

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

**SURFACE MINING DOCKET NO. C20-0019-SC-48-B:
APPLICATION BY LUMINANT MINING COMPANY LLC FOR REVISION NO. 43,
PERMIT NO. 48C, THREE OAKS MINE, BASTROP AND LEE COUNTIES, TEXAS**

**ORDER OF APPROVAL OF APPLICATION FOR REVISION
TO PERMIT NO. 48C**

STATEMENT OF THE CASE

The Applicant, Luminant Mining Company LLC (“Luminant”), 6555 Sierra Drive, Irving, Texas 75039, has applied (“Application”) to the Railroad Commission of Texas (“Commission”), for revision (Revision No. 43) to its surface coal mining and reclamation permit for its Three Oaks Mine, Permit No. 48C, located in Bastrop and Lee Counties, Texas. In the Application, Luminant proposes to revise the reclamation plan for the final pit and adjoining area, included a revised postmine topography, and also proposes a revised reclamation cost estimate for completion for reclamation.

The Application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, Tex. Nat. Res. Code Ann. Ch. 134 (Vernon’s 2021) (“Act”) and 16 Tex. Admin. Code Ch. 12 of the “Coal Mining Regulations” (Thomson West 2021) (“Regulations”). Permit No. 48C currently authorizes surface coal mining operations at the Three Oaks Mine within a permit area of 15,809 acres. The Three Oaks Mine permit area is located in Lee and Bastrop Counties, approximately seven miles northeast of Elgin and approximately 15 miles west of Lexington, Texas. The Three Oaks Mine, Permit No. 48C, ceased removing coal in 2018, and no change is requested for the mine to its approved status as a “Reclamation-Only Permit.”

The parties to this proceeding are the Commission’s Surface Mining and Reclamation Division (“SMRD” or “Staff”) and Luminant. Luminant’s currently accepted reclamation performance bond is a blanket collateral bond for all of its statewide mining operations in the amount of \$975,000,000, approved by Order dated September 27, 2016 (Docket No. C16-0021-SC-00-E). Staff recommends adoption of Luminant’s proposed cost estimate of \$95,961,225. No changes to Luminant’s existing blanket collateral bond are necessary as a result of this proposed permit revision because Luminant’s currently approved blanket bond amount exceeds the cumulative sum of Staff’s recommended amounts revised by the amount recommended in this docket.

After consideration of the Application, as supplemented, Findings of Facts, and Conclusions of Law, and the Permit Provisions set out in Appendix I, the Commission approves the Application.

FINDINGS OF FACT

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

1. By letter dated April 4, 2019, Luminant Mining Company LLC ("Luminant") submitted a revision application ("Revision No. 43" or "Application") for the Three Oaks Mine, Permit No. 48C, to the Railroad Commission of Texas' ("Commission") Surface Mining and Reclamation Division ("SMRD" or "Staff") to revise the reclamation plan for the final pit and adjoining area, included a revised postmine topography. Luminant proposes a revised reclamation cost estimate for completion of reclamation. The existing 15,809-acre Three Oaks Mine permit area is located in Lee and Bastrop Counties, Texas, approximately seven miles northeast of Elgin and 15 miles west of Lexington, Texas. By letter dated July 22, 2019, Staff determined that the Application was a significant revision to Permit No. 48C because it significantly changed the effect of the mining operation would have on either those persons impacted by the permitted operation or on the environment pursuant to §12.226(a)(1). On October 16, 2019, Luminant requested that the significance decision be reconsidered and instead be processed administratively (non-significant). On April 17, 2020 (in a letter erroneously dated 2019, instead of 2020), after a consultation period between Staff and Luminant of approximately six months, the Director reaffirmed that the Application would be processed as a significant revision to Permit No. 48C. On May 26, 2020, Luminant submitted Supplemental Document No. 1 to achieve administrative completeness and eligibility for review.
2. The Application was filed pursuant to the Texas Surface Coal Mining and Reclamation Act, Tex. Nat. Res. Code Ann. Ch. 134 (Vernon's 2021) ("Act") and 16 Tex. Admin. Code Ch. 12 of the "Coal Mining Regulations," Tex. R.R. Comm'n (Thomson West 2021) ("Regulations").
 - (a). The Application was filed at least 180 days before the date of anticipated need for the proposed reclamation activities, as set out in 16 Tex. Admin. Code §12.106(b)(3).
 - (b). The Application has met the requirements set out in 16 Tex. Admin. Code §12.107 for format and content, with adoption of the Findings of Fact and Conclusions of Law, and the permit provisions contained in Appendix I of this order. An updated application Form SMRD-1C was included in the initial filing containing information required by 16 Tex. Admin. Code §§12.116-12.154 [§12.107(a)]. In the supplemented Application, the information is current, presented clearly and concisely, and is supported by appropriate references [§12.107(b)]. Technical data have been submitted as required [§12.107(c) and (e)], and the data were prepared by or under the direction of professionals in the subjects analyzed [§12.107(d)]. A responsible official of Luminant verified the supplemented Application under oath that the information is true and correct to the best of the official's information and belief. [§12.107(g)].

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- (c). A filing fee of \$500 has been paid as required by the Regulations for an application for revision to the approved permit. [§12.108(a)(2)].
3. On June 9, 2020, the Director of SMRD determined the Application to be administratively complete and filed the Application with the Hearings Division for docketing.
 - (a). The Application consists of one volume and is supplemented by three additional volumes, Supplemental Document Nos. 1, 2, and 3. The initial application and Supplemental Document No. 1 were filed with the Hearings Division on June 2, 2020; Supplemental Document No. 2 was filed on March 31, 2022; and Supplemental Document No. 3 was filed on May 20, 2022. All information contained in the supplements has been submitted for the purpose of supplementation, clarification, limitation, or correction of data and information addressed in the initial application. The application and supplements were appropriately placed in the file for public inspection. The information contained in the supplements does not constitute a material change to the Application for which additional notice must be provided pursuant to 16 Tex. Admin. Code §12.212(d).
 - (b). Staff filed its Technical Analysis ("TA") and two addenda. The TA was filed on July 6, 2020, TA Addendum No. 1 ("TAA1") on April 20, 2022, and TA Addendum No. 2 ("TAA2") on June 14, 2022. In TAA2, Staff recommends approval of the Application, as supplemented, with the removal of five existing permit provisions for Permit No. 48C because they are no longer needed, retention of two existing permit provisions as originally adopted, retention of two existing permit provisions with modifications, and addition of a new proposed permit provision. The recommended existing permit provisions are retained or re-adopted with Staff's recommended modifications, and Staff's new permit provision proposed in TAA2 is adopted with minor modifications, as set out in the Findings of Fact and in Appendix I to this order.
4. Proper notice of application was published once per week for four consecutive weeks in a newspaper of general circulation in the locality of the surface mining and reclamation operations on July 22 and 29, and August 5 and 12, 2020, in the *Elgin Courier*, in Bastrop County, Texas, and on July 23 and 30, and August 6 and 13, 2020, in the *Lexington Leader*, in Lee County, Texas. Luminant filed proof of publication of notice by letter dated October 9, 2020. The notices of application contain all information required by the Act and the Regulations. Luminant identified the location of the public offices where the supplemented Application was filed in accordance with 16 Tex. Admin. Code §12.207, and submitted original affidavits and news clippings showing publication, in accordance with 16 Tex. Admin. Code §12.123. The notices contain the required information concerning the Applicant, the location and boundaries of the permit area, the availability of the Application for inspection, and the address to which comments, objections, or requests for a public hearing or informal conference on the Application were to be sent.

5. Luminant filed a copy of the Application for public review. The Application, which includes all supplements, was appropriately placed on file for public inspection at the Commission's Austin offices and at the offices of the Lee and Bastrop County Clerks. Required public notice was given after the filing of the Application [§12.123]. The information contained in the supplements are for the purposes of approval of the Application as set out in this Order, do not constitute material changes to the Application for which additional notice must be provided under 16 Tex. Admin. Code §12.212(d).
6. In accordance with its policy, on July 24, 2020, the Commission provided notice of a complete application, by first-class mail or interagency mail, as appropriate, to the Texas and federal agencies listed in 16 Tex. Admin. Code §12.207, and to local government agencies, specifically the following: Texas Commission on Environmental Quality ("TCEQ"); Texas Historical Commission; University of Texas, Bureau of Economic Geology; Texas State Soil and Water Conservation Board; Texas Parks and Wildlife Department ("TPWD"); General Land Office; Natural Resources Conservation Service; USDI Fish and Wildlife Service; U.S. Environmental Protection Agency ("EPA"); USDI Office of Surface Mining Reclamation and Enforcement ("OSM"); U.S. Army Corps of Engineers ("USACE"); Texas Department of Transportation; Nueces River Authority; Texas State Soil and Water Conservation Board; Lee County Soil and Water Conservation District #359; Bastrop County Soil and Water Conservation District #340; Lee County Water Supply Corporation; Bastrop County Water Control and Improvement District #2; Lost Pines Groundwater Conservation District; and the Lee and Bastrop County Clerks and County Judges.
7. By letters dated August 18, 2020 and May 20, 2022, TPWD filed comments and recommendations regarding the Final Pit Reclamation-Plan changes proposed in the Application. On August 20, 2020 and May 24, 2022, the Hearings Division transmitted TPWD's comments to Luminant and Staff. Luminant partially addressed TPWD's comments in accordance with Commission requirements by modifications to portions of the Application. Luminant provided responses to TPWD's recommendations in Supplemental Document No. 2. Staff provided responses to TPWD's comments and recommendations in TAA1 and TAA2 and recommended permit provisions to fully address regulatory requirements. The requirements set out in Luminant's fish and wildlife plan, with adoption of proposed permit provisions, will satisfy the requirements of the Regulations and sufficiently address TPWD's comments and recommendations.
 - (a). TPWD's August 18, 2020 Comment No. 1 states that TPWD has concerns regarding the complete omission of fish and wildlife habitat land use from the reclamation plan proposed in the within Revision 43. Based on a comparison of the 2014 Renewal and the information provided in Revision 43, substantial changes pertaining to the consideration of natural resource impacts and to natural resources management during reclamation have occurred.

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- (b). TWPD's August 18, 2020 Recommendation No. 1 states that impacts to Fish & Wildlife Habitat be accurately accounted for throughout the application and specifically in Section 12.147. TPWD recommends that the applicant present information that is consistent with previous documentation, such as the 2014 Renewal.
- (c). TWPD's August 18, 2020 Recommendation No. 2 states that during reclamation an acreage commensurate with pre-disturbance conditions be reclaimed into Fish & Wildlife Habitat. Based upon the pre-mine land uses reported within the 2014 Renewal, land uses comparable to post-mine Fish and Wildlife Habitat include Undeveloped Land (36.7%) and Grazing Land (18.9%) totaling a pre-mine landscape that is comprised of approximately 55.6% terrestrial wildlife habitat. TPWD recommends that the amount of existing land uses that provide benefits to terrestrial wildlife resources be matched or exceeded for the post-mine land uses.
- (d). TWPD's August 18, 2020 Recommendation No. 3 states that being situated in an ecotone of the Blackland Prairie and the Post Oak Savannah ecoregions, TPWD recommends the applicant reclaim Fish & Wildlife Habitat areas to a largely open landscape of native herbaceous cover interspersed with a low percentage of woody components. Plant species appropriate to the area are included as an attachment to this letter.
- (e). TPWD's May 20, 2022 Comment No. 1 states that TPWD staff continues to encourage the applicant to consider greater commitment to reclamation efforts resulting in Fish & Wildlife Habitat land use. This comment has been made in prior TPWD reviews, most recently in August of 2020 (Docket No. C20-0019-SC48-B). Based on a comparison of the 2014 Renewal and the information provided in Supplements 1 and 2 of Revision 43, substantial changes pertaining to the consideration of natural resource impacts and to natural resources management during reclamation have occurred. TPWD would be very interested to explore different cost-sharing options that would make reclamation to Fish and Wildlife Habitat land use more feasible for the applicant. Likewise, TPWD staff are available to provide technical guidance (including in the field before, during, and after any reclamation activities) in order to facilitate success. TPWD staff have introduced potential habitat reclamation opportunities on mined lands to colleagues within the U.S. Fish and Wildlife Service (USFWS) Partners Program, and it appears there is a willingness to engage and perhaps offer resources from the USFWS as well, should the applicant choose to engage with resource agencies on this topic.
- (f). TWPD's May 20, 2022 Recommendation No. 1 states that during reclamation an acreage commensurate with pre-disturbance conditions be reclaimed into Fish & Wildlife Habitat. Based upon the pre-mine land uses reported within the 2014 Renewal, land uses comparable to post-mine Fish and Wildlife Habitat include Undeveloped Land (36.7%) and Grazing Land (18.9%) totaling a pre-mine

landscape that is comprised of approximately 55.6% terrestrial wildlife habitat. TPWD recommends that the amount of existing land uses that provide benefits to terrestrial wildlife resources be matched or exceeded for the post-mine land uses.

- (g). In TAA2, Staff indicates that it is unclear why the proposed significant changes to the postmine land-use acres were not coordinated with TPWD and USFWS; particularly as the issue was raised previously in the 2014 Renewal coordination efforts. Staff requested in the TA that Luminant refrain from changing approved Exhibit 144-1, *Conceptual Fish and Wildlife Enhancements* map, in terms of the fish and wildlife habitat land use that is proposed, and instead revise its proposed Exhibit 147-1, *Postmine Land Use* map, to contain the same amount of proposed acreage of fish and wildlife habitat land use, as shown on approved Exhibit 144-1. However, Luminant did not make this change in Supplemental Document No. 3. In fact, Luminant made the contradictory change in Supplemental Document No. 2 by reducing the fish and wildlife habitat land use in its fish and wildlife enhancement plan to instead match that in its postmine land-use plan. Staff indicates that it will continue to encourage Luminant to add additional enhancement features throughout the remainder of reclamation activities. This issue is addressed further in a subsequent Finding of Fact in this Order and a proposed permit provision.
- (h). Staff recommends that the applicant explore with TPWD the benefit of establishing native grasslands and utilizing the TPWD incentive programs. Staff included recommendations to TPWD in Section 12.144 and 12.147 of this TAA2. Staff has also recommended and encourages TPWD to provide a presentation at the annual Texas A&M University/Texas Mining and Reclamation Association Reclamation Workshop to inform the mining industry about how these programs can benefit the applicant and the pollinator enhancement program. Staff further recommends that Luminant work directly with technical Staff and TPWD to identify the details of the current enhancement program, assess the condition of areas that have been enhanced or are still to be enhanced, and to determine how the incentives to which TPWD refers would be able to assist Luminant while still meeting reclamation goals and standards in a timely manner. Staff incorporated TPWD's comment in its review in TAA2.
- (i). Staff indicates in Supplemental Document No. 2 that, although the Regulations support a position that restoration to the premine condition is the expectation, except when the Commission makes allowances after certain findings are met, landowners typically desire a different land use to support their future expected use of the land, which is usually agricultural; therefore, alternative postmine land uses have become the norm. Staff can provide the Commission with a recommendation to not approve the alternative land uses; however, the Commission may make other findings. Staff notes that comparing premine percentages of the entire permit area to postmine percentages of reclaimed disturbance acres provides a skewed comparison because usually nearly half of the acreage has not been disturbed by

mining activities and retains its premine land use. Staff has reviewed the premine acreage of the area within the disturbance boundary. Under that comparison, Staff realizes that the loss of habitat (in the form of undeveloped land and grazingland when converted to pastureland), as a percentage of the land uses comprising the disturbed area, is approximately 62%. As described in paragraph iii. above, Staff can and has requested Luminant to maintain the fish and wildlife habitat land-use acreage at percentages shown on approved Plate 144-1, *Conceptual Wildlife Enhancement*; however, Luminant prefers to reclaim the tracts to an agricultural use.

- (j). The Commission has determined that the issues expressed by TPWD that are within the jurisdiction of the Commission and are germane to the Application have been resolved to the satisfaction of the Commission and the requirements under the Act and Regulations with the adoption of the proposed permit provisions.
8. On September 4, 2020, the Lost Pines Groundwater Conservation District ("LPGCD"), filed comments regarding proposed changes to the methods for backfilling the excavations in the Calvert Bluff formation in the reclamation plan.
- (a). LPGCD commented that the proposed changes to the reclamation plan must be evaluated to determine if the applicant will protect the hydro logic balance of groundwater, and that the plan is consistent with Railroad Commission ("RRC") rules adopted to protect this resource. The location of these mining pits in eastern portions of the Calvert Bluff outcrop in the District has altered the natural recharge of the formation, which impacts both the amount of recharge that may occur as well as the water quality. Changing the methods for proper closure of the mine can potentially impact the recharge that occurs, resulting in the potential for an increase in the amount of water recharging over and moving through the abandoned pits. This increases the potential for a degradation in groundwater quality around and down dip of the reclaimed excavations. In addition, there is the possibility of localized hydraulic interconnection between the Calvert Bluff and the underlying Simsboro formation, whether naturally occurring or inadvertently created as part of the mining or reclamation efforts, that could create pathways for contaminant flow between the two formations. This is critical because the Simsboro Aquifer is heavily utilized within the District for water supply purposes. The District has also issued permits for two large water projects that intend to use water from the Simsboro formation to meet growing water demands along the 1-35 corridor. As I am sure others have already expressed, the residents of Lee and Bastrop Counties depend upon both the Simsboro and Calvert Bluff formations for secure and safe water for public water supply, domestic, and agricultural usage. The proposed changes to the reclamation plan need to be carefully evaluated in the context of the potential for harm in terms of both water quality and quantity in both the Calvert Bluff and underlying Simsboro formation and to ensure compliance with the RRC' s hydro logic balance and groundwater protection rules.

- (b). By letter dated September 17, 2020, The ALJ directed Luminant to contact LPGCD. On October 9, 2020, Luminant filed a summary of their conference call with Mr. Totten. Dr. Justin Ewing (Luminant) and Mr. Keith Wheeler (Hydrogeologist, Golder Associates Inc.) participated in the conference call. Luminant summarized the conference call as follows: Mr. Totten presented his concerns as reflected in his letter of September 4, 2020. Dr. Ewing and Mr. Wheeler explained how the early termination of mining at Three Oaks Mine lead to the permit revision application and the planned changes in surface water resulting from reclamation of the final pit area (*i.e.* smaller ponds with connecting stream segments). Mr. Wheeler responded to Mr. Totten's concerns about postmining groundwater and explained the continued validity of the earlier Probable Hydrologic Consequences report and the expected impacts to groundwater quality and quantity. Luminant also offered to provide Long-Term Groundwater Monitoring data previously filed with the Railroad Commission. Mr. Totten indicated that he would appreciate the additional data and that he believed that he now had the information to address the LPGCD board's concerns.
 - (c). The Commission has determined that the issues expressed by the LPGCD that are within the jurisdiction of the Commission and are germane to the Application have been resolved to the satisfaction of the Commission and the requirements under the Act and Regulations.
9. On September 14, 2020, the Central Texas Regional Water Supply Corporation ("CTRWSC"), an entity not identified in the Application, filed comments regarding easements owned by CTRWSC along the property line of the Three Oaks Mine. In its comments, CTRWSC described the 15 easement agreements that protect the easements from encroachment, the construction and design criteria for any incursion into the easements, and that those criteria should be enforced for this permit. Luminant contacted the commenter by telephone on September 16, 2020, and documented its discussion by letter to the ALJ dated October 9, 2020. In its letter, Luminant indicated that the intent of CTRWSC's letter was for the record to document that active easement agreements were in effect for Permit No. 48C, but that CTRWSC had no adverse issues with the reclamation-plan changes proposed in the Application. The Commission has determined that the issues expressed by the CTRWSC that are within the jurisdiction of the Commission and are germane to the Application have been resolved to the satisfaction of the Commission and the requirements under the Act and Regulations.
10. No governmental agency requested a hearing on the Application. No other governmental agencies filed comments or recommendations with the Commission regarding the Application.

11. On July 24, 2020, the Commission provided notice of a complete application to landowners within and adjacent to the permit area via first-class mail. Comments and/or objections were received from several landowners or their representative.
12. On August 24, 2020, Mr. Travis Brown, of Lexington, Texas, filed comments objecting to the proposed revision to alter the reclamation required in the original mine permit and in subsequent revisions. Mr. Brown filed the comments as an individual and on behalf of the citizen's groups Neighbors for Neighbors, Inc. and the Simsboro Aquifer Water Defense Fund ("SAWDF").
 - (a). Mr. Brown summarizes his concerns as: (1) the apparent failure of Luminant's pending reclamation revision to restore the mined land to a topography similar to what existed prior to mining; (2) the potentially adverse impacts on both groundwater and surface waters in the area as a result of Luminant's proposed changes to reclamation of the final pits; and (3) a reduction by Luminant of fish and wildlife habitat to zero acres from the original 2,767 acres required in the original permit, which is contrary to the number of acres required by TPWD. Mr. Brown provided detailed explanations of these three issues in his letter.
 - (b). As directed by the ALJ by letter dated August 25, 2020, Luminant contacted Mr. Brown by letter dated September 10, 2020. In this letter, which was copied to the ALJ, Luminant indicated that it believed that Mr. Brown's concerns would be addressed in its next supplemental response (Supplemental Document No. 2) to the application deficiencies noted in Staff's July 6, 2020, TA. Luminant indicated that it expected to submit this supplemental response on or about November 1, 2020. Luminant did not submit this supplement until March 31, 2022.
 - (c). Also as directed by the ALJ in the August 25, 2020, letter, Staff contacted Mr. Brown by letter dated September 18, 2020. Staff wrote that Mr. Brown's letter identified three concerns on pages 1 and 2, and a fourth concern on page 3. With regard to this fourth issue that Staff has indicated was identified by Mr. Brown, the Examiners were unable to identify any issue put forth by Mr. Brown for which the three summary issues was not inclusive. Importantly, Staff asserted that all four of Mr. Brown's concerns were identified as application deficiencies in Staff's July 6, 2020, TA, as Mr. Brown himself noted in his letter. SMRD stated that it was awaiting the submittal of an application supplement from Luminant to address the deficiencies. Staff committed to notify Mr. Brown of receipt of any responses from Luminant and to provide to him copies electronically via email. Staff also reminded Mr. Brown that a hard copy would be made available by Luminant in the respective County Clerk offices. There is no information in the record as to whether Staff notified Mr. Brown of the receipt of the subsequent supplements filed by Luminant in this docket.

- (d). The Commission has determined that the issues expressed by Mr. Brown that are within the jurisdiction of the Commission and are germane to the Application have been resolved to the satisfaction of the Commission and the requirements under the Act and Regulations.
13. On September 14, 2020, the Sierra Club filed comments objecting to the proposed revision because it would be significantly less protective of human health and the environment. In its comment, the Sierra Club said it supports and adopts the comments and objections filed by Mr. Travis Brown, the Simsboro Aquifer Water Defense Fund, and Neighbors for Neighbors, which are described in Finding of Fact 12(a).
- (a). Sierra Club comments that an analysis of the Technical Assessment of Railroad Commission of Texas Staff (Staff), shows that the proposal being considered would allow significant, less protective changes in the kind of material used to constitute the top four feet of the reclaimed mining land, including the use of deep ripping, an unacceptable mining practice. Likewise, Luminant proposes new sloping, gradation, and backfilling plans that are not protective and do not conform to the original topography. Importantly, the proposed plan does not adequately address the impacts of the changes to the planned water impoundments and would not result in a reclaimed landscape that supported appropriate post mining uses. These changes alone, even after going through the administrative process as a significant action for consideration by the Commission, should be reason enough to deny the application. Luminant should honor its existing reclamation obligations that it owes to communities in Lee and Bastrop counties. Luminant agreed to these requirements in order to gain permission to literally rip open the land and burn the contents for profit. Luminant has the technical and financial capabilities to restore the mined land as required by the existing permit. One thing is clear, Luminant's current revision request is severely deficient and must be denied.
- (b). Sierra Club submitted the following specific questions and comments:
- (i). Question 1: What is the nature and origin of the top layer material? And will Deep Ripping be required to access suitable material? Does the proposed contouring and grading meet the requirements and return the land to anything consistent with premined areas?
- (ii). Comment 1: Sierra Club agrees with Staff that Luminant's plan is inconsistent with itself and does not comply with applicable regulations. Luminant has not proposed an approvable plan to source the top four feet of postmine reclamation. Luminant's plan is unclear and/or identifies inappropriate sources for material [See Staff Technical Assessment, July 6, 2020, Pages 12-14; Application Deficiency 139-1, 139-2, 139-3, 139-5). Luminant's plan also appears to invalidly rely on Deep Ripping Practices to source a suitable top layer but misses the mark in demonstrating that the top

layer will in fact be suitable (Application Deficiency 139-4). Staff identifies the proposed plan as “essentially invalid.” Luminant’s plan includes post mine topography (reclaimed land) that clearly retains stockpiles that haven’t been addressed properly [Application Deficiency 145(b)(3)-1]. Throughout the plan, Luminant continues to fail at showing anything approximating proper reclaimed land, or natural looking postmine contours [Application Deficiency 145(b)(3)-2]. Using dangerous materials and practices for reclamation cannot be approved, as it undermines the entire purpose of the reclamation activities and is contrary to Commission rules.

- (iii). Question 2: Is the post mining land use proposed appropriate? Is nearly 90% proposed pastureland acceptable? How is it possible to approve a reclamation plan that results in zero acres suitable for fish and wildlife with no guidance from Texas Parks and Wildlife?
- (iv). Comment 2: Luminant’s proposal effectively asks the Commission to approve a reclamation project with zero available acres of habitat for fish and wildlife (down from 2,767 acres) with no updated fish and wildlife plan (Staff Technical Assessment, Page 15; Application Deficiency 144-1). This is a huge deficiency that must be addressed in order for the Commission to even make a determination on the proposed changes. In addition to no plan to review, the information that is actually available shows that Luminant’s plans run afoul of the requirements of this Commission’s rules. While staff notes that “all affected areas shall be restored in a timely manner to condition that are capable of supporting the premining environment or to higher or better uses (as required by Commission Rule Sec 12.399), Luminant instead intends to “restore” the land to almost 90% pastureland, with the remaining split between Industrial or developed water resources. Again, no land for wildlife, no discussed opportunities for recreational use, and more than double the pastureland that was in premine land use. This is not even close to “capable of supporting the premining environment or to higher or better uses” as Luminant is required to implement. Staff refers to this broad category of inadequate restoration plans as an “overarching error.” [Staff Technical Assessment, Page 23, Application Deficiency 147-1)]
- (v). Question 3: What is the impact of the proposed revision on water resources?
- (vi). Comment 3: Water resources in Texas are particularly precious and this reality is echoed in the comments provided by Mr. Brown, et al. (Comments of Travis Brown, Simsboro Aquifer Water Defense Fund, and Neighbors for Neighbors, August 24, 2020, Page 3). Staff note that the revision proposed by Luminant does not include an adequate, updated probable hydrologic consequences (“PHC”) determination. Understanding the impacts of the proposed reclamation activities on Texas water resources is clearly a key

component to any decision that this Commission makes on this proposal. Staff note that the current PCH does not adequately evaluate a broad range of potential impacts of the reclamation activities on Texas ground and surface waters that are relied upon by local communities. Currently, there are many more questions than answers and at a minimum, Luminant is required to conduct a new PHC determination that addresses Staff's questions and the requirements of the rules [Staff Technical Assessment Page 20; Application Deficiency 146(d)-1]. Mr. Brown, et al specifically raise the likelihood that reclamation activities will draw groundwater from the Simsboro aquifer, an already stressed aquifer (Comments of Travis Brown, Simsboro Aquifer Water Defense Fund, and Neighbors for Neighbors, August 24, 2020, Page 3). In addition to valid scarcity concerns that have not been addressed, Mr. Brown, et al. note the likelihood of significant pollution impacts into the groundwater and surface waters from injection of contaminated water in and around the Brazos and Colorado river basin.

- (vii). Comment 4: These at risk underlying aquifers support communities throughout Bastrop and Lee Counties. These aquifers support thriving ecosystems that extend well beyond the reclamation acreage that Luminant will leave behind. It is imperative to get this right, and Luminant appears to be seeking authorization for a series of shortcuts and loopholes that could leave an environmental and public health disaster in the rear view as Luminant clamors to quickly and forever close up shop. Sierra Club objects to the revision proposal. Please find this revision proposal inadequate, reject it, and require Luminant to do what they promised- restore the land back to premined condition or better, while protecting fragile and valuable water resources.
 - (c). The Commission has determined that the issues expressed by the Sierra Club that are within the jurisdiction of the Commission and are germane to the Application have been resolved to the satisfaction of the Commission and the requirements under the Act and Regulations, as set forth in Finding of Fact No. 27, *infra*.
14. By letters dated August 13 and 27, 2020, and emails dated September 22 and 24, 2020, Landowners Morris and Vernell Kastner filed comments regarding the Application. In their August 13th letter, the Kastners summarize their concerns regarding requests, per their coal leases, for rebuilding deteriorated fences, eradicating mesquite overgrowth, and addressing postmine contours, slope and postmine land use. In their August 27th letter, the Kastners noted additional concerns regarding the required vegetation type for reclamation (Coastal Bermuda Grass) as stated in a contract clause to a coal lease dated January 24, 1974, a request to remove a temporary concrete dam, and reiterated the issue of rebuilding fencing to contain cattle.

- (a). Luminant, pursuant to the ALJ's request by letters dated August 20 and September 2, 2020, had its Real Estate Department contact the Kastners. Luminant communicated to the ALJ by letter dated September 11, 2020, copied to the Kastners, that it believed it had satisfied the Kastner's concerns. By email on September 11, 2020, provided before and after photos showing the condition of their property. In addition, Mrs. Vernell Kastner stated that she had been contacted by Ms. Tamara Myers of Luminant's Real Estate Department. Mrs. Kastner stated she left two voicemails with Ms. Myers requesting a written summary of their discussions and Luminant's commitments, but had yet to receive any response. Mrs. Kastner wanted to receive assurance in writing that Luminant would rebuild the fences, eradicate the mesquite growth, replant coastal bermudagrass where needed, remove the concrete dam that was constructed by Luminant, and complete whatever was necessary to reestablish postmine contours, slopes, and postmine land use. The Kastners also requested an approximate time frame for completion of this work.
- (b). By letter dated September 18, 2020, Staff responded to the Kastners comment, stating that the proposed changes to the currently approved reclamation plan have no impacts to the Kastner's property, and that the Commission has no jurisdiction over private, contractual agreements raised as issues by the Kastners. SMRD Inspector Cade Harris conducted a special inspection of the mine that included the Kastner tract on September 10, 2020 and provided a copy of the inspection report to the Kastners but did not file a copy of the inspection report in the record of this proceeding. In their letter, Staff offered further observations regarding the issues described by the Kastners regarding reclamation of their property tract:
- (i). Mesquite vegetation: Permit Provision No. 9 requires that "Luminant shall manage mesquite (*Prosopis glandulosa*) on Tracts 114, 115, and 116 to ensure that it is eradicated on these tracts as a weedy species." Staff stated that these tracts are include on the Kastner property. Staff clarified that the permit allows that approved invasive species may collectively constitute up to 25% of the overall species composition and that Honey mesquite (*Prosopis glandulosa var. glandulosa*) is an "approved" invasive species within the permit boundary of the Three Oaks Mine. In addition, during the September 10, 2020 inspection, Luminant informed Mr. Harris that it is committed to working with the Kastners to manage the mesquite species on their property.
- (ii). Coastal bermudagrass:
- (A). Pursuant to the approved reclamation plan (page 147-3 of Permit No. 48C) and 16 Tex. Admin. Code §§12.147 and 12.399, the approved postmine land use for the permit area covering your property is pastureland. Pastureland is classified as land used primarily for the long-term production of adapted, domesticated forage plants to be

grazed by livestock or occasionally cut and cured for livestock feed. 16 Tex. Admin. Code §12.3(99)(B).

- (B). Per Appendix 144-D of the approved permit, the bermudagrass referenced in your letters is acceptable for use on tracts of land classified as pastureland postmine landuse. However, per the conditions of the approved reclamation plan, grasses other than bermudagrass are also acceptable for use on tracts of land classified as pastureland postmine landuse. Therefore, as long as Luminant plants approved grasses on tracts of land classified as pastureland postmine landuse, Luminant is compliant with the approved reclamation plan. This requirement does not address any specific grass identified in an agreement with the landowner.
- (iii). Fence replacement: The Surface Mining and Reclamation Act and associated regulations (16 Tex. Admin. Code, Chapter 12) do not address fencing of private property. Therefore, the Commission has no jurisdiction to adjudicate the fencing concerns referenced in your letter. By email on September 22, 2020, Mrs. Vernell Kastner comment that she was disappointed with this interpretation of the Commission's regulatory jurisdiction.
- (iv). Removal of concrete dam: Staff states that, pursuant to the Regulations, the Commission has jurisdiction over the construction, modification, use, maintenance, and removal of dams, embankments, and other impoundments associated with the surface mine. The concrete structure identified by the Kastners as a "dam" is classified by the Commission as a component part of an impoundment; specifically, a spillway. The impoundment located on the Kastner property, Temporary Pond DP-1, is a structure that must be removed before the Commission can approve release of reclamation obligations for the area where the structure is located unless the Kastners consent to reclassification as a permanent structure.
- (c). On September 24, 2020, the Kastners sent a comment via email in response to the September 10, 2020 Special Investigation Report. The Kastners acknowledge that Staff's observations listed in Finding of Fact No. 14(b)(i-iv) are permit requirements. The Kastners stated that their remaining concern was for Luminant to reestablish the fences on their property because they are in bad shape and allow cattle to roam on their land. Ms. Kastner stated that Luminant's requirement to maintain the fence is in the contract signed by the Kastners and Luminant and that Ms. Myers of the Real Estate Department agreed. The Kastners asked if the fence would be rebuilt and when. They requested Luminant reply in writing. The record does not contain a response to this request.

- (d). The Commission has determined that the issues expressed by the Kastners that are within the jurisdiction of the Commission and are germane to the Application have been resolved to the satisfaction of the Commission and the requirements under the Act and Regulations.
15. By email dated September 13, 2020, Ms. Billie Evans, an absentee landowner in the area, filed a comment regarding the Application.
- (a). Ms. Evans commented that she received notification from Veronica L Ruberto, Administrative Law Judge of Hearings Division that Luminant is proposing to revise the reclamation plan and update postmine contours, postmine slopes and postmine land use within Permit 48C. This will be problematic for land owners in this area, especially the closing of Bastrop County Road CR 305. It appears on the map this county road will permit Luminant Mining to block this and surrounding county roads for there personal use. We live in this area and our county road is in bad enough and ill maintained as it is without Luminant causing hardship on the land owners. It is bad enough that this mining company has taken control of underground water sources from the aquifer and caused damage to our properties by the land erosion due to the lowering water table. They have also caused environmental climate damage. The constant hummings affect humans as well as wildlife running their dregging twenty-four hours a day, seven days a week. The hazy air is from coal residue in the air, this is not fog. Now they want to control and/or change our county roads limiting our way in and out of our homes and property. Enough is enough of this corrosive company causing damage in so many ways that it is too numerous to count.
- (b). By letter dated September 24, 2020, Luminant responded to Ms. Evan's comments stating: You noted in your letter regarding CR 305 that "[i]t appears on the map this county road will permit Luminant Mining to block this and surrounding county roads for there personal use." We wish to clarify that Luminant has no proposals or intentions to close or otherwise impede access to CR 305 either now or in the future. We regret any confusion on this point. It is possible that, if the map you have referenced is the location map included in the recent public notice, there may be some confusion over what is shown as the existing "Permit 48C Boundary." Although CR 305 traverses the permit boundary, this is not intended to imply that there would be impacts to or closures of CR 305. The subject area of the proposed permit revision is designated on the location map as the "A and B Area Permit Term Mine Blocks." We hope that this resolves your concerns with access to CR 305 and other nearby county roads.
- (c). Staff responded to Ms. Evans' comments by letter dated September 18, 2020. Staff responded as follows:

- (i). County Roads: Regarding your concern about the county roads, please note that Revision No. 43 (the revision currently under review) proposes no changes to the currently approved road system. However, a recent change to the county-road system was approved by the Commission in administratively processed Revision No. 44, approved on October 22, 2019. Luminant's application for Revision No. 44 included the Deed without Warranty, filed in the Bastrop County on July 8, 2019, wherein Bastrop County, Texas, conveyed 4.338 acres to Luminant Mining Company LLC. The application also included the Bastrop County Texas Commissioners Court Order dated July 8, 2019, wherein the Bastrop County Commissioners Court found that the "interests of the public and the affected landowners have been protected" concerning the proposed change to the county road system. The Commissioners Court Order was issued after "notice of meeting had been posted in the form, manner, and place required by law."
- (ii). Underground water sources: Your email expressed concerns due to the "mining company...tak[ing] control of underground water sources from the aquifer ... [causing] land erosion due to the lowering water table." Pursuant to 16 Texas Administrative Code §12.146 the Texas Coal Mining Regulations allow for coal mining to affect groundwater within the mine permit area and adjacent to the mine permit area. The rules also require the permittee to replace water resources which are determined to have been adversely impacted by contamination, diminution, or interruption resulting from surface mining activities. See 16 Tex. Admin. Code § 12.352. Furthermore, in Staff's review of the current application for revision, Staff requested additional information regarding the PHC of the proposed revision. See Application Deficiency No. 146(d)-1, Technical Analysis ("TA") dated July 6, 2020. Additional detail on PHC requirements can be found at 16 Texas Administrative Code §12.339 et seq., accessed here: [https://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac_view=5&ti=16&pt=1&ch=12&sch=K&div=2&rl=Y](https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=16&pt=1&ch=12&sch=K&div=2&rl=Y).
- (iii). Additional concerns:
- (A). Regarding your concern about humming: The Commission has no regulatory authority over noise or nuisance related issues. Noise and nuisance related issues are governed by local ordinances. Information on local ordinances can be found here: <https://www.texas.gov/>.
- (B). Regarding your concern about air quality: The Commission requires that the permittee comply with the air pollution control plan included in its permit. See 16 Tex. Admin. Code §12.143. The air-pollution control plan requires a plan for fugitive-dust control practices. Luminant's air pollution control plan can be found in section .143 in the initial submittal of the last permit renewal approved October 14, 2014. A

copy of the permit can be found at the Lee and/or Bastrop County Clerk's Office. It is also available via an open records request. Information on making open records requests can be found here: <https://www.rrc.state.tx.us/general-counsel/open-records/>.

- (d). The Commission has determined that the issues expressed by Ms. Evans that are within the jurisdiction of the Commission and are germane to the Application have been resolved to the satisfaction of the Commission and the requirements under the Act and Regulations.
16. By email dated September 11, 2020, Ms. Margaret Hobbs, area landowner, requested an informal conference regarding the Application. On September 15, 2020, Mrs. Hobbs filed comments describing her concerns regarding the Application.
- (a). Ms. Hobbs commented that Luminant has re-routed Chocolate Creek and built a pond. This creek runs across Hobbs property and Star Ranch. My worry is that when flooding happens, the water and sediment will back flow onto Hobbs property. A photo of Chocolate Creek crossing Hobbs property is attached. Luminant has asked me to sign the attached No Protests. I would be agreeing to give up all of my rights and accept legal action against me. I do not recall ever saying anything bad about Luminant. I have always had a high opinion of Luminant, but I cannot sign their No Protests document. It seems to request an informal conference is the only way to ask to see a study/report showing that the re-routing of Chocolate Creek will not cause a back flow of water and sediment onto Hobbs Property.
- (b). By letter dated September 30, 2020, Luminant responded to Ms. Hobbs' comments. Luminant responded as follows:
- (i). You noted in your letter regarding the tributary (identified by USGS as "Big Sandy Tributary No. 6") which leaves your property and flows into Chocolate Creek, that, "I am hearing that Luminant has re-routed Chocolate Creek and built a pond. This creek runs across Hobbs property and Star Ranch. My worry is that when flooding happens, the water and sediment will back flow onto Hobbs property." We wish to clarify that Luminant has not re-routed this tributary and, although Luminant has received approval to re-route a separate tributary into Chocolate Creek, it did not implement this approved re-routing because of the early termination of mining. Luminant's only changes to Big Sandy Tributary No. 6 have been the 2014 construction of Pond SP-6 adjacent to Chocolate Creek, and the modification of the tributary upstream channel, which modification was designed to improve flow between your property and Pond SP-6. We regret any confusion on this point.

- (ii). Regarding your concern about possible back-flow onto your property should there be flooding, we have conducted a review of relevant elevations for the SP-6 structure and the upstream creek tributary channel. Based on that review, we have determined that, absent additional existing or unforeseen modifications to the tributary it is highly improbable that during a major storm event water and sediment would back streamflow onto your property, given the significant difference in elevation from the Pond SP-6 spillway or embankment to the elevation of the tributary at your property. While the top of the embankment of SP-6 is at 469.76 ft. and the primary spillway is 457.7 ft., the elevation of the creek at your property line is 477.19 ft. and is sufficiently higher to ensure positive flow (again, assuming no constrictions created upstream of Luminant's approved changes). As noted earlier, modifications to the creek channel (not a reroute) at elevation 465.98 ft. were designed and performed to enhance flow. Luminant cannot respond to, and is unaware of, any crossings or obstructions of streamflow that may have occurred upstream of elevation 465.98 ft., by other third-parties, which may create the conditions of potential back-flow described in your letter. Since the SP-6 pond was constructed, the tributary channel has endured at least one 100-year storm event (2017) and many smaller. Though significant storms. To-date, we are unaware of any circumstance of water and sediment back-flow onto your property and our analysis leads us to believe it is highly improbable, as noted earlier. Absent any knowledge of actual back-flow onto your property subsequent to the construction of SP-6 or any upstream obstructions of streamflow, and given the elevation differences noted above, we believe that Luminant's analysis is conclusive.
- (iii). You also noted in your letter that you had been asked to sign a "No Protests" document and that it would be "...agreeing to give up all [your] rights and accept legal action against [you]". As you are aware, the "No Protests" clause you mention was part of a real estate contractual matter that developed as result of a verbal request from Mr. John Hobbs, and subsequently discussed with you, that Luminant concede certain legal rights to certain property owned by the Hobbs family. Because this concern is of a confidential real estate contractual nature, it is outside the purview of this docket and the jurisdiction of the Railroad Commission of Texas.
- (c). Staff responded to Ms. Hobbs' comments by letter dated October 6, 2020. Staff responded as follows:
- (i). The waterway you refer to as "Chocolate Creek" is identified in the permit documentation as Big Sandy Tributary No. 6. Regardless of the name, the current revision does not propose to make any alterations from the approved contours downstream of your property. In other words, the slopes immediately downstream of your property are not being changed.

- (ii). There is a pond located about a mile downstream of your property identified by Luminant as Temporary Sedimentation Pond SP-6. However, this pond was last modified in 2017 and has not been modified since. Moreover, the ponds maximum water elevation during the 100-year storm event is 466.4 feet above mean sea level, the elevation of "Chocolate Creek" where it leaves your property is between 480 and 485 feet above sea level. Meaning your property is situated about 15 to 20 feet above the level the pond could cause to flood. Therefor no increase of flooding is anticipated from the pond.
 - (d). Luminant arranged a visit on November 19, 2020, for Mrs. Hobbs, and her son, Mr. John Hobbs, to observe and discuss Pond SP-6 and the flow configuration in Chocolate Creek. After that visit, Mrs. Hobbs filed a letter, dated November 20, 2020, describing the visit. Mrs. Hobbs stated that she had numerous elevations taken and that Pond SP-6 and Chocolate Creek appear to be practically level with the Hobbs property and it is in the 100 year flood plain. Mrs. Hobbs stated that she wished to withdraw her request for informal conference. The informal conference, which had been scheduled for December 10, 2020, was cancelled on November 24, 2020.
- 17. By email dated March 10, 2021, Ms. Gail Karwoski requested information regarding a hearing on the Application. Ms. Karwoski stated that she owned a lease interest in 83.125 acres in Lee County. She stated that, due to a family member's illness and death, she was unable to attend the hearing and had not received any additional information subsequent to the letter mailed to her on July 24, 2020, by the ALJ. She requested to be advised of any subsequent legal actions.
 - (a). By letter dated March 12, 2021, the ALJ informed Ms. Karwoski that a hearing was not held and no hearing was scheduled to be held for this docket and that the statutory and regulatory deadline to request a hearing was September 28, 2020. As a consideration, the ALJ offered to accept a letter addressing any concerns that Ms. Karwoski may have regarding her lease interest related to the Application as long as it was filed by March 26, 2021. No further correspondence was filed in this docket by Ms. Karwoski.
- 18. Luminant has submitted information to adequately address each requirement of the applicable regulations. The Application does not change the approved permit as relevant to 16 Tex. Admin. Code §§12.119 and 12.125(1). The Commission finds that the approved permit and the Application meet the requirements of 16 Tex. Admin. Code §§12.119 and §12.125(1).
- 19. Revisions are proposed to the following sections of the permit that correspond to the same sections of the Regulations: §12.122 (Identification of Location of Public Office for

Filing of Application); §12.123 (Newspaper Advertisement and Proof of Publication); §12.136 (Maps: General Requirements); §12.137 (Cross Sections, Maps and Plans); §12.139 (Operation Plan: General Requirements); §12.142 (Operation Plan: Maps and Plans); §12.144 (Reclamation Plan: Fish and Wildlife Plan); §12.145 (Reclamation Plan: General Requirements); §12.146 (Reclamation Plan: Protection of the Hydrologic Balance); and §12.147 (Reclamation Plan: Postmining Land Uses).

20. The maps, cross-sections, and plans were submitted and properly certified as required by 16 Tex. Admin. Code §§12.136 and 12.137. Luminant provided revised tables with respect to the tables contained in approved Permit No. 48C. Application section .136 (Supplemental Document No. 3, pages 136-1 through 136-3) contains an updated table entitled "*Rule 12.136 Maps: General Requirements*", in which Luminant specifies the names and locations of maps within the Application containing certain required information, as follows:

SECTION	SUBJECT	PLATE	LOCATION
12.136(1)	All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area.	Plates 116-1 thru 3 Appendix 116-B Appendix 116-C	Permit No. 48B Renewal/Revision
12.136(2)	The boundaries of land within the proposed permit area upon which the applicant has the legal right to enter and begin surface mining activities.	Plates 116-1 thru 3	Permit No. 48B Renewal/Revision
12.136(3)	The boundaries of all areas proposed to be affected over the estimated total life of the proposed surface mining activities, with a description of size, sequence, and timing of the mining of sub-areas for which it is anticipated that additional permits will be sought.	Plates 125(a)-1 thru 3	Permit No. 48C Revision No. 30
12.136(4)	The location of all buildings on and within 1,000 feet of the proposed permit area, with identification of the current use of the buildings.	Plates 116-1 thru 3	Permit No. 48B Renewal/Revision
12.136(5)	The location of surface and subsurface man-made features within, passing through, or passing over the proposed permit area, including, but not limited to major electric transmission lines, pipelines, and agricultural drainage tile fields.	Plates 136-1 thru 3 Plate 128-1 Figure 128-5 Plate 146-5	Permit No. 48C Revision No. 20 Permit No. 48B Renewal/Revision
12.136(6)	The location and boundaries of any proposed reference areas for determining the success of revegetation.	None proposed or approved.	

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SECTION	SUBJECT	PLATE	LOCATION
12.136(7)	The locations of water supply intakes for current users of surface water flowing into, out of, and within a hydrologic area defined by the Commission, and those surface waters which will receive discharges from affected areas in the proposed permit area.	Plate 129-1	Permit No. 48B Renewal/Revision
12.136(8)	Each public road located in or within 100 feet of the proposed permit area.	Plates 139-1-1 through 139-1-12	Plate 139-1-1 (48C, Rev. 4, SD1); Plate 139-1-2 (48C, Rev. 20, SD2); Plate 139-1-3 (48C, Rev. 30); Plates 139-1-4 and 139-1-5 (48B Renewal/Revision); Plate 139-1-6 (48C, Rev. 4, SD1); Plates 139-1-7 and 139-1-8 (48C, Rev. 20); and Plates 139-1-9 thru 139-1-12 (48B Renewal/Revision)
12.136(9)	The boundaries of any public park and locations of any cultural or historical resources listed or eligible for listing in the National Register of Historic Places, and known archeological sites within the permit or adjacent areas.	On file with SMRD.	Confidential Information not for public disclosure.
12.136(10)	Each public or private cemetery or Indian burial ground located in or within 100 feet of the proposed permit area.	Plates 125-(a)-1 thru 3 Plates 139-1-1 through 139-1-12	Plate 139-1-1 (48C, Rev. 4, SD1); Plate 139-1-2 (48C, Rev. 20, SD2); Plate 139-1-3 (48C, Rev. 30); Plates 139-1-4 and 139-1-5 (48B Renewal/Revision); Plate 139-1-6 (48C, Rev. 4, SD1); Plates 139-1-7 and 139-1-8 (48C, Rev. 20); and Plates 139-1-9 thru 139-1-12 (48B Renewal/Revision)

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SECTION	SUBJECT	PLATE	LOCATION
12.136(11)	Any land within the proposed permit area and adjacent area which is within the boundaries of any units of the National System of Trails or Wild and Scenic River System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act.	None.	
12.136(12)	Other relevant information required by the Commission.	None.	

Application section .137 (Supplement No. 3, pages 137-1 through 137-3) contains an updated table entitled "*Rule 12.137 Cross Sections, Maps and Plans*", in which Luminant specifies the names and locations of cross-sections, maps, and plans within the Application containing certain required information as follows:

SECTION	SUBJECT	PLATE	LOCATION
12.137(a)(1)	Elevations and locations of test borings and core samples.	Plate 127-1	Permit No. 48B Renewal/Revision
12.137(a)(2)	Elevations and locations of monitoring stations used to gather data for water quality and quantity, fish and wildlife, and air quality, if required, in preparation of this application.	Plate 128-1 Plate 132-2-A and B	Permit No. 48B Renewal/Revision
12.137(a)(3)	Nature, depth, and thickness of the coal seams to be mined, any coal or rider seams above the seam to be mined, each stratum of the overburden, and the stratum immediately below the lowest coal seam to be mined.	Plates 127-1 through 127-11	Permit No. 48B Renewal/Revision
12.137(a)(4)	All crop lines and the strike and dip of the coal to be mined within the proposed permit area.	Plates 127-1 through 127-11	Permit No. 48B Renewal/Revision
12.137(a)(5)	Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit and adjacent areas.	None exist.	None.
12.137(a)(6)	Location and extent of subsurface water, if encountered, within the proposed permit and adjacent areas.	Plates 128-3 and 4	Permit No. 48B Renewal/Revision
12.137(a)(7)	Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drains, and irrigation ditches within and the proposed permit and adjacent areas.	Plate 129-1, 2 and 4	Permit No. 48B Renewal/Revision
12.137(a)(8)	Location and extent of existing or previous surface- mined areas within the proposed permit area.	Plate 125(a)-1 thru 3	Permit No. 48C Revision No. 30

SECTION	SUBJECT	PLATE	LOCATION
12.137(a)(9)	Location and dimensions of existing areas of spoil, waste, and non-coal waste disposal, dams, embankments, other impoundments, and water-treatment and air pollution control facilities within the proposed permit area.	Plates 148-1 thru 3 Plates 139-1-1 thru 139-1-12	Permit No. 48B Renewal/Revision Plate 139-1-1 (48C, Rev. 4, SD1); Plate 139-1-2 (48C, Rev. 20, SD2); Plate 139-1-3 (48C, Rev. 30); Plates 139-1-4 and 5 (48B Renewal/Revision); Plate 139-1-6 (48C, Rev. 4, SD1); Plates 139-1-7 and 139-1-8 (48C, Rev. 20); and Plates 139-1-9 thru 139-1-12 (48B Renewal/Revision)
12.137(a)(10)	Location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent area.	Plate 128-2 Plate 146-5	Permit No. 48B Renewal/Revision
12.137(a)(11)	Sufficient slope measurements to adequately represent the existing land surface configuration of the proposed permit area.	Plates 137-2-1 thru 3 Plates 137-3-1 thru 3	Permit No. 48B Renewal/Revision
12.137(b)	Location of certifications.	Maps and plans not contained in section .137 are certified individually.	

21. In Luminant's proposed revised reclamation plan in section .139, the reclamation of the final pit area will be completed in three zones (Zones 1 through 3). These zones (1 through 3) are depicted on Plate 139-B-1 in the initial application. In the proposed plan in the Application, Luminant has updated the information in section .139 contained in Tables 139(a)-1 through 3, 139(b)-1 and 3, 139(T)-1 and 139(T)-8, Figure 139(a)-9, Plates 139-1-1, 3 and 6, 139-2-1 through 3, Plates 139-3-1 through 3, and Appendix B. New Tables 139 B-1 (Three Oaks Final Pit Backfilling and Grading Schedule), 139 B-2 (Three Oaks Final Pit Suitable Material Placement Schedule), and 139 B-3 (Three Oaks Final Pit Suitable Material Availability), and Plate 139-B-1 (Final Pit Reclamation Plan) were also provided in Supplemental Document No. 2. The dirt volumes and dates of completion for each area are approximate and may fluctuate due to unanticipated weather delays. In the event these unanticipated situations are encountered, Luminant will evaluate strategies to keep the overall reclamation on the proposed completion schedule. If changes to the reclamation time schedule are necessary, a request will be submitted to the Commission.

- (a). The reclamation activities in the three zones (Zones 1 through 3) are described in detail on pages 139-B-1 through B-6, and in Tables 139-B-1 through B-3 in the initial submittal. In Table 139-B-1, Luminant provides a schedule for backfilling and grading, and Table 139-B-2 contains a suitable material placement schedule. In Table 139-B-3, Luminant indicates the suitable material availability, including recoverable suitable material from B-Area Stockpile No. 1, C-Area Stockpile No. 1 and Highwall Zone Nos. 1, 2, and 3 (HZ1 through HZ3), compared to the required suitable material in Zones 1, 2, and 3. The plan utilizes suitable material, proposed to be recovered from two SPGM stockpiles (Suitable Material Stockpile No. 1 in B and C areas) and three highwall borrow areas (Highwalls 1, 2 and 3) to complete the top four feet of Zones 1, 2, and 3 reclamation areas. The primary equipment for the reclamation of Zones 1, 2, and 3 will be a mobile equipment fleet as supplemented by the dragline.
- (b). Zone 1: Luminant has provided a plan for subgrade backfilling and grading and suitable material placement in Zone 1.
- (i). Subgrade backfilling and grading in Zone 1 will consist of mobile equipment with the supplemental use of the dragline. Leveling of the subgrade will be complete within 327 days of commencement. Backfilling and grading in Zone 1 are already complete.
- (ii). Luminant expected that suitable material placement in Zone 1 will be completed by moving approximately 2,238,677 loose cubic yards (lcy) of suitable material from B-Area Stockpile No. 1, C-Area Stockpile No. 1, and Highwall Zone No. 1. Suitable material placement activities in Zone 1 started prior to the submittal of Revision No. 37, which was administratively approved for Zone 1 by letter dated March 1, 2019. Subsequent to the administrative approval of Revision No. 37, Luminant has refined the suitable material placement schedule for Zone 1 to be completed in two phases.
- (A). Phase 1 consists of leveling of approximately 1,188,667 lcy of suitable material using bulldozers to establish the postmine topography. Final suitable material placement in Phase 1 was completed on February 28, 2019.
- (B). Phase 2 of the suitable material placement in Zone 1 will involve placing the remaining 1,050,000 lcy required to establish the top four feet of reclamation. Luminant intends to finalize suitable material placement in the upstream reaches of the drainage area in Zone 2 prior to completion of Zone 1. Final suitable material placement for Phase 2 was projected to be complete by November 5, 2020.

- (C). Highwall Zone No. 1 reclamation activities will occur once the suitable material used to establish the top four feet of reclamation in Zone 1 is removed. The material that will remain in the top four feet of Highwall Zone No. 1 is categorized as suitable material. Luminant proposes to initiate the highwall reduction and grade the remaining suitable material in Highwall Zone No. 1 to match the proposed postmine topography shown on Plate 139-B-1. After the dragline highwall pass, mobile equipment will remove material from the highwall in 5-30 ft benches from surface to subgrade level, creating multiple benches. Once mobile equipment has completed the removal of material from the highwall, bulldozers will be used to establish the slope by pushing suitable material from the top of the first bench to the bottom at subgrade level, establishing approved postmine contours. By using this approach, the suitable material will be adequately blended as it coats the slopes and the approved slopes are created. Reclamation of Highwall Zone No. 1 is now complete and currently being reclaimed using the same approved reclamation plan, including soil testing and revegetation, as followed for all other disturbed areas within the permit area.
- (D). According to the approved permit, suitable material used to substitute for the top four feet of postmine reclamation is the oxidized overburden that extends from the natural ground surface to the shallowest of the base of the oxidized zone or 5 feet above the uppermost lignite seam. Five continuous cores, K2152A, K2550A, K2858A, K3045B, and K3249A, have influence areas within Highwall Zone No. 1. The oxidized intervals for these five cores are 24 ft, 34 ft, 20 ft, 65 ft, and 30 ft, respectively. Luminant will recover suitable material within the oxidized range while leaving at least four feet of suitable material in place to comply with final reclamation standards. The use of soil information contained in Permit No. 48C, as well as visual indicators and global positioning system (GPS)-based mining software will allow Luminant to identify seams of unsuitable material and avoid recovering such material during the establishment of the top four feet of reclamation.
- (iii). Reclamation Ponds RPC-15 and RPC-17 are permanent impoundments scheduled to be constructed in Zone 1. Detailed design plans for these ponds were submitted by letter dated August 8, 2019. By letter dated May 13, 2020, Luminant requested that the structures be approved as temporary structures. This request was administratively approved by letter dated September 3, 2020.
- (c). Zone 2: Luminant has provided a plan for subgrade backfilling and grading and suitable material placement in Zone 2.

- (i). Subgrade backfilling and grading in Zone 2 area was accomplished using mobile equipment and supplemented by the dragline. Leveling of the subgrade was completed in late 2020.
- (ii). Suitable material placement in Zone 2 will be finalized by moving approximately 5,861,353 lcy of suitable material recovered from Highwall Zone No. 2 and moving it to other areas within Zone 2.
 - (A). Highwall Zone No. 2 reclamation activities will occur once the suitable material used to establish the top four feet of reclamation in Zone 2 is removed. The material that will remain in the top four feet of Highwall Zone No. 2 is categorized as suitable material. Luminant proposes to initiate the highwall reduction and grade the remaining suitable material in Highwall Zone No. 2 to match the proposed postmine topography shown on updated Plate 139-B-1.
 - (B). According to the approved permit, suitable material used to substitute for the top four feet of postmine reclamation is oxidized overburden that extends from the natural ground surface to the shallowest of the base of the oxidized zone or 5 feet above the uppermost lignite seam. Five continuous cores K3045B, K3643A, K3935, K4043A and K4634A have influencing areas within Highwall Zone No. 2. The oxidized intervals for these five cores are 65 ft, 43 ft, 59 ft, 65 ft, and 83 ft, respectively. Luminant will recover suitable material within the oxidized range while leaving at least four feet of suitable material in place to comply with final reclamation standards. The use of soil information contained in Permit No. 48C, as well as visual indicators and GPS-based mining software, will allow Luminant to identify seams of unsuitable material and avoid recovering such material during the establishment of the top four feet of reclamation.
 - (C). After the dragline highwall pass, mobile equipment will remove material from the highwall in 5-30 ft benches from surface to subgrade level, creating multiple benches. Once mobile equipment has completed the removal of material from the highwall, dozers will be used to establish the slope by pushing suitable material from the top of the first bench to the bottom at subgrade level, establishing approved post mine contours. By using this approach, the suitable material will be adequately blended as it coats the slopes and the approved slopes are created. After completion of reclamation of Highwall Zone No. 2, the areas will be reclaimed following the same approved reclamation plan, including soil testing and revegetation, as followed for all other disturbed areas within the permit area. Final grading will be completed in 1,451 days of commencement and is projected to be complete by March 8, 2023.

- (iii). Ponds B-6, B-7, B-9, B-10, and B-11 are permanent impoundments scheduled to be constructed in Zone 2. Detailed design plans for Ponds B-7, B-10, and B-11 were submitted by letter dated August 8, 2019. By letter dated May 13, 2020, Luminant requested that the structures be approved as temporary structures. This request was approved by letter dated September 3, 2020. Detailed design plans for Pond B-6 were submitted by letter dated June 30, 2021. Detailed design plans for Pond B-9 are scheduled for submittal to the Commission by May 8, 2023 (approximately 60 days after completion of suitable material placement in the respective reclamation zones). The proposed submittal date will provide Luminant adequate time to obtain survey information from the completed reclamation and incorporate the information into the detailed design plans.
- (d). Zone 3: Luminant has provided a plan for subgrade backfilling and grading and suitable material placement in Zone 3.
 - (i). Subgrade backfilling and grading activities in Zone 3 were scheduled to commence on June 3, 2019. Mobile equipment will be utilized to complete the proposed backfilling and grading activity. The dragline will supplement the backfilling and grading activities as it passes between each reclamation zone. Leveling of the subgrade will be complete within 1,286 days of commencement and is projected to be complete by December 10, 2022.
 - (ii). To finalize the reclamation of Zone 3, approximately 4,599,452 lcy of suitable material will be needed for placement in the top four feet of reclamation. This material will be recovered from Highwall Zone No. 3 and delivered to Zone 3. The dragline will supplement the suitable material recovery activities as it passes between each reclamation zone. Bulldozers will level the suitable material as it is delivered in order to establish the postmine topography. Final backfilling and grading of the top four feet of reclamation will be complete within 285 days and is projected to be complete by December 19, 2023.
 - (A). Reclamation of Highwall Zone No. 3 will occur as material is hauled from the zone and delivered to Zones 2 and 3 to establish the top four feet of reclamation. The material that will remain in the top four feet of Highwall Zone No. 3 is categorized as suitable material. Once the material that will be used to establish the suitable material of Zone 3 has been removed, Luminant will initiate the reduction of the highwall and grade the remaining suitable material in Highwall Zone No. 3 to match the proposed postmine topography shown on Plate 139-B-1. After the dragline highwall pass, mobile equipment will remove material from the highwall in 5-30 ft benches from surface to subgrade level, creating multiple benches. Once mobile equipment has completed the removal of material from the highwall, dozers will be used to establish

the slope by pushing suitable material from the top of the first bench to the bottom at subgrade level, establishing approved postmine contours. By using this approach, the suitable material will be adequately blended as it coats the slopes and the approved slopes are created. Final grading is expected to be completed in 1,737 days of commencement and is projected to be complete by December 19, 2023.

(B). According to the approved baseline information in Permit No. 48C, the oxidized interval extends from the natural ground surface to either the shallowest of the base of the oxidized zone or five feet above the uppermost lignite seam, excluding rider seams. The data associated with five continuous cores—K4043A, K4634A, K4529B, K5427A and K5422A—located near the proposed suitable material source, describe the oxidized zone to have a depth of approximately 65 ft, 83 ft, 46 ft, 32 ft, and 17 ft from the natural ground surface, respectively. During the execution of the proposed reclamation plan, Luminant will recover suitable material within the oxidized zone while leaving at least four feet of suitable material in place to comply with final reclamation standards. After completion of reclamation of Highwall Zone No. 3, the areas will be reclaimed following the same approved reclamation plan, including soil testing and revegetation, as followed for all other disturbed areas within the permit area.

(iii). Ponds A-11, A-12, A-14, and B-8 are permanent impoundments scheduled to be constructed in Zone 3. Detailed design plans for Ponds A-12 and B-8 were submitted by letter dated June 30, 2021. Detailed design plans for Ponds A-11 and A-14 are scheduled for submittal to the Commission by February 19, 2024 (approximately 60 days after completion of suitable material placement in the respective reclamation zones). The proposed submittal date will provide Luminant adequate time to obtain survey information from the completed reclamation and incorporate the information into the detailed design plans.

(e). Luminant’s proposed final pit subgrade schedule is summarized as follows:

Zones	Task	Activity	Activity Time Frame	Anticipated Completion Date
1	Reclamation	Subgrade Haul/Leveling	327 Days	11/10/2018 (Completed)
2	Reclamation	Subgrade Haul/Leveling	713 Days	10/14/2020 (Completed)
3	Reclamation	Subgrade Haul/Leveling	1286 Days	12/10/2022

Luminant proposed suitable material reclamation plan for the Three Oaks final pit is summarized in the following table:

Zone (acres)	Task	Activity	Material Quantity(Icy)	Source of Material	Activity Time Frame	Anticipated Completion Date
1	Reclamation	Suitable Material Haul/Leveling	1,188,677	C-Area SMSA 1	242 Days	Complete
(322.7 ac)	(Phase 1)			B-Area SMSA 1 & HZ1		Complete
1	Reclamation	Suitable Material Haul/Leveling	1,050,000	HZ1	80 days	Complete
(322.7 ac)	(Phase 2)					Complete
	Design	RPC-15 & RPC-17 Ponds	N/A	N/A	60 Days	Complete
2	Reclamation	Suitable Material Haul/Leveling	5,861,353	HZ2 & HZ3	1451 days	3/8/2023
(844.9 ac)						
	Design	B-6, B-7, B-9 B-10 & B-11 Ponds	N/A	N/A	60 Days	5/8/2023
3	Reclamation	Suitable Material Haul/Leveling	4,599,452	HZ3	285 Days	12/19/2023
(663.0 ac)						
	Design	A-11, A-12, A-14 & B-8 Ponds	N/A	N/A	60 Days	2/29/2024

Luminant’s reclamation plan proposed in the Application is designed to result in conditions that contribute to the successful revegetation of the reclaimed area. Luminant proposes that, should conditions that hinder the establishment of vegetation arise, bulldozers equipped with rippers in combination with disking equipment will be used to loosen the remaining material in the suitable layer. This equipment will cultivate the suitable layer to ensure a minimum of the top four feet is in the appropriate condition for the revegetation phase of the approved reclamation requirements.

22. Luminant updated the listing in section .142 to identify the operation and reclamation plan maps and plans that are approved or are proposed in the Application:

SECTION	DESCRIPTION	PLATE NUMBER
§12.142(1)	The maps and plans shall show the lands proposed to be affected throughout the operation and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under Section 12.136 and 12.137 of this title (relating to Maps: General Requirements, and to Cross Sections, Maps, and Plans).	Plates 139-1-1 to 139-1-12
§12.142(2)		
(A)	Buildings, utility corridors and facilities to be used;	Plates 139-1-1 to 12, Plates 136-1 to 3
(B)	The area of land to be affected within the proposed permit area, according to the sequence of mining and reclamation;	Plates 139-1-1 to 12
(C)	Each area of land for which a performance bond or other equivalent guarantee will be posted under Subchapter J of this	Plates 142-1 to 3

SECTION	DESCRIPTION	PLATE NUMBER
	Chapter (relating to Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations);	
(D)	Each coal storage, cleaning and loading area;	Plates 139-1-1 to 12
(E)	Each topsoil, spoil, coal waste, and noncoal waste storage area;	Plates 139-1-1 to 12
(F)	Each water diversion, collection, conveyance, treatment, storage, and discharge facility to be used;	Plates 148-1 to 3
(G)	Each air-pollution collection and control facility	None Proposed.
(H)	Each source of waste and each waste-disposal facility relating through to coal processing or pollution control;	Plates 139-1-1 to 12
(I)	Each facility to be used to protect and enhance fish and wildlife and related environmental values;	Plates 147-1 to 3
(J)	Each explosive storage-and-handling facility; and	None Proposed
(K)	Location of each sedimentation pond, permanent water impoundment, coal processing waste dam and embankment, in accordance with Section 12.148 of this title (relating to Reclamation Plan: Ponds, Impoundments, Banks, Dams, and Embankments), and fill area for the disposal of excess spoil in accordance with Section 12.153 of this title (relating to Disposal of Excess Spoil),	Plates 148-1 to 3, Plates 139-1-1 to 12
§12.142(3)	Except as provided in Section 12.148(a)(2) and (3), Section 12.153(a), Section 12.363(b), Section 12.366(b)(1), and Section 12.368(c), maps, plans, and cross-sections required under Paragraphs (2)(D), (E), (F), (J), and (K) of this Subsection shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer, or professional geologist, with assistance from experts in related fields such as land surveying and landscape architecture.	
§12.142(4)	A description of and plans and drawings for each support facility to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall include a map, appropriate cross sections, design drawings, and specifications sufficient to demonstrate compliance with Section 12.403 of this title (relating to Support Facilities) for each facility.	Plates 139-1-1 to 12

(a). Luminant proposes to revise the Application in section .142 to provide updated bonding maps (Plates 142-1, 142-2, and 142-3), and revised bond-change maps [Plates 142(a)-1, 142(a)-2, and 142(a)-3]. Luminant also submitted a revised bond-summary table, as follows:

Bond Block	Bond Status	Approval Date	Mined Acres	Disturbed Acres	Phase I Acres	Phase II Acres	Phase III Acres	Ancillary Acres	Grand Total
A-1	Mined	Pending	4,240.40						
A-8	Mined	05/08/17	2.40						

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A-9	Mined	05/08/17	0.90						
A-10	Mined	05/08/17	0.80						
A-2	Disturbed	09/02/15		169.00					
A-3	Disturbed	09/02/15		16.40					
A-4	Disturbed	09/02/15		6,180.90					
A-11	Disturbed	12/01/17		527.70					
A-5	Phase I	05/08/17			92.20				
A-6	Phase I	05/08/17			96.30				
A-7	Phase I	05/08/17			327.70				
			4,244.50	6,894.00	516.20	0.00	0.00	0.00	1,1654.70

(b). The revised bonding maps, bond-change maps, and bond-summary table accurately reflect the changes proposed in the Application.

23. Luminant has satisfactorily addressed the fish and wildlife protection plan requirements of §12.144 in the Application, as supplemented, with adoption of existing and new permit provisions as described in this Order.

(a). In the TA, Staff identified that the fish and wildlife protection plan in the approved permit was obsolete and did not sufficiently meet the requirements of 16 Tex. Admin. Code §§12.144(3)(B), 12.380(a), and 12.142(2)(l). Staff identified a key concern regarding a reduction of fish and wildlife habitat postmine land use from 2,767 acres approved in the last renewal in October 2014 to zero acres via four subsequent revisions applications. In section .144 of Supplemental Document No. 2, Luminant provided Plate 144-1, *Conceptual Wildlife Enhancements* (Sheets 1 and 2), in order to “expedite the processing of the application.”

(b). In TAA1, Staff acknowledged that Luminant added back more sinuosity into the general design for the main stem of Willow Creek as shown on Plate 144-1, and agreed that mitigation corridors, riparian and fringe wetland plants would help facilitate the reestablishment of habitat that could functionally be used by fish and wildlife. Luminant continued to state in the supplemented application that other artificial enhancement measures identified in §12.144(3)(B) were not practical, and regarded them as not reasonably feasible, economically viable, or necessary to accomplish habitat development, and would be burdensome. Staff, however, indicated that the rationale for including artificial enhancement measures such as perches and nest boxes as a minimum requirement of enhancements is to ensure that reclamation of habitat proceeds in the timely manner. Staff further indicates that without them, reclamation of habitat could be delayed because of the resulting limits to the species and number of species that could re-inhabit the area. Basing its position on its interpretation of the identified Regulations, Staff noted continuing concerns with Plate 144-1 as proposed in Supplemental Document No. 2, concluding that the revised plate continued to not depict all of the required enhancement features—because Middle Yegua Creek and Sandy Branch provide

important wildlife habitat crossings, given the approximately 5.25-mile-long transportation corridor that was approved as permanent for the haul road as a postmine feature, Luminant needed to identify the riparian corridors along both the Middle Yegua Creek crossing and the Sandy Branch crossing as essential habitat enhancement features to be established in the postmine. Staff further noted the omission of riparian plantings at both of these creek crossings, the need for a revised fish and wildlife plan containing more verifiable performance measures in Permit No. 48C, and an updated list of species for wildlife land-use planting (Permit No. 48C Appendix 144-C), as recommended by the TPWD.

- (c). Following review of responses submitted in Supplemental Document No. 3, Staff described further, in TAA2, the need for complete information to be provided on Plate 144-1. No enhanced riparian corridors are shown along the Middle Yegua Creek or the Sandy Branch crossings leading up to and crossing under the bridge. Whereas it appeared that Luminant understood (per its Supplemental Document No. 3 Errata response) the issue to be referring to the roadway corridor as an enhancement, Staff intended that both the creeks and the creeks' passages beneath the road bridges that represented the long-term important wildlife habitat due to the planned permanency of the road and bridge. Thus, Staff noted the importance of identifying and enhancing the riparian creek corridor along and leading up to the bridge crossings, per the §12.380(e)(1) requirement to minimize the impacts of long-term operation of the road. These enhanced riparian creek corridors will help to guide wildlife to the creeks as the safest and most suitable crossings under the roadway, rather than crossing on the road surface. Staff specifically noted the absence of and incorporation of enhanced riparian creek corridors to account for the permanency of the haul road.
- (d). Staff also elaborated on the need for changes to the approved fish and wildlife protection plan in TAA2, indicating that the reason for including enhancement measures, such as perches and nest boxes, as a minimum requirement of necessary enhancement features is to ensure that reclamation of habitat proceeds in a timely manner. Shelters are a critical component within habitat; without these enhancements, reclamation of habitat and related environmental values will be delayed because the specific species and number of species that can re-inhabit the area will be limited. This time frame includes a delay of 5 to 10 years after planting for a sufficient number of shrubs to mature to a size that will support species that utilize shrub cover as shelter or that nest within shrubs that grow 5 to 10 feet in height. It typically takes 15 to 25 years for trees to grow to sufficient heights to support animals that build nests upon branches and use elevated branches for shelter, and 20 to 40 years, depending on the species, for trees to grow to a size that cavity-nesting animals can create out cavities used for nesting and sheltering. Luminant's plan does not adequately address these delays to minimize the effects on these applicable animal groups.

- (e). Staff described the existing fish-and-wildlife permit provisions adopted with the approved permit and the continued applicability. Staff also provided a description of the need for an additional permit provision pursuant to continued issues noted as comments in Staff's TA and TA addenda.
- (i). Existing Permit Provision Nos. 1, 2, 3, 4, and 6 pertain to fish and wildlife protection and enhancement measures. Staff recommends that existing Permit Provision Nos. 2, 4, and 6 not be retained. The requirements of these permit provisions have been satisfied via submittal of revision applications that were subsequently approved. Existing Permit Provision No. 1 remains applicable, as it concerns the potential need for a TPWD protection permit and its accompanying protection-plan changes, if required as a result of the proposed final reclamation-plan changes. Permit Provision No. 3, regarding the submittal of an annual update of Plate 144-1, if necessary, also remains applicable. Staff proposed minor modifications to this existing permit provision to clarify ongoing submittal requirements. **Permit Provision Nos. 1 and 3 are retained and adopted as modified. Existing Permit Provision No. 3 is herein renumbered as Permit Provision No. 2.**
- (ii). Staff withdrew the initial new application deficiency noted for the Application and instead noted comments regarding the above-described concerns. Subsequently, in response to the Examiners' request to the parties for clarification or suggested appropriate permit provisions, Staff proposed the adoption of a new multipart permit provision regarding the noted concerns described by Staff.
- (iii). The ALJ recommends that the Staff-sponsored new permit provision be modified for clarity. The Commission adopts the following new permit provision, which is contained in Appendix I of this Order, to address these concerns:

Permit Provision No. 3

Within 180 days of approval of the Application, Luminant shall submit for approval in accordance with §12.226 of the Regulations a revision application containing updated text for permit sections .142 and .144, and which shall include, but may not be limited to:

- 1) the name and location of the Commission-approved maps that address Luminant's response to §12.142(2)(C) and §12.142(2)(I) of the Regulations, as applicable,
- 2) an appropriately updated Appendix 144-C, *Revegetation Species for Fish & Wildlife Areas*,
- 3) an appropriately revised Plate 144-1, sheet 1 and 2 of 2, depicting riparian corridors within the permit area along the

- creek channels of the Middle Yegua Creek and Sandy Branch, and
- 4) Luminant's rationale for the number, type, and placement of enhancement measures.
24. The Application, as supplemented, contains a plan for reclamation of the lands within the proposed permit area that meets the requirements of Tex. Nat. Res. Code Ann. § 134.092 and 16 Tex. Admin. Code § 12.145.
- (a). An updated reclamation timetable for Permit No. 48C has not been provided in the Application. Staff does not indicate that the changes to the reclamation plan proposed in the Application require changes to the approved reclamation timetable. Staff, in its initial TA, confirms that the requirements of 16 Tex. Admin. Code § 12.145(b)(1) have been met.
- (b). A detailed estimate of the cost of reclamation required to be covered by the performance bond is contained in the application, as supplemented in Supplement No. 3, in accordance with 16 Tex. Admin. Code § 12.145(b)(2).
- (c). Luminant provided a reclamation cost estimate in section .145, Appendix 145-H. Luminant's estimate of \$95,961,225 includes costs for mined areas, disturbed areas, and ancillary areas. Staff's reclamation cost estimate of \$95,727,726 is less than Luminant's estimate, primarily due to differences in the equipment and equipment rates used by Staff and Luminant. (TAA2, page 18). Staff recommends that Luminant's estimate be approved.
- (d). Luminant's \$975,000,000 blanket bond approved by Commission Order dated September 27, 2016, is sufficient to cover the cost of reclamation for all Luminant mines. The aggregate reclamation cost estimate amount for all Luminant permits will be \$916,927,510, if the recommended reclamation cost estimate (\$95,961,225) for Permit No. 48C as modified in the Application is approved. Luminant's total blanket bond amount will exceed the aggregate reclamation cost estimate amount by \$58,072,490.

Mine Name	Permit Number	Reclamation Cost Estimate Date	Reclamation Cost Estimate
Big Brown Mine	3F	December 6, 2017	\$16,363,718
Martin Lake Mine	4L	March 19, 2020	\$149,473,703
Monticello Thermo Mine	5G	July 12, 2021	\$19,683,539
Monticello Winfield Mine	34F	November 6, 2019	\$126,109,272
Oak Hill Mine	46C	July 5, 2017	\$149,439,526
Three Oaks Mine	48C	Pending	\$95,961,225
Bremond Mine	49C	February 4, 2021	\$29,632,951
Kosse Mine	50C	November 18, 2020	\$192,897,214
Leesburg Mine	51	May 3, 2016	\$4,886,759

Martin Lake AIV South Mine	53	June 6, 2014	\$40,448,786
Turlington Mine	54A	April 6, 2021	\$39,038,038
Monticello Thermo A-1 Area Mine	56	October 21, 2020	\$3,774,219
Liberty Mine	58A	June 17, 2020	\$49,218,560
Total Aggregate Reclamation Amount			\$ 916,927,510
Approved Collateral Bond			\$ 975,000,000
Excess Bond Amount			\$ 58,072,490

25. In accordance with 16 Tex. Admin. Code § 12.145(b)(3), the supplemented Application includes a plan that shows the final surface configuration of the permit area. Luminant provided proposed revised slopes and confirmed that a final subgrade-soil intensive-sampling plan will be conducted. Staff compared the premine slopes with the proposed postmine slopes (as shown in the table below) and determined that the increase in the steeper slope category appears to result from the elevation drop into the final pit area, and the elevation rise to meet the highwall-side natural ground elevation. Nevertheless, the proposed changes in the higher slope categories bring the postmine slopes closer to the premine slopes than had been previously approved. Additionally, nearly all the postmine slopes in the "Over 15" category are located on approach slopes to permanent impoundments and along permanent roads. The proposed slopes meet the character of the premine topography.

Slope Category (%)	Premine Study Area		Proposed Postmine Study Area		Proposed Change	
	(acres)	(%)	(acres)	(%)	(acres)	(%)
0 - 5	11,203	70.9%	12,107	76.6%	+904	+5.7
5 - 10	3,674	23.2%	2,621	16.6%	-1,053	-6.6
10 - 15	555	3.5%	722	4.6%	+167	+1.1
Over 15	377	2.4%	359	2.3%	-18	-0.1
	15,809	100.0%	15,809	100.0%		

In Supplemental Document No. 2, Luminant revised the reclamation plan and postmine contour maps to show that temporary suitable-material stockpiles would be reclaimed in the revised reclamation plan, and to redesign the footprints of postmine ponds and drainages to conform with a natural postmine topography. Staff indicates that the proposed reclamation plan meets the requirements of 16 Tex. Admin. Code § 12.145(b)(3) with regard to backfilling and grading.

26. The supplemented Application appropriately addresses requirements for materials proposed for placement in the postmine top four feet. Much of this plan is integrated in the operation plan contained in section .139 of the Application (Appendix 139-B). Luminant has satisfied the regulatory concerns noted by Staff in its review of the proposed plan in section .139 (Finding of Fact No. 11, *supra*). Staff indicates that Luminant has satisfactorily addressed the soil-handling requirements of 16 Tex. Admin. Code § 12.145(b)(4), and has provided a satisfactory plan for handling acid-forming

materials and toxic-forming materials in the overburden as required by 16 Tex. Admin. Code § 12.145(b)(7).

- (a). The approved permit, together with the revised reclamation plan contained in the Application, meet the general requirements of 16 Tex. Admin. Code § 12.145 and the revegetation requirements of 16 Tex. Admin. Code §§ 12.390-12.393 and § 12.395.
- (b). No changes are proposed in the Application to Luminant's plan to comply with the requirements of the Clean Air Act and Section 404 of the Clean Water Act, as required by 16 Tex. Admin. Code §12.145(b)(9).

27. Luminant proposes changes to the approved permit regarding the surface-water hydrologic protection plan requirements of 16 Tex. Admin. Code § 12.146, and the surface-water PHC determination for Permit No. 48C. Staff determined in its review that the approved groundwater hydrologic protection plan and groundwater PHC determination pursuant to §§12.146(a), (b), and (d) of the Regulations remained adequate. Staff noted in its initial TA that Luminant needed to provide updates to this information to address the changes to the postmine surface-water drainage, documenting that the surface-water quality has been protected by handling earth materials, groundwater discharges, and runoff in a manner that minimizes the formation of acidic or toxic drainage, as required by §12.349(a) of the Regulations. In Supplemental Document Nos. 1, 2, and 3, Luminant provided updated portions to the approved PHC determination dated May 2020. The approved PHC determination and the revised portions in the Application were prepared and certified by Mr. Keith Wheeler, a Professional Geoscientist licensed in the State of Texas.

- (a). In Supplemental Document No. 3, Luminant provided additional information to address Staff's concern that the PHC determination did not quantify which stock tanks or how many would be impacted by mining and reclamation activities, nor did the PHC determination describe how impacts to downstream stock tanks would be remediated during the reclamation phase of mining. Luminant states that it investigated and did not find any stock ponds located on creeks or immediately downstream of mining activities and therefore there are no known impacts to private landowner livestock watering ponds. Additionally, Luminant notes that baseline studies indicate that the creeks and streams immediately downstream of the permit area were dry for extended periods of time prior to mining, and thus any downstream riparian uses for livestock would have been sporadic in nature. Luminant also noted that the mine is obligated to provide alternative sources of water to landowners if the mining operations diminish water supplies.
- (b). In Supplemental Document No. 3, Luminant also provided additional information regarding TDS concentrations in permanent impoundments located within the reclaimed permit area and in stormwater discharges from the permit area [pages

146(d)-22 and 23], and indicates that permanent impoundments impacted by receiving spoil water (end lakes) will likely see increases in TDS concentrations. However, the increases will be slight to moderate because horizontal seepage of groundwater within the overburden will be small due to the low hydraulic conductivity of the resaturated spoil and because the spoil water will be highly diluted by end-lake storage and rainfall runoff.

- (c). Also in Supplemental Document No. 3, Luminant revised Appendix I of the PHC determination to provided premine-to-postmine water balance impacts for the Brazos River and Colorado River watersheds separately, rather than as a single balance. Luminant's summary of the surface-water mass-balance analyses indicates that the Colorado River watershed will see a 29% increase in average annual runoff volume compared to premine conditions, and that the Brazos River watershed will see an 8% decrease in average annual runoff when compared to premine conditions (page 146(d)-19). Overall, the Three Oaks Mine will see a 9% increase in average annual runoff volume (Errata, Application Supp. 3).
- (d). Luminant's revised PHC determination provided in Supplemental Document No. 3 includes a table in which it summarizes key findings that are required by 16 Tex. Admin. Code § 12.146(d). This table indicates where in the PHC determination information can be found satisfying the different various required findings.
- (e). Staff initially noted an application deficiency because Luminant's surface-water mass-balance calculations did not separately identify the expected impacts to the two major watersheds, the Brazos River and Colorado River watersheds.
 - (i). In Supplemental Document No. 3, Luminant provided information to address this concern, indicating that the Colorado River watershed is expected to see a 29% increase in average annual runoff volume compared to premine conditions, and that the Brazos River watershed is expected to see an 8% decrease in average annual runoff when compared to premine conditions [Application, page 146(d)-19].
 - (ii). Staff notes several errors in the PHC determination as proposed, primarily stemming from discrepancies associated with the necessary separation of the main watersheds in the updated analysis, and neglecting to consider drainages from some acreages within the two watersheds. The Commission adopts the following new permit provision, which is contained in Appendix I of this Order, to address these concerns:

Permit Provision No. 6¹:

Within 90 days of approval of the Application, Luminant shall submit a revision application to be processed in accordance with 16 Tex. Admin. Code § 12.226, which, at a minimum, shall include surface-water mass-balance analyses that account for all watersheds modified by mining activities, which correctly quantifies impacts to the surface-water hydrologic balance, and which quantifies impacts to the Brazos River and Colorado River watersheds.

- (f). Permit No. 48C, as revised in the Application and with the adoption of the Permit Provision No. 6., meets the surface-water requirements of 16 Tex. Admin. Code § 12.146. The Application includes a description of measures that were or might be taken to protect the hydrologic balance of the surface-water and groundwater systems within the permit area and adjacent areas; to prevent damage outside the permit area; to meet water-quality laws; and to protect groundwater and surface-water users as required by 16 Tex. Admin. Code § 12.146. Staff's assessment in its TAA2 dated June 14, 2022, indicates that, with adoption of Permit Provision noted in Section 12.146(d) of the TAA2, the approved cumulative hydrologic impact assessment for Permit No. 48C does not need to be updated (TAA2, page 29) and that the operations proposed in the Application are designed to prevent damage to the hydrologic balance outside the proposed permit area. Staff affirmatively offers that the necessary statutory and regulatory findings that are required under Tex. Nat. Res. Code Ann. § 134.006 and 16 Tex. Admin. Code § 12.216 have been met.

28. The Application contains changes to the approved permit regarding the requirements of 16 Tex. Admin. Code § 12.147, requesting approval of updated Tables 147-1 and 147-2, and updated Plates 147-1 through 147-3, on which Luminant describes and depicts postmine land uses. Staff noted the following changes proposed in Table 147-1, from the approved postmine acres:

Land-Use Category	Approved Postmine Area, acres	Proposed Revised Postmine Area, acres	Difference, acres
Pastureland	6,599	6,368	-231
Fish and Wildlife Habitat	0	272	+272
Developed Water Resources	231	195	-36
Industrial/Commercial	569	569	0
Undeveloped	30	30	0
Grazing	13	13	0

¹ Staff proposes that, of the nine permit provisions adopted in Permit No. 48C, that four be retained and that five are no longer needed. The currently approved permit provisions are addressed elsewhere in the Order.

Residential	0	0	0
Cropland	1	1	0
Totals	7,443	7,448	+5

Staff indicates that Luminant described these proposed changes as need to update the projected locations of proposed permanent impoundments based on the proposed final pit plan. The proposed changes result in a net decrease of 231 acres of pastureland postmine land use and a 36-acre decrease in developed water resources, an addition of 272 acres of fish and wildlife habitat postmine land use, and an overall increase of 5 acres to the total disturbed acreage, as reflected in the table above. Luminant did not explain the 5-acre difference. For clarity of the record, Staff identified that the change accounting for the difference appears to be the inclusion into the disturbance area of a section of Blackmon Road (CR101, 304A), which previously was excluded. Staff indicates that the change of ownership/right-of-entry with the county for this section of road was submitted in Revision No. 48, approved on November 18, 2019.

(a). Staff provided the following table to address comments submitted by the TPWD.

Land-Use Category	Premine Land Use for Permit Area Acres ²	Premine Land Use for Disturbed and Mined Acres	Application Postmine Land Use (Disturbed and Mined) Acres	Difference Pre vs. Post for Disturbed-Area Acres ³
Pastureland	6,510.0	2,679.6	6,368	+3,688.4
Undeveloped Land	5,795.2	3,030.5	30	-3,000.5
Fish and Wildlife Habitat	0	0	272	+272.0
Grazing Land	2,988.9	1,571.2	13	-1,558.2
Developed Water Resources	171.0	60.1	195	+134.9
Industrial/Commercial	149.8	86.7	569	+482.3
Cropland	97.5	0	1	+1.0
Residential	96.7	19.9	0	-19.9
Totals	15,809.1	7,448.2	7,448	-0.2

(b). In TPWD's letter dated May 20, 2022, for this docket, it notes that "...TPWD would be very interested to explore different cost-sharing options that would make reclamation to Fish and Wildlife Habitat land use more feasible for the applicant. Likewise, TPWD staff are available to provide technical guidance (including in the field before, during, and after any reclamation activities) in order to facilitate success. TPWD staff have introduced potential habitat reclamation opportunities on mined lands to colleagues within the U.S. Fish and Wildlife Service (USFWS) Partners Program, and it appears there is a willingness to engage and perhaps offer resources from the USFWS as well, should the applicant choose to engage with resource agencies on this topic."

² Based on 15,809.1-acre total permit area acreage, not permit-term acreage.

³ Premine land use of disturbed area versus postmine land use.

- (c). Staff's summary indicates that TPWD has presented viable options for Luminant to consider. Implementing these options will help to ensure that the postmine land-use plan as required pursuant to 16 Tex. Admin. Code § 12.399(c)(8) for protecting fish, wildlife, and related environmental values meets minimum restoration standards to the extent possible using the best technology currently available. Staff's comments, in consultation with TPWD, made in accordance with §12.215(a)(2), are made to ensure that Luminant meets the minimal reclamation of fish and wildlife habitat enhancements and protections required under the regulations. While Luminant indicates the effort it has put forth (+3.7% fish and wildlife habitat land use) is sufficient to meet the minimum standards, it will not meet the criteria based on Staff's and TPWD's evaluations (-51.1% undeveloped and grazingland) to ensure that fish and wildlife resources are protected and enhanced. Staff strongly encourages Luminant to revise its reclamation efforts for fish and wildlife, habitat, and other environmental values.
- (d). The approved permit includes several permit provisions that address the section .147 postmine land-use plan.
- (i). Existing Permit Provision No. 7, which required that Luminant submit a postmine land-use plan that clearly depicted the proposed postmine land uses on a tract-by-tract basis and that excluded tracts for which Luminant did not hold right of entry, was adequately addressed in Revision No. 4, approved on September 4, 2015, and in Revision No. 16, approved on February 24, 2016. Permit Provision No. 7 is no longer needed and is not adopted in this Order.
- (ii). Existing Permit Provision No. 8 requires that Luminant provide an updated landowner consultation for Tract 146 prior to any activities on the tract, and ensure that the approved postmine land-use map is consistent with that consultation, if necessary via submittal of a revision to the postmine land-use plan. Staff indicates that no information has been submitted to address Permit Provision No. 8, even though portions of Tract 146 has been disturbed by temporary Diversion DD-18. Staff recommends adoption of revised Permit Provision No. 8. The Commission adopts revised Permit Provision No. 8, renumbered as Permit Provision No. 4, which is contained in Appendix I of this Order, to require this information be submitted within 30 days following approval of this Application.
- (iii). Existing Permit Provision No. 9 requires that Luminant manage mesquite on three tracts to ensure that it is eradicated as a weedy species. This requirement is not a part of Luminant's general land-management plan and was a part of the land-use consultation agreement between Luminant and the landowners. Staff recommends retention of Existing Permit Provision No. 9. The Commission retains Existing Permit Provision No. 9, renumbered as

Permit Provision No. 5, which is contained in Appendix I of this Order, to continue this requirement in accordance with the landowner wishes.

29. Luminant does not propose any changes to application sections .148 through .154 of the approved permit. The Application, as supplemented, meets the requirements of 16 Tex. Admin. Code §§ 12.148 - 12.154.
30. The Application, as supplemented, and with the adoption of the permit provisions contained in Appendix I, meets the requirements as set out below and as included in the Findings of Fact.
 - (a). The Application is accurate and complete. All requirements of the Act and Regulations have been met as set out in these Findings of Fact with the adoption of the permit provisions set out in Appendix I of this Order.
 - (b). Luminant has demonstrated that reclamation operations, as required by the Act and the Regulations, can be feasibly accomplished under the reclamation plan contained in the Application with adoption of the proposed permit provisions set out in Appendix I of this Order.
 - (c). The approved permit area is not proposed to be modified in the Application and is not within an area designated as unsuitable for surface mining (§§12.74 - 12.85 of the Regulations) nor involved in a proceeding seeking to designate the area as unsuitable for surface mining (§§12.78 - 12.85 of the Regulations).
 - (d). The information provided in the Application is adequate to address the requirements of 16 Tex. Admin. Code § 12.116. All required fees have been paid. Luminant is current in payment of required franchise taxes. The report from the Applicant/Violator System ("AVS") database (operated by the Office of Surface Mining) is contained in Appendix VI of Staff's TAA2; the information in the AVS database indicates that there are no pending violations that remain uncorrected, or the violations are in the process of being corrected or are subject to a valid, good faith appeal of the alleged violation. Luminant has demonstrated compliance with 16 Tex. Admin. Code § 12.215(e) and has satisfied the requirements for submissions and demonstrations under 16 Tex. Admin. Code § 12.216(7).
 - (e). The AVS report has been reviewed. The report included no indication that required reclamation fees have not been paid.
 - (f). The proposed operations to be performed at the Three Oaks Mine will not be inconsistent with other surface mining and reclamation operations in areas adjacent to the existing permit area.
 - (g). Luminant currently has a collateral bond for its statewide mining operations in place in an amount of \$975,000,000. No changes to Luminant's existing blanket

collateral bond are necessary as a result of this permit revision. The approved bond is sufficient and will remain in place. No additional bond is required.

- (h). The approved application has, with respect to prime farmland, addressed the requirements of 16 Tex. Admin. Code § 12.201.
 - (i). The postmining land uses of the permit revision area meet the requirements of the Regulations; the proposed postmining land uses are approved in accordance with this Order and the requirements of 16 Tex. Admin. Code § 12.339.
 - (j). All specific performance-standard approvals required under Subchapter K of the Regulations have been made by the Commission.
 - (k). The Three Oaks Mine activities will not affect the continued existence of endangered or threatened species or result in destruction or adverse modification of critical habitats, as determined under the Endangered Species Act of 1973 (16 U.S.C. §1531 *et seq.*).
 - (l). The requirements in §12.390 for a long-term, intensive agricultural postmine land use are not applicable because no postmine cropland land use is planned or required.
31. The Commission adopts Luminant's cost estimate of \$95,961,225 as the amount required to reclaim the permit area should reclamation be performed by a third-party at the direction of the Commission because it is sufficient to assure the completion of the reclamation in the event of forfeiture. (See Finding of Fact No. 24, *supra.*) 16 Tex. Admin. Code § 12.306(a) state that liability under a performance bond shall continue until all reclamation, restoration and abatement work required of persons who conduct surface coal mining and reclamation operations under requirements of the Act, the Regulations, and the provisions of the permit has been completed, and the permit terminated by release of the permittee from any further liability in accordance with §§12.312 and 12.313; addressing procedures, criteria, and schedule for release of performance bond.
32. The proposed order was properly circulated to the parties, and the required public posting of the consideration of this application by the Commission has occurred.
33. This application was processed in accordance with the procedures contained in the Regulations, Act, Commission's *Practice and Procedure*, and in accordance with the Administrative Procedure Act.

CONCLUSIONS OF LAW

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

1. The Commission has jurisdiction under Tex. Nat. Res. Code Ann. §§134.051 and 134.075 and 16 Tex. Admin. Code § 12.216 to approve this application for permit revision as contained in this Order, and as set out in Appendix I to this Order.
2. The application for revision of Permit No. 48C, with references to the approved permit and with the permit provisions (Appendix I), meets all requirements for approval as set out in the Act, the Regulations, the APA, and the Commission's *Practice and Procedure*, as set forth in the Findings of Fact.
3. Proper notice of the application was provided in accordance with the requirements of the Act, §§134.058 and 134.059; the Regulations, §12.207; the Commission's *Practice and Procedure*, 16 TAC §1.1 et seq.; and the Administrative Procedure Act (APA), Tex. Gov't Code Ch. 2001 (Vernon Supp. 2021). No public hearing was required. Open meeting notice has been made as required.
4. Staff's proposed Permit Provision Nos. 1 through 6, which are contained in Appendix I of this Order, are necessary to meet the requirements of the Regulations.
5. A reclamation cost estimate for the Three Oaks Mine in the amount of \$95,961,225 is sufficient to ensure completion of the reclamation plan if the work has to be performed by a third-party at the direction of the Commission in the event of forfeiture.
6. Luminant's current blanket collateral bond of \$975,000,000 approved by Commission Order dated September 27, 2016, is sufficient to cover the cost of reclamation for all Luminant mines.

ORDERING PROVISIONS

IT IS THEREFORE ORDERED that the Findings of Fact, Conclusions of Law, and Permit Provisions set out in Appendix I, as contained in this Order, are hereby adopted;

IT IS FURTHER ORDERED that Luminant Mining Company LLC's application, as supplemented, for revision of Surface Mining and Reclamation Permit No. 48C is approved as set out in this Order;

IT IS FURTHER ORDERED that Permit No. 48C is hereby revised to allow commencement of the revised activities proposed by the application, as supplemented, in accordance with the permit provisions and this Order;

IT IS FURTHER ORDERED that Luminant Mining Company LLC's current blanket collateral bond in the amount of \$975,000,000 remains in place until released or replaced by Commission Order. The amount of the bond is greater than the cumulative approved and proposed reclamation costs of all Luminant Mining Company LLC's permits; and

Luminant Mining Company LLC
Docket No. C20-0019-SC-48-B

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 1, 2022.

RAILROAD COMMISSION OF TEXAS

DocuSigned by:
Wayne Christian
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CHAIRMAN WAYNE CHRISTIAN

DocuSigned by:
Christi Craddick
15494B7DF4CC424

COMMISSIONER CHRISTI CRADDICK

DocuSigned by:
Jim Wright
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COMMISSIONER JIM WRIGHT



ATTEST: DocuSigned by:
Callie Farrow
3581C80DFDE0476

SECRETARY

Luminant Mining Company LLC
Docket No. C20-0019-SC-48-B

Appendix I

**APPENDIX I
PERMIT PROVISIONS
DOCKET NO. C20-0019-SC-48-B**

1. If TPWD determines that an aquatic life or stream-bed protection permit is required, Luminant shall submit a revision application for approval in accordance with §12.226 of the Regulations to update the information required in §12.121 and amend its fish and wildlife protection plan in section .144 to incorporate the aquatic relocation and protection plan developed for the TPWD permit.
2. Plate 144-1, *Conceptual Wildlife Enhancements*, depicting planned fish and wildlife enhancement features within the permit area, including proposed temporary wildlife protection and enhancements and permanent reclamation protection and enhancement areas (such as the on-site wetland mitigation area) shall be updated annually and provided concurrently with the annually submitted postmine land-use management plan maps, unless no changes are proposed or necessary, and Luminant so indicates in the submittal.
3. Within 180 days of approval of the Application, Luminant shall submit for approval in accordance with §12.226 of the Regulations a revision application containing updated text for permit sections .142 and .144, and which shall include, but may not be limited to:
 - 1) the name and location of the Commission-approved maps that address Luminant's response to §12.142(2)(C) and §12.142(2)(I) of the Regulations, as applicable,
 - 2) an appropriately updated Appendix 144-C, *Revegetation Species for Fish & Wildlife Areas*,
 - 3) an appropriately revised Plate 144-1, sheet 1 and 2 of 2, depicting riparian corridors within the permit area along the creek channels of the Middle Yegua Creek and Sandy Branch, and
 - 4) Luminant's rationale for the number, type, and placement of enhancement measures.
4. Luminant shall provide a copy of an updated landowner consultation for Tract 146 within 30 days of the approval of this application, to be processed in accordance with §12.226 of the Regulations. The consultation must be consistent with the approved postmine land-use map. If not consistent with the approved post land-use map, Luminant shall, at the same time submit a proposed revised postmine land-use map consistent with the consultation, as a revision for review and approval in accordance with §12.226 of the Regulations.
5. Luminant shall manage mesquite (*Prosopis glandulosa*) on Tracts 114, 115, and 116 to ensure that it is eradicated on these tracts as a weedy species.

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Appendix I

6. Within 90 days of approval of the Application, Luminant shall submit a revision application to be processed in accordance with 16 Tex. Admin. Code § 12.226, which, at a minimum, shall include surface-water mass-balance analyses that account for all watersheds modified by mining activities, which correctly quantifies impacts to the surface-water hydrologic balance, and which quantifies impacts to the Brazos River and Colorado River watersheds.