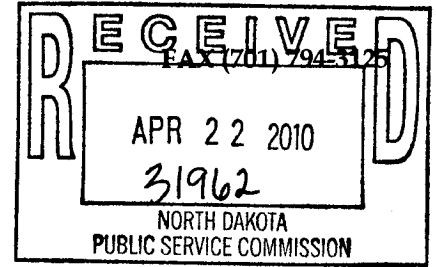


PHONE (701) 794-8734



April 21, 2010

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

FROM DIRECTOR - RECLAMATION DIV.

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

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

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

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

RE: Revision 30 to BNCR-9702

Dear Mr. Deutsch,

This submittal contains a response to your letter to us dated February 10, 2010. In this letter you listed technical deficiencies that must be addressed before the revision can be deemed complete. The following is a listing of the deficiencies followed by our response:

**General**

While we appreciate BNI's effort to convert Permit BNCR-9702 to an electronic format with Revision 30, the organization of the revision changes has made our review a challenge. Please make the following changes to the electronic permit submittal. (All)

1. In the conversion of a paper to electronic permit format, the reference to binder volumes for the paper permit should be abandoned. Retaining a reference to binder volumes with the electronic permit creates arbitrary and distracting divisions in the organizational structure. We suggest that you organize the electronic permit according to the permit's four parts of I - Legal and Financial, II - Extended Mine Plan, III - Environmental Resources, and IV - Operation Plan. Our previous reviews of permit revisions have referenced sections within these parts rather than volumes. We therefore see no benefit to retaining a volume reference in the electronic permit.

*As discussed in our last meeting, BNI added additional headings which specifically illustrate the sections contained within each volume, thus addressing your staffs concerns regarding what sections are contained within specific volumes. Although the PSC may not see a benefit in retaining the volumes within the electronic permit, BNI views this as important feature to our everyday use. Furthermore, BNI does not see any additional benefits in changing the approved format to the suggested four parts as illustrated above. It seems as a request to follow the template of other mines electronic permits which do not necessarily fit well for our intended use.*

**BNI COAL, LTD.  
2360 35<sup>th</sup> Ave SW, Center, ND 58530**

2. We believe that the Revision 30 electronic permit submittal requires fundamental restructuring. The first step in that process should be creating a separate DVD for the electronic version of the approved permit without binder volume references. The DVD for the Revision 30 submittal should build upon the approved permit by adding a revision list of changes in I. - Legal and Financial, similar to the hyperlinked instructions for Revision 30, but without volume references. The Revision 30 changes should be incorporated directly into the approved permit, rather than providing hyperlinks to standalone sections that are changed. All updates, additions, modifications, or deletions anywhere in the permit revision should be clearly marked by underscore or strikethrough in text (unless the entire section is replaced and noted on the page footer), with page footer on added sections or appendices, or revision number and date on plates.

*The problem we have at this time in this request is that we have four revisions out in BNCR-9702 alone. Once we get to a point that our revisions are approved and future revisions occur, I do not see a problem in changing the documents within the permit itself with hyperlinks leading you to them from an instructions page. This request is again more a matter of timing than an issue to change.*

*As we also discussed at our last meeting in that BNI would use the track changes feature in revision 30 as a trial, as we did. Although we will review this issue as revision 30 progresses BNI is seeing additional staff time being spent with this feature and will consider its use at a future date. BNI will discuss this issue with the PSC staff again in the future.*

3. Hyperlinks created to link referenced sections, appendices, or plates of the permit are the most useful tool of electronic permitting for anyone reviewing the permit. Absent a hyperlink, the reviewer must navigate to a main page of the permit to view a referenced document, and navigate a return to the document of primary interest. Aside from hyperlinks on the main pages to sections, appendices, or plates, there do not appear to be any hyperlinks elsewhere in the permit. Please insert hyperlinks throughout the permit for any references to sections, plates, or appendices.

*As we discussed at our last meeting BNI agrees that hyperlinks and bookmarks are important functions within an electronic permit. BNI also stated that due to the time constraints on this revision and having four additional Revisions currently being worked on ( Rev. 27, 30, 31, 32 to BNCR-970, as well as the pre-renewal of BNCR-9401) we will address these as time allows. BNI believes the format the permit was submitted in presents all the information in a manner that is reasonable for permit review, in addition BNI is committed to making these hyperlink and bookmark additions. BNI's main focus of Revision 30 is to permit the additional acreage to BNCR-9702 and then to convert to an electronic copy.*

4. Consideration should be given to consolidating maps that currently consist of various parts or sheets (e.g., pre-mine land use) into a single map of the entire permit area.

*Many maps have been created throughout a significant time span and with considerable differences in technologies. When BNI brings together specific maps the differences in software, digitizing, geo-referencing, and survey accuracies (etc.) can severely reduce the accuracy and quality of a composite map, hence individual maps have been retained which ultimately presents the data more precisely than a composite map would. At this*

*time BNI is only aware of a couple maps that have not been combined. Ultimately, the maps that are not consolidated are clearly labeled and meet permit requirements.*

*This item was also specifically discussed in Tech. No. 31 (Pre-mine Land use map),*

5. The use of bookmarks to break long narratives or sections in subsections is strongly encouraged.

*This was addressed in response No. 3.*

6. BNI is proposing to permit the entire S½ of Section 29; however, no mining (coal removal) will take place on this tract according to the Extended Mine Plan Map, Plate 2.1. NDAC 69-05.2-05-08(1) states that the "permit area shall be no larger than a logical pit sequence and include lands used for activities incidental to coal extraction". The Landowner Notification Map, Plate 1.3-1, does show that a portion of the south side of this tract will be used to store overburden but we question whether it is necessary to permit the entire S½ of Section 29 for use as a stockpile location given the requirements of NDAC 69-05.2-05-08 (1) and the requirements of NDAC 69-05.2-13-05 to minimize disturbances on lands where coal is not removed. Please provide the details of any disturbances proposed in these areas and clearly depict the anticipated disturbance boundary on the appropriate maps as required by NDAC 69-05.2-09-02. Please provide the justification for permitting the entire S½ of Section 29. (GAW)

*Portions of the south half of section 29 are going to be used for associated disturbance which is illustrated on plate 4.1-1. The proposed permit boundary is located on the quarter line which to 1) give a clean line without specific jogs around stockpiles and potential water control features, and 2) an additional area is needed around stockpiles to contain the water. For an addition as this with a final high wall being proposed, BNI does not deem the requested area to be unreasonable.*

### **Newspaper Notice**

7. Please revise the public advertisement to clearly state that the purpose of this revision is to add 676.48 acres of land and indicate the location (at least to the quarter section) of the lands being added. The newspaper notice heading should be "Notice of filing a revision to add area to an existing surface coal mining permit" not a "Notice of application for permit to engage in surface coal mining and reclamation activities". The advertisement should indicate if any operations will be within 100-feet of the outside right-of-ways of any section lines or public roads and if so, those specific areas must be identified or specified in the notice. (GAW)

*The Newspaper Notice has been revised as requested.*

8. The surface and coal ownerships for Section 21 contain duplicate entries for Jeanette Lange and Virginia Miller. Please correct. (SAS)

*The duplicate reference was deleted.*

9. Please modify the newspaper publication notice map in Appendix 1-1 to improve the permit boundary legibility, and to clearly identify the acreage being added to the permit.

The permit boundary line type and the hatching for the acreage added as used on the Landowner Notification Map (Plate 1-3.1) would be suitable for use on the newspaper public notice map. (GAW, WTG, SAS)

*The Publication Notice Map has been revised.*

### **Section 1.9 – Surface and Coal Ownership**

10. The ownership listing for Section 22 is incomplete on pages 1-12 and 1-13. Please include the ownerships for the E $\frac{1}{2}$ NW $\frac{1}{4}$  and NE $\frac{1}{4}$ . [NDCC 38-14.1-14(1)(b) and NDAC 69-05.2-06-01(1)(a)]. (SAS)

*The ownership listings for Section 22 were revised to just include the NW and SW  $\frac{1}{4}$ 's since the requirement is for adjacent owners within one quarter mile. The NE  $\frac{1}{4}$  is not necessary for the same reason.*

11. The contiguous ownership for the NW $\frac{1}{4}$  of Section 23 is missing. Please supply the necessary ownership information. [NDCC 38-14.1-14(1)(b) and NDAC 69-05.2-06-01(1)(a)]. (SAS)

*The ownership for the NW  $\frac{1}{4}$  of Section 23 is not necessary because it is outside the one quarter mile required for adjacent ownerships.*

### **Section 1.10 – Areas Unsuitable for Mining**

12. Please update Section 1.10, Areas Unsuitable for Mining, to address whether the lands being added with Revision No. 30 contain any areas designated as unsuitable for mining as required by NDAC 69-05.2-06-05, or where mining is prohibited for compliance with NDCC 38-14.1-07. It is not clear where the discussion about the current use of the buildings is in the permit. (GAW)

*This item was updated as requested.*

### **Plate 1-1 – Permit Boundary**

13. Please add a written metes and bounds description and plate showing the surveys of the additional land. (MSK)

*Updated as requested.*

14. Please use NAD 27 coordinates to identify the Point of Beginning for all surveys. (MSK)

*Updated as requested.*

### **Appendix 1-2**

15. Please include copies of the federal coal lease for the NW $\frac{1}{4}$ SW $\frac{1}{4}$ , N $\frac{1}{2}$ NW $\frac{1}{4}$  and SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 32. (SAS)

*A copy of the Federal Coal Lease for Section 32 was added with the approval of Revision 27.*

### **Section 3.1 – Topographic Information**

16. Please revise the Limit of Mining Boundary on Plates 3.1-1 and 3.1-2 to coincide with the areas intended to be mined. The pre-mine area slope map should extend to the permit boundary in Section 21 as mining will continue to the west according to the Extended Mine Plan. (MSK)

*The Limit of Mining Boundary was updated on Plates 3.1-1 and 3.1-2. The pre-mine area slope map was corrected to extend to the permit boundary in Section 21.*

### **Section 3.2 – Geology**

17. The drillhole numbers that are depicted on the new Drillhole Location Map of Plate 3.2-1 are not legible at any scale. Also, there are at least four different shaped and colored symbols associated with the drillholes on the map but there is no legend or index on the map to describe what the varying symbols represent. Please consider increasing the font size of the drillhole numbers or eliminate the bolded text so that the drillhole numbers can be read, and provide a map legend to distinguish the differing symbols at the drillhole location sites. (BEB, WTG)

*Replaced as new 3.2-1 with additional information*

18. The Drillhole Location Map of Plate 3.2-1 depicts only one drillhole located within the NW¼ of Section 32, T142N, R84W. Based on BNI's revised Extended Mining Plan Map and other information provided with Revision 30, it appears that it is your intention to mine this quarter-section, and information derived from drillholes at a minimum density of one drillhole per 40 acres is required. Please address this apparent data gap in the NW¼ of Section 32. [NDAC 69-05.2-08-05(2)]. (BEB)

*This gap will be filled with the drillholes needed, due to Federal Coal, BNI waited until a lease agreement was met. These drillholes should be drilled in 2010.*

19. Coal analysis information for Revision 30 that is provided at the end of Appendix 3.2-3 and before Plate 3.2-1 provides coal analysis for only one drillhole, No. 09-102. All other data that is provided for the remaining 16 new/relevant drillholes in that section is overburden analysis information. Please provide the coal analysis information for the remaining new drillholes as required by NDAC 69-05.2-08-05(2) (d). (BEB)

*Updated with other drillholes*

20. NDAC 69-05.2-08-05(2)(f) requires the submission of a thickness isopach map that depicts overburden thickness to the top of the deepest seam to be mined. The current OB thickness isopach map that is provided in Plate 3.2-4 depicts overburden thickness down to the top of the Hagel A seam. Assuming BNI is planning to remove coal from the Hagel B seam, a replacement or additional map needs to be provided that depicts overburden thickness to the top of the Hagel B seam unless BNI can provide reasonable rationale that the map is unnecessary. (BEB)

*Inserted Plate 3.2-5*

21. We have noted that the new Drillhole Location Map of Plate 3.2-1 that is replacing the existing drillhole location map has eliminated the cross-section reference portion of the replaced drillhole location map. Please incorporate the cross-section reference locations (A-A', B-B', C-C') into the new Drillhole Location Map so that the location of the cross-sections is observable, or provide that information on another map. [NDAC 69-05.2-08-05 (2) (e)]. (BEB)

*New Plates were inserted as 3.2-1A, 3.2-1B, 3.2-1C, adjustments made in Section 3.2 also to note new plate numbers.*

22. Several of the new maps that are provided in the geology section with Revision 30 such as the Drillhole Location Map, Overburden Isopach Map, Structural Contour Map and perhaps others, have the sections and section numbers depicted in yellow and all of those maps are set on a white background. The section numbers in particular are difficult to read on these maps and we ask that you please consider changing the color of the sections and section numbers so that the information presented on the map is more visible. (BEB)

*Updated with different color schemes to provide better depictions.*

23. NDAC 69-05.2-08-05 (2)(g) requires that all coal crop lines of the coal seams to be mined be depicted on a map or maps. The previous Overburden Isopach Map and Structural Contour Maps provide that information, although those maps are now being replaced in Revision 30 with maps that do not provide that information. Please incorporate the coal crop line location information into the new maps or provide that information on some other map in the geology section of the permit. (BEB)

*Updated both Plate 3.2-4 and 3.2-5 with croplines*

### **Appendix 3.2-2 – Chemical and Physical Analyses of Overburden**

24. Please rotate page 31 (overburden analysis) to the correct orientation in Appendix 3.2-2. (WTG)

*Completed as requested.*

### **Section 3.3 – Groundwater**

25. Please explain what changes have been made to Section 3.3 Groundwater with Revision 30. Based on a comparison with the approved permit, it does not appear that any changes have been made with this section for Revision 30, but the entire section is being replaced. Is it being replaced because of the addition of Section 3.3.4, and if so, why is this added section titled as 3.3.4? (WTG, MSK)

*The section was misled, per 69-05.2-08-04(3)(a) was added as PHC for groundwater*

26. Plate 3.3-1 represents the Location Map of Active Piezometer Nest which replaces the Location of Groundwater Monitoring Nests, which was also Plate 3.3-1. The new map

has eliminated the inactive/removed/destroyed monitoring well locations that were on the original map and those inactive wells that were eliminated need to be shown on the new map as well, or the locations provided on a different map. Groundwater data has been collected for many years on most of the inactive wells and as new areas at the Center Mine come available for bond release, the submitted hydrologic data of those wells along with a location map will be reviewed for post-mine hydrologic assessment and a location map of those wells is required. Generally, active monitoring wells are depicted on a map in one color and the inactive/removed/destroyed wells are depicted on the same map in a different color. Please restore all of the wells into the new map, or provide a different map with inactive well locations. (BEB)

*Updated with inactive/destroyed wells*

27. The Water Well Location Map in Plate 3.3-5 is not being revised or replaced with Revision 30; however, the permit boundary that is depicted on this map needs to be updated to show the new permit boundary that is proposed with Revision 30. Please revise. (BEB)

*Updated.*

28. The Sheet Sand Potentiometric Surface Map of Plate 3.3-4 is a map that is not being revised or replaced with Revision 30; however, the proposed new permit boundary with Revision 30 needs to be shown on the map. Please revise. (BEB)

*Updated with Plate 3.3-4, additionally updated new permit boundary on Plates 3.3-2, 3.3-3 also.*

29. Plates 3.3-2 and 3.3-3 represent potentiometric surface maps for the Kinneman Creek and Hagel seams, respectively, and are both being replaced with new maps with the submission of Revision 30. The potentiometric surface maps for both of these hydrostratigraphic units need to depict the revised permit boundary, section lines and numbers, north arrow, and the location of Square Butte and Hagel Creeks if possible so that the location perspective of the potentiometric contours, and the location perspective of the monitoring wells used to generate the maps can be viewed. (BEB, WTG)

*Updated on all suggested plates and additionally plate 3.3-4*

### **Section 3.5 – Pre-Mining Land Use**

30. Please update Section 3.5, Pre-Mining Land Use, to account for the acreage being added with Revision 30. A few pages and a plate are being added to Appendix 3.4-2, but the information is incomplete for compliance with NDAC 69-05.2-08-08 and our pre-mine inventory guidelines. It is not clear why page 3.5-7a, Table 3.5-2a and Plate 3.5-1D are listed under Appendix 3.4-2 of the Revision 30 changes. Likewise, prime farmland sections are listed under Appendix 3.6-1 rather than Section 3.7. This is very confusing. (GAW)

*Section 3.5 was updated. Updates include changes to table 3.5-1 (premine landuse acres), 3.5-2a (cropland map unit acres), 3.5-3a (native grassland map unit acres), 3.5-6 (shelterbelt acres), and 3.5-7 wetland acres.*

*Regarding the comments on certain sections being listed under incorrect sections, this was related to the layout of the electronic submittal in which the actual location of these sections are listed in the correct areas within the revision itself, but were misleading in the instructions.*

31. Please create a comprehensive Pre-Mine Land Use Map, Plate 3.5-1A-D, for the entire permit area. The Reclamation Division allowed BNI to use separate Pre-Mine Land Use Maps when Permits BNCR-8704 and BNCR-8901 were consolidated and new acreage was added with Permit BNCR-9702. When acreage was added to this permit with Revision 8 (Sections 6, 7 & 31), we required that Plate 3.5-1B be updated rather than including a separate plate as is being proposed with this revision. (GAW)

*As BNI stated in a previous meeting with PSC staff, the age of the older pre-mine photos and the associated georeferencing does not allow for the creation of a quality composite map. Although BNI tried to entertain the request of the PSC staff, only a degraded map came about, hence why separate maps are approved in the permit. All information is currently in the permit as previously submitted meeting all requirements as written in the regulations.*

32. Please discuss if the existing land uses of the land being added with Revision 30 have changed within the past 5 years. (NDAC 69-05.2-08-08 (3) (a). (GAW)

*Updated as requested in section 3.5.*

### **Section 3.6 – Pre-Mining Vegetation**

33. Please update Table 3.6-2, the potential productivity by soil map unit, to account for the land being added with Revision 30. There are several soil mapping units for the addition area that are not listed in Table 3.6-2. In addition, ecological site mapping units were identified on the native grassland being added, but only range sites are shown in Table 3.6-2. Please provide the information required by NDAC 69-05.2-08-08 (3) and NDCC 38-14.1-14(2)(a)(3). (GAW)

*Table 3.5-3 was added to section 3.5. This table includes acreage of ecological sites by section and landowner for the additional acres being added in revision 30. Additionally, tables 3.6-2 was revised and tables 3-6-3 through 3-6-5 were added to address all soil types and potential productivity for cropland, native grassland, and tame pastureland.. Plate 3.6-1 was also added showing the ecological site types in the native grassland for revision 30.*

34. The National Wetlands Inventory identifies several freshwater emergent wetlands in the S $\frac{1}{2}$  of Section 29 and in the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 32 but only one of these features is identified as a wetland by BNI. Please include a discussion regarding the evaluation of these features and about consulting NRCS during the wetland inventory and identification process as required by our guidelines. These additional NWI wetland features are delineated in Figure 1 below. (GAW)

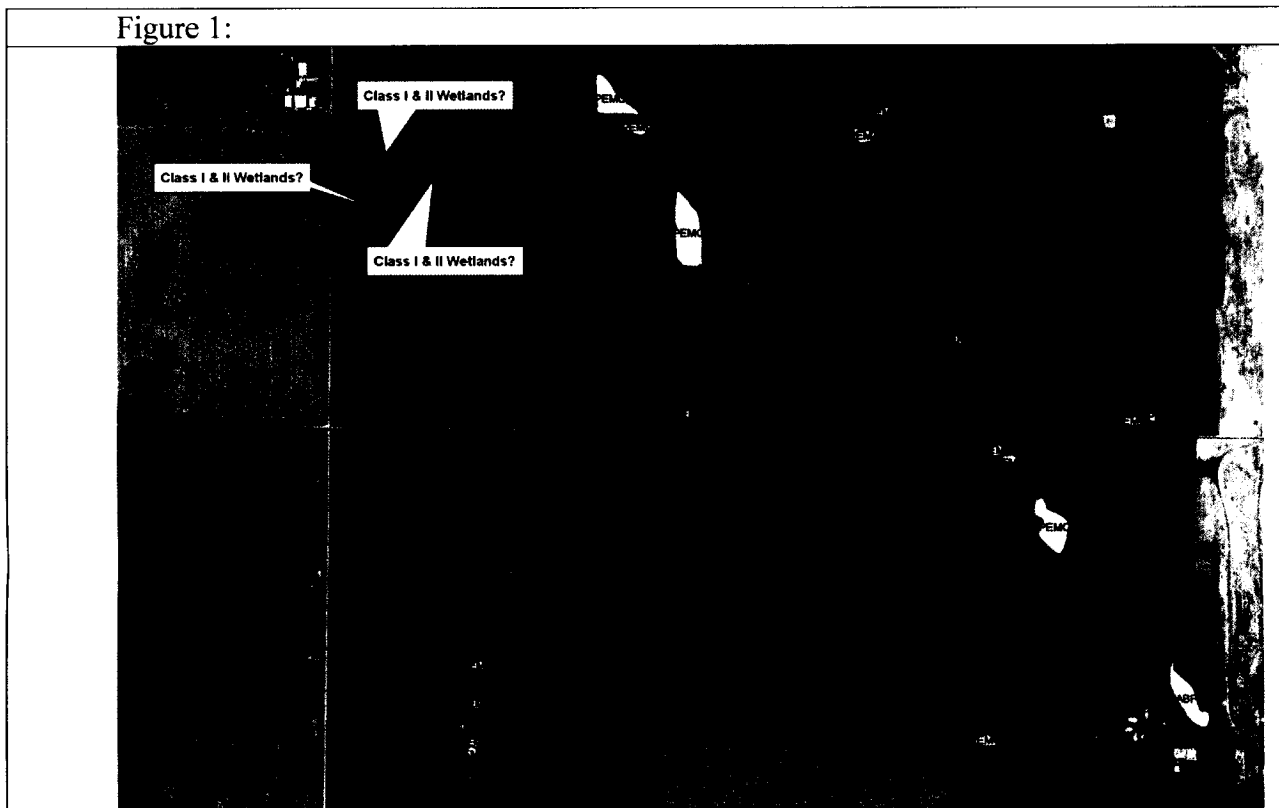


*An intensive ground reconnaissance of the area delineated two temporary and one seasonal wetlands in the permit addition. A conversion of layers from GIS to AutoCad unfortunately deleted the appropriate layers which has now been updated. During the field investigations, three of the NWI wetlands were found not to exist. The NRCS has been sent a letter and map regarding the updated information and is currently under review.*

*With this update the pre-mine landuse map was updated as well as the appropriate text within the permit.*

35. The 2009, 2005 and 2003 NAIP aerial imagery shows what appears might be temporary wetlands in the cropland in the NW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub> of Section 29. Please review and discuss as necessary to clarify. These features are identified in Figure 1 below. (GAW)

*All features were examined in 2009's field season by Kelly Krabbenhoft (KDK) consulting. Per the 2009 field reconnaissance, no hydric parameters were associated with the features identified in Figure 1.*



36. Please include an assessment of the surface water quality of the Class III wetland Revision 30 area as described in the revegetation guidelines and as required by NDAC 69-05.2-08-07(3). (GAW)

*Water quality data from two Class II wetlands, one Class III wetland, and one DWR were added to Appendix 3-6-1a.*

37. Please include and reference (both in the native grassland narrative in Section 3.6 and in methodology Subsection 3 of Appendix 3.6-1) where the ecological sites are delineated on a map as required by NDAC 69-05.2-08-08(1) (as amended January 1, 2009) and show the locations where sampling was conducted on each tract of native grassland. (GAW)

*The five areas where detailed ecological site sampling was conducted are provided on plate 3.6-1. On this same map each ecological site within native grassland areas have been provided.*

38. In Subsection 3 of Appendix 3.6-1a, please thoroughly discuss the methodology used to determine the ecological site similarity index. Describe how total annual yields were estimated on tracts that had been grazed during the growing period and how the sample sites were selected. The narrative in Subsection 3 of Appendix 3.6-1a states that the major ecological site(s) within each tract containing native grassland were sampled, but that is not the case. The native grassland in Tracts 1 and 2 were not sampled. Please explain. (GAW)

*The methodology for determining ecological site similarity indices are provided in Subsection 3 of Appendix 3.6-1a as requested. Clarification of sampling strategy within tracts has been provided.*

39. Please include a description of each soil mapping unit delineated on the native grassland being added with Revision 30 as required by NDAC 69-08-08 (1)(a)(3). (GAW)

*Descriptions for each soil mapping unit was already provided in appendix 3.8-11 (Report by Prairie Soil Consulting) for the NW4 of Section 32-142-84 and the S2 Section 29-142-84. Likewise in appendix 3.8-9 is the report by Nordan Lunde for the NE4 of Section 32-142-84 and Section 21-142-84.*

40. Please include a description of the water conditions in the pre-mine wetlands as required by NDAC 69-05.2-08-08(1)(c)(5). (GAW)

*Water quality data from two Class II wetlands, one Class III wetland, and one DWR were added to Appendix 3-6-1a.*

41. Please include a detailed narrative describing the nature and variability of the vegetation of all of the ecological sites found on the Revision 30 area. Describing the plant community's departure from the Historic Climax Plant Community (HCPC) using the NRCS's established Plant Communities and Transitional Pathways would be one way to meet this regulatory requirement. [NDAC 69-05.2-08-08 (1)(d)]. (GAW)

*Although the information was clearly listed in a manner NRCS has approved and has been using to describe hundreds of thousands of acres in each state, additional references as requested were added to more clearly describe the nature and variability of the vegetation in all ecological sites found within the permit, this information has been provided in subsection 3 of appendix 3.6-1a. Additionally, how the plant communities found onsite depart from HCPC has been more clearly provided as well. In addition, and as requested, the NRCS ecological site descriptions were incorporated into the permit*

*instead of listing a reference website link. Since this request consists of a large amount of data Appendix 3-6-1b was added.*

42. Please remove Appendix 3.6-1a, proposed to be added with Revision 30, from Appendix 3.6-1 Pre-Mining Vegetation Data (pages 165-191) in the approved permit since the Revision 30 material was inserted into the approved permit. (WTG)

*This was an electronic permit issue in which appendix 3-6-1a should be its own document and has been removed from the approved documentation.*

### **Section 3.10 – Fish and Wildlife Resources**

43. The Fish and Wildlife Habitats Map, Plate 3.10-4, must be delineated on aerial photographs in accordance with NDAC 69-05.2-08-15. (GAW)

*A photo was added to Plate 3.10-4.*

44. Please include the methodology used to complete the Section 32 song bird survey, and provide an estimated species population density. (GAW)

*The methodology and population data as requested was added to the permit. It did not make sense nor fit to add this request to 3.10 as requested but instead was added to appendix 3.10-1a where the wildlife monitoring plan layout and results are found for revision 30.*

45. Please discuss if the area being added to the permit contains any high value fish and wildlife habitat (i.e. native grassland, woodlands, shelterbelts, etc. ) or any habitats of unusually high value such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protections, migration routes and wintering areas as required by NDAC 69-05.2-08-15. (GAW)

*This was addressed in the 2<sup>nd</sup> paragraph of section 3.10 – fish and wildlife resources as requested.*

### **Section 3.12 – Cultural Resources**

46. Please provide the letter of acceptance or other documentation from the SHPO indicating that the cultural resource report (2003) for the S½ of Section 29 is acceptable. In addition, please update the Cultural Resource Summary Table in Section 3.12 to indicate that Site 32OL343 is no longer located outside the permit boundary. (DKM)

*SHPO's response to the 2003 report was added to appendix 3-12-2 (SHS Correspondence).*

### **Section 4.1 – Mining Operations and Waste Disposal**

47. Please update Plate 4.1-1 to depict the pit sequencing for all areas (not just those areas that will be mined in a 5-year period) in the permit that will be mined as required by NDAC 69-05.2-09-02(4). We recommend changing the title on the map to the "Pit

Layout and Facilities Map” and also show the location of haul roads, sedimentation ponds, stockpiles and other support facilities. (JRD)

*Plate 4.1-1 was updated to show the locations of the items listed and the title was changed to “Pit Layout and Facilities Map”.*

48. Please update the permit term coal production schedule in this section as required by NDAC 69-05.2-09-01. (WTG)

*The permit term coal production has been updated.*

#### **Section 4.2 – Existing Structures**

49. Please update this section’s narrative and associated plate (map) to address the lands being included with Revision 30. (GAW)

*The narrative has been updated. Plate 4.2-1 General Mine Plan Map was requested to contain the same information as Plate 4.1-1 Pit Layout and Facilities Map, therefore Plate 4.2-1 was deleted from this section and the section 4.2 narrative was updated to reference Plate 4.1-1.*

#### **Section 4.4 – Blasting Plan**

50. Please update the Blasting Map and narrative to include the entire permitted area. (MSK)

*The narrative in Section 4.4-3 has been revised to reflect the additional area and a sketch of a typical blast pattern has been added to the blasting record. Plate 4.4-1 has been updated to reflect the entire permitted area.*

#### **Section 4.6 – Water Management Plan**

*Plate 4.6-1 was updated to reflect current Ponds and Diversions. Diversion 32-1 text within the Section 4.6 Surface Water Management Plan Narrative was also updated from the initial submittal.*

#### **Section 4.11 – Suitable Plant Growth Material Removal and Replacement**

51. Please update this section to provide the suitable plant growth material volumes by ownership for the acreage added with Revision 30, as required by NDAC 69-05.2-09-11-5. (WTG)

*The Section 4.11 Narrative was updated. The SPGM volumes in tables 4.11-1 and 4.11-2 for the proposed acreage addition were updated. Plate 4.11-1 was also updated to include the acreage addition.*

#### **Section 4.12 – Post-Mine Land Use and Revegetation**

52. Section 29 is not included in Table 4.12-1 and the total acres in this table do not equal the current permit acres plus what is being added to the permit with Revision 30. Please make the necessary corrections. (SAS)

*Table 4.12-1 was updated to include the section 29 acres.*

53. Please add a discussion in Section 4.12.2 (including the pre- and post-mine comparison table) on the pre-mine and post-mine land uses for the area being added to the permit in Section 29 similar to what was done for the other tracts. This should be added even though the area will not be mined but only used for support activities. Please place the discussion on page 4.12.2-8 prior to the discussion on Section 31. (SAS, WTG, & GAW)

*Section 4.12-2 was updated to include a pre- and post mine comparison for section 29 as requested.*

54. The Post-Mining Land Use Map, Plate 4.12-1, which was used to update Revision 30, is not the currently approved version but an earlier version. Please update this map to the current approved version of this map. (GAW)

*The correct version of the post mining land use map was used as requested. Also the following changes were made to Plate 4.12-1 as requested in revision 32 to BNCR-9702.*

*As requested in the pre-renewal or revision 32 to 9702 (technical No. 24) the shelterbelt in section 28 that was located on prime farmland soils was relocated north into the pastureland.*

*No changes were made to the technical No. 25 (request to track buck brush re-spread from years past). These areas would be very difficult to track and BNI does not see the regulatory requirement nor the need to track these areas on native grassland.*

*As requested in technical No. 26 of revision 32, buffer zones were added to the wetlands in 28, 32, and 33 which are surrounded by cropland in the post mine setting.*

#### **Appendix 4.12-1**

55. Page 4.12-1-21-2 is the signature page for the Virginia Miller preference statement for Section 21. Please include the first page of this preference statement. (SAS)

*The first page for Virginia Miller's preference statement has been included.*

56. Preference statements for the following surface owners were not included in the revision application. Please include these preference statements or indicate that statements were not received from these surface owners on page 4.12.1-1.

- The remainder of the surface owners in Section 21;
- Arnold Torgerson for the SE $\frac{1}{4}$  of Section 29; and,
- John Yantzer for the SW $\frac{1}{4}$  of Section 29 plus the N $\frac{1}{2}$  and SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 32. (SAS)

*This section contains all received preference statements to date.*

57. Several surface owners within the NW $\frac{1}{4}$  of Section 32, T142N, R84W, have noted in their Land Owner Preference Statements in Appendix 4.12-1 that they wish to have the

existing pre-mine water well left intact and usable and/or restored or saved. We have been unable to find documentation in the permit revision that states BNI's intention to either not disturb this resource or to replace the resource if it is disturbed or destroyed. Please address water supply replacement issues for this well and any other wells that have not been addressed to date in Section 3.3.2.3 and in any other permit section(s) providing data as related to pre-mine developed wells and replacement plans. (BEB)

*BNI updated these concerns in Section 3.3.2.3, with either well replacement or rural water connection.*

#### **Section 4.13 – Fish and Wildlife Resource Protection and Enhancement Plan & Fish and Wildlife Monitoring Plan**

58. Please update the Fish and Wildlife Resources Protection and Enhancement Plan to include a discussion of the enhancement measures that will be used during the reclamation phase on the land being added with Revision 30 to develop aquatic and terrestrial habitat as required by NDAC 69-05.2-09-17 (1) (d). If the plan does not include enhancement measures, valid justification must be included in the permit explaining why enhancement is not practicable. (GAW)

*Updated section 4.13.*

#### **Section 4.14 – Reclamation Cost Estimate for Bonding Purposes**

59. Please update the worst case bond associated with Permit BNCR-9702 to reflect the additional area and mining, including all maps and spreadsheets to reflect the additional area and mining proposed by Revision 30. (MSK)

*The worst case bond had been updated as requested. The worst case bond now reflects the additional permit area and a new worst case bond situation. The limit of Mining Boundary was updated within Plate 4.14-1.*

In addition to the above list of “completeness” deficiencies, we noted the following “technical” deficiencies in the application. These can either be addressed at this time or wait until we conduct a more thorough technical review after the application is deemed complete.

#### **Section 2.1 – Extended Mine Plan**

1. Please remove the boundary denoting Permit BNCR-9401 from the area that has not yet been permitted to the south of current Permit BNCR-9401, similar to how the area is shown west of Permit BNCR-9702 in Sections 19 and 20. (MSK)

*The boundary in question was removed. The extended mine plan was also updated to reflect the most recent mine plan.*

2. Please revise the Limit of Mining Boundary to coincide with the areas actually intended to be mined. For example, in the N½ of Section 28 and in Section 21, mining is still shown well beyond the current Limit of Mining Boundary. As currently depicted the Limit of Mining Boundary tends to infer that a final highwall will be located in that area. (MSK)

*The Limit of Mining Boundary was adjusted to match the planned mining area within Section 28 and was moved out to the proposed Permit Boundary in Section 21. The pit sequences were also updated to reflect the most current plan.*

### **Section 3.4 – Surface Water**

3. Please modify the watershed boundary line types on Plates 3.4-2 and 3.4-3 to show the boundaries as dashed lines as indicated in the map legend. (MSK)

*The line types were corrected. The comparison charts were updated on Plate 3.4-2. The Mining Disturbance Boundary, Post Mine Topography, and Comparison charts were updated on Plate 3.4-3.*

*The section 3.4 narrative relating to Plates 3.4-2 and 3.4-3 was updated to reflect the change in the Post Mine Topography.*

*Plate 3.4-1 General Drainage Map was also updated in Revision #30 from the initial submittal to reflect the current ponds and diversions.*

### **Section 4.8 – Cultural Resources Protection Plan**

4. The Cultural Resources Protection Plan narrative information that is provided in Section 4.8 does not pertain to other items in the Reclamation Section (4.8) and should be relocated to the Cultural Resources Section of the permit in Section 3.12. Please relocate these sections. (BEB)

*No changes were made to this section in revision 30.*

### **Section 4.10 – Backfilling and Regrading**

*The Post Mine Topography was updated within Sections 21, 28 and 32. Plates 4.10-1 and 4.10-2 were updated to reflect the changes.*

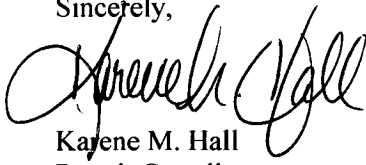
### **Section 4.12 – Post-Mine Land Use and Revegetation**

5. The surface owners of the area being added in Section 21 and most of the surface owners of the area being added in the NW¼ of Section 32 request that their property be returned to its pre-mine land uses, according to their landowner preference statements. However, BNI is proposing to reclaim the cropland and native grassland in Section 21 to hayland and all of the native grassland in the NW¼ of Section 32 (which is comprised mainly of soils poorly suited to cropland) to cropland. Please provide the rationale for changing the post-mine land use from what the landowner has requested or revise Section 4.12-2 to comply with the landowner's preference statement. (GAW)

*These tracts are comprised of multiple owners with different ownership percentages in which only a portion of the landowners have responded to the preference statements. BNI stated in its reclamation plan the intent shown by the owners with the largest ownership percentage. No changes were made at this time.*

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

Sincerely,

A handwritten signature in black ink, appearing to read "Karene M. Hall". The signature is fluid and cursive, with the first name being the most prominent.

Karene M. Hall  
Permit Coordinator