PHONE (701) 794-8734

BNI COAL®

FAX (701) 794-3125

FROM DIRECTOR - RECLAMATION DIV.

Date:

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April 17, 2009

Mr. James R. Deutsch, Director
Reclamation Division, NDPSC
Department 408
600 East Boulevard Avenue
Bismarck, ND 58505-0480

RE: Section 26/23 Bond Release Revisions

Dear Mr. Deutsch,

This submittal contains a response to your letter to us dated March 31, 2009. In this letter you listed technical deficiencies that must be addressed prior to final bond release. The following is a listing of the deficiencies followed by our response:

Section 26:

1. The second paragraph on page 2 of 14 of Attachment VI includes a general statement about the amounts of fertilizer used but Mr. Meckle's letter in Attachment XI states that he doesn't know how much fertilizer was used. Please explain. Mr. Meckle also mentions that he doesn't think BNI's scale is properly calibrated. Please discuss when the scale was calibrated. (GAW)

Updated paragraph 2 on page 2 indicating Mr. Meckle's letter (Attachment XI) states specific fertilizer rates were not recorded although through further conversations he indicated the type and range of fertilizer that was applied. Revised text to make narrative consistent with Mr. Meckle's letter as requested.

A statement regarding the Attachment XI Meckle letter which states the scale house may weigh heave was addressed in the 3rd paragraph on page 5 as follows: It was indicated in a letter by Mr. Meckle that the BNI scale house potentially weighs heavy (Attachment XI), although the BNI owned scale house is calibrated, and repaired if needed, on a yearly contract with Fairbanks Scales.

2. The last paragraph on page 5 of 14 of Attachment VI states that Rod Meckle weighed the bales annually, but if that was the case why is a value of 1300 lbs/bale used for every year? The 1300 lb value is certainly reasonable, but we would expect some variance from year-to-year or between cuttings. Please explain. (GAW)

Revised the 4th paragraph on page 5 to indicate Mr. Meckle weighed, reported, and verified these weights.

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BNI Coal, Ltd.
Jay Volk

3. The unadjusted yield standards for oats and sunflowers stated in the second paragraph on page 6 of 14 of Attachment VI are incorrect. The oats value of 47.7 should be 56.1 and the sunflower value of 1417.1 should be 1320 lbs/acre as shown in Table 3 on page 7. (GAW & SAS)

Revised.

4. The acreage values listed in the second paragraph on page 6 of 14 of Attachment VI do not match the acreage values listed in Table 3. Please correct. (GAW)

Revised.

5. With the difficulty in reading some of the information on the field sheets, please include summary tables of the scale data (such as those e-mailed to Guy Welch of the Reclamation Division staff on March 12, 2009) in Attachment VI to facilitate review of the data and calculations by those not familiar with the data for the two years of data being used to prove productivity. (GAW & SAS)

Added tables 3a and 3b, similar to the ones mailed to Guy Welch on March 12, 2009, in Attachment VI as requested.

6. The production ratios listed on page 6 of 14 (second and third paragraphs) of Attachment VI do not match the values listed in Table 3. Please correct as needed. (GAW & SAS)

Production ratios listed in narrative were revised to match values listed in Table 3.

7. The conversion value being used to convert corn yields to wheat yields in Table 3 of Attachment VI is not currently included in our guidelines. Please indicate that the value was approved by personal communication with Reclamation Division staff. (GAW & SAS)

Updated 2nd paragraph in page 5 stating the reclamation staff recommended and approved the corn conversion factor. Also revised footnote #3 in table 3.

8. The left column on the 2003 Scale Weights sheet (Attachment XI) is not legible. In addition, it is not clear if the four values above the "oats for seed" row or the bottom are wheat weights. Please provide a legible copy that provides complete, clear and accurate information. (GAW)

The 2003 Scale Weight sheet copies could not be improved due to the original forms condition. To clarify the content of the original forms the dates and crop types were typed onto the existing scale weight sheet making them easier to read as requested. In addition to relabeling the 2003 scale weight sheets, tables 3a and 3b were added to Attachment VI on pages 8 and 9, respectfully. These tables clearly summarize the scale weight sheets and additionally illustrate the yield calculations used.

9. A sheet labeled "BNI Scale Weights" showing estimated truck weights of crops (dated 7/30 – 8/26) is included in Attachment XI, but the sheet is neither signed nor dated. It is not even clear which year the values were obtained. Please clarify. (GAW)

Although the BNI Scale weight sheets were listed in chronological order page numbers were not included and years were not listed on all scale weight sheets. To eliminate confusion, a footnote including Attachment XI and the respective page number was added to all Attachment XI's material. In addition, the sheet that was referred to in deficiency number 9 has had the year added to it.

10. The Excel spreadsheet that was e-mailed on March 12th to the Reclamation Division staff indicated that the wheat dockage was 2.8% in 2005; however, elevator receipts indicating the wheat dockage were not included in Attachment XI. The third paragraph on page 5 of Attachment VI states that a 2.0% dockage value was used in instances where an elevator slip was not provided. Please provide elevator slips showing the 2005 wheat dockage value or otherwise revise the dockage value as necessary. (GAW & SAS)

Revised 3rd paragraph of page 5 as follows. When elevator slips were issued the actual dockage was used to determine the reported yield values. If elevator slips were not issued, a 2% wheat dockage was calculated into the reported yield. An exception to this was in 2005 where Mr. Meckle supplied BNI with an actual wheat dockage of 2.8% although an elevator slip was not obtained.

11. The yield values listed on Rodney Meckle's letter dated January 30, 2009 (Attachment XI) do not match the values being used to demonstrate revegetation success (Attachment IV). Please provide an explanation for the apparent differences in the bond release application. (GAW)

A new verification letter was inserted into attachment XI which lists the total pounds harvested instead of bushel per acres, this is consistent with the values used in tables 3a and 3b.

12. BNI is assuming the tare weight of the truck is 28,640 lbs as the weight of 58,640 lbs (2003 scale weights Attachment XI) is an obvious mistake. However, it would appear that a tare weight of 29,050 lbs should be used as this value is used in all other instances (one wheat load and all oat loads). (GAW)

As on the 2003 BNI scale weight sheet the 2 in the 28640 was clearly changed to a 5 making it 58640, which is incorrect. The correct weight should be the 28640 since only the 2 shows any signs of being changed. As your comment is valid in the use of the tare weight of 29,050 lbs for all tare weights, BNI does not believe it is correct to change the number from 28640 since this is what was reported from the person taking the measurements and supplied to BNI, hence no changes were made. It can also be noted that a change from 28640 to 29050 would make approximately 0.10 bushel difference and have no effect on meeting the reclamation standards.

13. In Attachment XI, please provide an estimate of the moisture content of the sunflowers that were harvested in 2003. Using high moisture content truck harvest weights can provide misleading yield data. (DKM)

It was noted in the narrative (3rd paragraph of page 5) that no moisture tests were provided to BNI for sunflowers in 2003. It was also noted that 30% of the actual yield could be eliminated and reclamation success would not be affected. Thus illustrating even the most extreme moisture contents when applied to the data will not affect reclamation success in 2003.

Section 23:

14. Narrative in the first and second paragraphs on page 2 of 30 and the second paragraph on page 4 of 30 of Attachment VI state or indicate that a pond was removed sometime prior to 2003. Please identify which sediment pond was removed. It is this reviewers understanding that Pond 23-7 was reshaped in 2003 in conjunction with reclamation of a haulroad, but that a pond was not removed. Please review the reclamation history of the tract and clarify as necessary so that the information is accurate. (GAW)

The reference areas were revised to illustrate pond 23-7 was not removed but reshaped.

15. Please identify the unit of measurement of the values in the tame pastureland seed mixture in the table on page 2 of 30 of Attachment VI. (GAW)

Footnotes were added to the table on page 2 and are as follows: [1]Values are based on seed percentage present in mix and [2]A minimum of 40 pure live seeds per square foot was seeded.

16. Please edit the sentence in the first paragraph on page 6 of 30 of Attachment VI, which incorrectly states that there are no specific cover standards for tame pastureland. The specific ground cover standard for tame pastureland is 73% ground cover which is based on ARS research. However, there are no specific diversity and seasonality standards for tame pastureland. (GAW)

The 1st paragraph on page 6 was revised illustrating the tame pastureland standard is 73%.

17. In the cover narrative on page 6 of 30 of Attachment VI, please address if the perennial species included in the approved seed mixtures are present and if any non-seeded species are present which may be considered detrimental to the post-mine land use as required by our Revegetation Success Standards Guidelines Document, page II-E-7. In addition, please provide an explanation why the cover sampling data in 2004 does not show any western wheatgrass being present while the 2005 data indicates that this species comprises 29.4% of the composition. Similarly, intermediate wheatgrass comprised 14.3% of the relative composition in 2004, but was apparently not detected in 2005. Considering that both are perennial species it would make sense that both species should have been present both years that measurements were taken. (GAW)

As the narrative on page 2 (1st paragraph) indicates the first three seed mixes were planted during the early part of the decade and were used on the majority of the acres. It also states the 3, 4th, and 5th seed mixes were used on haylands. The difference between seed mixes is the addition of western wheatgrass into the mix starting in mix three where it was not present in mix 1 or 2. Although it cannot be answered for sure if some of mix 3 could have been seeded (which included western wheatgrass) in the tame pastureland or if the drill was not cleaned out, seeding overlap occurred, or if western moved into the area on its own through defecation associated with grazing. A second explanation could be the difference between data collators between years and the associated variability associated with the 10-pin collection method or through identification of the wheatgrass.

18. In the Hydrology Narrative that begins on page 6 of 30 of Attachment VI, please reference the attachment that shows the location of the ponds that are being retained as permanent features. Currently the ponds are not shown on any of the maps, but they should be identified on the map that shows the post-mine land uses, presumably Attachment V. (GAW)

Ponds 23-6 and 23-7 were added to Attachment V and referenced in the hydrology section of Attachment VI, page 7 second paragraph, as requested.

19. Follow-up to Original Items No. 57/Item No. 19 of our Jan. 27th letter: Please revise the second paragraph on page 7 of 30 of Attachment VI to clarify the location of the attachment that includes the water quality sample for Pond 23-6 taken in September of 2008. The referenced attachment cannot be found. In addition, in the bond release application, please mention that Revision 48 to Permit BNCR-8106 addresses the post-mine rehabilitation of sediment Ponds 23-6 and 23-7 (NDAC 69-05.2-16-19) and the fifty-year six-hour precipitation event spillway requirement for permanent ponds as required by NDAC 69-05.2-16-09 (9) if that is the case. (GAW)

The water quality sample for pond 23-6 was added to Attachment XI and referenced accordingly in the second paragraph on page 7 as requested.

In this same paragraph revision #48 to BNCR-8106 was also mentioned outlining modifications that are needed to meet the applicable pond permanence requirements.

20. Follow-up to Original Item No. 57/Item No. 19 of our Jan. 27th letter: The last sentence of the second paragraph on page 7 of 30 of Attachment VI states that "Pond 23-7 is not used for livestock" and apparently no water sample was taken to meet the requirements of NDCC 38-14.1-24.7. If this pond is not used for livestock, discuss what kind of a developed water resource the pond is serving as, and if it is functioning for its intended purpose. (GAW)

Revised 3rd paragraph on page 7 to illustrate Permit BNCR-8106 only designates this pond as a DWR but does not allude to the intended use, whether it is livestock or a wildlife pond. The landowner through his own management practice does not use this pond for livestock, although it is being used as a source of water and cover for wildlife.

21. Attachment VII, Grade Approvals/Soil Depths Map, mistakenly identifies the drainage way where the permanent ponds are located as "Undisturbed Land". Please show the associated disturbance areas for the ponds and their access corridors. (GAW)

Revised Attachment VII, Grade Approval/Soil Depths Map to identify ponds 23-6 and 23-7, embankments, and access corridors.

22. Please provide the SPGM respread depths of the associated disturbance areas located in the SW¼ of the NE¼ of Section 23 on Attachment VII, Grade Approvals/Soil Depth Map. (GAW)

The associated disturbance areas located in the SW ¼ of the NE ¼ were stockpile locations in which 2 were topsoil piles and 1 was a subsoil pile. During reclamation the topsoil piles would have been graded to match the existing topography while the subsoil piles would have required topsoil respread following grading. The topsoil that was salvaged from the subsoil stockpile area would have been replaced although no grade approval was needed. This information was added to Attachment VII, Grade Approvals/Soil Depth Map.

If you have any questions regarding this submittal, please contact me at the Center office.

Sincerely,

Jay M. Volk, Ph.D
Environmental Supervisor