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January 28, 2009

Mr. James R. Deutsch
Reclamation Director
Public Service Commission
600 East Boulevard
Bismarck, ND 58505-480

Re: Bond Release No. 1 – Permit BCGH-8801

Dear Mr. Deutsch:

This correspondence contains our response to deficiencies you sent on October 20, 2008.

Application Form

1. The bond release application form indicates that Tract 1 encompasses only Sections 16 and 17, although a small portion of the W½ of Section 15 is included in Permit BCGH-8801 and should be noted in the application form as well. (BEB)

Response: Application form SFN 19813 was changed to indicate that section 15 is in Tract 1. A revised page is included with this correspondence.

Table of Contents

2 The Table of Contents lists Attachments XA and XB which is supposed to represent maps of the various reference areas, although theses attachments do not exist in the submittal. The submittal does have a section labeled Attachment X, but there is no data in the section. Please revise the submittal by incorporating the maps into the hard copy submittal or update the Table of Contents and Attachments XA and XB to indicate that these attachments are on the attached CD. (BEB)

Response: The Table of Contents was revised to indicate that these drawings are on the enclosed CD. Also a page (explanation page) was prepared listing the Basin Drawings in Attachment X. This page gives a short description of the content of each drawing. If a hard copy is desired you can print the .pdf file from the CD and insert it in the application.

Please replace the Table of Contents with the revised Table of Contents included with this correspondence. Also place the explanation page in Attachment X where there is currently no data.

Attachment V

3. The area represented by the dashed purple polygon located directly west of Pond 143-84-21-3F was disturbed and should be shown as such (dashed blue line). If this was a soil stockpile, then also show ingress/egress to the area. (SAS/MDB)

Response: This area is a reclaimed dugout sediment pond that trapped sediment upstream from Pond 143-84-21-3F. Attachment V was changed to show the location of ingress/egress to this area as a light blue line indicative of the total disturbance boundary as shown in the legend.

Four revised copies of Attachment V are included with this correspondence. The Attachment V.pdf file located on the enclosed CD was also revised to show these changes.

Attachment VI

4. Tracts 1 and 2 were recently soil probed to verify the soil respread thicknesses as reported in Attachments VI and VIII. Although the soil probing data has not yet been completely analyzed and summarized, it is apparent that the actual subsoil thicknesses as verified by soil probing are considerably less than the approved respread depths. For example, the portion of Tract 1 that has an approved actual respread thickness of 13/33 had an average actual respread thickness of 13/22 and the portion of Tract 2 that has an approved respread thickness of 11.3/17.4 has an average actual respread thickness of 11/11. Topsoil depths appear to be satisfactory. Please provide an explanation and justification for the reduced subsoil respread thicknesses. (WTG)

Response: The text in Attachment VI concerning soil replacement for each tract was revised on pages 4 and 11.

Topsoil and subsoil volumes used to determine respread depths were those presented in the 1992 and 1993 Annual Reports. Respread depths based on these volumes are identified on Attachment VIII. However, actual respread depth as identified by soil probing show the amount that was respread to be less. This was probably due to inaccurate stockpile volumes that were determined from aerial photography. Also, pre-mine soil surveys that identified other suitable strata were incorrect and less soil was removed from these areas than originally planned. It is important to note that all suitable plant growth material was removed and no soils were mixed between ownerships.

5. The Mining and Reclamation History and the Revegetation narratives on page 11 of Attachment VI states that subareas A, B, C and D were "reseeded" in 1994, 1996, 1998 and 1999. We understand that these were the initial seedings to start the revegetation responsibility period and that the areas were not reseeded to re-initiate the revegetation responsibility period. Please edit the narratives to clarify. (GAW)

Response: The term reseeding was incorrectly used in the narrative of Attachment VI and has been changed on pages 4, 8, 11, 15 and 16

6. The Revegetation narrative on page 11 of Attachment VI mentions subareas 1A, 1B, 1C and 1D. The Management and Weed Control narrative at the bottom of page 15 of Attachment VI mentions subareas 2A, 2B, 3C and 2D while the map, Attachment IX and other narratives identify these areas as subareas A, B, C and D. Please edit the narratives and label the map so that the subarea naming convention is consistent. (GAW)

Response: Changes were made in Attachment VI. In this bond release application, there are 2 tracts identified as Tracts 1 and Tract 2. Within these tracts are subareas identified as A, B, C and D and in Tract 2 subarea E. In some portions of the text the tract number along with the subarea designation was used to identify a subarea. For example, 2A, 2B etc. would indentify Tract 2 subarea A, Tract 2 subarea B etc. Since this caused confusion, all of the text was changed to refer to the subareas in Tracts 1 and 2 as A, B, C and D and in Tract 2 subarea E.

7. Table 2 of Attachment VI indicates that subarea D of Tract 1 was seeded in 1996, but Attachment IX indicates the area was seeded in 1995. Please review and correct. (GAW)

Response: Table 2 was changed. A revised Table 2 is included with this correspondence. Subarea D of Tract 1 was seeded in 1995 and 1999.

8. Table 8 is labeled as "Premine rangeland soils and range site data for Tract 2 –BCS"; however, it appears to be the pre-mine acreage for Tract 1. The acreage amounts are the same for Tables 11 and 12 and they are listed as Tract 1 – BCS. Please review and correct as necessary. (GAW)

Response: This was corrected. A revised Table 8 is included with this correspondence.

9. Tables 11 and 12 list the reclaimed yields for just some of the four reclaimed subtracts (subtracts A, B and C in Table 11 and subtract D in Table 12). Since the yield data was not combined for all of the subtracts, the yields for all of the subtracts should be provided not just the lowest value. Please provide the reclaimed yield data for all the reclaimed subtracts ("A, B and C" and "D") in Tables 11 and 12 as was done in Table 1 (GAW)

Response: Tables 11 and 12 were revised. Yield data for subtracts A, B and C were combined. Quarter meter quadrats were proportionately distributed based on the acreage in each subarea. Therefore, the mean yield for these combined subareas was determined from all 30 ¼ meter quadrats. Subarea D was sampled separately and data shown on Table 1 were added to Tables 11 and 12.

10. In Attachment VI, please include a narrative that identifies the soil mapping units of the native grassland reference areas. Discuss if the native grassland reference areas and the reclaimed native grasslands received equivalent management and mention that the range condition of the reference areas can be found in the summary production data for the reference area range sites. (GAW)

Response: A table providing information about each reference area is provided with this correspondence to be placed in Attachment X.

Also, text was added at the end of Attachment VI and before the Tables that discusses reference area and reclaimed area management.

11. In Attachment VI, or where appropriate, please identify who collected the data that is being used to demonstrate revegetation success of the grasslands, woodlands and cropland, and the sampling methodology used for the native grassland. (GAW)

Response: Data collection was done by BCS personnel and KDK Consulting – owner Kelly Krabbenhoft. This information was added to Attachment VI (see page 18). A section on sampling methodology for native grassland was added beginning on page 18.

12. In Attachment VI, please include a brief discussion of the permanence of the reclaimed native grassland and woodlands. This can be done based on the species seeded, seeding dates and meeting the other success standards. (GAW)

Response: A discussion on permanence was added near the end of Attachment VI (see page 20).

13. On page 16 in the discussion on the "Reclaimed Cropland" there are two "2007" data years. We assume the last one should be 2008? Please review and correct. (SAS)

Response: The table on page 16 was changed.

14. Under the analysis of reclamation success on page 17, we recommend adding a short explanation of why the 2005 and 2006 yields on the reclaimed cropland and control area data were less than half of the unadjusted yield standards. (SAS)

Response: A short discussion concerning the drought in this part of Oliver County was given on page 19. Due to additions to the text, this is now on page 23.

15. The wheat yield data given in Table 1 is listed as "lbs/acre" but likely should be "bu/ac" values. Please correct as needed. (SAS)

Response: Table 1 was revised to identify these values as bu/ac.

16. In Tables 4 and 5, the undisturbed area is referred to as a reference area. The methodology presented in these two tables actually uses the "Reference" area as a "Control" area since it uses that yield to adjust the standard for the reclaimed area. Please re-label the area as a "Control Area" and make the necessary change in the

conclusions on the page. (SAS)

Response: Tables 4 and 5 were revised.

17. In Table 6, the summed weighted yield value for the reclaimed area used to calculate the "unadjusted wheat yield standard" should be listed as 225.7 bushels in the calculation rather than 218.8 bushels as currently shown. (SAS)

Response: This has been changed and a revised Table 6 is included with this correspondence. This did not change the conclusion that the reclaimed cropland yield exceeded the standard.

18. In the titles of both Tables 6 and 7 the wheat yields are referenced to Mercer County. Since the bond release area is located in Oliver County, these references should be changed to Oliver County even though the yield at PI=100 is the same for both counties. (SAS)

Response: Tables 6 and 7 were changed. Revised pages are included with this correspondence.

19. Please provide the unit of measure used for the sample weights in Tables 29 and 30. It is difficult to check out the numbers without knowing this unit. (SAS)

Response: These tables have been changed. Revised pages are included with this correspondence.

20. Please state how the test weight was determined for the crop samples in 2005 and 2006. (SAS)

Response: A test weight of 60 was used in the original application because mean weights (grams) from hand samples were compared. This was changed. The actual test weights are given on Tables 29 and 30. Actual test weights were determined by NDSU after hand samples were threshed.

21. Please include a discussion about retaining the haulroad across the drainage on the section line between Sections 15 and 16 for property access purposes. The application should also include if the culvert under this road is sized properly to handle the expected flows through the channel and provide the necessary calculations or reference the appropriate section of the permit. (GAW)

Response: A narrative concerning retaining the embankment across the drainage between sections 15 and 16 was added on page 23 of Attachment VI.

Retaining the haulroad embankment as a permanent structure was included in the original application during the original review process. Information required for permanent status was requested by the PSC in the initial deficiency letter (see PSC letter 02-07-1989). It was stated in the permit that haulroad design and construction was in accordance with ND Rules 69-05.2-24-02 through 69-05.2-24-05 that were effective at the time of permit approval. Certification by a Professional Engineer was

included in Volume 1, page 3.4-14. Information regarding culverts size and their ability to handle a 10 year 24 hour precipitation event are provided on page 3.6-2. (note: 69-05.2-24-04 required the 10 year 24 hour precipitation event. This was repealed effective May 1, 1992 (after the permit was approved) and this requirement was changed to a 10 year 6 hr storm precipitation event).

A Plan and Profile design was provided on Plate 3.4-1 (see Volume 6). These culverts are identified as culvert 5 in Section 3.4 and are located at station 10+44 and 11+00 on this plate. Specific design information used to determine the size the culvert is provided in Volume 1 Section 3.4 (see page 3.4-9). Also, a discussion regarding reclamation of the embankment was added to Section 4.1 of the permit.

22. Please provide documentation (or refer to information in the permit) demonstrating that for Pond 21-2A will be adequate to meet its intended uses as was done with Pond 21-3F. (MDB)

Response: Ponds 21-3F and Pond 21-2A were proposed as permanent impoundments in Revision 4 that was approved by the Commission on 04/04/1996. In this revision, Pond 21-2A was added to Plate 4.3-1. A discussion on both ponds was added to the reclamation narrative on page 4.1-1. Also, page 3.6-5 of the permit was revised to include these impoundments as permanent. Additionally permanent impoundment information was added to pages 3.6-6, 3.6-7 and 3.6-8 and Appendix 3.6-1 was revised to include permanent impoundment information.

Please note that Pond 21-2A is spring fed and is a permanent water source. Quarterly pond inspections support this conclusion and answer the question concerning its use as wildlife habitat and a livestock water source. Based on this, it is unnecessary to provide watershed and yield data as was the case for 21-3F.

23. Please provide a short narrative referencing the design plans in the permit for the two developed water resources. (MDB)

Response: A short narrative was added to page 17. Pond information can be found in Attachment XI on the CD. Design plates are identified as Attachment XIA, Attachment XIB and Attachment XIC on that CD. Also see the BCS response to PSC comment No 22.

24. Attachment XII, Variance Areas – Post-Mining Topography and Watershed Areas, shows the watershed for Pond 21-3F as being 4.34 acres which is actually the size of the pond. Please update the watershed boundary for this pond to reflect 166 acres of watershed as stated in Table 1, Dugout Specifications and Yield Information. (MDB)

Response: Attachment XII was changed. A revised Attachment XII is included on the enclosed CD.

25. There are three tree species comprising at least 50% of the initial planting rate in Mixed Deciduous Woodland in 2005, according to the workbook labeled BR8801_MDW_2005 in the excel Woody_Quad_Data05-06.xls file. Please review

and update as necessary the workbook and Table 3 of Attachment VI as they currently list only two species. (GAW)

Response: Table 3 was changed to show that 3 species greater than 50% were present in 2005.

26. Attachment III on the CD is a map that shows the entire bond release area as being Tract 1. Please incorporate a boundary that delineates and labels the separate tracts, similar to the hard copy submittal or re-adjust the boundary line in Attachment III of the CD to show only the Tract 1 area if that was the intention. (BEB)

Response: Attachment III on the CD was deleted and the correct Attachment III was added. Please note that Attachment III (hard copy) included in the application was correct. Also, the correct Attachment III was used for the public notice.

Other

27. During the final bond release inspection we noted a gully near the disturbance boundary on the section line common to Sections 16 and 17 and several open trenches in a reclaimed drainage in Section 21. The trenches will need to be filled and the gully repaired prior to final bond release approval.

Response: This work was completed in October of last year.

28. We noted that the apron of one of the culverts through the Section 15/16 embankment is partially detached. This needs to be repaired prior to bond release approval.

Response: This culvert is on BCS owned land. The partial detachment of the apron is not a serious matter. It does not affect the flow function and it is not a threat to the embankment which is over 200 feet wide at the base. Please note that the embankment is rip-rapped all around the culverts. We do not believe this should affect final bond release. In other locations along the haulroad culverts have been installed without these aprons and have functioned perfectly well.

We request that this requirement be reconsidered.

The Reclamation Division provided you with the response to Mr. Bryan Reinhardt on the concerns he raised during the inspection. Please consider removing the large scattered rocks in the drainage above the undisturbed dugout in Section 21 to address this concern raised by Mr. Reinhardt.

Response: Large rock were identified during a late fall PSC inspection and marked for removal. This was completed in October of last year.

At our meeting on Friday January 16 we discussed an inspection to determine that this work was done. This work was done and repair wore resulted in minor disturbances. We request that final bond release proceed following the resolution of issues in this

deficiency list.

If you have any questions, please contact me at 701-745-7242.

Sincerely,

David J. Nilson
Reclamation Administrator

cc: Permit BCGH-8801
Mike Murray