

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

**SURFACE MINING DOCKET NO. C17-0001-SC-11-F:
APPLICATION BY SAN MIGUEL ELECTRIC COOPERATIVE, INC. FOR RELEASE OF
PHASES I, II AND III ON 101.0 ACRES, PERMIT NO. 11H, SAN MIGUEL MINE
ATASCOSA AND MCMULLEN COUNTIES, TEXAS**

**ORDER APPROVING RELEASE OF RECLAMATION OBLIGATIONS FOR
PHASES I, II AND III ON 101.0 ACRES**

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 (Staff or SMRD), for Phases I, II and III release of reclamation obligations on 101.0 acres within Permit No. 11H, San Miguel Mine, Atascosa and McMullen Counties, Texas. The Application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, Tex. Nat. Res. Code Ann. Ch. 134 (Vernon's 2022) (Act) and §§ 12.312-12.313 of the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 Tex. Admin. Code Ch. 12 (Thomson West 2022) (Regulations).

Permit No. 11H was issued by Commission Order (Docket No. C18-0017-SC-11-C) dated April 13, 2021, and currently authorizes surface coal reclamation operations at SMECI's San Miguel Mine within its permit area of approximately 16,000 acres. Copies of the Application for release were filed in the required county and Commission offices. After public notice, no comments or requests for a public hearing were received. The only parties to the proceeding are SMECI and Staff. There remain no outstanding issues between the parties. Based on information provided by SMECI and the inspection of the area, Staff recommends release of Phases I, II, and III reclamation obligations for the requested 101.0 acres. The parties have filed waivers of preparation and circulation of a proposed order.

Based upon the evidence in the record, reclamation requirements have been met for the acreage requested for release. The Commission approves the release as requested and finds that SMECI is eligible to reduce the amount of bond for the permit to an amount that is attributable to the subject acreage in future bond adjustments.

FINDINGS OF FACT

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

1. By letter dated August 30, 2016, San Miguel Electric Cooperative, Inc. (SMECI) filed an application (Application) with the Railroad Commission of Texas (Commission), Surface Mining and Reclamation Division (SMRD or Staff) for various Phases of release of reclamation obligations (Phases I through III, Phases II and III, and Phase III) on an aggregate 97.0 acres within the San Miguel Ignite Mine, Permit No. 11H, located in McMullen and Atascosa Counties, Texas. The initial Application was subsequently revised by SMECI to add 4.0 acres to the proposed release area and to request Phases I through III release on all acreage, resulting in a total of 101.0 acres requested for Phases I through III release from reclamation obligations.

2. The Application was filed pursuant to Texas Surface Coal Mining and Reclamation Act, Tex. Nat. Res. Code Ann. Ch. 134 (Vernon's 2022) (Act), and the Coal Mining Regulations, Tex. R.R. Comm'n, 16 Tex. Admin. Code Ch. 12 (Thomson West 2022) (Regulations). No filing fee is required. The Application was properly certified in accordance with § 12.312(a)(3).

3. The Application consists of the initial submittal and three supplemental documents submitted by SMECI. The following timeline includes supplemental materials for the Application, Staff's review of those materials, and related correspondence:
 - (a). On September 6, 2016, Staff docketed the Application with the Hearings Division for review of the initial public notice. The initial Application requested release of reclamation obligations for Phases I, II and III on 40.2 acres, Phases II and III on 2.5 acres, and Phase III on 54.3 acres (aggregate 97.0 acres).

 - (b). From August 30, 2016 through January 11, 2023, the Application was under review by SMRD Staff, and revision and supplementation by SMECI. Staff's Technical Analysis provided the following summary of the Application review process which occurred prior to the filing of Application Supplement No. 1:
 - i. On May 22, 2017, the Application was suspended at the request of SMECI by letter dated May 22, 2017, pending issuance of SMRD Advisory Notice AD-BO-306(e). On July 24, 2017, Advisory Notice AD-BO-306(e) was approved by Staff.

 - ii. Staff's advisory notice created a new postmine land use named "Industrial/Commercial (I/C) Exempt." Staff defined the "I/C-Exempt" postmine land use, in Advisory Notice AD-BO-306(e), as "third-party features of an approved alternative postmining industrial/commercial (I/C) land use outside the scope of the reclamation plan. Such features may

include but are not necessarily limited to oil and gas well pads, storage facilities, gathering and boosting stations, roads used exclusively to access third-party features, and areas immediately adjacent to those features disturbed in the implementation of the I/C land use.” Staff indicated that the “I/C-Exempt” areas are subject to “[a]ctions of third parties which are beyond the control of the operator and for which the operator is not responsible under the permit [§ 12.306(e)].”

- iii. In response to the approval of Advisory Notice AD-BO-306(e), SMECI submitted Revision No.13 to revise the postmine land use for the proposed release area from “I/C” to “I/C-Exempt.” Revision No. 13 was approved administratively, by letter dated December 22, 2017. The application was released from hold by the request of SMECI on December 11, 2018. On October 14, 2019, Staff re-suspended the Application pending resolution of the submittal of soil-testing information, surface-water and groundwater data, and assessments of the data.
 - iv. By letter dated October 15, 2019, Administrative Law Judge (ALJ) Kyle Lebby indicated that the “I/C-Exempt” postmine land use created by Staff in Advisory Notice AD-BO-306(e) was undefined in the Regulations and could not be used in the Application (as addressed in Docket No. C18-0001-SC-26-F).
 - v. Staff determined that Revision No. 13 was unnecessary and requested that SMECI submit a second revision, to revert back to the previously approved I/C postmine land use. On November 1, 2019, SMECI submitted Revision No. 13A, which was approved administratively by Staff on November 8, 2019. By letter dated February 4, 2021, the Application was again suspended at the request of SMECI to provide the soil information, surface-water, and groundwater information requested by Staff.
- (c). On February 1, 2022, SMECI submitted Supplemental Document No. 1 (Supp. 1) to SMRD Staff, in response to a SMRD comment letter dated October 14, 2019. Supp. 1 contains: 1) additional surface and groundwater information, and 2) a revision to the acreage requested for release [added 4.0 acres, resulting in a total of 101.0 acres].
 - (d). On February 14, 2022, SMECI filed Supp. 1 with the Hearings Division in response to an ALJ letter dated February 11, 2022.
 - (e). On June 29, 2022, SMECI filed Supplemental Document No. 2 (Supp. 2), which contains copies of postmine soils approval letters.

- (f). SMECI filed Supplemental Document No. 3 (Supp. 3) on August 2, 2022, by cover letter dated July 2, 2022. Supp. 3 revised the Application to request exclusively Phases I through III release of reclamation obligations for the full 101.0 acre release area [initial Application requested various phases of release-Phases I-III, Phases II-III, and Phase III].
 - (g). On December 21, 2022, the SMRD Director declared the Application to be administratively complete.
 - (h). On January 11, 2023, Staff filed a Technical Analysis (TA) and two field inspection reports recommending release of Phases I through III reclamation obligations on the requested 101.0 acres.
4. On March 20, 2023, the Examiners requested an Informal Conference to discuss ALJ Letter No. 10, regarding issues related to erosion control, postmine land use, and final discharge ponds within the 101.0 acre release area. The Informal Conference was initially noticed on March 23, 2023, as scheduled for April 3, 2023, but was canceled by ALJ Letter No. 13 due to illness. The Informal Conference was rescheduled and noticed on April 10, 2023, and held via Zoom on April 18, 2023. SMECI and Staff were the only parties that participated in the Informal Conference. In ALJ Letter No. 15, issued on April 20, 2023, the ALJ requested that SMRD and SMECI provide further information based on the responses the Parties gave during the Informal Conference. On June 19, 2023, SMECI provided supplemental information in response to ALJ Letter No. 15.
5. Permit No. 11H and the most recent bond map were approved and issued by the Commission on April 13, 2021. SMECI does not request a reduction of its approved total bond amount. The currently accepted reclamation performance bond for SMECI's San Miguel Lignite Mine under Permit No. 11H is in the form of two self-bonds with third-party guarantee and indemnity agreement in the amounts of \$131,000,000 and \$35,000,000, totaling \$166,000,000, for SMECI's four Texas surface coal mining permits—Permit Nos. 11H, 52A, and 60, and 61. The self-bonds were accepted by Commission Order (MR-23-00013159) dated June 13, 2023. The third-party guarantees and indemnity agreements are issued by National Rural Utilities Cooperative Finance Corporation (CFC). The currently approved reclamation cost estimate for Permit No. 11H is \$84,513,813 and was approved by letter dated December 6, 2021 in Revision No. 1. The aggregate total estimated reclamation cost for SMECI's four permits is \$161,842,495, which is less than the bonded amount, yielding an excess bond amount of \$4,157,505. The Regulations at § 12.306(a) state that liability under a performance bond shall continue until all reclamation, restoration and abatement work required of persons who conduct surface coal mining and reclamation operations under the requirements of the Act, the Regulations, and the provisions of the permit has been completed, and the permit terminated by release of the permittee from any further liability in accordance with §§ 12.312 and 12.313, via application addressing the procedures, criteria, and schedule for release of performance bond. Alternatively, an

existing bond may be replaced with a separate bond if the liability which has accrued against a permittee on the permit area covered by the bond is transferred to an *acceptable* replacement [§ 12.310]. The bond may be released if the Commission has approved an *acceptable* replacement bond to assure completion of the reclamation plan prior to demonstrating that reclamation has been accomplished in accordance with §§ 12.312 and 12.313 [see § 12.310(b)].

6. Copies of the Application were filed for public review, in compliance with notice requirements, at the main office of the Railroad Commission of Texas at 1701 North Congress, William B. Travis Building, Austin, Texas, in the Office of the Atascosa County Clerk in Jourdanton, Texas, and in the Office of the McMullen County Clerk in Tilden, Texas.
7. Public notice was published on three occasions for the Application: 1) with the initial Application, 2) due to an increase in acreage requested for release [Supp. 1], and 3) due to a change in the Phases requested for release [Supp. 3]. Application notice has been appropriately effected. The third and final public notice for release of 101.0 acres was reviewed and approved by the ALJ on September 2, 2022 and published in *The Pleasanton Express* once per week for four consecutive weeks, on October 26, and November 2, 9, and 16, 2022. The newspaper is a paper with general circulation in Atascosa and McMullen Counties. 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 general notification of the request for release. The notice includes the elements required by § 134.129 of the Act and § 12.312(a)(2) 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. SMECI submitted proof of publication (Publisher's Affidavit and newspaper tear sheets) to the Commission by letter dated December 16, 2022.
8. SMECI sent notice of application by letters dated November 4, 2022 to owners of interests in the areas requested for release and of adjacent lands, and to local governmental bodies, planning agencies, sewage and water treatment authorities and water companies in the locality, as required by § 12.312(a)(2) of the Regulations. SMECI mailed notice to the: Atascosa County Judge; Atascosa County Clerk; McMullen County Judge; McMullen County Clerk; Texas Commission on Environmental Quality (TCEQ) (Austin); Bureau of Economic Geology (Austin); Texas Historical Commission (Austin); Texas Parks and Wildlife Dept. (Columbus); Natural Resources Conservation Service (NRCS) offices (Tilden and Pleasanton); Texas General Land Office (Austin); U.S. Environmental Protection Agency (USEPA) office (Dallas); U.S. Fish and Wildlife Service

(Houston); Office of Surface Mining Reclamation and Enforcement (Tulsa, Oklahoma); TX State Soil and Water Conservation Board (Temple); U.S. Army Corps of Engineers' District Office (Fort Worth); the Nueces River Authority (Uvalde); the Evergreen Underground Water Conservation District (Pleasanton); the San Miguel Electric Cooperative, Inc. office (Jourdanton); EOG Resources, Inc. (San Antonio); McMullen County Water (Tilden); McMullen County Soil and Water Conservation District (Tilden); Atascosa Rural Water Supply (Atascosa); and the Atascosa County Soil and Water Conservation District (Pleasanton).

9. Staff provided notification of the application by certified letters dated December 21, 2022, to the McMullen County Judge James Teal and Atascosa County Judge Robert L. Hurley (Staff's TA, Attachment II). Mailing of notification was provided at least 31 days prior to the date of consideration of the docket by the Commission in accordance with § 134.133 of the Act.
10. No adverse comments or written objections were filed regarding the request for release pursuant to the notification. No requests for hearing or informal conference were filed pursuant to § 12.313(d).
11. Two field inspections were conducted by SMRD Inspection and Enforcement (I&E) Staff of the proposed release area: 1) on September 28, 2016 and, 2) on March 8, 2022.
 - (a). For the initial inspection, pursuant to § 12.312(b) of the Regulations, SMRD notified owners of interests in lands and lessees of the Application for release and the Office of Surface Mining Reclamation and Enforcement (OSMRE), Tulsa Field Office by letters dated September 8, 2016, of the date and time of Staff's field inspection scheduled for September 28, 2016. The notification stated that a release had been requested and, pursuant to § 12.312(b)(1), advised them of their opportunity to participate in the on-site inspection. A copy of the inspection report is provided in Staff's TA, Attachment III and copies of the notification letters are provided within Appendix III of the inspection report.

The initial field inspection of the 97.0 acres proposed for release from reclamation liability occurred on September 28, 2016, as indicated in Staff's notification letters. SMECI representatives Dave Burris and Jeremiah McKinney and OSMRE inspector Robin Lynch were present for the inspection. No landowners were present for the inspection. Field conditions were wet at the time of the inspection but did not restrict access to any of the areas proposed for release of reclamation liability. Based on the release inspection report dated November 29, 2016, SMECI demonstrated compliance with the permit performance standards and the regulations for the proposed release area, with the exception of two possible unapproved small area depressions located on the EOG 8H well pad and the Sanchez Cobra 1H-7H well pad, respectively. SMRD determined that SMECI must survey the areas proposed for Phase III release of reclamation liability for

small area depressions and provide documentation of landowner consultation, to meet the criteria defined in SMRD Advisory Notice EN-PS-385(c), at least six months prior to Phase III release.

- (b). SMRD inspection and enforcement personnel conducted a second inspection of the proposed release area on March 8, 2022. The area was reinspected because Supp. 1 to the Application (filed with the Hearings Division by letter dated February 14, 2021) added 4.0 acres to the initial proposed release area of 97.0 acres, the initial inspection for the 97.0 acres was conducted more than five years prior, and the initial inspection report noted two possible unapproved small area depressions. SMRD again notified owners of interests in lands and lessees of the Application for release and the OSMRE, Tulsa Field Office by letters dated February 9, 2022, of the date and time of Staff's field inspection scheduled for March 8, 2022. The notification stated that a release had been requested and, pursuant to § 12.312(b)(1), advised them of their opportunity to participate in the on-site inspection. A copy of the inspection report is provided in Staff's TA, Attachment III and copies of the notification letters are provided within Appendix III of the inspection report.

The inspection of the 101.0 acres proposed for release from reclamation liability occurred on March 8, 2022. SMECI representative Shad Crow was present for the inspection. No landowners were present for the pre-inspection meeting or the field portion of the inspection. Field conditions were moderate at the time of the inspection. The inspection report indicated (p. 7) that SMECI demonstrated in Supp. 3 to the Application that the areas requested for Phase III release were evaluated for small area depressions and none were found to meet the criteria defined in SMRD Advisory Notice EN-PS-385(c). Based on the release inspection report dated August 2, 2022, SMECI demonstrated compliance with the permit performance standards and the regulations for the 101.0 acres requested for Phases I through III release.

- 12. The permitted area for Permit No. 11H is approximately 16,000 acres and was approved by Commission Order (Docket No. C18-0017-SC-11-C) dated April 13, 2021. The permitted area is located in Atascosa and McMullen Counties approximately sixteen (16) miles south of Jourdanton, Texas and six (6) miles southeast of Christine, Texas. A general location map of the permit area, with the 101.0 acres requested for release delineated, is provided in Staff's TA, Attachment III (Inspection Report), Appendix I.
- 13. The 101.0 acres requested for release are comprised of multiple parcels in the A and E mine areas. The approved postmining land use for the requested release is Industrial/Commercial (I/C) and consists of reclaimed and revegetated land within Permit No. 11H that has been developed for oil and gas industry use. These facilities consist of active oil well locations, inactive oil well locations, storage facilities and facility roadways.

Supp. 3 of the Application included the following summary of the proposed release areas:

- (a). **Sanchez Oil and Gas Corporation: Wells Cobra #1H - #7H:** An area comprised of approximately 23.1 acres which was mined in 1995 and regraded in 1996. In 1997, the area was planted with hybrid bermudagrass. This facility was constructed sometime between August 2, 2011 and April 20, 2012. In the initial Application, this acreage was 19.2 acres. However, field verification of the disturbance boundary indicated the site was actually 23.1 acres. This additional acreage was approved as I/C land use in Revision No. 1 (approved by letter dated December 6, 2021).
- (b). **EOG Resources: San Miguel D Unit, Well No. 1H:** An area comprised of approximately 12.8 acres which was mined in 1983 and regraded in 1984. In 1985, the area was planted with hybrid bermudagrass. This facility and associated roadway were constructed sometime between April 20, 2012 and July 29, 2013.
- (c). **EOG Resources: San Miguel D Unit, Well No. 2H:** An area comprised of approximately 7.9 acres which was disturbed from mining in 1983 and regraded in 1984. In 1985, the area was planted with hybrid bermudagrass. The current facility and roadway were built sometime between April 20, 2012 and July 29, 2013 and consist of a single pad location and associated access road.
- (d). **Ellsworth, H. P. O&G Properties pad and facilities:** An area comprised of approximately 3.3 acres which was mined in 1983 and regraded in 1984. In 1985, the area was planted with hybrid bermudagrass. This facility and roadway were constructed sometime between October 30, 2008 and October 13, 2010. No signage was found at the site, but a review of the Railroad Commission of Texas Well database provided a name for the operator.
- (e). **EOG Resources: Peeler Ranch Lease, Well No. 4H:** An area comprised of approximately 7.7 acres which was mined in 1983 and regraded in 1984. In 1985, the area was planted with hybrid bermudagrass. This facility and associated roadway were constructed sometime between October 30, 2008 and May 7, 2010.
- (f). **Rickaway Energy Corporation: Peeler, Well No. 2A:** An area comprised of approximately 2.9 acres which was mined in 1985 and regraded in 1986. In 1987, the area was planted with hybrid bermudagrass. This facility and associated roadway were constructed sometime between May 7, 2010 and February 6, 2011.
- (g). **Rickaway Energy Corporation: Peeler, Well No. 1A:** An area comprised of approximately 1.5 acres which was mined in 1985 and regraded in 1986. In 1987, the area was planted with hybrid bermudagrass. This facility and associated roadway were constructed sometime between October 30, 2008 and May 7, 2010.

- (h). **EOG Resources: Peeler Ranch Reclamation Unit, Well No. 8H:** An area comprised of approximately 8.3 acres which was mined in 1985 and regraded in 1986. In 1987, the area was planted with hybrid bermudagrass. This facility and associated roadway were constructed sometime between April 20, 2012 and July 29, 2013.
 - (i). **EOG Resources: Peeler Ranch Reclamation Unit Storage facility:** An area comprised of 3.9 acres which was disturbed by mining activities in 1982 and replanted in 1984 with hybrid bermudagrass. The current facility was built sometime between May 7, 2010 and February 6, 2011.
 - (j). **EOG Resources: Peeler Ranch, Well No. 5H:** An area comprised of approximately 4.9 acres which was disturbed by mining activities in 1985 and regraded in 1986. In 1987, the area was planted with hybrid bermudagrass. This facility was constructed sometime between October 30, 2008 and May 7, 2010.
 - (k). **EOG Resources: Peeler Ranch, Well No. 6H:** An area comprised of approximately 7.2 acres which was disturbed by mining activities in 1986 and regraded in 1987. In 1988, the area was planted with hybrid bermudagrass. This facility and associated road were constructed sometime between May 7, 2010 and February 6, 2011.
 - (l). **EOG Resources: Peeler Ranch, Well No. 7H:** An area comprised of approximately 8.9 acres which was mined in 1986 and regraded in 1987. In 1988, the area was planted with hybrid bermudagrass. This facility and associated road were constructed sometime between May 7, 2010 and February 6, 2011.
 - (m). **EOG Resources: Peeler SMECI A Lease, Well No. 1H:** An area comprised of approximately 8.6 acres which was mined in 1987 and regraded in 1988. In 1989, the area was planted with hybrid bermudagrass. This facility and associated road were constructed sometime between April 20, 2012 and July 29, 2013.
14. Based upon the Application, as supplemented, and Staff's review, release of reclamation obligations has been met for Phase I requirements for backfilling, regrading, and drainage control, as required by § 12.313(a)(1), for the requested 101.0 acres. The postmining land use of the areas requested for Phase I release consists of I/C. No permanent structures are located within the requested release area.
- (a). The area has been backfilled and regraded to its approximate original contour [§ 12.385(a)]; highwalls have all been eliminated [12.385(b)]; suitable topsoil has been placed over regraded spoil; no cut-and-fill terraces were constructed; and drainage control has been established in accordance with the approved

reclamation plan. Surface-water runoff from the proposed Phase I release area flows to ponds 1, 2, 3, 5, 7 and 15E.

- (b). Postmine soil testing has been conducted on the 101.0 acres of I/C land proposed for Phase I release and all areas have met the suitability requirements. SMECI indicates in the Application that initial soil testing of the top four feet for soil grids within the requested 101.0 acres has demonstrated that postmine soil suitability meets all requirements. Backfilling and grading activities have resulted in a minimum four-foot cover of the best available non-toxic and non-combustible material over all exposed coal seams and all acid-forming, toxic-forming or combustible materials.
 - i. Staff's TA and the Application indicate that soil grids within the proposed 101.0-acre Phase I release area were sampled and approved between 1995 and 2021. Data for the grids within EOG 1H-Area A and EOG 6H (located in Area A) were approved by letter dated November 9, 2000. Staff found that the data for all the sampled areas within the A-Mine Area did not indicate the presence of acid- and toxic-forming materials in the top four feet of reconstructed soils. Data for the soil grids within EOG 1H-Area E, 2H, and Cobra 1H-7H (located in Area E) were approved by letter dated November 22, 2021. The data verified that the banking-acreage balances were positive in all parameter-value ranges and did not indicate the presence of acid- and toxic-forming materials in the top four feet of postmine soils.
 - ii. The remaining postmine soil data within the Ellsworth H. P. O&G, Rickaway 1A, and EOG 8H, Rickaway 2A, EOG 4H, 5H, 7H, and EOG Storage Area were approved in the Phase I bond release Order dated April 25, 1995 (Docket No. C5-0038-SC-11-F). The postmine soil report for the proposed 651.37 acres Phase I release area was included in the bond release application (in the Docket No. C5-0038-SC-11- F). The Commission Order approved 499.48 acres out of 651.37 acres due to some temporary features within the proposed release areas. The soil grids which were not approved in the Phase I release application (F-5b, F-5f, G-5c, J-3f, K-3d, E-5c, and H-2g) are not located within the release areas proposed in the Application. Staff's TA indicated that copies of the approved postmine soil approval letters are contained in Supp. 3 to the Application. A finding has been made that all sampled areas meet the applicable postmine-soil performance standards. [§ 12.386].
- (c). No disposal of non-coal wastes has occurred within the areas requested for Phase I release. [§ 12.375].

15. Based upon the Application and on Staff's review, the Phase II release requirements under § 12.313(a)(2) of the Regulations for the establishment of revegetation and that discharges from the area not contribute suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by § 134.092(a)(10) of the Act and Subchapter K of the Regulations, have been met for the 101.0 acres requested for Phase II release. This acreage is the same acreage also requested for Phase I release.
- (a). As per the August 2, 2022 Inspection Report contained in Attachment III of the TA, no rills or gullies that require repair were present within the area eligible for Phase II release. The areas have been stabilized to reduce the potential for contributing suspended solids to streamflow.
 - (b). Staff indicated in the same inspection report that no prime farmland, for which additional requirements would be applicable, is located within the areas requested for release. [§§ 12.620 - 12.625].
 - (c). The requested 101.0 acre I/C Phase II release area is not required to undergo an Extended Responsibility Period (ERP) prior to release. The ground-cover performance standard for I/C requires that the cover must be adequate to control erosion. No erosion was observed in the requested 101.0 acre release area. Portions of the requested I/C release area are occupied by oil and gas well pads, roads, and associated infrastructure. Staff's TA and the Application indicate that per § 12.306(e) of the Texas Coal Mining Regulations, actions of third parties that are beyond SMECI's control and for which SMECI is not responsible under the approved surface mining permit need not be covered by the bond. In the TA, Staff determined that SMECI is not responsible for the revegetation of the acreage occupied by oil and gas infrastructure, under § 12.306(e).
 - (d). As described in SMECI's response to ALJ Letter No. 15, the 101.0 acre I/C release area had a Pastureland postmine land use prior to 2006. The 101.0 acre release area was regraded and fully revegetated with hybrid Bermuda grass, planted between 1980 and 1996. Details of the grading and planting timelines within the proposed release are addressed in Finding of Fact No. 13, *supra*. Portions of the release area had previously undergone up to Phase II release from reclamation liability as Pastureland, prior to the third-party disturbance. SMECI's response to ALJ letter No. 15 documented the docket numbers and order approval dates for the phase bond release blocks in which some of the various gas well pads are located (Table 3). The revegetation success for these Phase II areas were determined according to Commission standards for Pastureland. Since the land use has changed, SMECI is requesting Phases I, II and III release from reclamation obligations for the 101.0 acre release area. The following table, prepared by SMECI, summarizes the land use history of the proposed release area:

Well Site ID	Total Acres	Land Use	2006 Land Use	2013 Land Use	2021 Land Use
			Acres	Acres	Acres
Cobra 1H-7H	23.1	Pastureland	21.1	1.9	0.0
		DWR	2.0	2.0	0.0
		I/C	0.0	19.2	23.1
EOG Storage	3.9	Pastureland	3.9	3.9	0.0
		I/C	0.0	0.0	3.9
EOG 1H - Area A	8.6	Pastureland	8.6	8.6	0.0
		I/C	0.0	0.0	8.6
EOG 7H	8.9	Pastureland	8.9	7.9	0.0
		I/C	0.0	1.0	8.9
EOG 6H	7.2	Pastureland	7.2	7.2	0.0
		I/C	0.0	0.0	7.2
EOG 5H	4.9	Pastureland	4.9	4.9	0.0
		I/C	0.0	0.0	4.9
EOG 4H	7.7	Pastureland	7.7	7.6	0.0
		I/C	0.0	0.1	7.7
Rickaway 2A	2.9	Pastureland	2.9	1.9	0.0
		I/C	0.0	1.0	2.9
Rickaway 1A and EOG 8H	9.8	Pastureland	9.8	5.0	0.0
		I/C	0.0	4.8	9.8
Ellsworth, H.P. O&G	3.3	Pastureland	3.3	1.7	0.0
		I/C	0.0	1.6	3.3
EOG 2H	7.9	Pastureland	7.9	7.9	0.0
		I/C	0.0	0.0	7.9
EOG 1H - Area A	12.8	Pastureland	12.8	12.8	0.0
		I/C	0.0	0.0	12.8

- (e). SMRD's August 2, 2022, inspection report verified that the vegetative ground-cover and the surface material for all well pads and supportive roadways within the proposed release area are adequate to control erosion and meet the ground-cover standards for I/C postmine land use. No erosion was observed at the time of inspection.
- (f). The 101.0 acres requested for Phase II release is not contributing excess solids to streamflow or runoff outside the permit area in excess of effluent limitations set out in the water-quality permit or in excess of stream segment standards. SMECI provided Phase II pond-sampling data in the Application, contained in a report titled, *Groundwater and Surface Water Assessment 101-acre Industrial Commercial/Bond Release (Assessment)*, prepared by Mitchell A. Hermiston, P.G,

at Golder Associates Inc., a consultant to SMECI, and contained in Supp. 3 of the Application. Staff evaluated these data, indicating the following:

- i. SMECI’s individual final discharge pond long-term water-quality monitoring data evaluation is based on information compiled from five (5) sedimentation ponds (depicted on Figure 1, *Bond Release Areas*), which capture runoff from the areas proposed for Phase II release from reclamation liability. The evaluation included Pond Nos. 2, 3, 5, and 7 (Area A) and Pond No. 15 (Area E). SMECI’s June 19, 2023, response to ALJ Letter No. 15, indicated that Pond No. 1 is not sampled because it drains into Pond No. 5, and it is not a final discharge pond for the 101.0 acre release area. There are no permanent impoundments located within the 101.0 acre Phase II release area.
- ii. SMECI provided an analysis in which it compared the ponds’ long-term monitoring data to Texas Commission on Environmental Quality (TCEQ) effluent limitations as contained in its Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0002043000. The ponds have varying periods of record ranging from August 26, 1998 to September 16, 2021. The data evaluated by SMECI and by Staff include parameters for flow (Q), hydrogen-ion concentration (pH), total dissolved solids (TDS), total suspended solids (TSS), settleable solids (SS/TSM), total iron (Fe), and total manganese (Mn). Staff summarized the data in the table, shown below, along with TCEQ/TPDES permit effluent limitations:

Individual Pond Long-Term Water-Quality Pond Data and TCEQ/TPDES Effluent Limitations							
Pond (Period of Record)	Q (mgd) {Range} [avg.]	pH (s.u.) {Range} [avg.]	TDS (mg/L) {Range e} [avg.]	TSS (mg/L) {Range} [avg.]	SS/TSM (ml/L) {Range} [avg.]	Fe (mg/L) {Range} [avg.]	Mn (mg/L) {Range} [avg.]
Pond 2 (2004 - 2021)	{0.0-5.2} [2.8]	{6.4-7.9} [7.3]	NR	{5.5-15.5} [10.5]	{0.5-0.5} [0.5]	{0.2-1.1} [0.6]	{0.07-0.9} [0.5]
Pond 3 (1998 - 2021)	{0.0-7.6} [2.5]	{6.3-9.0} [7.8]	NR	{6.5-59.5} [28.4]	{0.5-0.5} [0.5]	{0.04-2.5} [1.0]	{0.001-2.1} [0.3]
Pond 5 (1998 - 2021)	{0.0-7.0} [2.0]	{6.8-9.0} [7.7]	NR	{4.7-28.5} [11.8]	{0.5-0.5} [0.5]	{0.03-4.2} [0.8]	{0.03-0.7} [0.1]
Pond 7 (2001 - 2021)	{0.0-7.9} [3.5]	{6.7-8.5} [7.6]	NR	{6.3-42.5} [17.8]	{0.5-0.5} [0.5]	{0.07-3.0} [0.9]	{0.03-2.2} [0.5]
Pond 15E (1998 - 2021)	{0.0-19.0} [5.9]	{7.0-8.7} [7.9]	NR	{4.7-35} [20.0]	{0.5-0.5} [0.5]	{0.01-4.8} [0.8]	{0.001-0.4} [0.1]
TCEQ/TPDES Permit No. 02043 Effluent Limitations	none	6.0 - 9.0	none	35/70*	none	3.0/6.0*	1.0/2.0*

NR = Non reported

*Allowable daily average/allowable daily maximum

- iii. In the TA, Staff indicated that discrepancies in parameter values are the result of the different periods of record for the data which was evaluated by Staff versus that by SMECI. Sampling data for Pond Nos. 2, 3, 5, 7, and 15E indicate that pH, TSS, Fe, and Mn concentrations fall within TCEQ/TPDES effluent limitations. Staff noted that a comparison of TDS and SS/TSM data to TCEQ/TPDES effluent limitations cannot be made because there are no TCEQ/TPDES effluent limitations established for TDS and SS/TSM. Staff's analysis of the data (SMECI and SMRD) indicated no adverse trends for TSS concentrations. SMECI demonstrated that the areas proposed Phase II release from reclamation liability obligations are not contributing suspended solids to stream flow or runoff outside of the permit area in excess of the performance standards at § 12.313(a)(2).
 - iv. From the data analysis results, Staff concluded in its TA, that the data provided by SMECI to support the release Application demonstrate that the 101.0 acres proposed for Phase II release meets the surface-water protection requirements of § 12.349.
- 16. Based upon the Application and Staff's review, Phase III release of reclamation obligations have been met for the 101.0 acres requested for release, in accordance with Phase III requirements for soil resampling and vegetation standards as provided in § 12.313(a)(3). The postmining land use in the area requested for Phase III release consists of 101.0 acres of I/C.
 - (a). There are no permanent structures located within the 101.0 acre Phase III release area. This was verified in the Staff's Inspection Reports (TA Attachment III). [§ 12.154, § 12.347, § 12.400, § 12.401].
 - (b). The 101.0 acres requested for Phase III release were surveyed for the presence of small-area depressions and none were observed (§ 12.385).
 - (c). The postmining land use in the area requested for Phase III release consists of 101.0 acres of I/C. The ground-cover performance standard for I/C requires that the cover must be adequate to control erosion and I/C areas are not required to undergo an ERP prior to release from reclamation obligations. No erosion was observed in the requested 101.0 acre release area. The 101.0 acre release area was revegetated with hybrid bermuda grass, planted between 1980 and 1996 [see Finding of Fact No. 15(d), *supra*]. Portions of the requested I/C release area are occupied by oil and gas well pads, roads, and associated infrastructure. Staff indicated in the TA that oil and gas pads and access roads in the proposed release area are subject to the actions of third-party operations beyond the control of the permittee and therefore revegetation requirements no longer apply.

17. SMECI has conducted surface mining activities in a manner that has ensured that surface-water quantity and quality have been protected in accordance with § 12.313(a)(2), § 12.313(a)(3) and § 12.349. Staff examined SMECI's analysis of the surface-water quality and quantity data from four stream-monitoring stations that are located upstream of the mining disturbance or receive runoff from the areas requested for release. SMECI demonstrated that disturbance to the hydrologic balance has been minimized in the permit and adjacent areas, and that material damage has been prevented outside the permit area.

(a). SMECI provided long-term surface-water monitoring (LTSM) data for four (4) LTSM Stations: MK001A, MK002, 1E, and 2A. LTSM Stations MK001A upstream (undisturbed-area flow) and MK002 downstream (disturbed-area flow) are located on La Parita Creek, in Mine Area A. LTSM stations 1E upstream (undisturbed-area flow) and 2A downstream (disturbed-area flow) are located on La Jarita Creek, in Mine Area E. The approved LTSM plan requires that the LTSM stations be sampled for flow (Q), pH, and concentrations of TDS, TSS, total Fe, total manganese (Mn), sulfate (SO₄⁻²), and chloride (Cl⁻).

LTSM Stations - Atascosa River and San Miguel Watersheds						
Period of Record		6/15/94-9/14/21	6/15/94-9/15/21	3/30/90-9/1/21	3/30/90-9/30/21	Stream Segment Criteria
Parameter		Undisturbed Upstream	Disturbed Downstream	Undisturbed Upstream	Disturbed Downstream	
		La Parita Creek		La Jarita Creek		
		MK001A	MK002	1E	2A	
Flow (gpm)	Min.	0.0	0.0	0.0	0.0	none
	Max.	10.6	3876.0	36.2	19.4	
	Avg.	1.1	73.7	0.6	0.5	
pH (s.u.)	Min.	6.6	6.8	6.7	6.8	6.5 - 9.0
	Max.	9.3	9.2	7.7	7.9	
	Avg.	8.1	7.8	7.2	7.3	
TDS (mg/L)	Min.	467.0	125.0	44.0	47.0	1,500 2,000**
	Max.	15,100.0	11,800.0	224.0	900.0	
	Avg.	6,732.4	2,695.3	108.3	187.2	
TDS (mg/L)	Flow-Weighted Average	4,420.5	1,030.6	106.9	145.1	1,500* 2,000**
TSS (mg/L)	Min.	6.0	10.0	18.0	12.0	none
	Max.	412.0	448.0	97.0	600.0	
	Avg.	59.5	68.1	45.8	81.9	
Fe (mg/L)	Min.	0.1	0.1	0.9	0.7	none
	Max.	116.1	38.4	6.0	6.5	
	Avg.	4.4	5.4	3.5	3.0	
Mn (mg/L)	Min.	0.02	0.01	0.04	0.03	none
	Max.	3.2	1.4	0.2	0.4	
	Avg.	0.3	0.2	0.1	0.1	
SO ₄ ⁻²	Min.	30.5	22.5	1.0	7.0	500*
	Max.	2,980.0	2,990.0	275.0	313.0	

LTSM Stations - Atascosa River and San Miguel Watersheds						
Period of Record		6/15/94-9/14/21	6/15/94-9/15/21	3/30/90-9/1/21	3/30/90-9/30/21	Stream Segment Criteria
Parameter		Undisturbed Upstream	Disturbed Downstream	Undisturbed Upstream	Disturbed Downstream	
		La Parita Creek		La Jarita Creek		
		MK001A	MK002	1E	2A	
(mg/L)	Avg.	1,242.7	654.8	59.8	73.7	700**
Cl ⁻ (mg/L)	Min.	290.8	62.2	2.0	10.0	600* 700**
	Max.	7,010.0	4,510.0	50.0	60.0	
	Avg.	3,050.7	867.5	20.5	26.2	

Stream Segment No. 2107 Criteria (Atascosa River) *

Stream Segment No. 2108 Criteria (San Miguel Creek)**

Baseline - Atascosa River and San Miguel Watersheds			
Period of Record		9/23/91-8/31/92	6/21/83-3/14/85
Parameter		Downstream	Downstream
		La Parita Creek	La Jarita Creek
		MK002	2A
Flow (gpm)	Min.	0.0	NR*
	Max.	3,876.0	NR*
	Avg.	545.5	NR*
pH (s.u.)	Min.	6.9	7.0
	Max.	8.0	7.8
	Avg.	7.5	7.3
TDS (mg/L)	Min.	80.0	68.0
	Max.	620.0	168.0
	Avg.	368.5	127.7
TDS (mg/L)	Flow-Weighted Average	85.8	NR*
TSS (mg/L)	Min.	NR*	9.0
	Max.	NR*	190.0
	Avg.	NR*	87.3
Fe (mg/L)	Min.	NR*	1.5
	Max.	NR*	23.8
	Avg.	NR*	8.9
Mn (mg/L)	Min.	NR*	0.2
	Max.	NR*	0.3
	Avg.	NR*	0.2
SO ₄ ⁻² (mg/L)	Min.	NR*	20.0
	Max.	NR*	314.0
	Avg.	NR*	186.0
Cl ⁻ (mg/L)	Min.	NR*	5.0
	Max.	NR*	55.0
	Avg.	NR*	23.7

- (b). A comparison of the water-quality data collected from undisturbed LTSM station MK001A and disturbed LTSM station MK002 indicates that: pH, iron, and manganese concentrations are generally similar to the upstream MK001A surface-water monitoring station compared to the downstream surface-water

monitoring station. Data for undisturbed LTSM station MK001A indicate an average TDS concentration of 6,732.4 mg/L and a range from 467.0 mg/L to 15,100.0 mg/L. Data for disturbed LTSM station MK002 indicate an average TDS concentration of 2,695.3 mg/L and a range from 125.0 mg/L to 11,800.0 mg/L. The highest TDS concentration (15,100.0 mg/L) for undisturbed LTSM station MK001A occurred on June 15, 2011. The highest TDS concentration (11,800.0 mg/L) for disturbed LTSM station MK002 occurred on March 16, 2011. Staff's evaluation noted that the flow-weighted average TDS concentration at disturbed LTSM station MK002 (1,039.6 mg/L) is less than the maximum annual average TDS concentration criterion for Stream Segment No. 2107 (1,500.0 mg/L) and significantly lower than the flow-weighted average TDS concentration at undisturbed LTSM station MK001A (4,420.5 mg/L). SMECI attributed these high TDS concentrations to discharges from upstream saline artesian wells (Peeler Flowing Well Nos. 1 and 2), located upstream of undisturbed LTSM station MK001A. Concentrations of major ions measured during two sampling events at the Peeler Flowing Well No. 1, and one sampling event at the Peeler Flowing Well No. 2, as summarized in Staff's TA, are provided in the following table:

La Parita Creek Well Data**							
Description	Sample Date	Field Data		General Chemistry			
		Q gpm	pH s.u	TDS mg/L	Cl ⁻ mg/L	SO ₄ ²⁻ mg/L	Na mg/L
Peeler Flowing Well No. 1	08/21/79	*NM	*NM	10,549	4,500	1,400	3,320
	03/12/14	11.7	7.74	11,000	4,250	1,930	3,120
Peeler Flowing Well No. 2	10/16/92	*NM	*NM	6,930	3,650	22.0	2,330

In the Application, SMECI provided a comparison of the TDS concentrations from LTSM stations MK001, MK001A, and MK002. SMECI's evaluation indicated that high TDS concentrations reported at disturbed LTSM station MK002 (located downstream of the wells) originate from the artesian wells upstream of the permit, is supported by comparing the data from water samples taken at undisturbed LTSM station MK001A (installed in 2005 and located downstream of the wells between LTSM stations MK001 and MK002) and at the downstream LTSM station MK002. Staff's evaluation in the TA agreed that flow from the upstream artesian wells may have negatively affected the downstream TDS concentrations as measured at disturbed LTSM station MK002. Staff determined from the data provided that the Peeler Flowing Well No. 1 contributes approximately 282 tons/year of dissolved solids to La Parita Creek. Peeler Flowing Well No. 2 does not reach La Parita Creek but is intercepted by Pond 9B. Nevertheless, the loading from Peeler Flowing Well No. 1 is sufficient to affect the water quality measured at undisturbed LTSM station MK001A.

Staff's evaluation noted that the flow-weighted average TDS concentrations in the data for undisturbed LTSM station MK001A appear to be skewed upward by the larger flow events (>3 mgd). This difference appears to be an effect of the drought conditions subsequent to the baseline measurement period, during which time the continual, higher TDS flows from the upstream wells provided a significant portion of the storage within the creek alluvium and therefore have not contributed as much measurable flow to disturbed LTSM station MK002, which receives most of its flow during precipitation events.

- (c). A comparison of the water-quality data collected from undisturbed LTSM station 1E and disturbed LTSM station 2A (La Jarita Creek) indicates that: pH, chloride, iron, manganese, and sulfate concentrations in the upstream (1E) and downstream (2) stations are generally comparable. The average TDS concentration in the downstream station (187 mg/L) is slightly higher than the upstream station (127.7 mg/L). However, SMECI's evaluation indicated minor increases in concentrations of dissolved and suspended solids were predicted during reclamation by the PHC. Staff noted that the downstream TDS concentration is significantly lower than the maximum annual average TDS concentration criterion for Stream Segment No. 2108 (2,000.0 mg/L).

- (d). A comparison of LTSM water-quality data collected from disturbed LTSM station MK001A (La Parita Creek) to baseline surface-water data for the same station indicates:
 - i. The average pH (7.8 s.u.) is slightly higher than baseline (7.5 s.u.). The highest pH level (9.2 s.u.) for disturbed LTSM station MK002 occurred on February 25, 2009; since that time, the pH levels have been below 9.0 s.u.

 - ii. A comparison of LTSM data for disturbed LTSM station MK002 to baseline surface-water data for the same station indicates that the average TDS (2,695.3 mg/L) is higher than the baseline average TDS (368.5 mg/L), and that the TDS range (125.0 mg/L to 11,800 mg/L) is higher than the baseline TDS range (80.0 mg/L to 620.0 mg/L). The highest TDS concentration (11,800 mg/L) for disturbed LTSM station MK002 occurred on March 16, 2011. However, the flow-weighted average TDS concentration at disturbed LTSM station MK002 (1,039.6 mg/L) is less than the maximum annual average TDS concentration criterion for Stream Segment No. 2107 (1,500.0 mg/L) and significantly lower than the flow-weighted average TDS concentration at undisturbed LTSM station MK001A (5,000.8 mg/L). A comparison of LTSM TSS data for disturbed LTSM station MK002 to baseline surface-water data for the same station cannot be made because baseline TSS data was not reported.

- iii. Staff's TA noted that a comparison of disturbed LTSM station MK002 iron, manganese, chloride, sulfate and TSS data to baseline cannot be made because baseline data for these parameters was not reported.

- (e). A comparison of LTSM water-quality data collected from disturbed LTSM station 2A (La Jarita Creek) to baseline surface-water data for the same station indicates that:
 - i. Average pH, chloride, iron, sulfate, and manganese concentrations from downstream LTSM station 2A were generally comparable to baseline monitoring to concentrations.
 - ii. Staff's evaluation noted that the average TDS concentration (187.2 mg/L) in LTSM station 2A is higher than the baseline average TDS (127.7 mg/L), and that the TDS range (47.0 mg/L to 900.0 mg/L) is higher than the baseline TDS range (68.0 mg/L to 168.0 mg/L). However, the flow-weighted average TDS concentration at disturbed LTSM station 2A (145.1 mg/L) is less than the maximum annual average TDS concentration criterion for Stream Segment No. 0804 (2,000.0 mg/L).

- (f). A comparison of LTSM data for disturbed LTSM station MK002 to stream segment criteria indicates that:
 - i. The average pH (7.8 s.u.) is within Stream Segment No. 2107 criterion for pH (6.5 - 9.0 s.u.), and the pH range (6.8 s.u. to 9.2 s.u.) is higher than Stream Segment No. 2107 criterion for pH (6.5 - 9.0 s.u.). The highest pH value (9.2 s.u.) for disturbed LTSM station MK002 occurred on February 25, 2009; however, since that time, pH levels have remained within the stream segment criterion (6.5 s.u. - 9.0 s.u.).
 - ii. The average TDS (2,695.3 mg/L) is higher than Stream Segment No. 2107 criterion for TDS (1,500 mg/L), and that the range (125.0 mg/L - 11,800.0 mg/L) is higher than Stream Segment No. 2107 criterion for TDS concentration (1,500 mg/L). The highest TDS concentration (11,800 mg/L) for disturbed LTSM station MK002 occurred on March 16, 2011. However, the flow-weighted average TDS concentration at the downstream LTSM station MK002 (1,039.6 mg/L) is lower than the maximum annual average TDS concentration for Stream Segment No. 2107 (1,500.0 mg/L) and significantly lower than the flow-weighted average TDS concentration at undisturbed LTSM station MK001A (5,000.8 mg/L).
 - iii. Average TDS, chloride, and sulfate concentrations at both the upstream and downstream stations (MK001A and MK002) are greater than the

stream segment criteria. As summarized in the TA, Peeler Flowing Well No. 1 is affecting chloride and sulfate concentration in La Parita Creek, upstream of the mine.

iv. A comparison of TSS, iron, and manganese data for disturbed LTSM station 2A to stream segment criteria cannot be made because there is not stream segment criteria established for these parameters.

(g). Staff's evaluation of SMECI's LTSM monitoring data in comparison to the Probable Hydrologic Consequences (PHC) Determination (water quality) for the mine indicated that surface mine drainage must be routed through a sedimentation pond prior to release and is required to meet TCEQ effluent limitations. Dissolved constituents, including TDS, iron, manganese, and sulfate, as well as sediment, are generally predicted to increase during mining when compared to premine conditions, eventually decreasing to or below premine conditions.

Average TDS concentrations at disturbed LTSM station 1E and 2A (108.3 mg/L and 187.2 mg/L) and flow-weighted average TDS concentrations (106.9 mg/L and 145.1 mg/L, respectively), are expected to remain near the levels observed in recent water samples and within or lower average TDS concentrations in the baseline surface-water data for the same station. SMECI indicates that high TDS concentrations have been observed at flowing wells (Peeler Flowing Well No. 1 and No. 2) and artesian wells (Metate Creek Well, Ranch Well No. 1, and Ranch Well No. 2), which affect water quality in La Parita Creek. Staff's evaluation supports the conclusion that water quality in comparison to the approved surface-water PHC determination has been protected.

(h). Staff's TA indicated that SMECI's evaluation of flow data for the LTSM stations includes a discussion of impacts to water quantity relating to the PHC determination, stating that: "Both upstream and downstream stations [1E and 2A] have been dry for over 70% of the monitoring period as shown on Appendix D2 of the Application. The average flow at the upstream station and downstream station are similar [0.6 million gallons per day (mgd) and 0.5 mgd, respectively]. The discharge measurements collected during mining as part of quarterly sampling are consistent with the predictions and suggest that there has been minimal disturbance to the hydrologic balance."

SMECI provided an analysis of surface-water quantity in comparison to the PHC determination in Permit No. 11H. In the analysis, SMECI indicated that runoff volumes will increase from premine to postmine conditions as result of decreased vegetation density. This increase is mitigated somewhat 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 ground-water contributions to stream baseflow. Staff concluded in the CHIA, with respect to water quantity, that the attenuation of storm runoff and increase in sustained flows is insignificant when compared to the amount of storm runoff originating within the CIDA (Cumulative Impact Drainage Area).

- (i). The TA indicated that Staff's CHIA for the San Miguel Lignite Mine (Permit No. 11G), San Miguel Lignite Mine Area C (Permit No. 52A), and San Miguel Lignite Mine Area F, G, and H (Permit No. 60), contained in its May 10, 2017, Technical Analysis [Docket No. C1-0020-SC-00-A, Permit No. 60], establishes material damage criteria for the defined cumulative impact area which are based on baseline surface-water information contained in the permit, stream-segment criteria, public drinking-water supply standards, and Federal and State wastewater discharge permits.

In its CHIA, Staff indicated that the greatest potential increase in 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). The greatest potential increase in TDS concentration is expected to be approximately 8.2%, from approximately 567 mg/L to 613 mg/L. While not insignificant, the resultant value remains within acceptable drinking-water standards and well below the maximum for the applicable TDS standard of 1,500 mg/L for TCEQ Stream Segment No. 2107. The flow-weighted average TDS concentrations at disturbed LTSM Station No. MK002 (1,030.6 mg/L) somewhat exceed the TDS concentrations predicted in the CHIA but is less than the maximum annual average concentration for Stream Segment Nos. 2107 (1,500 mg/L). Staff indicated that the greatest potential increase in TDS concentration is anticipated at Mass-Balance Point No. 5 (USGS Gauging Station No. 08206900, located at the outfall of Choke Canyon Reservoir near Three Rivers). The greatest potential increase in TDS concentration is expected to be approximately 1.9%, from approximately 413 mg/L to 421 mg/L. The average and flow-weighted average TDS concentrations at disturbed LTSM Station No. 2A (187.2 mg/L and 145.1 mg/L, respectively) are below the maximum annual average concentration for Stream Segment No. 2108 (2,000 mg/L).

- (j). Staff's TA supports the conclusion that surface-water quality and quantity in comparison to the approved surface-water PHC determination has been protected.
18. The groundwater hydrologic balance has been protected as required by § 12.313(a)(3) and § 12.348, and the re-established postmining groundwater system supports the approved postmining uses of the 101.0 acres requested for Phase III release. Staff

reviewed the long-term groundwater monitoring (LTGM) data submitted by SMECI to the Commission for LTGM wells in the A and E Mine Areas.

- (a). No premine overburden water-bearing strata (shallow systems within 100-150 feet from the surface) are present in the reclaimed area of the A and E Areas of the San Miguel Lignite Mine. One underburden water bearing unit (Unit 22) in the San Miguel Mine area is separated from the overburden by underclays having a thickness of thirty-five feet or more.
- (b). Lignite surface mining at Permit No. 11H disturbed the alternating sequence of mudstones and siltstones located above the lignite. The Stratigraphy of the original strata has been altered to a depth ranging up to 120 feet. Since no laterally consistent water-bearing zones were identified in the overburden, except for isolated saturated portions of alluvium deposits near creek drainages, impacts to the local groundwater system are negligible in that the disturbed strata do not constitute a major groundwater resource. The shallowest potable groundwater in the area is the Carrizo Aquifer, which is about 3,000 feet below ground surface (bgs). The Carrizo Aquifer was not disturbed by mining in the proposed bond release areas.
- (c). For Area A, SMECI provided data from seven spoil wells, A-MW-13(S), A-MW-14(S)R, A-MW-15(S), A-MW-16(S), A-MW-17(S), A-MW-18(S), and A-MW-19(S)R; one overburden well (SM-1); and five underburden wells, MW-A1, MW-A2, MW-A3, MW-A4, and MW-A5R. Staff's Evaluation of the Area A LTGM data indicated that:
 - i. Water levels in Area A spoil wells have been relatively steady over the monitoring period. Water level in Area A overburden well SM-1 has fluctuated over the monitoring period. Water levels initially decreased in 1984 and have been steadily increasing since 1985 and have been relatively stable over the last 5 years. Water levels in Area A underburden wells MW- A1, MW-A2, MW-A3, MW-A4, and MW-A5R have been relatively stable over the monitoring period. Water levels at MW-A1 show a steady increase but have been stable over the last 10 years.
 - ii. Chemistry data from Area A overburden well SM-1 indicated TDS and boron concentrations have been variable over the monitoring period. TDS concentrations exhibit a slightly decreasing trend. Boron concentrations exhibit a slightly increasing trend but have been relatively stable since late-2018, and sulfate concentrations have been relatively stable over the entire monitoring period. Average TDS concentrations in underburden wells ranged from 6,878 mg/L (MW-A3) to 20,721 mg/L (MW-A5R) in Area A. The median pH values during the entire monitoring period ranged from 5.6 (MW-A1) to 7.4 (MW-A3).

- (d). For Mine Area E, SMECI included data from three spoil wells (E-MW-1, E-MW-2R, and E-MW-3) and three underburden wells (MW-E3, MW-E4B, and MW-EA7). Staff's evaluation of the Area E LTGM data indicated the following:
- i. Water levels in Area E spoil wells that have steadily increased during the monitoring period, as predicted in the PHC, are beginning to stabilize. Water levels in Area E underburden wells MW-E3, MW-E4B, and MW-EA7 have increased during the monitoring period. Well MW-E3 is located approximately 500 feet from spoil and water levels in MW-E3 have been stable over the last 2 years. Well MW-E4B is located approximately 1,000 feet from the spoil and water levels in MW-E4B have been stable over the last 10 years. Well MW-EA7 is located within 200 feet of the mined area and water levels in MW-EA7 decreased slightly in the late 1990s and early 2000s but increased after mining activities ceased in the area. Area E spoil groundwater chemistry is similar to that in Area A.
 - ii. Groundwater chemistry in Area A spoil wells is variable. The median pH ranged from 5.0 s.u. in well A-MW-17S to 7.4 s.u. in well A-MW-19(S)R. TDS ranged from 6,306 mg/L in well A-MW-18(S) to 13,153 mg/L in well A-MW-14(S)R. Area E spoil groundwater chemistry is similar to that in Area A.
 - iii. Average TDS concentrations in underburden wells ranged from 6,699 mg/L (MW-E3) to 10,526 mg/L (MW-EA7). The median pH values during the entire monitoring period ranged from 7.2 s.u. (MW-E3) to 7.9 s.u. (MW-EA7) in Area E.
- (e). Staff indicated that resaturation of the spoil is consistent with what was predicted in the approved probable hydrologic consequences (PHC) determination. There are no private wells completed in the overburden or the underburden Unit 22 in the area. There were no premine ground-water systems in or near the areas proposed for bond release in the A or E Areas; therefore, no ground-water systems have been impacted by the mining and reclamation operations. The Carrizo-Wilcox aquifer, the uppermost source of drinking water in the area, is greater than 3,000 feet below the surface. No long-term issues with ground or surface-water contamination is anticipated.
- (f). Staff's TA supports the conclusion that the groundwater hydrologic balance has been protected. The data provided by SMECI for the 101.0 acres requested for Phase III release demonstrate that the ground-water protection requirements of § 12.348 have been met.

19. No monitoring wells are located within the proposed release area.
20. The areas requested for release of reclamation obligations are capable of sustaining the postmining land uses. Monthly inspections and Staff’s field inspections dated November 29, 2016 and August 2, 2022, demonstrate that the land has been reclaimed to and managed in accordance with the approved postmining land use of I/C.
21. Pursuant to § 12.313(a)(3), the Commission may release the remaining portion of the bond attributable to the subject 101.0 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. As a result of being granted release of reclamation obligations on the 101.0 acres, SMECI is eligible to reduce the bond amount for Permit No. 11H. The unit reclamation costs were derived from Staff’s reclamation cost analysis (\$84,513,813) approved administratively by letter dated December 6, 2021 (Revision No. 1). A specified reduction amount is only an estimate provided for illustration purposes. The actual amount of any reduction would be calculated based on the costs for reclamation at the time a bond reduction is requested by SMECI; therefore, 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. If the application is approved by the Commission, as proposed, SMECI would be eligible to reduce its performance bond obligations by \$694,299.98, as shown in the following table:

Phase Requested	Area Acres	Disturbance Category	Bonded Per Acre	Eligible Reduction Per Acre	Eligible Reduction
Phase I-III	25.6	Mined	\$11,771.00	\$11,771.00	\$301,337.60
Phase I-III	21.7	Disturbed	\$8,990.00	\$8,990.00	\$195,083.00
Phase I-III	8.2	Mined (Ph. I)	\$4,708.00	\$4,708.00	\$38,605.60
Phase I-III	20.1	Disturbed (Ph.I)	\$3,596.00	\$3,596.00	\$72,279.60
Phase I-III	24.0	Mined (Ph.I&II)	\$940.00	\$940	\$22,560.00
Phase I-III	1.4	Disturbed (Ph.I&II)	\$940	\$940	\$1,316.00
Subtotal					\$631,181.80
Admin. Costs (10%)					\$63,118.18
Total	101.0				\$694,299.98

22. All acres requested for release were marked in the field to distinguish them from active mining and reclamation areas.
23. SMECI and Staff, the only parties to the proceeding, filed waivers of the preparation and circulation of a proposal for decision. The proposed order was circulated to the parties with opportunity for comment.

24. Open meeting notice has been posted for Commission consideration of this application in accordance with Tex. Gov't Code Ann. Ch. 551 (Vernon's 2022).

CONCLUSIONS OF LAW

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

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. 2022).
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 attach to allow consideration of the matter.
4. SMECI has complied with all applicable provisions of the Act and the Regulations for the acreage requested for release as set out in the Findings of Fact.
5. The Commission may approve Phases I, II, and III release of reclamation obligations for the requested 101.0 acres, as set out in the Findings of Fact and Conclusions of Law.
6. Pursuant to the Commission's authority for inspection and evaluation of release applications, the Commission may order that SMECI continue marking the area approved for release so that Staff mapping and tracking will be efficient.
7. SMECI is eligible to reduce the amount of bond for Permit No. 11H by an amount that is attributable to the requested Phases I, II, and III release of reclamation obligations for the subject 101.0 acres in future bond adjustments.

ORDERING PROVISIONS

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 Phases I, II, and III release of reclamation obligations for the requested 101.0 acres are 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 SMECI is eligible to reduce the amount of bond for the permit by the amount that is attributable to the subject acres granted various phases of release in this Order;

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

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

SIGNED on November 15, 2023.

RAILROAD COMMISSION OF TEXAS

DocuSigned by:
Christi Craddick
15494B7DE4CC424


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:
Calbie Farran
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Secretary, Railroad Commission of Texas