



# Public Service Commission

## State of North Dakota

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January 20, 2009

Jeffrey W. Fleischman, Director  
OSM Casper Field Office  
PO Box 11018  
150 East "B" Street, Room 1018  
Casper, WY 82602-5004

**RE: Request for Authorization to Proceed for 2009 Hazen-West Phase 2, and  
2009 Williams County Road 9 Phase 4 Projects in North Dakota.**

Dear Mr. Fleischman:

Please find enclosed documentation to support our Request for Authorization to Proceed with the 2009 Hazen-West Phase 2 and 2009 Williams County Road 9 Phase 4 Projects.

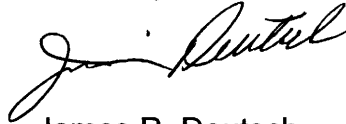
Updated environmental assessments for these projects are attached. Both are continuations of previous reclamation projects. The first phase of work at the Hazen-West site was conducted in 1991 and the third phase at the Williams County Road 9 site was conducted in 2008. Also attached is an eligibility determination letter for these projects.

We have requested concurrence for these projects from the North Dakota State Historical Society, U.S. Fish and Wildlife Service, North Dakota Parks and Recreation Department, the North Dakota State Department of Health and the North Dakota Game and Fish Department. Because of the nature of reclamation work planned at the Hazen-West site, we requested and received approval from the U.S. Army Corps of Engineers to proceed with the proposed project in accordance with Nationwide Permit No. 27 for affecting water of the United States. Attached is a copy of the October 29, 2008 letter from The Corps of Engineers. Any outstanding responses to these requests for concurrence will be forwarded to you as we receive them.

Mr. Jeffrey Fleischman  
January 20, 2009  
Page 2

If additional information is needed or you have any questions, feel free to call Bill Dodd at 701-328-4101 or me at 701-328-2251.

Sincerely,

A handwritten signature in black ink, appearing to read "James R. Deutsch", written in a cursive style.

James R. Deutsch  
Director  
Reclamation and AML Divisions

Enclosures

m\AML\2009\OSM\authorization\_2\_proceed\_rqst\_1-20-09

## List of Attachments

1. Standardized Environmental Assessment for Hazen-West AML (January 2009)
2. Standardized Environmental Assessment for Williams County Road 9 AML (January 2009)
3. Project Location Maps for Hazen-West and Williams County Road 9
4. Requests for Concurrence for 2009 projects
5. Responses to Requests for Concurrence Received to date
  - ND State Historical Society
  - ND State Department of Health
  - ND Parks & Rec. Dept.
  - ND Game & Fish Dept.
  - U.S. Fish and Wildlife Service
6. October 29, 2008 letter from the U.S. Army Corps of Engineers for the Hazen-West Project
7. Eligibility Determination for 2009 Projects

# **STANDARDIZED ENVIRONMENTAL ASSESSMENT**

**Hazen-West Phase 2  
Abandoned Mine Lands Project  
ND089  
Mercer County, North Dakota**

**Prepared by**

**North Dakota Public Service Commission**

**In Cooperation With**

**United States Department of Interior  
Office of Surface Mining Reclamation and Enforcement  
Casper Field Office**

**(January 2009)**

## **Section I Introduction**

### **A. Need for the Action**

The principal objective of the Public Service Commission is to reclaim potentially hazardous portions of a surface mine located within Sections 8 and 16, T144N, R87W approximately four miles west of Hazen, North Dakota, population 2,457 and three miles northeast of Beulah, North Dakota, population 3,152. The surface mine contains dangerous highwalls near roads. About 40 acres of surface mine land will be reclaimed with the Hazen-West Phase 2 Project, but the entire mine site is much larger.

To our knowledge, there have been no instances of death or personal injury attributable to the abandoned mine; however, the potential for death or injury is inherent due to the location of the abandoned mine.

### **B. Project Background**

The Hazen-West Problem Area is composed of an extensive surface coal mine located in Mercer County, T144N, R87W, Sections 5, 8, 16 and 17. This AML site is characterized by dangerous highwalls near roads. The land is currently owned by the North Dakota Game and Fish Department and serves as a Wildlife Management Area.

The Hazen-West AML site is within four miles of the corporate limits of Hazen, North Dakota, and encompasses approximately 185 acres. Mining was conducted from the 1950's to the 1960's. Current land use of the area is designated as agricultural (farming and grazing land). Anticipated land use of the area will remain agricultural (grazing land).

## **Section II Description of the Proposed Project and Alternatives**

The proposed reclamation project for this site will be beneficial to the general public and meets the requirements of federal and state law for reclamation. Besides the elimination of a severe hazard to the general public, as well as the landowner, parameters with other beneficial effects are land use, vegetation, wildlife and topography.

The plan of action for proposed reclamation activity will be to backfill hazardous highwalls with material from adjacent spoil piles. Erosional drainage channels, which flow over the steep dangerous highwalls, will be repaired and re-established to a non-erosive slope.

To the degree possible, topsoil will be salvaged from the disturbed areas and respread once the dirt work has been completed. Approximately 4,500 feet of hazardous highwall would be eliminated through proposed reclamation operations. The disturbed area will be fertilized, seeded and mulched. Revegetation would be done with a seed mixture compatible to the quality of available plant growth material.

Options or alternatives include backfilling, fencing of hazard areas or no action. Backfilling is the preferred option. The no action does not solve the AML problems at the site and is not considered a viable option. The proposed reclamation activities should have no long term adverse effects on the environment. The temporary disruption of wildlife habitat will be a short term effect.

The approved North Dakota Abandoned Mine Lands State Reclamation Plan identifies backfilling as an effective reclamation technique.

### **Section III Existing Environmental Documents**

The environmental concerns of the proposed project are addressed in an environmental impact statement (EIS) prepared by the Office of Surface Mining Reclamation and Enforcement entitled "Approval of State and Indian Reclamation Program Grants Under Title IV of the Surface Mining Control and Reclamation Act of 1977": (OSM-EIS-11, November 1983). Please reference the following documents for further information.

Chapter III, Affected Environmental Rocky Mountain/Northern Great Plains Region

Section 3.5.2.2, Adverse Impacts Related to Highwalls, pp. III-24  
Subsections 3.5.2.2.1, 3.5.2.2.12, pp. III-24 to III-26

Chapter IV, Environmental Consequences Rocky Mountain/Northern Great Plains Region

Section 4.2.2, Impact Common to Remedial Actions, pp. IV-3 to IV-7

Section 4.3.2 Reclamation of Highwalls, pp. IV-11  
Subsection 4.3.2.1, pp. IV-11 to IV-12.

## **Section IV Site Specific Review**

- A. Cultural or historic resource values (the archaeological Resources Protection Act of 1979; the Archaeological and Historic Preservation Act of 1974; the National Historic Preservation Act of 1986, as amended; the Antiquities Act of 1906, Executive Order 11593, concerning the protection and enhancement of the cultural environment; the American Indian Religious Freedom Act of 1978; the Historic Sites Act of 1978; and, OMB Circular A-102).**

A letter was sent December 12, 2008, to the North Dakota State Historical Society requesting comments concerning the cultural resources of this site. The State Historical Society has finished its review of this site and concurred with a recommendation of "No Historic Properties Affected" and "No Significant Sites Affected" for this site in a letter dated December 17, 2008.

- B. Water quality values (Clean Water Act, as amended)**

There are no streams present on or near the proposed project area. Reclamation efforts at Hazen-West Phase 2 will have no effect on water quality.

A letter was sent to the North Dakota Department of Health on December 12, 2008 requesting concurrence. A response dated January 6, 2009, indicated that a NDPDES permit may be required for stormwater runoff and dewatering.

- C. Wetlands values (Clean Water Act, Executive Order 11990, and Army/EPA Memorandum of Agreement (MOA) Concerning the Determination of Mitigation under the Section 404(b) (1) Guidelines)**

A letter was sent to the Corps of Engineers on October 14, 2008. In a letter dated October 29, 2008, the Corps of Engineers approved a permit under Nationwide Permit No. 27 for the Hazen-West Phase 2 Project.

- D. Flood values (Executive Order 11988)**

The project areas are not contained within an identified floodplain.



**E. Wildlife (Endangered Species Act and Fish and Wildlife Coordination Act)**

The U.S. Fish and Wildlife Service has been contacted, for their response to identification of any threatened or endangered plant or animal species that may be located on or near the proposed project site, in a letter dated December 12, 2008. On January 15, 2009, the U.S. Fish and Wildlife Service issued a determination that no endangered or threatened species are known to occupy the project area and that the project will have no significant impacts on fish and wildlife resources. A letter was also sent to the North Dakota Game and Fish Department requesting concurrence for the work proposed at this site (the NDGF is the property owner at this site).

There has been no other sensitive wildlife identified in the proposed project area.

**F. Prime and unique farmland values (Farmland Protection Policy Act)**

There has been no prime farmland identified on the proposed project site.

**G. Recreational resource values (Wild and Scenic Rivers Act, Clean Air Act)**

There are no lands in the proposed project area classified as Wilderness Area or lands being studied for wilderness.

There are no lands in the proposed project area identified as areas of critical environmental concern.

There are no lands in the proposed project area included in the Wild and Scenic River category.

There are no parks or areas of critical ecological or aesthetic concern found in the proposed project area.

**H. Air quality (Clean Air Act)**

The proposed project area is not in or near a Class I air quality region.

There are no conditions on the existing site of the proposed project that affect air quality of the nearby area.

**I. Socioeconomic factors**

There will be no adverse socioeconomic effect from the reclamation of this site.

**J. Political factors**

Meetings between the North Dakota Public Service Commission and all governing entities are ongoing and will continue throughout project completion. County officials and landowners have expressed interest in reclamation of the proposed areas. A public meeting has been scheduled on January 28, 2009, in Beulah, North Dakota, to discuss this project with local residents, city and county officials and the general public.

**K. Existing Vegetative Cover**

Highwalls and pits are mostly unvegetated. The adjacent spoil is generally in lower relief dozer and scraper built piles. The spoil material is composed of mostly sands and clays. The spoil piles are fairly vegetated. Dominant plant species include Smooth brome grass (*Bromis inermis*), Western wheat grass (*Agropyron smithii*), and Kentucky bluegrass (*Poa pratensis*). Forb species including Alfalfa (*Medicago sativa*), American Licorice (*Glycyrrhiza lepidota*), and Missouri Goldenrod (*Solidago missouriensis*) are commonly found in mine spoils in this area.

**L. Threatened and Endangered Plant Species**

No threatened or endangered plant species have been identified within the project area.

**M. Anticipated date of Reclamation**

Reclamation work for Hazen-West Phase 1 Project began in June 1991 and was completed in September 1991.

Reclamation performance period for Hazen-West Phase 2 Project is scheduled to begin in May 2009 and be completed in October 2009.

**N. Estimated Construction Cost**

The construction cost for the Hazen-West Phase 1 Project was \$539,501.53.

It is estimated that construction cost for the Hazen-West Phase 2 Project will be \$900,000.

**O. Offsite Borrow and Disposal Areas**

There will be no offsite borrow or disposal area concerns relative to this project. If offsite borrow or disposal issues arise, applicable environmental regulations will be addressed through the North Dakota Department of Health and Consolidated Laboratories.

**P. Noise Pollution**

Project work will be conducted no closer than 5,000 feet from the nearest residential or commercial population. Noise pollution problems are not anticipated; however, if problems arise, remedial action measures will be addressed through the North Dakota Department of Health and Consolidated Laboratories.

## **Section V Consultations**

The State Historical Preservation Officer has been contacted with reference to any cultural or historical values present at or near the project site.

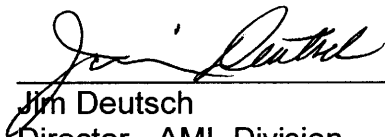
The Department of the Army, Corps of Engineers has been contacted with reference to any waters of the United States (wetlands).

The United States Fish and Wildlife Service has been contacted with reference to identification of threatened or endangered animal species on the proposed project site.

The Planning and Natural Resources Division of the North Dakota Parks & Recreation Department has been contacted with reference to identification of threatened, endangered or rare plant species or communities.

Letters were also sent to the North Dakota Department of Health and the North Dakota Game and Fish Department, requesting concurrence for this project.

## **Section VI Preparers**

A handwritten signature in cursive script, appearing to read "Jim Deutsch", is written over a horizontal line.

Jim Deutsch  
Director - AML Division  
North Dakota Public Service Commission

# **STANDARDIZED ENVIRONMENTAL ASSESSMENT**

Williams County Road 9 AML  
Abandoned Mine Lands Project  
ND000111  
Williams County, North Dakota

Prepared by

North Dakota Public Service Commission

In Cooperation With

United States Department of the Interior  
Office of Surface Mining Reclamation and Enforcement  
Casper Field Office

December 2006  
(Revised January 2009)

## **Section I Introduction**

### **A. Need for the Action**

The principal objective of the Abandoned Mine Lands Division of the North Dakota Public Service Commission regarding this project is to reclaim potentially hazardous portions of underground mines located beneath and adjacent to Williams County Road 9 and several Township roads and residential areas which are located near Williston, North Dakota.

To our knowledge there have been no instances of death or personal injury attributable to abandoned coal mines included in the 2009 Williams County Road 9 sites; however, the potential for death or injury is inherent due to the location of the abandoned mines beneath public roadways. There have been documented instances of sinkholes within the proposed project area in the past. Some have been filled in by the North Dakota Public Service Commission and some by local landowners.

### **B. Project Background**

The proposed Williams County Road 9 AML project area is located within portions of Sections 5, 6, 7, 8, 17, 18, 19, 20, and 21, T154N, R100W, and Section 36, T155N, R101W, Williams County, North Dakota.

County Road 9 provides access from Williston to the city's landfill, an active leonardite mine, Grandview Subdivision and also serves as a bus route and main thoroughfare to areas north and east of Williston, North Dakota (population 13,000).

Exploratory drilling in 1991 and 1994 was conducted along the county and township road shoulders and within Grandview Subdivision. Drilling information indicates a minimum of 4,350 linear feet of road surface within the defined project area could be undermined. Most areas of the underground mines are in various stages of collapse and upward migration to surface. Depth to voids below surface ranged from 30 feet at the north end of the proposed project area and up to 120 feet below surface towards the south end. This variation in depth to mining voids is reflected by the increase in land elevation trending to the south. The deteriorating underground coal mines below and their location adjacent to well-traveled county and township roads and residential areas present a potential hazard to the driving public.

The Williams County Road 9 AML Project is expected to be conducted in phases as funding allows. Approximately 30,000 feet were drilled and 2500 cubic yards of grout were injected in the first phase of this project series (2006) to stabilize portions of County Road 9, 53<sup>rd</sup> Street and 53<sup>rd</sup> Lane. In 2007, Phase 2 included 34,812 feet of

rotary drilling, and 5,576 cubic yards of grout was injected. In 2008, Phase 3 included 50,000 feet of rotary drilling and 3,882 cubic yards of grout was injected. Plans for the 4<sup>th</sup> project phase include approximately 60,000 feet of rotary drilling and 7,500 cubic yards of grout.

Mining of the (average) 10 foot thick lignite seam at this project site was conducted by several medium-sized operators and large commercial operations which date back to the early 1900's up to 1930. Underground mining in other areas east of Williston was prevalent up into the 1960's. Current land use of the proposed project area is public roadway and classified as public domain. Upon completion of the reclamation project, land use will remain as public roadway. Land use in the Grandview Subdivision is residential.

A public meeting was conducted on December 13, 2005 in Williston to discuss the proposed project with local residents, as well as city and county officials. All present indicated support for the proposed project. A second public meeting was held on February 7, 2008, with local property owners and any other interested parties that may be affected during Phase 3 of the project, again everyone present indicated support for the proposed project.

## **Section II**

### **Description of the Proposed Project and Alternatives**

The preferred option for reclamation is pressure grout backfilling to stabilize overburden from collapse. A grout mixture consisting of water, fine sand, Portland cement, flyash and pumping agents would be used as the backfill material.

Abandoned mine workings and rubble encountered during the exploratory drilling projects have been (and will be) cased from ground surface to the top of the voids with 3" diameter Schedule 40 PVC pipe. Casing of the holes is accomplished to allow mine inspection with the borehole camera (where conditions allow) and to protect the integrity of the borehole from formation collapse. Cased void and rubble holes will be used as injection holes into the abandoned underground mine workings.

Backfilling of the mine will commence systematically with injection holes spaced approximately every 10 linear feet along the road shoulders and around homes to the extent possible. This relatively close spacing will be required because available mine maps indicate haul tunnels within this historic mining district are typically 10 feet wide. Drill holes spaced any further than 10 feet apart may miss targeted mined workings. Due to varying degrees of collapse and void migration to surface, a pressure grout backfill injection will be required. Some areas may require the emplacement of subsurface barrier walls to contain pumped grout materials within selected areas.

However, most mined areas indicate varying magnitudes of collapse, which forms a natural barrier to control excessive grout-take. Angle drilling may be utilized if deemed necessary for mined areas directly underneath road surfaces if grout injection through rubble zones proves ineffective.

Another alternative would be gravity backfilling. Gravity backfilling has proved to be a much cheaper method of mine-fill; however, gravity backfilling will not penetrate the tight rubble that has been encountered through exploratory drilling. Underground mine filling utilizing gravity-feed slurry was attempted unsuccessfully in a number of areas of North Dakota during the 1980's demonstrating similar geological characteristics of overburden, coal thickness and room and pillar mining methods.

Another alternative would be "daylighting" or over-excavation. This process would entail excavating all overburden down to the mined coal seam and backfilling once all mining voids have been excavated. This alternative is not considered viable due to the excessive costs involved for this type of work, especially considering the overburden thickness throughout much of the project area. Also, a minimum of a 3:1 backslope would be required to safely operate equipment under this alternative and this also would prove to be unfeasible due to the location of adjacent steep drainages, as well as various buried utilities located in the area. The process of daylighting would also require the road to be temporarily re-located during reclamation. Daylighting in residential areas would require the re-location of homes and other buildings.

Another alternative would be relocating the road. This is not considered a viable option either because mine maps indicate there appears to be substantial underground mining on both sides of the road for considerable distances, and would serve to only relocate the road on other portions of underground mines. Re-locating the homes and other buildings in residential areas is not a viable option either.

The final alternative would be no action. This option does not solve the inherently dangerous AML problems that exist at the site and is not considered a viable option.



### **Section III Existing Environmental Documents**

The environmental concerns of the proposed project are addressed in an environmental impact statement (EIS) prepared by the Office of Surface Mining Reclamation and Enforcement entitled "Approval of State and Indian Reclamation Program Grants Under Title IV of the Surface Mining Control and Reclamation Act of 1977": (OSM-EIS-11, November 1983). Please reference the following documents for further information.

Chapter III, Affected Environmental Rocky Mountain/Northern Great Plains Region

Section 3.5.3.2, Adverse impacts related to subsidence, pp III-29,  
Subsections 3.5.3.2.1, 3.5.3.2.2, 3.5.3.2.4, 3.5.3.3.3

Chapter IV, Environmental Consequences Rocky Mountain/Northern Great Plains Region

Section 4.3.3.3, Impacts of deep subsurface reinforcement treatment

Section 4.3.1.1, Impacts of backfilling mine openings

## **Section IV Site Specific Review**

- A. Cultural or historic resource values (the Archaeological Resources Protection Act of 1979; the Archaeological and Historic Preservation Act of 1974; the National Historic Preservation Act of 1986, as amended; the Antiquities Act of 1906, Executive Order 11593, concerning the protection and enhancement of the cultural environment; the American Indian Religious Freedom Act of 1978; the Historic Sites Act of 1935; and, OMB Circular A-102).**

Reclamation activities will be conducted in a manner that should have no significant effect on cultural or historic resources. A letter was sent to the State Historical Society of North Dakota on December 12, 2008, requesting concurrence for the proposed 2009 project. A response was received on December 17, 2008 indicating that the State Historical Society concurs with the recommendation that "No Historical Properties will be Affected".

- B. Water quality values (Clean Water Act, as amended)**

There are several drainages and the Little Muddy River located within close proximity to the reclamation site. Reclamation will be conducted in a manner that should have no significant effect on surface water quality or quantity. Groundwater can be affected by pressurized grout remote backfilling; however, water contained in abandoned underground coal mines and coal seams is of poor quality and is not generally used for home consumption. The AML Division remains in continual consultation with the North Dakota Department of Health to monitor the performance and environmental aspects of the use of flyash-grout, especially as it concerns groundwater. A letter was sent to the North Dakota Department of Health on December 12, 2008 requesting concurrence for proposed 2009 project sites. A response regarding groundwater effects was received on January 6, 2009, indicating no concerns regarding surface waters, and a similar finding is expected for ground waters affected by the proposed project.

- C. Wetlands values (Clean Water Act, Executive Order 11990, and Army/EPA Memorandum of Agreement (MOA) Concerning the Determination of Mitigation under the Section 404(b) (1) Guidelines)**

No reclamation activities are planned on or near wetlands within the Williams County Road 9 reclamation project area.

**D. Floodplain values (Executive Order 11988)**

No reclamation activities within the Williams County Road 9 AML project area are within an identified floodplain.

**E. Wildlife (Endangered Species Act and Fish and Wildlife Coordination Act)**

No endangered or threatened species are known to occupy the project area as described. A letter was sent to the United States Fish and Wildlife Service on December 12, 2008, requesting concurrence for proposed 2009 project sites. A response dated January 15, 2009 was received indicating there will be no significant impact on fish and wildlife resources and that no endangered or threatened species are known to occupy the area.

**F. Prime and unique farmland values (Farmland Protection Policy Act)**

Reclamation will be conducted as to not destroy the integrity or utility of prime farmland within the proposed reclamation area. As noted previously, the Williams County Road 9 AML project area is located within the right-of-ways of County Road 9, adjacent township roads and residential areas, and reclamation efforts should have no effect on prime and unique farmland values.

**G. Recreational resource values (Wild and Scenic Rivers Act, Clean Air Act)**

There are no lands in the proposed project area classified as Wilderness Area or lands being studied for wilderness.

There are no lands in the proposed project area identified as areas of critical environmental concern.

There are no lands in the proposed project area included in the Wild and Scenic Rivers category.

There are no parks or areas of critical ecological or aesthetic concern found in the proposed project area.

**H. Air quality (Clean Air Act)**

The proposed project area is not in or near a Class I air quality region. There are no conditions on the existing site of the proposed project that affect air quality of the nearby area.

**I. Socioeconomic factors**

The Williams County Road 9 AML project area consists of public roads, road right-of-ways, and residential areas near the town of Williston, North Dakota and factors such as noise, traffic control and dust suppression will be addressed in the Information for Bidders (IFB) package.

**J. Political factors**

Williams County, North Dakota has zoning jurisdiction over 70% of the project area and Stony Creek Township and Missouri Ridge Township have zoning jurisdiction over the remaining 30% of real property. Correspondence between the North Dakota Public Service Commission and all governing entities are ongoing and will continue throughout the duration of the project. City, township and county officials have expressed support in reclamation of the proposed project.

Public meetings were held December 13, 2005 and February 7, 2008, to discuss proposed projects with local residents, government officials, and the general public.

**K. Existing vegetative cover**

Existing vegetation along the road ditches and residential areas consists of introduced species. This vegetation includes species such as Fairway crested wheat grass, Smooth brome grass, Kentucky bluegrass, and yellow sweet clover.

**L. Threatened and endangered plant species**

To the best of our knowledge, no threatened or endangered plant species have been identified within the project areas. The only federally-listed threatened or endangered plant in North Dakota is the Western Prairie Fringed Orchid (*Platanthera praeclara*). *Known locations of this plant are within* moist, tall grass prairie and sedge meadows of the Sheyenne National Grasslands in the southeastern corner of the state. This plant has not been seen and is not likely to inhabit the proposed project areas. U.S. Fish & Wildlife Service, Bismarck, ND (North Dakota's Federally Listed Endangered, Threatened and Candidate Species -1995) listed several other former candidate species which remain of management concern. These include Hayden's Yellow-Cress (*Rorippa calcina*), Wolf's Spike-Rush (*Eleocharis wolfii*), Dakota Wild Buckwheat (*Eriogonum visherii*) and Handsome Sedge (*Carex formosa*). None of these species are likely to be found or disturbed within the 2009 Williams County 9 Phase 4 project site. A letter was sent to the Natural Heritage Program of the North Dakota Parks and Recreation Department on December 12, 2008, requesting concurrence for proposed project sites. A response has not yet been received, but it is anticipated a

recommendation that any impacted areas be revegetated with species native to the project area.

**M. Anticipated dates of reclamation**

Exploratory drilling for this project was conducted in 1991-95. The first phase of this reclamation project was conducted in 2006. The second phase of the reclamation was conducted in 2007. The third phase of the reclamation was conducted in 2008. Subsequent project phases may be conducted as funding levels allow over the next several years.

**N. Estimated cost of reclamation**

The contractual cost for the 2006 Williams County Road 9, Phase 1 Project was approximately \$358,621. The contractual cost for the 2007 Williams County Road 9, Phase 2 Project was \$664,155. The 2008 Williams County Road 9, Phase 3 has not been finalized but the estimated cost is \$700,000. Estimated costs for Phase 4 is \$1,100,000. The estimated cost for the entire Williston/Williams County Road 9 project series is \$3 million.

**O. Offsite borrow and disposal areas**

If offsite borrow or disposal issues arise, applicable environmental regulations will be addressed through the North Dakota Department of Health and Consolidated Laboratories.

**P. Noise Pollution**

Noise Pollution is not anticipated. Should noise pollution problems arise, the North Dakota Health Department will be consulted for remedial action.

**Q. Environmental Justice Policy**

Construction work may result in a slight increase in employment and revenues, but no significant direct or indirect impact on minority or low-income populations is expected.

## **Section V Consultations**

### **1. U.S. Fish and Wildlife Service**

A letter was sent to the United States Fish and Wildlife Service on December 12, 2008 requesting concurrence for the proposed 2009 project.

### **2. State Historical Preservation Officer**

A letter was sent to the State Historical Society of North Dakota on December 12, 2008 requesting concurrence for the proposed 2009 project.

### **3. N.D. Department of Health**

A letter was sent to the North Dakota Department of Health on December 12, 2008 requesting concurrence for the proposed 2009 project

### **4. N.D. Parks and Recreation**

A letter was sent to the North Dakota Parks and Recreation Department on December 12, 2008 requesting concurrence for the proposed 2009 project.

## **Section VI Preparers**



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James R. Deutsch  
Director - AML Division  
North Dakota Public Service Commission

# STATE OF NORTH DAKOTA

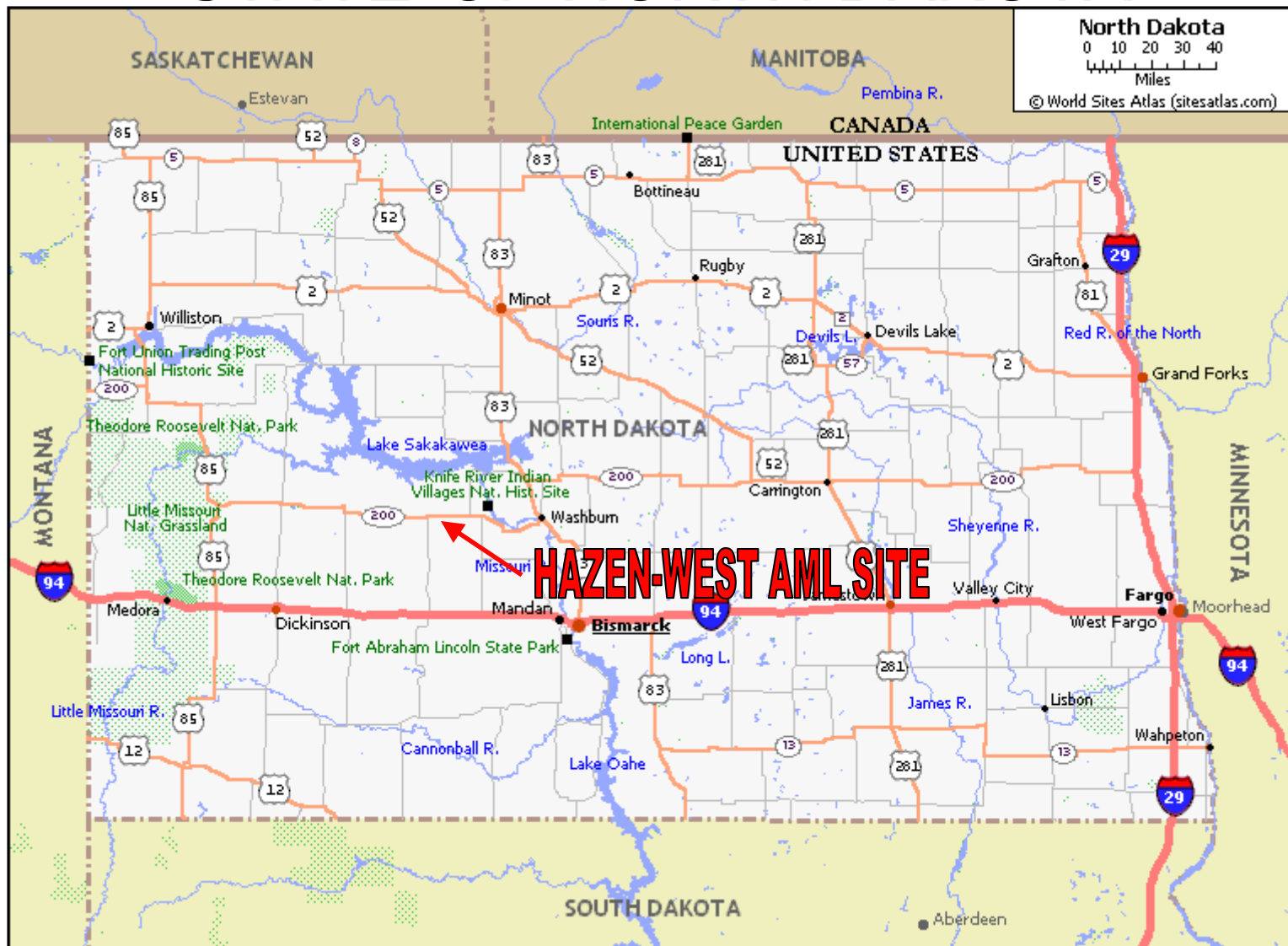
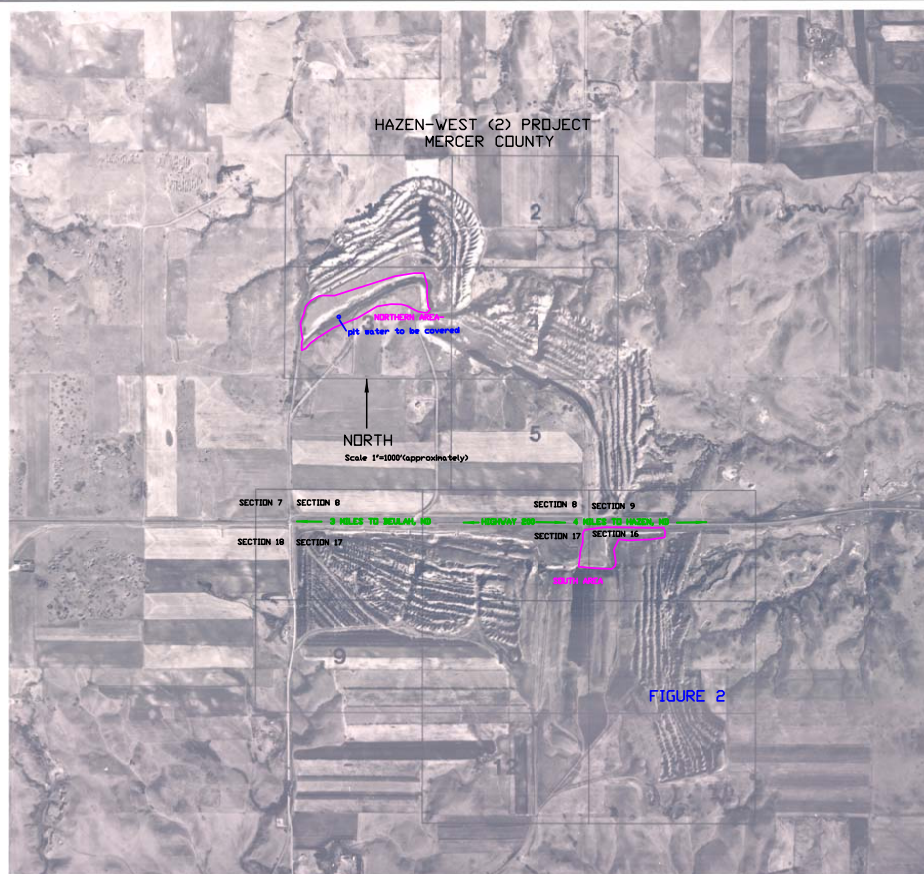


FIGURE 1



LEGEND	
PAVED ROAD	MAJOR SWAMP
UNPAVED ROAD	INTERMITTENT WATER
TRAIL	TREE, 80-90
RAILROAD	INDEX CONTROL
BRIDGE	INTERMEDIATE CONTROL
CULVERT	DEPRESSION CONTROL
BUILDING, STRUCTURE	FIELD ELEVATION
FENCE	PLANTER ELEVATION
FIELD LINE	

7	HORIZONTAL CONTROL STATION
8	VERTICAL CONTROL STATION
9	SECTION CORNER
10	POLE
11	STREAM
12	LAKE
13	SLIDEMENT SET (HOLE)
14	SPIRE (HILL)

[illegible]

SCALE: 1" = 100'

100' 50' 0 100' 200' 300' 400'

LENGTH IN FEET: 2

COMPILED BY PHOTOGRAMMETRIC METHODS FROM AERIAL PHOTOGRAPHY COMPLETED SEPTEMBER 15, 1969

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**2009 Williams County Road 9, Phase 4  
Proposed Sites**

General Overview Map of Site Locations near Williston



**Detail Map 1**, Proposed drilling and grouting, Grandview Subdivision and along Williams County Road 9, Sections 7, 8, 17, 18, 19, T154N, R100W, (approx. 5 acres disturbance)





**Detail Map 2**, proposed drilling and grouting near Scenic East subdivision, Solberg property, driveway and home, Section 20 T154N, R100W (approx 3 acres disturbance).



**Detail Map 3**, Proposed drilling and grouting east of Williston on a driveway north of Highway 1804, Section 16, T154N, R100W (approx. 1 acre or less disturbance).





**Detail Map 4,** Proposed drilling and grouting site in north Williston near the Eagle Ridge golf course including the Krist Ring home and nearby segment of 65th Street, Section 36, T155N, R101W (approx. 1 acre or less disturbance).



D

Proposed drilling and grouting east of Williston on a driveway north of Highway 1804, Section 16, T154N





Proposed drilling and Grouting in and around Grandview Subdivision and along Williams County Road 9



**STATE  
HISTORICAL  
SOCIETY  
OF NORTH DAKOTA**

**RECEIVED**

DEC 18 2008  
201

**PUBLIC SERVICE COMMISSION**

John Hoeven  
*Governor of North Dakota*

**North Dakota  
State Historical Board**

Albert I. Berger  
*Grand Forks - President*

Chester E. Nelson, Jr.  
*Bismarck - Vice President*

Gereld Gerntholz  
*Valley City - Secretary*

A. Ruric Todd III  
*Jamestown*

Diane K. Larson  
*Bismarck*

Marvin L. Kaiser  
*Williston*

Richard Kloubec  
*Fargo*

Sara Otte Coleman  
*Director  
Tourism Division*

Kelly Schmidt  
*State Treasurer*

Alvin A. Jaeger  
*Secretary of State*

Douglass Prchal  
*Director  
Parks and Recreation  
Department*

Francis Ziegler  
*Director  
Department of Transportation*

Merlan E. Paaverud, Jr.  
*Director*

*Accredited by the  
American Association  
of Museums*

December 17, 2008

Mr. William E. Dodd  
Assistant Director  
Public Service Commission  
600 East Boulevard Avenue  
Dept. 408  
Bismarck ND 58505-0408

**ND SHPO REF: 09-0251 PSC/AML Two projects:  
2009 Hazen-West Project [T144N R87W Sections 8 & 16] Mercer County  
and  
2009 Williams County Road 9 project [T154N R100W Sections  
7,8,16,17,18,18,20, and 21; T155N R101W Section 36] Williams County North  
Dakota**

Dear Mr. Dodd,

We reviewed the two projects listed above and concur with the recommendation of "No Historic Properties Affected" and "No Significant Sites Affected," provided that the projects are of the nature specified and the work takes place in the mapped locations provided.

Thank you for the opportunity to review these projects. Please include the ND SHPO Reference number listed above in any further correspondence for this project. If you have any questions please contact Susan Quinnell, Review and Compliance Coordinator at (701)328-3576 or [squinnell@nd.gov](mailto:squinnell@nd.gov)

Sincerely,

Merlan E. Paaverud, Jr.  
State Historic Preservation Officer (North Dakota)  
and  
Director  
State Historical Society of North Dakota



**NORTH DAKOTA**  
DEPARTMENT of HEALTH

ENVIRONMENTAL HEALTH SECTION  
Gold Seal Center, 918 E. Divide Ave.  
Bismarck, ND 58501-1947  
701.328.5200 (fax)  
www.ndhealth.gov



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**PUBLIC SERVICE COMMISSION**

**FROM DIRECTOR - RECLAMATION DIV.**

Date: \_\_\_\_\_

Action: \_\_\_\_\_

Info. Only: \_\_\_\_\_

Info. & File: \_\_\_\_\_

January 15, 2009

William Dodd, Assistant Director  
Abandoned Mine Lands Division  
Public Service Commission  
600 East Boulevard Avenue  
Bismarck, ND 58505

RE: Consultation Request for 2009 Abandoned Mine Reclamation Projects

Mr. Dodd:

We appreciate the opportunity to review the proposed abandoned mine reclamation projects described in your December 12, 2008 letter. We have reviewed the information contained in your letter and the supplemental information you provided to address our concerns about domestic water supply wells located near the project areas. Based on the data, it does not appear that the proposed work will have any significant impact on groundwater resources or private wells located within the project area.

Please do not hesitate to contact me at 701-328-5213 if you have any additional questions.

Sincerely,

Carl Anderson  
Ground Water Protection Program Manager  
NDDH – Division of Water Quality

CA:dlp





**NORTH DAKOTA**  
DEPARTMENT of HEALTH

ENVIRONMENTAL HEALTH SECTION  
Gold Seal Center, 918 E. Divide Ave.  
Bismarck, ND 58501-1947  
701.328.5200 (fax)  
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January 6, 2009

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**PUBLIC SERVICE COMMISSION**

William Dodd, Assistant Director  
Abandoned Mine Lands Division  
Public Service Commission  
600 E. Boulevard Ave  
Bismarck, ND 58505

RE: Consultation Request for 2009 Abandoned Mine Reclamation Projects

Dear Mr. Dodd:

We appreciated the opportunity to review the proposed abandoned mine reclamation projects described in your December 12, 2008 letter.

The proposed work at the Hazen-West Project site may require a NDPDES permit for stormwater runoff from the construction disturbance and construction dewatering. If stormwater or any construction dewatering will not be contained within the abandon mine area an NDPDES permit for construction stormwater discharges would apply. The permit does require the development of a Storm Water Pollution Prevention (SWPP) plan to outline measures that will be implemented for erosion and sediment control as well as construction dewatering on the site. Once the site is stabilized as outlined in the general permit, you may terminate permit coverage. A copy of the permit conditions and related forms are available on our web site at:

<http://www.health.state.nd.us/wq/Storm/Construction/ConstructionHome.htm>

The Department has no further comments or concerns regarding surface water impacts from the Hazen-West Project or the sinkhole filling reclamation projects identified in the proposal. Should you have any questions on the permit application, please contact me at 701-328-5239.

Sincerely,

Randy Kowalski  
Environmental Scientist  
Division of Water Quality

RK:dlp

Attached are maps showing general locations of these proposed reclamation projects. Thank you for your assistance in this matter. If you have any questions or need more information, please contact me at [wdodd@nd.gov](mailto:wdodd@nd.gov) or 701.328.4101

Sincerely,



William E. Dodd,  
Assistant Director  
Abandoned Mine Lands Division

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JAN 1 2009  
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PUBLIC SERVICE COMMISSION

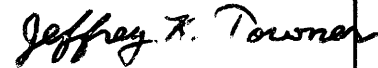
U.S. FISH AND WILDLIFE SERVICE

ECOLOGICAL SERVICES  
ND FIELD OFFICE

Project as described will have no significant impact on fish and wildlife resources. No endangered or threatened species are known to occupy the project area. IF PROJECT DESIGN CHANGES ARE MADE, PLEASE SUBMIT PLANS FOR REVIEW.

1-15-09

Date



Jeffrey K. Towner  
Field Supervisor



# Public Service Commission

## State of North Dakota

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### COMMISSIONERS

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Executive Secretary  
Darrell Nitschke

600 E. Boulevard Ave. Dept 408  
Bismarck, North Dakota 58505-0480  
Web: [www.nd.gov/psc](http://www.nd.gov/psc)  
E-mail: [ndpsc@nd.gov](mailto:ndpsc@nd.gov)  
TDD 800-366-6888 or 711  
Fax 701-328-2410  
Phone 701-328-2400

December 12, 2008

Mr. Jeff Towner, Field Supervisor  
US Fish and Wildlife Service  
3425 Miriam Avenue  
Bismarck, ND 58501-7926

Dear Mr. Towner:

The Public Service Commission is planning reclamation activities in 2009 on the Hazen-West and Williams County Road 9 Abandoned Mine Lands (AML) Sites. Both of these projects are continuations of previous reclamation work. These projects will be conducted by contractors selected through competitive bidding.

The 2009 Hazen-West Project is located in Sections 8 and 16 T144N, R87W, in Mercer County, North Dakota (see map). This abandoned surface coal mine site contains hazardous highwalls. The plan of action is to backfill and backslope hazardous highwalls with material from areas adjacent to the highwalls and nearby spoil piles. The total surface area to be affected in 2009 will be approximately 40 acres.

The 2009 Williams County Road 9 Project is located along Williams County Road 9 and several township roads and residential areas in portions of Sections 7, 8, 16, 17, 18, 19, 20 and 21, T154N, R100W, and Section 36, T155N, R101W, all in Williams County near Williston (see maps). The plan of action is to drill holes into the underground mine and, if necessary, pump cementitious grout through drilled holes into abandoned underground mined workings to help stabilize the surface from future mine collapse. The combined total area of disturbance in 2008 is expected to be ten acres or less and surface disturbance will be fairly minimal.

As part of the grant application process, our office requests concurrence that the proposed reclamation work will not adversely affect any threatened, endangered or rare animal species. We would appreciate your review and concurrence for the work proposed at these sites. Please reply regarding these proposed projects by January 16, 2009.



North Dakota Regulatory Office

DEPARTMENT OF THE ARMY  
CORPS OF ENGINEERS, OMAHA DISTRICT  
NORTH DAKOTA REGULATORY OFFICE  
1513 SOUTH 12<sup>TH</sup> STREET  
BISMARCK ND 58504-6640  
October 29, 2008

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PUBLIC SERVICE COMMISSION

[NWO-2008-02695-BIS]

North Dakota Public Service Commission  
AML Division  
600 E. Boulevard Ave., Dept. 408  
Attn: Mark Knell  
Bismarck, North Dakota 58505-0480

Dear Mr. Knell:

1. **Project Authorization.** Reference your **October 15, 2008** request for Department of the Army (DA) authorization to conduct mine reclamation activities on the abandoned Hazen-West Mine. The project involves the backfilling of highwalls with material from adjacent spoils and the re-establishment of pre-mining drainage patterns. A one (1) acre wetland will be established in the area of the pit water.

A preliminary jurisdictional determination (JD) has been prepared for the site which is a written indication that the waterway (wetlands) within the NDDOT right of way may be jurisdictional waters of the United States. Such waters have been treated as jurisdictional waters of the United States for purposes of computation of impacts and compensatory mitigation requirements. If you concur with the findings of the enclosed preliminary JD (blue sheets) please sign it and return it to the letterhead address.

If you believe the preliminary JD is inaccurate, you may request this office complete an approved JD prior to your commencement of any work in waters of the United States. An approved JD is an official determination regarding the presence or absence of waters of the United States. Completion of an approved JD may require coordination with the U.S. Environmental Protection Agency.

If you do not want the DA to complete an approved JD, you may proceed with the proposed project in accordance with the terms and conditions of Department of the Army Nationwide Permit No. 27, found in the March 12, 2007 Federal Register (72 FR 11092), Reissuance of Nationwide Permits. Enclosed is a fact sheet that fully describes this Nationwide Permit and lists the General and Regional conditions and the Section 401 Water Quality Certification Requirements, if applicable, that must be followed for this authorization to remain valid. **Please note, any deviations from the original plans and specifications of your project could require additional authorization from this office.**

This verification will be valid until **October 29, 2010**.

2. **Project Location.** The legal description at the project site is within Sections 5, 8, 16 and 17, Township 144 North, Range 87 West, Mercer County, North Dakota.

**3. Project Compliance Certification.** *In compliance with General Condition 26, you are required to submit the following project compliance certification within thirty (30) days of project completion. [Please check all applicable statements]*

- ☐ I certify that I have completed the project as permitted.
- ☐ I certify that I have completed a modified version of the project.
- ☐ I certify that I have completed all required mitigation.

**Permittee's Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**4. Other Authorizations.** This determination is applicable only to the permit program administered by the US Army Corps of Engineers. It does not eliminate the need to obtain other Federal, state, tribal, and local approvals before beginning work.

**5. Responsibility.** You are responsible for all work accomplished in accordance with the terms and conditions of this Nationwide Permit. If a contractor or other authorized representative will be accomplishing the work authorized by the Nationwide Permit on your behalf, it is strongly recommended that they be provided a copy of this letter and the attached conditions so that they are aware of the limitations of the Nationwide Permit. Any activity that fails to comply with all the terms and conditions of the Nationwide Permit will be considered unauthorized and subject to appropriate enforcement action.

**6. Other Special Conditions.**

**Endangered Species**

That the permittee shall report any threatened or endangered species at the project site. Notification shall be made to the North Dakota Regulatory Office by telephone or fax within 24 hours. Written confirmation shall be provided within 48 hours if deemed necessary by the North Dakota Regulatory Office.

**Cultural Resources**

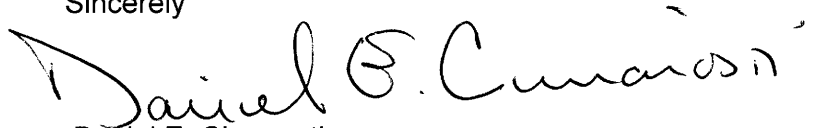
That the permittee and/or the permittee's contractor, or any of the employees, subcontractors or other persons working in the performance of a contract or contract(s) to complete the work authorized herein, shall cease work immediately and report the discovery of any previously unknown historic or archeological remains to the North Dakota Regulatory Office. Notification shall be by telephone or fax within 24 hours of the discovery and, in writing, within 48 hours. The North Dakota Regulatory Office will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places. Work shall not resume until notified by the North Dakota Regulatory Office.

**7. Additional Information.**

**Suitable Material and 1978 Stream Evaluation Map:** Permittees are reminded that General Condition No. 6 prohibits the use of unsuitable material. In addition, organic debris, some building waste, and materials excessive in fines are not suitable material. Specific verbiage on prohibited materials and the 1978 Stream Evaluation Map for the State of North Dakota can be accessed on the North Dakota Regulatory Office's website at:  
<https://www.nwo.usace.army.mil/html/od-rnd/ndhome.htm>

**8. Points-of-Contact.** If you have any questions concerning this determination, please contact William May of this office by letter or telephone at 701-255-0015 and reference Authorization Number **NWO-2008-02695-BIS**.

Sincerely

A handwritten signature in black ink that reads "Daniel E. Cimarosti". The signature is written in a cursive style with a large, sweeping initial "D".

Daniel E. Cimarosti  
Regulatory Program Manager  
North Dakota

Enclosures:

Preliminary JD Form (blue sheets)  
Fact Sheet NWP 27

## PRELIMINARY JURISDICTIONAL DETERMINATION FORM

### BACKGROUND INFORMATION

**A. REPORT COMPLETION DATE FOR PRELIMINARY JURISDICTIONAL DETERMINATION (JD):** 23 October 2008

**B. NAME AND ADDRESS OF PERSON REQUESTING PRELIMINARY JD:**

North Dakota Public Service Commission  
600 E. Boulevard Ave. Dept 408  
Attn: Mark Knell  
Bismarck, North Dakota 58505-0480

**C. DISTRICT OFFICE, FILE NAME, AND NUMBER:** Omaha District,  
Mercer County, NWO-2008-02695-BIS

**D. PROJECT LOCATION(S) AND BACKGROUND INFORMATION:  
(USE THE ATTACHED TABLE TO DOCUMENT MULTIPLE WATERBODIES  
AT DIFFERENT SITES)**

State: North Dakota County/parish/borough: Mercer County City:

Center coordinates of site (lat/long in degree decimal format):

Lat. 47.30947° Pick List, Long. -101.73981° **Pick List.**

Universal Transverse Mercator:

Name of nearest waterbody: Antelope Creek

Identify (estimate) amount of waters in the review area:

Non-wetland waters: linear feet: width (ft) and/or 0.4 acres.

Cowardin Class:

Stream Flow:

Wetlands:

Cowardin Class:

Name of any water bodies on the site that have been identified as Section 10 waters:

Tidal: N/A

Non-Tidal: N/A

**E. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):**

☒ Office (Desk) Determination. Date: 23 October 2008

☐ Field Determination. Date(s):

1. The Corps of Engineers believes that there may be jurisdictional waters of the United States on the subject site, and the permit applicant or other affected party

who requested this preliminary JD is hereby advised of his or her option to request and obtain an approved jurisdictional determination (JD) for that site. Nevertheless, the permit applicant or other person who requested this preliminary JD has declined to exercise the option to obtain an approved JD in this instance and at this time.

2. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "pre-construction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an approved JD for the activity, the permit applicant is hereby made aware of the following: (1) the permit applicant has elected to seek a permit authorization based on a preliminary JD, which does not make an official determination of jurisdictional waters; (2) that the applicant has the option to request an approved JD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an approved JD could possibly result in less compensatory mitigation being required or different special conditions; (3) that the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) that the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) that undertaking any activity in reliance upon the subject permit authorization without requesting an approved JD constitutes the applicant's acceptance of the use of the preliminary JD, but that either form of JD will be processed as soon as is practicable; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a preliminary JD constitutes agreement that all wetlands and other water bodies on the site affected in any way by that activity are jurisdictional waters of the United States, and precludes any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an approved JD or a preliminary JD, that JD will be processed as soon as is practicable. Further, an approved JD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331, and that in any administrative appeal, jurisdictional issues can be raised (see 33 C.F.R. 331.5(a)(2)). If, during that administrative appeal, it becomes necessary to make an official determination whether CWA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps will provide an approved JD to accomplish that result, as soon as is practicable. This preliminary JD finds that there "*may be*" waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information: **The proposed project involves coal mine reclamation to include the backfilling of highwalls with material from adjacent spoils and the re-establishment of**



pre-mining drainage patterns. This drainage pattern appears to be connected to an unnamed tributary to Antelope Creek. In addition a 1 acre wetland will be established in the former area of the pit water.

**SUPPORTING DATA. Data reviewed for preliminary JD (check all that apply**

- checked items should be included in case file and, where checked and requested, appropriately reference sources below):

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: The Applicant's location map, construction plans.
- ☐ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - ☐ Office concurs with data sheets/delineation report.
  - ☐ Office does not concur with data sheets/delineation report.
- ☐ Data sheets prepared by the Corps:
- ☐ Corps navigable waters' study:
- ☐ U.S. Geological Survey Hydrologic Atlas:
  - ☐ USGS NHD data.
  - ☐ USGS 8 and 12 digit HUC maps.
- ☒ U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000 & Hazen West.
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation:.
- ☒ National wetlands inventory map(s). Cite name: Hazen West.
- ☐ State/Local wetland inventory map(s):
- ☐ FEMA/FIRM maps:
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☐ Photographs: ☐ Aerial (Name & Date):  
or ☐ Other (Name & Date):
- ☐ Previous determination(s). File no. and date of response letter:
- ☒ Other information (please specify): ORM2 maps .

**IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.**

Will A. My October 23, 2008  
Signature and date of  
Regulatory Project Manager  
(REQUIRED)

\_\_\_\_\_  
Signature and date of  
person requesting preliminary JD  
(REQUIRED, unless obtaining  
the signature is impracticable)

**U.S. Army Corps of Engineers  
North Dakota Regulatory Office  
1513 South 12th Street  
Bismarck, North Dakota 58504  
Telephone (701) 255-0015 Fax (701) 255-4917**

**IMPORTANT INSTRUCTIONS FOR OUR PERMIT CUSTOMERS**

Notice of the Reissuance of Nationwide Permits was published in the Federal Register [72 FR 11092] on March 12, 2007. The Nationwide Permits went into effect on March 19, 2007. Project compliance certification is required by General Condition 26. The following instructions are provided to clarify the information contained within the nationwide permit authorization letter and attachments.<sup>1</sup>

**STEP 1**

Review the permit authorization and be sure you understand the terms and conditions for the authorization to remain valid. If you do not understand, or have any questions, please do not hesitate to contact this office at the above address.

**STEP 2**

Complete your project in accordance with the permit terms and conditions. [Remember that any deviation from the original plans and specifications of your project could require additional authorization from this office.]

**STEP 3**

Within thirty (30) days of project completion, please complete the permit compliance certification contained within your permit authorization letter. A photocopy of the first page (marked with a colored COPY stamp) has been provided for this purpose. Mark the applicable statements, sign and date where indicated, and forward the COPY to this office at the above address.

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<sup>1</sup>There is no charge associated with any aspect of this nationwide authorization or the follow-up compliance certification.

3. **Project Compliance Certification.** *In compliance with General Condition 26, you are required to submit the following project compliance certification within thirty (30) days of project completion. [Please check all applicable statements]*

- ☐ I certify that I have completed the project as permitted.
- ☐ I certify that I have completed a modified version of the project.
- ☐ I certify that I have completed all required mitigation.

Permittee's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

4. **Other Authorizations.** This determination is applicable only to the permit program administered by the US Army Corps of Engineers. It does not eliminate the need to obtain other Federal, state, tribal, and local approvals before beginning work.

5. **Responsibility.** You are responsible for all work accomplished in accordance with the terms and conditions of this Nationwide Permit. If a contractor or other authorized representative will be accomplishing the work authorized by the Nationwide Permit on your behalf, it is strongly recommended that they be provided a copy of this letter and the attached conditions so that they are aware of the limitations of the Nationwide Permit. Any activity that fails to comply with all the terms and conditions of the Nationwide Permit will be considered unauthorized and subject to appropriate enforcement action.

6. **Other Special Conditions.**

**Endangered Species**

That the permittee shall report any threatened or endangered species at the project site. Notification shall be made to the North Dakota Regulatory Office by telephone or fax within 24 hours. Written confirmation shall be provided within 48 hours if deemed necessary by the North Dakota Regulatory Office.

**Cultural Resources**

That the permittee and/or the permittee's contractor, or any of the employees, subcontractors or other persons working in the performance of a contract or contract(s) to complete the work authorized herein, shall cease work immediately and report the discovery of any previously unknown historic or archeological remains to the North Dakota Regulatory Office. Notification shall be by telephone or fax within 24 hours of the discovery and, in writing, within 48 hours. The North Dakota Regulatory Office will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places. Work shall not resume until notified by the North Dakota Regulatory Office.



# Public Service Commission

## State of North Dakota

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### COMMISSIONERS

Kevin Cramer  
Tony Clark  
Brian P. Kalk

Executive Secretary  
Darrell Nitschke

600 E. Boulevard Ave. Dept 408  
Bismarck, North Dakota 58505-0480  
Web: [www.nd.gov/psc](http://www.nd.gov/psc)  
E-mail: [ndpsc@nd.gov](mailto:ndpsc@nd.gov)  
TDD 800-366-6888 or 711  
Fax 701-328-2410  
Phone 701-328-2400

January 20, 2009

Jeffrey W. Fleischman, Director  
OSM Casper Field Office  
PO Box 11018  
150 East "B" St, Rm 1018  
Casper, WY 82602-5004

### **RE: Eligibility Determination for the 2009 Hazen-West Phase 2 and 2009 Williams County Road 9 Phase 4 AML Projects in North Dakota**

Dear Mr. Fleischman:

This letter is submitted under 30 CFR 874.12 as the required eligibility determination for lands included in the aforementioned proposed abandoned mine lands reclamation projects. Legal descriptions for these lands are included with the request for authorization to proceed and are summarized below:

**2009 Hazen-West Phase 2 Project:** NW¼ of Section 8 and the N½ of the NW¼ of Section 16, T144N, R87W, Mercer County

**2009 Williams County Road 9 Project:** Portions of Sections 5, 6, 7, 8, 17, 18, 19, 20, and 21, T154N, R100W, and Section 36, T155N, R101W, Williams County

### Eligibility Determination - 30 CFR 874.12

The requirements of this section of the Abandoned Mine Reclamation Program set forth the following criteria for eligibility for reclamation activities (paraphrased):

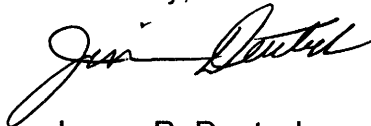
- a. Was the real property subjected to coal mining and related processes?

- b. Did the coal mining processes on the real property occur prior to August 3, 1977, and was said real property left or abandoned in an unreclaimed or inadequately reclaimed condition? and,
- c. Is there continuing responsibility for reclamation by the operator, permittee, or agent of the permittee under the statutes of the State of North Dakota or the government of the United States?

Based upon available historical information, I find that the described real properties were mined for coal; that the coal mining activity occurred prior to August 3, 1977; and, that the property has been left in an abandoned and unreclaimed state. I further find that there is no continuing responsibility for reclamation by the operator, permittee or agent of the permittee under statutes of the State of North Dakota or the government of the United States.

Based on these findings, it is my opinion that the described real properties meet the eligibility requirements of 30 CFR 874.12 for abandoned mine reclamation.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Deutsch", written over a horizontal line.

James R. Deutsch  
Director  
Reclamation and AML Divisions