



Public Service Commission

State of North Dakota

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May 20, 2015

Mr. Troy Leingang
Environmental Manager
Coteau Properties Company
204 County Rd. 15
Beulah, ND 58523

Dear Mr. Leingang:

The Reclamation Division has reviewed Coteau's April 1, 2015 response to our technical review letter dated December 11, 2014 of Revision 18 to NACT-0201. The following issues must be satisfactorily addressed before we recommend Commission action.

Section 2.2 Surface Water Hydrology

1. The probable hydrologic consequences narrative pertaining to Lake Sakakawea watersheds LS-01 and LS-02 on page 21 of Section 2.2.4, includes a statement that the culverts under County Road 15 at the LS-01 outlet are adequate for the anticipated post mine flows but no information is provided for the culverts at the outlet of LS-02 (triple 30"RCP). A statement regarding the adequacy of the LS-02 culverts should be added for the anticipated increases in watershed area and post-mine peak flow rates. (RLK)
2. Follow-up to Item No. 22: The ephemeral drainage profiles in Section 2.2.8.4 depict a 20 foot or more increase in the elevation between the pre-mine and post-mine profile at station 0+00 for all profiles with the exception of profile SC-04. Station 0+00 for the profiles appears to be located at the mining disturbance boundary as shown in Section 2.2.8.3. Please review and correct as appropriate so there is not any changes in pre and postmine elevations at the disturbance boundary. (RLK)

Section 2.2.4 – Surface Water Hydrologic Consequences

3. Follow-up to Item No. 17: Please revise Section 2.2.8, Stability Analyses of Reclaimed Drainage Channels, to provide the justification or explanation for using Manning roughness coefficient "n" values that range from 0.043 to 0.086 in the channel's worksheet computations. All of the recreated drainages are similar in terms of vegetative cover, sinuosity and stream bed roughness, but the "n" values used vary considerably. Natural stream channels with a flood stage top-width of < 100' wide that are clean, winding, with pools and stones are normally given Manning "n" values of < 0.045 while sluggish reaches of these such streams with deep pools, and lots of rocks

and vegetation are given an “n” value of 0.07. Please provide proper justification for the Manning “n” values used. Please also identify the control point for each of the worksheets on Section 2.2.8.3. NDCC 38-14.1-24 and NDAC 69-05.2-16-01(1) (GAW)

4. Follow-up to Item No. 18: Please update the Stability Analyses of Reclaimed Drainage Channels, Section 2.2.8, to discuss compliance with NDAC 69-05.2-16-07 which requires that intermittent stream channels be restored to their natural meandering shape that approximates the pre-mine channel characteristics. Pre-mine intermittent streams are being considered ephemeral in the post-mine setting without clarification or justification. NDCC 38-14.1-24(3)(8) and NDAC 69-05.2-16-01(1) (GAW)

Section 2.4.1 – Pre-Mining Land Use and Vegetation

5. Follow-up to Item No. 36: Please update narrative in the permit to provide justification why tame pastureland in Tract 56 is now being considered native grassland, and clarify the ecological condition of the native grassland in this tract (56). This is required to make other information in the permit, such as the Tame Pastureland table on page 2 of Section 2.4.2 more clear and to allow one to determine the variability of species composition within this tract. Please also delineate the area previously considered tame pastureland on the Pre-Mining Land Use and Vegetation Map, Section 2.4.3, as “go-back land” since it is questionable whether ecological sites descriptions can properly represent this area since its species composition is 97% non-native species. NDAC 69-05.2-08-08 (1)(d) (GAW)
6. Follow-up to Item No. 37: New language has been added to Tract 58, page 67 of Section 2.4.2, but the land being added to the permit with Revision 18 is labeled as Tracts 109 and 110 on the Pre-Mining Land Use and Vegetation Map, Section 2.4.3 and in Section 2.4.4. Please revise to correct this error. The new language at the bottom of Tract 58 states that the “N1/2SE1/4NE1/4” was added with Revision 18. This legal description references an area 20 acres in size located in the N1/2 of the SE1/4 of the NE1/4, which presumably is not what was intended. (GAW)
7. Follow-up to Item No. 44: Although pages 13 and 14 of Section 2.4.2 discuss wetlands in intermittent streams, it is not clear how this acreage is being accounted for in the Pre-Mining Land Use and Ownership Table, Section 2.4.3, or in the Wetland Acreage Summary Table, Section 2.4.10. Wetlands within intermittent streams are delineated on the Pre-Mining Land Use and Vegetation Map, Section 2.4.3, for only some of the intermittent streams. Please revise Section 2.4.10, Wetland Acreage Summary, and Section 2.4.3, Pre-Mining Land Use and Ownership Table, to clarify how wetland acreage associated with intermittent streams is accounted for in these tables, or otherwise revise as necessary. (GAW)
8. Follow-up to Item No. 40 and 41: Please either include sampling data for the two wetlands being added to the permit or clarify which wetlands with data already in the permit represent these two features as required by NDAC 69-05.2-08-08(1)(c) and (d) and Vegetation Guidelines Document (Section II-H). Information from Permit NACT-9101 can be included but will need to be updated if description of the vegetative community is no longer current. NDAC 69-05.2-08-08 (GAW)
9. Follow-up to Item No. 44: The Pre-Mining Land Use and Ownership Table, Section 2.4.4, shows that there are 252 acres of wetlands in the permit but Table 2.4.10, Wetland Acreage Summary, indicates there are 254.29 acres. Also, it is not clear if either of these tables account for wetlands

associated with intermittent streams. Please review and revise as necessary to provide clarity. (GAW)

10. Follow-up to Item No. 46: Even though each tract contains the same native grassland acreage in Tables 2.4.2 and 2.4.7, the total cumulative values listed are not the same. Please recalculate the total native grassland acreage in these tables and highlight the values in red if changes occur. Please also retain the average lbs/acre yield value in Table 2.4.8 so that one can calculate an acreage amount. (GAW)

Section 2.4.10 – Wetland Acreage Summary

11. Original Item No. 47: Section 2.4.10, Wetland Acreage Summary, is being revised with Revision 18 to show a total loss of wetland acreage in the original permit area and significant changes were made in some tracts, for example, Tract 49 which had 12.1 acres of seasonal wetland but changes with Revision 18 reduces the value to 2.1 acres. However, there have been no apparent changes to the delineations on the pre-mine land use map, Section 2.4.3. Please explain these wetland acreage changes in the Methods section (2.4.1) of the permit and/or revise the Pre-Mining Land Use and Vegetation Map, Section 2.4.3, as necessary so the information is consistent between these sections of the permit. (GAW)

Section 2.5 - Soil Resources

Section 2.5.6.2 - Table 2 - Soil Volume Summary

12. We apologize for previously overlooking that Table 2 had not been updated to reflect soil volumes for Tract 109 and Tract 110 acres being transferred to NACT-0201 from NACT-9001. Please update Table 2 to reflect soil volumes for the projected disturbed acres in Tract 109 and Tract 110. (WTG)

Section 2.5.10 - Soil Survey and Prime Farmland Map

13. Follow-up to item No. 49: A closer examination of the soil map unit delineations and labels in Section 11, T145N, R88W, for the acres being transferred to NACT-0201 from NACT-9001 to confirm correction of a Grail loam (16) soil map unit in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ that had been incorrectly labeled as Bowdle loam (28) revealed two additional corrections that are necessary. Please revise the first lift/second lift label for the Bowdle loam (28) map unit in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ (Tract 109) to correctly read 17/15 rather than 7/15 as currently presented to be consistent with labeling on page 166 of 2.8.1 of NACT-9001. Please also revise the map unit and first lift/second lift label for the delineation in the southwest corner of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ (Tract 110) incorrectly labeled as 16 20/40 (Grail loam 1-3% slopes) that should be labeled as 15B 13/47 (Shambo loam 3-6% slopes) to be consistent with labeling on page 166 of 2.8.1 of NACT-9001. Please also update Section 2.5.3.1 (Table 4 - Mapping Unit Acreage by Tract) and Section 2.5.3.2 (Table 5 - Total Mapping Unit Acreage for Permit Area) to reflect the slight decrease in acreage for map unit 16 and the slight increase in acreage for map unit 15B. (WTG)

Section 2.5.12 - Projected Soil Respread Depth Map

14. Follow-up to item No. 51: Please define the line in the legend of what appears to be an associated disturbance boundary added to Section 2.5.12. (WTG)

Section 2.7 – Fish and Wildlife Resources

15. Original Item No. 52: Please update Section 2.7.2, Fish and Wildlife Summary, to include a discussion and description of the fish and wildlife habitat of the acreage being added to the permit with Revision 18. This should include a discussion about whether there is any unique or high value fish and wildlife habitat in the addition area, and the proximity of piping plover designated critical habitat in relation to the permit area. Relevant fish and wildlife information from Permit NACT-9001 related to the area being added to the permit should now be included in Permit NACT-0201. (GAW)
16. Follow-up to Original Item No. 54: Please update Section 2.7.3, Mining Impacts, to clarify the following:
 - a. A sentence in the first paragraph states that “Wildlife will be lost...” Please clarify if this means “taking” of any threatened, endangered or candidate or species protected by federal laws.
 - b. A sentence in the third paragraph on page 1 states that “wildlife species that use these habitats are still considered abundant...” Certainly not all wildlife species that use these habitats are considered abundant. Please revise to provide clarity. (GAW)
17. Follow-up to Original Item No. 54: Please revise the new Threatened and Endangered Species narratives in Section 2.7.3, Mining Impacts, to clarify if special consideration continues to be given to Threatened, Endangered and Candidate species. The first sentences uses the past tense word “was” rather than “is” and clarify specifically which species specific habitats were searched during surveys conducted in 2013 and 2014. (GAW)
18. Follow-up to Original Item No. 54: The first sentence of the second paragraph under the new Threatened and Endangered Species subsection of Section 2.7.3 states that “Mining activity is not likely to jeopardize threatened or endangered species, since none were observed during annual wildlife and land use update surveys conducted in 2013 and 2014.” However, 4 new species have been added to the Threatened and Endangered species list since the surveys were conducted and if species specific surveys were not conducted for two of these species (Northern Long Eared Bat and Dakota Skipper) they would not expected to be observed. Also, the second sentence is written as if 4 new species were not listed. Please revise to provide clarity. (GAW)
19. Follow-up to Original Items No. 54 and 55: Please revise the new Threatened and Endangered Species language that begins on page 2 of Section 2.7.3 that incorrectly indicates that the Rufa Red Knot, Northern Long-Eared Bat, Poweskiek Skipperling, and Dakota Skipper are Proposed species. All of these species are now officially listed as Threatened and Endangered Species. (GAW)
20. Follow-up to Original Items No. 54 and 55: The new Northern Long-Eared Bat narrative states that there are no abandoned mines in the “study area”. It is not clear what is meant by the language “study area”. The permit identifies two abandoned underground coal mines in the permit area and the PSC AML Division has records of 4 old mine areas in the permit area. Please review and revise as necessary and discuss if the old underground mines have surface opening that could provide hibernacula. (GAW)

21. Follow-up to Original Items No. 54 and 55: The Northern Long-Eared Bat narrative mentions Paul Barnhart as the best source of information until further information is published with the listing of the species. Please update to include information provided in the official Federal Register listing of this species, which includes habitat information. (GAW)
22. Follow-up to Original Items No. 54 and 55: Please include a Northern Long-Eared Bat species specific Protection and Enhancement Plan and either include it in this permit, or concurrently in the stand-alone Consolidated Wildlife Habitat and Management Plan. We suggest using the Northern Long-Eared Bat Interim Conference and Planning Guidance document dated January 6, 2014, or other guidance recommended by the USFWS. The protection and enhancement plan should provide an assessment about whether or not the permit and adjacent area contains habitat suitable for the Northern Long-Eared Bat and include plans for conducting surveys if recommended by the USFWS. The plan should also discuss the likelihood of species presence, whether any suitable habitat is going to be impacted that could result in a “taking” of the species and the protective measures that will be implemented to reduce the chance of a “taking” and destruction or adverse modification of suitable habitat. Verbal and written communications with state and federal wildlife agencies regarding this matter should be documented and included in the permit. NDAC 69-05.2-09-17 (GAW)
23. Follow-up to Original Items No. 54: As previously requested, please include a specific discussion about whether the federal coal tracts in the permit contain any habitat suitable for Threatened, Endangered or Proposed Candidate species, since this revision is also a mine plan modification that will require Department of Interior approval and specific information for these tracts will be needed to develop a finding. (GAW)
24. Follow-up to Original Items No. 54: Please revise the new Sprague’s pipit narrative in Section 2.7.3 with summary results of the 2011 survey and clarify what is meant by the statement that “While other grassland sites within the study area may appear to contain suitable habitat for Sprague’s pipits, none were observed during the sampling period”. The 2012-2013 Wildlife Monitoring Report (page 13 of 64) states that the next Sprague’s pipit survey will be completed in 2014. Please include a summary of the results of the 2014 survey and clarify what is meant by the statement that surveys utilizing transects will begin in 2015. Maps showing the locations where surveys were conducted and where sightings occurred should be included since this was not included in the most recent Biennial Wildlife Report. (GAW)
25. Please update Section 2.7.4, References, to include Paul Barnhart, Gillam Bat Lab, IUCN and any other pertinent sources of information for this and other species. (GAW)

Section 2.8 – Cultural Resources

26. Follow-up to item No. 57: Coteau’s January 6, 2015 letter to SHPO beginning on page 34 of Section 2.8.5 informs SHPO that field work regarding three NRHP eligible sites was completed and the letter further requests concurrence with the management plan regarding mitigation of those three sites and approval for surface disturbance. One of the three site descriptions provided in the letter is referenced as 32ME0328; however, there is no cultural resource site 32ME0328 that we are aware of at the Freedom Mine and we surmise the intent was to describe site 32ME0238 that is located in Section 14 of MA1. Generally, a typo such as this can be dismissed; however, the incorrect site number is mentioned twice in the letter to SHPO and SHPO’s response to your letter does not provide any site description numbers for verification. Please

update the permit with some type of correspondence with SHPO regarding the site identification error in the letter to clarify and document the correct cultural resource site number and location. (BEB)

Section 3.1 – Operations – General

27. Follow-up to item No. 61: Please update the narrative on page 7 of Section 3.1.1.2 regarding NRHP eligible sites 32ME108, 32ME1571 and 32ME238 to provide a past-tense account of the excavation and disinterment/reinterment work that was conducted in 2014. (BEB)

Section 3.1.1.3 Reclamation Procedures and Schedule

28. New Item: Please update the narrative of subsection Overburden Pile Reclamation to include overburden piles located in the N½ of Section 11, OB-W06-01 and OB-W05-01. (FSE)
29. New Item: Please review and correct if necessary update subsections Post-Mining Topography and Material Balance to take into account changes made to Section 4.1.2. It appears that these subsections were not updated with the modifications made to the *Post-Mining Topography and Land Use Map*. (FSE)
30. New Item: Please review the acreage listed for the MA3 mining block under Material Balance and Area Slope Comparison Table of Section 3.1.1.3. These subsections indicate MA3 mining block is 2893 acres; however, the Post Mining Area Slope Map, Section 3.1.5, indicates the MA3 mining block consists of 2925 acres. Please explain or correct this inconsistency. (FSE)

Section 3.1.3 – Pit Layout and Facilities Map

31. Follow-up to Item No. 74: Although an associated disturbance line has been added to the Pit Layout and Facilities Map, Section 3.1.3, the associated disturbance line encompasses areas of West Antelope Creek where approval to operate within 100-feet of this intermittent stream has not been granted. Also, the associated disturbance line is shown in areas where detailed mining plans have not yet been developed, primarily the 2030-2045 mining blocks. Please revise to not show an associated disturbance line in areas where detailed mining plans have not yet been approved and specifically where approval to operate within 100-feet of an intermittent stream has not yet been granted. NDAC 69-05.2-09-01(2) and (3) (GAW)
32. Follow-up to Item 76: Contrary to Coteau's April 1st response, the NW1/4 of Section 12, T144N, R89W, is within Permit NACT-0201. While this area was originally proposed for mining, only surface disturbances including a large overburden stockpile are now proposed on this tract. Please provide a new surface owner notice and map to the landowners as required by NDCC 38-18-06(1) so they know what disturbances are now planned. (JRD)
33. Follow-up to Item No. 78: As previously stated, please revise the Pit Layout and Facilities Map, Section 3.1.3, to not show any mining related disturbance within 100 feet of the north side of West Antelope Creek in Sections 23, 26, 27 and 28 until such time the permit is updated to provide all details of the proposed mining activities and a demonstration of full compliance with NDAC 69-05.2-16-06, -07 and -20. Currently the 2030-2045 and 2041-2045 mining blocks show mining through this intermittent stream even though a stream buffer zone is depicted on the north side of this stream. And, please remove all of the language regarding the "conceptual plan" for

mining and reclaimed West Antelope Creek and associated support features, such as sediment ponds, which was added to Section 3.1.1.9 of the permit in the April 30, 2015 response to Item No. 78. (GAW)

3.1.5 Post-Mining Area Slope Map

34. New item: Please update the Mining Disturbance Limit depicted in the Post-Mining Area Slope Map and Pre-Mining Area Slope Map as well as the Post-mining Topography Map and related tables and narratives to reflect that no mining is currently proposed in Section 4, T145N, R88W. (FSE)

Section 3.3 – Surface Water Management

35. Follow-up to Item No. 93: The mine plan has been revised to no longer show mining in Section 4 of T145N, R88W, but three sediment ponds have been added. Please do not show these ponds on the Surface Water Management Plan Map, or the Pit Layout and Facilities Map, until detailed mining plans have been developed for the area. Likewise, please do not show Ponds P-W21-01 or P-W23-01 until detailed mining plans have been developed for the 2030-2045 mine areas. (GAW)

Section 3.3.38 - Design of Impoundment P-W11-01

36. New item: Section 3.3.4 indicates P-W11-01 will be constructed in 2015; however, Section 3.3.38 indicates it will be constructed in 2016. Please review and correct as necessary. (FSE)

Section 4.1 – Postmining Land Use Plans

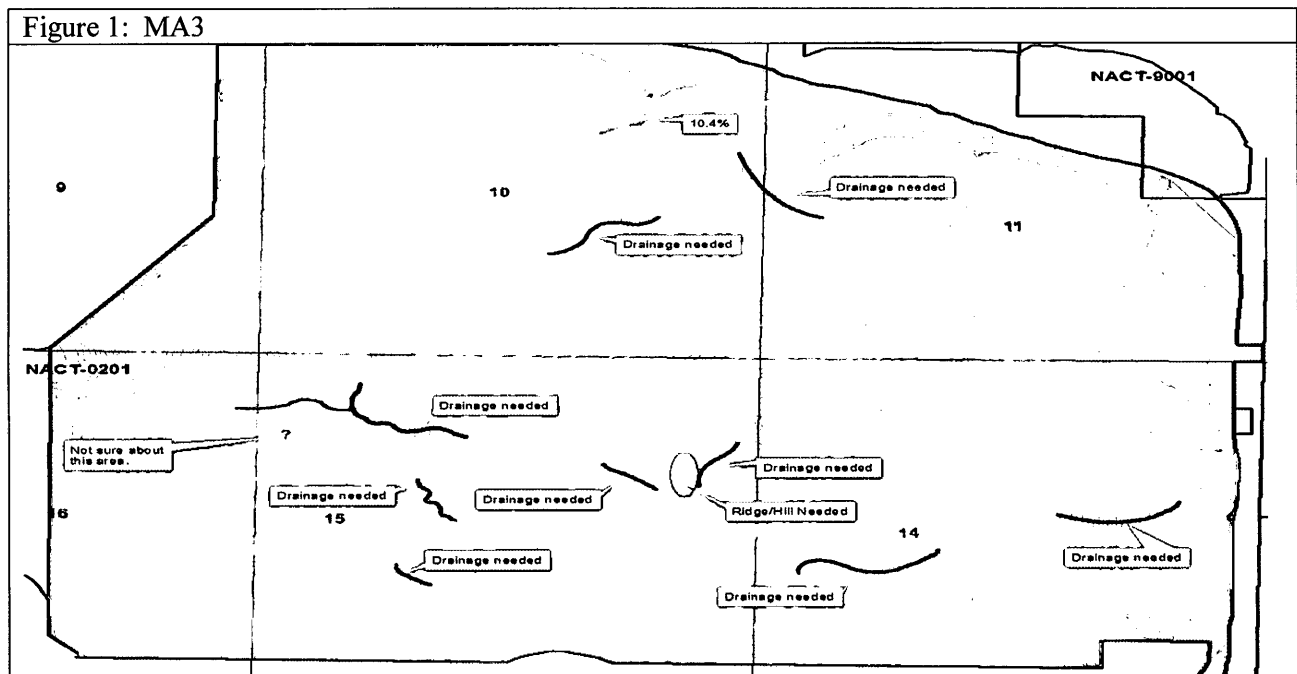
37. Original Item No. 94: Follow-up to Completeness Item No. 6 of our letter dated September 23, 2014 in which Coteau indicated the issue will be addressed during the technical review. Please include an assessment that shows that the pre-mine land use capabilities will be restored on each tract of land by surface owner where disturbance is planned through 2032. This assessment can be based on soils that NRCS considers “farmlands of statewide importance”. The pre-mine capabilities of non-cropland areas must be replaced as required by NDCC 38-14.1-24(2) and the reclamation plan for these areas must address restoring the pre-mine capabilities. This may involve increasing topsoil respread depths on some reclaimed native grassland areas that had the potential to be converted to cropland in the pre-mine condition. (GAW)
38. Follow-up to Item No. 95: Please include a narrative in Section 4.1.1, Narrative, that explains the purpose and results of the Contingency Closure Plan Land Use Map, Section 4.1.6, and Contingency Closure Plan Land Use Comparison Table, Section 4.1.7. The map, Section 4.1.6, has green and magenta colored land use boundary lines but the legend does not explain this difference and the note at the bottom of the table in Section 4.1.7 is difficult to understand. This table shows a loss of 355.1 acres of cropland in Mine Area 1 if mining is not continued beyond the cessation pit. A comparison should also be made between the approved postmining cropland acreage (assuming mining will continue beyond the contingency area) and the contingency plan cropland acreage in addition to the pre-mine acreage. Also, please discuss how Coteau plans to make up the loss of 355 acres of cropland if mining does not resume after the long term cessation of mining in this area. (GAW/JRD)

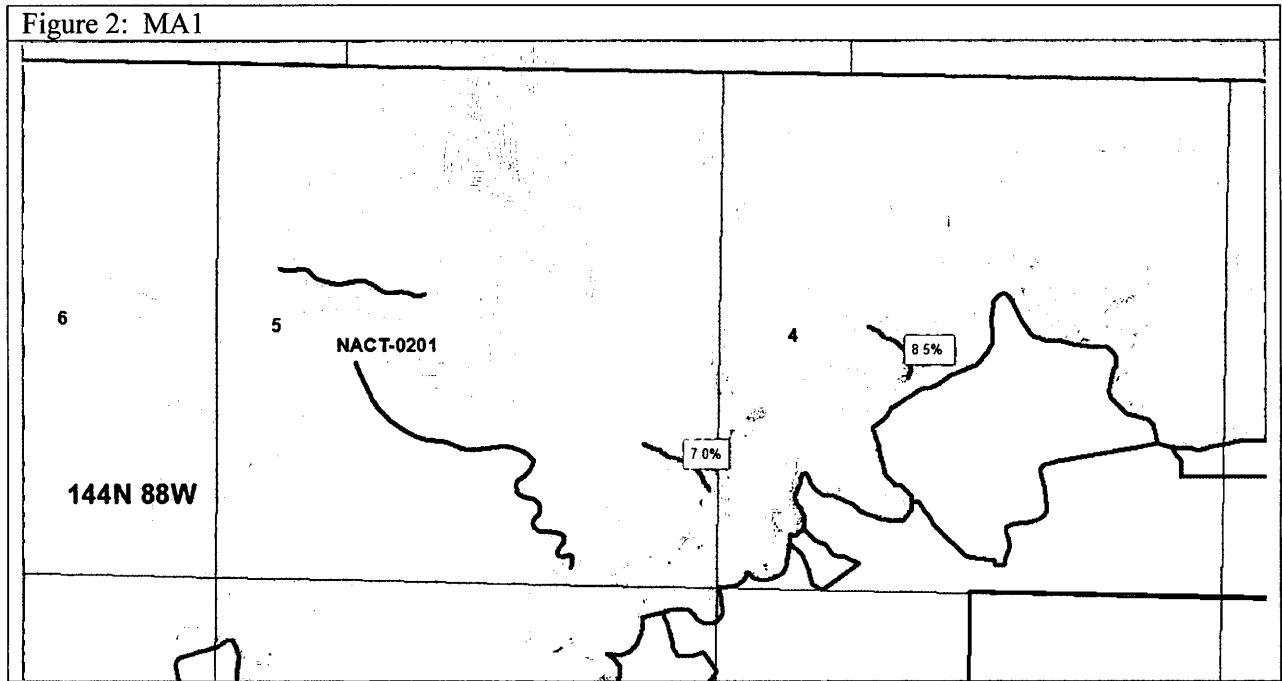
39. Follow-up to Item No. 101: As previously requested for compliance with NDCC 38-14.1-14(2)(f), please revise the appropriate subsections of Section 4.1, Post-Mining Land Use Plans, to show a water source for the native grassland tracts that are to be reclaimed in the W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 6, T144N, R88W. Alternatively, the postmining land use of the small tracts of native grassland located in the SW $\frac{1}{4}$ of Section 11, T145N, R88W should be changed to hayland if topographically suitable and if it is going to be managed as hayland as stated. It is not realistic to assume that the native grassland performance standard can be achieved without grazing. (GAW)
40. Original Item No. 101: Please revise the appropriate subsections of Section 4.1, Post-Mining Land Use Plans, to show a water resource for the native grassland that is to be reclaimed in the NW $\frac{1}{4}$ of Section 14, T145N, R88W. This tract of native grassland had a developed water resource prior to mining and it needs to be replaced with an equivalent source as required by NDAC 69-05.2-16-17. (GAW)
41. Follow-up to Item No. 103: Leon and Corrine Walz requested additional trees in their landowner preference statement but Section 4.1.3 does not show additional trees being planted on their property, Tracts 43 and 44. Please revise to comply with the landowners wishes, or discuss the consideration given to their preference for additional trees as required by NDCC 38-14.1-14(2)(d) and explain why the additional trees cannot be provided. Coteau replied that no changes made because Coteau has purchased the property but the permit or revision application does not show that to be the case. (GAW)
42. Follow-up to Item No. 104: Page 6 of Section 4.1.5 indicates that trees may not be planted in the SW $\frac{1}{4}$ of Section 36 and that a minimum of 15 acres of trees will be planted on Tract 108. However, the Postmine Topography and Land Use Map shows two plantings comprising about 5 acres are planned for the SW $\frac{1}{4}$ of Tract 108, and these trees and all of the other tree planting planned on this tract are not accounted for in Table 4.1.3, Pre- and Postmining Land Use Comparison Table. In addition, the Pre- and Postmining Land Use Comparison Table indicates that 2.3 acres of woodlands are to be planted on this tract but they are not shown on the Postmine Topography and Land Use Map. Please review and revise as necessary. We believe that approximately 80 acres of potential cropland should be restored on the native grassland in the SW $\frac{1}{4}$ of Section 36 since the detailed soil survey and NRCS survey shows that a field of this size consisting of important farmlands could have been cultivated in the NW $\frac{1}{4}$ of this Tract. (GAW)
43. Original Item No. 109: Please include a table that lists each reclaimed shelterbelt and woodland that is to be planted in the permit area with details regarding its planned size and revegetation schedule as required by NDAC 69-05.2-09-11. There is insufficient information in the permit to determine how many acres of woodlands and shelterbelts are planned to be disturbed in each tract and there is no information regarding the planned size of each planned planting. Section 4.1.3, Pre- and Post-Mining Land Use Comparison Table, contains a single column listing the pre- and post-mining land use acreage which provides no meaningful information regarding actual disturbance and replacement plans. (GAW)
44. Please reconsider plans to reclaim about 40 acres of tame pastureland in the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 5, T144N, R88W. Either this tract should be reclaimed to native grassland so that it is compatible with the balance of the tract or provide a water source for the tract to facilitate proper management as a tame pastureland tract. (GAW)

45. Please revise the appropriate Subsections of Section 4.0 to include a source of water for the native grassland that is to be reclaimed in the W1/2 of the NW1/4 of Section 6, Tract 14. Premine native grassland in this tract was supplemented by water sources that included fen wetlands, an intermittent stream, and farmstead wells. (GAW)
46. Please reconsider plans to reclaim an isolated tract of tame pastureland in the SW1/4 of Section 7, (Tract 16), or provide plans to fence it separately and provide water to allow for future management of the tract. This area is to be affected by stockpiles. (GAW)

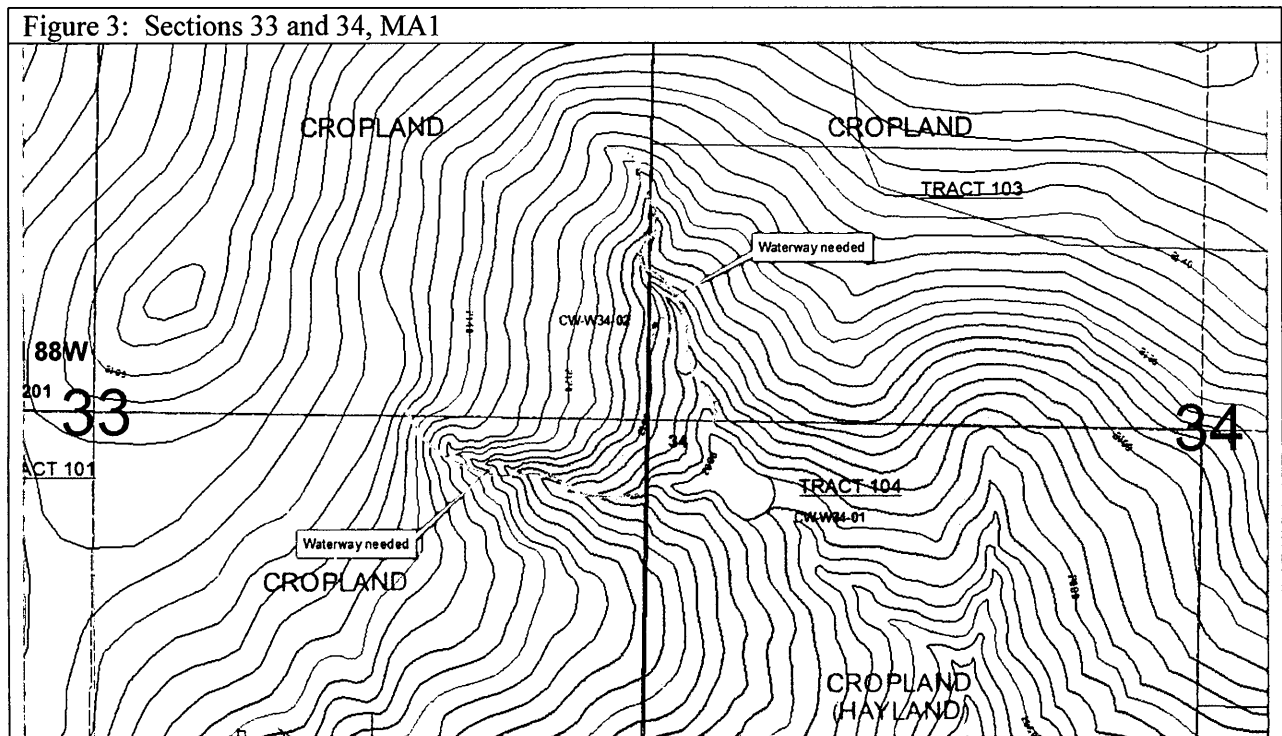
Section 4.1.2 – Post Mining Topography and Land Use Map

47. Please revise Section 4.1.2 to remove the potential post-mining prime farmland landscape designation from steeply sloping drainages in Sections 10 and 11 and elsewhere as necessary where post-mining topographic changes were made with the April 1, 2015 response. (WTG)
48. Please review and adjust the land use boundaries depicted on the Post-Mining topography and Land Use Map, Section 4.1.2, to avoid creating areas that are impractical or hard to manage. Long narrow points of cropland or grassland would be impractical to manage such as those depicted in the SW1/4 of Section 3, T145N, R88W, and south of the grassed waterway in shown in the NE1/4 of Section 15, T145N, R88W. The cropland proposed in the NE1/4SW1/4 of Section 4, T145N, R88W, appears excessively steep for reclaimed cropland. Consider relocating the cropland from the NW1/4NW1/4 of Section 14 to the NE1/4SE1/4 of Section 14 where slopes appear more favorable for cropland. (RLK)
49. Follow-up to Items 112 through 115: Please consider adding secondary drainages as depicted on Figures 1 and 2 below to improve long-term stability by reducing slope length and to further minimize runoff from passing over steep slopes. Please also consider reducing slope steepness in the drainage ways shown in red on Figures 1 and 2. (GAW)





50. Follow-up to Item No. 122: Please add grassed waterways in recreated drainages on cropland in Sections 33 and 34 as depicted in Figure 3: (GAW)



51. Original Item No. 125: Please include an identification label for each reclaimed shelterbelt and woodland that is to be planted in the permit area on the Post-Mining Topography and Land Use Map, Section 4.1.2, that corresponds with a table showing the planned size of each planting. This is needed to ensure adequate acreage is being replaced in each tract. NDAC 69-05.2-05-02 (GAW)
52. Follow-up to Item No. 130: There are numerous numeric values on the Post-Mining Topography and Land Use Map, Section 4.1.2, that do not appear to have any apparent value. For example, below the Tract 29 listing there are 0.6, and a 1.6 numbers that do not appear to be representative of anything nearby. Likewise, the number 8.9 is listed on the tame pastureland for Tract 11, a 5.0 number is listed below the word Tract 22 and 0.14 and 0.3 is listed below the word Tract 22. Please review and revise so that the numbers become meaningful or remove the unexplained numbers. (GAW/RLK)
53. The Post-Mining Topography and Land Use Map, Section 4.1.2, shows undisturbed woodlands in the drainages where sediment ponds P-W08-01 and P-W16-01 are to be located and undisturbed wetlands where sediment pond P-W07-01 is to be located. Please review and revise to correct these discrepancies, and review all other areas to ensure this issue is not occurring elsewhere. (GAW)
54. Coteau is proposing to reclaim 4 acres of tame pastureland adjacent native grassland in the northwest corner of Section 10, and 12.6 acres in Tract 66, NE1/4 of Section 15, but page 2 of Section 4.1.1 of the permit says that tame pastureland will be converted to native grassland in these instances. Please review this issue on all tracts and revise accordingly. (GAW/RLK)
55. The map in Section 4.1.2 and table in Section 4.1.3 indicate that approximately 75 acres of pre-mine native grassland will be converted to cropland in Tracts 58, 59 and 61; however, the post-mine slopes are not conducive to cropland. Please consider returning the areas that contain land with slopes mostly greater than 6% to native grassland or reduce slopes on the cropland areas. (RLK/GAW)
56. Please revise the Post-Mining Topography and Land Use Map, Section 4.1.2, so that it is possible to distinguish “replacement native shrub and tree community” plantings from “replacement ¼ acre shrub plantings”. It appears that Coteau is attempting to use “replacement ¼ acre shrub plantings” as woodland replacement acreage, but as discussed in Section 4.1.1 of the permit, the ¼ acre planting are replacing low shrub communities that were not distinguished as woodlands. For example, 10 small ¼ acre tree plantings and no “replacement native shrub and tree communities” are depicted in the S1/2 of Section 14, Tracts 64 and 65A, but Table 4.1.3 shows 3.6 acres of woodlands on this tract. Likewise, only “replacement ¼ acre shrub plantings” are depicted in Section 36, T108, but Table 4.1.3 indicates that 2.3 acres of woodlands are to be replaced. Please review and revise as necessary to provide clarity. (GAW)
57. The Post-Mining Topography and Land Use Map, Section 4.1.2, depicts a number of “Replacement Shelterbelt Plantings”, but in many instances these plantings are not accounted for in the Pre- and Post-Mining Land Use Comparison Table, Section 4.1.3. For example, the map depicts a replacement shelterbelt planting in Tract 65, SE1/4 of Section 14, but no shelterbelt acreage is listed for this tract in Section 4.1.3. Likewise, Tract 108, Section 36, has eight 2.5 acre plantings but o shelterbelt acreage is listed. Please review this issue for all tracts and revise as necessary to provide clarity. (GAW)

58. Table 4.1.3, Pre- and Post-Mining Land Use Comparison Table, indicates that 1.3 acres of wetland and 3.8 acres of woodland are to be reclaimed on Tracts 92 and 93 but the Post-Mining Topography and Land Use Map, Section 4.1.2, does not show wetland or woodland acreage being reclaimed on these tracts. Please review and revise as necessary. (GAW)
59. Coteau is proposing to change the land use of Ralph Sasse's land in the SW1/4 of Section 33 from cropland to native grassland but a portion of this land is not going to be disturbed by mining according to the pit layout and facilities map. There shouldn't be a land use conversion on land that isn't going to be affected by mining activities. Also, please reconsider reclaiming an odd shaped area of native grassland on the balance of the land in this quarter. (GAW)
60. The Post-Mining Topography and Land Use Map, Section 4.1.2, depicts the wetlands in Tracts 109 and 110 as reclaimed wetlands but the Pit Layout and Facilities map does not show the wetland basin located north of the road as being disturbed by mining activities. Please revise the legend of this map to more clearly differentiate undisturbed versus reclaimed wetlands and revise to provide clarity regarding the wetlands in Tracts 109 and 110. (GAW)
61. Coteau is proposing to retain the road bed through the wetland located in the NE1/4 of Section 11 but this road was not present at this location when the land was originally included in Permit NACT-9001 and we understand that it was moved to its current location to facilitate mining activities. Please review and revise the topography of this area to eliminate the road bed and adjust the land use acreages in Table 4.1.3, if necessary. (GAW)

Section 4.1.3 – Pre- and Post-Mining Land Use Comparison Table

62. Follow-up to item No. 132: Item 132 requested that the tract number information in the Pre- and Post-Mining Land Use Comparison Table, Section 4.1.3 be retained as it is presented in Section 2.4.4 - Pre- Mining Land Use and Ownership Table, so that information and acreages in other sections of the permit could be cross referenced and so the location of property can be determined even if ownership changes. The current table in Section 4.1.3 is not in the requested format as it combines numerous tracts and is inconsistent with other sections of the permit, including the new Contingency Closure Plan Land Use Comparison Table in Section 4.1.7. Highlighting or colored text is used to identify portions of narrative or numbers that have been revised, but Section 4.1.3 was submitted entirely as red text. Please retain the Pre- and Post-Mining Land Use Comparison Table, Section 4.1.3 that is in the currently approved version of the permit (Revision 17); make appropriate changes to the table for Revision 18; and highlight or use colored text to identify changes to the table. (ZAB)
63. Follow-up to Item No. 135: Table 4.1.3 shows an increase of shelterbelt acreage in Tracts 6 and 7 (Section 4) but this planting is not depicted on the Post Mining Topography and Land Use Map. (GAW)
64. Table 4.1.3 shows a loss of about 20 acres of wetland in Tracts 16 and 17 (Section 7) but the Postmine Land Use Map does not indicate this as it appears more than 5.7 acres of wetland (undisturbed and reclaimed) in these tracts. Please review and revise as necessary. (GAW)

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65. Table 4.1.3 shows that there will be 1.4 acres of woodland in Tract 30, NE4 of 12, but the Post Mine Land Use map only shows about an half of acre of woodland in this tract. Please review and revise as necessary. (GAW)

Section 4.2.2 – Seed Mixes

66. Follow-up to Item No. 80: The third paragraph on page 2 of Section 3.1.8 references Section 4.2.2 for details regarding a seeding plan for temporary disturbances but Section 4.2.2 does not contain temporary disturbance seed mixture information for the mining area cessation. (GAW)
67. Follow-up to Item No. 83: The revised mining plan shows future disturbances on approved native grassland reference areas in Section 7 of T144N, R88W. Please include a paragraph in Section 4.3.1 that explains that the Consolidated Revegetation Success Standards Document will need to be updated with a new native grassland reference area(s) prior to disturbance of the approved sites. (GAW)
68. Follow-up to Item No. 138: Please revise the new language added to Section 4.2.2, Seed Mixes, to clarify that this new language only applies to recreated ephemeral streams and not intermittent streams. NDAC 69-05.2-16-07(4) is very explicit in that the natural riparian vegetation must be restored on recreated stream channels, but Coteau has stated in its response to Item No. 98 there is no need to discuss reclaiming intermittent streams in this permit at this time since all intermittent streams are being reclaimed as ephemeral features since the ground water that supports these streams cannot be restored. Please revise to remove “Intermittent” streams language from Section 4.2.2.(GAW)

Other

69. Original Item No. 146: The Reclamation Division has had a recent discussion with staff at OSM’s western regional office about the federal mine modification that will be necessary for Revision 18 before mining will be allowed to begin on tracts containing leased federal coal in the northern part of the permit area. OSM indicated that additional information and discussion is needed to assess the possible impacts of mining on air quality, greenhouse gas emissions, cultural resources, and threatened and endangered species and candidate species. The air quality discussion will need to address compliance with National Ambient Air Quality Standards (NAAQS), North Dakota Ambient Air Quality Standards (NDAAQS), and limits air quality degradation under the Prevention of Significant Deterioration (PSD) Program. The PSD discussion needs to specifically address particulate matter with a diameter of less than or equal to 10 microns (PM10) and less than or equal to 2.5 microns (PM2.5). The North Dakota Department of Health has an ambient air quality monitoring station north of Beulah and monitoring data from this location should be helpful in addressing these and other air quality standards. OSM also said the discussion needs to address how the additional mining will affect greenhouse gas emissions and global warming as well as any issues or concerns about nitrous oxide emissions due to the use of explosives at the Freedom Mine. In addition, an update on the current status of implementing and carrying out activities under the approved cultural resources management plan should be provided. Any additional work under this plan that will be conducted in the next five years or so should be discussed as well. While other items in this letter include requests to update the list of threatened and endangered species and candidate species, such an update will also be needed for the federal lands decision document. We recommend you

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contact Lauren Mitchell (303-293-5028) or Mr. Gene Hay (303-293-5036) at OSM for more information on these matters. **The responses to most of these items need to be incorporated into the applicable sections of the permit. (PSC Cooperative Agreement with the Department of the Interior and 30 CFR 740.)** (JRD)

70. Please update the appropriate sections of the permit to address any changes made as a result of OSM's letter dated December 29, 2014 (copy attached) and the March 13, 2015 letter that OSM sent to you with U.S. Fish and Wildlife Trust Resources information. The March 13, 2015 OSM letter provides species and critical habitat information that should be considered in the affects analysis of this project and they mention that mitigations and protective measure may be required. They also mention coordinating with the USFWS if there are wetlands in the project area. Please update the appropriate sections of the permit to address the issues raised in these letters. (GAW)

If you have any questions, please contact this office.

Sincerely,



James R. Deutsch
Director
Reclamation Division

cc: Mercer County Auditor



United States Department of the Interior

OFFICE OF SURFACE MINING
Reclamation and Enforcement
Western Region Office
1999 Broadway, Suite 3320
Denver, CO 80202-3050



December 29, 2014

Mr. James R. Deutsch
Director, Reclamation Division,
North Dakota Public Service Commission
600 East Boulevard, Dept. 408
Bismarck, North Dakota 58505-0480

Dear Mr. Deutsch:

This letter is in response to North Dakota Public Service Commission's (NDPSC) letter dated October 28, 2014 requesting the Office of Surface Mining Reclamation and Enforcement (OSMRE) review Revision 18 (REV 18) to Coteau Property Company's Coal Mining Permit NACT-0201. REV 18 will add a portion of Federal coal lease NDM91535 to the permit area. The coal is located in the E1/2 of Section 4, the N1/2 of Section 10, and all of Section 14, T145N, R88W, Mercer County, ND.


REV 18 was reviewed for compliance with applicable Archaeological, Historic, Fish and Wildlife, and Resource Recovery Acts, Regulations and Executive orders. OSMRE has the following comments:

1. Section 2.7.6.3 Table 3 contains waterfowl and shorebird data from 1990 to 2002. This data needs to be updated or discussion provided explaining why the data are still relevant.
2. Section 2.7-6-1 contains the list of rare plants. The data is dated 2002. This data needs to be updated or discussion provided explaining why the data are still relevant.
3. Section 2.8.1 lists Archaeological sites 32ME108 and 32ME1571 as being mitigated in 2014. OSMRE notes that item 57 of NDPSC's Technical Review dated December 11, 2014 addresses this concern by requesting the operator update the discussion.
4. Endangered Species information has not been updated. OSMRE notes that items 52 through 55 of NDPSC's Technical Review dated December 11, 2014 address this concern by requesting the operator update the discussion.

Please note the Environment Impact Statement (EIS) for lease NDM 91535 titled *Coteau Properties Company Federal Coal Lease by Application (NDM 91535) for West Mine Area, Freedom Mine, Mercer County, North Dakota EIS* was prepared in 2005. This EIS is no longer current and a tiered Environmental Assessment (EA) will need to be prepared to support the mining plan modification recommendation. Information contained in the permit application package and revision application will be used to prepare the EA.

If you have any questions please contact Lauren Mitchell at 303-293-5028 or lmitchell2@osmre.gov or Eugene Hay at 303-293-5036 or ghay@osmre.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Postle", with a long horizontal line extending to the right.

Robert Postle, Manager
Program Support Division

CC: Jeff Fleischman, OSMRE, Casper Field Office