

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

**SURFACE MINING DOCKET NO. C16-0015-SC-53-F
APPLICATION BY LUMINANT MINING COMPANY LLC
FOR PHASE I RELEASE OF RECLAMATION OBLIGATIONS
FOR 506.5 ACRES OF ITS SURFACE COAL MINING OPERATIONS
FOR PERMIT NO. 53, MARTIN LAKE AIV SOUTH MINE, PANOLA AND RUSK
COUNTIES, TEXAS**

**ORDER APPROVING PHASE I RELEASE
OF RECLAMATION OBLIGATIONS FOR 506.5 ACRES**

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, for Phase I release of reclamation obligations (backfilling, regrading, and drainage control) for a single parcel of land located within its Permit No. 53 comprising 506.5 acres. The permit area is located adjacent and immediately south of the Martin Lake Mine, Permit 4J in Panola and Rusk Counties and contains 2,403 acres. Luminant does not request a reduction in the amount of the approved reclamation bond. The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. CH. 134 (Vernon Supp. 2016) (Act), and the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE ANN. CH. 12 (Thomson West 2016) (Regulations).

Staff, Surface Mining and Reclamation Division (SMRD) has reviewed the request for release of the acreage and filed its Technical Analysis and field inspection report. The only parties to the proceeding are Luminant and SMRD Staff. Copies of the application were filed in the required county and Commission offices, and notices were mailed to landowners and adjoining landowners of the area requested for release and required federal and state agencies. No comments were made, and no public hearing was requested.

Based on the record in this docket including the application and Staff review, and the Act and Regulations, the examiner recommends that the application for Phase I release should be

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approved for the 506.5 requested acres, as set out in the Findings of Fact and Conclusions of Law. There remain no outstanding issues between the parties.

FINDINGS OF FACT

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

1. By letter dated April 29, 2016, Luminant Mining Company LLC (Luminant) filed its request for Phase I release of reclamation requirements (backfilling, regrading, and drainage control) for 506.5 acres, located within the 2,403-acre permit area of the Martin Lake AIV South Mine, Permit No. 53, Panola and Rusk Counties, Texas.
2. No filing fee is required. The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. CH. 134 (Vernon 2016) (Act), and the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE CH. 12 (Thomson West 2016) (Regulations). The application was properly certified in accordance with §12.312(a)(3) of the Regulations.
3. Luminant currently bonds its operations in Texas with a blanket collateral bond and trust agreement. Luminant does not request any change to the bond instrument. An eligible bond reduction amount may be considered.
4. The draft public notice included with the application was reviewed June 3, 2016, was supplemented June 7, 2016, and was approved June 9, 2016. Copies of the application were filed for public review in compliance with notice requirements, at the main office of the Railroad Commission of Texas at 1701 North Congress, William B. Travis Building, Austin, Texas, at the Commission's Regional Office in Tyler, Texas, and in the offices of the Panola and Rusk County Clerks in Carthage and Henderson, Texas, respectively,
5. Publication of notice of application occurred once each week for four consecutive weeks in both *The Panola Watchman* and the *Henderson Daily News*, newspapers of general circulation in Panola County, Texas and in Rusk County, Texas, respectively, on June 19,

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June 26, July 3, and July 10, 2016.

6. Proof of publication and notice to landowners and others was provided by letter dated July 28, 2016. The newspapers are published in the locality of the surface mining and reclamation operations. The notice of application contains all information required by §134.129 of the Act and §12.312(a) of the Regulations for notice of application for release of Phase I reclamation obligations for backfilling, regrading, and drainage control. The notice is adequate notification of the request for release. The notice included the name of the permittee, the location of the land affected, the approximate number of acres, permit number at the time of application and date approved, the amount of approved bond, the type and appropriate dates reclamation work was performed, and a description of the results achieved as they relate to the approved reclamation plan. The notice contained information concerning the applicant, the location and boundaries of the permit area, the availability of the application for inspection, the address to which comments should be sent, and a map with sufficient notice of the boundaries of the area requested for release.

7. Luminant provided copies of letters dated June 15, 2016 notifying property owners, owners of leaseholds or other property interests, and adjoining property owners of the application for release in accordance with §12.312(a)(2) of the Regulations. Luminant also provided copies of the letters to landowners and/or adjoining landowners, and lessees and holders of other property interests, and to the following: the Panola and Rusk County Judges/Commissioners Courts, Texas Department of Transportation (letter dated July 13, 2016), Natural Resources Conservation Service, Texas Commission on Environmental Quality, Rock Hill Water Supply Corp., Beckville, Texas and Carthage, Texas, Eastex Telephone Cooperative, Inc., Southwestern Bell Telephone Company, U.S. Army Corps of Engineers, Fair Play Water Supply Corporation, Reliant Energy Service, and Verizon as required by §12.312(a)(2) of the “Coal Mining Regulations” and §134.129 of the Surface Coal Mining and Reclamation Act. The area requested for release is not located within the territorial boundaries of any municipality that would be notified pursuant to §12.313(c) of the Regulations.

8. No adverse comments or written objections were filed regarding the request for release

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pursuant to the notification. No requests for hearing or informal conference were filed pursuant to §12.313.

9. The area requested for release is made up of one parcel of land located in the southern part of the permit area owned by Luminant Mining Company LLC. The area was mined or otherwise disturbed by mining-related activities. Adjoining properties are owned by Luminant as well as several other landowners. The currently approved postmine land uses for the area requested for release are developed water resources (5.4%), fish and wildlife habitat (60.3%), and forestry (34.3%).
10. The application was declared administratively complete and filed with the Hearings Division on August 3, 2016. Staff's technical analysis (TA) and inspection report was filed with the Hearings Division on August 17, 2016. The TA noted a concern regarding drainage control of a two-acre area in the southwestern portion of the area requested for release. Luminant provided a supplement by letter dated September 19, 2015 indicating the approval of Sedimentation Pond AIV-14 and AIV-14 Diversion No. 1 as permanent structures and requesting approval of drainage control for the two-acre area that drains to AIV Diversion No. 1 located west of the release [§12.313(a)(1)]. Luminant also submitted a supplement by letter dated October 10, 2016, and additional information to Staff by email copied to the ALJ October 17, 2016. Staff filed its TA addendum October 20, 2016. Information provided by Luminant adequately addressed Staff's concern regarding drainage control for the two acres. Staff indicated in its TA Addendum dated October 20, 2016 that the disturbance in the watershed was limited to the construction of AIV-14 Diversion No. 1 and its associated appurtenances, that the land within the watershed is fully revegetated with permit-approved species and is stable, and that drainage from the two acres was not intended to be routed through surface water control.
11. The area proposed for release is detailed in the Staff Evaluation, Attachment I (depiction of area requested for release) and Attachment III (Staff Inspection Report), Appendix I (Location Map) to Attachment III, and Appendix IV (General Photographs and Photograph Location Map, as well as Appendix V, Permanent Structures Tables, Structure Photographs and Photograph Location Map. The application, photographic evidence, and Staff

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Inspection Report and Evaluation provide support for release of Phase I reclamation obligations.

12. SMRD's Inspection and Enforcement Section mailed letters dated May 2, 2016 to Luminant, landowners, holders of other interests within the area requested for release, and the Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office (OSM), notifying them of the date scheduled for inspection, June 1, 2016, and the opportunity to participate in the inspection in accordance with §12.312(a)(2) (Appendix II to Staff's analysis document). Staff sent a letter of notification of the application by certified mail to the Panola and Rusk County Judges by letter dated June 14, 2016 (Attachment II to Staff's inspection report) as required by the Act, §134.133. The inspection occurred on the date scheduled. Three Luminant representatives participated in the inspection with the Commission field inspector. No OSM representative attended the inspection. No others attended the inspection. The area requested for release was appropriately marked in the field.
13. The areas requested for release were mined or otherwise disturbed from 2009-2011. Final grading occurred from 2009-2011, and vegetation was planted from 2011-2016. Routine monthly inspections of the operations and/or reclamation work covering the proposed release area occurred from 2009 to the present.
14. The Staff inspection report noted certain mapping/accounting errors or omissions and one issue relating to the condition and integrity of Pond AIV-64R Inlet No. 1. A one-inch crack had appeared in the inlet (Photograph 14 of Attachment III, Appendix V); Staff indicated that this condition requires repair, should be no problem to repair, and does not constitute an impediment to Phase I release. All other structures were determined to be structurally intact and stable. The mapping errors were also found to be not an impediment to release.
15. The structures contained in the area requested for release are 10 permanent impoundments, two permanent diversions, and eight pond inlets or spillways as determined by Staff. Luminant and/or Staff provided copies of all Commission letters approving the permanent structures located within the area requested for release. The ten approved permanent impoundments and associated structures are the following: AIV-63RW and Spillway

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Structure, AIV-64R and Inlet No. 1, AIV-65RW, AIV-66R and Inlet No. 1, AIV-67RW and Spillway Structure, AIV-70RW and Spillway Structure, AIV-71RW and Spillway Structure, AIV-72RW, AIV-73RW and Spillway Structure, and AIV-74RW and Spillway Structure. Photographs for the structures are contained in Appendix V to Attachment III, Field Inspection Report. The two approved permanent diversions located within the area proposed for release are the AIV-63RW Reclamation Drainageway (Photographs 1 and 2 of Appendix V, and the AIV-66R Diversion No. 1 (Photographs 6 and 17, Appendix V).

16. No roads are located within the area, although there are several vehicular pathways that are visible (Attachment III, Appendix IV, Photographs 13, 19, and 23). Luminant may determine to retain these pathways as permanent road for access; if so, application should be made prior to application for Phase II or III release.
17. Based upon the application and Staff review in its Technical Evaluation Report, the acreage requested for release from Phase I reclamation obligations has met Phase I requirements for backfilling, regrading, and drainage control requirements as required by §12.313(a)(1) of the Regulations and may be approved for Phase I release.
18. The areas requested for Phase I release have been backfilled and graded to approximate original contour [§12.385(a)], and vegetation has been planted. All highwalls and spoil piles were eliminated in accordance with §12.384(b)(1) of the Regulations, and suitable substitute material was placed over the regraded spoil. No cut-and-fill terraces were constructed. Backfilled material has been placed to minimize erosion, to minimize water pollution both on and off the site, and to support the approved postmining land uses [§12.384(b)(2)]. The areas have been regraded to approximate original contour. Drainage patterns approximating premine drainage have been established. All areas requested for release meet Phase I release have been stabilized to control drainage and erosion [(§12.389)].
19. Luminant submitted soil testing data for the 31 full or partial 23-acre soil grids in two increments (0-12 inches and 12-48 inches) comprising the area requested for release in 2013 and 2014. Testing was completed for soil sampling requirements for pH, acid-base accounting, texture, and cation exchange capacity, and for plant available nutrients in the

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top 12 inches of reclaimed soil. A random 10% of the grids were also analyzed for boron, cadmium, and selenium. The Commission determined that data for these grids indicated that all are free of acid-forming and toxic-forming materials and meet the applicable physicochemical postmine soil performance standards. (AFM/TFM) (SMRD letter dated July 20, 2015) (Plates III.A.3-1 through 3, application).

20. Runoff from 504.5 acres of the areas proposed for release drain into final discharge ponds AIV-12, AIV-13, AIV-14, and AIV-15. As indicated, runoff from two acres drains through a freshwater diversion that is not within surface water control.
21. There is no prime farmland located in the area proposed for Phase I release for which specific soil reconstruction standards would apply [§12.624].
22. The area requested for Phase I release has been marked in the field with permanent boundary markers to distinguish the area from active mining and reclamation. Clear identification of this area will assist future inspection of this area and adjacent areas.
23. The notice of application for release stated that an eligible bond reduction amount may be determined. Luminant has not requested an adjustment to the accepted bond instrument. The areas requested for release are bonded at the mined rate, \$20,075 per acre. They are eligible for a 60% reduction as Phase I released lands. The amount is calculated as follows: 506.5 acres x \$20,075 per acre x .60, totaling a reduction amount of \$6,100,792.50, plus a 10% increase for administrative costs (\$610,079.25) for a total of \$6,710,871.75 as an eligible bond reduction amount.
24. Luminant and Staff, the only parties to the proceeding, filed waivers of the preparation and circulation of a proposal for decision. The proposed order was circulated to the parties with opportunity for comment.
25. Required public notice and notice of the open meeting to consider Luminant's request has been made. All other required notice has been made. The matter has been posted for Commission consideration in accordance with the Open Meetings Act.
26. The 506.5 acres have met requirements for Phase I release of reclamation obligations.

CONCLUSIONS OF LAW

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

1. Proper notice was provided for this request for release of reclamation obligations.
2. No public hearing was requested, and none is warranted.
3. Luminant has complied with applicable provisions of the Act and Regulations regarding notice for Commission jurisdiction to attach to allow consideration of the matter.
4. Luminant has met all requirements for Phase I release for 506.5 acres within the Martin Lake AIV South Mine as set out in the application, as supplemented, and Staff review.
5. The Commission may approve a release of Phase I reclamation obligations for the 506.5 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.

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 Commission approved Phase I release of reclamation obligations for the requested 506.5 acres as set out in the Findings of Fact and Conclusions of Law;

IT IS FURTHER ORDERED that \$6,710,871.75 is determined as an eligible bond reduction amount (Finding of Fact No. 20);

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 all areas released from reclamation obligations in this

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Order shall be clearly marked in the field with permanent boundary markers to distinguish these areas from active mining and reclamation areas;

IT IS FURTHER ORDERED that the Commission may vary the total amount of bond required from time to time as reclamation costs change; and

IT IS FURTHER ORDERED by the Commission that this order shall not be final and effective until 25 days after a party is notified of the Commission's order. 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. Pursuant to 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 operation of law, is hereby extended until 90 days from the date the parties are notified of the order.

SIGNED IN AUSTIN, TEXAS, on January 24, 2017.

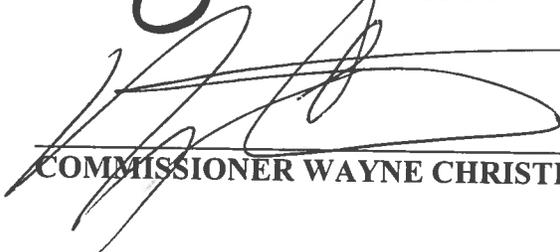
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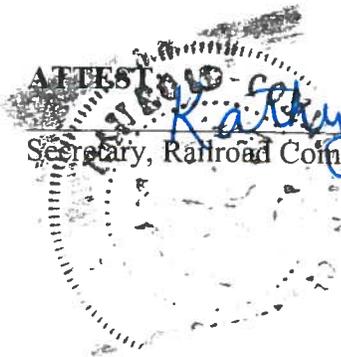
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ATTEST


Secretary, Railroad Commission of Texas