

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

**SURFACE MINING DOCKET NO. C17-0008-SC-50-F
APPLICATION BY LUMINANT MINING COMPANY LLC
FOR PHASE I RELEASE OF RECLAMATION OBLIGATIONS
FOR 336.8 ACRES AND FOR PHASES I, II, AND III RELEASE
OF RECLAMATION OBLIGATIONS FOR 5.8 ACRES
WITHIN PERMIT NO. 50B, KOSSE MINE, LIMESTONE
AND ROBERTSON COUNTIES, TEXAS**

**ORDER APPROVING PHASE I RELEASE
OF RECLAMATION OBLIGATIONS FOR 328.6 ACRES
AND PHASES I, II, AND III RELEASE FOR 5.8 ACRES**

STATEMENT OF THE CASE

Luminant Mining Company LLC (Luminant), 1601 Bryan Street, Dallas, Texas, 75201 applied to the Railroad Commission of Texas (Commission), Surface Mining and Reclamation Division, for Phase I release of reclamation obligations (backfilling, regrading, and drainage control) for 208.5 acres of mined lands with 150-ft pits and Phase I release of reclamation obligations for 128.3 acres of mined lands with 180-ft pits for parcels of land located within its Permit No. 50B, Kosse Mine. Luminant also requested release of Phases I, II, and III reclamation obligations for 5.8 acres of land that were mined with 180-ft pits. The permit was last renewed by Order dated May 3, 2016. The 15,040-acre permit area is located along State Highway (SH) 7 approximately 6 miles east of the town of Kosse, Texas and approximately 12 miles west of Marquez, Texas. Luminant does not currently request a reduction in the amount of the approved reclamation bond. The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. CH. 134 (Vernon 2016) (Act), and the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE ANN. CH. 12 (Thomson West 2017) (Regulations).

Staff of the Surface Mining and Reclamation Division has reviewed the request for release of the acreage and filed its Technical Analysis and field inspection report. The only parties to the proceeding are Luminant and the Commission's Surface Mining and Reclamation Division (SMRD or Staff). Copies of the application were filed in the required county and Commission offices, and notices were mailed to landowners and adjoining landowners of the

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area requested for release and required federal and state agencies. No comments were made following public notice and mailed notice, and no public hearing was requested.

Based on the record in this docket including the application and Staff review, and the Act and Regulations, the examiner recommends that the application for Phase I release should be approved as recommended by Staff and with which Luminant concurs, for 200.3 acres (150-ft pits), Phase I for 128.3 acres (180-ft pits), and Phases I, II, and III for 5.8 acres. This constitutes release for 334.4 acres, rather than the requested 342.6 acres. An area of 8.2 acres containing a temporary structure (topsoil stockpile) is not approved for release of Phase I reclamation obligations, and an additional .6 acre adjacent to the temporary stockpile was determined not to be within the requested release area and is not approved for release. There remain no outstanding issues between the parties. The Commission approves the releases as recommended in accordance with the Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

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

1. By letter dated November 3, 2016, Luminant Mining Company LLC (Luminant) filed its request for Phase I release of reclamation requirements (backfilling, regrading, and drainage control) for 342.6 acres and Phase I through III release of reclamation obligations for 5.8 acres located within the 15,040-acre permit area of the Kosse Mine, Permit No. 50B, Limestone and Robertson Counties, Texas. During the processing of the application, it was noted that .6 acres of the areas requested for Phase I release were not within the release area and that 8.2 acres containing a temporary structure were not eligible for release. The request for release of Phase I reclamation obligations, therefore, covers 328.6 acres [200.3 acres (150-ft pits) and 128.3 acres (180-ft pits)], with Phases I through III covering 5.8 acres.
2. No filing fee is required. The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. CH. 134 (Vernon 2016) (Act), and the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE CH. 12 (Thomson West 2017) (Regulations). The application was properly certified in accordance with §12.312(a)(3) of the Regulations. The application was supplemented

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by letter dated January 26, 2017 to address corrections to the draft public notice, reviewed by the administrative law judge by letter dated November 15, 2016, and by letter dated February 22, 2016 to provide proof of public notice. The application was declared administratively complete on April 17, 2017.

3. An approved reclamation cost estimate, \$176,165,220, for Permit No. 50B was approved in the Commission Order dated September 17, 2016 accepting a blanket collateral bond with collateral trust agreement for all Luminant operations in Texas in the amount of \$975 million. Staff later administratively approved reclamation costs for Permit No. 50B by letter dated January 13, 2017 in the amount of \$148,248,020.
4. The reclamation costs for Permit No. 50B were calculated on a hybrid worst case/area bonding method and. included worst-case pit closure costs for the DI-Auxiliary worst-case pit, costs for mined areas, disturbed areas, ancillary areas, and facility reclamation costs. Luminant does not request any change to the bond instrument. An eligible bond reduction amount may be determined.
5. The area proposed for release is detailed in the Staff Evaluation, Attachment I (Map) and Attachment III (Staff Inspection Report), Appendix I (Location Map) to Attachment III, and Appendix IV (General Photographs and Photograph Locations) to Attachment III. The application, photographic evidence, and Staff Inspection Report and Evaluation, as well as letters of SMRD approval for permanent structures and for soil testing provide support for release of reclamation obligations.
6. Copies of the application were filed for public review in compliance with notice requirements, at the main office of the Railroad Commission of Texas at 1701 North Congress, William B. Travis Building, Austin, Texas and in the offices of the Limestone and Robertson County Clerks, Groesbeck and Franklin, Texas, respectively.
7. Publication of notice of application occurred once each week for four consecutive weeks in the *The Groesbeck Journal*, a newspaper of general circulation in Limestone County, Texas, on February 16 and 23, 2017 and on March 2 and 9, 2017 and in *The Bremond Press*, a newspaper generally circulated in Robertson and Limestone Counties on

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February 10, 17, 24, 2017 and on March 3, 2017. Proof of publication was submitted by letter with attached affidavit of publication and clippings. The newspapers are in the locality of the surface mining and reclamation operations. The notice of application contains all information required by §134.129 of the Act and §12.312(a) of the Regulations for notice of application for release of Phase I reclamation obligations for backfilling, regrading, and drainage control. The notice is adequate notification of the request for release. The notice included the name of the permittee, the location of the land affected, the approximate number of acres, permit number at the time of application and date approved, the amount of approved bond, the type and appropriate dates reclamation work was performed, and a description of the results achieved as they relate to the approved reclamation plan. The notice contained information concerning the applicant, the location and boundaries of the permit area, the availability of the application for inspection, the address to which comments should be sent, and a map with sufficient notice of the boundaries of the area requested for release.

8. The Director, SMRD, determined the application to be administratively complete by letter dated April 17, 2017. The Staff's evaluation document was filed with the Hearings Division by letter dated May 25, 2017.
9. The areas requested for release is made up of several parcels of land located in the central to southern portion of the permit area. The approved postmining land uses for the areas requested for Phase I release are predominantly pastureland, with small acreages of fish and wildlife habitat, and developed water resources. The Phases I-III release area is Limestone County Road (LCR) 714 (Ebenezer Cemetery Road). The Technical Evaluation and inspection report indicated that Luminant had met requirements for Phase I release for the entire acreage requested for Phase I release only, except for small acreage that was not located within the requested release area (.6 acres) and acreage containing a temporary structure, a topsoil stockpile (8.2 acres). The .6 acres is not eligible for release, and the temporary structure encompassing 8.2 acres must be reclaimed prior to Phase I release. In addition, Staff recommended release of the 5.8 acres of land made of industrial commercial land use requested for Phases I-III release.
10. Luminant provided copies of letters of notification of the application for release to

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property owners, owners of leaseholds or other property interests, and adjoining property owners in accordance with §12.312(a)(2) of the Regulations. Luminant submitted to the Commission copies of the letters to landowners and/or adjoining landowners, and lessees and holders of other property interests, and to the following: the Limestone County Judge/Commissioners Court, Ebenezer Cemetery Association, King and Williams Cemetery, the Robertson County Judge/Commissioners Court, Robertson County Water Supply Corporation, Navasota Valley Electric Cooperative, Inc., Texas Department of Transportation in Waco, Texas, the Texas Commission on Environmental Quality, Natural Resources Conservation Service in Franklin and in Groesbeck, Texas, Texas State Soil and Water Conservation Board in Temple and in Dublin, Texas, the U.S. Army Corps of Engineers Ft. Worth District, and the Texas Department of Highways in Austin, Texas as required by §12.312(a)(2) of the “Coal Mining Regulations” and §134.129 of the Surface Coal Mining and Reclamation Act. The area requested for release is not located within the territorial boundaries of any other municipality that would be notified pursuant to §12.313(c) of the Regulations.

11. No adverse comments or written objections were filed regarding the request for release pursuant to the notification. No requests for hearing or informal conference were filed pursuant to §12.313(d).
12. SMRD’s Inspection and Enforcement Section mailed letters dated November 7, 2016 to Luminant, landowners, holders of other interests within the area requested for release, and to the Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office (OSM), notifying them of the date scheduled for inspection, December 1, 2016, and the opportunity to participate in the inspection in accordance with §12.312(a)(2). Staff sent a letter of notification of the application as required by the Act, §134.133 by certified mail to the Limestone and Robertson County Judges by letter dated February 8, 2017 (Attachment II to Staff’s inspection report). The inspection occurred on the date scheduled.
13. The manager of SMRD’s Inspection and Enforcement Section, and a Commission inspector were present at the pre-inspection meeting. Two Luminant representatives were present at the pre-inspection meeting and the inspection. Three OSM

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representatives attended the meeting as well as the inspection, along with the inspector and one representative of Luminant. No others attended the inspection. The area was inspected with the use of a GPS device; some areas had not been properly marked in the field at the time; Luminant undertook to correct the markers. No rainfall was noted on the date of the inspection, and all areas could be accessed. Some minor erosion was noted in two areas; however, they did not warrant immediate repair. These areas are shown on Photos 2 and 3 in Appendix IV of Attachment III to the Staff analysis. Luminant undertook to repair the additional areas.

14. The areas requested for release was mined and regraded from 2010-2012. Routine monthly inspections of the reclamation work covering the proposed release area occurred from 2010 to the date of the inspection and have continued.
15. Based upon the application and Staff review in its Technical Evaluation Report, the acreages requested for release from Phase I reclamation obligations have met Phase I requirements for backfilling, regrading, and drainage control requirements as required by §12.313(a)(1) of the Regulations and may be approved for Phase I release.
16. The area requested for Phase I release have been backfilled and graded to approximate original contour, [§12.385(a)]. All highwalls and spoil piles were eliminated in accordance with §12.384(b)(1) of the Regulations, and suitable substitute material was placed over the regraded spoil. No cut-and-fill terraces were constructed. Backfilled material has been placed to minimize erosion, to minimize water pollution both on and off the site, and to support the approved postmining land uses [§12.384(b)(2)]. Drainage patterns similar to premine drainage have been established. All areas requested for release meet Phase I release have been stabilized to control drainage and attendant potential erosion [(§12.389)]. Two small areas were observed in the inspection that were eroded; since the inspection, Luminant repaired and stabilized the two areas as confirmed during the monthly inspection on January 9, 2017. Topsoil substitute material was placed on the regraded surface. The areas requested for release contain 118 full or partial 5.7-acre soil-testing grids (Table III.A.3-1), and soil data provided by Luminant for soils tested in 2012, 2013, and 2014. Approval letters indicating that the results of soil testing of grids as detailed in Table II.A.3-1 and depicted on Plate II.A-3-1 through Plate

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III.A-3-5 in the application reflect compliance with soil sampling requirements for pH, acid-base accounting, texture, and cation exchange capacity, and for plant available nutrients in the top 12 inches of reclaimed soil. A random 10% of the grids were also analyzed for boron, cadmium, and selenium. All soil grids have received Commission approval as free of acid-forming and toxic-forming materials. Grid data for the acreage requested for release were approved by the Commission on April 12, 2013, May 27, 2015, and June 27, 2016. After final grading, vegetation was planted. Several structures are located within the areas requested for Phase I release. All structures and surrounding areas are stable and have been approved as permanent, with the exception of the temporary topsoil stockpile located on 8.8 acres; 8.2 are requested for Phase I release (Photograph 4). The 8.2 acres are not approved for release.

- (a). There is one approved permanent diversion located in the area proposed for Phase I release of reclamation liability, the D-5D Diversion, approved December 5, 2015 (Photograph 5, Appendix IV to inspection report).
- (b). There are three approved permanent impoundments located in the area requested for Phase I release [§12.347(b)], the D-130 Permanent Impoundment Modification No. 1, approved February 21, 2013 (Photograph 14), the D-149 Permanent Impoundment approved September 20, 2012 (Photograph 15), and the D-107 Permanent Impoundment approved April 4, 2013 (Photograph 16).
- (c). The area proposed for Phase I release contains eight approved drop structures, D-5D Drop Structure No. 1 (Photograph 6), approved December 2, 2015, the D-132 Drop Structures No. 1, 2, 3, 4, and 5 (Photographs 7-11), all approved September 20, 2012, Pond D-130 Inlet, and Pond D-130 Spillway, each approved February 21, 2013 (Photographs 12 and 13). Luminant also requests release of Limestone County Road 714 (Ebenezer Cemetery Road) (5.8 acres) (Photographs 17 and 18). The road is not used for mining purposes.
- (d). There are no Luminant-owned water wells located in the areas requested for release.

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- (e). Surface water from the reclaimed area flowed through approved Sedimentation Pond D-6. No active mine drainage flows through the area requested for release.
 - (f). The area proposed for Phase I release does not contain any area approved for disposal of non-coal waste. [§12.375]
 - (g). There is no prime farmland located in the area proposed for Phase I release for which specific soil reconstruction standards would apply. [§12.624]
17. The area requested for Phase I release has been marked in the field with permanent boundary markers to distinguish the area from active mining and reclamation. The inspector noted that the markers were incorrectly labeled, but that they did correctly mark the area requested. Clear identification of this area will assist future inspection of this area and adjacent areas. Luminant shall ensure that the markers are labeled correctly, that the 8.2-acre area is excluded from the Phase I release area, and shall appropriately maintain the markers.
18. The area proposed for Phase II release (5.8 acres) has a postmine land use of industrial/commercial. The area has been reclaimed in accordance with the postmine land use. Requirements for Phase II release have been met for the 5.8-acre area.
- (a). The area was stabilized with vegetation and road surfacing to reduce the potential for contributing suspended solids to streamflow. The area has met the revegetation requirement for industrial/commercial use that vegetation is adequate to control erosion. The vegetated areas consist of areas adjacent to LCR 714. A groundcover analysis was conducted on August 3, 2016 and was submitted to the Commission by letter dated August 26, 2016. The Surface Mining and Reclamation Division approved the result of the evaluation. The evaluation indicated that the groundcover for the area was 95.8%. The groundcover is adequate to control erosion. [§12.395(b)(4)]
 - (b). The area proposed for Phase II release is not contributing excess suspended

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solids to streamflow outside the permitted area in excess of the requirements set by the Act §134.092(a)(10) and 16 TEX. ADMIN. CODE Ch. 12, Subchapter K. The 5.8-acre area drained to the D-6 Pond. All discharges were compliant with the Texas Pollutant Discharge Elimination System Permit No. 02699 (Application, Appendix III.B.3-A) [Finding of Fact No. 19(e)(1), *infra*]. No discharges of disturbed drainage occur from the area. No permanent ponds are located within the 5.8-acre area for which water quality sampling would be required. No silt dams are present within the area proposed for Phase II release.

19. The area requested for Phase III release (5.8 acres of industrial/commercial land use) has met requirements for Phase III release.
 - (a). LCR 714 (Ebenezer Cemetery Road) makes up the land use.
 - (b). Groundcover is sufficient to control erosion. No productivity standard applies. No extended responsibility period is applicable.
 - (c). The only structure located in the area requested for Phase III release is the road.
 - (d). Groundwater has been protected in accordance with §12.348 for the areas requested for Phase III release. Groundwater sampling has been conducted in accordance with the requirements of Permit No. 50B, and results of sampling of overburden and underburden monitoring wells have been reported to the Commission. The Calvert Bluff overburden prior to mining and destroyed by mining consisted of sands, silts, and clays and had little or no capacity to store or transmit groundwater. Sands that were present were isolated and discontinuous. Small amounts of groundwater could be produced by silty sands interbedded with silts, clays, and lignite stringer seams in the underburden below the deepest recoverable lignite seam; however, these were separated from the lignite seam by a clay unit from 5 to 30 feet in thickness. The Simsboro aquifer (the shallowest significant water-bearing aquifer below the Calvert Bluff) occurs at depths greater than 100 feet beneath the lowest mineable lignite seam and has not been affected by mining. Data from quarterly monitoring of four wells close

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to the area requested for release (Overburden Well 29-OB-08, spoil monitoring well 36-R-14, and Underburden Wells 29-UB-08 and 29-UB-S-08) have been reviewed by Staff to determine whether these aquifers have been affected. There are no monitoring wells within the 5.8-acre area requested for Phase III release. Luminant included Tables III.A.9-1 and II.A.9-2 in the application that include well data accompanied by graphs showing water-table elevation with accompanying data (Appendix III.A.9-A) comparing initial water levels and initial concentrations for total dissolved solids (TDS), and sulfate concentrations (SO₄) over time (among other constituents) (Appendix III.A.9-B, chemistry data and graphs).

- (i). Spoil monitoring well 36-R-14 is less than 500 feet east of the acreage. The water levels in this well decreased approximately one foot and have steadily increased since November 2015. Results for the water level in Overburden Well 29-OB-08 show that after decreases in 2010 and 2011, the groundwater elevation has increased and decreased but has a steady increasing trend. Groundwater levels in Underburden Wells 29-UB-08 and 29-UB-S-08 have not been impacted by mining.
- (ii). Concentrations of TDS and sulfate and pH measurement are used to indicate water quality. Based upon Appendix II.A.9-B, pH levels have been stable and indicate no problems. Compared to initial measurements, the concentrations of TDS and sulfates and measurements of pH for Overburden Well 29-OB-08 have been generally stable since approximately September 2010. For Underburden Well 29-UB-08 (Calvert Bluff), after some fluctuations in 2009, 2011, and 2012, concentrations have been stable. For Underburden Well 29-UB-S-08 (Simsboro), increases were measured in concentrations of TDS in 2012 and 2014; other values of constituents measured were similar to initial measurements; for sulfate, sample results are generally similar to initial measurements. The Simsboro was not affected in this area by mining. For Well 36-R-14 (spoil monitoring well), sulfate concentrations increased in 2014 but have generally reduced to initial measurements or less, and

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sulfate concentrations have remained stable. Based upon the data submitted, sampling results are similar to those predicted in the Cumulative Hydrologic Impact Assessment for the mine.

- (e). Surface water monitoring of pond discharges from Pond D-6 and long-term monitoring of streams receiving discharges from the 5.8-acre area have been conducted in accordance with the requirements of the permit. Staff has reviewed the data submitted to the Commission. Based upon Luminant's hydrology consultant's report and review by Staff, the 5.8-acre area is not contributing suspended solids to runoff in excess of the requirements of the Texas Commission on Environmental Quality's (TCEQ) Texas Pollutant Discharge Elimination System (TPDES) Permit No 02699, nor to streamflow outside the permit area.
- (i). Water quality data was submitted for temporary Sedimentation Pond D-6 (final discharge pond) and for two pairs of long-term surface water monitoring stations (LTSMs). There are no permanent impoundments located within the 5.8 acres. Pond D-6 has a period of record of 2010 – 2016. Data was provided for this period of record for flow, pH, total suspended solids (TSS), total settleable matter (SS/TSM), total iron (Fe), and total selenium (Se). Values and concentrations of pH, TSS, SS/TSM, Fe, and Se meet the effluent limitations of the TCEQ discharge permit, and no adverse trends were evident.
- (ii). The highest average values as compared to the range or allowable daily average and allowable daily maximum for each parameter are: pH, 7.0 standard units (s.u.) as compared to the range 6.0-9.0 s.u.; TSS, average 21.0 mg/L, compared to allowable daily average of 35 mg/L and allowable daily maximum of 70 mg/L; Fe, average 0.5 mg/L, as compared to an allowable daily average of 3.0 mg/L and average daily maximum of 6.0 mg/L; Se, <0.01 mg/L, as compared to a single grab/report daily maximum of 0.1 mg/L, and SS/TSM, <0.1ml/L, as compare to a maximum of 0.5 ml/L. Based on analyses of the pond discharges,

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Luminant demonstrated that the 5.8-acre is not contributing suspended solids to streamflow or runoff outside of the permit area in excess of water quality permit requirements.

- (f). Luminant provided monitoring data for paired watersheds for the undisturbed watershed upstream of the area requested for Phase III release and for the watershed receiving runoff from the area requested for Phase III release (disturbed watersheds). Runoff from the 5.8-acre area drains through Heads Creek, thence to Steele Creek, which eventually drains into the Navasota River at Stream Segment No. 1209. The paired monitoring stations that receive drainage from the area were evaluated in Staff and Luminant's analyses; these stations are Steele Creek Inlet located upstream of mining activities at the western boundary of the permit area (undisturbed watershed monitoring point) paired with Steele Creek Outlet located on Steele Creek downstream of mining activities near the eastern boundary of the permit area (disturbed watershed monitoring point). This monitoring station reflects any effects from the area requested for Phase III release. The results of monitoring were also compared to baseline LTSM stations for the upstream and downstream watersheds (Stations SW-1 and SW-2A, respectively) and to stream segment criteria for Stream Segment 1209 of the Navasota River. LTSM baseline station SW-1 is located at approximately the same location as the undisturbed long-term surface water monitoring station Steel Creek Inlet. LTSM baseline station SW-2A is located approximately 2.5 miles downstream of disturbed long-term surface water monitoring station Steel Creek Outlet. Results of Luminant's evaluation are contained in a report signed and sealed by a professional geoscientist licensed in Texas. Staff's analysis of the report is located in Staff's Technical Analysis dated May 25, 2017. An examination of these analyses and the data presented reflect that no adverse effects have resulted due to mining and reclamation of the area requested for Phase III release.
- (1). The LTSM plan for the permit for the paired watersheds requires monitoring of flow, pH, TDS, TSS, Fe, and Mn. For the period of record June 29, 2007 through December 5, 2016, results of sampling indicate

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the following: Slightly higher average and maximum flows are reflected at the downstream station, Steel Creek Outlet. Levels of maximum and average pH at the undisturbed upstream LTSM station, Steel Creek Inlet, and at the disturbed downstream station are similar and meet the stream segment criteria, 6.5-9.0 s.u. Concentrations of minimum, and average TDS are similar at both stations and are well within the 600 mg/L stream segment criterion for TDS; maximum concentrations are slightly higher than the stream segment criteria. Flow-weighted TDS is lower at the downstream station at 165.6 mg/L compared to 309.4 at the upstream station and are well within the 600 mg/L for the stream segment criterion. Minimum TSS at the upstream and downstream stations are 10.0 and 6.0, respectively; maximum TSS has increased from 1,096.0 mg/L to 2,940.0 mg/L; average TSS for the period of record were 77.0 mg/L for the upstream station (Steele Creek Inlet) and 176.5 mg/L at the downstream Steele Creek Outlet. There is no criterion for TSS in the stream segment criteria. There are also no stream segment criteria for minimum and maximum concentrations of Fe and Mn. Concentrations of Fe have increased from Steele Creek Inlet to Steele Creek Outlet; concentrations of Mn have remained stable or have decreased from the Inlet to the Outlet. Luminant provided graphs for pH, TDS, TSS, Fe and Mn (Appendix II.B.3-B).

- (2). A comparison of the sampling constituents to baseline levels for the period of record May 28, 1987 through August 25, 2005 (upstream station SW-1) and for September 29, 2004 through August 25, 2005 (downstream station SW-2A) shows: For pH, all average pH, minimum pH, and maximum pH levels at the upstream and downstream undisturbed and disturbed stations and baseline stations are within the acceptable range for pH, with the exception of the average minimum value at the undisturbed upstream Steele Creek Inlet for the period of record. All concentrations of TDS in mg/L for the upstream and downstream undisturbed and disturbed stations and at the baseline stations are below the maximum annual average for the stream segment,

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except for the maximum concentrations of TDS at the undisturbed upstream Steele Creek Inlet and the maximum concentrations of TDS for the disturbed downstream station on Steel Creek Outlet that are slightly above the stream segment criterion of 600 mg./L maximum. Although the maximum TDS concentrations for the periods of record for the upstream baseline and downstream baseline stations are greater than the stream segment criterion, the averages and the flow-weighted TDS averages for Steele Creek Upstream, Steele Creek Outlet, and SW-1 (upstream baseline) and SW-2A (downstream baseline) are well within the maximum 600 mg/L stream segment criterion for TDS. In addition, the flow-weighted TDS concentrations for the upstream undisturbed Steele Creek Inlet are higher than the flow-weighted concentrations at the downstream disturbed Steele Creek Outlet.

- (3). The findings set out in this Finding of Fact No. 19 are consistent with the cumulative hydrologic impact assessment (CHIA) for the mine. The quality of water draining from the reclaimed area has not been impacted by mining. Any changes in flow from the 5.8-acre area contributes insignificantly to the much larger Steele Creek watershed. Evaporative losses from the area also represent an insignificant percentage of streamflow. There are no downstream water users immediately downstream of the mine on Steele Creek.

20. The notice of application for release stated that an eligible bond reduction amount may be determined. Luminant has not requested an adjustment to the accepted bond instrument; however, an eligible bond reduction amount may be determined. The Staff has filed its estimate of eligible bond amount reduction, \$3,358,957.21. This amount was calculated as follows:

Phase Requested	Area Acres	Disturbance Category	Bonded Per Acre	Eligible Reduction Per Acre (for Phase I: 60%)	Eligible Reduction
Phase I	200.3	Mined (150' pits)	\$13,504.00	\$ 8,102.40	\$1,622,910.72
Phase I	128.3	Mined (180')	\$17,283.00	\$10,369.80	\$1,330,445.34

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		pits)			
Phase I, II & III	5.8	Mined (180' pits)	\$17,283.00	\$17,283.00	\$ 100,241.40
Subtotal					\$3,053,597.46
Admin. Costs (10%)					305,359.75
Total					\$3,358,957.21

21. Luminant and Staff, the only parties to the proceeding, filed waivers of the preparation and circulation of a proposal for decision. The proposed order was circulated to the parties with opportunity for comment.
22. The acreage has met the requirement of the releases requested, with the exception of the .6-acre area that is not within the release area and the 8.2-acre temporary structure (stockpile).
23. Required public notice and notice of the open meeting to consider Luminant's request has been made. All other required notice has been made.

CONCLUSIONS OF LAW

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

1. Proper notice was provided for this request for release of reclamation obligations.
2. No public hearing was requested, and none is warranted.
3. Luminant has met all requirements for Phase I release for 328.6 acres within the Kosse Mine as set out in the application and Staff review.
4. Luminant has met all requirements for Phases I through III release of reclamation obligations for the 5.8 acres as set out in the above Findings of Fact and Conclusions of

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Law.

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

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

IT IS FURTHER ORDERED that the Commission approves Phase I release of reclamation obligations for the requested 328.6 acres as set out in the Findings of Fact and Conclusions of Law;

IT IS FURTHER ORDERED that the Commission approves Phases I through III releases of the 5.8 acres (Ebenezer Cemetery Road);

IT IS FURTHER ORDERED that \$3,358,957.21 is determined eligible for reduction in an estimate of the costs of reclamation (Finding of Fact No. 20);

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

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

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

IT IS FURTHER ORDERED by the Commission that this order shall not be final and effective until 25 days after a party is notified of the Commission's order. If a timely motion for rehearing is filed by any party of interest, this order shall not become final and effective until such motion is overruled, or if such motion is granted, this order shall be subject to further action by the Commission. Pursuant to TEX. GOV'T CODE §2001.146(e), the time allotted for

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Surface Mining Docket No. C17-0008-SC-50-F

Commission action on a motion for rehearing in this case prior to its being overruled by operation of law, is hereby extended until 90 days from the date the parties are notified of the order.

SIGNED IN AUSTIN, TEXAS August 1, 2017.

RAILROAD COMMISSION OF TEXAS



CHAIRMAN CHRISTI CRADDICK



COMMISSIONER RYAN SITTON



COMMISSIONER WAYNE CHRISTIAN

ATTEST:



Secretary, Railroad Commission of Texas

