

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

**SURFACE MINING DOCKET NO. C16-0001-SC-46-F
APPLICATION BY LUMINANT MINING COMPANY LLC
FOR RELEASE OF PHASES I, II, AND III RECLAMATION OBLIGATIONS FOR
VARIOUS ACREAGES, PERMIT NO. 46C, OAK HILL MINE, RUSK COUNTY, TEXAS**

**ORDER APPROVING APPLICATION FOR RELEASE OF PHASE I RECLAMATION
OBLIGATIONS FOR AN AGGREGATE 864.9 ACRES (PARCELS 2, 4, 5, 11, 15, 16
AND 17) AND RELEASE OF PHASE II RECLAMATION OBLIGATIONS FOR AN
AGGREGATE 632.4 ACRES (PARCELS 6, 7, 8, 9, 10, 12 AND 13)**

STATEMENT OF THE CASE

Luminant Mining Company LLC (Luminant), 6555 Sierra Drive, Irving, Texas, 75039, applied to the Railroad Commission of Texas (Commission), Surface Mining and Reclamation Division, for various releases of reclamation obligations for an aggregate 2,164.1 acres within Permit No. 46C, Oak Hill Mine, in Rusk County, Texas. The permit area, located approximately three miles northeast of Henderson, Texas, contains approximately 26,014 acres. Specifically, Luminant requested Phase I release of reclamation liability on 1,529.7 acres, Phases II and III release on 632.4 acres, and Phase III release on 2.0 acres. After review by Staff, Luminant withdrew a portion of its request for release. The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. Ch. 134 (Vernon Supp. 2017) (Act), and the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE Ch. 12 (Thomson West 2017) (Regulations).

Copies of the application were filed in 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 written comments were made following public notice and mailed notice, and no public hearing was requested. The only parties to the proceeding are Luminant and the Commission's Surface Mining and Reclamation Division (SMRD or Staff). The parties have filed waivers of the preparation and circulation of a proposal for decision.

Based on the record in this docket including the application and supplements, Staff's Technical Analysis, its inspection report, and the Act and Regulations, the Commission finds that the application for release, as revised by Luminant's withdrawal of certain parcels from the request, should be approved, as set out in the Findings of Fact and Conclusions of Law. Luminant has withdrawn such parcels without prejudice and may, in the future, again request release of reclamation obligations for the portions withdrawn.

FINDINGS OF FACT

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

1. By letter dated August 21, 2015, Luminant filed its application for release of an aggregate 2,164.1 acres (17 parcels) within the 26,014-acre permit area of Permit No. 46C, Oak Hill Mine, located in Rusk County, Texas. Specifically, Luminant requested Phase I release of reclamation requirements (backfilling, regrading, and drainage control) on 1,529.7 acres, Phase II release of reclamation requirements (revegetation and sediment control), and Phase III release of reclamation requirements (completion of the five-year extended responsibility period (ERP) and surface water and groundwater protection) on 632.4 acres, and Phase III release on 2.0 acres.
2. The application is made pursuant to Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. CH. 134 (Vernon Supp. 2017) (Act), and the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE CH. 12 (Thomson West 2017) (Regulations). No filing fee is required. The application was properly certified in accordance with § 12.312(a)(3) of the Regulations.
3. Although the acreage is eligible for a bond reduction, Luminant does not request an adjustment in the amount of the approved reclamation bond at this time. An eligible bond reduction amount may be considered. Luminant currently bonds all of its operations in Texas with a blanket collateral bond in the amount of \$975,000,000 approved by Order dated September 27, 2016 (Docket No. C16-0021-SC-00-E).
4. The application was supplemented by letter dated September 9, 2015, with a revised Section II.B and revised Plates II.B.1-1 and 2.
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; at the Commission's field office located at 2202 Old Henderson Highway, Tyler, Texas 75702; and in the office of the Rusk

County Clerk, Henderson, Texas.

6. SMRD's Inspection and Enforcement Section mailed letters dated September 14, 2015, to landowners and the Office of Surface Mining Reclamation and Enforcement (OSM) Tulsa Field Office, notifying them of the date scheduled for inspection, September 29, 2015, and offering the opportunity to participate in the inspection in accordance with § 12.312(a)(2) of the Regulations. Staff sent a letter of notification of the application as required by the Act, § 134.33 and provided a copy of the approved public notice by certified letter to the Rusk County Judge by letter dated September 30, 2015 (Attachment II to Staff's Technical Analysis). The inspection occurred on the date scheduled. Three Luminant representatives were present at the pre-inspection meeting and the inspection. No others attended the inspection. The area was inspected with the use of a GPS device; the areas were marked in the field at the time of the inspection, and the accuracy of the boundary markers was confirmed. Field conditions were moist at the time of the inspection, allowing access to the entire proposed release area.
7. Publication of notice of application occurred once each week for four consecutive weeks in the *Henderson Daily News*, a newspaper of general circulation in the vicinity of the Oak Hill Mine, on October 8, 15, 22, and 29, 2015. This newspaper is 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 reclamation obligations. Luminant submitted an affidavit of publication with news clippings by letter dated November 18, 2015. The notice is adequate notification of the request for release. The notice included the name of the permittee, the location of land affected, the approximate number of acres, the permit number at the time of the application and date approved, the amount of the approved bond, the type of and appropriate dates when reclamation work was performed, and a description of 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 areas requested

for release.

8. By letter dated November 17, 2015, Luminant submitted to the Commission copies of the letters to landowners and/or adjoining landowners, and lessees and holders of other property interest, and to the following: Rusk County Judge and Commissioners Court, the Texas Commission on Environmental Quality, the United States Army Corps of Engineers, the Natural Resources Conservation Service, the City of Henderson, Texas, Eastex Telephone Cooperative, Inc., the State of Texas c/o State Department of Transportation, Southwestern Bell Telephone Company, New Prospect Water Supply Corp., Crims Chapel Water Supply Corp., Rusk County Electric Co-op, and Atmos Energy Corporation, as required by § 12.312(a)(2) of the Regulations and § 134.129 of the Act. 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.
9. SMRD determined the application to be administratively complete on November 23, 2015. Staff's Technical Analysis and inspection report were filed with the Hearings Division by letter dated June 29, 2016. The Technical Analysis and inspection report indicated that Staff recommended Phase I release of Parcel Nos. 2, 4, 5, 11, 15, 16, and 17 and Phase II release of Parcel Nos. 6, 7, 8, 9, 10, 12, and 13. Staff found that Luminant had met all requirements for the 864.9 acres recommended by Staff for Phase I release and the 632.4 acres recommended by Staff for Phase II release. By letter dated May 4, 2017, Luminant requested that processing of this application be suspended. By letter dated February 5, 2018, Luminant indicated that it accepted Staff's findings and recommendations for Phase I release of Parcel Nos. 2, 4, 5, 11, 15, 16 and 17 and Phase II release of Parcel Nos. 6, 7, 8, 9, 10, 12, and 13, and Luminant withdrew its request without prejudice for Phase I release of Parcel Nos. 1 and 14 and Phase III release of Parcel Nos. 3, 6, 7, 8, 9, 10, 12, and 13. Luminant also requested that the docket be presented to the Commissioners.
10. Information presented by Staff and/or Luminant include land ownership information and related information, public notice information, previous release information, status of structures contained within the areas requested for release, sampling history, information

regarding groundwater chemistry data, ground cover and productivity data, postmining land use, surface water monitoring data, appropriate mapping of the areas proposed for release, soil monitoring grid maps, monitor well location maps and data, permanent structures maps, and land use maps.

11. 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) of the Regulations.
12. The area requested for Phase I release was mined between 1988 and 2010, and final grading was accomplished between 1998 and 2011. The Phase I release areas were planted with approved species between 1988 and 2014. Routine monthly inspections of the reclamation work covering the proposed Phase I release area occurred from 1998 to the date of the inspection and have continued. The areas requested for Phases II and III release were disturbed by mining between 1988 and 2014, were leveled between 1988 and 2014, and were planted with approved species between 2000 and 2006. Routine monthly inspections of the reclamation work covering the proposed Phases II and III release area occurred from 2000 to the date of the inspection and have continued. Of the 634.4 acres proposed for Phase III release, 2.0 acres were accepted into the ERP on November 9, 1995, 476.2 acres were accepted into the ERP on July 11, 2007, and 156.2 acres were accepted into the ERP on October 30, 2007.
13. The areas requested for Phase I release have been backfilled and graded to approximate original contour [§ 12.385(a)]. Final grading occurred from 1998-2011, and vegetation was planted from 2000-2006. All highwalls were eliminated in accordance with § 12.384(b)(1) of the Regulations, and suitable substitute material was placed over the regraded spoil. 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 Phase I release have been stabilized to control draining and attendant potential erosion [§ 12.389]. The areas requested for Phase I release contain 483 full or

partial soil-testing grids, and soil data provided by Luminant on various dates in years 1995-2000, 2003-2011, 2013, and 2014 as listed in Section III.A.3 of the application reflect compliance with 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. During the fourth or subsequent year of the ERP, a random 10% of the grids are to be resampled and analyzed according to the methodology used in the initial minesoil-monitoring program. All soil grids have received Commission approval as free of acid-forming and toxic-forming materials. Grid data for the acreage requested for Phase I release were approved by the Commission on various dates (most recently by letter dated October 12, 2015).

14. No coal-processing waste or associated structures exist within the areas proposed for release. Portions of three Class III waste disposal sites are located within the areas proposed for Phase I release, as noted on Plate III.A. 4-1 of the application. The disposal areas have been recorded for Class III waste and have been operated in accordance with Commission Regulations and the requirements of the Texas Commission on Environmental Quality. The disposal sites have been covered by a minimum of four feet of suitable material [§ 12.375].
15. There is no prime farmland located in the areas proposed for Phase I release for which specific soil reconstruction standards would apply [§ 12.624].
16. The areas approved for Phase I release meet draining control requirements. The areas drain to approved sedimentation ponds DI-12, DI-14, DI-15, DI-23, DI-24, DI-41, DI-42, DI-79, DI-81, and DI-115.
17. No cut-and-fill terraces have been constructed for which other requirements apply [§ 12.385].
18. Permanent roads located within the Phase I release areas include access roads and extensions DI, DI-12, DI-13, DI-14, DI-15, DI-23, DI-24, DI-51R, and DII. All roads have

been approved as permanent and are structurally intact and stable.

19. Structures that occur within the Phase I requested areas include Impoundments DI-12, DI-13, DI-14, DI-15, DI-23, DI-24, DI-48RW, DI-89R, DI-91RW, DI-124RW, DI-125RW, DI-48R, DII-64R, DII-70RW, DIII-56R, DIII-83R, DIII-109RW, and DIII-110RW; Drop Structures ML DI-14A, ML DI-14C, DI-12A, DI-12B, DI-41B DS, DI-81 Div DS E, F & G, DI-91RW DS, DII-64R DS A-D, and DIII-56R DS A-B; Inlet Structures DI-13, DI-14, DI-14 Chutes A and B, DI-15 A-D, DI-23 Drop Inlet Nos. 1-3 and Drop Chutes, and DI-24; Spillway and Inlet Structures DI-12, DI-12A, DI-13, DI-14, DI-15, DI-23, DI-24, DI-41B, DI-81, DI-89, DI-91RW, DI-124RW, DII-64R, and DIII-56; and Stream Diversions DI-12, DI-14, DI-23, DI-24, DI-81 Diversion No. 5, DI-91RW Drainage Waterway Nos. 1 and 2, and DI-124RW Drainage Waterway. All structures have been approved as permanent and are structurally intact and stable.
20. Based upon the application and Staff review, Phase I requirements for backfilling, regrading, and drainage control as required by § 12.313(a)(1) of the Regulations have been met for all acreage requested for Phase I release, except for Parcels 1 (294.6 acres) and 14 (370.3 acres). Parcel 1 contains a portion of temporary downsized Ramp 3 in the DI Area, an unapproved DI-13 Inlet, and unnamed concrete chutes. Parcel 14 contains a portion of an unnamed road that leads to a water-treatment station in the vicinity of DI-81 Diversion No. 2. Luminant has withdrawn these parcels from its request without prejudice. Luminant may in the future request release of Parcels 1 and 14. Parcels 2, 4, 5, 11, 15, 16, and 17 (a total of 864.9 acres) requested for Phase I release are approved.
21. The parcels proposed for Phases II and III release were previously released from Phase I backfilling, regrading, and drainage control reclamation requirements required by § 12.313(a)(1) of the Regulations by Orders dated January 28, 2008 (Docket No. C7-0029-SC-46-F) and February 26, 2009 (Docket No. C8-0029-SC-46-F). The parcel proposed for Phase III release only was released from Phase I and II reclamation liability by Order dated February 11, 1997.

22. The areas requested for Phases II and III release have met the Phase II revegetation requirements of § 12.313(a)(2) of the Regulations and the requirement that the areas not contribute suspended solids to streamflow outside the permit area in excess of the requirements set by the Act, § 134.092(a)(10) and Subchapter K of 16 TEX. ADMIN. CODE Ch. 12. Luminant has withdrawn its request, without prejudice, for Phase III release of any parcels, and Luminant may in the future request Phase III release of Parcels 3, 6, 7, 8, 9, 10, 12, and 13. Parcels 6, 7, 8, 9, 10, 12 and 13 (a total of 632.4 acres) requested for Phase II release are approve. These areas have postmine land uses of forestry (482.8 acres), fish and wildlife habitat (122.1 acres), industrial/commercial (20.3 acres), and developed water resources (7.2 acres). These lands have been reclaimed to the postmine land uses, managed accordingly, and have been inspected monthly since 2000. Vegetation observed appears healthy and self-sustaining.

(a). The 482.8 acres of forestry area are included in four land management units (LMUs): DI-1995F (11/09/1995 ERA), DI-2007F (07/11/2007 ERA), DIII-2007F (07/11/2007 ERA), and DIII-2007F2 (10/30/2007 ERA). Forestry areas were planted with loblolly pine. Luminant submitted 2000 ground cover and stem count data for LMU DI-1995F by letter dated October 2, 2000, and the SMRD approved the data by letter dated December 2, 2000. Luminant submitted 2004 ground cover and stem count data for LMU DI-1995F by letter dated October 7, 2004, and the SMRD approved the data by letter dated January 5, 2005. Luminant submitted 2012 ground cover and stem count for the DI-2007F and DIII-2007F2 LMUs by letter dated March 18, 2013, and the SMRD approved the data by letter dated August 8, 2013. Luminant submitted 2014 ground cover and stem count data for LMU DIII-2007F by letter dated August 5, 2014, and the SMRD approved the data by letter dated February 3, 2015. The data submitted met the performance standards of § 12.395(c)(2).

(b). The 122.1 acres of fish and wildlife habitat are located within three LMUs: DI-2007H (07/11/2007 ERA), DIII-2007H (07/11/2007 ERA), and DIII-2007H2 (10/30/2007 ERA). Fish and wildlife habitat areas were planted with a variety of

trees including bald cypress, loblolly pine, various oaks, and plum. Luminant submitted 2012 ground cover and stem count data for these three LMUs by letter dated March 18, 2013, and the SMRD approved the data by letter dated August 8, 2013. These LMUs have met the requirements for revegetation for fish and wildlife habitat.

- (c). For developed water resources and industrial/commercial land uses, vegetation must be sufficient for erosion control. Inspection and photographs taken of these areas indicate that the vegetation meets this requirement. Industrial/commercial land use proposed for Phases II and III release comprise 20.3 acres and were planted with Common bermudagrass and native grasses and are sufficient to control erosion. Data were submitted for the industrial/commercial areas and were approved by letter dated December 16, 2015. Developed water resources comprise 7.2 acres that were not covered with water are sufficiently vegetated to control erosion and are sufficient for the postmine land uses.
 - (d). Of the 634.3 acres initially proposed for Phase III release of reclamation liability, 0.2 acres have a postmining land use of pastureland and are included in one LMU designated as DI-1995 (11/09/1995 ERA). Luminant submitted ground cover and productivity data for this LMU as described in Staff's Inspection Report. Luminant, however, has withdrawn its request for any Phase III release of reclamation obligations.
23. Appendix IV of Staff's Inspection Report depicts the area requested for release and the locations of photographs taken during the Staff inspection. Appendix V of Staff's Inspection Report contains photographs taken during the Staff inspection of permanent structures located within the area requested for release, as well as location maps. Structures proposed within Phases II and III areas are approved as permanent and are stable. In addition to the structures proposed for Phase I release (Finding of Fact Nos. 18 and 19), the following roads and structures are approved as permanent: Phases II and III – Roads DI-203, DIII-7C, and DIII-RD-2; Impoundments DIII-90R and DIII-99RW; and

Spillway Structure DIII-99RW.

24. Four (4) small depressions are located within the Phase III requested areas: DIII-SD-8, DIII-SD-9, DIII-SD-10, and DIII-SD-11. All depressions were approved as permanent on May 16, 2014.
25. The areas requested for release have met the Phase II requirement that they are not contributing suspended solids to runoff in excess of water quality permit requirements or stream segment standards. The areas requested for Phase II and III release drains through or to ponds and ultimately to Mill Creek that discharges to Lake Cherokee, thence to the Cherokee Bayou, and finally to the Sabine River. Luminant submitted surface water monitoring data for sedimentation ponds, permanent impoundments, and area streams. Luminant analyzed data from one permanent sedimentation pond, six temporary sedimentation ponds, two permanent impoundments, and four long-term surface water monitoring (LTSM) stations that receive runoff from the areas proposed for Phase II/Phase III release. These data have been compared to the effluent limitations of the Texas Pollutant Discharge Elimination System (TPDES) Permit No. 02644 for the Oak Hill Mine and stream segment criteria for Stream Segment No. 0505 (Sabine River above Toledo Bend Reservoir). A professional geoscientist licensed in Texas prepared a summary of the data for Luminant, and Staff evaluated the data, summary, and other information provided.
 - (a). Luminant provided individual pond long-term monitoring data from six temporary sedimentation ponds capturing runoff from the areas proposed for Phase II release, including D1-40, DI-41, DI-42, DIII-7, DIII-8, and DIII-15. Data were provided for flow (Q), pH, total dissolved solids (TDS), and total suspended solids (TSS), total iron (Fe), total manganese (Mn), selenium (Se), and total settleable matter (SS/TSM). Individual ponds were sampled quarterly for all parameters except TDS and Se. Data were collected weekly when discharging. Luminant included a summary of the minimum, maximum, and average pond water quality data in ranges and averages (application, Tables III.B.3-7 through III.B.3-21 for

individual pond monitoring initiated in June 1997 and application, pages III.B.3-2 and III.B.3-3). Staff included the summary of this data along with TCEQ TPDES Permit No. 02644 effluent limitations for pH (6.0-9.0 standard units (s.u.), TSS (35 mg/L allowable daily average/ 70 mg/L allowable daily maximum), Fe (3.0 mg/L, allowable daily minimum/6.0 mg/L, allowable daily maximum), Mn (1.0 mg/L, allowable daily minimum/2.0 mg/L, allowable daily maximum), and SS/TSM (0.5 mg/L). (There is no requirement for flow.) Prior to 1997, the ponds were not sampled individually but were flow-weighted into composite samples. Based upon the summary of the data from June 1997, there were no exceedances of the TPDES water quality effluent standards for DI-42, DIII-7, DIII-8, and DIII-15, with the exception of the following: Pond DI-40 (April 11, 1998: TSS of 74 mg/L) and Pond DI-41 (May 25, 1996: pH of 9.4 s.u., and November 2, 1997: TSS of 73 mg/L, and Total Fe, 8.0 mg/L). Staff identified no trends other than rising pH levels in Ponds DI-40, DI-42, and DIII-15. No explanation was provided by Luminant for this trend. Staff also noted that the data for Pond DI-41 indicate rising TDS concentrations in excess of the 400 mg/L stream segment criterion since the end of 2007. Luminant did not provide an explanation for this trend and exceedances. Parcels 12 and 13 are located within the watershed of Pond DI-41, and Staff does not recommend Phase III release for these parcels.

- (b). Luminant also provided data on pages III.V.3-22 through III.B.3-28 summarizing quarterly sampling for Ponds DI-40, DI-41, DI-42, DIII-7, DIII-8, and DIII-15 as part of the LTSM program. These data also indicate that the ponds met permit limits for parameters for which sampling was conducted.
- (c). Luminant presented data for the four concurrent quarterly samples (from discharges or grab samples if no discharge) that were taken for Permanent Impoundments DIII-90R and DIII-99RW (Table III.B.3-15) required for Phase II release. Although there was no flow for any of the sampling dates, the flow samples taken and the grab samples were all within stream segment criteria.

26. Luminant also provided information to demonstrate that the criteria for Stream Segment 0505 are being met (pH, 6.0-8.5; TDS, 400 mg/L, maximum annual average). To determine impacts to streams, Luminant provided water quality and water quantity data from paired monitoring stations, HSW-2 on Boggy Creek (replaced with PBW-2 on Sheffield Branch on November 30, 2015) (upstream undisturbed) for the period June 29, 1997 through January 18, 2011 and HSW-1 (downstream disturbed) for the period of record June 29, 1997 through March 28, 2016, as well as USGS Station No. 08020960 (upstream undisturbed, except for runoff treated at Pond D1-24 that has been released from sediment control requirements) for the period of record June 29, 1997 through March 28, 2016 and USGS Station No. 08020980 (downstream disturbed) for the same period of record. Surface water quality has been protected in accordance with the probable hydrologic consequences (PHC) determination in the permit.
- (a). Based on Luminant and SMRD data, average values for pH meet the stream segment criterion for pH at all stations except for LTSM station HSW-2 and downstream USGS monitoring station 08020980; however, Staff notes that pH values have not exceeded applicable stream-segment criteria for at least five years. Average values for TDS meet the stream segment criterion for TDS at all stations.
- (b). The average TDS values at downstream station HSW-1 are slightly more than twice that of the upstream station for the period of record. The flow-weighted TDS values, however, are lower at the downstream USGS monitoring station 08020980 than the upstream USGS monitoring station 08029060 and well within the stream segment criterion of 400 mg/L. Staff indicates that the TDS concentrations have been within the stream segment criterion since 2001 at HSW-1.
- (c). Average values for TSS are similar at the upstream and downstream stations.

- (d). Average values for Fe at downstream station HSW-1 are similar to the upstream station, HSW-2; the flow-weighted values for Fe at the downstream USGS station are twice that of the upstream USGS station.
 - (e). Average values for Mn are higher at the downstream stations; however, there is no stream segment criterion for Mn. The average values are below the TPDES daily maximum effluent limitation of 2.0 mg/L. The average value of selenium at the downstream station HSW-1 is twice the average value of the selenium at the upstream station HSW-2; no criterion for selenium has been established for the stream segment. The average values for Se at the upstream and downstream USGS stations are the same.
 - (f). Average acidity values at the downstream HSW-1 station appear to be similar to the average acidity values at the upstream HSW-2 station. The baseline for undisturbed LTSM station HSW-2 shows that the pH level is naturally acidic. After mining, the undisturbed station HSW-2 is more neutral; since November 2002, pH levels at the disturbed LTSM station HSW-1 have been typically above 6.0 s.u.
 - (g). Staff compared the values and concentrations of the undisturbed and disturbed stations to the baseline values for the respective stations. Staff determined that there are no appreciable differences that are of concern. Staff did note high values for TDS at LTSM stations HSW-1 and HSW-2, however, Staff indicates that these values occurred prior to 2006.
27. The most recent Cumulative Hydrologic Impact Assessment (CHIA) performed by Staff that is applicable to this mine is also applicable to the Liberty Mine, Marshall Mine, Martin Lake Mine and Martin Lake AIV South Mines, South Hallsville No. 1 Mine, Rusk Mine, former Darco Mine, and Marshall Facility Area Mine in that they are all located within the Sabine River Basin in Harrison, Rusk, and Panola Counties. Although Staff predicted an increase by as much as 384% in the indicator parameter TDS at Mass Balance Point No. 6, the increase, from approximately 81 mg/L to 392 mg/L still results in a level less

than the stream segment criterion for TDS, 400 mg/L. Large portions of the Martin Lake, Oak Hill, and South Hallsville No. 1 Mines are in reclamation, TDS concentrations should decrease over time. Despite the increase in TDS at Mass Balance Point No. 6, the TDS concentrations contributed from the release areas are significantly less than the stream segment criteria.

28. The following parcels and acreages were requested for release. Those indicated have been withdrawn from the request. Withdrawal of these parcels is without prejudice so that Luminant may resubmit an application for release of these areas.

Parcel	Total Acres	Release Requested	Withdrawn
1	294.6	I	WD*
2	8.5	I	
3	2.0	III	WD**
4	132.2	I	
5	189.7	I	
6	17.0	II and III	Phase III WD**
7	69.0	II and III	Phase III WD**
8	34.2	II and III	Phase III WD**
9	219.6	II and III	Phase III WD**
10	101.3	II and III	Phase III WD**
11	136.0	I	
12	137.3	II and III	Phase III WD**
13	54.0	II and III	Phase III WD**
14	370.3	I	WD*
15	199.4	I	
16	138.8	I	

17	60.3	I	
Totals	2,164.1		

*Staff does not recommend Phase I release for these parcels because they contain temporary or undocumented structures (downsized DI Area Ramp 3, undocumented road near DI-81 Diversion No. 5, undocumented DI-13 Inlet and four undocumented concrete chutes).

**All parcels requested for Phase III release were not recommended for release by Staff due to the following:

- (a). The data for Pond DI-41 indicate rising TDS concentrations in excess of 400 mg/L stream-segment criteria since the end of 2007.
- (b). The pH range [2.7 standard units (s.u.) to 5.9 s.u.] for disturbed USGS monitoring station 08020980 is lower than both USGS monitoring station 08020960 (5.4 s.u. to 7.3 s.u.) and the stream segment range for pH (6.0 s.u. – 8.5 s.u.) indicating that the parcels proposed for Phase III release may be contributing acidic waters to Mill Creek preventing a finding being made that drainage from acid-forming spoil coming into contact with surface waters has been avoided [§12.349(1)].
- (c). Luminant has not presented any explanation why average flow data for undisturbed LTSM station HSW-2 is nearly twice that measured at disturbed LTSM station HSW-1. In addition, flow data in Tables II.B.3-16 and III.B.3-17 are not consistent with data contained in quarterly LTSM reports submitted by Luminant. Staff also indicates that there is no clear correlation between rainfall and flow data in quarterly reports for LTSM stations HSW-1 and HSW-2. For these reasons, Luminant has not shown that surface water quantity has been protected as required for Phase III release.

29. The areas approved for release of reclamation obligations are eligible for an adjustment

to the required amount for the bond. The notice of application for release did not include an amount of eligible bond reduction requested, and Luminant has not requested an adjustment to the approved bond at this time. No replacement bond instrument has been filed.

30. Although Luminant has not requested an adjustment to the approved bond at this time, there is an eligible bond reduction amount, based upon Staff's Technical Analysis and the Findings of Fact contained in this Order. The Staff has filed its estimate of eligible bond amount reduction, \$7,510,201.05, based upon the bonding rates used for Staff's reclamation cost estimate in Revised Application No. 34 (approved by letter dated December 3, 2014), should the Commission concur with Staff's recommendations for release. This amount includes a 10% administrative cost.
31. The Regulations at § 12.310(b) require that the Commission shall not release an existing performance bond until the permittee has submitted and the Commission has approved an acceptable replacement performance bond. Luminant must submit an acceptable replacement performance bond prior to any adjustment of the approved bond instrument.
32. The areas requested for release have been clearly marked in the field with permanent boundary markers to distinguish the areas from active mining and reclamation areas. The areas not approved for release shall remain marked to reflect the bonded status. Identification of these areas assists future inspection of adjacent areas by field office staff; the markers shall be maintained.
33. This docket has been posted for consideration by the Commission.

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, and the Commission properly posted the docket for consideration.
2. No public hearing was requested, and none is warranted.
3. Luminant has complied with all applicable provisions of the Act and the Regulations for the release of acreages approved in this Order.
4. The eligible bond reduction amount calculated by Staff fairly represents the amounts that may be released for the acreage approved for release in a bond approval proceeding.
5. The Commission may approve a release of reclamation obligations for the acreages requested in accordance with the Findings of Fact as set out in this Order.
6. The acreages not approved for release are denied release, without prejudice to the applicant for re-filing an application for release.
7. The Commission determines an eligible bond reduction amount of \$7,510,201.05.

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 release of reclamation obligations are approved as set out in Finding of Fact Nos. 20 and 22;

IT IS FURTHER ORDERED that the Commission denies without prejudice the releases requested that are not approved in this order as indicated in Finding of Fact Nos. 20 and 22;

IT IS FURTHER ORDERED that the Commission determines an eligible bond reduction amount of \$7,510,201.05;

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 areas released from reclamation obligations shall remain clearly marked in the field with permanent boundary markers to distinguish these areas from active mining and reclamation areas in accordance with this Order;

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

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 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 is 100 days from the date the Commission Order is signed.

SIGNED this 24th day of April, 2018.

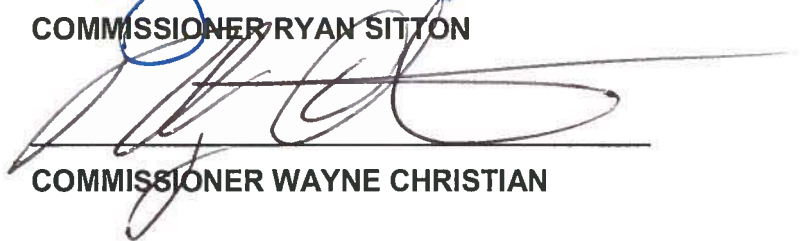
RAILROAD COMMISSION OF TEXAS



CHAIRMAN CHRISTI CRADDICK

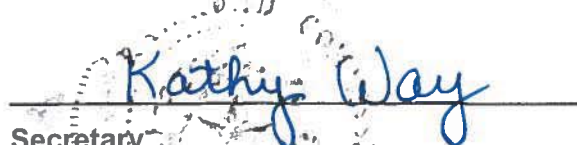


COMMISSIONER RYAN SITTON



COMMISSIONER WAYNE CHRISTIAN

ATTEST:



Secretary

Railroad Commission of Texas