

**RAILROAD COMMISSION OF TEXAS  
HEARINGS DIVISION**

**SURFACE MINING DOCKET NO. C15-0004-SC-34-F  
APPLICATION BY LUMINANT MINING COMPANY, LLC  
RELEASE OF RECLAMATION OBLIGATIONS  
PHASE I, II AND III FOR 8.5 ACRES AND PHASE II AND III FOR 920.9 ACRES  
PERMIT NO. 34F, MONTICELLO WINFIELD MINE  
TITUS AND FRANKLIN COUNTIES, TEXAS**

**ORDER APPROVING VARIOUS PHASES OF RELEASE OF RECLAMATION OBLIGATIONS  
FOR AN AGGREGATE 929.4 ACRES**

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 the release of Phase I, II and III reclamation obligations for 8.5 acres and release of Phase II and III release of 920.9 acres within Permit No. 34F, Monticello Winfield Mine, Titus and Franklin Counties, Texas. The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, Tex. Nat. Res. Code Ann. Ch. 134 (Vernon Supp. 2019) ("Act"), and the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 Tex. Admin. Code Ch.12 (Thomson West 2019) ("Regulations"). No new bond instrument has been filed, and Luminant does not request reduction of the bond at this time.

Permit No. 34F currently authorizes surface coal mining operations at the Monticello Winfield Mine. Copies of the Application for release were filed in the required county and Commission offices and notice was mailed to landowners of the area requested for release and to adjoining landowners. After public notice, no comments 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"). There remain no outstanding issues between the parties. Based on the information provided by the application, Staff analyses and the inspection of the area, Staff recommends the approval of the release with which Luminant concurs. The parties have filed waivers of preparation and circulation of a proposal for decision.

Based upon the evidence in the record, reclamation requirements have been met for the acreage requested for release. The Commission approves the request as set out in this Order. Luminant is eligible to reduce the bond by an amount attributable to the 929.4 acres when an adjustment to the bond is requested in the future.

**FINDINGS OF FACT**

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

1. By letter dated September 30, 2014, Luminant Mining Company LLC ("Luminant") filed its application with the Railroad Commission of Texas' ("Commission") Surface Mining and Reclamation Division ("SMRD" and/or "Staff") for Phase I, II and III release of reclamation obligations for 8.5 acres and Phase II and III release of reclamation obligations for 920.9 acres at its Monticello Winfield Mine, Permit No. 34F, located in Titus and Franklin Counties, Texas. Luminant filed supplemental information in response to Staff's technical

reviews of the Application by letters dated December 30, 2015 ("Supplement No. 1"), March 18, 2016 ("Supplement No. 2"), September 13 and 15, 2016 ("Supplement No. 3"), September 28, 2018 ("Supplement No. 4"), and March 19, 2019 ("Supplement No. 5"). The procedural history of the subject docket is further addressed in Finding of Fact No. 3, *infra*.

2. The application is made pursuant to Texas Surface Coal Mining and Reclamation Act, Tex. Nat. Res. Code Ann. Ch. 134 (Vernon Supp. 2019) ("Act"), and the Coal Mining Regulations, Tex. R.R. Comm'n, 16 Tex. Admin. Code Ch. 12 (Thomson West 2019) ("Regulations"). The application was properly certified in accordance with §12.312(a)(3).
3. Luminant's currently bonds all its statewide mining operation, including those conducted under Permit No. 34F, with a blanket collateral bond in the amount of \$975,000,000 that was accepted by Commission Order dated September 27, 2016 [Docket No. C16-0021-SC-00-E]. No changes to the accepted bond are proposed in the application.
4. Staff declared the application administratively complete on March 13, 2015. Staff's technical analysis ("TA") and field inspection report ("Inspection Report") were filed in the docket on October 8, 2015. For numerous reasons outlined in its TA, primarily regarding postmine soil testing and surface-water protection demonstrations, Staff did not recommend release of 920.9 acres proposed for Phase II & III reclamation obligations, only recommending approval of Phase I release on the 8.5 acres proposed for Phase I-III release. After submittal by Luminant of additional information on December 30, 2015, Staff filed Addendum No. 1 to its TA ("TAAddm1") on February 18, 2016, recommending Phase I & II release on 8.5 acres proposed for Phase I-III release, Phase II release on 273.2 acres proposed for Phase II & III release, full release on 2.6 acres proposed for Phase II & III release, and no release on 645.1 acres proposed for Phase II & III release. After submittal by Luminant of additional information on March 18, 2016, Staff filed Addendum No. 2 to its TA ("TAAddm2") on June 28, 2016, recommending no changes from that set forth in its TAAddm1. Following a lengthy Luminant-requested suspension of review of the application, meeting with Staff, and subsequent submittal of a further supplement, Staff filed TA Addendum Nos. 3 and 4, recommending release of reclamation obligations as proposed by Luminant for the aggregate 929.4 acres. The chronology of the application and associated actions is set out below:

DATE	ACTION
September 30, 2014	Luminant submits Application for Phase I, II and III release of reclamation obligations for 929.4 acres
October 7, 2014	Copy of application provided to Hearings Division for review of public notice
November 5, 2014	Assigned Administrative Law Judge ("ALJ") Randall Collins provides comment letter on proposed public notice text and map

DATE	ACTION
December 2, 2014	Luminant submits revised proposed public notice
December 5, 2014	Staff notifies Mt. Pleasant Mayor and County Judges for Franklin and Titus Counties of the proposed release
December 5, 2014	ALJ Collins approves the revised proposed public notice
January 29, and February 5, 12, and 19, 2015	Luminant publishes Notice of Application in newspapers of general circulation in the locality of the surface coal mining operation
March 9, 2015	Luminant submits proof of publication and landowner notification
March 13, 2015	SMRD Director declares the application administratively complete
October 8, 2015	Staff files its initial TA
December 30, 2015 (rcv'd on January 4, 2016)	Luminant files response to Staff's initial TA
February 18, 2016	Staff files TAAddm1
March 18, 2016	Luminant files response to Staff's TAAddm1
June 28, 2016	Staff files TAAddm2
September 13 and 15, 2016	Luminant files response to Staff's TAAddm2
October 27, 2016	Via email, Staff shares draft TA Addendum No. 3 ("TAAddm3") with Luminant
November 3, 2016	Docket considering the subject application reassigned to ALJ Kyle Lebby
November 16, 2016	Luminant requests that ALJ Lebby suspend review of the application to allow needed revisions to be processed prior to continued processing of the application
November 17, 2016	ALJ Lebby grants suspension until April 1, 2017
May 4, 2017	Luminant requests that ALJ Lebby extend the suspension of review

DATE	ACTION
May 22, 2017	ALJ Lebby extends suspension until March 2018
April 2, 2018	Luminant requests that ALJ Lebby again extend the suspension of review
April 2, 2018	ALJ Lebby extends the suspension until September 1, 2018
September 28, 2018	Luminant submits supplemental information without transmittal letter
November 9, 2018	ALJ Lebby indicates that processing of this docket has resumed, and indicates that Staff's TAAddm3 should be formally filed in this docket
February 22, 2019	Staff and Luminant meet to discuss remaining concerns with application, as supplemented
February 25, 2019	Staff notifies ALJ Lebby of Luminant's request to have an additional few weeks to respond to the concerns discussed in the February 22, 2019 meeting
February 25, 2019	ALJ Lebby acknowledges Luminant's request
March 19, 2019	Luminant submits supplemental information
May 23, 2019	Staff files TA Addendum No. 4 ("TAAddm4"), including draft TAAddm3 as Attachment V

5. Notice of the Application was published once per week for four consecutive weeks in the *Mount Vernon Optic-Herald* and the *Mount Pleasant Daily Tribune*, newspapers of general circulation in the vicinity of the Monticello Winfield Mine in Franklin and Titus Counties, respectively. These papers also circulate in adjacent Camp and Morris Counties. Dates of publication in both newspapers were January 29, and February 5, 12, and 19, 2015. The notice of Application contains all information required by §134.129 of the Act and §12.312(a)(2) 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. The published notice is adequate notification of the request for release. The notice included the name of the permittee, the precise location of the land affected, the number of acres, permit number at the time of application and date approved, the amount of 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 notices contained information concerning the applicant, the location and boundaries of the permit area, the availability of the application for inspection and the address to which comments should be

sent. The notice included a map showing sufficient notice of the boundaries of the area requested for release. Luminant submitted affidavits of publication with newspaper clippings by letter dated March 9, 2015.

6. 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).
7. Copies of the Application were filed for public review in the offices of the County Clerk of Franklin and Titus Counties, Texas, and in the offices of the Surface Mining and Reclamation Division, Railroad Commission of Texas at 1701 North Congress Avenue, William B. Travis Building, Austin, Texas.
8. By letter dated March 9, 2015, Luminant submitted copies of letters notifying adjoining landowners, lessees, and leasehold interests, Southwestern Bell Telephone Company, Texas Department of Highways and Public Transportation, Tri-Special Utility District, South Franklin Water Supply Corporation, White Oak Springs Cemetery, Wood County Electric Cooperative, Inc., Verizon, U.S. Department of Agriculture Natural Resources Conservation Service, U.S. Army Corps of Engineers, Texas Commission on Environmental Quality, County Judges and Commissioners' Courts of Titus and Franklin Counties, and the City of Mount Pleasant, Texas, of the application for release in accordance with §12.312(a)(2). Staff indicates that the areas proposed for release are not located within the boundary of any municipality that would be notified pursuant to §12.313(c).
9. SMRD notified the County Judges of Titus and Franklin Counties of the Application as required by §134.133 of the Act by certified letters dated December 5, 2014. Although Staff indicates (Inspection Report, p.3) that the areas proposed for release are not located within the boundary of any municipality that would need to be notified pursuant to §12.313(c), SMRD also notified the Mayor of the City of Mount Pleasant, Texas, by certified letter dated December 5, 2014.
10. Pursuant to §12.312(b) of the Regulations, Staff notified owners of interests in lands and lessees within the requested release area of the application and the Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office (OSM) by letters dated October 2, 2014, of the date and time of Staff's field inspection scheduled for October 28, 2014. The notification stated that the subject release had been requested and, pursuant to §12.312, advised recipients of the opportunity to participate in the on-site inspection. Staff provided copies of the letters in Appendix II of Attachment III (Inspection Report) of the TA.
11. The inspection occurred on October 28, 2014, as scheduled. Following a pre-inspection meeting with a representative from Luminant, Mr. Monty Ward, SMRD Inspection and Enforcement ("I&E") Staff Inspector Lindsay N. Lang, accompanied by Mr. Ward, conducted the inspection of the areas requested for release. Except for eight issues identified in Findings of Fact, *infra*, the inspector found, as documented in the Inspection

Report, that the proposed release area was eligible for the requested release, pending Staff review.

12. The permit area is comprised of approximately 26,732 acres located approximately 2 miles north of Mount Pleasant, Texas, in Titus and Franklin Counties. The 929.4 acres proposed for release are located in the A, G and L Areas of the mine. A general location map of the permit area, with the 929.4 acres proposed for release identified, is found in Appendix I of Staff's Inspection Report. The area is depicted in photographs taken during Staff's inspection. The application, photographic evidence and Staff's Inspection Report and TA provide support for varied phases of release of reclamation obligations for the subject 929.4 acres. In its TA and TA addenda, Staff evaluated the proposed release application by dividing the proposed release areas into 12 parcels based on geographical location and permanent infrastructure, as shown on figures contained in Staff's October 8, 2015, TA (Attachment I).
13. As set forth in the application (page IV.A.5-1), the approved postmine land uses within the 929.4-acre proposed release areas are as follows:

<b>Proposed Release Phases</b>	<b>Pastureland</b>	<b>Fish and Wildlife</b>	<b>Developed Water Resources</b>	<b>Forestry</b>	<b>Industrial/ Commercial</b>	<b>Total</b>
I, II & III	6.0	0	0	0	2.5	8.5
II & III	242.8	138.3	17.5	522.2	0.1	920.9
<b>Total</b>	<b>248.8</b>	<b>138.3</b>	<b>17.5</b>	<b>522.2</b>	<b>2.6</b>	<b>929.4</b>

As noted in I&E Staff's Inspection Report, the acres listed in the above table for acres proposed for Phase II & III release actually total to 921.0 acres; however, this discrepancy is due to rounding of the individual land uses to the nearest 0.1 acre, so Luminant and Staff chose to identify the more accurate *total* acreage as 920.9 acres.

14. The Commission previously approved Phase I release of reclamation liability for 920.9 acres proposed for Phase II and III release by Orders dated February 26, 2008 [Docket No. C6-0021-SC-34-F, 260.3 acres] and March 22, 2011 [Docket No. C10-0007-SC-34-F, 660.6 acres].
15. The 924.9 acres proposed for release of reclamation liability contain two (2) diversions, three (3) permanent impoundments, twenty (20) drop structures, one (1) pond inlet structure, and six (6) access roads. Except for Impoundment LR-1, all structures were approved as permanent by Staff between 1995 and 2008. By letter dated February 29, 2016, Staff approved Impoundment LR-1 as a permanent postmine feature with revised detailed design plans that were submitted to address runoff draining through an existing culvert that affected an area immediately west of the structure as noted in Staff TA and Inspection Report (Revision No. 27). The LR-20 Spillway Drop Structure, not identified by Luminant in the application, was located within the proposed release area during Staff's inspection of the area; subsequently, Luminant provided a copy of SMRD's approval letter for the drop structure in Supplement No. 1. All structures have been inspected by SMRD I&E Staff and documented to be structurally intact with the surrounding areas well

vegetated, and are consistent with the approved postmine land use. Two structures, Drop Structure L-103 and Impoundment LR-21, initially proposed for release were removed from the request. Drop Structure L-103 was reclaimed prior to Staff's inspection of the area. Additionally, Luminant had proposed in the approved permit to construct and build Impoundment LR-21 within the area of Parcel No. 10; however, Staff's TA and Inspection Report note this impoundment was never built. At the time of submittal of the application, Luminant continued to show the area of this impoundment on its postmine land use map as DWR land use. By letter dated April 21, 2015, Luminant submitted Revision No. 23 to SMRD, proposing to remove the impoundment from the area and revise the postmine land use from DWR to forestry, an appropriate postmine land use consistent with the status of the footprint in the field. Revision No. 23, which also changed the postmine land use of the area west of Impoundment LR-1 to DWR, was approved by SMRD letter dated September 9, 2016. A copy of SMRD's approval letter for Revision No. 23 was provided as an attachment to Staff's draft TAAddm3.

16. Phase I release of reclamation obligations have been met for subject 8.5 acres in accordance with Phase I requirements for backfilling, regrading, and drainage control as required by §12.313(a)(1). The aggregate postmining land uses in the areas proposed for Phase I release consist of 6.0 acres of pastureland and 2.5 acres of industrial/commercial (I/C). Staff designated these areas as proposed Release Parcel Nos. 2 (1.0 acre of I/C), 4 (1.5 acres of I/C), 6 (3.8 acres of pastureland) and 7 (2.2 acres of pastureland) in its TA and addenda thereto.
  - a. The area has been backfilled and regraded to its approximate original contour [§12.385(a)]; eliminated all highwalls [12.385(b)]; placed suitable topsoil substitute material over regraded spoil as plant-growth material; constructed no cut-and-fill terraces; and, accomplished drainage control in accordance with the approved reclamation plan. Regrading of the area occurred between 1981 and 2004 in such a manner that erosion and water pollution has been minimized. [§12.385(d)]
  - b. By letters dated April 24, 2013 and May 7, 2014, SMRD determined that the soil-testing data for all soil-testing grids within the areas proposed for Phase I release do not indicate the presence of acid- and/or toxic-forming materials in the top four feet of postmine soil. [§12.386]
  - c. No diversions are contained within the 8.5-acre area proposed for Phase I release. [§12.341]
  - d. No permanent impoundments are contained within the 8.5-acre area proposed for Phase I release. [§12.347(b)]
  - e. Runoff from the 2.5-acre I/C area (Parcel Nos. 2 and 4) requested for Phase I release flows into final discharge Pond F2R-3, and runoff from the 6.0 acres of postmine pastureland requested for Phase I release flows into final discharge Pond C-20 (Parcel Nos. 6 and 7). Neither pond is proposed for release of reclamation obligations in this application. [§12.343]

- f. C Area Access Road Nos. 1 and 2 are located within the proposed 8.5-acre Phase I release area. These roads were approved as permanent by letter dated July 11, 1996. [§12.400]
  - g. The 8.5-acre Phase I release area also contains a portion of Titus County Road (TCR) 2500 (Parcel Nos. 2 and 4). As noted in the I&E Inspection Report, no information was provided in the initial application to demonstrate that Titus County had accepted any I/C postmine land-use portions of TCR 2500 (G Area) proposed for Phase I, II & III release, nor, in fact, accepted any I/C postmine land-use portions of TCR 1400 (L Area) proposed for Phase II & III release (in Parcel No. 9). The I&E Inspection Report also identified that Titus County was not listed as an owner of interest for Tracts 129 and 1230. Staff indicated in its initial TA (October 8, 2015) that, on the tract sheet in Section II.B of the application for Tract 1230, which contains these two I/C road segments, Titus County was not listed as an owner of "Leasehold or Other Interests" with respect to its ownership of TCR 2500 (originally named County Road SW19) and TCR 1400. In its December 30, 2015 response (Supplement No. 1), Luminant identified that the tract sheets for Tracts 1230 and 129 indicate that both TCR 2500 and TCR 1400, respectively, are prescriptive use. This clarification effectively identifies Titus County as a holder of "other interest" within the tracts. In Appendix C of Supplement No. 1, Luminant provided a copy of a July 11, 1988 Order of the Titus County Commissioners' Court accepting the re-established portions of TCR 2500 (renamed), and a copy of a November 13, 2006 Commissioners' Court Order accepting the relocated TCR 1400 as a new county road segment.
  - h. One area designated for disposal of non-coal waste occurs within the area requested for Phase I release (portion of 1.0-acre Parcel No. 2). This area has been operated in accordance with §12.375 of the Regulations and applicable TCEQ regulations. The acreage has been deed recorded as a waste management unit for Class III waste with the County courthouse and registered with TCEQ. During reclamation, the area was covered with a minimum of at least four feet of suitable material. [§12.375]
17. Luminant has successfully completed all activities related to revegetation of the 929.4 acres proposed for release of Phase II and III reclamation obligations in accordance with the approved reclamation plan and §§12.313(a)(2)-(3) and 12.395 of the Regulations; including completion of the extended responsibility period, as applicable. Additionally, a random 10% resampling of required soils within the proposed release area indicates the subject acreage may be granted Phase III release, having satisfied the soil suitability requirements of §§12.335 and 12.386 and the approved postmine soil-testing plan.
- a. The 248.8 acres of pastureland postmine land use have been revegetated primarily with Coastal and Common bermudagrass consistent with general revegetation requirements at §12.390. The 248.8 acres are comprised of land management units (LMUs) 08-G-2P, 08-L-2P and 06-C-1P. In accordance with the approved postmine soil-testing plan, Luminant submitted soil-fertility data for the pastureland LMUs. For LMUs 08-G-2P and 08-L-2P, SMRD found by letters dated July 8, 2010, August 31, 2011, and August 20, 2012, that soil-fertility data for samples collected in 2009, 2010, and 2011, respectively, did not indicate that augmented fertilization occurred within



the LMUs during the 2009 through 2011 growing seasons. For LMU 06-C-1P, SMRD found by letters dated May 17, 2007, July 1, 2008, and May 6, 2009, that soil-fertility data for samples collected in 2006, 2007, and 2008, respectively, did not indicate that augmented fertilization occurred within the LMU during the 2006 through 2008 growing seasons.

- b. For pastureland to be eligible for Phase III release, vegetation parameters must equal or exceed the approved standards during the growing seasons of any two years of the extended responsibility period ("ERP"), except the first year [§12.395(c)(2)]. LMUs 08-G-2P and 08-L-2P were both placed in the ERP on September 17, 2008; LMU 06-C-1P was placed in the ERP on March 6, 2006. Luminant submitted groundcover and productivity reports for the 2010 and 2011 growing seasons for LMUs 08-G-2P and 08-L-2P by letters dated December 28, 2010, and April 12, 2012, respectively. SMRD determined that the groundcover and productivity data exceeded the approved standards for the land use of pastureland for these LMUs during the 2010 and 2011 growing seasons by letters dated December 9, 2011, and September 18, 2012, respectively. SMRD determined that the groundcover and productivity data exceeded the approved standards for the land use of pastureland for LMU 06-C-1P during the 2007 and 2008 growing seasons by letters dated October 31, 2008, and September 1, 2009, respectively. Luminant has met Phase III requirements for revegetation of pastureland in accordance with §12.395.
- c. Two fish and wildlife habitat LMUs (LMUs 06-L-1H and 08-L-2H) and two forestry LMUs (LMUs 06-L-1F and 08-L-2F) are located within the proposed release area (Parcel Nos. 8 through 12). SMRD found by letter dated September 17, 2013 that the data for forestry LMU 06-L-1F indicated that vegetative ground cover and woody-plant stocking within the LMU exceeded 90% of the approved success standards during the 2014 growing season. By letter dated February 11, 2015, SMRD found that Luminant's data for LMUs 06-L-1H and 08-L-2H indicated that vegetative ground cover and woody-plant stocking exceeded 90% of the approved success standards during the 2014 growing season. Regarding forestry LMU 08-L-2F, I&E Staff identified in the Inspection Report that a 9.7-acre portion of the LMU (part of Parcel No. 11) had not received a finding of revegetation success due to poor performance of planted pine trees, as documented in SMRD letter dated February 11, 2015, provided as an attachment to the TA. Staff continued to note this same issue in its TAAddm1. In Supplement No. 2 (dated March 18, 2018), Luminant indicated that it had planted additional southern pine seedlings within this 9.7 acres. In draft October 19, 2016 TAAddm3, filed as an attachment to Staff's May 23, 2019 TAAddm4, Staff included a copy of its September 30, 2016 approval letter for the replanted 9.7 acres finding revegetation was successful on the parcel within forestry LMU 08-L-2F based on SMRD's inspection of the area, aerial imagery and photos and maps provided by Luminant. Revegetation of the fish and wildlife and forestry postmine acreage has been completed as required at §§12.313(a)(2) and 12.395(a)(2) for Phase II and III release of reclamation liability.

- d. The 17.5 acres of DWR postmine land use meet applicable revegetation requirements for Phase II and III release. During Staff's filed inspection of the area, it noted the areas not covered by water have been planted with Common bermudagrass and native grasses and that the vegetation is adequate to control erosion as required for Phase II and III release of DWR acreage.
  - e. Revegetation on I/C postmine land use acreage must be sufficient to control erosion prior to Phase II and III release. By letter dated August 5, 2014, Luminant submitted vegetative ground-cover data for 2.4 of the aggregate 2.6 acres of I/C land use within the proposed release boundary. During its inspection of the area, Staff identified that no ground-cover data were provided for vegetated portions of 0.1 acre of I/C postmine land use in G Area (southernmost portion of Parcel No. 2 on Tract 1230) and 0.1 acre of I/C postmine land use in L Area (portions of Parcel No. 9 on Tract 129). These areas are partially comprised of portions of County Road ("CR") 2500 (Parcel No. 2) and CR 1400 (Parcel No. 9). Staff indicated that, by examination of 2014 aerial imagery from the National Agricultural Imagery Program (NAIP) and photographs taken during the field inspection of the area (Photos 54 and 62), it determined qualitatively that these small portions of these tracts appear to have well-vegetated rights-of-way and do not represent an impediment to release (TA).
  - f. The soil-testing plan ("STP") approved for Permit No. 34D, which included a consolidation of Permit Nos. 30C and 34C and was approved by Order dated February 6, 2001, did not include a requirement to submit a random 10% resampling of the soil grids. This requirement was reinstated in the Order dated March 25, 2014, issuing Permit No. 34F. The pastureland LMUs were initiated into the ERA during this period between February 6, 2001 and March 25, 2014 and data demonstrating Phase III revegetation success had been approved at the time this change to the STP became effective [Finding of Fact No. 17 (b), *supra*]; therefore, ten-percent random resampling data are not required. Given Phase III revegetation success for the forestry and fish and wildlife LMUs had not been determined prior to the reinstatement of the 10% resampling requirement in the STP [Finding of Fact No. 17(c), *supra*], Luminant submitted soil-testing data for a random 10% of the soil grids within these LMUs by letter dated July 18, 2015. SMRD found the resampling data indicted compliance with the approved STP by letter dated December 17, 2015.
  - g. Completion of the five-year period of extended responsibility applicable to this permit area having at least 26 inches of rainfall annually has been met for the postmine pastureland, forestry and fish and wildlife acreage within the proposed release area. These areas were accepted into the ERP on either March 6, 2019 or September 17, 2008. The ERP is not applicable to DWR or I/C land use acreage. [§12.395(c)(2)]
  - h. No portion of the area proposed for release of reclamation liability has soils classified as prime farmland prior to mining for which specific standards would apply. [§§12.624-.625]
18. The 929.4 acres proposed for release from Phase II requirements are not contributing suspended solids to streamflow or runoff outside the permit area in excess established

effluent limitations pursuant to §12.313(a)(2). An examination of water discharged from sedimentation ponds to receiving streams shows that the water-quality requirements §12.349 have been met. Mining activities were conducted to minimize the formation of acidic or toxic drainage and to prevent additional contributions of suspended solids to streamflow outside the permit area and to otherwise prevent water pollution. Based upon the application, Commission records, and Staff review, Phase II surface water quality and quantity have been protected as demonstrated by the surface water monitoring data collected in accordance with the approved long-term surface water monitoring (LTSM) plan.

- a. Discharge from the proposed release areas in final discharge sedimentation Ponds F2R-3, G-1, L-1 and L-2 remains in compliance with the TCEQ-issued TPDES permit water-quality effluent standards, as demonstrated in Application Tables III.B.3-1, III.B.3-2, III.B.3-3 and III.B.3-4, respectively. From 2004 to 2014, monitoring data for these four final-discharge ponds have shown a pH consistently within the range of 6.0 to 9.0 s.u., and total settleable matter (TSM) consistently under the allowable daily maximum of 0.5 mL/L.
- b. Discharge from all proposed release areas monitored at final discharge monitoring point L-9 remains in compliance with the TCEQ-issued TPDES permit water-quality effluent standards, as demonstrated in Application Table III.B.3-6. From 2008 to 2014, monitoring data for this monitoring point have shown a pH consistently within the range of 6.0 to 9.0 s.u., and TSM consistently under the allowable daily maximum of 0.5 mL/L.
- c. Discharges from the proposed release areas in final discharge sedimentation Ponds L-4 and M-1 remain in compliance with the TCEQ-issued TPDES permit water-quality effluent standards, as demonstrated in Application Tables III.B.3-5 and III.B.3-7. From 2004 to 2014, monitoring data for these ponds have shown a pH consistently within the range of 6.0 to 9.0 s.u., and TSM consistently under the allowable daily maximum of 0.5 mL/L.
- d. Luminant provided sampling data for iron, total suspended solids (TSS) and selenium as contained in Tables III.B.3-5 and III.B.3-7, respectively, for Pond L-4 (from 2003 and 2004) and Pond M-1 (from 2003 to 2005). TSS concentrations were consistently below the allowable daily maximum of 70 mg/L and the allowable daily average of 35 mg/L. Total iron concentrations were also consistently below the allowable daily average of 3.0 mg/L and allowable daily maximum of 6.0 mg/L. Selenium concentrations were consistently under the allowable daily maximum of 0.036 mg/L.
- e. Luminant has demonstrated that discharges from sedimentation Ponds F2R-3 (Parcel Nos. 1 through 5), G-1 (Parcel Nos. 1 through 5), L-1 (Parcel Nos. 9, 11 and 12), L-2 (Parcel Nos. 11 and 12), L-4 (Parcel Nos. 11 and 12) and M-1 (Parcel Nos. 10 and 11), and the L-9 monitoring point (Parcel Nos. 9 and 10) have complied with the water-quality limitations established in TPDES Permit No. 269700 (alternative limitations). The data indicate that runoff from the proposed release areas that drain to these final

discharge sedimentation ponds will not have a negative impact downstream of Parcel Nos. 1 through 5, and 9 through 12.

- f. Parcel Nos. 6 and 7 (Phase I, II and III) are within the watershed of Pond C-20. Staff indicated that the majority of the watershed contributing flow to Pond C-20 has already obtained Phase III release from reclamation obligations (approved May 24, 2013), and Luminant indicates that it no longer monitors Pond C-20 (letter to TCEQ dated March 13, 2014). Staff noted in its initial TA that the monitoring data for through 1<sup>st</sup> Quarter 2014 for Pond C-20 (at that time a final discharge pond), and an evaluation of that data, needed to be provided in support of the proposed release of Parcels 6 and 7. and did not recommend in its initial TA that Phase II release from reclamation obligations be approved for Parcel Nos. 6 and 7. In its February 18, 2016, TA Addendum No. 1, Staff noted that the SMRD files indicate that Luminant sent a March 13, 2014 letter to TCEQ (a copy was received by SMRD separately in the application) indicating that Luminant would no longer monitor Pond C-20 as a final discharge pond. In response to Staff concerns noted in the initial TA, Luminant provided the monitoring data through 1<sup>st</sup> Quarter 2014 and an evaluation of these data for the Pond C-20 watershed in its December 30, 2015 response supplement. Staff indicates that, based on this data evaluation, Luminant has adequately demonstrated that discharges from Pond C-20 have complied with water-quality standards of TPDES Permit No. 269700 (alternative limitations), and recommends in TA Addendum No. 1 that Phase II release from reclamation obligations be approved for Parcel Nos. 6 and 7.
- g. Parcel No. 8 (Phase II and III) has been and remains outside of surface-water control. Staff indicates that this parcel was associated with the reclaimed D-23 Equipment Walkway (approved July 27, 1995), was never mined, and is not required to be within surface-water control [§12.340(a)]. Based on the inspection, the area is fully vegetated and does not contribute suspended solids to streamflow. It does not appear that Parcel No. 8 will pose a threat hydrologically because it is fully revegetated. Requirements for release of Parcel No. 8 from Phase II reclamation obligations have been met.
- h. Water quality data for four consecutive quarters for permanent Ponds LR-1 (Parcel No. 11), LR-15 (Parcel No. 11), and LR-20 (Parcel No. 12), which drain into Stream Segment No. 0303 (Sulphur River Basin), were provided by Luminant. All of the ponds are located in a proposed Phase II and III release area. The permanent ponds were sampled for pH and electrical conductivity (EC). Staff estimated the TDS concentrations by multiplying EC by a factor of 0.65. Because water-quality standards do not exist for permanent ponds, Staff used the annual average criteria for TCEQ Stream Segment No. 0303 for comparison purposes. The water-quality data provided for the ponds that drain to Stream Segment No. 0303 (Ponds LR-1, LR-15, and LR-20) indicate that the maximum annual average TDS concentrations were below the average annual stream segment criteria for TDS (600 mg/L), and the pH was within the range of criteria of 6 to 8.5 s.u. Staff therefore believes these ponds will not have a negative impact on the hydrology of the watershed.

- i. Staff noted in its initial TA that, although the data are adequate for Pond G-1, Pond C-20 and the L-9 monitoring point, the watershed boundaries and postmine topography for Pond G-1, Pond C-20 and the L-9 monitoring point were not shown on Plate III.B.3-1 and that it did not recommend Phase II release from reclamation obligations for any areas within these watersheds (Parcel Nos. 1 through 7, 9 and 10). In its December 30, 2015 supplement, Luminant provided depictions of the watershed boundaries (with topography) for Pond C-20 and the L-9 Monitoring Point, and indicated that Pond G-1 fell entirely within the watershed for Pond F2R-3; hence, no separate watershed boundary was provided on Plate II.B.3-1 for Pond G-1. In TA Addendum No. 1, Staff indicated that revised Plate III.B.3-1 and Luminant's explanation for Pond G-1 were satisfactory. Staff recommends that Parcel Nos. 1 through 12 are all eligible for Phase II release of reclamation obligations.
19. Luminant has demonstrated groundwater quantity and quality have been protected as required for Phase III release of the subject acreage. Surface mining activities were conducted according to Luminant's reclamation plan, which was designed to conduct operations to meet the requirements of §12.348. Soils and overburden materials were handled and surface water runoff controlled to minimize acidic, toxic, or other harmful infiltration to groundwater systems. Groundwater quantity has been protected by restoring approximate premining recharge capacity of the reclaimed area as a whole. Appropriate monitoring has occurred in accordance with the approved plan, and monitoring results indicate that groundwater resources have been protected.
  - a. Prior to mining, the overburden material in the proposed release areas consisted of interbedded sands, silts and clays that in some areas of the mine included discontinuous bodies of sand that exhibited a significant capacity to store or transmit groundwater to wells, springs or surface water bodies. Silty sands present in the underburden below the deepest recoverable lignite seam are capable of producing small amounts of groundwater. These silty sands are monitored in the proposed areas of release by four underburden LTGM wells. Mining occurred in the lower Calvert Bluff Formation, overlying the Simsboro Formation. The Simsboro Formation is the shallowest water bearing unit beneath the Calvert Bluff Formation and occurs at depths greater than one hundred feet beneath the lowest mineable lignite seam in the permit area, hydrologically isolated from the lowest mineable seam and the overburden by thick sequences of low-permeability (clayey) confining strata. Mining activities have not disturbed the Simsboro Formation in the proposed release area.
  - b. Luminant addressed requirements related to groundwater protection through the submission of groundwater information on the overburden and underburden aquifers at the Monticello Winfield Mine, including data from 13 long-term groundwater monitoring (LTGM) wells completed near the proposed release area (4 overburden wells, 1 underburden well, 6 spoil wells, and 2 ash-disposal wells). Staff conducted an independent analysis of the groundwater monitoring data, evaluating 5 overburden wells, 4 underburden wells, and 7 spoil wells, as depicted on Staff's Figure 1 and Figure 2 (October 8, 2015, TA). Monitoring data from overburden monitoring wells indicate that the water quality in the overburden is variable across the permit area but do not indicate that any substantive deleterious effects have occurred to overburden

water quality from migration of spoil waters. The pH of samples recorded in overburden LTGM Well G-31-OB-85, representative of native overburden for G Area south of the well and A and C Areas north of the well, ranges between 4.6 and 8.3 s.u. over the period of record, with a median of 6.0 s.u. TDS concentrations range from 58 mg/L to 370 mg/L for the same period, with a median TDS concentration of 207 mg/L. Likewise, sulfate concentrations range from 15 to 100 mg/L, with a median concentration of 44 mg/L. The pH and TDS and sulfate concentrations appear to have been stable in this well throughout the monitoring history. Water levels observed in this well do not show any mining-related impacts, indicating that water quantity in the overburden aquifers has not been affected.

Data were also evaluated by Staff from three overburden wells in L Area—LTGM Wells B2-9-OB-1, B2-9-OB-2, and B2-35-OB—and one well from J Area—LTGM Well B2-29-OB-93. The J and L Area wells indicate that the overburden has not been substantively impacted by mining. These wells yield a pH range from 5.1 to 7.8 s.u. with a median value of 6.5 s.u., a median TDS concentration of 382 mg/L, ranging from 46 to 1,784 mg/L, and a median sulfate concentration of 18 mg/L, ranging from 1 to 700 mg/L. Water-quality trends show little change from the premine period to present. The water levels in these four overburden wells have shown only temporary, minor drawdown effects from mining activities which now show full recovery.

- c. As described by Staff from its independent evaluation, the groundwater levels in spoil monitoring wells completed in mined blocks have risen measurably in the postmine period. Spoil resaturation in the reclaimed J and L Areas is monitored via wells B2-7-R, B2-3-OB-R-06 and B2-M2-R-08 (located in adjacent M area). Spoil resaturation in G Area, as well as A and C Areas immediately to the north, are monitored in wells A-33-R-85, G-34-R-85, G-35-R-85 and G-36-R-91, and in ash monitoring wells G-2 and G-8, which have shorter periods of record. The groundwater level in each of these wells has stabilized at a static elevation or is nearing stabilization, indicating that complete or nearly complete re-saturation of the reclaimed spoil in A, C and G Areas has occurred. Based on monitoring data and the hydrologic conditions, it is unlikely that re-saturation of spoil will impact the quality of the adjacent native overburden groundwater, and localized effects to underburden and overburden water quantity have thus far been only temporary. The groundwater systems adjacent to the proposed release area have not been impacted by deterioration in water quality or quantity as a result of the mining or reclamation activities. With respect to protection of the groundwater hydrologic balance, Luminant has complied with the requirements of the Regulations for the 929.4-acre area proposed for Phase III release from reclamation obligations.
20. Luminant has adequately demonstrated that surface water quantity and quality protection requirements for Phase III release from reclamation obligations have been met. The 929.4 acres proposed for release from Phase III requirements meet the surface water protection requirements of §12.349 as shown by an examination of discharges to receiving streams. Mining activities were conducted to minimize the formation of acidic or toxic drainage and to prevent additional contributions of suspended solids to streamflow outside the permit area and to otherwise prevent water pollution. Based upon the application, Commission

records and Staff review, surface water quality and quantity have been protected. Staff noted in its October 8, 2015 initial TA that Luminant uses paired watersheds and quarterly monitoring of final pond discharges as the primary components of its LTSM program. The paired-watershed methodology is used to monitor long-term impacts to streams via concurrent flow and water quality monitoring of a disturbed watershed and an undisturbed watershed during the life of the permit. LTSM Station HSW-W1 monitors flow undisturbed by surface mining activities and is located on an unnamed tributary of Blundell Creek at the northern boundary in the southwestern portion of the permit area, near where Blundell Creek enters the permit area. LTSM Station HSW-W2 monitors disturbed flow downstream of surface mining activities and is located in the Winfield North mine area on a tributary of Tankersley Creek. Luminant compared data from the undisturbed station (HSW-W1) to data from the disturbed station (HSW-W2) in its assessment of mining effects, and Staff conducted an independent assessment of the same data.

- a. Protection of surface water quality is addressed in Luminant's analysis of paired-watershed data. TDS concentrations at the undisturbed-watershed station (HSW-W1) ranged from 46 to 706 mg/L, averaging 214 mg/L, and TDS concentrations from the disturbed watershed station (HSW-W2) ranged from 60 to 722 mg/L, averaging 280 mg/L.
  - i. TSS concentrations from the undisturbed-watershed station ranged from 2 to 166 mg/L, averaging 20 mg/L, and TSS concentrations from the disturbed-watershed station ranged from 1 to 88 mg/L, averaging 15 mg/L.
  - ii. Total iron concentrations from the undisturbed-watershed station ranged from 0.11 to 5.18 mg/L, averaging 1.53 mg/L, and total iron concentrations from the disturbed-watershed station ranged from 0.01 to 7.58 mg/L, averaging 1.15 mg/L.
  - iii. Total manganese concentrations from the undisturbed-watershed station ranged from 0.01 to 2.95 mg/L, averaging 0.55 mg/L, and total manganese concentrations from the disturbed-watershed station ranged from 0.01 to 3.12 mg/L, averaging 0.40 g/L.
- A. The pH at the undisturbed-watershed station ranged from 6.2 to 7, and pH from the disturbed-watershed station ranged from 5.4 to 7.9.
- B. Settleable solids (SS) at both the disturbed- and undisturbed-watershed stations had reported concentrations of <0.1 mg/L.
- C. The data in application show that TDS, pH, TSM, TSS, iron and manganese at the disturbed-watershed station is similar when compared to the undisturbed-watershed station, although slightly higher for some parameters, and do not demonstrate negative impacts to water quality downstream (Tables III.B.3-16 and III.B.3-17). Staff concludes in TAAddm2 that, based on a comparison of disturbed-watershed Station HSW-W2 data to undisturbed-watershed Station HSW-W1 data, mining activities do not

appear to have negatively impacted the hydrologic balance (Parcel Nos. 1 through 12).

- D. Staff noted in its review in TAAAddm1 that Luminant did not provide an evaluation and comparison as outlined in SMRD Advisory Notice AD-BO-312.VI for the following: (a) disturbed-watershed station water-quality data to baseline station water-quality data; (b) disturbed-watershed station data to State and Federal water-quality criteria; and (c) disturbed-watershed station data to the PHC determination water-quality criteria. Staff, therefore, in TAAAddm1, did not recommend Phase III release from reclamation obligations for any of the requested areas (Parcel Nos. 1 through 12). Staff also noted that, although Luminant provided data for baseline surface water monitoring Station SW-3, there were two stations of this name shown on Plate 129-1, *Surface Water Data Location Map*, in Permit No. 34D, and that Luminant needed to identify which station the provided data were from. In Supplement No. 2 (March 18, 2016), Luminant confirmed that the data were from Station SW-3 located nearest to disturbed-watershed Station HSW-W2 (labeled on Plate III.B.3-1 in the application as Station HSW-W3), and provided a trend evaluation of this disturbed-watershed Station HSW-W2 data as a comparison of these data to baseline data, the PHC determination, and Federal and State water-quality data. In its December 30, 2015 Supplement No. 1, Luminant had also provided a water-quality analysis from an earlier application for release of 1,486 acres that was submitted in 2013, which Staff deemed inadequate at that time. Staff noted that in 2013 it chose to perform its own evaluation of the data, finding through the use of a nonparametric statistical analysis that water quantity was similar for the disturbed, baseline, and undisturbed monitoring stations for data available through 2<sup>nd</sup> Quarter 2013. In Supplement No. 2, Luminant showed that pH data demonstrated a stable trend, with only one pH measurement outside of the range specified for TCEQ Stream Segment No. 0404. Luminant further showed that Mn and TDS data were trending downward, similar to baseline values and generally not exceeding the values predicted in the PHC determination and in State and Federal water-quality criteria. Luminant also showed TSS and Fe trending upward slightly; however, as Staff notes, these concentrations remain within the baseline range and are generally below the TPDES permit limits. Staff concurred with Luminant's evaluation and determined that the surface-water quality data do not indicate any adverse effects to the surface-water hydrologic balance.
- b. Protection of surface-water quantity is also addressed in Luminant's analysis of paired-watershed data. Staff noted in its initial TA that Luminant did not provide a satisfactory long-term surface-water quantity analysis, including a comparison of LTSM data to the probable hydrologic consequences (PHC) determination in approved Permit No. 34F and to the baseline data contained in Permit No. 34F for the LTSM paired-watershed stations, as described in Advisory Notice AD-BO-312.VI. Review history follows.



- i. Staff determined in its TAAAddm1 that Luminant had not performed its own evaluation as required, nor did it evaluate all available surface-water data, including the data obtained since 2<sup>nd</sup> Quarter 2013. Staff further noted a concern that Luminant had not provided an adequate comparison of long-term surface-water quantity monitoring data to predictions in the PHC determination and to baseline data for the LTSM paired watersheds, as described in Advisory Notice AD-BO-312.VI.
- A. In the March 18, 2016, Supplement No. 2, Luminant provided a further assessment of water quantity, providing a comparison of the median and average flows at disturbed-watershed Station HSW-W2 to the median and average flows at undisturbed-watershed Station HSW-W1. Luminant indicated that the median and average flows at Station HSW-W1 were larger than the flows at Station HSW-W2. Luminant further indicated that an explanation for this phenomenon was provided in the approved PHC determination, which indicates that peak flows at Station HSW-W2 are likely to be attenuated due to the presence of upstream sedimentation ponds originally installed for mining purposes, and that the average flow at Station HSW-W1 was greater than the average flow for Station HSW-W2 because Station HSW-W1 has a larger watershed.
- B. Luminant confirmed in Supplement No. 2 that Station SW-3 was the baseline station that it chose to compare against disturbed-watershed Station HSW-W2. (As identified by Staff, baseline Station SW-3 and its watershed are depicted on Plate III.B.3-1 as Station HSW-W3.) Luminant indicated that it compared the flow at disturbed-watershed Station HSW-W2 to the baseline data collected at Station SW-3 because the watersheds for both stations are comparable in size, and it concluded that the flow at both stations was similar. Staff's evaluation concluded that a comparison of watershed size for disturbed-watershed Station HSW-W2 and baseline Station SW-3 indicates that the watershed for disturbed-watershed Station HSW-W2 is 362.5 acres larger (62.4%) than the watershed for baseline Station SW-3.
- C. Therefore, in Staff's view, a comparison of the flows at both stations could not be made directly because, even with consideration of the flow attenuation by permanent impoundments, the larger watershed of disturbed Station HSW-W2 yielded larger flows, as demonstrated by the median (91% larger) and average (213% larger) flow volumes indicated in Table 1 in Luminant's March 18, 2016, supplement. In its June 28, 2016, TAAAddm2, Staff also noted that the watershed size for disturbed-watershed Station HSW-W2, as depicted on Plate III.B.3-1 in the application, is approximately 118 acres larger (14.3%) than the watershed depicted on Plate 146(d)-3, *Surface Water PHC Watershed Boundaries and Long-Term Monitoring Stations*, in Permit No. 34F, for the same station. As a result, Staff requested that Luminant provide an explanation for the discrepancy in watershed size between that considered in its approved PHC determination versus what is depicted in the application.

- D. Luminant addressed these concerns in the September 28, 2018, Supplement No. 4, which contains a document entitled, *Luminant Response to RRC Water Quantity Concerns, Monticello 929.4 Acre Bond Release*, which was filed in response to Staff's draft TA Addendum No. 3 (TAAddm3) dated October 19, 2016. TAAddm3 was transmitted by email only to Luminant but was later filed in draft form as an attachment to Staff's TAAddm4, at the ALJ's direction. TAAddm4 was filed on May 23, 2019 to address Supplement Nos. 4 and 5. Supplement No. 4 contained the following information prepared by its consultant, Pastor, Behling & Wheeler LLC (now Golder Associates) in response to issues noted by Staff:
- LTSM watershed history and management of LTSM paired-watershed stations at Monticello Winfield Mine;
  - Description of available flow data (final discharge pond, LTSM, baseline, SEDCAD4) and applicability of this data for analysis;
  - Findings of the PHC determination and a comparison to paired-watershed data;
  - Comparison of LTSM water-quantity data to nearby baseline stations;
  - Discussion of possible water-quantity impacts to adjacent and downstream users;
  - Discussion of potential discrepancies in flow data from Station HSW-W2; and
  - Attachment A, 1987 report titled, *Hydrologic Balance Surface Water Monitoring Plan, Monticello Winfield/Thermo Mines*.
- E. In Supplement No. 5, Luminant provided the following additional information prepared by the same consultant:
- Unanalyzed baseline flow data from Monticello Winfield Mine permit area;
  - Table 1, *Summary of Baseline and LTSM Surface Water Stations, Monticello Winfield Mine*, inadvertently omitted from Supplement No. 4 submittal;
  - Table 1A, *Summary of Baseline and LTSM Surface Water Flow Information, 929 Acre Bond Release Package, Monticello-Winfield Mine, Updated for March 2019 Supplemental Response*, replacing Table 1 above and adding additional flow measurements through December 2017;
  - Statistical evaluation comparing flow data from paired-watershed Stations HSW-W1 (undisturbed) and HSW-W2 (disturbed); and
  - Statistical evaluation comparing flow data from Station HSW-W2 to nearby baseline stream-monitoring Stations SW-3 and SW-4.
- F. Luminant indicated that most of the Station HSW-W2 watershed area was released from further reclamation obligations in August 1997, and that, while retaining access for monitoring purposes, Luminant has never managed the ponds within the Station HSW-W2 watershed and has not had the right to do so since 2008 or before, when it sold most of the land. In Supplement No. 4,

Luminant identified that the current landowners had modified the capacity of Pond BR-22 as part of conducting their own agricultural activities, but that Luminant did not have any information regarding the raised normal pool elevation or the capacity of the modified pond. In TAAAddm4, Staff indicated that without this pond-management information, it did not believe that it could make a technical finding regarding impacts of the modified pond affecting flow measurements at paired-watershed Station HSW-W2.

- G. In TAAAddm4, Staff indicated that via email dated May 21, 2019, Luminant stated that a portion of the Station HSW-W2 watershed south of FM 1734 is currently owned by Welco Land Company LLC, rendering the landowner information that is contained in the approved permit pursuant to §12.116(d) inaccurate. This area was previously released from reclamation obligations and sold to a separate third-party prior to a permit boundary modification that was approved by Order dated October 23, 2007 [Docket No. C5-0029-SC-34-C]. In TAAAddm4, Staff does not view the landowner change as an impediment to release of the subject acreage but requests the ALJ include the following language in a finding of fact of an order recommending approval of the application: “given that similar concerns will arise in future release applications with respect to postmine land use for portions of the LTSM Station HSW-W2 watershed, Luminant shall update the ownership information for the property tracts located south of FM 1734 in the next *applicable revision application*” (emphasis added). Section 12.107(b) of the Regulations requires an application contain current information. “Application” is defined in §12.3(15) to include revisions sought to a permit. Accordingly, under the Regulations, Luminant is required to provide current landowner information in a revision application that necessitates review of materials submitted pursuant to §12.116(d) (*i.e.*, a revision application that is “applicable” to landowner information). In the current docket, Luminant does not seek release of the area Staff references in its requested language, as it is no longer under bond. Current landowner information for the area south of FM 1734 is not relevant to the subject application. The Commission recognizes that landowner information contained in Permit No. 34F may be outdated but declines to require Luminant to update the information in the next applicable revision application to the permit given the subject of the current proceeding and that the issue has been memorialized in this Order and will be addressed under the Regulations when appropriate.
- H. In summarizing Luminant’s Supplement No. 5 submittal, Luminant indicates that, to determine whether there are impacts to water quantity, it is necessary to understand what data are available and the applicability of that data for analysis. Luminant states that while flow data exist from baseline monitoring stations, paired-watershed stations, sampling associated with point-source final-discharge ponds and from SEDCAD4 modeling, it is important to understand and consider that watersheds change during mining. Therefore, there are assumptions that must be made periodically to allow for comparisons and that not all flow data can be compared. Luminant believes

that, based on the initial premise of the paired-watershed protocol as set forth in Supplement No. 4, Attachment A, a 1987 report titled, *Hydrologic Balance Surface Water Monitoring Plan, Monticello Winfield/Thermo Mines*, all data for Station HSW-W1 is considered “baseline data” (Station HSW-W1 is located on a tributary that is undisturbed by mining activities), and that there is no “baseline data” associated with Station HSW-W2 because the purpose of this station has always been to gather information on postmine surface-water quantity and quality and the station location has always monitored only disturbed-area drainage.

- I. Because of the assumptions inherent to the paired-watershed methodology, and because the establishment of surface-water control using final discharge ponds is required by the mining process, and further, because topographic modifications during reclamation invoke a change from baseline conditions to the size and behavior of the watersheds, it is not possible to directly compare the paired-watershed monitoring data to baseline stations for both premine and postmine conditions. Luminant also indicated that the paired-watershed monitoring-plan data were the only data available to evaluate; no additional data have been collected at baseline stations during the life-of-mine period.
- J. Luminant nevertheless considered that data from all baseline monitoring stations could be used to provide a broad but representative understanding of premine hydrology with regard to surface water quantity. Luminant used this approach to compare generally both of the paired-watershed stations to determine whether the baseline-station data can be considered comparable to data from the undisturbed-watershed Station HSW-W1, and also to determine whether a difference exists between the baseline stations and disturbed-watershed Station HSW-W2. This method of analysis allows for a “before and after” comparison of surface-water quality and quantity. Luminant further indicated that, while not a direct comparison, baseline Station SW-3, located 1.5 miles northeast of LTSM Station HSW-W2 on a tributary to Tankersley Creek, could be compared to disturbed-watershed Station HSW-W2.
- K. Attachment A in Supplement No. 4 describes the method used in 1987 in the watershed selection for LTSM Stations HSW-W1 (undisturbed) and HSW-W2 (disturbed), when these paired watersheds were initially established. These two watersheds were selected based on watershed area and shape, slope elevation, drainage features, access, easement, and channel shape. A matrix evaluation of the watersheds was provided in Table 2 of Attachment A. Luminant indicated that the Station HSW-W1 and HSW-W2 watersheds were selected because they were the most similar geomorphologically and most similar in size (Stations HSW-W1 and HSW-W2 have watersheds of 1,202 acres and 943 acres, respectively). Current differences exist primarily due to subsequent mining and reclamation activities. The postmine watershed of Station HSW-W2 includes five ponds: BR-16, BR-18, BR-19,

BR-22, and BR-23, which have a combined storage capacity of 581 ac-ft. Additionally, the surface area of these ponds is 54 acres, or 5.7% of the watershed. In contrast, the undisturbed watershed of Station HSW-W1 presently includes at least three stock ponds with a surface area of less than two acres each (~0.8% of the watershed). The land use and vegetation of the two watersheds are also different. The watershed area of disturbed-watershed Station HSW-W2 is dominated by pastureland and is used for grazing, whereas the watershed for undisturbed-watershed Station HSW-W1 has large areas of trees and the land use includes pastureland and fish and wildlife habitat. Luminant concluded that all these differences influence runoff and peak flows in a manner that cannot be controlled or quantified.

- L. Staff agreed that there are differences in watershed size and land cover between the watersheds that influence runoff and peak flow; however, Staff indicated in TAAddm4 that it remained unclear how these two very different watersheds were selected for the paired watershed method, because the concept requires the monitoring of two hydrologically similar watersheds that reflect typical surface-water conditions for premine and postmine conditions, as indicated in Attachment A, Supplement No. 4.
- M. In finding resolution, Staff notes in its evaluation in TAAddm4 that Luminant provided a comparison of flow data from Station HSW-W2 to flow data from Station HSW-W1. Luminant's findings are based on information provided in Table 1 in Supplement No. 5. Table 1A in Supplement No. 5 supersedes Table 1 because it accounts for flow measurements from Stations HSW-W1 and HSW-W2 through December 2017. Luminant did not update the text in the application to reflect this latest information in Table 1A (averages, means, etc.); however, Staff updated the findings in TAAddm4 to reflect this information. Based on information in Table 1A, the average flow for LTSM Station HSW-W1 [6.1 cubic-feet per second (cfs) or 2,737.9 gallons per minute (gpm)] is higher than the average flow at LTSM Station HSW-W2 (1.2 cfs or 538.6 gpm). Luminant expects the average flow at Station HSW-W2 to be lower because the station is located downstream of several large ponds that attenuate peak flows, and the corresponding watershed of Station HSW-W1 is also larger than the watershed of Station HSW-W2. Prior to the inclusion of flow data through December 2017, the median flows for Stations HSW-W1 and HSW-W2 were similar (0.1 cfs or 44.9 gpm). With the inclusion of flow data through December 2017, the median flow for Station HSW-W1 remained the same (0.1 cfs or 44.9 gpm) and the median flow for Station HSW-W2 increased to 0.3 cfs or 134.6 gpm. Because these streams are intermittent, Luminant indicated that it was useful to evaluate the amount of time that the streams contained flow. According to Table 1A, Stations HSW-W1 and HSW-W2 did not flow in 29% and 27%, respectively, of the 66 monitoring events. Luminant concludes that historical flow data for the LTSM paired-watershed stations indicate that flows at Station HSW-W2 are being attenuated due to upstream sedimentation ponds.

- N. According to Attachment A in Supplement No. 4, the watersheds of Stations HSW-W1 and HSW-W2 are hydrologically and geomorphologically similar. Therefore, the median flows for both stations should be comparable, but the median flow at LTSM Station HSW-W1 is three times larger (0.3 cfs or 134.6 gpm) than the median flow at Station HSW-W2 (0.1 cfs or 44.9 gpm). Luminant attributes the lower flow measurements at LTSM Station HSW-W2 to the attenuation of runoff by the permanent impoundments located within the station watershed. Luminant has also indicated that the embankment of permanent Pond BR-22 was raised between January 2009 and September 2011. However, Luminant has not determined the revised capacity of permanent Pond BR-22 or documented whether the current property owners are managing the water levels in the ponds north of FM 1743. Without additional information, Staff indicated that it was unable to make a finding regarding any impacts the permanent ponds may be having on flow measurements obtained at Station HSW-W2.
  - O. After meeting with Staff on February 22, 2019, to discuss remaining surface-water concerns in the application, Luminant and Staff agreed that Luminant could use the same statistical approach used by Staff during its review of a previous release application. Luminant's consultant prepared the statistical analysis and concluded in the report provided in Supplement No. 5 that the flow data collected from Stations HSW-W1 and HSW-W2 are similar. The methodology and results from this statistical analysis are provided in Attachment B of Supplement No. 5. Staff also conducted an independent statistical evaluation of the flow data from Station HSW-W2 in comparison to LTSM Station HSW-W1, the results of which are provided in TAAAddm4, Attachment VI. Staff concurs with the finding of Luminant's consultant that Stations HSW-W1 and HSW-W2 do not have statistically different proportions of flow events (47 and 48 flow events, respectively).
  - P. Luminant's consultant also concluded that LTSM Stations HSW-W1 and HSW-W2 did not have statistically different median flows based on a 95% level of confidence [probability-value (p-value) of 0.0912, above the 0.05 threshold]. Luminant's consultant used a Wilcoxon rank sum test with continuity correction to arrive at this conclusion. Staff used an equivalent test, referred to as the Mann-Whitney U Test. The Mann-Whitney U test is a nonparametric test that allows two groups or conditions or treatments to be compared without making the assumption that values are normally distributed. Staff was able to confirm the finding of Luminant's consultant that LTSM Stations HSW-W1 and HSW-W2 do not have statistically different median flows at the 95% confidence level, though Staff's p-value was lower (0.05592) and just above the 0.05 threshold at 95% confidence.
- ii. Impacts to immediate downstream users, an issue noted by Staff, have been addressed by Luminant. In its March 18, 2016 Supplement No. 2, Luminant provided a comparison of the median and average flows at disturbed-watershed Station HSW-W2 to the median and average flows at undisturbed-watershed

Station HSW-W1. The information provided indicated that the median and average flows at Station HSW-W1 were larger than the flows at Station HSW-W2. In its evaluation, Luminant indicated that according to its approved PHC determination, peak flows at Station HSW-W2 are likely being attenuated due to the construction of upstream sedimentation ponds and that the average flow for Station HSW-W1 is higher than the average flow for Station HSW-W2 because its watershed is larger.

- A. Staff indicated from its analysis that, in fact, the watershed for Station HSW-W1 is 25.5% larger than the watershed for Station HSW-W2, and Permanent Impoundments BR-16, BR-18, BR-22 and BR-23 are attenuating flow upstream of Station HSW-W2, as depicted on the exhibit in Attachment VI; however, in TAAddm2, Staff found that Luminant only considered the impacts to the hydrologic balance and downstream surface-water users at far downstream stream segments in its evaluation and did not consider impacts to surface-water users in areas immediately adjacent to and downstream of the permit boundary.
- B. In Supplement No. 4, Luminant provided a comparison of LTSM water-quantity data to baseline data and the approved PHC determination and addressed potential impacts to downstream surface-water users adjacent to the permit boundary. Luminant also indicated that the application for a mining permit is required to address the probable hydrologic consequences to surface water sufficient to provide support to conclude that water quantity within the proposed permit areas and adjacent areas will be protected from adverse effects. Luminant further noted that at the time of bond release, evidence needed to be provided to support the conclusions in the PHC determination. Luminant further indicated in Supplement No. 4 that, because peak flows at Station HSW-W2 were attenuated due to upstream sedimentation ponds, a direct comparison between average flows at the LTSM stations was difficult at best. Luminant concluded that a comparison of median flows and frequency of flows provided the best available means of evaluating the restoration of the hydrologic balance in the watershed of Station HSW-W2 following mining and reclamation activities.
- C. Luminant and Staff agree that the changes in hydrology between premine and postmine conditions are assumed to be in response to changes in topography, surface soils, and land cover (vegetation type and aerial coverage). Peak flows and runoff volumes (quantity) within the mine permit area will increase during mining but likely return to premine levels once vegetation has been permanently reestablished with some areas experiencing a slight increase in runoff due to less vegetative cover and lower evapotranspiration rates from changes in vegetative cover. As water moves outside the permit area, changes to water quantity will be evident in changes to peak flows and runoff volumes as a result of sedimentation ponds redistributing storm water runoff by temporarily storing flood waters and releasing them at a lowered controlled rate (attenuation). Both Luminant and

Staff do not expect the total volume leaving the mine area to appreciably change by the use of sedimentation ponds, but expect the peak flow downstream to decrease and the base flow to increase.

- D. In its approved PHC determination in Permit No. 34F, Luminant indicated that 19 watersheds were modeled using SEDCAD4. Based on these SEDCAD4 models, Luminant expected postmine peak flows and runoff volumes in the watersheds to be similar to peak flows and runoff volumes during premine conditions. Luminant asserted that although the SEDCAD4 models did not account for the peak-flow attenuation due to the presence of sedimentation ponds, it expected that, because of shifts in watershed size, runoff in some watersheds would increase while runoff would decrease in other watersheds. The overall impact to the hydrologic balance would nevertheless be minimal. Further, Luminant expected impacts to downstream water users to be minimal to slight because the streams, which are typically located in the headwaters of relatively small watersheds, are intermittent and do not represent a reliable source of surface water.
- E. Luminant further concluded in the PHC determination that runoff from the mine area represented a very small percentage of the flow in downstream stream segments and indicated that changes in watersheds have shifted some drainage from the Tankersley Creek watershed to the Smith Creek watershed in the southern portion of the Monticello Winfield Mine. Luminant nevertheless expected the net change in drainage to the ultimate receiving body of water (Big Cypress Creek) to be insignificant because the Tankersley Creek and Smith Creek watersheds both discharge to either Lake Bob Sandlin or Big Cypress Creek.
- F. In its assessment in TAAddm4, Staff indicates that the mining area covers the headwaters of two major watersheds, the Sulphur River and Big Cypress Creek. The headwater streams in these watersheds are typically ephemeral or intermittent with each stream contributing just a small portion of the overall flow to the major watershed. Water uses from the streams in this area are typically for livestock and wildlife. A couple of major drainages flow into reservoirs (Tankersley Creek Lake, Lake Monticello, and Lake Bob Sandlin) near Permit No. 34F. Luminant indicates that none of these reservoirs have reported impacts to water levels as a result of mining activities. Luminant acknowledges that watersheds have changed as a result of mining and reclamation, shifting some runoff from the Tankersley Creek watershed to Smith Creek watershed; however, both watersheds discharge to either Lake Bob Sandlin or Big Cypress Creek.
- G. Staff further notes in TAAddm4 that Luminant holds water rights associated with streams in the mining area. Water rights are typically associated with the storage of water in permanent impoundments with storage capacities of over 200 ac-ft. Some of Luminant's water rights do allow for the aggregate consumptive use of 510 ac-ft of water per year, distributed across different



watersheds, for mining or industrial purposes in the north area of the Monticello Winfield Mine. Luminant indicates that it has never used all 510 ac-ft of water in a year although the 510 ac-ft of water is a small portion of the millions of acre feet of water available in the major river complexes. Luminant also indicates that, in the time since mining ceased, no water associated with these water-right permits has been used and yet there has never been a call for water by superior water-right holders that would indicate issues with the quantity of water use associated with Luminant's mining activities. Luminant concludes that there are no impacts to downstream water-right holders because water rights are adjudicated based on availability, and permanent impoundments allow water to pass through once full, so there is no longer any consumptive use for mining activities.

- H. Finally, Staff concurs that Luminant's conclusion that the evaluations in Supplement Nos. 1 through 5 demonstrate that postmine flow is similar to premine flow and that the water available for downstream use has not changed significantly so as to indicate that mining has impacted downstream water use and water rights. Staff concurs with Luminant's finding and notes that in the approved PHC determination, Luminant commits to mitigate any impacts to low-water crossings resulting from upstream mining activities and to provide alternate sources of water to downstream surface-water users should they be impacted by mining activities.
- iii. Staff also noted concerns regarding apparent discrepancies in the reported flow data. In Supplement Nos. 4 and 5, Luminant addressed concerns regarding apparent discrepancies in flow measurements at the monitoring stations during dry periods when the ponds are not expected to be discharging and the instances of no-flow measurements during or after rainfall events, particularly at Station HSW-W2.
  - A. Luminant indicated that, in general, the time-series data show that flows from disturbed-watershed Station HSW-W2 are influenced by postmine ponds that attenuate peak flows and release water at a lower sustained rate following precipitation events. Luminant correlated these sustained rates to flows during dry periods and indicated that site personnel have observed that the pond upstream of Station HSW-W2 often flows for extended periods of time following precipitation events. Conversely, when the antecedent soil moisture conditions in the watershed are low and/or the freeboard in the pond is sufficient to contain the rainfall event without discharging, no flow is observed during or after most rainfall events. Luminant believes that this type of hydrologic behavior is identified in the approved PHC determination and is evident in the data analysis.
  - B. Based on discussions with Staff, Luminant reviewed the daily rainfall data against the daily average flow observed at Station HSW-W2 from 2007 through 2017. The response of flow to rainfall was mostly as expected. When there was a significant amount of rainfall (to overcome low soil

moisture and pond freeboard), flow occurred. Likewise, after a dry period it typically took more rainfall before there was a flow response. During wet periods, flow response was more immediate. Conversely, baseline flow observed at undisturbed Station HSW-W1 continued into dryer periods as the ponds steadily released excess water.

- C. Despite the conclusions that can be drawn from the compiled data, Staff noted discrepancies that are evident in the daily and monthly flow and rainfall data. There were discrepancies with the data over the period of record that could be attributed to equipment malfunction, and erroneous readings caused by vegetation, beaver activities and power outages. Luminant provided a graph in Supplement No. 4 (Figure 9) on which it depicted monthly rainfall from 2007 to 2017 at the Winfield Mine north rain gauge along with the average monthly flow for LTSM Station HSW-W2. Rainfall and flow data in 2017 were exceptionally high, and interviews with site environmental staff revealed that beavers constructed dams around the LTSM station, resulting in false readings. Even though dams were removed, beavers continued to be a problem throughout the year. Starting in the last quarter of 2017, the mine began using staff gauge readings to monitor flow following the approval of Revision No. 34, switching from using continuous electronic transponders. With staff gauges, if a beaver dam is present it can be removed, and flow can equilibrate prior to taking a flow measurement.
- D. Staff also noted that in Figure 9 there is a long-term low-flow period from mid-2010 through late-2014. This long period of drought began in 2010 and continual normal rainfall did not return until late 2014. Also, starting in 2010, the landowners of permanent Ponds B-22 and B-23 raised the outfall, coalescing three ponds upstream of Station HSW-W2, effectively increasing the storage capacity within the watershed. Both the drought and the raising of the spillway resulted in flows that do not appear consistent with the reported rainfall during this four-year period.
- E. Staff identified a particular discrepancy for the first 15 days of October 2015, when significant flow was recorded, but without corresponding rainfall, a phenomenon for the 10-year review time frame which, in itself, was a subset of the period of record. Site environmental staff were not able to identify a particular issue during that time frame that might have accounted for this particular phenomenon. Staff speculated that there may have been some error with the equipment or that there was interference with the equipment by wildlife or vegetation, the net result of which was a false reading. Around mid-October, the flow response to rain events return to normal until late 2016 and through 2017 when beavers started causing issues.
- F. While there are specific discrepancies within the flow data when compared to rainfall, as a whole, the data show a predictable response of flow to rainfall and the attenuation effect of ponds within the watershed of Station HSW-W2

on the flow data. Staff concurs that discrepancies in the flow data tend to be the result of equipment failure and wildlife influences (TAAddm4).

- G. Staff expressed its appreciation of Luminant's efforts in creating Figure 9 and providing a detailed explanation for the discrepancies in flow data. Staff concurs that the discrepancies in the flow data tended to be the result of equipment failure and wildlife influences. Staff nevertheless notes that Attachment A in Supplement No. 4 indicates that the paired watershed analysis requires *continuously recorded* water quantity and quarterly quality data collected from the two watersheds, and even provides a description of the equipment (continuous stream stage recorder as well as a low-flow measurement device) to be used to collect hydrologic flow data (TAAddm4). Until 2017, this equipment was used to monitor flow at these LTSM Stations [Finding of Fact No. 20(b)(iii)(C), *supra*]. No information was provided in the record other than Attachment A, submitted by the Applicant, to indicate that the technical protocols for paired-watershed monitoring require or allow different monitoring protocols than what has been described by Staff. In TAAddm4, Staff indicates that all issues have been resolved regarding the sufficiency of the demonstration related to surface water protection set out in the application; however, Staff recommended the ALJ include a finding of fact in an order proposing approval of the subject application that states Luminant shall make every effort to increase the frequency of flow measurements at the LTSM Stations instead of the single measurement taken once a quarter when a water quality sample is collected and stated that the additional flow data can be submitted with the water quality data once per quarter. Staff's reasoning for the recommended finding is based on the following: (1) the myriad concerns with data integrity described in the application, as supplemented; (2) Staff's concerns with water-quantity data noted in its TA and TA addenda; and, (3) the fact that integrity of said data will impact future applications for release (TAAddm4). The Commission concurs with Staff's recommendation and its basis for the request. Further, in order to facilitate an increase in the frequency of flow measurements taken at these LTSM Stations, Luminant is encouraged to install continuous stream stage recorders at these locations. In summary, based on the issues presented in this docket related to the amount of flow data reported from LTSM stations used to support a demonstration that surface water quantity has been protected in accordance with §12.348 and Staff's reasoning set forth in TAAddm4, the Commission finds the following: Luminant shall make every effort to increase the frequency of flow measurements taken at LTSM Stations HSW-W1 and HSW-W2 instead of the single measurement taken once a quarter when a water quality sample is collected, including installing continuous stream stage recorders at these LTSM Stations to monitor flow, and any additional flow data collected may be submitted with the water quality data that is submitted to SMRD once per quarter in accordance the approved LTGM plan under Permit No. 34F.

21. According to Staff's TA and SMRD I&E's Inspection Report, one small depression is located within the proposed release area. Luminant has depicted this small depression, located in L Area and labeled LSD-1, on Plate III.B.1-3, *Proposed 929.4 Acre Bond Release Structures Map*. By letter dated December 3, 2003, Staff found that this small depression met all requirements for retention as a postmine enhancement feature. Luminant provided a copy of the December 3, 2003 approval letter for this small depression in the application.
22. The area requested for release of reclamation obligations is capable of sustaining the approved postmine land uses. Monthly inspections, the inspection on October 28, 2014, Staff's TA, and subsequent Staff TA addenda demonstrate that the land has been reclaimed to and managed in accordance with the requirements for the approved postmine land uses within the proposed area.
23. Pursuant to §12.313(a)(3), the Commission may release the requested portion of the bond attributable to the subject 929.4 acres upon a determination that reclamation has been successfully completed in accordance with the terms of the approved permit and the requirements of the Act and the Regulations. As a result of being granted the various Phases I, II and III release of reclamation obligations on this area, Luminant is eligible to reduce the bond amount for Permit No. 34F. The last bond-map update and reclamation cost estimate (RCE) were approved administratively by letter dated July 25, 2017 (Revision No. 32). In its technical evaluation of Revision No. 32, Staff indicated that its revised RCE of \$94,181,660 was greater than Luminant's estimate of \$91,221,897, and therefore was recommended as the minimum required reclamation bond amount necessary for completion of mine reclamation in the event of forfeiture. The bonding rates in Staff's table below were determined from its RCE (table titled *Summary of Estimated Reclamation Costs* in its July 25, 2017, technical evaluation of Revision No. 32). No reduction of the \$975,000,000 blanket collateral bond approved by Order dated September 27, 2016, is requested by Luminant in the application [Finding of Fact No. 3, *supra*]. If the application is approved by the Commission as proposed, Luminant will be eligible to reduce its performance bond obligations by \$765,343.92, as tabulated below, based on the RCE and bond-map approved in Revision No. 32. The Commission considers this specified reduction amount to only be an estimate provided for illustration purposes. The actual amount of any eligible reduction would be calculated based on the costs for reclamation at the time that Luminant requests an actual bond reduction, thereby ensuring that the proposed bond amount always remains sufficient to cover the cost of outstanding reclamation work. Additionally, since the Commission is not required under the Act or the Regulations to determine an eligible bond reduction amount when approving an application for release, this Order prescribes that Luminant is eligible to reduce the amount of bond attributable to the 929.4 acres granted Phase III release, but does not specify the amount of the reduction.

**Eligible Bond Reduction for Release as Proposed by Luminant**

Phase Requested	Acreage	Rate	Bonded \$ Per Acre	Eligible Reduction
Phase I, II, and III	2.0	Mined (no reduction)	\$977.00	\$1,954.00
Phase I, II, and III	4.2	Disturbed (no reduction)	\$3,863.00	\$16,224.60
Phase I, II, and III	2.2	Ancillary	\$851.00	\$1,872.20
Phase I, II, and III	0.1	Phase III (no reduction) <sup>1</sup>	\$0.00	\$0.00
Phase II and III	264.0 <sup>2</sup>	Mined (no reduction) <sup>3</sup>	\$977.00	\$257,928.00
Phase II and III	656.9	Phase I reduction	\$636.00	\$417,788.40
<b>Subtotal</b>				<b>\$695,767.20</b>
Admin. Costs (10%)				\$69,576.72
<b>Total</b>	<b>929.4</b>			<b>\$765,343.92</b>

<sup>1</sup> no reduction applicable to 0.1 acre within Parcel No. 2 erroneously bonded as released from reclamation liability

<sup>2</sup> 137.0 acres of these 264.0 acres are bonded as virtual worst-case pits covering portions of Parcel Nos. 11 and 12; however, physical pits do not exist within these parcels

<sup>3</sup> portions of Parcel Nos. 9 through 12 are bonded as mined with no reduction even though released from Phase I liability

24. No silt dams are present within the areas requested for Phase II and III release. [§12.344].
25. No rills or gullies were present within the areas requested for Phase II and III release that would require repair. The areas have been stabilized to reduce the potential for contributing suspended solids to streamflow.
26. All acres requested for release were marked in the field to distinguish them from active mining and reclamation areas.
27. 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. No exceptions to the proposed order were filed.
28. Open meeting notice has been posted for Commission consideration of this Application in accordance with TEX. GOV'T CODE §551.048.

**CONCLUSIONS OF LAW**

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

1. Proper notice of application and notice of consideration by the Commission has been provided for this request for release of reclamation obligations.
2. A public hearing on the request is not warranted.
3. Luminant has complied with all applicable provisions of the Act and the Regulations regarding notice for Commission jurisdiction to attach to allow consideration of the matter.

4. Luminant has complied with all applicable provisions of the Act and the Regulations for the release of Phase I, II and III reclamation obligations for 8.5 acres and release of Phase II and III reclamation obligations for 920.9 acres within the Monticello Winfield Mine permit area.
5. The Commission may approve a release of Phase I, II and III reclamation obligations for 8.5 acres and release of Phase II and III reclamation obligations for 920.9 acres as set out in the above Findings of Fact and Conclusions of Law.
6. Luminant is eligible to reduce the bond for the permit by the amount that is attributable to the subject aggregate 929.4 acres in future bond adjustments.

**IT IS THEREFORE ORDERED** that the above Findings of Fact and Conclusions of Law are adopted;

**IT IS FURTHER ORDERED** that release of Phase I, II and III reclamation obligations for 8.5 acres and release of Phase II and III reclamation obligations for 920.9 acres as set forth in the above Findings of Fact are hereby approved;

**IT IS FURTHER ORDERED** Luminant is eligible to reduce the amount of bond for the permit by the amount that is attributable to the 929.4 acres granted full release in this Order;

**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 other reclamation areas in accordance with this Order;

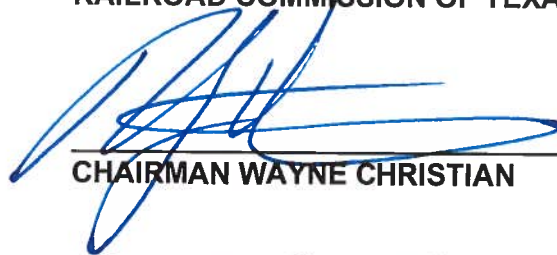
**IT IS FURTHER ORDERED** that the current bond remains in effect according to its terms until otherwise ordered by the Commission;

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

**SIGNED** on December 17, 2019.

**RAILROAD COMMISSION OF TEXAS**



CHAIRMAN WAYNE CHRISTIAN



COMMISSIONER CHRISTI CRADDICK



COMMISSIONER RYAN SITTON

**ATTEST:**

  
Secretary  
Railroad Commission of Texas

Deputy