

**RAILROAD COMMISSION OF TEXAS  
HEARINGS DIVISION**

**SURFACE MINING DOCKET NO. C16- 0014-SC-11-F  
APPLICATION BY SAN MIGUEL ELECTRIC COOPERATIVE, INC.  
FOR RELEASE OF RECLAMATION OBLIGATIONS FOR PHASE I, II, AND III ON 4.3  
ACRES AND PHASE III ON 103.6 ACRES, AN AGGREGATE OF 107.9 ACRES, FOR  
PERMIT NO. 11H, SAN MIGUEL LIGNITE MINE, ATASCOSA AND MCMULLEN  
COUNTIES, TEXAS**

**ORDER APPROVING  
RELEASE OF RECLAMATION OBLIGATIONS  
PHASE I, II, AND III RELEASE ON 4.3 ACRES AND  
PHASE III RELEASE ON 103.6 ACRES,  
AN AGGREGATE 107.9 ACRES, FOR PERMIT NO. 11H**

Statement of the Case

San Miguel Electric Cooperative, Inc. (SMECI), P.O. Box 280, Jourdanton, Texas 78026 applied to the Railroad Commission of Texas (Commission), Surface Mining and Reclamation Division (SMRD and/or Staff), for Phases I, II, and III release of reclamation obligations on 4.3 acres, and Phase III release of reclamation obligations on 103.6 acres within Permit No. 11H, San Miguel Lignite Mine, in Atascosa County, Texas. The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, Tex. Nat. Res. Code Ann. Ch. 134 (Vernon Supp. 2020) (Act) and §§12.312-12.313 of the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 Tex. Admin. Code Ch. 12 (Thomson West 2020) (Regulations).

Permit No. 11H currently authorizes surface and coal mining operations within the 16,000-acre permit area of SMECI's San Miguel Lignite Mine. Copies of the application for release were filed in the required county and Commission offices and notice was mailed to landowners of the areas requested for release and to adjoining landowners. After public notice, no comments or requests for hearing were filed. The only parties to the proceeding are SMECI and Staff. There remain no outstanding issues between the parties. Based on the information provided in the application, Staff Analyses, and the inspection of the area, Staff recommends the approval of the release, to which SMECI concurs. The parties have filed waivers of preparation and circulation of a proposal for decision.

Based upon the evidence in the record, reclamation requirements have been met for the acreage requested for release. The Commission approves the request as set out in this Order. SMECI is eligible to reduce the bond by an amount attributable to the aggregate 107.9 total acres when a future adjustment to the bond is requested.

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### **FINDINGS OF FACT**

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

1. By letter dated April 19, 2016, San Miguel Electric Cooperative, Inc. (SMECI) filed an application (Application) with the Railroad Commission of Texas' (Commission) Surface Mining and Reclamation Division (SMRD and/or Staff) for Phase III release of reclamation obligations on 103.6 acres within Permit No. 11H, San Miguel Lignite Mine, in Atascosa and McMullen Counties, Texas. Pursuant to Staff's recommendation, SMECI submitted Supplement No. 1 to the Application on November 16, 2020, requesting an additional adjacent 4.3 acres for Phases I, II, and III release of reclamation obligations, for an aggregate release area total of 107.9 acres. Staff conducted a new inspection to account for the requested additional acres on April 13, 2021. SMECI submitted Supplement No. 2 by letter dated June 1, 2021, to address issues noted in Staff's letter dated April 28, 2021. SMECI submitted Supplement No. 3 by letter dated June 29, 2021, in response to Staff's letter dated June 3, 2021, in which Staff indicated a need to update certain information.
2. The Application was filed with the Commission's Hearings Division by letter dated May 3, 2016, and the Director of SMRD determined the Application to be administratively complete for the initial 103.6 acres by letter dated November 7, 2016, and administratively complete for the aggregate 107.9 acres by letter dated July 1, 2021. Based on the Application, as supplemented, Staff analyses, and the inspections of the area, Staff recommends release of Phases I, II, and III reclamation obligations on the requested 4.3 acres and release of Phase III reclamation obligations on the requested 103.6 acres, for an aggregate 107.9 acres.
3. The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, Tex. Nat. Res. Code Ann. Ch. 134 (Vernon Supp. 2020) (Act) and §§12.312-12.313 of the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 Tex. Admin. Code Ch. 12 (Thomson West 2020) (Regulations). The Application was properly certified in accordance with §12.312(a)(3). No fee is required for the Application.
4. By Order dated April 13, 2021, the Commission approved the application by SMECI for renewal/revision of Permit No. 11G for a five-year term, within San Miguel Lignite Mine located in Atascosa and McMullen Counties, Texas and issued the renewed and revised permit as Permit No. 11H. The proposed permit area consists of approximately 16,000 acres located approximately 50 miles south of San Antonio, 16 miles south of Jourdanton, and 6 miles southeast of Christine, Texas. SMECI's Permit No. 11H, as well as Permit Nos. 52A and 60, are bonded in a total amount of \$140,000,000, and that amount is sufficient to cover the recommended reclamation cost estimates for all three permits.

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5. The acreage requested for release is located in Atascosa County within Permit No. 11H, San Miguel Lignite Mine in the A Area. All of the acreage requested for Phase III release was mined. The approved postmine land use is pastureland. Staff confirmed that the acreage requested for release is 107.9 acres.
6. Release of Phase I or II reclamation obligations have previously been made by the Commission on the 103.6 acres proposed for Phase III release only and are not requested in this application. Phases I and II release is proposed for the remaining 4.3 acres.
7. Notice of the request for release was published in the *Pleasanton Express*, a newspaper of general circulation in Atascosa County in the locality of the surface coal mining operation, once a week for four consecutive weeks on March 24, 31, and April 7 and 14, 2021. The newspaper is a paper of general circulation in the area of the proposed requested release area in Atascosa County. SMECI provided publishers' affidavits with copies of the notices to the Commission. The notice of application contains all information required by the Act and Regulations for notice of an application requesting release. The published notice is adequate notification of the request for release. The notice includes the elements required by §134.129 of the Act and §12.312(a)(3) of the Regulations: the name of the permittee, the precise location of the land affected, the number of acres, permit number at the time of application and date approved, the amount of bond approved, the type and appropriate dates reclamation work was performed, and a description of the results achieved as they relate to the approved reclamation plan. The notice contains information on the applicant, location and boundaries of the permit area, the Application's availability for inspection, and the address to which comments should be sent.
8. By letters dated March 19, 2021, notice of the revised request for release was sent by letters mailed by SMECI to the owners of interests in the lands within the areas requested for release, A. M. Peeler, Jr., Harrison Interests, Ltd., and San Miguel Electric Cooperative, Inc., the Atascosa County Judge and Commissioners Court, the Natural Resources Conservation Service offices in Tilden, Texas, and Pleasanton, Texas, the Texas Commission on Environmental Quality, the U.S. Army Corps of Engineers (USACE), the Nueces River Authority, the U.S. Environmental Protection Agency, the Texas General Land Office, the Atascosa County Soil and Water Conservation District, and the Evergreen Underground Water Conservation District. The areas requested for release are not located within the territorial boundaries of any municipality. The Staff sent notice by certified letters dated March 17, 2021, to the Atascosa County and McMullen County Judges. This notification letter date is not later than the 31st day before the date of release as required by §134.133 of the Act.
9. The SMRD mailed letters dated April 28, 2016, and March 23, 2021, to the landowner of the areas requested for release, to SMECI, and to the U.S.D.I. Office of Surface Mining Reclamation and Enforcement (OSM), providing notification that a release had been requested and advising them of the opportunity to participate in the on-site inspections

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conducted on May 19 and 23, 2016, and April 13, 2021, respectively. Representatives of SMECI attended the inspection with Staff. An OSM representative attended the inspection conducted on April 13, 2021. Neither the landowner nor their representative attended the inspections.

10. No adverse comments or objections were filed regarding the request for release. No requests for public hearing or informal conference were filed.
11. The staff prepared an evaluation and recommendation to determine whether the areas requested for Phase III release have been reclaimed in accordance with reclamation requirements of §134.131 of the Act and §12.313(a)(3) of the Regulations. Staff recommends release of Phase III reclamation obligations for the 107.9 acres requested for release.
12. Three permanent structures are located within the areas requested for release—a permanent diversion (Diversion/Ditch 8), and two permanent roads (Ranch Road 3 and Ranch Road 8A). Diversion/Ditch 8 was approved as permanent on October 27, 2000, with a modification approved on June 25, 2002. Ranch Roads 3 and 8A were both approved as permanent on June 7, 1994, as part of the approval of Permit No. 11D.
13. SMECI has met all requirements for Phase I release on 4.3 acres.
  - (a). All highwalls, spoil piles, and depressions were eliminated. Backfilling and regrading were conducted in accordance with permit requirements, and the area has been filled, graded, or otherwise stabilized. Mining of the area requested for Phase I release was conducted between 1979 and 1993, and final grading occurred in 1995. The area meets requirements for regrading to approximate premine topography, and is consistent for use with the approved postmine land use.
  - (b). Soil-testing information consists of portions of two sampling grids that were sampled on May 11, 2016, but not submitted to SMRD until August 13, 2020. By letter dated August 20, 2020, Staff indicated that the submitted data did not indicate the presence of acid-forming materials, toxic-forming materials, or combustible materials within the top four feet of the postmine reclaimed soils. The areas proposed for release have satisfied the soil suitability requirements of §12.335 and §12.386 of the Regulations and the requirements of the approved postmine soil-testing plan.
  - (c). Staff indicates in its TA Addendum No. 1 (July 13, 2021), that three permanent structures are located within the requested Phase I release area; however, the structures map, *Exhibit 108-ST*, contained in Application Supplement No. 2, depicts the locations of these permanent structures outside the area requested for Phase I release. No permanent structures are located within the area requested for Phase I release.

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- (d). Staff has confirmed that there are no areas approved for the disposal of non-coal waste within the areas requested for Phase I release. [§12.375].

14. SMECI has met all requirements for Phase II release on 4.3 acres.

- (a). Areas requested for Phase II release have met Phase II requirements for the establishment of vegetation.

- (i). Revegetation within the proposed 4.3-acre Phase II release area was achieved utilizing permanent species approved for use at the time of planting. Coastal bermudagrass, Kleingrass, Plains bristlegrass, Sideoats grama, and Wilman lovegrass were planted between 1995 and 1997. The species planted are established and provide pastureland forage, wildlife enhancement, and erosion control.

- (ii). SMECI submitted ground-cover and productivity data for the Land Management Unit (LMU) for the requested 4.3 acres of pastureland land use, LMU A-22. The requested release acres are contained within the February 3, 2003 Extended Responsibility Area (ERA). Ground-cover and productivity data for this ERA were submitted by letters dated April 24, 2006, and February 26, 2007, and were approved by SMRD by letters dated July 19, 2006, and June 13, 2007, respectively.

- (iii). As required per the plan contained in the approved permit, a random 10% resampling of soils within the requested release area for the fourth year of the five-year Extended Responsibility Period (ERP) of the ERA indicates that the subject release acres meet the ground-cover and productivity requirements necessary for Phase II release.

- (b). The 4.3 acres proposed for release from Phase II requirements are not contributing suspended solids to streamflow or runoff outside the permit area in excess of established effluent limitations pursuant to §12.313(a)(2). An examination of water discharged from sedimentation ponds to receiving streams shows that the water-quality requirements of §12.349 have been met. Staff describes that all areas proposed for release of Phase II reclamation obligations are located within the watershed of Sedimentation Pond 5. SMECI depicts the proposed release area on Exhibit 108-WS, *Watershed Map*.

- (c). No rills or gullies were observed during the inspection within areas proposed for Phase II release. [§12.389].

- (d). The 4.3-acre area requested for Phase II release from reclamation obligations does not contain any permanent impoundments. [Finding of Fact No. 13(c), *supra*].

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- (e). SMECI's individual pond long-term water-quality monitoring data evaluation for Phase II release, filed by letter dated June 29, 2021, is based on data from a single pond [Pond 5 (part of Outfall 101)] that captures runoff from the area proposed for Phase II release from reclamation obligations. SMECI's analysis compares the individual pond long-term water-quality monitoring data to effluent limitations under TPDES Permit No. WQ0002043000. Data from Pond 5 were obtained between the third quarter of 2013 and the first quarter of 2021. The data evaluated by SMECI included the parameters flow (Q), hydrogen-ion concentration (pH), total suspended solids (TSS), settleable solids (SS), total iron (Fe), and total manganese (Mn) for the period of record. The data evaluation indicates no adverse trends for monitored constituents, including TSS and SS. SMECI has demonstrated that the area proposed for Phase II release from reclamation obligations is not contributing suspended solids to stream flow or runoff outside of the permit area that exceed the performance standards at §12.313(a)(2). Because the requested area of Phase II release does not include any permanent impoundments, Staff evaluated the available data contained in the Commission's files and submitted in the Application, concurring that this area is not contributing poor-quality waters to the surface-water system.
15. All 107.9 acres proposed for Phase III release have met Phase III requirements for backfilling, regrading, and drainage control.
- (a). All areas requested for release are stable with no eroded areas. All highwalls, spoil piles, ponds, and depressions were eliminated. Backfilling and regrading were conducted in accordance with permit requirements. All areas have been filled, graded, or otherwise stabilized. Mining of the areas requested for release was conducted between 1979 and 1993, and final grading occurred in 1995. The areas meet requirements for regrading to approximate premine topography. The subject acreage does not contain any cut-and-fill terraces or underground drains. All requirements for covering acid- and toxic-forming (AFM/TFM) and combustible materials have been met.
- (b). Completion of the five-year period of extended responsibility applicable to this permit area, having at least 26 inches of rainfall annually, has been met for the approved postmine land use, which is pastureland, within the requested release areas. [§12.395(c)(2)].
- (c). No portion of the areas requested for release of reclamation obligations had a soils classified as prime farmland prior to mining for which specific reclamation standards would apply. [§§12.624 - 12.625].
- (d). No small-area depressions are present within the requested Phase III release areas. [§12.385].

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- (e). Areas requested for Phase III release meet requirements for protection of the groundwater resources.
  - (i). Monitoring wells within the requested 107.9-acre Phase III release area were plugged on April 17, 2017. No monitoring wells are located within the areas requested for Phase III release of reclamation obligations.
  - (ii). Groundwater monitoring for the areas requested for Phase III release has been performed in accordance with provisions of the approved mining permit. No premine overburden water-bearing strata (shallow systems within 100-150 feet from the surface) are present in the reclaimed portions of the A Area of the San Miguel Lignite Mine; therefore, none have been destroyed by mining. One underburden aquifer (Unit 22) in the San Miguel Lignite Mine area is separated from the overburden by underclays having a thickness of fifty feet or more. These underclays include some thin silty sand lenses of limited lateral hydrologic extent interbedded within thicker clay layers.
  - (iii). Based on water levels observed in the area monitoring wells, there is at least 15 feet of unsaturated soil above the water table. The presence of resaturation is consistent with that predicted in the approved probable hydrologic consequences (PHC) determination. Based on the geometry of the reclaimed overburden in LMU A-22 and the surrounding area, and consideration of the potential for ground-water drainage to the surface, Staff believes it highly unlikely that the surface-water system will be impacted by the reclamation operations in the area, in that the development of surface-water seeps is unlikely to occur. No private wells completed in the overburden or in the underburden Unit 22 aquifer exist in the area. The Carrizo-Wilcox aquifer, the uppermost source of potable groundwater in the area, is more than 3,000 feet below the ground surface in the San Miguel Lignite Mine area.
  - (iv). Staff notes no problems relating to the protection of the ground-water hydrologic balance that would preclude the Phase III release of the requested areas from reclamation performance obligations.
- (f). SMECI has met the Phase III reclamation performance obligations for protection of surface-water resources.
  - (i). SMECI provided surface-water and groundwater assessments in the initial application for release of reclamation obligations in a report dated April 8, 2016, and an updated report in Supplement No. 2 filed by letter dated June 1, 2021.
  - (ii). As indicated in the surface-water and groundwater evaluation report contained in the application (dated April 8, 2016), runoff from all areas requested for

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Phase III release drain through approved Sedimentation Pond 1 to Sedimentation Pond 5, whereupon the runoff is discharged northward to Souse Creek, which subsequently drains into La Parita Creek, and ultimately to the Atascosa River. For the period of record, runoff from the area proposed for release from reclamation obligations has been controlled by Sedimentation Ponds 1 and 5. Pond outfalls at the San Miguel Lignite Mine are currently monitored under TPDES Permit No. WQ0002043000. The watersheds of these ponds are delineated on Plate 108-WS, *Watershed Map*, and required TPDES monitoring data [flow in gallons per minute (gpm), pH, total suspended solids (TSS) in mg/L, and total iron (Fe) and manganese (Mg) in mg/L] are provided in the surface-water and groundwater assessments in the Application.

- (iii). Long-term surface-water monitoring (LTSM) stations are located upstream and downstream of the mine on La Parita Creek. Locations are shown on Plate 1, *Long-Term Surface Water Monitoring Station and Flowing Well Location Map*, contained in the April 8, 2016, surface-water and groundwater evaluation report. LTSM stations for which monitoring data were evaluated for this Application are as follows:

<b>LTSM Stations</b>	
<b>Upstream/Undisturbed Stations</b>	<b>Location LTSM Station/River Watershed</b>
MK001	La Parita Creek / Atascosa
MK001A	La Parita Creek / Atascosa
<b>Downstream/Disturbed Station</b>	<b>Location LTSM Station/River Watershed</b>
MK002	La Parita Creek / Atascosa

Staff and SMECI evaluated slightly different parameter-value sets due to different periods of record for the data; nevertheless, in comparing surface-water quality of flows at disturbed versus undisturbed (downstream versus upstream), Staff and SMECI concurred in their ultimate conclusions. Comparisons were conducted on: (1) LTSM-station surface-water data; (2) baseline surface-water data; (3) applicable stream-segment criteria, including Federal and State effluent standards; (4) predictions contained in the approved probable hydrologic consequences (PHC) determination; and (5) estimates of effect contained in Staff's Cumulative Hydrologic Impact Assessment (CHIA) conducted for the mine for specific mass-balance points.

(A). Comparisons of LTSM-station surface-water data:

- (i). Data for upstream LTSM station MK001A show an average TDS concentration of 6,827.1 mg/L, and a range from 467.0 mg/L to 15,100 mg/L. LTSM data for downstream LTSM station MK002 show an average TDS concentration of 2,686.9 mg/L, and a range from 125 mg/L to 11,800 mg/L. The flow-weighted average TDS



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concentration at downstream LTSM station MK002 (1,033.9 mg/L) is lower than the maximum annual average concentration for the stream segment (1,500 mg/L) and significantly lower than the flow-weighted average TDS concentration at the upstream LTSM station MK001A (4,709.1 mg/L).

- (ii). The highest TDS concentration (15,100 mg/L) at upstream LTSM station MK001A occurred on June 15, 2011, whereas the highest TDS concentration (11,800 mg/L) at downstream LTSM station MK002 occurred on March 16, 2011. SMECI attributed these high TDS concentration occurrences to discharges from upstream saline artesian wells (Peeler Flowing Well Nos. 1 and 2), located upstream of LTSM station MK001A. As noted in TA Addendum No. 1, Staff determined from its data evaluation that Peeler Flowing Well No. 1 contributes approximately 282 tons/year of dissolved solids to La Parita Creek. Peeler Flowing Well No. 2 water does not enter La Parita Creek because its flow is intercepted by Pond 9B. Staff nevertheless concluded that the loading from Peeler Flowing Well No. 1 was sufficient to affect the water quality measured at upstream LTSM station MK001A. Further, Staff indicated that the dynamics of the La Parita Creek hydrologic system were such that during drought conditions, flow from the upstream wells was stored in the creek alluvium and not recorded at the downstream station. Therefore, measurable flow primarily only occurs at downstream station during storm events.
  - (iii). For parameters TSS and Fe, average concentrations are slightly higher at the downstream stations than they are at the upstream station. Both are skewed by some high measurements that occurred early in the period of record.
  - (iv). For the parameters manganese (Mn), sulfate ( $\text{SO}_4^{2-}$ ), and chloride ( $\text{Cl}^-$ ), measured downstream concentrations are lower than the upstream concentrations.
- (B). Comparison to baseline surface-water data:
- (i). Average hydrogen-ion concentration (pH) at the downstream station (7.8 s.u.) is slightly greater than the baseline pH for the mining-area surface waters (7.5 s.u.). SMECI and Staff believe this is due to anomalous readings, with a high reading of 9.2 s.u. in February 2009 having a significant influence on the statistical results. Since that time, pH measurements have not exceeded 9.0

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- (ii). The downstream average measured TDS concentration and range of TDS concentrations is significantly higher than the baseline TDS concentrations. SMECI interprets that this difference is not due to mining effects but rather is due to high-TDS flow from artesian wells upstream. The baseline surface-water characterization is no longer a valid point of comparison.
  - (iii). Per the approved monitoring plans, no data are available for baseline comparison for parameters TSS, Fe, Mn,  $\text{SO}_4^{-2}$ , and  $\text{Cl}^-$ .
- (C). Comparison to criteria established for applicable TCEQ stream segment (Stream Segment No. 2107 of the Atascosa River in the Nueces River Basin):
- (i). The highest measurement for downstream pH, at 9.2 s.u., exceeded the stream segment criterion maximum of 9.0 s.u., occurring in February 2009. Since that time, pH has remained within the stream segment range criterion (6.5 s.u. - 9.0 s.u.). The average pH (7.8 s.u.) remains within this range.
  - (ii). The average TDS concentration exceeds the stream segment criterion maximum of 1,500 mg/L; however, most, if not all of this TDS loading is due to upstream high-TDS artesian wells within the watershed of La Parita Creek. Exceedances in TDS concentrations have occurred at the upstream and downstream LTSM stations, but the flow-weighted average TDS concentration at the downstream station (1,033.9 mg/L) is lower than the maximum annual average concentration for the stream segment (1,500 mg/L), and significantly lower than the flow-weighted average TDS concentration at the upstream LTSM station (4,709.1 mg/L).
  - (iii). A comparison of LTSM data for sulfate ( $\text{SO}_4^{-2}$ ) at the downstream station to the stream segment criterion (500 mg/L) indicates that the average  $\text{SO}_4^{-2}$  concentration (652.0 mg/L) and the range (22.5 mg/L to 2,990.0 mg/L) are higher than stream segment criterion for  $\text{SO}_4^{-2}$ . Nevertheless, this downstream station  $\text{SO}_4^{-2}$  concentration is significantly lower than the average  $\text{SO}_4^{-2}$  concentration at the upstream station (1,264.5 mg/L).
  - (iv). A comparison of LTSM data for chloride ( $\text{Cl}^-$ ) at the downstream station to the stream segment criterion (600 mg/L) indicates that the

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average  $\text{Cl}^-$  concentration (867.5 mg/L) and the range (62.2 mg/L to 4,510.0 mg/L) are higher than the stream segment criterion for  $\text{Cl}^-$ . However, this downstream station  $\text{Cl}^-$  concentration is significantly lower than the average  $\text{Cl}^-$  concentration at the upstream LTSM station (3,050.7 mg/L).

(D). Comparison to approved PHC determination:

- (i). SMECI did not address effects predicted in the approved permit with regard to water quality. In its TA, Staff summarized the approved PHC determination, indicating that the determination predicts increases during mining to sediment load and to TDS, Fe, Mn, and  $\text{SO}_4^{2-}$  concentrations relative to the premining conditions, with a subsequent decrease to at or below premining conditions in the post-reclamation period. Staff indicates that its analysis of the monitoring data supports a conclusion that water quality in the postmine period is consistent with the approved PHC determination and has been protected.
- (ii). Staff summarizes the water-quantity predictions in the approved PHC determination to indicate that runoff volumes will increase from premining to postmining conditions as a result of decreased vegetation density. This increase is somewhat mitigated by the increase in surface-water impoundments, which will act to retain and detain surface-water runoff. By detaining runoff, peak flows from precipitation events will be attenuated and infiltration to aquifers will be increased, as well as the evapotranspiration. Thus, longer sustained flows will be expected because of the controlled discharge through the pond's outlet and increased groundwater contributions to stream baseflow. Staff concurs with SMECI's assessment that the monitoring data support that the prediction has been borne out, which states that "Annual runoff and consumptive losses appear to be consistent with the evaluation presented in the PHC determination provided in previous permit application for Area B [SMLM III (1994) and SMLM V (1997)], with expected higher evaporative losses as a result of the permanent ponds, but with increased runoff volume and rates in the disturbed area. Flow at the downstream surface-water monitoring stations generally show greater flow volumes compared to the upstream surface-water monitoring stations, indicating no significant water volume loss across the mine areas."

(E). Comparison with estimates of effect in the approved CHIA:

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- (i). As described in the TA, in its CHIA, Staff predicted the greatest potential increase in the indicator parameter (TDS concentration) is anticipated at Mass-Balance Point No. 2 (USGS Gauging Station No. 08208000, located on the Atascosa River downstream of Metate Creek and La Parita Creek). At this location, TDS concentration is predicted to increase by as much as 8.2%, from approximately 567 mg/L to 613 mg/L, less than the threshold value of 1,500 mg/L for Stream Segment No. 2107.
  - (ii). Staff's postmine assessment of the predictions regarding TDS concentrations at the downstream stations evaluated for this release area have yielded significantly higher concentrations than the stream segment criterion (1,500 mg/L). As indicated in Finding of Fact No. 15(f)(iii)(A)(a), *supra*, these higher values are not due to mining activities at the San Miguel Mine.
  - (iv). Staff's summarized the assessment of surface-water protection pursuant to requirements at §12.349 of the Regulations, indicating that SMECI has demonstrated that disturbance to the surface-water hydrologic balance has been minimized in the permit and adjacent areas, and that material damage has been prevented outside the permit area. Staff noted no impediments to Phase II and III release from reclamation obligations for the requested 107.9 acres.
16. Pursuant to §12.313(a)(3), the Commission may release the remaining bond monies attributable to the subject 107.9 acres upon a determination that reclamation has been successfully completed in accordance with the terms of the approved permit and the requirements of the Act and the Regulations. For the renewal/revision application for Permit No. 11H, approved by the Commission on April 13, 2021, the most recent reclamation cost estimate and bond information was summarized as follows:

Commission Order signed on December 8, 2020, Docket No. C20-0021-SC-00-E, accepted two Blanket Self Bonds with Third Party Guarantees to cover reclamation obligations in sum for Permits 11G, 52A and 60. The accepted Self Bond instruments covering the three permits are in the amounts of \$131,000,000 and \$9,000,000, for a total \$140,000,000. The final pit areas are currently bonded utilizing the Area Bond methodology, which equates to \$11,438.00/acre for the mined rate. This cost includes the following work categories: overburden spoil leveling, topsoil distribution, soil preparation, revegetation, and vegetation maintenance for a five year period. SMECI provided a detailed estimate of the cost of reclamation required to be covered by the performance bond is contained in the Application, in accordance with

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§12.145(b)(2). SMECI provided a revised detailed reclamation cost estimate in section .145, in Appendices 145-1 and 1a, *Reclamation Cost Determination*, in the initial submittal, and in Supps. 2 through 5. Staff's reclamation cost estimate is \$41,903,538 for Areas A and E of the mine, and \$42,730,060 for Areas B and BX of the mine, for a total estimate of \$84,633,598 recommended by Staff as the necessary performance bond amount for the proposed activities in this Application.

Based on the terms of the approved permit, there is no eligible bond reduction amount for the acreage approved for release of Phase I reclamation requirements given bonded areas within Permit No. 11H are bonded based upon the "worst-case" bond method. This worst-case method assumes that mining and reclamation operations are always contemporaneous with the reclamation plan. Areas recommended for Phase I and II release of reclamation liability are not eligible for release of bond monies; therefore, that no eligible bond reduction is specified for these phases. For Phase III release, any eligible reduction amount based on the current reclamation cost estimate would be superseded once the costs for reclamation are calculated at a future date when SMECI requests a reduction of the bond, thereby ensuring the proposed bond amount is sufficient to cover the cost of outstanding reclamation work. SMECI does not request an adjustment to the approved bond in the Application, and no new bond instrument has been filed. Nevertheless, in its TA, Staff concurred with the amount of the Phase III reduction that was calculated by SMECI in the amount of \$161,309.28. This Order prescribes that SMECI is eligible to reduce the amount of bond attributable to the requested acreage, but does not specify the amount of the reduction.

17. The areas requested for release have been marked in the field with boundary markers at corners sufficient so that these areas can be distinguished from active mining and reclamation areas. Permanent markers shall be maintained; marking the areas will appropriately identify them to aid in inspection and enforcement.
18. SMECI and the Staff, the only parties to the proceeding, filed waivers of the preparation and circulation of a proposal for decision. The proposed order was circulated to the parties with opportunity for comment. No exceptions to the proposed order were filed.
19. Open meeting notice has been posted for Commission consideration of this Application in accordance with Tex Gov't Code §551.048.

#### **CONCLUSIONS OF LAW**

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

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1. Proper notice was provided for this request for release of reclamation obligations pursuant to the Act, the Regulations, and the Administrative Procedure Act, TEX. GOV'T CODE ANN. Ch. 2001 (Vernon Supp. 2020).
2. No public hearing was requested, and none is warranted.
3. SMECI has complied with all applicable provisions of the Act and the Regulations regarding notice for Commission jurisdiction to allow consideration of the matter for release of Phase III reclamation obligations for (aggregate 107.9 acres) as set out in this Order acreage requested for release as set out in the Findings of Fact.
4. SMECI has complied with all applicable provisions of the Act and the Regulations for release of Phase III reclamation obligations for aggregate 107.9 acres as set out in this Order acreage requested for release as set out in the Findings of Fact.
5. The Commission may approve a release of Phase III reclamation obligations for aggregate 107.9 acres as set out in the above Findings of Fact and Conclusions of Law.
6. SMECI is eligible to reduce the bond for the permit by the amount that is attributable to the aggregate 107.9 acres in future bond adjustments.

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

**IT IS FURTHER ORDERED** that a release of Phases I, II, and III reclamation obligations on the requested 4.3 acres and release of Phase III reclamation obligations on the requested 103.6 acres, an aggregate of 107.9 acres, is hereby approved;

**IT IS FURTHER ORDERED** that all areas released from reclamation obligations shall remain clearly marked in the field with permanent boundary markers maintained to distinguish these areas at all corners and angle points from active mining and reclamation areas in accordance with this Order;

**IT IS FURTHER ORDERED** that the current bond remains in effect in accordance with its terms until a replacement bond is approved by the Commission;

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

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**IT IS FURTHER ORDERED** by the Commission that this order shall not be final and effective until 25 days after the Commission's Order is signed, unless the time for filing a motion for rehearing has been extended under Tex. Gov't Code §2001.142, by agreement under Tex. Gov't Code §2001.147, or by written Commission Order issued pursuant to Tex. Gov't Code §2001.146(e). If a timely motion for rehearing is filed by any party at interest, this order shall not become final and effective until such motion is overruled, or if such motion is granted, this order shall be subject to further action by the Commission. Pursuant to Tex. Gov't Code §2001.146(e), the time allotted for Commission action on a motion for rehearing in this case is 100 days from the date the Commission Order is signed.

**SIGNED** on August 24, 2021.

**RAILROAD COMMISSION OF TEXAS**

DocuSigned by:  
*Christi Craddick*  
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**CHAIRMAN CHRISTI CRADDICK**

DocuSigned by:  
*Wayne Christian*  
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**COMMISSIONER WAYNE CHRISTIAN**

DocuSigned by:  
*Jim Wright*  
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**COMMISSIONER JIM WRIGHT**

**ATTEST:**  
DocuSigned by:  
*Callie Farrar*  
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\_\_\_\_\_  
**Secretary, Railroad Commission of Texas**

