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JAN 25 2011

PUBLIC SERVICE COMMISSION

January 25, 2011

Darrell Nitschke
Executive Secretary
North Dakota Public Service Commission
600 East Blvd., Dept 408
Bismarck, ND 58505-0480

Re: Case No. RC-10-598

North Dakota Public Service Commission Reclamation Staff (Staff) herewith submits its Reply Brief and its Proposed Findings of Fact, Conclusions of Law and Order in the above referenced case.

The original and seven (7) copies of each have been provided to the Commission and one copy has been provided to the parties noted below.

Sincerely,

Mark Gruman
Legal Counsel
North Dakota Public Service Commission

cc: Brian Bjella

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Coteau Properties Company)	Case No. RC-10-598
Notice of Violation No. 1004)	OAH File No. 20100364
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NORTH DAKOTA PUBLIC SERVICE COMMISSION
RECLAMATION DIVISION
RESPONSIVE BRIEF

Staff takes this opportunity to briefly respond to Coteau’s written final argument. As all parties are aware, Coteau attached a November 5, 1985 Findings of Fact, Conclusions of Law and Order for NOV 8504, in support of their argument that NOV 1004 unfairly punishes them for the storm event of September 6 and September 9, 2010. It is Staff’s respectful opinion that their inclusion of NOV 8504 perfectly demonstrates the main point of contention between the two parties.

NOV 8504 is a past order by the North Dakota Public Service Commission (Commission) which determined that a Respondent should not be punished for erosion damage that is directly the result of a 3.8 inch 25 year, 24 hour storm event (which was preceded by .5 inches of rain the day before). Findings of Fact, Conclusions of Law and Order ¶ V (November 5, 1985). The distinction between this matter and NOV 1004, of course, is that the May 10, 1985 rain event of NOV 8504 washed away suitable plant growth material from the face of a slope “prior to the germination of the previous fall’s

seeding and immediately following the completion of the reseeding operation”. *Id.* at VI.

The rain event in NOV 1004 exacerbated an already deteriorated haulroad ditch.

(Coteau maintains, in NOV 1004, that their vegetative cover was established at the time of the September 6 and September 9 rainfall event; therefore, the vulnerability factor indicated in NOV 8504 is also not at issue). *Id.* at VI.

Staff has repeatedly indicated that the condition of the north haulroad ditch prior to September 6th and September 9th is a main issue to NOV 1004. Additionally vegetation cover, alone, did not satisfy Coteau’s obligations as it relates to the north haulroad ditch and N.D. Admin. Code § 69-05.2-24-01(2)(a) and N.D. Admin. Code § 69-05.2-16-08(1)(c). Proper erosion control is demonstrated by PSC Staff Exhibits 10 and 11 whereby, in their abatement efforts for NOV 1004, Coteau installed erosion control matting and silt fences (at the north haulroad location) in addition to their reseeding of the north haulroad ditch.

Throughout these proceedings Coteau has implied that objective, static factors exist to qualify vegetation, alone, as proper erosion control for N.D. Admin. Code § 69-05.2-24-01(2)(a) and N.D. Admin. Code § 69-05.2-16-08(1)(c). A simple reading of these two Codes, however, demonstrates otherwise:

Each road must be located, designed, constructed, reconstructed, used, maintained, and reclaimed so as to ... [c]ontrol or prevent erosion, siltation, and the air pollution attendant to erosion, including road dust as well as dust occurring on other exposed surfaces, by measures such as vegetating, watering, using chemical or other dust suppressants, or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices.

N.D. Admin. Code § 69-05.2-24-01(2)(a) (emphasis added).

Appropriate sediment control measures must be designed, constructed, and

maintained using the best technology currently available to ... [m]inimize erosion to the extent possible.

N.D. Admin. Code § 69-05.2-16-08(1)(c) (emphasis added).

Staff interprets Coteau's mandate as an ongoing obligation. Alternatively stated, if confronted with a failing erosion control system, further efforts must be undertaken to minimize erosion to the extent possible. In mid July 2010 Coteau both met, and violated, their mandate. Because the south side of the culvert had degraded, Coteau invested significant erosion control efforts to both fix, and improve, their existing erosion control system. However, at approximately the same time, when confronted with rilling and sediment deposition on the north side of the culvert, Coteau elected to do nothing.

The ongoing obligation mandate, referred to above, has been articulated to Coteau since the time of NACT-8103's and NACT-8102's issuance. *Please see* PSC Staff Exhibits 20 and 21. Contained on page 2, paragraph 4 of each document is the following identical language:

Compliance with any design criteria or technical specifications, even where design criteria or the specifications have been approved by the Commission as a part of this permit shall not relieve The Coteau Properties Company of the duty to redesign any criteria or technical specifications in order to comply with any applicable effluent limitation, applicable performance standard, water quality standard, ambient air quality standard, or any order issued by the Commission under Chapter 38-14.1, of the North Dakota Century Code, if such design criteria or technical specifications are later found to be inadequate.

Staff also feels that further clarification of its position, as it relates to Mr. Hoetzer's testimony, is warranted. Essentially Mr. Hoetzer's figures were phrased in terms of volumetric flow, not velocity. Volumetric flow is the rate at which a volume flows a certain distance (e.g. cubic feet/second); velocity is the speed at which the water

flows (e.g ft/sec). As noted by Mr. Schouweiler, velocity of the water results in plants being dislodged. Although cubic feet and velocity are mathematically related (i.e. velocity multiplied by cross sectional area with equate to volumetric flow), the conclusion sought (i.e. plant loss) cannot be gained with volumetric flow alone.

Further analysis by Mr. Hoetzer could have yielded this data. For example, the velocity of the water (for September 6 and/or September 9, 2010) could have been determined by the input of several variables (volumetric flow, channel slope, the lining of the channel (bare soil, grass cover, riprap, etc.), and the cross sectional area of the channel). For example a narrow channel with a steep slope and minimal, or no, vegetation would handle less flow before eroding than a wide channel with a minimal slope and good live vegetation.

Therefore, as previously stated, although Mr. Hoetzer's calculations could be utilized to determine velocities, no such computation was undertaken, leaving his conclusions uncertain as to whether or not the additional flow grossly overwhelmed the north haulroad ditch on September 6 or 9, 2010 or whether the north haulroad ditch was even stable prior to the same rain events. It is fortunate that the degradation question can be alternatively answered with the facts; the rilling and sediment deposition witnessed on the north side of the haulroad in mid July 2010 support a finding that the north haulroad ditch was not stable as early as that time.

On page 7 of Coteau's initial brief, Coteau incorrectly interpreted Mr. Moos' testimony as acknowledging that some of the sediment deposition observed on the north side of the haulroad could have accumulated from sources other than within the north

haulroad ditch. Rather, Mr. Moos stated the opposite, indicating that “[i]t would be hard to draw the conclusion that it [sediment deposition on the north side of the haulroad] was all from sheet erosion”. Hrg. Tr. 94:13-20 (December 17, 2010).

As noted in Staff’s initial brief, the “73% total basal cover” alluded to on page 8 of Coteau’s brief represents effective cover for what’s commonly referred to as “sheet erosion”, not channelized flow as what would be experienced within the north haulroad ditch. Therefore this purported threshold value is irrelevant to these proceedings. Staff agrees with Coteau’s assessment that some of the ditch’s sideslopes were well vegetated. What is important, though, is that the ditch bottom was not sampled; any inference that the ditch bottom was properly vegetated is pure, uncorroborated speculation.

Because the sediment deposition observed on September 2, 29 and 30, 2010 is critical to the Commission’s determination of this matter, a brief restatement seems prudent. Although discussed throughout these proceedings by Coteau, Staff focuses upon page 9 of Coteau’s initial brief, whereby they restate that sediment deposition observed by Mr. Berg on the south side of the haulroad on September 2, 2010 was solely accumulated from the south side of the ditch. Logic dictates that sediment in the south ditch would have been removed when the concrete matting was installed.

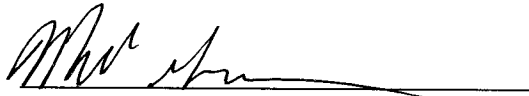
Notwithstanding common sense, Staff’s position is additionally supported by the record. PSC Staff Exhibit 3 indicates that the area just south of the concrete matting was reseeded, presumably at the time the concrete matting was installed. It seems very likely the seeding would have been through the drainage channel that is now full of sediment.

Concerning page 10 of Coteau’s brief, that argument associated with the north

haulroad ditch gradient, it should be noted that, in achieving the smaller (and, thereby more desirable for Coteau's argument) value, Coteau included the flat section around the culvert with the more sloping portion, thereby reducing the average slope. Staff's calculations achieved average slopes of 2.5% to the northeast and 3.7% to the southwest, done so by scaling off the map in the permit and excluding the flat portion of the ditch bottoms at the culvert inlet.

In Conclusion, allegations of speculation have been advocated by both parties in this matter. As the Commission is well aware, the facts, and their prudent analysis, will yield truth. The rainfall event of September 6 and September 9, 2010 has no relevance to the main issues of this matter. Even before the first drop of rain fell on September 6, 2010, the north haulroad ditch was in a degraded condition, as indicated by Mr. Kirk's observations of rilling, and sediment deposition, in on the north side of the culvert in mid July, 2010. Staff therefore requests that NOV 1004 be affirmed.

Respectfully submitted this 25th day of January, 2011.



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**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**The Coteau Properties Company
Notice of Violation No. 1004**

Case No. RC-10-598

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

February __, 2011

Appearances

Commissioners Tony Clark, Brian P. Kalk and Kevin Cramer

Mark Gruman, Legal Counsel, North Dakota Public Service Commission, State Capitol Building, 12th Floor, Bismarck, North Dakota 58505, on behalf of the North Dakota Public Service Commission Reclamation Staff.

Brian R. Bjella, Attorney-at-Law, Crowley Fleck, PLLP, 400 East Broadway, Suite 600, Bismarck, North Dakota 58501, on behalf of the Coteau Properties Company.

Christopher D. Friez, Attorney-at-Law, Crowley Fleck, PLLP, 400 East Broadway, Suite 600, Bismarck, North Dakota 58501, on behalf of the Coteau Properties Company.

Allen C. Hoberg, Administrative Law Judge, Office of Administrative Hearings, 1707 North Ninth Street, Bismarck, North Dakota 58501-1882, as Procedural Hearing Officer.

Preliminary Statement

The Coteau Properties Company (Coteau) is the owner and operator of the Freedom Mine located near Beulah, North Dakota. Coteau operates the mine under various permits issued by the North Dakota Public Service Commission (Commission).

On October 4, 2010 Mike Berg, PE of the Reclamation Division of the Commission, ("Mr. Berg") issued Notice of Violation No. 1004 (NOV 1004) to Coteau. The Notice of Violation was issued for "fail[ure] to install the appropriate measures to control or prevent erosion and siltation from a segment of haulroad constructed in 2009". NOV 1004 went on to state that "[f]ailure to install appropriate sediment control measures in the haulroad ditch caused erosion of the ditch bottoms and the deposition of sediment on reclaimed mine lands". The area of violation was described as "[t]he north haulroad ditch located in the NW1/4SW1/4 of Section 18, Township 145N, Range 87W,

Mercer County, ND” and referenced Permit Numbers NACT-8103 and 8203. Coteau was directed to remove sediment from the haulroad ditch, repair and stabilize the erosion features in the north haulroad ditch, and to install appropriate control measures in the north haulroad ditch.

On October 25, 2010 James R. Deutsch, Director of Reclamation for the Commission (Mr. Deutsch), wrote to Coteau informing them that NOV 1004 had mistakenly cited Permit Number NACT-8103, rather than NACT-8102.

On October 25, 2010 Mr. Berg issued a Termination or Vacation of Notice of Violation informing Coteau that the remedial measures undertaken by Coteau pursuant to NOV 1004 were adequate, pursuant to a follow up inspection conducted by Mr. Berg on October 20, 2010.

On October 28, 2010 the Commission received a Request to Vacate Notice of Violation, or in the Alternative, Application for Formal Hearing by the Coteau Properties Company (Request to Vacate). “Coteau requests that the Commission immediately vacate and dismiss with prejudice the NOV for alleging violations in lands where no haulroad is located. As there is no haulroad in the lands described in the NOV, there can be no violation. Coteau further requests if the NOV is not vacated and dismissed for describing lands in which no haulroad is located, that this matter be set for formal hearing pursuant to North Dakota Century Code Chapter 38-14.1 and North Dakota Century Code § 38-14.1-30”.

On November 2, 2010 the Reclamation Division of the Commission issued Modification of Notice of Violation 1004 to correct the cited Permit Number from NACT-8103 to NACT-8102 as well as to correct the legal description to “The haulroad near the center of Section 18, T145N, R87W, Mercer County, ND”.

On November 24, 2010, the Commission issued a Notice of Formal Hearing, scheduling the Public Hearing at 9:00 a.m. CST, on December 17, 2010, in the Public Service Commission’s Hearing Room, 12th Floor, State Capitol, Bismarck, North Dakota.

On November 24, 2010 the Commission assessed a proposed penalty of \$1500 (\$250 for seriousness and \$1250 for negligence) for NOV 1004.

On December 14, 2010 Coteau paid the proposed penalty and the funds were placed in an escrow account at the Bank of North Dakota pending the final outcome of the formal hearing.

The Formal Hearing was held as scheduled on November 24, 2010 in the Commission Hearing Room, State Capitol, Bismarck, North Dakota.

Case No. RC-10-598

Findings of Fact, Conclusions of Law and Order

Page 2

Having allowed all interested persons an opportunity to be heard, and having heard, reviewed, and considered all testimony and evidence presented, the Commission makes the following:

Findings of Fact

1. Coteau is engaged in surface coal mining operations under permits issued by the Commission.
2. On September 17, 2009 William R. Kirk, PE (Mr. Kirk), Staff Mining Engineer for Coteau, wrote to Mr. Deutsch, informing him of the construction of a haulroad within the boundary of Permits NACT-8102, 8203 and 8401 of the Freedom Mine (haulroad).
3. The construction of the haulroad began on May 8, 2009, and was first utilized by Coteau on September 3, 2009.
4. According to Mr. Kirk as of September 17, 2009 the haulroad required installation of storm water best management practices, such as disking and seeding of road ditch bottoms and slopes, and installation of silt fence adjacent to culvert installations to control erosion.
5. In mid July 2010 Mr. Kirk observed sediment deposition on the north and south side of a culvert, located at the intersection of Permits-8102, NACT-8203 and the haulroad (culvert). As a result of the sediment deposition below the culvert, Coteau installed engineering fabric and articulated concrete matting on the south side of the culvert. Due to erosion damage the configuration of the south ditch was required to be restored. Coteau also reseeded the south ditch location, and installed an erosion control blanket.
6. During cross examination Mr. Kirk admitted that, during the installation of concrete matting on the south side of the haulroad in mid July, 2010, he observed some sediment deposition and rilling on the inslopes, the ditch bottom and the backslopes of the north haulroad ditch.
7. On September 2, 2010 Mr. Berg conducted a routine complete inspection of the Freedom Mine.
8. During the September 2, 2010 inspection of the Freedom Mine (more than a month after the erosion repairs and installation of concrete matting on the south

side of the haulroad), Mr. Berg noted a large accumulation of sediment deposition on the south side of the culvert. Mr. Berg stated that vegetated overburden, and the subsoil respread edge, was acting as a sump in this location, collecting sediment prior to the water flowing down the reclaimed drainageway. Mr. Berg immediately informed Coteau of his observations.

9. Mr. Berg's comments to Coteau at this time put Coteau on implicit notice to conduct further research as to the source of this sediment deposition.
10. Mr. Kirk testified that the reason Coteau did not clean out the sediment in the south side of the culvert immediately after Mr. Berg's September 2, 2010 inspection was due to the September 6th and September 9th rainfall events, which prohibited the use of heavy equipment.
11. Mr. Dave Schouweiler (Mr. Schouweiler), an expert witness appearing on behalf of Coteau, testified that, in his opinion, the damage to the north haulroad had been caused on September 6th and 9th 2010. Mr. Schouweiler informed the Commission that, in his opinion, a good grass cover is the best protection for a grass waterway (such as the north haulroad ditch). Mr. Schouweiler stated that, because standing grass is perpendicular to water flow, the grass will lie down and allow water to flow over it. Later on in his testimony, Mr. Schouweiler stated that "during a precipitation event that greatly exceeds a 10-year/6-hour event, the velocities and the turbulence can be such that they will actually put enough friction on the plants that cause them to be removed at that point the ground is without protection and the erosion occurs very quickly.
12. Mr. Steve Hoetzer (Mr. Hoetzer), an expert witness appearing on behalf of Coteau, testified that, on September 6, 2010, the watershed applicable to NOV 1004 received 2.7 inches of rain in a 24 hour period. Mr. Hoetzer stated that the same watershed received approximately 2.2 inches of rain in two hours on September 9, 2010. Although Mr. Hoetzer calculated flow rates, he failed to calculate the velocity of the water within the north haulroad ditch on either of the September 6 or September 9, 2010 storm events. Therefore Mr. Hoetzer's findings are not directly relevant to NOV 1004.
13. Mr. Berg inspected the Freedom Mine on September 29, 2010. During this inspection Mr. Berg observed sediment deposition on the south side of the culvert, similar to what he had witnessed on September 2, 2010.
14. Upon further examination on September 29th, Mr. Berg noticed sediment deposition on the north side of the same culvert, observing that some of the

sediment deposition was on reclaimed lands.

15. After completing his inspection of the Freedom Mine on September 29, 2010, Mr. Berg proceeded to the Office of Reclamation of the North Dakota Public Service Commission. Mr. Berg consulted with Mr. Deutsch and Dean Moos, Assistant Director of Reclamation for the North Dakota Public Service Commission (Mr. Moos) concerning Mr. Berg's Freedom Mine observations of September 2, 2010 and September 29, 2010.
16. On September 30, 2010 Mr. Berg and Mr. Moos travelled to the Freedom Mine to conduct a further inspection of the culvert location. After first observing the south side culvert location, Mr. Berg and Mr. Moos proceeded to the north side culvert location.
17. Utilizing his GPS track log Mr. Berg estimated the size of the sediment deposition on reclaimed land was approximately 2800 square feet in size and 4 to 8 inches in depth.
18. Mr. Berg took two samples of this sediment deposition and conveyed them to Minnesota Valley Testing Laboratories, Inc. for testing. The analysis indicated that the material was topsoil quality. Mr. Moos testified that these findings surprised him, due to his belief that the material was substantially comprised of spoil material. Mr. Moos contributed the materials' high organic content to the significant presence of vegetation debris and haulroad dust (coal fines) within the samples.
19. Mr. Berg and Mr. Moos inspected the north haulroad ditch, which runs parallel to the haulroad on the haulroad's north side. Mr. Berg and Mr. Moos also observed a gully, extending 450 southwest and 750 feet northeast of the culvert location, ranged between 6-24 inches wide and 6-18 inches deep.
20. Because the north haulroad ditch was constructed of spoil material (as with the haulroad), only spoil material could have eroded from the north haulroad ditch to form this gully.
21. Mr. Kirk testified that the north haulroad ditch was scarified, seeded and mulched. Between the haulroad's construction and September 30, 2010 inspection, Coteau installed no further erosion control measures concerning the north haulroad ditch.
22. Some sections of the north haulroad ditch sideslopes were sparsely vegetated.

23. Mr. Moos inspected a stockpond northwest of the culvert location. The stockpond did not significantly contribute to the sediment deposition observed by Mr. Berg on September 2, 2010 and September 29, 2010, or Mr. Berg and Mr. Moos on September 30, 2010.
24. In mid July 2010 Coteau undertook erosion repair and installed additional erosion control measures on the south road ditch. Logic dictates that sediment in the south ditch would have been removed at this time.
25. Erosion within the north haulroad ditch occurred before September 2, 2010, since the south side of the haulroad had been repaired and stabilized in mid July 2010, and only spoil material from the north haulroad ditch could create the sediment deposition observed by Mr. Berg during his September 2, 2010 inspection.
26. A combination of erosion control fabric, silt fences, rock check dams and/or concrete matting should have been added to Coteau's erosion control efforts concerning the north haulroad ditch.
27. The erosion control matting slows the flow of the water passing down the north haulroad ditch, minimizing erosion, and the silt fences help contain some of the sediment upstream, rather than being deposited on reclaimed land, as was observed by Mr. Berg and Mr. Moos on September 29, 2010.
28. The concrete matting that was installed on the south culvert location in mid July 2010 constituted adequate, and appropriately responsive, erosion control. Therefore, NOV 1004 concerns only the north haulroad ditch.
29. At the conclusion of his direct testimony, Mr. Moos testified concerning the \$1500 penalty assessed against Coteau. Mr. Moos stated that four factors were taken into consideration when levying this amount: history of violations, the seriousness of the violation, negligence associated with the violation, and good faith. Mr. Moos testified that \$250 was assessed for seriousness, due to the amount of sedimentation observed, and \$1250 for negligence, due to the lack of best management practices on the north side of the haulroad. Nothing was assessed for the remaining factors.
30. As part of their case in Chief, Coteau relied upon Coteau Exhibit Number 5, a 77.9% basal cover finding, and a purported threshold of 73% basal cover to justify their position that there existed proper vegetation cover within the north haulroad

ditch prior to September 6 and/or September 9, 2010. No such objective figure for channelized flow has been established to qualify the 73% basal cover threshold. The 73% basal cover threshold is only applicable to sheet flow conditions, not channelized flow as existed in the north haulroad ditch. Additionally only small portions of the north haulroad ditch were taken into account to achieve the 77.9% reading, particularly those which were not exposed to the greatest amount of channelized flow. Coteau's position, in this regard, assumes no degradation in the north haulroad ditch bottom prior to the rainfall events of September 6 and September 9, 2010, even though Coteau observed rilling and sediment deposition in the north ditch in mid July 2010.

31. NOV 1004 stated, and the Commission finds, that Coteau violated N.D. Admin. Code § 69-05.2-24-01(2)(a) and N.D. Admin. Code § 69-05.2-16-08(1)(c) for failing to install the appropriate measures to control or prevent erosion and siltation from a segment of haulroad constructed in 2009. Failure to install appropriate sediment control measures in the haulroad ditch caused erosion of the ditch bottoms and the deposition of sediment on reclaimed mine lands.
32. Coteau completed the remedial actions specified in the notice of violation within the prescribed time.
33. Staff terminated NOV 1004 on October 25, 2010.
34. N.D. Admin. Code § 69-05.2-28-12 requires the Commission to consider four factors in determining the amount of civil penalty. These factors are: 1) history of previous violations; 2) seriousness of the violation; 3) negligence; and 4) good faith in attempting to achieve rapid compliance.
35. The Commission finds that assessment of a civil penalty based on the history of previous violations at the Freedom Mine is not warranted. Including this NOV, Coteau has received two violations within the past three years. Two violations in three years does not constitute a history of violations.
36. The Commission finds that Coteau's violation did cause sediment deposition on reclaimed land that is just north of the haulroad. A penalty for seriousness is therefore warranted.
37. The Commission finds that a penalty for negligence is warranted. The primary reason for NOV 1004 was for failure to install the necessary erosion and sediment control measures in the north haulroad ditch. Other than seeding, no other erosion and sediment control measures were installed in the north haulroad ditch.

Coteau's September 17, 2009 certification of this haulroad following its construction noted that the installation of a silt fence adjacent to culvert installations to control erosion remained to be completed at that time. However, a silt fence was never installed next to the culvert inlet on the north road ditch near the center of Section 18. Sediment deposition in this road ditch was also noted by Coteau prior to the September 2, 2010 inspection, but Coteau failed to install any silt fences or other sediment control measures in the north ditch after that inspection. The failure to install the erosion and sediment control measures is due to lack of diligence and ordinary negligence.

38. The Commission finds that a deduction for good faith is not warranted. Even though Coteau immediately began repair of the erosion feature and installed erosion control measures, the compliance in this case is considered normal. No extraordinary measures were required to abate this violation.
39. Based on these facts, the Commission should assess a penalty of \$250 for seriousness and \$1250 for negligence.
40. On November 2, 2010 Staff issued a Modification of Notice of Violation 1004, correcting the Permit Number and Legal Description errors in NOV 1004.
41. It is not disputed that "good cause" existed to modify NOV 1004 to correct the legal description, and permit, errors.

From the foregoing Findings of Fact, the Commission now makes its:

Conclusions of Law

1. The Commission has jurisdiction over this proceeding under North Dakota Century Code Chapter 38-14.1.
2. N.D. Admin. Code § 69-05.2-28-05(2) provides "[t]he Commission or its authorized representative may modify, vacate, or terminate a notice of violation for good cause."
3. Commission Reclamation Staff are "authorized representatives".
4. Good cause existed to modify NOV 1004.
5. Staff's November 2, 2010 Modification of Notice of Violation 1004 was proper. Coteau's Request to Vacate is therefore denied.

6. It is the Reclamation Division of the North Dakota Public Service Commission's burden to prove, by a preponderance of evidence, that Coteau violated N.D. Admin. Code § 69-05.2-24-01(2)(a) and N.D. Admin. Code § 69-05.2-16-08(1)(c).
7. Coteau violated N.D. Admin. Code § 69-05.2-24-01(2)(a) and N.D. Admin. Code § 69-05.2-16-08(1)(c).
8. The Commission should assess a civil penalty for NOV 1004.

From the foregoing Findings of Fact and Conclusions of Law, the Commission makes the following:

Order

The Commission orders:

1. Notice of Violation No. 1004 is affirmed.
2. Coteau is assessed a total civil penalty of \$1500 (\$250 for seriousness, \$1250 for negligence) for the violation.
3. The proceeding is closed.

PUBLIC SERVICE COMMISSION

Kevin Cramer

Commissioner

Tony Clark

Chairman

Brian P. Kalk

Commissioner

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Coteau Properties Company
Notice of Violation No. 1004
Violation

Case No. RC-10-598

AFFIDAVIT OF SERVICE BY CERTIFIED MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

John Hamre deposes and says that:

he is over the age of 18 years and not a party to this action and, on the **25th** day of **January, 2011**, he deposited in the United States Mail, at Bismarck, North Dakota, **one** envelope with certified postage, return receipt requested, fully prepaid, securely sealed and containing a photocopy of:

Reply Brief
Proposed Findings of Fact, Conclusions of Law, and Order

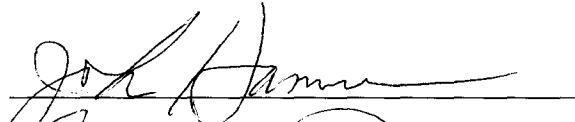
The envelope was addressed as follows:

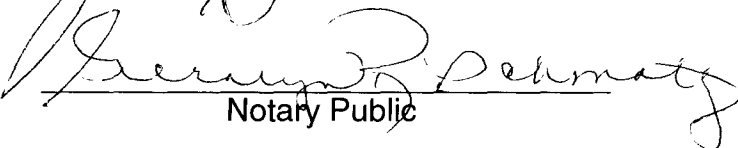
Brian R. Bjella
Crowley Fleck, PLLP
P.O. Box 2798
Bismarck, ND 58502

Cert. No. 7007 0710 0003 6056 9195

The address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this **25th** day of **January, 2011**.





Notary Public

SEAL

