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April 16, 2025

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 Technical #1 review letter dated June 24, 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
David Kuzara

April 16, 2025

**Comment/Response to June 24, 2024 PSC Letter
Revision 36**

Table of Contents

1. The Table of Contents pdf provided with Revision No. 36 is labeled “Revision #35” at the top of page 1 and the footnotes at the bottom of each page reference Revision No. 35, November 2022. Please review and correct as necessary. (GAW/AAC/PJR)

Response: The Table of Contents has been corrected to reflect Revision No. 36.

2. Follow-up to Item No. 1: The link for Exhibit 2.5.3 (Sharp-tailed Grouse) has been severed into the following two hyperlinks: "Survey Locations for Waterfowl, Breeding Birds, Pheasants and" and "Sharp-tailed Grouse". The "Sharp-tailed Grouse" hyperlink correctly links to Exhibit 2.5.3 but the other link does not. Please combine the two links and have it link to Exhibit 2.5.3. (SMN)

Response: The link to Exhibit 2.5.3 has been updated.

3. The following is a list of hyperlinks that have been identified as not working. Please repair the hyperlinks (SMN/PJR):

- 1.6 - RELATIONSHIP OF PROPOSED PERMIT AREA
- Exhibit 1.6.1 – Waiver of 500 Feet Coal Removal Limitation
- Exhibit 2.1.2 – Test Hole and Monitoring Wells Lithologic Logs
- Exhibit 2.1.7 – Sampling Locations
- Exhibit 3.6.5 – Subsurface Investigation – Fill Area
- Exhibit 3.7.3 – Suitability Groups and Premining Production

Response: The links to the Exhibits listed above have been updated.

4. Exhibit 2.5.7 (NDG&F, 1984 Sharp-tailed Grouse Census Summary) has been updated with new data from 2005. Please update the Exhibit title in the Table of Contents to reflect this update. (AAC)

Response: The Table of Contents has been updated to correctly reference Exhibit 2.5.7 (NDG&F, 2005 Sharp-tailed Grouse Census Summary).

Section 1.2 – General Information

5. Within subsection E, Government Agencies Contacted, of Exhibit 1.2 (General Information), please replace Zanna Brinkman with Jonathan Emmer as the contact for the ND Public Service Commission. (AAC)

Response: Zanna Brinkman has been replaced with Jonathan Emmer in Section 1.2, subsection E, Government Agencies Contacted. Also, David Kuzara has replaced Nettie Ore within the planning personnel.

Section 2.2 – Surface Water Hydrology Inventory & Monitoring

6. Follow-up to Item No. 9: The magenta color depicting intermittent streams on Exhibit 2.2.7 (Surface Water Monitoring Map) is identical to the magenta color depicting the topographical contour lines which makes identification of the intermittent streams difficult. Please consider changing the color of the intermittent streams on the map, so they are easily identified. Also, please add labels to the topographical contour lines at the proper intervals. (JAR/AAC/SMN/PJR)

Response: Exhibit 2.2.7 has been updated to depict intermittent streams in green. Contour labels have been added to the figure.

Section 2.3 – Groundwater Hydrology

7. Within subsection D, Probable Hydrologic Consequences, there is no narrative discussion on any possible effects of retaining sediment ponds 112 and 113. Although there is no difference in watershed size acres from pre- to post-mine, there are potential effects to downstream users as sediment ponds 112 and 113 will be retaining a significant amount of runoff. Please revise the Probable Hydrologic Consequences narrative to include a discussion about the probable hydrologic consequences of retaining sediment ponds 112 and 113 as permanent features. (PJR)

Response: Subsection D has been updated. The information on Table 2.3.7 and with the addition of following text. Ponds 112 and 113 drain to Brush Creek. The increase in drainage area will offset the increase in evaporation due to the developed water resource and increase in wetland area. The evaporation for Pond 112 is estimated at 1.7 ac-ft while the increase of annual runoff at the 80 percent chance is a 1.8 ac-ft due to the increased drainage area. The increase in wetland area is 0.6 acres (0.96 ac-ft increase in evaporation) while the increase of annual runoff at the 80 percent chance is a 1.1 ac-ft due to the increased drainage area. This should result in minimal impacts to downstream water users.

Section 2.5 – Wildlife Inventory and Plan

8. A paragraph that states “As of March 2022, WBM is no longer mining coal.....” was copied twice on page 2.5.69 of Section 2.5 (Wildlife Inventory and Plan). Please delete the duplicate paragraph. (AAC)

Response: Page 2.5.69 of Section 2.5 (Wildlife Inventory and Plan) has had the duplication removed.

Section 2.7 – Land Use

9. Follow-up to Item No. 16: WBM is proposing to replace Christianson pre-mine woodlands, SE22-1, on Terrance Schmidt property in the NE¼ of Section 22 because Christianson did not select woodlands as a post-mine land use preference. Disturbed woodlands and wetlands must be replaced on an acre-for-acre basis and should not be replaced on another landowner’s property without their concurrence. Please either depict reclaimed woodland SE22-1 on native grassland in the SE¼ of Section 22 or provide written concurrence from Mr. Schmidt that it is acceptable to replace Christianson pre-mine woodland on his property in the NE¼ of Section 22. Alternatively, reclaimed woodland SE22-1 may be planted on WBM native grassland in Section 20. Please review and revise as necessary. (GAW)

Response: The woodland titled SE22-1 has been relocated to the originally permitted native grassland area in the SE¼ of Section 22 on Exhibit 2.7.1.

10. Follow-up to Item No. 18: The developed water resource that will exist by retaining sediment pond 112 and the wetland that will exist by retaining a portion of the pool area of sediment pond 113 must be depicted and labeled on the Postmining Land Use map, Exhibit 2.7.1, and the associated acreage must be listed in the Premining and Postmining Land Use Acres table in Exhibit 2.7.4. The Reclamation Division does not believe that sediment pond 113 can be expected to function as a developed water resource after the riser has been removed. The pool area of this pond should be classified as a seasonal wetland if the expected intermittent stream flow is not enough to keep this pond at spill elevation during the summer months. (GAW/PJR)

Response: Text in Section 3.2 has updated to reflect that Pond 112 will be left as a developed water resource and what is left of Pond 113 will be a wetland. Exhibit 2.7.1 has been updated to reflect these changes as well as acreage on Exhibit 2.4.4. The text in subsections G and H has been updated to reflect the water balance. A figure showing the wetland design for Pond 113 (NW22-1W, Exhibit 3.2.58) has been added.

11. Follow-up to Item No. 18: A wetland is not depicted in portions of the intermittent stream in the W½ of Section 22 and SW¼ of Section 15. It seems the entire length of the drainageway, minus the developed water resource associated with sediment pond 112, should be depicted as a class III wetland. Please review the amount and duration of the expected streamflow in this drainage and revise as appropriate. Postmining wetland and native grassland acreage adjustments should be reflected in Exhibit 2.7.4, Premining and Postmining Land Use Acres. (GAW)

Response: Exhibit 2.7.1 and Exhibit 2.2.7 have been updated to reflect the changes for retaining Pond 113 as a wetland. The acreage on Exhibit 2.4.4 was updated to reflect the changes. The text in subsections G and H has been updated to reflect the water balance and explain why the drainage should be considered a wetland. A figure showing the wetland design for Pond 113 (NW22-1W Exhibit 3.2.58) has been included. No additional wetlands were added in the SW ¼ of Section 15 even though they may naturally develop in the channel bottom.

12. Follow-up to Item No. 19: WBM is proposing to increase the post-mine acreage of cropland in the NE¼ of Section 19 per the surface owner's request. However, the pre-mine acreage of cropland and native grassland is being revised on the Premining and Postmining Land Use Acres table, Exhibit 2.7.4. The pre-mine land use acreages are established at the time of permitting and should not be altered after the land has been affected by mining activities. Please revise the Premining and Postmining Land Use Acres table, Exhibit 2.7.4, accordingly, and provide an explanation of this land use change in Section 2.7 (Land Use). This explanation should mention if the SPGM respread thickness and post-mine topography are suitable for cropland. Please also update Exhibit 2.7.3, Alternative Postmining Land Uses, to show the proposed land use change. (GAW)

Response: The table in Exhibit 2.7.4, Premining and Postmining Land Use Acres, has been corrected to reflect the original pre-mine land use acres. Discussion on the change of this land use has been added to the narrative of Section 2.7 (Land Use). Also, Exhibit 2.7.3, Alternate Postmining Land Uses, has been updated.

Section 3.2 – Surface Water Management Plan

13. Follow-up to Item No. 24: Please revise the Table of Contents, Section 3.2 (Water Management Plan), and Exhibits 3.2.29, 3.2.54, 3.2.55, and 3.2.57 to provide consistent wetland identification numbers (labels) as described in Section 2.7 (Land Use). Each reclaimed wetland should be depicted and labeled on the Post Mining Land Use Map, Exhibit 2.7.1. Please also include a map with the wetland designs that depicts the entire contributing watershed of each wetland with labeled contour elevation lines. (GAW)

Response: The wetland exhibits and associated reference from the Table of Contents have been updated. Exhibits 3.2.29, 3.2.54, 3.2.55, and 3.2.57 have to updated, and Exhibits 3.2.58 through 3.2.62 have been added to match the wetlands illustrated on Exhibit 2.7.1. The Narrative for Section 3.2 now include additional design information related to the updated wetlands.

Section 3.5 – Backfilling and Grading

14. Follow-up to Item No. 26: Please depict the Gold-01-2022 grade approval consistent with all other grade approvals on the Post Mining Topography map, Exhibit 3.5.3. The other grade approvals are outlined and cross hatched according to the legend. Please also depict grade approval Gold 3-2015 (Revised) on Exhibit 3.5.3 and review the map to ensure all other grade approved areas are depicted. The pdf version of the Gold 3-2015 grade approval request suggests that portions of the NW¼NE¼ of Section 22 were grade approved in 2013, see Gold 03-2013. (GAW)

Response: Exhibit 3.5.3 has been updated to include grade approvals Gold-3-2015 and Gold-03-13 as requested.

15. The scalebar on Exhibit 3.5.4(b), Area Slope Map, Post-mining Slopes, shows 500 feet and 600 feet being the same distance. Please replace the 600 feet label with 500 feet. (SMN)

Response: Exhibit 3.5.4(b), Area Slope Map, Post-mining Slopes, has had the scale bar corrected to 600 feet.

Section 3.7 – Revegetation Plan

16. Follow-up to Item No. 24: Item No. 24 requested detailed design plans for each reclaimed wetland depicted on the Post Mining Land Use Map, Exhibit 2.7.1. However, WBM has responded by proposing to delete reclaimed wetlands SE20-2W, SE20-3W, NW22-1W, SW22-1W and SW22-2W rather than provide design plans. Wetlands and woodlands must be replaced on an acre-for-acre basis by surface ownership. It might be appropriate to replace the disturbed pre-mine wetland acreage in the NW¼ of Section 22 with the wetland planned with the retention of a portion of the pool area of sediment pond 113. It might also be realistic to expect the disturbed portion of the linear wetland in the SW¼ of Section 22 to be recreated from ground water flow from the Schmit et. al. seep but this needs to be explained in the permit. Table 3.7.4 within Section 3.7 (Revegetation Plan) suggests that an additional 1.02 acres of wetland needs to be replaced in Section 20 based on the premine wetland acreage. Perhaps the pool area of sediment pond 104 could be converted to a wetland. In any event, please provide design plans and appropriate narratives discussing WBM's wetland replacement plans as previously requested and depict and label all reclaimed wetlands on the Post Mining Land Use map, Exhibit 2.7.1. (GAW)

Response: The wetland exhibits have been updated. Exhibits 3.2.54, 3.2.55, and 3.2.58 through 3.2.62 now reference wetland designs illustrated on Exhibit 2.7.1. The Narrative for Section 3.2 and Section 3.7 (specifically Table 3.7.4) now include additional design information related to the updated wetlands.