

RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

SURFACE MINING DOCKET NO. C16-0008-SC-03-F

**APPLICATION BY LUMINANT MINING COMPANY LLC
FOR PHASE I RELEASE OF RECLAMATION OBLIGATIONS
FOR 948.6 ACRES OF ITS SURFACE COAL MINING OPERATIONS
FOR PERMIT NO. 3F, BIG BROWN MINE, FREESTONE COUNTY, TEXAS**

**ORDER APPROVING PHASE I RELEASE
OF RECLAMATION OBLIGATIONS FOR 948.6 ACRES**

STATEMENT OF THE CASE

Luminant Mining Company LLC (Luminant), 1601 Bryan Street, Dallas, Texas, 75201 applied to the Railroad Commission of Texas (Commission), Surface Mining and Reclamation Division, for Phase I release of reclamation obligations (backfilling, regrading, and drainage control) for parcels of land located within its Permit No. 3F comprising 948.6 acres. The permit area is located near Fairfield, Texas and contains 12.910 acres. The permit's last significant revision was January 29, 2013. The Luminant does not currently request a reduction in the amount of the approved reclamation bond. The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. CH. 134 (Vernon 2016) (Act), and the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE ANN. CH. 12 (ThomsonWest 2016) (Regulations).

Staff of the Surface Mining and Reclamation Division has reviewed the request for release of the acreage and filed its Technical Analysis and field inspection report. The only parties to the proceeding are Luminant and the Commission's Surface Mining and Reclamation Division (SMRD or Staff). Copies of the application were filed in the required county and Commission offices, and notices were mailed to landowners and adjoining landowners of the area requested for release and required federal and state agencies. No comments were made following public notice and mailed notice, and no public hearing was requested.

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Based on the record in this docket including the application and Staff review, and the Act and Regulations, the examiner recommends that the application for Phase I release should be approved for all of the 948.6 requested acres, as set out in the Findings of Fact and Conclusions of Law. There remain no outstanding issues between the parties.

FINDINGS OF FACT

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

1. By letter dated October 22, 2015, Luminant Mining Company LLC (Luminant) filed its request for Phase I release of reclamation requirements (backfilling, regrading, and drainage control) for 948.6 acres, located within the 12,910-acre permit area of the Big Brown Mine, Permit No. 3F, Freestone County, Texas.
2. No filing fee is required. The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. CH. 134 (Vernon 2016) (Act), and the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE CH. 12 (Thomson West 2016) (Regulations). The application was properly certified in accordance with §12.312(a)(3) of the Regulations. The application was supplemented with proof of public notice and required letters to landowners and others received by the Commission on February 12, 2016. The application was declared administratively complete on February 17, 2016.
3. The approved bond map and reclamation cost estimate were approved administratively by letter dated February 9, 2016 in Revision No. 48. Reclamation costs of \$24,448,255 were approved for the permit. Luminant currently bonds all of its operations in Texas with a blanket collateral bond. Luminant does not request any change to the bond instrument. An eligible bond reduction amount may be considered.
4. The area proposed for release is detailed in the Staff Evaluation, Attachment I (Map) and Attachment III (Staff Inspection Report), Appendix I (Location Map) to Attachment III, and Appendix IV (General Photographs and Photograph Locations). The application,

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photographic evidence, and Staff Inspection Report and Evaluation provide support for release of Phase I reclamation obligations.

5. Copies of the application were filed for public review in compliance with notice requirements, at the main office of the Railroad Commission of Texas at 1701 North Congress, William B. Travis Building, Austin, Texas and in the offices of the Freestone County Clerk, Fairfield, Texas.
6. Publication of notice of application occurred once each week for four consecutive weeks in the *The Fairfield Recorder* and the *Freestone County Times*, newspapers of general circulation in Freestone County, Texas, on January 7, 14, 21, and 28, 2016 and January 6, 13, 20, and 27, 2016, respectively. Proof of notice was provided to the Commission, received on February 12, 2016. The newspapers are published in the locality of the surface mining and reclamation operations. The notice of application contains all information required by §134.129 of the Act and §12.312(a) of the Regulations for notice of application for release of Phase I reclamation obligations for backfilling, regrading, and drainage control. The notice is adequate notification of the request for release. The notice included the name of the permittee, the location of the land affected, the approximate number of acres, permit number at the time of application and date approved, the amount of approved bond, the type and appropriate dates reclamation work was performed, and a description of the results achieved as they relate to the approved reclamation plan. The notice contained information concerning the applicant, the location and boundaries of the permit area, the availability of the application for inspection, the address to which comments should be sent, and a map with sufficient notice of the boundaries of the area requested for release.
7. The Director, SMRD, determined the application to be administratively complete by letter dated February 17, 2016. The Staff's evaluation document was filed with the Hearings Division by letter dated May 20, 2016. The Technical Evaluation and inspection report indicated that Luminant had met all requirements for Phase I release for the entire 948.6 acres identified in the application.

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8. The area requested for release is made up of several parcels of land (Attachment I, Maps 1-4 located in the central and northern portions of the permit area.
9. Luminant provided copies of letters of notification of the application for release to property owners, owners of leaseholds or other property interests, and adjoining property owners in accordance with §12.312(a)(2) of the Regulations. By letter dated February 11, 2016, Luminant submitted to the Commission copies of the letters to landowners and/or adjoining landowners, and lessees and holders of other property interests, and to the following: the Freestone County Judge/Commissioners Court, Ward Prairie Water Supply, Texas Department of Transportation, the Texas Commission on Environmental Quality, Natural Resources Conservation Service in Fairfield, Texas, the U.S. Army Corps of Engineers Ft. Worth District, Windstream, Navasota Valley Electric Cooperative, Inc., and Navarro County Electric Cooperative, Inc. as required by §12.312(a)(2) of the “Coal Mining Regulations” and §134.129 of the Surface Coal Mining and Reclamation Act. The area requested for release is not located within the territorial boundaries of any municipality that would be notified pursuant to §12.313(c) of the Regulations.
10. No adverse comments or written objections were filed regarding the request for release pursuant to the notification. No requests for hearing or informal conference were filed pursuant to §12.313(d).
11. SMRD’s Inspection and Enforcement Section mailed letters dated October 30, 2015 to Luminant, landowners, holders of other interests within the area requested for release, and the Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office (OSM), notifying them of the date scheduled for inspection, November 18, 2015, and the opportunity to participate in the inspection in accordance with §12.312(a)(2). Staff sent a letter of notification of the application as required by the Act, §134.133 by certified mail to the Freestone County Judge by letter dated December 21, 2015 (Attachment II to Staff’s inspection report). The inspection occurred on the date scheduled. Luminant

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representatives were present at the pre-inspection meeting and one representative attended the inspection with the SMRD inspector. No others attended the inspection. The area was inspected with the use of a GPS device; the areas had recently received rains resulting in erosion along the Bear Creek Restoration Modification No. 2 (Photograph 6, Appendix IV). The heavy rainfall has resulted in problems with access to the area. No erosion was observed in any areas with well-established vegetation (Photographs 1-5). Based on Photograph 6, there are still areas of erosion; however, the erosion is not preventing drainage in the manner intended through the drainageway.

12. The area requested for release was mined from 1998-2009, and final grading was accomplished from 1999-2014. Routine monthly inspections of the reclamation work covering the proposed release area occurred from 1998 to the date of the inspection and have continued. The postmine land uses are pastureland, fish and wildlife habitat, forestry, and developed water resources.
13. Based upon the application and Staff review in its Technical Evaluation Report, the acreages requested for release from Phase I reclamation obligations have met Phase I requirements for backfilling, regrading, and drainage control requirements as required by §12.313(a)(1) of the Regulations and may be approved for Phase I release.
14. The areas requested for Phase I release have been backfilled and graded to approximate original contour [§12.385(a)], and vegetation has been planted. All highwalls and spoil piles were eliminated in accordance with §12.384(b)(1) of the Regulations, and suitable substitute material was placed over the regraded spoil. No cut-and-fill terraces were constructed. 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 uses [§12.384(b)(2)]. Drainage patterns similar to premine drainage have been established. All areas requested for release meet Phase I release have been stabilized to control drainage and erosion [(§12.389)].

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- (a). The areas requested for release contain 111 full or partial 23-acre soil-testing grids (Table III.A.3-1), and soil data in two increments (0-12 inches, and 12-48 inches) provided by Luminant on various dates as depicted on Plates III-A-3-1 (three pages) in the application reflect compliance as approved on December 1, 1998, February 15, 2000, August 15, 2003, July 5, 2005, April 13, 2007, November 30, 2007, November 12, 2008, March 14, 2011, October 16, 2012, and June 3, 2014. Testing was completed for soil sampling requirements for pH, acid-base accounting, texture, and cation exchange capacity, and for plant available nutrients in the top 12 inches of reclaimed soil. A random 10% of the grids were also analyzed for boron, cadmium, and selenium. All soil grids have received Commission approval as free of acid-forming and toxic-forming materials.
 - (b). A portion of one deed-recorded disposal site is located within an area requested for release comprising 857.459 acres. It was deed recorded with the County and registered with TCEQ May 6, 1991 as Class III waste. The disposal area was operated in accordance with Section 12.375(a)-(d) and with TCEQ regulations. It has been covered with a minimum of four feet of suitable material and revegetated.
15. Structures are located within the areas requested for release and are stable approved structures. Photographs depicting the structures are contained in Appendix V.
- (a). There are nine permanent diversions located in the area proposed for Phase I release of reclamation liability, the C-158 East Waterway, WC-2 Erosion Protection Structure, WC-2 Diversion, C-47 Diversion, C-255 Diversion Modification, C-87-1 Drainageway, CII Auxiliary Haul Road Diversion, Bear Creek Restoration No. 4 Modification No. 2, and C-66 Permanent Diversion (§12.341). Commission approval dates were provided (Application , p. III.B.1-1).

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- (b). There are six approved permanent impoundments located in the areas requested for Phase I release [§12.347(b)], WC-2 Pond Modification, Impoundments C-47, C-255, C-182, and C-263, and Impoundment C-184 Reanalysis No. 1. Commission approval dates were provided (Application, p. III.B.2-1).
 - (c). Ten permanent drop structures are located within the area requested for release: C-158-6 through C-158-10, Permanent WC-2 Drop Structures A and B, C87-4, C229-3, and CII Auxiliary HR drainage Structure No. 2 Reanalysis (Application, p. III.B.2-1). Commission approval dates were provided (Application, p. III.B.4-1).
 - (d). There are three permanent inlets and one permanent spillway: Inlets C-255-A, C-255-B, and C-182 Inlet No. 1, and C-255 Spillway, respectively. Commission approval dates were provided (Application, p. III.B.4-1).
 - (e). Nine approved permanent roads are located within the release areas: CR11 Access Road Modification No. 2, CR12, Prairie Creek Permanent Access Road, CR13 Realignment No. 4, CR52 Access Road, CR15 Access Road Modification, C-255 Access Road Extension, C-255 Access Road Modification, and CII Auxiliary Haul Road. Commission approval dates were provided (Application, p. III.B.5-1).
 - (f). Surface water from the reclaimed areas proposed for release flows into final discharge ponds C-30, C-66, C-67, C-87, C-255, and WC-2.
16. There is no prime farmland located in the area proposed for Phase I release for which specific soil reconstruction standards would apply [§12.624].
17. The area requested for Phase I release has been marked in the field with permanent boundary markers to distinguish the area from active mining and reclamation. Clear identification of this area will assist future inspection of this area and adjacent areas.

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18. The notice of application for release stated that an eligible bond reduction amount may be determined. Luminant has not requested an adjustment to the accepted bond instrument at this time. The Staff has filed its estimate of eligible bond amount reduction, \$3,307,911.68 based upon a Phase I (60% reduction) of the costs of reclamation of the acreage requested, should the Commission approve the release requested. Acres mined comprise 945.8 acres, and acres disturbed comprise 2.8 acres. Based upon the cost for mined and disturbed acreages, the reclamation cost reduction is calculated as: .60 of the mined rate of \$ 5,271, that is, \$3,162.60, x 945.8 mined acres = \$2,991,187.08, + .60 of the disturbed rate, \$9,527 that is, \$5,716.20 x 2.8 disturbed acres, = \$16,005.36, with a final subtotal of \$3,007,192.44. A 10% amount (\$300,719) is then added for administrative costs, for a final total amount of \$3,307,911.68 that may be considered eligible for reduction in estimated costs of reclamation.
19. Luminant 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. The matter has been posted for Commission consideration.
20. The 948.6 acres have met requirements for release of Phase I reclamation requirements (60% of costs of reclamation for the areas).
21. Required public notice and notice of the open meeting to consider Luminant's request has been made. All other required notice has been made.

CONCLUSIONS OF LAW

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

1. Proper notice was provided for this request for release of reclamation obligations.
2. No public hearing was requested, and none is warranted.

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3. Luminant has complied with applicable provisions of the Act and Regulations regarding notice for Commission jurisdiction to attach to allow consideration of the matter.
4. Luminant has met all requirements for Phase I release for 948.6 acres within the Big Brown Mine as set out in the application and Staff review.
5. The Commission may approve a release of Phase I reclamation obligations for the 948.6 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 Luminant continue marking the area approved for release so that Staff mapping and tracking will be efficient.

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 the Commission approved Phase I release of reclamation obligations for the requested 948.6 acres as set out in the Findings of Fact and Conclusions of Law;

IT IS FURTHER ORDERED that \$3,307,911.68 is determined eligible for reduction in an estimate of the costs of reclamation (Finding of Fact No. 18);

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

IT IS FURTHER ORDERED that all area released from reclamation obligations shall be clearly marked in the field with permanent boundary markers to distinguish these areas from active mining and reclamation areas;

IT IS FURTHER ORDERED that the Commission may vary the total amount of bond required from time to time as reclamation costs change; 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 a party is notified of the Commission's order. 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 9th day of August, 2016.

RAILROAD COMMISSION OF TEXAS



CHAIRMAN DAVID PORTER



COMMISSIONER CHRISTI CRADDICK



COMMISSIONER RYAN SITTON

ATTEST:


Secretary, Railroad Commission of Texas

