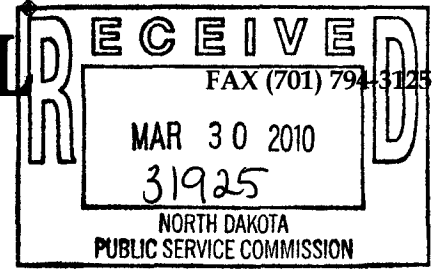
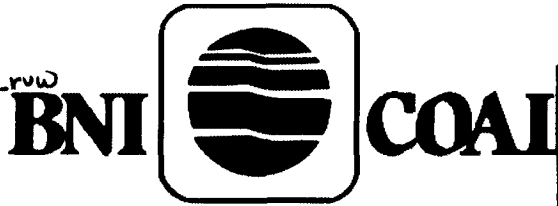


SCANNED

Date 3/31/10 (31925)

File CR 3-30-10-rsp-preren.rvw

PHONE (701) 794-8734



March 30, 2010

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

FROM DIRECTOR - RECLAMATION DIV.

Date: 3-31-10

Action: Store

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

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

RE: Revision 32 to BNCR-9702  
*Renewal 2 to BNCR-9702*  
Dear Mr. Deutsch,

This submittal contains a response to your letter to us dated February 3, 2010. In this letter you listed technical deficiencies that must be addressed before the renewal and revision can be deemed complete. Please note that, with using the "Track Changes" feature, some of the page numbers seem wrong on the submittal. They have been checked in the final viewing and will be correct once submitted in the final format. The link to the Revision 30 documents has been left on the DVD for reference only. The changes to Revision 30 will be submitted separately. Also included on the DVD is the second round submittal of Revision 31 and a separate response letter for Revision 31 is included. The following is a listing of the deficiencies followed by our response:

**Section 1.7 – Business Entity Information**

1. Please update the listing of the corporate officers and board members for BNI and Allete from that currently shown on pages 1-2 through 1-4 if any changes have occurred since the update that was part of Revision No. 27. [NDCC 38-14.1-14(1)(e)] (BEB & SAS)

*The listing of corporate officers and board members for BNI and Allete has been updated.*

2. Please update the organizational chart on page 1-6 to reflect BNI's current structure. (SAS)

*The organizational chart for BNI was updated with Revision 27 and is still current for Revision 32.*

1 RC-10-80 Filed: 3/30/2010 Pages: 8  
Revision Application Filed to Update Plans for the  
Next Permit Term

BNI Coal, Ltd.  
Jay Volk

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

### **Section 1.8 – Description of the Permit Boundary**

3. Please include the point of beginning coordinates in datum plane NAD27 within this section and on Plate 1-1 for both the permit area and the exclusion area. [NDAC 69-05.2-08-01(3)] (MDB & SAS)

*Point of beginning coordinates have been added to Section 1.8 and Plate 1-1.*

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

4. If any changes have occurred, please update the listing of the permit and contiguous surface and subsurface owners from those currently shown on pages 1-9 through 1-22. Any changes should also be reflected on the Ownership Map, Plate 1-2. [NDCC 38-14.1-14(1)(b) and NDAC 69-05.2-06-01(1)(a)] (SAS)

*Ownerships have been updated as requested.*

### **Section 1.11 – Current Surface Mining Permits**

5. Please update the status of the surface mining permits issued to BNI in Table 1.11-1 on page 1-19. [NDCC 38-14.1-14(1)(f)] (MDB & SAS)

*Table 1.11-1 has been updated.*

### **Section 1.12 – Other Licenses and Permits**

6. Please update the list of other licenses and permits issued to BNI from that currently shown on pages 1-19 through 1-20 to provide current expiration dates for the various licenses and permits held by BNI Coal, Ltd. [NDAC 69-05.2-06-04] (BEB, MDB & SAS)

*The listing of other licenses and permits has been updated.*

### **Section 1.13 – Schedule of Past Violations**

7. Please update Section 1.13, Past Violations, to meet the requirements of NDCC 38-14.1-14(1)(g). (MDB & SAS)

*No changes necessary.*

### **Section 1.15 – List of ... Data**

8. Please update the List of Consultants that have furnished technical information for the permit in Section 1.15 to include DSAtlantic Tribble & Richardson Consulting Company that provided most of the ground water hydrology narrative for the Center Mine in Section 3.3. (BEB)

*The List of Consultants has been revised.*

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

9. Please update the Extended Mine Plan Map in Section 2.1 to reflect the current long term mining plans for the Center Mine. (BEB & MDB)

*Plate 2.1 Extended Mine Plan was updated to reflect the most current plan.*

## **Section 3.4 – Surface Water**

10. Since the General Drainage Map; Plate 3.4-1, shows the location of ponds and diversions, please update this map and any related narrative to all ponds and diversions currently in place. (MSK)

*The updated Plate 3.4-1 General Drainage Map was submitted in Revision 30. Revision 30 includes the addition of a proposed pond and diversion.*

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

11. The spring wheat data presented in Table 3.6.2 is outdated. The equivalent PI=100 wheat yield is now 37 bu/ac for Oliver County rather than the 32 bu/ac upon which these values in the table were calculated. Either the values need to be updated or the table footnoted that the data presented is not current. (SAS)

*Table 3.6-2 has been revised in revision 30 as (deficiency #33). With the revision 30 changes the wheat yield was updated as requested.*

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

12. In the first paragraph on page 4.1-1, please reference the various plates that show the various types of information that is required by NDAC 69-05.2-09-02, Operation Plans – Maps and plans. (GAW)

*Dispersed throughout section 4.1 there are references to the relevant plates and other supporting documents. All sections of BNI's approved mining permits handle references in this manner. In our opinion it is more beneficial to include these references within the text where individual permit requirements are being addressed than it would be to have a standalone list preceding the individual section responses.*

13. Please update the tables “Coal Production by Year” and “Projected Area Affected by Year” on pages 4.1-2 and 4.1-3 for the next 5-year term. (MDB & SAS)

*The tables in 4.1-2 and 4.1-3 have been updated.*

14. If necessary, please update the equipment list on pages 4.1-4 thru 4.1-6. (MDB, MSK & SAS)

*The equipment list was updated.*

15. Please update the 5-Year Limited Mine Plan Map, Plate 4.1-1, to reflect the actual mineral removal area for 2009 and to clearly show the area that will be mined during the

next 5-year term for this permit. If mining will continue beyond the next permit term, the projected pit areas for those areas within the current permit boundary should also be depicted. In addition, for areas that have been mined, please delineate the actual areas mined by year. (MDB, SAS & JRD)

*Plate 4.1-1 was updated to show the projected pit areas in the permit and additional areas that are anticipated to be mined in the future. The title was changed to "Pit Layout and Facilities Map" as requested in Revision 30.*

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

16. Please review and update Plate 4.2-1, General Mine Plan Map, as necessary, for the next permit term for compliance with NDAC 69-05.2-09-02. The items listed below were identified as needing to be updated by the Reclamation Division:
- a) The permit boundaries (exclude bond released areas).
  - b) The location of all proposed and existing spoil and SPGM stockpiles in accordance with NDAC 69-05.2-09-02(4).
  - c) Existing and proposed utility corridors, substations/transformer boxes, ponds, and drainages.
  - d) Existing county roads and those that will be constructed on reclaimed lands.
  - e) Proposed and existing haul road corridors.
  - f) Highwall areas to be backsloped.
  - g) Existing and planned buildings and other support facilities.
  - h) The additional bond release areas approved since 2005. (GAW, MSK & SAS)

*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**

17. A copy of the blasting record is shown on the last page of this section; however, the record is incomplete. NDAC 69-05.2-17-07(15) states the record must also include a sketch of the pattern, including the number of holes, burden, spacing, decks and delay patterns. We understand that each blast is unique in design and timing; however, each "Record of Blasting Operations" form needs to include a sketch of the blast with the appropriate information. (MDB)

*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 additional permit area, both the map and narrative has been submitted as requested in Revision 30.*

#### **Section 4.5-1 – Transportation Plan Narrative**

18. Please update the Permit Boundary and Overall Road Plan on Plate 4.5-1 to specifically include all haul roads that have been built and certified. (MSK)

*Plate 4.5-1 was updated in Revision #31 to BNCR 9702.*

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

19. Please update the Surface Water Management Plan, Plate 4.6-1, to specifically include all ponds and diversions. Please ensure all ponds are labeled correctly. (MSK)

*The updates that are necessary to section 4.6 are contingent upon the approval of the additional acreage requested in Revision 30. Since this does not apply to revision 32, no update has been submitted in this response. An update to all of section 4.6 has been prepared and will be submitted in our response to the technical deficiencies of Revision 30.*

20. Please review the watershed sizes and conditions in reclaimed areas to ensure the sedimentation ponds controlling runoff from these areas are adequately sized. (JRD)

*BNI monitors the watershed conditions of all ponds on a continual basis. Additionally, a formal engineering certification of the adequacy of all ponds within the permit is submitted annually in accordance with NDAC 69-05.2-16-09(19). At this time we have no reason to believe that there have been any substantial changes to the watershed conditions of any ponds since the last engineering certification was submitted in July of 2009. The next engineering certification will be submitted in July of this year.*

## **Section 4.9 – Reclamation Schedule**

21. Please update the Reclamation Schedule discussion to include the next permit term. Also, please review and update as appropriate the dates of reclamation for ponds and haul roads. (SAS)

*Section 4.9 and Plate 4.9-1 have been modified to address this deficiency.*

22. Please update the discussion on the need for variances beginning on page 4.9-1 to reflect the current status of these areas. If additional areas will need a variance from either the 180-day grading or 3-year contemporaneous reclamation requirement, the appropriate justification will need to be provided. For previously approved variance areas that are now reclaimed, please retain the discussion in the narrative and continue to show them on the map, but add notes to indicate when reclamation was completed on these areas. If new variance areas are proposed, they also need to be reflected on the Reclamation Variance Areas Map, Plate 4.9-1. (MSK & SAS)

*Section 4.9 and Plate 4.9-1 have been modified to address this deficiency.*

23. Please update the discussion on the buffer area surrounding the Section 3 Ash Disposal Pit to include the timing of the respread of the thin layer of subsoil and seeding of the area since the current schedule as listed is not current. (SAS)

*Section 4.9 and Plate 4.9-1 have been modified to address this deficiency.*

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

24. Prime farmland soils have been respread along the north edge of the SE $\frac{1}{4}$  of Section 28, but a large multi-row shelterbelt about 75 feet wide is planned at this location. NDAC

69-05.2-26-05 (a) requires that crop productivity be initiated within 10-years after completion of soil replacement. This shelterbelt is too wide to be considered a typical field windbreak. The requirements of NDAC 69-05.2-26-05 will not be met if the approved post-mine land use is shelterbelt instead of cropland. We recommend relocating this shelterbelt off areas that will be respread with prime farmland soils. (GAW)

*The shelter belt that was located in the prime farmland has been relocated as requested. This change was updated in revision 30 as the changes were made to the post mining land use map in deficiency # 54.*

25. On Plate 4.12-1, Post-Mining Land Use, please identify the locations where buckbrush has been directly respread on reclaimed native grassland. (GAW)

*The buckbrush locations were added to the post mining land use map in revision 30 as the changes were made to the post mining land use map in deficiency #54.*

26. Please identify perennial vegetation buffer zones that are to be created around the wetlands that are surrounded by cropland in Sections 28, 32 and 33 in compliance with NDAC 69-05.2-22-07 (3) (e). (GAW)

*Buffer strips were identified on the post mining land use map in revision 30 as the changes were made to the post mining land use map in deficiency #54.*

27. Please update the SO1 South and B13 North Silty Reference Area tables and associated narrative in Section 4.12.4-3 & 4 with data from 2008 and 2009. (GAW)

*Data for SO1 and B13 has been updated as requested in revision 30.*

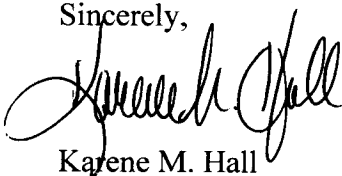
#### **Section 4.14 – Reclamation Cost Estimate for Bonding Purposes**

Please update the Worst-Case Reclamation Cost Estimate to reflect the new worst-case reclamation scenario that will occur during the next 5-year permit term. This includes revising Plate 4.14-1, Worst Case Bond Calculation Map, to show new worst-case pits and SPM and spoil haul distances. The worst-case calculations will also need to be updated using the July 2009 variable costs. (MDB)

*The worst case bond has been modified to reflect a new worst case bond situation. It should be noted that new worst case bond assumes that the additional permit areas requested in Revision 30 will be approved.*

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

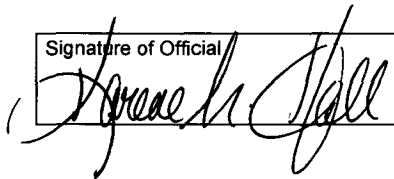
Sincerely,



Karene M. Hall  
Permit Coordinator

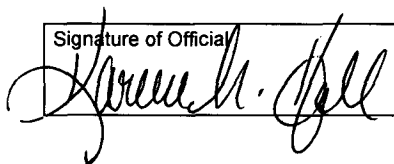


- c. An assessment of the probable cumulative impact of all anticipated mining in the general area on the hydrologic balance as specified in subdivision o of subsection 1 of Section 38-14.1-14 has been made and the proposed operation has been designed to prevent material damage to the hydrologic balance both on and off the mine site;
  - d. The area proposed to be affected is not included within an area designated unsuitable for all or certain types of surface coal mining and is not within an area under study for such designation in an administrative proceeding;
  - e. The proposed surface coal mining operation will not interrupt, discontinue or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated and will not materially damage the quantity or quality of water in surface or underground water systems that supply these alluvial valley floors; and
  - f. The permit revision applicant has the legal right to surface mine the land for which this permit revision application is made and all of the requirements of Chapter 38-18 of the North Dakota Century Code have been complied with.
3. The area proposed to be affected is not included within an area where mining is prohibited pursuant to Section 38-14.1-07 of the North Dakota Century Code; unless specifically allowed in accordance with the provisions of Section 69-05.2-04-01 of the North Dakota Administrative Code; and
4. The surface coal mining and reclamation operations contained in this permit revision application will be carried out at all times in a manner which ensures that all of the requirements of Chapter 38-14.1 of the North Dakota Century Code, Article 69-05.2 of the North Dakota Administrative Code, and any permit conditions attached thereto are complied with.

Signature of Official 	Title Permit Coordinator
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**VERIFICATION**

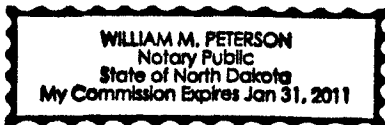
I, Karene M. Hall, being first and duly sworn, verify that the information contained in this Permit Revision Application is true and correct to the best of my knowledge and belief.

Signature of Official 	Title Permit Coordinator
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STATE OF North Dakota )  
 ) ss.  
 COUNTY OF Oliver )

Subscribed and Sworn before me, this 29th day of March, 2010.

(SEAL)



William M. Peterson  
 Notary Public

My Commission Expires: \_\_\_\_\_