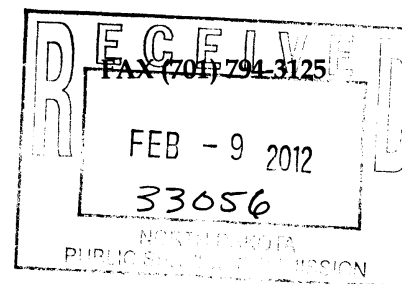


PHONE (701) 794-8734



February 9, 2012

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

RE: Completeness Review for BNCR-1101

Dear Mr. Deutsch,

This submittal contains a response to your letter to us dated January 11, 2012. In this letter you listed technical deficiencies that must be addressed before the permit application for BNCR-1101 can be deemed complete. Below is a listing of the deficiencies followed by our response:

General

In numerous places throughout the permit as noted in some following deficiencies, the narrative, labels, or legends refer this permit area as Area C. As changes are made to the permit narrative, tables, plates, and appendices as a result of the completeness and technical reviews, we recommend that the references to Area C be changed to BNCR-1101. (WTG)

As recommended, BNI, to the best of our ability, has changed Area C references to BNCR 1101. However there were a few cases (i.e. 4.12-5 and 3.6-3) where we were unable to change the text, as this was contractor data, and was provided to us in PDF format. If altered the text becomes un-readable. In addition all appendices/tables/narratives/etc have been updated to be numbered and labeled at the top of the page or on a cover page.

On numerous plates throughout the permit as noted in following deficiencies, the BNCR-1101 permit boundary requires clearer definition as required by NDAC 69.05.2-05-02(1), whether the Adobe Reader image was exported from ArcMap or AutoCAD. On Plate 1.9-1 Surface and Coal Ownership, for example, identification of the BNCR-1101 permit area polygon is aided by the light green fill color, but the solid magenta line representing the permit boundary is concealed by the overlying solid turquoise line representing the BNCR-9401 permit boundary. Definition of the BNCR-1101 and BNCR-9401 permit boundary is further obscured by the absence of labels and similar line type used to represent the current and proposed addition BNCR-9401 permit boundary. For plates of this type exported from ArcMap, we believe that a specific prominent line type for permit boundaries and use of permit number labels, or "not permitted" labels, are preferable to colored line permit boundaries defined in a map legend for purposes of clarity.

Please revise the line type and use permit labels as necessary to improve the permit boundary clarity for plates exported from ArcMap. For plates exported from AutoCAD, the solid colored line representing the permit boundary is often difficult to distinguish from black section lines of the same weight. On Plate 4.1-1 Pit Layout and Facilities Map, for example, the permit boundary is obscured in part by section lines and roads. For plates of this type exported from AutoCAD, we believe that a specific prominent line type for permit boundaries would improve clarity for plates exported from AutoCAD. Please also note that section lines and labels for Sections 5, 6, and 31 are absent from numerous plates exported from AutoCAD. Township and section lines must be depicted and labeled within the permit boundary as required in part by NDAC 69.05.2-08-02(1)(b). (WTG/GAW/MSK/MDB)

As requested, we have changed all boundary lines in both ArcMap and AutoCAD to have a consistent line type and colors. BNCR 1101 Permit boundary has a heavier line weight and is placed in back of existing permit boundaries, in order to show where boundaries meet. In addition to line type and colors, we have added labels for all BNI permit boundaries. Missing section lines and section numbers have been corrected in Sections 5, 6, and 3.

Please check all of the links in the narrative portions of Sections 3.5 (Pre-Mining Land Use), 3.6 (Pre-Mining Vegetation), 4.12 (Revegetation and Post-Mining Land Use) and 4.13 (Fish and Wildlife) to ensure that they work as planned. In many instances the links take the reader to tables, appendices and plates other than that intended. For example, Section 4.12-2, Determining Reclamation Success, opens rather than the Appendix 4.12-2, Pre/Post Mine Land Use Discussions, when the link is clicked in the Operations Plan Section of the permit. Also, the name of the Section, Table or Appendix must be placed at the top of each page of these documents so that it is clear which document has been opened. NDAC 69-05.2-05-02 (GAW/RLK)

As requested all links in Sections 3.5, 3.6, 4.12, and 4.13 have been checked and corrected or updated when appropriate.

Permit and Section Home Pages

Please edit either the permit or section home pages to correct the following inconsistencies: (1) Section 3 is titled as **Environmental Resources** on the permit Home Page, but it is titled as **Geology** on the Section 3 Home Page, and (2), Section 4 is titled as **Operations** on the permit Home Page, but it is titled as **Operations Plan** on the Section 4 Home Page. (WTG)

Updated as requested.

1. LEGAL AND FINANCIAL INFORMATION

Permit Application (SFN 10552) and Appendix 1.5

1. Please include the legal description (section, township, and range) of the acreage included in the proposed permit on the first page of the application. This information is not included in the referenced attached sheet which is a metes and bounds description. (GAW)

The legal description for acreages, section, township and range has been included as requested.

Appendix 1.5-1 Notice of Publication (Newspaper Advertisement)

2. The second sentence in the first paragraph indicates that only parts of a number of sections are being permitted when actually all of the acreage in some sections is included in the proposed permit. Please correct this error. (GAW)

This sentence was revised as requested.

3. Please edit the last sentence in the first paragraph to clarify that a petition to designate an area as unsuitable for surface coal mining operations must be filed within thirty days of the last publication of the notice. (GAW)

Updated as requested.

4. Please revise the sentence preceding the listing of surface and coal ownership to remove the phrase "... that will be affected by the revised plans..." so the sentence will read "*The legal description and names of the apparent surface and mineral (coal) owners of the land in the permit area are as follows:*". (WTG)

Updated as requested.

5. As required by NDCC 38-14.1-18(1), and as noted in a similar deficiency in Section 1.9 Surface and Coal Ownership, please clarify if Opp Limited Partnership is a successor to its members Allen E. Opp and Fern O. Opp. If it is not, the two individual members of Opp Limited Partnership should be listed as surface or coal owners in the W½ of Section 7, and the NE¼NW¼, and Lots 1 and 2 of Section 18, T141N, R83W rather than Opp Limited Partnership. (WTG)

Opp Limited Partnership was changed to Allen E. Opp and Fern O. Opp as owners in the publication notice. Opp Limited Partnership was left in the surface and coal ownership in Appendix 1.9-1 along with the two owner's names, as is indicated on the actual lease document.

6. As required by NDCC 38-14.1-18(1), and as noted in a similar deficiency in Section 1.9 Surface and Coal Ownership, please clarify if Five D's LLP is a successor to its members David Erhardt, Delphine Vetter, Doretta Bornemann, Danita Deichert, and Dean Erhardt. If it is not, the five individual members of Five D's should be listed as surface or coal owners in the S½ of Section 8 (with the exception of Lot A) and the E½ of Section 17, T141N, R83W, rather than Five D's LLP. Please note that the surface ownership lease (9046) for the S½ of Section 8 (with the exception of Lot A) and the E½ of Section 17, T141N, R83W is with Five D's LLP signed by its five members, but the coal ownership lease (9047) for the SW¼ and the NE¼SE¼ of Section 8 and the E½ of Section 17, T141N, R83W is with its five members. (WTG)

The Five D's title was changed to the 5 owners' names in the publication notice. It was left as the Five D's along with the names in Appendix 1.9-1 as indicated on the actual lease document.

7. As required by NDCC 38-14.1-18(1), please clarify if the tract owned by John Strand (St. Lucas Cemetery) is located in the NW $\frac{1}{4}$ as described in the Newspaper Advertisement, or the NE $\frac{1}{4}$ of Section 18, T141N, R83W. It is depicted in the NE $\frac{1}{4}$ on Plate 1.9-1 Surface and Coal Ownership, and USA coal ownership restricted to the NE $\frac{1}{4}$ indicates that it should be described as in the NE $\frac{1}{4}$ of the section. (WTG)

The cemetery is located in the NW $\frac{1}{4}$ of Section 18 as indicated in the notice. Plate 1.9-1 was updated to show the correct location.

8. Please clarify if Peter Jr. & Margaret Pflieger are the correct listing for coal ownership in the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 18, T141N, R83W. Plate 1.9-1 Surface and Coal Ownership and Appendix 1.9-1 Ownership Information (within Permit Boundary) have the names listed as Margaret (Peter Jr.) Pflieger. (WTG)

Peter Jr. is deceased. All references of his name have been removed and the ownership is listed as Margaret Pflieger only.

9. As required by NDCC 38-14.1-18(1), and as noted in a similar deficiency in Section 1.9 Surface and Coal Ownership, please list the names of Douglas D. Doll and James D. Pazdernik (and Bonita if applicable) as the apparent surface and partial coal owners instead of the abbreviation of Doll and Pazdernik for ownership in the NE $\frac{1}{4}$ of Section 20, the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 20, the NW $\frac{1}{4}$ of Section 21, and the SE $\frac{1}{4}$ of Section 21, T141N, R83W, on Plate 1.9-1 Surface and Coal Ownership. (WTG)

Revisions have been completed as requested.

10. It appears that Audrey A. Peterson should also be listed as a Remaindermen for the Anton Friesz Life Estate surface and coal ownership in the NE $\frac{1}{4}$ of Section 28, T141N, R83W, according to information presented in Appendix 1.9-1 Ownership Information (within Permit Boundary) and Appendix 1-2 Certified Copies of Leases and Assignment Documents. Please review and correct as necessary. (WTG)

Updated as requested.

11. It appears that Mark R. Fuchs should also be listed as a Remaindermen for Frances Fuchs surface ownership in the S $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 12, T141N, R84W according to information presented in Appendix 1.9-1 Ownership Information (within Permit Boundary) and Appendix 1-2 Certified Copies of Leases and Assignment Documents. Please review and correct as necessary. (WTG)

Updated as requested.

12. It appears that coal ownership for Larry Dresser and Remaindermen Brian Dresser is listed twice for the S $\frac{1}{2}$ of Section 12, T141N, R84W because it is listed both at the top and bottom of the column. Please review and correct as necessary. (WTG)

The second listing for Larry Dresser and the Remainderman has been removed.

13. As required by NDCC 38-14.1-18(1), and as noted in a similar deficiency in Section 1.9 Surface and Coal Ownership, it appears that the quarter line for the NE $\frac{1}{4}$ and the SE $\frac{1}{4}$ of

Section 31, T142N, R83W has been inadvertently shifted to the north about 320 feet enlarging the appearance of the SE¼ of Section 31 by about 17 acres on Plate 1.9-1 Surface and Coal Ownership. A close inspection reveals that the accurate quarter line placement coincides with the short line segment underlining a portion of the “*Coal Ownership: Kathleen Windhorst - 100%*” label thereby placing a very small tract of the NE¼ of Section 31 within the BNCR-1101 permit boundary. As a result, the Newspaper Advertisement must be corrected to include surface and coal ownership for that portion of the NE¼ of Section 31. Plate 9A Ownership Map for Permit BNCR-8106 appears to indicate that BNI Coal, Ltd. owns the surface for this small tract and Kathleen Windhorst owns the coal, but page 31 of Appendix 4.12-2 of the BNCR-1101 permit application states that Kathleen Windhorst is the surface owner. Please resolve the question of surface ownership, and correct the advertisement to include surface and coal ownership for the NE¼ of Section 31 within the permit boundary. (WTG/GAW)

Revisions have been completed as requested.

14. In the section line, county road closures, and relocation portion of the advertisement, please clarify the duration of the permit term and the expected time period of the road closure. Stating that the road will be closed during the permit term does not provide the reader a meaningful time period. In addition, please expand the narrative regarding the temporary relocation of the county roads to clearly state which county road or roads will be closed and where traffic will be routed as required by NDAC 69-05.2-10-01 (1) (d). It appears that the existing county roads (35th Avenue SW and 27th Street SW) located between Sections 13 and 24, 18 and 19, 19 and 20, and 29 and 30 should be included in the relocation corridor. NDAC 69-05.2-10-01 (GAW)

Updated as requested.

15. Please review and revise the last paragraph of the newspaper advertisement to resolve the apparent contradiction between the third paragraph of Section 1.10 Areas Unsuitable for Mining stating that section lines “...will be closed or we will request approval to work within the 100 feet of the right-of-way” and the newspaper advertisement that states “No surface coal mining operations will be located within 100 feet of the outside rights-of-way of any of these county and section line roads until they are closed ...”. (WTG)

Updated as requested.

16. Please revise the last paragraph of the newspaper advertisement to remove the last two sentences because they are repeated from the previous two sentences. (WTG)

Updated as requested.

17. As required by NDAC 69-05.2-10-01-1(b), please make the following revisions to the newspaper advertisement map: (WTG/GAW/BEB)
 - a. Label the permit area as BNCR-1101 rather than Area C;
 - b. Label the east-west state highway through Center as ND Highway 25 rather than County Hwy 25, and extend the highway route to the western extent of the map;
 - c. Add north-south ND Highway 48 to the map, label it properly, and extend the highway route to the northern extent of the map from its intersection with ND Highway 25 in Center;

- d. Add the following major county roads to the map and label them properly: north-south 37th Avenue SW along the entire length of the western permit boundary; north-south 35th Avenue SW through the center of the entire permit area; east-west 27th Street SW through the southern half of the entire permit area; and, east-west 28th Street SW across the western half of the permit area along, or one-half mile north of, the southern permit boundary;
- e. Extend the Hagel Creek route to the western extent of the map; and,
- f. Reposition the labels for Hagel Creek as well as Sections 5 and 6 to make them legible;
- g. Please remove the “BNCR-9401 Addition” label in the NE¼ of Section 8 since this tract has not yet been permitted.

Revisions have been completed as requested.

Appendix 1.5-2 Landowner Notification Letters

18. The Surface and Coal Ownership Map, Plate 1.9-1, shows that Larry and Virginia Schmidt own the NW¼ of Section 17 and the E½ of Section 18 but a surface ownership notification letter is not included in Section 1.5.2, Land Owners Notification letters to Larry and Virginia Schmidt. Larry and Ginger Schmidt were notified as owners of the NW¼ of Section 8. Please review and clarify as necessary. (GAW)

Larry and Virginia Schmidt have been sent notification as well as updated Landowner Notification Map

19. As required by NDCC 38-18-06(1), it does not appear that Great River Energy, owner of Lot A in the SE¼ of Section 8, T141N, R83W, was given notice of the type of land disturbance or mining operation contemplated by BNI Coal, Ltd. before the BNCR-1101 permit application was submitted to the Commission based on our review of Appendix 1.5-2. Please review and provide notice to Great River Energy if necessary. (WTG/GAW)

Great River Energy has been sent notification as well as a Landowner Notification Map.

20. As required by NDCC 38-18-06(1), it does not appear that John Strand, owner of the St. Lucas Cemetery in the NE¼ of Section 18, T141N, R83W, was given notice of the type of land disturbance or mining operation contemplated by BNI Coal, Ltd. before the BNCR-1101 permit application was submitted to the Commission based on our review of Appendix 1.5-2. Please review and provide notice to John Strand if necessary. (WTG)

Per the updated information, Susan Jones is the owner of this tract. A landowner notification letter and map have been sent and is now included in the permit.

21. Page 31 of Section 4.12.2, Pre-mine and Post-mine Land Use Discussions, states that Kathleen Windhorst is the surface owner of a small portion of the N½ of Section 31, T142N, R83W, but she has not been notified for compliance with NDCC 38-18-06 (1). Please review and provide notice to Kathleen Windhorst if necessary. (GAW)

Kathleen Windhorst has been sent notification as well as a Landowner Notification Map. Since sending notification, surface ownership of this parcel has been corrected to being owned by BNI Coal, Ltd as per the Warranty Deed now included in the permit.

Plate 1.5-2 Landowner Notification Map

22. The Landowner Notification Map, Plate 1.5-2, does not depict the mining that is scheduled to occur in Section 9, the SE¼ of Section 8, and NW¼ of Section 16 as shown on Pit Layout and Facilities Map (Plate 4.1-1). NDCC 38-18-06 (1) requires that the mineral developer fully disclose the type and extent of the disturbance planned on each surface owner's property. Please correct and re-submit the Landowner Notification Map to the affected surface owners. (GAW/BEB)

The Landowner Notification Map has been corrected to depict mining in Section 9, SE4 of Section 8, and NW4 of 16.

Landowners affected by this change (Minnkota Power, Five D's, and Larry & Virginia Schmidt) have been sent notification as well as updated Landowner Notification Map.

Section 1.8 Metes and Bounds Description of Permit Area

23. As required by NDAC 69.05.2-05-02(1), please label the permit area as BNCR-1101 on Plate 1.8-1, and revise the plate title to be consistent with the plate name listed in the Table of Contents. (WTG)

Updated as requested.

Plate 1.9-1 Surface and Coal Ownership

24. As required in part by NDAC 69.05.2-08-02(1)(b), please label the township and range boundaries on Plate 1.9-1. (WTG)

Revisions have been completed as requested.

25. As required by NDAC 69.05.2-05-02(1), please clarify the BNCR-1101 permit boundary on Plate 1.9-1 with a specific prominent line type and permit number labels of adjoining permits to improve the permit boundary clarity. (WTG)

Revisions have been completed as requested.

26. As required by NDAC 69.05.2-08-02-1(a), please list the name(s) of the surface and coal owners on Plate 1.9-1 for the unpermitted area in the N½NW¼ Section 5, T141N, R83W, and color code the parcel light blue signifying that it is land within one-quarter mile of the BNCR-110 permit boundary. (WTG)

Revisions have been completed as requested.

27. As required by NDAC 69.05.2-08-02(1)(a), please define and label BNI Coal, Ltd. permitted lands adjoining the BNCR-1101 permit boundary as being within one-quarter mile of the BNCR-1101 permit boundary. In Permit BNCR-9401, the E½ of Section 5 is defined as being within one-quarter mile of the BNCR-1101 permit boundary and ownership is labeled,

but the permitted portion of BNCR-9401 in the W½ of Section 5 is treated as being beyond one-quarter mile of the BNCR-1101 permit boundary. Similarly in Permit BNCR-8106, the E½ of Section 31 is defined as being within one-quarter mile of the BNCR-1101 permit boundary and ownership is labeled, but the permitted portion of BNCR-8106 in the W½ of Section 31 is treated as being beyond one-quarter mile of the BNCR-1101 permit boundary. (WTG)

Revisions have been completed as requested.

28. As required by NDAC 69.05.2-08-02(1)(a), and as noted in a similar deficiency for the Newspaper Advertisement, please clarify if Opp Limited Partnership is a successor to its members Allen E. Opp and Fern O. Opp. If it is not, the two individual members of Opp Limited Partnership should be listed as surface or coal owners on Plate 1.9-1 in the W½ of Section 7, and the NE¼NW¼, and Lots 1 and 2 of Section 18, T141N, R83W rather than Opp Limited Partnership. (WTG)

Opp Limited Partnership was changed to Allen E. Opp and Fern O. Opp as owners in the publication notice. Opp Limited Partnership was left in the surface and coal ownership in Appendix 1.9-1 along with the two owner's names, as is indicated on the actual lease document.

29. As required by NDAC 69.05.2-08-02(1)(a), and as noted in a similar deficiency for the Newspaper Advertisement, please clarify if Five D's LLP is a successor to its members David Erhardt, Delphine Vetter, Doretta Bornemann, Danita Deichert, and Dean Erhardt. If it is not, the five individual members of Five D's should be listed as surface or coal owners on Plate 1.9-1 in the S½ of Section 8 (with the exception of Lot A) and the E½ of Section 17, T141N, R83W, rather than Five D's LLP. Please note that the surface ownership lease (9046) for the S½ of Section 8 (with the exception of Lot A) and the E½ of Section 17, T141N, R83W is with Five D's LLP signed by its five members, but the coal ownership lease (9047) for the SW¼ and the NE¼SE¼ of Section 8 and the E½ of Section 17, T141N, R83W is with its five members. (WTG)

The Five D's title was changed to the 5 owners' names in the publication notice. It was left as the Five D's along with the names in Appendix 1.9-1 as indicated on the actual lease document.

30. As required by NDAC 69.05.2-08-02(1)(a), and as noted in a similar deficiency for the Newspaper Advertisement, please list the names of Douglas D. Doll and James D. Pazdernik (and Bonita if applicable) as the apparent surface and partial coal owners instead of the abbreviation of Doll and Pazdernik for ownership in the NE¼ of Section 20, the S½SW¼ of Section 20, the NW¼ of Section 21, and the SE¼ of Section 21, T141N, R83W on Plate 1.9-1. (WTG)

Revisions have been completed as requested.

31. As required by NDAC 69.05.2-08-02(1)(a), and as noted in a similar deficiency for Appendix 1-2 Certified Copies of Leases and Assignment Documents, please determine the coal ownership in the NE¼ of Section 20, T141N, R83W on Plate 1.9-1. (WTG)

BNI has contacted the appropriate parties involved in the mineral ownership and made them aware of the respective title defects on this tract. The appropriate parties are working towards obtaining the required documentation needed prior to BNI being able to lease the ownership. Once the appropriate documents are recorded and then leased, BNI will update the correct ownership. At this time there is still a defect in title which does not make it able to lease.

32. As required by NDAC 69.05.2-08-02(1)(a), and as noted in a similar deficiency in Appendix 1.9-2 Adjacent Ownership Information (within ¼ mile), please clarify surface and coal ownership in the SE¼ of Section 23 and the NE¼ of Section 26, T141N, R84W on Plate 1.9-1. Ownership is listed as Darrin and Bruce Hoger in the SE¼ of Section 23, but surface ownership is listed as Darrin Bruce Hoger in the NE¼ of Section 26. (WTG)

Revisions have been completed as requested.

33. As required by NDAC 69.05.2-08-02(1)(a), and as noted in a similar deficiency for the Newspaper Advertisement, it appears that the quarter line for the NE¼ and the SE¼ of Section 31, T142N, R83W has been inadvertently shifted to the north about 320 feet enlarging the appearance of the SE¼ of Section 31 by about 17 acres on Plate 1.9-1. A close inspection reveals that the accurate quarter line placement coincides with the short line segment underlining a portion of the “Coal Ownership: Kathleen Windhorst - 100%” label thereby placing a very small tract of the NE¼ of Section 31 within the BNCR-1101 permit boundary. Please move the quarter line southward to its accurate location, and use leaders to legibly label the three small adjoining tracts. (WTG/GAW)

Revisions have been completed as requested.

34. As required by NDAC 69.05.2-08-02(1)(a), please review and revise the following additional ownership listings as necessary to ensure that ownership listed on Plate 1.9-1 is correct and consistent with that listed in the Newspaper Advertisement, Appendix 1.9-1 Ownership Information (within Permit Boundary), and Appendix 1-2 Certified Copies of Leases and Assignment Documents: (WTG/GAW)
- a. Larry and Ginger Schmidt are listed as surface and coal owners in the NW¼ of Section 8 and the NW¼ of Section 17, T141N, R83W, but it appears that the listing should read Larry and Virginia Schmidt;

Revisions have been completed as requested.

- b. It appears that the 100 percent coal ownership listed for the State of North Dakota in the SW¼ of Section 17, T141N, R83W is incorrect based on contrary information in the Newspaper Advertisement and Appendix 1.9-1 that list five coal owners;

Revisions have been completed as requested.

- c. It appears that coal ownership should be described as USA for John Strand (St. Lucas Cemetery) surface ownership in the NE¼ of Section 18, T141N, R83W;

Revisions have been completed as requested.

- d. Please correct the spelling for the first name of Keith Reuther surface and coal ownership in the SW $\frac{1}{4}$ and SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 18, T141N, R83W, the NW $\frac{1}{4}$ of Section 19, T141N, R83W, and the E $\frac{1}{2}$ of Section 24, T141N, R84W;

Revisions have been completed as requested.

- e. Please correct the spelling for the first name of Lila Wilson coal ownership in the SW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$ Section 19, T141N, R83W;

Revisions have been completed as requested.

- f. Please clarify if Rose should be listed with Anton Landeis coal ownership in the NE $\frac{1}{4}$ and S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 20 and the NW $\frac{1}{4}$ and SE $\frac{1}{4}$ of Section 21, T141N, R83W;

Rose is deceased, hence only Anton should be listed. Updated.

- g. Please clarify if Delmar Hagerott surface and coal ownership should be listed as a Life Estate in the NE $\frac{1}{4}$ of Section 21, T141N, R83W;

Delmar Hagerott surface and coal ownership is not in a life estate, the appropriate changes were made.

- h. Please clarify the spelling for Matt Pfliger coal ownership spelled as such in the Newspaper Advertisement but spelled Pflieger in the SW $\frac{1}{4}$ of Section 21 and the NW $\frac{1}{4}$ less west 528 feet of Section 28, T141N, R83W;

Revisions have been completed as requested.

- i. Please label Margaret Erhardt surface ownership as 100% (rather than 25%) in the N $\frac{1}{2}$ N $\frac{1}{2}$ of Section 13, T141N, R84W; and,

Revisions have been completed as requested.

- j. Please clarify if Karen should be listed jointly with David Porsborg for surface and coal ownership in the W $\frac{1}{2}$ of Section 24 and the NE $\frac{1}{4}$ of Section 25, T141N, R84W.

Revisions have been completed as requested.

Appendix 1.9-1 Ownership Information (within Permit Boundary)

35. As required by NDAC 69-05.2-06-01(1)(a), please provide addresses for all of the coal owners of record in the NW $\frac{1}{4}$ of Section 8, T141N, R83W. (WTG)

Updated as requested.

36. As required by NDAC 69-05.2-06-01(1)(a), please provide addresses for all of the coal owners of record in the NW $\frac{1}{4}$ of Section 17, T141N, R83W. (WTG)

Updated as requested.

37. As required by NDAC 69-05.2-06-01(1)(a), please provide the address for John Strand listed as the surface owner of the St. Lucas Cemetery in the NE¼ of Section 18, T141N, R83W. (WTG)

Per the updated documents Susan Jones is the surface owner of the 2 acre tract described as St. Lucas Cemetery, her address was added as requested.

38. As required by NDAC 69-05.2-06-01(1)(a), please provide addresses for all of the coal owners of record in the N½SE¼ of Section 18, T141N, R83W. (WTG)

Updated as requested.

39. As required by NDAC 69-05.2-06-01(1)(a), please provide addresses for all of the coal owners of record in the S½SE¼ of Section 18, T141N, R83W. (WTG)

BNI is still searching for the addresses of the coal owners in this section.

40. As required by NDAC 69-05.2-06-01(1)(a), please provide addresses for all of the coal owners of record in the NE¼ of Section 20, T141N, R83W. (WTG)

BNI is still searching for the addresses of the coal owners in this section.

41. As required by NDAC 69-05.2-06-01(1)(a), please provide addresses for all of the coal owners of record in the N½N½ of Section 13, T141N, R84W. (WTG)

Updated as requested.

42. As required by NDAC 69-05.2-06-01(1)(a), please provide addresses for all of the coal owners of record in the S½S½ of Section 13, T141N, R84W. (WTG)

BNI is still searching for the addresses of the coal owners in this section.

43. As required by NDAC 69-05.2-06-01(1)(a), and as noted in similar deficiencies for the Newspaper Advertisement and Section 1.9 Surface and Coal Ownership, a very small tract of the NE¼ of Section 31, T142N, R83W is within the BNCR-1101 permit boundary. Please update Appendix 1.9-1 to describe surface and coal ownership for the tract. (WTG)

Updated as requested.

Appendix 1.9-2 Adjacent Ownership Information (within ¼ mile)

44. As required by NDAC 69-05.2-06-01(1)(a), please provide the name(s) and address(es) of the surface and coal owners for the unpermitted area in the N½NW¼ Section 5, T141N, R83W. (WTG)

Updated as requested.

45. As required by NDAC 69-05.2-06-01(1)(a), please clarify surface ownership in the SW¼ of Section 3, T141N, R83W. Plate 1.9-1 Surface and Coal Ownership depicts Minnkota Power as the surface owner of about 156 acres in the SW¼ of Section 3, but page 1 of Appendix 1.9-2 appears to indicate that Minnkota Power is the surface owner of about 4 acres. Please review and revise as necessary. (WTG)

Plate 1.9-1 was updated to show only the 4 acre tract being owned by Minnkota.

46. As required by NDAC 69-05.2-06-01(1)(a), please clarify surface and coal ownership in the SE¼ of Section 23 and the NE¼ of Section 26, T141N, R84W. Ownership is listed as Darrin and Bruce Hoger in the SE¼ of Section 23, but surface ownership is listed as Darrin Bruce Hoger in the NE¼ of Section 26. (WTG)

Updated as requested.

47. As required by NDAC 69-05.2-06-01(1)(a), please clarify the 27 acres ascribed to a tract of BNI Coal, Ltd. surface ownership and Robert Reinke coal ownership in the SE¼ of Section 31 T142N, R83W. According to our review, this tract in Permit BNCR-8106 used for a haulroad measures about 7 acres at most. Please review and revise as necessary. (WTG)

Section 31 T142N R83W BNI ownership has been updated.

Section 1.10 Areas Unsuitable for Mining

48. NDCC 38-14.1-07(5) prohibits mining within 500 feet of any occupied building and NDCC 38-18-07 prohibits coal removal within 500 feet of any farm building unless the mineral developer pays the owner the fair market value of the building or the cost of removing the farm building. Please address BNI Coal, Ltd.'s specific plans in Section 1.10 for compliance with these statutes. (DKM/MSK)

Updated as requested.

49. A cemetery is located in the southeast corner of the NE¼ of Section 18, T141N, R83W. NDCC 38-14.1-07(5) prohibits mining within 100 feet of a cemetery but the Pit Layout and Facilities Map indicates that the cemetery will be mined through. Section 1.10, Areas Unsuitable for Mining, indicates that BNI is not planning any disturbance within 100 feet of a cemetery. Please clarify your intentions with regard to this cemetery and either provide plans for relocating this cemetery or plans for avoiding (no mining activities within 100 feet) of the cemetery as may be the case. (DKM/MSK)

Plate 4.1-1 Pit Layout and Facilities Map was updated to show no disturbance within 100 feet of the cemetery.

Appendix 1-2 Certified Copies of Leases and Assignment Documents

50. As required by NDAC 69-05.2-06-03(1), please provide a certified copy of the surface ownership lease with Gary Leinius for the E½ of Section 6 and the E½ of Section 7, T141N, R83W. (WTG/DKM)

BNI is working on securing language with Gary Leinius to illustrate the approval of mining disturbance on his land. This document will be provided in the near future.

51. As required by NDAC 69-05.2-06-03(1), please provide a certified copy of the coal ownership lease with Great Northern Properties for Section 7, T141N, R83W. (WTG/DKM)

BNI is working on securing language with Great Northern Properties to show minable control of their minerals. This document will be provided in the near future.

52. As required by NDAC 69-05.2-06-03(1), please provide a certified copy of the surface ownership lease with Great River Energy for the SE¼ of Section 8 Lot A, T141N, R83W. A lease with the surface owner will be necessary if Great River Energy owned this tract prior to the effective date of the coal lease. (WTG/DKM)

BNI was not aware that it needed a surface lease on an area we were not showing disturbance but has since then contacted GRE and is working in obtaining a surface lease. Documentation will be added shortly.

53. It does not appear that Appendix 1-2 contains a surface ownership lease with Minnkota Power Cooperative, Inc. for Section 9, T141N, R83W. Although a lease number (6040) is hyperlinked for the tract surface owner on page 18 of Appendix 1.9-1, the lease appears to pertain to the former surface owner and current coal owner. As required by NDAC 69-05.2-06-03(1), please provide a certified copy of the surface owner lease with Minnkota Power Cooperative, Inc. A surface lease with Minnkota Power Cooperative may not be necessary if they purchased this tract after the effective date of the coal lease and if that is the case, please provide such an explanation. (WTG/DKM)

Lease number 6040 with Charles Anderson was obtained on June 1st, 2006 and Minnkota purchased the property in June of 2007, hence as stated in the above technical a lease is not necessary since the lease follows the land sales per the term of the lease. A warranty deed was added.

54. As required by NDAC 69-05.2-06-03(1), please provide a certified copy of the surface ownership lease with the State of North Dakota for the E½ of Section 16, T141N, R83W, and the coal ownership lease with the State of North Dakota for all of Section 16, T141N, R83W. (WTG/DKM)

The department of trust lands, minerals management division, is currently working on the lease package containing this tract; the lease auction is set for March 30th.

55. As required by NDAC 69-05.2-06-03(1), please provide a certified copy of the surface ownership lease with Kasper and Donna Kraft for the SW¼ of Section 16, T141N, R83W. (WTG/DKM)

BNI is working on securing language with Kasper and Donna Kraft to show minable control of their minerals. This document will be provided in the near future.

56. As required by NDAC 69-05.2-06-03(1), please provide a certified copy of the 50 percent coal ownership lease with the State of North Dakota for the SW¼ of Section 17, T141N, R83W. (WTG)

The department of trust lands, minerals management division, is currently working on the lease package containing this tract; the lease auction is set for March 30th.

57. As required by NDAC 69-05.2-06-03(1), please provide a certified copy of the 50 percent coal ownership lease with the State of North Dakota for the NE $\frac{1}{4}$ NW $\frac{1}{4}$, and Lots 1 and 2 of Section 18, T141N, R83W. (WTG/DKM)

The department of trust lands, minerals management division, is currently working on the lease package containing this tract; the lease auction is set for March 30th.

58. As required by NDAC 69-05.2-06-03(1), please provide a certified copy of the surface ownership lease with John Strand listed as the owner of the St. Lucas Cemetery in the NE $\frac{1}{4}$ of Section 18, T141N, R83W. (WTG/DKM)

BNI was not aware that it needed a surface lease on an area we were not showing disturbance but has since then contacted Susan Jones, the current owner of this tract; a lease document is being obtained and will be added shortly.

59. All of the leases for the NW $\frac{1}{4}$ of Section 19, T141N, R83W and the E $\frac{1}{2}$ of Section 24, T141N, R84W are described as the aforementioned tract "less Lot A." Lot A is not identified on Plate 1.9-1 Surface and Coal Ownership, Appendix 1.9-1 Ownership Information (within Permit Boundary), or Appendix 1-2 Certified Copies of Leases and Assignment Documents. Please identify Lot A for these two tracts and provide the right of entry information for these tracts. (DKM)

Keith Reuther owns the NW $\frac{1}{4}$ of Section 19, 141-83 (lot A) individually, hence it is included only within his lease description (lease 8061) and excluded in the other leases pertaining to this quarter. This document is already attached. Likewise, Kent Reuther owns the Lot A within the E $\frac{1}{2}$ of section 24-141-84 individually, hence it is included only within Kent's lease description (lease 8061) and excluded in the other leases pertaining to this quarter.

60. As required by NDAC 69-05.2-06-03(1), please determine the coal ownership in the NE $\frac{1}{4}$ of Section 20, T141N, R83W and provide certified copies of coal ownership leases for at least 75 percent of the ownership as required by NDCC 38-18-05-3. It is clear from the red font and the sum of coal ownership equaling 200 percent listed on page 46 of Appendix 1.9-1 Ownership Information (within Permit Boundary) that ownership is in the process of being determined. (WTG/DKM)

BNI has contacted the appropriate parties involved in the mineral ownership and made them aware of the respective title defects on this tract. The appropriate parties are working towards obtaining the required documentation needed prior to BNI being able to lease the ownership.

61. As required by NDAC 69-05.2-06-03(1), please provide a certified copy of the 50 percent coal ownership lease with Winfrid Keller for the N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 20, T141N, R83W. Lease No. 6017 is listed as the Right of Entry Document for the tract, but the lease references attached Exhibit A for real property description which does not appear to be attached. A Personal Representative Deed of Distribution references conveyance of surface and coal

ownership in the NE¼ of Section 19, T141N, R83W, but no conveyance reference is made to the N½SW¼ of Section 20, T141N, R83W. (WTG/DKM)

As discussed with PSC staff the personal representative deed of distribution was removed from the application and exhibit A was added describing the leased property. Ownership of the lease goes to the next of kin which would be Winfrid.

62. As required by NDAC 69-05.2-06-03(1), please provide a certified copy of the 50 percent coal ownership lease with Matt Pfliger for the SW¼ of Section 21, T141N, R83W. (WTG/DKM)

Matt Pfliger's lease number 4035 was added to the application.

63. Lease No. 7003 is listed as the Right of Entry Document for Ralph and Irene Kautzman 50 percent coal ownership in the SE¼ of Section 21, T141N, R83W on page 53 of Appendix 1.9-1 Ownership Information (within Permit Boundary), but it appears that Lease No. 4065 has superseded Lease No. 7003 for the S½SW¼ Section 20 and the SE¼ of Section 21 that will apparently expire on July 12, 2012. Please note that Lease No. 4065 is referenced as the Right of Entry Document for Ralph and Irene Kautzman 50 percent coal ownership in the S½SW¼ of Section 20 on page 48 of Appendix 1.9-1 Ownership Information (within Permit Boundary). Please review and correct the reference to Lease No. 7003 as necessary, and remove Lease No. 7003 from the permit application if it has been superseded. (WTG/DKM)

The above statement is correct in that 4065 is the active lease, this was revised.

64. As required by NDAC 69-05.2-06-03(1), please provide certified copies of coal ownership leases for at least 75 percent of the ownership as required by NDCC 38-18-05(3) in the NE¼ of Section 28, T141N, R83W as necessary. Current mine plans show no actual mining in this tract but coal removal is projected to occur up to the northwest corner of this tract. At least 75 percent of the coal interests would need to be leased if any mining were to take place on this tract. (WTG/DKM)

No mining is planned for this quarter hence only a surface lease was obtained.

65. Although a note on page 64 of Appendix 1.9-1 Ownership Information (within Permit Boundary) states that the S½ of Section 12, T141N, R84W will be permitted for associated disturbance only, Plate 4.1-1 Pit Layout and Facilities Map depicts mining in the SE¼ of Section 12 from 2018-2028. As required by NDAC 69-05.2-06-03(1), please provide certified copies of coal ownership leases for at least 75 percent of the ownership as required by NDCC 38-18-05(3) in the S½ of Section 12, T141N, R84W. (WTG/DKM)

BNI currently has 100% of the coal leases (Dresser lease #10013 and Yvonne Schmidt (lease #4066 was added). The note on page 64 was removed.

66. As required by NDAC 69-05.2-06-03(1), please provide certified copies of coal ownership leases for at least 75 percent of the ownership as required by NDCC 38-18-05(3) in the N½N½ of Section 13, T141N, R84W. (WTG/DKM)

BNI is working on securing language with the coal owners to show minable control of their minerals. These documents will be provided in the near future.

67. As required by NDAC 69-05.2-06-03(1), please provide certified copies of coal ownership leases for at least 75 percent of the ownership as required by NDCC 38-18-05(3) in the S½S½ of Section 13, T141N, R84W. (WTG/DKM)

BNI is working on securing language with the coal owners to show minable control of their minerals. These documents will be provided in the near future.

68. It appears that the coal lease for Gloria Civarella and Wallace Erhardt (Constine & Rose Erhardt) for the S½N½ of Section 13, T141N, R84W expired in 2000. As required by NDAC 69-05.2-06-03(1), please provide proof that the lease has been renewed. (DKM)

The first term expired in 2000 but was renewed via a continuation of payment for a second term. To further illustrate this, a vendor payment voucher was included for Wallace Erhardt and Gloria Civarella, thus illustrating the lease is still active.

69. As required by NDAC 69-05.2-06-03(1), please provide a certified copy of the surface ownership lease with Robert Reinke for the S½ of Section 31, T142N, R83W. (WTG/DKM)

BNI is working on securing language with Robert Reinke to show control. This document will be provided in the near future.

70. As required by NDAC 69-05.2-06-03(1), and as noted in similar deficiencies for the Newspaper Advertisement and Section 1.9 Surface and Coal Ownership, a very small tract of the NE¼ of Section 31, T142N, R83W is within the BNCR-1101 permit boundary. Please provide certified copies of leases as necessary for this tract. (WTG)

A warranty deed was added illustrating BNI is the owner of this tract. Appropriate additions and changes were made.

Appendix 1-4 Officers of Companies with Mineral Interests

71. As required by NDCC 38-14.1-14(1)(c)(6), please provide the names and addresses of the principals, officers, and resident agent for any surface or subsurface owners that are entities other than a single proprietor. The listing that is provided in Appendix 1-4 is from 1997 (appears to be copied from permit BNCR-9401) and does not appear to be complete. (DKM)

Letters requesting names of principals, officers, and resident agent have been sent to business entities that are surface or subsurface owners within the BNCR 1101 permit. These letters have been added to Appendix 1-4 Officers of Officers of Companies with Mineral Interests. BNI will add names and addresses as we receive responses.

3. ENVIRONMENTAL RESOURCES

Plate 3.1-1 Pre-Mining Topography

72. As required by NDAC 69.05.2-05-02(1), please clarify the BNCR-1101 permit boundary on Plate 3.1-1 with a specific prominent line type to improve the permit boundary clarity. (WTG)

Revision was completed as required.

73. As required in part by NDAC 69.05.2-08-02(1)(b), please depict and label Sections 5, 6, and 31 of T141N and T142N on Plate 3.1-1, and label the township boundary between T141N and T142N. (WTG)

Revisions were completed as required.

Plate 3.1-2 Pre-Mining Area Slope Map

74. As required by NDAC 69.05.2-05-02(1), please clarify the BNCR-1101 permit boundary on Plate 3.1-2 with a specific prominent line type to improve the permit boundary clarity. (WTG)

Revision was completed as required.

75. As required in part by NDAC 69.05.2-08-02(1)(b), please depict and label Sections 5, 6, and 31 of T141N and T142N on Plate 3.1-2, and label the township boundary between T141N and T142N. (WTG)

Revisions were completed as required.

76. Please revise the Pre-Mining Area Slope Map, Plate 3.1-2, to show the contours of the whole permit area as required by NDAC 69-05.2-08-02 (3). (GAW)

Plate 3.1-2 was revised as required.

Section 3.2 Geology

77. NDAC 69-05.2-08-05(2)(a) requires that information regarding the location of subsurface water encountered be included in the permit area Geology description and this information is required in determining the occurrence and depth of the water table aquifer as well as perched aquifers, if present, and is generally acquired by the permittee during overburden sampling operations. This information should be provided in the permit in the form of a table or spreadsheet and include the borehole number, surface elevation, and depth to the first encounter of subsurface water. If not specifically measured, frequently this information is generated from drilling or coring logs by descriptions of the depth at which water injection is required to maintain cuttings removal from the borehole during drilling operations. Please provide the required information. (BEB)

Updated section with table showing water table levels.

78. The Pit Layout and Facilities' Map depicts several areas that are planned to be mined-through in areas that are located outside of the permit boundary and where drillhole and other required information appears to be lacking or non-existent. We assume that is not your intention to permit these areas at this time; however, if you intend to permit these areas, then in order to comply with the requirements of NDAC 69-05.2-08-05(2) please provide additional drilling data for areas within the NE¼ of Section 18, N½ of Section 29, and the N½ of Section 30. Applicable sections of the permit that includes the Drillhole Location Map, Drillers Logs, Overburden Analysis, Geophysical Logs, and others will also need to be

updated with the required information. Please provide the information or update all maps that show planned mining in those areas listed above if it is your intention to mine these areas. (BEB)

Plate was updated to show current mine plan.

79. NDAC 69-05.2-08-05(2)(g) requires information be provided showing the crop lines and the strike and dip of the coal seam to be mined. Hagel seam outcrop and interpreted subcrop locations are already depicted on a couple of the permit maps, but not the strike and dip. Due to varying geologic influences the strike and dip of coal seams in North Dakota often show extreme local variability within short distances and most mining companies provide this required data in the form of a structure contour map of either the top or bottom of the coal seam to be mined, generally incorporating a 5 or 10-foot contour interval. Due to glacial constructional and erosional processes and post-glacial erosional process, it is recommended that this map provide the structural elevation data of the bottom of the Hagel coal seam. Please provide the required geologic information. (BEB)

Plate 3.2-4 was added as requested.

80. The Overburden Analysis information provided in Appendix 3.2-2 does not provide any data for the 32 or so “2011”-series of overburden drillholes located within the permit area. The physical and chemical analysis required by NDAC 69-05.2-08-05(2) for all areas planned to be mined need to be incorporated into the application at this time. (BEB)

Additional Overburden analysis was added to existing appendix from 2011 drilling.

Plate 3.2-1 Drill Hole Location Map

81. As required by NDAC 69.05.2-05-02(1), please clarify the BNCR-1101 permit boundary on Plate 3.2-1 with a specific prominent line type to improve the permit boundary clarity. (WTG)

Updated

82. As required in part by NDAC 69.05.2-08-02(1)(b), please depict and label Sections 5, 6, and 31 of T141N and T142N on Plate 3.2-1, and label the township boundary between T141N and T142N. (WTG)

Updated

83. As required by NDAC 69.05.2-08-05(2)(g), please define the coal crop line for the entire permit area on Plate 3.2-1. (WTG/MSK)

Added crop line.

Plate 3.2-2 Geologic Cross Section Map

84. As required by NDAC 69.05.2-05-02(1), please clarify the BNCR-1101 permit boundary on Plate 3.2-2 with a specific prominent line type to improve the permit boundary clarity. (WTG)

Updated

85. As required by NDAC 69.05.2-08-05(2)(g), please define the coal crop line for the entire permit area on Plate 3.2-2. (WTG)

Added crop line

Plate 3.2-3 Overburden Thickness Map

86. As required by NDAC 69.05.2-05-02(1), please clarify the BNCR-1101 permit boundary on Plate 3.2-3 with a specific prominent line type to improve the permit boundary clarity. (WTG)

Updated

87. As required in part by NDAC 69.05.2-08-02(1)(b), please depict and label Sections 5, 6, and 31 of T141N and T142N on Plate 3.2-3, and label the township boundary between T141N and T142N. (WTG)

Updated

88. Please provide the mining disturbance boundary on Plate 3.2-3 and include it on the legend. (MSK)

Updated

Section 3.3 Groundwater

89. The Ground Water Chemical Analysis spreadsheet, Appendix 3.3-6 does not provide any water quality data for new ground water monitoring wells C11-1 and C11-2, and only a couple of analyte parameters are provided for monitoring wells C8-1 and C10-1. Please provide the required baseline water quality data for these permit area ground water monitoring wells and please note that generally, water quality/water type information provided in permit narrative is reinforced with providing Piper plots or Trilinear diagrams of permit area water quality. (BEB)

Compiled Piper plots for well quality and inserted into Appendix 3.3-6

90. There appears to be no water level information for the ground water monitoring wells that are being activated for this permit application. Please incorporate baseline water level data and preferably, time-series graphs (hydrographs) for all of the ground water monitoring wells to be incorporated into the ground water monitoring plan of Permit BNCR-1101 as required by NDAC 69-05.2-08-04 and NDAC 69-05.2-08-06. At a minimum, a water level data table or spreadsheet should include well identification, screened aquifer or hydrostratigraphic unit, measuring point elevation, depth to water and water level elevation. Valuable, but not required data that should be added to the spreadsheet would be measures of hydraulic head (elevation at top of the water level column in the well minus/subtracted by the elevation of the base of the screened unit). Please provide the required baseline hydrologic information. (BEB)

Added Appendix 3.3-7, with additional information provided in Appendix 3.3-1

91. Please provide the geophysical logs (gamma ray and density) for those drillholes that were utilized for construction of the permit area ground water monitoring wells per NDAC 69-05.2-08-06(1)(d). (BEB)

Added Appendix 3.3-8

92. As a component of the permit area hydrologic reclamation plan (HRP), please provide a plan for restoring the approximate recharge capacity of the permit area as required by NDAC 69-05.2-09-12(1)(d). (BEB)

HRP was inserted to address recharge.

Plate 3.3-4 Certified Well Location Map

93. As required by NDAC 69.05.2-05-02(1), please clarify the BNCR-1101 permit boundary on Plate 3.3-4 with a specific prominent line type to improve the permit boundary clarity. (WTG)

Updated

94. As required in part by NDAC 69.05.2-08-02(1)(b), please depict and label Sections 5, 6, and 31 of T141N and T142N on Plate 3.3-4, and label the township boundary between T141N and T142N. (WTG)

Updated

3.4 Surface Water

95. The General Drainage Map, Plate 3.4-1, includes a classification for Intermittent/Ephemeral Stream; however, NDAC 69-05.2-01-02 provides definitions for each individual stream classification. The intermittent stream segments are subject to buffer zone requirements provided in NDAC 69-5.2-16-20. Please identify stream segments as either ephemeral or intermittent based on the information available *or include a discussion on when a determination will be made in Section 3.4.* (RLK)

The revision was completed as required.

96. The surface water information in Section 3.4 does not include probable hydrological consequences (PHC) information for an area planned for surface mining in Section 9 as required in NDAC 69-5.2-08-04(4). Please provide the PHC information for the areas to be disturbed in Section 9. (RLK)

Plates 3.4-2 & 3.4-3 were updated to reflect the area in Section 9. Section 3.4 was updated to reflect the changes.

97. In Section 3.4, Surface Water, please include a discussion on the probable hydrological consequences (PHC) and possible replacement water features for intermittent stream segments that may be disturbed by mining activity. [NDAC 69-05.2-08-04(4)] (RLK)

Section 3.4 was updated with PHC portion to it.

98. The drainageway running through Hagel Creek Watershed HC-3 in Sections 18 and 7, T141N, R83W and 12, T141N, R84W) and the drainageway running through Square Butte Creek Watershed SBC-5 (in Sections 20 and 21, T141N, R83W) are delineated on the General Drainage Map, Plate 3.4-1, as having intermittent stream segments. Please provide baseline water quality and quantity information, or plans to collect the information, to characterize the stream flow from these drainageways. [NDAC 69-05.2-08-07(3)] (RLK)

Baseline data can be found in Appendix 3.4-1 (Plate 3.4-5) for quality on these stream reaches, quantity data will be taken in the start of runoff 2012 along with SWS 100 and 103.

99. Baseline water quality data for surface water monitoring sites SWS 100, SWS 101, SWS 102 and SWS 103 does not appear to be presented in the permit information. Please include baseline water quality information for the monitoring sites or indicate when such information will be added. [NDAC 69-05.2-08-07(3)] (RLK)

Water quality information was added in Appendix 3.4-1.

100. Baseline water quantity data for surface water monitoring sites SWS 100 and SWS 103 does not appear to be presented in the permit information. Please include baseline flow or quantity information for the monitoring sites or indicate when such information will be added. [NDAC 69-05.2-08-07(3)] (RLK)

Data will be collected at start of runoff in 2012 for locations stated above. Site preparation has already been conducted, thus waiting for flows to start.

Plate 3.4-1 General Drainage Map

101. As required by NDAC 69.05.2-05-02(1), please clarify the BNCR-1101 permit boundary on Plate 3.4-1 with a specific prominent line type to improve the permit boundary clarity. (WTG)

The revision was completed as required.

102. As required in part by NDAC 69.05.2-08-02(1)(b), please depict and label Sections 5, 6, and 31 of T141N and T142N on Plate 3.4-1, and label the township boundary between T141N and T142N. (WTG)

The revisions were completed as required.

Plate 3.4-2 Pre-Mine Watershed Map

103. As required by NDAC 69.05.2-05-02(1), please clarify the BNCR-1101 permit boundary on Plate 3.4-2 with a specific prominent line type to improve the permit boundary clarity. (WTG)

The revision was completed as required. This plate was also updated to reflect additional watershed information in Section 9, T141N, R83W.

104. As required in part by NDAC 69.05.2-08-02(1)(b), please depict and label Sections 5, 6, and 31 of T141N and T142N on Plate 3.4-2, and label the township boundary between T141N and T142N. (WTG)

The revisions were completed as required.

Plate 3.4-3 Post-Mine Watershed Map

105. As required by NDAC 69.05.2-05-02(1), please clarify the BNCR-1101 permit boundary on Plate 3.4-3 with a specific prominent line type to improve the permit boundary clarity. (WTG)

The revision was completed as required. This plate was also updated to reflect additional watershed information in Section 9, T141N, R83W.

106. As required in part by NDAC 69.05.2-08-02(1)(b), please depict and label Sections 5, 6, and 31 of T141N and T142N on Plate 3.4-3, and label the township boundary between T141N and T142N. (WTG)

The revisions were completed as required.

Plate 3.4-4 Springs and Seeps and Surface Water Monitoring Locations

107. As required by NDAC 69.05.2-05-02(1), please clarify the BNCR-1101 permit boundary on Plate 3.4-4 with a specific prominent line type to improve the permit boundary clarity. (WTG)

Updated

108. As required in part by NDAC 69.05.2-08-02(1)(b), please depict and label Sections 5, 6, and 31 of T141N and T142N on Plate 3.4-4, and label the township boundary between T141N and T142N. (WTG)

Updated

Section 3.5 Pre-Mine Land Use

109. Please characterize the wetlands in the proposed permit area by describing the hydrology, geomorphic setting and hydrodynamics of the various wetlands within the permit area. The wetland discussion in Section 3.5, Pre-Mine Land Use, mentions defining the water regimes using the Cowardin classification system, and a narrative in Appendix 3.5-5, Pre-Mining Wetlands, mentions an attempt to use the Hydrogeomorphic classification system but the wetlands are not classified using either of these systems. Furthermore, it is not clear how only beaded wetlands can be delineated along intermittent streams (at a minimum the channel must be delineated as wetland) or how springs and seeps can be considered only temporary wetlands. Prairie cordgrass, and other obligate and facultative wet species, were

observed by Reclamation Division staff lining the channels of drainages considered ephemeral streams on Plate 3.4-1, General Drainage Map, but many of these channels are not being considered wetlands. The wetland delineation process needs to be fully explained and an established appropriate classification system must be used to characterize the wetlands. (GAW) NDAC 69-05.2-08-08(1)(c)(5)

The narrative in Appendix 3.5-5 Wetlands has been revised to include more detailed wetland characterization and clarifies classification system used. Appropriate links to this section have been addressed. Also an additional Plate 3.4-5 has been add to easily identify Linear Surface Wetlands.

110. Please provide an assessment of the surface water quality of the wetlands as required by NDAC 69-05.2-08-07 and Section II-H of the PSC Pre- and Post-Mining Vegetation Assessments Document. The permit must include a narrative discussing of the results of the wetland water quality analysis as required in Section II-H-7 of the PSC Pre- and Post-Mining Vegetation Assessments Document. A sentence on page 1 of Appendix 3.5-5 incorrectly states that the results of the total water quality sampling can be found in Section 3.3, Groundwater; and Section 3.4, Surface Water, does not include an evaluation of the water quality of the wetlands or the water quality's effects or limitations on the vegetation established on the wetlands. It appears wetland water quality data may be included in Section 3.4-1, Surface Water Analysis, but the wetlands and the locations where the wetlands were sampled is not identified on Plate 3.4-4, Spring/Seep & SW Monitoring Location. (GAW)

Revisions have been completed as requested

Plate 3.5-1 Pre-Mining Land Use (Aerial Photograph)

111. As required in part by NDAC 69.05.2-08-02(1)(b), please label the township and range boundaries on Plate 3.5-1. (WTG)

Revisions have been completed as requested

112. As required by NDAC 69.05.2-05-02(1), please clarify the BNCR-1101 permit boundary on Plate 3.5-1 with a specific prominent line type and permit number labels of adjoining permits to improve the permit boundary clarity. (WTG)

Revisions have been completed as requested

Plate 3.5 -2 Pre-Mining Land Use

113. As required in part by NDAC 69.05.2-08-02(1)(b), please label the township and range boundaries on Plate 3.5-2. We also suggest converting the section labels to annotation so they can be centered within the section boundary. (WTG)

Revisions have been completed as requested

114. As required by NDAC 69.05.2-05-02(1), please clarify the BNCR-1101 permit boundary on Plate 3.5-2 with a specific prominent line type and permit number labels of adjoining permits to improve the permit boundary clarity. (WTG)

Revisions have been completed as requested

Section 3.6 Pre-Mine Vegetation

115. In Section 3.6, please include a detailed discussion about the nature and variability of the vegetation of each woodland, native grassland and wetland mapping unit within the permit area as required by NDAC 69-05.2-08-08(1)(d). The mapping unit sampling data must be analyzed and discussed along with vegetation information obtained from the thorough reconnaissance and qualitative evaluation observed on mapping units not sampled. (GAW)

Revisions to this section have been made, discussing the variability of vegetation in wetlands, native rangelands, and woodlands.

116. Please include a map showing the locations where the wetlands (East and West Access, LSW1-14, SP NW5 and SP NE12) were sampled. (GAW)

Revisions have been completed as requested

Section 3.7 Prime Farmlands

117. As required in part by NDAC 69-05.2-09-15(1), please provide representative soil profile descriptions, soil horizon depths, pH, and applicable physical properties for each prime farmland soil map unit. (WTG)

Revisions have been completed as requested. Figure numbers were added to Plate 3.7-2 and referenced in this section.

118. As required by NDAC 69-05.2-09-15(4), please provide a reference and hyperlink to Plate 4.10-1 Post-Mining Topography in the narrative for depiction of prime farmland respread areas. (WTG/RLK)

Revisions have been completed as requested

Plate 3.7-1 Prime Farmland Soils

119. As required in part by NDAC 69.05.2-08-02(1)(b), please label the township and range boundaries on Plate 3.7-1. We also suggest converting the section labels to annotation so they can be centered within the section boundary. (WTG)

Revisions have been completed as requested

120. As required by NDAC 69.05.2-05-02(1), please clarify the BNCR-1101 permit boundary on Plate 3.7-1 with a specific prominent line type and permit number labels of adjoining permits to improve the permit boundary clarity. (WTG)

Revisions have been completed as requested

Plate 3.8-1 Soil Map Units (Aerial Photography)

121. As required in part by NDAC 69.05.2-08-02(1)(b), please label the township and range boundaries on Plate 3.8-1. Please also darken the section boundaries and brighten the section labels to make them visible. We also suggest converting the section labels to annotation so they can be centered within the section boundary. (WTG)

Revisions have been completed as requested

122. As required by NDAC 69.05.2-05-02(1), please clarify the BNCR-1101 permit boundary on Plate 3.8-1 with a specific prominent line type and permit number labels of adjoining permits to improve the permit boundary clarity. (WTG)

Revisions have been completed as requested

123. It does not appear that soil map unit boundary color symbology is effective for clearly depicting soil map unit boundaries or clearly identifying soil map units on Plate 3.8-1. To the contrary, it appears that the colored map unit boundaries may hinder clear definition of the boundary for lighter colored polygons. Furthermore, the color legend provides limited utility because the colors are frequently repeated to accommodate the large number of soil map units. As required by NDAC 69.05.2-05-02(1), please depict the soil map unit boundaries with white or black lines to clearly define the boundaries, and remove the color legend from the numerical soil map unit legend. (WTG)

Revisions have been completed as requested. The previous multicolored soils layer was to be used as a graphic tool, to help the eye distinguish when crossing the boundary of a particular soil. The color and soil representation in the legend and were not intended to be a literal association. Therefore, line colors have been changed to black, however, the soils map units/types are still represented in a legend in the map to provide viewers with a reference of soil symbols/types.

Plate 3.8-2 Soil Map Units

124. As required in part by NDAC 69.05.2-08-02(1)(b), please label the township and range boundaries on Plate 3.8-2. We also suggest converting the section labels to annotation so they can be centered within the section boundary. (WTG)

Revisions have been completed as requested

125. As required by NDAC 69.05.2-05-02(1), please clarify the BNCR-1101 permit boundary on Plate 3.8-2 with a specific prominent line type and permit number labels of adjoining permits to improve the permit boundary clarity. (WTG)

Revisions have been completed as requested

Section 3.10 – Fish and Wildlife

126. Please revise the Wildlife Study Map, Plate 3.10-1, to show the habitats within the entire approved wildlife study area boundary and update the narratives, tables, appendices and reports to include information for the whole study area as indicated would be done in the approved plan. (GAW)

Revisions have been completed as requested

4. OPERATIONS

Section 4.1 Operations Plan

127. Pre-application PSC field investigations identified areas of previous or historic abandoned gravel/scoria and lignite surface mines within the proposed permit and these areas need to be described in narrative in the Operations Plans narrative, Section 4.1, and identified on an operations map, preferably the Pit Layout and Facilities Map, Plate 4.1-1. The Public Service Commission's AML Inventory also lists at least three abandoned mine lands (AML) within the proposed permit area and information regarding these AML's and others listed in the Cultural Resource Reports, Section 3.12, need to be addressed in applicable sections of the permit. [NDAC 69-05.2-08-02(1)(k) & (l)] (BEB)

Section 4.1 has been modified as requested. The locations of these abandoned mines have been added to Plate 4.1-1 as requested.

128. Please provide a narrative in Section 4.1, Operations Plan, that discusses compliance with NDAC 69-05.2-16-20(2) which in effect states that the operator must not disturb lands within 100 feet of an intermittent or perennial stream and that these areas must be designated as buffer zones and marked according to NDAC 69-05.2-13-04. Please identify the buffer zone on the Pit Layout and Facilities Map Plate 4.1-1. (GAW)

A 100' buffer zone around intermittent and perennial streams is now depicted on Plate 4.1-1 Pit Layout and Facilities Map. A statement has been added to Section 4.1 Operations and Waste Disposal that BNI will not disturb lands within this buffer.

Plate 4.1-1 Pit Layout and Facilities Map

129. As required by NDAC 69.05.2-05-02(1), please clarify the BNCR-1101 permit boundary on Plate 4.1-1 with a specific prominent line type and permit number labels of adjoining permits to improve the permit boundary clarity. (WTG/MSK)

The revision was completed as required.

130. Plate 4.1-1 depicts coal removal subareas within Sections 23, T141N, R84W and Sections 29 and 30, T141N, R83W; however, these coal removal subareas are located outside of the proposed permit boundary. Please revise the map to eliminate the coal removal subareas that are depicted outside of the permit boundary or alternatively, provide all the required permit information that gives BNI the legal right to mine within Sections 23, 29 and 30 and revise the permit application accordingly. (BEB/GAW/WTG/MSK)

These coal removal areas were removed from the areas outside the permit boundary.

131. Plate 4.1-1 depicts mining in areas where mineral leases have not yet been obtained (SE¼ of Section 8 and NE¼ of Section 18), within 500 feet of occupied buildings (all), through a cemetery (St. Lucas, SE¼ of Section 18) and within 100 feet of county roads not identified for permanent or temporary closure on Plate 4.5-3, Section Line Closure, Right of Way

Variances, and Detour Corridors (35th Avenue SW and 27th Street SW). Please revise the Pit Layout and Facilities Map for compliance with NDAC 69-05.2 and NDCC 38.14.1. NDCC 38-14.1-14(1)(j) requires a map clearly showing the lands to be affected within the permit upon which the applicant has the legal right to enter and commence surface coal mining operations. (GAW/WTG)

The map has been revised to exclude these areas pertaining to the occupied buildings, the cemetery, roads not identified for permanent or temporary closure.

132. Please show the anticipated area where initial pit spoils will be placed on the Plate 4-1.1, or other map for the proposed permit area. [NDAC 69-05.2-09-02] (RLK)

The map has been changed to show where initial pit spoils will be placed along the initial box cut. Additional spoil material which will be removed during dragline bench construction will be stockpiled in designated stockpile areas shown on the map. The initial 2014 pits in Section 16, T141N, R83W will be stockpiled and are shown on the map.

Plate 4.2-1 Existing Structures

133. Please include a map showing the location and current use of all buildings on and within one half mile of the proposed permit boundary as required by NDAC 69-05.2-08-02. It appears that the Existing Structures map, Plate 4.2-1, is included to fulfill some of the requirements of NDAC 69-05.2-08-02 but the Existing Structures narrative, Section 4.2, does not mention that this is the intention of this map. The farmsteads are shown on Plate 4.2-1, but the buildings and their current use is not included and this map does not show the cemetery or the location and extent of known underground mines or surface mines (gravel/scoria pits). Please include all of the information required by NDAC 69-05.2-08-02. (GAW)

Plate 4.2-1 has been modified as requested. The text of section 4.2 has been modified to address the intent of Plate 4.2-1.

The following deficiencies refer to Plate 4.2-1, Existing Structures, but they refer as applicable to any replacement map added to the permit to meet the requirements of NDAC 69-05.2-08-02:

134. As required by NDAC 69.05.2-05-02(1), please clarify the BNCR-1101 permit boundary on Plate 4.2-1 with a specific prominent line type and permit number labels of adjoining permits to improve the permit boundary clarity. (WTG)

The revision was completed as required

135. As prohibited by NDCC 38-14.1-25-2, please modify the mineral removal area boundary on Plate 4.2-1 to depict no mining outside of the permit area. (WTG)

The revision was completed as required

136. As required by NDAC 69-05.2-08-02(1)(e), please depict buildings at the following additional locations boundary on Plate 4.2-1: the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 9, T141N, R83W; the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 20, T141N, R83W; the Center Coal buildings in the W $\frac{1}{2}$ W $\frac{1}{2}$ of section 32, T142N, R83W; the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 2, T141N, R84W; the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section

14, T141N, R 84W; the SW¼NE¼ of Section 26, T141N, R84W; the SE¼SE¼ Section 26, T141N, R84W; and the SW¼SW¼ Section 30, T141N, R83W. Please also add the updated building features to all other applicable plates on which buildings are depicted. (WTG)

Plate 4.2-1 has been modified to address this request.

137. As required by NDAC 69.05.2-05-02(1), please remove the 500 foot setback from buildings outside the permit area boundary on Plate 4.2-1 unless they are within 500 feet of the permit boundary. (WTG)

The revision was completed as required

138. As required by NDAC 69-05.2-08-02(1)(f), please depict the Great River Energy tower in the N½ SE¼ of Section 8, T141N, R83W boundary on Plate 4.2-1. (WTG)

The revision was completed as required.

139. As required by NDAC 69-05.2-08-02(1)(g), please depict and label the public roads in or within 100 feet of the permit boundary on Plate 4.2-1 consistent with the county road classification. The Section 4.5-1 Transportation Narrative references Plate 4.5-3 for road closures, but because Plate 4.2-1 is used to depict buildings and utilities it appears to be an appropriate plate for depicting roads as well. (WTG)

Updated as requested.

140. Plate 4-2.1 depicts sedimentation ponds, haulroads, dragline walkway, watershed breaks, and stockpiles. These features should not be shown on the existing structures map as they have not yet been constructed and the intent of the Existing Structures Map is to depict the existing features at the time of permitting. Please revise as necessary. (MSK)

The revision was completed as required

Section 4.5-1 Transportation Narrative

141. Please provide additional design and construction details for the Dragline Walkway Corridor in Section 4.5-1, particularly for the Hagel Creek crossing. The current narrative states “*The Hagel Creek Stream crossing will be constructed of Subsoil.*” The Hagel Creek crossing must have adequately sized culverts placed and compacted cover to withstand vertical soil pressures and loads from mining equipment, and any other measures necessary to prevent alteration of creek flow. Please provide the necessary information to comply with NDAC 69-05.2-24-03. (MSK)

The culvert design details and watershed information are shown in Appendix 4.5-6.

142. The narrative for Section 4.5-1 should include a determination letter from the US Corps of Engineers indicating whether or not BNI Coal, Ltd. needs to obtain a 404 Permit from the Corps before any activities take place near the Hagel Creek crossing. (MSK)

Section 4.5 Appendices

143. Please depict and identify all culverts in Appendices 4.5-3 through 4.5-6. (MSK)

The culverts are shown on all haul road profile drawings as requested.

Plate 4.5-1 Transportation Plan

144. As required by NDAC 69.05.2-05-02(1), please clarify the BNCR-1101 permit boundary on Plate 4.5-1 with a specific prominent line type to improve the permit boundary clarity. (WTG)

The revision was completed as required.

145. As prohibited by NDCC 38-14.1-07(5), please define a 500 foot setback from occupied dwellings on Plate 4.5-1 and modify the pit layout to depict no mining within the setback. (WTG)

The revision was completed as required.

146. As prohibited by NDCC 38-14.1-25(2), please modify the pit layout on Plate 4.5-1 to depict no mining outside of the permit area. (WTG)

The revision was completed as required.

Plate 4.5-3 Section Line Closures, Right of Way Variances, and Detour Corridors

147. As required by NDAC 69.05.2-05-02(1), please clarify the BNCR-1101 permit boundary on Plate 4.5-3 with a specific prominent line type to improve the permit boundary clarity. (WTG)

Revisions have been completed as requested.

148. As noted in a similar deficiency for Plate 4.2-1 Existing Structures, and as required by NDAC 69.05.2-05-02(1) and NDAC 69-05.2-08-02(1)(g), please depict and label the public roads in or within 100 feet of the permit boundary on Plate 4.5-3 consistent with the county road classification. The Section 4.5-1 Transportation Narrative references Plate 4.5-3 for road closures; consequently, the county roads should be depicted on the plate. (WTG)

Revisions have been completed as requested.

149. As required by NDAC 69.05.2-05-02(1), please either remove the number labels (1 through 20) for the section line segments, or define the number labels in the legend on Plate 4.5-3 or in an associated permit narrative. As currently depicted, the number labels do not appear to be relevant to the newspaper advertisement or the permit. Please also remove or define the label of Q1 2013. (WTG)

Revisions have been completed as requested.

Plate 4.6-1 Surface Water Management Plan

150. As required by NDAC 69.05.2-05-02(1), please clarify the BNCR-1101 permit boundary on Plate 4.6-1 with a specific prominent line to improve the permit boundary clarity. (WTG)

The revision was completed as required.

151. As prohibited by NDCC 38-14.1-25(2), please modify the pit layout on Plate 4.6-1 to depict no mining outside of the permit area. (WTG)

The revision was completed as required.

Section 4.7 Water Monitoring and Drill Hole Reclamation Plans

152. The discussion on surface water quantity provided in Section 3.4, Surface Water, indicates that stage-discharge relationships have been developed for the surface water monitoring sites SWS 100, SWS 101, SWS 102 and SWS 103. The surface water quantity information in Section 3.4 and the Surface Water Monitoring Plan in Section 4.7 of the permit both indicate water height at the surface water monitoring sites will be measured with Solinst Level-Loggers. To translate the surface water height information to flow rates for the monitoring sites, please include the stage-discharge relationship information for the surface water monitoring sites in the Surface Water Monitoring Plan. Alternatively, you could provide the actual flow data based on the stage-discharge tables rather than providing just the stage data. [NDAC 69-05.2-09-12(1)(e)] (RLK)

Currently compiling data to construct curve information.

Section 4.9 Reclamation Schedule

153. BNI is requesting variances from the backfilling and grading requirement and the three-year seeding rule (Page 2 of Section 4.9) but Plate 4.9-1, Reclamation Variance Areas, is vacant. Please depict the location of all areas where contemporaneous reclamation will not be completed within the required time frames set forth by NDCC 38-014.1-24 (14) and NDAC 69-05.2-21-01. (GAW)

The last paragraph on page 2 of section 4.9 indicates that it is not possible to determine the locations the corridors which require a variance from the 3 year seeding rule. As such they are not depicted on Plate 4.9-1.

Section 4.10 Backfilling & Grading

154. In the paragraph on wetland design, a link to Section 3.5 is provided to take the reader a location where a list of wetlands to be mined through can be found. However the link takes the reader to the general discussion on Pre-mine Land Use. The section does contain wetland acreage by landownership but does not appear to provide a list that specifically identifies wetlands to be mined through. Please correct as appropriate. (RLK)

The link was changed to take the reader to Plate 3.4-5 Linear Surface Wetlands and DWR Locations.

Plate 4.10-1 Post-Mining Topography

155. As required by NDAC 69.05.2-05-02(1), please clarify the BNCR-1101 permit boundary on Plate 4.10-1 with a specific prominent line type to improve the permit boundary clarity. (WTG)

The revision was completed as required.

156. As required in part by NDAC 69.05.2-08-02(1)(b), please depict and label Sections 5, 6, and 31 of T141N and T142N on Plate 4.10-1, and label the township boundary between T141N and T142N. (WTG)

The revisions were completed as required.

157. As required by NDAC 69.05.2-05-02(1), please depict the additional Federal coal tracts in the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 6, T141N, R83W and the S $\frac{1}{2}$ N $\frac{1}{2}$ of Section 12, T141N, R84W on Plate 4.10-1 if the apparent intent of the plate is to depict all Federal coal tracts within the permit boundary. (WTG)

The federal coal tract depiction was removed from this plate.

158. As noted in a related deficiency in Section 3.7 Prime Farmlands, and as required by NDAC 69-05.2-09-15-4, please depict the potential prime farmland respread areas on Plate 4.10-1. (WTG/RLK)

Updated.

159. Post-mining topography should be shown on Plate 4.10-1 for the all tracts overlying federal coal within the proposed permit area that BNI intends to mine. This is done to calculate the dirt/spoil volume as closely as possible and to avoid having to redo the post mining topography once the federal coal tracts are permitted. (MSK)

Updated.

160. The Post Mine Topography Map requires some clarification and modification. Please provide the proposed postmine topography for the area that will be mined in Section 9, the SE $\frac{1}{4}$ of 8, and the NW $\frac{1}{4}$ of 16. In addition, there are red contour lines that turn into blue contour lines in the NW $\frac{1}{4}$ of Section 21 and the SE $\frac{1}{4}$ of Section 21 Plate 4.10-1. There is also a gap in the elevation 2100 line in the SE $\frac{1}{4}$ of Section 20. Please review and revise as necessary. (MSK)

Updated.

Plate 4.10-2 Post-Mining Area Slope Map

161. As required by NDAC 69.05.2-05-02(1), please clarify the BNCR-1101 permit boundary on Plate 4.10-2 with a specific prominent line type to improve the permit boundary clarity. (WTG)

Updated.

162. As required in part by NDAC 69.05.2-08-02(1)(b), please depict and label Sections 5, 6, and 31 of T141N and T142N on Plate 4.10-2, and label the township boundary between T141N and T142N. (WTG)

Updated.

163. Post-mine area slope should be developed in the areas that are shown to be mined in the post-mining topography, thus it should include the tracts overlying federal coal, and the portion of Section 9 that is shown to be mined in 2036-2040. (MSK)

Updated.

Section 4.11 SPGM Removal and Replacement

164. As required in part by NDAC 69.05.2-09-11(5), please provide the **volumes**, by ownership, of topsoil and subsoil available in all areas to be **disturbed**. Please note the emphasis added to the volume of SPGM in disturbed areas because the information is necessary to evaluate if the SPGM volume is adequate within the mining disturbance area to meet the criteria of NDAC 69-05.2-15-04(4)(a)(2) proposed for SPGM replacement. Table 4.11-1 can be retained in the permit at your discretion, but it is not necessary because the acreage includes the entire permit area rather than being limited to the mining disturbance area. If Table 4.11-1 is retained in the permit, please expand the title to add "... *For Entire Permit Area* ..." and enter the topsoil and subsoil volumes for each tract in newly inserted columns. Table 4.11-2, however, requires the following modifications to meet the references cited above: (WTG/RLK)

Table 4.11-2 was modified as required and replaces the original Table 4.11-1.

- a. Expand the title to add "... *Within the (Mining) Disturbance Boundary* ..." (see item b);

The title was modified to read, "...Within the Mining Disturbance Boundary..."

- b. Edit the Area column to read "*Disturbed Area (Acres)*" and clarify if the area is mining disturbance or associated disturbance, or limit the table to mining disturbance and title it as such, while elsewhere describing NDAC 69-05.2-15-04(4)(b) for areas of associated disturbance;

The title was modified to read, "...Within the Mining Disturbance Boundary..." in order to clarify the type of disturbance.

- c. Clarify or complete the Estimated SPGM Respread Depth entries that are listed as N/A or *;

Completed.

- d. Insert a new column following "Estimated SPGM Respread Depth" titled "Required Respread Volume (yds³)". The column could be footnoted as 1, and

Footnote 1 could be expanded to read “Estimated respread depths and volumes were obtained from Plate 4.11-1”;

Completed.

- e. Insert new table columns on the right-hand side of the table as follows: available topsoil (yds³), available subsoil (yds³), total available SPGM (yds³), and surplus/deficit (yds³);

Completed.

- f. Calculate the cubic yard quantities for each tract and subtract the required respread volume from the total available SPGM column to determine the projected SPGM surplus or deficit for each tract ; and,

Completed.

- g. Sum the required respread volume and total available SPGM columns to determine the projected permit SPGM surplus or deficit.

Completed.

Plate 4.11-1 Proposed SPGM Respread Depths

165. As required by NDAC 69.05.2-05-02(1), please clarify the BNCR-1101 permit boundary on Plate 4.11-1 with a specific prominent line type to improve the permit boundary clarity. (WTG)

The revision was completed as required.

166. As required in part by NDAC 69.05.2-08-02(1)(b), please depict and label Sections 5, 6, and 31 of T141N and T142N on Plate 4.11-1, and label the township boundary between T141N and T142N. (WTG)

The revisions were completed as required.

167. Please remove the 42 inch SPGM respread depth category from the legend and recalculate the projected SPGM respread depth for the borings in question. The 42 inch respread depth was removed from NDAC 69-05.2-15-04(4)(a)(2) in 1999. We apologize that Policy Memorandum No. 17 contains a reference to the 42 inch respread depth. (WTG/RLK)

The revision was completed as required.

168. As required in part by NDAC 69.05.2-08-05(2), 69.05.2-08-05(2)(c), and 69-05.2-15-04(4)(a)(2), please provide projected SPGM respread depths for the entire mining disturbance area within the permit boundary as depicted on Plate 4.1-1. A permit applicant can only propose to respread SPGM according to graded spoil properties (Method 2(a) of Policy Memorandum No. 17 and NDAC 69-05.2-15-04(4)(a)(2)) if projected SPGM depths are defined for the entire mining disturbance area. (WTG/RLK)

The revision was completed as required.

Section 4.12 Revegetation and Post Mining Land Use

169. Please include a narrative that discusses the consideration which has been given to developing a reclamation plan in a manner consistent with the local physical, environmental, and climatological conditions, including the use made of hydrologic and geochemical information in addressing problems of subsurface drainage and stability. (NDCC 38.14-14(2)(e). (GAW)

Revisions have been completed as requested.

170. In the Reclamation Plan, please include information adequate to predict the potential for re-establishing vegetation on all areas to be disturbed as required by NDAC 69-05.2-08-08(4). (GAW)

Information for predicting potential have been added to Section 4.12-1 Reclamation Plans and Productivity values for soil map units are also included in Section 3.6-6 Productivity Index.

171. Please include re-vegetation replacement plans for woodlands that are going to be destroyed by mining activities in Section 4.12-1. This includes species to be planted, planting density, site preparation and management during the responsibility period as required by NDAC 69-05.2-09-11(6). (GAW)

A Woodland Species Mix was added to Table in 4.12-1. Also, a description of re-vegetation plans of woodlands was added to text on pg3 of 4.12-1

172. Please include general management plans for all reclaimed land uses during the re-vegetation responsibility period, and detailed management plans for the native grassland as required by NDAC 69-05.2-09-13(1). Discuss how the post-mine land use will be achieved and the support activities (features) needed to implement the proposed post-mine land uses. NDAC 69-05.2-09-13(1) (GAW)

Revisions have been completed as requested.

173. BNI is proposing to convert native grassland to cropland within several sections of land. In the Reclamation Plans section of the permit, Section 4.12-1, please include a discussion demonstrating compliance with NDAC 69-05.2-23-03. (GAW)

Revisions have been completed as requested.

Plate 4.12-1 Post-Mine Land Use

174. Please correct the title of Plate 4.12-1 Post-Mine Land Use that currently reads Plate 4.12-2 (Plate 4.12-2 is Ecological Site Reference Area Locations). (WTG)

Revisions have been completed as requested.

175. As required by NDAC 69.05.2-05-02(1), please clarify the BNCR-1101 permit boundary on Plate 4.12-1 with a specific prominent line type and permit number labels of adjoining permits to improve the permit boundary clarity. (WTG)

Revisions have been completed as requested.

176. As required in part by NDAC 69.05.2-08-02(1)(b), please label the township and range boundaries on Plate 4.12-1. (WTG)

Revisions have been completed as requested.

177. It is difficult to distinguish between the reclaimed wetlands and developed water resources, the reclaimed woodlands and hayland, or the cropland and the shelterbelts on the Post Mine Land Use Map, Plate 4.12-1. Please correct this by including a Post Mine Land Use map that is not color coded so that a technical review can be completed. NDAC 69-05.2-05-02 (GAW)

Solid colors have been removed from the Map and Text Labels have been added. Hatch was added to some land uses (i.e. native range land and hayland) in order to be able to distinguish where boundaries of these land uses begin and end. Shelterbelts, the Cemetery, and Row have been colored (all different) so that these features will be readable on the map.

Appendix 4.12-1 Landowner Preference Statements

178. Please include landowner preference statements received since the application was submitted and update the postmine land use section of the permit (Section 4.12) if changes are necessary. Preference statements have not been included for lands located in the E $\frac{1}{2}$ of Section 6, Lot A in SE $\frac{1}{4}$ of Section 8, E $\frac{1}{2}$ of Section 16, S $\frac{1}{2}$ of Section 19, S $\frac{1}{2}$ of SW $\frac{1}{4}$ of Section 20, NW $\frac{1}{4}$ and SE $\frac{1}{4}$ of Section 21, W $\frac{1}{2}$ of Section 24, NE $\frac{1}{4}$ of Section 20, NE $\frac{1}{4}$ and S $\frac{1}{2}$ Section 31. NDAC 69-05.2-09-13 (3) (BEB/GAW)

We have received landowner preference statements from Gary Leinius for the E $\frac{1}{2}$ of Section 6 and E $\frac{1}{2}$ of Section 7. They have been added to Appendix 4.12-1 Landowner Preference Statements. Appropriate changes have been made.

Section 4.13 Fish and Wildlife Resource Protection, Enhancement, and Monitoring Plan

179. Please edit the Fish and Wildlife Resource Protection, Enhancement, and Monitoring Plan to meet the requirements of NDAC 69-05.2-05-02. Portions of this section contain a lot of irrelevant general baseline information without clearly specifying if any important or high value habitats exist within the proposed permit area. The wetland discussion on page 2 reads as if the wetlands within the proposed permit area are prairie pothole basins when in fact most are associated with springs, seeps, creeks and streams and page 8 consists largely of a discussion about ecological sites and native grassland reference areas that have nothing to do with the Fish and Wildlife Monitoring Plan. A copy of this section of the permit will be provided to other review agencies once the application is deemed complete so it is important that the links work and that plan be understandable. NDAC 69-05.2-05-02 (GAW)

Revisions have been made to Section 4.13. It now contains more streamlined information that pertains to Fish and Wildlife Resource Protection, Enhancement, and Monitoring Plan.

Plate 4.13-1 Wildlife Monitoring Map

180. As required by NDAC 69.05.2-05-02(1), please clarify the BNCR-1101 permit boundary on Plate 4.13-1 with a specific prominent line type and permit number labels of adjoining permits to improve the permit boundary clarity. (WTG)

Revisions have been completed as requested.

181. As required in part by NDAC 69.05.2-08-02(1)(b), please label the township and range boundaries on Plate 4.13-1. (WTG)

Revisions have been completed as requested.

Plate 4.14-1 Worst Case Bond Plan View

182. As required by NDAC 69.05.2-05-02(1), please clarify the BNCR-1101 permit boundary on Plate 4.14-1 with a specific prominent line type and permit number labels of adjoining permits to improve the permit boundary clarity. (WTG)

Revisions have been completed as requested.

183. Plate 4.14-1 and the corresponding narrative in Section 4.14 Reclamation Cost Estimate, indicate that the worst case bond will be in the second year of the permit term. After a quick review of the mining and reclamation schedule, it appears that the actual worst case bond, for the permit term, will be in the year 2017. Considering the following:
- a. Length of the pit extended to approx. 11,000 feet;
 - b. Amount of pre-strip in front of and the amount of un-reclaimed land lying behind the pit;
 - c. Ponds to be constructed in years 2015-2017; and,
 - d. Total amount of land that will be disturbed through 2017.

We suggest a meeting with the Reclamation Division to jointly determine when the actual worst case scenario will occur. (MSK)

We agree with your observations; however, BNI is proposing the use of an incremental bonding strategy during the initial development of this permit area. Once the area is developed BNI will submit a bond revision which most likely will be for the worst case scenario. This concept is discussed in the text of Section 4.14.

In addition, the following technical deficiencies were noted during the completeness review. They are provided for your information and you do not have respond to them at this time but may do so if you choose.

1. Please include a copy of the drainage permit application to the State Engineer to drain wetlands within the proposed Permit BNCR 1101 area. While we have noted that Appendix 1-6 indicates the applicable drain permit application as pending, a copy of the application must be included with the surface mining permit application. [NDCC 38-14.1-14(1)(n)] (RLK)

The application has been sent to the Oliver County Water Resource Board, please reference NDAC 89-02-01-05(2)(f) regarding permit requirements

2. BNI Coal, Ltd. owns a portion of the coal rights for some of the tracts. Please provide documentation (purchase agreement, deed, quit claim deed, etc.) for those tracts that BNI Coal, Ltd. is a coal owner. If BNI Coal, Ltd. Purchases the surface of any of the tracts, then they should provide the proper documentation also. (DKM)
3. As required by NDCC 38-14.1-14-1(h), please provide more detail to the “...no other violations...” sentence to state whether the permit applicant, any subsidiary, affiliate, or persons controlled by or under common control with the permit applicant, has ever held any federal or state mining permit which in the five-year period prior to the date of submission of the application has been suspended or revoked, or has had a mining bond or similar security deposited in lieu of bond forfeited and, if so, a brief explanation of the facts involved. (WTG)
4. The Certificate of Liability Insurance in Appendix 1.14-1 does not cover the new permit area being added; it only includes the current permit areas. Please provide a new Certificate of Liability as required by NDCC 38-14.1-14 (3). (MDB/GAW)

An updated copy of the Certificate of Liability Insurance has been included with this submittal.

5. A Rider is required to be included with Appendix 1.14-1 which states the insurer will notify the Commission whenever substantial changes are made to the Certificate of Liability, including any termination or failure to renew per NDCC 38-14.1-14(3). (MDB)
6. A copy of the Excess Liability Policy needs to be included with the Certificate of Liability Insurance in Appendix 1.14-1 if it is applicable to the permit area. (MDB)

A copy of the Excess Liability Certificate has been included with this submittal.

7. On Plate 2.1, Extended Mine Plan, there are several tracts of land to be mined that are lacking a label indicating the year to be mined, specifically in Sections 7, 12, and 13. (MSK)

The Map has been corrected as required.

8. Please provide a spreadsheet, or by some other manner of your choosing, provide the information that lists or identifies the specific location coordinates of the overburden drillholes within the permit area. (BEB)
9. As required by NDAC 69.05.2-05-02(1), please remove the detailed soil survey and its accompanying legend from Plate 3.7-1 so that the NRCS prime farmland soil map units are the salient map features. (WTG)

Revisions have been completed as requested.

10. Please mark the buffer zone around any unmitigated significant cultural resource site (including sites that the significance testing has not yet been completed) and provide plans for marking the buffer zones around such sites in the field prior to any disturbance within ½ mile of the site. (DKM)

Revisions have been completed as requested

11. In Section 4.1, Operations Plan, the equipment list should be updated to reflect the addition of the truck/shovel fleet if it will be operational by the time the permit is approved. (MSK)

We expect delivery of a hydraulic excavator in the first quarter of 2012. We will update our equipment list once that machine arrives on site.

12. Plate 4-1.1 depicts several ponds in Section 21 with same pond number. Please revise as necessary. Also, a pond is depicted in Section 28 with a label unlike other BNI Coal, Ltd.'s ponds, and a pond is shown in Section 16 without any identification. Please make the necessary changes. (MSK)

The pond numbers were changed and the labels have been corrected in all applicable maps.

13. Plate 4.1-2 indicates that a key cut would be made first and then two subsequent passes will be conducted to remove the piece of overburden located towards the center of the pit and another to aid with the pre-strip. The narrative indicates that a simple side cast method would be primarily utilized. Please update the diagram. (MSK)

Additional explanation was added to the map to clarify that the digging will be done in one pass, with four steps to each pass.

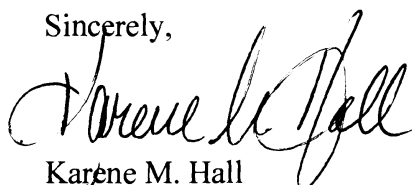
14. Plate 4.10-2 indicates that the S½ of Section 18 appears to be steeper post-mine than pre-mine. Please revise the post-mine topography to comply with NDCC 38-14.1-24.3. (MSK)

15. As required by NDAC 69.05.2-05-09-11-6(h), please provide a soil testing plan for evaluating the results of suitable plant growth material handling and reclamation procedures related to revegetation. (WTG)

As of today, January 11, 2012, 90 days of the Commission's 120 day review period remain. The 120-day review period is suspended until all of the items listed above have been satisfactorily addressed. If you have any questions, please contact this office.

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

Sincerely,



Karène M. Hall
Permit Coordinator