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July 2, 2008

Mr. James R. Deutsch
Director
Reclamation Division
North Dakota Public Service Commission
600 E. Boulevard Ave. Dept 408
Bismarck, North Dakota 58505-0480

Dear Mr. Deutsch:

In preparation of submitting a bond release package for the East ½ and Southwest ¼ of Section 26-142-84 at the Center Mine, BNI Coal ownership, BNI is requesting a variance for three seeding dates (2001, 2002 and 2003) within the proposed bond release tract (see attached map).

The 2001 seeding date consists of two parcels; one is located in SE ¼ and consists of 1.27 acres while the second parcel, located in the NE ¼, consists of 0.54 acres. The 2002 seeding date is also located in the NE ¼ and consists of 5.59 acres. Lastly, the 2003 seeding date is located in the E ½ of the section and consists of 24.48 acres. The total requested variance area encompasses 31.88 acres while the total proposed bond release tract acreage would be 475.71 acres. The variance area would therefore consist of 7 % of the proposed bond release tract ((31.88 ac. / (475.71 ac. – 31.88 ac.)) x 100). Maps illustrating the proposed variance area, bond release tract, seeding dates, post-mine topography, and watershed boundaries are enclosed.

Appendix A illustrates the approved unadjusted standards for the cropland acres in the E ½ and SW ¼ of Section 26 which will be used in the Final Bond Release application. Methodology for data collection, as approved by the PSC, can be found in Section 4.12.4 (Reclamation Success) of Permit BNCR-8106 and is as follows:

In Section 26, one standard will be developed on all areas owned by BNI Coal (includes portions of BNCR-8202 and BNCR-8006). One standard will be derived based on premine soils for cropland areas in the SW¼ of Section 26 and contiguous cropland areas in the E½ of Section 26. These areas occur as one field, and will be sampled as a whole field harvest, or representative strips (as approved by the PSC).

Full field harvest was the approved sampling methodology; therefore no individual samples were taken specifically on the proposed variance area. Instead, the approved

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sampling method of full field harvest incorporates the entire tract acreage into one yield. As approved by the OSM and PSC in 2005, a production ratio was then used to calculate reclamation success of the entire tract taking into consideration all crops and acreage. Although data from the variance areas was not individually collected, but instead incorporated into the production ratio, visual observations can be used to compare the proposed variance areas to the surrounding areas. As noted in the field, there are no visual differences in the variance area crops compared to crops on surrounding seeding dates. Furthermore, in 2007 when compaction observations were taken by the PSC in the proposed bond release tract three areas in the 2003 seeding date were measured and had an average depth of 14.7 inches. In comparison to the surrounding seeding dates the 2003 site was in the top 75% tile of the surrounding reclaimed penetrometer measurements. Using the existing information it can be concluded that there are no differences between the proposed variance area and the surrounding areas that exceed the 10-year liability period.

In summary, the proposed bond release for this tract would consists of 475.71 acres in which 93% of the acres were seeded prior to 1997 and as early as 1986. The remaining variance area (31.88 acres), or 7% of the land, was seeded later due to the reclamation of a haul road corridor. Without a variance being granted final bond release on this tract would be delayed an additional five years until the 2003 seeding date reached its 10-year liability period. Although data specific to the variance area was not sampled individually, the proposed variance area was incorporated into the full field harvest data, as stated in the permit, which met productivity requirements in 2003 and 2005. This data will be used to illustrate reclamation success in the Final Bond Release application.

If you have any questions, please contact me.

Sincerely,

Jay M. Volk, Ph.D
Environmental Supervisor

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Appendix A. Unadjusted Cropland Standard for the SW ¼ and E ½ of Section 26-142-84.

SECTION 26 UNADJUSTED TECHNICAL STANDARD FOR CROPLAND YIELD

BNI Ownership - SW1/4 and E1/2

Soil	Slope Group	PI Index	Benchmark Wheat Yield	Yield (bu/ac)	Acres	Weighted Yield (bu)	Unadjusted Yield Standard (bu/ac)
Amor loam	C	61	37	22.6	2.96	66.8	
Arnegard loam	B	95	37	35.2	122.63	4,310.4	
Arnegard loam	C	76	37	28.1	9.78	275.0	
Cabba loam	B	38	37	14.1	3.62	50.9	
Cabba loam	C	30	37	11.1	37.36	414.7	
Cabba loam	D	23	37	8.5	14.76	125.6	
Cabba loam	E	16	37	5.9	8.11	48.0	
Max loam	B	80	37	29.6	1.42	42.0	
Max loam	C	64	37	23.7	1.75	41.4	
Rhoades clay loam	C	22	37	8.1	2.43	19.8	
Rhoades Complex	B						
-- Rhoades loam	B	28	37	10.4	3.4	35.2	
-- Daglum silt loam	B	43	37	15.9	2.27	36.1	
Sen loam	B	76	37	28.1	46.25	1,300.6	
Sen loam	C	61	37	22.6	36.27	818.6	
Sen loam	D	46	37	17.0	11.02	187.6	
Vebar sandy loam	B	57	37	21.1	1.11	23.4	
Vebar sandy loam	C	46	37	17.0	2.8	47.7	
Williams loam	B	85	37	31.5	100.68	3,166.4	
Williams loam	C	68	37	25.2	24.65	620.2	
Williams loam, very stony	B	43	37	15.9	1.07	17.0	
Williams loam, very stony	C	34	37	12.6	1.77	22.3	
Zahl loam	C	46	37	17.0	16.15	274.9	
Zahl loam	D	35	37	13.0	1.13	14.6	
					453.4	11,959.2	26.4