

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

SMRD DOCKET NO. C14-0002-SC-34-F

**APPLICATION OF LUMINANT MINING COMPANY LLC FOR PHASE I, PHASE II, AND
PHASE III RELEASES OF RECLAMATION OBLIGATIONS FOR VARIOUS ACREAGES
WITHIN PERMIT NO. 34F, MONTICELLO WINFIELD MINE, TITUS AND FRANKLIN
COUNTIES, TEXAS**

**ORDER APPROVING RELEASE
OF PHASE I, PHASE II, PHASES I-III, PHASES II-III, AND PHASE III RECLAMATION
OBLIGATIONS**

Statement of the Case

Luminant Mining Company LLC (Luminant), 1601 Bryan Street, Dallas, Texas 75201 applied to the Railroad Commission of Texas (Commission), Surface Mining and Reclamation Division (SMRD), for a release of reclamation obligations on an aggregate 1,620.2 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. 2014), and the "Coal Mining Regulations" Tex. R.R. Comm'n, 16 Tex. Admin. Code Ch. 12 (Thomson West 2014).

Permit No. 34F authorizes surface coal mining operations at Luminant's Monticello Winfield Mine within its 26,732-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 SMRD Staff (Staff). Staff's initial review indicated that insufficient evidence had been presented for release of most parcels (Parcels 1-8, 10, and 12-15). After supplementation by Luminant, Staff now recommends the releases requested for all parcels (including an added Parcel 16 of 1.6 acres), with the exception of Parcel 7 and with the exception of Phase III for Parcel 8, withdrawn from consideration by Luminant. Luminant concurs with this assessment. There remain no outstanding issues between the parties.

Based on the information provided by the applicant, inspection of the area, and Staff's review, Staff recommends various releases on an aggregate of 1,486.4 acres made up of Phase I release for backfilling, regrading, and drainage control for 242.3 acres, Phase II release for revegetation and adequate sediment control for 97.9 acres, Phases I, II, and III release for revegetation and adequate sediment control and for completion of the extended responsibility period of five years, as applicable, and protection of the surface water quality and quantity and groundwater for 195.5 acres, Phases II and III release (revegetation and adequate sediment control and for completion of the extended responsibility period of five years, as applicable, and protection of the surface water quality and quantity and groundwater) for 948.7 acres, and Phase III release for 2.0 acres (completion of the extended responsibility period of five years, as applicable, and protection of the surface water quality and quantity and groundwater). The parties filed waivers of preparation and circulation of a proposal for decision.

The Commission approves the release of reclamation obligations as recommended by Staff with which Luminant concurs. Luminant does not request adjustment to the approved reclamation bond at this time and no new bond has been submitted. An eligible bond reduction amount of \$1,390,776.42 may be determined.

FINDINGS OF FACT

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

1. By letter dated September 25, 2013, received by the Surface Mining and Reclamation Division (SMRD or Staff) on September 26, 2013, Luminant filed its application with the Surface Mining and Reclamation Division (Staff) for various releases of reclamation obligations for an aggregate 1,620.2 acres within Permit No. 34F, Monticello Winfield Mine. The mine encompasses 26,732 acres in Titus and Franklin Counties Texas. The areas requested for release are located in Titus and Franklin Counties. The releases initially requested for release were: Phase I, 242.3 acres (backfilling, regrading, and drainage control); Phases I, II, and III (release of Phase I and II

obligations, completion of the extended responsibility period (ERP) and protection of the surface water and groundwater) for 193.9 acres, Phases II and III, 1,046.6 acres (establishment of revegetation and 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 Phase III, 137.4 acres (completion of the ERP and protection of the surface water and groundwater). After the withdrawal by Luminant of Parcels 7 and 8, and the addition of 1.6 acres to the request for release, the aggregate acreage requested for release totals 1,486.4 acres. These areas are depicted on Figures 1-4, Staff's Addendum to its Technical Analysis document dated May 13, 2015.

2. SMRD filed the application with the Hearings Division by letter dated September 10, 2014. After review of the draft notice by the examiner, Luminant supplemented the application by letter dated October 8, 2013 to provide a revised draft notice of application for publication, approved by letter dated October 11, 2013, and revised pages for the application.
3. The application is made pursuant to Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. Ch. 134 (Vernon Supp. 2014) (Act), and the Coal Mining Regulations, Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE Ch. 12 (Thomson West 2014). The application was properly certified in accordance with §12.312(a)(3).
4. By letter dated November 25, 2013, Luminant provided proof of publication of notice of application. Staff declared the application administratively complete by Staff's letter dated December 3, 2013 and indicated that the Staff's Technical Analysis (TA) document would be filed later. After no further documents were received, on August 22, 2014, the hearings examiner sent a letter to the applicant and Staff requesting an update on processing. By letter dated August 26, 2014, Luminant indicated that it was awaiting the Staff's TA document. By letter dated August 29, 2014, Staff indicated that it anticipated that its TA (and its field inspection report)

would be filed no later than September 12, 2014. The TA was filed September 10, 2014. Luminant responded to items noted in Staff's TA and provided additional information by letter dated February 27, 2015. By letter dated May 13, 2015, Staff filed its Addendum to the TA. Luminant concurs with Staff's addendum. The TA had identified concerns and deficiencies with most of the parcels as requested. After supplementation, Staff recommended all releases requested, except for Parcels 7 and 8, withdrawn from Phase III release by Luminant.

5. 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 bond for all of Luminant's mining and reclamation operations in Texas, approved by Order dated June 17, 2014. The latest estimate of reclamation costs used for Permit 34F is \$129,529,692 (approved by letter from the Director dated February 11, 2015).

6. Publication of notice of application occurred once a week for four consecutive weeks on October 17, 24, and 31, 2013 and on November 7, 2013 in the *Mount Vernon Optic-Herald* and on the same dates in the *Mount Pleasant Daily Tribune*. The two newspapers are papers of general circulation in the area of the proposed operations. Luminant submitted affidavits of publication with clippings. 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. The addition of 1.6 acres to the request for release, occurring subsequent to publication, does not result in a need for additional notice. The area added is adjacent to another parcel and does not result in a change to landowners required to be sent notice. Luminant owns the tract on which the 1.6 acres is located (Plate II.B.1-2 and Section II.B, Tract Sheet, Tract 193, p. 116.B-254),

7. Copies of the application were filed for public review at the Railroad Commission's Regional Office at 2202 Old Henderson Highway in Tyler, Texas, and in the offices of the Titus and Franklin 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 and water companies in the locality as required by §12.312(a)(2). In addition to approximately nine landowners, Luminant mailed notice to the County Judges and Commissioners' Courts of Titus and Franklin Counties, 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, the City of Mount Pleasant, several oil and gas lessees, Tri-Special Utility District, Southwestern Bell Telephone Company, Verizon of the Southwest, Wood County Electric Cooperative, Inc., Bowie Cass Electric Cooperative, Inc., and South Franklin Water Supply Corporation.
9. The Staff provided notification of the application by certified letters dated October 18, 2013 to the County Judges of Titus and Franklin Counties and to the Mayor of Mount Pleasant, Texas (in that a portion of the permit is located within the City of Mount Pleasant) 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. 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 24, 2013, by letters dated October 1, 2013. The owners of the areas requested for release include Luminant, Luminant Generation Company LLC, and two individual landowners. There are also several leaseholders and holders of easements within the areas requested for release who were also sent notice. Luminant and Luminant Generation Company also own most of the adjoining tracts; approximately six others own adjoining tracts. The notification 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. The Division also sent notice to the Office of Surface Mining Reclamation and Enforcement (OSM) (Tulsa, Oklahoma office), however, no OSM representative attended. Three representatives of Luminant or Luminant related entities, three Staff inspectors, and Mr. Danny Crump, a landowner of a 3.8-acre tract (Tract 1638) within the release area, attended the inspection. No adverse comments or written objections were filed regarding the request for release. No requests for hearing were filed pursuant to §12.313(d).

10. The areas proposed for release are detailed in Staff's Technical Evaluation dated September 10, 2014, in the Field Inspection Report dated June 16, 2014, and in Addendum No. 1 to the Technical Evaluation dated March 13, 2015. Figures and photographs of the proposed release areas and structures in the Staff Inspection Report provide depictions of the areas included with the application and the specific releases proposed. Figures IG-3G and 1S-3S are located in Appendices IV and V to the Staff report, respectively. The figures provide the locations of certain structures and photograph locations. Photographs from the inspection are also included in Appendix V of the Inspection Report (Attachment III to Staff's TA) providing support for the application and the inspection report. In its TA Addendum I, Staff included revised Figures 1-4 showing Staff's recommendations for release.

11. The area was inspected as scheduled. Subject to review by Staff of the Commission's Surface mining and Reclamation Division (SMRD) in Austin, Texas including surface and groundwater analysis, the inspection report recommended release of the reclamation obligations except that no documentation was included to indicate Titus County's acceptance of the section of County Road 1135 that is included in the 0.45-acre industrial/commercial land use area on Tract 1047, and with the exception of Drop Structure G-155 that had been previously reclaimed. Luminant provided information in its supplement dated February 27, 2015 that County Road NW-12 Relocation's name had been changed to County Road 1135, and Luminant provided Attachment C to that letter that included Titus County's acceptance of the road segment.
12. After Luminant's supplementation, the addition of the 1.6 acres, and the withdrawal of Parcel 7, the application as supplemented and Staff review show that approved postmine land uses within the areas requested for release are fish and wildlife habitat, 384.43 acres; forestry, 674.83 acres; pastureland, 334.83 acres; developed water resources, 88.06 acres; undeveloped, 3.81 acres; and industrial/commercial, 0.45 acres (TA Addendum I, page 6). The areas requested for release have been placed into the extended responsibility period, as applicable, between 1998-2007.
13. The application indicated that the areas requested for release contain 12 permanent impoundments, 16 permanent drop structures, 7 inlets and spillways, five permanent stream diversions, 12 permanent roads, and 18 small depressions. One of the drop structures, however, has been reclaimed, Drop Structure G-155.
14. The areas proposed for release are detailed in the Staff technical evaluation, Attachment III (inspection report), and related attachments and appendices filed September 10, 2014 and in Staff's TA Addendum No. 1 filed May 13, 2015. Revised Figures 1 through 4, TA Addendum I (Attachment I, revised, to the TA and field inspection report) provide depictions of the areas

proposed for release, the specific releases proposed and recommended for approval, postmine land uses, and locations of long-term groundwater monitoring wells.

15. Sixteen (16) parcels are proposed for releases of reclamation obligations: Phase I release (only), Parcels 9 and 11; Phases I-III release, Parcels 4, 5, 6, 12, 15, and 16. Parcels requested for Phases II and III release (only) include Parcels 2, 3, 8, 10, 13, and 14. Parcel 7 was requested for Phase III release only. The parcels are scattered throughout the permit area generally in three areas from northeast to southwest. The following parcels are depicted on Figures 1-4 of the TA, respectively: Figure 1, Parcels 1-6 and Parcel 16 (H Mine Area); Figure 2, Parcels 8-11 (G Mine Area); Parcel 8, initially requested for Phase II and III release was not recommended for Phase III release in Staff's TA and is now requested for Phase II release; Parcel 7, requested for Phase III release only, has been withdrawn from Luminant's request for Phase III release); Figure 3, Parcel 12 (J Mine Area); and Figure 4, Parcels 13, 14, and 15 (M Mine Area).
16. The areas requested for Phase I release (Parcels 9 and 11) and the areas requested for Phases I-III release (Parcels 4, 5, 6, 12, 15, and 16) may be approved for Phase I release. Acreage requested for Phase I release is made up of 242.33 acres requested for Phase I only and 195.55 acres requested for Phases I-III release. The areas requested for Phase I release (only) have land uses of forestry (204.11 acres), fish and wildlife habitat (21.08 acres), and pastureland (17.14 acres). The areas requested for Phase I-III release have the following land uses: forestry (88.81 acres), fish and wildlife habitat (15.55 acres), pastureland (69.16 acres), developed water resources (21.58 acres), and industrial/commercial (0.45 acres).
 - (a). The Areas requested for Phase I and those 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. The areas are stable with no active erosion evident.

- (b). The areas requested for Phase I/Phases I-III 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 were mined from 1989-2005, and final grading was accomplished from 1992-2009. 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 release (only) and for areas requested for Phases I-III release. Luminant has covered all exposed coal seams remaining after mining and all acid-forming and toxic forming material (AFM/TFM) and combustible material (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 foot) and subsoil (1-4 feet) intervals. Additionally, some plant-available nutrients are determined for the top one-foot increment. 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 only contain 14 soil-testing grids and the Phase I-III areas contain approximately 50 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 letters from the Director, SMRD, dated February 25, 2009 and January 6, 2010 for the Phase I only areas and approval letters dated March 12, 1999, January 14, 2000, May 15, 2001, June 15, 2001, October 2, 2003, March 8, 2006, September 8, 2006, January 6, 2010, and April 24, 2013 for the 175.7 of the Phases I-III acres tested]. 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 area proposed for Phase I bond release (only) contains no structures. The areas proposed for Phases I-III release contain the following permanent structures: H-1 Permanent Impoundment, HR-25 Permanent Impoundment, H-150 Waterway, H-150 Drop Structure Modification, H Area Access Road No. 3 Modification No. 1, H Area Access Road No. 9, H Area Small Depression (HSD) No. 9, M-1A Permanent Impoundment, M-1 Pond Access Road No. 2, and K Area Access Road [Plate IV.A.5-1 (eight pages), and Plates III.B.1-1 and III.B.1-2, application]. These structures have all been approved by the Commission as permanent and are stable and structurally intact. [Other structures are located within the areas requested for Phases II and III release and Phase III release. See Findings of Fact No. 17(a) and 18 (e)].
- (e). The areas requested for Phase I release and Phase I-III release meet drainage control requirements. The areas drain to approved sedimentation ponds H-1, H-4, M-1, F2R-3,

and GR-15.

- (f). These areas contain no prime farmland for which specific soil reconstruction requirements apply.
17. As revised, the areas requested for Phase II release (Parcel 8), Phases II-III release (Parcels 2, 3, 10, 13, and 14), and for Phases I-III release (Parcels 4, 5, 6, 12, 15, and 16), have met Phase II requirements for reclamation in accordance with §12.313(a)(2) of the Regulations for revegetation and for sediment control.
- (a). All structures located within these areas are approved as permanent, are stable, structurally intact, require no maintenance, and are surrounded by well-vegetated areas. The areas requested for Phase II, Phases II-III, and Phases I-III release contain the following structures: G-3 Ramp Diversion No. 1, G-176 Drop Structure, G-3 Ramp Diversion Inlet No. 1, G-161 Drop Structure, H-1 Permanent Impoundment, H-25 Permanent Impoundment, H Area Access Road No. 9, HSDs 10-14, H Area Access Road No. 1, H-150 Waterway, H-150 Drop Structure Modification, H Area Access Road No. 2, H Area Access Road No. 4, H Area Access Road No. 5 Modification No. 1, H-4 Drainageway, H Area Access Road No. 10, H4-1 through H4-4 Drop Structures and H4-7 and H4-8 Drop Structures, H-4 Permanent Impoundment, H-4A through H-4C Inlets, H-4 Spillway, H-4A Permanent Impoundment, H-4 Pond Access Road Modification, H-5 Diversion Modification No. 2, HR-23 Permanent Impoundment, HR-23A Pond Inlet, HR-24 Permanent Impoundment, M Area Access Road No. 1, M-14 Diversion Extension, MR-18 Permanent Impoundment, M-29 through M-34 Drop Structures, MR-7 Permanent Impoundment, M-20 Permanent Impoundment, M-21

Permanent Impoundment, MR-4 Permanent Impoundment, MR-4 Pond Inlet, M Area Access Road No. 3, MR-19 Permanent Impoundment, M Area Small Depressions (MSD) MSD-1, and MSDs 14-24 [Plate IV.A.5-1 (eight pages), and Plates III.B.1-1 and III.B.1-2, application]. G-155 Drop Structure has been reclaimed.

- (b). The areas requested for release from Phase II, Phases II-III, and Phases I-III reclamation obligations, as revised, have met Phase II requirements for revegetation, as applicable, in accordance with §12.313(b) of the Regulations. All soil fertility submittals and approvals have occurred. 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)]. These areas 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.
- (1). The areas requested for Phase II release are made up of 78.71 acres of forestry and 19.14 acres of fish and wildlife habitat. The areas requested for Phases II-III release have the following land uses: forestry (301.77 acres), fish and wildlife habitat (328.12 acres), pastureland (248.53 acres), developed water resources (66.48 acres), and undeveloped (3.81 acres). The areas requested for Phases I-III release have the following land uses: forestry (88.81 acres), fish and wildlife (15.55 acres), pastureland (69.16 acres), developed water resources (21.58 acres), and industrial/commercial (0.45 acres).

- (2). The areas requested for Phases II-III release and Phases I-III release show that Phase II vegetation requirements are complete by the stem count and groundcover data submitted, as applicable.
- (A). Luminant planted areas reclaimed to undeveloped land with several varieties of oaks, loblolly pine, sumac, hickory, persimmon and plum, along with shrubs, forbs, vines, and herbaceous species. Undeveloped land and developed water resources and industrial commercial are revegetated sufficient to control erosion. The areas surrounding the developed water resources meet revegetation requirements and the areas of industrial commercial are revegetated sufficient to control erosion. Fish and wildlife habitat, pastureland, and forestry areas were divided into land management units (LMUs) to track results of revegetation of fish and wildlife, forestry, and pastureland uses. Undeveloped LMU 08-M-U was evaluated to track results of revegetation.
- (B). Areas reclaimed to fish and wildlife habitat were planted with several varieties of oaks, loblolly pine, sumac, hickory, persimmon and plum. Shrubs, forbs, vines, and herbaceous species were also planted. Native grasses were planted; however common bermudagrass also occurs. The fish and wildlife habitat areas requested for Phase II release are contained in the following land management units (LMUs): 98-H-2H, 99-H-H, 07-G-H, 07-H-H, and 08-M-H. Groundcover and stem count data for LMU 98-H-2H submitted by Luminant's letter dated February 23, 2004 met the performance standards of §12.395(b)(3)(A)-(C) for the growing season of the last year of the ERP (2003) as required (SMRD's

letter dated April 29, 2004). Groundcover and stem count data for 99-H-H submitted by Luminant's letter dated June 30, 2005, were found to meet the approved success standards for growing year 2004 (SMRD letter dated August 9, 2005). For fish and wildlife LMUs 07-G-H, 07-H-H, and 08-M-H, groundcover and stem count data submitted by Luminant's letter dated April 8, 2013 were found to meet the approved success standards for growing year 2012 (SMRD letter dated September 17, 2013)

- (C). Pastureland was planted with coastal and common bermudagrass. Pastureland LMUs 98-H-2P, 07-H-P, and 08-M-P must meet the groundcover and productivity standards for any two years of the-five year ERP other than the first year. Luminant submitted groundcover and productivity reports for growing years 2000 and 2001 for pastureland LMU 98-H-2P by letters dated March 20, 2001 and January 28, 2002 that were approved by SMRD letters dated April 23, 2001 and May 15, 2002, respectively, as in accordance with §12.395(c)(2). For pastureland LMUs 07-H-P and 08-M-P, Luminant submitted groundcover and productivity reports for growing years 2009 and 2010 by letters dated February 5, 2010 and December 28, 2010, respectively. These LMUs were determined to meet revegetation groundcover and productivity standards for these two years of the ERP in accordance with §12.395(c)(2) by SMRD's approval letters dated July 27, 2010 and December 9, 2011, respectively. An area of 4.5 acres within LMU 07-H-P had been re-disturbed in connection with reclamation of treatment ponds associated with Ponds H-1 and H-4 in April 2011. Luminant

submitted quantitative groundcover data for the acreage and Staff determined that permanent approved vegetation exceeded required standards for the 2014 growing season [Staff letter dated May 8, 2015 in Attachment V to Addendum No. 1, approving data in Luminant's *2014 Ground-Cover/Stem Count Evaluation* submitted by letter dated December 29, 2014, and *Normal Husbandry Practices for Surface-Mined Lands*, p. 14].

- (D). Forestry was planted with loblolly pine. There are five forestry LMUs, 98-H-2F, 07-G-F, 07-H-F, 08-M-F, and 99-H-F proposed for release. Groundcover and stem count data were submitted for growing year 2003 were submitted for LMU 98-H-2F by letter dated February 23, 2004, approved by SMRD by letter dated April 29, 2004. SMRD determined that the vegetation remains successful by letter dated November 28, 2011 (reviewing Luminant's qualitative report submitted June 1, 2011 and revised September 21, 2011; SMRD Advisory Notice AD-BO-312, requiring at a minimum, a qualitative review to be submitted if more than two years since the last groundcover and stem count data were collected (data collected 2003-2005). Groundcover and stem count data for forestry LMU 99-H-F submitted by Luminant's letter dated June 30, 2005 were found to meet the approved success standard for growing year 2004 (SMRD letter dated August 9, 2005). For forestry LMUs 07-G-F, 07-H-F, and 08-M-F, groundcover and stem count data submitted by Luminant's letter dated April 8, 2013 were found to meet the approved success standards for growing year 2012 (SMRD letter dated September 17, 2013).

- (c). No rills or gullies are present within areas requested for Phase II release. 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).

- (d). Phase II sediment control requirements have been met for the areas requested for Phases II and III release (Parcels 2, 3, 10, 13, and 14), for Phase II release (Parcel 8) and for Phases I-III release (Parcels 4, 5, 6, 12, 15, and 16). The areas are not contributing suspended solids to areas outside the permit area in excess of regulatory limits.
 - (i). Runoff from these areas drains to current final discharge ponds F2R-3, G-6 (subsequently replaced by pond F2R-3 as the final discharge pond) making up Outfall 003, L-4, M-1, and GR-15, making up Outfalls 001 and 002, and J-4, H-1, H-3, H-4, and H-5, making up outfalls 102 and 103. Staff examined data for water discharges for all ten ponds and, after supplementation by Luminant to provide topographical information for Plate III.B.3-1, the inclusion of all ponds on the watershed map, and explanations regarding what appeared to be missing data, Staff determined that the water discharges have complied with TCEQ Permit No. 02697 requirements.

 - (ii). The outfalls that receive discharges are Outfalls 001, 002, 003, 102, and 103. Outfall 001 flows to Stream Segment No. 0303 in the Sulphur River Basin; Outfalls 002 and 102 flow into Big Cypress Creek below Lake Bob Sandlin in Stream Segment No. 0404; and Outfalls 003 and 103 flow into Lake Monticello, thence to Lake Bob Sandlin in Stream Segment No. 0408. These outfalls feed

into the Cypress Creek Basin. Staff summarized the data for the current final discharge ponds and compared the data to applicable TCEQ TPDES (Texas Pollutant Discharge Elimination System) water quality effluent standards (Tables 1, 2, and 3, pp. 8-9, Staff TA). In Table 1 (Ponds L-4, M-1 and GR-1, Outfalls 001 and 002), the average pH in standard units (s.u.) for each pond was within the effluent limitation of 6.0-9.0 s.u. The average total suspended solids (TSS) for each of these ponds was well below the allowable daily average and allowable daily maximum of 35 mg/L and 70 mg/L, respectively. The average Fe (iron) for each of the ponds was well below the allowable daily average and allowable daily maximum effluent limitations of 3.0 mg/L and 6.0 mg/L, respectively. The average Se (selenium) for each of the ponds was also well below the limitation of 0.036 mg/L allowable daily maximum. For Ponds G-6 and F2R-3 (Outfall 003), in Table 2, the pH averages were within the 6.0-9.0 effluent limitation. Luminant did not include data for TSS, Fe, and Se in the TCEQ permit; however, Staff consulted with TCEQ and determined that sampling for total settleable material (TSM) is performed if a discharge occurs due to a rainfall event, explaining the lack of data. For Ponds J-4, H-1, H-3, H-4, and H-5, the average pH for each of the ponds was within the effluent limitation of 6.0-9.0 s.u. In addition, TSM data reflects that the levels of TSM were also consistently less than the effluent limitation of 0.5 mL/L. The levels reflect compliance with the water quality effluent requirements.

- (iii). Staff also examined water quality data for four consecutive quarters for permanent Ponds H-1, H-4, H-4A, HR-23, HR-24, and HR-25 that flow into Stream Segment No. 0408 and for Ponds MR-4, MR-7, MR-18, MR-19, MR-20, and MR-21 that flow into Stream Segment No. 0303 (Sulphur River) and

compared them to maximum annual averages for TDS and the required range for pH for the stream segments. This comparison reflected that the average annual TDS for all except for one of the ponds that is slightly in excess of Stream Segment No. 0408's maximum annual average of 150 mg/L. Also, the pH measurements for the ponds were slightly below the minimum pH required for Stream Segment No. 0408. Staff indicates, however, that the levels will not have a negative impact on the stream segment because the watersheds are small in comparison with the stream-segment watershed size and because the discharges are diluted by Lake Bob Sandlin and upstream and downstream discharges. For Ponds MR-4, MR-7, MR-18, MR-19, MR-20, and MR-21 that flow into Stream Segment No. 0303 (Sulphur River), submitted sets of data reflect that the ponds' water quality meets the standards for Segment No. 0303.

- (iv). Staff performed a water quantity analysis and determined that water quantity has been protected. From a comparison of disturbed water monitoring station HSW-W2 to baseline data from stations SW-3 and SW-4, flow from disturbed and baseline stations should remain relatively unchanged.
 - (v). Parcels 7 and 8 drain to the F2R-3 Pond. These two parcels are receiving disturbed drainage from Phase I released areas. Although Parcel 8 is appropriate for Phase II release in that the records of Pond F2R-3 show discharges that are compliant with the water quality permit, Phase III release is inappropriate because of the presence of disturbed drainage on these parcels.
- (e). The areas requested for Phase II release have been managed in accordance with their postmine land uses as confirmed by field inspection reports.

- (f). No portions of the areas proposed for Phase II release were reclaimed to prime farmland for which other requirements would be applicable (§§12.201 and 12.620-625).
 - (g). There are no silt dams to be retained as permanent impoundments for which provisions for sound maintenance would be required.
18. Luminant initially requested Phase III release (only) for Parcel 7 and Phases II and III release of Parcel 8 totaling 233.3 acres. Luminant revised this request to eliminate its request for Phase III for Parcel 7 (135.4 acres) and to revise its request for Parcel 8 to Phase II release only (97.9 acres). The acreage requested for only Phase III release (Parcel 1) is comprised of 1.99 acres, 0.54 acres of fish and wildlife habitat and 1.43 acres of forestry adjacent to an area previously approved for Phase III release. The areas requested for Phases I-III release (195.55 acres) are made up of forestry (88.81 acres), fish and wildlife habitat (15.55 acres), pastureland (69.16 acres), developed water resources (21.58 acres), and industrial/commercial (0.45 acres). Areas requested for Phases II and III releases (948.71 acres), are made up of forestry (301.77 acres), fish and wildlife habitat (328.12 acres), pastureland (248.53 acres), developed water resources (66.48 acres) and undeveloped (3.81 acres) (Table C-2, Staff's TA Addendum I, p. 6). Areas requested for Phases I-III release, and Phases II-III release have met Phase III reclamation requirements in accordance with §12.313(c) for completion of the extended responsibility period (ERP), as applicable, and for protection of surface water and groundwater.
- (a). The areas requested for Phases II and III release and Phases I-III release subject to the completion of the ERP have met Phase III requirements for successful completion of the five-year extended responsibility period (ERP).

- (1). The areas of fish and wildlife habitat requested for Phases II and III release and Phases I-III release have successfully completed the five-year ERP. The fish and wildlife areas requested for Phase III release are contained in the following five land management units (LMUs): 98-H-2H (ERP beginning September 16, 1998), 07-G-H and 07-H-H (ERP beginning February 27, 2007), 08-M-H (ERP beginning March 13, 2008), and 99-H-H (ERP beginning November 9, 1999).
 - (2). The five LMUs comprising the areas reclaimed as forestry and requested for Phase III release, have successfully completed the ERP. The LMUs were accepted into the ERP effective on the following dates: 98-H-2F, September 17, 1998; 07-G-F and 07-H-F, February 27, 2007; 08-M-H, March 13, 2008, and 99-H-F (ERP beginning November 9, 1999).
 - (3). Pastureland areas encompassing three LMUs designated as 98-H-2P, 07-H-P, and 08-M-P have successfully completed the ERP. These LMUs were accepted into the ERP effective on the following dates: 98-H-2P, September 17, 1998, 07-H-P, February 27, 2007, and 08-M-P, March 13, 2008.
- (b). Areas requested for Phases I-III and II and III releases have been reclaimed to and managed in accordance with the approved postmine land uses (§§12.147 and 12.399).
- (c). The structures listed in Finding of Fact No. 17(a) are located in the areas requested for Phase I-III, and Phases II- III release. All structures are intact, and the surrounding areas are well vegetated.

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

- (e). Groundwater has been protected in accordance with §12.348 for the areas requested for Phases I-III release and for Phases II-III release. Luminant submitted information for the overburden and underburden aquifers within the Monticello Winfield Mine. The pre-mine overburden water-bearing strata in the reclaimed area have been destroyed. Those aquifers, however, constituted only minor aquifers in both water quantity and quality, except for some shallow, localized strata that can have significant yields. Generally, the overburden aquifers have limited physical and hydrological lateral extents. Underlying these minor aquifers in the Monticello area are more prolific Wilcox Group underburden aquifers that are isolated from the lignite-bearing Calvert Bluff Formation by confining clays of varying thickness. Long-term quarterly monitoring data for the overburden and underburden hydrologic units in areas within the mine pertinent to the areas requested for release in the G, H, J, and M Areas do not indicate that any significant impacts have occurred to water quantity and quality. Groundwater has been protected in accordance with §12.348 for the areas requested for Phases II and III release and Phases I-III release. Groundwater monitoring for the proposed 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 reviewed the long-term groundwater monitoring records submitted by Luminant on a quarterly basis. With respect to groundwater systems, Luminant has complied with the requirements of the Regulations for groundwater protection.

- (1). Luminant's application contains monitoring data for Areas G, H, J and M from six overburden monitoring wells, five underburden wells, nine spoil monitoring wells, and seven ash disposal monitoring wells located within and adjacent to the areas proposed for Phase III release (Section II.A.9, *Groundwater Protection*).
- (2). No substantive effects to underburden water level are discernible in LGTM wells monitoring the underburden in reclaimed areas and areas adjacent to reclaimed areas. In overburden areas adjacent to the reclaimed areas, minor temporary drawdowns occurred; however, Staff analysis reflects that the drawdowns have been temporary and the water levels have shown full or nearly full recovery.
- (3). Staff reviewed water levels in spoil monitoring wells completed in mined blocks. Water levels have risen measurably based on records of wells B2-3-OB-R-06, B2-M2-R-08, G-34-R-85, G-35-R-85, G-36-R-91, H-5-OBR-06, H-11-R-91, H-16-R-08, and B2-J1-R-08.
- (4). Monitoring of pH in spoil monitoring wells and overburden wells in adjacent areas indicates that pH measurements are within the acceptable range. The concentrations of total dissolved solids (TDS) and sulfate in the spoil wells and overburden wells in adjacent areas vary considerably; however, generally they follow expected trends described in the probable hydrological consequences determination (PHC). Staff expressed concerns regarding the concentrations of total dissolved solids (TDS) and sulfate in native overburden wells adjacent to the M Area of the mine due to increases in sulfate (and therefore, TDS) in long-term overburden groundwater monitoring (LTGM) wells B2-18-V and B2-35-OB as compared to the much lesser increases in sulfate concentrations for the

two nearest spoil monitoring wells. Staff initially did not recommend release of Parcels 13, 14, and 15 in the M Area due to this concern. Luminant supplemented its application to indicate that logging information obtained at the time of drilling indicates that the wells are at least partially completed across carbonaceous clay units that likely contribute sulfate and iron to the well water due to increasing localized oxidation of the unit. Luminant indicated that drought conditions have tended to increase ionic concentrations in the water in these shallow wells. Staff review accepts this non-mining additional explanatory information and now recommends release of Parcels 13, 14, and 15.

- (f). Luminant has conducted surface mining activities 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. Staff reviewed the surface water discharge reports submitted by Luminant on a monthly basis since 1989. Based on Finding of Fact No. 17(d) (compliance with water quality permit requirements) and the following, all areas requested for Phases I-III release and Phases II-III release, with the exception of Parcels 7 and 8 [Finding of Fact No. 17(d)(v)], have met Phase III requirements for protection of surface water quantity and quality. Based upon a comparison of disturbed monitoring station data to stream segment criteria, threshold values contained in the Cumulative Hydrologic Impact Assessment (CHIA), expected CHIA mass-balance values for TDS, undisturbed monitoring station data, and baseline water quality, mining activity has not had a negative impact on the surface water hydrology relevant to areas requested for Phase I-III release, and Phases II and III release.

- (1). The approved long-term surface water monitoring plan (LTSM) plan includes monitoring of paired watersheds to characterize disturbed and undisturbed water quality and quantity data at specific monitoring points in order to monitor long-term impacts to streams. The undisturbed watershed stream monitoring data were summarized and compared to the disturbed paired watershed stream monitoring data, and the disturbed watershed sets of data were compared to stream segment standards and to the expected cumulative hydrologic impact assessment (CHIA) mass balance concentrations (Staff's TA, pages 11-12). The surface water quantity (volume or rate of flow in area watersheds) and surface water quality have not been adversely affected by runoff from the areas proposed for release as described in the permit application. The data provided in the application and Staff's evaluation of the information with respect to the CHIA indicate that Luminant has met the requirements of §12.349 for Phase III release of reclamation obligations for the requested areas. The undisturbed LTSM station HSW-W1 for the period of record 2000-2013 exhibited a pH range of 6.2-7.7 s.u. The range for the disturbed station HSW-W2, 5.4-7.9, is similar, although one pH measurement was less than the acceptable range. Flow from the disturbed station HSW-W2 flows into Stream Segment 0404 with a stream segment standard for pH of 6-8.5 s.u. The pH range for station HSW-W2 generally meets the standard for Segment 0404. HSW-W2 exhibits a TDS range of 60-722 mg/L, as compared to the undisturbed station HSW-W1 of 46-694. This compares to the stream segment standard for Stream Segment 0404 of 500 mg/L and 397 for the expected mass balance concentration. Although higher than the expected mass balance concentration and the undisturbed station, there are only four samples out of approximately 49 samples that were greater than the stream segment standard, and Staff indicates that the TDS concentrations are

trending downward. Staff indicates that the TDS concentrations are sufficient to determine that TDS concentrations meet the stream segment standard of 500 mg/L. Staff review states that the disturbed station and the baseline station SW-3 have similar average values for parameters of concern.

19. The following releases of reclamation requirements are approved: Phase I release for 242.3 acres, Phase II release for 97.9 acres, Phases I-III releases for 195.5 acres, Phases II and III releases for 948.7 acres, and Phase III release for 2.0 acres.

20. The areas approved for release of reclamation obligations are eligible for an adjustment to the required amount for the bond. Luminant has not requested an adjustment to the approved bond at this time. No replacement bond instrument has been filed. Based upon the application, as supplemented, Staff's Ta and Addendum, and the Findings of Fact contained in this Order, the eligible bond reduction amount totals \$1,390,776.42. The acreage that is bonded is made up of mine land (not part of worst-case pit) at \$1,023/acre, disturbed land at \$6,259/acre, and lands with previous Phase I or II reduction at the bonded amount per acre -\$891/acre (\$891 = soil preparation, revegetation, and maintenance costs/acre). The parcels, acreage, reclamation cost per acre and reduction recommended plus a 10% administrative fee for each type of disturbance on each parcel, along with the total amounts recommended for release are set out below:

| Parcel | Total Acres | Phases Requested as Supplemented | Bonded Acres | | | Remaining Bonded Amount Per Acre prior to Release | Reduction Now Recommended ¹ |
|--------|-------------|----------------------------------|--------------|-----------|--------------------|---|--|
| | | | Mined/ | Disturbed | / Ph. I/II Release | | |
| 1 | 2.0 | III | 0.0 | 0.0 | 2.0 | \$ 891 | \$ 1,960.20 |
| 2 | 153.4 | II and III | 0.0 | 0.0 | 153.4 | 891 | 150,347.34 |
| 3 | 278.9 | II and III | 0.0 | 0.0 | 278.9 | 891 | 273,349.89 |
| 4 | 5.4 | I, II, and III | 0.0 | 5.4 | 0.0 | \$ 6259 | 37,178.46 |
| 5 | 115.4 | I, II, and III | 93.6 | 21.8 | 0.0 | 93.6,\$1023/a | 105,328.10 |
| | | | | | | c. (mined) | |
| | | | | | | 21.8/\$6259/a | 150,090.80 |

| | | | | | | | |
|----------------|---------|----------------|-------|-----|-------|---|----------------|
| | | | | | | c. (dist'd) | |
| 6 | 53.2 | I, II, and III | 45.2 | 8.0 | 0.0 | 45.2/\$1023/a c.(mined) | 50,863.56 |
| | | | | | | 8.0/\$6259/ ac.(dist'd) | 55,079.20 |
| 7 ² | 0.0 | none | 0.0 | 0.0 | 0.0 | N/A | 0.00 |
| 8 | 97.9 | II | | | | \$ 0 | 0.00 |
| 9 | 164.1 | I | 164.1 | 0.0 | 0.0 | \$1023 ³ | 23,827.32 |
| 10 | 44.1 | II and III | 0.0 | 0.0 | 44.1 | \$ 891 | 43,222.41 |
| 11 | 78.2 | I | 78.2 | 0.0 | 0.0 | \$1023 ³ | 11,354.64 |
| 12 | 0.5 | I, II, and III | 0.0 | 0.5 | 0.0 | \$6259 | 3,442.45 |
| 13 | 468.5 | II and III | 0.0 | 0.0 | 468.5 | \$ 891 | 459,176.85 |
| 14 | 3.8 | II and III | 0.0 | 0.0 | 3.8 | \$ 891 | 3,724.38 |
| 15 | 19.4 | I, II, and III | 19.4 | 0.0 | 0.0 | \$1023 | 21,830.82 |
| 16 | 1.6 | I, II, and III | 0.0 | 0.0 | 0.0 | \$ 0 (erroneously bonded as released from Phase III liability) | 0.00 |
| Totals | 1,486.4 | | | | | | \$1,390,776.42 |

¹ 10% administrative costs added

² Withdrawn from request

³ The amount eligible for Phase I release is the mined acreage amount, \$1023, minus the amount that must be retained for soil preparation, revegetation, and maintenance, \$891, leaving \$132 per acre (plus 10%) as the amount eligible for release.

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

22. The Commission posted this docket for consideration in accordance with the Open Meetings Act.

CONCLUSIONS OF LAW

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

1. Required public notice and notice to landowners, agencies, and other interested persons was provided for this request for release of reclamation obligations, and the Commission properly posted the docket for consideration.

2. A public hearing on the request is not warranted.

3. Luminant has complied with all applicable provisions of the Act and the Regulations for Phase I release for 242.3 acres, Phase II release for 97.9 acres, Phases I-III releases for 195.5 acres, Phases II and III releases for 948.7 acres, and Phase III release for 2.0 acres. The Commission may determine an eligible bond reduction amount attributable to this acreage.

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

IT IS FURTHER ORDERED that the following releases of reclamation obligations are approved: Phase I release for 242.3 acres, Phase II release for 97.9 acres, Phases I-III release for 195.5 acres, Phases II and III release for 948.7 acres, and Phase III release for 2.0 acres;

IT IS FURTHER ORDERED that an eligible bond reduction amount of \$1,390,776.42 is approved;

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

IT IS FURTHER ORDERED that the 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 20 days after a party is notified of the Commission's order. A party is presumed to have been notified of the Commission's order three days after the date on which the notice is mailed. If a timely motion for rehearing is filed by any party of interest, this order shall not become final and effective until such motion is overruled, or if such motion is granted, this order shall be subject to further action by the Commission. In accordance with TEX. GOV'T CODE §2001.146(e), the time allotted for Commission action on a motion for rehearing in this case prior to its being overruled by operator of law, is hereby extended until 90 days from the date the parties are notified of the order.

SIGNED this 14th day of July 2015.

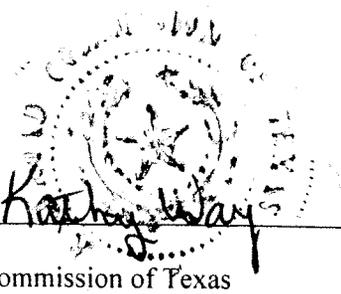
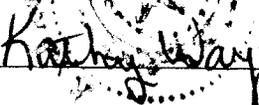
RAILROAD COMMISSION OF TEXAS


CHAIRMAN DAVID PORTER


COMMISSIONER CHRISTI CRADDICK


COMMISSIONER RYAN SITTON

ATTEST:



Secretary
Railroad Commission of Texas