

**RAILROAD COMMISSION OF TEXAS
OFFICE OF GENERAL COUNSEL
HEARINGS SECTION**

**SMRD DOCKET NO. C5-0033-SC-09-B
APPLICATION BY FARCO MINING, INC.
FOR REVISION OF PERMIT NO. 9D, RACHAL MINE
WEBB COUNTY, TEXAS**

**ORDER APPROVING PERMIT REVISION
(Permanent Impoundments, Surface Water PHC Revision and Other Structures)**

STATEMENT OF THE CASE

Farco Mining, Inc. (Farco), 116 Inverness Drive East, Suite 207, Englewood, Colorado 80112, has applied to the Railroad Commission of Texas for revision of Permit No. 9D in Webb County, Texas, at its Rachal Mine located approximately 41 miles north of Laredo, Texas. The application was filed pursuant to the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. Ch. 134 (Vernon 2011) (Act), and the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE Ch. 12 (West 2012) (Regulations). In this revision application, as supplemented, Farco seeks approval for 11 permanent impoundments; reanalysis of one existing sedimentation pond; two proposed permanent diversions; 13 proposed permanent roads; and a revised determination of probable hydrologic consequences (PHC) for impacts to the surface water regime.

After Staff declared the application administratively complete and filed its Technical Analysis (TA) with the Office of General Counsel, notice of the application was published in local newspapers, and the Commission mailed notice to landowners and holders of other real estate interests and Texas and federal agencies. No hearing was requested. Staff and Farco, the only parties to the proceeding, have waived the preparation and circulation of a proposal for decision. Based upon the application as supplemented, Staff's review of the application, and the information contained in the approved permit and Commission files, the Commission finds that the application for revision may be approved with revisions to the existing permit provisions and the adoption of seven new permit provisions, for a total of 12 proposed permit provisions.

FINDINGS OF FACT

1. Farco Mining, Inc. (Farco) timely filed an initial application for revision for its Rachal Mine, Permit No. 9D, on February 7, 2005. Farco filed supplemental information on March 14, 2005, and August 23, 2005. The August 23, 2005, supplemental information was a complete replacement of the February 7, 2005, original application and March 14, 2005, supplement. The approved permit area is located approximately 41 miles north of Laredo, Texas, and contains approximately 1,541 acres. No changes are proposed to the permit boundaries. In this revision application, as supplemented, Farco seeks approval for the following: 11 permanent impoundments, including a change of permitting status from temporary to permanent for eight existing sedimentation ponds (SP-1, SP-5, SP-6, SP-7, SP-9, SP-10, SP-11, SP-13), as well as the construction of three new permanent impoundments (RP-1A, RP-1B and RP-3); reanalysis of one existing sedimentation pond (SP-1); two proposed permanent diversions (DD-1 and DD-4); 13 proposed permanent roads (Haul Roads H-1, H-2 and H-3, Access Roads A-1, A-2 and A-4, and Ranch Roads 1 through 7); and a revised determination of probable hydrologic consequences (PHC) for impacts to the surface water regime.

2. The required application fee of \$500 was submitted to the Commission [§12.108(a)(2)]. The application was filed at least 180 days prior to the date the proposed operations are planned [§12.106(b)(3)]. Farco has met the general requirements for format and contents of the application, as supplemented. Form SMRD-1C was filed and contains the information required by §§12.116-12.154 [§12.107(a)]. In the application, as supplemented, the information is presented clearly and concisely, and is supported by appropriate references [§12.107(b)]. Technical data have been submitted as required [§12.107(c) and (e)], and the data were prepared by or under the direction of professionals in the subjects analyzed [§12.107(d)]. A responsible official of the applicant verified under oath that the information contained in the application and supplements is true and correct to the best of the official's information and belief [§12.107(g)].

3. Farco initially filed its application for revision with the Director of the Surface Mining and Reclamation Division by letter dated February 7, 2005. The application was declared a significant revision by letter dated February 10, 2005, and supplemented by information filed by Farco on March 14, 2005, and August 23, 2005. The August 23, 2005, supplemental information was a complete

replacement of the February 7, 2005, original application and March 14, 2005, supplement. The application was declared administratively complete by letter dated September 2, 2005, and filed with the Office of General Counsel on the same date. On December 27, 2005, Staff filed its initial Technical Analysis (TA), which reflected Staff's review of the administratively complete application, as well as Supplement No. 1, which was filed by Farco on October 7, 2005. The initial TA noted 25 application deficiencies. Farco filed Supplement No. 2 by letter dated March 14, 2006, which Staff reviewed in TA Addendum No. 1, filed by letter dated June 9, 2006. In TA Addendum No. 1, Staff again identified 25 application deficiencies; four unresolved deficiencies that were identified in the initial TA, as well as 21 new deficiencies. Farco filed Supplement No. 3 by letter dated December 5, 2006, which Staff reviewed in TA Addendum No. 2, filed by letter dated March 30, 2007. In TA Addendum No. 2, Staff noted eight unchanged or modified application deficiencies, as well as seven new deficiencies. By letter dated January 14, 2008, Farco filed Supplement No. 4, which Staff reviewed in TA Addendum No. 3, filed by letter dated April 3, 2008. In TA Addendum No. 3, Staff noted five unchanged or revised application deficiencies, as well as two new deficiencies. By letter dated July 23, 2008, Farco filed Supplement No. 5, which Staff reviewed in TA Addendum No. 4, filed by letter dated October 3, 2008. In TA Addendum No. 4, Staff noted four unchanged or revised deficiencies, as well as one new application deficiency. Farco filed Supplement Nos. 6, 7 and 8 by letters dated March 24, 2009, September 2, 2009, and June 27, 2011, respectively. In TA Addendum No. 5, filed by letter dated December 28, 2011, Staff reviewed Farco's Supplement Nos. 6, 7 and 8, noting that all application deficiencies had been resolved. Staff recommended approval of the revision application with the proposed permit provisions as set out in Appendix I. This revision application was filed prior to the effective date of §134.085 of the Act, which provides for specific timeframes related to Staff's technical review of applications and Applicant's submittal of supplemental information.

4. Farco filed copies of the application and supplements in the Webb County Clerk's office for public review. Copies were available for public review in the Commission's office in Austin, Texas.
5. The Commission mailed notice of the application to the appropriate divisions of the Texas Commission on Environmental Quality (TCEQ); Texas Historical Commission (THC); University of Texas, Bureau of Economic Geology; Texas State Soil and Water Conservation Board; Texas Parks

and Wildlife Department (TPWD); General Land Office; U.S. Department of Agriculture Natural Resources Conservation Service (NRCS); U.S. Department of the Interior (USDI) Fish and Wildlife Service (USFWS); U.S. Army Corps of Engineers, Fort Worth District Office; and USDI Office of Surface Mining and Reclamation and Enforcement (OSM), Tulsa, Oklahoma. The Commission additionally mailed notice of the application to all owners of interests in lands within the permit boundary and tracts adjacent to the permit boundary, in accordance with Commission policy.

6. Notice of the application was published once each week for four consecutive weeks in the *Laredo Morning Times* (Webb County) on July 9, 16, 23, and 30, 2009. Notice was published an additional time on August 17, 2009, to reflect a correction in the prior notice. The *Laredo Morning Times* is a newspaper of general circulation in the vicinity of the mine.
7. No request for a hearing on the application was filed. One comment to the application was filed by the Natural Resources Conservation Service (NRCS), stating that the NRCS expects the application will have no significant adverse impact on the environment or natural resources of the area.
8. Revisions are proposed to the following sections of the permit that correspond to the same sections of the Regulations: §12.116 (ownership and control); §12.119 (permit term); §12.145 (reclamation plan: general requirements); §12.146 (reclamation plan: protection of hydrologic balance); §12.147 (reclamation plan: postmining land uses); §12.148 (reclamation plan: ponds, impoundments, banks, dams, and embankments); §12.150 (diversions); and §12.154 (road systems and support facilities). No changes are proposed to the remaining sections of the application other than §§ 12.136, 12.137 and 12.142 for changes to ground maps, cross sections and plans. The existing permit contains 11 permit provisions. Staff recommends that seven new permit provisions be approved and that the existing permit provisions be modified as follows: Nos. 1-3 and 5 to be retained; No. 4 to be retained as revised; and Nos. 6-11 to be removed. The revised permit will contain a total of 12 provisions. All permit provisions for this revision, including retained, revised and new, are set out in Appendix I.
9. In the application, as supplemented, Farco has submitted information to adequately address each requirement of the applicable regulations.

10. Farco has not had a surface coal mining permit suspended or revoked, nor a reclamation bond forfeited and has resolved all notices of violation issued to its operations. The Applicant-Violator System (AVS) report indicates no nonpayment of abandoned mine land fees and no violations by Farco or any owner or controller that would be inconsistent with approval of the revision application (Appendix VI, TA5). All compliance information required has been provided or is otherwise available to the Commission. Farco is in compliance with its current permits (Permit Nos. 9D, 37C and 45D; all located in the same general vicinity in Webb County, Texas).

11. The application, as supplemented, includes all information required to show organizational information, ownership interests, and compliance information, as required by §12.116 of the Regulations. Farco provided information regarding its status as a corporation, an organizational chart for Farco and affiliated companies, and listings of officers and directors of Farco and of its owners or controllers (as updated in Supplement No. 8 to correct or clarify discrepancies in the listings). Farco, a Texas Corporation, is a wholly-owned subsidiary of Chevron Global Energy Inc., which is, in turn, a wholly-owned subsidiary of Texaco Overseas Holdings Inc., which is, in turn, a wholly-owned subsidiary of Texaco Inc., which is, in turn, a wholly-owned subsidiary of Chevron Investments Inc., which is, in turn, a wholly-owned subsidiary of the Chevron Corporation. Mining permits held by Farco have been identified. Farco indicated, and the AVS report confirmed, that Farco has no outstanding violations related to coal mines it owns or operates in the United States. This section, as supplemented, provides the information required by the Regulations.

12. The application, as supplemented, includes all required information relating to the permit term as required by §12.119 of the Regulations. Mining has ceased at the Rachal Mine and backfilling operations have been completed. In Supplement No. 2, Farco provided the acreage to be affected over the remaining life of the permit and the timing for the beginning and ending of the activities proposed. The acreage to be affected is related to final reclamation of the mine and consists of grading and topsoil distribution (14.6 acres), road narrowing (7.3 acres), and pond and diversion modifications (1.2 acres). Farco indicated that all existing sedimentation ponds are intended to remain as permanent structures.

13. All requirements have been met in the application, as supplemented, and the approved permit for the

submission of general maps, cross sections, and plans, as required by §§12.136 and 12.137. All requirements have been met for operations maps and plans in compliance with §12.142.

14. Farco's application, as supplemented, contains all required information for compliance with §12.145, relating to the reclamation plan.
 - (a). Farco provided a detailed timetable for the completion of each major step in the reclamation plan. In Supplement No. 8, Farco submitted a revised reclamation timetable and planting schedule. The reclamation timetable was revised to indicate that groundcover sampling will be conducted no later than two years after establishment of vegetation. Staff sponsors the revision of existing Permit Provision No. 4, as included in Appendix I, to detail the reclamation timetable. Staff additionally sponsors the retention of existing Permit Provision No. 5 to clarify that Farco will only submit applications for Phase II and III release of reclamation obligations during the months of February through November. With the approval of revised Permit Provision No. 4 and the retention of existing Permit Provision No. 5, the application, as supplemented, meets the requirements of §12.145(b)(1).
 - (b). Staff estimates reclamation costs based on this application and approved operations in the amount of \$826,658. Farco provided an estimate of reclamation costs in the amount of \$541,795. Farco's estimate was based on a bond map that was submitted in Supplement No. 6. The bond map was subsequently revised in Supplement No. 7 to correct acreage discrepancies, including an additional 6.1 acres requiring off-site topsoil, which resulted in a higher reclamation estimate. Additionally, Farco's reclamation cost estimate did not include costs associated with the removal of two temporary roads (Ranch Roads 8 and 9). Costs for removal of the ranch roads, reclamation of the additional disturbed acreage, and the 6.1 acre area requiring topsoil are incorporated in Staff's reclamation cost estimate. The detailed cost summary, as provided in TA Addendum No. 5, is as follows:

TOTAL MINE RECLAMATION COST SUMMARY

Ancillary Facilities Removal	\$78,800
Topsoil Replacement	\$288,386
Revegetation	\$384,321
Subtotal	\$751,507
Administrative Costs (10%)	\$75,151
TOTAL RECOMMENDED BOND AMOUNT	\$826,658

Staff's reclamation cost estimate is a greater amount and is accepted as a more accurate, conservative and appropriate reclamation cost estimate. The Commission approves the estimate as the amount required to ensure reclamation of mined and otherwise disturbed areas within the permit area should the Commission direct that a third party complete reclamation in the event of forfeiture. By Order dated May 24, 2005, the Commission accepted a reclamation performance bond for Permit No. 9C in the form of a surety bond issued by Travelers Casualty and Surety Company of America in the amount of \$1,966,969, which is in excess of the estimated reclamation costs. The permit was subsequently renumbered as Permit No. 9D, and a rider reflecting the revised permit number was accepted by Commission Order dated May 29, 2008. The currently accepted bond is sufficient and no additional or replacement bond is required. The information provided in the application, as supplemented, is adequate to meet the requirements of §12.145(b)(2).

- (c). Farco indicated that after construction activities are complete, Farco will rip all areas to a depth of at least 18 inches where topsoil will be placed. Farco provided clarification relating to the erosion control plan to indicate that terracing and sediment logs may be used singly or in combination with other erosion techniques. Farco additionally indicated that 5,700 cubic yards of substitute topsoil will be needed to topsoil the 6.1 acre area with a replacement thickness of seven inches. The application, as supplemented, meets the requirements of §12.145(b)(3) and (4).
- (d). Farco provided an adequate plan for revegetation. Farco indicates that it will monitor seeded areas for a period of two or more growing seasons after planting to determine the adequacy of

its revegetation efforts. Staff noted that Farco's list of pastureland plants is appropriate, with the exception of Needle Grama, which is a short-lived annual grass and does not meet the revegetation permanency standard outlined in §12.390(a)(1). Therefore, Staff proposed Permit Provision No. 7 to exclude Needle Grama from the approved permanent revegetation species. Staff further noted that Farco's management plan did not contain a fertilizer component and that no evidence had been provided to support Farco's assertion that revegetation had met the success standards in the approved permit. For this reason, Staff proposed Permit No. 8 to require that Farco apply fertilizer to all lands within the extended responsibility areas according to the normal county practices applicable to the approved land use. With the adoption of Permit Provisions Nos. 7 and 8, the application, as supplemented, is sufficient to demonstrate compliance with §12.145(b)(5)(A) through (F).

- (e). Farco seeks to revise its soil testing plan in this revision application. However, Staff noted multiple issues that were not resolved through Farco's supplemental filings. The issues involved the review of postmine soil data, a proposed mitigation plan that has not yet been submitted to the Commission by Farco, testing of offsite material used to topsoil the 6.1 acre area, soil sampling and analysis of the 6.1 acres, and clarification of the portions of the soil testing plan that are proposed to be revised. For these reasons, the proposed revisions to the soil testing plan are not approved and the existing soil testing plan will remain in effect to ensure that all acid-forming/toxic-forming material (AFM/TFM) is detected and treated, as necessary. Staff additionally noted that Farco did not submit an updated soil bank and, consequently, proposed Permit Provision No. 9 to require that Farco submit an updated soil bank after approval of postmine soil testing data for the 6.1 acre area remaining to be topsoiled.
- (f). The application, as supplemented, does not provide a remediation plan to ameliorate any potential soil problems. Farco removed the text regarding the AFM/TFM handling plan as required by §12.145(b)(7). Consequently, Staff proposes Permit Provision No. 10 to require that all AFM/TFM will be covered with up to four feet of non-AFM and non-TFM containing materials.

15. The application, as supplemented, along with the addition of two proposed permit provisions (Nos. 11 and 12), contains sufficient information to meet the requirements of §12.146, *Reclamation Plan: Protection of Hydrologic Balance*.

(a). Farco has provided information in accordance with §12.146(a) and (c) related to general reclamation plan requirements and surface water monitoring plan, respectively. The Rachal Mine contains three stream-monitoring stations: SM-1, SM-2 and SM-3. In Supplement No. 2, Farco proposed to revise the location of SM-3, as it is currently located approximately one-half mile downstream of the permit boundary. In TA Addendum No. 1, Staff indicated that the proposed revised location of SM-3, just inside the southwest corner of the permit boundary, is suitable and would better characterize discharge leaving the permit boundary, if any, than the current location.

(1). Staff noted that Farco did not commit to a specific method of monitoring for SM-3. In Supplement No. 3, Farco indicated that a provider of automated stream flow monitoring equipment determined that there is no suitable location that would allow creation of a stream flow curve with acceptable accuracy and, therefore, SM-3 will continue to be sampled manually with measurements taken when available and a passive automated sampler installed as a backup. Farco additionally indicated that automated samplers had been installed at SM-1 and SM-2, and specifications for the sampling stations were listed on pages 146-7 and 146-7A of Supplement No. 3.

(2). Farco committed to resurveying the channels for potential changes to the stream rating curves developed for SM-1 and SM-2 after a 10-year/24-hour storm event, or not less than once every two years. In Supplement No. 6, Farco indicated that monitoring will be conducted at SM-1 and SM-2 within 24 hours of a cumulative rainfall of two inches or greater within a 24-hour period and committed to measuring flow in cubic feet per second. Farco additionally indicated that it will collect data for total dissolved solids (TDS), total suspended solids (TSS), total and dissolved iron, total manganese, pH,

acidity, and alkalinity.

- (3). In Supplement No. 6, Farco proposed removal of SM-3 from its long-term surface water monitoring plan, citing that data collected at the station are invalid since the station is located outside the permit area and flow at this location is comingled with runoff from disturbed and undisturbed watersheds. Farco further justified elimination of SM-3 based on the fact that mining-disturbed flows are monitored at SP-1 in accordance with its Texas Pollutant Discharge Elimination System (TPDES) permit. In response, Staff noted in TA Addendum No. 5 that should Farco construct station SM-3 as proposed in Supplement No. 2 [subparagraph (a)], the station would monitor only mining-disturbed flows from within the permit area. Staff additionally noted that even though SP-1 monitors flow from a large portion of the watershed, a stream-monitoring station is necessary to characterize the outflow from the permit area and to quantify postmine TDS concentrations and rainfall relationships. For these reasons, Staff proposed Permit Provision No. 11 to require as follows: “Farco must sample and report water-quantity and water-quality data from stream-monitoring stations SM-1, SM-2 and SM-3 in accordance with the parameters and frequency described in Supplement No. 6. Samples must be taken from the stream-monitoring stations at the locations depicted in Exhibit 146-1 contained in Supplement No. 2.”
- (4). Staff noted that Farco’s revised portions of section .146 contained in Supplement No. 6, relating to removal of SM-3 and the frequency of sampling and reporting of SM-1 and SM-2, appear to be excerpts from prior Permit No. 9A, rather than from previous supplements to this revision application. To avoid the potential for confusion, Staff proposed Permit Provision No. 12 to require as follows: “Farco must provide, within 30 days following permit issuance, a complete replacement of section .146, which addresses all approved elements of the long-term surface water monitoring plan and probable hydrologic consequences determination (for the surface water

system).” With the inclusion of Permit Provision Nos. 11 and 12, the application, as supplemented, is sufficient to address the requirements of §12.146 (a) and (c).

- (b). The information in the application, as supplemented, meets the requirements of §12.146(d) related to the probable hydrologic consequences (PHC) determination. Farco submitted an updated PHC to address the proposed permanent status for the 11 impoundments (SP-1, SP-5, SP-6, SP-7, SP-9, SP-10, SP-11, SP-13, RP-1A, RP-1B and RP-3). Farco’s revised water quality PHC determination estimated annual evaporative/consumptive losses at 410 ac-ft based on 74.5 acres of proposed developed water resources (Table 146-6, Supplement No. 2). Farco indicated that although this is a significant increase from the premine phase, it is considered minimal relative to the anticipated evaporative losses at downstream USGS gauging station 08459200, Rio Grande below Laredo (drainage basin). The estimated annual evaporative/consumptive losses at the Rachal Mine account for approximately 0.03% of the annual measured flow (1.4 million ac-ft/ year as noted in Table 146-4, Supplement No. 2) at the downstream USGS gauging station. Farco provided water quality data for individual discharge ponds and stream-monitoring stations (Table 146-1, Supplement No. 2). In TA Addendum No 1, Staff noted that while a few exceedances were recorded for values of total suspended solids (TSS) and total iron in pond discharges, typical values were within criteria specified in the TPDES permit and that with the exception of very large storm events, exceedances of the effluent limits specified in the TPDES permit are not expected in the future. Users of surface water adjacent to and downstream of the permit area have not been and are not expected to be adversely impacted by continuance of reclamation activities at the Rachal Mine. Farco has provided sufficient information to establish that proposed reclamation operations will have minor to no impact on the surface water regime. Farco has satisfactorily met the requirements of §12.146(d).

- (c). In accordance with §12.146(e), the Commission is required to provide a cumulative hydrologic impact assessment (CHIA) for proposed operations to address the aggregate effects of all anticipated impacts to the surface water and groundwater systems that could result from existing and proposed mining operations within a defined cumulative impact area (CIA). The

development of the CHIA must be sufficient to determine whether the operations have been designed to prevent material damage to the hydrologic balance outside the permit area. Staff's Technical Analysis of the Treviño Mine Permit Application (Docket No. C4-0033-SC-00-A), dated June 30, 1994, contains a comprehensive CHIA that includes hydrologic impacts of the mining activities within the Life-of-Mine Area of the Palafox, Treviño and Rachal Mines. The cumulative effects of all three mines on downstream surface water users of the Rio Grande were assessed as practically insignificant. The effects of the mining activities on groundwater adjacent to each mine were also found to be insignificant, as were the cumulative effects. Based on the updated PHC submitted by Farco in this revision application, Staff concluded that the proposed ponds and reclamation activities would have minor to no impact on the surface water regime. Staff noted that minor impacts will be mitigated by the proposed surface water control plan and any unforeseen, significant impacts occurring as a result of reclamation processes will be detectable by the hydrologic monitoring program. Since projected changes to the probable hydrologic consequences are insignificant, the cumulative effects on the surface water and groundwater resources of the area continue to be insignificant. As a result, no new CHIA is necessary for this revision application.

- (d). In Supplement No. 5, Staff noted that existing Permit Provision No. 8 requires installation of spoil monitoring wells in the three mine areas of the Rachal Mine. Staff noted that these wells have been installed and data have been provided quarterly since installation in 2005. For this reason, Staff recommended removal of existing Permit Provision No. 8, as it is no longer needed.

16. The postmine land use information, as supplemented, is sufficient to meet the requirements of §12.147. The following acreage tabulation is a comparison of the approved postmine land use plan with the proposed plan:

Postmine Land Use	Permit No. 9D Acres	Proposed Acres	Revision Acres
Developed Water Resources	6.0	85.9	+ 79.9
Industrial Commercial	0	4.7	+ 4.7
Pastureland	838.1	524.4	- 313.7
Total	844.1	615.0	- 229.1

The proposed changes will result in an increase of developed water resources and industrial commercial use, and a decrease of in pastureland. The proposed ponds will be used for fish and wildlife and as stock water. The proposed postmine land use plan meets the requirements of §§12.147 and 12.399 of the Regulations. The alternative land uses as proposed are approved.

- (a). Farco has provided sufficient information concerning landowner consultation for all of the proposed permanent structures that constitute revised postmine land uses. The information reflects that the landowner of the affected property supports the revised postmine land use. Staff review indicates that the proposed postmine land use changes are compatible with adjacent land uses and will not present an actual or probable hazard to the public health or safety and will not pose any actual or probable threat of water pollution or diminution. The increased acreage in developed water resources will enhance the area for wildlife and cattle operations.
- (b). The application and approved permit include the consideration given to making the surface mining and reclamation operations consistent with surface owner plans and applicable land use plans and programs. Landowners were consulted as required. Appropriate agencies were provided the opportunity to review the application and to provide comments.
- (c). The proposed uses will not result in unreasonable delays in reclamation, nor will they adversely affect fish and wildlife and related environmental values. The areas are bonded and will remain bonded until release of reclamation obligations is ordered by the Commission.
- (d). Plans were designed under the general supervision of a licensed professional engineer who has ensured that the plans conform to applicable accepted standards for adequate land stability, drainage, vegetative cover, and aesthetic design appropriate for the proposed land use.
- (e). No cropland alternative land uses are proposed for which other requirements would be applicable.

- (f). The application, as supplemented, and approved permit describe how the proposed alternative postmining land use is to be achieved and the necessary support activities that may be needed to achieve these uses. There are no other state or local land use plans or programs that would be affected for the proposed postmine land uses. The plan will present no actual or probable hazard to public health or safety, water-flow diminution or pollution. Staff indicates that the size, location, and configuration of the proposed permanent impoundments will be adequate for their intended purpose as developed water resources. The application and approved permit have identified the steps to be taken to comply with applicable water quality laws, rules, and regulations. The proposed uses will be compatible with adjacent land uses. As set out in Finding of Fact No. 15, the applicant has submitted a revised probable hydrologic consequences (PHC) determination, which, along with Staff review, indicates that the proposed land uses will not materially affect the cumulative hydrologic impact of the proposed operations.
17. In this revision application, Farco seeks approval for 11 permanent impoundments (SP-1, SP-5, SP-6, SP-7, SP-9, SP-10, SP11, SP-13, RP-1A, RP-1B and RP-3). Farco is requesting a change in permitting status from temporary to permanent for the eight existing sedimentation ponds and seeks permission to construct three permanent reclamation ponds. Farco is also requesting approval for reanalysis of sedimentation pond SP-1 based on the current watershed size and characteristics. Initially, Farco had also requested approval for reanalyses of sedimentation ponds SP-5, SP-6, SP-7, SP-9 and SP-11. However, the Commission subsequently administratively approved Farco's request for release from sedimentation control requirements for SP-5, SP-6, SP-7, SP-9 and SP-11. The Director's approval for release from sedimentation control requirements for these ponds incorporates that the ponds will satisfactorily function as impoundments, thereby negating the need for approval of reanalyses of the released ponds through this revision application. All of the impoundments are proposed in mined out, reclaimed areas as postmine developed water resources for use by fish and wildlife habitat and for use as stock water.
- (a). Required information has been submitted in compliance with §§12.148 and 12.347 of the Regulations for ponds, impoundments, banks, dams, and embankments, in accordance with requirements for the structures. Registered professional engineers certified the plans for these

structures. Estimated volumes and surface areas have been provided for the ponds. The structures are not located within 100 feet of a cemetery or the outside right-of-way of a public road, not otherwise previously reviewed and approved, or within 300 feet of occupied dwellings, public buildings, schools, churches, community or institutional buildings, or public parks. They will not adversely impact any sites listed or eligible for listing in the National Register of Historic Places or sites for which eligibility has not yet been determined. Farco has provided for adequate safety and access to the ponds. All ponds approved in this Order as permanent will be appropriately bonded and are located on land for which consultation with the landowner for the proposed postmine land use of developed water resources has been documented. As set out in this subparagraph and subparagraphs (b) through (e), the ponds meet the requirements for permanent impoundments set out in §12.347(b). Due to the fact that Farco seeks a change of permitting status of the sedimentation ponds from temporary to permanent, Staff recommended removal of existing Permit Provision No. 9, which is the reclamation schedule for the eight existing temporary sedimentation ponds.

- (b). All of the proposed permanent ponds are appropriately depicted on plates contained in the application, as supplemented. Detailed design plans for all ponds include sufficient information to show that the structures are designed with appropriate capacities and will safely pass the design storm events applicable to the structures. Appropriate erosion control measures will be used. The proposed permanent impoundments are low-hazard (Class A) and do not have characteristics that would make them subject to Mine Safety and Health Administration (MSHA) requirements of 30 CFR §77.216 or Natural Resources Conservation Service (NRCS) Class B or C criteria and requirements. SP-1 was previously classified as an MSHA structure, but has since been released from MSHA control.
- (c). Farco seeks a change of permitting status for eight existing sedimentation ponds (SP-1, SP-5, SP-6, SP-7 and SP-9, SP-10, SP-11 and SP-13) from temporary to permanent. In this revision application, as supplemented, Farco has provided detailed design plans for SP-1, SP-5, SP-6, SP-7 and SP-9. Detailed design plans for SP-10, SP-11 and SP-13 were previously submitted and approved administratively as temporary structures by letter dated January 28, 2005. Proposed permanent Ponds SP-1, SP-5, SP-6, SP-7 and SP-9 are embankment ponds currently

permitted as temporary ponds. Farco plans to modify the principal and/or emergency spillway spillways for each of these ponds, increasing their normal pool elevation in order for the ponds to serve as agricultural supply and/or wildlife enhancement features in the postmine phase. Farco submitted detailed design information for the ponds in Appendices 148-1 through 148-5 in its application, as supplemented. The characteristics of and design plans for each pond follows.

- (1). Farco proposes to increase the storage capacity of approved Pond SP-1, raising the principal spillway invert by attaching a 5-ft high, 24-inch diameter ungated riser pipe to the existing 8-inch diameter dewatering pipe and removing the outlet valve. No other modifications to Pond SP-1 are proposed. Pond SP-1 is characterized by the following:

Surface Area	Pond Volume	Drainage Area	Normal Pool Elevation (Principal spillway)	Top of Embankment
6.4 acres	27.8 ac-ft	691.0 acres	556.1 ft-msl	563.8 ft-msl

Farco indicates that Pond SP-1 is considered an NRCS Type A structure. The geotechnical report contained in Appendix 148-8 indicates that the SP-1 pond embankment has a minimum factor of safety of 3.6 for the worst-case condition (full pond). A mass water-balance analysis for Pond SP-1 was simulated for 30 years using the Reservoir Operation Study Computer Program (RESOP). This mass water-balance indicates that Pond SP-1 is capable of supporting the approved surrounding land use of pastureland. The model predicted the pond would not be dry at any point during the evaluation period. The mass water-balance included a demand for livestock watering. One grab sample was taken from the pond discharge and analyzed for total dissolved solids (TDS), pH, total suspended solids (TSS) and iron. Farco's water-quality data for Pond SP-1 were collected on March 21, 2005, and the test results indicated 613 mg/L TDS; a pH of 7.9; 7 mg/L TSS; and .19 mg/L total iron. Farco indicated that the values reported for TSS and iron should only improve as vegetation in the watershed continues to mature. Farco provided Sediment, Erosion, Discharge by Computer Aided Design (SEDCAD4™) reanalyses data for SP-1 for the 10-year, 24-hour storm event and the 100-year, 6-hour storm event (Pond SP-1 had been classified as an MSHA pond under 30 CFR §77.216, but has since been released

from MSHA control). The 10-year, 24-hour model reflects that the pond will contain the runoff from the design storm event without discharge. The 100-year, 6-hour model reflects that the pond will have .65 feet of freeboard with both the principal and emergency spillways discharging. The pond spillway was designed to safely pass the peak flow from a 100-year, 6-hour storm event, as required by §12.347(a)(9)(B)(ii), using SEDCAD4™.

- (2). Farco proposes to increase the storage capacity of approved Pond SP-5, raising the principal spillway invert by attaching a 3-ft high, 24-inch diameter ungated riser pipe to the existing 8-inch diameter dewatering pipe and removing the outlet valve. No other modifications to Pond SP-5 are proposed. Pond SP-5 is characterized by the following:

Surface Area	Pond Volume	Drainage Area	Normal Pool Elevation (Principal spillway)	Top of Embankment
1.3 acres	3.0 ac-ft	36.7 acres	550.2 ft-msl	554.8 ft-msl

Farco indicates that Pond SP-5 is considered an NRCS Type A structure. The geotechnical report contained in Appendix 148-8 indicates that the SP-5 pond embankment has a minimum factor of safety of 1.9 for the worst-case condition (full pond). A mass water-balance analysis for Pond SP-5 was simulated for 30 years using RESOP. This mass water-balance indicates that Pond SP-5 is capable of supporting the approved surrounding land use of pastureland. The model predicted the pond would be dry for some of the time during the evaluation period. The mass water-balance included a demand for livestock watering. One grab sample was taken from the pond discharge and analyzed for TDS, pH, TSS and iron. Farco's water-quality data for Pond SP-5 were collected on March 15, 2005, and the test results indicated 175 mg/L TDS; a pH of 7.8; 7 mg/L TSS; and .19 mg/L total iron. Farco indicates that the values reported for TSS and iron should only improve as vegetation in the watershed continues to mature. The pond spillway was designed to safely pass the peak flow from a 25-year, 6-hour storm event, as required by §12.347(a)(9)(B)(iii), using SEDCAD4™.

- (3). Farco proposes to increase the storage capacity of approved Pond SP-6, raising the principal spillway invert by attaching a 4-ft high, 24-inch diameter ungated riser pipe

to the existing 8-inch diameter dewatering pipe and removing the outlet valve. No other modifications to Pond SP-6 are proposed. Pond SP-6 is characterized by the following:

Surface Area	Pond Volume	Drainage Area	Normal Pool Elevation (Principal spillway)	Top of Embankment
0.7 acres	2.3 ac-ft	13.2 acres	556.0 ft-msl	560.1 ft-msl

Farco indicates that Pond SP-6 is considered an NRCS Type A structure. The geotechnical report contained in Appendix 148-8 indicates that the SP-6 pond embankment has a minimum factor of safety of 1.6 for the worst-case condition (full pond). A mass water-balance analysis for Pond SP-6 was simulated for 30 years using RESOP. The mass water-balance indicates that Pond SP-6 is capable of supporting the approved surrounding land use of pastureland. The model predicted the pond would be dry for some of the time during the evaluation period. The mass water-balance included a demand for livestock watering. No water sample was taken from the pond. Farco listed samples taken from Ponds SP-5 and SP-7 (discussed in appendices 148-2 and 148-3, respectively) to represent the water quality for Pond SP-6. The pond spillway was designed to safely pass the peak flow from a 25-year, 6-hour storm event, as required by §12.347(a)(9)(B)(iii), using SEDCAD4™.

- (4). Farco proposes to increase the storage capacity of approved Pond SP-7, raising the principal spillway invert by attaching a 2-ft high, 24-inch diameter ungated riser pipe to the existing 8-inch diameter dewatering pipe and removing the outlet valve. No other modifications to Pond SP-7 are proposed. Pond SP-7 is characterized by the following:

Surface Area	Pond Volume	Drainage Area	Normal Pool Elevation (Principal spillway)	Top of Embankment
0.1 acres	0.3 ac-ft	12.5 acres	550.5 ft-msl	555.5 ft-msl

Farco indicates that Pond SP-7 is considered an NRCS Type A structure. The geotechnical report contained in Appendix 148-8 indicates that the SP-7 pond embankment has a minimum factor of safety of 2.4 for the worst-case condition (full

pond). A mass water-balance analysis for Pond SP-7 was simulated for 30 years using RESOP. This mass water-balance indicates that Pond SP-7 is capable of supporting the approved surrounding land use of pastureland. The model predicted the pond would be dry for some of the time during the evaluation period. The mass water-balance included a demand for livestock watering. One grab sample was taken from the pond discharge and analyzed for TDS, pH, TSS and iron. Farco's water-quality data for Pond SP-7 were collected on March 15, 2005, and the test results indicated 159 mg/L TDS; a pH of 7.8; 9 mg/L TSS; and .32 mg/L total iron. Farco indicated that the values reported for TSS and iron should only improve as vegetation in the watershed continues to mature. The pond spillway was designed to safely pass the peak flow from a 25-year, 6-hour storm event, as required by §12.347(a)(9)(B)(iii), using SEDCAD4™.

- (5). Farco proposes to increase the storage capacity of approved Pond SP-9, raising the principal spillway invert by attaching a 3.4-ft high, 24-inch diameter ungated riser pipe to the existing 12-inch diameter dewatering pipe and removing the outlet valve. No other modifications to Pond SP-9 are proposed. Pond SP-9 is characterized by the following:

Surface Area	Pond Volume	Drainage Area	Normal Pool Elevation (Principal spillway)	Top of Embankment
18.6 acres	48.5 ac-ft	167.7 acres	555.0 ft-msl	552.5 ft-msl

Farco indicates that Pond SP-9 is considered an NRCS Type A structure. The geotechnical report contained in Appendix 148-8 indicates that the SP-9 pond embankment has a minimum factor of safety of 3.4 for the worst-case condition (full pond). A mass water-balance analysis for Pond SP-9 was simulated for 30 years using RESOP. The mass water-balance indicates that Pond SP-9 is capable of supporting the approved surrounding land use of pastureland. The model predicted the pond would be dry for some of the time during the evaluation period. This mass water-balance included a demand for livestock watering. One grab sample was taken from the pond discharge and analyzed for TDS, pH, TSS and iron. Farco's water-quality data for Pond SP-9 were collected on May 16, 2005, and the test results indicated 282 mg/L TDS; a pH of 8.0; 5 mg/L TSS; and .17 mg/L total iron. Farco indicated that the

values reported for TSS and iron should only improve as vegetation in the watershed continues to mature. The pond spillway was designed to safely pass the peak flow from a 25-year, 6-hour storm event, as required by §12.347(a)(9)(B)(iii), using SEDCAD4™.

- (6). Detailed design plans for SP-10, SP-11 and SP-13 were previously submitted and approved administratively as temporary structures by letter dated January 28, 2005.

- (d). Farco seeks approval to construct three permanent impoundments: RP-1A, RP-1B and RP-3. In the application, as supplemented, Farco submitted detailed design information for the ponds in Appendices 148-6 and 148-7. The characteristics of and design plans for each pond follows.
 - (1). Farco seeks to construct RP-1A and RP-1B as permanent impoundments. Ponds RP-1A and RP-1B will be completely incised ponds and will be constructed during reclamation of the final pits in Area 1. The ponds will be used for livestock watering and as an enhancement to wildlife. Ponds RP-1A and RP-1B are characterized by the following:

Pond	Surface Area	Pond Volume	Drainage Area	Normal Pool/Crest Elevation
RP-1A	12.4 acres	77.5 ac-ft	462.3 acres	580.0 ft-msl
RP-1B	7.1 acres	30.6 ac-ft	221.9 acres	590.5 ft-msl

Farco indicates that Pond RP-1A will have a combination principal/emergency spillway located in the west side of the impoundment, approximately 350 feet from the north end of the pond. Pond RP-1B will have a combination principal/emergency spillway located in the southeast corner of the pond. Both spillways will be grass-lined, trapezoidal-shaped channels with 4h:1v side slopes. The proposed Pond RP-1B spillway will discharge to Pond RP-1A. Pond RP-1A will be located approximately 650 feet downstream of pond RP-1B. A mass water-balance analysis was simulated for 30 years using the RESOP program for proposed Ponds RP-1A and RP-1B. The mass water-balance indicates that the ponds are capable of supporting the approved

surrounding land use of pastureland. Pond RP-1A was predicted to be dry for some of the time during the simulation period. The model predicted that Pond RP-1B would not dry out at any point during the simulation period. This mass water balance included a demand for livestock watering. Water samples from the basins where proposed Ponds RP-1A and RP-1B will be constructed were taken on November 10, 2005 (TDS) and August 14, 2006 (pH). The test results for proposed Pond RP-1A indicated 660 mg/L TDS and a pH of 8.4. The test results for proposed Pond RP-1B indicated 268 mg/L TDS and a pH of 8.1. The RP-1A and RP-1B pond spillways were designed to safely pass the peak flow from a 25-year, 6-hour storm event, as required by §12.347(a)(9)(B)(iii), using SEDCAD4™.

- (2). Farco seeks to construct RP-3 as a permanent impoundment. Pond RP-3 will be a completely incised pond and will be constructed during reclamation of the final pit in Area 3. Portions of existing freshwater diversion DD-3 will be breached to allow the upstream watershed to flow into the pond. Farco proposes to leave the remainder of the diversion in place. The pond will be used for livestock watering and as an enhancement to wildlife. Pond RP-3 is characterized by the following:

Pond	Surface Area	Pond Volume	Drainage Area	Normal Pool/Crest Elevation
RP-3	14.4 acres	166.9 ac-ft	411.9 acres	555.0 ft-msl

Farco indicates that Pond RP-3 will have a combination principal/emergency spillway located on the southeast corner of the impoundment. The spillway will be a grass-lined, trapezoidal-shaped channel with 5h:1v side slopes. A mass water-balance analysis was simulated for 30 years using the RESOP program for proposed Pond RP-3. The mass water-balance indicates that the pond is capable of supporting the approved surrounding land use of pastureland. Pond RP-3 was not predicted to dry out any point during the simulation period. This mass water balance included a demand for livestock watering. Water samples from the basin where proposed Pond RP-3 will be constructed were taken on November 10, 2005 (TDS) and August 14, 2006 (pH). The test results indicated 333 mg/L TDS and a pH of 8.1. The RP-3 spillway was designed to safely pass the peak flow from a 25-year, 6-hour storm event, as required by §12.347(a)(9)(B)(iii), using SEDCAD4™.

- (e). Proposed permanent impoundments SP-1, SP-5, SP-6, SP-7, SP-9, SP-10, SP-11, SP-13, RP 1A, RP-1B and RP-3 meet the design requirements of the Regulations and are approved. The reanalysis data for SP-1 reflect that the pond has sufficient storm pool volume to contain the runoff from the 10-year, 24-hour storm event as required by §12.344(c)(1)(C) and that the spillway was designed to safely pass the peak flow from the 100-year, 6-hour storm event, as required by §12.347(a)(9)(B)(ii). The reanalysis of SP-1 is approved.
18. The application, as supplemented, satisfies the requirements of §12.150 relating to diversions. Existing diversions DD-1, DD-2, DD-3 and DD-4 are currently approved as temporary. Farco proposes to breach diversions DD-2 and DD-3 at locations traversing natural drainages, with the remaining embankments proposed as permanent ranch roads. Farco requests that Diversions DD-1 and DD-4 be approved as permanent postmine features. Diversion DD-1 is approximately 3,100 feet long and will route water through a grass-lined channel from a 34.8-acre watershed to Pond SP-1. Diversion DD-1 is proposed to remain in its current condition. Diversion DD-1 was designed to safely pass the peak flow from the 10-year, 6-hour storm event [§12.341(c)(3)]. Diversion DD-4 is approximately 1,840 feet long and will route water through a grass-lined channel from a 19.0-acre watershed to SP-11. Farco proposes to breach Diversion DD-4 at Station 10+97 to allow additional runoff to enter the diversion and provide erosion relief to the east of Diversion DD-4. The portion of the diversion berm located south of the breach will be reclaimed. The remainder of Diversion DD-4 (Station 0+00 to 10+97) was designed to safely pass the peak flow from the 10-year, 6-hour storm event [§12.341(c)(3)]. Farco has modified the plans for Diversions DD-1 and DD-4 to reshape the existing channels to uniform trapezoidal-shaped channels with 3(h):1(v) side slopes and a bottom width of 10 feet. Upstream of station 9+00, along Diversion DD-4, the berm separating the DD-4 diversion channel from the fresh water drainage has become steeper than 3(h):1(v) due to erosion. Farco proposes to reshape the berm and the fresh water drainage area to maintain 3(h):1(v) side slopes. Farco indicated and Staff verified that the existing rock riprap-lined slope at Diversion DD-4 is stable and should provide protection against erosion on a permanent basis. A professional engineer signed and sealed each of the revised design sheets and the certification statement in section .150 of the application. All requirements for diversions have been met.
- (a). The diversions will be stable, will protect against flooding and related damage, and will

prevent additional contributions of suspended solids to streamflow outside the permit area using the best technology currently available. The diversions will minimize adverse impacts to the hydrologic balance within the permit and adjacent areas, prevent material damage outside the permit area, and assure the safety of the public. The diversion and portions related to the impoundments will be designed with gentle sloping banks, and will incorporate appropriate channel linings (rock riprap where erosive velocities are present or where steep slopes occur) and other erosion protection measures.

- (b). The diversions are not located within prohibited distances from occupied dwelling or the permit boundaries, cemeteries, cultural resource sites, or within national parks, refuges, national system of trails, wilderness preservations areas, or wild and scenic rivers. They will not encroach public roads or buffer zones.
 - (c). Farco has provided landowner consultation documentation demonstrating the landowner's desire to leave Diversions DD-1 and DD-4 as permanent. The permanent diversions will be appropriate for the postmine land use and will be appropriately bonded.
 - (d). Farco has adequately addressed the requirements of §12.150 regarding detailed plans for the proposed permanent Diversions DD-1 and DD-4. Proposed permanent Diversions DD-1 and DD-4, and the associated DD-4 Breach and DD-4 Freshwater Channel, are approved. Diversions DD-2 and DD-3 are proposed as permanent roads (Finding of Fact No. 19). The current permit provision (No. 10) approving DD1, DD-2, DD3 and DD4 as temporary diversions is removed.
19. In the application, as supplemented, Farco seeks approval of 13 proposed permanent roads. Farco is requesting a change in permitting status from temporary to permanent for Haul Roads H-1, H-2 and H-3, and Ancillary Roads A-1, A-2 and A-4. Haul Roads H-1 and H-2 will be modified to conform to ranch road characteristics. Haul Road H-3 will remain in its current condition. Farco plans to breach berms associated with Diversions DD-2 and DD-3 at locations traversing natural drainages and the remaining embankments are proposed as permanent ranch roads (Ranch Roads 1, 6 and 7). In addition, four existing ranch roads (Ranch Roads 2, 3, 4 and 5) are proposed as permanent roads to

support the intended postmining land use. The application, as supplemented, indicates that none of the roads proposed as permanent are located within areas designated as unsuitable for mining. The proposed permanent roads will not affect any site that is listed, eligible for listing, or for which eligibility has not been determined for the National Register of Historic Places. None of the proposed roads are located within 100 feet of a cemetery or within 300 feet of occupied dwellings, public buildings, schools, churches, community or institutional buildings, or public parks. The proposed roads are located at distances greater than 100 feet from the nearest public road, as measured from the right-of-way, except where such roads join a public road for access, as allowed in §12.71(4)(A). In Supplement No. 2, Farco provided all necessary information to evaluate the proposed permanent road design plans for permanent status. Farco has provided landowner consultation documentation demonstrating the landowner's desire to leave the haul roads and ancillary roads as permanent structures. Design plans for the proposed permanent haul roads and ancillary roads meet the requirements of §§12.154, 12.400 and 12.401 and are approved. The designs of proposed permanent Ranch Roads 1 through 7 meet the requirements of §§12.154 , 12.400 and 12.401, are technically adequate, and are congruent with accepted engineering practices, as reviewed by Staff. Information has been included to demonstrate that the roads meet required performance standards for the control of erosion and dust and for sediment control to ensure that no violation of water quality standards will result. The roads are constructed in a manner that will not change the normal flow of water in streambeds or drainage channels. Road surfaces are non-acid forming and non-toxic forming. No landowner consultation documentation was provided with regard to Ranch Roads 1 through 7. For this reason, the design plans for Ranch Roads 1 through 7 as permanent are incomplete and Permit Provision No. 6 is approved to require that Farco provide updated landowner consultation letters for Ranch Roads 1 through 7 within 60 days of approval of this revision. These consultation letters may be provided as a revision to the permit for administrative approval by the Division Director of the Surface Mining and Reclamation Division. Additionally, current Permit Provision No. 11, which provides that temporary roads shall be reclaimed in accordance with their approved reclamation timetable, is removed due to the fact that all of the existing temporary roads at the Rachal Mine (Haul Roads H-1, H-2 and H-3, and Ancillary Roads A-1, A-2 and A-4) will be approved as permanent. The application, as supplemented, meets all other requirements of §12.154 of the Regulations.

20. The application and supplements, Staff's Technical Analysis and addenda, and the permit provisions demonstrate the following:
- (a). The application, as supplemented, is accurate and complete and with this information and the approved permit, all requirements of the Act and Regulations are met. Certification of the application and all supplements has occurred as required by §12.107(g) of the Regulations.
 - (b). The operations proposed by the application may be feasibly accomplished according to the application, as supplemented, and as approved in this Order and in the approved permit.
 - (c). The assessment of the probable cumulative impacts of mining on the hydrologic balance has been made, as set out in Finding of Fact No. 15. The proposed operations are designed to prevent damage to the hydrologic balance outside the mine plan area and the proposed activities will have an insignificant effect on the hydrologic balance outside the mine plan area.
 - (d). The proposed operations are not on lands designated as unsuitable or under study for such designation [§12.216(4)(A) and (B)].
 - (e). No operations are proposed on any lands within the boundaries of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the National Wild and Scenic Rivers System, or National Recreation Area, and no operations are proposed within 300 feet of occupied dwellings, public buildings, schools, churches, community or institutional buildings, or public parks, or within 100 feet of a cemetery or prohibited 100-foot buffer zones for public roads [§12.216 (4)(C), (D) and (E)]. The proposed operations will not adversely affect any places included in or eligible for the National Register of Historic Places [§12.216(5)].
 - (f). The Applicant-Violator System report indicates no record of violations that would prohibit issuance of the revision of the permit. Farco has submitted all required compliance

information.

- (g). Information available to the Commission reflects no nonpayment of abandoned mine reclamation fees.
 - (h). The applicant has not demonstrated a pattern of willful violations so as to indicate an intent not to comply with the Act. The requirements of §12.216(7) have been met.
 - (i). The proposed operations will not be inconsistent with existing operations.
 - (j). Farco's and Staff's estimates of current reclamation costs have been submitted for the application. The Commission adopts Staff's reclamation cost estimate, which is inclusive of all anticipated reclamation costs in the event of forfeiture, as the most conservative estimate. The Commission finds that the current bond is sufficient for reclamation of the permit area (Finding of Fact No. 14).
 - (k). By previous order, the Commission made a negative determination of prime farmland and no new areas are proposed for addition to the permit area. The proposed permit area is east of the 100th meridian west longitude; consequently, the provisions of §12.202 regarding alluvial valley floors are not applicable.
 - (l). Postmining land use changes are supported by landowners and are sufficient to be approved, with the exception of Ranch Roads 1 through 7.
 - (m). All specific approvals required under Subchapter K (performance standards) have been made.
 - (n). The activities will not affect the continued existence of endangered or threatened species or result in destruction or adverse modification of their critical habitats.
21. Official notice has been taken of the current certificate of account status from the Comptroller of Public Accounts, which reflects that Farco Mining, Inc. is currently in good standing in the payment of franchise taxes through November 15, 2012.

22. Farco and Staff submitted written waivers of the preparation and circulation of a Proposal for Decision in this matter.
23. This docket has been properly posted for consideration by the Commission.

CONCLUSIONS OF LAW

1. Proper public notice and notice to Texas and federal agencies was made as required by the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. Ch. 134 (Vernon 2011) (Act), the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE Ch. 12 (West 2012) (Regulations), the Administrative Procedure Act, TEX. GOV'T. CODE ANN. Ch. 2001, and the Commission's "Practice and Procedure," Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §1.1 *et seq.* (West 2012).
2. No persons requested a hearing; no public hearing is warranted or required pursuant to the Act, Regulations, APA or "Practice and Procedure."
3. The reclamation performance bond is of sufficient value to ensure reclamation of the permit area.
4. The application for revision, as supplemented, meets all requirements as set out in the Act, Regulations, APA and the Commission's Practice and Procedure, and may be approved with the permit provisions contained in Appendix I.

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

IT IS FURTHER ORDERED that the application, as supplemented, and as set out in the Findings of Fact, is hereby approved with the permit provisions set out in Appendix I;

IT IS FURTHER ORDERED that no changes to the bond are required;

IT IS FURTHER ORDERED that Permit No. 9D is hereby revised to allow commencement of the revised activities proposed by the application, as supplemented, in accordance with the permit provisions and this Order; and

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

SIGNED IN AUSTIN, TEXAS, on the 2nd day of October, 2012.

RAILROAD COMMISSION OF TEXAS



CHAIRMAN BARRY T. SMITHERMAN

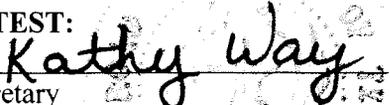


COMMISSIONER DAVID PORTER



COMMISSIONER BUDDY GARCIA

ATTEST:


Secretary
Railroad Commission of Texas



APPENDIX I
PERMIT PROVISIONS

1. Any cultural resource site within the permit boundary, identified during or subsequent to any baseline surveys, for which eligibility for listing in the National Register of Historic Places has not been determined, or that has not been satisfactorily mitigated after consultation with the Texas Historical Commission, shall not be disturbed by mining or mining-related activities.
2. Copies of all correspondence between Farco and the Texas Historical Commission, including any attachments, shall concurrently be provided to the Commission by Farco.
3. Sedimentation pond discharges will be monitored and recorded for total dissolved solids on a weekly basis when discharging. This data will be submitted quarterly with the results of the long-term monitoring program.
4. The Reclamation Timetable (see table at end of Permit Provisions) is an approved part of the permit.
5. Applications for Phase II and III release of reclamation liability shall be submitted between the months of February through November.
6. Permanent Ranch Roads 1 through 7 are not approved. Farco must provide updated landowner consultation letters for Ranch Roads 1 through 7 within 60 days of approval of this revision. These consultation letters must be provided as a revision to the permit for administrative approval of the Division Director of the Surface Mining and Reclamation Division.
7. Needle Grama, *Bouteloua aristidoides*, a short-lived annual grass, does not meet the revegetation permanency standard at §12.390(a)(1), and is excluded from inclusion amongst the approved permanent revegetation species to reclaim postmine pastureland use.
8. Farco will apply fertilizer to all lands within the extended responsibility areas according to the normal county practices applicable to the approved land use.
9. Farco must provide an updated soil bank, including revised figures, tables and a bank balance to reflect the area of the grids within the revised disturbance boundary as well as a complete mitigation plan for grids exceeding approved frequency distributions for EC and pH in electronic and hard copy format within 120 days after permit approval. The updated soil bank must reflect the approved disturbance boundary.

10. Farco will cover all AFM/TFM with up to four feet of non-AFM and non-TFM containing materials.
11. Farco must sample and report water-quantity and water-quality data from stream-monitoring stations SM-1, SM-2 and SM-3 in accordance with the parameters and frequency described in Supplement No. 6. Samples must be taken from the stream-monitoring stations at the locations depicted on Exhibit 146-1 contained in Supplement No. 2.
12. Farco must provide, within 30 days following permit issuance, a complete replacement of section .146, which addresses all approved elements of the long-term surface water monitoring plan and probable hydrologic consequences determination (for the surface water system).

Reclamation Timetable (Permit Provision No. 4)

Establish AOC	Topsoil Replacement	Stabilization & Vegetation Establishment	Postmine Initial Soils Sampling	ERP Initiation	10 Year ERP Phase I & II Release	Phase III Release
C O A L R E M O V A L <ul style="list-style-type: none"> ▪ Complete ponds RP-1a and RP-1b spillways within 180 days of permit approval. ▪ Modify diversions upon removal of areas from water control and Farco notification of Commission. 	<ul style="list-style-type: none"> ▪ Topsoil replaced/redistributed within 90 days of permit approval. 	<ul style="list-style-type: none"> ▪ Plant to permanent vegetation. ▪ Augmented activities. ▪ Ground cover sampling will be conducted no later than 2 years after establishment. 	<ul style="list-style-type: none"> ▪ Submit all remaining soil data within 180 days of permit approval. 	<ul style="list-style-type: none"> ▪ ERP initiated within 90 days following establishment of permanent vegetation & approval of initial soils data. 	<ul style="list-style-type: none"> ▪ Normal husbandry practices. ▪ Ground cover sampling conducted no later than third year of the ERP. ▪ Submittal of Phase I release applications within 90 days of approval of postmine soil data. ▪ Submittal of Phase II release applications within 90 days following approval of ground cover report. ▪ Ground cover and productivity sampling. ▪ Soil fertility analyses completed in the year prior to and during the first and second years of productivity assessment. ▪ Ninth year soil monitoring data submitted no later than the second month of the tenth year of the ERP. ▪ Completion of the ERP is 10 years following the date of initiation. 	<ul style="list-style-type: none"> ▪ Phase III release applications submitted within 90 days following completion of the ERP.