



# Public Service Commission

## State of North Dakota

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March 1, 2013

Mr. Jeff Frohlich  
Knife River Corporation  
Beulah Mine  
P.O. Box 39  
Beulah, ND 58523-0039

Dear Mr. Frohlich:

The Reclamation Division has conducted a completeness review of the application for Revision No. 27 to Surface Coal Mining Permit No. KRSB-8603 in accordance with NDAC 69-05.2-05-10(2). This revision proposes to add 892.2 acres of land located in portions of Sections 20, 21, 22 and 23, T143N, R88W, to the existing permit. The completeness items below must be satisfactorily addressed before the Reclamation Division will deem the application complete. As of March 1, 92 days of the Commissions 120 day review period remain and the review period will remain suspended until the revision application is deemed complete.

We noted that the federal coal in the S $\frac{1}{2}$  of Section 20 is depicted as being mined with this revision; however, this federal coal has not yet been leased. Staff also noted that there does not appear to be a coal lease or other documents in the application showing the right to mine and otherwise disturb lands in the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 21. Not having the right to mine the federal coal and not having the legal right to disturb the other tract are major items that are likely a determination that this application is incomplete. From our discussions with BLM, we understand it may be several months before a coal lease modification is issued to add the federal coal tract to an existing coal lease. We believe the fact that DWC does not have the coal lease for this federal tract should have been discussed, or at least explained in the cover letter, before filing the revision application.

If you want our review of this application to proceed without a federal coal lease for the S $\frac{1}{2}$  of Section 20, mining plans in the revision application must be revised to show no mining of this tract at this time. Then, when the appropriate coal lease is issued for the S $\frac{1}{2}$  of Section 20, the permit will need to be further revised (significant revision) to reflect the plans for mining this federal coal. With regard to the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 21, either a surface or coal lease must be provided showing that DWC has the legal right to conduct mining operations on this tract before this application will be deemed complete. Otherwise, the tract will have to be deleted from the application.

During this review staff noted a number of technical review deficiencies and they are included after the completeness deficiencies. These items do not need to be addressed at this time; however, you can do so at your discretion.

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The following are the completeness items that were noted:

### **General**

1. Please revise the electronic permit format so that it opens in an html format and with working links. We also recommend that bookmarks be added to aid in navigation of the permit. Bookmarks are especially helpful in the long narratives/permit subsections such as Section 1.4. Using bookmarks allows one to locate the desired information quicker without having to scroll through the entire section or subsection to find the information. (all staff)
2. Since this revision application proposes the mining of additional federal coal, the application package must include a copy of the resource recovery and protection plan required by the BLM and the additional information required by 30 CFR 740.13(b)(3)(iii). (JRD)

### **Section 1.1 – Application and Support Documents**

3. The Listing of Revised Information notes that the Table of Contents (TOC) was updated to reflect all additions for Revision 22. We presume the intention was to reference Revision 27 rather than 22. Please update the Table of Contents narrative accordingly. (BEB)

### **Exhibit 1.3.1 Permit Area Map**

4. As required by NDAC 69-05.2-05-02(1) and 69-05.2-08-02(1)(c), please depict the KRSB-8603 permit boundary proposed with Revision 27 as one polygon of the area defined by the metes and bounds description of the 3,558.3 acres on pages 1.3.1 and 1.3.2 of Section 1.3. In addition, it is recommended that a separate map or exhibit depicting the original permit area and the various additions (revisions) to the permit be retained in the permit (similar to what is currently depicted on Exhibit 1.3.1) for historical reference. (WTG)

### **Section 1.4 – Part B – Property Interests**

5. As required by NDCC 38-14.1-14(1)(c)(2), please list surface and subsurface ownership percentages for all surface and coal owners within the permit area in Table 1 of the property interests table, thereby allowing the Commission to evaluate Dakota Westmoreland's compliance with NDCC 38-18-06. This information is not provided in Section 1.4 nor is it shown on Exhibit 1.4.1, Surface and Coal Ownership Map. In addition, it appears that Table 1 does not include all of the coal owners listed in lease documents in Exhibit 1.4.2 (Copies of Certified Leases and Agreements). (WTG/GAW)
6. As required by NDCC 38-14.1-14(1)(c)(2), please list the names and addresses for all surface and coal owners within the permit area. It appears that the list of names and addresses on page 1.4.19 does not include all of the coal owners listed in lease documents in Exhibit 1.4.2 (Copies of Certified Leases and Agreements). (WTG/ZAT)

### **Section 1.4 – Part E – Other Permits**

7. Please update the "Other Permits" section to clarify if the intermittent streams discussed in Sections 2.5, 2.6 and 2.7 that are going to be affected are wetlands subject to Corps of Engineers

jurisdiction and if the appropriate authorization has been obtained from the Corps of Engineers.  
NDAC 69-05.2-06-04 (GAW)

#### **Section 1.4 – Part I – Public Notice**

8. Please insert the word “Coal” in the second line of the advertisement title so that the title reads as follows: “Notice of Application for Revision to a Surface Coal Mine Permit”. Please insert the word “Coal” in the first sentence as well so that the ending of the first sentence reads as follows: “... for Revision No. 27 to Surface Coal Mining Permit KRSB-8603”. (WTG)
9. Please include the mailing address for the ND Public Service Commission, 600 East Boulevard Avenue, Dept. 408, Bismarck, ND 58505-0480, in the third paragraph of the Notice of Application for Revision to a Surface Mine Permit on page 1.4.37. (ZAT/WTG)
10. The statutory right of way between sections 22 and 23 has not been closed by Mercer County according to Exhibit 1.4.4, Temporary Roadway and Section Line Closures. The Pit Layout and Facilities Map, Exhibit 3.1.2, depicts this section line being mined through in 2015. Section line right of ways are public roads, by definition, and NDCC 38-14.1-07 (4) prohibits mining within 100 feet of the outside right of way of section line right of ways. As required by NDAC 69-05.2-10-01(1)(d), please identify any other rights of way or public roads that will be closed or that will have mining operations conducted within 100 feet of the outside right way as a result of mining operations proposed by this revision. NDAC 69-05.2-04-01.3(2), (3) and (4). (GAW)
11. Please revise the map included with the Public Notice to show the proposed permit boundary more prominently and cross hatch only the area being added with this revision. The whole permit boundary should be identified with a prominent line, not just the existing permit area. The wording “Proposed Additional Permit Acreage 892.2 Acres” is written in such small font that it will most likely not be legible when published. Please revise to clearly identify the addition area. Please also increase the font size of the section numbers and names of the creeks so they will be legible, and finally, separate or move the “Rose Hill Cemetary” (spelling error) wording away from the “3.5 miles to Beulah” wording. (GAW/BEB/MDB/WTG)
12. The Public Notice for Revision 27 should identify the apparent surface and coal owners of the NE¼ of Section 22 since the proposed permit area includes a small portion of the northeast quarter of that section. (RLK)
13. Please review the coal ownership for the SW1/4 of Section 23. The Notice of Application on page 1.4.37 lists Schmidt and Weigel as coal owners, and page 1.4.16 lists only Weigel as a coal owner, and Exhibit 1.4.1 lists the coal owner as Weigel et.al. Please review and list the coal ownership consistently and accurately on page 1.4.37, page 1.4.16, and on Exhibit 1.4.1. (ZAT)

#### **Exhibit 1.4.2 – Copies of Certified Leases and Agreements**

14. It appears that the federal coal lease documents on pages 293-300 and 301-303 are respective duplicates of pages 276-283 and 284-286. Please review the documents and delete any duplicates in Exhibit 1.4.2. If changes are made, please make the appropriate changes to Page 2 of this exhibit. It was also noted that the land descriptions for the various tracts represented by USA #269, USA #276, and USA #293 are inconsistent (not all tracts are listed) on page 2 even though each of the lease documents is for the same tracts. Please revise as necessary. (WTG/ZAT)

15. As required by NDAC 69-05.2-06-03(1), please clarify if the owners of the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 21 have executed a lease with Dakota Westmoreland. The legal description for the leased property in the S $\frac{1}{2}$  of Section 21 on page 309, appears to exclude the NW $\frac{1}{4}$ SW $\frac{1}{4}$ . It does not appear that the document on page 304 covers this tract, but reference is made to a 1961 lease for the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 21. In addition, the surface lease on page 168 covers only a portion of this tract (what was included in the original permit area). Please provide a lease or other documents showing the right to conduct mining operations on this tract. Please also clarify if the lease dated February 25, 2011 has been executed by a DWC representative. (WTG)
16. As required by NDAC 69-05.2-06-03(1), please submit a copy of the surface lease with Ronald and Janice Gunsch for the E $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 22 that has been filed with the Mercer County Office of County Recorder. (WTG)
17. As required by NDAC 69-05.2-06-03(1), please submit a copy of the surface lease with Vergene Christianson for the SE $\frac{1}{4}$  of Section 22 that has been filed with the Mercer County Office of County Recorder. (WTG)
18. As discussed above and as required by NDAC 69-05.2-06-03(1), a certified copy of the coal lease with the Bureau of Land Management for mining in the S $\frac{1}{2}$  of Section 22 must be included in the revision application if mining plans are not revised. (WTG)
19. As required by NDAC 69-05.2-06-03(1), please submit a copy of the coal lease with the mineral owners of the SW $\frac{1}{4}$  of Section 23 that has been filed with the Mercer County Office of County Recorder. As noted in a related deficiency in Section 1.4 - B, please clarify if the lease meets the requirements of NDCC 38-18-06, because coal ownership percentages are not listed in Table 1 of Section 1.4 - B (although they may correspond to the Exhibit A payment schedule on page 398). (WTG)

#### **Exhibit 1.4.3 – Notices of Intent to Mine**

20. NDCC 38-18-06(1) requires the mineral developer to give written notice to the surface owners of the type of land disturbance contemplated with sufficient detail to allow the surface owner to evaluate the extent of the disturbance planned on their property. The notices provided in Exhibit 1.4.3 do not provide any information regarding the type or extent of disturbance planned. Although the notification letter indicates that the attached map shows the plan of work and operations planned for the new area, the attached map only depicted the area being added to the permit. Please provide the surface owners with information that meets the requirements of law and include copies of this correspondence in the permit. The notice to Terence Schmidt should indicate that some of his land in the NE $\frac{1}{4}$  of Section 22 is being added to the permit as well. (GAW)

#### **Exhibit 1.4.4 – Temporary Roadway & Section Line Closures**

21. Please update Exhibit 1.4.4 to address the section line between Sections 22 and 23, which is an area where mining is prohibited. NDCC 38-14.1-07 (4), NDAC 69-05.2-04-01.3(2), (3) and (4). (GAW)

#### **Exhibit 1.4.5 – 100- Foot Buffer Zone Waivers**

22. Please update Exhibit 1.4.5 to address the section line between Sections 22 and 23, which is an area where mining is prohibited. NDCC 38-14.1-07 (4), NDAC 69-05.2-04-01.3(2), (3) and (4). (GAW)

#### **Section 1.5 – Compliance Information**

23. As required by NDAC 69-05.2-06-02(3) and NDCC 38-14.1-14(1)(g), please update Section 1.5 to list notices of violation NOV 1201 issued to the Dakota Westmoreland Corporation Beulah Mine on October 30, 2012 and NON 11-03-01 issued to the Western Energy Company Rosebud Mine on June 27, 2011. (WTG/ZAT/GAW)

#### **Section 1.6 – Relationship of Proposed Permit Area**

24. Please update Section 1.6, Relationship of Proposed Permit Area to Areas Designated Unsuitable for Mining, to state whether the Revision 27 addition area is within any areas designated unsuitable or under study for designation. Please also address the section line between Sections 22 and 23 and state which exhibit(s) depict all abandoned and occupied farmsteads and structures within and adjacent to the permit area, current use of all buildings on and within one-half mile of the permit area, and all features within, passing through or over the permit area (e.g. utility lines, pipelines, etc.) as required by NDAC 69-05.2-08-02. NDAC 69-05.2-06-05(1). (GAW/RLK/ZAT)

#### **Section 2.2 – Surface Water Hydrology Inventory and Monitoring**

25. The Surface Water Monitoring Map, Exhibit 2.2.7, does not clearly identify ephemeral, intermittent and perennial streams in the permit area. While the map includes labels in drainages indicated by contour lines, it does not identify the water course with a line and does not depict the extent of the intermittent or perennial segments. In addition, the labeling provided is not consistent with information provided elsewhere in the permit. The label provided in the drainage located in the S1/2 of Section 20 appears to indicate the tributary to Coyote Creek is ephemeral, but the wildlife inventory Table 2.5.1 lists 3.4 acres of intermittent stream habitat type in the Revision 27 acreage and Exhibit 2.5.1a, Classification of Habitat Types, depicts intermittent stream habitat in Sections 20, 21 and 22. The wetland narrative in Section 2.6 describes several wetlands as being associated with intermittent streams which are not shown on the surface water map. Please provide a surface water features map that identifies ephemeral, intermittent and perennial streams as required by NDAC 69-05.2-08-07(1). (RLK)
26. In Section 2.2, Surface Water Hydrology Inventory and Monitoring, please update the narrative to describe how stream classifications were determined for intermittent and ephemeral stream segments on land within the permit addition and describe the seasonal quantity and flow variations for streams included in the permit. NDAC 69-05.2-08-07(2). (RLK)
27. In Section 2.2, Surface Water Hydrology Inventory and Monitoring, the narrative on page 2.2.3 indicates the permit contains five dugouts and two stock pond developed water resources. However, the pre-mine land use map, Exhibit 2.6.9, appears to depict ten developed water resources in the permit area. Please update the narrative to include the developed water resources added with Revision 27. (RLK)

### **2.3 Groundwater Hydrology**

28. In Section 2.3, the probable hydrologic consequences narrative does not appear to have been updated to provide an assessment of the potential effects current and planned mining may have on the possible intermittent stream segments in sections 15, 20, 22 and 23. Please update the probable hydrologic consequences narrative to provide a description of potential effects and measures to be taken in the mining and reclamation process to assure the protection of surface water systems, and/or provide alternate sources of water if a pre-mining source cannot be maintained or restored. NDAC 69-05.2-09-12. (RLK)

### **Section 2.4 - Soils Inventory**

29. As required by NDAC 69-05.2-05-02(1), please create hyperlinks for Exhibits 2.4.10 and 2.4.11 that are currently only accessible through Windows Explorer. (WTG)

### **Section 2.5 – Wildlife Inventory Plan**

30. Please revise Section 2.5, Wildlife Inventory Plan, to include correspondence regarding DWC's plan for acquiring additional fish and wildlife information for the Revision 27 addition area. This should include a copy of the plan, correspondence from the Commission and the August 17, 2012 approval letter. NDAC 69-05.2-08-15(2). (GAW)
31. Please revise Section 2.5, Wildlife Inventory Plan, to specifically state if the proposed permit or adjacent area contains any habitat of high value for fish or wildlife or designated critical habitat as required by NDAC 69-05.2-08-15(3). (GAW)

### **Section 2.6 – Pre-Mining Vegetation Inventory**

32. Please revise the Tame Pastureland narrative in Section 2.6 to provide an assessment of the species composition of the tame pastureland as required by NDAC 69-05.2-08-08(1)(d). The narratives indicate that the tame pastureland being included with Revision 27 is essentially native grassland that has been invaded by introduced species. The Reclamation Division believes that undisturbed native grassland should continue to be classified as native grassland even if introduced species are prevalent. (GAW)
33. Please include a table or other information that provides an assessment of the productivity of each native grassland mapping unit (ecological/range site) as required by NDAC 69-05.2-08-08(1)(c). The mapping unit acreage information for each surface owner is provided in Exhibit 2.6.11 and the cropland, hayland and tame pastureland land uses mapping unit productivity information is provided in Section 3.7 of the permit, but native grassland productivity information for all mapping units could not be located in the permit. (GAW)
34. As required by NDAC 69-05.2-08-08(3)(b), please discuss the capability of the pre-mine native grasslands and tame pasturelands to support other land uses, such as cropland. (GAW)

### **Section 2.7 – Land Use**

35. Please include a table in Section 2.7 that identifies the Pre- and Post-Mine Land Use acreages by tract or surface ownership. NDAC 69-05.2-05-02. (GAW)

### Section 3.1 – General Mining Plan

36. Please add some discussion to the first part of Section 3.1 that explains the names of the various pit sequences in Permit KRSB-8603. The general location of each pit sequence should be described and refer to a map that depicts the various pit sequences would be helpful. In addition, there are some references to “this revision” when referring to past revisions that added other acreage to this permit and the phrase “newly permitted Federal coal” is also used for areas that were added with a previous revision. Statements like this need to be updated to refer to the specific revision that added lands along with the general location of those areas. Please review and clarify as necessary. NDAC 69-05.2-05-02. (JRD)
37. Based on information provided in the application, it appears slightly over 200 acres of the 892.2 acres proposed to be added to the permit with Revision 27 will actually be mined. NDAC 69-05.2-05-08(1) states that the “permit area shall be no larger than a logical pit sequence and include lands used for activities incidental to coal extraction”. None of the areas within the S1/2 of Section 21 being added to the permit are planned for disturbance except for the haulroad at the north side of this tract. It appears that a contiguous tract in the S½ of Section 21 and the SW¼ of Section 23 totaling about 475 acres is not projected to have any mining related disturbance. Please provide the details of any disturbances proposed in these areas and clearly depict the anticipated disturbance boundary on the appropriate maps as required by NDAC 69-05.2-09-02. If no disturbances are currently planned for the tracts listed above, then please provide justification for including these areas in the permit. If DWC is unable to justify including these tracts in the permit, then those areas should be considered for deletion from the addition area. Please address as appropriate. (BEB)
38. Please revise the General Mining Plan, Section 3.1, to discuss how the first pits will be dug in the Iron Pit sequence, S½ of Section 20, and how the box cut spoil will be handled as required by NDAC 69-05.2-09-14. Information regarding the initial pits in the Iron pit sequence is provided in Section 3.5, Backfilling and Grading, but this needs to be discussed in Section 3.1 as well. (GAW)
39. Please revise the Pit Layout and Facilities Map, Exhibit 3.1.2, to show where SPGM and spoil stockpiles will be located, and where ramps leading into the pits will be constructed. The Pit Layout and Facilities Map does not show any disturbance to the Pleasant Valley Farmstead or the drainage way west of this location but the Post Mining Topography map shows topographical changes in this area. Please review and update as necessary. (GAW)
40. Please update the Pit Layout and Facilities Map, Exhibit 3.1.2, to identify the Iron, Silver, Gold, Red and White Pit areas since the narratives in Sections 3.1 and 3.5 discusses mining in terms of these pit Areas. Also the pit numbers on the Pit Layout and Facilities Map, Exhibit 3.1.2, are not legible even when zoomed in. Please make the pit numbers legible. (GAW)
41. Please revise the Pit Layout and Facilities Map, Exhibit 3.1.2, to show the corridor that will be used to transport box cut spoil from the Iron Pit to the Silver Pit mining sequence. (GAW)
42. Please update the discussion regarding the mining of federal coal in Section A (Past, Present and Future Production) of Section 3.1. The narrative refers to newly leased federal coal tracts, but it does not appear that this information was updated since federal coal was added with Revision 22.

Please revise this language to clarify which areas have been leased and approved for mining with reference to the specific revision that approved mine plans for some of the federal coal tracts. (MDB)

43. Please include design plans for the haul road/dragline walkway in Sections 20 and 21 per NDAC 69-05.2-09-06 and 69-05.2-24-03. We understand that the dragline walkway will also be utilized for hauling coal as well. Portions of this road are not contained by a pond nor are they within the immediate mining area. Therefore, this primary road must be designed and certified. (MDB)
44. Please retain existing Exhibit 3.1.8 as it is the approved haul road which leads to the Silver Pits and continues to be used. The new haul road design should be on a new exhibit and should not replace the existing haul road design plans. (MDB)
45. Please include a Certification of Haul Roads as required by 69-05.2-09-06(2). (MDB)

### **3.2 Water Management Plan (also relates to 3.1 General Mining Plan)**

46. The Pit Layout and Facilities Map, Exhibit 3.1.2, and Water Management Plan Map, Exhibit 3.2.1, need to depict the intermittent stream segments within the permit area along with a 100 foot buffer zone that may not be disturbed except as provided in NDAC 69-5.2-16-20. (RLK)
47. Please provide a description of any structures (ponds, pond outfalls, haul road crossings, stockpiles, etc.) or other mining disturbance within 100 feet of an intermittent stream in the narrative for Section 3.1, General Mining Plan and/or Section 3.2, Water Management Plan. The narrative should also describe what measures will be used to prevent adverse affects on the water quantity and quality or other environmental resources of the stream. Land within 100 feet of an intermittent or perennial stream may not be disturbed unless the Commission specifically authorizes surface mining activities closer to, or through, a stream after consulting the state engineer and the state department of health in accordance with NDAC 69-05.2-16-20. The Pit Layout and Facilities Map does not show disturbance to the stream channel in Section 20 but the topography is being altered in the upper reaches of the stream area on Exhibit 3.5.3. Exhibit 2.2.7 indicates that the drainage in 22 is an intermittent stream at its headwaters but it is not clear how far up the channel the drainage is considered intermittent. (RLK/GAW)
48. Please provide justification for retaining ponds 87 and 94 as a permanent structures as required by NDCC 38-14.1-24(7) and NDAC-69-05.2-16-09(9). (MDB)
49. Please revise the sediment pond exhibits to make the information more legible. For example, yellow does not show up well on a white background and is very difficult to see; new pond contours are overlapping the existing contours instead of being joined to the contours and existing contours removed; and several pond cross sections did not depict the pond bottoms. Please revise as necessary to provide the needed information and to make the exhibits more user friendly. (MDB)
50. Please include the runoff volume calculations for each of the new ponds submitted as required by NDAC 69-05.2-09-09(2)(c). Also, please review the sediment volume calculations as our preliminary review indicates they are under-estimated. (MDB)

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51. Please correct the Water Management Certification as it is for Permit KRSB-8802, not KRSB-8603. (MDB)

### **Section 3.3 – Blasting Plan**

52. With the areas being added to the south portion of this permit with Revision 27, please update the list of landowners, government agencies and other parties who will receive the blast notice as well as to be notified of the options of a pre-blast survey if necessary. NDAC 69-05.2-17-02 and 69-05.2-17-03(1)(b). (MDB)

### **Section 3.7 – Revegetation Plan**

53. Please revise Section 3.7 to include specific design plans for the conservation woodlands for compliance with NDAC 69-05.2-09-11 (6). GAW
54. Please revise Section 3.7 to discuss the procedures and methods that will be used to restore stream channels that will be affected by mining. They must be restored in a manner that ensures compliance with NDAC 69-05.2-16-01(1)(a) and (b). (GAW)

### **3.8 Time Schedules**

55. In Section 3.8, Time Schedules, DWC is requesting reclamation variances Number 8 and 9, but it does not state what requirements a variance is being requested from. Please specify if the requested variances are for the 180 day backfilling requirement and/or for the three year contemporaneous reclamation requirement. Also, please expand the discussion to include the appropriate justification for the various requests. (MDB)

### **3.9 Reclamation Cost Estimates and Performance Bond**

56. With Revision 27, the worst case scenario was updated to a new worst condition of May 2016; however, this is **not** worst case. Generally the worst case scenario is the time frame in which the greatest volume of spoil and SPGM would have to be moved. There may be more total acres disturbed in 2016; however, according to DWC calculations there would be approximately 1.8 million less yards of spoil that would have to be moved and approximately 1 million less yards of topsoil and 0.6 million less yards of subsoil to move. It was previously determined that the worst case scenario for the current permit term (ends in August of 2016) would be in 2013. Please remove the revised worst case reclamation scenario as proposed in Revision 27 and retain the currently approved worst case scenario and update the variable costs to the August 2012 Variable Cost Update. (MDB)

### **Technical Deficiencies**

The following items are technical deficiencies that were noted during our completeness review. They do not have to be addressed at this time if you chose not to address them but you may wish to address them at your discretion.

1. Please review ownership for the three adjacent land owner tracts in the NW1/4 of Section 27 listed on 1.4.17 and 1.4.18. Ownership should be listed consistently between pages 1.4.17 and 1.4.18 and Exhibit 1.4.1. (ZAT)

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2. At the top of page 1.4.25, please remove the listings for the S1/2 of Section 22 and the NW1/4 and SW1/4 of Section 23 under the heading Operator Interests in Lands Abutting the Proposed Permit Area, since these tracts of land are within the proposed permit boundary for Revision 27. (ZAT)
3. Please review the last sentence on page 1.4.26 which states a copy of the initial application newspaper advertisement is included as pages 1.4.19 and 1.4.20. It appears the page numbers should be updated to 1.4.29 through 1.4.38. (ZAT)
4. On page 1.4.28, please update the narrative under letter I, Permit Application Advertisement, to include Revision 24, Renewal 5 and Revision 27. (ZAT)
5. On Exhibit 1.4.1, Surface and Coal Ownership Map, please relocate the range number in Section 28 that interferes with ownership label clarity, or remove it because the township and range numbers on the map legend encompass the entire map area. NDAC 69-05.2-05-02(1). (WTG)
6. Although not required, please label ownership in the SE<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub> of Section 27 on Exhibit 1.4.1, Surface and Coal Ownership Map, because the parcel ownership is listed on page 1.4.18 of the Section 1.4 narrative. (WTG)
7. In Section 2.5, please include a discussion about reviewing the ND Natural Heritage Inventory database and the ND GAP Report for a determination if any important plant, plant communities or terrestrial vertebrate species are known to exist in the proposed permit or adjacent area as requested in our letter dated March 16, 2012. (GAW)
8. Please revise the Exhibit 2.5.1A, Classification of Habitat Types, to identify all the habitats on areas adjacent the proposed permit addition, and clearly indicate if this area contains habitat capable of supporting Sprague's pipit or the Dakota Skipper. (GAW)
9. Exhibit 2.5.1a, Classification of Habitat Types, does not appear to have been completed with the degree of detail shown on the Pre-mine Land Use Map, Exhibit 2.6.9. For example, Exhibit 2.5.1a identifies a number of small woodland communities not shown on Exhibit 2.5.1a and a woodland community located in the SW1/4 of the SW1/4 of Section 23 is identified as a low shrub community but Exhibit 2.6.9 identifies this woodland as a tall shrub community. Please revise Exhibit 2.5.1a to show all of the habitat types, including low shrub communities not classified as woodlands in the Pre-Mine Land Use section of the permit, and revise Section 2.5 to include a discussion about the value of the low shrub habitat type for wildlife. NDAC 69-05.2-08-15 (3) and NDAC 69-05.2-05-02. (GAW)
10. Please revise the Woodland narrative in Section 2.6 to clarify how low shrub communities, particularly western snowberry, not associated with tall shrub woodlands were classified as a land use. NDAC 69-05.2-05-02.. (GAW)
11. DWC is proposing a number of land use changes on lands that were previously permitted and on lands where no preference statement has been obtained, according to page 2.7.1 and Exhibit 2.7.3. Please explain and justify these proposed changes. It is not clear why 0.3 acres of native grassland is being reclaimed to woodland in the SE1/4 of Section 22. The 0.4 acre wetland that is to be reclaimed on hayland in the S<sup>1</sup>/<sub>2</sub>SE<sup>1</sup>/<sub>4</sub> of Section 17 does not appear to have a watershed

large enough to support this wetland and it is recommended that the developed water resource that is being added in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 16 be placed further down the drainage where the slope is less steep. (GAW)

12. On Exhibit 2.7.1, Post Mine Land Use Map, please review the wetlands in the SE $\frac{1}{4}$  of Section 22 and the SW $\frac{1}{4}$  of Section 23. Please add a class label to the wetlands in Section 23 and also indicate the class of the wetlands in the SE $\frac{1}{4}$  of Section 22 that lie southwest of the large DWR. (ZAT)
13. The table provided in the General Mine Plan narrative in Section 3.1 provides estimates of coal production up to and including the year 2017 (5-years), however, the Extended Mine Plan Map, Exhibit 3.1.1, depicts areas proposed for mining only through 2016 (4-years). Please depict those areas planned for mining in the year 2017 on the Extended Mine Plan Map and also on the Pit Layout and Facilities Map, Exhibit 3.1.2. Additionally, please revise the legend of the Pit Layout and Facilities Map so the color scheme for mining years 2015 and 2016 match the color scheme provided on the legend, or vice versa. (BEB)
14. In Part A of Section 3.1 it also states the application and attendant Extended Mine Plan was approved in Permits KRSB-8009, KRSB-8108, KRSB-8301, KRSB-8603 and KRSB-8802. Please revise as three of the permits no longer exist. (MDB)
15. Several of the pond embankments will also be used as a haul road. Please provide the specific BMPs that will be used on the down side slope of the pond embankment/haul road to ensure compliance with NDAC 69-05.2-24-01(2)(d). Also please clarify what type of BMPs will be used along the new haul road in section 21 to control runoff. (MDB)
16. General comment/recommendation – If mining is going to cease in 2016 in Section 20, it seems more logical to start the first pits of the Iron Pit area at the south end of the mine area and then mine northward towards the drainage rather than away from the drainage. It may be easier to close the final pit areas near the drainage way rather than in the middle of an upland site that is to be reclaimed to cropland/hayland. It appears that DWC would have more options to deal with spoil shortages or excess material near the drainage than in an upland setting. (GAW)
17. DWC is encouraged to revise the sediment ponds to only use one barrel riser combination for the discharge of water. NDAC 69-05.2-16-09(9) allows a single spillway to safely discharge the runoff event. We also noted none of the drawings show a drawdown structure so the ponds will need to be pumped to maintain an adequate water level. (MDB)
18. In Exhibit 3.5.3, the post mining topography in Section 22 does not appear to blend with the surrounding topography or even tie into the undisturbed topography in places. For example, the reconstructed drainage channel in the W $\frac{1}{2}$  of Section 22 above Pond 85 is discontinuous and undefined (topography flattens out with no drainage channel defined) in the upper reclaimed reaches yet it ties into a well-defined undisturbed drainage in the SW $\frac{1}{4}$  of Section 22. Also, in the eastern portion of Section 22, the undisturbed slopes at the graded spoil/undisturbed interface are convex shaped but the reclaimed slopes that tie-into the undisturbed area will be concave shaped. In addition, it appears that portions of the post mining topography in the Gold Pit area do not meet grading requirements. The drainage above pond 85 should have smaller secondary drainage ways fingering off the main drain as well. (MDB/GAW)

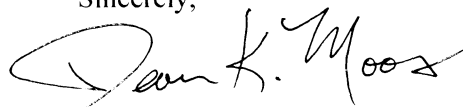
Mr. Jeff Frohlich

March 1, 2013

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If you have any questions, please contact this office.

Sincerely,

A handwritten signature in black ink, appearing to read "James R. Deutsch". The signature is fluid and cursive, with the first name "James" being the most prominent.

for James R. Deutsch  
Director  
Reclamation Division

Minedata/Beulah/Permits/KRSB-8603/Revisions/No.27/Rev27\_completeness\_rvw\_ltr\_3-1-13