

Westmoreland Beulah Mining LLC
Jesse Noel



Westmoreland Beulah Mining LLC
A Subsidiary of WESTMORELAND MINING LLC

October 31, 2024

North Dakota Public Service Commission
Reclamation Division
Jonathan Emmer
600 East Boulevard Ave.
Department 408
Bismarck, ND 58505-0480

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NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Mine Permit KRSB-8802: Bond Release 4 – Response to Initial Review Comments

Dear Mr. Emmer,

Westmoreland Beulah Mining provides the following responses to comments provided by the Reclamation Division on July 22, 2024 for the Partial Bond Release No. 4 application. The application for partial bond release has been revised to incorporate changes in response to Reclamation Division comments as indicated below.

General:

1. Please include bookmark links in the bond release pdf application that will enable quick access to Attachments I through VII and all Exhibits. (GAW)
 - *Response: Bookmark links have been added to PDF documents.*
2. WBM is requesting the release of \$6,271,338.60 for reclamation work completed in Permit KRSB-8802, but the bond release amount has been calculated incorrectly. As required by NDAC 69-05.2-12-12(10), WBM must first update the existing Reclamation Cost Estimate in Section 3.8 of Permit KRSB-8802 to establish the amount of money required to complete all remaining reclamation obligations in Permit KRSB-8802. This would include the costs to remove roads, road underpasses, ponds and other features, and facilities including gravel for reconstructed public roads. The cost-estimate for reclaiming the remaining features and facilities must be subtracted from the current bond amount. A disturbed and undisturbed dollar amount can then be established on a per acre basis. Lands not disturbed by mining activities should be assigned a dollar amount of \$200.00 per acre. The disturbed acreage amount is then determined by dividing the disturbed acreage by the amount of money remaining after subtracting the costs of reclaiming the remaining obligation and the undisturbed acreage amount. (GAW/AAC)
 - *Response: Revised bond calculations are provided in Attachment VII. Revisions to the calculations include detailed supporting calculations for the worst case bond amount, inclusion of summary tables for bonding of remaining reclamation work, and inclusion of acreage summaries for the permit and bond release areas. Calculations of requested bond release amounts for Stage 1 and Stage 2 reclamation are provided using the updated existing bond amount (\$10,382,986) and withholding the worst case scenario bond amount (\$325,635.67) plus bonding for undisturbed acres at \$200 per acre (\$238,000) to determine the amount of bond eligible for release (\$9,819,350.33). The eligible bond amount was then allocated proportionately as 40% for Stage 1 bond release (\$3,927,740.13) and 20% for Stage 2 bond release (\$1,963,870.07), in accordance with regulations in Chapter 38-14.1-17(7).*





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3. In prior correspondence with Reclamation Division staff, WBM has indicated they may need to re-disturb approximately 16 acres of land in the S $\frac{1}{2}$ of Section 8 to repair differential settling that has occurred on reclaimed land. This area should not be included in the bond release application if it is likely that SPGM will need to be removed from the site and if the approved grade contours may be altered. (GAW/PJR)
 - *Response: To accommodate potential disturbances in the area, the S $\frac{1}{2}$ of Section 8 was removed from the bond release area boundary in the revised application and maps. This area has also been removed from descriptions of the bond release area such as bond calculations, metes and bounds, and public notices.*
4. Water has been observed ponding in low areas in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17, the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18, and the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 19. It is questionable whether these areas should be included in the bond release application if the respread SPGM will need to be re-disturbed to repair these features. (GAW/PJR)
 - *Response: The NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ in Section 17 and the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 18 have been removed from the bond release area in the revised application and maps to accommodate potential repairs and associated disturbances. These areas have also been removed from descriptions of the bond release area such as bond calculations, metes and bounds, and public notices.*

Application SFN 19812

5. Please revise and resubmit the application form SFN 19812 to account for changes requested in Item No. 2 above. (PJR)
 - *Response: Revised application form is included with revised application package.*

Attachment I – Bond Release Area Map: Exhibit I-1

6. Exhibit I-1 (Stage 1 and 2 Bond Release 4 Areas) is listed as the Bond Release Area Map in the Table of Contents, but the map legend identifies the map as “Stage 1 and 2 Bond Release 4 Areas”. Please revise to reference this map in a consistent manner. (GAW)
 - *Response: Table of Contents has been revised to reference map as Stage 1 and 2 Bond Release 4 Areas Map*
7. The pool areas of reclaimed sediment ponds 4, 5, 6, and 25 are included in the bond release area on Exhibit I-1 (Stage 1 and 2 Bond Release 4 Areas) but the reclaimed embankment areas associated with these ponds are not included in the bond release area. It seems the reclaimed embankments associated with these ponds should be included in the bond release area. (GAW)
 - *Response: Referenced embankment areas have been added to bond release area.*
8. Please review the Stage 1 & 2 Bond Release Area around the sump in the southeast corner of the NE $\frac{1}{4}$ of Section 19 to ensure the boundary is accurately depicted on Exhibit I-1 (Stage 1 and 2 Bond Release 4 Areas). It appears that a portion of an old haul road that has not been reclaimed is included in the bond release area. (GAW)
 - *Response: Referenced feature has been removed from bond release area.*
9. Exhibit I-1 (Stage 1 and 2 Bond Release 4 Areas) depicts the areas requested for Stage 1 and 2 bond release completion. This includes areas around pond P71. It was noted in the Commission’s November 15, 2023 inspection that 2 acres immediately north of the pool area of





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pond P71 had not yet been reclaimed. This area needs to be graded and respread prior to stage 1 and 2 bond release. (AAC/JAR)

- *Response: The NW1/4 of Section 24 has been removed from the bond release area in the revised application and maps to accommodate potential disturbances related to reclamation. This area has also been removed from descriptions of the bond release area such as bond calculations, metes and bounds, and public notices.*

10. Old transmission lines and power poles are present in Permit KRSB-8802. These need to be removed to complete reclamation of the site. Please update Exhibit I-1 (Stage 1 and 2 Bond Release 4 Areas) with the locations of the transmission lines and power poles to ensure they are not present in the bond release request area. (AAC)

- *Response: Removal of powerpoles has been completed within the bond release area. Exhibit I-1 has been revised accordingly to show locations of remaining power poles and transmission lines within and adjacent to the permit area.*

11. Please add and label Highway 49 on Exhibit I-1 (Stage 1 and 2 Bond Release 4 Areas) for general reference. (PJR)

- *Response: Highway 49 has been added to the map and legend and clearly labeled on Exhibit I-1.*

12. The county line is illegible on Exhibit I-1 (Stage 1 and 2 Bond Release 4 Areas). Please change the coloring so it is visible. (PJR)

- *Response: Symbology for the county line has been revised to be more visible on Exhibit I-1, as requested.*

Attachment II – Stage 1 and Stage II Bond Release Boundary

13. Please revise the acreage listed in Attachment II (Stage 1 and Stage II Bond Release Boundary) to 3,268 as indicated throughout the bond release application. (MLJ/GAW/SMN)

- *Response: Revised bond release area is 2,851 acres following revisions to the bond release boundary to remove areas with potential for future disturbances and inclusion of areas such as reclaimed sediment pond embankments. References to this acreage have been updated in the bond release application and supporting documents. A total of 421 acres were removed from the original 3,268 acre bond release area and 4 acres were added, resulting in the revised bond release area size of 2,851 acres.*

14. Please revise Attachment II (Stage 1 and Stage II Bond Release Boundary) to include a metes and bounds description of the partial bond release boundary as required by the application form (SFN 19812). (JWE/GAW)

- *Response: Metes and bounds of bond release boundary are provided in Attachment II.*

Attachment III – Public Notice

15. Please revise the last sentence of the first paragraph under the “Notice of Filing For Partial Release of Reclamation Bond” subsection in Attachment III (Public Notice) to state that Permit KRSB-8802 was “originally” approved on October 24, 1990. Also, please consider revising this sentence to make it clear that the 4,906 acres refers to the size of the permit area and not the size of the bond release area. (PJR/MLJ)

- *Response: Notice has been revised as requested.*





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16. Attachment III (Public Notice) states the current bond amount for Permit KRSB-8802 is \$10,452,231 but our records indicate the amount is \$10,382,986.00, effective October 13, 2021. Please review and correct if necessary. (GAW)
 - *Response: The Public Notice has been revised as requested to include the corrected current bond amount and effective date.*

17. The third paragraph under the “Notice of Filing For Partial Release of Reclamation Bond” subsection in Attachment III (Public Notice) states that WBM is requesting the release of \$6,271,338.60 for reclamation work completed to date, \$4,180,892.4 for backfilling and grading and \$2,090,446.20 for SPGM respread. Please update these values after addressing Item No. 2 above. (GAW/PJR)
 - *Response: The current bond amount and requested bond release amounts for Stage 1 and Stage 2 reclamation have been revised in the Public Notice document. The revised calculations for worst case and requested bond release amounts are provided in Attachment VII.*

18. The first sentence of the fourth paragraph under the “Notice of Filing For Partial Release of Reclamation Bond” subsection in Attachment III (Public Notice) states that coal removal began in the bond release area in 1969 but the bond release area includes lands that were mined or affected by mining activities prior to 1969. Please revise to provide clarity. (GAW)
 - *Response: The Public Notice has been revised to clarify that mining began prior to 1969.*

19. Attachment III (Public Notice) specifies that the notice will be published in the Beulah Beacon, Hazen Star, and the Center Republican. The Beulah Beacon is not the official newspaper of Mercer County, so the notice is only required to be published in the official newspapers of Mercer County (Hazen Star) and Oliver County (Center Republican) and not required to be published in the Beulah Beacon (NDCC 34-14.1-18(1) & Subdivision a of Policy Memo No. 9). (JAR)

Response: Attachment III has been revised to remove the Beulah Beacon from the publications.

20. Please add Highway 49 as a bold line on Exhibit III-1 (Public Notice Map) for general reference. (PJR/WWS)
 - *Response: Public notice map has been revised as requested to symbolize Highway 49 as a dashed bold line on Exhibit III-1.*

21. Please include a scale bar on Exhibit III-1 (Public Notice Map). (WWS)
 - *Response: Public notice map has been revised as requested to include a scale bar in the bottom right corner.*

Attachment IV – Letters to Affected Parties

22. Please provide a list of names and addresses of the surface owners whose land is proposed for bond release and a list of the names and addresses of adjoining property owners whose land is contiguous with any area proposed for partial bond release. Signed copies of the letters sent to all surface and adjacent surface owners, agencies and governmental bodies will need to be included in the bond release application after publication of the public notice. (GAW/JAR)
 - *Response: Tables listing names and addresses for surface landowners in the bond release area, adjoining landowners, state agencies, and local governments has been added to*





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Attachment IV. Signed versions of the example bond release notification letters will be sent to the parties indicated on the tables.

23. Attachment IV (Letter to Affected Parties) indicates that WBM is planning to notify coal owners of proposed partial Bond Release No. 4. NDCC 38-14.1, NDAC, and Policy Memorandum No. 9 to Mine Operators do not require coal owner notification. Please review and clarify if WBM is planning to send notification letters to all affected coal owners. (GAW/JAR)
 - *Response: Attachment IV has been revised to remove references for providing letters to coal owners.*

24. A sentence in the second paragraph of the surface and adjoining owner notification letters in Attachment IV (Letter to Affected Parties) states “The bond release area also includes 127 acres of mine area reclaimed prior to mining law and reclamation bonding”. Please revise to clarify if this statement is referring to pre-law areas that were initially affected by mining activities that occurred prior to the enactment of North Dakota’s first mining law in 1969. Areas of pre-law mining disturbance that were used to support current law mining activities are subject to the reclamation standards that were in effect at the time of coal removal from such lands. These re-disturbed pre-law areas were not “reclaimed prior to mining law and reclamation bonding”. (GAW)
 - *Response: To improve clarity of the notification letters, references to the various law liability areas within the bond release area have been removed.*

25. The surface and adjoining owner notification letters in Attachment IV (Letter to Affected Parties) state the current bond amount for Permit KRSB-8802 is \$10,452,231 but our records indicate the amount is \$10,382,986.00, effective October 13, 2021. Please review and correct if necessary. (GAW)
 - *Response: Notification letters have been revised with the correct bond amount.*

26. The third paragraph of the surface and adjoining owner notification letters in Attachment IV (Letter to Affected Parties) states that WBM is requesting the release of \$6,271,338.60 for reclamation work completed to date, \$4,180,892.4 for backfilling and grading, and \$2,090,446.20 for SPGM respread. Please update these values after addressing Item No. 2 above. (GAW/PJR)
 - *Response: Notification letters have been revised with updated bond release amounts.*

27. The first sentence of the fourth paragraph of the surface and adjoining owner notification letters in Attachment IV (Letter to Affected Parties) states that coal removal began in the bond release area in 1969 but the bond release area includes lands that were mining or affected by mining activities prior to 1969. Please revise to provide clarity. (GAW)
 - *Response: Notification letters have been revised as requested.*

Attachment V – Stage 1 & 2 Detail Maps

28. Please depict and label all PSC approved grade approvals in the bond release area on Exhibit V-2 (Stage 1 & 2 Bond Release 4 Soil Respread Depths Map). Please realize that grade approvals were not submitted when haul road corridors and the final pit in the SW¼ of Section 19 were reclaimed in 2020 because these areas simply needed to be shaped to tie into adjacent reclaimed lands. (PJR/GAW)





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- *Response: Grade approval references identifications have been added to Exhibit V-2. The referencing convention format (e.g. Charlie-1-2016) does not appear to have been used prior to 2011. Grade approval areas completed prior to 2011 or that do not have a grade approval identifier have been labeled with the date of approval. Some of the grade approval dates are approximate, especially in older grading areas.*
29. Please revise Exhibit V-2 (Stage 1 & 2 Bond Release 4 Soil Respread Depths Map) and Exhibit V-3 (Stage 1 & 2 Bond Release 4 Soil Respread Year Map) to show the Mercer/Oliver County line in bold to easily denote where the county line is located. (WWS)
- *Response: Exhibits V-2 and V-3 have been revised as requested to symbolize the county line using bold lines. This symbology has also been added to the map legends.*
30. A small area in the NW¹/₄ of Section 24 that was respread with SPGM in 2015 does not depict the SPGM respread depths on Exhibit V-2 (Stage 1 & 2 Bond Release 4 Soil Respread Depths Map). Please update Exhibit V-2 with the SPGM respread depths required for this area. (JAR)
- *Response: The referenced area in the NW¹/₄ of Section 24 has been removed from the bond release area in response to potential reclamation work near Pond 71 (see Comment #9). However, this area was regraded in 2015 with respread soil depths of 0.75 feet for topsoil and 1.25 feet for subsoil.*
31. The SPGM respread depths provided for the final pit in the SW¹/₄ of Section 19 and haul road corridors in Sections 12, 13, 18, 19, and 24 that were initially seeded in 2020 and 2021 appear incorrect on Exhibit V-2 (Stage 1 & 2 Bond Release 4 Soil Respread Depths Map). Please delineate these areas and provide accurate SPGM respread depths for these areas. (GAW)
- *Response: Soil respread depths provided on Exhibit V-2 have been revised to include the requested information. Topsoil respread depths in the SW¹/₄ of Section 19 range from 0.30 to 0.75 feet, with subsoil depths ranging from 1.25 to 1.30 feet. Respread soil depths in the haul road corridors are 0.30 feet of topsoil and 1.30 feet of subsoil.*
32. Please provide the year SPGM was respread (Respread Year) of all respread areas on Exhibit V-3 (Stage 1 & 2 Bond Release 4 Soil Respread Year Map). A respread year is not provided for the final pit in SW¹/₄ of Section 19 and haul road corridors in Sections 12, 13, 18, 19, and 24. Recent WBM annual mine maps should provide you with this information. (GAW/JAR)
- *Response: Exhibit V-3 has been revised to provide more detailed soil respread / seeding dates. The Exhibit now provides soil respread/seeding years for the SW¹/₄ of Section 19 and the referenced haul road corridors, as well as all other areas within the bond release boundary.*
33. Please review the Stage 1 & 2 Bond Release Area around the sump in the southeast corner of the NE¹/₄ of Section 19 to ensure the boundary is accurately depicted on Exhibit V-1 (Stage 1 & 2 Bond Release 4 As Built Post-mine Topography), Exhibit V-2 (Stage 1 & 2 Bond Release 4 Soil Respread Depths Map), and Exhibit V-3 (Stage 1 & 2 Bond Release 4 Soil Respread Year Map). It appears that a portion of haul road, that has not been reclaimed, is included in the bond release area. (GAW)
- *Response: The bond release area boundary on all exhibits and in the application has been revised to remove the SE¹/₄ of the NW¹/₄ of Section 19 from the bond release area.*
34. The pool areas of reclaimed sediment ponds 4, 5, 6, and 25 are included in the bond release area on Exhibit V-1 (Stage 1 & 2 Bond Release 4 As Built Post-mine Topography), Exhibit V-2 (Stage 1 & 2 Bond Release 4 Soil Respread Depths Map), and Exhibit V-3 (Stage 1 & 2 Bond





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Release 4 Soil Respread Year Map), but the reclaimed embankments associated with these ponds are not included in the bond release area. It seems the reclaimed embankment areas associated with these ponds should be included with the pool areas and these areas should be labeled 0/0 on Exhibit V-2. (GAW)

- *Response: The bond release area boundary on all exhibits has been revised to add the embankment areas of Ponds 4,5,6, and 25 in the bond release area. These embankment areas added approximately 4 acres to the bond release area. Soil depth labels have been added as requested.*

Attachment VI – Reclamation Narrative

35. In the Background subsection of Attachment VI (Reclamation Narrative), please provide a brief history of the backfilling, grading, and SPGM respreading timeline in the bond release areas. (WWS)

- *Response: Descriptions of the mine history and reclamation timeline have been added to the Background and Reclamation Description sections of Attachment VI.*

36. A sentence in the second paragraph of Attachment VI (Reclamation Narrative) states pre-law areas (127 acres) are excluded from the bond release, but Exhibits I-1 (Stage 1 and 2 Bond Release 4 Areas), Exhibit V-1 (Stage 1 & 2 Bond Release 4 As Built Post-mine Topography), Exhibit V-2 (Stage 1 & 2 Bond Release 4 Soil Respread Depths Map), and Exhibit V-3 (Stage 1 & 2 Bond Release 4 Soil Respread Year Map) include pre- and early law areas that were used to support current law mining. Please clarify if the 127 acres is pre-law mining disturbance that was not used to support SMRCA mining. These areas are hatched and labeled as undisturbed on the Exhibits. (GAW)

- *Response: There are 127 acres of Pre-Law Area within the BR4 bond release area. To clarify this, the Bond Release Area Description section of Attachment VI has been revised to include a discussion of mine liability categories within the bond release area. In addition, the acreage summary table within this section also identifies how many acres of pre- and early law areas are located within the bond release area.*

37. A sentence in the second paragraph of Attachment VI (Reclamation Narrative) incorrectly states that pre-law areas are not bonded and that these areas were reclaimed prior to passage of reclamation bond laws. Some pre-law areas in Permit KRSB-8802 that were used to support current law mining are included in the current bond area and are subject to the bond stage criterion and 10-year revegetation responsibility period requirement. Pre-law areas that were used to support current law mining activities were not reclaimed prior to passage of reclamation bonding laws as stated. Please revise the narrative in the second paragraph of Attachment VI to clarify that pre-law disturbance that was not used to support current law mining is not subject to any reclamation performance standards. However, pre-law disturbance used to support current law mining must be reclaimed in accordance with plans in the permit and to the satisfaction of the Commission. This would include re-establishing drainage and erosion control. (GAW)

- *Response: A discussion of law liability areas and relevant reclamation requirements has been added to the Bond Release Area Description section of Attachment VII.*

38. The last sentence of the first paragraph under the Stage 2 Bond Release subsection of Attachment VI (Reclamation Narrative) states that soil replacement and seeding occurred between 1984 and 2023 but Exhibit V-3 (Stage 1 & 2 Bond Release 4 Soil Respread Year Map) shows 1982 and 1983 seedings in the bond release area. Please review and revise to provide clarity. (GAW)





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- *Response: The reclamation narrative under the Reclamation Description section in Attachment VI have been revised to clarify the dates of grading, soil respread, and seeding. Updated soil respreading information provides that within the bond release area soils were respread between 1983 and 2021.*

39. The last sentence of the second paragraph under the Stage 2 Bond Release subsection of Attachment VI (Reclamation Narrative) states the minimum topsoil respread depth was 0.75 feet but Exhibit V-2 (Stage 1 & 2 Bond Release 4 Soil Respread Depths Map) provides that no (0) topsoil was respread on areas subject to 1969 and 1971 reclamation laws and that 0.5 feet of topsoil was respread on an area subject to the 1973 reclamation law. Please review and revise as appropriate. (GAW)

- *Response: Soil respread depths on Exhibit V-2 have been revised to include areas without soil respread such as Pre-Law or 1969 & 1971 Law areas as well as reclaimed topsoil stockpile sites. For reclamation sites in the bond release area where soils were respread, the average soil depths were 1.0 feet for topsoil and 1.6 feet for subsoil. While there is variability in respread soil depths between reclamation units, the average soil depths exceed the minimum soil depths of 0.60 feet and 0.81 feet specified in Table 3.4.3 of the mine permit documents.*

40. Please remove the last paragraph in Attachment VI (Reclamation Narrative) that pertains to the public notice as this information is already covered by Attachment III (Public Notice). (PJR)

- *Response: The Public Notice section of Attachment VI has been removed as requested.*

Attachment VII – KRSB-8802 Performance Bond Release Calculations

41. As previously stated in Item No. 2 and required by NDAC 69-05.2-12-12(10), please revise the entirety of Attachment VII (KRSB-8802 Performance Bond Release Calculations) to accurately portray the correct amount of bond to be released. The costs to complete all remaining reclamation work needs to be calculated and retained in the bond, and then up to 60% of the remaining amount may be calculated for the 3,268 acres in the bond release area for the first two stages or release after establishing the amount needed for undisturbed land in Permit KRSB-8802. (PJR/GAW/AAC)

- *Response: As described in the response to Comment #2, revised bond calculations are provided in Attachment VII. Revisions to the calculations include detailed supporting calculations for the worst case bond amount, inclusion of summary tables for bonding of remaining reclamation work, and inclusion of acreage summaries for the permit and bond release areas. Calculations of requested bond release amounts for Stage 1 and Stage 2 reclamation are provided using the updated existing bond amount (\$10,382,986) and withholding the worst case scenario bond amount (\$325,635.67) plus bonding for undisturbed acres at \$200 per acre (\$238,000) to determine the amount of bond eligible for release (\$9,819,350.33). The eligible bond amount was then allocated proportionately as 40% for Stage 1 bond release (\$3,927,740.13) and 20% for Stage 2 bond release (\$1,963,870.07), in accordance with regulations in Chapter 38-14.1-17(7)..*

Sincerely,

Jesse Noel
Director, Environmental and
Regulatory Affairs

