



December 10, 2013

Mr. James R. Deutsch
Director, Reclamation Division
Public Service Commission
600 E Boulevard Ave, Dept 408
Bismarck, ND 58505-0480

Dear Mr. Deutsch:

Re: Revision No. 27
KRSB-8603

Per your letter of March 1, 2013, enclosed are three CD's in electronic format. Individual comments are set forth below followed by Dakota Westmoreland's responses.

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)
 - The permit was reformatted to a single PDF document. Bookmarks were added for the exhibits and narratives. The exhibits were bookmarked under the corresponding narrative and the narratives were bookmarked under the corresponding section. Links were updated to connect to the appropriate pages within the document. Additional bookmarks were added to Exhibit 1.4.2.
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)
 - Dakota Westmoreland is unable to update the resource recovery and protection plan (R2P2) until the lease modification has been approved by the Bureau of Land Management. (Refer to BLM letter of 11/18/13 addressed to the Public Service Commission.) Enclosed with this submittal is a copy of the currently approved R2P2 and Logical Mining Unit plan (LMU).

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)
 - The reference to Revision 22 has been corrected to reference Revision 27



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)

- Exhibit 1.3.1 was changed so that the proposed Permit boundary of Revision 27 is one solid polygon. The boundaries of the previous revisions were more clearly marked and labeled.

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)

- Percentage of total ownership for each parcel has been added. The complete list of lessors for the SW¼ of Section 23 has been added.

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)

- The names and address for all lessors of the SW¼ of Section 23 has been added.

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)

- The Corps of Engineers prefers that our application not be submitted until later in the process, so we intend to submit the Section 404 application to them after the first round of technical deficiencies.

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)

- The word "Coal" has been inserted in both places as requested.



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)
 - The mailing address for the ND PSC has been added to the public notice.
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)
 - The temporary closure application of this section line is slated for the Mercer County Commission agenda on December 18, 2013. This section line is unimproved and has little or no travel. Upon receipt of the approval document, DWC will submit a hard copy to the PSC under separate cover and will append it to Exhibit 1.4.4 with technical deficiency responses.
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)
 - The public notice map was changed so that the existing and proposed permit boundaries are the same color. The labeling and cross-hatch was changed to make them more legible for the additional area. Rose Hill Cemetery and stream labels were adjusted to make them more legible.
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)
 - The apparent surface and coal owners for the NE¼ of Section 22 have been added to the notice.
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 1.4.1 is correct for coal ownership as Weigel et.al. The Notice of Application and the list of ownerships in Table 1 under *Property Interests* (now page 1.4.17) have been corrected.

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)
- The duplicate leases have been removed from the exhibit. Page references have been removed from the index as the leases are now “bookmarked.” The land description for federal lease has been corrected on page 2.
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)
- The second page of the February 25, 2011 Ratification and Payment Division Order (now page 414) states that the current owners ratify the Coal Lease, defined on the first page as the 1963 coal lease (page 406) for the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21. Subsequent language on the second page states that the lessors “grant, lease and let the Coal Leased Premises to Lessee subject to and in accordance with the terms and conditions set forth in the Coal Lease.” The Coal Leased Premises are defined as the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21 on page 1 of the document. The 1963 lease has been appended to the exhibit found at page 406.
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)
- The page providing the recordation information from the Mercer County Office of County Recorder has been added to this lease.
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)
- The page providing the recordation information from the Mercer County Office of County Recorder has been added to this lease.
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)
- The approved *Modified Coal Lease* to include the S $\frac{1}{2}$ of Section 22 has been received as of 12/09/13 (copy enclosed with this submittal). However, it has not yet been recorded at the Mercer County Office of County Recorder. The recorded document will be appended to the electronic permit, Exhibit 1.4.2, with the technical deficiencies submittal.
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)

- The page providing the recordation information from the Mercer County Office of County Recorder has been added to this lease. The coal ownership percentages are now listed in Table 1, *Property Interests*.

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 NE1/4 of Section 22 is being added to the permit as well. (GAW)

- The Notice of Intent to Mine exhibit has been revised as requested. Upon approval from the PSC, this information will be resent to the surface owners listed. The descriptor “the SE¼ of the NE¼, Section 22,” has been added to Terence Schmidt’s Notice of Intent letter.

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)

- As stated for item #10, the temporary closure application of this section line is slated for the Mercer County Commission agenda on December 18, 2013. This section line is unimproved and has little or no travel. Upon receipt of the approval document, DWC will submit a hard copy to the PSC under separate cover and will append it to Exhibit 1.4.4 with technical deficiency responses.

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)

- DWC does not anticipate problems with obtaining the temporary section line closure (see response to items 10 and 21), therefore; no additional information will be necessary for this exhibit.

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)

- NOV 1201 issued to DWC and NON 11-03-01 issued to WECO have been added to Section 1.5. This section will be updated again just prior to the final approval.



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)

- DWC does not anticipate problems with obtaining the temporary section line closure (see response to items 10 and 21), therefore; no additional information will be necessary for this section. An account of where to find the requested information (referencing two existing exhibits) has been added to the narrative of Section 1.6.

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)

- We have revised Exhibit 2.2.7 to display the perennial, intermittent, and ephemeral streams in the revision area consistent with information presented in other sections.

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)

- A description of the information considered when designating the type of stream and verbiage regarding flow variability have been added to the narrative.

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)

- The narrative has been changed to address the additional developed water resources.

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)

- The PHC narrative has been amended to clarify perceived impacts to intermittent streams and mitigative responses.

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)

- We have edited some of the hyperlinks and believe that all will now work. During our review, we discovered that many soil sample analyses for the revision No. 22 area as well as the current revision were missing. These have been added to Exhibit 2.4.2.

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)

- The fish and wildlife plan of study correspondence and August 17, 2012 approval letter has been added to Exhibit 2.5.11.

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)

- The coordinator for the Natural Resources Division of the Nature Preserves/Natural Heritage Inventory/Natural Areas Registry was contacted on April 5, 2013. Christine Dirk of their staff was to conduct an environmental review of the project area. No information has been received from their office. DWC will again contact the agency for further information.

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)

- We have changed the identification for areas formerly identified as tame pastureland in the S½ of Section 22 to native grassland, despite an overwhelming predominance of tame species. However, the tame pastureland in the SW¼ of Section 23 was planted, so the identification remains unaffected. This necessitated changes to Exhibits 2.6.1.1, 2.7.3, and Exhibit 3.7.3. Coincidentally,



we took the opportunity to revise Exhibit 2.6.11 to correct longstanding discrepancies largely a result of disregarding industrial and commercial land use acreages in the original and early permit revisions involving Sections 14, 15, 16, and 21. We also made corrections to some cadastral boundaries. Areal coverage of map units was estimated using AutoCAD, improving upon the results derived by the planimetry employed years ago. The resultant changes to Exhibit 2.6.11 cascaded to related data in Exhibit 3.7.3.

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)

➤ Native grassland production by landowner has been appended to Exhibit 3.7.3.

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)

➤ The land use narrative (Section 2.7) has been expanded to address the capability of the premining grasslands to support other land uses.

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)

➤ New Exhibit 2.7.4 presents premining and postmining land use acres by ownership.

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)

➤ The third paragraph in Narrative 3.1 was changed to describe the locations and directions of the various pits. Narrative 3.1 was also updated to reference the proper permit revision and federal coal references.

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)

- The S ½ of Section 21 T. 143 N., R. 88 W. is an integral component of our long range mine plan. The present stripping sequence is based on projected tonnages from our existing customers at this time. Our experience with coal contracts has shown that the actual tonnages, ending dates, or starting dates are subject to change. DWC plans on being ready for any coal demand above the projected plan. The S ½ of Section 21 is contiguous to our active mining areas in the Gold and Silver pit areas. The additional tonnage on this parcel of land could be incorporated into our existing mining plan with minimal modifications to the existing plan.

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)

- The following text was added to discuss the handling of box cut material: *In regard to the Iron pit, some of the box pit material will be hauled to fill in the final Silver Pit. DWC accounted for this material when designing the silver pit final topo, as seen on Exhibit 3.5.3. Roughly half of the box pit material will be hauled to the Silver pit. As seen in Exhibit 3.5.2b, and Exhibit 3.5.2c, DWC will stack the box pit material just to the north side of the pit for Iron box pit 1 & 2. For Iron box pit 3, 4 & 5 DWC will haul half or all of the box pit material to the Silver final pit. The remaining box pit material will be stacked on the north side of the pit. Iron Box Pit material will also be used to build Ramps 1 and 2 of the Iron Pit and Ponds 103, 104, 105, and 106 embankments. Box Pit Spoil will be hauled to Silver Pit via ramps 2 and 1 of the Iron Pit.*

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)

- Exhibits 3.1.1, 3.1.2, 3.5.3, 3.5.1b, 3.5.4a and 3.5.4b were updated to show the correct disturbance area.

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)

- The Iron, Silver, Gold, Red and White Pit areas were outlined and the labeling was changed to make the pit numbers more legible.

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)

- The corridor that will be used to transport the Iron Pit Box Cut Spoil was added to Exhibit 3.1.2.

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)

- Section A of Narrative 3.1.1 was updated to include references to when federal tracts were approved for mining (page 3.1.2, 3rd paragraph).

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)

- Designs for the dragline walkway in Sections 20 and 21 were added to Exhibit 3.1.8. Exhibit 3.1.8a and Exhibit 3.1.8b were added to show a typical cross-section and the disturbance depths, respectively. The walkway is not a haul road and all runoff will be routed to sediment ponds per Revision 28.

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)

- Exhibit 3.1.8 was changed to show all proposed new haul roads and existing haul roads.

45. Please include a Certification of Haul Roads as required by 69-05.2-09-06(2). (MDB)

- The haul road certification was added to Exhibit 3.1.7.

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)

- Exhibit 3.1.2 was changed to add intermittent stream segments within or near the proposed and existing permit area. The mine plan was changed to maintain a 100 foot buffer where possible.

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)

- Text was added to page 3.2.30 regarding Sump 99E. "In the W½ of Section 21 and E½ of Section 20, where the proposed box cut haul road will be built, there is a section of the road that crosses



and intermittent stream segment. At this location silt fences and curlex will be used to maintain the water quality of the stream." Was added to page 3.1.9.

48. Please provide justification for retaining ponds 87 and 94 as permanent structures as required by NDCC 38-14.1-24(7) and NDAC-69-05.2-16-09(9). (MDB)

➤ Justification was added as requested.

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)

➤ The DWG file has been edited. Yellow contour lines were changed to blue to improve visibility and the contour lines have been trimmed. Pond bottoms are now shown and labeled on the cross sections.

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)

➤ Sediment computations were reviewed and, while the sediment yields appear low, they reflect the output of the RUSLE. The watershed area to the ponds has a moderate slope and mining activity will only be active for 2-3 years, so the computed yields are comparatively low relative to other ponds within the mine.

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

➤ The Water Management Certification has been corrected.

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)

➤ Page 3.3.7, as submitted in January, has the correct list of landowners, government agencies and other parties. However, the updated information was not highlighted nor was the replaced information cross-hatched. I am sorry for the inconvenience this caused.

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

➤ Planting details for the conservation woodland plantings have been added to the narrative.



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)

- Narrative addressing the location of postmining stream channels and practices that may affect land use has been added to this section.

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)

- The narrative has been modified as requested.

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)

- As requested the bonding calculations have been updated using a worst case of 2013.

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)

- Exhibit 1.4.1 has been corrected.

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)

- The three tracts referenced have been removed.

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)



- The page references have been deleted from the narrative to eliminate confusion.
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)
 - The additional revision references have been added to the narrative.
 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)
 - The range label within Section 28 has been removed.
 6. Although not required, please label ownership in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ 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)
 - The ownership is now shown for the SE $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 27.
 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)
 - Discussion pertaining to our review of the database and GAP report has been added to the narrative on page 61.
 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)
 - The exhibit has been revised by adding habitat types to adjacent areas. We will address habitat capability for the two species in our next round of revisions.
 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 SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ 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)
 - Concerning the identification of additional woodland communities, we intend to further amend the exhibit during the next round of revisions. The narrative will also be revised at that time.
 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)



- Early narrative in the Woodlands section has been revised to explain the approach to low shrub community identification and mapping.
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 S¹/₂SE¹/₄ 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 NE¹/₄SE¹/₄ of Section 16 be placed further down the drainage where the slope is less steep. (GAW)
- Language has been added to the narrative to help explain the rationale behind land use changes. We are able to propose minor increases in postmining wetland and/or woodland acres in some ownerships, as is the case for the 0.2-acre increase in the SE22, in order that wildlife habitat might be enhanced. Design plans and calculations in the Water Management Plan provide evidence that the watershed is sufficient to support the conservation wetland. We anticipate that the upland conservation and mitigation wetlands will drawdown substantially from time to time, which can aid in maintaining a predominance of emergent vegetation. The DWR in the NESE16 has been moved a bit downstream.
12. On Exhibit 2.7.1, Post Mine Land Use Map, please review the wetlands in the SE1/4 of Section 22 and the SW1/4 of Section 23. Please add a class label to the wetlands in Section 23 and also indicate the class of the wetlands in the SE1/4 of Section 22 that lie southwest of the large DWR. (ZAT)
- Labels have been added so that all wetland segments are identified as to class.
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)
- Exhibit 3.1.1 has been modified as requested. Exhibit 3.1.2 is quite “busy” with detail. We request to leave this exhibit as is.
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)
- This information was left in for historical purposes.
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)
- Silt fences are used along the toe of all downstream embankments. These BMP's will be maintained until the slopes are vegetated. New haul roads will have silt fences at low points and straw waddles where needed.



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)
- DWC is actively pursuing an extension to the existing coal contract with the Heskett Power Plant in Mandan, ND. Our long range planning includes this additional tonnage. That would require extending the Iron Pits into Section 29. Therefore stripping the Iron pits from south to north does not make sense.
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)
- Pond outlets were revised to consist of a single riser barrel. The haul road will cross the embankment of the ponds that were presented with multiple barrel outlets, so a surface overflow emergency spillway was not feasible for those locations. The barrel sizes were upsized to convey the design storm with a minimum of two feet of freeboard.
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 W½ 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 SW¼ 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)
- The proposed topography lines in the gold pit that were blended with the existing topography and drainage issues were addressed.

Please contact me at extension 3926 or Jeff Frohlich, extension 3908, if you have any questions.

Sincerely,

Paula Koble Gores
Permit Coordinator

/s/
Enclosures

DAKOTA WESTMORELAND CORPORATION

Mine: Beulah Mine
Permit Number: KRSB-8603
Revision No.: 27
Submittal Date: January 31, 2013
Completeness: December 10, 2013

Revision Narrative

Revision No. 27 adds 892.2 acres to permit KRSB-8603 for future mining in the Iron, Gold, and Silver pit locations.

Listing of Revised Information

<u>Volume</u>	<u>Section</u>	<u>Revised Information and Instructions</u>
TOC	TOC	Revised to reflect all additions for Revision 27.
1	1.1	Add revision forms
1	1.3	Revised Exhibit 1.3.1
1	1.4	Revised narrative 1.4 Revised Exhibit 1.4.1 Revised Exhibit 1.4.2 Revised Exhibit 1.4.3
1	1.5	Revised violation history
1	1.6	Revised narrative
2	2.2	Revised narrative 2.2 Revised Exhibit 2.2.7
2	2.3	Revised narrative 2.3
2	2.4	Revised narrative Revised Exhibit 2.4.2
2	2.5	Revised narrative Revised Exhibit 2.5.1a
2	2.6	Revised narrative Revised Exhibit 2.6.9 Revised Exhibit 2.6.11
2	2.7	Revised narrative Revised Exhibit 2.7.1 Revised Exhibit 2.7.3 Added Exhibit 2.7.4
3	3.1	Revised narrative 3.1

		Revised Exhibit 3.1.1 and 3.1.8
3	3.2	Revised narrative 3.2 Revised Exhibits 3.2.1, 3.2.44, 3.2.45, 3.2.46, 3.2.47, 3.2.48, 3.2.49, and 3.2.50 Added tables for ponds 103 through 106
3	3.3	Revised Exhibit 3.3.1
3	3.4	Revised Exhibit 3.4.1
3	3.5	Revised n arrative 3.5
3	3.7	Revised narrative Revised Exhibit 3.7.3 Revised Exhibit 3.7.10
3	3.8	Revised narrative 3.8
3	3.9	Revised narrative 3.9

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

Serial No. NDM 041765

Date of Lease: August 1, 1961

MODIFIED COAL LEASE

PART I.

THIS MODIFIED COAL LEASE is entered into on December 1, 2013 by and between the UNITED STATES OF AMERICA, hereinafter called the Lessor, through the Bureau of Land Management, and

Dakota Westmoreland Corporation
2 N Cascade Ave., 14th Floor
Colorado Springs, CO 80903

hereinafter called Lessee.

This modified lease shall retain the effective date of August 1, 1961, of the original COAL LEASE NDM 041765, and is effective for a period of 20 years therefrom, and for so long thereafter as coal is produced in commercial quantities from the leased lands, subject to readjustment of lease terms at the end of the 20th lease year (August 1, 1981), and each 10 year period thereafter.

Sec. 1. This lease is issued pursuant and subject to the terms and provisions of the:

Mineral Lands Leasing Act of 1920, as amended, 41 Stat. 437, 30 U.S.C 181-287, hereinafter referred to as the Act;

Mineral Leasing Act for Acquired Lands of 1947, 61 Stat 913, 30 U.S.C. 351-359;

And to the regulations and formal orders of the Secretary of the Interior which are now or hereafter in force, when not inconsistent with the express and specific provisions herein.

Sec. 2. Lessee as the holder of Coal Lease NDM 041765, issued effective August 1, 1961, was granted the exclusive right and privilege to drill for, mine, extract, remove or otherwise process and dispose of the coal deposits in, upon, or under the lands described as Tract 1.

Lessee as the holder of Coal Lease NDM 041765, issued effective December 1, 2009, was granted the exclusive right and privilege to drill for, mine, extract, remove or otherwise process and dispose of the coal deposits in, upon, or under the lands described as Tract 2.

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DEPT OF INTERIOR

The Lessor in consideration of fair market value, rents and royalties to be paid, and the conditions and covenants to be observed as herein set forth, hereby grants and leases to Lessee the exclusive right and privilege to drill for, mine extract, remove, or otherwise process and dispose of the coal deposits in, upon, or under the lands described below as Tract 3.

Tract 1: T. 143 N., R. 87 W., 5th Principal Meridian

Sec. 20: W $\frac{1}{2}$, S $\frac{1}{2}$ SE $\frac{1}{4}$

Sec. 30: NE $\frac{1}{4}$ NE $\frac{1}{4}$

T. 143 N., R. 88 W., 5th Principal Meridian

Sec. 14: NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$

Sec. 20: NE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$

Sec. 22: N $\frac{1}{2}$

Sec. 24: NE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$

1,240.00 Acres, Oliver and Mercer Counties, North Dakota

Tract 2: T. 143 N., R. 88 W., 5th Principal Meridian

Sec. 20: NW $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$

240.0 Acres, Mercer County, North Dakota

Tract 3: T. 143 N., R. 88 W., 5th Principal Meridian

Sec. 22: S $\frac{1}{2}$

320.00 Acres, Mercer County, North Dakota

Containing 1,800.00 acres, more or less, together with the right to construct such works, buildings, plants, structures, equipment and appliances and the right to use such on-lease rights-of-way which may be necessary and convenient in the exercise of the rights and privileges granted, subject to the conditions herein provided.

Part II. TERMS AND CONDITIONS

Sec. 1.(a) RENTAL RATE – Lessee shall pay Lessor rental annually and in advance for each acre or fraction thereof during the continuance of the lease at the rate of \$3 for each lease year.

(b) RENTAL CREDITS – Rental shall not to be credited against either production of advance royalties for any year.

Sec.2.(a) PRODUCTION ROYALTIES - The royalty shall be 12.5 percent of the value of the coal as set forth in the regulations. Royalties are due to Lessor the final day of the month succeeding the calendar month in which the royalty obligation accrues.

(b) ADVANCE ROYALTIES – Upon request by the Lessee, the authorized officer may accept, for a total of not more than 20 years, during the life of the lease the payment of advance royalties in lieu of continued operation, consistent with the

regulations. The advance royalty shall be based on a percent of the value of a minimum number of tons determined in the manner established by the advance royalty regulations in effect at the time the lessee requests approval to pay advance royalties in lieu of continued operation.

Sec.3. BONDS – Lessee shall maintain in the proper office a lease bond in the amount of \$5,000. The authorized officer may require an increase in this amount when additional coverage is determined appropriate.

Sec.4. DELGENCE – This lease achieved diligent development on June 30, 1984, and is subject to the conditions of continued operation. Continued operation may be excused when operations under the lease are interrupted by strikes, the elements, or casualties not attributable to the Lessee. The Lessor, in the public interest, may suspend the condition of continued operation upon payment of advance royalties in accordance with the regulations in existence at the time of the suspension.

The Lessor reserves the power to assent to or order the suspension of the terms and conditions of this lease in accordance with, inter alia, Section 39 of the Mineral Leasing Act, 30 U.S.C. 209.

Sec.5. LOGICAL MINING UNIT (LMU) - The lands contained in the original lease are included in the Beulah Mine LMU (NDM 83214) effective January 1, 1991. Within 90 days after the effective date of this lease modification, the Lessee shall amend its Logical Mining Unit to include the 320.0 acres added to the Coal Lease NDM 041765 by this modification. The modified land shall be segregated into another Federal coal lease should the Lessee fail to file such amendment.

The stipulations established in an LMU approval in effect at the time of LMU approval or modification will supersede the relevant inconsistent terms of this lease so long as the lease remains committed to the LMU. If the LMU of which this lease is a part is dissolved, the lease shall then be subject to the lease terms which would have been applied if the lease had not been included in the LMU.

Sec.6. DOCUMENTS, EVIDENCE AND INSPECTION-

At such times and in such form as Lessor may prescribe, Lessee shall furnish detailed statements showing the amounts and quality of all products removed and sold from the lease, the proceeds therefrom, and the amount used for production purposes or unavoidably lost.

Lessee shall keep open at all reasonable times for the inspection of any duly authorized officer of Lessor, the leased premises and all surface and underground improvements, works, machinery, ore stockpiles, equipment, and all books, accounts maps, and records relative to operations, surveys, or investigations on or under the leased lands.

Lessee shall allow Lessor access to and copying of documents reasonably necessary to verify Lessee compliance with terms and conditions of the lease.

While this lease remains in effect, information obtained under this section shall be closed to inspection by the public in accordance with the Freedom of Information Action (5 U.S.C. 552)

Sec.7. DAMAGES TO PROPERTY AND CONDUCT OF OPERATIONS

– Lessee shall comply at its own expense with all reasonable orders of the Secretary, respecting diligent operations, prevention of waste, and protection of other resources.

Lessee shall not conduct exploration operations, other than casual use, without an approved exploration plan. All exploration plans prior to the commencement of mining operations within an approved mining permit area shall be submitted to the authorized office.

Lessee shall carry on all operations in accordance with approved methods and practices as provided in the operating regulations, having due regard for the prevention of injury to life, health, or property, and prevention of waste, damage or degradation any land, air, water cultural, biological, visual, and other resources, including mineral deposits and formations of mineral deposits not leased hereunder, and to other land uses or users. Lessee shall take measures deemed necessary by Lessor to accomplish the intent of this lease term. Such

measures may include, but not limited to, modification to proposed siting or design of facilities, timing of operations, and specifications of interim and final reclamation procedures. Lessor reserves to itself the right to lease, sell, or otherwise dispose of the surface or other mineral deposits in the lands and the right to continue existing uses and to authorize future uses upon or in the leased lands, including issuing leases for mineral deposits not covered hereunder and approving easements or rights-of-way. Lessor shall condition such uses to prevent unnecessary or unreasonable interference with rights of Lessee as may be consistent with concepts of multiple use and multiple mineral development.

Sec. 8. PROTECTION OF DIVERSE INTERESTS, AND EQUAL OPPORTUNITY – Lessee shall: pay when due all taxes legally assessed and levied under the laws of the State or the United States; accord all employees complete freedom of purchase; pay all wages at least twice each month in lawful money of the United States; maintain a safe working environment in accordance with standard industry practices; restrict the workday to not more than 8 hours in any one day for underground workers, except in emergencies; and take measures necessary to protect the health and safety of the public. No person under the age of 16 years shall be employed in any mine below the surface. To the extent that laws of the State in which the lands are situated are more restrictive than the provisions in this paragraph, then the State laws apply.

Lessee will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and the rules, regulations, and relevant orders of the Secretary of Labor. Neither Lessee nor Lessee's subcontractors shall maintain segregated facilities.

Sec.9.(a) TRANSFERS – This lease may be transferred in whole or in part to any person, association or corporation qualified to hold such lease interest.

Transfers of record title, working or royalty interest must be approved in accordance with the regulations.

(b) RELINQUISHMENTS – The Lessee may relinquish in writing at any time all rights under the lease or any portion thereof as provided in the regulations. Upon Lessor's acceptance of the relinquishment, Lessee shall be relieved of all future obligations under the lease or the relinquished portion thereof, whichever is applicable.

Sec.10. DELIVERY OF PREMISES, REMOVAL OF MACHINERY, EQUIPMENT, ETC. – At such times as all portions of this lease are returned to Lessor, Lessee shall deliver up to Lessor the land leased, underground timbering, and such other supports and structures necessary for the preservation of the mine workings on the leased premises or deposits and place all workings in condition for suspension or abandonment. Within 180 days thereof, Lessee shall remove from the premises all other structures, machinery, equipment, tools, and materials that it elects to or as required by the authorized officer. Any such structures, machinery, equipment, tools, and materials remaining on the leased lands beyond 180 days, or approved extension thereof, shall become the property of the Lessor, but Lessee shall either remove any or all such property or shall continue to be liable for the cost of removal and disposal in the amount actually incurred by the Lessor. If the surface is owned by third parties, Lessor shall, waive the requirement for removal, provided the third parties do not object to such waiver. Lessee shall, prior to the termination of bond liability or at any other time when required and in accordance with all applicable laws and regulations, reclaim all lands the surface of which has been disturbed, dispose of all debris or solid waste, repair the offsite and onsite damage caused by Lessee's activity or activities incidental thereto, and reclaim access roads or trails.

Sec.11. PROCEEDINGS IN CASE OF DEFAULT – If Lessee fails to comply with applicable laws, existing regulations, or the terms, conditions and stipulations of this lease, and the noncompliance

continues for 30 days after written notice thereof, this lease shall be subject to cancellation by the Lessor only by judicial proceedings. This provision shall not be construed to prevent the exercise by Lessor of any other legal and equitable remedy, including waiver of the default. Any such remedy or waiver shall not prevent later cancellation for the same default occurring at any other time.

Sec.12. HEIRS AND SUCCESSORS – IN-INTEREST

Each obligation of this lease shall extend to and be binding upon, and every benefit hereof shall inure to, the heirs, executors, administrators, successors, or assigns of the respective parties hereto.

Sec.13. INDEMNIFICATION – Lessee shall indemnify and hold harmless the United States from any and all claims arising out of the Lessee's activities and operations under this lease.

Sec.14. SPECIAL STATUTES- This lease is subject to the Federal Water Pollution Control Act (33 U.S.C. 1151 – 1175); the Clean Air Act (42 U.S.C. 1857 et seq.), and to all other applicable laws pertaining to exploration activities, mining

operations and reclamation, including the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.)

Sec.15. SPECIAL STIPULATIONS -- The approval of the lease modifications is subject to mitigation measures identified in the EA, the existing mine permits, as well as all permit requirements. Those measures specifically designated in the EA are as follows:

- Modification of the federal coal lease NDM 041765 to include the 320-acre coal tract makes tract 3 subject to the same terms, conditions, and special stipulations as the existing lease.
- Dakota Westmoreland Corporation must obtain state approval of a mine permit amendment, which may include additional measures to avoid impacts, prior to mining.

These mitigation measures contain all practicable means to avoid or minimize environmental harm.

Dakota Westmoreland Corporation
Company or Lessee Name

The United States of America

By Phillip C. Perlewitz

William W. Wlean
(Signature of Lessee)

Phillip C. Perlewitz
(Signing Officer)

President
(Title)

Chief, Branch of Solid Minerals
(Title)

2 December 2013
(Date)

December 6, 2013
(Date)

Title 18 U.S.C. Section 1001, makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.