

APPROVED

DATE: 6-19-08

[Signature]

MOTION

June 19, 2008

**Coteau Properties Company
Bond Release No. 2, Permit NACT-9101
Approval**

Case No. RC-06-527



I move the Commission approve Bond Release No. 2 for Surface Coal Mining Permit No. NACT-9101, held by the Coteau Properties Company for the Freedom Mine, to release all reclamation liabilities on 318.3389 acres of land located in a portion of Section 20, T145N, R86W, Mercer County. The release will become effective July 21, 2008, unless a formal hearing is requested.

JRD, DKM & GAW

Caselib\060527\motion.doc

PUBLIC SERVICE COMMISSION
Reclamation Division

Memorandum

TO: Commissioners Wefald, Cramer and Clark
FROM:  Jim Deutsch, Dean Moos and  Guy Welch
DATE: June 11, 2008
SUBJECT: Bond Release No. 2 to Surface Coal Mining Permit NACT-9101 held by the Coteau Properties Company, Case No. RC-06-527

Summary – On December 20, 2006, the Coteau Properties Company filed the application for Final Bond Release No. 2 to Surface Coal Mining Permit NACT-9101 requesting release of all reclamation liabilities on 318.3389 acres of land at the Freedom Mine. The proposed bond release tract contains approximately 131.4 acres of reclaimed native grassland, 46.3 acres of redisturbed orphan (pre-law) spoil and 140.6 acres that were not disturbed by mining activities. The redisturbed orphan spoil has been reclaimed to grassland (26.7 acres), a conservation tree planting (17.9 acres) and a developed water resource (1.7 acres). The reclaimed lands are subject to our current reclamation law and rules and Coteau has demonstrated that the reclaimed lands have met all applicable final bond release performance standards. The Reclamation Division recommends approval of this bond release application based on the findings discussed below.

Discussion – Bond Release Application No. 2 to Permit NACT-9101 pertains to lands located primarily in the N½ of Section 20, T145N, R86W, Mercer County. Coteau owns the N½ of the NE¼ of Section 20, Basin Cooperative Services owns the NW¼ and S½ of the NE¼ of Section 20, and Mercer County owns about 1 acre of redisturbed orphan spoil located in the S½ of Section 20.

Affected areas in the bond release tract were initially disturbed in 1992 and coal removal was completed in 1993. Pre-law orphan spoils were redisturbed to allow for coal removal and to provide access to soil stockpiles located southeast of this tract. Backfilling and grading was initiated in 1993 and completed in 1995. Soil respreading activities were completed in 1995 and 1996 for most of the area except for an access corridor located along the east edge of the tract which was reclaimed in 2000. The topsoil respread thicknesses ranged from 8 to 12.6 inches and 23 to 40 inches of subsoil were respread on the reclaimed native grassland. Since no topsoil or subsoil was available on the redisturbed orphan spoil, none was respread. The reclaimed native grassland was seeded to the approved native grassland seed mixture in 1995 and 2000. The redisturbed orphan spoils were seeded to a grassland mix in 1996, as was the conservation tree planting. A section line road/trail has been constructed along the north side of this bond release tract.

A variance from the 10-year revegetation responsibility period was approved by the Commission in September of 2005 for the area reclaimed in 2000, which consists of 6.92 acres of reclaimed native grassland and 16.42 acres of redisturbed orphan spoil. This variance allowed the entire tract to be eligible for final bond release at the same time, with the 10th year of the responsibility period being 2006.

Basin Cooperative Services and Coteau agreed that vegetation sampling data from their portions of this bond release tract could be combined for the purpose of demonstrating revegetation success. The Reclamation Division concurs that this is acceptable since the property was mined, reclaimed and managed during the responsibility period as a single unit. The reclaimed native grassland was initially hayed and has been managed with livestock grazing since 1998. A developed water resource was constructed in the redisturbed orphan spoil and the balance of the reclaimed orphan spoil is being left idle to function as fish and wildlife habitat.

There have been no previous bond releases on this property. Therefore, first (backfilling and grading), second (soil resspreading), third (vegetation establishment) and fourth (vegetation performance standards) stage bond release is being requested for this property at this time.

Coteau demonstrated that the revegetation performance standards have been achieved for each land use as discussed below and described in the bond release application. A small scale map of the bond release area is attached.

Reclaimed Native Grassland – The reclaimed native grassland was seeded with seven species, western wheatgrass, slender wheatgrass, green needlegrass, blue grama, sideoats grama, switchgrass and little bluestem, in 1995. Vegetation sampling data from the last two years of the responsibility period, 2005 and 2006, show that the revegetation standards have been achieved as summarized in the tables below. The productivity and cover standards were developed using the premine soils data for the Dakota Star Region of the mine as approved in Coteau’s Consolidated Vegetation Success Standards (CVSS) document. Production and ground cover values are listed in the table below for 2004, 2005 and 2006.

Year	Production (lbs/acre)		Ground Cover (%)	
	Standard	Reclaimed	Standard	Reclaimed
2004	896	1,734	89.5	98.9
2005	2,023	3,339	89.2	98.6
2006	1,143	1,478	89.3	98.7

The diversity and seasonality standards for reclaimed native grassland require that at least five native grass species must be present, and native plant species must comprise at least 65% of the total relative live vegetation composition by cover or weight. Four native species must each comprise at least 3% of the relative live composition by cover (5% if production data is used). Native warm season grasses must comprise at least 15% of the total relative live composition and at least one cool season and two warm season species must each comprise at least 3 percent of the relative composition if cover data is used to show this standard was met (or at least 5% relative composition if production data is used).

Sampling data in the bond release application shows that 6 native grass species were present during 2005 and 2006, and these species comprised at least 88% of the live cover composition. Three native warm season species comprised at least 24% of the relative live cover composition during the last two years of the responsibility period. One cool season species, western wheatgrass, and three warm season species, sideoats grama, blue grama and switchgrass, each contributed at least 3 percent of the relative composition during the last two years of the responsibility period. The seasonality and diversity values are listed in the tables below.

Seasonality	Standard	2004	2005	2006
% Warm Season Composition	15	27	27	24
Number Cool Season Species >3%	1	2	2	1
Number Warm Season Species >3%	2	3	4	3

Diversity	Standard	2004	2005	2006
Total Number Species Present	5	7	6	6
Number Species >3% Composition	4	5	6	4
% Native Species Composition	65	97	99	88

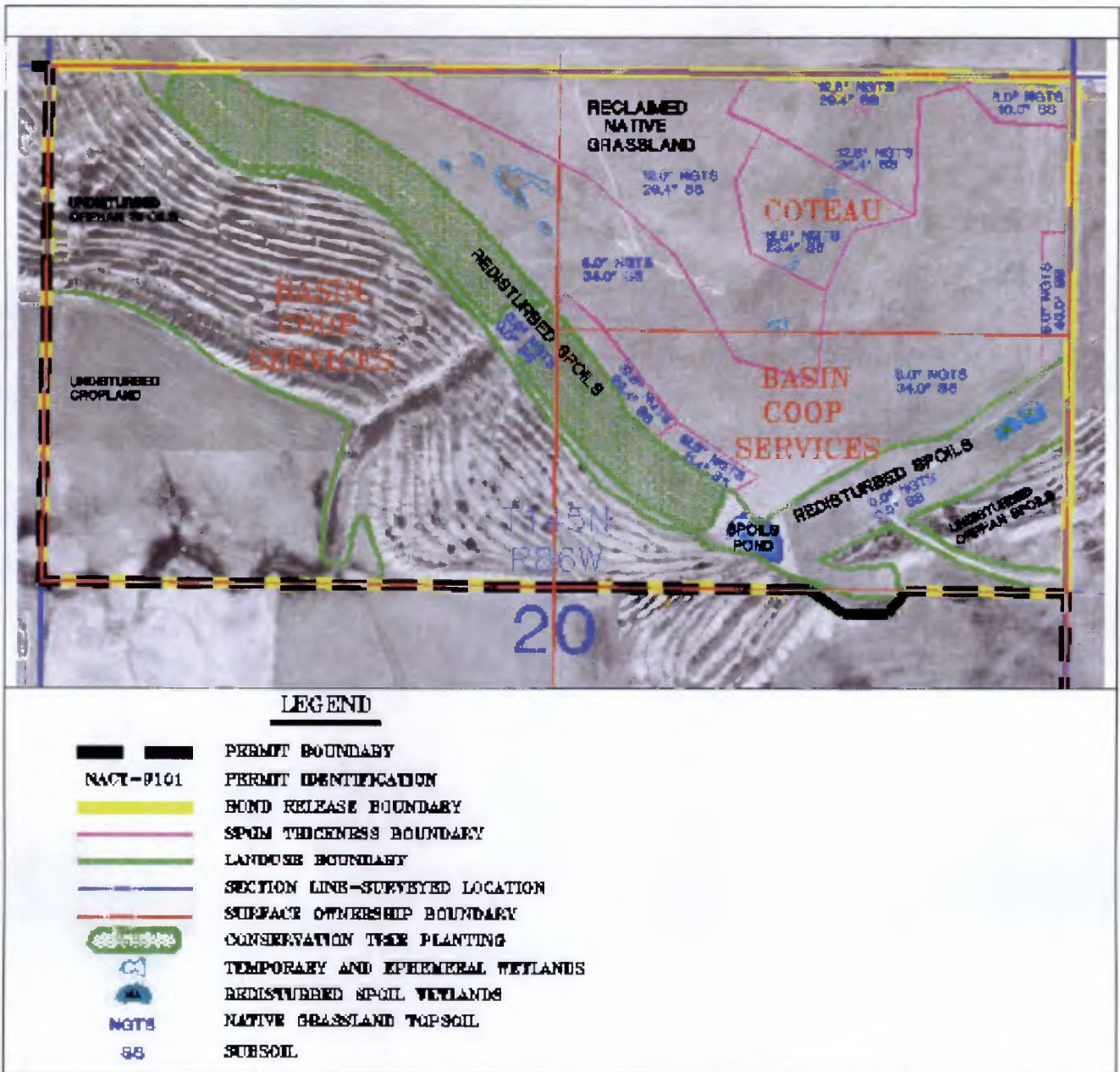
Highly invasive introduced species that are capable of invading and displacing the native species must not be present on reclaimed native grassland in quantities that may be considered detrimental to the land use. This is a subjective standard that is to be evaluated at the time of the final bond release inspection. During the bond release inspection, Kentucky bluegrass was noted as being present as a secondary species. The bond release sampling data shows that it comprised less than 6 percent of the relative live ground cover composition in the 2005 and 2006. Other invasive species, such as smooth brome grass and crested wheatgrass, were not noted as being prevalent during the bond release inspection.

Redisturbed Orphan Spoil – Some of the pre-law spoils in Section 20 were reaffected by Coteau to accommodate the mining on adjacent lands. As previously mentioned, no topsoil or subsoil was available for salvaging on the disturbed orphan spoil, thus none was respread. The affected areas were graded to ensure runoff would be contained in the pre-law spoil areas and this land was essentially reclaimed to function as fish and wildlife habitat. A 17.9 acre conservation tree planting was established consisting of 16 species of trees and shrubs. Grass barriers were established between the tree rows. A developed water resource was constructed on a portion of this land and serves as a water source for the adjacent reclaimed native grassland included in this bond release. The balance of the redisturbed orphan spoil was seeded to a diverse mixture of 17 species of native and introduced grasses. Two small temporary wetlands were constructed in the orphan spoil grassland area. These temporary wetlands are functioning as intended. The developed water resource is fenced with the adjacent reclaimed native grassland, but the balance of the redisturbed orphan spoil is fenced to exclude livestock.

The revegetation performance standards for the redisturbed orphan spoil is that ground cover must not be less than can be supported by the best available plant growth material in the reaffected area, nor less than the ground cover existing before redisturbance. Sampling data in the bond release application shows that the reclaimed orphan spoils have greater ground cover than the adjacent undisturbed pre-law orphan spoils as shown in the table below. The data below shows the mean cover value for the grassland area and the grass barriers planted between the tree rows in the conservation tree planting. The trees and shrubs planted in the conservation planting have established quite well considering no soil was respread. A fabric weed barrier was used to help the trees and shrubs establish. A 1999 tree and shrub survival count survey showed a 90% survival rate. There are no specific success standards for conservation tree plantings.

Year	Undisturbed Spoils Ground Cover	Reclaimed Spoils Ground Cover
2005	85.2%	91.1 %
2006	85.2%	89.0%

The small area of redisturbed orphan spoil located in the S½ of Section 20 owned by Mercer County was reclaimed to grassland. This area is well established with vegetation.



Coteau has completed surface and ground water post-mine hydrologic assessments for the bond release and adjacent area. The reports show that there was no material damage to the hydrologic balance outside the permit area. Coteau noted that the wildlife habitat value of the bond release area has been improved and wildlife monitoring shows that a variety of wildlife utilize the area.

General Information - The formal final bond release inspection was conducted on September 27, 2007. Dave Nilson, Basin Cooperative Services, and Frank Bitterman, Mercer County Commissioner, participated in the final bond release inspection as surface owner representatives. Four representatives from the Coteau Properties Company participated in the inspection. Other representatives from various state and federal agencies were invited, but did not participate in the inspection. Commissioner Tony Clark and six Reclamation Division staff members participated in the inspection. Some minor erosion was identified during the inspection where cattle trail and congregate near the developed water resource and Coteau has repaired these features. No issues were identified during this inspection that would prevent final bond release approval.

The reclaimed native grassland is supporting a very good stand of native vegetation and native forb species were also noted on the tract. Curleycup gumweed was quite abundant, but this species was not viewed as a problem due to its cyclic nature. Some Canada thistle and wormwood were present as scattered plants. The necessary support facilities, i.e., fence and livestock water, are in place to support the post-mine land use. The pre-mine capabilities of the land have been restored. A few low areas where water temporarily ponds are present on the reclaimed native grassland. These features are replacing the pre-mine temporary wetland that existed in the area and they are not considered detrimental to the post-mine land use.

A single salt-cedar tree was identified at the disturbance boundary in the pre-law orphan spoils. This species is a new invasive state listed noxious weed and Coteau took measures to eradicate the plant.

The bond release tract was soil probed in October 2005 by Reclamation staff to verify the soil respread thicknesses. The actual topsoil and subsoil thicknesses were close to the approved respread depths and any variation was within acceptable limits. The Mercer County Highway Department provided a letter accepting the reconstructed section line road that is partially within this bond release application.

Notice of the bond release application was published in the official county newspaper, the Hazen Star, and Beulah Beacon and Bismarck Tribune weekly from August 23rd through September 13, 2007. No objections to this bond release application were received.

Coteau is not requesting any reduction in the bond amount since this area is currently covered by a worst-case reclamation condition that still exists at the Freedom Mine. This area is part of a consolidated bond area that includes Permit NACT-9101 and others at the Freedom Mine. If Bond Release No. 2 to Permit NACT-9101 is approved, Coteau Properties Company will be released from all reclamation liabilities the on 318.3389 acres of land. Assuming June 19th approval, the bond release will become effective July 21, 2008, unless a formal hearing is requested.

Attached are a motion and award form for consideration at the June 19, 2008 Commission meeting.

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Coteau Properties Company
Bond Release No. 2, Permit NACT-9101
Approval

Case No. RC-06-527

RELEASE OF BOND
FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS

June 19, 2008

Based on the application for **Bond Release Number 2 for Surface Coal Mining Permit NACT-9101**, received December 20, 2006 and all information and documentation contained therein, the North Dakota Public Service Commission finds that:

1. Attached to the Application for Release of Bond were copies of all letters sent by the Permittee as required by NDCC §38.14.1-17(1)(b). Affidavits of publication for the advertisement required by NDCC §38.14.1-17(1)(a) have been filed and have been made part of the Application for Release of Bond. The last date of publication was September 13, 2007.
2. On September 27, 2007, the Commission conducted an inspection and evaluation of the reclamation work involved in this bond release as required by NDCC §38.14.1-17(3). The surface owners, agents, or lessees were given notice of the bond release inspection and had the opportunity to participate with the Commission in conducting the inspection of the bond release areas at the Freedom Mine.

In accordance with NDCC §38.14.1-17, Bond Release No. 2 for Surface Coal Mining Permit NACT-9101 is hereby granted to the Coteau Properties Company effective July 21, 2008, unless a formal hearing is requested. No monetary release is being requested since the current bond amount is based on the worst-case reclamation condition in a consolidated bond area that includes this permit and others at the Freedom Mine. The area is described by metes and bounds descriptions and is generally as follows:

A portion of Section 20, T145N, R86W, Mercer County,
releasing all reclamation liabilities on 318.3389 acres.

The decision to release all remaining bond on this acreage is made for the following reason:

The Coteau Properties Company has met the requirements of the reclamation law and rules administered by the Commission for successfully reclaiming 131.4 acres of native grassland and 46.3 acres of orphan spoils. The bond release area also includes 140.6 acres of land that were not affected by Coteau's mining activities. The vegetation success standards and all other applicable performance standards have been met to the satisfaction of the Commission. The acreage included in this bond release is subject to the 1979 reclamation law.

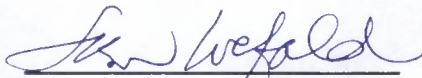
IMPORTANT – PLEASE READ

1. If bond release has been approved, actual release of bond shall not occur until the effective date of this decision. If a formal hearing is requested on this bond release decision by a person with a valid legal interest or by the head of any state or local government agency with appropriate jurisdiction, the actual release of bond may not occur until after a final decision is issued following the formal hearing. A request for formal hearing by any such person must be filed with the Public Service Commission within 30 days of this bond release decision.
2. If bond release has been disapproved or if you are unsatisfied with the amount of bond approved for release, you have the right to request a formal hearing regarding this decision by filing an application for a hearing with the Public Service Commission within 30 days of the date of this decision.

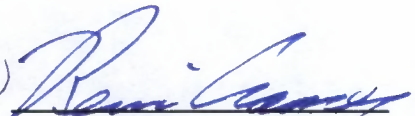
PUBLIC SERVICE COMMISSION



Tony Clark
Commissioner



Susan E. Wefald
President



Kevin Cramer
Commissioner

Attachment II – Metes and Bounds Description

A tract of land for final bond release in Section 20, T145N, R86W of the 5th P.M., Mercer County, North Dakota, described as follows:

Beginning at the northwest corner of said Section; thence S 89°28'26" E a distance of 2620.52 feet to the north ¼ corner of said Section; thence S 89°28'26" E a distance of 2620.52 feet to the northeast corner of said Section; thence S 00°37'33" W a distance of 2638.44 feet to the east ¼ corner of said Section; thence N 89°24'11" W a distance of 809.92 feet on the east-west ¼ line of said Section; thence S 40°50'28" W a distance of 157.36 feet; thence N 89°24'09" W a distance of 225.38 feet; thence N 54°37'30" W a distance of 210.57 feet to the center-east 1/16 corner of said Section; thence N 89°24'11" W a distance of 1309.93 feet to the center ¼ corner of said Section; thence N 89°23'39" W a distance of 2630.80 feet to the west ¼ corner of said Section; thence N 00°50'07" E a distance of 2631.57 feet to the point of beginning.

Said tract having an area of 318.3389 acres.

All bearings and distances are based on the North Dakota State Plane Coordinate System, South Zone, NAD 27.