



# Public Service Commission

## State of North Dakota

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July 21, 2011

Mr. John Sebastian  
Hinshaw & Culbertson, LLP  
222 North LaSalle Street, Suite 300  
Chicago, IL 60601

RE: Buechler/Velva Abandoned Mine Lands (AML) Project  
Invoice No. 5 from Kern & Tabery, Inc.

Dear Mr. Sebastian:

Attached is a copy of the fifth invoice the AML Division has received from Kern & Tabery, Inc. for work that they have completed at the 2010 Buechler/Velva AML project and staff spreadsheets that are used to track contractor invoices and payments. The amount of Kern & Tabery's fourth invoice is \$80,032.80 for dirt work and water management work that has been completed. AML staff has reviewed the invoice and approves payment of this amount in accordance with Covenant No. 3 of the Tender Agreement. We understand that First National Insurance Company of America needs to make payment to Kern & Tabery within seven days of your receipt of this letter. After this payment is made, our calculations show that the surety will have \$27,321.96 remaining to pay under terms of the Tender Agreement.

If you have any questions, please contact Jim Deutsch or Bill Dodd with the AML Division.

Sincerely,

  
Darrell Nitschke  
Executive Secretary

### Attachments

cc: Jeff Olson, First National Insurance Company of America  
Kevin Tabery, Kern & Tabery, Inc.

AML/2010/Buechler-Velva/KernTabery2011takeover/Surety\_K&T\_invoice5\_7-21-11.doc

INVOICE: 005  
 Project: BUECHLER/VELVA COMPLETION PROJECT  
 Project No.: 10168  
 Contractor: Kern & Tabery Inc.  
 222 SE 1st Street, Suite 3  
 Wadena, MN 56482

Contract No.: AM-588-10  
 Date of Invoice: 07/20/11  
 Dates Service Rendered: 7/5/11 to 7/16/11

| Spec No. | Description              | Orig. Quantity | Unit     | Unit Price  | Bid Amount        | Previous Invoices |                 | Current Invoice |                 | Total To Date |              |              |
|----------|--------------------------|----------------|----------|-------------|-------------------|-------------------|-----------------|-----------------|-----------------|---------------|--------------|--------------|
|          |                          |                |          |             |                   | Quantity          | Amount          | Quantity        | Amount          | Quantity      | Amount       |              |
| (1)      | Mobilization             | 1              | L. Sum   | \$75,432.00 | \$75,432.00       | 0.80              | \$60,345.60     |                 | \$0.00          | 0.8           | \$60,345.60  |              |
| (2)      | Water Management         | 1              | L. Sum   | \$9,000.00  | \$9,000.00        | 0.20              | \$1,800.00      | 0.5             | \$4,500.00      | 0.7           | \$6,300.00   |              |
| (3A)     | Topsoil Salvage          | 1              | Cu. Yds. | \$1.85      | \$1.85            | 1600.00           | \$2,960.00      |                 | \$0.00          | 1600          | \$2,960.00   |              |
| (3B)     | Topsoil Salvage-Respread | 20048          | Cu. Yds. | \$1.25      | \$25,060.00       |                   | \$0.00          |                 | \$0.00          | 0             | \$0.00       |              |
| (4)      | Dirt Work                | 824586         | Cu. Yds. | \$0.96      | \$791,602.56      | 104199.00         | \$100,031.04    | 78680           | \$75,532.80     | 182879        | \$175,563.84 |              |
| (5)      | Culvert                  | 240            | Ft.      | \$85.00     | \$20,400.00       |                   | \$0.00          |                 | \$0.00          | 0             | \$0.00       |              |
| (6)      | Fert. Seed & Mulching    | 150            | Acres    | \$420.00    | \$63,000.00       |                   | \$0.00          |                 | \$0.00          | 0             | \$0.00       |              |
| (7)      | Wattles                  | 12000          | Ft.      | \$2.67      | \$32,040.00       |                   | \$0.00          |                 | \$0.00          | 0             | \$0.00       |              |
| (8)      | Force Account            | 1              | L. Sum   | \$80,000.00 | \$80,000.00       |                   | \$0.00          |                 | \$0.00          | 0             | \$0.00       |              |
| (9)      | Clean-up                 | 1              | L. Sum   | \$3,360.00  | \$3,360.00        |                   | \$0.00          |                 | \$0.00          | 0             | \$0.00       |              |
|          |                          |                |          |             | Original Contract | \$1,099,896.41    |                 | \$165,136.64    |                 | \$80,032.80   |              | \$245,169.44 |
|          |                          |                |          |             | Change Orders (+) | \$0.00            | Change Order(s) | \$0.00          | Change Order(s) | \$0.00        | Total CO.    | \$0.00       |
|          |                          |                |          |             | Change Orders (-) | \$0.00            |                 |                 |                 |               |              |              |
|          |                          |                |          |             | Grand Total       | \$1,099,896.41    |                 |                 |                 |               |              |              |
|          |                          |                |          |             | Contract Balance  | \$854,726.97      | Amount Paid     | \$165,136.64    | AMOUNT DUE      | \$80,032.80   | Total Amt.   | \$245,169.44 |

Project Manager:

AML Director:

*MLK*  
*JW*  
 OK WD 7-20-11

AMOUNT DUE = \$80,032.80  
 Please note: Surety (Liberty) to pay first \$272,491.39

**CONTRACTOR PRODUCTION FIGURES**

Project: Buechler/Velva ANL Project ND 004

Contractor: Kern & Tabery Inc. 222 SE 1st Street, Suite 3, Wadena, MN 56482

Submittal Number: 5

From: 7/5/2011 through 7/16/2011

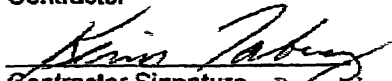
| <u>ITEMS</u>         | <u>Equipment Description</u> | <u>Operating Hrs.</u> | <u>Avg. Cycle Time</u> | <u>Avg. Load Capacity</u> | <u>Job Eff. Factor</u> | <u>Est. Volumes Moved</u> | <u>TOTAL</u>       |
|----------------------|------------------------------|-----------------------|------------------------|---------------------------|------------------------|---------------------------|--------------------|
| (2) Water Management | \$9,000.00 total @ 50%       |                       |                        |                           |                        |                           | \$ 4,500.00        |
| (4) Dirt Work        | D9G Dozer                    | 99.5 hrs.             | 3.0 minutes            | 10 cy                     | 90%                    | 18900 cy @ \$0.96         | 18,144.00          |
|                      | D8N Dozer                    | 109.5 hrs.            | 3.0 minutes            | 8 CY                      | 90%                    | 13520 cy @ \$0.96         | 12,979.20          |
|                      | D8R Dozer                    | 113.0 hrs.            | 3.0 minutes            | 8 CY                      | 90%                    | 18080 cy @ \$0.96         | 17,356.80          |
|                      | 637D Scraper                 | 82.5 hrs.             | 7.8 minutes            | 22 cy                     | 90%                    | 14025 cy @ \$0.96         | 13,464.00          |
|                      | 637D Scraper                 | 44.0 hrs.             | 7.8 minutes            | 22 cy                     | 90%                    | 7480 cy @ \$0.96          | 7,180.80           |
|                      | 631D Scraper                 | 44.5 hrs.             | 8.0 minutes            | 20 cy                     | 90%                    | 6675 cy @ \$0.96          | 6,408.00           |
|                      |                              |                       |                        | Volume total              |                        | 78,680 cy                 |                    |
|                      |                              |                       |                        |                           |                        |                           | <u>\$80,032.80</u> |

TOTAL DOLLARS THIS PAY REQUEST

The Contractors signature certifies the accuracy and completeness of these estimated production figures.

KERN & TABERY INC.

Contractor



Contractor Signature President-Treasurer

7/18/2011

Date

**FIGURE 3**

**Contractor Payment Requests  
2011 Buechler/Velva Project  
Kern & Tabery, Inc.  
Tender Agreement**

**Note:** Under Tender Agreement, Surety agreed to pay the first 272,491.40, which is the Contract Shortfall amount.  
When this amount is exhausted, PSC will pay the remainder of the Tender Agreement Amount.

**Pay 1 : For Surety Payment 5-23-11**  
Dates of Service: May 18-21, 2011

| Item                             | Units    | Unit Price  | Total                     | Cumulative Units | Cumulative \$\$    | Bid Price             | %            |
|----------------------------------|----------|-------------|---------------------------|------------------|--------------------|-----------------------|--------------|
| Mobilization LS                  | 0.50     | \$75,432.00 | \$37,716.00               | 0.50             | \$37,716.00        | \$75,432.00           | 50.00%       |
| Water Management LS              | 0.20     | \$9,000.00  | \$1,800.00                | 0.20             | \$1,800.00         | \$9,000.00            | 20.00%       |
| Topsoil Salvage 3A CY            | 1600.00  | \$1.85      | \$2,960.00                | 1600.00          | \$2,960.00         | \$1.85                | 160000.00%   |
| Topsoil Salvage 3B (respread) CY | 0.00     | \$1.25      | \$0.00                    | 0.00             | \$0.00             | \$25,060.00           | 0.00%        |
| Dirt Work CY                     | 11000.00 | \$0.96      | \$10,560.00               | 11000.00         | \$10,560.00        | \$791,602.56          | 1.33%        |
| Culvert FT                       | 0.00     | \$85.00     | \$0.00                    | 0.00             | \$0.00             | \$20,400.00           | 0.00%        |
| Fert/Seed/Mulch AC               | 0.00     | \$420.00    | \$0.00                    | 0.00             | \$0.00             | \$63,000.00           | 0.00%        |
| Wattles FT                       | 0.00     | \$2.67      | \$0.00                    | 0.00             | \$0.00             | \$32,040.00           | 0.00%        |
| Force Account LS                 | 0.00     | \$80,000.00 | \$0.00                    | 0.00             | \$0.00             | \$80,000.00           | 0.00%        |
| Clean Up LS                      | 0.00     | \$3,360.00  | \$0.00                    | 0.00             | \$0.00             | \$3,360.00            | 0.00%        |
| <b>Total This Invoice</b>        |          |             | <b><u>\$53,036.00</u></b> |                  | <b>\$53,036.00</b> | <b>\$1,099,896.41</b> | <b>4.82%</b> |

**Note:** The Topsoil Salvage 3A bid item was an unknown and was bid with a unit cost and 1 unit. Any costs for this item will be monitored and charged to the force account so that there will be no addition to the total contract price.

**Pay 2 : For Surety Payment 6-7-11**  
Dates of Service: May 23 to June 4, 2011

| Item                             | Units    | Unit Price  | Total                     | Cumulative Units | Cumulative \$\$    | Bid Price             | %            |
|----------------------------------|----------|-------------|---------------------------|------------------|--------------------|-----------------------|--------------|
| Mobilization LS                  | 0.00     | \$75,432.00 | \$0.00                    | 0.50             | \$37,716.00        | \$75,432.00           | 50.00%       |
| Water Management LS              | 0.00     | \$9,000.00  | \$0.00                    | 0.20             | \$1,800.00         | \$9,000.00            | 20.00%       |
| Topsoil Salvage 3A CY            | 0.00     | \$1.85      | \$0.00                    | 1600.00          | \$2,960.00         | \$1.85                | 160000.00%   |
| Topsoil Salvage 3B (respread) CY | 0.00     | \$1.25      | \$0.00                    | 0.00             | \$0.00             | \$25,060.00           | 0.00%        |
| Dirt Work CY                     | 20660.00 | \$0.96      | \$19,833.60               | 31660.00         | \$30,393.60        | \$791,602.56          | 3.84%        |
| Culvert FT                       | 0.00     | \$85.00     | \$0.00                    | 0.00             | \$0.00             | \$20,400.00           | 0.00%        |
| Fert/Seed/Mulch AC               | 0.00     | \$420.00    | \$0.00                    | 0.00             | \$0.00             | \$63,000.00           | 0.00%        |
| Wattles FT                       | 0.00     | \$2.67      | \$0.00                    | 0.00             | \$0.00             | \$32,040.00           | 0.00%        |
| Force Account LS                 | 0.00     | \$80,000.00 | \$0.00                    | 0.00             | \$0.00             | \$80,000.00           | 0.00%        |
| Clean Up LS                      | 0.00     | \$3,360.00  | \$0.00                    | 0.00             | \$0.00             | \$3,360.00            | 0.00%        |
| <b>Total This Invoice</b>        |          |             | <b><u>\$19,833.60</u></b> |                  | <b>\$72,869.60</b> | <b>\$1,099,896.41</b> | <b>6.63%</b> |

**Pay 3 : For Surety Payment 6-21-11**  
Dates of Service: June 6-18, 2011

| Item                             | Units    | Unit Price  | Total                     | Cumulative Units | Cumulative \$\$     | Bid Price             | %            |
|----------------------------------|----------|-------------|---------------------------|------------------|---------------------|-----------------------|--------------|
| Mobilization LS                  | 0.15     | \$75,432.00 | \$11,314.80               | 0.65             | \$49,030.80         | \$75,432.00           | 65.00%       |
| Water Management LS              | 0.00     | \$9,000.00  | \$0.00                    | 0.20             | \$1,800.00          | \$9,000.00            | 20.00%       |
| Topsoil Salvage 3A CY            | 0.00     | \$1.85      | \$0.00                    | 1600.00          | \$2,960.00          | \$1.85                | 160000.00%   |
| Topsoil Salvage 3B (respread) CY | 0.00     | \$1.25      | \$0.00                    | 0.00             | \$0.00              | \$25,060.00           | 0.00%        |
| Dirt Work CY                     | 26020.00 | \$0.96      | \$24,979.20               | 57680.00         | \$55,372.80         | \$791,602.56          | 7.00%        |
| Culvert FT                       | 0.00     | \$85.00     | \$0.00                    | 0.00             | \$0.00              | \$20,400.00           | 0.00%        |
| Fert/Seed/Mulch AC               | 0.00     | \$420.00    | \$0.00                    | 0.00             | \$0.00              | \$63,000.00           | 0.00%        |
| Wattles FT                       | 0.00     | \$2.67      | \$0.00                    | 0.00             | \$0.00              | \$32,040.00           | 0.00%        |
| Force Account LS                 | 0.00     | \$80,000.00 | \$0.00                    | 0.00             | \$0.00              | \$80,000.00           | 0.00%        |
| Clean Up LS                      | 0.00     | \$3,360.00  | \$0.00                    | 0.00             | \$0.00              | \$3,360.00            | 0.00%        |
| <b>Total This Invoice</b>        |          |             | <b><u>\$36,294.00</u></b> |                  | <b>\$109,163.60</b> | <b>\$1,099,896.41</b> | <b>9.92%</b> |

**Pay 4 : For Surety Payment 7-6-11**

Dates of Service: June 20-July 2, 2011

| Item                             | Units    | Unit Price  | Total                     | Cumulative Units | Cumulative \$\$     | Bid Price             | %             |
|----------------------------------|----------|-------------|---------------------------|------------------|---------------------|-----------------------|---------------|
| Mobilization LS                  | 0.15     | \$75,432.00 | \$11,314.80               | 0.80             | \$60,345.60         | \$75,432.00           | 80.00%        |
| Water Management LS              | 0.00     | \$9,000.00  | \$0.00                    | 0.20             | \$1,800.00          | \$9,000.00            | 20.00%        |
| Topsoil Salvage 3A CY            | 0.00     | \$1.85      | \$0.00                    | 1600.00          | \$2,960.00          | \$1.85                | 160000.00%    |
| Topsoil Salvage 3B (respread) CY | 0.00     | \$1.25      | \$0.00                    | 0.00             | \$0.00              | \$25,060.00           | 0.00%         |
| Dirt Work CY                     | 46519.00 | \$0.96      | \$44,658.24               | 104199.00        | \$100,031.04        | \$791,602.56          | 12.64%        |
| Culvert FT                       | 0.00     | \$85.00     | \$0.00                    | 0.00             | \$0.00              | \$20,400.00           | 0.00%         |
| Fert/Seed/Mulch AC               | 0.00     | \$420.00    | \$0.00                    | 0.00             | \$0.00              | \$63,000.00           | 0.00%         |
| Wattles FT                       | 0.00     | \$2.67      | \$0.00                    | 0.00             | \$0.00              | \$32,040.00           | 0.00%         |
| Force Account LS                 | 0.00     | \$80,000.00 | \$0.00                    | 0.00             | \$0.00              | \$80,000.00           | 0.00%         |
| Clean Up LS                      | 0.00     | \$3,360.00  | \$0.00                    | 0.00             | \$0.00              | \$3,360.00            | 0.00%         |
| <b>Total This Invoice</b>        |          |             | <b><u>\$55,973.04</u></b> |                  | <b>\$165,136.64</b> | <b>\$1,099,896.41</b> | <b>15.01%</b> |

**Pay 5: For Surety Payment 7-20-11**

Dates of Service: July 5-16, 2011

| Item                             | Units    | Unit Price  | Total                     | Cumulative Units | Cumulative \$\$     | Bid Price             | %             |
|----------------------------------|----------|-------------|---------------------------|------------------|---------------------|-----------------------|---------------|
| Mobilization LS                  | 0.00     | \$75,432.00 | \$0.00                    | 0.80             | \$60,345.60         | \$75,432.00           | 80.00%        |
| Water Management LS              | 0.50     | \$9,000.00  | \$4,500.00                | 0.70             | \$6,300.00          | \$9,000.00            | 70.00%        |
| Topsoil Salvage 3A CY            | 0.00     | \$1.85      | \$0.00                    | 1600.00          | \$2,960.00          | \$1.85                | 160000.00%    |
| Topsoil Salvage 3B (respread) CY | 0.00     | \$1.25      | \$0.00                    | 0.00             | \$0.00              | \$25,060.00           | 0.00%         |
| Dirt Work CY                     | 78680.00 | \$0.96      | \$75,532.80               | 182879.00        | \$175,563.84        | \$791,602.56          | 22.18%        |
| Culvert FT                       | 0.00     | \$85.00     | \$0.00                    | 0.00             | \$0.00              | \$20,400.00           | 0.00%         |
| Fert/Seed/Mulch AC               | 0.00     | \$420.00    | \$0.00                    | 0.00             | \$0.00              | \$63,000.00           | 0.00%         |
| Wattles FT                       | 0.00     | \$2.67      | \$0.00                    | 0.00             | \$0.00              | \$32,040.00           | 0.00%         |
| Force Account LS                 | 0.00     | \$80,000.00 | \$0.00                    | 0.00             | \$0.00              | \$80,000.00           | 0.00%         |
| Clean Up LS                      | 0.00     | \$3,360.00  | \$0.00                    | 0.00             | \$0.00              | \$3,360.00            | 0.00%         |
| <b>Total This Invoice</b>        |          |             | <b><u>\$80,032.80</u></b> |                  | <b>\$245,169.44</b> | <b>\$1,099,896.41</b> | <b>22.29%</b> |

\* Note that Surety has \$27,321.96 remaining to pay under the Tender Agreement.