

Reclamation Division  
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Memorandum

TO: Commissioners Christmann, Haugen-Hoffart, and Kringstad  
FROM: Jonathan Emmer, <sup>JE</sup> Monty Johnson, <sup>MJ</sup> Guy Welch, and Warren Swenson, <sup>SW</sup> <sup>US</sup>  
DATE: June 4, 2025  
SUBJECT: Bond Release No. 2 to Surface Coal Mining Permit NACT-1801 held by Coteau Properties Company, Case No. RC-24-296

**Summary**

On July 11, 2024, the Coteau Properties Company filed Final Bond Release No. 2 to Surface Coal Mining Permit NACT-1801 requesting release of all reclamation liabilities on 377.6206 acres located in Section 29, T145N, R87W, Mercer County at the Freedom Mine. These lands are subject to current reclamation laws and rules and Coteau has demonstrated that the reclaimed lands have met all applicable final bond release performance standards. The Reclamation Division recommends approval of this bond release application based on the findings discussed below.

**Discussion**

The bond release application contains two tracts totaling 377.6206 acres located in Section 29, T145N, R87W. Tract 1 contains 218.342 acres in the SW¼ and NE¼ of Section 29 and is owned by Coteau Properties Company. Tract 2 contains 159.2786 acres in the SE¼ of Section 29 and is owned by Butler, Kasey L. et al. and LAB Family LLLP, Travis Boeckel. The bond release tracts in Section 29 were originally permitted with Surface Coal Mining Permit NACT-8503, which has since been incorporated into Permit NACT-1801.

Tract 1 contains approximately 166.7 acres of reclaimed tame pastureland that includes a 2.2-acre conservation tree planting, 3.1 acres of reclaimed stock ponds, 1 acre of reclaimed road, and 47.5 acres that were not disturbed by mining activities. Surface disturbance began in 1989 with suitable plant growth material (SPGM) stripping and construction of soil stockpiles and water management features. Coal removal occurred from 1994 to 2005. Reclamation efforts began in 1997 and continued until 2012 when the last affected areas were seeded to initiate the ten-year revegetation responsibility period. These reclaimed lands were respread with 6.9 to 12.2 inches of topsoil and 35.8 to 41 inches of subsoil. Soil respread depths on areas mined were based on graded spoil properties.

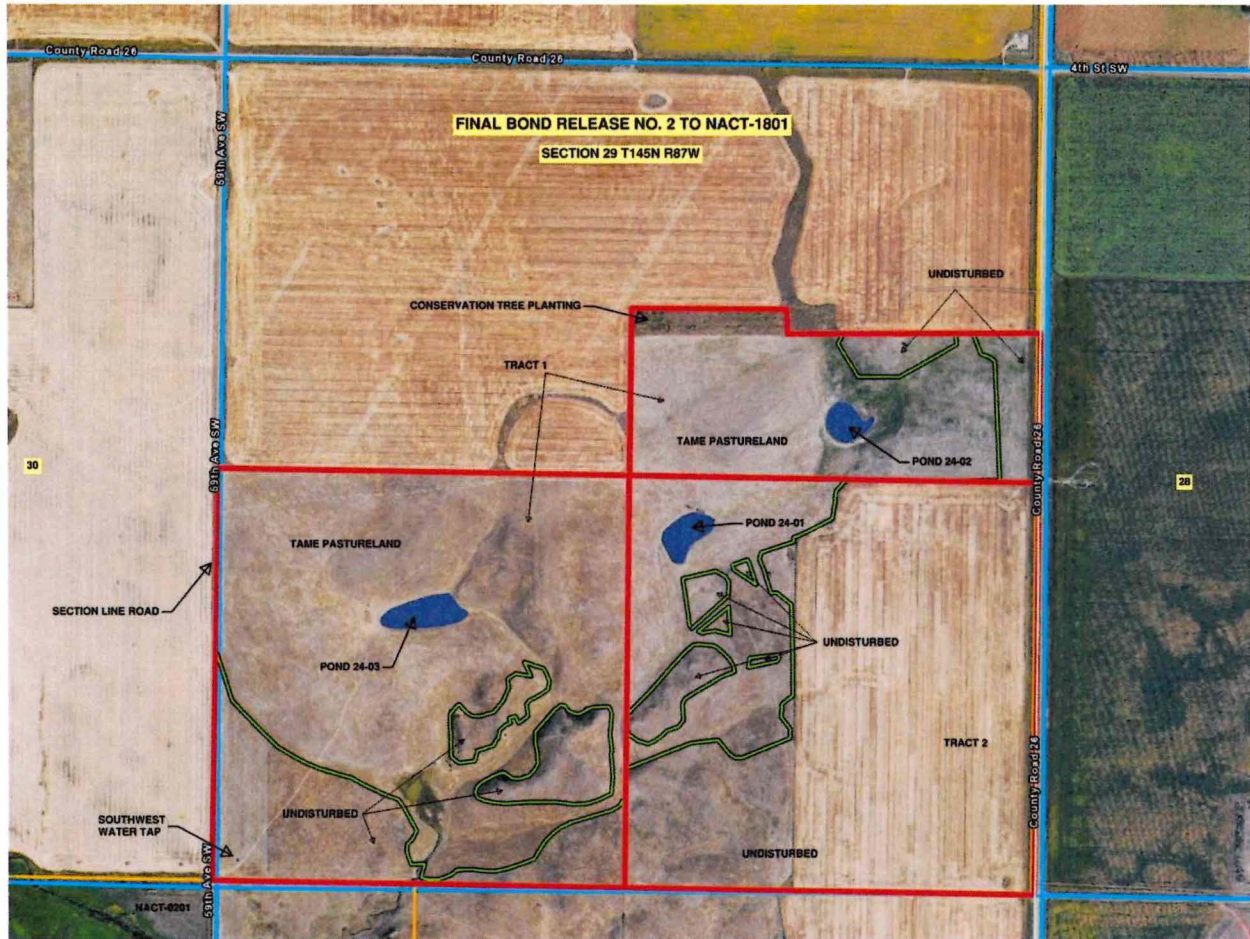
Tract 2 contains approximately 32.6 acres of reclaimed tame pastureland, 1.5 acres of reclaimed stock ponds, and 125.2 acres that were not disturbed by mining activities. Surface disturbance began in 1989 with SPGM stripping and construction of soil stockpiles and water management features. No coal was removed from this tract. Reclamation efforts occurred in 2007, and all areas of disturbance were seeded to initiate the ten-year revegetation responsibility period. These reclaimed lands were respread with 7.1 inches of topsoil and 14.8 inches of subsoil. Soil respread depths were based on total SPGM that was inventoried and removed since all affected areas were associated disturbance and no coal removal occurred.

There have been no previous partial bond releases on these tracts. Therefore, all four stages of bond release are being requested with this application. The bond release stages are as follows: the first stage is

backfilling and grading, the second stage is soil respreading, the third stage is successful vegetation establishment, and the fourth stage is a demonstration of revegetation success.

Coteau has demonstrated that the revegetation performance standards have been achieved as discussed below and described in the bond release application. Vegetation establishment has been successful and actual topsoil and subsoil respread depths have been verified by Reclamation Division staff. The topography of the bond release tract has been shaped to conform with the contours of the approved post-mining topography. **Figure 1** below depicts the bond release tract.

**Figure 1: Final Bond Release No. 2 to NACT-1801**



### Revegetation Success Standards

The Reclamation Division's revegetation success standards require that each landowner's property be evaluated independently for the purposes of demonstrating revegetation success. These tracts of reclaimed land are owned by the Coteau Properties Company, Butler, Kasey L. et al., and LAB Family LLLP, Travis Boeckel. The tame pastureland productivity standard was established using the soil mapping units of the pre-mining native grassland in Section 29. Coteau and private ownership allowed local farmers and ranchers to graze cattle on this tame pastureland during the revegetation responsibility period.

**Tame Pastureland**

Mining companies must demonstrate that reclaimed tame pastureland yields are as good or better than the expected yield of the pre-mining grassland soils during any two years after year six of the ten-year revegetation responsibility period. The year 2020 is the ninth year of the revegetation responsibility period. The productivity standard is calculated using the Natural Resource Conservation Service (NRCS) Pasture and Hayland Forage Suitability Group yields of the pre-mine soils. The standard is then multiplied by a Climatic Correction Factor which utilizes the National Agricultural Statistics Service 15-year average divided by the current year’s yield. Third party consultants collected vegetation samples from hand harvested plots within fenced enclosures designed to exclude cattle from grazing. These samples were used to determine annual yield estimates. The tame pastureland revegetation performance standard also requires a demonstration that ground cover is at least 73%, which includes live and litter. Live species used to determine ground cover must not be detrimental to the post-mining land use. For example, live annual and noxious weed growth cannot be used to demonstrate ground cover. Productivity and ground cover sampling data are summarized in the tables below.

**Production**

**Tract 1**

Year	Reclaimed Yield (ton/acre)	Productivity Standard (ton/acre)	Achieved?
2020	1.21	0.70	Yes
2022	1.71	1.00	Yes

**Tract 2**

Year	Reclaimed Yield (ton/acre)	Productivity Standard (ton/acre)	Achieved?
2020	1.33	0.65	Yes
2022	1.25	0.93	Yes

**Cover**

**Tract 1**

Year	Reclaimed Basal Cover %	Basal Cover Standard %	Achieved?
2020	83.2	73	Yes
2022	88.2	73	Yes

**Tract 2**

Year	Reclaimed Basal Cover %	Basal Cover Standard %	Achieved?
2020	90.1	73	Yes
2022	100	73	Yes

The permanence standard is achieved by the established vegetation’s continued persistence in the reclaimed area. This reclaimed tame pastureland has been managed with prescribed grazing during the revegetation responsibility period. Fencing and livestock water support facilities have been installed to support the intended post-mine land use.

The Reclamation Division also completed an additional verification of productivity standards on both tracts in this bond release application. Current guidelines require the mine to use the last 15 years of production data, and to reach that standard Coteau had to use data from as far back as 1998 as the NDASS has not provided consistent forage yield data since 2013. The Reclamation Division is currently working on revising the *Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and*

*Postmining Vegetative Assessment* to include the USDA's Risk Management Agency (RMA) cropland yield data to calculate an annual climatic control factor. Productivity standards for both tracts are listed in the tables below.

**Tract 1**

Year	Reclaimed Yield (ton/acre)	Productivity Standard (ton/acre) (RMA)	Achieved?
2020	1.21	0.9	Yes
2022	1.71	1.09	Yes

**Tract 2**

Year	Reclaimed Yield (ton/acre)	Productivity Standard (ton/acre) (RMA)	Achieved?
2020	1.33	0.87	Yes
2022	1.25	1.02	Yes

**Reclaimed Stock Ponds**

The developed water resources, three stock ponds, were designed to provide water for livestock while grazing these tracts. Stock pond SP-29-03, located in the SW<sup>1</sup>/<sub>4</sub> of Section 29 in Tract 1, was designed as a sump or dugout which means it does not have an embankment or anything to maintain. The drainage below this stock pond was well vegetated and stable. Stock pond SP-29-01 is located in the SE<sup>1</sup>/<sub>4</sub> of Section 29 in Tract 2 and stock pond SP-29-02 is located in the NE<sup>1</sup>/<sub>4</sub> of Section 29 in Tract 1. Stock ponds SP-29-01 and SP-29-02 have very small embankments. There are no specific vegetation performance standards for developed water resources. All water quality tests indicate that these stock ponds are suitable for livestock use.

**Roads**

One-eighth of a mile of section line road, consisting of approximately one acre located along the west side of the bond release Tract 1, was directly disturbed by mining activities. The road has been reconstructed according to Mercer County standards and the road ditch was vegetated with predominately cool-season grass consisting of Smooth Brome and Kentucky Bluegrass. This section line road was inspected and approved by the Mercer County Road Superintendent, Elroy Opp on September 4, 2024. There were no disturbed section line roads in Tract 2.

**Hydrologic Assessment and Wildlife**

Coteau has completed surface and groundwater post-mine hydrologic assessments for the bond release and adjacent area. The reports show that there was no material damage to the hydrologic balance outside of the permit area and no significant negative impacts were observed to the surface and groundwater resources within the bond release area. The bond release application contains a wildlife report that concludes that habitat in this area has not been diminished.

**General Information**

The formal bond release inspection was conducted on October 29, 2024. Participants of the bond release inspection included Reclamation Division staff and Coteau Properties staff. The Mercer County Commissioners, Mercer County NRCS District Conservationist, OSMRE Casper Field Office, and ND Game and Fish Department were invited to participate in the bond release inspection, but all declined the offer.

The Reclamation Division verified that the reclaimed tame pastureland is established with a diverse mixture of tame and native grass species. Originally, this tract was planted with a native grassland seed mixture, but the seeded species have been largely displaced by introduced species. Coteau's efforts to control smooth brome on this tract were not successful and Reclamation Division staff agreed with Coteau, that in this instance, it was appropriate to classify the tract as tame pastureland rather than native grassland. The post-mining land use was changed to tame pastureland with Revision 1 to Permit NACT-1801, approved July 25, 2022. During the final bond release inspection, smooth brome, Kentucky bluegrass, western wheatgrass, green needlegrass, sideoats grama, and switchgrass appeared to be the dominant species present. Plant vigor was high, and the grasses were providing excellent cover and protection from erosion.

To help demonstrate revegetation success, Coteau included annual unadjusted productivity data from 2012 through 2022 in the bond release application to show that the reclaimed tame pastureland has consistently yielded well. The reclaimed tame pastureland yielded an average of 1.27 tons/acre on Tract 1 and 1.21 tons/acre on Tract 2.

The conservation tree planting in the northwest corner of Tract 1, the S $\frac{1}{2}$ NE $\frac{1}{4}$  of Section 29, is providing wildlife habitat and landscape diversity. The planted trees and shrubs have established with variable success and are competing with a dense stand of smooth brome. Green ash, cottonwood, chokecherry, woods' rose, buffalo berry, and American plum are some of the species observed growing in this planting. The tree planting site is fenced from the tame pastureland to the south and is bordered by cropland to the north and west and a grassed waterway to the east. The tree planting is stable from all forms of erosion.

The developed water resources, three stock ponds, were holding water and functioning as intended during the final bond release inspection. Landowner post-mining pond maintenance agreements were signed by the private landowners in Tract 2 and included in the bond release application for stock pond SP-29-01. A Southwest Water livestock tap has been installed on bond release Tract 1. Both bond release tracts are fenced to facilitate grazing, and the pasture tap provides water to tame pastureland in the SW $\frac{1}{4}$  of Section 29.

Notice of bond release application was published in the Hazen Star, weekly from October 31, 2024, through November 21, 2024. No objections to this bond release were received.

Coteau is not requesting any reduction in the bond amount since this area is currently covered by a worst-case reclamation condition that exists at the Freedom Mine. This area is part of a consolidated bond area that includes Permit NACT-1801 and other permits at the Freedom Mine. If Bond Release No. 2 to Permit NACT-1801 is approved, Coteau Properties Company will be released from all reclamation liabilities on 377.6206 acres of land. If Bond Release No. 2 is approved on June 18, the bond release will become effective July 18, 2025, unless a formal hearing is requested.