

FINDINGS OF FACT

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

1. By letter dated May 20, 2019, Luminant Mining Company LLC (Luminant) filed an application with the Railroad Commission of Texas (Commission), Surface Mining and Reclamation Division ("SMRD" and/or "Staff") for Release of Reclamation Obligations on an aggregate 592.5 acres (reduced to an aggregate 586.7 acres), with 542.14 acres (reduced to 536.34 acres) for Phase I release, 37.04 acres for Phase II and III release, and 13.32 acres for Phase I, II and III release, within Permit No. 3F, Big Brown Mine, in Freestone County, Texas. The permit area encompasses approximately 12,910 acres. By letter dated October 18, 2019, Staff suspended the application due to insufficient data and evaluation of the data for groundwater. By letter dated December 12, 2019, Luminant submitted the additional groundwater information. The acreage for proposed Phase I release was changed during the review process from 542.14 acres to 536.34 acres, resulting in a total acreage change from 592.5 acres to 586.7 acres. The procedural history of the subject docket is further addressed in Finding of Fact No. 4, *infra*.
2. The Application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, Tex. Nat. Res. Code Ann. Ch. 134 (Vernon Supp. 2020) ("Act"), and the Coal Mining Regulations, Tex. R.R. Comm'n, 16 Tex. Admin. Code Ch. 12 (Thomson West 2020) ("Regulations"). The Application was properly certified in accordance with §12.312(a)(3) of the Regulations.
3. Luminant currently bonds all of its statewide mining operations, including those conducted under Permit No. 3F, with a blanket collateral bond in the amount of \$975,000,000, which was accepted by Commission Order dated September 27, 2016 [Docket No. C16-0021-SC-00-E]. No changes to the accepted bond are proposed in the Application.
4. Review of the Application was suspended from October 18, 2019 through December 17, 2019, pending resolution of deficiencies in the Application identified in Staff's October 18, 2019, letter concerning lack of groundwater data and the evaluation thereof by the applicant. After Luminant's submittal of additional groundwater information and its revision to the requested Phase I release boundary depicted on the maps in the Application, Staff resumed its review of the Application on December 18, 2019. By letter dated December 19, 2019, Staff declared the Application administratively complete and transferred the Application to the Hearings Division. By letter dated February 4, 2020, Staff filed its technical analysis ("TA") and field inspection report ("Inspection Report") dated October 8, 2019. Staff's recommends release for the 536.34 acres proposed for Phase I release, the 37.04 acres proposed for Phases II and III release, and the 13.32 acres proposed for

Phase I, II and III release. The chronology of the Application submittal and review, and other associated actions, is set out below:

| DATE | ACTION |
|---|--|
| May 20, 2019 | Luminant submits Application for Phase I, II and III release of reclamation obligations for an aggregate 592.5 acres |
| May 22, 2019 | Copy of Application provided to Hearings Division for review of public notice |
| July 3, 2019 | Assigned Administrative Law Judge ("ALJ") Veronica Ruberto approved Luminant's proposed public notice |
| July 8, 2019 | Staff notifies Freestone County Judge of the proposed release |
| July 18 and 25 and August 1 and 8, 2019 (<i>The Fairfield Recorder</i>); July 17, 24, 31 and August 7, 2019 (<i>The Freestone County Times</i>) | Luminant publishes Notice of Application in newspapers of general circulation in the locality of the surface coal mining operation |
| October 16, 2019 | Luminant submits proof of publication and landowner notification |
| October 18, 2019 | SMRD review of the Application is suspended pending resolution of deficiencies in groundwater information and evaluation |
| December 12, 2019 | Luminant submits additional groundwater information and revised Phase I release boundary information, resulting in a change in the acreage proposed for Phase I release from 542.14 acres to 536.34 acres and a total acreage change from 592.5 acres to 586.7 acres |
| December 19, 2019 | SMRD Director declares the Application administratively complete |
| February 4, 2020 | Staff files its TA and Inspection Report |

5. As identified in the above chronology, notice of the Application was published once per week for four consecutive weeks in the *Fairfield Recorder* and *The Freestone County Times*, newspapers of general circulation in the vicinity of the Big Brown Mine in Freestone County, Texas. Dates of publication in the *Fairfield Recorder* were July 18 and 25, and August 1 and 8, 2019. Dates of publication in the *Freestone County Times* were July 17, 24, and 31, and August 7, 2019. The notice of application contains all information required by §134.129 of the Act and §12.312(a)(2) of the Regulations for notice of application for release of reclamation obligations. The notice contains a statement that the applicant does not seek a reduction in the approved bond but that an eligible bond reduction amount may be determined. The published notice is adequate notification of the request for release. The notice included the name of the permittee, the precise location of the land affected, the number of acres, permit number at the time of Application and date approved, the amount of the approved bond, the type of and appropriate dates on which 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, and the address to which comments should be sent. The notice included a map showing sufficient notice of the boundaries of the area requested for release. Luminant submitted affidavits of publication with newspaper clippings by letter dated October 16, 2019.

6. 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). One letter was submitted by landowner Billy Betts indicating that he had interests in land in or adjacent to the area proposed for release, but he did not request party status or submit any protest or additional comments.

7. Copies of the Application were filed for public review in the Office of the County Clerk of Freestone County, Texas, and in the offices of the Surface Mining and Reclamation Division, Railroad Commission of Texas at 1701 North Congress Avenue, William B. Travis Building, Austin, Texas.

8. Luminant sent notice of the Application to owners of interests within and adjacent to the areas requested for release. Luminant also sent notice to local governmental bodies, planning agencies, sewage and water treatment authorities and water companies in the locality as required by §12.312(a)(2) of the Regulations. The notice was provided via first-class letter in multiple mailings dated July 25, 2019. Luminant mailed notice to the U.S. Army Corps of Engineers, Natural Resources Conservation Service (Fairfield Office), Texas Commission on Environmental Quality, Texas Department of Highways and Public Transportation, Navarro County Electric Cooperative, Inc., Navasota Valley Electric Cooperative, Inc., Ward Prairie Water Supply, and Windstream. Copies of notification letters were filed by Luminant with the Commission by letter dated October 15, 2019.

because it excluded the portion of the TxDOT right-of-way along FM 2570. Luminant revised the boundary for the Phase I release of the smaller parcel on the maps by excluding this portion from the proposed Phase I release area. As a result, the revised requested Phase I release acreage was reduced from 542.14 to 536.34 acres, resulting in the total requested release acreage of 586.7 acres.

12. The permit area is comprised of approximately 12,910 acres located approximately 8 miles northeast of Fairfield, Texas. A general location map of the permit area, with the 586.7 acres proposed for release identified in three parcels, is found in Appendix IV of Staff's Inspection Report. The area is depicted in photographs taken during Staff's inspection and also provided in Appendix IV of the Inspection Report. The Application, photographic evidence, Staff's Inspection Report, and Staff's TA provide support for the various phases of release of reclamation obligations for the three parcels comprising the requested release area.
13. As set forth in the Application (page IV.A.5-1) and in the TA (page 2), the approved postmine land uses within the requested release areas consist of pastureland (37.03 acres, 6.31%), fish and wildlife habitat (529.18 acres, 90.20%), developed water resources ("DWR") (7.16 acres, 1.22%), and I/C (13.33 acres, 2.27%), for a total of 586.7 acres. The following table shows the postmine land use with the proposed release areas:

| Postmine Land Use | Land Use Total Acres | | | |
|-------------------|----------------------|----------------|-------------------|------------|
| | Phase I | Phase II & III | Phase I, II & III | % of Total |
| Pastureland | | 37.03 | | 6.31 |
| Fish and Wildlife | 529.18 | | | 90.20 |
| DWR | 7.16 | | | 1.22 |
| I/C | | 0.01 | 13.32 | 2.27 |
| Total | 536.34 | 37.04 | 13.32 | 100.00 |

14. The subject acreage requested for release was mined and/or disturbed by mining-related activities from 1998 to 2009, and various reclamation activities were conducted from 1998 to 2014 as necessary for reclamation and maintenance, concurrently with re-vegetation of the areas. Final grading took place between 1999 and 2013. Staff conducted routine monthly inspections of the proposed release area from 1993 to the present. The 37.04 pastureland acres of the 50.36 acres proposed for Phase III release have been in the extended responsibility period ("ERP") for a minimum of five consecutive years.
15. The Commission previously approved Phase I release of reclamation liability for the 37.04 acres requested for Phase II and III release by Order dated February 8, 2005 [Docket No. C4-0019-SC-03-F]. This Order found that requirements for backfilling, regrading, and drainage control had been met for this area.

16. The 586.7 acres proposed for release of reclamation liability contain the following permanent structures: two permanent impoundments (Ponds C-256 and C-259); one diversion (Bear Creek Restoration Modification); one drop structure (C-259-1 Drop Structure Modification No. 1); and four access roads (CR46 and CR53 Access Roads, B-Area Shop Entrance Road, and BR06 Access Road Modification). All structures were approved as permanent by SMRD between 1998 and 2018. All structures have been inspected by SMRD I&E Staff, have been documented to be structurally intact, with the surrounding areas well vegetated, and are consistent with the approved postmine land use. Approval letters for these structures are provided in the Application (Section VI) except for the May 14, 2018, approval letter for CR53 Access Road, which is contained in Attachment IV of Staff's TA.
17. Surface-water runoff from the requested release areas drain into TCEQ Stream Segment No. 0804 of the Trinity River.
18. Phase I release of reclamation obligations have been met for the subject 549.66 acres in accordance with Phase I requirements for backfilling, regrading, and drainage control as required by §12.313(a)(1) of the Regulations.
 - a. The aggregate postmining land uses in the areas proposed for Phase I release consist of 549.66 acres of fish and wildlife and 7.16 acres of DWR, and 13.32 acres of I/C. None of the 50.36 acres proposed for release of Phase II and III reclamation obligations have postmining land uses of fish and wildlife habitat or DWR
 - b. The area has been backfilled and regraded to its approximate original contour [§12.385(a)]; highwalls have been eliminated [12.385(b)]; suitable topsoil substitute material has been placed over regraded spoil as plant-growth material; no cut-and-fill terraces have been constructed; and drainage control has been accomplished in accordance with the approved reclamation plan. Regrading of the area occurred 1999 and 2013 in such a manner that erosion and water pollution have been minimized [§12.385(d)]. The proposed Phase I release area was mined in 1998 to 2009.
 - c. The soil-testing grids within the 549.66 acres proposed for Phase I release of reclamation obligations have met all soil suitability requirements for Phase I release. By letter dated September 20, 2016, the SMRD Director determined that the soil-testing data for all soil-testing grids within the areas requested for Phase I release do not indicate the presence of acid- and/or toxic-forming materials in the top four feet of postmine soil. Staff included a copy of the September 20, 2016, letter in Attachment IV of its TA. [§12.386].

the appropriate postmine land uses as required by §12.147 and §12.399 of the Regulations.

- b. The 37.03 acres of pastureland postmine land use have been revegetated primarily with coastal bermudagrass consistent with general revegetation requirements at §12.390. This acreage is comprised of one land management unit ("LMU"), B03-P. In accordance with the approved postmine soil-testing plan, Luminant submitted soil-fertility data for this pastureland LMU in 2013 and 2014, which samples did not indicate that augmented fertilization occurred within the LMU.
- c. For pastureland to be eligible for Phase III release, vegetation parameters must equal or exceed the approved standards during the growing seasons of any two years of the ERP, except the first year [§12.395(c)(2)]. LMU B03-P was placed in the ERP on October 9, 2003. Luminant submitted groundcover and productivity data for the 2012 growing season by letter dated March 6, 2013, and SMRD approved the data by letter dated July 5, 2013. By letter dated April 22, 2014, SMRD determined that year 2013 ground-cover and productivity data met or exceeded the approved standards for the land use of pastureland for this LMU. Luminant has met Phase III requirements for revegetation of pastureland in accordance with §12.395.
- d. The aggregate 50.36 acres postmining land uses in the areas proposed for Phase II release consist of 37.03 acres of pastureland and 13.33 acres of I/C. None of the 50.36 acres proposed for release of Phase II and III reclamation obligations have postmining land uses of fish and wildlife habitat or DWR.
- e. Revegetation on I/C postmine land use acreage must be sufficient to control erosion prior to Phase II and III release. Of the 50.36 acres proposed for Phase II and III release, 13.33 acres have a postmining land use of I/C. Luminant submitted ground cover data for a 7.09-acre portion of this I/C area by letter dated October 4, 2018, and this data were approved by SMRD letter dated November 6, 2018. A copy of the approval letter is included in Attachment IV to Staff's TA. Staff's notes in its TA that the ground-cover report submitted by letter dated October 4, 2018, and approved by letter dated November 6, 2018 (Attachment IV to Staff's TA) was actually for a 13.33-acre I/C area rather than a 7.09-acre area, and was comprised of the former shop area and the associated access road, for which there are no vegetation productivity performance standards. These are non-grassed areas with a cover is primarily crushed rock that is adequate to control erosion.
- f. Completion of the five-year period of extended responsibility applicable to this permit area, having at least 26 inches of rainfall annually, has been met for the

postmine pastureland and I/C acreage within the proposed release area. [§12.395(c)(2)].

- g. No portion of the area proposed for release of reclamation liability has soils classified as prime farmland prior to mining for which specific reclamation standards would apply. [§§12.624 - 12.625].

20. The 50.36 acres proposed for release from Phase II requirements are not contributing suspended solids to streamflow or runoff outside the permit area in excess of established effluent limitations pursuant to §12.313(a)(2). An examination of water discharged from sedimentation ponds to receiving streams shows that the water-quality requirements of §12.349 have been met. Mining activities were conducted to minimize the formation of acidic or toxic drainage and to prevent additional contributions of suspended solids to streamflow outside the permit area and to otherwise prevent water pollution. Based upon the Application, Commission records, and Staff review, Phase II surface-water quality and quantity have been protected as demonstrated by the surface-water monitoring data collected in accordance with the approved long-term surface-water monitoring ("LTSM") plan in the permit.

- a. TCEQ issued Texas Pollutant Discharge Elimination System (TPDES) Permit No. 0002700000 to Luminant for wastewater discharges from the Big Brown Mine. Luminant's individual pond long-term water-quality monitoring data evaluation is based on information derived from a single pond, Pond B-62, which captures runoff from all areas proposed for Phase II release from reclamation obligations in this application.
- b. Luminant's data evaluation compares the Pond B-62 long-term monitoring data to TCEQ/TPDES effluent limitations. This pond has varying periods of record ranging from July 23, 1997, to August 31, 2019. The data (Luminant and SMRD) include parameters for flow (Q), hydrogen-ion concentration (pH), total dissolved solids (TDS) concentration, total suspended solids (TSS) concentration, and total iron (Fe) concentration.
- c. Luminant provided tables in section 6 of its submittal in which it summarizes minimum, maximum, and average water-quality data. The ranges and averages (both Luminant and SMRD data) for Q, pH, TDS, TSS, and Fe, along with TCEQ/TPDES permit effluent limitations, are summarized in the following table:

| Individual Pond Long-Term Water-Quality Monitoring Data and TCEQ/TPDES Effluent Limitations | | | | | |
|---|-----------------------------------|----------------------------------|-----------------------------------|-----------------------------------|----------------------------------|
| Pond (Period of Record) | Flow, gpm {Range} [Average] | pH, s.u. {Range} [Average] | TDS, mg/L {Range} [Average] | TSS, mg/L {Range} [Average] | Fe, mg/L {Range} [Average] |
| B-62 (1997-2019) | {0.0-442.4} [3.2] | {6.3-9.0} [7.6] | NR | {1.0-30.0} [6.8] | {0.04-5.0} [1.3] |
| TCEQ/TPDES Effluent Limits | none | 6.0-9.0 | none | 35/70* | 3.5/7.0* |

NR – not reported

* daily average/daily maximum

- d. Via this table, Staff concludes that the average pH was consistently within the TCEQ/TPDES effluent limit range of 6.0 s.u. to 9.0 s.u. Likewise, the average TSS concentrations were less than the TCEQ/TPDES effluent limit of 35 mg/L for daily average and less than the TCEQ/TPDES effluent limit of 70 mg/L for daily maximum, and average total iron concentrations were also consistently less than the TCEQ/TPDES effluent limit of 3.5 mg/L for daily average and less than the TCEQ/TPDES effluent limit of 7.0 mg/L for daily maximum.
 - e. Staff’s evaluation of the data (Luminant’s and SMRD) indicates no adverse trends for TSS concentrations and indicates that Luminant has appropriately demonstrated that the areas proposed for Phase II release from reclamation obligations are not contributing suspended solids to stream flow or runoff outside of the permit area exceeding performance standards at § 12.313(a)(2).
 - f. No permanent impoundments are located within the areas requested for Phase II release.
21. Luminant has demonstrated that groundwater quantity and quality have been protected as required for Phase III release of the subject acreage. Surface mining activities were conducted according to Luminant’s reclamation plan, which was designed to conduct operations in a manner meeting the requirements of §12.348. Soils and overburden materials were handled, and surface-water runoff controlled, to prevent acidic, toxic, or other harmful infiltration to groundwater systems. Groundwater quantity has been protected by restoring approximate premining recharge capacity of the reclaimed area as a whole. Likewise, appropriate monitoring has occurred in accordance with the approved plan, and water-quality monitoring results indicate that groundwater resources have been protected.
- a. In the May 20, 2019, initial application, Luminant submitted monitoring data for spoil LTGM well B-48-R-92, including measurements made through the end of

2017. By letter dated December 12, 2019, Luminant supplemented the groundwater data to include two more wells: CVI-27-OB-96 and CVI-27-UB-99, overburden and underburden LTGM wells, respectively. The supplement included monitoring data through the second quarter of 2019 and is considered current. Staff reviewed monitoring data for the spoil well through the second quarter of 2019. Mr. Keith A. Wheeler at Golder Associates Inc. (Golder), a licensed professional geoscientist in the State of Texas (Firm #50369), prepared, signed, and sealed his initial assessment on September 27, 2018, and the supplement on November 11, 2019.

- b. Spoil LTGM well B-48-R-92 is located just outside the westernmost proposed release parcels. The native unit monitoring wells (overburden and underburden) are located about 1½ miles east of the westernmost parcels, and excess of two miles to the southeast of the primary parcel (largest) requested for release. However, each of these wells is located within or adjacent to areas disturbed by mining that are not requested for release in this application.
- c. Staff developed hydrographs for the three wells, plotting water levels over time. These plots show relative stability of the postmining hydrologic system in recent years. Via this assessment, Staff, has determined that spoil LTGM well B-48-R-92 has exhibited a static water level of about 390 ft above mean sea level (amsl) since early 2016. The overburden well also has been stable since 2016 following a 20-ft rise in levels between 2004 and 2016. The underburden well initially showed a rapid rise by approximately 50 ft from 2002 to 2004, followed by a significantly slower rise of about 25 ft over the subsequent 18 years of the period of record (POR).
- d. Staff notes that when static water levels are close to surface elevations, the topography has a stronger influence on the static water levels and, therefore, a comparison of elevations above mean sea level is not necessary. In other words, the ground surface itself induces a elevation measurement limit on the water level, making a comparison of the LTGM well water-level information to baseline water levels is not a straightforward endeavor for these wells. Table 128-4 in the approved permit is an inventory of wells inside and adjacent to the permit area, and includes water elevations of domestic wells measured before mining of the area. The western areas requested from release were mined out in 1998, the large eastern primary parcel was mined between 2000 and 2009. Water levels before these dates are considered baseline measurements. Baseline inventory well nos. 15, 16, 130, and 158 are located near the two native wells. The first three are shallow wells, 50 ft or less in total depth, and are considered to be overburden wells. The overburden wells have static water levels listed as 12.22, 15.16 and 15 ft below surface for inventory wells #15, #16 and #130, respectively. Inventory well

Luminant for the 50.36 acres proposed for Phase III release demonstrate that the ground-water protection requirements have been satisfied [§12.348].

22. Based upon the Application, Commission records, and Staff review, surface-water quality and quantity have been protected, and Luminant has adequately demonstrated that the surface-water quantity and quality protection requirements for Phase III release from reclamation obligations have been met. The 50.36 acres proposed for release from Phase III requirements meet the surface-water protection requirements of §12.349, as shown by an examination of discharges to receiving streams. Mining activities were conducted to minimize the formation of acidic or toxic drainage and to prevent additional contributions of suspended solids to streamflow outside the permit area and to otherwise prevent water pollution. As noted by Staff in its February 4, 2020, TA, Luminant's analyses of the surface-water data are based on information compiled from two LTSM stations (HSW-1 and HSW-2) which receive runoff from upstream and downstream of the areas proposed for Phase III release. Flow undisturbed by mining activities is monitored at Station HSW-1, located in the southern portion of the permit area on Pin Oak Creek. This flow discharges to Tehuacana Creek, thence to Stream Segment No. 0804 of the Trinity River. The northern portion of the permit area is monitored at Station HSW-2, located on Bear Creek, which also discharges to Tehuacana Creek, thence to Stream Segment No. 0804 of the Trinity River. Stations HSW-1 and HSW-2 monitor paired watersheds and are the primary component of the Big Brown Mine approved LTSM plan. Luminant provided delineations and topographic contours of the paired-watershed areas on Plate 1, *Long-Term Monitoring Well and Surface Water Station Locations*, contained in the Application. The paired-watershed methodology is used to monitor long-term impacts to streams via concurrent flow and water-quality monitoring of a disturbed watershed and an undisturbed watershed during the life of the permit. Staff conducted an independent assessment of the LTSM data, and Luminant also provided trend analyses of the water chemistry for these paired-watershed LTSM stations.
 - a. The approved LTSM plan requires that LTSM Stations HSW-1 and HSW-2 be sampled for flow (Q), hydrogen-ion concentration (pH), and for concentrations of total dissolved solids (TDS), total suspended solids (TSS), total iron (Fe), and total manganese (Mn). Time-series graphical analyses of the available data from LTSM Stations HSW-1 and HSW-2 were provided for these parameters. Statistical analyses of the data from these stations are provided in Appendix C of the submittal. Both paper and electronic copies of the data for the stations were included in the application.
 - b. Protection of surface-water quality is addressed in the analysis of paired-watershed data. Staff's and Luminant's evaluations of the data indicate the following:

- i. Values of pH at the undisturbed watershed station (HSW-1) ranged from 6.2 to 8.7 s.u., averaging 7.1 s.u., and pH of the disturbed watershed station (HSW-2) ranged from 6.5 to 8.4 s.u., averaging 7.6 s.u.
 - ii. TDS concentrations at the undisturbed watershed LTSM station ranged from 68 to 1,614 mg/L, averaging 368.2 mg/L, and TDS concentrations from the disturbed watershed station ranged from 9 to 990 mg/L, averaging 505.4 mg/L.
 - ii. TSS concentrations from the undisturbed watershed LTSM station ranged from 1 to 108 mg/L, averaging 26.4 mg/L, and TSS concentrations from the disturbed watershed station ranged from 1 to 174 mg/L, averaging 20.3 mg/L.
 - iii. Total iron concentrations measured at the undisturbed watershed station ranged from 0.1 to 6.0 mg/L, averaging 1.3 mg/L, and total iron concentrations at the disturbed watershed station ranged from 0.02 to 9.2 mg/L, averaging 0.8 mg/L.
 - iv. Total manganese concentrations at the undisturbed watershed station ranged from 0 to 3.1 mg/L, averaging 0.4 mg/L, and total manganese concentrations at the disturbed watershed station ranged from 0 to 0.6 mg/L, averaging 0.1 mg/L.
- b. A comparison of LTSM data for disturbed LTSM station HSW-2 to baseline surface-water data for the same station indicates that the average pH (7.6 s.u.) is slightly higher than the baseline average pH (7.2 s.u.), and that the pH range (6.5 s.u. to 8.4 s.u.) is larger than the baseline pH range (6.8 s.u. to 7.9 s.u.). The average TDS concentration (505.4 mg/L) is higher than the baseline average TDS concentration (434.6 mg/L), and the range of TDS concentrations (9.0 mg/L to 990 mg/L) is somewhat larger than the baseline TDS range (206.0 mg/L to 814.0 mg/L). The average TSS concentration (20.3 mg/L) is lower than the baseline average TSS concentration (41.3 mg/L), and the range of TSS concentrations (1.0 mg/L to 174.0 mg/L) is larger than the baseline TSS range (5.0 mg/L to 131.0 mg/L). The average Fe concentration (0.8 mg/L) is less than the baseline average Fe concentration (1.5 mg/L), and the range of Fe concentrations (0.02 mg/L to 9.2 mg/L) is larger than the baseline Fe range (0.1 mg/L to 1.3 mg/L). The average Mn concentration (0.1 mg/L) is less than the baseline average Mn concentration (0.5 mg/L), and the range of Mn concentrations (0.0 mg/L to 0.6 mg/L) is smaller than the baseline Mn range (0.1 mg/L to 1.3 mg/L).
- c. A comparison of LTSM data for disturbed LTSM station HSW-2 to stream segment criteria indicates that the average pH (7.6 s.u.) is within Stream Segment No. 0804 criterion for pH (6.5 - 9.0 s.u.), and that the pH range (6.5 s.u. to 8.4 s.u.) is within

disturbed LTSM Station HSW-2 (383.9 mg/L) is below the maximum annual average TDS concentration criterion for Stream Segment No. 0804 (600.0 mg/L).

- f. Staff concludes that Luminant has demonstrated that disturbance to the hydrologic balance has been minimized in the permit and adjacent areas, and that material damage has been prevented outside the permit area. Staff recommends Phase II and III release from reclamation liability obligations for the proposed 50.36 acres.
23. Staff also noted that there is one permanent diversion (Pin Oak Creek re-Establishment) and two roads (B-Area Shop Entrance Road and BR06 Access Road Modification) within the 50.36-acre area requested for Phase III release [Finding of Fact No. 16, *supra*]. The structures and the surrounding areas were observed to be structurally stable and well vegetated, and copies of the approval letters are included in Section VI of the Application. Staff notes that no small depressions, permanent impoundments, or drop structures were identified as present within the areas proposed for Phase III release.
24. The area requested for release of reclamation obligations is capable of sustaining the approved postmine land uses. Monthly inspections, the release inspection on June 13, 2019, and Staff's evaluation in its February 4, 2020, TA, demonstrate that the land has been reclaimed to and managed in accordance with the requirements for the approved postmine land uses.
25. Pursuant to §12.313(a)(3), the Commission may release the requested portion of the bond attributable to the subject 586.7 acres upon a determination that reclamation has been successfully completed in accordance with the terms of the approved permit and the requirements of the Act and the Regulations. As a result of being granted the various Phases I, II and III release of reclamation obligations on this area, Luminant is eligible to reduce the bond amount for Permit No. 3F. The last bond-map update and reclamation cost estimate ("RCE") were approved administratively by letter dated December 6, 2017 (Revision No. 53). The reclamation costs were derived from Luminant's reclamation cost analysis (\$16,363,718) prepared for Revision 53. No reduction of the \$975,000,000 blanket collateral bond approved by Order dated September 27, 2016, is requested by Luminant in the Application [Finding of Fact No. 3, *supra*]. If the Application is approved by the Commission as proposed, then Luminant will be eligible to reduce its performance bond obligations by \$1,839,984.52, as determined by Staff, based on the most recent RCE and bond map (Revision No. 53). The Commission considers this specified reduction amount to only be an estimate provided for illustration purposes. The actual amount of any eligible reduction would be calculated based on the costs for reclamation at the time that Luminant requests an actual bond reduction, thereby ensuring that the proposed bond amount always remains sufficient to cover the cost of outstanding reclamation work. Additionally, since the Commission is not required under the Act or the Regulations to determine an eligible bond reduction amount when approving an application for release,

this Order only prescribes that Luminant is eligible to reduce the amount of bond attributable to the 586.7 acres granted the requested phases of release.

26. No silt dams are present within the areas requested for Phase II and III release. [§12.344].
27. No rills or gullies were present within the areas requested for Phase II and III release that would require repair. The areas have been stabilized to reduce the potential for contributing suspended solids to streamflow. [§12.389].
28. All acres requested for release were marked in the field to distinguish them from active mining and reclamation areas.
29. 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. No exceptions to the proposed order were filed.
30. Open meeting notice has been posted for Commission consideration of this Application in accordance with Tex. Gov't Code Ann. Ch. 551 (Vernon Supp. 2020).

CONCLUSIONS OF LAW

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

1. Proper notice of application and notice of consideration by the Commission has been provided for this request for release of reclamation obligations.
2. No public hearing was requested, and none is warranted.
3. Luminant has complied with all applicable provisions of the Act and the Regulations regarding notice for Commission jurisdiction to allow consideration of the matter.
4. Luminant has complied with all applicable provisions of the Act and the Regulations for the acreage requested for release as set out in the Findings of Fact and Conclusions of Law.
5. The Commission may approve a release of Phase I reclamation obligations for 536.34 acres, Phase II and III reclamation obligations for 37.04 acres, and Phase I, II and III reclamation obligations for 13.32 acres, as set out in the above Findings of Fact and Conclusions of Law.

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6. Luminant is eligible to reduce the bond for the permit by the amount that is attributable to the subject aggregate 586.7 acres in future bond adjustments.

IT IS THEREFORE ORDERED that the above Findings of Fact and Conclusions of Law are adopted;

IT IS FURTHER ORDERED that release of Phase I reclamation obligations for 536.34 acres, release of Phase II and III reclamation obligations for 37.04 acres, and release of Phase I, II, and III reclamation obligations for 13.32 acres as set forth in the above Findings of Fact are hereby approved;

IT IS FURTHER ORDERED Luminant is eligible to reduce the amount of bond for the permit by the amount that is attributable to the 586.7 acres granted release in this Order;

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

IT IS FURTHER ORDERED that the current bond remains in effect according to its terms until otherwise ordered by the Commission;

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

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Luminant Mining Company LLC
Permit No. 3F, Big Brown Mine

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, then 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 June 16, 2020.

RAILROAD COMMISSION OF TEXAS

DocuSigned by:

Wayne Christian

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CHAIRMAN WAYNE CHRISTIAN

DocuSigned by:

Christi Craddick

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COMMISSIONER CHRISTI CRADDICK

DocuSigned by:

Ryan Sitton

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COMMISSIONER RYAN SITTON

ATTEST:

DocuSigned by:

Callie Farrar

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Deputy Secretary
Railroad Commission of Texas

