

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

**SURFACE MINING DOCKET NO. C19-0003-SC-32-F:
APPLICATION BY JEWETT MINE LLC FOR VARIOUS PHASES OF RELEASE OF
RECLAMATION OBLIGATIONS AN ON AGGREGATE 499.1 ACRES, PERMIT NO.
32H, JEWETT MINE, LIMESTONE, LEON, AND FREESTONE COUNTIES, TEXAS**

**ORDER APPROVING PHASE I RELEASE OF RECLAMATION OBLIGATIONS ON
321.5 ACRES, AND DENIAL OF PHASE II RELEASE ON 7.0 ACRES, AND
DENIAL OF PHASE III RELEASE ON 183.2 ACRES**

Statement of the Case

Jewett Mine LLC (JMLLC, or Applicant) [formerly Westmoreland Jewett Mining LLC (WJM); formerly Texas Westmoreland Coal Company (TWCC)], P.O. Box 915, Jewett, Texas, 75846-0915, applied to the Railroad Commission of Texas (Commission), Surface Mining and Reclamation Division (SMRD, or Staff), for various phases of release of reclamation obligations on an aggregate 499.1 acres within Permit No. 32H, the Jewett Mine, located in Limestone, Leon, and Freestone Counties, Texas. The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, Tex. Nat. Res. Code Ann. Ch. 134 (Vernons 2021) (Act), and the "Coal Mining Regulations," Tex. Railroad Comm'n, 16 Tex. Admin. Code Ch. 12 (Thomson West 2021) (Regulations). Initially submitted by TWCC, the application was assumed by successor in interest JMLLC upon approval of the transfer application in Docket No. C20-0011-SC-32-B on April 27, 2021.

Permit No. 32H currently authorizes surface coal mining and reclamation operations within the 21,575.1-acre permit area of JMLLC's Jewett Mine. No comments or requests for hearing were filed following public notice of the requested release. The only parties to the proceeding are JMLLC and Staff. There remain no outstanding issues between the parties. Based on the information provided by the Applicant, Staff analyses, and the inspection of the area, Staff recommends only Phase I release of reclamation obligations on 321.5 acres. Staff does not recommend approval at this time of the Phases II and III areas requested. JMLLC is in agreement with Staff's recommendation. The parties have filed waivers of preparation and circulation of a proposal for decision.

After consideration of the application and the Findings of Fact and Conclusions of Law, the Commission approves the release of reclamation obligations as described in the foregoing. The current bond was estimated for the areas proposed for release by the worst-case bonding calculation method. As there is no recommended Phase III release, there is no eligible bond reduction amount that may be determined associated with this Order.

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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 October 18, 2017, Westmoreland Jewett Mining LLC [now Jewett Mine LLC (JMLLC, or Applicant)] filed an application (Application) with the Railroad Commission of Texas' (Commission) Surface Mining and Reclamation Division (SMRD, or Staff) for Phase I release of reclamation obligations on 315.9 acres, Phase III release on 176.2 acres, Phases II and III release on 1.4 acres, and Phases I, II and III release on 5.6 acres within the Jewett Mine, Permit No. 32H, located in Limestone, Leon, and Freestone Counties, Texas. Permit No. 32H was most recently issued as a transfer to JMLLC by the Commission on April 27, 2021 (per Commission Order for Docket No. C20-0011-SC-32-B, filed in Staff's letter dated March 29, 2022).
2. The Application was filed with the Commission's Hearings Division by letter dated October 18, 2018, and the Director of SMRD determined the Application to be Administratively Complete by letter dated May 9, 2019. Based on the Application, as supplemented by letters dated October 31, 2017, December 12, 2017, October 4, 2018, and October 10, 2018, Staff analyses, and the inspection of the area, Staff recommends Phase I release of reclamation obligations for the requested areas (321.5 acres), and denial of requested Phase II release on 7.0 acres and denial of requested Phase III release on 183.2 acres at this time without prejudice.
3. The Application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, Tex. Nat. Res. Code Ann. Ch. 134 (Vernons 2021) (Act), and the "Coal Mining Regulations," Tex. Railroad Comm'n, 16 Tex. Admin. Code Ch. 12 (Thomson West 2021) (Regulations). The Application was properly certified in accordance with 16 Tex. Admin. Code §12.312(a)(3). No fee is required for this Application.
4. The reclamation bonds held by the commission for Permit No. 32H consist of three surety bonds totaling \$62,000,000. JMLLC's approved bond instruments consist of surety bonds held by the Commission in the amounts of \$13,500,000 (a surety bond issued by Liberty Mutual Insurance Company and approved by Commission Order dated June 12, 2012, in Docket No. C12-0024-SC-32-E), and \$22,219,000 and \$26,281,000 (surety bonds issued by Arch Insurance Company and Aspen American Insurance Company, respectively, and both approved by Commission Order dated August 9, 2018, Docket No. C16-0018-SC-32-E) and reaffirmed in Docket No. C20-0011-SC-32-B by Commission Order dated April 27, 2021. JMLLC does not request a reduction in the amount of the reclamation bond instruments in this Application. (accepted per Commission Order for Docket No. C20-0011-SC-32-B, filed in Staff's letter dated March 29, 2022)

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5. 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, and in the offices of the County Clerk in Freestone, Limestone, and Leon Counties, Texas.
6. By letter dated October 30, 2018, the assigned Administrative Law Judge (ALJ) reviewed and approved the revised draft public notice submitted by the Applicant by letter dated October 25, 2018, which was subsequently published in newspapers of general circulation in the vicinity of the permit area. Notice letters were sent by the Applicant to affected and adjacent landowners, and to identified State and federal agencies. Application notice has been appropriately effected.
 - a. Notice of application was published once per week for four consecutive weeks in *The Groesbeck Journal*, *The Fairfield Recorder*, and *The Jewett Messenger*, which are newspapers in the vicinity of the Jewett Mine, filing the tear sheets and publisher's affidavits (published on November 15, 22, and 29, and December 6, 2018, in *The Groesbeck Journal* and *The Fairfield Recorder*, and November 14, 21, 28, and December 5, 2018, in *The Jewett Messenger*) by letter dated March 19, 2019. By letter dated March 27, 2019, SMRD requested that the Applicant correct the publication dates indicated in the affidavit for *The Fairfield Recorder*, and notarize the revised Publisher's Affidavit. The Applicant submitted a revised Publisher's Affidavit and tear sheets for *The Fairfield Recorder* notices by letter dated May 1, 2019. The published notices of application contain all information required by the Act and Regulations for notice of an application requesting such release and is adequate notification of the request for release. The public notices include the elements required by Tex. Nat. Res. Code Ann. §134.129 and 16 Tex. Admin. Code §12.312(a)(2): 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 when the reclamation work was performed, and a description of the results achieved as they relate to the approved reclamation plan. The notices contain 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. Satisfactory proof of publication (tear sheets and publisher's affidavit) was submitted by letters dated March 19, 2019, and May 1, 2019.
 - b. JMLLC sent notice of the application by first-class mail dated November 8, 2018, to local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality as required by 16 Tex. Admin. Code §12.312(a)(2). Mailed notice was provided to the County Judges and the Commissioners' Courts of Freestone, Limestone, and Leon Counties, the Natural

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Resources Conservation Service (Offices in Centerville, Groesbeck, and Fairfield, Texas), the Texas Commission on Environmental Quality, the Texas Department of Transportation, the U.S. Army Corps of Engineers' District Office in Fort Worth, the Texas General Land Office, the U.S. Environmental Protection Agency, the Brazos River Authority, the Texas Soil and Water Conservation Board in Temple, Texas, and district offices Limestone-Falls SWCD, Freestone County SWCD, and Bedias Creek SWCD, the Donie Water Works, and the Concord-Robbins Water System. This notice was also sent by first-class letter dated November 8, 2018, to entities holding leasehold interests or easements, as follows: Enbridge Pipelines, LP, Level 3 Communications LLC, Navasota Valley Electric Cooperative, Pinnacle Gas Treating, Inc., Trend Gathering & Treating, LP, Valence Operating, XTO Energy, Inc., and CCI Gulf Coast. The areas requested for release are not located within the territorial boundaries of any municipality that would be notified pursuant to 16 Tex. Admin. Code §12.313(c). Copies of notification letters were filed with the Commission's Docket Services by Staff's letter dated March 29, 2022.

- c. Letters providing notice of the application were sent by JMLLC's predecessor company, TWCC, by first-class mail to owners of interests within and adjacent to the areas requested for release on November 8, 2018. No comments or requests for a public hearing were received for this application.
 - d. Proof of publication and copies of notice letters to local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies, and copies of letters to landowners within and adjacent to the proposed area of release were filed with the SMRD by letters dated March 19, 2019, and May 1, 2019. Copies of these letters were filed with Docket Services by Staff's letter dated March 29, 2022.
7. Staff provided notification of the application by certified letter dated November 6, 2018, to Limestone County Judge Richard Duncan, Leon County Judge Bryon Ryder, and Freestone County Judge Linda Grant. Mailing of notification was provided at least 31 days prior to the date of consideration of the docket by the Commission in accordance with Tex. Nat. Res. Code Ann. §134.133. Copies of these letters were provided in Attachment III of Staff's TA.
 8. Pursuant to 16 Tex. Admin. Code §12.312(b), Staff notified owners of interests in lands and lessees of the application for release and the Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office (OSM) by letters dated October 30, 2017, of the date and time of Staff's field inspection scheduled for November 16, 2017. The notification stated that a release had been requested and, pursuant to 16 Tex. Admin. Code §12.312(b)(1), advised them of the opportunity to participate in the on-site inspection.

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Staff provided copies of the letters in its Technical Analysis (TA) review documents, specifically in Appendix II of Attachment III (Inspection Report).

9. The inspection occurred on November 16, 2017, as scheduled. Two Commission inspectors, four representatives from JMLLC, and one representative from JMLLC consultant, Blackland Environmental, attended the pre-inspection meeting, along with five landowners of various tracts located within the requested Phase I release area. All individuals participated in all or part of the field inspection. Per the Inspection Report, after visiting their respective tracts, the five landowners were satisfied with their properties and did not raise any concerns regarding the status or condition of their respective land tracts. The SMRD Inspection and Enforcement Staff (I&E Staff) inspectors found that, subject to further review by Staff, the proposed areas were eligible for the requested release, with resolution of three issues, two issues regarding placement of requested acreage into a five-year extended responsibility area (ERP), and a need for additional information regarding an excess construction material stockpile.
10. The 21,575-acre permit area is located approximately five miles northwest of Jewett, Texas. A general location map of the permit area, with the aggregate 499.1-acre area requested for release identified, is provided in Appendix I of TA Attachment IV (Staff's Inspection Report).
11. The acres requested for release are comprised of several parcels located in the A, B, and C Areas of the mine.
12. Based upon the application, as supplemented, and Staff's review, Phase I release of reclamation obligations have been met for the 321.5 acres requested in accordance with Phase I requirements for backfilling, regrading, and drainage control as required by 16 Tex. Admin. Code §12.313(a)(1). The 321.5 acres eligible for Phase I release were reclaimed in a manner that supports the approved postmining land uses of pastureland (300.3 acres), industrial/commercial (I/C, 9.6 acres), and developed water resources (DWR, 11.6 acres), as required by 16 Tex. Admin. Code §12.384(b)(2). All structures located within the proposed Phase I release area have been approved as permanent.
 - a. The area has been backfilled and regraded to its approximate original contour [16 Tex. Admin. Code §12.385(a)]; highwalls have all been eliminated [16 Tex. Admin. Code §12.385(b)]; suitable topsoil substitute material 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. Regrading of the area occurred between 1987 and 2003 in such a manner that erosion and water pollution has been minimized. [16 Tex. Admin. Code §12.385(d)].

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- b. Postmine soil-testing requirements have been conducted on the 321.5 acres requested for Phase I release. Data for the soil-testing grids requested for Phase I release were submitted from 1995 to 2015 and approved by SMRD letters dated September 13, 1995, November 14, 1996, April 9, 1998, April 9, 1999, March 20, 2001, May 23, 2002, October 14, 2003, July 14, 2004, May 9, 2005, January 4, 2007, May 15, 2009, August 14, 2009, August 21, 2009, and December 16, 2015. On Exhibit 142-S, Sheets 1-4, *Proposed 499.1 Acre Bond Release: Soil Grid Map*, JMLLC shows the location of grids within the requested release area. Staff concurred that, as JMLLC indicated in the application, all initial soils data for the postmine-soil testing grids requested for Phase I release (83 grids) have been approved by the Commission. JMLLC provided copies of all approval letters in Section 6.0 of the application.
 - c. Two permanent diversions are located within the requested Phase I release area [16 Tex. Admin. Code §12.400(f)]. Lambs Creek Permanent Diversion was approved as a permanent postmine feature by SMRD letter dated March 30, 2012 (Permit No. 32F). C7 Diversion was approved as a permanent postmine feature by Commission Order dated September 21, 2010 (Docket No. C7-0015-SC-32-B, Permit No. 32F). No permanent impoundments, drop structures or roads are contained within the areas requested for release. Copies of the listed approvals (March 30, 2012 letter, and Summary of Decision for Docket No. C7-0015-SC-32-B) are contained in Section 6.0 of the application.
 - d. Runoff from the 321.5 acres requested for Phase I release flow through final discharge Ponds 010, 017, and 018.
 - e. As stated in Staff's TA, no disposal of non-coal waste has been approved within the areas requested for Phase I release. [16 Tex. Admin. Code §12.375].
13. Based upon the application and on Staff's review, the Phase II and III release requirements under 16 Tex. Admin. Code §12.313(a)(2) and §12.313(a)(3) that discharges from the area not contribute suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by Tex. Nat. Res. Code Ann. §134.092(a)(10) and Subchapter K of the Regulations, and that a demonstration that groundwater outside the disturbance area has been protected in accordance with 16 Texas Admin. Code §12.313 and §12.348, have not yet been met, as set forth in Staff's October 11, 2019, TA. In its TA, Staff noted unaddressed concerns regarding six applicable wells in the long-term groundwater monitoring (LTGM) plan contained in the approved permit, and 18 unaddressed concerns regarding the Applicant's evaluation of the long-term surface-water monitoring (LTSM) plan, and satisfaction of the associated protection plans thereof. JMLLC indicated by letter dated February 18, 2022, that it was

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accepting Staff's recommendation in the TA for only Phase I release, and would not file any additional response with respect to requested Phase II and III releases in this docket. A Phase II and III application would be filed at a later date in a new docket.

14. Based on the terms of the approved permit, there is an eligible bond reduction amount for acreage once it is approved for release of Phase III reclamation requirements, given that disturbed areas within Permit No. 32H are bonded based upon the "worst-case" bond calculation method. This method estimates costs of reclaiming the worst-case pit and reclamation of structures, and assumes that all other disturbed areas are reclaimed contemporaneously, so that there is no eligible bond reduction amount until Phase III release is approved; at that time, the remaining reclamation costs for the bonded acreage will be soil preparation, revegetation, and maintenance costs, retained until Phase III release is granted. In that JMLLC has satisfactorily addressed the requirements for Phase I release on 321.5 acres of the aggregate 499.1 acres requested for various phases of release in accordance with 16 Tex. Admin. Code §12.313(a), Staff recommends release of reclamation liability on these 321.5 acres, with no eligible bond reduction amount at this time. The Commission considers any specified reduction amount to only be an estimate provided for illustration purposes. The Commission is not required under the Act or the Regulations to determine an eligible bond reduction amount when approving an application for release, and the actual amount of bond liability attributable to the acreage granted release by this Order will be determined by the Commission when a bond adjustment is requested. No reduction of the \$62,000,000 held in bond is requested in this application (see Finding of Fact No. 4, *supra*). No replacement bond instrument has been filed. [per Commission Order for Docket No. C20-0011-SC-32-B, filed in Staff's letter dated March 29, 2022].
15. Acreage requested for release was marked by PVC pipe in the field to distinguish it from active mining and reclamation areas.
16. JMLLC 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.
17. Open meeting notice has been posted for Commission consideration of this application in accordance with Tex. Gov't Code Ann. Ch. 551 (Vernons 2021).

CONCLUSIONS OF LAW

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

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1. Proper notice of application and notice of consideration by the Commission has been provided for this request for release of reclamation obligations.
2. No public hearing was requested, and none is warranted.
3. JMLLC 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.
4. The Commission may approve a release of Phase I reclamation obligations for 321.5 acres, as set out in the above Findings of Fact and Conclusions of Law.
5. The Commission may deny release Phase II and III release as set forth in this Order, without prejudice, for which a demonstration of the completion of the required reclamation obligations has not yet been made. JMLLC may re-file an application for release of the acreage that was not approved for Phase II and III release.
6. Pursuant to the Commission's authority for inspection and evaluation of release applications, the Commission may order that JMLLC continue marking the area approved for release so that Staff mapping and tracking will be efficient.

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 release of Phase I reclamation obligations for 321.5 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 acreage is 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 June 7, 2022.

RAILROAD COMMISSION OF TEXAS

DocuSigned by:
Wayne Christian
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CHAIRMAN WAYNE CHRISTIAN

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Secretary
Railroad Commission of Texas

