

#35 Deed & Agreement H. R. Burden et ux to Texas Industries, Inc.

THE STATE OF TEXAS I
COUNTY OF ELLIS I

35

THIS DEED AND AGREEMENT, entered into this 31 day of

December, 1973, by and between H. R. BURDEN and wife MILDRED BURDEN, whose address is P.O. Box 368, Ennis, Texas, herein called Grantors, and TEXAS INDUSTRIES, INC., a Delaware corporation with its principal office at 715 Avenue H East, P.O. Box 400, Arlington, Texas, herein called Grantee:

W I T N E S S E T H :

1.

For and in consideration of the sum of One Hundred Seventy-Five Thousand and No/100 Dollars (\$175,000), the receipt and sufficiency of which is hereby acknowledged, and of the agreements of Grantee herein contained, Grantors do hereby grant, bargain, sell and convey to Grantee all of the sand and gravel located or contained in, on and under all that certain tract or parcel of land located in the S. Rumfield Survey, Abstract No. 888, the T. J. Chambers Survey, Abstract No. 1, and the A. de la Garza Survey, Abstract No. 2, in Ellis County, Texas, more fully described by metes and bounds in Exhibit A attached hereto and hereby made a part hereof for all purposes, together with free rights to use the surface and the subsurface of said land for the purpose of excavating, mining, producing, saving, taking, owning, storing, washing, processing, treating, selling and transporting said sand and gravel, and for the purpose of building and installing washing plants, treating and separating plants, power houses and stations, pipelines, tanks, ponds, wells, pumps, telephone and telegraph lines, roads, railroad tracks and all other structures thereon which may be necessary or convenient in the conduct of any of such operations, including temporary concrete batch plants, and exclusive easements or rights-of-way over and across the land covered hereby for the purpose of building and maintaining railroad tracks, telephone and power lines, pipe lines and truck roads thereon or thereover to be used in the mining, preparation, storage, transportation and removal to market of sand, gravel, clay, soil and like materials from other lands in the

Model 9-74 to Morgan Industries
8100 Campment Freeway
Dallas, TX 75247
Attn: Don Daulton

vicinity of the land covered hereby from which the Grantee may desire to prepare and remove such commodities as well as the right to continue the use of such of the land covered hereby as may be required to operate the plant, storage facilities, disposing of waste materials and all operations with respect to materials from other lands in the same manner as is carried on in preparing, storing, wasting, and marketing the materials from the land covered hereby.

TO HAVE AND TO HOLD the above described sand and gravel and all rights herein granted and conveyed together with, all and singular, the rights and appurtenances thereto in any wise belonging, unto the Grantee and its successors and assigns forever, and Grantors do hereby bind themselves, their heirs, executors, administrators and assigns to warrant and forever defend all and singular the said premises unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

Provided, however, it is understood and agreed that out of the property above conveyed to Grantee, there is hereby excepted and received unto Grantor, his heirs, successors and assigns, a 50 foot right of way easement over and across the property herein conveyed to Grantee as a connection between the property retained by Grantors, said right of way easement to be located from time to time so as not to interfere with the use by Grantee, its successors or assigns, of the property herein conveyed to Grantee for sand and gravel mining purposes.

2.

All estates, rights and interests created hereby may be fully assigned in whole or in part by Grantee without notice to or consent of Grantors, and the provisions hereof shall extend to the heirs.

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legal representatives, successors and assigns of the parties hereto, but no change or division in the ownership of the land, however accomplished, shall operate to enlarge or increase the obligations or to diminish the rights of Grantee.

3.

Grantors hereby agree to pay all ad valorem taxes assessed against said land and any and all liens, charges and assessments which become due and payable during the term of this Grant, and agree that Grantee may, without being obligated to do so, pay and discharge any taxes or other liens, charges and obligations, or any part thereof, secured by liens upon all or any part of the land and shall thereupon be subrogated to the rights of the holder of such lien.

4.

Grantors shall have the right to use for farming and grazing purposes the surface of such portion of the land covered hereby as Grantee from time to time may deem unnecessary for use in the conduct of Grantee's operations on said land, provided that Grantors shall not mine, excavate, or drill on any portion of said land, nor make any other use of said land which would or might interfere with, impede or make more difficult or expensive the mining, removal and processing of sand and gravel therefrom by Grantee. Grantors and all persons claiming or using said land under Grantors waive all claims for damage or injury of every nature resulting from or in connection with the operations of Grantee on said land, and Grantors agree to indemnify Grantee against and hold Grantee harmless from any and all claims and demands of others and any and all penalties of any governmental agency for damage or injury resulting from the condition of the land after the completion of Grantee's operations or resulting from the failure of Grantors to restore same.

5.

Grantors desire that Grantee allow Grantors to perform, at Grantors' expense, all reclamation and restoration of the land which may be required

after mining is complete, and Grantors and Grantee hereby expressly agree and understand that the purchase price set forth hereinabove for the sand and gravel includes a sum sufficient to compensate Grantors, their heirs, legal representatives, successors and assigns for the cost and expense of restoring and reclaiming said land, after Grantee's mining is completed, to the condition it was in prior to mining. Accordingly, for and in consideration of the payment of the purchase price set forth hereinabove, Grantors hereby agree for themselves, their heirs and assigns, to restore and reclaim said land in any manner and to any extent that may be required by any governmental agency having jurisdiction promptly at the time or times Grantee notifies Grantors, their heirs or assigns that Grantee's mining operations are completed or at such earlier time or times as restoration and reclamation is required on any portion of the land. Grantors hereby agree that Grantors, their heirs, legal representatives and assigns shall pay all costs and expenses of restoration and reclamation and shall hold harmless, indemnify and defend Grantee, its successors and assigns from and against any and all costs, expenses, penalties, damages and liabilities arising from or in connection with the performance of said work or the failure or refusal of Grantors, their heirs or assigns to fully perform and comply with any and all restoration and reclamation laws, rules, orders, regulations and requirements of any and all governmental agencies, including any and all orders directed to Grantee or Grantor and all fines and penalties levied or assessed against Grantee or Grantors. In the event Grantors or their heirs or assigns fail or refuse to perform restoration and reclamation of the land strictly in accordance with all governmental laws, rules, requirements and orders, then Grantee shall be entitled to perform such work and upon such performance, Grantee shall have, and for valuable consideration is hereby granted, a valid lien on the mined land only to secure payment by Grantors of all losses, costs, expenses, damages, fees, fines and penalties incurred or paid by Grantee or for which Grantee is liable. The lien hereby granted in favor of Grantee shall be prior and superior to any and all liens, leases, tenancies, encumbrances and other interests in the land created or arising after the date hereof, and shall be subject to foreclosure in the same manner as vendors liens and deeds of trust on real property in the state of Texas. Grantors hereby further grant Grantee, its successors and assigns and any purchaser at any foreclosure sale, an easement for access to the mined land in the event of any foreclosure of the lien hereby granted, which easement

shall be fifty (50) feet in width over, upon, along and across Grantor's remaining land from the mined land foreclosed upon to the nearest public roadway.

6.

Grantee hereby agrees to execute and deliver to Grantors, from time to time as in good faith determined by Grantee in its sole discretion, releases of portions of the land which do not contain sand and gravel or from which Grantee has mined and removed all sand and gravel and from which Grantee has removed all of its property, plant and equipment, provided, however, that no such releases shall be given or required until Grantors, their heirs and assigns, shall have fully performed and completed all of Grantors obligation to restore and retain the land in compliance with and in satisfaction of all governmental laws, rules, regulations and orders, or until such time as Grantors, their heirs or assigns, shall have fully reimbursed Grantee for all costs and expenses waived or paid by Grantee in performing restoration and reclamation work and all fees, fines, damages and penalties incurred, paid or suffered, by Grantee as a result of or in connection with the failure or refusal of Grantors or their heirs or assigns to perform and comply with such restoration and reclamation laws, rules, regulations or orders.

7.

All of the terms and provisions of this Deed and Agreement shall be binding upon the Grantors jointly and severally and upon the Grantee and shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, successors and assigns.

EXECUTED in duplicate originals the day and year first above written.


H. R. BURDEN


MILDRED BURDEN

THE STATE OF TEXAS 1
COUNTY OF Ellis 1

BEFORE ME, the undersigned, a Notary Public in and for said County, Texas, on this day personally appeared H. R. BURDEN and MILDRED BURDEN, both known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

 GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 31 day of December, 1973.


Notary Public in and for
Ellis County, Texas

Continuation Form 203-A-T

EXHIBIT "A"

Attached to and made a part of Stewart Title Guaranty Company Policy No.

Continuation of Schedule A - Property Description

TRACT NO. ONE: All that certain lot, tract or parcel of land, being 640.741 acres, situated in A. de la Garza Survey, Abstract No. 2, T. J. Chambers Survey, Abstract No. 1, and in the Solomon Rumfield Survey, Abstract No. 888, Ellis County, Texas, and being a part of the 324 acre tract as First Tract and part of the Second tract of 359.5 acres described in deed from Franklin Potter et ux to James E. Kemp and H. R. Burden, dated September 25, 1948, recorded in Volume 398, Page 110, Deed Records of Ellis County, Texas, and a part of the First Tract described in deed as 386.15 acres from R. V. Stockton et ux to H. R. Burden, dated April 23, 1952, recorded in Volume 423 Page 494, Deed Records of Ellis County, Texas, and being described as follows:

BEGINNING at an iron stake at fence corner on South line of Ennis-Red Bank road, and being 1712 feet N 59° 30' E from the Northwest corner of the 324 acre First Tract, from Franklin Potter et ux to Kemp and Burden;

THENCE N 59° 30' E 1500 feet with fence on South line of said road to a stake for corner;

THENCE S 30° 30' E 2400 feet to a stake for corner;

THENCE N 59° 30' E 2640 feet to a stake on West line of Cut-off or Smith creek;

THENCE down and along the meanders of said Smith Creek as follows:
S 82° 24' E 508 feet, S 66° 26' E 494 feet, S 30° 30' E 400 feet,
S 11° 13' E 423.3 feet, S 1° 30' W 471.7 feet, S 21° 56' W 504.6 feet,
S 38° 50' W 1133 feet, S 28° 40' W 730 feet, S 1° 30' W 471.7 feet,
S 6° 19' W 449.5 feet, S 10° 41' W 531 feet, S 16° 28' E 412 feet,
S 47° 38' E 402.6 feet, S 40° 26' E 405.8 feet, S 54° 29' E 442.8 feet,
S 37° 28' E 402.6 feet, S 19° 11' E 419 feet, S 24° 47' E 402 feet, S 41° 49' E 102 feet to a stake on west bank of Smith Creek at its confluence with an old Trinity River channel.

THENCE S 43° 30' W 1150 feet to an iron stake in fence at base of large tree for corner;

THENCE N 19° 30' W 3092 feet with fence on East line of the Timms Property, and the West line of the Rumfield Survey to an iron stake at corner, the most Southeast corner of the R. V. Stockton tract;

THENCE S 43° 30' W 2436 feet with fence to a stake at corner;

THENCE N 31° 30' W 636 feet with fence to angle in fence;

THENCE N 36° 30' W 2000 feet with fence to an angle in fence;

THENCE N 13° 30' W 263 feet with fence to corner;

THENCE N 37° 30' E 507 feet with fence to a corner;

THENCE N 53° 30' W 766 feet with fence to a corner;

THENCE N 4° 30' W 1228 feet with fence to corner;

SEE CONTINUATION SHEET ATTACHED HERETO

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ELLIS COUNTY ABSTRACT & TITLE COMPANY, INC.

Attached to and made a part of Stewart Title Guaranty Company Policy No.

Continuation of Schedule

A - Property Description

TRACT NO. ONE: continued

THENCE N 59° 30' E 240 feet with fence to corner;

THENCE N 20° 30' W 2587 feet with fence to the place of BEGINNING, containing 640.741 acres.

As surveyed by R. L. Thigpin, Registered Public Surveyor No. 1175.

TRACT NO. TWO: A tract of land being 146 acres, more or less, situated in A. De La Garza Survey, Abstract No. 2 and in the Solomon Rumbold Survey, Abstract No. 888 Ellis County, Texas. Such tract or parcel North of and adjacent to 640.741 acre more particularly described as Tract 1.

BEGINNING at an iron stake at fence corner on South line of Ennis-Red Bank road, and being 3212 feet N 59 deg 30' E from the Northwest corner of the 324 acre First Tract, from Franklin Potter et ux, to Kemp and Burden;

THENCE N 59 deg 30' E 2100 feet with fence on South line of said road to a corner;

THENCE S 42 deg 45' E approximately 2520 feet to a stake on West line of cut-off or Smith Creek such point common to Tract 1 and Tract 2;

THENCE S 59 deg 30' W 2640' to a stake for a corner such line common to Tract 1 and Tract 2;

THENCE N 30 deg 31' W 2400' to the place of BEGINNING. Such line common to tract 1 and tract 2.

Tract 2 contains 146 acres, more or less.



Sincerely, of Contract

FILED FOR RECORD ON THE 2 DAY OF Jan. 1974 AT 1:35 O'CLOCK PM

DULY RECORDED ON THE 4 DAY OF Jan. 1974 AT 4:20 O'CLOCK PM

BY Oliver Knowles CHAS. W. HUFF

DEPUTY ELLIS COUNTY CLERK

ELLIS COUNTY ABSTRACT & TITLE COMPANY, INC.

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By:

STEWART TITLE

GUARANTY COMPANY



TEXAS INDUSTRIES, INC.

1341 W. MOCKINGBIRD LANE • DALLAS, TEXAS 75247-6913 • (214) 647-6700

February 5, 1996

Mr. Monty D. Gearner, Dist. Conservationist
Natural Resource Conservation Service
800 Ferris Ave., Suite 325
Waxahachie, TX 75165

Re: Sand And Gravel Rights On Bruce Fuelberth
Property, Ellis County

Dear Mr. Gearner:

Pursuant to the meeting regarding Mr. Bruce Fuelberth's 363.9 acre bottom land described on the USGS map attached, Texas Industries, Inc. (TXI) understands this property is under consideration by USDA for its Wetland Reserve Program. To be eligible for this program, Mr. Fuelberth would be required to grant permanent easement on the property to the USDA to protect the proposed wetlands from disturbance.

As indicated to you in the meeting with Stephen England, TXI's Mine Plan Administrator, Mr. Burden (previous owner of the property) granted to TXI, and TXI currently holds, a right to an unspecified, undesignated 50' wide easement across the property to the river for the purpose of access, drainage and/or water. TXI has not released this right and will expect such right to be preserved and all commitments of Mr. Burden to TXI to be honored by Mr. Fuelberth and the USDA. As I understand from said discussion, even if the property enters the program, it is the USDA's position that TXI's right to retain the easement access to the river across the property should not be affected.

Additionally, USDA's access through TXI's mining area on the Burden, now Fuelberth, property will be subject to TXI's mining rights; however, TXI will be willing to work with Mr. Fuelberth and the USDA to provide an appropriate access to the 363.9 acres of bottom land.

I would perceive these issues definable and the Wetland Reserve Program to be achievable on the 363.9 acres by a

Letter to Mr. Monty D. Gearner
February 5, 1996
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Letter Agreement between the three parties (TXI, Mr. Fuelberth, and the USDA). If Mr. Fuelberth could supply a copy of a survey of the total property from his purchase, it would make it easy to define the issues on paper. I look forward to your response.

Sincerely,



WILLIAM F. RAPIER, CPGS #6759
Corporate Reserves Manager

Attachment

CC: W. Scott
S. England
J. Fundling
B. Fuelberth

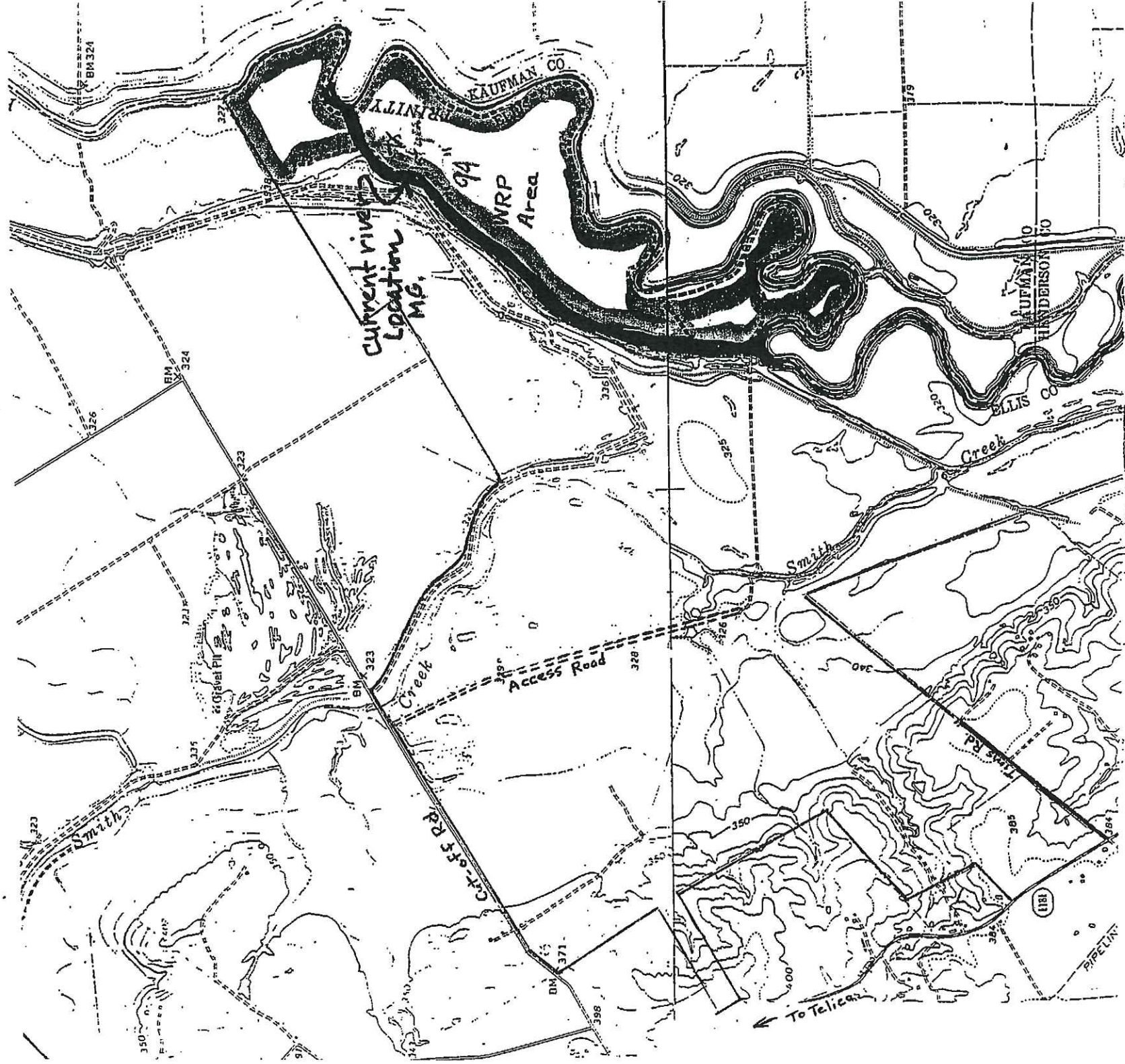
1/31/85

LOCATION MAP

Fuelberth WRP

Ellis Co, Texas

Note: Access to WRP is through locked gate on Cut-off Road.





**980 CUT OFF ROAD
ENNIS, TX 75119**

**2260 ACRES, MORE OR LESS
APPROXIMATE PROPERTY LINE**

Burden Property

Released 54 acres

