



Public Service Commission

State of North Dakota

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October 9, 2020

Mr. Scott Aberle
General Mine Manager
Dakota Westmoreland Corporation
Beulah Mine
P.O. Box 39
Beulah, ND 58523-0039

Dear Mr. Aberle:

The Reclamation Division has completed a technical review of Revision 32 to Surface Coal Mining Permit KRSB-8603. The following items must be adequately addressed prior to the Reclamation Division recommending Commission action. DWC should make every effort to have Revision 32 approved prior to December 31, 2020 if a variance from the contemporaneous reclamation requirements is being requested for additional acreage in the permit.

Section 1.1 – Application and Support Documents

1. The Revision Summary in Section 1.1 states that Revision 32 modifies the post-mining topography in the Gold Pit area. Changes are also proposed in the Iron pit. Please update this section, as well as other applicable sections, to accurately account for all changes that are proposed with Revision 32. (SMN)

Section 1.4 – Business Entity Information

2. Please update Property Interests information that begins on page 1.4.16, consistent with surface and coal ownership information included with the Revision 32 public notice that begins on page 1.4.50. (GAW)
3. Please update the names and addresses of apparent surface and subsurface owners of record information that begins on page 1.4.22. This would include addresses for Vergene Christianson, Candida Rhoades' heir Rita Schmidt, Bonnita Schmidt, Janice and Marvin Sigman, Joan Miller and Sylvia and Dalton Zeiszler. (GAW)
4. Please review the Surface and Coal Ownership Map, Exhibit 1.4.1, to ensure the ownership information provided is accurate. (GAW)
5. All reference to the ND State Health Department in subsection E of Section 1.4 should be updated to ND Department of Environmental Quality. The address for the Department of Environmental Quality should be updated to 918 E. Divide Ave., Bismarck, ND 58501. The

permit identification number for the Air Permit to Operate #081011 should begin with the letter "O" (see attached letter from the ND DEQ). (GAW)

Section 2.3 – Ground Water Hydrology – Probable Hydrological Consequences

6. Please update the post-mining topography acreages in Table 2.3.7 in subsection D of Section 2.3, Ground Water Hydrology, to account for all post-mining changes being proposed with Revision 32, and please reference a map in the permit where the post-mine watersheds are clearly depicted. Please also highlight all changes being made in Section 2.3. Every page in this section is listed as being revised with Revision 32 but the changes are not highlighted. (GAW)

Section 2.5 – Wildlife Inventory and Plan

7. Please revise the Northern Long Eared Bat (NLEB) narrative on page 2.5.66 to clarify that White-Nose Syndrome (WNS) has been found in bats in Mercer County, ND, and that there is no known NLEB hibernacula or maternity sites at the DWC Beulah Mine. Since the WNS 4(d) buffer zone rule is no longer applicable, please revise the narrative accordingly and state that the protocol established in the USFWS January 13, 2016 "Key to the Northern Long Eared Bat 4(d) Rule" will be followed. Please also revise the narrative to state that the USFWS IPAC data base will be consulted on a regular basis to determine if NLEB and other federal threatened or endangered species are listed in Mercer County, ND. (GAW)

Section 2.7 – Land Use

8. Please revise the road discussion in the third paragraph on page 2.7.4 to clarify if an improved section line road or county road is going to be replaced on the section line between Sections 20 and 21. (GAW)
9. Please move the location of reclaimed wetlands SW20-1W and SE20-2W into drainageways on the Post-Mining Land Use Map, Exhibit 2.7.1, and revise the reclaimed wetland design plans for changes in location and perhaps the size of the associated watershed. (GAW)
10. Please consider moving the location of reclaimed woodland SE20-1 and conservation woodland SW20-1 to areas having a north, east or northeasterly facing slope (aspect) on the Post-Mining Land Use Map, Exhibit 2.7.1, to improve the likelihood of tree and shrub survival. (GAW)
11. Please consider moving the location of reclaimed woodland SE22-1 from a south, southwesterly facing slope to a north, east or northeasterly facing slope on the Post-Mining Land Use Map, Exhibit 2.7.1. It appears reclaimed land located west of sediment pond P108 would be an excellent location for a tree planting. (GAW)
12. Please revise the location of reclaimed wetlands NW22-1W and SW22-1W on the Post-Mining Land Use Map, Exhibit 2.7.1, such that they are in the bottom of the proposed reclaimed drainageway. (GAW)

Section 3.1 – General Mining Plan

13. Please revise sentences towards the end of second paragraph on page 3.1.2 to clarify that the Iron Pit is also located in the S1/2 of Section 20 and that the Gold Pit also occupies a portion of Section 23. (GAW)
14. Please review the list of major equipment on page 3.1.8 to ensure it is current and accurate. (NDCC 38-14.1-14(1)(I)) (GAW/PJR)

Exhibit 3.1.2 – Pit Layout and Facilities Map

15. Please update the Pit Layout and Facilities Map to show all current SPGM stockpiles and revise the map to show SPGM stockpiles that have been depleted differently than those with soil remaining. The SPGM piles in Section 18 have been depleted and there are SPGM piles on areas where coal was removed in Section 22 that are not depicted. (GAW)
16. Please consider depicting a 100-foot no disturbance buffer zone along the north side of Emmaus Cemetery. (GAW)
17. Please include Iron Pit identification numbers on recently mined pits. Please note the pit numbers used in the Reclamation Time Schedule (Section 3.8) and Worst-Case Bond (Section 3.9) need to be identified in a consistent manner on the Pit Layout Map. (GAW)
18. Please depict Pond 85 and Pond P85 Sump on the Pit Layout and Facilities Map, Exhibit 3.1.2. (GAW/PJR)
19. Please depict the Brush Creek sumps on the Pit Layout and Facilities Map, Exhibit 3.1.2. (PJR)

Exhibit 3.1.6 – Facilities Area Map

20. Please depict all sediment ponds on the Facilities Area Map, Exhibit 3.1.6, or clarify why only some are shown. (GAW)

Section 3.2 – Water Management Plan

21. Follow-up to Item No. 15 of our February 13, 2019 midterm review letter: Please revise Section 3.2, Water Management Plan, to include a table that identifies the year that each temporary sediment pond will be reclaimed. While design information for each pond generally includes construction dates, it does not include a reclamation date as required by NDAC 69-05.2-09-09(1)(d). Section 3.8 does not provide an adequate reclamation date for each temporary sediment pond. (GAW)
22. Please review the design plans for Ponds 104, 105, 106 and 108 and clarify if each of these ponds will be reconstructed exactly as originally designed. If these sediment ponds are not going to be reconstructed according to the original design plans, new design plans must be submitted. Pond 106 is designed such that Ditch 106W, which is the initial box cut adjacent the undisturbed land, functions as the pond's emergency spillway. Ditch 106W has not

been maintained to function as planned. Please review and consider alternatives that will expedite reclamation of the watershed. (GAW)

23. Please consider constructing a sediment pond in the valley between Ponds 105 and 106 to facilitate reclamation of this area. Without a pond in this valley, Ditches 106E and 106W will need to be maintained, which will delay timely reclamation of the area. In addition, Ditch 106W does not currently convey runoff water to Pond 106 as depicted on the Exhibit 3.2.69. (GAW)
24. Pond 109, Diversion Ditch 109S, and Diversion Ditch 109N will not be constructed because of the shortened Iron Pit sequence in the N½ of Section 29. Please revise pages 3.2.40 and 3.2.52 of Section 3.2 (Water Management Plan) to delete the descriptions of Pond 109, Diversion Ditch 109S, and Diversion Ditch 109N. Please also revise Exhibit 3.2.1 (Water Management Plan) to delete the depictions and labels of Pond 109, Diversion Ditch 109S, and Diversion Ditch 109N. (WTG/GAW)
25. Please discuss the diversion that was constructed along the east side of Ramp 2, east of the Pond 85 Sump, and describe how surface water runoff will be managed when the Gold Pit is backfilled and no longer stores runoff. It is not clear if sediment Pond 85 Sump has been constructed at an elevation that will accommodate reclamation of the surrounding area. (GAW)
26. Please clarify if Ponds 104, 105 and 106 (submitted informally on 8-11-2020) were designed to control runoff from post-mine watersheds as proposed with Revision 32. Please review and revise if necessary. (SMN)
27. Revision 32 proposes to remove the design data for the Pond 85 Sump that is currently located in the Pond 85 narrative found on page 3.2.13 in Section 3.2. Please retain this information. (SMN)
28. Design information regarding the Pond 85 Sump is located in Exhibits 3.2.7 and 3.2.40. Please provide this information in only one location. If you wish to retain it in Exhibit 3.2.40, please provide a statement in Exhibit 3.2.7 indicating that the as-built design plans for Pond 85 Sump are located in Exhibit 3.2.40. If you retain the as-built design plan for Pond 85 Sump in Exhibit 3.2.7, please update the Table of Contents to indicate the Exhibit 3.2.7 includes Pond 85 and Pond 85 Sump. (SMN)

Exhibit 3.2.1 – Water Management Plan Map

29. Please depict Pond 85 Sump where it was actually constructed on the Water Management Plan Map, Exhibit 3.2.1, and delineate the watershed. (GAW/SMN)
30. Please depict the diversion that was constructed along the east side of Ramp 2 and identify the watershed it was designed to control. (GAW)
31. The Water Management Plan Map, Exhibit 3.2.1, depicts diversions constructed to control surface water runoff when mining operations began. However, some of these features were mined through and “Ditches” along the disturbance boundary were constructed to control surface water runoff, e.g. Ditch 106 East and Ditch 106 West. These Ditches are currently

needed for water management and therefore must be depicted on the Surface Water Management Plan Map, Exhibit 3.2.1. Please update the Water Management Plan Map, Exhibit 3.2.1 to show all features and facilities currently being used to manage surface water runoff. Features and facilities that are no longer being used to manage runoff should be depicted differently than features currently being used. (GAW)

32. Please depict the diversion in the E1/2 of Section 16 that conveys runoff from disturbed areas to Pond 86. (GAW)

Section 3.3 – Blasting plan

33. Please update the blasting plan to reflect current blasting procedures at the Beulah Mine. (PJR)

Section 3.4 - Suitable Plant Growth Material Handling Plan

34. As required by NDAC 69-05.2-09-11(5), please update Section 3.4 (Suitable Plant Growth Material Handling Plan) with a current plan for redistribution of suitable plant growth material (SPGM) that provides the volumes, by ownership, of topsoil and subsoil available for reclaiming all disturbed acreage. The plan should include (a), a table with ownership acreage by legal description, postmine land use, available topsoil and subsoil stockpile volumes, or portions thereof, mixing agreement status, and topsoil and subsoil respread depths, and (b), a map depicting and labeling ownership parcels, postmine land use parcels, and topsoil and subsoil respread depths. Projected SPGM respread depths described and depicted in the permit and annual soil handling plans have become irrelevant as contemporaneous reclamation has increasingly lagged behind the permit's reclamation schedule. Although graded spoil properties typically dictate grade approval area total SPGM respread depths, a current plan for SPGM redistribution is necessary to prevent respread depth shortfalls during permit reclamation. (WTG)

Section 3.5 – Backfilling and Grading

35. DWC is proposing a final post-mining topography of less than 1 percent slope on approximately 20 acres of hayland and native grassland along the south side of Section 20. Please revise the Post Mining Topography Map, Exhibit 3.5.3, to show this flat area having at least 1 percent slope. (GAW)
36. DWC is proposing 11 percent slopes on reclaimed cropland in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 22. Please revise the postmining topography, Exhibit 2.5.2, such that slopes in this area are more similar to that which existed prior to mining, and not greater than 9 percent. In addition, there appears to be an increase in acreage of 6 to 9 and 9 to 12 percent slopes for a portion of this tract. Similar concerns exist for portions of the SW $\frac{1}{4}$ of Section 22 (GAW)
37. DWC is proposing 8.4 percent slope on reclaimed cropland located in the N $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 22. Please revise the postmining topography, Exhibit 2.5.2, such that slopes in this area are more similar that which existed prior to mining, and not greater than 6 percent, if feasible. (GAW)

38. DWC is proposing to reclaim a few acres above an undisturbed wooded draw in the SE $\frac{1}{4}$ of Section 15 with slopes exceeding 20 percent. Although topographic changes are not being proposed in this area with Revision 32, please consider reviewing and revising the post mining topography in this area such that the reclaimed drainages blend appropriately with adjacent undisturbed land. It does not appear that the disturbance boundary on the Post Mining Topography Map, Exhibit 3.5.3, is accurately reflected in the SE $\frac{1}{4}$ of Section 15 and land not disturbed for the purposes of coal removal should not be altered for reclamation purposes. (GAW)
39. Please review the disturbance boundary (dashed blue line) on the Post Mining Topography Map, Exhibit 3.5.3 to ensure that it only encompasses lands affected by mining activities. Topographical changes should not be proposed on any areas not affected by mining or on areas affected only by associated mining disturbances. This includes a large portion of the N $\frac{1}{2}$ S $\frac{1}{2}$ of Section 21 and the entire east, north and west sides of mine area. (GAW)
40. Please revise the Post Mining Topography Map, Exhibit 3.5.3 to include a line that clearly depicts the boundary where topographical changes have been or are being proposed. This includes all areas where coal was removed and other areas where topographical changes are warranted, for example back sloping a highwall to fill a final pit. Areas of associated mining disturbance would lie in between the disturbance boundary and this boundary where the pre-mining topography is being altered. (GAW)
41. Please revise Exhibits 3.5.4(a) and 3.5.4(b), Pre- and Post-Mining Area Slope Maps, with an accurate depiction of the mining disturbance boundary and the boundary where post-mining topographical changes are being made. (GAW)
42. The table at the bottom of Exhibit 3.5.4(a), Pre- Mining Area Slope Map, is incorrectly labeled "Postmine Surface" rather than "Pre-Mine Surface", and the map is labeled "Pre-Mine Slope Contours" rather than "Pre-Mining Area Slope Map" in the legend. Please correct these errors. (GAW)
43. Please provide a pre-mining vs post-mining slope analysis for each surface owner tract in Section 22 so that we can determine if any surface owners land will have steeper slopes than existed prior to mining. NDAC 69-05.2-09-11(3), NDAC 69-05.2-21 and NDCC 38-14.1-02(2). (GAW/SMN)

Section 3.8 – Time Schedules

44. Please edit the first sentence of the last paragraph on page 3.8.3 which incorrectly states that the Gold Pit will end in 2019 in a natural drainage. DWC's Annual Mine Maps indicate that coal removal ended in 2018 adjacent to a natural drainage rather than in a natural drainage. Please correct this error. (GAW)
45. The term "Reclamation" is used in the Schedule of Events in subsection B of Section 3.8 to presumably mean backfilling and final grading. Please clarify what is meant by the term "Reclamation" since it does not appear to include SPGM respread and seeding as those terms are also used. (GAW)

46. The last item in the 2020 Schedule of Events on page 3.8.8 includes "Reclaim in Gold Pit". Please clarify what type of reclamation will occur in the Gold Pit in 2020. (GAW)
47. The 2020 Schedule of Event on page 3.8.8, states that reclamation, SPGM respread and seeding will be completed in the Charlie Pit in 2020. Please clarify that the Charlie Pit is in Permit KRSB-8802 or removal all references to the Charlie Pit. (GAW)
48. Please revise the narrative for Variance Zone No. 10 on page 3.8.10 to only include areas where backfilling and rough grading will not be completed within 180-days and areas that will not be seeded within 3 years of coal removal. Exhibit 3.8.2 incorrectly includes land in Section 29 where a variance is not needed and the acreage amount, 196.3 acres, should be updated with Revision 32. The narrative also continues to state that 86.8 acres is needed for the worst-case bond but the mine plan is being changed with Revision 32. (GAW)
49. Please update the narratives for Variance Zones No. 9, 11 and 13 to clarify if a variance is still needed for any of those areas. (GAW)
50. Please revise the Variance Zone No. 14 narrative to clarify that this variance area is needed for areas where coal was removed from 2015 through 2018 and recalculate the acreage associated with the Variance Zone. (GAW)
51. In Section 3.8, please clarify how many acres of additional contemporaneous reclamation variance are being requested with Revision 32. This must be itemized as acres of variance from the 180-day backfilling and rough grading rule and the acres of coal removal that will not be seeded within 3-years of coal removal. These acreage values should include only areas of variance not previously approved and detailed justification must be provided with the request for delaying reclamation on these additional acres. It would be helpful to provide the acres in each existing variance area to help justify granting variances on additional acreage. NDAC 69-05.2-21-01 and NDCC 38-14.1-24(14). (GAW)

Section 3.9 – Reclamation Cost Estimates and Performance Bond

52. Table 3.9.1, Dozer and Haul Truck Fill Summary, does not include filling the northeastern portion of the Iron Pit or the northwestern portion of the Gold Pit with spoil. These areas have not been rough graded and should be included in the June 2020 worst-case reclamation costs. (GAW)
53. Table 3.9.5, Scraper & Truck-Loader Production for Soil Respreading, indicates that SPGM is needed on 529.5 acres but DWC's 2019 Annual Mine Map indicates that subsoil is needed on 991.3 acres and topsoil is needed on 1124.1 acres. The Reclamation Division is not aware of any SPGM respread operations in Permit KRSB-8603 during the first 5 months of 2020 so it is not clear why the worst-case bond does not account for all the acreage needing SPGM respread. Please review and revise the worst-case bond accordingly or inform the Reclamation Division why our assumptions are not correct. (GAW)
54. Please revise Exhibit 3.9.2, Worst-Case Bond Map, to correctly depict all areas where soil has been respread in the Silver Pit. (GAW)

55. Please revise Exhibit 3.9.2, Worst-Case Bond Map, to show all areas where subsoil and topsoil needs to be respread, effective June 2020, the worst-case time period. (GAW)
56. The worst-case bond map, Exhibit 3.9.2, identifies worst-case mining disturbance beyond the existing disturbance boundary south of the Gold Pit. Please revise Exhibit 3.9.2, to not depict worst-case mining disturbance beyond the existing disturbance boundary. If DWC is planning to disturb the highwall along the south side of the Gold Pit to backfill the pit, then this should be thoroughly discussed in Section 3.5, Backfilling and Grading, and Section 3.2, Water Management. The worst-case mining disturbance cannot come within 100 feet of the unnamed intermittent stream located south of the Gold Pit. (GAW)

Attached are comments from the ND Department of Environmental Quality and ND Parks and Recreation.

If you have any questions, please contact this office.

Sincerely,



Dean K. Moos
Director
Reclamation Division

Enclosures

cc w/enclosures: Jesse Noel

October 11, 2020

Public Service Commission
600 East Boulevard Dept. 408
Bismarck, ND 58505-0480

Re: Dakota Westmoreland Corporation – Revision No 32, Permit KRSB-8603-Beulah Mine

Dear Commissioners,

The North Dakota Parks and Recreation Department has reviewed the above referenced proposed Dakota Westmoreland Corporation application Revision No 32, Permit KRSB-8603 at the Beulah Mine, in Mercer County, North Dakota.

NDPRD's scope of authority and expertise covers properties that NDPRD owns, leases, or manages; properties that are protected under Section 6(f) of the Land and Water Conservation Fund (LWCF); and rare plants and ecological communities established through the Natural Heritage Program.

The project does not appear to affect properties that NDPRD owns, leases, or manages.

The project does not appear to affect any properties protected under Section 6(f) of the LWCF.

The North Dakota Natural Heritage biological conservation database has reviewed the project to determine if any current or historical plant or animal species of concern or other significant ecological communities are known to occur within an approximate one-mile radius of the project area. Based on this review, we have no known rare species or significant ecological communities documented within or immediately adjacent to the project site. Because the Natural Heritage information is not based on a comprehensive inventory, there may be species of concern or otherwise significant ecological communities in the area that are not represented in the database. The absence of data may indicate that the project area has not been surveyed, rather than confirm that the area lacks natural heritage resources.

We appreciate your commitment to rare plant, animal, and ecological community conservation, management, and inter-agency cooperation to date. For additional information please contact NDPRD's Natural Resources Coordinator, Kathy Duttenhefner at (701-220-3377 or kgduttenhefner@nd.gov).

Thank you for the opportunity to comment on the proposed project.

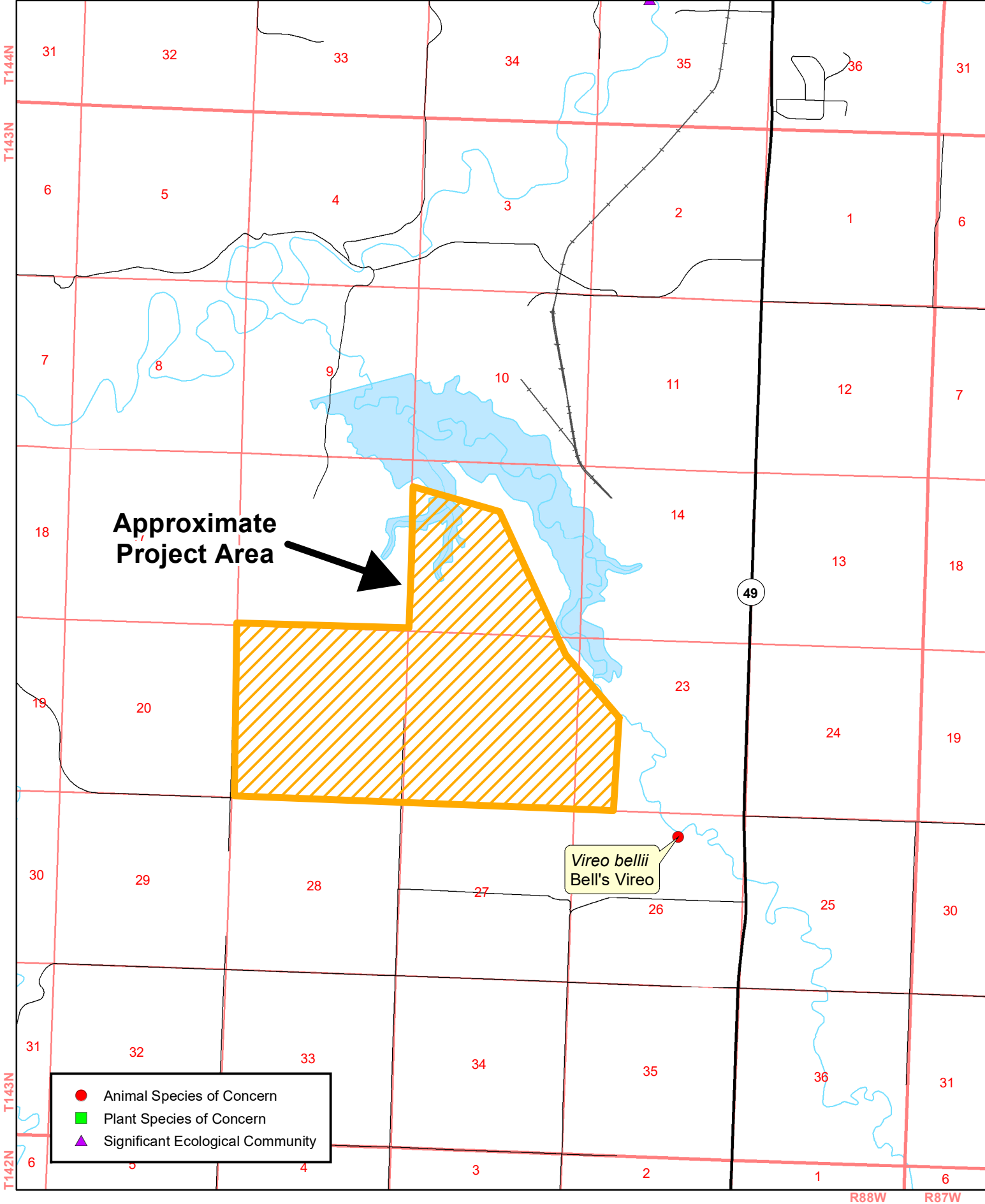
Sincerely,



Kathy Duttenhefner
Coordinator/Biologist II, Natural Resources Division

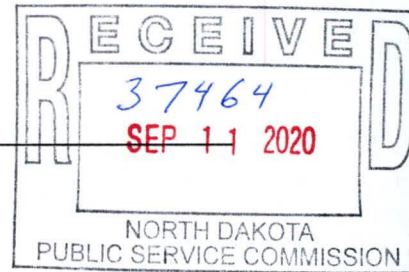
1600 East Century Ave. Ste. 3 | Bismarck, ND 58503

North Dakota Parks and Recreation Department North Dakota Natural Heritage Inventory



North Dakota Natural Heritage Inventory
Rare Animal and Plant Species and Significant Ecological Communities

State Scientific Name	State Common Name	State Rank	Global Rank	Federal Status	Township Range Section	County	Last Observation	Estimated Representation Accuracy	Precision
Vireo bellii	Bell's Vireo	S3	G5	PS	143N088W - 26; 142N088W - 09; 142N088W - 08; 143N088W - 31; 143N088W - 21; 143N088W - 30; 142N087W - 06; 143N087W - 10; 143N087W - 21; 143N087W - 32; 143N088W - 10; 143N087W - 22; 143N089W - 24; 143N088W - 32; 143N088W - 22; 143N087W - 34; 142N088W - 07	Mercer, Oliver	1975		G



September 10, 2020

Mr. Dean Moos
Reclamation Division
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505

RE: Revision 32 to Permit KRSB-8603

Dear Mr. Moos:

We have reviewed Dakota Westmoreland Corporation's application for revision number 32 to Surface Coal Mining Permit KRSB-8603. We have no objection to the revision which proposes to modify the approved post-mining topography and reclamation schedule for areas affected by mining. We also have no objection to updates to the business entity and compliance information, surface and coal ownership, ground water monitoring plans, surface water management plans, mining and reclamation plans and the estimated worst-case reclamation cost.

References to the North Dakota State Health Department in Section E of 1.4 should be updated to the North Dakota Department of Environmental Quality. The address for the Department of Environmental Quality should be updated to 918 E Divide Ave., Bismarck, ND 58501. In addition, the permit identification for the Air Permit to Operate #O81011 should begin with the letter "O".

At this time, the department has no further comments regarding this revision.

Sincerely,

Dallas Grossman
Environmental Engineer
Division of Water Quality

c. Matthew Bingert – NDDEQ, Division of Air Quality