

May 19, 2022

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

Dear Ms. Brinkman:

The technical 2 review of Revision 37 to Permit NACT-9101 has been uploaded to Permit Services. The technical 2 review deficiencies listed in your May 12, 2022, letter have been addressed, with responses listed below.

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)*

The hyperlink for Section 1.5.3, Surface and Coal Ownership Map, has been updated.

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)

Coteau will hire a third-party contractor to conduct a habitat analysis of the native grassland that will be disturbed in the next permit term. This will be done as quickly as possible and provided to the NDPSC.

- 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)*

As requested, the frequency in which the USFWS IpaC site will be viewed has been updated, and the last sentence was deleted from page 7 of Section 2.7.7.

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)*

The normal water elevation was requested by the PSC. This estimate normal water level is only estimated for the first year but should not be lower on a normal basis. In following years water should begin to compound or fill the impoundment similar to any stockpond or other wetland, as runoff is in excess of evaporation. After several years pond should reach the overflow state or the high-water mark. Therefore, the acreage at the high-water mark, which it is described as in the permit, is 9.8 acres. Water elevations are driven off of the current weather and precipitation.

- 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 Coteau Properties Company is in the process of applying for a water appropriation permit, however the water appropriations permit does require a public notice as well as DWR review and approval. At this time there is nothing to update in Permit NACT-9101. Once approval has been received, the water appropriations permit will be included with the next revision to NACT-9101.

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If you have any questions, please contact Ms. Sarah Flath.

Sincerely,

THE COTEAU PROPERTIES COMPANY



Rylan A. Sundsbak
Environmental Specialist

RAS:ajh
Uploaded via Permit Services

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Coteau Properties Company, a subsidiary company of The North American Coal Corporation

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