

**RAILROAD COMMISSION OF TEXAS  
HEARINGS DIVISION**

**SURFACE MINING DOCKET NO. C20-0017-SC-27-F  
APPLICATION BY WALNUT CREEK MINING COMPANY  
FOR RELEASE OF PHASE I RECLAMATION OBLIGATIONS FOR 916 ACRES  
(REVISED TO 919 ACRES), PERMIT NO. 27H, CALVERT MINE, ROBERTSON  
COUNTY, TEXAS**

**ORDER APPROVING  
RELEASE OF PHASE I RECLAMATION OBLIGATIONS  
FOR 919 ACRES IN PERMIT NO. 27H**

Statement of the Case

Walnut Creek Mining Company (WCMC), P.O. Box H, Bremond, Texas 76629-0318, applied to the Railroad Commission of Texas (Commission), Surface Mining and Reclamation Division, for Phase I release of reclamation obligations for 916 acres, revised to 919 acres, within Permit No. 27H, Calvert Mine, Robertson County, Texas. The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, Tex. Nat. Res. Code Ann. Ch. 134 (Vernon Supp. 2020), and "Coal Mining Regulations" Tex. R.R. Comm'n, 16 Tex. Admin. Code Ch. 12 (Thomson West 2020).

WCMC requests release from Phase I reclamation obligations for backfilling, regrading, and drainage control for the proposed acreage. Permit No. 27H currently authorizes surface coal mining operations within the 8,040-acre permit area of WCMC's Calvert Mine. The Application was supplemented to increase the requested acreage from 916 acres to 919 acres. A request for hearing was filed following public notice. A pre-hearing conference was scheduled for December 14, 2020; however, the requestor withdrew the request for a hearing on November 30, 2020. The only parties to the proceeding are WCMC and the Commission's Surface Mining and Reclamation Division ("SMRD" and/or "Staff"). There remain no outstanding issues between the parties. Based on information provided by WCMC and the inspection of the area, Staff recommends release of Phase I reclamation obligations for 919 acres.

After consideration of the application and the Findings of Fact and Conclusions of Law, the Commission approves the release of reclamation obligations as recommend by Staff. WCMC does not request adjustment to the approved reclamation bond at this time and no new bond has been submitted. The parties have filed waivers of preparation and circulation of a proposal for decision. The Commission approves the release as requested and finds that WCMC is eligible to reduce the amount of bond for the permit by 60% of the amount that is attributable to the subject acreage in future bond adjustments.

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### **FINDINGS OF FACT**

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

1. By letter dated April 30, 2020, Walnut Creek Mining Company (“WCMC”) filed an application with the Railroad Commission of Texas’ (“Commission”) Surface Mining and Reclamation Division (“SMRD” and/or “Staff”) for release of Phase I reclamation obligations on 916 acres located mine areas, Pit 6A at the Calvert Mine, Permit No. 27H, located in Robertson County, Texas. By letter dated May 15, 2020, Staff commented on WCMC’s application in regard to grid sampling, public notice, mining period, bond release map, and notarization. In response to Staff’s comment letter, WCMC submitted Supplement No. 1 by letter dated June 11, 2020, and refined the requested release boundary, resulting in an acreage increase by an additional 3 acres, for a total requested release area of 919 acres. By letter dated June 15, 2020, WCMC submitted to the administrative law judge (ALJ) a request to suspend review of the application until inspection of the additional acreage could be accomplished. The Application was suspended on June 16, 2020, pending a follow-up inspection of the additional 3 acres since the initial 916 acres had been inspected on on May 7, 2020. The additional 3 acres were inspected on July 13, 2020. Subsequent to the follow-up inspection, by letter dated July 24, 2020, WCMC submitted to the ALJ a request to lift the suspension and by letter dated July 27, 2020, the ALJ lifted the suspension. By letter dated August 11, 2020, WCMC updated the public notice. By letter dated September 28, 2020, the SMRD Director declared the application administratively complete. By letter dated October 19, 2020, Staff filed its Technical Analysis (TA) and field inspection report recommending release of Phase I reclamation obligation on the requested 919 acres. The permit area encompasses approximately 8,040 acres.
2. The application is made pursuant to Texas Surface Coal Mining and Reclamation Act, Tex. Nat. Res. Code Ann. Ch. 134 (Vernon Supp. 2020) (Act), and the Coal Mining Regulations, Tex. R.R. Comm’n, 16 Tex. Admin. Code Ch. 12 (Thomson West 2020) (Regulations). No filing fee is required. The application was properly certified in accordance with §12.312(a)(3).
3. SMRD approved the most recent bond-map revision by letter dated January 24, 2020 (Revision No. 10). The unit reclamation costs (\$40,296,224) were derived from the analysis that Staff prepared for Revision No. 10. WCMC does not request a reduction of its approved total surety bond amount. The currently accepted reclamation performance bond for WCMC’s Calvert Mine under Permit No. 27H is in the form of two surety bonds in an aggregate amount of \$43,198,583, accepted by Commission Order dated January 27, 2015 [Docket No. C15-0006-SC-27-E].

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4. The application was filed with the Hearings Division by letter dated May 6, 2020. WCMC supplemented the application by letter dated June 11, 2020, to address Staff's comment letter dated May 15, 2020. In Supplement No. 1, WCMC: (1) removed a portion of unsampled grids 31S/01E (0.7 acres) and 31S/02E (0.3 acres) included in the initial bond release request; (2) modified the draft public notice to include the proposed release acreage in the heading and corrected the actual year mining commenced; and, (3) included a notarized statement dated May 29, 2020, that confirmed Phase I reclamation activities have been completed as required by §12.312(a)(3). Additionally, WCMC refined the requested release area to include slivers on the southwest and northeast, thus increasing the requested release area from 916 to 919 acres.
5. The ALJ reviewed and approved the initial draft public notice for publication and accompanying map on May 15, 2020. However, due to the possibility that there may be restrictions in inspecting the Application at Robertson County Clerk's Office due to COVID-19, the ALJ requested that, prior to publication, WCMC include a written statement regarding accessibility to the Application. By letter dated July 27, 2020, WCMC updated the public notice to address the additional acreage and the issue regarding accessibility of the release application for inspection in the Robertson's County Clerk's Office due to COVID-19 restrictions. WCMC indicated that the application would be available for review at the Robertson County Courthouse if the reviewer wore a face covering and practiced social distancing. Copies of the Robertson County Judge's orders dated April 30, 2020, and July 21, 2020, confirming that the County Office was open for essential services were also attached to the July 27, 2020 letter. WCMC updated the public notice by letter dated August 11, 2020, to indicate how the application could be requested, while access to the Railroad Commission Office is restricted. The ALJ reviewed and approved the revised draft public notice that addressed the 919 acres proposed for release, by letter dated August 17, 2020.
6. 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 Robertson County Clerk in Franklin, Texas.
7. Notice of application was published once a week for four consecutive weeks, on August 20, 27 and September 3, and 10, 2020, in the *Robertson County News*, a newspaper with general circulation in the area of the proposed release request in Robertson County. The notice of application contains all information required by the Act and Regulations for notice of application for release of 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 that reclamation work was performed, and a description of the results achieved as

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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 address to which comments should be sent, and the availability of the application for inspection, including accessibility due to COVID-19 restrictions. By letter dated September 16, 2020, WCMC submitted to the Commission proof of publication, consisting of affidavits of publication with newspaper tear sheets. Staff indicates that the Commission received hardcopies of these documents on September 23, 2020.

8. WCMC sent notice of application by letter dated September 11, 2020 to owners of interests in the areas requested for release and adjacent lands and 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. WCMC mailed notice to the: Robertson County Judge/Commissioners' Court; Mayors of the cities of Bremond and Calvert, Texas; Tri-County S.U.D.; Navasota Valley Electric CO-OP, Inc.; Brazos Electric Power Cooperative, Inc.; Brazos River Authority; CenturyLink, Inc.; Texas Commission on Environmental Quality (TCEQ); Natural Resources Conservation Service's local office in Franklin, Texas; Texas General Land Office; U.S. Environmental Protection Agency; U.S. Army Corps of Engineers' District Office in Fort Worth; and the Texas Soil and Water Conservation Board headquartered in Temple. 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. Staff indicates that the Commission also received hardcopies of these documents on September 23, 2020.
9. By letter dated September 11, 2020, Shirley and John Ridings ("Ridings") submitted a letter to the SMRD Director stating concerns with the quality of the water in their well, specifically the increasing content of iron in the last four years. Additionally, the Ridings also described concerns with flooding and poor road conditions alleged to be caused by surface coal mining and reclamation activities. Staff verified the location of the landowners' address and confirmed that the Ridings' property tract and well were not within or adjacent to the proposed 919-acre Phase I release area, currently under review in this docket. Staff transmitted the Ridings' complaint letter dated September 11, 2020, to SMRD's Inspection and Enforcement ("I&E") Section and the Hearings Division within the Commission. Staff's letter dated September 24, 2020 addressed to the Ridings states that the complaint was transmitted to SMRD's I&E Section "to investigate potential impacts of mining activities from WCMC's Calvert Mine on your well water quality, flooding, and road concerns." Upon receipt of the complaint, SMRD's I&E Section conducted a field inspection on October 13, 2020.
  - a. Staff indicates in its TA that the I&E manager spoke to the Ridings on September 21 and 30, 2020, and that Commission inspectors followed up with a field visit on October 13, 2020, which indicated that at the time of inspection, no flooding, or discharges from Pond SPC-63B were observed. Staff further indicates that the inspector noticed a few potholes on the road to the Ridings subdivision but, in general, the road appeared to

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be in good condition. With regard to the water-quality complaint, the surface depth of the Ridings' ground water well was measured as were the depths of the wells owned by five neighbors (James and Cyndi Weber, Clint Oldham, Wesley Dobbs, Casey Cook and Chris Ridings) within the subdivision. Additionally, Staff indicated that water samples were collected from the Ridings and Weber wells and sent to DHL Analytical Inc. to measure pH, total dissolved solids, dissolved aluminum, dissolved iron, and total iron. Staff indicated that an evaluation of the data would be conducted by SMRD's geologist and a report of the inspection would be finalized in November 2020. By letter dated November 10, 2020, Staff notified the Ridings of the results of the information collected during the field investigation on October 13, 2020, and periodic long-term monitoring data provided by the mine, and attached a copy of the inspection report. By letter dated November 16, 2020, Staff notified the ALJ of the results of the inspection and summarized that: the Ridings' subdivision road appeared to be in good condition at the time of the inspection and that WCMC collaborates with Robertson County to maintain the road; no significant damage or evidence of flooding was observed due to discharges from Sedimentation Ponds SPC-63A and SPC-63B; and the well investigation report concluded that that it was unlikely mining activities at the Calvert Mine have influenced the water quality of the Ridings Well (Well #2). Staff provided copies of the inspection reports dated October 13, 2020 and November 10, 2020, to the record for this docket.

- b. By letter dated October 5, 2020, the ALJ informed the Ridings that their letter dated September 11, 2020, had been accepted into the record as a comment letter and were given the opportunity to request a hearing to address their concerns. By email dated October 27, 2020, the Ridings requested a hearing. Based on the I&E's inspection report expected to be finalized in November 2020 and the opportunity for the Ridings to review that inspection report, a pre-hearing conference was scheduled on December 14, 2020. By email dated November 30, 2020, the Ridings requested that the hearing be withdrawn. By letter dated November 30, 2020, the ALJ informed the parties and the Ridings that the pre-hearing had been cancelled.
10. No other adverse comments or written objections were filed regarding the request for release pursuant to the effected notification. No other requests for hearing or informal conference were filed pursuant to §12.313(d). [See Finding of Fact No. 9, *supra*].
11. Staff provided notification of the application by certified letters dated August 25, 2020 to the County Judge of Robertson County. [Staff's TA, Attachment II]. 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 May 7, 2020, of the date and time of Staff's field inspection scheduled for May 27, 2020. The notification stated that a release had been requested

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and, pursuant to §12.312(b)(1), advised them of their opportunity to participate in the on-site inspection. Staff provided copies of the letters in Appendix II within Attachment III (Inspection Report) of the TA. Following the addition of the 3 acres in Supplement No. 1 to the initial 916-acre release request, a special inspection of the additional 3 acres was conducted on July 13, 2020. Based on the release inspection report dated September 28, 2020, WCMC has demonstrated compliance with the permit performance standards and the regulations for the proposed Phase I release area. A copy of I&E Staff's inspection report is provided in Staff's TA, Attachment III.

12. The initial inspection occurred on May 27, 2020, of the requested release area. No OSM representative or landowners were present for the scheduled pre-inspection meeting nor did any attend the field inspection. One Commission inspector and one representative of the mine participated in the May 27, 2020 field inspection. A follow-up inspection occurred on July 13, 2020, for the additional 3 acres proposed in Supplement No. 1. Two Commission inspectors along with one representative of the mine participated in the July 13, 2020 field inspection of the requested additional release area.
13. The application included ownership and tract information for owners of interests in the areas proposed for release and adjacent lands. There are 12 tracts within the areas requested for Phase I release of reclamation obligations, with 2 owners. One tract is owned by a private landowner (Tract 6272) and the other 11 tracts are owned by WCMC (Tracts 0152, 0153, 6027, 6134, 6273, 6275, 6238, 6319, 6320, 6481, and 6532). Similarly, there are 28 adjacent tracts with, multiple landowners, of which 9 tracts are wholly owned by WCMC and one tract is partially owned by WCMC. These tracts are shown on revised Exhibit 2, *Bond Release Area and Land Tracts*, and in Attachment 2 of Supplement No. 1. Staff's indicates in its TA that all landowners and adjacent owners were notified of the requested release area as required by §12.312.
14. The 919 acres requested for Phase I release have met Phase I requirements for backfilling, regrading and drainage control as required by §12.313(a)(1) of the Regulations. The 919 acres proposed for release are detailed in Staff's Technical Analysis (TA) and Inspection Reports dated September 29, 2020, (Attachment III to Staff's TA). Mining operations were conducted on the 919-acre proposed request area from 2004-2005. Final grading was completed in the areas requested for release in 2018. The areas have been backfilled and graded to approximate original contour [§12.385(a)]. Backfilled material has been placed to minimize erosion, to minimize water pollution both on and off the site, and to support the approved postmining land use of pastureland [§12.384(b)(2)]. All highwalls were eliminated in accordance with §12.384(b)(1) of the Regulations, and suitable substitute material was placed over the regraded spoil so that all acid-forming and toxic-forming materials were placed to a depth greater than four feet [§12.386)]. No cut-and-fill terraces were constructed. All areas requested for Phase I release have been stabilized to control drainage and attendant potential erosion [§12.389]. Surface-water runoff from the proposed Phase I release area flows into sedimentation Pond SPC-66

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located south of the requested release area. Photographs taken during Staff's field inspection of the requested areas confirm suitable vegetation planted in all requested areas.

- a. In the application and Supplement No. 1, WCMC indicates that the area proposed for Phase I release contains no permanent structures. Staff's indicates in its TA that publicly available aerial imagery on Google Earth and field observation by a Commission inspector confirmed that there are no structures in the proposed Phase I release area.
  - b. The mine soil-handling plan involves the use of topsoil haulback/salvage and subsoil substitute based on suitability information. WCMC shows soil sampling grids within the proposed Phase I release area on revised Exhibit 1, *Bond Release Area and Soils Grids* in Supplement No. 1. The 182 whole and partial soil grids in the proposed release area were sampled in 2010, 2012, 2014, 2015, 2016, 2017 and 2018, and were approved by letters dated July 5, 2011, January 30, 2013, June 12, 2015, May 31, 2016, April 18, 2017, April 24, 2018, and June 19, 2019. These approval letters confirmed that data for the 182 grids within the 919-acre Phase I release area have met the applicable postmine soil performance standards. All approval letters (except the July 5, 2011 letter) were included in Attachment 1 of the application. WCMC included a SMRD comment letter dated May 25, 2011 related to the 2010 soil report. However, the final approval letter for the 2010 Initial Postmine Soil report was issued later, on July 5, 2011. A copy of the July 5, 2011 approval letter is included in Attachment IV of Staff's TA.
  - c. Surface-water runoff from the requested Phase I release area flows into sedimentation Pond SPC-66 located south of the release parcel. [§12.344].
  - d. There are no areas approved for the disposal of non-coal waste within the areas requested for Phase I release [§12.375].
15. Pursuant to §12.313(a)(1), the Commission may release 60% of the bond or collateral attributable to the subject 919 acres upon a determination that reclamation has been successfully completed in accordance with the terms of the approved permit and the requirements of the Act and the Regulations. In its TA, Staff calculated an eligible bond reduction amount based on the most recently approved reclamation cost estimate for the permit. The proposed Phase I release area is located in Pit 6A for which the area bond method was used to calculate reclamation costs (Finding of Fact No. 3, *supra*). The amount of the eligible bond reduction specified in Staff's TA is \$5,819,144.76; however, as stated in Staff's TA, the specified reduction amount is only an estimate provided for illustration purposes. The actual amount of any reduction would be calculated based on the costs for reclamation at the time a bond reduction is requested by WCMC; thereby, ensuring the proposed bond amount is sufficient to cover the cost of outstanding

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reclamation work. In that WCMC does not request an adjustment to the approved bond in the Application (Finding of Fact No. 3, *supra*), any eligible reduction amount based on the current reclamation cost estimate would be superseded once the costs for reclamation are calculated at a future date when WCMC requests a reduction of the bond. Additionally, since the Commission is not required under the Act or the Regulations to determine an eligible bond reduction amount when approving an application for release, this Order states that WCMC is eligible to reduce the amount of bond by 60% that is attributable to the 919 acres granted Phase I release, but does not specify the amount of the reduction.

16. All acres requested for release were marked in the field to distinguish them from active mining and reclamation areas and for aid in inspection.
17. WCMC 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.
18. 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 held, and none is warranted.
3. WCMC 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. WCMC has complied with all applicable provisions of the Act and the Regulations for release of Phase I reclamation obligations for the areas proposed for release as set out in the Findings of Fact.
5. The Commission may approve a release of Phase I reclamation obligations for the 919 acres as set out in the above Findings of Fact and Conclusions of Law.
6. Pursuant to the Commission's authority for inspection and evaluation of release applications, the Commission may order that WCMC continue marking the area approved for release so that Staff mapping and tracking will be efficient.
7. WCMC is eligible to reduce the amount of bond for Permit No. 27H by 60% of the amount that is attributable to the subject 919 acres in future bond adjustments.



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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 I reclamation obligations for 919 acres is hereby approved;

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

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

**IT IS FURTHER ORDERED** WCMC is eligible to reduce the amount of bond for the permit by 60 % of the amount that is attributable to the 919 acres granted Phase I release 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 January 26, 2021.

**RAILROAD COMMISSION OF TEXAS**

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*Christi Craddick*  
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**CHAIRMAN CHRISTI CRADDICK**

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**COMMISSIONER WAYNE CHRISTIAN**

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**COMMISSIONER JIM WRIGHT**

**ATTEST:**  
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*Callie Farrar*  
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**Secretary**  
**Railroad Commission of Texas**

