RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION

SMRD DOCKET NO. C14-0005-SC-04-F
APPLICATION BY LUMINANT MINING COMPANY LLC FOR A MULTI-PHASE RELEASE OF RECLAMATION OBLIGATIONS ON AN AGGREGATE 954.8 ACRES: RELEASE OF PHASE I, II, AND III ON 34.1 ACRES AND RELEASE OF PHASE II AND III ON 920.7 ACRES, PERMIT NO. 4L, MARTIN LAKE MINE, PANOLA AND RUSK COUNTIES, TEXAS

ORDER APPROVING MULTI-PHASE RELEASE ON 954.7 ACRES AND DENYING RELEASE OF 0.1 ACRE

STATEMENT OF THE CASE

The Applicant, Luminant Mining Company LLC ("Luminant"), 6555 Sierra Drive, Irving, TX 75039 applied to the Railroad Commission of Texas ("Commission"), Surface Mining and Reclamation Division, for a multiphase release of reclamation obligations on an aggregate 954.8 acres within Permit No. 4L, Martin Lake Mine, Panola and Rusk 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. 2020), and the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 Tex. Admin. Code Ch. 12 (Thomson West 2020) (Regulations).

Permit No. 4L currently authorizes surface coal mining operations at Luminant's Martin Lake Mine within its 30,529-acre permit area. Copies of the application were filed in required County and Commission offices, distributed to applicable agencies for review and comment, and mailed to landowners as required. No comments or requests for hearing were filed following public notice. The only parties to the proceeding are Luminant and the Commission's Surface Mining and Reclamation Division ("Staff"). Staff's initial review of the Application submitted by letter dated September 30, 2013, indicated that most parcels did not meet requirements for portions of the releases requested. After three supplementations by Luminant, with the final supplement filed on July 29, 2019, Staff filed its final TA Addendum No. 3 on June 16, 2020, recommending release of all acreages and phases as proposed by Luminant, with the exception of 0.1 acre ineligible for Phase I, II and III release. Luminant concurred with Staff's TA Addendum No. 3 by letter dated June 18, 2020. The ALJ noted some issues necessitating clarification from the parties by letter dated July 21, 2020. Satisfactory responses were received from Luminant by letter dated September 11, 2020, and from Staff by letter dated October 9, 2020. There remain no outstanding issues between the parties. The parties have filed waivers of preparation and circulation of a proposal for decision.

Based on the information provided by the applicant, inspection of the area, and Staff's review, Staff recommends release for an aggregate of 954.7 acres, comprised of Phase I, II, and

III release on 34.0 acres, and Phase II and III release on 920.7 acres. Staff does not recommend release of Phase I, II and III on 0.1 acre. Luminant does not request adjustment to the approved reclamation bond at this time and no new bond has been submitted. Luminant is eligible to reduce the bond by an amount attributable to released phases on the 954.7 acres when a future adjustment to the bond is requested. After consideration of the Application and Findings of Fact and Conclusions of Law, the Commission approves the release of reclamation obligations as described in the foregoing.

FINDINGS OF FACT

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

1. By letter dated September 30, 2013, Luminant filed its application with the Surface Mining and Reclamation Division ("Staff" or "SMRD") for various releases of reclamation obligations for an aggregate 954.8 acres within Permit No. 4L, Martin Lake Mine. The mine encompasses 30,529 acres in Panola and Rusk Counties, Texas. The releases requested are: 34.1 acres of Phase I, II, and III release [backfilling, regrading, and drainage control, establishment of revegetation, conditions such that the areas are not contributing excess suspended solids to streamflow or runoff outside the permit area in excess of regulatory requirements, and completion of the extended responsibility period ("ERP") and protection of the surface water and groundwater]; and 920.7 acres of Phase II and III release (all obligations with the exception of backfilling, regrading, and drainage control that have previously been approved for Phase I release by Commission Orders dated October 25, 2000 (Docket No. C0-0064-SC-04-F), September 21, 2004 (Docket No. C0-0016-SC-04-F), July 6, 2006 (Docket No. C0-0005-SC-04-F), and December 18, 2007 (Docket No. C0-0001-SC-04-F). The areas requested for release are depicted on the Location Map [Appendix I, Staff's Technical Analysis ("TA")] as well as in maps and drawings contained in the application, as supplemented.

2. SMRD filed the application with the Hearings Division by letter dated October 4, 2013. After review of the draft notice by the administrative law judge ("ALJ"), Luminant supplemented the application by letter dated October 8, 2013 to provide a revised draft notice of application for publication and revised pages for the application. The revised draft was approved by ALJ Marcy Spraggins by letter dated October 11, 2013. A complete listing of the review history for this docket is provided in the following table:

Action	Date
Initial application submitted	September 30, 2013
Copy of application filed with Commission Hearings Division	October 4, 2013
ALJ Spraggins comments on the draft public notice	October 7, 2013
Luminant submits revised pages 11.A-2, 11.C-2, and 11.C-3	October 8, 2013
ALJ Spraggins approves the revised draft public notice	October 11, 2013
Staff notified local Mayors and County Judges	October 18, 2013

Action	Date
SMRD Staff inspects the areas proposed for release	October 22, 2013
Proof of publication and landowner notification submitted	January 6, 2014
SMRD declares the application administratively complete	January 10, 2014
Inspection report completed and transmitted to SMRD Director	June 3, 2014
Staff files its initial TA	May 14, 2015
ALJ Spraggins inquires of Luminant as to whether it intends to file a supplement	May 19, 2015
Luminant requests until September 21, 2015, to respond	August 20, 2015
ALJ Spraggins grants Luminant's request for additional time	August 25, 2015
Luminant responds to Staff's initial TA but requests that review be suspended to allow SMRD review of integral submittals	September 24, 2015
Revision No. 78 (postmine land use), integral to this docket, is approved by SMRD	October 6, 2015
A 2015 ground-cover evaluation report, integral to this docket, is acknowledged by SMRD	February 24, 2016
Staff files TA Addendum No. 1	April 15, 2016
ALJ Spraggins inquires of Luminant as to whether it intends to file a supplement	April 19, 2016
Luminant indicates that it intends to respond by May 31, 2016	April 20, 2016
Luminant requests until July 29, 2016, to file a supplement	May 19, 2016
ALJ Spraggins grants Luminant's request for additional time	May 24, 2016
ALJ Spraggins requests that Luminant indicate its intentions in this docket	April 4, 2017
Luminant requested additional time (no date specified) to file a supplement	May 4, 2017
ALJ Spraggins grants additional time until January 15, 2018	May 10, 2017
Luminant requests additional time (no date specified) to file a supplement	January 23, 2018
ALJ Spraggins grants additional time until April 3, 2018	January 25, 2018
ALJ Steven Leary indicates that he is now ALJ for this docket	April 2, 2018
Luminant requests additional time (no date specified) to file a supplement	April 3, 2018
ALJ Leary grants additional time until July 2, 2018	April 5, 2018
Luminant requests until August 15, 2018 to file a supplement	June 29, 2018
ALJ Leary grants Luminant's request until August 15, 2018	July 3, 2018
Luminant requests until October 31, 2018 to file a supplement	August 14, 2018
ALJ Leary grants Luminant's request until October 31, 2018	August 22, 2018
Luminant responds to Staff's TA Addendum No. 1	November 1, 2018
ALJ Veronica Ruberto indicates that she is now ALJ for this docket	April 8, 2019
Staff files TA Addendum No. 2	April 29, 2019

Action	Date
Luminant responded to Staff's TA Addendum No. 2	July 29, 2019
ALJ Ruberto requests update to be filed on status of application	June 11, 2020
Staff files TA Addendum No. 3	June 16, 2020
Luminant files letter agreeing with Staff's recommendations	June 18, 2020
ALJ Ruberto requests clarification from Luminant and Staff regarding further identified issues	July 21, 2020
Luminant provides response to 7/21/2020 ALJ letter	September 9, 2020
Staff files TA Addendum No. 4	October 9, 2020

3. The application is made pursuant to Texas Surface Coal Mining and Reclamation Act, Tex. Nat. Res. Code Ann. Ch. 134 (Vernon Supp. 2020) ("Act"), and the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 Tex. Admin. Code Ch. 12 (Thomson West 2020) ("Regulations"). The application was properly certified in accordance with §12.312(a)(3).

4. By letter dated January 6, 2014, Luminant provided proof of publication of notice of application. Staff declared the application administratively complete by Staff's letter dated January 10, 2014 and indicated that the Staff's TA document would be filed later. Staff's TA was filed by letter dated May 14, 2015.

5. Luminant arranged for publication once each week for four consecutive weeks on October 20 and 27, 2013, and on November 3 and 10, 2013, in the *Panola Watchman*, a newspaper published in Panola County, and for publication of notice of application on October 19 and 26, 2013, and on November 2 and 9, 2013, in the *Henderson Daily News*, a newspaper published in Rusk County. An incorrect location map was included with the publications in the *Henderson Daily News*; therefore, Luminant arranged for corrected publication in the *Henderson Daily News* on November 20 and 27, 2013, and on December 4 and 11, 2013. The publications meet the requirements for notice. The two newspapers are papers of general circulation in the area of the proposed operations. Luminant submitted affidavits of publication with tear sheets. The notice of application contains all information required by the Act and Regulations for notice of application for bond release applications. The published notice is adequate notification of the request for release. The notice includes the elements required by §134.129 of the Act and §12.312(a)(2) of the Regulations: the name of the permittee, the precise location of the land affected, the total number of acres, permit number at the time of application and date approved, the amount of bond filed, the type and appropriate dates reclamation work was performed, and a description of the results achieved as they relate to the approved reclamation plan. The notice contains information concerning the applicant, the location and boundaries of the permit area, the availability of the application for inspection at county and Commission offices, and the address to which comments should be sent.

6. Luminant does not request a reduction in the amount of the approved reclamation bond at this time. The existing reclamation bond for the permit is a blanket collateral bond and

trust agreement for all of Luminant's mining and reclamation operations in Texas, approved by Commission Order dated September 27, 2016 (Docket No. C16-0021-SC-00-E).

7. Copies of the application were filed for public review, in compliance with notice requirements, at the Railroad Commission's Austin Office, and the Regional Office at that time at 2202 Old Henderson Highway in Tyler, Texas, and in the offices of the Panola and Rusk County Clerks.

8. By letters dated October 16, 2013, Luminant sent notice to owners of interests in the areas requested for release and adjacent lands and to local government bodies, planning agencies, sewage and water treatment authorities, water companies, and lessees in the locality as required by §12.312(a)(2). Luminant owns 55 tracts included within the areas requested for release and 28 adjoining tracts. Luminant Generation Company LLC owns nine tracts included within the areas requested for release and three adjoining tracts. One individual landowner owns one tract within the areas requested for release; 63 individual landowners own or have interests in adjacent tracts. Luminant mailed notices to all of these persons. In addition, Luminant mailed notice to the County Judge/Commissioners' Court of Panola and Rusk Counties, the City of Tatum, the Texas Commission on Environmental Quality, the U.S. Army Corps of Engineers, the local office of the Natural Resources Conservation Service, the Texas Department of Transportation, Fair Play Water Supply Corporation, Rock Hill Water Supply Corporation, four electric utilities, and approximately 27 other lessees, primarily holding oil and gas interests.

9. Staff provided notification of the application by certified letters dated October 18, 2013, to the County Judges of Panola and Rusk Counties as required by §134.133 of the Act; the date of notification is at least 31 days prior to the date of consideration of the docket by the Commission. Notification was also provided on the same date to the Mayors of Tatum and Beckville; portions of the permit area are partially located within these cities. Pursuant to §12.312(b) of the Regulations, Staff notified owners and lessees of interests in lands within the areas requested for release of the application and the date and time of Staff's field inspection, October 22, 2013, by letters dated October 2, 2013. The notifications sent by Staff to landowners and other owners of interests of tracts within the areas requested for release stated that a release had been requested and, pursuant to §12.312(b)(1), advised them of the opportunity to participate in the on-site inspection.

10. The area was inspected as scheduled. Subject to review by Staff, including a surface and groundwater analysis, the Field Inspection Report dated May 29, 2014, and sent to the SMRD Director on June 3, 2014, recommended release of the acreage requested with seven noted exceptions for various acreages. After review, Staff filed its TA dated May 14, 2015, which included the inspection report. In its TA, Staff recommended release of Phase I reclamation obligations for 33.7 acres (Parcels Nos. 2, 5, 14, 16, 20, 22, and 24), but recommended denial of the other releases requested and enumerated many

outstanding deficiencies related to necessary findings that must be made prior to release related to surface water quantity and quality, groundwater quantity, postmine land use, revegetation success, period of liability, bonding, right-of-entry, and landowner consultation. Further processing of the application, with modifications by Luminant and technical review by Staff continued as outlined in Finding of Fact No. 2, *supra*.

11. In its Addendum No. 1 to the TA, Staff did not support Phase II and III release, indicating that several deficiencies remained for the area of the requested Phase II and III release. Luminant addressed the issues in subsequent supplements, and the issues were resolved to Staff's satisfaction, as documented in later TA addenda, as follows:

a. Surface-water issues:

i. Staff noted that the revised surface-water evaluation had not been certified by a Professional Geoscientist or Professional Engineer. In Supplement Nos. 1 and 2, Luminant provided the necessary certifications.

ii. The long-term surface-water monitoring ("LTSM") data for the paired-watershed station for disturbed flow reflected a persistent upward trend in manganese (Mn) concentrations and there was no indication that Mn concentrations had reached a state of equilibrium, based on the LTSM data for the sole pair of watersheds representing surface-water quality and quantity for the entire Martin Lake Mine. In Supplement No. 2, Luminant provided a statistical analysis performed by consultant Golder Associates Inc. ("Golder"), dated June 25, 2019, which included box-and-whisker plots, linear regressions, distributional tests for the data, and outlier tests. These tests showed that the Mn data were lognormally distributed, and that a lognormal linear regression showed no statistical increase in Mn concentrations at the 95% confidence level (p-value for the slope is greater than 0.05), and that the Mn concentrations were not trending upward or downward. Employing technical assistance from OSM, Staff concluded from its review of Golder's evaluation that Luminant has satisfactorily addressed issues regarding trends in the Mn concentration data.

iii. The long-term surface-water quantity analysis comparison to the approved probable hydrologic consequences ("PHC") determination remained inadequate for monitoring of the paired-watershed stations. This deficiency had three parts:

(a) Staff noted that a comparison of the flow data for the disturbed LTSM station for periods when discharges from B-1 Pond were managed (1989-2011) and not managed (2012-2018), to the original and relocated undisturbed LTSM station for the same periods. In Supplement No. 2, Golder addressed this issue part, conducting a comparison of the proportion of measured flow events between the two LTSM stations, and a comparison of the median flow

for the single disturbed and two undisturbed watersheds (location of undisturbed watershed station was changed in 2000) monitored by these three LTSM stations. Golder's evaluation employed nonparametric statistical methods because some measured events at each LTSM station had no flow. the data were also divided into two periods because during the period from 1989 to 2011, the flow was managed, whereas from 2012 to 2018, the flow was unmanaged. As described in Staff's summary in TA Addendum No. 3, for the managed period, the statistical analysis showed that the proportion of flow events between stations were statistically similar, whereas median flow rates showed statistically distinct differences between disturbed and undisturbed stations. For the unmanaged period, Golder's comparison showed that flow events were similar. Staff concurred with Golder's conclusion that the statistical data demonstrate that there has not been a material effect on flow in the postmining period as a result of the mining activities conducted.

(b) Staff further noted as a part of its issues regarding a comparison of the stream-flow data to the approved PHC determination that a table of rainfall data for the period of record (similar to that provided in release applications for the Monticello Winfield Mine) needed to be provided, along with graphs presenting flow data versus time, in which Luminant comparing undisturbed and disturbed stations. In Supplement No. 2, Luminant provided two figures showing monthly flow curves to rainfall for two monitoring periods—January 2008 to November 2018, and January 2016 to December 2018—but did not provided the tabulated rainfall data requested by Staff. In its analysis, Luminant explained that the anomalously high flow measurements during the period of low rainfall at the undisturbed stations early in the reporting period were due to problems with data loggers and transducers, power failures, and issues with animals, vegetation and debris, and also discussed the drought period on Figure I as well as the period from mid-2015 onwards, which showed a more normal rainfall period and similar flow data for disturbed and undisturbed stations. Luminant concluded that its analysis of the daily (as opposed to monthly) data showed a general trend of an increase in flow surrounding rainfall events, but did not provide details of this analysis. However, these numerous problems continued for years and at only one station, not both. Staff noted an overriding concern that these factors affecting measurement of flow were allowed to continue for so many years, thereby corrupting the data set. Therefore, Staff concluded that because a table of rainfall data was not provided, its independent analysis of the effects of the drought period could not be performed, and thus it was unable to make a determination regarding this issue. In its conclusion, however, Staff indicated that from the preponderance of the data regarding rainfall, flow rates and watershed comparisons, it could recommend that Luminant had

sufficiently demonstrated that it had met the requirements for Phase III release.

(c) Lastly, Staff noted as a part of this issue that an assessment (tables, graphs, and figures) to support Luminant's position that disturbed LTSM flow rates are similar to most of the baseline flow rates with similar watershed sizes needed to be provided. In Supplement No. 2, Luminant provided a statistical evaluation to determine whether the surface-water quantity differs between select baseline watershed stations and the disturbed station on Mulberry Creek. For the selection of the baseline stations, Luminant rejected four stations due to low sampling counts or drastically different watershed size. The remaining six baseline stations were compared statistically to Mulberry Creek. The time period from 2012 to 2018 was chosen for analysis because this is the time period where flow was unmanaged. Luminant's statistical analysis showed that Mulberry Creek had a median flow rate that was not statistically different from four baseline stations (ML-01, ML-02, ML-17, and SW-1) based on a 95% level of confidence (p-value greater than 0.05). This comparison also showed that Mulberry Creek's median flow rate was statistically different from Stations ML-19 and SW-2, based on a 95% level of confidence. With OSM assistance, Staff reviewed the statistical assessment and concurred with Luminant's analysis.

iv. Staff noted that final discharge Ponds CII-46 (in Parcels No. 17 and 18) and CIII-6 (in Parcel Nos. 19 and 20) did not appear to be functioning as designed. In Supplement No. 2, Luminant indicated that Permit Revision No. 24 was approved on June 11, 2019, in which Luminant requested and received approval of a reanalysis of Ponds CII-46 and CIII-6 by providing a project narrative, hydrologic and hydraulic analysis, watershed maps, plans and profiles, precipitation data, lab reports for water grab samples, and photographs for both ponds. Staff concurred that the Revision No. 24 application was approved on the noted date and that Luminant had satisfactorily addressed this issue.

v. Staff noted in TA Addendum No. 2 that the annual average total dissolved solids ("TDS") concentrations for final discharge Pond AII-2 exceeded the maximum annual average TDS concentration expected for both Stream Segment No. 0505 and that which was predicted in Staff's cumulative hydrologic impact assessment ("CHIA") TDS concentrations at Mass Balance Point No. 6. Staff further expressed a concern that these TDS concentrations appeared to be trending upward. Luminant set forth several facts to support why it believed that the higher concentrations of TDS and upward trend do not preclude Phase III release. Among these were the absence of TDS standards in the permit, Act or Regulations, the use of flow-weighted TDS concentrations in the CHIA and not in the release application, the qualitative rather than definitive nature of the TCEQ

stream-segment limitations (i.e., is not a limit but merely a screen value), the proximity of the Ash Disposal Area to the disturbed watershed monitoring point, the lack of mined land in the requested release area within the watershed of AII-2 Pond, and a comparison of TDS sample concentrations obtained from ponds in varying proximity to the Ash Disposal Area (Pond AII-2 and Pond AII-1). Luminant indicates that the data support a rising TDS concentration due to proximity of the Ash Disposal Area, is not a mining-related activity. Staff, however, indicated that, while Luminant contends that TDS concentration from final discharge ponds should not be an issue in postmine water quality, Staff reiterated from its TA Addendum No. 2 that the LTSM plan and Table 146(d)-7 in the approved permit include TDS concentration as an effluent parameter in association with the paired-watershed approach to monitoring, and Staff considers that if the disturbed-station data are to be considered representative of the entire permit for demonstration of satisfactory reclamation under the Regulations, then the TDS concentrations in permit-area ponds should be expected to show similar concentrations to those of the disturbed and undisturbed stations. Staff asserts that the burden of proof to demonstrate such relationship lay with the permittee. Nevertheless, Staff believes that the data provided by Luminant for the two ponds in the ash-disposal area show that ash-disposal-area Ponds AII-2 and AII-1 had very high TDS concentrations. This occurrence, combined with the fact that the ash-disposal-area ponds drain to Pond AII-2, the release parcels requested in the Application having been mined, and the high quality of the vegetation on these parcels, allows Staff to recommend that release of reclamation liability for Parcel Nos. 4 through 9.

b. Other issues:

i. Phase III release was not recommended for Parcel Nos. 14-18 and 26 because was is not clear, based on the information in the application, as supplemented, that the groundwater systems adjacent to these parcels in the vicinity of long-term groundwater monitoring ("LTGM") Wells CII-28-UBR-93, TMW-1-UB-95, and CII-26-OB proposed for Phase III release have not been impacted with respect to water quantity as a result of the mining or reclamation activities. In Supplement No. 2, Luminant satisfactorily addressed Staff's concerns by providing updated water-level data for LTGM Wells CII-28-UBR-93 and TMW-1-UB-95, indicating that the water levels in both wells have been recovering since Staff last reviewed data for the wells. For LTGM Well CII-28-UBR-93, Luminant demonstrated the water levels in the well had recovered to less than a foot below the baseline level. For LTGM well TMW-1-UB-95, Staff had specifically requested that Luminant provide a mechanism for the lowering of the potentiometric surface in the surrounding area, and Luminant responded that incidental depressurization was possible due to advance dewatering and removal of the overburden during mining in the CVI North Area, which occurred in 2008 and 2009. The effects of pumping from several rig supply wells that have since been installed by oil and gas companies in the vicinity

of Well TMW-1-UB-95 has also lowered the potentiometric surface in the area. Staff concurred with this explanation.

ii. Phases II and III release were not recommended for Parcel Nos. 2, 5, 14, 16, and 20 because: (1) these parcels contained lands that are subject to, but had not completed, an ERP; and (2) Luminant had not submitted data to demonstrate that revegetation was successful within the portions of these parcels reclaimed to the land uses of forestry, fish and wildlife habitat, and pastureland. Luminant revised its earlier ERP requests to include lands within these parcels, and provided ground-cover and productivity data for the requested areas, which were approved by Staff by letter dated September 19, 2016.

12. In TA Addendum No. 1, Staff did not recommend release of Phases I, II, and III for Parcel No. 17 because the parcel was not bonded and because Luminant had not demonstrated right-of-entry ("ROE") to 0.1 acre within the parcel. This parcel is located in the CII Area, as shown on Attachment I, Figure 5 of Staffs initial TA. The 0.1-acre portion for which Luminant has no ROE is within Tract No. 1016A owned by the Texas Department of Transportation ("TXDOT"). According to Plate III.B.I-1, *Structure Map, 956.15 Ac. Proposed Bond Release*, in the initial application, this parcel contains a portion of FM 1794 West Segment Access Road approved by SMRD as permanent by letter dated January 26, 2004. Luminant indicated that it had incorrectly delineated this parcel and concurred that the 0.1-acre area was not bonded, based on the bond maps (Plates 142-1-1, 2, and 3, *Bond Map*) that were approved in Revision No. 86 by letter dated January 28, 2016. Luminant therefore indicated in Supplement No. 1 that it concurred with Staff's findings regarding this non-right-of-entry portion of requested Parcel No. 17.

13. Approved postmine land uses within the areas requested for release, as adjusted by Staff based on adjustments approved in Revision Nos. 57 and 98 are shown in the following table from Staff's April 15, 2016, TA Addendum No. 1 (Table E-3, Revision 1):

Release Phases(s) Requested	Fish and Wildlife	Forestry	Pasture	Dev. Water Resources	Industrial/ Commercial	Total
Phase I, II, and III	5.57	5.79	4.60	17.93	0.17	34.06
Phase II and III	337.29	475.40	0.68	61.67	45.68	920.72
Totals	342.86	481.19	5.28	79.60	45.85	954.78

The areas requested for release comprising fish and wildlife habitat, forestry, and pastureland land uses were placed into the extended responsibility period, as applicable, between 1998-2006. Staff inspection reflects that the areas requested for release contain 16 permanent impoundments, 21 permanent drop structures, 14 access roads, five diversions, and seven small depressions, SD-06-AI-1, SD-06-AI-2, SD-06-AII-1, SD-03-BIII-1, SD-03-BIII-2, SD-06-BIII-3, and SD-06-BIII-4, all approved as permanent structures.

14. The areas proposed for release are described in detail in Attachment III (inspection report) to Staff's TA, and in related attachments and appendices filed on May 14, 2015, in Staff's TA Addendum No. 1 filed on April 15, 2016, in TA Addendum No. 2 filed on April 29, 2019, TA Addendum No. 3 filed on June 16, 2020, and TA Addendum No. 4 filed October 9, 2020. Figures 1 through 4 in Staff's initial TA (Attachment I) provide depictions of the areas proposed for release, the specific releases proposed, postmine land uses, and locations of LTGM wells. TA Addendum No. 4 provides additional photos of the proposed released area. (Staff's TA Addendum No. 4, Inspection Report, Section V. Photographs).

15. There are 26 parcels proposed for various releases of reclamation obligations, as follows: Phases I-III release: Parcels 2, 5, 14, 16, 17, 20, 22, 24, and 25; and Phases II and III release: Parcels 1, 3, 4, 6-13, 15, 18, 19, 21, 23, and 26. The parcels are distributed throughout the permit area. The 26 requested parcels are depicted on Figures 1-6 of the initial TA and TA Addendum No. 3.

16. The areas requested for Phases I-III release have met Phase I requirements for backfilling, regrading, and drainage control as required by §12.313(a)(1) of the Regulations and may be approved for Phase I release. Acreage requested for Phase I release is comprised of 34.06 acres having land uses of 5.29 acres of fish and wildlife habitat, 5.79 acres of forestry, 4.88 acres of pastureland, 17.93 acres of developed water resources ("DWR"), and 0.17 acres of industrial/commercial ("I/C") land use.

    a. The areas requested for Phase I release are stable with no active erosion evident.

    b. The areas requested for Phase I release have been regraded to approximate original contour, all highwalls have been eliminated, suitable topsoil and subsoil material have been placed over regraded soil, as required for Phase I release, and no cut-and-fill terraces have been constructed (§12.385).

    c. The areas requested for release were mined from 1977-2003, and final grading was accomplished from 1977-2004. All Phase I requirements for acid-forming and/or toxic-forming materials ("AFM/TFM") and combustible materials ("CBM") have been met for the areas requested for Phase I-III release. Luminant has covered all exposed coal seams remaining after mining and all AFM/TFM and CBM with a minimum of four feet of the best available non-AFM/TFM and non-CBM. Each acre that has been mined or disturbed must meet the required quality for each required soil parameter based on approved frequency distribution percentages for topsoil (0-1 ft) and subsoil (1-4 ft) intervals. Testing for plant-available nutrients was accomplished for the top one-foot increment. Additionally, ten percent (10%) of the soil grids are tested randomly for boron (B), cadmium (Cd), selenium (Se), electrical conductivity (EC), and sodium adsorption ratio (SAR). The areas requested for Phase I release contained in 40 soil-testing grids. Luminant provided a list of soil-testing grids and dates of sampling in its application, as supplemented. Staff determined that the postmining soil data from the

soil-testing grids for the depth intervals tested reflected no indication of the presence of AFM/TFM or CBM in the top four feet of reclaimed soils in compliance with §12.386 of the Regulations. Appropriate methods were used in reclamation operations in compliance with the permit and Regulations for replacement of the top four feet with non-toxic and non-acid forming materials. The applicable areas have been covered by a minimum of four feet of suitable soil material. Materials unsuitable for use in the top four feet were placed low in the spoil to ensure that no unsuitable materials occur in the top four feet. No disposal sites exist within the release areas. Testing of the grids comprising the Phase I release areas did not indicate the presence of AFM, TFM, or CBM materials in the top four feet of postmine soils [approval letter from the Director, SMRD, dated September 24, 2012]. Maintenance (fertility) sampling was also conducted for the pastureland land management units ("LMUs") within these areas and reflected no unauthorized augmentation. (Application, Section III, Tables III.A.3-1 and III.A.3-2, and Staff).

d. The areas proposed for Phases I-III release contain five permanent ponds, five permanent roads, and five drop structures (Plates III.B.1-1, Sheets 1 through 3, and Inspection Report, Appendix V, Tables 1, 2 and 3, respectively). These structures have all been approved as permanent and are stable and structurally intact. Other structures are located within areas requested for Phases II and III release. See Finding of Fact No. 17(a), *infra*).

e. The areas requested for Phase I-III release meet drainage control requirements for Phase I. The areas drain to approved sedimentation Ponds AII-2, AII-6, CII-46, CII-52, CII-53, CIII-6, and CIII-8 (Inspection Report, page 5).

f. These areas contain no prime farmland for which specific soil reconstruction requirements apply.

17. The areas requested for Phase II and III and for Phases I-III release have met Phase II requirements for reclamation, except for 0.1 acre, in accordance with §12.313(a)(2) of the Regulations for revegetation and for sediment control.

a. All structures located within these areas are stable, structurally intact, require no maintenance, and are surrounded by well-vegetated areas. The areas requested for Phases II and III release contain the following structures: AI-28, AI-30, AI-50R, AII-2, AII-6, AII-75, B-81, CII-46, CII-52, CII-53, CIII-6, CIII-8 and CIII-14. The areas requested for release of Phases I-III also contain the structures listed in Finding of Fact No. 16(d), *supra*. These areas requested for release from Phase II and III reclamation obligations have met Phase II requirements for revegetation, as applicable, and for sediment control in accordance with §12.313(b) of the Regulations.

b. Vegetation was planted in the areas requested for release from 1992-2010. Vegetation has been established in accordance with the approved reclamation plan, and applicable ground cover, stem count, and productivity performance standards, as applicable, have been met [§12.313(a)(2)]. The areas proposed for Phase II release meet the requirement that the areas not contribute suspended solids to streamflow outside the permit area in excess of the requirements set by the Act §134.092(a)(10) and Subchapter K of 16 Tex. Admin. Code Ch. 12.

c. Postmine land uses are addressed as a part of Phase II and III release.

i. As adjusted in Supplement No. 1 (see Finding of Fact No. 13, *supra*), the areas requested for Phase II release (requested for Phases I-III release) have the following land uses: forestry (5.79 acres), fish and wildlife habitat (5.57 acres), pastureland (4.60 acres), DWR (17.93 acres), and I/C (0.17 acres). Areas requested for Phase II release (Phases II and III release) have the following land uses: forestry (475.40 acres), fish and wildlife habitat (337.29 acres), pastureland (0.68 acres), DWR (67.67 acres), and I/C (45.68 acres). In total, areas requested for Phase II release in the Application have the following land uses: forestry (481.19 acres), fish and wildlife habitat (342.86 acres), pastureland (5.28 acres), DWR (79.60 acres), and I/C (45.85 acres).

ii. As summarized by Staff in its initial TA, the requested release areas are divided into land management units (LMUs) for the purpose of tracking results of revegetation of fish and wildlife, forestry and pastureland uses. Requested areas reclaimed to fish and wildlife habitat land use are contained in the LMUs AI-06H, BK-99H, BK-03H, BK-06H, and C-06H. Likewise, requested areas reclaimed to forestry postmine land use are contained in LMUs AI-06F, BK-99F, BK-03F, BK-06F, and C-06F. Ground-cover and stem-count data for these LMUs were approved by Commission letters dated July 6, 2012, and September 24, 2012. Requested areas reclaimed to pastureland postmine land use are contained in LMU BK-06P. The SMRD found by letters dated February 22 and August 7, 2012, that these data indicated that revegetation within this LMU met or exceeded 90% of the approved success standards in 2009 and 2010, respectively, in accordance with §12.395(c)(2). Thus, all requested areas eligible for release have successfully completed the extended responsibility period ("ERP").

d. Final discharge Ponds AI-28, AI-30, AI-50R, AII-2, AII-6, AII-75, B-81, CII-46, CII-52, CII-53, CIII-6, CIII-8 and CIII-14 receive runoff from the proposed release areas. Of these, only Ponds AI-28, AI-50R, AII-2, AII-75, B-81, CII-52 and CII-53 are still active sedimentation ponds. Water discharges have complied with the permit requirements and performance standards. No rills or gullies are present. No silt dams, for which maintenance requirements would apply, are present within the area proposed for Phase II bond release. The areas requested for Phase II release have been stabilized

to reduce the potential for contributing suspended solids to streamflow (§12.340) and the areas are not contributing suspended solids to areas outside the permit area in excess of regulatory limits.

e. The areas requested for Phase II and III release have been managed in accordance with their postmine land uses as confirmed by field inspection reports. (§12.147 and §12.399).

f. No portions of the areas proposed for Phase II and III release were reclaimed to prime farmland for which other requirements would be applicable (§§12.201 and 12.620-625).

g. All soil fertility submittals and approvals have occurred.

18. Luminant has requested Phases II and III release for the full 954.8 acres. Except for 34.1 acres, the requested release acreage has already been approved by the Commission for Phase I release. All areas requested for Phases I-III release and all areas requested for Phase II and III release have met Phase III reclamation requirements, except for 0.1 acre, in accordance with §12.313(c) for completion of the extended responsibility period, as applicable, and for protection of surface water and groundwater.

a. The areas requested for Phase III release have met Phase III requirements for successful completion of the ERP, except for 0.1 acre, as described in Finding of Fact No. 17.c., *supra*.

b. Groundwater has been protected in accordance with §12.348 for the areas requested for Phase III release. Groundwater monitoring for the requested release areas has been performed in accordance with the provisions of the approved mining permit. Groundwater monitoring wells located within the areas requested for release will remain for monitoring purposes. Staff indicates that it reviewed the LTGM records submitted by Luminant on a quarterly basis since as early as 1977 for 19 LTGM wells (overburden monitoring Wells AI-15-OB-96, C-3-OB, and CII-26-OB; underburden monitoring Wells AI-1-UB, AI-3-UB, AI-13-UB-R-95, AI-15-UB-96, CII-27-UB, CII-28-UBR, and TMW-1-UB-95; and spoil monitoring Wells AI-16-Spoil-99, AI-17-Spoil, AII-12-OBR-03, AII-35-R-91, B-27-Spoil-03, CIV-31-R-91, C-32-Spoil, C-33-Spoil, and TMW-7-OBR). Luminant evaluated more recent data for these wells (one as early as 1983). During the life-of-mine period, additional wells are installed as monitoring needs change; there is nothing in the record to indicate that any earlier data than what was provided by Luminant exist for these 19 LTGM wells. With respect to groundwater systems, Luminant has complied with the requirements of the Regulations for all areas requested for Phase III release from reclamation obligations.

i. Luminant has addressed the requirements of §12.348 through the periodic submission of groundwater information on the overburden and underburden aquifers at the Martin Lake Mine, including the results from spoil, underburden and underburden LTGM wells located within and adjacent to the areas proposed for Phase III release.

ii. No substantive effects to underburden water level and quality are discernible in LGTM wells monitoring those strata.

iii. Water levels in overburden and underburden LGTM wells do not appear to have been substantively affected by mining activities. Only minor, temporary incidental drawdown to the underburden potentiometric surface appears to have occurred in the vicinity of the mined areas. The shallow aquifers have fully or near fully recovered from these temporary effects.

iv. In the initial TA and TA Addendum No. 1, Staff requested that Luminant provide an explanation for apparent underburden drawdown as identified in two LTGM underburden wells. Luminant responded by indicating that the declines in wells CII-28-UBR-93 and TMW-1-UB-95 were likely due to leakage from the confined aquifer into the adjacent spoil mass in this area as the hydrogeologic system acquired a new equilibrium. Luminant did not describe in in response to Staff's initial TA the timing and location of mining activities in relation to these two underburden wells. Staff noted that the potentiometric-surface decline in well CII-28-UBR-93 began around the second quarter of 2006, and that a steady decline in water-level in well TMW-1-UB-95 began in mid-2002, appearing to have occurred after adjacent mining and backfilling was completed. As described in TA Addendum No. 2, Luminant further evaluated the effects to the underburden aquifers as evidenced in the two wells, determining that incidental depressurization had possibly occurred in the vicinity of LTGM Well TMW-1-UB-95 due to advance dewatering and removal of the overburden during mining in the CVI North Area, which occurred in 2008 and 2009, and to pumping from several rig supply wells that have since been installed by oil and gas companies in the vicinity of the well, and that Well CII-28-UBR-93 was frequently dry or only contained a few feet of water, suggesting that the monitored hilltop sand represented a localized, perched groundwater system easily affected by climatic changes. Luminant also pointed out the minimal affects to the hydrologic balance of the area because the monitored underburden stratum was an isolated sand lens and did not represent a reliable, used groundwater supply. Staff concurred with these plausible assessments and stated that Luminant had adequately demonstrated protection of groundwater quantity and quality in the requested release areas at the Martin Lake Mine.

v. By letter dated July 21, 2020, the ALJ requested that, because the period of record for surface-water and groundwater data evaluated by Staff for this release application ended in First Quarter 2013, excepting some surface-water data provided in a later supplement relating to the paired-watershed analysis, Luminant needed to evaluate the additional seven years of available data to ensure that the trend results demonstrated in the 2013 evaluation remain valid. The ALJ noted as well that some of the LTGM wells evaluated in 2013 showed trends that appeared tenuous, wherein they were described but had not been evaluated (wells C-3-OB, C-32-Spoil, CII-26-OB, CII-28-UBR, and TMW-1-UB). Luminant provided an assessment by letter dated September 11, 2020, in response to the ALJ's request, providing a summary statistical data table and time-series trend graphs of LTGM well data for analyses obtained through 2nd Quarter 2020. Luminant summarized from these data that there is little to no difference in the statistical results and the trends over time that would disagree with Staff's assessment of the 2013 evaluation. Staff concurred with Luminant's assessment by letter dated October 9, 2020, indicating that it had no issues with the updated analyte trends, indicating that Luminant has met the groundwater protection requirements for the 954.8-acre area requested for Phase III release.

c. Luminant has conducted surface coal mining and reclamation operations in accordance with §12.313(a)(2-3) and §12.349 to protect surface-water quality and quantity for the areas requested for Phase III release. Surface-water monitoring for the proposed release areas has been performed in accordance with the provisions of the approved mining permit. As set forth in Staff's TA, surface-water discharge reports have been submitted by Luminant and reviewed on a monthly basis since 1977. Most of the surface-water data submitted by Luminant for LTSM stations was obtained subsequent to 2002. Other than Staff's indication in its TA that it has reviewed these data since 1977, nothing in the record indicates that additional surface-water data are available other than that provided in the Application.

i. Luminant provided Texas Pollutant Discharge Elimination System ("TPDES") outfall data for final discharge Ponds AI-28, AI-30, AI-SOR, AII-2, AII-6, AII-75, 8-8 I, CII-46, CII-52, CII-53, CITI-6, CIII-8, and CIII-14, all of which receive runoff from the requested release areas. Of these, only Ponds AI-28, AI-SOR, AII-2, AII-75, B-81, CII-52, and CII-53 are still active sedimentation ponds. The requested release areas and final-discharge ponds are depicted on Plate III.B.3-1, *Wells/Ponds/ Watersheds Location Map* in the Application. Each of these final discharge ponds flows into TCEQ Stream Segment No. 0505, Sabine River above Toledo Bend Reservoir, and have varying periods of record and collection frequency. Collected data for the active ponds variously include the parameters flow, pH, total suspended solids (TSS), total iron (Fe), total selenium (Se), and the equivalent of settleable solids (SS). These data are presented in Tables III.B.3-1

through III.B.3-18 of the application, and a summary of the data is provided in Staff's TA.

ii. In Supplement No. 1, Luminant provided a map of the watersheds for the pertinent ponds as requested by Staff on which it depicts the various locations of the monitoring stations. The submitted data demonstrates that runoff from the proposed Phase III release areas has met effluent limitations during the postmine phase of each respective pond. Discharge from these impoundments did not exceed TPDES water-quality effluent limitations or standards outline in 40 C.F.R. Chapter 434.

iii. In TA Addenda Nos. 1, Staff identified five remaining surface-water-protection issues that Staff believed needed to be addressed prior to approval of Phase II and III release.

(a) Staff identified that the revised surface-water evaluation report in the supplement required a certification from a Professional Geoscientist or Professional Engineer. Luminant provided the appropriate certification in Supplement No. 2; however, Staff identified in TA Addendum No. 2 that Luminant needed to resubmit the accompanying report that was previously not certified. The revised accompanying report and certification were submitted in Supplement No. 3.

(b) Staff noted that the manganese (Mn) concentrations (0.05 mg/L to 17.10 mg/L) at the disturbed-flow monitoring station on Mulberry Creek exceeded the undisturbed station Mn concentrations (<0.05 mg/L to 1.0 mg/L) and the baseline Mn concentrations (0.07 mg/L to 0.75 mg/L), and were trending upwards. In Supplement No. 1, Luminant indicated and Staff agreed that high Mn concentrations at the disturbed station were the result of chemical reactions of pyrite and impure siderite with rainwater, which has increased the dissolved Mn in the water and decreased the amount of dissolved iron in the mine discharge water (precipitating as ferric hydroxide or goethite). Staff further concurred with Luminant's explanation that, in accordance with the surface-water PHC determination in the approved permit, dissolved solids and suspended solids are expected to increase during mining activities; however, since mining activities at the Martin Lake Mine have been decreasing over the past several years, Staff requested that Luminant explain in further detail why Mn concentrations, which were increasing without a showing of trends toward equilibrium, did not reflect adverse impacts to the surface-water hydrologic balance as described at §12.349. In Supplement No. 3, Luminant provided a statistical analysis of Mn concentrations and flow data, which Staff confirmed with assistance from

OSM technical staff, concluding that there was no statistical increase in Mn concentrations with time, indicating that Mn concentrations had stabilized.

(c) In a third concern, Staff identified that, although Luminant provided a table comparing the maximum, median and average flow of the disturbed-flow station to the maximum, median and average flow of the undisturbed-flow and baseline stations, explaining its belief that the baseline and disturbed station maximum flows were very similar, and that the undisturbed station maximum flow was higher than the disturbed station maximum flow, Staff did not believe that use of the maximum-flow data point alone was sufficient to adequately characterize flow when discussing the PHC determination peak flow and needed further supporting information to support the conclusion, preferably in the form of a comparison of time-series flow data and rainfall data for the two stations. Luminant instead provided a nonparametric statistical comparison of flow at the two stations over time, adequately demonstrating to Staff's satisfaction that the median flow rates were statistically similar for the period 2011 to 2018, the most recent eight years of the evaluated data.

(d) Staff identified in TA Addenda Nos. 1 and 2 that Ponds CII-46 and CIII-6, although they are final discharge sedimentation ponds, they had not discharged in over 11 years, according to data provided in the Application and, from the SMRD inspection report, it appeared that both ponds were dry. Staff further indicated that the surface-area to watershed-size ratios of Ponds CIII-6 and CII-46 were 1:37 and 1:11, respectively, and thus the ponds should have received sufficient runoff based on the volume and curve numbers provided in the original detailed design plans to maintain normal pool level. Staff requested further explanation of the lack of discharge flow from these ponds.

(A) In Supplement No. 2, Luminant referred to a pond reanalysis submitted to SMRD on October 18, 2018, in which it acknowledged that the reanalysis indicates that the ponds should flow during the year, but also indicated that, in reality, the ponds flow very infrequently. Luminant provided a detailed explanation for this condition, along with detailed description of the watersheds for the two ponds. Luminant indicated that on-site visual inspections indicate that no flow bypasses or seeps exist nearby that would suggest that water was finding an alternative outlet or undermining the embankment. Luminant provided statements indicating that its explanation was provided in then-pending Revision No. 24 (the October 18, 2018, submittal), which contained re-analyses of these ponds. Luminant also explained that it did not consider there to be a water-quality issue associated with these ponds. Staff

considered this explanation favorably but indicated that because the necessary explanation was contained in Revision No. 24, which was currently under review, it was necessary for that revision application to be approved before this issue could be resolved.

(B) In Staff's TA Addendum No. 3, Revision No. 24 was confirmed to have been approved by Staff on June 11, 2019. Staff indicates that this revision application requesting approval of a reanalysis of Ponds CII-46 and CIII-6 included a narrative, hydrologic and hydraulic analyses, precipitation data, laboratory reports for pond-water grab samples, photographs, and watershed maps, plans and profiles. Staff confirmed that, with approval of Revision No. 24, Luminant had adequately addressed the noted issues regarding water quantity in Permanent Ponds CII-46 and CIII-6.

(e) Lastly, Staff noted in TA Addenda Nos. 1 and 2 that the annual average TDS concentrations for final discharge Pond AII-2 continued to exceed the maximum annual average TDS concentration expected for both the Stream Segment No. 0505 and for the TDS concentration at Mass Balance Point No. 6 used in Staff's CHIA, with little indication that the concentrations would decrease. Luminant responded to indicate several peripheral points of information not considered by Staff to be persuasive, excepting Luminant's identification that two ponds from the approved ash-disposal area at Martin Lake Mine flow into Pond AII-2, and providing TDS concentrations for these two ponds, both of which well-exceeded the same-day TDS concentration for Pond AII-2. Staff indicated that, based on these data, coupled with the facts that the pertinent proposed release parcels had never been mined and exhibit excellent vegetation throughout, it recommended release of reclamation liability.

iv. By letter dated July 21, 2020, the ALJ requested that Luminant provide further evaluation to explain the presence of what appeared to be successively increasing deposits of iron precipitate in the outlet drop structures of Reclamation Pond B-100R (Drop Structures B-100A, B-100B and B-100C). The ALJ noted that , as seen in the photographs in Attachment III of the May 14, 2015, TA, these three drop structures show the successively increasing iron precipitate, and that, in that such precipitate formation was typical of flows with high acidity, an explanation for this occurrence was warranted. In its response, Luminant obtained additional pH, acidity, and alkalinity data for the pond outflow waters at these structures, and found that the pH of water obtained from the bottom of Structure B-100B was 6.57 s.u., declining from the pH of Pond B-100R of 7.51 s.u. Neither values indicate any acid drainage issues. For both the pond and water below Drop Structure B-100B, alkalinity and acidity data were almost identical, indicating that any

groundwater seepage into the surface flow in the area was also not acid drainage. Luminant did identify, however, that, based on total and dissolved iron analyses, the groundwater contributions to the surface-water flow are high in iron, indicating that this water is becoming aerated, causing precipitation of iron hydroxide from the mixed waters. Staff concurred with this assessment by letter dated October 9, 2020, providing a report of field inspection conducted on September 15, 2020, and also indicating that, although acidity measurements exceed alkalinity measurements in inflowing waters to the drop structure, the pH is not less than 6.0 s.u. Therefore, Staff did not consider acid drainage to be present. Staff continued to recommend approval of the releases as requested.

v. Staff's assessment in TA Addendum No. 3 concluded that Luminant had adequately demonstrated protection of surface-water quantity and quality in the requested release areas at the Martin Lake Mine. Luminant has met the surface-water protection requirements for the subject area requested for Phase III release, with the exception of an 0.1 acre.

19. The areas requested for release of reclamation of obligations are capable of sustaining the postmine land use. Monthly inspections and Staff's latest inspection on September 15, 2020, demonstrate that the land has been reclaimed to and managed in accordance with the approved postmine land uses.

20. Following releases of reclamation requirements are approved: Phases I, II, and III release on 34.0 acres (34.1 acres minus 0.1 acre), and Phases II and III release on 920.7 acres, for a total for full release on 954.7 acres. The requested release for Phase I, II, and III on an 0.1 acre that is not bonded is denied.

21. Pursuant to §12.313(a)(3), the Commission may release the requested portion of the bond attributable to the subject 954.7 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 Phase I, II and III release of reclamation obligations on this area, Luminant is eligible to reduce the bond amount for Permit No. 4L. The last bond-map update and reclamation cost estimate ("RCE") were approved administratively by letter dated March 19, 2020 (Revision No. 26). In its technical evaluation of Revision No. 26, Staff indicates that its revised reclamation cost estimate of $149,473,703.57 was greater than Luminant's estimate and was therefore adopted as the minimum required bond amount. (TA Addenda Nos. 3 and 4, Table F, Revision 2). No reduction of the $975,000,000 blanket collateral bond approved by Commissioner Order dated September 27, 2016, is requested by Luminant in the Application [Finding of Fact No. 6, supra]. If the Application is approved by the Commission as proposed, then Luminant will be eligible to reduce its performance bond obligations as shown in Staff's Table F, Revision 2 (TA Addenda No. 3 and 4). 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 954.7 acres granted Phase I, II and III release, but does not specify the amount of the reduction.

22. All acres requested for release were marked in the field to distinguish them from active mining and reclamation areas.

23. Luminant and Staff are 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 for opportunity to comment.

24. Open meeting notice has been posted for Commission consideration of this Application in accordance with Tex. Gov't Code Ann. Ch. 551 (Vernon Supp. 2020).

CONCLUSIONS OF LAW

Based on the above 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. No public hearing was requested, and none is 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 acreage requested for release as set out in the Findings of Fact.

5. The Commission may approve a release of Phase I, II, and III reclamation obligations for 34.0 acres, and release of Phase II and III reclamation obligations on 920.7 acres, as set out in the above Findings of Fact and Conclusions of Law.

6. Pursuant to the Commission's authority for inspection and evaluation of release applications, the Commission may order that Luminant continue marking the area approved for release so that Staff mapping and tracking will be efficient.

7. Luminant is eligible to reduce the amount of bond for Permit No. 4L by an amount that is attributable to the subject acres in future bond adjustments.

IT IS THEREFORE ORDERED BY THE RAILROAD COMMISSION OF TEXAS that the above Findings of Fact and Conclusions of Law are adopted;

IT IS FURTHER ORDERED that release of Phase I, II, and III reclamation obligations for 34.0 acres, and release of Phase II and III reclamation obligations on 920.7 acres, is hereby approved;

IT IS FURTHER ORDERED that release of reclamation obligations on the requested 0.1 acre that is not bonded is denied without prejudice;

IT IS FURTHER ORDERED that all areas released from reclamation obligations shall remain clearly marked in the field with permanent boundary markers maintained to distinguish these areas at all corners and angle points from active mining and reclamation areas in accordance with this Order;

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

IT IS FURTHER ORDERED that Luminant is eligible to reduce the amount of bond for the permit by the amount that is attributable to the subject acres granted various releases in this Order;

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

IT IS FURTHER ORDERED by the Commission that this order shall not be final and effective until 25 days after the Commission's Order is signed, unless the time for filing a motion for rehearing has been extended under Tex. Gov't Code §2001.142, by agreement under Tex. Gov't Code §2001.147, or by written Commission Order issued pursuant to Tex. Gov't Code §2001.146(e). If a timely motion for rehearing is filed by any party at interest, this order shall not become final and effective until such motion is overruled, or if such motion is granted, this order shall be subject to further action by the Commission. Pursuant to Tex. Gov't Code §2001.146(e), the time allotted for Commission action on a motion for rehearing in this case is 100 days from the date the Commission Order is signed.

SIGNED on November 4, 2020.

RAILROAD COMMISSION OF TEXAS

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Christi Craddick
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CHAIRMAN CHRISTI CRADDICK

DocuSigned by:
Ryan Sitton
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COMMISSIONER RYAN SITTON

DocuSigned by:
Wayne Christian
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COMMISSIONER WAYNE CHRISTIAN

ATTEST:
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Secretary
Railroad Commission of Texas