

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 the Commission's Surface Mining and Reclamation Division ("Staff", or "SMRD"). 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 646.1 acres, release of Phase II and III reclamation obligations on 773.6 acres, and release of Phase III reclamation obligations on 0.8 acre. Two (2) acres requested for Phase I, II, and III release of reclamation obligations were determined by Staff to be ineligible for release at this time. The parties have filed waivers of preparation and circulation of a proposal for decision.

Docket No. C19-0023-SC-33-F
The Sabine Mining Company
Permit No. 33I, South Hallsville No. 1 Mine

2

After consideration of the application and the Findings of Fact and Conclusions of Law, the Commission approves the release of reclamation obligations as described in the foregoing. The current bond 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, 2018, The Sabine Mining Company ("SMC") filed an application ("Application") with the Railroad Commission of Texas' ("Commission") Surface Mining and Reclamation Division ("SMRD" and/or "Staff") for release on an aggregate 1,417.5 acres: release of Phase I, II, and III reclamation obligations on 638.4 acres, and release of Phase II and III reclamation obligations on 779.1 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. In preliminary review of the application, by letter dated October 16, 2018, Staff identified eight deficiencies that precluded a determination of completeness of the application. SMC submitted Application Supplement No. 1 by letter dated October 24, 2018, to address Staff's initial comments.
 - b. After reviewing Supplement No. 1, Staff indicated by letter dated November 1, 2018, that the application remained suspended pending resolution to two previous comments, one regarding an initial postmine soil-testing report for 2017 and the other regarding an administrative revision application, Revision No. 61, for approval of a small depression located within the area proposed for release. The 2017 soil report was approved by letter dated December 16, 2018, and Revision No. 61 was approved by letter dated December 4, 2018.
 - c. SMC submitted Application Supplement No. 2 by letter dated July 18, 2019. The proposed release area was increased from 1,417.5 to 1,422.5 acres in Supplement No. 2 by the addition of 5.9 acres and removal of 0.9 acres from the originally requested acreage. The added 5.9 acres consisted of acreage that was removed from the 2012 extended responsibility area (ERA) and added into the 2006 ERA pursuant to an administration action submitted to SMRD by letter dated January 9, 2019, and approved by letter dated March 1, 2019. The 0.9-acre area was removed from the

2. The revised application was filed with the Commission's Hearings Division by letter dated July 26, 2019, and the Director of SMRD determined the Application to be Administratively Complete by letter dated October 11, 2019. Based on the information provided by the

Docket No. C19-0023-SC-33-F
The Sabine Mining Company
Permit No. 33I, South Hallsville No. 1 Mine

4

applicant, Staff analyses, and the inspection of the area, Staff recommends release of Phase I, II, and III reclamation obligations on 646.1 acres, release of Phase II and III reclamation obligations on 773.6 acres, and release of Phase III reclamation obligations on 0.8 acre. Two (2) acres requested for Phase I, II, and III release of reclamation obligations was determined by Staff to be ineligible for release at this time. The parties have filed waivers of preparation and circulation of a proposal for decision.

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.
6. By letter dated August 19, 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 September 10, 17, and 24, and October 1, 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,

Docket No. C19-0023-SC-33-F
 The Sabine Mining Company
 Permit No. 33I, South Hallsville No. 1 Mine

5

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 October 7, 2019 (received on October 8, 2019).

- b. SMC sent notice of the Application by certified mail 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, SWEPCO, and to several lessees. 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 October 7, 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 September 13, 2019. The ALJ requested by letter dated April 15, 2020, that SMC provide updated landowner lists to compare with the notice letters provided. SMC provided updated lists of landowners within and adjacent to the areas of proposed release by letter dated April 17, 2020. The letters sent by SMC are in agreement with the landowners identified in the lists.
 - d. Proof of publication, and copies of notice letters to local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies, and letters to landowners within and adjacent to the proposed area of release were transmitted to Docket Services on October 11, 2019.
7. Staff provided notification of the Application by certified letter dated August 21, 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.

Docket No. C19-0023-SC-33-F
The Sabine Mining Company
Permit No. 33I, South Hallsville No. 1 Mine

6

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 September 19, 2019, Mr. Theophilus James, a notified landowner of Tracts 03-11 and 03-16 located adjacent to portions of the proposed release area, requested that the application be denied until he was able to get his consultant to look into the matter. Staff transmitted his letter to the ALJ by letter dated October 24, 2019. The ALJ responded to Mr. Theophilus James's comment by letter dated November 7, 2019, in which the ALJ summarized the status of the application at the time of notice, including opportunity for hearing if requested. Copies of Mr. James' letter, Staff's transmittal letter, and the ALJ's letter are included in Attachment IV of Staff's TA.
 - 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 the complete application for release, and also requested that her zip code be updated. Staff responded to her letter 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 by letter dated December 4, 2019. Staff also indicated that she should contact SMC to update her zip code. 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, 2018, of the date and time of Staff's field inspection scheduled for November 13, 2018. 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 13, 2018, as scheduled. Three Commission inspectors, two representatives from SMC, and two landowners attended 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.
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 1,422.5 total acres proposed for release outlined, is found in Appendix I of Staff's Inspection Report.

Docket No. C19-0023-SC-33-F
 The Sabine Mining Company
 Permit No. 33I, South Hallsville No. 1 Mine

7

12. The 1,422.5 acres proposed for release are comprised of six parcels located in the 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 646.1 acres of the proposed 648.1 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 646.1-acre area eligible for Phase I release consist of 50.3 acres of pastureland (7.8%), 9.7 acres of developed water resources (DWR) (1.5%), and 586.1 acres of forestry (90.7%) [Staff Table, TA page 2]. All structures located within the proposed Phase I release area have been approved as permanent.
 - a. The area has been backfilled and regraded to its approximate original contour [§12.385(a)]; highwalls have all been eliminated [12.385(b)]; suitable topsoil substitute has been placed material over regraded spoil; no cut-and-fill terraces were constructed; and, drainage control has been accomplished 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 646.1 acres of the 648.1 acres proposed for Phase I release. Staff's review indicates the following:
 - i. SMC indicated in its initial application that all initial soils data for the grids requested for Phase I release had been approved by the Commission except for 11 grids that were submitted to SMRD on April 3, 2017. Copies of all SMRD approval letters related to the soil grids were provided in Appendix A-1 of the initial application. The 2017 report addressing the 11 grids was approved by letter dated December 21, 2018, with a copy of this approval letter provided in Appendix A-1 of Supplement No. 2 of the release application (submitted by letter dated July 18, 2019).
 - ii. In Supplement No. 3, submitted by letter dated November 21, 2019, SMC revised the proposed area of Phase I, II and III release from 643.4 acres to 648.1 acres, the area of Phase II and III release from 779.1 acres to 773.6 acres, and an area of 0.8 acre proposed for only Phase III release. An area of 4.7 acres was removed from proposed Phase II and III release and added to the area of Phase I, II and III release because these 4.7 acres had not yet been approved for Phase I release.
 - (A) Of the 4.7 acres, 3.04 acres had yet to be sampled for postmine soil testing because the postmine land use for the 3.04 acres were DWR at the time of

Docket No. C19-0023-SC-33-F
 The Sabine Mining Company
 Permit No. 33I, South Hallsville No. 1 Mine

8

sampling (2002 through 2005). However, in approved Permit No. 33I, the postmine land use for the 3.04 acres were revised to forestry, therefore requiring postmine soil testing.

(B) Staff indicates that the 3.04 acres are distributed in seven soil-testing grids, with 0.38 acre in grid 1375, 0.09 acre in grid 1344, 0.9 acre (the 0.9 acre being comprised of two small areas of 0.8 acre and 0.08 acre, respectively) in grid 1345, 0.11 acre in grid 1313, 1.2 acres (the 1.2 acres being comprised of two small areas of 1.16 acres and 0.045 acre, respectively) in grid 1314, 0.13 acre in grid 1376, and 0.23 acre in grid 1377.

(C) Based on Staff's technical protocols of 1 core per acre sampling intensity and requirement that any grid less than 0.5 acre does not require a separate core, the 0.8 acre in grid 1345 and the 1.2 acres in grid 1314 (total of 2.0 acres) are of sufficient size that they need to be sampled and tested separately. The other five grids do not require separate soil testing.

iii. Staff concluded in its analysis that, without postmine soil testing data, the aggregate 2.0 acres in Grids 1314 and 1345 do not meet the requirements for Phase I release. Staff did not, therefore, recommend these 2.0 acres for Phase I release. SMC indicated by letter dated March 9, 2020, that it did not contest this recommendation and does not now seek release of the subject two acres at this time.

c. One permanent impoundment, Pond D4, and one access road, E2 Pond Access Road, are located within the proposed Phase I release area. Pond D4 was approved as permanent by SMRD letter dated June 18, 2004 (Permit No. 33F, Revision No. 3) and released from sediment-control requirements, with two subsequent modifications approved by letters dated February 27, 2015 (Permit No. 33H, Revision No. 38), and November 9, 2017 (Permit No. 33H, Revision No. 58). The area of the pond is structurally intact and stable. [§12.347(b)]. E2 Pond Access Road was approved as a permanent postmine feature by SMRD letter dated February 20, 2014 (Permit No. 33H, Revision No. 5).

d. Runoff from the 648.1-acre area requested for Phase I release flows into final discharge Ponds C8, B12, B15, D1, D2, D3, D4, E1, and E2. Sediment Ponds C8, B12, D1, D2, D3, D4, and E2 were approved as permanent by SMRD letters dated January 18, 2002 (C8), April 5, 1999 (B12), June 18, 2004 (D4)(with the two subsequent modifications), May 9, 2008 (D2, D3, and E2), and March 2, 2010 (D1). Previously approved temporary Ponds B15 and E1 were confirmed as temporary

Docket No. C19-0023-SC-33-F
The Sabine Mining Company
Permit No. 33I, South Hallsville No. 1 Mine

9

structures by letter dated May 9, 2008. All ponds except for Pond B15 have been released from sediment control. [§12.343].

- e. One permanent road, E2 Pond Access Road, is located within the area requested for Phase I release. According to the Inspection Report (Attachment III, Staff TA), this road was approved for retention as a permanent structure by SMRD letter dated February 20, 2014 (Permit No. 33H, Revision No. 5). [§12.400(f)].
 - f. 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 1,421.7 acres proposed for Phase II release (the proposed acreage of 1,421.7 acres minus 2.0 acres not eligible for Phase I release, see Finding of Fact No. 13(b)(iii), *supra*).
- 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 1,421.7 acres proposed for Phase II release have approved postmine land uses of pastureland (103.2 acres), DWR (9.7 acres), grazingland (15.1 acres), and forestry (1,293.7 acres). The proposed 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 103.2 acres of pastureland consist of one land management unit (LMU), the 15.1 acres of postmine grazingland are contained in one LMU, and the 1,291.7 acres of forestry postmine land use are contained in a total of nine LMUs. These LMUs and their ERA initiation dates are listed in the following table:

LMU	ERA Initiation Date
06Bp1	January 31, 2006
07Dn1	July 31, 2007

Docket No. C19-0023-SC-33-F
The Sabine Mining Company
Permit No. 33I, South Hallsville No. 1 Mine

10

LMU	ERA Initiation Date
08Cf1, 08Df1, 08Df3, 08Df4, 08Ef4, 08Jf2, 08Jf3, 08Jf4 and 08Jf5	September 25, 2008

- (A) By letter dated March 3, 2014, SMC submitted 2013 groundcover and stem-count data for forestry land use for the nine LMUs in the September 25, 2008 ERA. As memorialized in its letter dated October 9, 2014, Staff determined that the 2013 groundcover and stem-count data for these nine LMUs met or exceeded 90% of the approved success standard in accordance with §12.395(c)(2). The stem-count data were re-confirmed by a qualitative survey conducted on August 28-30, 2018, and submitted to SMRD by letter dated September 14, 2018. SMRD approved the report by letter dated October 26, 2018, and a copy of this approval letter is included in Appendix A-12 of SMC's Supplement No. 2.
 - (B) SMC submitted 2014 and 2015-2016 groundcover and productivity data for LMUs 06Bp1 and 07Dn1 to SMRD by letters dated February 12, 2016, and March 12, 2018, respectively. By letters dated July 18, 2016, and May 10, 2018, respectively, SMRD determined that the 2014 and 2015-2016 groundcover and productivity data for LMUs 06Bp1 and 07Dn1 indicated that the groundcover in these LMUs met the performance standards in accordance with §12.395(c)(2). Copies of these groundcover approval letters from SMRD are included in Appendix A-5 of SMC's initial application.
 - (C) SMC submitted a request to modify the January 31, 2006, ERA to include a 5.9-acre area that was originally contained in the October 12, 2012 ERA. Staff indicates that this modification was approved by letter dated March 1, 2019. A copy of the SMRD approval letter for this revision is included in Appendix A-5 of SMC's Supplement No. 2. The subject 5.9 acres of pastureland were incorporated into LMU 06Bp1. The revegetation success for the 5.9-acre area was re-assessed using the productivity data in LMU 06Bp1 from the 2014 and 2015-2016 data. The re-assessment of the LMU 06Bp1 productivity data, including the 5.9-acre area, were submitted by letter dated January 11, 2019, and approved by letter from SMRD dated January 18, 2019. A copy of Staff's approval letter for the productivity data is contained in Appendix A-7 of SMC's Supplement No. 2.
- ii. Of the 1,421.7 acres proposed for Phase II release of reclamation liability, 9.7 acres have a postmine land use of developed water resources. The groundcover 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.

Docket No. C19-0023-SC-33-F
 The Sabine Mining Company
 Permit No. 33I, South Hallsville No. 1 Mine

12

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.

- ii. As described by Staff, TPDES data for the D4 Pond, the only permanent pond within the proposed release areas, have been provided in Table 2, Appendix A-8, of the initial application. The watershed for the D4 Pond changed to that of a postmine permanent pond in 1999. All TPDES permit postmine outfalls are monitored for pH and total settleable matter (TSM). Although no monitoring data from the pond were collected as required by the permit for years 2000 through 2004, postmine water-quality data from D4 Pond were provided for two discharges in 2004, one discharge in 2005, and for all discharges since December 2015 (one discharge in 2015, seven in 2016, six in 2017, and seven in 2018). The TPDES permit effluent limitations require that pH of discharges from postmine areas be no less than 6.0 s.u. and no greater than 9.0 s.u. TPDES effluent data show that postmine discharges from the D4 Pond had pH values ranging between 6.6 s.u. and 8.3 s.u., with a median pH value of 7.6 s.u. SMC also provided data from four consecutive quarterly grab samples collected from D4 Pond from June 2011 to March 2012 and evaluated for parameters pH and TDS. The pH of the quarterly samples ranged from 7.4 to 8.2 s.u., and the TDS concentrations ranged between 90 and 106 mg/L.
 - iii. The TPDES discharge data for the downstream final discharge ponds show that there have been no postmine discharges that have exceeded the 0.5 ml/L effluent limit for TSM. Staff concludes that reclamation of the areas proposed for release has been completed in such a manner that no negative impacts due to sediment yield from the reclaimed areas are discernable.
 - iv. From the data analysis results for pH and TSM, Staff concludes that the data provided by SMC to support the release application demonstrate that the 1,421.7 acres proposed for Phase II release meets the surface-water protection requirements of §12.349.
15. SMC has successfully completed all surface coal mining and reclamation activities for the 1,422.5 total acres requested for Phase III release, except for 2.0 acres ineligible for Phase I release [see Finding of Fact No. 13(b)(iii), *supra*]. Requirements for the completion of vegetative standards have been met. Staff has approved all structures within the areas as permanent. Surface water and groundwater within and adjacent to proposed release areas have been protected in accordance with §§12.313(a)(3), 12.348 and 12.349 of the Regulations.

Docket No. C19-0023-SC-33-F
 The Sabine Mining Company
 Permit No. 33I, South Hallsville No. 1 Mine

14

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.

- (C) 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.
 - (D) 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.
 - (E) 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.
- 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. Staff evaluated groundwater quality effects by comparison of the wells in two roughly east-west swaths—a northern swath and a southern swath—traversing the areas proposed for Phase III release.

Docket No. C19-0023-SC-33-F
 The Sabine Mining Company
 Permit No. 331, South Hallsville No. 1 Mine

15

- (A) Overburden strata in southern swath, 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) For the northern swath, overburden LTGM wells monitoring, including Area C and the wells north of the proposed release areas, exhibit a somewhat higher pH, typically above 6 s.u. TDS concentrations in overburden wells in the northern swath 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 been consistently 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 in both the southern and northern swaths 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.
- (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-

Docket No. C19-0023-SC-33-F
 The Sabine Mining Company
 Permit No. 33I, South Hallsville No. 1 Mine

16

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.

- c. 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 proposed 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. The ALJ noted in an April 16, 2020, letter that Staff indicated in its TA that its Phase III surface-water review was applicable to just 774.4 acres of the 1,422.5 acres proposed for Phase III release. By letter dated April 22, 2020, in response to the April 16, 2020, letter, Staff affirmed that its surface-water review was applicable to all 1,422.5 acres proposed for Phase III release. Staff's review for the proposed release application relied on information included in the 2018/2019 assessments, and on additional data provided in Appendix 6-5 of the bond-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 long-term surface-water monitoring 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 in the western portion of the permit area. Data collected and evaluated included

Docket No. C19-0023-SC-33-F
 The Sabine Mining Company
 Permit No. 33I, South Hallsville No. 1 Mine

17

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:
 - a) 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.
 - b) 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.
 - c) 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.

- (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:
- a) 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 bond release application. By email dated October 12, 2018, I requested SMRD Inspection and

Docket No. C19-0023-SC-33-F
The Sabine Mining Company
Permit No. 33I, South Hallsville No. 1 Mine

19

Enforcement 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. I 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 no-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.

- b) 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.
- c) TSS: TSS trendlines are nearly flat for all downstream stations.
- d) Total Fe: Trendlines for total iron concentrations are nearly flat or trending downward. Data points show that total iron concentrations since 2014 are decreasing.
- e) Total Mn: Trendlines for total manganese concentrations show that manganese concentrations are nearly level or are trending downward for all downstream LTSM stations.
- v. Staff provided an assessment of the LTSM station water-quantity data with regard to protection of water quantity during and after mining:

Docket No. C19-0023-SC-33-F
 The Sabine Mining Company
 Permit No. 33I, South Hallsville No. 1 Mine

- (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 fairly regularly. Staff notes that Rogers Creek, located downstream of LTSM Station RC-2, flows through heavily wooded area that is not used for livestock grazing or other agriculture. Staff further notes that LTSM data indicates that Rodgers Creek is an intermittent stream that only flows in response to rainfall events. Staff believes that 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.

- (C) LTSM monitoring data indicate that mining likely 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 is similar to baseline data and to that of

Docket No. C19-0023-SC-33-F
 The Sabine Mining Company
 Permit No. 33I, South Hallsville No. 1 Mine

21

areas upstream of the mining activities. The data provided by SMC to support the release application demonstrate that the acreage proposed 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 inspection on November 13, 2018, 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. 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. No reduction of the \$10,000,000 and \$65,000,000 self-bonds with third-party guarantors, approved by Orders dated May 8, 2012, and August 14, 2007, respectively, is requested in this application. No replacement bond instrument has been filed.
18. All acres requested for release were marked in the field to distinguish them 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.
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).

Docket No. C19-0023-SC-33-F
The Sabine Mining Company
Permit No. 33I, South Hallsville No. 1 Mine

22

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 regarding notice for Commission jurisdiction to attach to allow consideration of the matter.
4. 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.
5. The Commission may approve a release of Phase I, II, and III reclamation obligations for 646.1 acres, release of Phase II and III reclamation obligations on 773.6 acres, and release of Phase III reclamation obligations on 0.8 acre, as set out in the above Findings of Fact and Conclusions of Law.
6. The Commission may deny release of Phase I, II, and III reclamation obligations for 2.0 acres, without prejudice, for which a demonstration of the completion of the required reclamation obligations has not yet been made and SMC may re-file an application for release of the 2.0-acre not approved for release.
7. 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.
8. 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 646.1 acres, release of Phase II and III reclamation obligations on 773.6 acres, and release of Phase III reclamation obligations on 0.8 acre is hereby approved;

IT IS FURTHER ORDERED that release of Phase I, II, and III reclamation obligations for

Docket No. C19-0023-SC-33-F
The Sabine Mining Company
Permit No. 33I, South Hallsville No. 1 Mine

23

2.0 acres is hereby denied without prejudice, and may be proposed for phased release following demonstration of the completion of the required reclamation obligations;

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 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

Docket No. C19-0023-SC-33-F
The Sabine Mining Company
Permit No. 33I, South Hallsville No. 1 Mine

24

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 May 20, 2020.

RAILROAD COMMISSION OF TEXAS

DocuSigned by:

Wayne Christian

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CHAIRMAN WAYNE CHRISTIAN

DocuSigned by:

Christi Craddick

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COMMISSIONER CHRISTI CRADDICK

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Ryan Sitton

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COMMISSIONER RYAN SITTON

ATTEST:

DocuSigned by:

Callie Farrar

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Secretary

Railroad Commission of Texas

