

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

**SURFACE MINING DOCKET NO. C20-0008-SC-33-F:
APPLICATION BY THE SABINE MINING COMPANY FOR RELEASE OF
RECLAMATION OBLIGATIONS ON AN AGGREGATE 708.6 ACRES FOR
RELEASE OF PHASE I, II, AND III RECLAMATION OBLIGATIONS ON 253.5
ACRES, PHASE II AND III RECLAMATION OBLIGATIONS ON 432.1 ACRES, AND
PHASE III RECLAMATION OBLIGATIONS ON 23.0 ACRES, PERMIT NO. 33I,
SOUTH HALLSVILLE NO. 1 MINE, HARRISON COUNTY, TEXAS**

**ORDER APPROVING VARIOUS PHASES OF RELEASE OF RECLAMATION
OBLIGATIONS ON AN AGGREGATE 708.6 ACRES**

Statement of The Case

The Sabine Mining Company ("SMC", or "Applicant"), 6501 Farm Road 968 West, Hallsville, Texas 75650-7413 applied to the Railroad Commission of Texas ("Commission"), Surface Mining and Reclamation Division ("SMRD", or "Staff"), for release of Phase I, II, and III reclamation obligations on 256.9 acres (revised to 253.5 acres), release of Phase II and III reclamation obligations on 428.6 acres (revised to 432.1 acres), and release of Phase III reclamation obligation on 23.0 acres, for an aggregate 708.5 acres (revised to 708.6 acres), within the South Hallsville No. 1 Mine located in Harrison County, Texas. By letter dated February 14, 2020, SMC submitted Supplement No. 1 to modify the release area from an aggregate 708.5 acres to 708.6 acres and revised text and exhibits to correctly reflect a request for Phase II and III only for REC-3 pond. Two structures noted during the inspection conducted on November 12, 2019, were added to Exhibit 5A. The Application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. CH. 134 (Vernon Supp. 2020) ("Act"), and the "Coal Mining Regulations," Tex. Railroad Comm'n, 16 TEX. ADMIN. CODE CH. 12 (Thomson West 2020) ("Regulations").

Permit No. 33I currently authorizes surface coal mining and reclamation operations at SMC's South Hallsville No. 1 Mine, within its 44,401-acre permit area. No comments or requests for hearing were filed following public notice. The only parties to the proceeding are SMC 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 release of Phase I, II, and III reclamation obligations on 253.5 acres, release of Phase II and III reclamation obligations on 432.1 acres, and release of Phase III reclamation obligations on 23.0 acres. 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.

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The current bond is calculated for the areas proposed for release by the worst-case bond method. With Phase III release, there is an eligible bond reduction amount that may be determined; however, the actual amount of bond liability attributable to the acreage granted release by this Order will be considered by the Commission when a bond adjustment is requested.

FINDINGS OF FACT

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

1. By letter dated October 11, 2019, The Sabine Mining Company ("SMC", or "Applicant") filed an application ("Application") with the Railroad Commission of Texas' ("Commission") Surface Mining and Reclamation Division ("SMRD", or "Staff") for release of Phase I, II, and III reclamation obligations on 256.9 acres (revised to 253.5 acres), release of Phase II and III reclamation obligations on 428.6 acres (revised to 432.1 acres), and release of Phase III reclamation obligation on 23.0 acres, for an aggregate 708.5 acres (revised to 708.6 acres), within the South Hallsville No. 1 Mine, Permit No. 33I, located in Harrison County, Texas. Permit No. 33I was most recently renewed by the Commission on February 26, 2019 (Docket No. C16-0023-SC-33-C).
 - a. During review of the Application, Staff noted and discussed with SMC that: (1) a 3.5-acre area (REC-3 pond) requested for Phase I, II, and III release had already received Phase I release; (2) the shape and acreage associated with land management unit (LMU) 12EP1 within the proposed release area did not reflect the extended responsibility area (ERA) modification/increase of 0.1-acre approved on October 3, 2019; (3) two additional structures observed during the release inspection on November 12, 2019 had been inadvertently omitted; and, (4) concerns with some watersheds depicted on Exhibit 5.
 - b. By letter dated February 14, 2020, SMC submitted Supplement No. 1 which consisted of a revised text and Exhibits (1-5B and D) to show the Rec-3 Pond area as proposed for Phase II and III release and revised the boundary of LMU 12Ep1 area. Thereby, the requested phases of release were revised for release of Phase I, II, and III reclamation obligations from 256.9 acres to 253.5 acres (a decrease of 3.4 acres), release of Phase II and III reclamation obligations from 428.6 acres to 432.1 acres (an increase of 3.5 acres), and release of Phase III reclamation obligation on 23.0 acres remained the same. The total acreage requested was revised from an aggregate 708.5 acres to an aggregate 708.6 acres (to account for the 0.1-acre added to LMU 12Ep1 area).
2. The Application was filed with the Commission's Hearings Division by letter dated October 17, 2019, and the Director of SMRD determined the Application to be Administratively

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Complete by letter dated December 19, 2019. Based on the Application, as supplemented, Staff analyses, and the inspection of the area, Staff recommends release of Phase I, II, and III reclamation obligations on 253.5 acres, release of Phase II and III reclamation obligations on 432.1 acres, and release of Phase III reclamation obligations on 23.0 acres. The chronology of the Application submittal and review, and other associated actions, is summarized below:

DATE	ACTION
October 11, 2019	SMC submits Application for various Phases I, II and III release of reclamation obligations on an aggregate 708.5 acres
October 17, 2019	Copy of Application is filed with the Hearings Division for review of public notice
October 21, 2019	Notification of assigned Administrative Law Judge ("ALJ") and Technical Examiner. ALJ approves SMC's proposed public notice
November 8, 2019	SMC mails letters to affected and adjacent-tract landowners informing them of the requested release.
November 12, 2019	Staff 's inspection of the requested release area
November 13, 2019	Staff notifies Judge of Harrison County of the proposed release
November 14, 21, 28, and December 5, 2019	SMC publishes Notice of Application in <i>The Marshall News Messenger</i> , a newspaper of general circulation in the locality of the surface coal mining operation
November 15, 2019	Letter filed with Staff by landowner of tracts outside of requested area of release
November 21, 2019	Letter filed with Staff by landowner of a requested release tract regarding fences and roads in vicinity of tract
December 4, 2019	Staff files copy of letter sent in reply to landowner's November 15 th letter, referring the landowner to ALJ for further comment
December 11, 2019	SMC letter transmitting proof of publication and copies of landowner and agency notification letters
December 19, 2019	SMRD Director declares the Application administratively complete
January 24, 2020	Letter from SMC via email requesting confirmation that addition of 0.1 acre to requested release area will not require additional public notice

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DATE	ACTION
January 27, 2020	Letter from ALJ indicating that additional notice will not be required
February 14, 2020	SMC files Supplement No. 1 to the application with Staff
February 20, 2020	Staff files SMC's Supplement No. 1 in Docket Services
May 13, 2020	Staff files its TA and Inspection Report
June 19, 2020	Letter from ALJ to SMC and Staff directing them to address noted concerns in record
June 24, 2020	Staff responded to the ALJ's June 19, 2020 letter
June 30, 2020	SMC responded to the ALJ's June 19, 2020 letter
July 6, 2020	Letter from ALJ requesting clarification regarding SMC's current performance bond, the approved reclamation cost estimate for the permit and Staff's eligible bond reduction amount specified in its TA
July 8, 2020	SMC and Staff file respective responses to ALJ's July 6, 2020 letter

3. The Application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. CH. 134 (Vernon Supp. 2020) ("Act"), and the "Coal Mining Regulations," Tex. Railroad Comm'n, 16 TEX. ADMIN. CODE CH. 12 (Thomson West 2020) ("Regulations"). The Application was properly certified in accordance with §12.312(a)(3). No fee is required for this Application.
4. The existing reclamation bonds for Permit No. 33I, two self-bonds with third-party guarantors, total \$75,000,000. The most recent Commission action regarding bonding of Permit No. 33I was an approval of an additional bonding instrument in the amount of \$10,000,000 (Docket No. C12-0012-SC-33-D). The additional bonding instrument was required to supplement the existing \$65,000,000 (Docket No. C7-0024-SC-E) bond due to an increase in the reclamation cost estimate for Permit 33I. Southwestern Electric Power Company ("SWEPCO") is the bound guarantor for both bonds that were accepted by Commission Orders dated August 14, 2007, and May 8, 2012, respectively. SMC does not request a reduction in the amount of the reclamation bond instruments in this Application.
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 office of the Harrison County Clerk in Marshall, Texas.

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6. By letter dated October 21, 2019, the assigned Administrative Law Judge (“ALJ”) reviewed the draft public notice submitted by SMC with its Application. Application notice has been effected appropriately.
 - a. Notice of Application was published once per week for four consecutive weeks in the *Marshall News Messenger*, a newspaper of general circulation in Harrison County, in the area of the proposed release request, on November 14, 21, and 28, and December 5, 2019. The published notice of Application contains 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 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. Proof of publication (tear sheets and publisher’s affidavit) were submitted to Staff by letter dated December 11, 2019.
 - b. SMC sent notice of the Application by certified mail dated November 8, 2019, 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. Mailed notice was provided to the County Judge and Commissioners’ Court of Harrison County, the Natural Resources Conservation Service, 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 Sabine River Authority of Texas, the Texas Parks and Wildlife Department, the U.S. Fish and Wildlife Ecological Service, the U.S. Environmental Protection Agency, the Harrison County Soil and Water Conservation District, West Harrison Water Supply, Panola Harrison Electric Cooperative, and SWEPCO. The areas requested for release are not located within the territorial boundaries of any municipality that would be notified pursuant to §12.313(c) of the Regulations. Copies of these notification letters were filed with the Commission by letter dated December 11, 2019.
 - c. Letters providing notice of the Application were sent by SMC by certified mail to owners of interests within and adjacent to the areas requested for release on November 8, 2019. By separate letters both dated December 10, 2019, the ALJ requested a copy of the complaint letters received from two landowners, Mr. Lonnie Harrison and Ms. Geraldine Watson. On December 10, 2019, Staff emailed copies of Mr. Harrison’s and Ms. Watson’s complaint letters dated November 21, 2019, and November 15,

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2020, respectively to Hearings. Staff's and SMC's responses to these letters are described in Finding of Fact No. 8, *infra*. By letter dated June 30, 2020, in response to the ALJ's inquiry letter dated June 19, 2020, SMC indicated it had again reviewed the tracts within and adjacent to the areas proposed for release and include four lists and one exhibit to address the landowner notice issue. By letter dated July 8, 2020, in response to the ALJ's inquiry letter dated July 6, Staff confirmed that it had reviewed the affected and adjacent (500 ft) landowners within the bond release area and compared the tracts with the proof of notification letter (916-page pdf file on flash drive) SMC submitted by letter dated December 11, 2019, and that the applicable affected adjacent landowners within the proposed release area had been notified.

- d. Proof of publication, and copies of notice letters to local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies were reviewed by Staff and transmitted to the ALJ on December 19, 2019. Letters to landowners within and adjacent to the proposed area of release were confirmed by Staff and SMC, by letters dated June 30 and July 8, 2020, respectively.
7. Staff provided notification of the Application by certified letter dated November 13, 2019, to the Harrison County Judge. 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. A copy of the letter was provided in Attachment II of Staff's TA.
 8. Comments were filed regarding the request for release pursuant to the notification letters. No requests for hearing or informal conference were received pursuant to §12.313(d).
 - a. As described in Staff's TA, by letter dated November 21, 2019, Mr. Lonnie Harrison, a notified landowner of Tracts 08-08 and 08-10 located adjacent to land management unit (LMU) 12Ef2 within the requested release area, raised concerns with the fences and road within the vicinity of his property. Staff's TA indicates that following discussions with SMC representatives, on December 2, 2019 Staff responded that in accordance with the lease agreement SMC's customer, SWEPCO, would re-establish the fences around his property after the release Application has been approved. Additionally, Staff's TA indicates that Mr. Harrison was referred to Harrison County to address his concerns regarding county roads. Furthermore, by letter dated December 2, 2019, SMC responded to Mr. Harrison's letter addressing fences and county roads, and confirmed that fencing would be replaced after the release. Staff transmitted his letter to the ALJ by email dated December 10, 2019. Copies of Mr. Harrison's letter, Staff's transmittal letter, and the SMC's letter are included in Attachment IV of Staff's TA.

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- b. SMRD received a comment letter from landowner Geraldine Watson, another owner of adjacent Tract 03-11. In her letter dated November 15, 2019, Ms. Watson indicated that she did not receive and requested a copy of the complete Application for release, and also requested that her zip code be updated. By letter dated December 4, 2019, Staff responded to Ms. Watson to indicate that a copy of the complete Application for the proposed release may be inspected in the main office of Surface Mining and Reclamation Division, Railroad Commission of Texas at 1701 North Congress, William B. Travis Building, Austin, TX 78701; and at the office of the Harrison County Clerk, at 200 West Houston St., Suite 143, Marshall, TX 75671. Staff also indicated that Ms. Watson should contact SMC to update her zip code. By email dated December 4, 2019, Staff provided a copy of its December 4, 2019 response to Ms. Watson. Copies of Ms. Watson's letter and Staff's response letter are included in Attachment IV of Staff's TA.
9. Pursuant to §12.312(b) of the Regulations, 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 22, 2019, of the date and time of Staff's field inspection scheduled for November 12, 2019. The notification stated that a release had been requested and, pursuant to §12.312(b)(1), advised them of the opportunity to participate in the on-site inspection. Staff provided copies of the letters in Appendix II of Attachment III ("Inspection Report") to the TA.
10. The inspection occurred on November 12, 2019, as scheduled. Two Commission inspectors, two representatives from SMC, two representatives from SWEPCO, two representatives from local utilities, and eleven landowners attended the pre-inspection meeting and the field inspection. In its Inspection Report, SMRD Inspection and Enforcement Staff ("I&E Staff") found that the proposed areas were eligible for the requested release, except for three issues that SMC needed to address, as follows:
 - a. The proposed Phase I release area included portions of seven (7) soil grids that were not listed on Table 3.1, *Minesoil Monitoring Grids Within Proposed Phase I, II, III Release Area*, in the Application: grids 681, 1012, 1193, 1506, B207, B285, and B327;
 - b. Approximately 100 acres of the 238.8-acre forestry land-use LMU 11Ef1 were consumed by a fire in July 2018, for which I&E Staff indicates that sampling was conducted in late May and early June 2018, prior to the causal lightning strike, and the LMU 11Ef1 stem-count evaluation was approved by letter dated August 16, 2018; and
 - c. SMC did not include documentation demonstrating that the LMU 12Ep1 land-use change had been submitted as required for Phase II release from reclamation

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performance obligations by the SMRD approval by letter dated October 3, 2019, of the changes to the October 12, 2012 Extended Responsibility Area (ERA).

- d. By letter dated June 19, 2020, the ALJ requested from the parties clarification as to how regulatory and statutory requirements for the proposed release area have been met and to provide delineation and acreage of the area that had been affected by fire caused by lightning in July 2018.
 - i. By letter dated June 24, 2020, Staff provided Attachment II, Aerial Views of LMU 11Ef1 April 2017 and April 2019, to show tree canopy coverage within the burned areas prior to and after the fire caused by lightning. In that letter, Staff explained its understanding of the regulatory requirements under §12.395(b)(3)(B) for portions of LMU 11Ef1 impacted by fire by stating that SMC's ground cover and stem-count measurement demonstrate that at least 80% of the trees (pines planted in 2000) within the LMU had been in place for at least 60% of the extended responsibility period (ERP), and that the existing vegetation at the time of the release inspection on November 12, 2019 had been in place for at least three growing seasons and were at least 80%. Additionally, Staff explained that its interpretation of the regulatory requirements under §12.395(c)(2)(A) is that SMC conducted a ground-cover and stem-count evaluation of the forestry LMU 11Ef1 in 2018 and that such evaluation demonstrated that it had met the success standards noted in the regulations as well as its permit. Staff indicated that the vegetation assessment was conducted in year 7 of the ERP and at least 60 days prior to submittal of a release application, in accordance with Section III of SMRD Advisory Notice AD-BO-312. Staff indicated that SMC demonstrated that out of the 238.8-acre LMU, the 33.1-acre area affected by the fire was capable of supporting a dense stand of 16-year-old-pine trees, in accordance with the approved postmine forestry land use and that success standards were met at the time of the assessment; therefore, Staff opined that SMC had exercised due diligence in establishing vegetation.
 - ii. By letter dated June 30, 2020, SMC addressed the regulatory requirement of §12.395(c)(2)(A) for the approximately 33.1-acre proposed release area affected by fire by explaining that the stem-count for the LMU was 534 stems per acre which is 118% of the stem count revegetation standard of 450 stem per acre, and that although 14% of the trees were lost to fire, there is enough production in the remainder of the unit to make up for the lost acreage. Additionally, SMC provided a quantitative approach that considered removing the 33.1 acres affected by the fire from the 238.8 acres of the LMU which would leave 205.7 acres, thus an 86.1% of the original acreage. Multiplying 86.1% times 534 stems per acres (2018 evaluation finding) would indicate there are still 460 stems per acre. SMC explained that the stem count would exceed the revegetation success standard of

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450 stems per acre. SMC indicated that the LMU continued to meet the standards for revegetation success and thus the regulatory and statutory requirements under §12.395(b)(3)(B).

- iii. By letter dated July 6, 2020, the ALJ requested that Staff to evaluate and provide a response and/or independent quantitative assessment regarding SMC's response dated June 30, 2020, which addressed the regulatory requirements of §12.395(b)(3)(B) regarding the area affected by fire.
 - iv. By letter dated July 8, 2020, Staff responded it reviewed the quantitative approaches SMC employed in its letter dated June 30, 2020 and Staff indicated it does not disagree "that these approaches are mathematically valid ways to demonstrate that 80% of the trees and shrubs remain." Staff did not provide an independent quantitative assessment based on SMC's response.
 - e. These issues were either addressed by the Applicant or Staff and evaluated by Staff in the TA or in response letters from the Applicant and Staff as identified in the docket processing history [see Finding of Fact No. 2, *supra*].
11. The 44,401-acre permit area is located approximately three miles southeast of Hallsville, Texas. The permit area is bordered to the north by U.S. Interstate 20. A general location map of the permit area, with the 708.6 total acres proposed for release outlined, is provided in Appendix I of TA Attachment III (Staff's Inspection Report).
 12. Mining operations were conducted between 1987 and 2000, final grading was accomplished between 1989 and 2003, and planting of permanent vegetation was accomplished between 1994 and 2007. The 708.6 acres requested for release are comprised of several parcels located in the A, B, C, D, E, and J Areas of the mine and are all located west of Brandy Branch Reservoir.
 13. Based upon the Application, as supplemented, and Staff's review, Phase I release of reclamation obligations have been met for 253.5 acres of the requested 708.6 acres in accordance with Phase I requirements for backfilling, regrading, and drainage control as required by §12.313(a)(1). The aggregate postmining land uses in the 253.5-acre area eligible for Phase I release consist of 34.0 acres of pastureland (13.4%), 2.0 acres of grazingland (0.8%), and 217.5 acres of forestry (85.8%) [Revise Staff Table G, Postmine Land-Use, by letter dated June 30, 2020,]. 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 [§12.385(a)]; highwalls have all been eliminated [12.385(b)]; suitable topsoil substitute

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- 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 1986 and 2002 in such a manner that erosion and water pollution has been minimized. [§12.385(d)].
- b. Postmine soil testing requirements have been conducted on the 253.5 acres proposed for Phase I release. Staff concurred that, as SMC indicated in its initial Application, all initial soils data for the postmine-soil testing grids requested for Phase I release have been approved by the Commission. SMRD approval letters dated June 16, 1994, July 7, 1995, June 19, 1996, June 12, 1998, September 29, 1999, April 10, 2000, December 3, 2001, June 4, 2002, January 24, 2005, August 19, 2005, August 1, 2006, May 10, 2007, June 29, 2007, August 28, 2008, June 29, 2009, September 29, 2011, July 9, 2013 and December 21, 2018, are all included in Appendix A-1 of the Application. Staff further indicated that, in addition to the soil-testing grids listed in Table 3.1 in Section 5 of the Application for the requested 253.5-acre area, partial grids 681, 1012, 1193, 1506, B207, B285, B327 and C020 (around the edges of the requested release area), although not listed in SMC's Table 3.1, have all been tested and the results approved by Staff.
- c. One permanent road, C1 Pond Access Road, is located within the proposed Phase I release area. [§12.400(f)]. The C1 Pond Access Road was approved as a permanent postmine feature by SMRD letter dated September 29, 2009 (Permit No. 33C). By email dated June 19, 2020, SMC provided a copy of an approval letter dated September 29, 2009, for the C-1 Permanent Pond Access Road and indicated that a copy of the approval letter was included in Supplement No. 1. By letter dated June 24, 2020, Staff also indicated that a copy of the approval letter was included in Supplement No. 1.
- d. Runoff from the 253.5-acre area requested for Phase I release flows into final discharge Ponds B-12, B-13, B-15, C-1, C-6, C-7, C-8, D-2, D-3, D-4, E-1, and E-2. These ponds were approved as permanent by SMRD letters dated November 27, 1995 (C-1), January 12, 1999 (C-6), July 16, 1998 (C-7), April 5, 1999 (B-12 and B-13), January 18, 2002 (C-8), June 18, 2004 (D-4)(with the two subsequent modifications in Permit No. 33H, Revision No. 38, approved on February 27, 2015, and Revision No. 58, approved on November 8, 2017), and May 9, 2008 (D-2, D-3, and E-2). Previously approved temporary Ponds B-15 and E-1 were confirmed as temporary structures by SMRD I&E Staff. All ponds except for Pond B15 have been released from sediment control. [§12.343]. By email dated June 24, 2020, Staff provided a copy of an approval letter as Attachment I (Approval letter for Permanent Pond C-6), dated January 12, 1999, showing that Pond C-6 has been approved as a permanent structure. Both

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SMC and Staff indicate that Pond C-6 receives drainage from the proposed release area but is not contained in the 708.6-acre area requested for release.

- e. No disposal of non-coal waste has occurred within the area requested for Phase I release. [§12.375].
14. 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 685.6 acres of the requested 708.6 acres requested for Phase II release.
- a. As per the Inspection Report, 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. No prime farmland, for which additional requirements would be applicable, are located within the areas requested for release. [§§12.620 - 12.625].
 - c. The proposed 685.6-ac release area is part of four ERAs initiated on July 31, 2007, February 28, 2011, December 13, 2011, and October 12, 2012 (as indicated in the table below) and managed in seventeen land management units (LMUs). In the table below are listed the ERA, LMUs and acreage associated with the requested release areas.

July 31, 2007		February 28, 2011		December 13, 2011		October 12, 2012	
LMU	Acres	LMU	Acres	LMU	Acres	LMU	Acres
07Cf1	39.7	11Df1	100.5	11Df/w1	8.4	12Cf2	27.2
		11Ef1	238.8			12Ap1	12.2
						12Cn1	1.0
						12Ap4	12.8
						12Df1	86.7
						12Bf1	8.5
						12Bf2	22.2
						12Ef5	25.1
						12Ef1	54.1
						12Ef2	40.0
						12En3	1.0
						12Ep1	21.8

July 31, 2007		February 28, 2011		December 13, 2011		October 12, 2012	
LMU	Acres	LMU	Acres	LMU	Acres	LMU	Acres
						12Ef3	8.4

Total of 708.4 acres differs from 708.6 requested acres due to rounding.

- d. Prior to Phase II release, an assessment of ground cover vegetation is required. Phase III requires two years of productivity assessments in addition to groundcover estimates in pasture and grazingland LMUs. As indicated in Section 5 of the Application, permanent vegetation was established from 1994 through 2007 on the 708.6 acres requested for release. File records confirm groundcover estimates as determined from 2016 through 2018 exceeded the technical standards. These data demonstrate successful vegetative establishment and stabilization of the postmine soils. Historical information concerning revegetation-success findings is provided in Staff's TA in Table E (Forestry and Fish and Wildlife Habitat) and Table F (Pastureland and Grazingland).

- i. Pastureland land management units (LMUs) and grazing LMUs require productivity assessments as well as soil fertility analysis prior to application for Phase III release. SMC's approved soil-testing plan specifies that soil fertility samples need to be collected in the year prior to productivity assessment and the year of productivity assessment. Productivity evaluations for applicable LMUs (12Ap1, 12Ap4, 12Ep1, 12Cn1 and 12En3) were conducted in 2016, 2017 and 2018. Soil fertility samples are required to be collected after the growing season, between October 1 and December 31 of a given year, to demonstrate that augmented fertilization did not occur during the preceding growing season. Staff provided the table below summarizing the dates that soil-fertility data were submitted, approved and the growing seasons in five LMUs applicable to the requested release. SMC provided copies of SMRD soil-fertility approval letters in Appendix A-2 of the Application.

LMU	2015 Growing Season	2016 Growing Season	2017 Growing Season	2018 Growing Season
	Submitted (Approved)	Submitted (Approved)	Submitted (Approved)	Submitted (Approved)
12Ap1	07/14/2017 (09/05/2017)	07/14/2017 (09/06/2017)	06/04/2018 (07/26/2018)	---
12Ap4	07/14/2017 (09/05/2017)	07/14/2017 (09/06/2017)	06/04/2018 (07/26/2018)	---
12Ep1	07/14/2017 (09/05/2017)	07/14/2017 (09/06/2017)	06/04/2018 (07/26/2018)	01/07/2019 (02/04/2019)

12Cn1	07/14/2017 (09/05/2017)	07/14/2017 (09/06/2017)	06/04/2018 (07/26/2018)	01/07/2019 (02/04/2019)
12En3	---	07/14/2017 (09/06/2017)	06/04/2018 (07/26/2018)	---

- ii. As summarized by Staff, during the fourth or subsequent year of the ERP, a random 10% of all grids within the ERAs were resampled and analyzed according to the methodology used in the initial minesoil-monitoring program in support of Phase III release. Grids within the July 31, 2007 ERA (Grids C018, C103 and C118) were initially sampled from 1989 through 2008 and resampled in 2014. A copy of the SMRD approval letter dated May 27, 2017, was provided in Appendix A-3 of the Application. The grids of the February 28, 2011 ERA (Grids 324, 393, 493, 812, 884, 887, 921, 955 and 1054) were initially sampled from 1989 through 2017, and were resampled in 2018. The December 13, 2011 ERA Grid 526 was initially sampled in 1999 and resampled in 2018. Grids of the October 12, 2012 ERA (Grids 496, 607, 915, 980, C005, C310, 702, 737, 1058, C002, C086, C087, C093, C310, C004 and C021) were initially sampled from 1989 to 2017, and were resampled in 2018 and 2019. Although not included in the Application, Staff found an approval letter dated October 14, 2019 in its files for the random 10% resample of grids in the February 28, 2011, December 13, 2011 and the October 12, 2012 ERAs proposed for release. The letter confirmed that the data for these ERAs indicate that no significant difference exists when compared to samples collected initially, that the data adequately characterized the minesoils, and that the data demonstrate an adequate soil stability that is not expected to change significantly in the near future.

- e. The 685.6 acres requested for Phase II release have approved postmine land uses of 46.8 acres of pastureland (6.8%), 3.5 acres of developed water resources (DWR) (0.5%), 2.0 acres of grazingland (0.3%), 8.4 acres of fish and wildlife land use (1.2%), and 624.9 acres of forestry land use (91.2%) (Staff TA, page 9). The requested areas of release are depicted on the map provided in Attachment I of Staff's TA. Photographs of the area taken during the field inspection by I&E Staff are included in Appendix IV of the Inspection Report contained in Attachment III of the TA.
 - i. The 46.8 acres of pastureland consist of three LMUs, the 2.0 acres of postmine grazingland are contained in two LMUs, the 8.4 acres of fish and wildlife habitat are contained in one LMU, and the 624.9 acres of forestry postmine land use are contained in eleven LMUs.
 - ii. Of the 685.6 acres proposed for Phase II release of reclamation liability, 3.5 acres have a postmine land use of developed water resources. The groundcover

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performance standard for DWR requires that cover must be adequate to control erosion. No erosion was observed in areas with a DWR postmine land use and all associated ground cover appeared adequate to control erosion.

- iii. By letter dated June 24, 2020, Staff provided a revised table to show approximate acreages that correspond with release phases requested, as follows:

**Revised Table G. Postmine Land-Use Acreage for
 Proposed Release Phase(s)**

Release Phase(s) Requested	Forestry	Pasture	Grazing	DWR	Wildlife	Total
Phase I, II, and III	217.5	34.0	2.0	0.0	0.0	253.5
Phase II and III	407.4	12.8	0.0	3.5	8.4	432.1
Phase III	23.0	0.0	0.0	0.0	0.0	23.0
Total	647.9	46.8	2.0	3.5	8.4	708.6

- f. As set out in Finding of Fact No. 15(c), *infra*, the 685.6 acres proposed for Phase II release are 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. SMC provided Phase II pond-sampling data in the Application. Staff evaluated these data, indicating the following:
- i. The watersheds for the Phase II release areas are delineated by the Applicant on Exhibits 5A, 5B, 5C, and 5D in Supplement 1 of the release Application. All or portions of the LMUs proposed for release areas variously drain to the watersheds of twelve ponds: B12 Pond, B13 Pond, B15 Pond, C1 Pond, C6 Pond, C7 Pond, C8 Pond, D2 Pond, D3 Pond, D4 Pond, E1 Pond, and E2 Pond, which are final discharge ponds monitored for compliance under SMC's approved TPDES permit and approved Permit No. 33I requirements. Each of these final discharge ponds has been approved by the RRC as a permanent postmine structure. The postmine TPDES discharge data for these 12 ponds exhibit pH values ranging from 6.1 to 8.9 s.u., with the lowest median pH being 7.1 s.u. (B12 and D3 Ponds) and highest median pH of 7.8 s.u. (D2 Pond). These data indicate that runoff from the watersheds containing the proposed release areas meets TPDES discharge requirements that pH of discharges be no less than 6.0 s.u. and no greater than 9.0 s.u. Trendlines for the pH data from the final discharge ponds show that there are positive trends for pH, which supports a conclusion that reclamation of the areas proposed for release has been completed in such a manner that there is no discernable negative impact to the pH of surface water.

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random ten-percent resample data confirm the adequacy of the postmine soils for the approved postmine land use [Finding of Fact No. 14(d), *supra*].

- c. Staff indicates that prior to Phase III release, features that develop and meet the definition of a small depression need to be identified and approved. SMC identified small depression 12Df1-D1 on revised Exhibit 5B, *708.6-Acre Proposed Bond Release Area and Features*. This small depression was submitted for approval as Revision No. 5 to Permit No. 33I, was determined by Staff to meet the requirements of §12.385(c), and was approved by letter dated September 23, 2019. SMC included a copy of the approval letter in Appendix A-6 of the Application.
- d. SMC has conducted surface coal mining and reclamation operations within the 708.6 acres eligible for Phase III release in a manner protective of groundwater quality and quantity, in accordance with §12.313(a)(3) of the Regulations. In addressing the requirements of §12.348, SMC has submitted groundwater monitoring data for the overburden, spoil, and underburden aquifers within and adjacent to the requested Phase III release areas. Groundwater monitoring has been performed in accordance with the provisions of the approved permit. Long-term groundwater monitoring data have been submitted to and reviewed by Staff on a quarterly basis.
 - i. In support of this and other anticipated release applications, SMC submitted a *2019 Ground-Water and Surface-water Assessment in Support of Phase III Bond Release Applications* by letter dated October 7, 2019. In this assessment, SMC included groundwater monitoring data through second quarter 2019 for 50 long-term groundwater monitoring (LTGM) wells, including 19 wells that could be considered overburden monitoring wells, 13 underburden monitoring wells, and 18 spoil monitoring wells. No groundwater monitoring wells are located within the requested Phase III release area.
 - ii. Data from the LTGM wells show no significant impacts to water levels. Where drops in water levels were observed, they were temporary and attributable to seasonal fluctuations and climactic variations. Staff, in its evaluation, provides time-series plots that it developed to show trends for the water-table elevation in A, B, C, D, E and J-Area wells for the POR. Groundwater in Area K is not relevant to this Application and was not evaluated by Staff for this Application.
 - (A) Area A Wells evaluated included one underburden monitoring well (Well PZ-102LR) and five spoil monitoring wells (Well PZ-102UR, and Wells TH#1 through TH#4).

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- (B) For Area B, void area monitoring wells PZ-16L, PZ-17L and PZ-17U, spoil monitoring well PZ-108U, and underburden monitoring well PZ-108L were evaluated.
- (C) For Area C, Staff evaluated overburden LTGM well PZ-6RL, underburden LTGM wells PZ-103L and PZ-106L, and spoil LTGM wells PZ-103U and PZ-106U. All of the wells roughly track one another over time, at least since about 2006. This is indicative of essentially having a single aquifer; i.e., there appears to be connectivity between the spoil and overburden in this area. Within the paired wells (both spoil and underburden), the PZ-106 well pair indicates that the underburden exhibits slightly higher heads than the spoil. The PZ-103 pair shows that the spoil has a higher head than the underburden.
- (D) For Areas D and E, underburden LTGM wells PZ-109L and PZ-125L, and spoil LTGM wells PZ-109U, PZ-110U, and PZ-125U were assessed by Staff. The PZ-125 well pair indicates that since 2012 the spoil has shown a higher head than the underburden. The PZ-109 underburden well has been dry for the entire record, likely because the base of the screen is roughly at 194 ft above sea level. The spoil monitored by LTGM well PZ-109U has been reasonably stable, showing a slight increase over the period of record.
- (E) For Area J, Staff evaluated underburden LTGM wells PZ-108L and PZ-111L, overburden LTGM well PZ-24, and spoil LTGM well PZ-111U. For most of their records, the PZ-111 monitoring-well pair had spoil heads slightly higher than those of the underburden, although this changed in later 2018.
- (F) Staff also evaluated water quantity in native-sediment wells adjacent to the mine areas, including overburden LTGM wells PZ-8, PZ-27S, PZ-29S, PT-1, and PT-4, and underburden LTGM wells PZ-27D and PZ-29D. Well PT-4, an overburden well located outside of the permit area approximately 4,000 feet west-northwest of the E Area mine block, has shown only minor changes throughout the period of mining activities. The PZ-29 well pair show levels in the overburden that are typically higher than those in the underburden. This same trend is also the case for the PZ-27 well pair, at least until 2012, at which time the underburden (PZ-27D) heads rose substantively higher than those in the overburden. Well PZ-8, an overburden well located just outside the permit area a few hundred feet north of the E Area mine block, has shown some drawdown concurrent with mining, beginning around 1995 with recovery beginning in about 2012. Since 2014, water levels in this well have been stable near the premining baseline levels.

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- iii. Staff notes no substantive impacts to water quality observed in the evaluated LTGM wells (the same wells evaluated for water quantity) that can be attributed to the mining activities. The data from the LTGM wells, as demonstrated in the pH and total dissolved solids (TDS) concentrations, show no significant deterioration in water quality.
- (A) Overburden strata in Areas B and J exhibited pH values for groundwater in the baseline (prior to 1984 for Area B; prior to 1994 for Area J) between 5 and 7 s.u, and the pH has largely exhibited the same trend. The TDS concentrations for wells in Areas B and J is very low, with values under 200 mg/L.
 - (B) Overburden LTGM wells monitoring Area C and the areas north of the proposed release areas exhibit a somewhat higher pH, typically above 6 s.u. TDS concentrations in overburden wells in this area are characterized between 200 mg/L and 800 mg/L. All TDS concentrations have remained consistent for the full period of record for the wells.
 - (C) Underburden LTGM wells in the southern swath (in Areas B and J) show an erratic pH early in the record but stabilizing later. Values of pH have consistently been between 6 and 7 s.u. since 2000 (for Area B) and 2012 (for Area J).
 - (D) The pH of underburden LTGM wells in Area E mine block in the northern swath are similar to those of the southern swath, whereas the pH of underburden LTGM wells in Area C and north of the northern-swath mine blocks tend to be greater than 7 s.u.
 - (E) Underburden well TDS concentrations across the permit area appear to be similar, exhibiting concentrations between 200 and 550 mg/L. SMC notes an exception to this similarity in LTGM well PZ-29D; this well, although now within the TDS range of concentrations. Staff also notes that LTGM well PZ-125L, which in 2002 initially yielded concentrations of about 600 mg/L and steadily rose to a maximum of 1,080 mg/L in 2012, has dropped and stabilized at about 930 mg/L since 2014, now yielding waters in the range of the other underburden wells. Staff notes that the drop in TDS concentrations in underburden monitoring well PZ-29D between 2004 and 2006 was suggested by SMC as possibly caused by sampling error; however, Staff does not believe that sampling error would produce results that are expressed in this staggered trend.

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- (F) Although water in the spoil mass is not considered a resource, of the six spoil LTGM wells assessed for this release, three have a pH that is typically above 6 s.u. These six wells in most cases have TDS concentrations of 500 mg/L or less, with higher concentrations seen in the Area E spoil LTGM wells (PZ-109L and PZ-125U), and most prominently in Area D spoil LTGM well PZ-110U. For the latter, a higher acidity is also noted, given recent pH measurements in the 3.0 s.u. range. This well has exhibited stable static-water levels since 2016 at about 305 feet above mean sea level (amsl), with a surface elevation of 330 feet amsl. Therefore, Staff believes that seeps are not likely to develop. For LTGM well PZ-109L, a spoil well with acidic water in the range of 4 to 6 s.u., this elevation differential is even greater, at about 50 feet below the ground surface.
- e. SMC has conducted surface coal mining and reclamation operations in accordance with §12.313(a)(3) and §12.349 to protect surface-water quality and quantity in the areas proposed for Phase III release. In support of this and other release applications, SMC submitted a *2018 Ground-Water and Surface-water Assessment in Support of Phase III Bond Release Applications* by letter dated April 9, 2018. The assessment was reviewed by Staff by letter dated October 26, 2018, in which Staff found, with certain exceptions, that the assessment satisfactorily demonstrates that the surface-water and groundwater hydrologic balance has been protected in the requested Phase III release area. By letter dated October 7, 2019, SMC submitted a supplement to its earlier assessment report. In this supplemental assessment, SMC included surface-water monitoring data through second quarter 2019 for the approved LTSM stations. Staff's review for the requested release Application relied on information included in the 2018/2019 assessments, and on additional data provided in Appendix 6-5 of the release Application titled, *Sediment Pond Discharge Data*, prepared by consulting firm Golder Associates Inc. (Golder). Components of surface-water quality information include the following:
- i. Runoff from disturbed areas is monitored under the Texas Pollutant Discharge Elimination System (TPDES) Permit No. 02538, which Staff evaluated relative to applicable stream segment criteria and provisions outlined in the approved LTSM plan in Permit No. 33I.
 - ii. In its 2018 annual assessment (with 2019 supplement), SMC provided surface-water quality data for eight approved LTSM stations and six baseline stations. The LTSM stations included upstream and downstream pairs for Hatleys Creek (Stations HC-1 and HC-2), Hardin Creek, Rodgers Creek, and an unnamed tributary of Clarks Creek that traverse Permit No. 33I roughly from north to south

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in the western half of the permit area. Data collected and evaluated included measurements of pH, total dissolved solids ("TDS"), total suspended solids ("TSS"), total iron ("Fe"), and total manganese ("Mn"). In its TA for this Application, Staff focused on the assessment of the LTSM data for stations located on Hatleys Creek, Hardin Creek, Rodgers Creek, and the Sabine River.

- iii. A comparison of surface-water quality data that were obtained from the baseline monitoring stations on Hatleys Creek, Hardin Creek, Rodgers Creek, the tributary to Clarks Creek, with the corresponding LTSM-station data showing that pH and concentrations of TDS, total Fe and total Mn are similar. The Sabine River baseline monitoring station data also show that average pH and concentrations of TDS, total Fe and total Mn are similar to the LTSM stations.
- iv. Staff's review of applicable long-term surface-water monitoring ("LTSM") data indicates that these data demonstrate that no negative impacts to water quality are anticipated from flows leaving the proposed release area and that surface-water quality has been protected. SMC and Staff evaluated water-quality impacts to the surface-water regime using several methodologies:
 - (A) A comparison of upstream to downstream LTSM station surface-water quality data for three of the area streams:
 - (i) Hatleys Creek: Stations HC-1 and HC-2: Average pH and concentrations of TDS, total Fe and total Mn are nearly equivalent for the period of record for the two stations. Average TSS concentration for downstream LTSM station HC-2 is 98 mg/L, whereas the average TSS concentration is 58 mg/L for upstream LTSM station HC-1.
 - (ii) Hardin Creek: Stations HDC-1 and HDC-2: Average pH and concentrations of TDS, total Fe and total Mn are very similar for the period of record for the two stations. Average TSS concentration for downstream station HDC-2 is 83 mg/L, whereas the average TSS concentration for upstream station HDC-1 is 34 mg/L. Average total iron is 5.9 mg/L at the downstream station and 3.7 mg/L at the upstream station.
 - (iii) Rodgers Creek: Stations RC-1 and RC-2: Average pH and concentrations of TSS, total iron and total manganese are very similar for the period of record. The average TDS concentration at downstream station RC-2 is 185 mg/L, whereas the average TDS concentration at the upstream station is 142 mg/L.

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- (B) A comparison of surface-water quality data from the LTSM stations to TCEQ Stream Segment Criteria. Both Staff's and SMC's analyses of the immediate downstream TCEQ stream segment for the study area centered on Stream Segment 0505 of the Sabine River. As summarized by Staff, the water-quality criteria for this segment are a pH range between 6.0 and 8.5, and TDS concentrations of no greater than 400 mg/L. The pH measurements for the downstream LTSM stations fall between 6.7 and 7.1. The average TDS concentrations for downstream LTSM stations range between 110 and 198 mg/L, whereas the average TDS concentrations for the upstream LTSM stations range between 191 and 241 mg/L.
- (C) A comparison of downstream water-quality from the LTSM stations to baseline data. Staff summarizes that the LTSM data for downstream stations are very similar to that of the baseline data obtained for pH, TDS, TSS, total iron and total Mn. Average concentrations of TDS, TSS and Total Fe in baseline samples were lower than the average concentrations for those constituents measured in downstream LTSM stations, but the period of record for baseline measurements was only one year and is not as representative of undisturbed stream-water quality as data from upstream LTSM stations, which have been collected for a much longer period.
- (D) A comparison of trend analyses for the water-quality parameters measured at the LTSM stations:
- (i) pH: pH measurements at LTSM stations have not always been within TCEQ stream-segment criteria of 6.0-8.5 s.u.; however, the data show that nearly all pH measurements are within the stream-segment range, and that any pH measurements outside that range are rare and are not indicative of a trend. The trend lines are close to flat for all stations except for RC-2, the downstream LTSM station on Rogers Creek. The trend line for pH at RC-2 is trending slightly upward, but the pH measurements are well within stream segment water quality criteria. Staff, however, believes the linear regression analysis provided by SMC may be misleading because all pH measurements since January 2016 have been 6.6 or below, with one measurement at 5.9. Contrary to trend line projections presented in SMC's report, recent pH data for RC-2 appears to be trending lower. LTSM Station RC 2 is located just downstream of where reclaimed final discharge pond, Pond E3, was once located, and LTSM Station RC-2 receives runoff from the western portion of LMU 08Jf5, one of the LMUs included in this release Application. By email

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dated October 12, 2018, SMRD Inspection and Enforcement Staff was requested to inspect the Pond E3 watershed area for any indication that acid seeps may have developed. SMRD Inspector Michael Gay (now retired), responded to my email on October 15, 2018. Mr. Gay said that he had inspected the area in July 2018 and saw no signs of acidic conditions. Staff also compared pH data from LTSM Station RC-1 (located upstream of mining activities) to pH data from LTSM Station RC-2. Data from LTSM Station RC-1 shows that during low-flow and non-measurable flow events, water collected from Rodgers Creek at LTSM Station RC-1 often had pH measurements below 6.0 s.u. (21 times), sometime below 4.0 s.u. Consequently, Staff concludes that pH measurements at LTSM Station RC-2 which approach 6.0 s.u. are likely due to naturally occurring conditions for Rodgers Creek rather than from mining operations.

- (ii) TDS: TDS concentrations are either flat or trending downward for the downstream LTSM stations except for Stations HDC-2 and UNT-B, which are trending upward. Although the TDS concentrations are trending upward, the range of TDS concentrations at these stations are still very low – 200 mg/L or lower. The trendline at Station HDC-2 is skewed upward by a single anomalously high measurement of 1,154 mg/L collected in July 2016, a measurement which is likely due to collecting a water sample during a time when there was no flow. Although, LTSM Stations UNT-A and UNT-B do not have upstream stations to compare to, the average concentrations are lower than the stream segment criterion of 400 mg/L. Additionally, the average TDS concentrations for the other LTSM stations are also lower than the stream segment criteria. The TDS data in Appendix D also indicates that TDS concentrations at the LTSM stations have remained under 400 mg/L on a consistent basis.
- (iii) TSS: TSS trendlines are nearly flat for all downstream stations.
- (iv) Total Fe: Trendlines for total iron concentrations are nearly flat or trending downward. Data points show that total iron concentrations since 2014 are decreasing.
- (v) Total Mn: Trendlines for total manganese concentrations show that manganese concentrations are nearly level or are trending downward for all downstream LTSM stations.

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- v. Staff provided an assessment of the LTSM station water-quantity data with regard to protection of water quantity during and after mining:
- (A) SMC's October 7, 2019, supplement to its *2018 Groundwater and Surface Water Assessment in Support of Phase III Bond Release* report includes statistical analyses to assess whether mining and reclamation operations have impacted surface-water availability in streams downstream of mining operations. SMC compared flow-event data from LTSM stations located upstream of mining activities to flow-event data from LTSM stations located downstream of mining activities. Results indicate that the number of downstream flow events is statistically similar to the number of upstream flow events for Hardin Creek and Hatleys Creek. Statistical analyses of flow-event data for Rodgers Creek show mixed results. Some analyses show that LTSM Station RC-2 has statistically fewer flow events than LSTM Station RC-1, and other analyses show that the flow events at the two stations are statistically similar.
 - (B) Staff believes that mining and reclamation operations have likely had an impact on the water availability in Rodgers Creek because of attenuation of storm flows by REC-4 Permanent Impoundment (REC-4 Pond), a large on-channel reclamation pond constructed on Rogers Creek and which has a surface area of 17.3 acres and normal-pool capacity of 126.7 acre-feet. The watershed for REC-4 Pond comprises about two thirds of the watershed contributing to LTSM Station RC-2. Since REC-4 Pond was constructed, SMC has collected LTSM data at Stations RC-1 and RC-2 sixty-six times. During those data collection events, water was flowing toward the pond eleven times, and flowing away from the pond seven times. However, Staff believes that the impact to water availability is negligible because the contributing watershed for REC-4 Pond is sufficiently sized to maintain the impoundment at its normal pool level throughout much of the year, such that Rogers Creek receives discharges from rain events with reasonable regularity. Staff notes that Rogers Creek, located downstream of LTSM Station RC-2, flows through a heavily wooded area that is not used for livestock grazing or other agriculture. Staff further notes that LTSM data indicate that Rodgers Creek is an intermittent stream that flows only in response to rainfall events. Any water availability impacts to intermittent stream flow in Rodgers Creek due to the construction of REC-4 Pond are easily offset by the water retained in the permanent impoundment – water which is available every day of the year, year-round, for the benefit of fish and wildlife.

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- (C) LTSM monitoring data support a determination that mining has no impact on downstream water quality and negligible impact on water availability. SMC has demonstrated that the hydrological balance has been restored and that surface-water quantity and quality of postmine discharges are similar to that of the baseline data and to that of areas upstream of the mining activities. The data provided by SMC to support the release Application demonstrate that the acreage requested for Phase III release meets the surface-water protection requirements of §12.349.
16. The areas requested for release of reclamation obligations are capable of sustaining the postmine land use. Monthly inspections and Staff's release inspection on November 12, 2019, demonstrate that the land has been reclaimed to and managed in accordance with the approved postmine land uses.
 17. 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 bonded areas within Permit No. 33I are bonded based upon the "worst-case" bond method (see Findings of Fact No. 4, *supra*). 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 SMC has satisfactorily addressed the requirements for all phased release on 708.6 acres in accordance with §12.313(a), Staff recommends release of reclamation liability on the 253.5 acres requested for Phases I, II and III, 432.1 acres requested for Phases II and III release, and on the 23 acres requested for Phase III release, in a total eligible amount of \$537,510.38. 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 \$65,000,000 and \$10,000,000 self-bonds with third-party guarantors, approved by Orders dated August 14, 2007, and May 8, 2012, respectively, is requested in this Application. No replacement bond instrument has been filed.
 18. Acreage requested for release was marked in the field to distinguish it from active mining and reclamation areas.
 19. SMC 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.

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20. Open meeting notice has been posted for Commission consideration of this Application in accordance with Tex. Gov't Code Ann. Ch. 551 (Vernon Supp. 2020).

CONCLUSIONS OF LAW

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

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. SMC 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, II, and III reclamation obligations for 253.5 acres, release of Phase II and III reclamation obligations on 432.1 acres, and release of Phase III reclamation obligations on 23.0 acres, as set out in the above Findings of Fact and Conclusions of Law.
5. Pursuant to the Commission's authority for inspection and evaluation of release applications, the Commission may order that SMC continue marking the area approved for release so that Staff mapping and tracking will be efficient.
6. SMC is eligible to reduce the amount of bond for Permit No. 33I by an amount that is attributable to the subject acres in future bond adjustments.

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

IT IS FURTHER ORDERED that release of Phase I, II, and III reclamation obligations for 253.5 acres, release of Phase II and III reclamation obligations on 432.1 acres, and release of Phase III reclamation obligations on 23.0 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

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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 SMC is eligible to reduce the amount of bond for the permit by the amount that is attributable to the subject acres granted various releases 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

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

SIGNED on August 4, 2020.

RAILROAD COMMISSION OF TEXAS

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Wayne Christian
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CHAIRMAN WAYNE CHRISTIAN

DocuSigned by:
Christi Craddick
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COMMISSIONER CHRISTI CRADDICK

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Railroad Commission of Texas

