

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

**SMRD DOCKET NO. C20-0004-SC-52-F
APPLICATION BY SAN MIGUEL ELECTRIC COOPERATIVE, INC.
RELEASE OF PHASE II RECLAMATION OBLIGATIONS FOR 477.7 ACRES
PERMIT NO. 52A, SAN MIGUEL C-AREA MINE, ATASCOSA COUNTY, TEXAS**

**ORDER APPROVING PHASE II RELEASE OF
RECLAMATION OBLIGATIONS FOR 477.7 ACRES**

Statement of the Case

San Miguel Electric Cooperative, Inc. ("San Miguel"), P.O. Box 280, Jourdanton, Texas 78026, has applied to the Railroad Commission of Texas ("Commission"), Surface Mining and Reclamation Division, for Phase II release of reclamation obligations for 477.7 acres for revegetation and the requirement that the areas are not contributing excess suspended solids to streamflow outside the permit area. Staff of the Surface Mining and Reclamation Division has reviewed the request for release of the acreage located within Permit No. 52A, San Miguel C-Area Mine. The permit area is located approximately 50 miles south of San Antonio, sixteen miles southeast of Jourdanton, Texas and six miles east of Christine on County Road 140. San Miguel does not request a reduction in the amount of the approved reclamation bond in this application. The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, Tex. Nat. Res. Code Ann. Ch. 134 (Vernon Supp. 2019), and "Coal Mining Regulations" Tex. R.R. Comm'n, 16 Tex. Admin. Code Ch. 12 (Thomson West 2019).

Permit No. 52, issued by Order dated April 28, 2008 (Docket C7-0008-SC-00-A) and renewed by Order dated April 9, 2013 (Docket C12-0007-SC-52-C) and renumbered as Permit No. 52A, currently authorizes surface mining operations at San Miguel's C-Area Mine, located within Atascosa County, Texas. The permit area includes approximately 4,444-acres. The only parties to the proceeding are San Miguel and the Commission's Surface Mining and Reclamation Division ("Staff"). Copies of the application were filed in the required county and Commission offices, and notices were mailed to landowners and adjoining landowners of the area requested for release. No comments were made following public notice and mailed notice, and no public hearing was requested. Based on information provided by San Miguel and its inspection of the area, Staff recommends release of Phase II reclamation obligations for 477.7 acres. There remain no outstanding issues between the parties.

After consideration of the application and the Findings of Fact and Conclusions of Law, the Commission approves the release of reclamation obligations as requested by San Miguel and recommend by Staff. There is no eligible bond reduction amount; the current bond is calculated for the areas proposed for release by the worst-case bond method. The remaining reclamation costs, should revegetation fail, are for soil preparation, revegetation, and maintenance and may be released when the acreage is approved for Phase III release. 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.

FINDINGS OF FACT

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

1. By letter dated September 27, 2019, San Miguel Electric Cooperative, Inc. ("San Miguel") filed an application with the Railroad Commission of Texas' ("Commission") Surface Mining and Reclamation Division ("SMRD" and/or "Staff") for release of Phase II reclamation obligations on 477.7 acres within the San Miguel C-Area Mine, Permit No. 52A, located in Atascosa County, Texas. Permit No. 52A was most recently renewed by the Commission on April 9, 2013 (Docket No. C12-0007-SC-52-C), with a permit area encompassing approximately 4,444 acres.
2. The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, Tex. Nat. Res. Code Ann. Ch. 134 (Vernon Supp. 2019) ("Act"), and the Coal Mining Regulations, Tex. R.R. Comm'n, 16 Tex. Admin. Code Ch. 12 (Thomson West 2019) ("Regulations"). No filing fee is required. The application was properly certified in accordance with §12.312(a)(3).
3. The Director, SMRD, determined the application to be administratively complete by letter dated January 3, 2020. The Staff's TA and Inspection Report were filed with the Commission's Hearings Division by letter dated February 12, 2020, recommending Phase II release on the proposed acreage with no outstanding comments. Staff's response provided an analysis of the mining operations conducted under the approved permit, the completion of reclamation activities required for Phase II release, and of the administrative application content requirements, in accordance with the Regulations.
4. The Permit No. 52A minimum bond amount is based on the worst-case pit method of reclamation cost calculation. By letter dated July 25, 2019, the Director, SMRD, approved the most recent bond-map update in Revision No. 12 to the permit. The current \$30,000,000 bond was accepted by Order dated March 22, 2011. The approved reclamation cost estimate is \$20,554,661, derived from Staff's reclamation cost analysis prepared for Revision No. 12. The reclamation cost estimate is based on the worst-case pit reclamation cost calculation method, which assumes that mining and reclamation operations are contemporaneous with the reclamation plan at all times. No reduction in the required bond amount is recommended for Phase II release based on the method of bonding (i.e., Staff's reclamation cost estimate does not change). In this application, San Miguel does not seek an adjustment to the currently held bond.
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 Atascosa County Clerk, Jourdanton, Texas.

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6. Notice of application was published once a week for four consecutive weeks, on October 30 and November 6, 13 and 20, 2019, in the *Pleasanton Express*, a newspaper with general circulation in the area of the proposed release request in Atascosa County, Texas. The notice of application contains all information required by the Act and Regulations for notice of application for release of Phase II reclamation obligations. The published notice is adequate notification of the request for release. The notice includes the elements required by §134.129 of the Act and §12.312(a)(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 and proposed phase of release. The notice contains information on the applicant, location and boundaries of the permit area, the availability of the application for inspection, and the address to which comments should be sent. San Miguel submitted proof of publication, consisting of affidavits of publication with newspaper clippings, to the Commission by letter dated December 23, 2019.

7. San Miguel sent notice of application by letter dated November 11, 2019 to owners of interests in the areas requested for release and adjacent lands and to local governmental bodies and planning agencies in the locality as required by §12.312(a)(2) of the Regulations. San Miguel mailed notice to the County Judge/Commissioners' Court of Atascosa County, the Texas Commission on Environmental Quality, the Natural Resources Conservation Service's local offices in Pleasanton and Tilden, Texas, the Texas General Land Office, the U.S. Environmental Protection Agency, the U.S. Army Corps of Engineers' District Office in Fort Worth, the Nueces River Authority, the Atascosa County Soil and Water Conservation District, and the Evergreen Underwater Conservation District. Copies of the notification letters were filed with the Commission by letter dated November 13, 2019. By letter dated October 14, 2019, in response to an inquiry from the Administrative Law Judge, San Miguel confirmed that there are no sewage and water treatment authorities and/ water companies in the locality of the operations that would require notification of the application pursuant to §12.312(a)(2). 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.

8. No adverse comments or written objections were filed regarding the request for release pursuant to the notification. No requests for hearing or informal conference were filed pursuant to §12.313(d).

9. Staff provided notification of the application by certified letters dated October 23, 2019 to the County Judges of Atascosa and McMullen Counties. 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. 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

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October 1, 2019 of the date and time of Staff's field inspection scheduled for October 16, 2019. The notification stated that a release had been requested and, pursuant to §12.312(b)(1), advised them of their opportunity to participate in the on-site inspection. Notice sent to the sole landowner of the subject 477.7 acres and adjacent tracts, Harrison Interests Ltd. ("Harrison"), was returned as undeliverable – after which Staff verified the accuracy of the address indicated on the returned envelope with San Miguel and determined inability of delivery lies with the United States Postal Service. Further, the record indicates Staff's notice of the inspection was sent to the same address for Harrison used by San Miguel to provide mailed notice of the application discussed in Finding of Fact No. 7, *supra*, and the copy of the notice filed in the docket reflects that notice of application, sent certified mail with return receipt requested, was delivered. Staff provided copies of the inspection notification letters, including the returned notice sent to Harrison, in Appendix II within Attachment III ("Inspection Report") of the TA.

10. The inspection occurred on October 16, 2019, as noticed. No OSM representative or landowners were present for the scheduled pre-inspection meeting nor did any attend the field inspection. Three Commission inspectors and one representative of the mine attended the pre-inspection meeting. One representative of the mine accompanied two inspectors for the field inspection. Staff found in its Inspection Report dated November 21, 2019 that the 477.7 acres proposed for Phase II release meet all applicable requirements under the approved permit and Regulations.
11. The permit area is comprised of approximately 4,444 acres located approximately 50 miles south of San Antonio, Texas, 16 miles south of Jourdanton, Texas, and six miles southeast of Christine, Texas, on FM 140. The 477.7 acres proposed for release is comprised of two parcels of land made up of portions of Tracts 2, 3, 4 and 16 owned by Harrison Interests Ltd. and leased by San Miguel. A general location map of the permit area, with the acreage proposed for release identified, is found in Appendix I of Staff's Inspection Report. The area is depicted in photographs taken during Staff's inspection. The application, photographic evidence and Staff's Inspection Report and TA provide support for Phase II release of reclamation obligations for the subject 477.7 acres.
12. The approved postmine land use of subject 477.7 acres is pastureland. The area requested for release was mined and/or disturbed from 2010 to 2011, and final grading was accomplished from 2010 to 2012. A mix of native bunchgrasses was planted from 2011 to 2013, including Switchgrass, Green Spangletop, Plains Bristlegrass, Blue Grama, Sideoats Grama, Little Bluestem, and Curley Mesquite. The subject acreage is within one land management unit, LMU C-2, that is located within the extended responsibility area that began on August 31, 2017 (Exhibit 4, application). Routine monthly inspections of the reclamation work covering the proposed release area occurred from 2010 to the date of the inspection and have continued. No structures are located within the areas requested for release.
13. The area requested for release was approved for Phase I release of reclamation

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requirements for backfilling, regrading, and drainage control by Commission Order dated May 22, 2018 [Docket No. C17-0015-SC-52-F]. Based upon the application and Staff review in its TA, the acreages requested for release from Phase II reclamation obligations have met Phase II requirements for revegetation and the requirement that the lands are not contributing suspended solids to streamflow outside the permit area in excess of regulatory requirements.

14. All exposed surface areas have been stabilized to control erosion; any eroded areas which occurred during mining and reclamation were stabilized pursuant to §12.389, Regulations. Vegetation was planted in accordance with the approved reclamation plan.
15. All acreage requested for release from Phase II reclamation obligations has met all applicable requirements for Phase II release in accordance with the terms of the approved permit and §12.313(a)(2) of the Regulations.
 - a. Revegetation has been established on all areas requested and approved for release in this Order in accordance with §12.395 of the Regulations.
 - i. The areas proposed for Phase II release have the postmine land use of pastureland and were planted with the grasses listing in Finding of Fact No. 12, *supra*.
 - ii. The extended responsibility period has been initiated (August 31, 2017, Finding of Fact No. 12, *supra*). San Miguel conducted an evaluation of the vegetation in 2018 that included groundcover data for the pastureland LMU C-2 covering the acreage requested for release and reported the groundcover data to the Commission by letter dated April 19, 2019. By letter dated May 23, 2019, Staff administratively approved the vegetative groundcover within the LMU, determining that it exceeded 90% of the approved groundcover standard in accordance with §12.395 of the Regulations during the 2018 growing season. The land has been reclaimed to the approved postmine land use as required by §§12.147 and 12.399. Based upon the Staff inspection and photographs in the record, the vegetation is healthy and self-sustaining.
 - iii. There is no prime farmland within the areas requested for release for which production to equivalent yields as non-mined land would apply [§§12.620 - 12.625].
 - b. San Miguel has met the Phase II requirement that the areas not contribute suspended solids to streamflow outside the permit area in excess of the requirements set by Tex. Nat. Res. Code Ann. '134.092(a)(10) and Subchapter K of 16 Tex. Admin. Code Ch. 12.

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- i. Drainage from the Phase II release area flows through sedimentation ponds 29C, 35C, 37C, and 38C and eventually to Metate Creek that flows into the Atascosa and Nueces Rivers. Discharge from the sedimentation ponds must meet the effluent discharge limitations for pH, total suspended solids (TSS), iron (Fe), and manganese (Mn) contained in TCEQ Texas Pollutant Discharge Elimination System (TPDES) Permit No. 02043. Final discharge pond water quality records for the sedimentation ponds were provided by San Miguel in the application. These ponds have varying periods of record ranging from August 14, 2008 to November 14, 2017. Based on this information and Staff review, the averages for pH, TSS, Fe, and Mn meet the effluent limitations of TPDES Permit No. 02043. Except for TSS concentrations observed at Pond 35C, all average values are below the following effluent requirements for pH [6.0-9.0 standard units (s.u.)], TSS [based on allowable daily average (35 mg/L) and allowable daily maximum (70 mg/L)], Fe [based on 3.0 mg/L (allowable daily average) and 6.0 mg/L (allowable daily maximum)], and Mn, 1.0 mg/L (allowable daily average) and 2.0 mg/L (allowable daily maximum). The average TSS concentration observed at Pond 35C during the relatively short period of record (May 2015 – November 2017) is 42.5 mg/L – exceeding the applicable allowable daily average of 35 mg/L. In the application, San Miguel indicates that most exceedances in TSS concentrations observed in 2016 and 2017 are attributable to precipitation received within a 24-hour period that was greater than the 2-year, 24-hour precipitation event, but less than or equal to the 10-year, 24-hour event, as defined by the TPDES permit. According to the terms of the permit, TSS concentrations were collected by San Miguel but were not required to comply with the TSS limitations due to discharges caused by the storm events. During these time, effluent discharge limitations for pH, Fe and settleable solids were required to meet stated criterion under the TPDES permit, and all samples collected as a result of these discharges were compliant with the applicable TPDES limitations. Staff’s analysis of the data provided in the application, in concert with Commission records, indicates that there are no adverse trends for TSS concentrations that were observed at any applicable pond that would preclude Phase II release of the subject acreage.
- ii. No permanent impoundments are located within the areas requested for release for which water quality would be required to be sufficient for the postmine land use. No silt dams to be retained as permanent impoundments are present within the area proposed for Phase II release for which plans for future maintenance would be required.

16. Based upon the application, as supplemented, and Staff review, sufficient evidence has been submitted to show that all requirements have been met for Phase II release of the requested 477.7 acres.

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17. Based on the terms of the approved permit, there is no eligible bond reduction amount for the acreage approved for release of Phase II reclamation requirements given bonded areas within Permit No. 52A are bonded based upon the "worst-case" bond method (see Findings of Fact No. 4, *supra*). This method estimates reclamation 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 approved. Further, 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.
18. All acres requested for release were marked in the field to distinguish them from active mining and reclamation areas for aid in inspection.
19. San Miguel 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.
20. Open meeting notice has been posted for Commission consideration of this application.

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.
2. No public hearing was requested, and none is warranted.
3. San Miguel has complied with all applicable provisions of the Act and the Regulations regarding notice for Commission jurisdiction to attach to allow consideration of the matter.
4. San Miguel has complied with all applicable provision of the Act and the Regulations for Phase II release of reclamation obligations for 477.7 acres as set out in the Findings of Fact.
5. The Commission may approve a release of Phase II reclamation obligations for the 477.7 acres as set out in the above Findings of Fact and Conclusions of Law.
6. San Miguel is not eligible to reduce the amount of bond for the permit as a result of Phase II release of the subject 477.7 acres due to the terms of the approved permit.

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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 II reclamation obligations for 477.7 acres is hereby approved;

IT IS FURTHER ORDERED that San Miguel is not eligible to reduce the amount of bond for the permit as a result of the release granted by this Order;

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

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

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

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

SIGNED on April 21, 2020.

RAILROAD COMMISSION OF TEXAS

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Secretary
Railroad Commission of Texas