

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Dakota Westmoreland Corporation**  
**Revision No. 22, Permit KRSB-8603**  
**Application**

**Case No. RC-08-904**

**REVISION OF PERMIT TO ENGAGE IN SURFACE COAL  
MINING AND RECLAMATION OPERATIONS**

**October 28, 2009**

Based on the application for **Revision No. 22 to Permit Number KRSB-8603** submitted by Dakota Westmoreland Corporation (DWC) for the Beulah Mine on November 25, 2008, and as revised through October 22, 2009, and all information and documentation contained therein, the North Dakota Public Service Commission (Commission) finds that the application meets all applicable requirements of Chapter 38-14.1 of the North Dakota Century Code (NDCC) and Article 69-05.2 of the North Dakota Administrative Code (NDAC). On the basis of the information set forth in the application or from that otherwise available and known by the applicant, the Commission finds that:

**Finding No. 1. The permit revision application is accurate and complete and complies with the requirements of NDCC Chapter 38-14.1 and NDAC Article 69-05.2 [NDCC 38-14.1-21(3)(a)].**

The applicant verified that all information included in the application is true and correct to the best of their knowledge. Commission staff conducted completeness and technical reviews to ensure that the required information was provided and mining and reclamation plans meet all applicable requirements. The Reclamation Division sent completeness and technical deficiency letters to the applicant on December 23, 2008, February 4, April 30, July 10, September 15 and October 9, 2009. Responses to each letter were reviewed and changes to the application were made to address the concerns that were noted. The Commission concludes that this significant revision application is now accurate and complete. DWC published the required notices in newspapers and the Commission sent notices to all surface owners in the permit area and to numerous local, state and federal agencies. Advisory committee members also reviewed portions of the application and comments were received from several agencies. No objections or requests for an informal conference were received on this application.

Much of the land being added to Permit KRSB-8603 with Revision No. 22 contains federally owned coal that DWC plans to mine. The federal coal tracts are located in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ , NE $\frac{1}{4}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ , S $\frac{1}{2}$ NE $\frac{1}{4}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$ , NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 20, and the N $\frac{1}{2}$  of Section 22, T143N, R88W. DWC currently has a federal coal lease for the NE $\frac{1}{4}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ NE $\frac{1}{4}$ , and NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 20 and the N $\frac{1}{2}$  of Section 22. A lease modification to add the NW $\frac{1}{4}$ NW $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$ , and NW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 20 to the existing lease is pending approval by the Bureau of Land Management within

the U.S. Department of the Interior. DWC either owns the surface or has the appropriate surface leases to conduct surface coal mining activities on the federal coal tracts. Therefore, DWC currently has the legal right to disturb the surface of the federal coal tracts to the extent necessary for conducting mining operations on the adjoining tracts where the coal is privately owned.

However, before overburden and coal removal is allowed to begin on the federal coal tracts, the federal coal lease modification needs to be approved for the additional federal coal tracts and the Department of the Interior needs to approve a mining plan covering all of the federal coal tracts as required by 30 CFR 746.11. Condition No. 1 attached to the Commission's approval of Revision No. 22 prohibits any overburden removal from the federal coal tracts as described above until DWC receives the required federal mining plan approval. Until that mining plan is approved, surface disturbances on the federal coal tracts will be limited to those activities that are needed for carrying out mining on the adjoining tracts where the coal interests are privately owned.

**Finding No. 2. The applicant has demonstrated that reclamation as required by NDCC Chapter 38-14.1 and NDAC Article 69-05.2 can be accomplished under the reclamation plan contained in the revised permit application [NDCC 38-14.1-21(3)(b)].**

Revision No. 22 adds 890.4 acres to the permit, revises mining and reclamation plans, and updates nearly all other sections of the permit accordingly. With the addition of this acreage, Permit No. KRSB-8603 now totals 2666.1 acres. The acreage being added to the permit is located directly south of the current permit boundary west of State Highway 49, about five miles southwest of Beulah. Coal removal will occur from most of the additional acreage and other areas will be used for soil stockpiles, sedimentation ponds and other associated disturbances. The disturbed acreage will be reclaimed using procedures that have been successful in the past and satisfy the requirements of the North Dakota law and rules. DWC has demonstrated that sufficient soil materials are available to meet the soil redistribution requirements of NDAC 69-05.2-15 and the revegetation requirements of NDAC 69-05.2-22.

The reclaimed land will be capable of supporting the uses, or higher or better uses, that were capable prior to mining. Cropland, followed by native grassland, is the predominant pre-mining and post-mining land use for the acreage being added with Revision No. 22 to the permit. However native grassland, followed by cropland, is the predominant pre-mining and post-mining land use for the entire permit area. Other pre-mining and post-mining land uses occurring in the permit area include hayland, tame pastureland, shelterbelts, woodlands, industrial/commercial, farmsteads, roads, wildlife habitat (wetlands) and developed water resources. Although there are some acreage adjustments, all of these other pre-mining land uses with the exception of farmsteads are also proposed after mining.

With regard to the reclamation schedule, DWC has requested additional variances from the contemporaneous reclamation requirements that normally require rough grading to be completed within 180 days of coal removal, NDAC 69-05.2-21-01(2), and that all reclamation efforts through the initial seeding be completed within three years of completion of mining activities, NDCC 38-14.1-24(14). These areas and the rationale for them are described and justified in the application for Revision No. 22 to Permit KRSB-8603. Variances from the 180 day grading and 3 year seeding requirements were previously granted for portions of the permit area as allowed by NDAC 69-05.2-21-02 and NDCC 38-14.1-24(14) and the Commission is approving the additional variances as proposed by Revision No. 22.

**Finding No. 3. Based on the assessment of the probable cumulative impact of all anticipated mining in the area, the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area [NDCC 38-14.1-21(3)(c)].**

An assessment of the probable cumulative hydrologic impact of all anticipated mining in the area has been made as required by NDCC 38-14.1-14(1)(o). The Commission finds that the proposed operation has been designed to maintain the quantity, quality, and hydrologic regime of surface and ground water systems in the area. The cumulative effects of all existing and proposed mining operations should not damage the hydrologic balance and water availability within or adjacent to the permit area. The detailed cumulative hydrologic impact assessment (CHIA), dated August 15, 2006, for the Beulah Mine included the area presently being added to the permit. Minor updates to the August 15, 2006 CHIA were incorporated for the area being added to the permit by this revision. The 890.4 acres being added to Permit No. KRSB-8603 with Revision No. 22 are located directly south of the current permit boundary.

**Finding No. 4. Lands being added to the permit area are not within an area designated unsuitable for surface coal mining operations, nor within areas under study or administrative proceedings under a petition to have an area designated as unsuitable for surface coal mining operations [NDCC 38-14.1-21(3)(d)].**

None of the lands being added to the permit area have been designated unsuitable for surface coal mining operations pursuant to NDCC 38-14.1-05, nor are they within an area under study or administrative proceedings under a petition to have an area designated as unsuitable for surface coal mining operations.

**Finding No. 5. The proposed mining operation will not interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated or materially damage the quantity or quality of water in surface or underground water systems that supply these alluvial valley floors [NDCC 38-14.1-21(3)(e)].**

Based on an examination of the geologic and geomorphic characteristics, soils, and the water quality and quantity of streams occurring within or adjacent to the lands being added to the permit area, it has been determined that no alluvial valley floors exist within or adjacent to this area. It was previously determined that Brush Creek, located east of the permit area does not meet the criteria of an alluvial floor, and it was recently determined that Coyote Creek, located south and west of the permit area, does not meet the criteria of an alluvial valley floor. Otter Creek and the Knife River, located east and north of the permit area respectively, were identified as potential alluvial valley floors; however, it was found that DWC's mining operations will not adversely affect the availability or quality of surface and ground water in these drainage systems.

**Finding No. 6. In cases where the mineral estate has been severed from the surface estate, the applicant complied with the requirements of NDCC 38-18 [NDCC 38-14.1-21(3)(f)].**

For the areas being added to the permit, the applicant included certified copies of leases and other documents in the application demonstrating compliance with the North Dakota Surface Owners Protection Act, NDCC 38-18. This documentation included the notice that was given to all surface owners before the application was filed with the Commission.

**Finding No. 7. Lands being added to the permit area are not within areas subject to the prohibitions or limitations of NDCC 38-14.1-07 unless such areas meet the application review procedures of NDAC 69-05.2-04-01[NDAC 69-05.2-10-03(6)(a)].**

Lands being added to the permit area are:

- a. Not on any lands within the boundaries of units of the North Dakota Park System, the National Park System, the National Wildlife Refuge Systems, the National System of Trails, the National Wilderness Preservation System, the National Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act, and national recreation areas.
- b. Not on any federal lands within the boundaries of any national forest.
- c. Not within 300 feet of any publicly owned park or places included in the State Historic Sites Registry or the National Register of Historic Places. UNDAR-WEST and other cultural resource contractors completed several inventories and cultural resource surveys of the areas being added to the permit between 1980 and 2007. A total of 13 cultural resource sites were evaluated within the Revision No. 22 permit area. None of the sites were deemed significant by the North Dakota State Historic Preservation Officer. Also, DWC has committed to informing the proper authorities in the event that any previously unrecorded archeological, cultural, or historic materials are discovered.
- d. Within 100 feet of the outside right-of-way of several public roads under Mercer County's jurisdiction. However, Mercer County has approved the temporary closure of the following county roads and section line rights-of-way: the east-west road between the SE¼ of Section 18 and the NE¼ of Section 19; the east-west road between Sections 17 and 20; the north-south section line right-of-way between Sections 20 and 21; the north-south road between Sections 21 and 22; the east-west road between Sections 15 and 22; and the north-south section line right-of-way between the NE¼ of Section 19 and the NW¼ of Section 20. The road closure process included the publication of a hearing notice and the Mercer County Commission held a public hearing on the matter. Written findings were issued that found the interests of the public and affected landowners would be protected. An alternate road will be constructed for public use in the area prior to the actual road closures.
- e. Not within 300 feet of any public building, school, church, community, or institutional building, nor will mining operations be conducted within 500 feet of any occupied dwelling. The coal removal area will not come within 500 feet of any occupied or utilized farm building.

No public buildings, schools, churches, or community or institutional buildings are within 300 feet of the area being added to the permit with Revision No. 22. An abandoned farmstead exists within the east half of Section 20. DWC owns the abandoned farmstead and plans are to remove all structures associated with the farmstead and mine through the area that is now occupied by the abandoned farmstead. Coal removal is not planned within 500 feet of the farmstead located in the NE¼NE ¼ of Section 22 which is adjacent to an area being added to the permit. This farmstead is not occupied.

- f. Not within 100 feet of any cemetery.

**Finding No. 8. With respect to prime farmland, the post-mining land use of the reclaimed prime farmland will be cropland, the reclamation plan was reviewed by the Natural Resources Conservation Service, and operations will be conducted in compliance with NDAC 69-05.2-26 and NDCC38-14.1. The applicant has the technological capability to restore the productivity on reclaimed prime farmlands [NDAC 69-05.2-10-03(6)(c) and NDCC 38-14.1-21(6)].**

A small area of prime farmland (2.8 acres) has been identified within the area being added to the permit and is located in the SW¼NE¼ of Section 22, T143N, R88W. This area of prime farmland will not be disturbed within the current permit term; however, based on the extended mine plan map, it appears this prime farmland area will be disturbed in 2014 or 2015. The applicant has included a prime farmland reclamation plan for the prime farmland tracts subject to the special requirements that satisfies the requirements of NDAC 69-05.2-09-15 and the performance standards of NDAC Chapter 69-05.2-26. The Natural Resource Conservation Service has reviewed the prime farmland reclamation plan and has determined that it is adequate to restore the productivity of the prime farmland. The reclamation methods that will be used by the applicant have proven to be successful in the past, therefore, the Commission finds that the applicant has the technological capability to restore the productivity of the reclaimed land to a level that is equal to or greater than the non-mined prime farmland in the surrounding area under equivalent management practices. Each landowner will receive the same acreage of reclaimed prime farmland as was present prior to mining and the post-mine land use of the reclaimed prime farmland will be cropland.

**Finding No. 9. The operations will not affect the continued existence of threatened or endangered species or result in the destruction or adverse modification of their critical habitats [NDAC 69-05.2-10-03(6)(d)].**

No threatened or endangered species or their critical habitats were observed within or contiguous to the tracts being added to the permit area. Surface coal mining and reclamation activities will not affect the continued existence of threatened or endangered species or result in the destruction or adverse modification of their critical habitats. The whooping crane could occur as an occasional migrant through the area. Habitats required for the black footed ferret, least tern, western prairie fringed orchid and pallid sturgeon are not found in or adjacent to the permit area. Piping plover habitat does not exist on the tracts being added to the permit, but desirable habitat may be temporarily created during the mining and reclamation process. The native grassland within the addition area could possibly provide habitat for the Dakota skipper butterfly which was listed as a candidate species under the Endangered Species Act in 2002. However, the Dakota skipper butterfly is not known to exist in or near the permit areas at this time. A survey to determine if the Dakota skipper butterfly exists in the area was completed by Ronald Alan Royer, Ph. D. in 2006. The survey states that "No Dakota Skippers were observed or collected at any time during the survey." There were in fact very few hesperiine (grass) skippers of any species found in the study area. Assessments of habitat and topography suggest that the Dakota Skippers may have reproduced at some time within the past century on prairies in the study area. However, an obvious history of relatively heavy grazing and the conversion of flora in most of the site to a predominantly monocot culture of unsuitable species suggest very little likelihood of recent production of the Dakota skipper in the land unit specified by the request for this survey. It clearly does not breed there now.

**Finding No. 10. The applicant has paid all reclamation fees required by 30 CFR subchapter R [NDAC 69-05.2-10-03(6)(e)].**

DWC has paid all reclamation fees required by 30 CFR subchapter R. Records maintained by the Office of Surface Mining's Applicant Violator System show that all fees have been paid.

**Finding No. 11. The applicant has satisfied requirements for approving cropland as a post-mining land use [NDAC 69-05.2-10-03(6)(f)].**

The applicant has satisfied the requirements for approval of a cropland post-mining land use under NDAC 69-05.2-22-01. Areas reclaimed to cropland will be seeded to a tame grass/legume pre-cropland mixture before the stand is broke and used for annual crops commonly grown in the area. Based on landowner requests, some areas will remain in perennial grasses and legumes for use as hayland, a subcategory of cropland. The soils are suitable for cropland in areas that are dedicated to that post-mining land use.

**Finding No. 12. All existing structures that will be used to support mining activities within the permit area comply with the application requirements of NDCC 38-14.1-24 and NDAC Article 69-05.2 [NDAC 69-05.2-10-04].**

No existing structures in the areas being added to the permit will be used to support mining activities. However, haul roads and other facilities within previously permitted areas of Permit KRSB-8603 will support mining in the area being added to the permit. These previously permitted structures have been found to meet the applicable design and performance standards of NDCC Section 38-14.1-24 and NDAC Article 69-05.2.

**Finding No. 13. No drill holes, boreholes or wells will be retained for other uses [NDAC 69-05.2-14-03].**

The applicant has not proposed to retain any drill hole, borehole, or well for other uses.

**Finding No. 14. No spoil in the permit area is known to cause toxic mine drainage [NDAC 69-05.2-16-11].**

The chemical characteristics of the overburden materials in the areas being added to the permit are such that they do not produce toxic mine drainage. The analysis of overburden samples included in the permit application do not reveal any substances that would cause any chemical reactions or physical effects that are likely to kill, injure, or impair biota commonly present in the area.

**Finding No. 15. The applicant does not propose to disturb land within one hundred feet of any perennial or intermittent stream channels [NDAC 69-05.2-16-20].**

The applicant does not propose to conduct any mining related activities in the areas being added to Permit KRSB-8603 with Revision No. 22 that are within one hundred feet of any perennial or intermittent stream channel.

**Finding No. 16. The applicant does not propose to use any experimental practices in the permit area [NDAC 69-05.2-27-02].**

There are no plans included in the revision application to use any experimental practices that may be allowed under NDAC 69-05.2-27-02.

**Finding No. 17. The applicant does not control and has not controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations [NDAC 69-05.2-10-03(4)].**

Commission records, and those in the Office of Surface Mining's Applicant Violator System, do not show that the applicant controls and has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of NDCC 38-14.1 or of other states' laws which are based on P.L. 95-87 (the Federal Surface Mining Control and Reclamation Act), of such nature, duration, and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of these laws.

**Finding No. 18. Neither the applicant, nor any affiliated companies, have unabated violations or unpaid civil penalties [NDAC 69-05.2-10-03(1)].**

Commission records, and those in the Office of Surface Mining's Applicant Violator System, do not indicate that the applicant, nor any affiliated companies, have any unpaid civil penalties or unabated violations of NDCC 38-14.1 or any other federal or state laws, rules, or regulations pertaining to air or water environmental protection. Staff at the North Dakota Department of Health also verified that the applicant has no unabated violations with regard to air and water environmental protection standards.

**Finding No. 19. A performance bond in the amount of \$6,267,847.00 is sufficient for the proposed surface coal mining operations in this permit area for the Beulah Mine [NDAC 69-05.2-12-07].**

An updated worst-case reclamation cost estimate for this permit was prepared with Revision No. 22 and staff determined that a performance bond in the amount of \$6,267,847.00 will be sufficient to perform the required reclamation, restoration, and abatement work in the permit area. The applicant has filed a stipulation of surety bond increase to add 890.4 acres being added by Revision No. 22 to Permit No. KRSB-8603 to the bond area and to increase the bond amount to \$6,267,847.00.

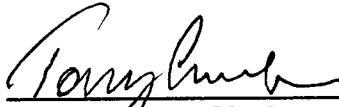
Subject to the right of any person with an interest that is or may be adversely affected to request a formal hearing under NDCC 38-14.1-30, **Revision No. 22 to Permit Number KRSB-8603** is hereby granted to **Dakota Westmoreland Corporation** to engage in surface coal mining and reclamation operations, on the following described areas subject to the applicable requirements of the original permit and conditions, Chapter 38-14.1 of the North Dakota Century Code, and the rules promulgated there under. (Attached is a copy of the metes and bounds description of lands being added to the permit area.)

**LOCATION**

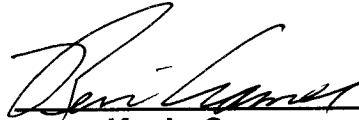
<b>MINE</b>	<b>ADDRESS</b>	<b>ACRES</b>	<b>Sec.</b>	<b>Twp.</b>	<b>Range</b>	<b>County</b>
<b>Beulah</b>	<b>Beulah, ND</b>	<b>890.40</b>	<b>15, 19, 20, 22</b>	<b>143N</b>	<b>88W</b>	<b>Mercer</b>

**890.40 acres – Total Area Added**

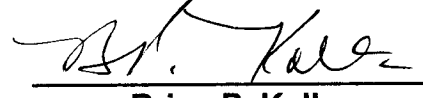
**PUBLIC SERVICE COMMISSION**



**Tony Clark**  
**Commissioner**



**Kevin Cramer**  
**Chairman**



**Brian P. Kalk**  
**Commissioner**

## 1.3 – LEGAL DESCRIPTION OF PROPERTY

### A. METES AND BOUNDS DESCRIPTION

MINE: Beulah  
PERMIT: KRSB-8603  
AREA: Revision No. 22 Area  
DATE: November 7, 2008  
FROM: Noel  
ACRES: 890.4 acres

Two tracts of land situated in Sections 19, 20, 15 and 22, T.143N., R.88W., Mercer County, North Dakota, being more particularly described as follows:

The first tract beginning at a point which is located and established by use of the Dakota Westmoreland Corporation coordinate system, such point also being the southwest corner of Section 16 and having the coordinates: S 5,247.2 and W 15,750.9; such point also being designated as corner No. 523;

thence N89°53'17"W along the south line of section 17 a distance of 2,643.0 feet to corner No. 668; such point also being the SW corner of the SE ¼ of Section 17;

thence N89°53'17"W a distance of 2,622.6 feet to corner No. 669; such point also being the SW corner of Section 17;

thence N89°53'53"W a distance of 2,019.4 feet to corner No. 677;

thence S23°16'50"E a distance of 1,629.9 feet to corner No. 678;

thence S20°11'34"W a distance of 770.2 feet to corner No. 679;

thence S75°25'20"E a distance of 1,687.5 feet to corner No. 680, such point also being the SE corner of the NE ¼ of Section 19;

thence S69°10'50"E a distance of 2,822.0 feet to corner No. 681;

thence N89°59'55"E a distance of 2,645.6 feet to corner No. 682;

thence N0°09'58"E a distance of 313.7 feet to corner No. 521;

thence N0°09'00"W along the west line of Section 21, a distance of 680.0 feet to corner No. 522, such point also being the SW corner of the NW ¼ of Section 21;

thence N0°9'16"W along the west line of Section 21, a distance of 2,641.1 feet to corner No. 523; the original point of beginning.

The above tract (tract 1 of 2) of land contains 501.5 acres, more or less.

The second tract beginning at a point which is located and established by use of the Dakota Westmoreland Corporation coordinate system, such point also being the northwest corner of Section 22 and having the coordinates: S 5,229.6 and W 10,505.8; such point also being designated as corner No. 513;

thence S0°00'28"E along the west line of Section 22, a distance of 2,642.9 feet to corner No. 514, such point also being the SW corner of the NW ¼ of Section 22;

thence S89°38'50"E, a distance of 5,277.9 feet to corner No.683, such point also being the SE corner of the NE ¼ of Section 22;

thence N11°23'53W, a distance of 4,832.4 feet to corner No.684;

thence S59°46'06W, a distance of 2,682.1 feet to corner No.511;

thence S90°00'00W, a distance of 726.3 feet to corner No.512;

thence N89°34'03W, a distance of 2,005.8 feet to corner No.513; the original point of beginning.

The above tract (tract 2 of 2) of land contains 388.9 acres, more or less.

In total, both tracts contain 890.4 acres, more or less.

Coordinates of each of the foregoing corners are as follows:

	<u>CORNER NO.</u>	<u>LATITUDE</u>	<u>DEPARTURE</u>
Tract 1	523	S 5,247.2	W 15,750.9
	668	S 5,242.0	W 18,393.9
	669	S 5,236.9	W 21,016.5
	670	S 5,233.1	W 23,685.9
	677	S 5,234.3	W 23,035.9
	678	S 6,731.5	W 22,391.7
	679	S 7,454.4	W 22,657.6
	680	S 7,879.1	W 21,024.4
	681	S 8,882.1	W 18,386.6
	682	S 8,882.0	W 15,741.1
	521	S 8,568.3	W 15,742.0
	522	S 7,888.3	W 15,743.8
Tract 2	513	S 5,229.6	W 10,505.8
	514	S 7,872.6	W 10,505.5
	683	S 7,905.1	W 5,227.6
	684	S 3,168.0	W 6,182.6
	511	S 4,518.4	W 8,500.0
	512	S 5,244.7	W 8,500.0