


May 10, 2024

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

Dear Mr. Emmer:

The following is in response to your letter dated March 11, 2024, regarding the midterm review of Permit KRSB-8603. The updated permit has been electronically copied (via *Dropbox*) for your review. Please feel free to contact me should you have any questions.

Sincerely,



Jesse Noel, P.E.
Director, Environmental & Regulatory Affairs
Westmoreland Mining LLC

Cc: Juris Ore
Nettie Ore

May 10, 2024

**Comment/Response to February March 11, 2024, PSC Letter
Midterm Review of KRSB-8603**

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1. The links for Exhibit 2.5.3 (Sharp-tailed Grouse) and Exhibit 2.5.9 (Density Ranges – Planktonic Organisms) do not work. Please repair these links. (SMN)

Response: The links for Exhibit 2.5.3 (Sharp-tailed Grouse) and Exhibit 2.5.9 (Density Ranges – Planktonic Organisms) have been repaired.

Section 1.1 – Application and Supporting Documents

2. The Certificate of Liability Insurance provided in Section 1.1 (Application and Supporting Documents) is outdated. Please replace the outdated version with the current Certificate of Liability Insurance. (PJR)

Response: The Certificate of Liability Insurance has been updated with the current certificate, which expires July 1, 2024.

Section 1.2 – General Information

3. Please update subsection C (Permit Application Responsibilities) within Section 1.2 (General Information) to include current staff responsibilities. (SMN/PJR)

Response: Subsection C (Permit Application Responsibilities) has been updated to include current staff responsibilities. This was completed with Revision 35 of KRSB-8603.

4. In the first paragraph of the History subsection under subsection B.2 (Summary – Corporate Identity) within Section 1.2 (General Narrative), the Beulah power plant is inaccurately described as a North Dakota sugar refinery. This description needs to be moved behind Minn-Dak Farmers Cooperative, since it is the North Dakota sugar refinery that is listed in this section. (AAC)

Response: This correction has been made under the History subsection B.2 (Summary – Corporate Identity) within Section 1.2 (General Narrative).

Section 1.4 – Business Entity Information

5. Although updates to ownership and control information and organizational structure contained in Section 1.4 (Business Entity Information), as required by NDCC 38-14.1-14(1)(e) and NDAC 69-05.2-06-01(1)(e) and (f), do not have to be completed with a midterm revision if coal removal is complete, please consider replacing the current information in Section 1.4 with the most up to date information. (PJR)

Response: These updates were completed with Revision 35 and are currently accurate.

6. Please update page 1.4.1 of Section 1.4 (Business Entity Information) to include the current General Manager of Westmorland Beulah Mining LLC. (GAW/PJR/AAC)

Response: This update to 1.4.1 of Section 1.4 (Business Entity Information) has been made.

7. If any changes have occurred, please update the Permit Area and Adjacent Area surface and coal owners of record in the Property Interests subsection on pages 1.4.15 through 1.4.20 of Section 1.4 (Business Entity Information) as required by NDCC 38-14.1-14(1)(c) and NDAC 69-05.2-06-01(1)(c). Any changes to this should also be made to Names and Addresses of Apparent Surface and Subsurface Owners of Record on pages 1.4.21 and 1.4.22 of Section 1.4 and Exhibit 1.4.1 (Surface and Coal Ownership Map). (GAW/PJR/JAR)

Response: These updates were completed with Revision 35 and are currently accurate.

Section 1.5 – Compliance Information

8. If necessary, please update the Summary of Violations in Section 1.5 (Compliance Information). (JAR/PJR)

Response: The Summary of Violations in Section 1.5 (Compliance Information) has been updated.

Section 2.2 – Surface Water Hydrology Inventory and Monitoring

9. Please update Exhibit 2.2.7 (Surface Water Monitoring Map). The map contains legend entries for various types of streams, but these stream symbols are not depicted on the drawing. Please depict the streams on the drawing and change the color of the post mine contours to differentiate them from the intermittent streams. (SMN/JAR)

Response: Exhibit 2.2.7 (Surface Water Monitoring Map) has been updated to include all entries in the legend including the various types of streams.

Section 2.5 – Wildlife Inventory and Plan

10. The Northern Long-Eared Bat narrative on pages 2.5.67 and 2.5.68 of Section 2.5 (Wildlife Inventory and Plan) states that the northern long-eared bat is a threatened species with a 4(d) rule. Please revise the narrative to clarify that the species has been listed under Endangered status. (AAC)

Response: Section 2.5 (Wildlife Inventory and Plan) has been updated to indicate the Northern Long-Eared Bat is now classified as endangered under the Endangered Species Act. References to the 4(d) rule have been removed from the section as they are no longer applicable because of this classification change.

11. Information on the Rufa Red Knot, a USFWS IPaC listed threatened species, should be included in Section 2.5 (Wildlife Inventory and Plan). Please update this section to include information on this species. (AAC)

Response: Information on the Rufa Red Knot and the Piping Plover has been added to this section. These were the only two threatened or endangered species listed on the USFWS IPaC that were not previously addressed in Section 2.5 (Wildlife Inventory and Plan).

12. A table listing all USFWS IPaC threatened, endangered, and candidate species should be added to Section 2.5 (Wildlife Inventory and Plan). (AAC)

Response: Table 2.5.12 has been added to Section 2.5 (Wildlife Inventory and Plan) listing all USFWS IPaC threatened, endangered, and candidate species for the KR5B-8603 permit area. This table is current as of May 1, 2024.

Section 2.6 – Pre-Mining Vegetation Inventory

13. Please update Exhibit 2.6.14 (Historic Reference Area Data) to show that the Silty and Sandy native grassland reference areas continue to be in reasonable ecological condition and suitable for use as native grassland reference areas for final bond release. WBM should provide updated ecological condition information using the current NRCS protocol, i.e., use the ecological site information rather than outdated range site information. WBM should provide NRCS similarity index information using NRCS form ND-CPA-20. (GAW)

Response: WBM has contracted an ecological firm (Cedar Creek Associates, Inc.) to complete the similarity analysis for the Silty and Sandy native grassland reference areas during the 2024 growing season, a summary report will be provided when it is completed.

Section 2.7 – Land Use

14. Exhibit 2.7.1 (Postmining Land Use) contains a scalebar that does not appear to correspond to the map scale. Please adjust the map scale so that the scalebar can be used to measure features depicted on the drawing. (SMN)

Response: The scale bar in Exhibit 2.7.1 (Postmining Land Use) has been adjusted to the appropriate scale.

15. Please adjust the contour layer in Exhibit 2.7.1 (Postmining Land Use) so that other information provided in the map is not obscured by the contours. (MLJ)

Response: There are no contours included in Exhibit 2.7.1 (Postmining Land Use). The location of other information (labels) has been adjusted to be more visible.

16. Please review the locations of all planned reclaimed woodlands in Exhibit 2.7.1 (Postmining Land Use) and revise if necessary to ensure the most appropriate site is chosen. It appears woodland NW22-1 will need to be moved because of sediment pond P112, and woodland SE20-1 should be moved to a slope with a northern aspect. Exhibit 2.7.1 (Postmining Land Use) depicts woodland SE22-1 in cropland in the NE¼ of Section 22. This woodland planting should be moved to an area of reclaimed native grassland. The current name of woodland SE22-1 indicates that the planting was originally intended to be planted in the SE¼ of Section 22 rather than the NE¼ of Section 22. (GAW)

Response: The three woodland areas noted in comments 16 have been updated in Exhibit 2.7.1 as follows:

- NW22-1 has been moved slightly to the south outside the boundary of Pond 112.
- SE20-1 has been relocated slightly to a location with an improved northern aspect.
- SE22-1 Has been moved to the SE1/4 NE1/4 of Section 22. This location is on a tract of land with and end land use of Native Grassland but within the property belonging to Terrance Schmidt, which is consistent with the Postmining land use preference letter for the NE1/4 of Section 22. The SE1/4 of Section 22 surface ownership belongs to Christianson, who does not have woodlands indicated on their Postmining land use preference letter.

17. With pending Revision No. 35, WBM included a preference statement update from Mr. Ronald Gunsch which indicates that he would like to retain sediment pond 112 as a permanent feature. The Reclamation Division is concerned that sediment pond P112 may be too large to allow intermittent stream flow to pass beyond the pool area of the pond, and the existing design of the pond shows steep slopes in the pool area that will need to be reshaped. Please provide an analysis of the expected volume of stream flow in the intermittent stream above sediment pond P112 and clarify if the flow rate is greater than the expected evaporation rate of the pool area of the pond. As required by NDAC 69-05.2-16-19, please provide a detailed plan for converting sediment pond P112 to a permanent structure while complying with NDAC 69-05.2-16-12(1) and with subsections 9 through 22 of NDAC 69-05.2-16-09. (GAW/PJR)

Response: Inflow to this reservoir will include both the annual surface water runoff and flow from the Schmidt et. al. seep. The seep was measured at 15 gpm. The combined annual runoff from the two sources is 33.3 acre-feet and the capacity of Pond 112 is 27.4 acre-feet, therefore there is sufficient available water for the pond to fill and spill on an annual basis. The as-built drawing for Pond 112 has been updated to account for additional grading that occurred adjacent to the pond and is included in this response package. The grading has reduced the side slopes of the pond. No additional work will be conducted at the pond to leave it as a permanent structure. Section G of Permit Section 3.2 was updated to reflect the water balance of the pond. Pond 112 section of Permit Section 3.2 was updated with additional text regarding the retention of the pond as a permanent structure.

18. With pending Revision No. 35, WBM included a preference statement update from Mr. Ronald Gunsch which indicates that he would like to retain sediment pond 113 as a permanent feature. The embankment of sediment pond P113 is within, or very close to the statutory section line right of way where County Road No. 12 is to be reconstructed. Please clarify how sediment pond P113 will be converted to a permanent pond as required by NDAC 69-05.2-16 while reconstructing County Road No. 12 immediately adjacent to the embankment. It appears the material in the embankment of sediment pond P113 will be needed to reconstruct County Road No. 12 through the drainageway. The Reclamation Division believes that WBM should convert sediment pond P113 to a wetland as indicated may be done according to Mr. Gunsch's land use preference statement. If the pond is to be converted to a wetland, please provide design plans for the wetland, update the narrative in Section 2.7 (Land Use), and update Exhibit 2.7.1 (Postmining Land Use) accordingly. (GAW/PJR)

Response: It is the intent of WBM to leave Pond 113 as a permanent pond. The riser portion of the principal spillway will be removed leaving only the 36" diameter barrel through the embankment which will reduce the capacity of the pond to 3.8 acre-feet. The anticipated annual surface water runoff to this pond is 6.7 acre-feet, therefore there is sufficient available water for the pond to fill and spill on an annual basis. If the county road is constructed, then the outlet pipe will need to be extended and a portion of the embankment could be used for the construction of the county road. Section G of Permit Section 3.2 was updated to reflect the water balance of the pond.

19. Mr. Voigt is cultivating areas that are to be reclaimed to native grassland according to Exhibit 2.7.1 (Postmining Land Use) in the NE¼ of Section 19. Please either revise Exhibit 2.7.1 to show the field boundary as it currently exists or plant the approved native grassland seed mixture on that portion of the cropland field that is approved to be reclaimed to native grassland. If WBM opts to plant the native seed mixture, it should not be planted until after WBM investigates, and later salvages, if necessary, a sufficient volume of topsoil from the reclaimed field in order to properly reclaim the balance of the disturbed Voigt property. (GAW)

Response: The area previously classified as Native Grassland currently being cultivated by Mr. Voight has been updated to Cropland. This area is roughly 6.8 acres in the E1/2 of NE1/4 of Section 19. Exhibit 2.7.1 (Post Mining Land Use) and Exhibit 2.7.4 (Premining and Postmining Land Use Acres) have been updated to reflect this change.

Section 3.1 – General Mining Plan

20. Exhibit 3.1.2 (Pit Layout and Facilities Map) depicts a Tesoro crude oil pipeline north of the permit boundary. This pipeline is believed to be owned by Marathon Oil Corporation. The line type is also indistinguishable from the coal crop line. Please review the pipeline ownership and consider changing the line color. (SMN)

Response: The Tesoro crude oil pipeline north of the permit boundary has been updated to reflect the current owner, Marathon Oil. The color of the pipeline has been changed to a dark green to make it easier to distinguish from other features.

21. Please add sediment ponds 112 and 113 to Exhibit 3.1.2 (Pit Layout and Facilities Map). (SMN)

Response: Ponds 112 and 113 have been added to Exhibit 3.1.2 (Pit Layout and Facilities Map).

22. Please remove stockpiles 23-02-2 and 23-01-1 from Exhibit 3.1.2 (Pit Layout and Facilities Map). These stockpiles were respread on grade approval area Gold-01-2022 (Schmidt et. al.). (SMN)

Response: Stockpiles 23-02-2 and 23-01-1 have been removed from Exhibit 3.1.2 (Pit Layout and Facilities Map).

23. Please depict the new dragline dismantling area in the SE¼ of Section 16 in Exhibit 3.1.2 (Pit Layout and Facilities Map). The Reclamation Division approved the new dismantling location on March 6, 2024. (SMN)

Response: The new dragline dismantling area in the SE¼ of Section 16 has been added to Exhibit 3.1.2 (Pit Layout and Facilities Map).

Section 3.2 – Water Management Plan

24. Please provide wetland design information in Section 3.2 for each reclaimed wetland depicted in Exhibit 2.7.1 (Postmining Land Use) and listed in Table 3.7.3 (page 3.7.9) of Section 3.7 (Revegetation Plan). Review the wetland design information in Exhibit 3.2.29 (Wetland Mitigation Design for SE¼ of Section 17), Exhibit 3.2.54 (Mitigation Wetland Design for SE¼ Section 20), Exhibit 3.2.55 (Mitigation Wetland Design for SW¼ Section 20), and Exhibit 3.2.57 (Conservation Wetland Design for SE¼ Section 17), and make updates to the exhibits if any changes are

necessary due to post-mining topographic alterations. The location and wetland design elevations should be reviewed to ensure that each reclaimed wetland will have sufficient watershed to allow the wetlands to function as intended. Please provide annual water yield information for each reclaimed wetland. Page II-H-9 of North Dakota's Revegetation Success Standard document states that the wetland basin must exhibit the degree of permanence for the class for which it was designed based on water supply from normal year precipitation as described by the ND Water Commission (ND Department of Water Resources) or based on basin configuration and the 50% annual water yield from the contributory watershed, to ensure the required acreage replacement. The Reclamation Division can provide you with examples of wetland design information from other mines to help you realize what is expected for water yield information. (GAW)

Response: Exhibit 2.7.1 has been updated to show the four wetlands presented in Section 3.2. Section 3.2 has been updated to match Exhibit 3.2.29, Exhibit 3.2.54, Exhibit 3.2.55, and Exhibit 3.2.57. The area for each wetland has been updated for the revised PMT (KRSB-8603 Revision 35).

25. Please depict ponds 112 and 113 as permanent ponds in Exhibit 3.2.1 (Water Management Plan). In addition, please review the permanent status of the other ponds. (SMN)

Response: Exhibit 3.2.1 (Water Management Plan) was updated during Revision 35 and depicts ponds 112 and 113 as permanent ponds. The remaining ponds classified as permanent (Ponds 81, 87, 94) remain up to date.

Section 3.5- Backfilling and Grading

26. Please depict grade approval area Gold-01-2022 (Schmidt et. al.) on Exhibit 3.5.3 (Post Mining Topography). (SMN)

Response: The grade approval area Gold-01-22 (Schmidt et. al.) has been added to Exhibit 3.5.3 (Post Mining Topography).

27. Exhibit 3.5.3 (Post Mining Topography) contains a scalebar that does not appear to correspond to the map scale. Please adjust the map scale so that the scalebar can be used to measure features depicted on the drawing. (SMN)

Response: The scalebar on Exhibit 3.5.3 (Post Mining Topography) has been corrected.

28. Exhibit 3.5.4b (Post-mine Slope Contours) contains a scalebar that does not appear to correspond to the map scale. Please adjust the map scale so that the scalebar can be used to measure features depicted on the drawing. (SMN)

Response: The scalebar in Exhibit 3.5.4b (Post-mine Slope Contours) has been adjusted.

29. Please adjust the slope class polygons in Exhibit 3.5.4b (Post-mine Slope Contours) so that the polygons are not obstructing the contours. (MLJ)

Response: The slope class polygons in Exhibit 3.5.4b (Post-mine Slope Contours) have been adjusted so that the polygons are not obstructing the contours.

Section 3.7 – Revegetation Plan

30. The cropland narrative on page 3.7.13 of Section 3.7 (Revegetation Plan) states that the NRCS cropland technical standard will be adjusted using correction method No. 1 (annual county yield to long-term county average ratio). North Dakota's Revegetation Success Standards document was updated in March 2022. Please revise to clarify if WBM is planning to use an older version of North Dakota's Revegetation Success Standards document or the current version. The current version provides correction method A (control area) or correction method B (County Wide Average). Please review and revise to provide clarity. (GAW)

Response: WBM has updated the permit language and will use correction method B.

31. Please revise the table labels in Section 3.7 (Revegetation Plan) for consistency. It appears the table on page 3.7.7 is not labeled, and there are two tables labeled as Table 3.7.3. Please update the narrative in Section 3.7 after making edits to the table labels as needed. (MLJ, GAW)

Response: The tables in Section 3.7 (Revegetation Plan) have been updated as well as references to the tables throughout the text.

32. Exhibit 3.7.3 (Suitability Groups and Premining Production) provides an unadjusted technical standard for cropland, hayland, tame pastureland, and native grassland based on pre-mining soil mapping units subject to SPGM removal or disturbance within contiguous quarter sections under the same ownership. These unadjusted standards are to serve as the basis for the development of bond release performance standards according to page 3.7.12 of Section 3.7 (Revegetation Plan). It appears some of the unadjusted standards include considerable undisturbed acreage that may not be allowed to be used to demonstrate revegetation success. For example, the unadjusted standard for the Schmidt et. al tract was developed using a 54.5-acre cropland field, but only approximately 4 acres of Schmidt et. al. cropland was disturbed by mining and therefore it may not be appropriate to establish an unadjusted standard using the entire pre-mine cropland field. Please provide an updated unadjusted technical standard for each tract of cropland, hayland, tame pastureland, and native grassland that includes only the acreage of soil mapping units affected by mining activities. Revised bond release field boundaries may need to be established if whole field harvesting techniques are to be used to demonstrate revegetation success. (GAW)

Response: WBM agrees that the unadjusted technical standards for each tract of cropland, hayland, tame pastureland, and native grassland need to be reweighted based on the actual disturbance footprint of the mine, rather than pre-mining weighting provided on Exhibit 3.7.3. The acreage discrepancies of planned versus actual disturbance have been identified by WBM. Therefore, the associated exhibit will be updated following verification of the disturbance footprint and post-mining and uses. WBM and their consultant (Cedar Creek Associates, Inc.) are still working through several of the discrepancies, and respectfully request to submit the updated table with the next round of responses of the KRSB-8603 mid-term review.