



Public Service Commission

State of North Dakota

COMMISSIONERS

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sent via email only

May 12, 2022

Ms. Sarah Flath
Environmental Manager
Coteau Properties Company
204 County Rd. 15
Beulah, ND 58523
sarah.flath@nacoal.com

Dear Ms. Flath:

The Reclamation Division has reviewed the Coteau Properties Company's April 25, 2022 response to our April 6, 2022 technical review of Revision No. 37 to Permit NACT-9101 at the Freedom Mine. The following technical review items must be addressed prior to Commission approval of the revision and corresponding Renewal No. 6. Since the current permit term will expire June 30, 2022, please respond to this letter promptly to ensure Commission action prior to the expiration date.

Section 1.5 – Identification of Interest and Rights of Entry

1. The Surface and Coal Ownership Map, Section 1.5.3 does not display utilizing the hyperlink. Please fix the hyperlink so the map opens as designed. (GAW)

Section 2.7 – Fish and Wildlife Resources

2. Follow-up to Item No. 10 of our April 6, 2022 technical review letter: As previously requested, please update the Fish and Wildlife Protection, Enhancement and Management Plan, Section 2.7.7, to address the comments received from USFWS on March 22, 2022 regarding Revision 37 and Renewal No. 6, a copy is attached. Section 2.7.7 must contain an analysis of whether the permit and adjacent areas have any suitable habitat for the Dakota skipper using the survey protocol established with the 2018 Dakota skipper North Dakota Survey Protocol. All remaining native grassland in the permit must be properly characterized and described in sufficient detail to allow the Reclamation Division to comply with NDAC 69-05.2-10-03(6) which states, "*no permit or significant revision will be approved, unless the application affirmatively demonstrates and the commission finds, in writing, on the basis of information in the application or otherwise available, which is documented in the approval and made available to the applicant, that: (d) The operations will not affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitats.*" (GAW/ZAB)

3. Follow-up to Item No. 10 of our April 6, 2022 technical review letter: Please revise the language proposed on page 7 of Section 2.7.7 to clarify the frequency in which Coteau will utilize the USFWS IPaC site to realize listed species. Please also remove the last sentence that references the Consolidated Wildlife and Habitat Monitoring plan. Threatened and Endangered species protection and enhancement plans (PEP) must be included in the permit as required by NDAC 69-05.2-10-03(6). (GAW)

Section 5.0 – Post-Mining Wetlands

4. Follow-up to Item No. 21 of our April 6, 2022 technical review letter: Coteau responded to Item No. 21 by clarifying that the expected normal water elevation of the wetland will be 1,945.6 with a 50% chance of annual runoff. Please clarify why the size of the wetland should be considered as 9.8 acres if the expected water elevation is 3.9 feet below spill elevation. (GAW)
5. The Reclamation Division received comments from the ND Department of Water Resources indicating that a construction permit may be required if sediment pond D10-01 is converted to a wetland, a copy is attached. Please revise the permit to address the ND Department of Water Resources' comments. (GAW)

The remaining native grassland in Permit NACT-9101 must not be disturbed until Coteau affirmatively demonstrates that potential Dakota skipper will not be adversely impacted. Failure to properly address our technical review items and comments received from USFWS will result in the need to conditionally approved Revision 37. Coteau should plan to provide a detailed Dakota skipper habitat site assessment of the remaining native grassland in the permit and Reclamation Division staff will need time to prepare written findings and obtain USFWS concurrence.

If you have any questions, please contact this office.

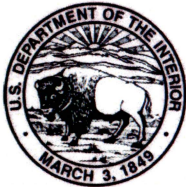
Sincerely,



Zanna A. Brinkman
Director
Reclamation Division

Enclosures: USFWS March 22, 2022 Comments
ND Department of Water Resource April 18, 2022 Comments

cc w/enclosures via email only: Amanda Hoffer (amanda.hoffer@nacoal.com)
Dillon Belisle (Dillon.Belisle@Nacoal.com)
Tyler Freuer (tyler.freuer@nacoal.com)
Rylan Sundsbak (Rylan.Sundsbak@nacoal.com)
Mark Wallen (Mark.Wallen@nacoal.com)



United States Department of the Interior



FISH AND WILDLIFE SERVICE
North Dakota Ecological Services Field Office
3425 Miriam Avenue
Bismarck, North Dakota 58501
(701) 250-4481, ndfieldoffice@fws.gov

In Reply Refer To:
2022-CPA
Coteau Revision 37

March 22, 2021

Ms. Zanna A. Brinkman, Director
Public Service Commission
Reclamation Division
600 East Boulevard, Department 408
Bismarck, North Dakota 58505-0480

Dear Ms. Brinkman:

Thank you for your letter of March 10, 2022, please reference the Renewal Application No. 6 and Revision No. 37 from the Coteau Properties Company for Surface Coal Mining Permit NACT-9101 at the Freedom Mine in Mercer County, North Dakota, PSC Cases RC-21-447 & RC-21-448.

The U.S. Fish and Wildlife Service (Service) offers the comments under the authority of and in accordance with the Endangered Species Act (ESA) (16 U.S.C. 1531 *et seq.*). The Service would recommend using the USFWS IPAC tool to obtain a current species list for the project area. New species ranges have been developed to determine if a species may be found in an area.

The Dakota skipper is a small prairie butterfly listed as a threatened species under ESA. Dakota skippers are obligate residents of high quality prairie ranging from wet-mesic tallgrass prairie to dry-mesic mixed grass prairie. In Northwestern North Dakota, Dakota skippers inhabit dry-mesic hill prairies with abundant purple coneflower (*Echinacea angustifolia*).

The Service would offer the following recommendations in relation to these proposed permit revisions. The coordinates provided for the proposed mining indicates that the operations would impact undisturbed native prairie grasslands. Surveys for Dakota skipper butterflies with positive results for occupancy have been conducted near the proposed mining activities. The Service would recommend habitat surveys on the permitted areas to identify areas of suitable habitat per the 2018 Dakota skipper Survey protocol be completed. In the event that suitable habitat is observed, the Service would recommend occupancy surveys prior to mining. Information relative to positive occupancy surveys should be shared with the Service for

consultation. Avoidance of impacts to native prairie habitat is recommended to reduce the risk of adverse effects to this species.

The Service appreciates the opportunity to work with the PSC to ensure the conservation of natural resources. Should you have any questions regarding these comments, please have your staff contact Jerry Reinisch of my staff at (701) 425-2133, or contact myself at (701) 319-0127.

Sincerely,

**DREW
BECKER**

Digitally signed by DREW
BECKER
Date: 2022.03.23 09:36:56
-05'00'

Drew N. Becker
ND Ecological Services Supervisor

Cc: Greg Link, ND Game and Fish Department

RECEIVED

April 18, 2022

Zanna Brinkman
Director
Public Service Commission
Inside Mail

APR 19 2022

NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Dear Ms. Brinkman:

This is in response to your request for a review of the environmental impacts associated with the Revision No. 37 to Permit NACT-9101 at the Freedom Mine.

The proposed project has been reviewed by Department of Water Resources, and the following comments are provided:

- There may be floodplains identified and/or mapped where this proposed project is to take place. North Dakota has no formal 'permitting' authority as a state entity in NFIP identified floodplain areas. The permitting is always done by the local entity, which has jurisdiction in the area in question. Please work closely with the local Floodplain Administrator.
- In accordance with North Dakota Century Code §61-16.1-38, any new construction or construction modifications on water storage impoundments, including stock ponds or sedimentation ponds, may require a construction permit from the Department of Water Resources (DWR) based on the ponds' storage volume and hazard classification. Similarly, if any stock ponds or sedimentation ponds are to be removed, we request that the DWR Regulatory Division be notified. Please contact the DWR Regulatory Division at 701-328-2752 if you have any questions.

Thank you for the opportunity to provide review comments. Should you have further questions, please contact me at 701-328-4970 or stevebest@nd.gov.

Sincerely,



Steven Best
Planner III

SB:dm/1570

RECEIVED

April 22, 2022

APR 22 2022

Zanna Brinkman
Director
Public Service Commission
Inside Mail

**NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

Dear Ms. Brinkman:

This is a response to your request for a review of the environmental impacts associated with Revision 37 to Coteau Properties Company's Surface Coal Mining Permit NACT-9101 at Freedom Mine.

The proposed project has been reviewed by the Water Appropriation Division of the Department of Water Resources and the following comments are provided:

Coteau Properties Company proposes to convert Constructed Pond D10-01 to a permanent fish and wildlife habitat. Fish and wildlife use is considered a beneficial use of water in North Dakota. North Dakota Century Code § 61-04-02 requires a water permit be secured from the Department of Water Resources prior to constructing works to impound or take water for beneficial use. An exception of this permitting requirement is provided for domestic, livestock, fish, wildlife, and other recreational uses when impounding up to 12.5 acre-feet of water at the principal spillway elevation or taking up to 12.5 acre-feet of water per year. Map No. 30-103-07082 of Section 3.3.28 indicates a storage capacity greater than 12.5 acre-feet at the principal spillway of Constructed Pond D10-01. Therefore, a water permit will be required to convert this impoundment for fish and wildlife use.

Coteau Properties Company or the landowner at Constructed Pond D10-01 may contact the Department of Water Resources' Water Appropriation Division at (701) 328-2754 for further guidance in applying for a water permit.

Thank you for the opportunity to provide review comments. Should you have further questions, please contact me at (701) 328-2754.

Sincerely,



Jennifer Martin
Hydrologist
Water Appropriation Division

SB.dm/1570