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PUBLIC SERVICE COMMISSION

August 22, 2008

FROM DIRECTOR - RECLAMATION DIV.

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Mr. James R. Deutsch
Director, Reclamation Division
Public Service Commission
600 E Boulevard Ave, Dept 408
Bismarck ND 58501-0480

Dear Mr. Deutsch:

Re: Revision No. 24, KRSB-8802

The following is submitted in response to the Commission's Technical review letter of August 1, 2008. The individual deficiency comments are set forth below followed by Dakota Westmoreland's responses and a listing of revised information. Two sets of the revised information are enclosed.

Table of Contents

1. Please review and update the Table of Contents to reflect changes that have been made to the permit with this revision. Specifically, we noted the following items that need to be updated, but there may be others as well:
 - Please add Exhibit 2.4.6d to the listing. (SAS)
 - Please add a listing for the Revision 24 area discussion to Section 2.6. It appears the numbering sequence has also been changed since the Revision 24 discussion is now numbered as 4 and the Rare...Plants is now listed as number 5 on page 2.6.43. The Table of Contents lists the Rare....Plants discussion as number 4. Please correct as necessary. (SAS)
 - Subsection "L" of Section 2.5 is being added with Revision 24 and subsection 5 of "I" is being added to Section 2.6. The Table of Contents needs to be updated to reflect these additions, plus all other changes. (GAW)
- The Table of Contents has been updated per your recommendation. In addition, several other corrections were made to the TOC (after a top to bottom review of the document) to ensure it was up to date.

Revision Narrative

2. The Revision Narrative indicates that 54.4 acres will be added to the permit and other narrative in the cover letter, notice of application, and all other revision documents indicate that 54.5 acres will be added to the permit. Please review and correct. (BEB/MDB)
 - The correct acreage is 54.5 acres. The Revision Narrative will be re-sent with the correct acreage in addition to the new Revision Narrative for the Technical Review.

Section 1.4 – Business Entity Information

3. Please include the necessary approvals from the North Dakota Department of Transportation to conduct mining operations within 100 feet of the outside right-of-way of Highway 49 related to the construction of the dragline walkway. The letter from DOT that is included on Exhibit 3.1.8 does not appear to be an approval letter in that they indicate that they are in the process of reviewing the details and will forward their findings in the near future. (DKM)
 - DWC is presently working with the North Dakota Department of Transportation – Dickinson Office. The DOT has recently requested minor changes to the construction sign and barricade location details. No changes are needed for the actual detour road alignment. The map, Exhibit 3.1.8a will be changed as requested by the DOT and the final approval will be forwarded to the PSC when we get it.

Section 2.

4. Please update the pre-mine facilities map or other maps that show the location of all surface and subsurface manmade features within, passing through, or passing over the permit area, including electric transmission lines, pipelines, agricultural features, wells, roads, highways, railroads and the other features listed in NDAC 69-05.2-08-02 for the Revision 24 addition area. It is not clear in the table of contents where this information can be found. (GAW)
 - Exhibit 3.1.6 has been updated per your recommendation to contain all of the features listed in NDAC 69-05.2-08-02. The Exhibit does not contain, however, wells (Exhibit 2.3.1) or haul roads (Exhibit 3.1.3).

Section 2.5 – Wildlife Inventory and Plan

5. The first paragraph of the Revision 24 addition area references Exhibit 2.5.2. However, it appears this should reference Exhibit 2.5.1 rather than 2.5.2. In addition, this paragraph states that the habitat classifications and changes are displayed on Exhibit 2.5.2a; however, the map is labeled as Exhibit 2.5.1a. Please review and correct as necessary. (GAW)
 - The correction to the references of Exhibit 2.5.1 and Exhibit 2.5.1a in the narrative have been corrected to correlate with the maps labeled Exhibit 2.5.1 and 2.5.1a.
6. In the Revision 24 area discussion on page 2.5.60, please specifically state whether there have ever been any sightings of threatened, endangered or candidate species on the addition area or if the addition area contains habitat suitable for any of these species. (GAW)
 - A paragraph has been included in the wildlife discussion on page 2.5.60 addressing the observations of threatened, endangered or candidate species listed by the US Fish & Wildlife Service and suitable habitat for these species. Attached are the updated pages 2.5.60 through 2.5.65.

Section 2.6 – Pre-mining Vegetation Inventory

7. A new version of Table 1, Exhibit 2.6.15, is being added with Revision 24, but it appears no changes are being made to the table. Please explain why the table was replaced. (GAW)
 - Although no changes were made to page 1, the entire two-page exhibit was replaced, rather than just the second page.
8. Table 2, Exhibit 2.6.15, is being updated to show that the Revision 24 addition area contains 1.9 acres of tame pastureland, but this acreage is not clearly depicted on the Pre-mining Land Use and Vegetation Mapping Units Map, Exhibit 2.6.1. Please revise the map, Exhibit 2.6.1, to clearly identify this area using the appropriate legend for the land use boundary line. (GAW)
 - No tame pastureland acres are being added to the permit; Exhibit 2.6.15 has been corrected.
9. Tables 2 and 3, Exhibit 2.6.15, have been revised to show that an additional 1.9 acres of tame pasture and 53.2 acres of native grassland are being added with Revision 24. However, these values total to more acres than those being added with Revision 24. Also, the added acreage contains a developed water resource (1.1 acre in size according to Section 2.7 of the permit). Please review and revise as necessary. (GAW/SAS)
 - As the preceding response indicates, the 1.9 tame pastureland acres are being expunged from the table. The native grassland and developed water resource acres equal the total being added to the permit, with allowance given for rounding error.
10. The tame pastureland acres added to Table 2 of Exhibit 2.6.15 were added to landowner Boland et al. According to Exhibit 1.4.1 this land is owned by Coyote Partners. Please explain this discrepancy or make the appropriate correction. (SAS)
 - The acreage addition was in error and the acres have been removed.
11. The tame pastureland acreage of the Heth property increased by 0.4 acres with changes being made by Revision 24. Please explain the reasons for the acreage change or otherwise correct. (SAS)
 - The acreage addition was in error and the acres have been removed.
12. Information on revised page 2.6.42 submitted with Revision 24 does not match up with page 2.6.41 in the permit. There seems to be some information missing on the transition from one page to the next. Please review and correct as necessary. (SAS)
 - The narrative gap has been closed.

13. In the Revision 24 area narrative on page 2.6.42, please list the seed mixture that was planted on the areas that were previously disturbed and bond released (stockpile site and access trails) and identify these areas on the Pre-Mining Land Use and Vegetation Mapping Units Map, Exhibit 2.6.1. If these areas were planted with introduced species, it may be more appropriate to classify them as tame pastureland rather than native grassland based on these land use definitions. The narrative discussion states that these previously disturbed areas and the old fields are dominated with introduced species such as smooth brome grass, crested wheatgrass, alfalfa, Kentucky bluegrass and absinth wormwood which raises questions why the sites are being classified as native grassland. Please review and discuss this issue in the Revision 24 area narrative. (GAW)

- We have identified the species planted on the pond 12 embankment and east inslope, as well as the mix and individual species rates for the pond 52 access road. We have not found information on stockpile areas seeding. The information we have has been added to the narrative and areas disturbed by mining activities have been identified on Exhibit 2.6.1. We debated whether or not to classify portions of the revision area as tame pastureland, particularly the oldfields. Ultimately, after weighing factors such as the size and shape of such areas, species planted, presumed land use intentions, pasture management, and dominant species, we decided to label the grassland portions as native grassland. Based on the appearance of the vegetation stand, there is reason to doubt that the oldfields were planted with the tame species now present. With maturation of the vegetation in general and species such as absinth in particular, the tamegrass profile has diminished and they probably no longer rate as the overall dominant class on areas such as the west oldfield.

14. The Revision 24 addition area discussion mentions that the undisturbed native grassland has been invaded by smooth brome grass and crested wheatgrass in a form that ranges from individual plants to small patches affecting virtually every acre. In the narrative, please include an estimate of the relative percentage of total composition that these and other introduced species comprise and include species composition estimates showing the range condition rating for each major range site present on the land being added with Revision 24. An estimate of the annual production for the mapping units is also required. NDAC 69-05.2-08-08(1)(c)(2), NDAC 69-05.2-08-08(1)(c)(3) and PSC Guidelines Doc, II-D-2. (GAW)

- An estimate for the relative percentage of production occupied by the tame species has been added to the narrative. In addition, range condition has been evaluated and species/group composition and total range condition rating has been tabulated in Exhibit 2.6.16. A tabular estimate of the annual production has been inserted into the narrative.

15. Please provide an assessment of the annual production, based on actual data or NRCS estimates, for the tame pastureland being added to the permit and provide an estimate of the relative proportion of the species composition of the tame pastureland. NDAC 69-05.2-08-08(1)(d) and PSC Guidelines Doc, II-E-2. (GAW)

- After correction, no tame pastureland is being added to the permit.

16. Although some general language has been added to Section 2.6.42 discussing the vegetation on the addition area, NDAC 69-05.2-08-08(1)(d) requires a detailed narrative describing the nature and variability of the vegetation in each mapping unit and land use category, based on a thorough reconnaissance and qualitative assessment. Please provide the required information for the area being added with Revision 24. (GAW)
 - Discussion of land uses and mapping units has been expanded, particularly with respect to range condition evaluations.
17. Please review and update the native grassland species list if necessary for the land being added with Revision 24. In the narrative being added to the permit, please specifically state when the area was inspected to update the species list and who inspected the area. NDAC 69-05.2-08-08(1)(b). (GAW)
 - A few new species have been added to Exhibit 2.6.2 and the text of Section 2.6 now gives evaluation dates and evaluator.
18. Please discuss if the existing native grassland reference areas (sandy site) adequately characterize the relevant mapping units which they propose to represent in the Revision 24 addition area and provide recent native grassland reference area sampling data to demonstrate this as required in NDAC 69-05.2-08-08-(2) and PSC Revegetation Doc, II-D-2. (GAW)
 - A new section (5) addressing the native grassland reference area has been added to the Section 2.6 narrative. Exhibit 2.6.17, containing historic reference area production and cover data, has also been added to evidence suitability of the Sandy reference area.
19. The footnote previously listed at the bottom of Exhibit 2.6.15 (as shown in the permit) has been removed yet most of the acreages are the same as currently listed in the permit. Does this change mean that the footnote no longer applies and the missing portions of Sections 11, 12, and 14 have now been included? If so, why are there no major changes in the acreages except for tame pasture and native grassland listings that account for the acres being added with this revision? Please review and explain. (SAS)
 - The footnote was inadvertently omitted and has been reinstated.

Section 2.7 – Land Use

20. Section 2.6, Pre-Mining Vegetation Inventory, indicates that the Revision 24 area contains 1.9 acres of tame pastureland but the Pre-Mining Land Use Table on page 2.7.1 has not been updated to show that this is the case. Please review and update as necessary. (GAW)
 - No tame pastureland is being added to the permit.

21. Please explain or correct the following discrepancies between Exhibit 2.6.15 and the Pre-Mining Land Use Table on page 2.7.1:

- The exhibit indicates 2629.3 acres of cropland but the table lists 2719.4 acres;
- The exhibit indicates 498.6 acres of hayland but the table lists 430.6 acres;
- The exhibit indicates 216.7 acres of tame pastureland but the table lists 221.2 acres; and
- The exhibit indicates 427.3 acres of native grassland but the table lists 533.8 acres.

Does the footnote that was deleted from the bottom of Exhibit 2.6.15 account for some these differences? (SAS)

➤ The differences are attributed to the circumstances explained by the footnote.

22. During the review of this revision we noted that the right-of-way of Highway 49 and that of other public roads in the permit area are not classified as industrial/commercial or separately listed as public roads. However, these public roads should be classified as industrial/commercial or public roads. Since these road right-of-ways have not been previously shown as a separate land use, it is not necessary to update the permit at this time to make this correction. However, since other land use changes are being made with Revision 24, we recommend that DWC consider updating Section 2.7 (maps, narrative, and tables) at this time to make these corrections. (GAW)

➤ Although we have identified improved public roads as industrial/commercial sites in recent years, Highway 49 and others were not identified as such in the “early days.” We would like to maintain the status quo, especially since little, if any disturbance will occur in these corridors.

Section 2.10 – Cultural Resource Inventory and Protection Plan

23. Please provide a cultural resource survey and inventory for the area in the NW¼ of Section 14 that is being added to the permit. It is our understanding that a cultural resources survey has been completed for this area but the results of this survey have not yet been incorporated into the revision. Also, please update the appropriate narrative in Section 2.10, the survey boundaries on Exhibit 2.10.1, and include any correspondence from the SHPO related to the survey and significance determinations for this additional area. (DKM)

➤ The cultural resource survey and inventory for this area has been included as Exhibit 2.10.15. Likewise, the section 2.10 narrative and Exhibit 2.10.1 have been updated. Because there are no new sites in this area, no SHPO related significant determinations are forthcoming.

Section 3.1 – General Mining Plan

24. Please include a discussion in the Dragline Walkway section on page 3.1.10 addressing water management plans for the areas of the dragline walkway and associated stockpiles that are not controlled by Pond 12 in accordance with NDAC 69-05.2-16-08(1). (MDB)

- The dragline walkway's runoff from the associated will be controlled via diversion ditches leading into Pond 12. A discussion has been added to the narrative of Section 3.1 (page 3.1.11) and Section 3.2. (Special Note: DWC noticed a page numbering problem with Section 3.1; thus, the entire updated section has been enclosed with this revision.)
25. Please provide the anticipated construction schedule of the dragline walkway in the Dragline Walkway section on page 3.1.10 and indicate when the dragline will be walked to the other permit area. An estimated timeframe for removing and reclaiming the walkway should also be provided rather than leaving that indefinite. In addition, please depict the dragline walkway, including the section that will be located on reclaimed land, on either the Pit Sequence Map, Section 3.1.2, or the Haul Road Map, Section 3.1.3. (DKM & JRD)
- A discussion has been added on pages 3.1.10 and 3.1.11 under the Dragline Walkway section concerning the timing of events associated with the Dragline Walkway. Exhibit 3.1.3 has been updated to depict the section of the walkway that will be located on reclaimed land per your request.
26. Since the dragline will be walking on some in-situ and respread subsoil, please include plans for deep ripping the subsoil prior to topsoil replacement in order to alleviate any compaction resulting from the dragline move. (DKM)
- Before topsoil is respread on the dragline walkway removal area, the subsoil will be ripped to alleviate the compaction caused by the dragline move. The Section 3 Narrative page 3.1.11 has been updated to discuss this.

Section 3.2 – Water Management Plan

27. Pond 12 was previously approved and bond released as a permanent structure and the permit narrative states the pond was designed to pass a 50-year 6-hour event as required by NDAC 65-05.2-16-09(9). However, the calculations provided show a design storm event of a 25-year storm. Please provide the calculations showing that the pond's spillways have the capacity to pass the 50-year 6-hour storm event. (MDB)
- Table 3.2.2 (11) and Exhibit 3.2.2 (11) have been updated to reflect the 50-year-6 hour storm event runoff calculations. Pond 12 principal spillway and emergency combined will be able to pass the 50-year-6 hour event safely without letting the water overtop the embankment. The narrative has been updated to reflect the 50-year-6 hour storm event runoff calculations.
28. Please include a discussion in the narrative and calculations showing that the culvert under the section of dragline trail in the pool area of Pond 12 has adequate capacity to handle the design storm event without overtopping the dragline trail as required by 69-05.2-16-09 (22). (MDB)

- The narrative has been updated to address the culvert's capacity. The culvert going through the subsoil fill area around Pond 12's inlet will have adequate capacity to pass the 50-year-6 hour through to Pond 12's pool area.
29. The Water Management Plan Map shows the Herman sump, which no longer exists, and proposed Pond 69 that may not be built. Please revise the map to reflect current conditions and plans. (BEB)
- Exhibit 3.2.1 has been updated per your request. The Herman hole has been taken off of the map. DWC has no plans of constructing Pond 69 due to the fact the Pond 70 was incised to gain extra capacity.

Section 3.4 – Suitable Plant Growth Material Handling Plan

30. We recommend making the following updates to Exhibit 3.4.1, the map showing the projected Suitable Plant Growth Material Respread Depths:
- The permit boundary should be changed to reflect that the NE¼ of Section 7 has been bond released and is no longer permitted.
 - The area of associated disturbance related to the dragline trail needs to be shown as requiring topsoil respread.
 - Ponds 50 and 51 are shown as temporary structures in Section 3.2 and being reclaimed in Section 3.8; however, Exhibit 3.4.1 does not show these areas as needing soil respread. Please correct. (MDB)
- Exhibit 3.4.1 has been modified to show the bond release in the NE¼ of Section 7 and the mining equipment walkway in the revision 24 area. As indicated in Section 2.7, ponds 50 and 51 are planned to be permanent structures and Exhibit 3.4.1 reflects this. Section 3.2 was updated accordingly; Section 3.8 was updated in Revision #25 (mid-term review).
31. Please update Exhibit 3.4.3, Material Storage Map, as the current permit boundary is incorrect; the NE¼ of Section 7 has been bond released and is no longer permitted. (MDB)
- Exhibit 3.4.3 has been updated with the bond release boundary in the NE¼ of Section 7.

Section 3.5 – Backfilling and Grading

32. The Contour Map of Post-Mining Topography, Exhibit 3.5.3, shows changes to the approved post-mining topography for apparent final pit areas in Sections 19 and 24. However, no changes to the Pit Sequence Map and Mining Schedule are proposed with Revision 24 and the post-mining topography changes in this revision are different from those proposed in the recently submitted Revision No. 25. Based on the major modifications being proposed with Revision 25, we recommend that no post-mining

topography changes for Sections 19 and 24 be included in Revision 24. Please review and correct or explain as appropriate. (GAW/MDB)

- Exhibit 3.5.3 has been updated for Revision 25 as showing the final pit areas being located in Section 19 and 24. Revision 24 will remain as having the final pit areas located in Sections 25 and 30 per your recommendation.

Section 3.8 – Reclamation Cost Estimates and Performance Bond

33. Table 3.8.4 indicates the total available from Stockpiles 1-13-1 and 1-12-1 as 20,257 cubic yards, but Table 3.8.5 indicates scraper production for 20,597 cubic yards. Please correct the discrepancy between the two tables. Also, please reformat Table 3.8.5 so all of the columns are shown. The column “required hours” for a 3 truck/shovel fleet is not shown on the pages submitted with Revision 24. (MDB)

- The reclamation cost estimate and performance bond calculations have been updated with Revision #25 (mid-term review). The total bond cost in Revision #25 is still less than the surety bond for permit KRSB-8802. The PSC and DWC agreed on our August 5th meeting that these costs could be used in lieu of new costs for Revision #24.

34. Table 3.8.10 indicates that 11.4 acres of dragline walkway will be respread which corresponds with the acres shown as disturbed for the walkway; however, it doesn't indicate the acreage in Section 13 which will be disturbed and require reseeding. Please update these values. (MDB)

- The reclamation cost estimate and performance bond calculations have been updated with Revision #25 (mid-term review). The total bond cost in Revision #25 is still less than the surety bond for permit KRSB-8802. The PSC and DWC agreed on our August 5th meeting that these costs could be used in lieu of new costs for Revision #24.

35. Exhibit 2.7.1 indicates the land use for the proposed acreage in Section 14 will be reclaimed to native grassland, but this is not represented in Table 3.8.10. It is actually shown as precrop, hayland, and pasture land. Please update accordingly. (MDB)

- The reclamation cost estimate and performance bond calculations have been updated with Revision #25 (mid-term review). The total bond cost in Revision #25 is still less than the surety bond for permit KRSB-8802. The PSC and DWC agreed on our August 5th meeting that these costs could be used in lieu of new costs for Revision #24.

36. The variable costs in Tables 3.8.10 and 3.8.11 need to be revised to use the updated variable costs that were distributed in July 2008. (JRD)

Mr. Jesse Noel
August 1, 2008
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- The reclamation cost estimate and performance bond calculations have been updated with Revision #25 (mid-term review). The total bond cost in Revision #25 is still less than the surety bond for permit KRSB-8802. The PSC and DWC agreed on our August 5th meeting that these costs could be used in lieu of new costs for Revision #24.

If you have any questions, please contact this office.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jesse Noel', is written over the word 'Sincerely,'.

Jesse Noel, P.E.
Environmental & Engineering Manager
Dakota Westmoreland Corp., Beulah Mine

cc: Paula Gores