarding Renewal of TPDES Permit WQ0003511000 from all above Protestants.

On July 15, 2021, all the above-named Protestants submitted comments ("Comments") to TCEQ outlining the reasons why they opposed the renewal of DRCP's TPDES Permit. On May 10, 2022, the Executive Director's (ED) Response to Comments (RTC) was issued. All Protestants still stand by their 2021 Comments, believe them to still be valid and make the following responses to this RTC:

1. TPDES Permit WQ 000351100 is in litigation.

As outlined in their 2021 Comments, the above Protestants, Maverick County and others appealed the issuance of DRCP's TPDES Permit in 2016 to state district court in Travis County; since then, the case has moved to the Third Court of Appeals, and the Texas Supreme Court. In February 2022, the Supreme Court remanded the water quality issues in the appeal back to the Third Court of Appeals. As of the present time, this court has yet to rule on the appeal.

In the RTC it states "The matter before the courts is DRCP's 2013 application, whereas the matter currently before TCEQ is DRCP's 2020 application." This implies that there are two separate permits in play. In fact, there is only one: the 2016 permit being appealed is a renewal of the 2011 permit. The current draft permit states that "This renewal replaces TPDES Permit No. WQ0003511000 issued on September 20, 2016." Since each of these permits are renewals of the previous one, and since the current 2016 TPDES permit being appealed remains in effect until all litigation has been concluded, there is no need to issue a renewal at the present time.

The effort by DRCP to obtain a renewal can only be viewed as a move to short circuit the legal process and to avoid any effects of an adverse court ruling. TCEQ should not allow this to happen and should not renew TPDES Permit WQ0003511000 until after the Third Court of Appeals renders a judgment in this case.

2. Draft Permit is inconsistent with the permit approved by the Texas Railroad Commission (RRC).

In their 2021 Comments, Protestants described DRCP's application to the Railroad Commission to convert its mining permit to a reclamation only permit. This Revision 35 was approved on 6-8-2021. However, DRCP's application for its TPDES Permit renewal continues to list sedimentation ponds and outfalls which have never been and never will be constructed. These include SP-6 (Outfall 001), SP-7 (Outfall 006), SP-5 (Outfall 007), SP-8 (Outfall 016), SP-9 (Outfall 017), SP-10 (Outfall 018), SP-11 (Outfall 019) and SP-12 (Outfall 020). As outlined in DRCP Table 148-1 ("Sedimentation Ponds") attached as Exhibit 1 to these requests, part of Revision 40 (the most recent revision) and dated March 2022, the only ponds that will ever be in the mine permit area are those already in existence: SP-1, SP-2, SP-3, SP-3 South, and SP-4. RP-1, RP-2 and RP-3 also remain in existence and are discussed below.

The RTC only addresses those outfalls that pertain to the existing ponds and states that these "outfalls will remain in the discharge permit until reclamation activities at the mine in relation to these outfalls are complete." It then mentions Outfalls 004 (SP-1), 008 (SP-3) and 015 (SP-4) specifically as having been moved to reclamation phase.

However, the RTC completely fails to mention the outfalls for those sedimentation ponds which were never constructed and for which no need exists during reclamation. As listed above, these include outfalls 001, 006, 007, 016, 017, 018, 019 and 020. There is no explanation in the RTC as to why these non-existent outfalls for non-existent ponds should remain in the Permit renewal application and draft permit. No renewal of TPDES Permit WQ0003511000 should be approved until DRCP submits a new application, showing only those SP's and outfalls now in existence and eliminating those outlined above which will never be constructed.

3. SP-3 and SP-3 South have been in violation of existing TPDES Permit provisions.

The Protestants' 2021 Comments outlined a situation at the DRCP mine where the actual location of outfall 008 (SP-3) was some 2500 feet away from the location listed in Table 1 (Mining Impoundment Information) on page 17 of the Draft Permit and that there was not an outfall listed for SP-3 South or even a mention of the existence of the latter pond in the draft permit.

The RTC states that although SP-3's location was moved (apparently without TCEQ approval), it now discharges into the area drained by SP-3 South and that the outfall for SP-3 South is in essentially the same place as the outfall for SP-3 (008) was in the Draft Permit (Table 1).

What the RTC fails to address is that while the situation outlined in the above paragraph (SP-3 discharging into SP-3 South) is in effect currently, this was not always the case. As shown in DRCP Table 148-1 (Exhibit 1 to these requests), SP-3 construction was certified complete on 11-9-2016 and SP-3 South was not completed until 3-4-2019. This means that for a period of two and a half years, SP-3 did not drain into SP-3 South, but instead discharged through its spillway onto the ground at a location 2500 feet from its permitted outfall.

On page 17 of the Draft Permit issued by TCEQ on 6-3-2021, "Other Requirements," paragraph 4.c. states that "no final outfalls other than those listed in Table 1 ["Mining Impoundment Information" on page 17] above that are associated with the active mining and post-mining areas are authorized by this permit."

So, for the period of November 2016 to March 2019, DRCP was in violation of this rule without the approval or (apparently) the knowledge of TCEQ. This cannot be simple carelessness; it can only be attributed to an attitude apparently held by DRCP that they do not need to comply with TCEQ rules or even keep TCEQ informed of changes in their operations. Since DRCP demonstrated an unwillingness or inability to abide by TCEQ rules and regulations for more than two years, they should not be rewarded with a renewal of TPDES Permit WQ0003511000.

4. SP-2 (Outfall 003) does not conform to requirements of the TPDES Permit.

The Protestants' Comments pointed out that the way SP-2 is currently constructed, it can never discharge through its approved outfall (003). This is because a collection ditch (inlet channel) has been configured to be at a lower elevation than the pond spillway. So, when SP-2 fills up, it discharges through the collection ditch backwards onto the ground 2500 feet from the approved outfall and out onto the Woodson Access Road, potentially blocking the route to Mike Hernandez' property on the east side of the Union Pacific Railroad. An aerial photo was provided showing that this actually happened in October 2015 after a 10 inch rainfall.

The RTC states that "DRCP will only be authorized to discharge effluent from Pond SP-2 through Outfall 003" and that "any discharge from the pond other than through the outfall in compliance with those effluent requirements would violate Permit Condition No. 2g and require DRCP to report the violation to TCEQ within 24 hours" or "as promptly as possible". The RTC goes on to say that unauthorized discharges can be reported to TCEQ.

First, the Protestants did report the 2015 violation in their July 2021 Comments with photographic evidence; Protestants are unaware of any corrective action taken. Second, did DRCP report their unauthorized discharge in 2015 within 24 hours or as promptly as possible? Protestants are unaware of any such report. If DRCP failed to do this, it is another example of their unwillingness to follow TCEQ regulations.

The main point, however, is that because of the way SP-2 is constructed, it remains systemically unable to discharge "naturally" through outfall 003. Any time a rainfall event greater than that which the pond is designed to retain (6 inches in 24 hours – a rate that was exceeded at the DRCP mine in June 2013, June 2014 and October 2015) occurs, the pond will discharge through its collection ditch as happened in 2015. Merely stating that if it happens again, it can be reported to TCEQ is akin to trying to report an electrical problem in a commercial building to Code Enforcement and being told not to worry because if it causes a fire you can always call the Fire Department.

Instead, TCEQ should require DRCP to fix the problem outlined above so as to prevent these unauthorized discharges (and violations of Permit Conditions) from happening. TCEQ should not renew TPDES Permit WQ0003511000 until DRCP resolves this situation.

5. DRCP has demonstrated such a level of malfeasance and willful failure to abide by TCEQ and RRC regulations in their past operations under existing permits that the TPDES Permit should not be renewed.

In July 2021, the Protestants' Comments outlined two major instances of malfeasance by DRCP in their operation of the Eagle Pass Mine. The first was contamination of canal Lateral 20 which supplies domestic water to several residents near the mine, including Gabriel De La Cerda, Dulce Esqueda and Walter Herring. Starting in July 2018 and continuing for many months, DRCP negligently allowed large quantities of dust to escape the mine permit area and fall into Lateral 20, seriously contaminating it and endangering the health of these residents. In addition, DRCP failed to effectively implement the air monitoring program required by Railroad Commission Regulations. During 2017 and 2018, some 36% of samples taken were "invalid" due to battery failure. In 6 of those 24 months, 50% of the samples were invalid for the same reason.

The RTC states that the Lateral 20 contamination issue has been resolved through an agreed order and that DRCP has a "satisfactory" rating and that the Eagle Pass Mine has a "high" rating. The air monitoring situation was not addressed in the RTC.

It is difficult to understand how an entity like the Eagle Pass Mine could have a high rating, given the repeated instances of sub-standard performance and lack of adherence to TCEQ and Railroad Commission rules as outlined above (SP-3, SP-2, Lateral 20 contamination, faulty air monitoring program). All of these combined indicate that DRCP has operated in a sloppy and cavalier manner over the past several years. TCEQ should carefully consider whether an organization as negligent as DRCP can be trusted to execute the TPDES permit in accordance with all requirements and regulations.

6. The Antidegradation Review is Inadequate.

The Protestants reiterate that the antidegradation review performed for the issuance of the 2016 TPDES Permit mischaracterized aquatic life uses in several of the receiving water bodies. That review disregarded uses and habitat during wet weather conditions, but the mine's sedimentation pond discharges should only occur after significant rainfall events. The TPDES Permit should not be renewed until these deficiencies are corrected.

7. New Ownership of RP-1, RP-2 and RP-3.

Subsequent to the deadline for public comments in July 2021, DRCP sold some 2156 acres of land that it owned to an entity known as Farming Hydrasource, LLC with an address of 338 Willory Farm Road, Quemado, TX 78877. This sale was executed on September 29, 2021 and made effective on October 1, 2021. A Railroad Commission inspection report from 10-19-2021 (excerpts attached as Exhibit 2) indicates that approximately 338 acres of this purchase lie inside the Eagle Pass Mine permit boundary and include the rail loop, coal loading facility and office buildings. DRCP Exhibit 117-1, Property Map, part of their Revision 40 (3-10-2022) (attached as Exhibit 3) shows the Farming Hydrasource property as Tract 27. This Tract includes RP-1, RP-2 (outfall 21) and RP-3 (outfall 22).

A Railroad Commission inspection report from 4-26-2022 (excerpts attached as Exhibit 4) states that in the B Mining Area, “Cleanout/maintenance operations were underway at Pond RP-2 during the inspection with operations performed by the new landowner.” The caption of Photo 4 from that report reads “Pond RP-2 clean-out/maintenance operations by new landowner.”


DRCP’s First Quarter Pond Discharge Report, dated 4-28-2022 (excerpts attached as Exhibit 5) states on the page for pond RP-2 that “Activity from Farming Hydrasource has begun with dewatering and sediment removal. DRCP or Berk Staff does not have control over the current activities with this structure.”

All these reports confirm that Farming Hydrasource is the current owner of RPs-1, 2 and 3 and that DRCP no longer is responsible for the maintenance of these structures. This being the case, TCEQ cannot issue a TPDES permit to DRCP that includes these 3 RPs with their outfalls. A separate TPDES for RP-1, 2 and 3 and outfalls 21 and 22 will have to be applied for by Farming Hydrasource.

8. Public Interest.

It is in the Public Interest that TCEQ hold a contested case hearing concerning the renewal of TPDES Permit No. WQ0003511000. First, since 2011, the elected public officials representing the people of both Eagle Pass and Maverick County have consistently opposed the issuance of any permits by TCEQ or the RRC for the DRCP mine. Over 6500 citizens of Maverick County signed petition letters opposing the operation of the mine (more than vote in many midterm elections here). Second, as outlined previously, DRCP has a demonstrated history of noncompliance with TCEQ environmental regulations. Consequently, additional terms need to be included in any permit renewal that will track DRCP’s compliance and enable regulators to confirm if DRCP is abiding with all environmental safety requirements in the future.

Respectfully submitted,



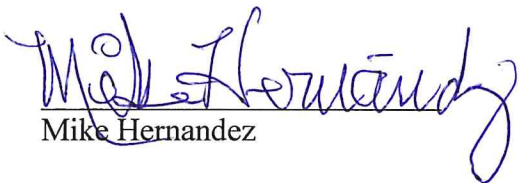
George Baxter
President, Maverick County
Environmental & Public Health
Association



Gabriel De La Cerda



Dulce Esqueda



Mike Hernandez



Walter Herring

TABLE 148-1

**SEDIMENTATION POND STORAGE DATA
AND
CONSTRUCTION AND RECLAMATION SCHEDULE**

<u>Sedimentation Pond Number</u>	<u>Sediment Storage (ac-ft)</u>	<u>Runoff Storage (ac-ft)</u>	<u>Total Storage (ac-ft)</u>	<u>Year Constructed</u>	<u>Construction Certification</u>	<u>*Projected Year Reclaimed/Submit</u>
SP-1	21.3	233.1	254.4	2017	04/20/17	2027
SP-2	20.2	246.7	266.7	2014	03/31/15	2024
SP-3	95.0	38.6	133.6	2016	11/9/2016	2026
SP-3 South	12.7	48.9	61.6	2018	3/4/2019	2027
SP-4	23.2	44.6	67.8	2018	9/14/2018	2027

Note: *Denotes year for pond to be either reclaimed or submitted as a permanent pond



Sealed on March 7, 2022
ENGINEERING RESOURCES LLC
TBPELS Firm No. F-12403

WAYNE CHRISTIAN, *CHAIRMAN*
CHRISTI CRADDICK, *COMMISSIONER*
JIM WRIGHT, *COMMISSIONER*



BRENT A. ELLIOTT, PH.D., P.G., *DIRECTOR*

RAILROAD COMMISSION OF TEXAS

SURFACE MINING AND RECLAMATION DIVISION

November 19, 2021

Sent by Email

Ms. Lisa Kost, Tech Specialist
Jackson Walker, LLP
100 Congress Avenue, Suite 1100
Austin, Texas 78701

RE: Dos Repúblicas Coal Partnership
Eagle Pass Mine, Permit No. 42B
Partial Inspection

Dear Ms. Kost:

Enclosed is a copy of the report for the inspection completed on October 19, 2021, at the Eagle Pass Mine.

If you have any questions concerning this report, please contact me at 512.305.8848.

Sincerely,

A handwritten signature in cursive script that reads "Jason Corley".

Jason Corley, Manager
Inspection and Enforcement

JC

Enclosure

pdfc: Randall Greene, OSMRE – Tulsa Field Office
Robin Lynch, OSMRE – Tulsa Field Office
Gelareh Smith, OSMRE – Tulsa Field Office

Inspectable Unit Name: Eagle Pass Mine
Permit Number: 42B
Inspection Date: October 19, 2021

IV. Comments – Compliance Narrative

(For Complete Inspections, this section should include a review of the most current effluent monitoring reports, MSHA records, pond discharges/inspections, blasting records, bonding, permit revisions and/or plans maintained on site)

In this section:

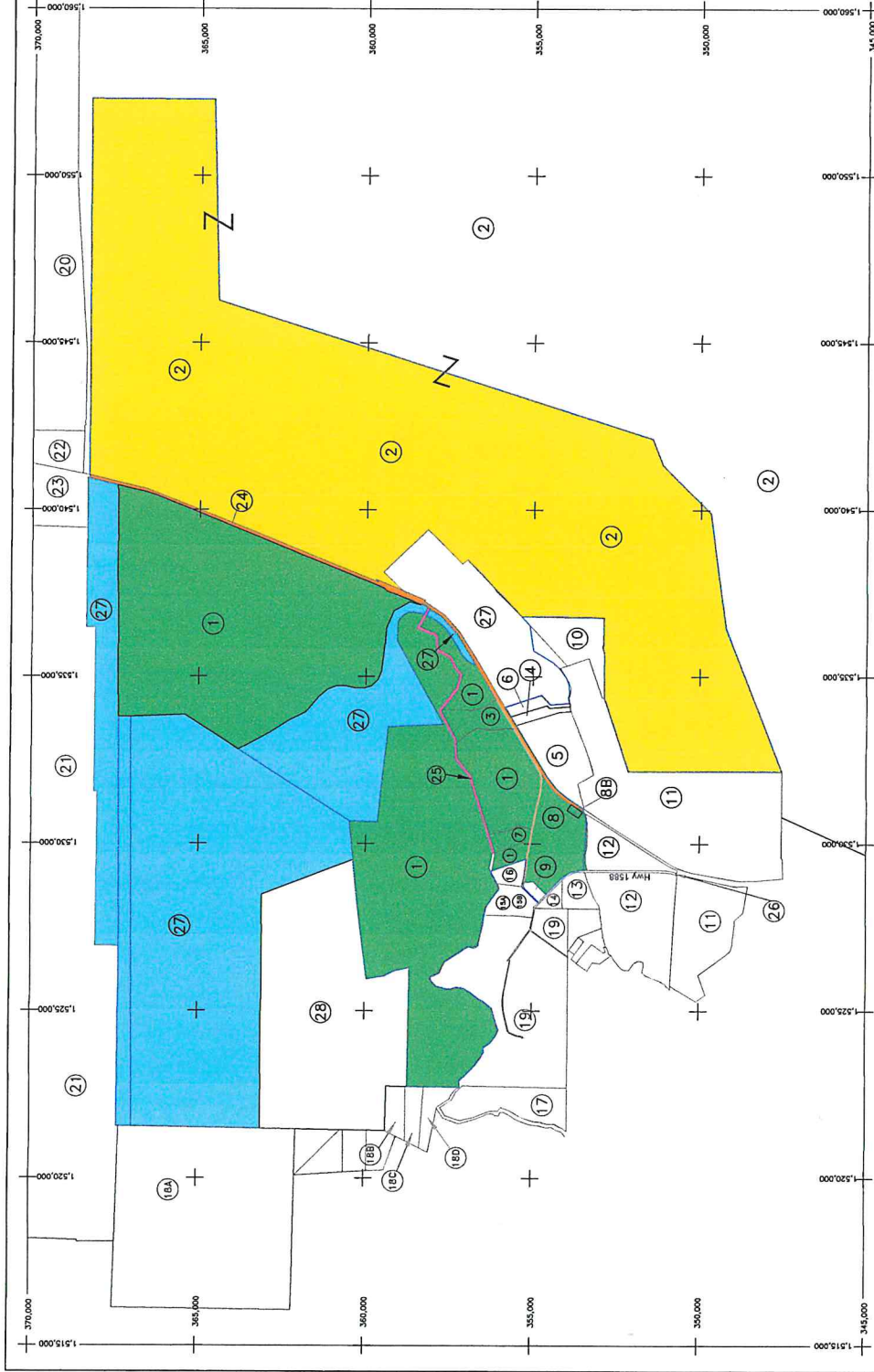
- Document the area of the permit inspected (pit designations or mine blocks)
- Document the mine equipment in use during the inspection
- Discuss observations made during the inspection (such as current activities, pond discharges, construction or drilling activities, etc.)
- Document the results of any field tests taken
- Document all approved rough backfilling/grading variances, including expiration dates
- Document any temporary cessations-of-operations
- Provide a summary of any discussions with industry representatives, along with results, and expectations from those discussions
- Describe any enforcement action taken during the inspection, along with facts or evidence supporting the enforcement action
- Document a detailed description of any off-site impact observed during the inspection

Most portions of the Eagle Pass Mine, Permit No. 42B, were observed during this **Partial Inspection**. DRCP representatives Rey Muñoz and Dario Berchelmann accompanied me during this inspection. Soil moisture conditions were dry, allowing access to all areas observed. At the close of inspection, the year-to-date total rainfall for the permitted area was 12.69 inches. In June 2020, the Eagle Pass Mine ceased all mining activities and is now a reclamation only permit, approved by letter dated June 1, 2021.

Refugio Chapa, Engineering Specialist with the Surface Mining and Reclamation Division requested that I inspect the proposed bond map changes in Revision No. 39 during my visit to Eagle Pass to confirm that the acreage DRCP is proposing to go from drilling to non-disturbance on 3,174.6 acres and from mined to disturbed on 18.9 acres in the bond map accurately depicts what is out in the field. After inspecting the areas of concern, I have confirmed that the acreage they are proposing to go from drilling to non-disturbance and from mined to disturbed in the bond map accurately depicts what is out in the field.

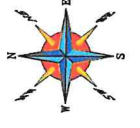
Property within the permit boundary has been purchased by a company called Farming Hydrasource. Approximately 338-acres which includes the coal loading facilities, the rail loop, the office and equipment buildings and most of the idle equipment are included in the purchase. The company purchased approximately 257-acres of undisturbed property along the rail loop within the permit boundary and has also purchased a large tract adjacent to the permit boundary across from the facilities area. A laydown yard is under construction for the equipment (Photos 1&2). It is presumed that they are applying for a TCEQ Permit to potentially quarry aggregate.

Farming Hydrasource has two dozers and a track hoe staged to assist in loading coal from stockpile onto the waiting train (Photo 3). At this time no activity has occurred involving removal of the coal stockpile by the loading the coal onto the waiting train.



TRACT NO.	SURFACE OWNERS
1	DOS REPUBLICAS COAL PARTNERSHIP
2	ROCKO JOSE PARR, LLC, et al. ETHEL W. PARR
3	DOS REPUBLICAS COAL PARTNERSHIP
4	ENRIQUE C. BARRA
5	RAMALDA N. ABUSGAL
6	MIKE P. HERNANDEZ AND ANTONETTA L. HERNANDEZ
7	DOS REPUBLICAS COAL PARTNERSHIP
8	DOS REPUBLICAS COAL PARTNERSHIP
8B	DOS REPUBLICAS COAL PARTNERSHIP
9	CANTU RODRIGUEZ, JR. AND LAWES YINCOAS & DANIEL F. KINKAD
10	LAWES YINCOAS & DANIEL F. KINKAD
11	BOYD JONES & JAMES FAMILY, LTD. ALBERTO JONES, JR. AND RENEE M. JONES
12	DOS REPUBLICAS COAL PARTNERSHIP
13	JOSE ALFREDO JIMENEZ ETUX. JUAN YINCOAS AND MARTY LOUIZ BENJAMIN
14	DOS REPUBLICAS COAL PARTNERSHIP
15A	DOS REPUBLICAS COAL PARTNERSHIP
15B	DORA G. SALINAS, WALTER O. CARRICO, AND JUAN YINCOAS
16	DOS REPUBLICAS COAL PARTNERSHIP
17	JUAN P. & GERTRUDA H. SALINAS
18A	VENADO GRANDE RANCH LTD.
18B	MOSES CANTU JR. AND ANN I. CANTU
18C	JOSE SANTIAGO CUELLAR
19	WALTER HERRING AND LAOTE HERRING
20	PALOMA ICE, LLC
21	MAVERICK COUNTY LAND & CATTLE CO., LLC
22	PALOMA ICE, LLC
23	RANCHO DORADO, L.L.C.
24	UNION PACIFIC RAILROAD
25	MAVERICK COUNTY WCD #1
26	TEXAS DEPT. OF TRANSPORTATION PARKING INFRASTRUCTURE LLC
27	PARKING INFRASTRUCTURE LLC
28	TERRA SAGUADA LLC

- LEGEND**
- LOM Permit Boundary
 - Property Tract Boundary
 - Lease Property
 - DRCP Fee Property
 - Right of Entry/Contract Agreement
 - Right-of-Entry Agreement / Easement
 - Woodson Easement
 - Configuous Property



Drawn By: LIS Date: 2-11-18 Approved: LIS Date: 2-11-18 Scale: 1"=2000' Dwg. No.:	Drawn By: LIS Date: 2-11-18 Approved: LIS Date: 2-11-18 Scale: 1"=2000' Dwg. No.:
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Dos Republicas Coal Partnership
 Eagle Pass Mine
 Permit 438 - Revision 40
EXHIBIT 117-1
PROPERTY MAP

ALL COORDINATES ARE BASED ON TEXAS STATE PLANE SYSTEM, SOUTH CENTRAL ZONE, 1927 N.A.D.

WAYNE CHRISTIAN, *CHAIRMAN*
CHRISTI CRADDICK, *COMMISSIONER*
JIM WRIGHT, *COMMISSIONER*



BRENT A. ELLIOTT, Ph.D., P.G., *DIRECTOR*

RAILROAD COMMISSION OF TEXAS

SURFACE MINING AND RECLAMATION DIVISION

May 9, 2022

Sent by Email

Ms. Lisa Kost, Tech Specialist
Jackson Walker, LLP
100 Congress Avenue, Suite 1100
Austin, Texas 78701

RE: Dos Repúblicas Coal Partnership
Eagle Pass Mine, Permit No. 42B
Partial Inspection

Dear Ms. Kost:

Enclosed is a copy of the report for the special inspection completed on April 26, 2022, at the Eagle Pass Mine.

If you have any questions concerning this report, please contact me at 512.305.8848.

Sincerely,

A handwritten signature in black ink that reads "Jason Corley".

Jason Corley, Manager
Inspection and Enforcement

JC

Enclosure

pdfc: Randall Greene, OSMRE – Tulsa Field Office
Robin Lynch, OSMRE – Tulsa Field Office
Gelareh Smith, OSMRE – Tulsa Field Office

Inspectable Unit Name: Eagle Pass Mine
Permit Number: 42B
Inspection Date: April 26, 2022

IV. Comments – Compliance Narrative

(For Complete Inspections, this section should include a review of the most current effluent monitoring reports, MSHA records, pond discharges/inspections, blasting records, bonding, permit revisions and/or plans maintained on site)

In this section:

- Document the area of the permit inspected (pit designations or mine blocks)
- Document the mine equipment in use during the inspection
- Discuss observations made during the inspection (such as current activities, pond discharges, construction or drilling activities, etc.)
- Document the results of any field tests taken
- Document all approved rough backfilling/grading variances, including expiration dates
- Document any temporary cessations-of-operations
- Provide a summary of any discussions with industry representatives, along with results, and expectations from those discussions
- Describe any enforcement action taken during the inspection, along with facts or evidence supporting the enforcement action
- Document a detailed description of any off-site impact observed during the inspection

Most portions of the Eagle Pass Mine, Permit Number 42B, were observed during this **Partial Inspection**. DRCP representative Rey Munoz accompanied me during the inspection. Permit No. 42B consists of 6,347.6 acres. Soil moisture conditions were wet, limiting access to some areas of the inspectable unit. The site received just under one inch of rainfall the day prior to inspection. At the close of inspection, the year to date (YTD) total rainfall for the permitted area was 1.21 inches.

A-1 Area

The area disturbed for the bridge crossing to the east of the railroad tracks has been reclaimed, with planting operations complete. Silt fencing remains in place and will continue to be utilized until the area is fully vegetated.

B-Area

The old B-Area haulroad, as well as a good portion of the former B-Area Stockpile footprint has recently been planted with native grasses and Brown Millet (Photo 1). Mr. Munoz stated that as soon as ground conditions are conducive, planting of permanent grasses will resume.

The repaired slopes of the CD-2 Diversion were observed to be stable following the recent rainfall events (Photos 2 and 3). The water level in Pond SP-1 appears consistent with conditions observed during the March inspection. Cleanout/maintenance operations were underway at Pond RP-2 during the inspection, with operations performed by the new landowner (Photo 4).

C-1A Area

Lateral 20 has been re-established through the C1-A Area (Photo 5). According to Mr. Munoz, a couple of canal crossings and control gates are yet to be installed. Installation of the aforementioned items will occur once the water district gives the go-ahead. The recently constructed water transfer ditch Lateral 20C was observed to be stable at this time (Photo 6).

Pond SP-2 continues to maintain an adequate water level (Photo 7).

Inspectable Unit Name: Eagle Pass Mine
Permit Number: 42B
Inspection Date: April 26, 2022

V. Photographs



Photo 3. CD-2 Diversion entering Pond SP-1 (view to southwest).



Photo 4. Pond RP-2 clean-out/maintenance operations by new landowner (view to southeast).



DOS REPUBLICAS COAL PARTNERSHIP

EAGLE PASS MINE

April 28, 2022

Brent Elliott, Ph.D., P.G., Director
Surface Mining and Reclamation Division
Railroad Commission of Texas
William B. Travis State Office Building
1701 North Congress Avenue
P.O. Box 12967
Austin, Texas 78711-2967

Railroad Commission of Texas

Received

Apr 28, 2022

Surface Mining & Reclamation Division

RE: **Dos Republicas Coal Partnership
Eagle Pass Mine, Permit No. 42B,
2022 – First Quarter Pond Discharge Report**

Dear Dr. Elliott;

Please find attached DRCP's 2022 – First quarter pond discharge report. The table will reflect no discharges for RP-2, RP-3, SP-1, SP-2, SP-3, SP-3 South & SP-4. Also, attached are the first quarter pond inspection forms.

If you have any questions regarding this submittal, please feel free to contact me at 830-275-6061.

Sincerely,

Reynaldo G. Munoz
Environmental Specialist

Enclosures

Cc: Martin Ballesteros (via email)
Dario Berchelmann (via email)

Quarterly Pond Inspections

Quarter: 1ST QUARTER Date: 3/30/2022

Inspector: Rey Munoz Pond: RP-2

Spillway: N/A

Inlets: N/A

Slopes: Erosion found on eastern slope near coal sctockpile and on western slope

Vegetation: Good Condition

Other Comments: Activity from Farming Hydrasource has begun with dewatering and sediment
removal. DRCP or Berk Staff does not have control over the current activities
with this structure.

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Maverick County Environmental and Public Health Association

P.O. Box 951
Eagle Pass, TX 78853

July 15, 2021

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By GCW

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TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Office of the Chief Clerk
MC 105
TCEQ
P.O. Box 13087
Austin, TX 78711-3087

RE: Dos Republicas Coal Partnership's Renewal of TPDES Permit No. WQ0003511000;
Eagle Pass Mine, 607 County Road 305, Eagle Pass, TX
**Comments and Request for Contested Case Hearing by Maverick County
Environmental and Public Health Association; Gabriel De La Cerda;
Dulce Esqueda; Mike Hernandez; and Walter Herring.**

Dear Sir of Madam:

In the matter of the proposed renewal of TPDES Permit No. WQ0003511000 ("Permit") filed by Dos Republicas Coal Partnership (DRCP), please accept these comments and requests for a contested case hearing on behalf of the Maverick County Environmental and Public Health Association (MCEPHA); Gabriel De La Cerda; Dulce Esqueda; Mike Hernandez; and Walter Herring (collectively "Protestants"). Each of the Protestants requesting a hearing have an independent personal interest related to the permit renewal and are therefore "affected persons." Additionally, all these Protestants state that "We request a contested case hearing."

Affected Person Determination.

1. The MCEPHA is an Affected Person. The MCEPHA is a Domestic Nonprofit Corporation created in the State of Texas and registered with the Texas Secretary of State on April 27, 2011. The MCEPHA requests a contested case hearing. George Baxter is President of MCEPHA and will serve as point of contact for all Protestants for this proceeding. Correspondence to the MCEPHA can be sent to P.O. Box 951, Eagle Pass, TX 78853; daytime telephone number is (830) 773-6480. The MCEPHA was formed to protect the public health of the residents of Maverick County and to protect the air and water quality within the county. A principal focus of the MCEPHA has been on protecting the health of the residents who live or own property adjacent to or near the DRCP open pit coal mine and on preventing the contamination of their air and water by mine operations. The MCEPHA received 6,532 signed letters from the citizens of Maverick County expressing opposition to the mine. Among MCEPHA's current membership are Gabriel De La Cerda, Dulce Esqueda, Mike Hernandez and Walter Herring. Each of these MCEPHA members own property that borders on Elm Creek or Hediondo Creek that is less than one mile from the nearest outfall. These MCEPHA members rely on Elm Creek for recreational purposes and on Hediondo Creek for raising livestock. As outlined below, each of these MCEPHA members are affected persons and have standing in their own right to request a contested case hearing. The wastewater discharge that will be authorized by this permit presents

a threat to their continued use of Elm and Hediondo Creeks for livestock or recreational purposes.

2. Gabriel De La Cerda is an Affected Person. Mr. De La Cerda requests a contested case hearing. Mr. De La Cerda's address is 307 CR 307, Eagle Pass, TX 78852; his daytime phone number is (830) 968-5107. He is a member of the MCEPHA. He and his family reside on property that he owns bordering Elm Creek. This property is identified as Property No. 33 on the Affected Landowners Map included in the DRCP application for the 2016 TPDES Permit. His property is less than one mile downstream from the nearest DRCP Outfall (008) on Elm Creek. The De La Cerda family routinely use the portion of Elm Creek bordering his property for fishing and birding and observing other wildlife such as beavers, raccoons, ocelots, ducks and herons. Fish caught in Elm Creek include catfish, bass, carp and alligator gar; Mr. De La Cerda and family routinely consume the fish caught in Elm Creek. Consequently, DRCP's request for industrial wastewater discharge is directly tied to Mr. De La Cerda's health and safety, as well as his ability to use his property.

3. Dulce Esqueda is an Affected Person. Ms. Esqueda requests a contested case hearing. Ms. Esqueda's address is 391 CR 307, Eagle Pass, TX 78852; her daytime phone number is (830) 776-8668. She is a member of the MCEPHA. She and her family reside on property bordering Elm Creek. This property is identified a Property No. 38 on the Affected Landowners Map included in the DRCP application for the 2016 TPDES Permit. Her property is less than one mile downstream from the nearest DRCP Outfall (008) on Elm Creek. The Esqueda family routinely use the part of Elm Creek bordering their property for fishing and observing wildlife; Ms. Esqueda and family routinely consume the fish caught in Elm Creek. Consequently, DRCP's request for industrial wastewater discharge is directly tied to Ms. Esqueda's health and safety as well as her ability to use her property.

4. Mike Hernandez is an Affected Person. Mr. Hernandez requests a contested case hearing. Mr. Hernandez' address is 2392 Hillcrest Boulevard, Eagle Pass, TX 78852; his daytime telephone number is (830) 499-4818. He is a member of the MCEPHA. He owns property directly adjacent to the DRCP mine boundary that also borders on Elm Creek. This property is identified a Property No. 6 on the Affected Landowners Map included in the DRCP application for the 2016 TPDES Permit. The "unnamed ditch" that serves as the route of discharge from Outfall 003 (SP-2) to Elm Creek runs directly alongside his property and the Outfall 003 discharge enters Elm Creek only about 20 feet upstream of his property. Mr. Hernandez raises livestock (horses, sheep and goats) on this property and maintains a stock pond for them on this property. Mr. Hernandez has concerns that a heavy discharge from Outfall 003 might flow onto his property and contaminate his stock pond. His livestock also drink from Elm Creek on occasion. In addition, Mr. Hernandez' family and friends routinely fish in the part of Elm Creek bordering his property and consume those fish. Therefore, DRCP's request for industrial wastewater discharge is directly tied to Mr. Hernandez' health and safety, the health and safety of his livestock and his ability to use his property.

5. Walter Herring is an Affected Person. Mr. Herring requests a contested case hearing. Mr. Herring's address is 3959 FM 1588, Eagle Pass, TX 78852; his daytime telephone number is (830) 513-1580. He is a member of the MCEPHA. He owns property directly adjacent to the DRCP mine boundary that also includes part of Hediondo Creek. This property is identified as Property No. 19 on the Affected Landowners Map included in the DRCP application for the 2016 TPDES Permit. The "unnamed tributary" to Hediondo Creek that serves as a discharge route from Outfall 015 (SP-4) runs directly through his property. Mr. Herring raises cattle on this property (about 60 to 100 head at any given time) and these cattle routinely drink the water in Hediondo Creek and in the "unnamed tributary" that serves as discharge route for Outfall 015. Mr. Herring also fishes in Elm Creek less than one mile downstream of Outfall 008 and consumes what he catches. Therefore, DRCP's request for industrial wastewater discharge is directly tied to Mr. Herring's health and safety, the health and safety of his cattle and his ability to use his property.

Comments Regarding Renewal of TPDES Permit WQ0003511000 from all above Protestants.

1. TPDES Permit WQ 000351100 is in litigation.

Following the issuance of the current TPDES permit for the DRCP mine in September 2016, Maverick County, the City of Eagle Pass, the Environmental Defense Fund, the MCEPHA and several affected individuals, including Gabriel De La Cerda, Juan Esqueda, Mike Hernandez and Walter Herring, appealed to the district court in Travis County. On 10-23-2017, the court reversed TCEQ's final order and remanded the permit to TCEQ. DRCP then appealed this ruling to the Third Court of Appeals. On 11-15-2019, the Third Court of Appeals upheld the district court ruling reversing TCEQ's final order and remanded the permit to TCEQ. DRCP then appealed to the Texas Supreme Court. On 6-11-2021, the Supreme Court granted the petition for review; a hearing in this case is believed to be scheduled for September or October of 2021. TCEQ should not allow DRCP to short circuit the legal process by renewing the permit before the Supreme Court even hears the case and rules as to whether there is even a valid permit to renew. The legal process should be allowed to run its course, allowing justice to be done to all parties. TCEQ should not renew TPDES Permit WQ0003511000 until after the Texas Supreme Court renders a judgment in this case.

2. Draft Permit is inconsistent with the permit approved by the Texas Railroad Commission (RRC).

When DRCP filed its TPDES Permit Renewal Application with TCEQ on 2-24-2020, it more or less (with exceptions noted below) reflected the mining plan that had been approved by the Railroad Commission as part of Permit 42B. The mine at that time was in full operation and plans were underway to extend mining operation to the east side of the Union Pacific Railroad which bisects the mine permit area. There were several more sedimentation ponds (SP's) and outfalls planned to be constructed in this area. However, in June 2020, the *Comision Federal de Electricidad* in Mexico, DRCP's sole customer for its coal, unilaterally canceled all coal contracts. This led to the halt of all mining operations by July 2020 and caused DRCP to ask that

their application to renew their mining permit be withdrawn and that the permit be converted to a Reclamation Only permit. DRCP filed its request for a Reclamation Only Permit as Revision 35 to Permit 42B on 10-30-2020 and supplemented it twice on 2-25-2021 and 5-13-2021. The RRC approved this Revision on 6-8-2021 and dismissed DRCP's permit renewal application. The main effect of Revision 35 on sedimentation ponds and outfalls is that all future SP's planned in the area to the east of the Union Pacific Railroad were eliminated. These include SP-6 (Outfall 001), SP-7 (Outfall 006), SP-5 (Outfall 007), SP-8 (Outfall 016), SP-9 (Outfall 017), SP-10 (Outfall 018), SP-11 (Outfall 019) and SP-12 (Outfall 020). As outlined in DRCP Table 148-1 (attached as Exhibit 1 to these comments), part of Revision 35 and dated October 2020, the only ponds that will ever be in the mine permit area are those already in existence: SP-1, SP-2, SP-3, SP-3 South, SP-4, RP-1, RP-2 and RP-3. Despite the fact that DRCP knew in July 2020 that the Permit Renewal Application submitted to TCEQ was now in serious error and that by 10-30-2020 (prior to the Notice of Receipt of Application and Intent to Obtain Water Quality Permit Renewal issued by TCEQ on 11-24-2020) it had a detailed plan worked out as to its future operations, DRCP made no attempt to alter or amend its TPDES renewal to conform to current reality. No renewal of TPDES Permit 0003511000 should be approved until DRCP submits a new application, showing only those SP's and outfalls now in existence and eliminating those outlined above which will never be constructed.

3. SP-3 and SP-3 South are in violation of existing TPDES Permit provisions.

On page 17 of the Draft Permit issued by TCEQ on 6-3-2021, "Other Requirements," paragraph 4.c. states that "no final outfalls other than those listed in Table 1 ["Mining Impoundment Information" on page 17] above that are associated with the active mining and post-mining areas are authorized by this permit." Both SP-3 and SP-3 South are in violation of this rule. First, SP-3 (Outfall 008) is nowhere near the location depicted on the Deadman's Hill USGS map in the DRCP Permit Renewal Application. The location shown on this map for SP-3 is very close to Elm Creek; this location was shown in the original 2011 plans for the mine, but was soon changed after the mine went into operation. According to Table 148-1 (Exhibit 1 to these comments), SP-3 was completed on 11-9-2016 and is located on the north side of Lateral 20, some 2500 feet north of the location depicted in the DRCP TPDES application (see Exhibit 2 to these Comments, Google Earth map of DRCP Mine (Lateral 20 is mislabeled as Lateral 21 on this map). Table 1 lists Outfall 008 as being located at Latitude 28° 47' 54" and Longitude 100° 28' 03". Instead, the actual location of Outfall 008 is approximately Latitude 28° 48' 22" and Longitude 100° 27' 55". Despite being constructed more than three years before their TPDES Permit Renewal Application on 2-24-2020, DRCP failed to depict SP-3 in its correct location.

DRCP has been equally careless in regard to SP-3 South. Although it was completed on 3-4-2019, DRCP completely failed to mention it in their 2-24-2020 TPDES Permit Renewal application or depict it on their application map. Likewise, SP-3 South does not appear in Table 1 of the Draft TPDES Permit and it has not been assigned an Outfall number. The approximate location of SP-3 South's spillway is Latitude 28° 47' 55" and Longitude 100° 28' 00". So, SP-3 South has been in operation for over two years in violation of Other Requirements, paragraph 4.c. of the TPDES Permit cited above. No renewal of TPDES Permit WQ0003511000 should be approved until DRCP resolves these violations.

4. SP-2 (Outfall 003) does not conform to requirements of the TPDES Permit.

In DRCP's Revision 2 to their mining plan, filed with the Railroad Commission, they received authorization to construct Collection Ditch 4B (CD-4B) to bring water from south of SP-2 northward into that SP. Since the ground to the south of SP-2 at the south end of CD-4B is lower (760' elevation) than the ground level at the pond (770'), CD-4B had to be deeply incised to flow northward. As shown in Revision 2, Supplement 1, it enters the side of SP-2 at an elevation of 755'. The spillway elevation of SP-2 (as shown in Revision 2) is 765'. During heavy rains, this creates the potential, when SP-2 fills up, of backfilling CD-4B and causing sediment laden water to flow out on the south end of CD-4B (which is 5' lower than the SP-2 spillway). This actually happened in October, 2015 when heavy rains (10 inches in 24 hours on 10-9-2015) filled SP-2 and the overflow ran out on the ground at the south end of CD-4B. At that time, this overflow was contained by the dirt wall of Aqueduct 1. There are photos taken from the air on 10-12-2015 of this situation (one is attached as Exhibit 3 to these comments). Now, however, the Aqueduct has been partially removed to mine beneath it and it has been pierced by the new Mine Access Road at exactly the location where the Aqueduct was containing the water overflow in 2015. According to the as-built plans for the new Mine Access Road (Revision 22), the elevation of the shoulder of this road is 764', which is below the level of the SP-2 spillway. If a similar rain event took place today, the overflow water from SP-2 would flow south along CD-4B, alongside the mine access road and out onto Woodson Access Road near the Union Pacific Railroad. This might well block the access route to Mike Hernandez' property on the east side of the railroad. So, although SP-2 can be and has been discharged by pumps through its spillway (Outfall 003), it can never discharge "naturally" through its spillway. It would also be a violation of the TCEQ TPDES permit which specifies that SP-2 is to discharge through Outfall 003 (the SP-2 spillway), not onto the ground at a point some 2500' away (the south end of CD-4B). No renewal of TPDES Permit WQ 0003511000 should be approved until DRCP resolves this problem.

5. DRCP has demonstrated such a level of malfeasance and willful failure to abide by TCEQ and RRC regulations in their past operations under existing permits that the TPDES Permit should not be renewed.

A. Contamination of Lateral 20.

Canal Lateral 20 is an irrigation canal owned and operated by the Maverick County Water Control and Improvement District. It flows along the southern edge of the mine permit area around SP-4 and then enters the mine permit area near SP-3. The source of the water in the Lateral is the Rio Grande.

Several residents living along FM1588/County Road 307 (Thompson Road) draw water from Lateral 20 once a week for all their domestic purposes except for drinking water. Most, if not all, have some sort of filtration system to process the water before use. For those living close to the old Lamar underground coal mine (including De La Cerda, Esqueda and Herring), this is their only option. There is no city water available and water wells are not practicable because the water table has been contaminated by the old underground mining activity.

Starting in July, 2018 and continuing up to the present time, the water in Lateral 20 has become contaminated by fugitive dust caused by DRCP mining activity in Mining Block C2 (near SP-4). On July 17, 2018, the water in the Lateral next to Block C2 (at the point where water is diverted to the Domestic users) was extremely muddy, opaque and discolored. At the same time, the water in the Lateral one mile upstream (one-half mile above the mine permit boundary) was clear and transparent. Water samples were taken at both points and tested at a certified testing laboratory. The sample taken above the mine was found to have a Total Suspended Solids (TSS) of 53 mg/liter; the sample taken next to the mine had a TSS reading of 303 mg/L or almost six times greater.

As a reference, the TPDES permit no. WQ0003511000 issued to DRCP by TCEQ allows a maximum TSS of 70 mg/L in the water discharged from the mine's sedimentation ponds. 30 TAC § 309.1(b), concerning effluent limitations, sets a maximum limit of 65 mg/L for discharge of treated domestic sewage (as measured in a single grab).

TCEQ was also called to the scene several times in the July 2018 to January 2019 time frame by concerned residents who complained about the large amount of dust leaving the mine permit area. On October 5, 2018, TCEQ released its Report of Investigation No. 1513538 (incident no. 292464) and issued two Notice of Violations (NOV) to DRCP. The first NOV was "30 TAC 101.4 for failure to not discharge, from any source whatsoever, one or more air contaminants or combinations thereof in such concentration and of such duration as are or may tend to be injurious to or to adversely affect vegetation or property, or as to interfere with the normal use of vegetation or property." The second NOV was for failure to run an opacity test during all of 2017. Within this report are numerous photographs of murky water in Lateral 20, heavy concentrations of dust on vegetation alongside the Lateral and of dust from the mining areas, blowing towards the Lateral. The TCEQ inspectors also checked the results of the particulate matter air monitors operated by DRCP in the mine permit area. It was found that "a review of the Summary of results [of these monitors] revealed that there have been multiple events in which the sample results were invalidated and labeled 'invalid run' due to low battery volume." A prime example of either incompetence, negligence or malfeasance.

A second TCEQ Report of Investigation (no. 1538420) was released on 1-16-2019. It found several locations where coal dust was confirmed to have left the mine permit area and settled on gates located on private property; coal dust was also observed leaving the mine permit area.

A third TCEQ Report of Investigation (no. 1553053) was issued on 4-25-2019. It also found numerous locations on the gates and windows of private residences near the mine on which it was confirmed that coal dust had settled as well as determining that coal dust had contaminated the water in Lateral 20 at several locations. Another NOV was issued for the same exact violation as on 10-5-18.

On 12-17-2019, DRCP entered into an Agreed Order (Docket no. 2019-0637-AIR-E) with TCEQ in which DRCP was assessed an administrative penalty of \$2125 for the above cited violations.

So, the residents of Thompson Road are subjected to overwhelming amounts of suspended solids in their bathing and cooking water which is clogging their filters and filtration systems and endangering their health and wellbeing. Yet, when approached about this problem and asked if they could provide a solution (such as laying a pipeline alongside Lateral 20 from a point above the mine to the place where the domestic water is diverted), DRCP simply denied having any responsibility for this ongoing contamination episode. This is the same type of callous attitude displayed to neighboring residents of surface coal mines in Mexico and it is unfortunate that DRCP has chosen to adopt this method of operation in this country. TCEQ should not reward companies which act with such blatant disregard of citizens' welfare and which commit numerous, continuing violations of TCEQ regulations regarding air and water pollution with a permit renewal.

B. Failure to Operate Air Monitoring Program Effectively.

As mentioned above, DRCP was found by TCEQ inspectors to have operated its air particulate monitoring program in an ineffective manner. The RRC required DRCP to operate 5 air monitoring stations within the mine permit area and to take samples at each one every 6 days. In the period from January 2017 to December 2018, a total of 610 samples were taken. 222 or 36% of these were found to be "invalid" due to "power failure due to low batteries." In 6 of those 24 months, over 50% of the samples were "invalid" for the same reason. So, over the span of two years, DRCP could not muster the ability to solve a simple battery replacement problem. Although the air monitoring program does not bear directly on the TPDES Permit, it is a red flag indicator of the sloppy, cavalier attitude adopted by DRCP in the execution of its environmental protection duties. TCEQ should carefully consider whether an organization as negligent as DRCP can be trusted to execute the TPDES permit in accordance with all requirements and regulations.

6. The Antidegradation Review is Inadequate. The antidegradation review performed for the issuance of the 2016 TPDES Permit mischaracterized aquatic life uses in several of the receiving water bodies. That review disregarded uses and habitat during wet weather conditions, but the mine's sedimentation pond discharges should only occur after significant rainfall events. The TPDES Permit should not be renewed until these deficiencies are corrected.

7. Public Interest.

It is in the Public Interest that TCEQ hold a contested case hearing concerning the renewal of TPDES Permit No. WQ0003511000. First, since 2011, the elected public officials representing the people of both Eagle Pass and Maverick County have consistently opposed the issuance of any permits by TCEQ or the RRC for the DRCP mine. Over 6500 citizens of Maverick County signed petition letters opposing the operation of the mine (more than vote in many midterm elections here). Second, as outlined previously, DRCP has a demonstrated history of noncompliance with TCEQ environmental regulations. Consequently, additional terms need to be included in any permit renewal that will track DRCP's compliance and enable regulators to confirm if DRCP is abiding with all environmental safety requirements in the future.

Respectfully submitted,

George Baxter

George Baxter
President, Maverick County
Environmental & Public Health
Association

Gabriel De La Cerda

Gabriel De La Cerda

Dulce Esqueda

Dulce Esqueda

Mike Hernandez

Mike Hernandez

Walter Herring

Walter Herring

TABLE 148-1

**SEDIMENTATION POND STORAGE DATA
AND
CONSTRUCTION AND RECLAMATION SCHEDULE**

<u>Sedimentation Pond Number</u>	<u>Sediment Storage (ac-ft)</u>	<u>Runoff Storage (ac-ft)</u>	<u>Total Storage (ac-ft)</u>	<u>Year Constructed</u>	<u>Construction Certification</u>	<u>*Projected Year Reclaimed/Submit</u>
SP-1	21.3	233.1	254.4	2017	04/20/17	2027
SP-2	20.2	246.7	266.7	2014	03/31/15	2024
SP-3	95.0	38.6	133.6	2016	11/9/2016	2026
SP-3 South	12.7	48.9	61.6	2018	3/4/2019	2027
SP-4	23.2	44.6	67.8	2018	9/14/2018	2027
RP-1	3.2	32.3	35.5	2014	3/29/2018	2021
RP-2	3.7	33.7	37.4	2014	8/4/2015	2021
RP-3	3.4	78.2	81.6	2014	8/3/2015	2021

Note: *Denotes year for pond to be either reclaimed or submitted as a permanent pond



Sealed on October 22, 2020
ENGINEERING RESOURCES LLC
TBPE Firm No. F-12403

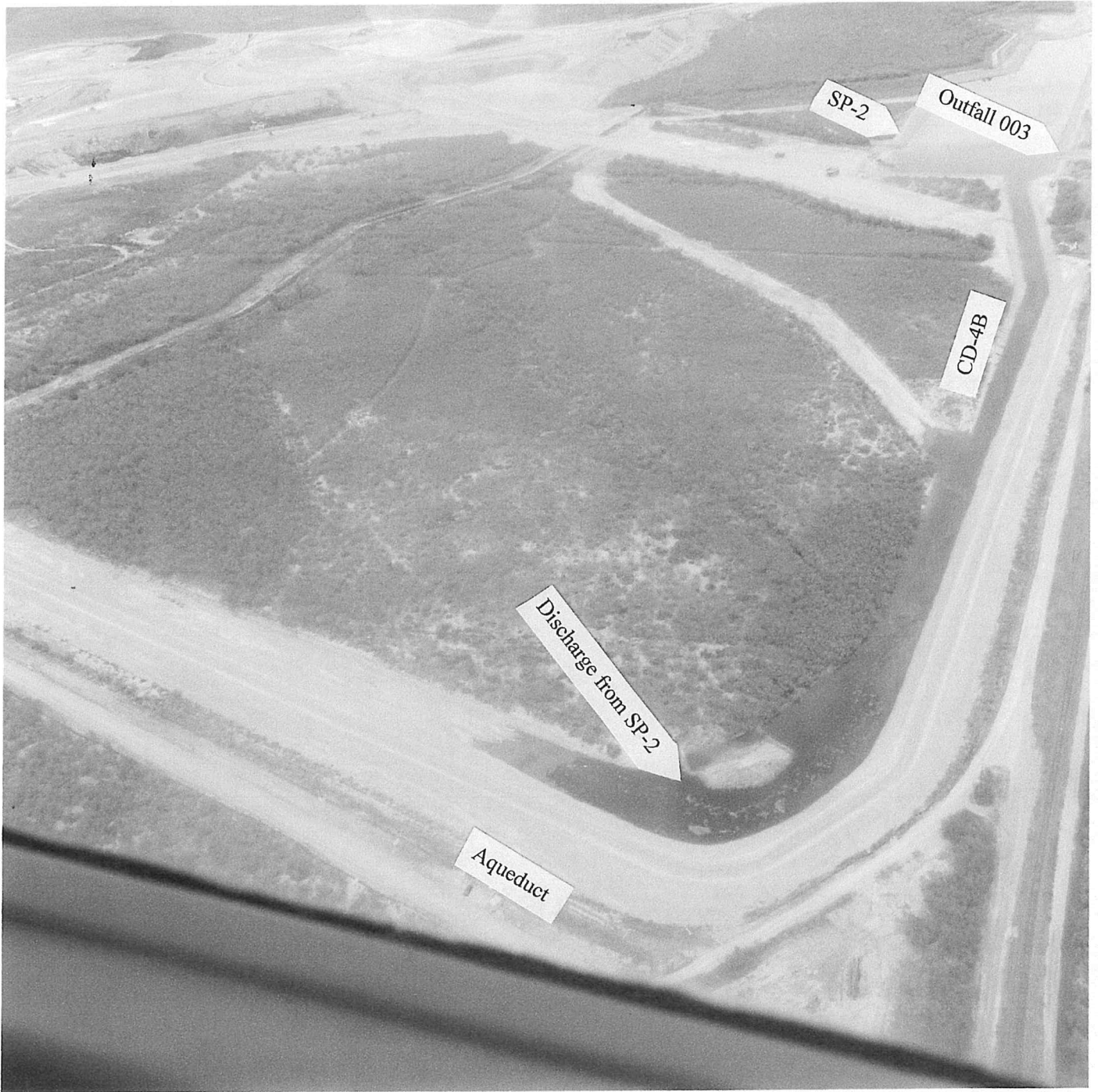
DRCP Mine, 2019 SP-3 & SP-3 South

Legend



Google Earth

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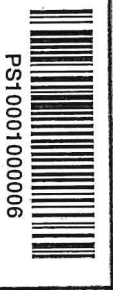
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- Restricted Delivery (weekend and business day) - Restricted delivery service. On 19 Purchase additional insurance. On 19 Purchase COV and/or Delivery Point Insurance. On 19 Purchase Signature Confirmation. On 19 Purchase Signature Required. On 19 Purchase Signature Required and Restricted Delivery. On 19 Purchase Restricted Delivery (weekend and business day).
- Signature Required (weekend and business day) - Signature required service. On 19 Purchase additional insurance. On 19 Purchase COV and/or Delivery Point Insurance. On 19 Purchase Signature Confirmation. On 19 Purchase Signature Required. On 19 Purchase Signature Required and Restricted Delivery. On 19 Purchase Restricted Delivery (weekend and business day).
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Priority <input type="checkbox"/> Day <input type="checkbox"/> 2-Day <input type="checkbox"/> 3-Day <input type="checkbox"/> Priority Mail <input type="checkbox"/> Registered Mail <input type="checkbox"/> Signature Confirmation <input type="checkbox"/> Signature Required <input type="checkbox"/> Signature Required and Restricted Delivery <input type="checkbox"/> Restricted Delivery (weekend and business day) <input type="checkbox"/> Signature Required (weekend and business day) <input type="checkbox"/> Signature Required and Restricted Delivery (weekend and business day) <input type="checkbox"/> Signature Required and Restricted Delivery (weekend and business day)		Special Delivery Premium fee \$ 7.60		Postage \$ 33.35		Insurance fee \$ 3.35	
Weight 3.40 lbs		Special handling fee \$ 11.5		COV fee \$ 3.35		Limitation fee \$ 3.35	
Delivery attempt (MANDATORY) Time <input type="checkbox"/> AM <input type="checkbox"/> PM		Employee Signature _____		Restriction fee \$ 3.35		Transit fee \$ 3.35	
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Delivery attempt (MANDATORY) Time <input type="checkbox"/> AM <input type="checkbox"/> PM		Employee Signature _____		Restriction fee \$ 3.35		Transit fee \$ 3.35	



Melissa Schmidt

From: PUBCOMMENT-OCC
Sent: Tuesday, July 20, 2021 8:22 AM
To: PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-WQ
Subject: FW: Public comment on Permit Number WQ0003511000
Attachments: 2021.07.19 DRCP Comments with Exhibits.pdf

IWD
121913

From: elena@txenvirolaw.com <elena@txenvirolaw.com>
Sent: Monday, July 19, 2021 4:13 PM
To: PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>
Subject: Public comment on Permit Number WQ0003511000

REGULATED ENTY NAME EAGLE PASS MINE

RN NUMBER: RN101529493

PERMIT NUMBER: WQ0003511000

DOCKET NUMBER:

COUNTY: MAVERICK

PRINCIPAL NAME: DOS REPUBLICAS COAL PARTNERSHIP

CN NUMBER: CN600787782

FROM

NAME: David Frederick

E-MAIL: elena@txenvirolaw.com

COMPANY: Perales, Allmon & Ice, P.C.

ADDRESS: 1206 SAN ANTONIO ST
AUSTIN TX 78701-1834

PHONE: 5124696000

FAX:

COMMENTS: Please see letter attached. Thank you.

PERALES, ALLMON & ICE, P.C.

ATTORNEYS AT LAW

1206 San Antonio Street
Austin, Texas 78701
(512) 469-6000 • (512) 482-9346 (facsimile)
info@txenvirolaw.com

Of Counsel:
David Frederick
Richard Lowerre
Brad Rockwell

July 19, 2021

Ms. Laurie Gharis
Texas Commission on Environmental Quality
Office of the Chief Clerk, MC 105
P.O. Box 13087
Austin, Texas 78701-3087

via TCEQ's e-Comments

Re: Comments of Maverick County on the Application by Dos Repùblicas Coal Partnership for Renewal of Texas Pollutant Discharge Elimination System Permit No. WQ0003511000.

Dear Ms. Gharis:

The following comments are on behalf of the Maverick County (the "County") on the Application by the Dos Repùblicas Coal Partnership ("DRCP") for a renewal of its TPDES Permit No. WQ0003511000.

Maverick County has significant governmental and environmental interests in the regulation of DRCP's wastewater discharges and, more broadly, in the agency's implementation of the TPDES permitting regimen.

Elm Creek flows roughly north to southwest through the DRCP mine boundary. It and one other creek, which is, itself, a tributary of Elm Creek, are the receiving water bodies for the permitted discharges. The County owns parkland on Elm Creek close downstream from the discharges. As you are likely aware, creeks of the size and general high water quality of Elm Creek are not numerous in the County, and no other creek offers the easy recreational access offered by Elm Creek to the residents of Eagle Pass, the County's largest municipality. The County's citizens use Elm Creek for contact recreation and fishing.

Maverick County is charged with safeguarding the health and welfare of Maverick County residents, and it exercises local enforcement authority for TCEQ-issued permits. Therefore, it has a particular interest in the practical enforceability of TCEQ-issued permits.

It is important to the County and its citizens that TCEQ's implementation of the TPDES program be credible in fact and in the eyes of the public. The proposed renewal is of a permit that is still deep in litigation arising from the permit's last amendment. It is not at all clear that the agency may "renew" a permit that is pending judicial review, but it certainly looks bad for the agency to process a renewal of such a permit, without the still-live legal issues having been resolved.

Regarding the pending litigation

The proposed renewal is of a 2016 permit, the issuance of which was reversed by the district court on appeal. The issue on which the agency lost at the district court was whether the operator of a facility is the entity with financial control, rather than "the entity responsible for its personal performance of causing the [facility] to function."¹ The district court reversal was affirmed on appeal to the court of appeals. The issue on which the issuance was reversed in district court is germane to the compliance of the TPDES program, as implemented, with the agency's regulation, 30 TAC § 305.43(a) ("for all Texas Pollutant Discharge Elimination System permits, it is the duty of the operator and the owner to submit an application for a permit"²) and with EPA's minimum program requirements, 40 CFR § 122.21(b) ("when a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit").

While the district court affirmed the agency's decisions on other issues the permit opponents had raised, the court of appeals vacated those affirmances. That action by the court of appeals revived other alleged errors in the issuance of the 2016 permit, e.g., (1) agency's insistence that, even though discharges only occur during "wet" weather conditions, those conditions were inappropriate when determining receiving-water aquatic life uses in and, thus, the antidegradation reviews; (2) the agency's rejection of the ALJs' recommendations of a water-quality-based effluent limit for boron and of an aluminum monitoring requirement; and (3) the agency's failure to include effluent limits to address chronic toxicity at certain outfalls. To be abundantly clear: the County either asserted or joined other parties in asserting the applicant-operator issue and each of these other three issues as reasons the 2016 permit was improperly issued and its renewal would, likewise, be improper.

¹ That quoted language is from *Heritage on San Gabriel Homeowners' Assoc. v. TCEQ*, 393 S.W.3d 417, 430 (Tex. App.—Austin 2012, pet. denied), which is the controlling Texas case law regarding what an "operator" is for purposes of 30 TAC § 305.43(a) and (b). The relevant federal law is that: "An entity is an operator of a facility where it has the power or capacity to (i) make timely discovery of discharges, (ii) direct the activities of persons who control the mechanisms causing the pollution, and (iii) prevent and abate damage." *Beartooth Alliance v. Crown Butte Mines*, 904 F. Supp. 1168, 1175 (D. Mont. 1995).

² This regulatory provision was added in 1990 by TCEQ's predecessor-once-removed at EPA's request. 15 *Tex. Reg.* 5493 (Sept. 21, 1990).

The disputes over the permit TCEQ proposes to renew and on the court of appeals' actions are now pending at the State Supreme Court.

Generally, an agency may not take actions that affect a matter within the jurisdiction of the judiciary. *Dass v. Tex. Board of Professional Engineers*, 517 S.W.3d 252, 256 (Tex. App. – Austin 2017, no pet.) (“[o]nce judicial-review proceedings are initiated, the agency loses jurisdiction of the subject matter of the case,” citing earlier cases.) Presumably, DRCP will argue that the case on appeal is not the attempted 2020 renewal of the permit but, rather, the 2016 amendment of the permit. Nonetheless, the “subject matter” of either case is the 2016 amended permit and the circumstances of its amendment.

At one time, see, **Exhibit A**, the agency felt it was appropriate, “since the issue is on appeal,” to put the renewal application on hold. For reasons unknown to the County, that position has obviously changed. One consequence of the change, however, will be to bolster arguments of the agency and of DRCP at the Supreme Court that, whatever errors may have attended the issuance of the 2016 permit, the case before the Supreme Court has been made moot by a 2021 renewal of the 2016 permit. Use of the TPDES permitting program for strategic leverage in litigation would be a mis-use of that program.

If DRCP has authorization to discharge under the 2016 permit, that authorization continues, because DRCP filed a timely renewal application.

The 2020 filing of the renewal application certainly shields the 2016 permit from expiration. Sec. 2001.054(b), Tex. Gov't Code.

Probably, the 2011 permit is the one that controls, legally, DRCP's current discharge options.

The agency has secured review of the district court and court of appeals' judgments. Those appeals supersede, for the time being, the judgments of the two lower courts. Texas law is not clear on exactly what it means to supersede a court order in an administrative appeal. Generally, the purpose of *supersedeas* is to preserve the *status quo* of the matters in litigation as they existed before the issuance of the judgment from which an appeal is taken. *Id.* However, when the object of the suit in which the judgment was had was to invalidate an administrative order, *status quo* means “the last, actual, peaceable, non-contested status which preceded the pending controversy.” *Id.*, citing *Universal Health Servs., Inc. v. Thompson*, 24 S.W.3d 570, 576-77 (Tex. App.—Austin 2000, no pet.), which relied on *Transport Co. v. Robertson Transports, Inc.*, 152 Tex. 551, 261 S.W.2d 549, 553-54 (Tex. 1953)). In a situation analogous to the one involving the 2016 permit (i.e., a suit for judicial review of an administrative order), the Texas

Supreme Court held that the *status quo* to be preserved pending a final judicial resolution was “the status of the controversy as it existed prior to the entry of the [Railroad] Commission’s order.” *Transport Co. v. Robertson Transports, Inc.*, 152 Tex. 551, 261 S.W.2d 549, 558 (Tex. 1953).

The status of the controversy as it existed prior to the agency’s order in the ongoing 2016 permit litigation was that set by the DRCP TPDES permit issued in November 2011. The timely filing of the amendment application that led to the issuance of the 2016 permit preserved the 2011 permit, until all appeals of the 2016 permit issuance are final.

The proposed renewal authorizes many discharge points that no longer exist.

The proposed renewal permit authorizes discharges from numerous outfalls from which DRCP no longer anticipates discharges. Largely, this is a function of changes at the mine that have occurred since the 2016 permit was issued. Specifically, **Exhibit B** to these comments documents that there will be, and the Railroad Commission has approved, only four sedimentation ponds and three retention basins, so, 7 discharge points, from which discharges might occur. (Exhibit B is excerpts from the RRC June 1, 2021, staff analysis of, among other things, DRCP’s current plans discharge sources at the site.) In contrast, the proposed draft permit authorizes 15 proposed discharge points.

Whatever TPDES permit is ultimately issued to DRCP should correctly reflect the number and locations of DRCP’s wastewater discharges, and this proposed renewal permit badly does not do that.

Maverick County supports the comments of the Maverick County Environmental and Public Health Association.

This local citizens’ group has closely followed the events of this mine and its discharges over the past decade. It has submitted to the agency a number of comments regarding this proposed renewal. Some of those comments mirror ones the County has made, here. The County supports all the Association’s comments, whether also covered in the County’s comments or not.

Conclusion

The County appreciates the agency’s outreach on this proposed permit renewal. Please feel free to contact me with any questions with any questions you might have. The County has had lengthy experience with the mine and, for most of that time, my firm has been the County’s legal counsel.

Sincerely,



David Frederick
dof@txenvirolaw.com
Perales, Allmon & Ice, P.C.
1206 San Antonio St.
Austin, Texas 78701
p: (512) 469-6000
f: (512) 482-9346

Counsel for Maverick County

Attachments: Exhibit A, Martinez email to Galindo and Galiga
Exhibit B, RRC DRCP Review (June 2021)

Exhibit A

Abesha Michael

From: David Galindo
Sent: Monday, June 15, 2020 12:27 PM
To: Robert Martinez
Cc: Todd Galiga
Subject: Re: Dos Republicas Coal Partnership

Will do.

Sent from my iPhone

On Jun 15, 2020, at 11:49 AM, Robert Martinez <robert.martinez@tceq.texas.gov> wrote:

Todd and David,

I spoke to Leonard Dougal and he informed me that Dos Republicas Coal Partnership will be supplementing its permit renewal application to add Camino Real Fuels as an operator. They already submitted the renewal application because the permit term ends in September 2020. In an abundance of caution, their client has decided to file paperwork to add Camino Real Fuels as operator on the permit in case the Supreme Court does not take up the appeal or enters an adverse decision . This will include submitting a transfer application to add Camino Real Fuels as an operator on the permit. They will note in the submittal that they are not waiving their arguments before the Supreme Court that Camino Real Fuels is not an operator under commission rules. He suggested that the agency place the transfer application and renewal application on hold pending Supreme Court action, which seems appropriate to me since the issue is on appeal.

Thanks,
Robert

Exhibit B

CHRISTI CRADDICK, *CHAIRMAN*
 WAYNE CHRISTIAN, *COMMISSIONER*
 JIM WRIGHT, *COMMISSIONER*



BRENT A. ELLIOTT, Ph.D., P.G., *DIRECTOR*

RAILROAD COMMISSION OF TEXAS

SURFACE MINING AND RECLAMATION DIVISION M E M O R A N D U M

TO: Brent A. Elliott, Ph.D., P.G., Director DS
BAE
 Surface Mining and Reclamation Division

THRU: Adam Krabbenhoft, Manager, Applications and Permits DS
ark

FROM: Ismael Gonzalez, Engineering Specialist
 Celeste Brancel, Natural Resources Specialist
 Dex Dean, P.E., Engineer
 Katherine Linford, Natural Resources Specialist
 Jillian Simpson, Engineering Specialist

SUBJECT: Dos Republicas Coal Partnership (DRCP)
 Eagle Pass Mine, Permit No. 42B
 Revision No. 35
 Reclamation Permit Only

DATE: June 1, 2021

Initial review of Revision No. 35 submitted by letter dated October 30, 2020, is complete. This revision application was submitted to is to convert Permit No. 42B to a Reclamation Only Permit due to coal removal activities ceasing in June 2020 at Eagle Pass Mine. A \$500 revision-application filing fee and Form SMRD-2C were provided with the initial application. DRCP supplemented the application by letters dated February 25, 2021 and May 12, 2021, in response to technical comments sent by letters dated January 21, 2021 and April 15, 2021. A summary of DRCP's submittal, as supplemented, and our technical review follows:

PROPOSAL SUMMARY

The application includes modification to the following permit content (unless indicated otherwise, these changes were submitted in the initial application):

Page/Plate Revised	Description of Changes
Section .117	Exhibit 117-1, <i>Property Map*</i> Table 117-5, <i>Right-Of-Way/Easement Interest Owners of Record Within the Permit Area*</i>
Section .121	Table 121-1, <i>Summary of Other Permits/Licenses*</i>
Section .132	12.132 Text Appendix 132-C, <i>Annotated Count Lists of Rare Species</i> Exhibit 132-1, <i>Vegetation/Habit Map Reclamation Only Permit, Sheet 1 of 3*</i> Exhibit 132-1, <i>Vegetation/Habit Map Reclamation Only Permit, Sheet 2 of 3*</i> Exhibit 132-1, <i>Vegetation/Habit Map Reclamation Only Permit, Sheet 3 of 3*</i> Exhibit 132-2, <i>Sample Site Location Elevation Map, Sheet 1 of 3*</i> Exhibit 132-2, <i>Sample Site Location Elevation Map, Sheet 2 of 3</i>

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June 1, 2021
Page 2

Page/Plate Revised	Description of Changes
	Exhibit 132-2, <i>Sample Site Location Elevation Map, Sheet 3 of 3</i>
Section .133	Text 12.133 * Table 133-6, <i>Rare and Endangered Species*</i> Exhibit 133-2, <i>Threatened and Endangered Species Observations within and near Permit Area, Sheet 1 of 3*</i> Exhibit 133-2, <i>Threatened and Endangered Species Observations within and near Permit Area, Sheet 2 of 3*</i> Exhibit 133-2, <i>Threatened and Endangered Species Observations within and near Permit Area, Sheet 3 of 3*</i>
Section .134	Text 12.134 * Exhibit 134-1, <i>Soils Map*</i> Exhibit 134-2, <i>Soils Handling Groups*</i>
Section .137	Table 137-1, <i>Cross-Sections, Maps and Plans**</i>
Section .139	Text 12-139* Table 139-1, <i>Size, Sequence and Timing of Subareas of Permit for Total Life of Mine*</i> Exhibit 139-1, <i>Sheet Index*</i> Exhibit 139-1, <i>Operations Map, Sheet 1 of 4*</i> Exhibit 139-1, <i>Operations Map, Sheet 2 of 4*</i> Exhibit 139-1, <i>Operations Map, Sheet 3 of 4*</i> Exhibit 139-1, <i>Operations Map, Sheet 4 of 4*</i> Exhibit 139-2, <i>Mining and Ancillary Disturbance</i> Appendix 139-6, <i>Figure B, Area C1A-C1B Mine Extension-Backfilling and Grading Variance*</i> Appendix 139-6, <i>Table 1-Backfilling and Grading Variance*</i>
Section .142	Table 142-1, <i>Operation Plan: Maps and Locations**</i>
Section .144	12.144 Text** Appendix 144-1, <i>Eagle Pass Mine Threatened and Endangered Species Protection Plan**</i> Appendix 144-3, <i>Potential Species Occurring In Revegetated Areas (Erosion Control And Wildlife Use)**</i> Appendix 144-5, <i>Eagle Pass Mine Agency Consultations for Fish, Wildlife and Related Resources*</i> Exhibit 144-1, <i>Wildlife Enhancement Features, Sheet 1 of 3*</i> Exhibit 144-1, <i>Wildlife Enhancement Features, Sheet 2 of 3*</i> Exhibit 144-1, <i>Wildlife Enhancement Features, Sheet 3 of 3*</i>
Section .145	12.145, Text Table 145-4, <i>Grasses for Revegetation Of Disturbed Areas*</i> Appendix 145-1, <i>Reclamation Cost Estimate</i> Appendix 145-4, <i>Topsoil Thickness Statistical Analyses</i> Exhibit 145-2, <i>Premine Topography Showing Slope Magnitude</i> Exhibit 145-3, <i>Postmine Topography Showing Slope Magnitude</i>
Section .147	12.147, Text** Exhibit 147-1, <i>Postmine Land Use**</i>
Section .148	12.148, Text Table 148-1, <i>Sedimentation Pond Storage Data and Construction and Reclamation Schedule</i> Exhibit 148-1, <i>Five Year Surface Water Management Plan</i>

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June 1, 2021
Page 3

Page/Plate Revised	Description of Changes
Section .150	12.150 Text Table 150-1, <i>Diversion/Collection Ditch Construction and Reclamation Schedule</i>
Section .152	12.152 Text*
Section .154	Table 154-1, <i>Road Schedule</i>

* Supplemental Document No. 1

** Supplemental Document No. 2

Section .116

DRCP states there are no changes to Section 12.116 since the approval of Revision No. 31 (File Reference No. 202018301) on August 20, 2020.

Section .117

DRCP updated Exhibit 117-1, *Property Map*, and Table 117-5, *Right-Of-Way/Easement Interest Owners of Record Within the Permit Area*. In Supplement No. 2, DRCP withdrew Exhibit 117-1 submitted in Supplement 1 of this application.

Section .119

DRCP has provided an updated description in Section .119 stating this revision application is for a Reclamation Only Permit.

Section .120

DRCP stated a new Certificate of Insurance was filed under separate cover on October 2, 2020 and was still under review by the SMRD.

Section .121

DRCP included revised Table 121-1, *Summary of Other Permits/Licenses*, as follows:

PERMIT/ LICENSE	AGENCY ADDRESS	APPROVAL DATE	EFFECTIVE DATE	TERM	EXPIRATION DATE
Railroad Commission of Texas Exploration Permits Issued to: Dos Republicas Coal Partnership ("DRCP")	Railroad Commission of Texas P.O. Box 12967 Austin, TX 78711-2967	N/A	N/A	N/A	N/A
Texas Commission on Environmental Quality - TPDES Permit No. WQ0003511000. Issued to: DRCP	Texas Commission on Environmental Quality P.O. Box 13087 Austin, TX 78711-3087	09-20-16	09-20-16	4 years	09-01-20 Permit Renewal Application Filed on 2-24-20

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DRCP calculated the impact of evaporative losses assuming approximate surface water areas of 167 acres pre-mine and 249 acres post-mine based on surface water information presented in permit Sections 133, 147, and 148. Assuming the approximate surface water acreages listed above for each mine condition, DRCP estimates that annual evaporative losses are estimated to be about 902 acre-feet per year pre-mine and 1,345 acre-feet per year post-mine. The difference from the baseline condition is 443 acre-feet more per year post-mine.

Subsection 12.146(e) - Cumulative Hydrologic Impact Assessment (CHIA)

Under the Coal Mining Regulations at 16 TEXAS ADMIN. CODE §12.146(e), the Railroad Commission of Texas is required to provide a probable **Cumulative Hydrologic Impact Assessment (CHIA)** for surface- and ground-water systems from current, proposed and otherwise anticipated mining operations within a defined **Cumulative Impact Area (CIA)**. For purposes of permit approval, the development of a CHIA must be sufficient to determine whether or not those operations have been designed to prevent material damage to the hydrologic balance outside the permit area. This involves the assessment of the aggregate effects of existing and proposed surface mining activities on the hydrologic environment within the affected watershed systems.

The existing Eagle Pass Mine is located within the Rio Grande Basin in Maverick County. A previous CHIA document was prepared for the Eagle Pass Mine on February 25, 2011, for the mining activities subsequently issued as Permit No. 42B under Docket No. C3-0003-SC-42-C (“2011 Eagle Pass CHIA”). Other mines located within the Rio Grande Basin include the Palafox, Rachal and Treviño Mines operated by Farco Mining, Inc., located further downstream in Webb County. Effects of these mines were addressed in this same CHIA. The 2011 Eagle Pass CHIA was limited to the life-of-mine operations anticipated at the time for all four mines. Following is a summary of the comprehensive 2011 Eagle Pass CHIA addressing all past, present and proposed surface mining areas within the Rio Grande Basin. The conclusions reached as a result of this CHIA remain valid and Staff does not believe that a new CHIA is warranted.

Section .147

In Supplement No. 2, DRCP submitted revised section text and Exhibit 147-1, *Postmine Land Use*, showing revised postmine land use only for disturbed areas. In the initial application, DRCP also updated coordination documents for two landowner consultations including correspondence letters and maps depicting the changes to alternative land use that are no longer proposed. In the Supplement No. 1 Errata, DRCP clarified that it corrected erroneous references in the text to mining activities, restored the postmine land use for disturbed areas to that of the approved postmine plan, revised Exhibit 147-1 for consistency with the approved postmine land use, revised information on DWRs for consistency with the PHC determination, restored missing text, and fixed typographical errors. DRCP provided revised the section text, pages 147-1 through 147-5, and revised Exhibit 147-1, including Table 147-1 of Postmine Land-Use Acres by land-use type.

Section .148

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DRCP revised section 12.148 to remove planned impoundments that will no longer be constructed and clarify that DRCP does not plan to construct additional impoundments. DRCP submitted Exhibit 148-1, which shows existing impoundments DRCP plans to maintain during the permit term and their associated watersheds and diversions. DRCP also updated Table 148-1 (duplicated below) to show only the existing impoundments that will be maintained during reclamation.

TABLE 148-1
SEDIMENTATION POND STORAGE DATA
AND
CONSTRUCTION AND RECLAMATION SCHEDULE

<u>Sedimentation Pond Number</u>	<u>Sediment Storage (ac-ft)</u>	<u>Runoff Storage (ac-ft)</u>	<u>Total Storage (ac-ft)</u>	<u>Year Constructed</u>	<u>Construction Certification</u>	<u>*Projected Year Reclaimed/Submit</u>
SP-1	21.3	233.1	254.4	2017	04/20/17	2027
SP-2	20.2	246.7	266.7	2014	03/31/15	2024
SP-3	95.0	38.6	133.6	2016	11/9/2016	2026
SP-3 South	12.7	48.9	61.6	2018	3/4/2019	2027
SP-4	23.2	44.6	67.8	2018	9/14/2018	2027
RP-1	3.2	32.3	35.5	2014	3/29/2018	2021
RP-2	3.7	33.7	37.4	2014	8/4/2015	2021
RP-3	3.4	78.2	81.6	2014	8/3/2015	2021

Note: *Denotes year for pond to be either reclaimed or submitted as a permanent pond

Section 150

DRCP revised section 12.150 to remove planned diversions that will no longer be constructed because of the proposed change to a reclamation-only permit. DRCP also updated Table 150-1 (duplicated below) to show only the existing diversions that will be maintained during reclamation.

Table 150-1
Diversion/Collection Ditch
Construction and Reclamation Schedule

<u>Diversion Identification Number</u>	<u>Cleanwater or Disturbed</u>	<u>Date Submitted</u>	<u>Date Approved</u>	<u>Year Constructed</u>	<u>Construction Certification</u>	<u>*Projected Year Reclaimed/Submit</u>
D-1	Clean	4/8/2008	Approved	2016	4/20/2017	2027
D-2	Clean	4/8/2008	Approved	2016	4/20/2017	2027
D-3	Clean	4/8/2008	Approved	2014	5/20/2015	2026
D-Aqueduct 1	Clean	6/27/2014	Approved	2015	7/23/2015	2024
CD-1	Disturbed	4/8/2008	Approved	2017	4/20/2017	2027
CD-2	Disturbed	4/8/2008	Approved	2017	4/20/2017	2027
CD-3	Disturbed	1/5/2015	Approved	2015	4/1/2015	2024

TABLE 148-1

**SEDIMENTATION POND STORAGE DATA
AND
CONSTRUCTION AND RECLAMATION SCHEDULE**

<u>Sedimentation Pond Number</u>	<u>Sediment Storage (ac-ft)</u>	<u>Runoff Storage (ac-ft)</u>	<u>Total Storage (ac-ft)</u>	<u>Year Constructed</u>	<u>Construction Certification</u>	<u>*Projected Year Reclaimed/Submit</u>
SP-1	21.3	233.1	254.4	2017	04/20/17	2027
SP-2	20.2	246.7	266.7	2014	03/31/15	2024
SP-3	95.0	38.6	133.6	2016	11/9/2016	2026
SP-3 South	12.7	48.9	61.6	2018	3/4/2019	2027
SP-4	23.2	44.6	67.8	2018	9/14/2018	2027
RP-1	3.2	32.3	35.5	2014	3/29/2018	2021
RP-2	3.7	33.7	37.4	2014	8/4/2015	2021
RP-3	3.4	78.2	81.6	2014	8/3/2015	2021

Note: *Denotes year for pond to be either reclaimed or submitted as a permanent pond



Sealed on October 22, 2020
ENGINEERING RESOURCES LLC
TBPE Firm No. F-12403