

**RAILROAD COMMISSION OF TEXAS  
HEARINGS DIVISION**

**SURFACE MINING DOCKET NO. C13-0010-SC-11-F  
SAN MIGUEL ELECTRIC COOPERATIVE, INC.  
SAN MIGUEL LIGNITE MINE, PERMIT NO. 11G  
APPLICATION FOR RELEASE OF PHASE III RECLAMATION OBLIGATIONS  
804.96 ACRES, REVISED TO 449.86 ACRES**

**ORDER APPROVING  
PHASE III RELEASE OF RECLAMATION OBLIGATIONS  
FOR 449.86 ACRES**

Statement of the Case

San Miguel Electric Cooperative (San Miguel), P.O. Box 280, Jourdanton, Texas 78026 applied to the Railroad Commission of Texas (Commission), Surface Mining and Reclamation Division, for the release of Phase III reclamation obligations for 804.96 acres within Permit No. 11G, San Miguel Lignite 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 Supp. 2014) (Act), and the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE Ch.12 (Regulations) (Thomson West 2014). No new bond instrument has been filed, and San Miguel does not request reduction of the bond at this time.

Permit No. 11G currently authorizes surface mining and reclamation operations at the San Miguel Lignite Mine. Copies of the application were filed in required county and Commission offices and notices were mailed to landowners of the areas requested for release and to adjoining landowners. No comments or requests for hearing were filed following public notice and mailed notice. The only parties to the proceeding are San Miguel and the Commission's Surface Mining and Reclamation Division (SMRD or Staff). An on-site inspection was made of the areas requested for release. A staff review was performed of the application, permit file, and inspection results and an evaluation document was prepared. In response to Staff's inspection and review, San Miguel withdrew its request for release of Phase III reclamation obligations for Land Management Unit B-7 (355.10 acres)

San Miguel now requests that the remainder, 449.86 acres, be approved for Phase III release of reclamation obligations. Based on the information provided by the applicant and its inspection of the area, Staff recommends release of Phase III reclamation obligations for the requested acreage, as revised. After review of the proposed order, the parties filed waivers of preparation and circulation of a Proposal for Decision. The Staff has filed its estimate of the eligible bond reduction amount that may be attributed to the acreage, \$451,794.40.

Based upon the evidence in the record, reclamation requirements have been met for the acreage requested for release, as revised. The Commission approves the request as set out in this Order, and the eligible bond reduction amount, with no adjustment of the accepted bond instrument at this time.

**FINDINGS OF FACT**

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

1. By letter dated September 28, 2012, San Miguel filed its application pursuant to §12.312(a)(3) of the Regulations for release of Phase III reclamation requirements on 804.96 acres of lands mined under Permit No. 11G for the San Miguel Lignite Mine located in 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 Supp. 2014) (Act), and the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE CH. 12 (Regulations) (Thomson West 2014). The areas proposed for release are located in Atascosa County. The application was supplemented on December 18, 2012 with a surface water evaluation, by letter dated February 15, 2013 with a revised draft public notice in response to comments by the examiner, by letters received on April 22, 2013 and April 23, 2013 to provide proof of notification to landowners, by letter dated June 5, 2013 to provide proof of public notice in accordance with §12.312(a)(2), and by letter dated April 3, 2014 to provide Supplement No. 1. Staff filed the application as administratively complete with the Hearings Division by memorandum dated June 26, 2013. No filing fee is required for this application. The application includes a notarized statement by a San Miguel representative that all applicable reclamation activities have been accomplished in accordance with the requirements of the Act, the regulatory program and the approved reclamation plan.
2. Permit No. 11G was issued by Commission Order dated October 22, 2013. The reclamation performance bond, a self-bond with third-party guarantee by National Rural Utilities Cooperative Finance Corporation, is in the amount of \$70,000,000.00 and was accepted by Commission Order dated March 22, 2011.
3. The acreage initially requested for release is depicted in the maps filed in support of the application as Areas B-7, BX-2, and BX-3 that were mined from approximately 2001-2007. Final grading occurred from 2001-2008. The areas requested for release comprise three land management units (LMUs) B-7, B-2, and B-3. Phase I release (backfilling, regrading, and drainage control) was approved as follows for these LMUs: B-7, by Order dated February 23, 2007 in Docket No. C7-0002-SC-11-F; BX-2, by Order dated August 3, 2005; and BX-3, by Order dated October 11, 2006. Phase II release (establishment of revegetation and a determination that the areas were not contributing suspended solids to streamflow outside the permit area in excess of water quality requirements) was approved for all three areas by Order dated July 30, 2008. Due to concerns expressed by Staff in its review regarding the ability of Land Management Unit (LMU) B-7 to sustain its approved postmine land use, San Miguel determined to conduct additional field investigations and withdrew LMU B-7 from its request for Phase III release. San Miguel may pursue Phase III release of LMU B-7 in future without prejudice.
4. No structures are located within the areas proposed for release.
5. Notice of the application for release was published once each week for four consecutive weeks in the *Pleasanton Express*, a newspaper of general circulation in Atascosa and McMullen Counties, Texas in the locality of the surface mining and reclamation operations, on April 17 and 24, 2013 and on May 1 and 8, 2013. The notice of application contains all information required by §134.129 of the Act and §12.312(a) of the Regulations for notice of application for release of reclamation obligations. The notice contains a statement that the applicant does not seek a reduction in the approved bond, but that an eligible bond reduction amount may be determined. San Miguel submitted affidavits of publication with news clippings. The published notice is adequate notification of the request for release. The notice included 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 approved bond, 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 notices contained information concerning the applicant, the location and boundaries of the permit area, the availability of the application for inspection and the address to which comments should be sent. The notice included a map showing sufficient notice of the boundaries of the areas requested for release.

6. Copies of the application were filed for public review in the offices of the County Clerk of Atascosa County in Jourdanton, Texas and in the offices of the Surface Mining and Reclamation Division, Railroad Commission of Texas, in Austin, Texas.
7. By letters dated April 16, 2013, San Miguel sent notice of the request for release to adjoining property owners and to local governmental bodies, planning agencies, sewage and water treatment authorities and water companies in the locality of the surface mining and reclamation operations [§12.312(a)(2)]. Notice was sent to the Atascosa County Judge and County Clerk, the Atascosa County Soil and Water Conservation District, the Texas Commission on Environmental Quality the Environmental Protection Agency office in Dallas, Texas, the U.S. Army Corps of Engineers, the Natural Resources Conservation Service, the Nueces River Authority, the Evergreen Underground Water Conservation District, the Texas General Land Office, and South Texas Electric Cooperative. The areas requested for release are not located within the territorial boundaries of any municipality that must be notified pursuant to §12.313(c) of the Regulations. The Staff sent notice by certified mail dated March 26, 2013 to the Atascosa County Judge, the county in which the areas requested for release are located, as required by §134.133 of the Act (Attachment II to Staff memorandum dated March 14, 2008).
8. SMRD mailed letters dated October 30, 2012 to the landowners of the areas requested for release, and to the U.S.D.I. Office of Surface Mining, Reclamation and Enforcement (OSM), Tulsa Field Office, notifying them that a release had been requested and advising them of the opportunity to participate in the on-site inspection scheduled for November 15, 2012 [§12.312(b)(1)]. The inspection was rescheduled to November 20, 2012. Although no indication appears in the record that letters indicating the rescheduling were sent, another inspection was scheduled for the same date and time at the mine, and the two areas proposed for release in the two dockets have the same surface owners who were notified. No landowners appeared at that inspection or at the inspection for the instant docket. A representative of San Miguel attended the inspection on November 20, 2012 with an inspector from the Commission's Austin office. Photographs taken during the inspection were included in Staff's inspection report as Appendix IV to Attachment III (Staff Inspection Report). The postmine land use is pastureland.
9. No persons filed written comments, objections, or requests for hearing [§12.313(d)].
10. 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 acreage requested (as revised to 449.86 acres) and an eligible bond reduction amount. Staff submitted its technical analysis (TA) by letter dated February 10, 2014 with attached memorandum and attachments including the inspection report (Attachment III). The Staff review recommended denial of release for all acreage requested. After supplementation by San Miguel and San Miguel's withdrawal of LMU B-7 from its request due to vegetative concerns, Staff filed its Addendum to the TA and now recommends approval of Phase III release for the remaining areas requested for release, LMUs B-2 and B-3. Information provided by San Miguel and available in Commission records constitutes sufficient information

to determine the appropriateness of Phase III release regarding successful completion of the extended responsibility period (ERP), the protection of the groundwater hydrologic balance, and the protection of the surface water hydrologic balance.

11. The 449.86 acres proposed for release from Phase III requirements meet the revegetation success requirements of §12.395(b)(1) and the five-year extended responsibility period of §12.395(c)(2).
  - (a). The postmine land use of the acreage requested for release is pastureland. The area was planted with Coastal bermudagrass, Common Bermudagrass, Kleingrass, Plains bristlegrass, Sideoats grama, Green sprangletop, Old World bluestem, WW-B dahl bluestem, Wilman lovegrass, and Buffalo grass, species appropriate to the postmine land use as required by §12.391, from 2002 to 2009. LMU BX-2 was placed in the extended responsibility area (ERA) on November 3, 2005, and LMU BX-3 was placed in the ERA on August 1, 2007.
  - (b). San Miguel gathered required soil fertility data, as reflected by correspondence contained in the application and as referenced in the Staff report. San Miguel submitted soil fertility data for the BX-2 ERA for the 2006 growing season by letter dated February 13, 2007, and the data were approved by the Commission by letter dated April 23, 2007 and amended by memorandum dated April 14, 2008. San Miguel submitted soil fertility data for the BX-2 ERA for the 2007 growing season by letter dated March 14, 2008 approved by the Commission by letter dated April 11, 2008. In addition, San Miguel submitted soil fertility data for the 2008 growing season by letter dated February 10, 2009, approved by the Commission April 15, 2009 for both the BX-2 ERA and the BX-3 ERA. By letter dated January 26, 2010, San Miguel submitted soil fertility data for growing season 2009 for the BX-3 ERA approved May 27, 2010. By letter dated January 10, 2010, San Miguel submitted soil fertility data for the BX-3 ERA for the 2010 growing season approved April 20, 2011. In Staff's approval letters, it determined that data submitted by San Miguel did not indicate any prohibited fertilizing [§12.395(c)(4)]. By letters dated September 1, 2010 and November 2, 2011, Staff also determined from 10% random sampling of soils in the fourth year of the ERP for the BX-2 ERA and the BX-3 ERA, respectively, that the data were satisfactory.
  - (c). San Miguel has met the vegetation requirements of §12.395 for pastureland in accordance with approved standards for ground cover and productivity. By letters dated February 15, 2008 and March 12, 2009, San Miguel submitted ground cover and productivity data for LMU BX-2 for growing years 2007 and 2008, respectively. SMRD determined that the ground cover and productivity data exceeded 90% of the approved standards for the land use of pastureland for LMU BX-2 for Years 2007 and 2008 by letters dated May 6, 2008 and May 29, 2009, respectively. SMRD determined that the ground cover and productivity data exceeded 90% of the approved standards for the land use of pastureland for LMU BX-3 for Years 2009 and 2010 by letters dated September 22, 2010 and May 9, 2011, respectively.
  - (d). The five-year period of extended responsibility applicable to this permit area having at least 26 inches of rainfall annually has been met [§12.395(c)(2)] for the BX-2 ERA and the BX-3 ERA.
12. Surface mining activities were conducted according to San Miguel's reclamation plan so that earth materials and runoff were handled to minimize acidic, toxic, or other harmful infiltration to

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groundwater systems and by operations conducted in a manner to prevent or control the discharge of pollutants into the groundwater. Groundwater quantity has been protected by restoring approximate premining recharge capacity of the reclaimed area as a whole. Operations were conducted in accordance with the requirements of §12.348 of the Regulations. Reclamation methods were used to minimize acid-forming and toxic-forming materials from adversely affecting groundwater, appropriate monitoring has occurred, and monitoring results indicate that the groundwater has been protected.

- (a). Based on premine drilling, no water-bearing sands were identified in the overburden in the areas requested for release. No premining groundwater monitoring wells were placed in the overburden. Following mining, three groundwater monitoring wells were installed in September 2004 to determine presence and quality of groundwater in the reclaimed spoil and potential effects. Well B-MW-1, damaged in 2010, was replaced with B-MW-1R. The three wells were monitored first on a monthly basis and then quarterly as a part of the long term groundwater monitoring (LTGM) program. Groundwater has been detected in only one of the wells, B-MW-1R. In 2012, saturated spoil was about 20 feet thick in the well. Levels have risen approximately 9 feet over the last six years. The quality of water in this well is not sufficient for stock watering in that it contains high total dissolved solids (TDS). This well is located in the B-7 area that has been withdrawn from release at this time. The other two wells, located in the areas proposed for release have historically been dry. The lateral and vertical distance between these wells and the well B-MW-1R is large and development of surface water seeps will not occur in the BX-2 and BX-3 areas. No deleterious impact has occurred to the BX-2 or BX-3 areas that contained no water-bearing sands.
  - (b). Adjacent unmined areas either do not contain usable groundwater or contain water with high total dissolved solids (TDS) (alluvial units).
  - (c). The shallowest underburden aquifer, Unit 22, separated from the mined areas by 40-65 feet of mudstone and siltstone, has poor quality water. It has not been affected by mining operations.
13. The areas proposed for release from Phase III requirements meet the surface water protection requirements of §12.349 as shown by an examination of discharges to receiving streams. La Parita and Metate Creeks drain the areas proposed for release; these creeks flow southeast to the Gulf of Mexico via the Atascosa River in the Nueces River Basin. Mining activities were conducted to minimize the formation of acidic or toxic drainage and to prevent additional contributions of suspended solids to streamflow outside the permit area and to otherwise prevent water pollution. Based upon the application, as supplemented with Supplement No. 1 providing additional surface water information, Commission records, and Staff review, surface water quality has been protected.
- (a) Staff reviewed baseline surface water monitoring records for stations upstream and downstream of the areas requested for release for differing periods of record and compared these records to records of long-term surface water monitoring (LTSM) stations downstream of the areas requested for release on La Parita Creek. The records of LTSM downstream stations were then compared with the TCEQ Stream Segment Standard for Stream Segment 2107 of the Atascosa River in the Nueces River Basin to determine any effects from mining.

- (1). Premine data from baseline upstream monitoring station MK001 was compared to premine downstream data at station MK002 for the period 1991-1992 for pH range, flow-weighted average total dissolved solids (TDS) in mg/L, and TDS range in mg/L and these stations were compared to the TCEQ limitations for Stream Segment 2107. The ranges for pH for the upstream [6.2-7.5 standard units (s.u.)], and downstream (6.9 – 8.0 s.u.) stations were compliant with the TCEQ stream segment standard, 6.5-9.0 s.u. The flow-weighted baseline average for TDS for the period 1991-1992 for the upstream station, MK001, was 104 mg/L, and the flow-weighted baseline average for TDS for this period at the downstream station, MK002, was 86 mg/L, also within the TCEQ stream segment standard. LTSM records for upstream stations MK001 and MK001A for the period of record 1994-2014 and 2006-2014, respectively, show pH ranges of 6.6-8.9 and 7.6-9.3, respectively, with MK001A slightly higher on the upper range than the limitations of Texas Commission on Environmental Quality Stream Segment 2107 of the Atascosa River for pH (6.5-9.0 s.u.); however, the average pH ranges of each meet the requirements for the stream segment. The LTSM downstream station MK002 for the period of record 1994-2012 had similar values, also with a slightly higher pH range than the TCEQ standard range; however, the average pH meets stream segment standards.
  - (2). The flow-weighted average TDS for upstream LTSM station MK001 (1994-2012), 233 mg/L is within the stream segment standard, 1,500 mg/L (maximum annual average). The flow-weighted average for upstream LTSM station MK001A (2006-2014), 4,283 mg/L, is not within the stream segment standard of 1,500 mg/L maximum annual average for TDS. This upstream station is, however, influenced by high TDS concentrations due to sodium chloride, and sulfate from flowing artesian well, Peeler Flowing Well No. 1, that discharges to La Parita Creek upstream of the station. Despite the high TDS concentrations at MK001A that Staff analysis determines is due to the flowing artesian well, the downstream LTSM station MK002 for the period of record 1994-2014 (518 mg/L) is within the TCEQ stream segment standard for TDS.
  - (3). Flow at the downstream station MK002 is reduced somewhat; Staff analysis indicates that it is dispersed over a wider floodplain.
  - (4). Based on the data and analysis contained in the record, runoff from the areas requested for release that drain to La Parita Creek have not resulted in damage to the water quality or quantity of the stream segment.
- (b). Staff reviewed surface water monitoring records collected from baseline monitoring stations and LTSM stations on Metate Creek. Based upon comparisons between upstream and downstream stations, information provided by San Miguel, and taking into consideration the level of flows at the respective stations during the periods of record, and Staff analysis, the surface water quality and quantity have has been only minimally affected.
- (1). A comparison of the average and range of pH values for LTSM upstream stations MK003 (period of record 1999-2014) and LTSM upstream station MK005(also referred to as SM005) (period of record 2004-2014) and downstream LTSM station MK004 (period of record 1999-2014) are similar as are concentrations for

flow-weighted TDS and TDS ranges at these stations. Flow, taking into consideration that the downstream station has a lower flow probably because it has a wider floodplain area, has not been materially affected. There are some values of pH higher than that allowed by the stream segment standard; however, the average pH values meet the limitations. The flow-weighted TDS concentrations at both the upstream and downstream stations are somewhat higher than the stream segment's maximum annual average for TDS. Staff analysis agrees with San Miguel's data indicating that adequate flow from upstream artesian wells Metate Creek Well, Ranch Well #1 and Ranch Well #2 may exist to negatively affect the TDS concentration downstream that has been measured at LTSM station MK004. Staff included a graph in its TA Addendum, page 8, displaying that although average flow-weighted TDS concentration is higher at downstream station MK004, the trends depicted on the graph confirm that TDS concentrations at LTSM station MK004 track closely with and are generally unchanged or slightly lower than TDS concentrations at upstream LTSM station MK003 (located downstream of the artesian wells).

- (2). Minimal effects to surface water quality and quantity have been indicated. Staff determined that the surface water hydrologic balance has been protected.
14. There are no ponds, diversions, impoundments, or other facilities in the area proposed for release from Phase III requirements.
15. San Miguel has reclaimed the areas requested for release, as revised, to a condition capable of sustaining the approved postmine land use, pastureland.
16. For areas approved for release of reclamation requirements, a reduction in bond may be made applicable to this acreage pursuant to §12.313(a). The remaining bond amount currently allocated to this acreage is \$901.00/acre due to prior releases.
17. The eligible amount for release is made up of the total remaining bond amount for each acre approved for release, \$901.00 per acre multiplied by 449.86 acres, or \$405,321.71, plus \$40,532.17 (10% administrative costs) for a total eligible bond reduction amount of \$445,853.88. Upon the filing of a replacement bond instrument for consideration by the Commission, the bond is eligible to be reduced. No replacement bond has been filed; the existing approved bond continues in effect.
18. The areas requested for release have been marked in the field with boundary markers at corners and angle points 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 from active areas and will aid in inspection and enforcement. (§12.330)
19. San Miguel and the Staff have waived preparation and circulation of a proposal for decision as provided for in §2001.062(e) of the Administrative Procedure Act, TEX. GOV'T CODE ANN. Ch. 2001 (Vernon Supp. 2014). Open meeting notice of consideration of this application has been provided in accordance with the Open Meetings Act (TEX. GOV'T CODE §551.048).

## 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 as required by the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. CH. 134 (Vernon Supp. 2014) (Act), and the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE CH. 12 (Regulations)(Thomson West 2014).and the Open Meetings Act, TEX. GOV'T CODE §551.048.
2. A public hearing on the request is not warranted.
3. San Miguel has complied with all applicable provisions of the Act and the Regulations for Phase III release of reclamation obligations for the acreage requested for release in accordance with §§12.312 and 12.313 of the Regulations.
4. No bond funds should be released in this docket; however, the released areas are eligible to be included in estimates in future bond adjustments. An eligible bond reduction amount of \$451,794.40 may be determined.
5. The 355.10 acres withdrawn from this release application may be pursued in future without prejudice.

**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 the application by San Miguel for release of Phase III reclamation obligations for 449.86 acres pursuant to §134.131(b) of the Act for the acreage requested for release, as revised, is hereby approved;

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

**IT IS FURTHER ORDERED** that the Commission determines an eligible bond reduction amount of \$451,794.40;

**IT IS FURTHER ORDERED** that all areas released from reclamation obligations shall remain clearly marked in the field with permanent boundary markers to distinguish the released areas from active mining and reclamation areas;

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

**IT IS FURTHER ORDERED** that San Miguel Electric Cooperative, Inc. may file an application for release of the 355.10 acres withdrawn from this application without prejudice; and

**IT IS FURTHER ORDERED** by the Commission that this order shall not be final and effective until 20 days after a party is notified of the Commission's order. A party is presumed to have been notified of the Commission's order three days after the date on which the notice is mailed. If a timely motion for rehearing is filed by any party of 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. As authorized by TEX. GOV'T CODE §2001.146(e), the time allotted for Commission action on a motion for rehearing in this case prior to its being overruled by operation of law, is hereby extended until 90 days from the date the parties are notified of the order.

**DONE AT AUSTIN, TEXAS**, this 2<sup>nd</sup> day of December, 2014.

**RAILROAD COMMISSION OF TEXAS**

  
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CHAIRMAN CHRISTI CRADDICK

  
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COMMISSIONER DAVID PORTER

  
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COMMISSIONER BARRY T. SMITHERMAN

ATTEST:

  
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Secretary  
Railroad Commission of Texas