PHONE (701) 794-8734

BNI COAL®

FAX (701) 794-3125

RECEIVED
FEB 1 2009
31308
FROM DIRECTOR - RECLAMATION DIV.

February 17, 2009

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

Date:_____

Action:_____

Info. Only:_____

Info & File:_____

RE: Section 26/23 Bond Release Revisions

Dear Mr. Deutsch,

This submittal contains a response to your letter to us dated January 27, 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:

Miscellaneous

1. Please include the List of Attachment page to both sections. Original item #37 indicates they were included but they were not. (GAW & SAS)

   List of Attachment page was included for both sections.

Section 26

Attachment V

2. Follow-up to original item #6: The maps included in Attachment XIII do not identify the conservation field windbreaks or waterways. Please revise the map as indicated in the response letter. (GAW)

   As requested, the conservational field windbreaks and waterways were added to attach. V.

Attachment VI

3. Follow-up to original item #10: The acreages for cropland and public roads do not agree between the breakdown by permit and in the discussion paragraph on page 1. Please correct. (SAS)

   Revised text to match breakdown by permit.

4. Please correct the spelling for "Public Roads" for Permit BNCR-8202 under the 'Post mine land use by Permit' heading on page 1. (SAS)

   Spelling corrected.

BNI COAL, LTD.
2360 35th Ave SW, Center, ND 58530

12 RC-08-696 Filed 02/18/2009 Pages: 7
Response to the January 27th Deficiency Letter Filed
BNI Coal, Ltd.
Jay Volk

5. Follow-up to original item #12: Since no soil testing was done prior to 2007, please discuss the fertilizer rates that were used on the reclaimed tracts in relation to what are normal management practices in the surrounding area. (JRD)

   The discussion of normal management practices was added to the 4th paragraph of the History of Tract Section.

6. Follow-up to original item #14: Please discuss in the bond release narrative the calculation of the "Adjusted County Wheat Yield" as used for the wheat yields in Table 3 as well as in the yield table in Attachment XI. Based on Footnote No. 4 to the tables, we assume these adjustments to the annual wheat yields for Oliver County take into account the continuous cropping practice used on the reclaimed tracts in Section 26. However, this needs to be clarified and should be discussed in the narrative that precedes Table 3. Also, please include a 2002 air photo of Section 26 or other documentation in the bond release application showing that all of the crop strips were seeded in 2002 to justify the continuous cropping adjustment factor in 2003. (JRD)

   Added 2002 photo to Attachment 13 as requested and further discussed adjusted county wheat yield as requested in 4th paragraph under table 2.

7. Follow-up to original item #17: Please include supporting data for determining average bale weights for each year bale counts are being used to demonstrate revegetation success as required on page II-D-3 of our guidelines. The last paragraph on page 5 states that Rod Meckle weighed a truckload of bales each year. Please include a copy of the scale weights and number of bales on each load for the years that measurements were taken to prove reclamation success. (GAW)

   This concern was discussed with Jim and a verification letter was added Attachment 11.

8. Follow-up to original item #18: Bale Counts – A review of Reclamation Division aerial photos taken July 21, 2005 found that the number of large bales appearing at that time in the S½ and NE¼ of Section 26 is consistent with those counted using the NAIP 2005 aerial photography. The photo and map reviews indicate that 140 large round bales were present at that time, not the 222 bales as stated in the bond release application. Please explain possible reasons for the differences, such as the taking of a second cutting and/or provide FSA actual yield documentation or Federal Crop Insurance data to support the higher yield values included in the bond release application. In any event, BNI's bale count should include documentation who took the count and the date it was taken. (GAW)

   This concern was discussed with Jim and a verification letter was added Attachment 11.

9. Follow-up to original item #18: Acreage Discrepancy – The December 10th response did not address the acreage differences that were noted in the original deficiency. Upon further review on the 2003 and 2005 maps in Attachment XIII, it appears only a small area north of multi-row shelterbelt in the SE¼ of Section 26 and another small area on the east side of Section 26 were not hayed in 2005 compared to the tracts hayed in 2003. However, the calculations in Table 3 show that only 100 acres were hayed in 2005 compared to 128 acres in 2003. Please explain the reason for the 28 acre difference. Also, on the "2003, 2004, 2005 and 2007 Crops Planted" maps in Attachment XIII please show the acreage in each crop strip that is depicted on these maps. The acreage occupied by each of the single row shelterbelts should also be shown and listed on these maps. Based on the total acreages for the various

crops planted and harvested in 2003 and 2005, some adjustment may be needed in Table 3 on page 7of 14. (JRD & GAW)

Updated 2003, 2004, 2005, and 2007 crops planted maps in Attachment XIII as requested. Table 3 was updated in Attachment VI, as was the supporting production data table in attachment XI. The 100 acres alfalfa/grass previously listed in the 2005, 2006, and 2007 was mislabeled and should have been 88.6 as illustrated in Attachment XIII maps. The 28.4 acres that was broke out of alfalfa in 2005 was added back into the 2005 calculations, leaving 117.0 acres of alfalfa/grass in 2005 and 88.6 acres in 2006 and 2007.

10. Follow-up to original item # 22: Please include a copy of Kelly Krabennoft's 2008 evaluation of the multi-row shelterbelt. This is needed based on the condition of the dogwood, caragana and Russian olive trees observed during the final bond release inspection. (GAW)

    As discussed with Guy, revised 3rd paragraph accordingly in shelterbelt section.

11. Follow-up to original item #23: Please address the following:
    a) The Shelterbelt Effectiveness standard requires that multi-row shelterbelts have a density profile of at least 60% (when viewing the shelterbelt from a point perpendicular to the shelterbelt) and density is to be evaluated as a percentage of the total area that should be occupied by the shelterbelt in relation to crown density. Although information for each row has been included in the application, please include approximate estimated values for these parameters for the entire shelterbelt in the conclusion narrative.

       Revised shelterbelt effectiveness conclusion paragraph.

    b) During the final bond release inspection it was noted that the crowns of many of the Russian olive trees appeared dead and portions of the caragana and dogwood rows appeared dead or dying. In the Vigor narrative, please elaborate on this issue and provide an explanation why this issue was not observed when the shelterbelt was evaluated in 2007 and 2008. In addition, provide an estimate of the number of trees and shrubs in the caragana, dogwood and Russian olive rows that appeared structurally sound with average or above average growth. Simply stating that vigor is >75% as reported in the 2007 data is inadequate. (GAW)

       Revised vigor conclusion paragraph as discussed with Guy.

12. Follow-up to original item #29: The beginning of the Hydrology discussion on page 13 discusses the provision in NDAC 69-05.2-12-12(7)(a) requiring documentation that the lands to which the release would be applicable are not contributing suspended solids to stream flow or runoff outside the permit area in excess of the requirements set by section 69-05.2-16-04. The discussion covers the cropland management practices that have been used to minimize erosion. However, since the downstream sedimentation ponds have not been removed and the associated NDPDES discharge points have not yet been released, please also briefly discuss the discharge history over the past five to ten years from these ponds and any exceeding of the NDPDES effluent limits. (WTG & BEB)

    Overland flow through impoundments discussed in bond release.

13. Follow-up to original item #31: We requested a brief general summary of current water level and water quality trends for this bond release tract and BNI's response was to reference the reader to annual ground water monitoring reports. The purpose of final bond release application is for the mining company to demonstrate that all reclamation requirements have been met in order to terminate all reclamation liabilities for a particular tract of land. The original deficiency asks for your review of data from the remaining monitoring wells and to provide a short summation (one paragraph) of trends and/or departures. Please provide a brief summary in the bond release applications as requested by the original deficiency. (BEB)

    Updated in report.

14. Follow-up to original item #32: This item was addressed by BNI in the Section 23 bond release package, but not in the Section 26 package. Please provide the requested information in the Section 26 bond release materials. (BEB)

    Revised.

15. Follow-up to original item #33: Please provide a response in the Section 26 bond release application to this deficiency similar to that provided in the Section 23 bond release application. Your response to this same item that was provided in the Section 23 narrative is appropriate. (BEB)

    Revised.

16. Follow-up to original item #36: Although the SPGM respread thickness is clear for each grade approval area within the bond release tract, the grade approval area boundaries are faint. Please strengthen the boundaries, and provide the revised map as a .dwg file that can be used in a geographic information system. (WTG)

    Changed font color as requested.

17. Follow-up to original item #40: Although a letter was added to Attachment XI from Mr. Meckle about a truck weight concern, the statement as requested by the original deficiency was not provided. Please provide a signed statement from Mr. Meckle (or other person who weighed the trucks) stating that the 2003 and 2005 weights provided in the bond release application were taken from the E½ and SW¼ of Section 26 and that they are true and correct to the best of his knowledge. A similar signed statement should be added to Attachment XI regarding the 2005 bale count made by BNI staff and, if possible, a concurrence of that count by Mr. Meckle since he did the haying that year. (JRD)

    This concern was discussed with Jim and a verification letter was added Attachment 11.

Section 23

Attachment VI

18. Follow-up to original item # 55: The beginning of the Hydrology discussion on page 6 discusses the provision in NDAC 69-05.2-12-12(7)(a) requiring documentation that the lands to which the release would be applicable are not contributing suspended solids to stream flow or runoff outside the permit area in excess of the requirements set by section 69-05.2-16-04. The discussion covers the grazing and haying practices that have been used to minimize erosion. However, since the downstream sedimentation pond has not been removed and the associated NDPDES discharge point has not yet been released, please also briefly discuss the discharge history over the past five to ten years from this pond and any exceeding of the NDPDES effluent limits. (WTG & BEB)

    Overland flow through impoundments discussed in bond release.

19. Follow-up to original item #57: Table 7, Water Depth of Ponds 23-6 and 23-7, shows that sedimentation Pond 23-7 has been either dry or has only held a minimal amount of water over the past 7 years. NDCC 38-14.1-24.7 requires that permanent ponds be of adequate size for its intended purpose, be designed to achieve stability, have water quality suitable for its intended purpose, discharges that do not exceed NDPDES discharge limitations, and hold water at a reasonably stable level. Please address each of these requirements for Pond 23-7 and its intended use. Also, please include water quality data from permanent Pond 23-6 indicating that the water is suitable for its intended purpose as a livestock watering source. The permit currently does not contain information for expected annual yield calculations for the reclaimed watershed to help demonstrate that the pond will have enough runoff to allow it to function as a developed water resource and will have enough capacity to allow it to function as a developed water resource. This information can be added to the application for Revision 48 to BNCR-8106 if you prefer not to add it to the bond release application for Bond Release No. 7 for BNCR-8106. (GAW)

    Discussed.

20. Follow-up to original item #58: The submission of Revision 48 to BNCR-8106 is sufficient. Once that revision is approved, this deficiency will have been met. (BAJ)

    Item noted.

21. Follow-up to original item #62: Areas in the N½ of Section 23 have previously been identified as an alluvial valley floor. Although mining activities have not been conducted in the AVF, mining has been conducted adjacent to and up gradient of the identified AVF and ground water contributions from the pre-mine coal seams and the described pre-mine seeps and springs may have supplied (in part) water for subirrigation or water table recharge to the alluvial valley. For the bond release application, please simply provide a very short summation of pre-mine versus post-mine levels and quality data for monitoring well 78-2 that is located in the alluvial channel fill of Square Butte Creek to support the statement in the last paragraph of the "Hydrology" discussion on page 8. (BEB)

    Updated.

22. Follow-up to original item #67: The cover hits reported on Line 68 of page 22 still need to be corrected. The Qualified Total Cover value is still not correct. Please correct. (SAS)

    Corrected.

23. Follow-up to original item #72: Please note that the repair of the erosion features near Ponds 23-6 and 23-7 could delay approval of Bond Release No. 7 to Permit BNCR-8601 until this fall. Also, any repair or replacement of the spillways for these ponds or changes that may be needed following the approval of Revision No. 48 could result in further delays of bond release approval. If significant changes or repairs are needed to one or both ponds, we suggest withdrawing the pond areas from the bond release application and including them in a later final bond application for other tracts in Section 23. (JRD)

    As discussed previously with reclamation staff only minor changes are required. BNI has committed to, at the request of the PSC, the addition of rock to a minor cut located southwest of pond 23-6. Gravel or scoria will be added to the embankment of pond 23-6 as requested, and a minor modification will be made to the emergency spillway of pond 23-7 (which will then be rocked to stabilize). These repairs are minor and will be done as soon as weather allows. If the repairs would be delayed, BNI again suggests the tract in section 26, BNI ownership, in which no repairs were noted in the final bond release inspection be bond released. The tract located in Section 23, Meckle ownership, could then be released following the required repairs.

Also, please commit to updating the post-mining hydrologic assessment document, *"Impacts of Mining on Ground Water Resources"* attached to Permit BNCR-9702, to correct the mislabeled study area locations in the second and third paragraphs of Section 3.3.1 with the next revision to that permit.

A replacement page 3.3-1 will be sent to replace your existing copy with an upcoming revision correcting the Range typo.

Prior to approval, BNI will need to provide three copies of each individual bond release application containing all of the necessary information for the areas in each application. This must to be done before we will recommend Commission approval to ensure that each application is complete, accurate and in the final format.

As previously discussed with PSC staff, prior to approval BNI will provide three copies of each bond release application within their respective permits.

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

Sincerely,

Jay M. Volk, Ph.D
Environmental Supervisor