



Public Service Commission

State of North Dakota

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December 5, 2008

Mr. Jeff Reinke
PO Box 2646
Center, ND 58530-2646

Dear Mr. Reinke:

This is in response to your November 12th e-mail message questioning if you could, as part of a possible request for a formal hearing following a bond release decision, raise the issue of BNI Coal, Ltd. being required to replace a water delivery system on reclaimed lands in the E $\frac{1}{2}$ and SW $\frac{1}{4}$ of Section 26. Other than being a person having a valid legal interest in the decision, there are no specific limitations on the issues that can be raised as part of a formal hearing request following the Commission's decision to approve or deny a bond release application. If a hearing is requested, the Commission will hear and consider all relevant issues that are brought up with regard to the condition of the reclaimed land in Section 26 and the applicable bond release standards.

However, the definition of replacement of water supply under subsection 90 of North Dakota Administrative Code Section 69-05.2-01-02 implies that any concern with a mining company not replacing water delivery systems should be raised during the comment period that was provided by the letters and newspaper notices that were published by BNI. As noted in my November 12th e-mail message, the comment period for the bond release applications for lands in the E $\frac{1}{2}$ and SW $\frac{1}{4}$ of Section 26 ended November 10th. It is my opinion it would have been better had you raised any water replacement concerns by submitting written comments before the close of the public comment period on these bond release applications.

Please contact me if you have any questions.

Sincerely,

James Deutsch
Director
Reclamation Division

cc: Ilona Jeffcoat-Sacco
Jay Volk, BNI Coal Ltd.

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