



Public Service Commission

State of North Dakota

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October 9, 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 September 2nd response to our August 7th technical review letter on Revision No. 18 to Permit NACT-0201. The following items must be addressed and resolved before we recommend Commission action:

Section 2.4 – Pre-Mining Land Use and Vegetation

1. Follow-up to Item No. 2: The Pre-Mining Land Use and Vegetation Map, Section 2.4.3, identifies tame pastureland in Section 10, Tract 56, but no acreage is associated with this land use for this tract in the Pre-Mining Land Use and Ownership Table, Section 2.4.4. Please review and correct this discrepancy. In addition, the narrative discussion for this tract in Section 2.4.2 indicates that perhaps this area should not be classified as tame pastureland. Please edit the narrative to provide clarity regarding the land use classification of this area. (GAW)
2. Follow-up to Item No. 3: A sentence on page 14 of Section 2.4.2 was previously revised to state that wetlands associated with intermittent streams were classified "as temporary wetlands" but Table 2.4.4 has been updated to include seasonal wetland acreage associated with intermittent streams. Please revise this sentence to provide clarity. (GAW)
3. Follow-up to Item No. 4: Coteau has responded to the repeated request to characterize the two seasonal wetland that are located in Section 11 on land being added to the permit by stating that the seasonal wetlands on cropland in Section 22 represent these wetlands. The Reclamation Division finds this response unacceptable as the vegetative communities of the wetlands in Section 11 are very different than those in Section 22. Thus, as required by NDAC 69-05.2-08-08(1)(c) and (d) and the Vegetation Guidelines Document, Section II-H, please provide a description of the vegetation zones or plant communities of these wetlands and include line drawings and a species list of each vegetation zone or plant community as required by said regulation. (GAW)
4. Follow-up to Item No. 5: Please consider removing the Land Use column from the Wetland Acreage Summary table, Section 2.4.10 and include a note at the bottom of this table to clarify

that wetlands have not yet been delineated along the West Antelope Creek intermittent stream channel. (GAW)

Section 2.7 – Fish and Wildlife Resources

5. Follow-up to Item No. 10: As previously requested, please revise the Northern Long-Eared Bat narrative in Section 2.7.3, Mining Impacts, to clarify approximately how many acres of potentially suitable habitat are to be disturbed by mining related activities and include a breakdown about how many acres are to be disturbed on each tract of federal coal where mining is being proposed with this revision. Table 1, Northern Long-Eared Bat Potential Tree and Tall Shrub Habitat, does not provide any information about how many acres of trees and tall shrubs are planned to be disturbed by mining activities. (GAW)
6. Follow-up to Item No. 11: Please revise the Northern Long-Eared Bat narrative discussion to mention whether areas adjacent the permit area contains suitable habitat for the Northern Long-Eared Bat, or discuss why the adjacent area is not relevant as required by NDAC 69-05.2-08-15. (GAW)
7. New Item: With the latest changes, Coteau has included whooping crane habitat information in Section 2.7.3 of the permit that indicates that all of the wetlands in the permit area (330 acres) are potential whooping crane habitat. Although this may be true, please further evaluate the wetlands in the permit area and clarify how many of these wetlands actually contain characteristics of desirable suitable stop-over habitat. According to a USFWS Biological Report dated May 1990 this would include wetlands that hold water ½ to 1½ feet deep at a distance 20 to 30 feet from the shoreline (or dense emergent vegetation) with no horizontal visibility obstructions greater than 3 feet in height for a straight line distance of about 150 yards. The horizontal visibility obstructions criteria must include topographical features such as high banks or steep slopes. Section 2.4 of the permit indicates that very few wetlands in the permit area actually contain any open water and the seasonal pools in the linear drainages are too small in size to meet the shoreline distance requirement. The whooping crane information, as included in this revision, actually makes it more difficult to find that Coteau's mining plans will not likely adversely affect the continued existence of this species. Please revise to properly characterize the wetland habitats, including stockponds, in and adjacent the permit area with regard to whooping crane habitat. (GAW)

Section 4.1 – Post-Mining Land Use Plans

8. Follow-up to Item No. 25: Coteau responded to Item 25 by stating that Coteau wishes to take 38.3 acres of native grassland in the NE1/4 of Section 10, Tract 56, and replace it with cropland and reclaim native grassland in a portion of the NW1/4 of Section 11, Tract 59 but this is not shown on the Post-Mining Topography Map, Section 4.1.2 or in the Table in Section 4.1.3. Please review and revise as necessary. (RLK/GAW)
9. Follow-up to item No. 19: Coteau's September 2nd responses to sub-items 19a through 19e are satisfactory; however, it appears that our request to review and revise potential postmine prime farmland landscape acreage in Sections 10 and 11 of T145N, R88W in the introductory paragraph was inadvertently overlooked. Please review and revise as necessary the potential postmine prime farmland landscape acreage added to portions of Section 10, T145N, R88W (Tracts 56 and 57) on Section 4.1.2 with the July 6th response. It appears that most of the potential postmine

prime farmland landscape acreage added to the N½S½ and the S½N½ of Section 10 occupies a convex runoff landscape position that is contrary to the requirement of NDAC 69-05.2-26-04(1). Please revise Section 4.1.2 to depict equivalent potential postmine prime farmland landscape acreage in a concave run-on landscape position in these tracts or others of Coteau postmine cropland ownership. Please also revise Section 4.1.2 to remove the potential postmine prime farmland landscape acreage north of, and parallel to, the grassed waterway in the S½ of Section 11, T145N, R88W (Tracts 60 and 61) where the postmine cropland slope was increased with the July 6th response, and depict equivalent potential postmine prime farmland landscape acreage in a concave run-on landscape position with slopes less than 6 percent in these tracts or others of Coteau postmine cropland ownership. (WTG)

10. Follow-up to Item No. 26: Section 4.1.3, Pre- and Post-Mining Land Use Comparison Table, has been revised to indicate that 15 acres of woodlands will be planted in Section 36. A note at the bottom of the Table, 4.1.3, states that 2.3 acres of woodlands is listed in the woodland column for Section 36 and that approximately 20 acres will be planted but these values are not listed in the table. The Post-Mining Topography and Land Use Map, Section 4.1.2, shows that shelterbelts rather than woodlands will be planted. Please revise Sections 4.1.3 and 4.1.2 to clarify if the additional tree plantings in Section 36 are shelterbelt or woodland plantings and revise so that the information in Sections 4.1.3 and 4.1.2 are consistent. (GAW)
11. Follow-up to Item No. 26: The Post-Mining Land Use Table, Section 4.1.3, attempts to combine the pre- and post-mining woodland acreage into a single value but there were 372.2 acres of pre-mine woodlands according to table 2.4.4, and it appears 387.1 acres are planned postmining. Please revise this table so that the information included is correct. In addition, the most recent version of Section 4.1.3 now indicates that pre-mine shelterbelts in Section 10 and 33 will not be replaced since they were not deemed “critical habitat”. Please include plans to replace these shelterbelts as originally planned, or provide a new land owner preference statement from the surface owner of Section 33 and make plans to replace the fish and wildlife habitat and landscape diversity values associated with the shelterbelt in Section 10 if it is not going to be replaced. Furthermore, it is not appropriate to include changes such as this without clearly informing the Reclamation Division of the change at the time it is proposed. (GAW)
12. Follow-up to Item No. 27: The Reclamation Division requested that the Post-Mining Topography and Land Use Map, Section 4.1.2, be updated to show the 2.3 acres of woodlands that are to be replaced in Section 36. Coteau has responded by stating that pages 1-2 of Section 4.1.3 have been revised. Again, as previously requested, please revise the Post-Mining Topography and Land Use Map, Section 4.1.2, to depict the 2.3 acres of woodlands that are to be replaced in Section 36. Apparently, one of the 6 tree plantings in Section 36 is going to replace this pre-mine acreage but all are labeled as shelterbelts rather than woodlands and these plantings are classified as woodlands rather than shelterbelts in Section 4.2.3.1, Postmining Replacement Woodlands. Please clarify this issue. (GAW)
13. Follow-up to Item No. 28: The legend on the Post-Mining Topography and Land Use Map, Section 4.1.2 shows that undisturbed shelterbelts are depicted with a lime colored polygon but the map depicts these plantings as a brown polygons filled with small hexagons. Please revise so that the information is depicted in a consistent manor on the map, if other changes are being made to this map. (GAW)

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14. Original Item No. 29: The Pre- and Post-Mining Land Use Comparison Table, Section 4.1.3, shows that Rudolph Sasse's land contains 6.4 acres of premine wetlands and 6.8 acres of postmine wetlands but Table 4.4.2.1, Undisturbed and Disturbed Wetland Acreage Summary Table, indicates that Mr. Sasse has only 4 acres of premine wetlands of which only 1.7 acres are to be disturbed. Please review these tables and revise as necessary so the information listed is consistent between Sections 2.4, 4.1 and 4.4. Coteau responded to this item by incorrectly stating that Section 4.4.2.1 shows only wetlands that have been disturbed prior to this revision, not all of the wetlands that will be disturbed within the permit boundary, and thus no changes were made. A note at the top of Table 4.4.2.1 states that wetland acreages listed pertains to those tracts of land that have been disturbed, or are proposed to be disturbed by mining activities up to and including Revision 18. Therefore, as originally requested, please update the tables in Sections 4.1.3 and 4.4.2.1. The table in Section 4.1.3 should not show Mr. Sasse gaining 0.4 acres of wetland and the table in Section 4.4.2.1 must be updated to reflect updated mine plans. The table in Section 4.4.2.1 incorrectly shows that 2.3 acres of wetlands in Tract 27 will remain undisturbed but all of the pre-mine wetland acreage is actually going to be disturbed on this tract and the Post-Mining Topography and Land Use Map shows that a 2.5 acre created wetland (CW-W02-01) is planned on this tract. Similarly, all of the wetland acreage in Tract 101 is going to be disturbed and replaced with created wetland CW-W33-01, 2.5 acres in size, but the table in Section 4.4.2.1 incorrectly indicates that there are only 1.4 acres of wetland on this tract and that same acreage amount is to be replaced. Please update as necessary so that the information is correct and consistent. (GAW)

If you have any questions, please contact this office.

Sincerely,



James R. Deutsch
Director
Reclamation Division

cc: Mercer County Auditor