

**RAILROAD COMMISSION OF TEXAS  
HEARINGS DIVISION**

**SURFACE MINING DOCKET No. C16-0004-SC-46-F**

**APPLICATION BY LUMINANT MINING COMPANY LLC FOR RELEASE OF PHASES I, II, AND III RECLAMATION OBLIGATIONS FOR VARIOUS ACREAGES WITHIN ITS SURFACE COAL MINING OPERATIONS FOR PERMIT NO. 46C, OAK HILL MINE, RUSK COUNTY, TEXAS**

**ORDER APPROVING APPLICATION FOR RELEASE OF PHASE I RECLAMATION OBLIGATIONS FOR PARCELS 1, 2, AND 10 AND PHASE II RELEASE OF RECLAMATION OBLIGATIONS FOR PARCELS 4, 5, 6, 7, 8, 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 1,313.1 acres within Permit No. 46C, Oak Hill Mine. The permit area contains approximately 26,014 acres. Luminant initially requested various releases on 13 parcels within the DI, DII, and DIII Areas of the permit area. After review by Staff, and the identification of deficiencies in the application for several parcels, Luminant withdrew a portion of its request for release. The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, TEX. ADMIN. CODE ANN. CH. 134 (Vernon Supp. 2017) (Act), and the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE ANN. CH. 12 (Regulations) (Thomson West 2017).

Permit No. 46C currently authorizes surface mining operations at Luminant's Oak Hill Mine located in Rusk County, Texas. Copies of the application were filed in required county and Commission offices and notices were mailed to landowners of the areas requested for release and to adjoining landowners. No written comments, protests, or requests for hearing were filed. The only parties to the proceeding are Luminant and the Commission's Surface Mining and Reclamation Division (SMRD or Staff).

Based on the record in this docket including the application and supplements, Staff's technical report, and addenda, its inspection report, and the Act and Regulations, the

Commission finds that the application for release, as revised, should be approved, as set out in the Findings of Fact and Conclusions of Law. Luminant may, in future, again request release of reclamation obligations for the portions withdrawn, without prejudice.

### FINDINGS OF FACT

1. By its request dated September 29, 2015, Luminant Mining Company LLC (Luminant) filed its application for release of an aggregate 1,313.1 acres (13 parcels) within the 26,014-acre permit area of Permit No. 46C, Oak Hill Mine, located in Rusk County, Texas. Luminant did not request an adjustment to the approved bond instrument; however, Luminant indicated that it sought an eligible bond reduction amount. The areas requested for release are made up of parcels located in the DI, DII, and DIII Areas of the permit area of the mine. They range in size from 18.1 acres to 282.5 acres. No replacement bond instrument has been filed. The existing bond is a collateral bond with trust agreement in the amount of \$975,000,000 accepted by Commission Order dated September 27, 2016 for all Luminant's mining operations.
2. Luminant supplied a certification that all reclamation activities associated with the acreage requested for release have been completed in accordance with the Act, the regulatory program, and the approved reclamation plan [§12.312(a)(3)]. 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 Supp. 2017) (Act), and the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE CH. 12 (Thomson West 2017) (Regulations).
3. By letter dated October 6, 2015, Staff requested that review of the application be suspended pending Staff's review of three vegetative groundcover and stem count reports that were in process for areas that were within the areas requested for release. The review was suspended; an additional letter dated January 27, 2016 from Staff indicated that there were still two outstanding groundcover and stem count report being reviewed and that the application should remain suspended until Staff completed review of these reports. By letter dated September 23, 2016 Staff notified the administrative law judge that Staff anticipated that a final TA would be filed on or before October 6,

2016. Staff's TA was filed by letter dated October 3, 2016. By letter dated October 6, 2016, Luminant submitted a statement that it intended to supplement the application to address comments set out in the TA on or before December 30, 2016. By emailed notification, Luminant stated that due to changes within Luminant, bond release priorities and schedules for pending application were being reassessed and that additional supplementation might be ready by April 1, 2017. Staff submitted a statement December 28, 2016 that it had no objection to the proposed schedule. By letter dated May 4, 2017, Luminant again requested suspension until a supplement could be prepared; the ALJ granted the request but requested an update by January 15, 2018. Luminant again requested that suspension continue by letter dated January 23, 2018; this was granted by letter dated January 25, 2018. By letter dated February 6, 2018, Luminant indicated that Luminant had determined to accept Staff's recommendations in its TA for Phase I release on Parcels 1, 2, and 10, and Phase II (only) on Parcels 4, 5, 6, 7, 8, 12, and 13. Luminant withdrew its prior request for Phase I release on Parcel 3, Phases II-III release on Parcels 9 and 11, and Phase III (only) on Parcels 4, 5, 6, 7, 8, 12, and 13, without prejudice.

4. By letter dated January 20, 2016, Luminant submitted proof of publication of notice and proof of mailed notification letters to landowners adjoining landowners, lessees, utilities and governmental agencies. Luminant own all the tracts within the areas requested for release and most of the adjoining tracts. Other owners of adjoining tracts include churches, a cemetery, a cemetery association, the Texas Department of Transportation (TxDOT), and five individuals. Several oil and gas lessees have interests in tracts within the areas requested for release and in adjoining tracts and were provided with notification of the application. In addition to landowners and adjoining landowners, Luminant notified The Rusk County Judge and Commissioners' Court, the Texas Commission on Environmental Quality, the Natural Resources Conservation Service, the City of Henderson, TxDOT, the U.S. Army Corps of Engineers, the Texas State Soil and Water Conservation Board in Temple, Texas and its Mount Pleasant Regional Office, Eastex Telephone Cooperative, Inc., Southwestern Bell Telephone Company, the Texas Department of Highways, New Prospect Water Supply Corp., Crims Chapel Water Supply Corp, and Rusk County Electric Coop. Staff declared the application administratively complete and filed the application with the Hearings Division by letter dated January 27, 2016. By letter dated October 3, 2016, Staff filed its Technical

Analysis (TA) and inspection report.

5. 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.
6. Notice of application was published once each week for four consecutive weeks in the *Henderson Daily News*, a newspaper of general circulation in Rusk County, Texas in the locality of the surface mining and reclamation operations on November 20 and 27, 2015 and on December 4 and 11, 2015. 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. The notice contains a statement that the applicant does not seek a reduction in the approved bond, but that an eligible bond reduction amount may be determined. Luminant submitted an affidavit of publication with news clippings by letter dated January 20, 2016. The published notice is adequate notification of the request for release. The notice included the name of the permittee, the location of the land affected, the number of acres, permit number at the time of application and date approved, the amount of approved bond, the type and appropriate dates reclamation was performed, and a description of the results achieved as they relate to the approved reclamation plan. The notices contained information concerning the applicant, location and boundaries of the permit area, the application's availability for inspection, the address to which comments should be sent, and a map showing sufficient notice of the boundaries of the areas requested for release.
7. Copies of the application were filed for public review in the offices of the Rusk County Clerk in Henderson, Texas and in the offices of the Railroad Commission of Texas at its former Regional Office in Tyler, Texas and in its offices in Austin, Texas.
8. By letters dated November 19, 2015, Luminant sent letters of notification of the application for release to the Rusk County Judge/Commissioners Court, the Texas

Commission on Environmental Quality (TCEQ), the Natural Resource Conservation Service, Henderson Field Office, the Texas State Soil and Water Conservation Board in Temple, Texas and the office in Mt. Pleasant, Texas, the U.S. Army Corps of Engineers, the City of Henderson, New Prospect Water Supply Corporation, Rusk County Electric Co-op, Southwestern Bell Telephone Company, Texas Department of Transportation, Department of Highways, Crims Chapel Water Supply Corporation (WSC), Eastex Telephone Cooperative, Inc., to property owners, lessees, owners of other property interests, and adjoining property owners in accordance with §12.312(a)(2). The areas at issue are not located within any municipality's boundaries that would be notified pursuant to §12.313(c) of the Regulations.

9. The Surface Mining and Reclamation Division mailed letters dated October 6, 2015 to the owners of the areas requested for release. Luminant owns all tracts within the area requested for release and most of the adjacent tracts. Other owners of adjacent tracts include churches, cemetery associations, TxDOT, Crims Chapel WSC and a few individuals. Notices were sent to the owners as well as to lessees, other owners of interests, and to the Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office (OSM), notifying them of the date for inspection and the opportunity to participate in the inspection scheduled for October 27, 2015. The Staff sent notice by certified mail of the application to the Rusk County Judge by letter dated November 16, 2015 as required by the Act, §134.133. Two representatives of the applicant and two staff inspectors attended the inspection.
10. No persons filed written comments, written objections, or requests for hearing regarding the request for release.
11. The areas requested for Phase I release were disturbed between 1989 - 2010, were leveled between 1989 – 2011, and were planted with approved species from 1990 – 2014. This acreage was placed in the extended responsibility period in 2014. The acreage requested for Phase II and III releases were disturbed between 1988 – 2005, were leveled between 1989 – 2005, were leveled between 1989 – 2006, and were planted between 1989 – 2007. The ERP was initiated for areas requested for Phases II and III release between 2005 -2010. Monthly inspections have occurred since mining operations began.

12. The entire area requested for release was accessible during the inspection. The regular monthly inspections as confirmed by the scheduled inspection reflects that Luminant has regraded the area to its approximate original contour, eliminated all highwalls, placed suitable plant-growth material on the surface, and has constructed no cut-and-fill terraces. As shown by the results of sampling and testing of soil grids (157) requested for release, the Phase I requested area has been covered in a minimum of four feet of cover of the best available nontoxic and noncombustible material over all exposed coal seams and all acid-forming, toxic-forming or combustible materials (letter from Staff to Luminant dated October 17, 2014). The areas requested for Phase I release have met Phase I requirements for stability with no active erosion evident, after correction of erosion that was apparent in the inspection. Portions of three Class III waste disposal sites are located within the areas proposed for Phase I release (application, Plate III.A.4-1). These areas have been deed-recorded for Class III waste and have been operated in accordance with the Regulations and requirements of the TCEQ. They have been covered with a minimum of four feet of suitable material.
13. No prime farmland occurs within the Phase I areas requested for release that would require specific soil reconstruction.
14. The areas approved for Phase I release meet drainage control requirements. The areas drain to approved sedimentation ponds DI-41, DI-79, DIII-6, DIII-7, DIII-10, and DIII-12.
15. No cut-and-fill terraces have been constructed for which other requirements apply (§12.385).
16. The areas requested for Phase contain no prime farmland for which specific soil reconstruction requirements apply.
17. There are no permanent roads located within the Phase I release areas.
18. Structures that occur within the Phase I requested areas include Impoundments DII-71RW, DIII-54R, DIII-103RW, DIII-105RW, DIII-106RW, DIII-107RW, DIII-108RW, DIII-111RW, DIII-100RW, and DIII-104RW; Drainage Feature DIII-238 Drop Inlet Structure,



and Spillway Structures DIII-103RW, DIII-105RW, DIII-106RW, DIII-107RW, DIII-108RW, and DIII-111RW. All structures have been approved as permanent and are structurally intact and stable.

19. 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 Parcel 3 (184.6 acres). This parcel contains Pond DIII-103RW Grass-Lined Spillway Structure that has been modified by the addition of rock riprap without approval. Luminant has withdrawn this parcel from its request. Luminant may in future request release of Parcel 3 without prejudice. Parcels 1, 2, and 10 (a total of 433.9 acres) requested for Phase I release are approved.
20. Postmine land uses approved for the areas requested for release include the following acreages by phase of release requested for the following land uses:

Release	Forestry	Fish and Wildlife Habitat	Developed Water Resources	Industrial/Commercial	Pastureland	Total Acres*
Phase I	331.1	240.3	21.5	25.6	0.0	618.5
Phase II and III	409.9	259.8	8.2	15.9	0.8	694.6
<b>Totals</b>	<b>741.0</b>	<b>500.1</b>	<b>29.7</b>	<b>41.5</b>	<b>0.8</b>	<b>1,313.1</b>

\*Revision No. 38 approved April 7, 2015.

21. The area proposed for Phases II and III release were determined to meet Phase I release requirements by Commission Orders dated April 18, 2006, December 5, 2006, and September 10, 2013.
22. The areas requested for Phases II and III releases have met the Phase II reclamation obligation for revegetation. These areas have land uses of forestry (409.9 acres), fish and wildlife habitat (259.8 acres), developed water resources (8.2 acres), industrial/commercial (15.9 acres), and pastureland (0.8 acre). These lands have been reclaimed to the postmine land uses, managed accordingly, and have been inspected

monthly since 2005. Vegetation observed appears healthy and self-sustaining.

- . (a). The 409.9 acres of forestry are included in five land management units (LMUs): DII-2005F [3/29/2005 extended responsibility area (ERA)], DIII-2006F (5/11/2006 ERA), DI-2009F (12/21/2009 ERA), DIII-2009F (12/21/2009 ERA), and DIII-2010F (3/16/2010 ERA). Forestry areas were planted with loblolly pine. Luminant submitted 2015 ground cover and stem count data for LMU DII-2005F by letter dated September 17, 2015 approved as meeting the performance standards of §12.395(c)(2) by SMRD letter dated February 5, 2016. Ground cover and stem count data for LMU DIII-2006F submitted by letter dated January 8, 2015 was approved by letter from SMRD dated May 25, 2016. Ground cover and stem count for LMUs DI-2009F, DIII-2009F, and DIII-2010F for 2014 and 2015 were submitted by letter dated August 26, 2015 and were approved by letter from SMRD dated January 21, 2016. The data submitted met the performance standards of §12.395(c)(2).
- (b). The 259.8 acres of fish and wildlife habitat are located within five LMUs, DII-2005H (3/29/2005 ERA), DIII-2006H (5/11/2006 ERA), DI-2009H (12/21/2009 ERA), DIII-2009H (12/21/2009 ERA), and DIII-2010H (3/16/2010 ERA). Fish and wildlife areas were planted with a variety of trees including bald cypress, loblolly pine, oaks, and plum. The dates of submittal and approval of data were: 2015 data submitted for LMU DII-2005H on September 17, 2015, approved February 5, 2016; 2014 and 2015 data submitted for LMUs DI-2009H, DIII-2009H, and DIII-2010H. These land management units 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 indicates that the vegetation meets this requirement. Industrial commercial land use proposed for Phases II and III release comprise 15.9 acres; developed water resources comprise 8.2 acres. The industrial/commercial areas not consisting of roads gravel are revegetated with common and coastal bermudagrasses and native grasses. Data were submitted for the industrial/commercial areas and were approved by letter dated December 16,



2015.

- (d). The 0.8 acre of pastureland is contained within LMU DIII-2006 (5/11/2006 ERA). Ground cover and productivity data were submitted for 2008 by letter dated August 28, 2009 and approved by SMRD by letter dated June 14, 2010. Ground cover and productivity data was submitted for 2010 by letter dated August 31, 2011 and approved by letter dated December 16, 2011. Ground cover data was submitted by letter dated December 20, 2011 and was approved by letter dated April 25, 2012. Luminant submitted required soil fertility data. The data did not reflect augmented fertilization.
23. Appendix V of Staff's inspection report contains Permanent Structures Tables, Structure Photographs, and a Photograph Location Map. Appendix IV of Staff's inspection report contains General Photographs and a Photograph Location Map. Staff's inspection of Parcel 11 reflected that no portion of Pond DI-114R is located within the proposed release area. The pond is not approved for release in this docket. Structures proposed within Phase II and III areas are approved as permanent and are stable. In addition to the structures proposed for Phase I release (Finding of Fact No. 18), the following structures are approved as permanent: Phases II and III – Todd Branch Restoration, Impoundment DII-29R, DIII-23RW, Depressions DI-SD-39 through DI-SD-41 and DIII-SD-13 through DIII-SD-17, roads - DI-203 Access Road, DII-52 Access Road, and DIII-West Access Road No. 1, Drainage features, including drop structures DI-27A, DI-27B, DI-34, DI-42A, DI-237, DIII-31, DII-30B, Inlet Structure DII-29R, Spillway Structure DII-29R, Drop Inlet Structure, DII-238, Spillway Structure 23RW, Flash Board Riser DIII-23RW, and Spillway Structures DIII-103RW, DIII-105RW, DIII-106RW, DIII-107RW, DIII-108RW, and DIII-111RW.
24. Eight (8) small depressions are located within the Phase III requested areas, DI-SD-39 through DI-SD-41, and DIII-SD-13 through DIII-SD-17. All depressions were approved as permanent on May 16, 2014, except for DIII-SD-17, approved in Revision Application No. 87 by letter dated June 8, 2016.
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 seven temporary sedimentation ponds, three 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 seven temporary sedimentation ponds capturing runoff from the areas proposed for Phase II release including DI-16, DI-40, DI-41, DI-42, DI-79, DIII-5, and DIII-6. 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. 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.3-1 through III.B.3-7 for individual pond monitoring initiated in October 2003 (application, page II.B.3-2). 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), Se (0.036 mg/L), and SS/TSM (0.5 mg/L). (There is no requirement for flow.) Prior to 2003, the ponds were not sampled individually but were flow-weighted into composite samples. Based upon the summary of the data from October 2003, there were no exceedances of the TPDES water quality effluent standards for DI-16, DI-40, DI-41, DI-42, DI-79, DIII-5, and DIII-6, although exceedances were noted for

dates prior to October 2003 [Pond DI-40, April 11, 1995 (TSS of 74 mg/L), Pond DI-41 (May 25, 1996, pH 9.35 s.u., November 2, 1997, TSS, 73 mg/L, and Total Fe, 7.97 mg/L), and for Pond DIII-6 (Fe, March 8, 2004)]. Staff identified no trends other than rising concentrations of Mn in Pond DI-79. No explanation was provided by Luminant for this trend. Parcel 9 drains to this pond; Staff recommends against Phase III release for Parcel 9. 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 in Tables III.B.3-8 through III.B.3-14 summarizing quarterly sampling for Ponds DI-16, DI-40, DI-41, DI-42, DI-79, DIII-5, and DIII-6 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 Ponds DII-29R, DI-114, and DIII-23RW (Table III.B.3-15) required for Phase II release. Although there was no flow for 10 of the 12 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 – 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 DI-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 and 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 stations than the upstream stations 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). Flow-weighted averages for TSS are similar at upstream and downstream station.
- (d). Flow-weighted averages 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). Flow-weighted 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 flow-weighted average value of selenium is twice that at the downstream 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 are less at the downstream HSW-1 station as compared to undisturbed HSW-2; average acidity values have increased at the downstream USGS 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. For Phase III requested areas, Luminant provided general chemistry data and water levels for 11 monitoring wells made up of overburden, underburden, and spoils wells. The spoil-well data indicate that water levels in the spoil-monitoring wells have risen in response to resaturation and have stabilized. The reestablishment of approximate original contour and vegetation has helped to ensure that the infiltration capacity (recharge) approaches that of premine conditions. Water quality has followed trends expected from the PHC and CHIA for the mine. The TDS (total dissolved solids) concentrations in water from the five spoil monitoring wells in the proposed release area have generally decreased over the period of record. Long-term quarterly monitoring of the overburden and underburden systems in areas adjacent to the proposed release area indicates no significant impacts to water level and water quality in adjacent areas. Localized effects to underburden and overburden water quantity have been only temporary. Otherwise, the ground-water systems adjacent to the proposed release area have not been impacted by deterioration in groundwater quality or quantity as a result of the mining or reclamation activities.

29. 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	Staff Review
1	64.2	I		
2	192.9	I		
3	184.6	I	WD	Structure modified without approval (DIII-103RW Grass-Lined Spillway Structure)
4	69.1	II and III	Phase III WD*	
5	51.8	II and III	Phase III WD*	
6	41.8	II and III	Phase III WD*	
7	18.1	II and III	Phase III WD*	
8	40.2	II and III	Phase III WD*	
9	89.7	II and III	Phase II and III* WD	Runoff drains to pond for which data show an upward trend in Mn
10	176.8	I		
11	75.0	II and III	Phase II and III* WD	Discrepancy between size and location of Pond DI-114R, and area within tract with postmine land use as developed water resources is actually densely covered with southern pine trees.
12	26.4	II and III	Phase III WD*	Rising trends in TDS above stream segment criteria
13	282.5	II and III	Phase III WD*	Rising trends in TDS above stream segment criteria
Totals	1,313.1			

NOTE: Although Staff recommended that Parcel 9 not be released from Phase II requirements because Staff noted that runoff drains to Pond DI-79 which has exhibited a rising trend in Mn, and Staff also indicated that Parcel 10 flows through Parcel 9, Parcel 10 is requested for Phase I only.



\*All parcels requested for Phase III release were not recommended for release by Staff due to the following: In addition to the rising trend in TDS concentrations in Pond DI-41 (above stream segment criterion) to which Parcels 12 and 13 drain, as indicated above, Staff noted the following:

- (a). The pH range (2.7 standard units, or 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)].
  - (b). 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.
30. The notice of application for release did not include an amount of eligible bond reduction requested but stated that an eligible bond reduction amount may be determined. Luminant does not request an adjustment to the approved bond instrument.
31. Staff recommends \$4,595,242.85 as the eligible bond reduction amount. This amount fairly indicates reclamation costs attributable to the acreage recommended for release. The last reclamation cost estimate was estimated in Revision No. 34 for the permit approved administratively as the minimum required bond amount by SMRD's letter dated December 3, 2014. The costs used in the bond estimate were used in calculating the recommended eligible bond reduction for the releases as approved in this Order. Although worst-case pit closure costs had been used to calculate reclamation costs, because physical pits do not currently exist within any parcels requested for release, Staff used a mined rate of \$5,307 for all mined areas rather than worst-case pit rates. The Commission may approve the eligible bond reduction amount set out in Table 6 of Staff's review memorandum dated October 3, 2016 that reflects the following:

Parcel No.	Total Acres	Phase(s) Sought	Acreage by Bonded Rate				Reduction Sought <sup>1</sup>	Phase Recomm.	\$ Reduction Recomm.
			WCP	WCP	Mined	Phase			

			PC-D	B&G		I			
1	64.2	I	0.0	23.2	41.0	0.0	\$374,780.34	I	\$374,780.34
2	192.9	I	0.0	62.3	130.6	0.0	\$1,126,092.33	I	\$1,126,092.33
3	184.6	I	0.0	12.2	172.4	0.0	\$1,077,639.42	None	0.0
4	69.1	II & III	0.0	0.0	0.0	69.1	\$316,201.60	II	\$316,201.60
5	51.8	II & III	0.0	0.0	0.0	51.8	\$237,036.80	II	\$237,036.80
6	41.8	II & III	0.0	0.0	0.0	41.8	\$191,276.80	II	\$191,276.80
7	18.1	II & III	0.0	0.0	0.0	18.1	\$82,825.60	II	\$82,825.60
8	40.2	II & III	0.0	0.0	0.0	40.2	\$183,955.20	II	\$183,955.20
9	89.7	II & III	0.0	0.0	0.0	89.7	\$410,467.20	none	0.0
10	176.8	I	3.4	0.0	173.4	0.0	\$1,032,105.36	I	\$1,032,105.36
11	75.0	II & III	0.0	0.0	0.0	75.0	\$343,200.00	None	0.0
12	26.4	II & III	0.0	0.0	0.0	26.4	\$120,806.40	II	\$102,743.52
13	282.5	II & III	0.0	0.0	0.0	282.5	\$1,292,720.00	II	\$1,099,433.50
Totals	1,313.1		3.4	97.7	517.4	694.6			\$4,595,242.85

WCP PC-D=worst-case pit, pit closure-dragline

WCP B&G=worst-case pit, backfilling and grading, closure area

<sup>1</sup> Includes a 10% administrative cost

32. 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.
33. 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.
34. Luminant and the 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.

**CONCLUSIONS OF LAW**

1. Proper notice was provided for this request for release of reclamation obligations. This application has been properly posted for consideration by the Commissioners
2. A public hearing on the request is not warranted.
3. Luminant has complied with all applicable provisions of the Act and the Regulations for release of the acreages approved in this Order.
4. The eligible 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 \$4,595,242.85.

**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 releases of reclamation obligations are approved as set out in Finding of Fact No. 31;

**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 No. 31;

**IT IS FURTHER ORDERED** that the Commission determines an eligible bond reduction amount of \$4,595,242.85;

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

**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;

**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 costs of reclamation change; 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 of an application is filed by any party at interest, this order shall not become final and effective until such motion is overruled, or if such motion is granted, this order shall be subject to further action by the Commission. Pursuant to Tex. Gov't Code §2001.146(e), the time allotted for Commission action on a motion for rehearing in this case is 100 days from the date the Commission Order is signed.

SIGNED AT AUSTIN, TEXAS, on March 20, 2018.

RAILROAD COMMISSION OF TEXAS

*Christi Craddick*

CHAIRMAN CHRISTI CRADDICK

*Ryan Sitton*

COMMISSIONER RYAN SITTON

*Wayne Christian*

COMMISSIONER WAYNE CHRISTIAN

ATTEST:

*Kathy Way*

Secretary, Railroad Commission of Texas

