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Public Service Commission State of North Dakota

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Exhibit

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INSPECTION REPORT

DATE OF INSPECTION: August 12, 2020

TYPE OF INSPECTION: Partial

PERMITTEE - MINE: Coteau Properties Company - Freedom Mine

PERMITS INSPECTED: Portions of Permits NACT-9501 and NACT-0201

PERSONS ACCOMPANYING INSPECTORS: Ms. Lucille Sailer, private landowner

INSPECTION CONDITIONS: The inspection was conducted between 10:30 a.m. and 12:15 p.m. CDT. Skies were mostly clear. The temperature was near 80° F. Access was good.

OFF-SITE REVIEW

Guy Welch of the Reclamation Division received an email from Mr. Clyde Eisenbeis on August 11, 2020 indicating that Lucille Sailer's farmland north of Beulah is being flooded by "*Coteau dumping pond water into the creek*" and he requested that photos be taken by the Reclamation Division the following day. Mr. Eisenbeis owns land adjacent to Permit NACT-9501 in the NW1/4 of Section 34, T146N, R88W and Ms. Sailer owns land 1/2 mile to the north of Mr. Eisenbeis in the NW1/4 of Section 27 and she also owns land in portions of Section 28, which is located directly to the west across Mercer County Road 15. Ms. Sailer's farmstead is located nearby, in the SE1/4 of Section 28. The creek that Mr. Eisenbeis referenced is an established unnamed ephemeral tributary to Beaver Creek Bay of Lake Sakakawea that runs through property owned by both Mr. Eisenbeis and Ms. Sailer, as well as other landowners to the south. The creek appears to originate in the S1/2 of Section 2, T145N, R88W, about 2.5 – 3 miles southeast of the flooded hayland in the NW1/4 of Section 27.

PSC inspectors Bruce Beechie and Jeff Roerick met with Ms. Sailer at 10:30 a.m. on August 12th and she showed us her areas of concern that she had described to Mr. Eisenbeis. The NW1/4 of Section 27 is predominantly hayland with the exception of about 35 acres in the northwest corner of the field that historically contains a topographic low/wetland complex dominated by hydrophyte vegetation, namely cattails, common bulrush, other sedge grasses and phragmites. Ms. Sailer rents the NW1/4 of Section 27 to local farmer T.J. Gustafson and Mr. Gustafson had recently completed a second cutting of hay on the tract and returned on Saturday, August 8th to bale the hay; however, some areas within the southwest corner of the tract were inundated with water when the creek overflowed its bank and saturated the adjacent hayfield with water that had been discharged from Coteau sediment pond P-W11-01. As viewed in **Figure 1**, the creek in this area of the hayfield is a meandering, low gradient stream channel that readily overflows its shallow bank. The flow within this lowland area of the creek is much more dispersed than other stretches of the creek to the north and south, where the channel is much more defined

and incised into the underlying alluvium. The hayfield was saturated with visible areas of standing water to the point that Mr. Gustafson was unable to bale hay within those areas of the field. It appeared the affected area was about two acres in size. Ms. Sailer indicated that similar wet field conditions were also located across County Road 15 to the west in hayland within the NE1/4 of Section 28 bordering the creek; however, the creek channel is significantly more contained within its banks in the NE1/4 of Section 28 and we did not inspect that particular field because the main area of Ms. Sailer's concern/complaint was in the NW1/4 of Section 27.

Figure 1.

**View of a portion of the flooded hayfield in the NW1/4 of Section 27
View is toward the south and the Sailer farmstead is shown in the background**



Coteau records indicate that sediment pond P-W03-04 began discharges to the creek on July 21 and finished on July 25 with an average discharge flow rate of 515 GPM and a total discharge volume of 2.9 million gallons, or 8.9 acre-feet. More recently, Coteau began discharging water intermittently from sedimentation pond P-W11-01 between the dates of July 23 and August 12 with an average discharge flow rate of about 675 GPM and a total discharge volume of about 13.5 million gallons, or about 41.4 acre-feet. Sediment pond P-W11-01 is located in the NW1/4 of Section 11 in Coteau's mining permit NACT-0201 about 2.5 miles south of the flooded hayfield. Ms. Flath indicated that once Coteau became aware of the flooding hayfield situation by Ms. Sailer, Coteau personnel immediately terminated the discharge of sediment pond P-W11-01. Ms. Sailer reported she had received .60 inches of rain at her farmstead on August 11th, which is located about 1/4 mile south of the hayfield in the SW1/4 of Section 27 and Coteau Properties reported they had received .87 inches of rain on August 11th. It appeared to us the precipitation received had mostly infiltrated into the soil because we were able to easily drive around the hayfield, and the ground was generally dry except in the areas where the creek water overtopped its bank.

Water depth was measured, and flow conditions were observed at several points along the creek. About 1/2 mile south of the Sailer's hayland in the NW1/4 of Section 27, water was actively flowing through the culvert located along the gravel road between the SW1/4 of Section 27 and the NW1/4 of Section 34. At that location the water depth measured 20 inches and the water level in the creek channel was about 4 feet below the surrounding cropland. Where the creek passes under County Road 15 in the NW1/4 of Section 27 adjacent to the hayfield, the water was actively flowing through the concrete box culvert and the water depth was 1 foot. Further to the north where the creek crosses ND Highway 1806 through three concrete culverts, the water was not flowing and measured about 1 foot in depth.

Figure 2 shows a constructed diversion that runs in an east-to-west direction along the south side of the NW1/4 of Section 27. The diversion was apparently constructed years ago to direct and contain stream flow coming from the east, but also converges with the creek coming from the south.

Figure 2
Constructed diversion along south side of the Sailer hayfield in the NW1/4 of Section 27
View is toward the southwest with the Sailer farmstead in the background



Ms. Sailer stated that when she was notified of the flooded hayland by her renter, she contacted Coteau about the situation. Coteau's Environmental Manager Sarah Flath and Coteau's Landowner Relations Manager, Rylan Sundsbak visited with Ms. Sailer at the hayfield that had flooded. Ms. Sailer stated that Ms. Flath and Mr. Sundsbak readily admitted the water was from Coteau's sedimentation ponds and they told her that Coteau would pay for the hay that was flooded. Ms. Sailer told us that just paying for the hay was not enough and that she also wanted payment for fuel and personal time dealing with the issue. Ms. Sailer stated she has had some ongoing issues with Coteau over the years regarding mining and reclamation of the Sailer property that was mined to the east in Permit NACT-9501. Some of her concerns and complaints to Coteau apparently involved such things as Coteau mining closer to the

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original farmstead in Section 26 than what she thought was going to be mined, care and management of planted trees, location and maintenance of fencing, cattails growing around the periphery of constructed stockponds, water levels of constructed stockponds, noxious weed control, etc.

Ms. Sailer stated that above all else, her main concern was the lack of communication between Coteau and her and with her renter, Mr. Gustafson. She stated that if Coteau had simply given them a call regarding sediment pond discharges, they could have made other arrangements so the flooding on the cut hay crop would not have happened, or perhaps Coteau could have delayed the discharge until the hay had been baled and hauled off site, or at least transported to a different area of the hayfield away from the creek.

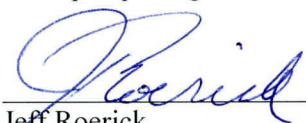
Section 2.2.4 of Permit NACT-0201 is the Surface Water Probable Hydrologic Consequences and Page 3 under Temporary Runoff and Sediment Controls describes Coteau's procedures for contacting downstream landowners to minimize potential adverse downstream impacts to farming or haying operations from sedimentation pond discharges. We are aware that Coteau has historically contacted landowners in the past of upcoming pond discharges and Coteau has provided us with a recent example of this in this same watershed. Coteau also responded to our request for sediment pond discharge information and indicated that it was not clearly evident to them at the time that haying operations were ongoing or pending at the Sailer property. Coteau's response also stated that they have committed to Ms. Sailer that in the future, she would be provided notification prior to every discharge event.

GROUND WATER

Water levels were measured from ground water monitoring wells MP93-P01A and MP93-P01B. These monitoring wells are located in the road ditch within the NW1/4NW1/4 of Section 27, T146N, R88W, which is at the north end of the wetland complex in the Sailer hayfield that was investigated today. Both wells are monitoring ground water of the Antelope Creek aquifer of the Beulah Trench and both wells have historically documented very high water levels. An electronic water level tape was used to measure depth to ground water and PM93-P01A measured 2.76 feet below the measuring point (top of casing) and MP93-P01B measured 4.45 feet to ground water below measuring point. These measurements equate to ground water elevations of 1853.34 feet and 1851.13 feet respectively, or about 9 inches and 27 inches below ground level, respectively.

MISCELLANEOUS

Additional photographs taken during the inspection are on file with the Reclamation Division. Enclosed is a map depicting the affected area, creek, sediment pond P-W11-01, and other relevant depictions.



Jeff Roerick
Environmental Scientist



Bruce Beechie
Environmental Scientist

cc: Sarah Flath
OSM Casper Field Office
Mercer County Auditor

August 12, 2020 PSC Inspection Report Map

