

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

**SURFACE MINING DOCKET NO. C17-0005-SC-34-F
APPLICATION BY LUMINANT MINING COMPANY LLC
FOR RELEASE OF RECLAMATION OBLIGATIONS
PHASE I, II AND III FOR 260.14 ACRES, PHASE II AND III FOR 254.56 ACRES,
AND PHASE III FOR 1.64 ACRES
PERMIT NO. 34F, MONTICELLO WINFIELD MINE
TITUS AND FRANKLIN COUNTIES, TEXAS**

**ORDER APPROVING VARIOUS PHASES OF RELEASE OF RECLAMATION
OBLIGATIONS FOR AN AGGREGATE 516.34 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 260.14 acres, Phase II and III reclamation obligations for 254.56 acres, and Phase III reclamation obligations for 1.64 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), and the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 Tex. Admin. Code Ch. 12 (Thomson West 2019). 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 within an approximate permit area of 26,732.0 acres. 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. There remain no outstanding issues between the parties. Based on the information provided by the Application, Staff's technical analysis and addendum, and the field Inspection Report for the proposed areas of release, Staff recommends the approval of release of reclamation obligations for the requested release phases for the aggregate 516.34 acres. 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 released phases for the 516.34 acres when a future adjustment to the bond is requested.

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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 260.14 acres, Phase II and III reclamation obligations for 254.56 acres, and Phase III reclamation obligations for 1.64 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), and the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 Tex. Admin. Code Ch. 12 (Thomson West 2019). 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 within an approximate permit area of 26,732.0 acres. 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. There remain no outstanding issues between the parties. Based on the information provided by the Application, Staff's technical analysis and addendum, and the field Inspection Report for the proposed areas of release, Staff recommends the approval of release of reclamation obligations for the requested release phases for the aggregate 516.34 acres. 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 released phases for the 516.34 acres when a future adjustment to the bond is requested.

FINDINGS OF FACT

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

1. By letter dated October 5, 2016, Luminant Mining Company LLC (Luminant) filed an application with the Railroad Commission of Texas (Commission), Surface Mining and Reclamation Division (SMRD and/or Staff) for Release of Reclamation Obligations on an aggregate 516.34 acres, with 260.14 acres for Phase I, II, and III release, 254.56 acres for Phase II and III release, and 1.64 acres for Phase III release, within Permit No. 34F, Monticello Winfield Mine, in Titus and Franklin Counties, Texas. By letter dated August 22, 2018, the Administrative Law Judge (ALJ) suspended the Application until February 15, 2019, at the request of the applicant, to allow Luminant time to address issues regarding surface-water data and assessment that were noted by Staff in its January 26, 2018, Technical Analysis (TA). This suspension was later extended at Luminant's request by letters dated February 21, 2019 and July 26, 2019, granted by letter from the ALJ by letters dated February 28, 2019, and July 29, 2019, respectively. By letter dated October 8, 2019, Luminant submitted Supplement No. 1 to the Application to provide the surface-water data and assessment. Further review by Staff resulted in additional issues noted (TA Addendum No. 1, January 8, 2020), in response to which Luminant filed Supplement No. 2 by letter dated February 6, 2020. The procedural history of the subject docket is further addressed in Finding of Fact No. 4, *infra*. The application, as modified in Supplement Nos. 1 and 2, and with inclusion of the public notice tear sheets and affidavits submitted by letter dated April 11, 2017, is collectively considered the "Application."
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 currently bonds all of its statewide mining operations, including those conducted under Permit No. 34F, with a blanket collateral bond in the amount of \$975,000,000, which 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 April 17, 2017. Staff's technical analysis ("TA") and field inspection report ("Inspection Report") were filed in the docket on January 26, 2018. Review of the Application was suspended from August 22, 2018 through October 7, 2019 pending resolution of deficiencies identified by Staff in Luminant's 929.4-acre application for release of reclamation liability for the same Monticello Winfield Mine in Docket No. C15-0004-SC-34-F, because the 929.4-acre

FINDINGS OF FACT

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

1. By letter dated October 5, 2016, Luminant Mining Company LLC (Luminant) filed an application with the Railroad Commission of Texas (Commission), Surface Mining and Reclamation Division (SMRD and/or Staff) for Release of Reclamation Obligations on an aggregate 516.34 acres, with 260.14 acres for Phase I, II, and III release, 254.56 acres for Phase II and III release, and 1.64 acres for Phase III release, within Permit No. 34F, Monticello Winfield Mine, in Titus and Franklin Counties, Texas. By letter dated August 22, 2018, the Administrative Law Judge (ALJ) suspended the Application until February 15, 2019, at the request of the applicant, to allow Luminant time to address issues regarding surface-water data and assessment that were noted by Staff in its January 26, 2018, Technical Analysis (TA). This suspension was later extended at Luminant's request by letters dated February 21, 2019 and July 26, 2019, granted by letter from the ALJ by letters dated February 28, 2019, and July 29, 2019, respectively. By letter dated October 8, 2019, Luminant submitted Supplement No. 1 to the Application to provide the surface-water data and assessment. Further review by Staff resulted in additional issues noted (TA Addendum No. 1, January 8, 2020), in response to which Luminant filed Supplement No. 2 by letter dated February 6, 2020. The procedural history of the subject docket is further addressed in Finding of Fact No. 4, *infra*. The application, as modified in Supplement Nos. 1 and 2, and with inclusion of the public notice tear sheets and affidavits submitted by letter dated April 11, 2017, is collectively considered the "Application."
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4. Staff declared the Application administratively complete on April 17, 2017. Staff's technical analysis ("TA") and field inspection report ("Inspection Report") were filed in the docket on January 26, 2018. Review of the Application was suspended from August 22, 2018 through October 7, 2019 pending resolution of deficiencies identified by Staff in Luminant's 929.4-acre application for release of reclamation liability for the same Monticello Winfield Mine in Docket No. C15-0004-SC-34-F, because the 929.4-acre

application used the same paired watersheds as this Application.¹ For several reasons outlined in its TA, primarily regarding a lack of information in the Application addressing revegetation success, postmine land use, well transfer or plugging, and surface-water quality and quantity, Staff did not recommend release of Phase II or Phase III reclamation obligations for any of the acres included in the Application; instead, Staff only recommended approval of Phase I release on the 260.14 acres proposed for Phase I-III release. After submittal by Luminant of additional information in Supplement No. 1 on October 7, 2019 in response to Staff's TA, Staff filed Addendum No. 1 to its TA ("TAAddm1") on January 8, 2020 (dated December 20, 2019), recommending full release for the 260.14 acres proposed for Phase I-III release, the 254.56 acres proposed for Phase II and III release, and the 1.64 acres proposed for Phase III release. The chronology of the Application and associated actions is set out below:

DATE	ACTION
October 5, 2016	Luminant submits application for Phase I, II, and III Release of Reclamation Liability on and aggregate 516.34 Acres.
October 10, 2016	Staff files application in Docket Services for ALJ assignment and review of public notice.
October 27, 2016	Staff files Luminant's revised application information with Docket Services which it submitted by letter dated October 18, 2016.
November 14, 2016	Letter notice of assignment to ALJ Marcy Spraggins.
January 20, 2017	Luminant informs ALJ Spraggins of its intent to publish notice of the release application.
January 23, 2017	ALJ Spraggins issues public notice review letter for release application.
January 25, 2017	Staff notifies by letter the Mayor of Mt. Pleasant and Judges of Titus and Franklin Counties of the proposed application for release.
January 25 – February 16, 2017	Luminant published Notice of Application in newspapers of general circulation in the locality of the surface coal mining operation.

¹ By letter dated March 6, 2020, the ALJ informed the parties that official notice Commission Order issued December 17, 2019, in Docket No. C15-0004-SC-34-F to demonstrate Commission precedent regarding utilization of long-term surface monitoring (LTSM) paired watershed stations. In Docket No. C15-0004-SC-34-F the long-term surface monitoring (LTSM) paired-watershed stations used in the surface-water data analysis is the same paired watershed as those applicable to the acreage for the proposed release in the subject application.

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DATE	ACTION
April 11, 2017	Luminant submits Publisher's Affidavit and tear sheets to ALJ.
April 17, 2017	Letter from SMRD Director Kingsley declaring application administratively complete.
January 26, 2018	Staff's Technical Analysis (TA) and Inspection Report filed with ALJ.
April 3, 2018	Letter notice of reassignment to ALJ Steven Leary.
August 15, 2018	Luminant requests by letter that release application be suspended until February 15, 2019.
August 22, 2018	Affirmation filed by email from Staff Assistant Director Wootton that Staff does not object to request for suspension.
August 22, 2018	Letter from ALJ Leary granting suspension until February 15, 2019.
February 22, 2019	Luminant requests that release application be suspended until June 1, 2019.
February 28, 2019	Letter from ALJ Leary granting suspension until June 3, 2019.
April 9, 2019	Letter notice of reassignment to ALJ Veronica Ruberto.
July 29, 2019	Luminant requests by letter that release application be suspended until December 1, 2019.
July 30, 2019	Letter from ALJ Ruberto granting suspension until December 1, 2019.
August 13, 2019	Letter from ALJ Ruberto notifying Applicant that T. Walter has been assigned to this docket as Technical Examiner and requesting objections.
August 16, 2019	Letter from Luminant indicating no objection to T. Walter assignment as Technical Examiner.
October 8, 2019	Supplement filed by Luminant addressing Staff's comments in its January 18, 2018, TA.

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DATE	ACTION
December 30, 2019	Luminant letter indicating concurrence with Staff's recommendation for release of the requested phases of reclamation bond liability and request for presentation of the docket in Open Conference.
January 8, 2020	Staff files TA Addendum No. 1 (dated December 20, 2019) addressing October 8, 2019, supplement.
February 6, 2020	Letter from ALJ notifying parties of updated service list which removes SMRD Interim Director and adds new SMRD Director.
March 6, 2020	Letter from ALJ notifying parties of taking official notice Commission Order issued December 17, 2019, in Docket No. C15-0004-SC-34-F regarding LTSM paired watershed stations.

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 the *Mount Vernon Optic-Herald* were January 26 and February 2, 9, and 16, 2017. Dates of publication in the *Mount Pleasant Daily Tribune* were January 25 and February 1, 8, and 15, 2017. 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 the approved bond, the type of and appropriate dates on which reclamation work was performed, and a description of the results achieved as they relate to the approved reclamation plan. The notice contained information concerning the applicant, the location and boundaries of the permit area, the availability of the Application for inspection, 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 April 11, 2017. The application was subsequently declared administratively complete on April 17, 2017.
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).

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December 30, 2019	Luminant letter indicating concurrence with Staff's recommendation for release of the requested phases of reclamation bond liability and request for presentation of the docket in Open Conference.
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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. Luminant sent notice of the Application to owners of interests within and adjacent to the areas requested for release. Luminant also sent notice to local governmental bodies, planning agencies, sewage and water treatment authorities and water companies in the locality as required by §12.312(a)(2) of the Regulations. The notice was provided via first-class letter in multiple mailings dated January 23, 2017. Luminant mailed notice to the U.S. Army Corps of Engineers (Fort Worth District), Natural Resources Conservation Service (Mount Pleasant Office), Texas Commission on Environmental Quality (Austin Office), Texas Department of Highways and Public Transportation (*sic*) (Mount Pleasant Office), Texas State Soil and Water Conservation Board (Temple and Mount Pleasant Offices), Tri-Special Utility District (Mount Pleasant), Southwestern Bell Telephone Company (Dallas Office), South Franklin Water Supply Corp (Mount Vernon), Verizon (Dallas Office), Wood County Electric Coop Inc. (Quitman Office), Bowie Cass Electric Coop, Inc. (Douglassville Office), Titus County Courthouse (Mount Pleasant), and Franklin County Courthouse (Mount Vernon). Copies of notification letters were filed by Luminant with the Commission by letter received on April 11, 2017.
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 January 25, 2017. SMRD also notified the Mayor of the City of Mount Pleasant, Texas, by certified letter dated January 25, 2017, because the Permit No. 34F area is partially located within the city of Mount Pleasant pursuant to §12.313(c) of the Regulations. Mailing of notification was provided at least 31 days prior to the date of consideration of the docket by the Commission in accordance with §134.133 of the Act. A copy of the letter was provided in Attachment II of Staff's TA.
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 by letters dated October 13, 2016, of the date and time of Staff's field inspection scheduled for October 27, 2016. 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 27, 2016, as scheduled. SMRD Inspection and Enforcement ("I&E") Staff Inspectors Brad Martin and Lindsay Lang, accompanied by Luminant representative Mr. Monty Ward, conducted the inspection of the areas requested for release. Except for seven issues (numbered 1, 2, and 4 through 8), the inspector

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11. The inspection occurred on October 27, 2016, as scheduled. SMRD Inspection and Enforcement ("I&E") Staff Inspectors Brad Martin and Lindsay Lang, accompanied by Luminant representative Mr. Monty Ward, conducted the inspection of the areas requested for release. Except for seven issues (numbered 1, 2, and 4 through 8), the inspector

found, as documented in the Inspection Report, that the proposed release area was eligible for the requested release, pending Staff review. Four of the seven issues (Issues 2, 4, 5, and 8) are mapping/accounting errors or omissions that do not represent impediments to release. Issue 1 noted that Luminant did not include documentation to indicate Titus County's acceptance of the sections of two county roads included in the postmine industrial/commercial ("I/C") land-use area, and Issue 6 noted that Luminant did not include ground cover approval letters for I/C land-use tracts; these concerns are addressed in Finding of Fact Nos. 18.c. and 18.f., *infra*. Issue 7 noted that Luminant did not address whether long-term groundwater monitoring (LTGM) wells B2-7-R and B2-24-UB, which are located in the proposed Phase III release area, should remain in place, and that Luminant did not list LTGM well B2-24-UB in Section V.A.1 of the Application; these issues are addressed in Finding of Fact 21.e., *infra*.

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 516.34 acres proposed for release are located in the A, C, F, H, J, and M Areas of the mine. A general location map of the permit area, with the 516.34 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, Staff's Inspection Report, and Staff's TA and TAAddm1 provide support for various phases of release of reclamation obligations for certain parcels comprising the subject 516.34 acres. In its TA and TAAddm1, Staff evaluated the proposed release Application by dividing the proposed release areas into seven parcels based on geographical location and permanent infrastructure, as shown on figures contained in Staff's January 26, 2018 TA (Attachment I).
13. As set forth in the Application (page IV.A.5-1), the approved postmine land uses within the 516.34-acre proposed release areas consist of pastureland (115.60 acres), fish and wildlife habitat (155.17 acres), developed water resources ("DWR") (30.62 acres), forestry (189.89 acres), and I/C (25.06 acres), for a total of 516.34 acres.
14. The subject acreage requested for release was mined or otherwise disturbed from 1980 to 2004, and final grading occurred from 1981 to 2005. Staff conducted routine monthly inspections of the proposed release area from 1980 to the present. Of the 516.34 acres proposed for release, 489.5 acres were placed into the extended responsibility period ("ERP") from 1998 to 2010, according to Table I-1. No ERP date is specified for the other 26.8 acres. Of these 26.8 acres, 25.06 acres are classified as postmine I/C land use. The other 1.7 acres not in the ERP are ostensibly congruous with the 1.64 acres proposed for Phase III release. Of these 1.64 acres, 0.64 acre (the northernmost extents of Parcel No. 3) contains a portion of A Area Access Road No. 3 (Attachment III, Appendix V, Photo 30). The other 1.0 acre contains a portion of C Area Access Road No. 1 (Attachment III, Appendix V, Photo 31) and was actually in the November 5, 1985, extended responsibility area ("ERA") until February 8, 2013. By letter dated February 8, 2013, the Director

found, as documented in the Inspection Report, that the proposed release area was eligible for the requested release, pending Staff review. Four of the seven issues (Issues 2, 4, 5, and 8) are mapping/accounting errors or omissions that do not represent impediments to release. Issue 1 noted that Luminant did not include documentation to indicate Titus County's acceptance of the sections of two county roads included in the postmine industrial/commercial ("I/C") land-use area, and Issue 6 noted that Luminant did not include ground cover approval letters for I/C land-use tracts; these concerns are addressed in Finding of Fact Nos. 18.c. and 18.f., *infra*. Issue 7 noted that Luminant did not address whether long-term groundwater monitoring (LTGM) wells B2-7-R and B2-24-UB, which are located in the proposed Phase III release area, should remain in place, and that Luminant did not list LTGM well B2-24-UB in Section V.A.1 of the Application; these issues are addressed in Finding of Fact 21.e., *infra*.

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 516.34 acres proposed for release are located in the A, C, F, H, J, and M Areas of the mine. A general location map of the permit area, with the 516.34 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, Staff's Inspection Report, and Staff's TA and TAAddm1 provide support for various phases of release of reclamation obligations for certain parcels comprising the subject 516.34 acres. In its TA and TAAddm1, Staff evaluated the proposed release Application by dividing the proposed release areas into seven parcels based on geographical location and permanent infrastructure, as shown on figures contained in Staff's January 26, 2018 TA (Attachment I).
13. As set forth in the Application (page IV.A.5-1), the approved postmine land uses within the 516.34-acre proposed release areas consist of pastureland (115.60 acres), fish and wildlife habitat (155.17 acres), developed water resources ("DWR") (30.62 acres), forestry (189.89 acres), and I/C (25.06 acres), for a total of 516.34 acres.
14. The subject acreage requested for release was mined or otherwise disturbed from 1980 to 2004, and final grading occurred from 1981 to 2005. Staff conducted routine monthly inspections of the proposed release area from 1980 to the present. Of the 516.34 acres proposed for release, 489.5 acres were placed into the extended responsibility period ("ERP") from 1998 to 2010, according to Table I-1. No ERP date is specified for the other 26.8 acres. Of these 26.8 acres, 25.06 acres are classified as postmine I/C land use. The other 1.7 acres not in the ERP are ostensibly congruous with the 1.64 acres proposed for Phase III release. Of these 1.64 acres, 0.64 acre (the northernmost extents of Parcel No. 3) contains a portion of A Area Access Road No. 3 (Attachment III, Appendix V, Photo 30). The other 1.0 acre contains a portion of C Area Access Road No. 1 (Attachment III, Appendix V, Photo 31) and was actually in the November 5, 1985, extended responsibility area ("ERA") until February 8, 2013. By letter dated February 8, 2013, the Director

acknowledged Luminant's request to remove this 1.0 acre from the ERP because: (i) the road segment is classified as a facility in support of the pastureland use which is adjacent to or an integral part of these operations, as described at §12.3(96)(B); and (ii) roads are not required to endure an ERP.

15. The Commission previously approved Phase I release of reclamation liability for the 254.56 acres proposed for Phase II and III release by Order dated August 21, 2012 [Docket No. C12-0006-SC-34-F], and approved the Phase I and II release of reclamation liability for the 1.64 acres proposed for Phase III release by Order dated November 2, 1999 [Docket No. C9-0026-SC-30-F].
16. The 516.34 acres proposed for release of reclamation liability contain four (4) ponds, two (2) diversions, three (3) drop structures, ten (10) small depressions, one (1) pond inlet structure, one (1) pond spillway, and eight (8) access roads. One drop structure, J-100 Drop Structure, was approved as Revision Application No. 2 on May 23, 1995. All other structures were approved as permanent by Staff between 1989 and 2014. 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.
17. Surface-water runoff from proposed release areas drain into Texas Commission on Environmental Quality (TCEQ) Stream Segment Nos. 0303, 0404, and 0408.
18. Phase I release of reclamation obligations have been met for the subject 260.14 acres in accordance with Phase I requirements for backfilling, regrading, and drainage control as required by §12.313(a)(1) of the Regulations.
 - a. The aggregate postmining land uses in the areas proposed for Phase I release consist of 58.86 acres of pastureland, 25.06 acres of industrial/commercial, 113.95 acres of forestry, 31.71 acres of fish and wildlife habitat, and 30.56 acres of developed water resources.
 - b. The area has been backfilled and regraded to its approximate original contour [§12.385(a)]; highwalls have been eliminated [12.385(b)]; suitable topsoil substitute material has been placed over regraded spoil as plant-growth material; no cut-and-fill terraces have been constructed; and drainage control has been accomplished in accordance with the approved reclamation plan. Regrading of the area occurred between 1981 and 2005 in such a manner that erosion and water pollution have been minimized [§12.385(d)].
 - c. The soil-testing grids within the 260.14 acres proposed for Phase I release of reclamation obligations have met the soil suitability requirements. All soil grids located within the release area are represented by 1991 to 2016 initial postmine soil monitoring reports. By letter dated October 18, 2016, SMRD determined that

acknowledged Luminant's request to remove this 1.0 acre from the ERP because: (i) the road segment is classified as a facility in support of the pastureland use which is adjacent to or an integral part of these operations, as described at §12.3(96)(B); and (ii) roads are not required to endure an ERP.

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 - c. The soil-testing grids within the 260.14 acres proposed for Phase I release of reclamation obligations have met the soil suitability requirements. All soil grids located within the release area are represented by 1991 to 2016 initial postmine soil monitoring reports. By letter dated October 18, 2016, 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].
- d. One diversion, the J-1 Diversion Reanalysis No. 1, is located in an area proposed for Phase I release of reclamation liability. The diversion was found to be stable and well vegetated. [§12.341].
 - e. Three permanent impoundments, J-1, JR-2 Reanalysis, and JR-3, are located in areas proposed for Phase I release. The ponds were found to be stable and well vegetated. [§12.347(b)].
 - f. The area proposed for Phase I-III release also contains sections of Titus County Roads ("TCR") 2550 and 2670 (Parcel No. 1). Staff's initial TA notes that Luminant did not provide documentation in the Application to demonstrate that Titus County had accepted any I/C postmine land-use portions of TCR 2550 and 2670. In response, Luminant indicates that both TCR 2550 and 2670 remain a part of the county road system. TCR 2250 was temporarily closed in order to protect Luminant property and is scheduled to reopen in March of 2020. Luminant provided closure documentation for TCR 2550 dated March 27, 2019 approved and signed by Titus County Judge Brian P. Lee. The supplemental information provided by Luminant effectively resolves Staff's concerns with County Roads 2550 and 2670 which are partially located within Parcel No. 1.
 - g. One area designated for disposal of non-coal waste occurs within the area requested for Phase I release (an approximately 13.4-acre portion of the Phase I release area). 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].
19. Luminant has successfully completed all activities related to revegetation of the 516.34 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 ERP, 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 of the Regulations and the requirements of the approved postmine soil-testing plan. Revegetation has been established on the areas requested for release in accordance with §12.395 of the Regulations.

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- a. Permanent vegetation was planted from 1981 through 2006. The areas proposed for release consist of postmine land uses of pastureland, fish and wildlife habitat, forestry, DWR, and I/C. Based upon the inspection conducted, Staff has determined that the land has been reclaimed to the appropriate postmine land uses as required by §12.147 and §12.399 of the Regulations.
- b. The 115.60 acres of pastureland postmine land use have been revegetated primarily with Coastal and Common bermudagrass consistent with general revegetation requirements at §12.390. This acreage is comprised of land management units ("LMUs") 98-C-2P, 98-J-2P, 06-C-1P, and 10-M-P. In accordance with the approved postmine soil-testing plan, Luminant submitted soil-fertility data for the pastureland LMUs. For LMUs 98-C-2P and 98-J-2P, SMRD found by letters dated May 15, 2000, June 7, 2001, and May 2, 2002, that soil-fertility data for samples collected for growing seasons 1999, 2000, and 2001, respectively, did not indicate that augmented fertilization occurred within the LMUs. SMRD made the same findings for LMU 06-C-1P by letters dated May 17, 2007, July 1, 2008, and May 6, 2009, for samples collected for growing seasons 2006, 2007, and 2008, respectively; and for LMU 10-M-P by letters dated August 31, 2011, August 20, 2012, and July 29, 2013, for samples collected for the 2010, 2011, and 2012 growing seasons, respectively.
- c. 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 ERP, except the first year [§12.395(c)(2)]. LMU 98-C-2P was placed in the ERP on September 17, 1998; LMU 98-J-2P was placed in the ERP on September 3, 1998; LMU 06-C-1P was placed in the ERP on March 6, 2006; and LMU 10-M-P was placed in the ERP on April 15, 2010. Luminant submitted groundcover and productivity reports for the pastureland LMUs as follows. For LMUs 98-C-2P and 98-J-2P, Luminant submitted groundcover and productivity reports for the 2000 and 2001 growing seasons by letters dated March 20, 2001 and January 28, 2002, respectively. SMRD determined that the groundcover and productivity data exceeded the approved standards for the land use of pastureland for these LMUs during the 2000 and 2001 growing seasons by letters dated April 23, 2001 and May 15, 2002, respectively. For LMU 06-C-1P, Luminant submitted groundcover and productivity reports for the 2007 and 2008 growing seasons by letters dated January 8, 2008, and June 12, 2009, respectively. SMRD determined that the groundcover and productivity data exceeded the approved standards for the land use of pastureland for this LMU during the 2007 and 2008 growing seasons by letters dated October 31, 2008 and October 27, 2009, respectively. Finally, for LMU 10-M-P, Luminant submitted groundcover and productivity reports for the 2011 and 2012 growing seasons by letters dated April 12, 2012 and April 8, 2013, respectively. SMRD determined that the groundcover and productivity data exceeded the approved standards for the land use of pastureland for this LMU

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during the 2011 and 2012 growing seasons by letters dated September 18, 2012 and September 17, 2013, respectively. Luminant has met Phase III requirements for revegetation of pastureland in accordance with §12.395.

- d. Two fish and wildlife habitat LMUs (LMUs 98-J-2H and 10-M-H) and three forestry LMUs (LMUs 98-J-2F, 08-L-2F, and 10-M-F) are located within the proposed release area (Parcel Nos. 4 through 7). SMRD found by letters dated April 29, 2004, and December 15, 2016, that the data for forestry LMU 98-J-2F and fish/wildlife LMU 98-J-2H indicated that vegetative ground cover and woody-plant stocking within the LMUs exceeded 90% of the approved success standards during the 2003 and 2016 growing seasons, respectively. Staff's initial TA states that findings based on quantitative data collected more than two years prior to the submittal of an application for Phase III release (in this case, collected prior to 2014) must be reconfirmed, as described in Section III.D. of SMRD Advisory Notice ER-BA-127(b). Staff notes that the 2016 growing season for which data are provided for LMUs 98-J-2F and 98-J-2H represents the year Luminant collected qualitative data to affirm the previous findings based on quantitative data. By letter dated February 11, 2015, SMRD found that the data for forestry LMU 08-L-2F 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 October 12, 2016, SMRD found that the data for forestry LMU 10-M-F and fish/wildlife LMU 10-M-H indicated that vegetative ground cover and woody-plant stocking within the LMUs exceeded 90% of the approved success standards during the 2016 growing season. Copies of the above-referenced October 12 and December 15, 2016, approval letters were included in Attachment IV of Staff's initial TA. Revegetation of the fish and wildlife and forestry postmine acreage has been successfully completed as required by §12.313(a)(2) and §12.395(a)(2) of the Regulations for Phase II and III release of reclamation liability.
- e. The 30.62 acres of DWR postmine land use meet applicable revegetation requirements for Phase II and III release. During Staff's field inspection of the area, staff noted that 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.
- f. Revegetation on I/C postmine land-use acreage must be sufficient to control erosion prior to Phase II and III release. The I/C areas proposed for release are comprised of: (i) a reclaimed dragline walkway that crossed IH-30 and the St. Louis Southwestern Railway (southern half of Parcel No. 2); and (ii) the intersection of County Roads 2550 and 2670 (Parcel No. 1). In its initial TA, Staff did not recommend Phase II and III release for Parcel Nos. 1 and 2 because Luminant provided no information to address revegetation success, nor could Staff find any such information in its files for the 25.06 acres of I/C land proposed for release in

during the 2011 and 2012 growing seasons by letters dated September 18, 2012 and September 17, 2013, respectively. Luminant has met Phase III requirements for revegetation of pastureland in accordance with §12.395.

- d. Two fish and wildlife habitat LMUs (LMUs 98-J-2H and 10-M-H) and three forestry LMUs (LMUs 98-J-2F, 08-L-2F, and 10-M-F) are located within the proposed release area (Parcel Nos. 4 through 7). SMRD found by letters dated April 29, 2004, and December 15, 2016, that the data for forestry LMU 98-J-2F and fish/wildlife LMU 98-J-2H indicated that vegetative ground cover and woody-plant stocking within the LMUs exceeded 90% of the approved success standards during the 2003 and 2016 growing seasons, respectively. Staff's initial TA states that findings based on quantitative data collected more than two years prior to the submittal of an application for Phase III release (in this case, collected prior to 2014) must be reconfirmed, as described in Section III.D. of SMRD Advisory Notice ER-BA-127(b). Staff notes that the 2016 growing season for which data are provided for LMUs 98-J-2F and 98-J-2H represents the year Luminant collected qualitative data to affirm the previous findings based on quantitative data. By letter dated February 11, 2015, SMRD found that the data for forestry LMU 08-L-2F 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 October 12, 2016, SMRD found that the data for forestry LMU 10-M-F and fish/wildlife LMU 10-M-H indicated that vegetative ground cover and woody-plant stocking within the LMUs exceeded 90% of the approved success standards during the 2016 growing season. Copies of the above-referenced October 12 and December 15, 2016, approval letters were included in Attachment IV of Staff's initial TA. Revegetation of the fish and wildlife and forestry postmine acreage has been successfully completed as required by §12.313(a)(2) and §12.395(a)(2) of the Regulations for Phase II and III release of reclamation liability.
- e. The 30.62 acres of DWR postmine land use meet applicable revegetation requirements for Phase II and III release. During Staff's field inspection of the area, staff noted that 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.
- f. Revegetation on I/C postmine land-use acreage must be sufficient to control erosion prior to Phase II and III release. The I/C areas proposed for release are comprised of: (i) a reclaimed dragline walkway that crossed IH-30 and the St. Louis Southwestern Railway (southern half of Parcel No. 2); and (ii) the intersection of County Roads 2550 and 2670 (Parcel No. 1). In its initial TA, Staff did not recommend Phase II and III release for Parcel Nos. 1 and 2 because Luminant provided no information to address revegetation success, nor could Staff find any such information in its files for the 25.06 acres of I/C land proposed for release in

- this docket. In response, Luminant submitted a ground-cover evaluation by letter dated June 12, 2018, for the 25.06 acres of I/C land proposed for release. Staff approved Luminant's ground-cover evaluation by letter dated July 10, 2018 (File Reference No. 1816402), and a copy of the approval letter is included in Attachment IV to Staff's TAAddm1. In TAAddm1, Staff concluded that Parcel Nos. 1 and 2 meet the requirements of §12.395 for revegetation success.
- g. Per Luminant's approved soil-testing plan ("STP") approved by Order dated March 25, 2014, a random 10% resampling of all soil grids within the ERP is required. However, for reasons described in a SMRD letter dated December 22, 2014, ERAs initiated on or before January 25, 2010, are excluded from this sampling requirement if data demonstrating Phase III revegetation success has been approved at the time this change to the STP became effective. As a result, Luminant includes an approval date for pastureland LMU 10-M-P only (letter dated December 17, 2015) and indicates, and Staff concurs, that the 10% resampling data are not required for the other three pastureland LMUs. Staff found in its TA that the resampling requirement applied to only one of the ligneous LMUs proposed for release, forestry LMU 08-L-2F, and that by the December 17, 2015, letter (a copy of which is included in Section V.B. of the Application), the SMRD found that Luminant had satisfied the requirement of the approved STP to resample a random 10% of previously sampled grids in the fourth (or later) year of extended responsibility within this forestry LMU and the entirety of the April 15, 2010, ERA.
- h. 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. [§12.395(c)(2)]
- i. 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. – 12.625]
20. The 514.7 acres proposed for release from Phase II requirements are not contributing suspended solids to streamflow or runoff outside the permit area in excess of 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 of §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

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- g. Per Luminant's approved soil-testing plan ("STP") approved by Order dated March 25, 2014, a random 10% resampling of all soil grids within the ERP is required. However, for reasons described in a SMRD letter dated December 22, 2014, ERAs initiated on or before January 25, 2010, are excluded from this sampling requirement if data demonstrating Phase III revegetation success has been approved at the time this change to the STP became effective. As a result, Luminant includes an approval date for pastureland LMU 10-M-P only (letter dated December 17, 2015) and indicates, and Staff concurs, that the 10% resampling data are not required for the other three pastureland LMUs. Staff found in its TA that the resampling requirement applied to only one of the ligneous LMUs proposed for release, forestry LMU 08-L-2F, and that by the December 17, 2015, letter (a copy of which is included in Section V.B. of the Application), the SMRD found that Luminant had satisfied the requirement of the approved STP to resample a random 10% of previously sampled grids in the fourth (or later) year of extended responsibility within this forestry LMU and the entirety of the April 15, 2010, ERA.
 - h. 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. [§12.395(c)(2)]
 - i. 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. – 12.625]
20. The 514.7 acres proposed for release from Phase II requirements are not contributing suspended solids to streamflow or runoff outside the permit area in excess of 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 of §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 in the permit.

- a. From 2003 to 2017, monitoring data for final discharge sedimentation Ponds F-2, F2-R3, F-11, J-1, J-2, and M-1 have shown a pH consistently within the range of 6.0 to 9.0 s.u. and total suspended matter ("TSM") consistently under the allowable daily maximum of 0.5 mL/L.
- b. Discharge from the proposed release area in final discharge sedimentation Pond F2-R3 remains in compliance with TCEQ-issued TPDES permit water-quality effluent standards, as demonstrated in the Application on Plate-III.B.3-1. From 2004 to 2017, monitoring data for this monitoring point have shown a pH consistently within the range of 6.0 to 9.0 s.u.
- c. Discharge from the proposed release area in final discharge sedimentation pond F-2 remains in compliance with TCEQ-issued TPDES permit water-quality effluent standards, as demonstrated in the Application on Plate-III.B.3-1. From 2006 to 2017, monitoring data for this monitoring point have shown a pH consistently within the range of 6.0 to 9.0 s.u., total settleable solids ("TSS") at or below the allowable daily maximum, and a total Fe at or below the allowable daily maximum.
- d. Discharge from the proposed release area in final discharge sedimentation pond F-11 remains in compliance with TCEQ-issued TPDES permit water-quality effluent standards, as demonstrated in the Application on Plate-III.B.3-1. From 2006 to 2017, monitoring data for this monitoring point have shown a pH consistently within the range of 6.0 to 9.0 s.u. and a TSM consistently under the allowable daily maximum of 0.5 mL/L.
- e. Discharge from the proposed release area in final discharge sedimentation pond J-1 remains in compliance with TCEQ-issued TPDES permit water-quality effluent standards, as demonstrated in the Application on Plate-III.B.3-1, with the exception of the exceedances provided on page III.B.3-3 for TSS and Fe. From 2003 to 2017, monitoring data for this monitoring point have shown a pH consistently within the range of 6.0 to 9.0 s.u. and a TSM consistently under the allowable daily maximum of 0.5 mL/L.
- f. Discharge from the proposed release area in final discharge sedimentation pond M-1 remains in compliance with TCEQ-issued TPDES permit water-quality effluent standards, as demonstrated in the Application on Plate-III.B.3-1. From 2003 to 2017, monitoring data for this monitoring point have shown a pH consistently within the range of 6.0 to 9.0 s.u. and a TSM consistently under the allowable daily maximum of 0.5 mL/L.

collected in accordance with the approved long-term surface-water monitoring ("LTSM") plan in the permit.

- a. From 2003 to 2017, monitoring data for final discharge sedimentation Ponds F-2, F2-R3, F-11, J-1, J-2, and M-1 have shown a pH consistently within the range of 6.0 to 9.0 s.u. and total suspended matter ("TSM") consistently under the allowable daily maximum of 0.5 mL/L.
- b. Discharge from the proposed release area in final discharge sedimentation Pond F2-R3 remains in compliance with TCEQ-issued TPDES permit water-quality effluent standards, as demonstrated in the Application on Plate-III.B.3-1. From 2004 to 2017, monitoring data for this monitoring point have shown a pH consistently within the range of 6.0 to 9.0 s.u.
- c. Discharge from the proposed release area in final discharge sedimentation pond F-2 remains in compliance with TCEQ-issued TPDES permit water-quality effluent standards, as demonstrated in the Application on Plate-III.B.3-1. From 2006 to 2017, monitoring data for this monitoring point have shown a pH consistently within the range of 6.0 to 9.0 s.u., total settleable solids ("TSS") at or below the allowable daily maximum, and a total Fe at or below the allowable daily maximum.
- d. Discharge from the proposed release area in final discharge sedimentation pond F-11 remains in compliance with TCEQ-issued TPDES permit water-quality effluent standards, as demonstrated in the Application on Plate-III.B.3-1. From 2006 to 2017, monitoring data for this monitoring point have shown a pH consistently within the range of 6.0 to 9.0 s.u. and a TSM consistently under the allowable daily maximum of 0.5 mL/L.
- e. Discharge from the proposed release area in final discharge sedimentation pond J-1 remains in compliance with TCEQ-issued TPDES permit water-quality effluent standards, as demonstrated in the Application on Plate-III.B.3-1, with the exception of the exceedances provided on page III.B.3-3 for TSS and Fe. From 2003 to 2017, monitoring data for this monitoring point have shown a pH consistently within the range of 6.0 to 9.0 s.u. and a TSM consistently under the allowable daily maximum of 0.5 mL/L.
- f. Discharge from the proposed release area in final discharge sedimentation pond M-1 remains in compliance with TCEQ-issued TPDES permit water-quality effluent standards, as demonstrated in the Application on Plate-III.B.3-1. From 2003 to 2017, monitoring data for this monitoring point have shown a pH consistently within the range of 6.0 to 9.0 s.u. and a TSM consistently under the allowable daily maximum of 0.5 mL/L.

- g. Discharge from the proposed release area in final discharge sedimentation pond J-2 remains in compliance with TCEQ-issued TPDES permit water-quality effluent standards, as demonstrated in the Application on Plate-III.B.3-1, with the exception of the exceedance provided on page III.B.3-3 involving TSS. From 2004 to 2017, monitoring data for this monitoring point have shown a pH consistently within the range of 6.0 to 9.0 s.u., a TSS at or below the allowable daily maximum, and a total Fe at or below the daily maximum.
- h. The Application identifies four permanent ponds located within the release areas—JR-2, JR-3, JR-1, and AR-39. Because these ponds were approved as permanent structures before the SMRD began requiring four quarters of monitoring data, Luminant did not provide the quarterly monitoring data for these structures. These ponds will not have a negative impact on the hydrology of the watershed.
- i. Luminant provided monitoring data for parameters of flow, pH, TSS, Fe, and TSM for Outfall No. 101; pH, TSS, Fe, Se, and TSM for Outfall No. 102; flow, pH, and TSM for Outfall No. 001; flow, pH, TSM for Outfall No. 003; and flow, pH, and TSM for Outfall No. 103, as contained in the table on pages 1 through 32 of Appendix III.B.3-A.
- j. Luminant has demonstrated that discharges from sedimentation Ponds F2-R3 (Parcel Nos. 2 and 3, F-11 (Parcel No. 1), F-2 (Parcel No. 1), J-2 (Parcel No. 4), J-1 (Parcel No. 4), and M-1 (Parcel Nos. 6 and 7) have complied with the water-quality limitations established in TPDES Permit No. 02697 (including 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.
- k. Staff noted in its initial TA that it did not recommend Phase II and III release for Parcel Nos. 1, 2, or 4 through 7 or Phase III release for Parcel No. 3 because Luminant did not provide necessary information regarding surface-water quantity and quality. In response to these concerns, Luminant provided Supplement No. 1, in which it responded to and provided data to address Staff's concerns, including:
- Errata providing Luminant's responses to the concerns listed in Staff's initial TA;
 - Figure 3, a graph of flow at LTSM Station HSW-W2 versus rainfall from January 2007 through November 2017;
 - Section III.B.3 Surface Water Monitoring/Sediment Control Measures —
 - hydrogeologic setting;
 - individual pond monitoring data evaluation;
 - TPDES point-source discharges;

- g. Discharge from the proposed release area in final discharge sedimentation pond J-2 remains in compliance with TCEQ-issued TPDES permit water-quality effluent standards, as demonstrated in the Application on Plate-III.B.3-1, with the exception of the exceedance provided on page III.B.3-3 involving TSS. From 2004 to 2017, monitoring data for this monitoring point have shown a pH consistently within the range of 6.0 to 9.0 s.u., a TSS at or below the allowable daily maximum, and a total Fe at or below the daily maximum.
- h. The Application identifies four permanent ponds located within the release areas—JR-2, JR-3, JR-1, and AR-39. Because these ponds were approved as permanent structures before the SMRD began requiring four quarters of monitoring data, Luminant did not provide the quarterly monitoring data for these structures. These ponds will not have a negative impact on the hydrology of the watershed.
- i. Luminant provided monitoring data for parameters of flow, pH, TSS, Fe, and TSM for Outfall No. 101; pH, TSS, Fe, Se, and TSM for Outfall No. 102; flow, pH, and TSM for Outfall No. 001; flow, pH, TSM for Outfall No. 003; and flow, pH, and TSM for Outfall No. 103, as contained in the table on pages 1 through 32 of Appendix III.B.3-A.
- j. Luminant has demonstrated that discharges from sedimentation Ponds F2-R3 (Parcel Nos. 2 and 3, F-11 (Parcel No. 1), F-2 (Parcel No. 1), J-2 (Parcel No. 4), J-1 (Parcel No. 4), and M-1 (Parcel Nos. 6 and 7) have complied with the water-quality limitations established in TPDES Permit No. 02697 (including 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.
- k. Staff noted in its initial TA that it did not recommend Phase II and III release for Parcel Nos. 1, 2, or 4 through 7 or Phase III release for Parcel No. 3 because Luminant did not provide necessary information regarding surface-water quantity and quality. In response to these concerns, Luminant provided Supplement No. 1, in which it responded to and provided data to address Staff's concerns, including:
- Errata providing Luminant's responses to the concerns listed in Staff's initial TA;
 - Figure 3, a graph of flow at LTSM Station HSW-W2 versus rainfall from January 2007 through November 2017;
 - Section III.B.3 Surface Water Monitoring/Sediment Control Measures —
 - hydrogeologic setting;
 - individual pond monitoring data evaluation;
 - TPDES point-source discharges;

- RRC point-source discharges;
- permanent pond water-quality evaluation;
- hydrologic balance monitoring;
- LTSM water-quality evaluation including comparison of undisturbed to disturbed station water quality, comparison to TCEQ stream segment criteria, and comparison to baseline data;
- trend analysis for water quality at disturbed station; and
- LTSM water-quantity evaluation;
- *Table III.B.3-2 Summary of Water Quality Data for LTSM Stations;*
- *Table III.B.3-2 Summary of Baseline and LTSM Surface Water Flow Information;*
- *Appendix III.B.3-A Final Discharge Pond Data and Graphs;*
- *Appendix III.B.3-B Data from LTSM Stations;*
- *Plate III.B.3-1 Wells/Ponds/Watersheds Location Map [(Sheets 1 and 2) certified by Mr. Demetrie S. Penson, a professional engineer licensed in the state of Texas];*
- *Attachment 1 [Luminant consultant] Golder 3/5/19 Technical Memorandum Addressing RRC Surface Water Concerns for the Monticello Winfield 929.4 Bond Release Application; and*
- *Attachment 2 Luminant response to RRC Water Quantity Concerns for the Monticello Winfield 929.4 Bond Release Application.*

Staff, in its TAAadm1, indicates that the data provided appear to demonstrate that water quality has largely stabilized with respect to the parcels requested for release.

- i. Staff noted in its initial TA that final discharge Pond F-11 and its watershed were not depicted on Plate III.B.3-1, and that Luminant did not provide topography for the entire watershed of final discharge Pond F2-R3 and Pond M-1 on Plate III.B.3-1. In response, Luminant revised Plate III.B.3-1 to depict final discharge Pond F-11, Pond F-11 watershed, and topography for the entire watershed for final discharge Ponds F2-R3 and M-1.
- m. A 0.29-acre portion of Parcel No. 1 is located outside the mapped watershed boundary of Pond F-2 and is located on the western edge of a county road right-of-way that has been released from bond. The area drains to Pond F-9, and Pond F-9 and its watershed are shown on revised Plate III.B.3-1. Staff's TAAadm1 indicates that the 0.29-acre area is a small mapping error and that the data Luminant provided from the adjacent F-2 watershed is adequate to show that water quality of this 0.29-acre area is acceptable to meet the requirements of Phase III release from reclamation liability.

- RRC point-source discharges;
- permanent pond water-quality evaluation;
- hydrologic balance monitoring;
- LTSM water-quality evaluation including comparison of undisturbed to disturbed station water quality, comparison to TCEQ stream segment criteria, and comparison to baseline data;
- trend analysis for water quality at disturbed station; and
- LTSM water-quantity evaluation;
- Table III.B.3-2 *Summary of Water Quality Data for LTSM Stations*;
- Table III.B.3-2 *Summary of Baseline and LTSM Surface Water Flow Information*;
- Appendix III.B.3-A *Final Discharge Pond Data and Graphs*;
- Appendix III.B.3-B *Data from LTSM Stations*;
- Plate III.B.3-1 *Wells/Ponds/Watersheds Location Map* [(Sheets 1 and 2) certified by Mr. Demetrie S. Penson, a professional engineer licensed in the state of Texas];
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Staff, in its TAAddm1, indicates that the data provided appear to demonstrate that water quality has largely stabilized with respect to the parcels requested for release.

- i. Staff noted in its initial TA that final discharge Pond F-11 and its watershed were not depicted on Plate III.B.3-1, and that Luminant did not provide topography for the entire watershed of final discharge Pond F2-R3 and Pond M-1 on Plate III.B.3-1. In response, Luminant revised Plate III.B.3-1 to depict final discharge Pond F-11, Pond F-11 watershed, and topography for the entire watershed for final discharge Ponds F2-R3 and M-1.
- m. A 0.29-acre portion of Parcel No. 1 is located outside the mapped watershed boundary of Pond F-2 and is located on the western edge of a county road right-of-way that has been released from bond. The area drains to Pond F-9, and Pond F-9 and its watershed are shown on revised Plate III.B.3-1. Staff's TAAddm1 indicates that the 0.29-acre area is a small mapping error and that the data Luminant provided from the adjacent F-2 watershed is adequate to show that water quality of this 0.29-acre area is acceptable to meet the requirements of Phase III release from reclamation liability.

- n. A portion of Parcel No. 2 lies outside of surface-water control because it is in the footprint of the dragline walkway when the dragline was walked across I-30 and its parallel road in 1998. The activities associated with the dragline walkway footprint were covered by a construction stormwater permit issued by the TCEQ, and the portion of Parcel No. 2 in the footprint of the dragline walkway has not had deleterious effects on the surface-water hydrologic balance. The area is acceptable to meet the requirements of Phase III release from reclamation liability.
- o. In its initial TA, Staff noted that monitoring data for Outfall No. 103 (Pond F-11) was not provided in the Application. In response, Luminant provided discharge data in the table titled *TPDES Point-Source Surface Water Chemistry Data* on pages 1 through 32 of Appendix III.B.3-A. In response to Staff's note that Table 146(d)-13 requires monitoring the final discharge ponds for TDS, flow, and pH at a minimum of once per quarter, Luminant provided this data also.
- p. In its initial TA, Staff also indicated that Luminant must provide a complete trend-graph analysis, because Luminant provided water-chemistry graphs for TDS only. In response, Luminant provided graphs of TDS and pH concentrations at final discharge ponds in revised Appendix III.B.3-A. Staff's TAAddm1 acknowledges Luminant's submission of pH graphs in addition to TDS and concurs with Luminant that pH concentrations are within TPDES pH effluent limitations.
- q. Based on the available discharge data, Staff's TAAddm1 indicates that the proposed Phase II release area is not contributing suspended solids to stream flow or runoff outside of the permit area in excess of the performance standards at §12.313(a)(2) and therefore recommends Phase II release of reclamation liability obligations on the requested 514.7 acres.
- r. Luminant provided quarterly chemistry pond data for final discharge ponds F-2, F2-R3, F-11, J-1, J-2, and M-1, as summarized in Staff's TAAddm1. In its initial TA, Staff noted that Luminant calculated TDS concentration from electrical conductivity ("EC"), but that Table 146(d)-13 in Permit No. 34F does not indicate that TDS concentrations were not determined from laboratory measurement. Staff asked Luminant to explain why and how TDS was calculated. In response, Luminant explained why it chose to convert EC to TDS rather than obtaining TDS lab samples, and Luminant revised Appendix III.B.3-A to indicate which TDS concentrations were calculated based on EC measurement and which were determined from lab analysis. Based on Luminant's supplemental information, Staff found that the TDS concentrations calculated from EC measurements are largely similar to laboratory EC (within +/- 10%). Staff also acknowledged that effective January 2015, Luminant now provides laboratory analyses for TDS concentration. The data demonstrate that the water quality has been maintained

- n. A portion of Parcel No. 2 lies outside of surface-water control because it is in the footprint of the dragline walkway when the dragline was walked across I-30 and its parallel road in 1998. The activities associated with the dragline walkway footprint were covered by a construction stormwater permit issued by the TCEQ, and the portion of Parcel No. 2 in the footprint of the dragline walkway has not had deleterious effects on the surface-water hydrologic balance. The area is acceptable to meet the requirements of Phase III release from reclamation liability.
- o. In its initial TA, Staff noted that monitoring data for Outfall No. 103 (Pond F-11) was not provided in the Application. In response, Luminant provided discharge data in the table titled *TPDES Point-Source Surface Water Chemistry Data* on pages 1 through 32 of Appendix III.B.3-A. In response to Staff's note that Table 146(d)-13 requires monitoring the final discharge ponds for TDS, flow, and pH at a minimum of once per quarter, Luminant provided this data also.
- p. In its initial TA, Staff also indicated that Luminant must provide a complete trend-graph analysis, because Luminant provided water-chemistry graphs for TDS only. In response, Luminant provided graphs of TDS and pH concentrations at final discharge ponds in revised Appendix III.B.3-A. Staff's TAAddm1 acknowledges Luminant's submission of pH graphs in addition to TDS and concurs with Luminant that pH concentrations are within TPDES pH effluent limitations.
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- r. Luminant provided quarterly chemistry pond data for final discharge ponds F-2, F2-R3, F-11, J-1, J-2, and M-1, as summarized in Staff's TAAddm1. In its initial TA, Staff noted that Luminant calculated TDS concentration from electrical conductivity ("EC"), but that Table 146(d)-13 in Permit No. 34F does not indicate that TDS concentrations were not determined from laboratory measurement. Staff asked Luminant to explain why and how TDS was calculated. In response, Luminant explained why it chose to convert EC to TDS rather than obtaining TDS lab samples, and Luminant revised Appendix III.B.3-A to indicate which TDS concentrations were calculated based on EC measurement and which were determined from lab analysis. Based on Luminant's supplemental information, Staff found that the TDS concentrations calculated from EC measurements are largely similar to laboratory EC (within +/- 10%). Staff also acknowledged that effective January 2015, Luminant now provides laboratory analyses for TDS concentration. The data demonstrate that the water quality has been maintained

at Ponds F-2, F2-R3, F-11, J-1, J-2, and M-1 and is suitable for the approved postmine land uses.

21. 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 exhibited a capacity to store or transmit groundwater to wells, springs or surface water bodies. The primary water-bearing units in the overburden are Wilcox channel sands. The Wilcox of the lower Claiborne Group is the primary geologic unit along with quaternary alluvium and terrace deposits associated with recent drainage systems. These deposits consist of interbedded sands, silts, and clays. Channel sands can store and transmit significant quantities of water, can have a thickness of up to 100 feet, and are typically unconfined. Interbedded mud units act as semi-permeable barriers that separate sand units into small confined reservoirs that can be confining layers that can limit hydraulic connection between water bearing units. Water-bearing units in the Wilcox underburden are relatively thin and usually not continuous.
 - 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 the results from spoil, underburden and overburden long-term groundwater monitoring ("LTGM") wells within and adjacent to the reclaimed 516.34-acre area proposed for Phase III release (10 overburden wells, 3 underburden wells, and 9 spoil monitoring wells). Staff conducted an independent analysis of the groundwater monitoring data, also evaluating the 10 overburden wells, 3 underburden wells, and 9 spoil wells, as depicted on Staff's Figures 1 through 3 (included in Attachment 1 to Staff's TAAddm1). As described by Staff from its independent evaluation, the groundwater levels in spoil monitoring wells completed in the A, B, F, and G Areas have risen measurably in the postmine period. Spoil resaturation in the reclaimed area is monitored via wells A-33-R-85, B2-3-OBR-06, B2-7-R, B2-J1-R-08, B2-M2-R-08, B-41-R-91, F-37-R-91, F-38-R-91, and G-34-R-85. The groundwater level in each of these wells has stabilized at a static elevation, indicating that complete or nearly complete re-saturation of the reclaimed spoil in A, B, F and G Areas has occurred. The establishment of approximate original contour and revegetation

at Ponds F-2, F2-R3, F-11, J-1, J-2, and M-1 and is suitable for the approved postmine land uses.

21. 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.
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 - 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 the results from spoil, underburden and overburden long-term groundwater monitoring ("LTGM") wells within and adjacent to the reclaimed 516.34-acre area proposed for Phase III release (10 overburden wells, 3 underburden wells, and 9 spoil monitoring wells). Staff conducted an independent analysis of the groundwater monitoring data, also evaluating the 10 overburden wells, 3 underburden wells, and 9 spoil wells, as depicted on Staff's Figures 1 through 3 (included in Attachment 1 to Staff's TAAddm1). As described by Staff from its independent evaluation, the groundwater levels in spoil monitoring wells completed in the A, B, F, and G Areas have risen measurably in the postmine period. Spoil resaturation in the reclaimed area is monitored via wells A-33-R-85, B2-3-OBR-06, B2-7-R, B2-J1-R-08, B2-M2-R-08, B-41-R-91, F-37-R-91, F-38-R-91, and G-34-R-85. The groundwater level in each of these wells has stabilized at a static elevation, indicating that complete or nearly complete re-saturation of the reclaimed spoil in A, B, F and G Areas has occurred. The establishment of approximate original contour and revegetation

help to ensure that the infiltration capacity (recharge) will approach that of premine conditions. Water levels in overburden and underburden LTGM wells adjacent to the proposed release area have not been substantively affected by mining or reclamation activities. Adjacent B, G, and H-Area overburden LTGM wells have all shown some temporary drawdown effects due to proximate mining activities, but the water-level record for each of these wells indicates that the monitored overburden aquifer has fully or near fully recovered from these temporary effects.

- c. Monitoring data from overburden monitoring wells adjacent to mined areas in B, G and H Areas do not indicate that any substantive deleterious effects have occurred to overburden water quality from migration of spoil waters in any of the mine areas. The pH of samples recorded in the overburden LTGM wells monitoring B-Area water quality—LTGM Wells B2-10-R-97, B2-19-V, B2-20-OB, B2-24-OB, B2-29-OB-93, B2-35-OB, B2-9-OB1, and B2-9-OB2—ranges between 3.4 and 8.5 s.u. over the period of record, with a median of 6.2 s.u. TDS concentrations range from 4 mg/L to 1,784 mg/L for the same period, with a median TDS concentration of 431 mg/L. Likewise, sulfate concentrations range from 0.1 to 700 mg/L, with a median concentration of 105 mg/L. Data were also evaluated by Staff from one overburden well in the G Area—LTGM Well G-30-OB-85—and one well from H Area—LTGM Well H-13-OB-AL-R-89. The G-Area well has a pH range from 4.6 to 8.3 mg/L, with an average of 6.2 mg/L, TDS concentration ranging from 58 to 370 mg/L, with an average of 272 mg/L, and sulfate concentration ranging from 1 to 100 mg/L, with an average of 46 mg/L. The H-Area well yields a pH range from 4.4 to 7.4 s.u., with an average of 6.0 s.u., TDS concentrations ranging from 324 to 3,692 mg/L, with an average of 2,209 mg/L, and a sulfate concentration ranging from 324 to 3,692 mg/L, with an average of 1,290 mg/L.
- d. The water-quality trends over the periods of record for wells in A, B, F, G, and H Areas do not indicate any concerns counter to the expected trends described in Luminant's probable hydrologic consequences ("PHC") determination. With respect to protection of the groundwater hydrologic balance, Luminant has complied with the requirements of the Regulations for the 516.24-acre area proposed for Phase III release from reclamation obligations. There is no indication that any substantive deterioration of overburden or underburden aquifers has occurred in the areas proposed for Phase III release.
- e. In its TA, Staff did not recommend Phase III release of Parcel No. 6 because: (1) LTGM Well B2-24-OB should remain in place for continued data acquisition but should be transferred to the landowner (now Luminant) with demonstrated access rights; and (2) Well B2-24-UB, not a LTGM well, should be plugged or, if appropriate, transferred to the landowner (now Luminant) for use as a water well. Staff noted that Issue No. 7 in the SMRD Inspection Report expressed concern with future access to wells B2-24-OB, B2-24-UB, and B2-7-R, but Staff also noted

help to ensure that the infiltration capacity (recharge) will approach that of premine conditions. Water levels in overburden and underburden LTGM wells adjacent to the proposed release area have not been substantively affected by mining or reclamation activities. Adjacent B, G, and H-Area overburden LTGM wells have all shown some temporary drawdown effects due to proximate mining activities, but the water-level record for each of these wells indicates that the monitored overburden aquifer has fully or near fully recovered from these temporary effects.

- c. Monitoring data from overburden monitoring wells adjacent to mined areas in B, G and H Areas do not indicate that any substantive deleterious effects have occurred to overburden water quality from migration of spoil waters in any of the mine areas. The pH of samples recorded in the overburden LTGM wells monitoring B-Area water quality—LTGM Wells B2-10-R-97, B2-19-V, B2-20-OB, B2-24-OB, B2-29-OB-93, B2-35-OB, B2-9-OB1, and B2-9-OB2—ranges between 3.4 and 8.5 s.u. over the period of record, with a median of 6.2 s.u. TDS concentrations range from 4 mg/L to 1,784 mg/L for the same period, with a median TDS concentration of 431 mg/L. Likewise, sulfate concentrations range from 0.1 to 700 mg/L, with a median concentration of 105 mg/L. Data were also evaluated by Staff from one overburden well in the G Area—LTGM Well G-30-OB-85—and one well from H Area—LTGM Well H-13-OB-AL-R-89. The G-Area well has a pH range from 4.6 to 8.3 mg/L, with an average of 6.2 mg/L, TDS concentration ranging from 58 to 370 mg/L, with an average of 272 mg/L, and sulfate concentration ranging from 1 to 100 mg/L, with an average of 46 mg/L. The H-Area well yields a pH range from 4.4 to 7.4 s.u., with an average of 6.0 s.u., TDS concentrations ranging from 324 to 3,692 mg/L, with an average of 2,209 mg/L, and a sulfate concentration ranging from 324 to 3,692 mg/L, with an average of 1,290 mg/L.
- d. The water-quality trends over the periods of record for wells in A, B, F, G, and H Areas do not indicate any concerns counter to the expected trends described in Luminant's probable hydrologic consequences ("PHC") determination. With respect to protection of the groundwater hydrologic balance, Luminant has complied with the requirements of the Regulations for the 516.24-acre area proposed for Phase III release from reclamation obligations. There is no indication that any substantive deterioration of overburden or underburden aquifers has occurred in the areas proposed for Phase III release.
- e. In its TA, Staff did not recommend Phase III release of Parcel No. 6 because: (1) LTGM Well B2-24-OB should remain in place for continued data acquisition but should be transferred to the landowner (now Luminant) with demonstrated access rights; and (2) Well B2-24-UB, not a LTGM well, should be plugged or, if appropriate, transferred to the landowner (now Luminant) for use as a water well. Staff noted that Issue No. 7 in the SMRD Inspection Report expressed concern with future access to wells B2-24-OB, B2-24-UB, and B2-7-R, but Staff also noted

that well B2-7-R has already been released from reclamation liability, and access to the well has not been a concern. LTGM well transfer or plugging must be demonstrated to and approved by the Commission as a prerequisite to its recommending approval of Phase III release. Staff approved the transfer of LTGM wells B2-24-OB and B2-24-UB to Luminant by letter dated July 6, 2018 (File Reference No. 1809505, included in Attachment IV to TAAddm1), resolving Staff's concern, and in TAAddm1, Staff found that Luminant has met the groundwater protection requirements of §12.348 for Parcel No. 6.

22. Luminant has adequately demonstrated that surface-water quantity and quality protection requirements for Phase III release from reclamation obligations have been met. The 516.34 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 January 26, 2018 initial TA that Luminant uses paired watersheds as the primary component 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. Baseline monitoring station SW-3 was located near LTSM Station HSW-W2 on an unnamed tributary of Tankersley Creek. Luminant compared data from the undisturbed station (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. Luminant also provided a trend analysis of the water chemistry for the LTSM stations.
 - a. In its initial TA, Staff noted that LTSM Station HSW-W1 was relocated in 2000, indicating that two different watersheds have been sampled for this station. Staff instructed Luminant to account for the difference in size and relocation of HSW-W1 in its evaluation of the LTSM data and to separate and independently evaluate the monitoring data sets from the two watersheds, rather than combine them into a single set of data. In response, Luminant separated the LTSM Station HSW-W1 data by before and after relocation and provided a separate statistical analysis for each in Appendix III.B.3-B. While the watershed size for Station HSW-W1 increased after the relocation, the increase in watershed size has not affected water quality. Additionally, the flow measurements at Station HSW-W1 began only

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one year before the move, and all remaining flow measurements were from the relocated station.

- b. 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 42 to 1,825 mg/L, averaging 185 mg/L before relocation and 260 mg/L after relocation, and TDS concentrations from the disturbed watershed station (HSW-W2) ranged from 60 to 722 mg/L, averaging 276 mg/L.
 - i. TSS concentrations from the undisturbed watershed station ranged from 1 to 166 mg/L, averaging 24 mg/L before relocation and 20 mg/L after relocation, 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 0.03 to 5.18 mg/L, averaging 1.3 mg/L before relocation and 1.39 mg/L after relocation, and total iron concentrations from the disturbed watershed station ranged from 0.01 to 7.6 mg/L, averaging 1.1 mg/L.
 - iii. Total manganese concentrations from the undisturbed watershed station ranged from 0.01 to 2.95 mg/L, averaging 0.1 mg/L before relocation and 0.52 mg/L after relocation, and total manganese concentrations from the disturbed watershed station ranged from 0.01 to 2.95 mg/L, averaging 0.52 mg/L.
 - iv. The pH at the undisturbed watershed station ranged from 6.2 to 8.5, and pH from the disturbed watershed station ranged from 5.4 to 7.9 mg/L.
- c. The data in the 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 (Table III.B.3-1). Staff concludes in TAAddm1 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 7).
 - i. Staff noted in its initial TA that Luminant needed to provide annual rainfall totals for the mine, along with rain gauge locations to correlate flow measurements. In response, Luminant updated Plate III.B.3-1 to show rain gauge locations and provided Figure No. 3 comparing flow at LTSM Station HSW-W2 to rainfall from January 2007 through November 2017. Staff's TAAddm1 concludes that the response of flow to rainfall was mostly as

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- expected and that Luminant provided the necessary information to address Staff's concern.
- ii. Staff noted in its initial TA that Luminant did not provide a plate depicting the two LTSM stations with their complete watersheds and rain-gauge location. In response, Luminant provided a revised Plate III.B.3-1 that includes the complete watersheds of the two LTSM stations, final discharge ponds, and rain-gauge location.
 - iii. While Staff's initial TA noted a discrepancy between the Application and Table 146(d)-11 in approved Permit No. 34F regarding the locations of the LTSM stations, this occurred due to incorrect locations being listed in the renewal of Permit No. 34F. This inconsistency was corrected in Revision No. 36 approved by letter dated September 12, 2017.
 - iv. Staff's initial TA also indicated that Staff could not make positive surface-water quantity findings for Phase III release of reclamation obligations because the information provided was incomplete. In response, Golder prepared a statistical analysis for Luminant concluding that the flow data collected from LTSM Stations HSW-W1 and HSW-W2 are similar (Attachment 2 to Luminant's October 7, 2019 Supplement No. 1). In the TAAddm1, Staff concurs with Golder that the LTSM stations do not have statistically different proportions of flow events or statistically different median flows.
 - v. In its initial TA, Staff also inquired as to which of the two baseline monitoring stations identified as "Station SW-3" Luminant was using in its analysis. In response, Luminant clarified that the monitoring station being used for comparison is now labeled "Station SW-3 (B-2)" and is located approximately 1.5 miles northeast of Station HSW-W2 and just north of Tankersley Lake. Luminant provided a revised Table III.B.3-2 with Station SW-3 (B-2) labeling and a copy of the technical memorandum dated March 5, 2019, that was submitted to support Luminant's Application for Release of Reclamation Liability on 929.4 acres at Monticello Winfield Mine.
 - vi. Staff also noted that Luminant did not provide baseline data for LTSM Station HSW-W1. In response, Luminant explained that in the paired watershed approach, the undistributed station is representative of pre-mining conditions, and the distributed stations are representative of post-mining conditions. Because HSW-W1 is the undisturbed paired watershed, there is no separate baseline, because all data at the station is considered baseline. Luminant also added HSW-W1 data from 1991 through 1996 to Table II.B.3-B.

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- vii. With respect to flow data from LTSM Station HSW-W2 compared to Baseline Stations SW-3 (B-2) and SW-4 (B-2), Luminant provided a statistical analysis prepared by Golder that concludes that flows at Station HSW-W2 are statistically different from flows measured at Baseline Stations SW-3 (B-2) and SW-4 (B-2) because HSW-W2 has a higher frequency of flow events and a higher median and average flow than the baseline stations, which were dry more than 50% of the time during the baseline monitoring period. Staff conducted independent statistical comparisons of the flow data, and its findings were consistent with Golder's findings.
- viii. Staff's TA also noted that Luminant did not provide a comparison of final discharge Ponds J-1 and J-2 to the corresponding TPDES Permit (Permit No. 02697) outfall but rather compared them to TPDES Permit No. 02644. In Supplement No. 1, Luminant responded that this was an editorial error and revised the text in the table on page III.B.3-3 to list the correct permit. Staff examined the respective TPDES permits and concurred with Luminant's assertion.
- ix. Staff's TA also noted that Luminant needed to provide a statistical evaluation of the LTSM data for LTSM Stations HSW-W1 and HSW-W2 to state and federal standards and indicate whether water quality at the stations meets those standards. In response, Luminant explained that state and federal standards for surface water in natural streams and water bodies are focused on impairment of that water for designated uses; thus, there are no single value parameter standards that could be used to conduct such a comparison. Luminant also indicated that Station HSW-W1 is located in TCEQ Stream Segment 0408, which, according to TCEQ's latest stream evaluations, has no impairments. Station HSW-W2, located in TCEQ Stream Segment 0404, is impaired for bacteria, but because Luminant's wastewater discharge does not include constituents that result in increased bacteria impairment, no additional parameter limitations are included in the TPDES permit. Luminant also indicates in its errata that the ambient stream segment concentrations for TDS in TCEQ Stream Segments 0404 and 0408 are lower than the average ambient TDS concentration for streams in Texas, and Staff adds that the TDS concentration has been on a downward trend throughout the period of record, as reflected in the graph on page 5 of Appendix III.B.3-b. Additionally, averages for both LTSM stations have a higher average pH than ambient conditions. In TAAddm1, Staff concludes that Luminant has provided an adequate comparison of LTSM data to all available State and federal standards, thereby resolving Staff's initial concerns. Staff finds that

- vii. With respect to flow data from LTSM Station HSW-W2 compared to Baseline Stations SW-3 (B-2) and SW-4 (B-2), Luminant provided a statistical analysis prepared by Golder that concludes that flows at Station HSW-W2 are statistically different from flows measured at Baseline Stations SW-3 (B-2) and SW-4 (B-2) because HSW-W2 has a higher frequency of flow events and a higher median and average flow than the baseline stations, which were dry more than 50% of the time during the baseline monitoring period. Staff conducted independent statistical comparisons of the flow data, and its findings were consistent with Golder's findings.
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the surface-water hydrologic balance has been protected as described at §12.349 of the Regulations and recommends release of reclamation liability obligations on all 516.34 acres requested for Phase III release.

- x. Commission Order issued December 17, 2019, in Docket No. C15-0004-SC-34-F, considered a 929.4-acre release application referenced in this proceeding and, because of issues regarding the adequacy of the data from LTSM paired-watershed stations (Stations HSW-W1 and HSW-W2) used in the surface-water data analysis under that docket, was temporarily suspended pending resolution of those issues. These were the same paired-watershed LTSM stations evaluated in the instant docket; therefore, suspension of review of this docket subsequently occurred. In Docket No. C15-0004-SC-34-F, Staff recommended and the Commission concurred regarding the need for changes to the monitoring protocols for the two paired-watershed stations at this mine. Staff noted in the instant docket that, just as in Docket No. C15-0004-SC-34-F, more frequent station monitoring was needed for the paired-watershed analyses. (The ALJ notes that in the earlier docket, it was evidenced that Luminant's design protocols required *continuously recorded* water quantity and quarterly quality data collected from the two paired-watershed stations.) In TAAddm1 for the instant docket, Staff indicates that all issues have been resolved regarding the sufficiency of the demonstration related to surface-water protection set out in the application, but reiterated that Luminant needed to make every effort to increase the frequency of flow measurements at the LTSM stations instead of the single measurement taken once per quarter when a water-quality sample is collected, and stated that the additional flow data could be submitted with the water-quality data that must be submitted quarterly. Staff's reiterated its reasoning for this recommendation 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 these data will impact future applications for release (TAAddm1, page 12). The Commission concurs with Staff's recommendation and its basis for the request. In Docket No. C15-0004-SC-34-F, the Commission noted that, in order to facilitate an increase in the frequency of flow measurements taken at these LTSM Stations, Luminant was 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 its January 8, 2020 TA Addendum, the Commission finds the following: Luminant shall make every effort to increase the frequency of flow measurements taken at LTSM Stations HSW-W1 and

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HSW-W2 instead of the single measurement taken once per quarter when a water-quality sample is collected, including the installation of continuous stream stage recorders at these LTSM Stations to monitor flow. 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.

23. Staff noted that ten small depressions exist within the areas proposed for release, but all small depressions have been inspected previously and were determined by the SMRD Director to meet all the criteria as listed in Advisory Notice EN-PS-385(c). Copies of approval letters dated March 25, 2004, and November 5, 2014, from the SMRD Director were provided in the Application.
24. The area requested for release of reclamation obligations is capable of sustaining the approved postmine land uses. Monthly inspections, the inspection on October 27, 2016, Staff's TA, and Staff's subsequent TAAAddm1 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.
25. Pursuant to §12.313(a)(3), the Commission may release the requested portion of the bond attributable to the subject 516.34 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, Staff's revised RCE was recommended as the minimum required reclamation bond amount necessary for completion of mine reclamation in the event of forfeiture. Staff provided a RCE in 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, then Luminant will be eligible to reduce its performance bond obligations by \$649,190.74, as tabulated by Staff, 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

HSW-W2 instead of the single measurement taken once per quarter when a water-quality sample is collected, including the installation of continuous stream stage recorders at these LTSM Stations to monitor flow. 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.

23. Staff noted that ten small depressions exist within the areas proposed for release, but all small depressions have been inspected previously and were determined by the SMRD Director to meet all the criteria as listed in Advisory Notice EN-PS-385(c). Copies of approval letters dated March 25, 2004, and November 5, 2014, from the SMRD Director were provided in the Application.
24. The area requested for release of reclamation obligations is capable of sustaining the approved postmine land uses. Monthly inspections, the inspection on October 27, 2016, Staff's TA, and Staff's subsequent TAAAddm1 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.
25. Pursuant to §12.313(a)(3), the Commission may release the requested portion of the bond attributable to the subject 516.34 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, Staff's revised RCE was recommended as the minimum required reclamation bond amount necessary for completion of mine reclamation in the event of forfeiture. Staff provided a RCE in 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, then Luminant will be eligible to reduce its performance bond obligations by \$649,190.74, as tabulated by Staff, 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 516.34 acres granted Phase III release, but does not specify the amount of the reduction.

26. No silt dams are present within the areas requested for Phase II and III release. [§12.344]
27. 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.
28. All acres requested for release were marked in the field to distinguish them from active mining and reclamation areas.
29. 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.
30. 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 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 264.14 acres, release of Phase II and III reclamation obligations for 254.56 acres, and release of Phase III reclamation obligations for 1.64 acres within the Monticello Winfield Mine permit area.
5. The Commission may approve a release of Phase I, II and III reclamation obligations for 264.14 acres, release of Phase II and III reclamation obligations for 254.56 acres, and release of Phase III reclamation obligations for 1.64 acres as set out in the above Findings of Fact and Conclusions of Law.

- prescribes that Luminant is eligible to reduce the amount of bond attributable to the 516.34 acres granted Phase III release, but does not specify the amount of the reduction.
26. No silt dams are present within the areas requested for Phase II and III release. [§12.344]
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1. Proper notice of application and notice of consideration by the Commission has been provided for this request for release of reclamation obligations.
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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 264.14 acres, release of Phase II and III reclamation obligations for 254.56 acres, and release of Phase III reclamation obligations for 1.64 acres within the Monticello Winfield Mine permit area.
5. The Commission may approve a release of Phase I, II and III reclamation obligations for 264.14 acres, release of Phase II and III reclamation obligations for 254.56 acres, and release of Phase III reclamation obligations for 1.64 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 516.34 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 264.14 acres, release of Phase II and III reclamation obligations for 254.56 acres, and release of Phase III reclamation obligations for 1.64 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 516.34 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

6. Luminant is eligible to reduce the bond for the permit by the amount that is attributable to the subject aggregate 516.34 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 264.14 acres, release of Phase II and III reclamation obligations for 254.56 acres, and release of Phase III reclamation obligations for 1.64 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 516.34 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, then 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 April 21, 2020.

RAILROAD COMMISSION OF TEXAS

DocuSigned by:
Wayne Christian
C1C74004*440422

CHAIRMAN WAYNE CHRISTIAN

DocuSigned by:
Ryan Sitton
7B100006A374400

COMMISSIONER CHRISTI CRADDICK

DocuSigned by:
Christi Craddick
10494270F400401

COMMISSIONER RYAN SITTON

ATTEST:

DocuSigned by:
Callie Farrar
3501060DF0E047C

Deputy Secretary
Railroad Commission of Texas



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, then 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 April 21, 2020.

RAILROAD COMMISSION OF TEXAS

DocuSigned by:
Wayne Christian
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CHAIRMAN WAYNE CHRISTIAN

DocuSigned by:
Ryan Sitton
7D188035A374438

COMMISSIONER CHRISTI CRADDICK

DocuSigned by:
Christi Craddick
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COMMISSIONER RYAN SITTON

ATTEST:
DocuSigned by:
Callie Barran
35816680FDE3476

Deputy Secretary
Railroad Commission of Texas

