



# Public Service Commission

## State of North Dakota

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October 22, 2020

Mr. Terence Schmidt  
312 10<sup>th</sup> Street NW  
Beulah, ND 58523

Dear Mr. Schmidt:

The Reclamation Division acknowledges receipt of the objections you filed via email on October 12, 2020 regarding the application for Revision No. 32 to Permit No. KRSB-8603.

We note that you filed objections to Revision No. 32 to Permit No. KRSB-8603; however, you did not request an informal conference. Please clarify or confirm that you did not request an informal conference. If you intended to request an informal conference, please state so in writing. Should you request an informal conference, it will be scheduled as required by NDCC 38-14.1-19 and your concerns will be addressed in an informal conference with Reclamation Division staff, Dakota Westmoreland Company (DWC) representatives, and yourself. It will be presided over by a hearing officer. Regardless of whether you request an informal conference or not, you may also request a formal hearing on the Commission's final ruling on Revision No. 32 to Permit No. KRSB-8603.

Assuming that you do not intend to request an informal conference, we will address each of the objections that you noted. I have also attached an electronic copy of Revision 32 and our latest technical deficiency letter on the revision application.

**Reclamation Delay:** The current approved reclamation schedule in Permit No. KRSB-8603 was approved with Revision No. 31 (approved February 14, 2018). Table 3.8.2 in Revision 31 states that Gold Pits 45-50 were to be leveled, respread with suitable plant growth material (SPGM), and seeded in 2018 while Gold Pits 51-53 and the final Gold Pits 54-57 were to be leveled, respread with SPGM, and seeded in 2019 and 2020, respectively. The following map includes 2019 imagery and depicts the approximate location of Gold Pits 40-57.



In 2017, DWC informed the Reclamation Division that they felt there would be a significant backfill material deficit for the final Gold Pit area and that the approved post mine topography likely could not be achieved. They committed to submitting a revision to modify the post-mine topography of the Gold Pit area by March 30, 2018. Throughout 2018, DWC informally submitted several revised post-mine topography proposals for the Gold Pit area. Each of the revised post-mine topography proposals were reviewed by staff and the first submittals were found to be unacceptable in terms of meeting the “approximate original contour” requirements. In reviewing each of the proposals, it became apparent to Reclamation Division staff that in order achieve an acceptable post-mine topography, overburden material from the areas remaining to be reclaimed (areas further north of the final Gold pits including areas that were already near final grade) would have to be “hailed” south to backfill the final pits.

Revision No. 32 was submitted on December 26, 2018 and it addresses the reclamation schedule and post mine topography for the Gold Pit area among other things. No changes to the size of the variance areas were proposed with Revision 32; however, it proposes to extend the final

reclamation (backfilling, SPGM respread, and seeding) of the remaining Gold Pit area until 2021.

You state that by granting further delays to the reclamation of these lands, the surface owners will continue to lose and have no chance to recoup income from the affected properties which is in direct violation of NDCC 38-18, Surface Owner Protection Act. Terms and administration of lease agreements between mining companies and surface/coal owners are outside the jurisdiction of the Reclamation Division.

**Post-Mine Topography:** As previously mentioned, DWC had informally submitted several revised post-mine topography proposals for the Gold Pit area prior to the submittal of Revision 32. Staff reviewed each submittal and the early submittals were rejected as being unacceptable. Attached is a copy of an email response to DWC for one of the submittals that was ultimately rejected. Improvements were suggested to DWC with each submittal. The last informal submittal was determined to be a vast improvement as it was similar to the approved post-mine topography and, with a few exceptions, met the approximate original contour requirements. It was also consistent with the approved post-mine landuse. DWC was encouraged to submit it in the forthcoming revision application.

Also attached is our post-mine topography analysis of various tracts of land in the Gold Pit area affected by Revision 32. It compares the pre-mine topography to that currently approved in Revision 31 and that proposed in Revision 32 as well as comparing the changes from Revision 31 to Revision 32. While the post-mine topography proposed with Revision 32 is not significantly different from what is currently approved in Revision 31, we have noted a few areas of concern in our technical review of Revision 32. DWC will need to address those concerns in their response to our technical review of Revision 32.

Further complicating matters, DWC's loss of the coal supply contract affected the overall mine plan, mining and reclamation schedules, and material balance for this entire permit area. Revision 32 provides a mine closure and reclamation plan for the remaining areas in the permit area. Delaying reclamation of final pit areas is a typical practice used at all mines in order to obtain enough material to backfill the final pit areas and achieve a satisfactory post-mine topography.

You also noted several other items of concern in your October 12, 2020 email and indicated that these concerns need to be addressed in the revision. Each of these concerns is noted below.

**Replacement of a spring:** You indicated that the permit should address water replacement for a destroyed water resource, namely a flowing spring that was located near the center of Section 22. Permit KRSB-8603 identifies two undeveloped seeps in the NE $\frac{1}{4}$  of Section 22 (Schmidt Seep #1 and Schmidt Seep #2). Exhibit 2.3.7, Water Supply Locations Map, in Permit KRSB-8603

indicates Seep #1 is located near the center of the NE¼ of Section 22 and Seep #2 is in the SE¼NE¼ of Section 22. Narrative regarding these seeps is provided on pages 2.3.21 and 2.3.22 of Permit KRSB-8603. The narrative states that Seep #1 has minimal flow and is only present in the top third of the draw. Seep #2 is in the wooded draw about 400 yards south of Seep #1 and the narrative states that this seep also has minimal flow. Please note that these features were considered “seeps” rather than “springs” because of diffuse ground water flow to surface, or interflow, and the inability of the well/spring certification contractor (Roger Schmid in this case) to provide a measurable discharge rate or collect a sample for water quality analysis.

The approved permit narrative further states ***“but if Seep #2 does not re-establish after mining, DWC will replace this pre-mining water source with a well in the near vicinity.”*** It is highly unlikely that either of the seeps will re-establish after mining. In addition to the above stated permit commitment for water replacement, the law and regulations require replacement of affected water resources so long as a replacement water source is necessary to implement the post-mining land use. DWC is not proposing any changes with Revision 32 to the commitment they made to replace water resources affected by mining activities.

**Weed Control:** You expressed concern regarding weed control areas disturbed by mining and adjacent undisturbed areas. North Dakota’s surface mining laws and regulations do not include specific performance standards for weed control, but our regulations require mining companies to comply with all other state and federal regulations including North Dakota’s noxious weed laws. There are no specific performance standards for non-noxious weeds other than mining companies are to manage lands that they own or control using standard agricultural husbandry practices. The Reclamation Division will remind DWC of the need to properly control noxious and non-noxious weeds on topsoil and subsoil stockpiles and other lands affected by mining activities.

**Repair of Downstream Erosion Caused by Pond Discharges:** You refer to erosion caused by pond discharges in the NE ¼ of Section 22. Staff will review this area during an upcoming routine inspection. Staff may contact you and invite you on the inspection to ensure the correct location is inspected. Erosion related to mining or reclamation activities will need to be repaired and could possibly be subject to enforcement activity. Repair of erosional features is a required performance standard and not necessarily something that needs to be incorporated into the permit.

Mr. Terence Schmidt  
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We are available to meet with you to further discuss these matters if you so desire. Please feel free to contact our office if you have any questions.

Sincerely,



Dean K. Moos  
Director, Reclamation Division

Attachments: Thumbdrive containing the current version of Rev. 32  
March 28, 2018 email rejecting proposed post-mine topography  
Slope analysis tables and maps

cc: Jesse Noel  
Scott Aberle

Mine data/Beulah Mine/Permits/KRSB-8603/Revisions/No. 32/Rev32\_Schmidt\_Objection\_rsp\_ltr\_10-22-20