



# Public Service Commission

## State of North Dakota

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March 2, 2012

Jay M. Volk, Ph. D  
Environmental Manager  
BNI Coal, Ltd.  
2360 35<sup>th</sup> Avenue SW  
Center, ND 58530-9499

Dear Dr. Volk:

The Reclamation Division has reviewed BNI Coal Ltd.'s February 9, 2012 responses to our January 11, 2012 completeness review letter for BNI's application for Surface Coal Mining Permit No. BNCR-1101 for the Center Mine. The following items must be satisfactorily addressed before the Reclamation Division can deem the application complete. Please note that deficiencies are new for the second completeness review unless otherwise prefaced as a follow-up item as numbered in first completeness review.

It is recommended that BNI expand the deficiency responses as necessary to specifically describe the section(s) of the permit application where additions, deletions, updates, or corrections were completed in response to a deficiency. While a brief response may adequately explain minor revisions, a more detailed and specific response may be necessary for clarifications or explanations of major revisions and those involving more than one section of the permit application.

### **General**

1. Follow-up unnumbered item: The link for Appendix 4.12-2, Pre/Post Mine Land Use Discussions, in the table of contents for the Operations Section takes the reader back to Section 4.12-2, Determining Reclamation Success rather than Appendix 4.12-2. (RLK)

### **Permit and Section Home Pages and Table of Contents**

2. Follow-up unnumbered item: Please edit the permit section home pages to correct the following inconsistencies: (1) the Section 3 home page should be titled *Environmental*

**Resources** to be accurately descriptive and consistent with the permit home page, and (2), the Section 4 home page should be titled **Operations** to be consistent with the permit home page. (WTG)

3. Please remove the word “*Plates*” that follows “...*Scenic and Aesthetic Impacts*” in Section 4.15 on page 7 of the Table of Contents and the Section 4 home page. (WTG)

## **1. LEGAL AND FINANCIAL INFORMATION**

### **Appendix 1.5-1 Notice of Publication (Newspaper Advertisement)**

4. Follow-up to item No. 7: The tract owned by St. Lucas Cemetery (Susan Jones) in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 18, T141N, R83W, and correctly depicted as such on Plate 1.9-1 Surface and Coal Ownership, is incorrectly described in the Newspaper Advertisement as being located in the NW $\frac{1}{4}$  of Section 18, T141N, R83W. Please correct the legal description for the cemetery to read as “*1 acre in the NE $\frac{1}{4}$* ” in the Newspaper Advertisement. Please also move the “*less 1 acre*” and “*1 acre in the NE $\frac{1}{4}$* ” related to the St. Lucas Cemetery ownership from the NW $\frac{1}{4}$  ownership associated with Allen and Fern Opp to the NE $\frac{1}{4}$  ownership associated with Larry and Virginia Schmidt. (WTG/KME)
5. As indicated in the February 9, 2012 response letter, as required by NDCC 38-14.1-14-1(c)(2), and as noted in similar deficiencies for Plate 1.9-1, Surface and Coal Ownership and Appendix 1.9-1 Ownership Information (within permit boundary), please provide the coal ownership in the NE $\frac{1}{4}$  of Section 20, T141N, R83W. (WTG)
6. Follow-up to item No. 9: As required by NDCC 38-14.1-18(1), please list the names of Douglas D. Doll and James D. Pazdernik instead of the abbreviation of Doll and Pazdernik for coal ownership in the S $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 20, T141N, R83W. (WTG/KME)
7. It appears that the second sentence of item number 10 of the temporary relocation of the county road description beginning with “*37<sup>th</sup> Avenue SW*” should be number 11, and the succeeding numbers of 11 through 13 should be renumbered to conclude with number 14 that is currently blank. Please renumber the description correctly. (WTG/GAW)
8. Please correct the legal description referencing the proposed permanent section line closure between Sections 5 and 8 of T141N, R83W. As written, the description reads “...*Section 8 T142N R83W.*” (WTG)
9. Follow-up to item No. 14: (GAW)
  - a. Please edit the two sentences discussing temporarily relocating county roads to clarify which roads are being closed and relocated, and where the new corridor is going to be located. The existing language does not clarify this issue and the duration of the closure and relocation is not provided as required by

NDAC 69-05.2-10-01 (1) (d). For example, you could state that 3.5 miles of County Road 35<sup>th</sup> Avenue SW is going to be closed south of BNI Mine Office and that traffic will be routed to 31<sup>st</sup> Avenue SW and 37<sup>th</sup> Avenue SW and that 27<sup>th</sup> Street SW is going to be closed between Sections 16 and 21 and 17 and 20 of T141N, R83W and that traffic will be routed two miles south to County Road 29 for approximately 30 years.

- b. Please include the official county road number in each applicable section line description in the “temporary relocate” section (items 1-6) and the “temporary relocation” section (items 1-13). The county road number is presently randomly included in some of the descriptions.
- c. The Pit Layout and Facilities Map shows that mining is to occur through or within 100 feet of section lines between Sections 13 and 18, 19 and 24, 19 and 30, 24 and 25, 23 and 24, 25 and 30 and 21 and 28 in the southern portion of the proposed permit area but these section lines are not included in the notice. We realize that these areas will not be affected until approximately 2027. Please mention in the public notice that BNI will obtain approval from the Oliver County Commissioners prior to affecting these areas or the right-of-ways associated with the relocation corridor.

10. As required by NDAC 69-05.2-10-01-1(b), please make the following updates to the newspaper advertisement map: (WTG/GAW)

- a. Depict the correct BNCR-1101 permit boundary. As depicted on the February 9, 2012 completeness response version, the 110.15 acres owned by Minnkota Power Cooperative, Inc. in the W<sup>1</sup>/<sub>2</sub> of Section 5, T141N, R83W adjoining the western boundary of Permit BNCR-9401 have been inadvertently removed from the permit.
- b. Depict and label 29<sup>th</sup> Street SW because it is proposed as a county road relocation route.
- c. Remove permit boundaries of other Center Mine permits for purposes of clarity with the exception of BNCR-9401 as depicted on the December 12, 2011 version.
- d. Depict section lines for all sections that are labeled as depicted on the December 12, 2011 version. As shown on the February 9, 2012 version, sections are labeled but no lines are depicted in the northern portion of the map.
- e. Consider using black to label the sections as depicted on the December 12, 2011 version, rather than red to prevent potential problems with black and white copying or printing.

#### **Appendix 1.5-2 Landowner Notification Letters**

11. Follow-up to item No. 20: As required by NDCC 38-18-06(1), it does not appear that Susan Jones, owner of the St. Lucas Cemetery in the NE<sup>1</sup>/<sub>4</sub> of Section 18, T141N, R83W, was given notice of the type of land disturbance or mining operation contemplated by BNI Coal, Ltd. following the Reclamation Division’s January 11, 2012 completeness review letter for the BNCR-1101 permit application. Please provide notice to Susan Jones, and provide a copy of the letter in the permit application. (WTG/GAW/KME)

**Plate 1.9-1 Surface and Coal Ownership**

12. Please depict the correct BNCR-1101 permit boundary on Plate 1.9-1. As depicted on the February 9, 2012 completeness response version, the 110.15 acres owned by Minnkota Power Cooperative, Inc. in the W $\frac{1}{2}$  of Section 5, T141N, R83W adjoining the western boundary of Permit BNCR-9401 have been inadvertently removed from the permit. Please also edit the horizontal label for R83W on the top right portion of the plate to correctly label T142N, R83W as T142R83 rather than T142R84. (WTG/GAW)
13. Please depict the approximately 2.5 acres of Permit BNCR-9401 in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 8, T141N, R83W as being adjacent to the permit boundary (light blue) rather than being within the permit boundary (light green). (WTG/KME)
14. As required by NDAC 69.05.2-05-02(1) and NDAC 69.05.2-08-02(1)(b), please depict the section lines in black to make them more visible, as depicted on the December 12, 2011 version, rather than tan, as depicted on the February 9, 2012 version. Please also consider using a specific line type for section lines to clearly differentiate them from tract ownership boundaries. (WTG)
15. Follow-up to item No. 31: As indicated in the February 9, 2012 response letter, as required by NDAC 69.05.2-08-02(1)(a), and as noted in similar deficiencies for the Newspaper Advertisement, and Appendix 1.9-1 Ownership Information (within permit boundary), please provide the coal ownership in the NE $\frac{1}{4}$  of Section 20, T141N, R83W on Plate 1.9-1. (WTG)
16. Please remove Bonita from the ownership listings with James Pazdernik 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 to be consistent with ownership listings in the Newspaper Advertisement and Appendix 1.9-1 Ownership Information (within permit boundary). (WTG/KME)
17. Follow-up to item No. 34j: Please list Karen jointly as a surface owner with David Porsborg the SW $\frac{1}{4}$  of Section 24, T141N, R84W to be consistent with ownership listings in the Newspaper Advertisement and Appendix 1.9-1 Ownership Information (within permit boundary). (WTG/KME)
18. As noted in a similar deficiency for Appendix 1.9-2 Adjacent Ownership Information (within  $\frac{1}{4}$  mile), please make the necessary surface ownership changes in the NE $\frac{1}{4}$  of Section 31, T142N, R83W to Plate 1.9-1 that corresponds to acreage changes for surface ownership made in Appendix 1.9-2 with the February 9, 2012 completeness response. Based on our measurement of the acreages from Plate 1.9-1, it appeared that ownership listed in the December 12, 2011 application (Kathleen Windhorst surface ownership of the NE $\frac{1}{4}$  less about 7 acres, and BNI Coal, Ltd. ownership of about 7 acres) was correct. The February 9, 2012 completeness response, however, changed the acreages to Kathleen Windhorst surface ownership of the NE $\frac{1}{4}$  less about 15 acres, and BNI Coal, Ltd.

ownership of about 15 acres. The February 9, 2012 revised acreages now agree with the ownership acreages in Section 1.9 of Permit BNCR-8106 as depicted on Plate 9A and also depicted on Plate 1-2 of Permit BNCR-9702. (WTG)

**Appendix 1.9-1 Ownership Information (within Permit Boundary)**

19. Follow-up to item No. 37: As indicated in the February 9, 2012 response letter and as required by NDCC 38-14.1-14-1(c)(2), please provide the address on page 41 for Susan Jones listed as the surface owner of the St. Lucas Cemetery in the NE¼ of Section 18, T141N, R83W. Although her address is listed on the warranty deed hyperlinked to Appendix 1-2, the address should be listed in Appendix 1.9-1. Please either retain the description of “unleased” associated with “Lease Document(s)” or hyperlink the recently acquired lease on page 41 because the warranty deed does not constitute right of entry (see related deficiency in Appendix 1-2). (WTG/KME)
20. Follow-up to item No. 39: As indicated in the February 9, 2012 response letter and as required by NDCC 38-14.1-14-1(c)(2), please provide addresses for all of the coal owners of record in the S½SE¼ of Section 18, T 141N, R 83W. (WTG)
21. Follow-up to item No. 40: As indicated in the February 9, 2012 response letter, as required by NDCC 38-14.1-14-1(c)(2), and as noted in similar deficiencies for the Newspaper Advertisement and Plate 1.9-1, Surface and Coal Ownership, please list the coal ownership and provide addresses for all of the coal owners of record in the NE¼ of Section 20, T141N, R83W. (WTG)
22. Follow-up to item No. 41: As required by NDCC 38-14.1-14-1(c)(2), please provide addresses for all of the coal owners of record (Alice Frederick - 5.56%) in the N½N½ of Section 13, T141N, R84W. (WTG/KME)
23. Follow-up to item No. 42: As required by NDCC 38-14.1-14-1(c)(2), please provide addresses for all of the coal owners of record in the S½S½ of Section 13, T141N, R84W. (WTG)

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

24. As noted in a similar deficiency for Plate 1.9-1, Surface and Coal Ownership, please explain the acreage changes that were made to surface ownership in the NE¼ of Section 31, T142N, R83W with the February 9, 2012 completeness response, and make the necessary changes to Plate 1.9-1 Surface and Coal Ownership. Based on our measurement of the acreages from Plate 1.9-1, it appeared that ownership listed in the December 12, 2011 application (Kathleen Windhorst surface ownership of the NE¼ less about 7 acres, and BNI Coal, Ltd. ownership of about 7 acres) was correct. The February 9, 2012 completeness response, however, changed the acreages to Kathleen Windhorst surface ownership of the NE¼ less about 15 acres, and BNI Coal, Ltd. ownership of about 15 acres. The February 9, 2012 revised acreages now agree with the ownership

acreages in Section 1.9 of Permit BNCR-8106 as depicted on Plate 9A and also depicted on Plate 1-2 of Permit BNCR-9702. (WTG)

**Appendix 1-2 Certified Copies of Leases and Assignment Documents**

25. Follow-up to item No. 50: As indicated in the February 9, 2012 response letter, and as required by NDAC 69-05.2-06-03(1), please provide a certified copy of the surface lease with Gary Leinius for the E $\frac{1}{2}$  of Section 6 and the E $\frac{1}{2}$  of Section 7, T141N, R83W. (WTG/DKM)
26. Follow-up to item No. 51: As indicated in the February 9, 2012 response letter, and as required by NDAC 69-05.2-06-03(1), please provide a certified copy of the coal lease with Great Northern Properties for Section 7, T141N, R83W. (WTG/DKM)
27. Follow-up to item No. 52: As indicated in the February 9, 2012 response letter, and as required by NDAC 69-05.2-06-03(1) and NDCC 38-18-06-2, please provide a certified copy of the surface lease with Great River Energy for the SE $\frac{1}{4}$  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)
28. Follow-up to item No. 54: As indicated in the February 9, 2012 response letter, and as required by NDAC 69-05.2-06-03(1), please provide a certified copy of the lease (surface and coal) with the State of North Dakota for the E $\frac{1}{2}$  of Section 16, T141N, R83W, and the coal lease with the State of North Dakota for the W $\frac{1}{2}$  of Section 16, T141N, R83W. (WTG/DKM)
29. Follow-up to item No. 55: As indicated in the February 9, 2012 response letter, and as required by NDAC 69-05.2-06-03(1), please provide a certified copy of the surface lease with Kasper and Donna Kraft for the SW $\frac{1}{4}$  of Section 16, T141N, R83W. (WTG/DKM)
30. Follow-up to item No. 56: As indicated in the February 9, 2012 response letter, and as required by NDAC 69-05.2-06-03(1), please provide a certified copy of the coal lease for the 50 percent coal interest owned by the State of North Dakota in the SW $\frac{1}{4}$  of Section 17, T141N, R83W. (WTG)
31. Follow-up to item No. 57: As indicated in the February 9, 2012 response letter, and as required by NDAC 69-05.2-06-03(1), please provide a certified copy of the coal lease for the 50 percent coal interest owned by 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)
32. Follow-up to item No. 58: As indicated in the February 9, 2012 response letter, and as required by NDAC 69-05.2-06-03(1) and NDCC 38-18-06-2, please provide a certified copy of the surface lease with Susan Jones listed as the owner of the St. Lucas Cemetery in the NE $\frac{1}{4}$  of Section 18, T141N, R83W. (WTG/DKM/KME)

33. Follow-up to item No. 59: BNI's response to this item indicates that the NW $\frac{1}{4}$  of Section 19, T141N, R84W and the E $\frac{1}{2}$  of Section 24, T141N, R84W each consist of 2 tracts (presumably coal tracts), Tract A and the remainder of the tract. While a single coal lease covers both tracts (Tract A and the remainder of the tract), they are separate tracts with different coal ownership and should be identified as such on the Surface and Coal Ownership Map (Plate 1.9-1) and the Public Notice. Please make the necessary corrections to Plate 1.9-1, Appendix 1-2, and the Public Notice. (DKM)
34. Follow-up to item No. 60: As indicated in the February 9, 2012 response letter, and as required by NDAC 69-05.2-06-03(1), please list the coal ownership in the NE $\frac{1}{4}$  of Section 20, T141N, R83W and provide certified copies of coal 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 47 of Appendix 1.9-1 Ownership Information (within Permit Boundary) that ownership of this tract is in the process of being determined. (WTG/DKM)
35. Follow-up to item No. 66: As indicated in the February 9, 2012 response letter, and as required by NDAC 69-05.2-06-03(1), please provide certified copies of coal leases for at least 75 percent of the ownership as required by NDCC 38-18-05(3) for the N $\frac{1}{2}$ N $\frac{1}{2}$  of Section 13, T141N, R84W. (WTG/DKM)
36. Follow-up to item No. 67: As indicated in the February 9, 2012 response letter, and as required by NDAC 69-05.2-06-03(1), please provide certified copies of coal leases for at least 75 percent of the ownership as required by NDCC 38-18-05(3) for the S $\frac{1}{2}$ S $\frac{1}{2}$  of Section 13, T141N, R84W. (WTG/DKM)
37. Follow-up to item No. 69: As indicated in the February 9, 2012 response letter, and as required by NDAC 69-05.2-06-03(1), please provide a certified copy of the surface lease with Robert Reinke for the S $\frac{1}{2}$  of Section 31, T142N, R83W. (WTG/DKM)
38. Please reinsert the warranty deed for Susan Jones listed as the surface owner of the St. Lucas Cemetery in the NE $\frac{1}{4}$  of Section 18, T141N, R83W in the appropriate location rather than between pages 1 and 2 of Keith Reuther's lease number 8061. In addition, please move the location of the bookmark to the appropriate location to be consistent with the tract sequence used throughout the remainder of the bookmarks. Once the lease is received for this tract it should also be inserted with the warranty deed similar to other deed/leases in the permit. (WTG/KME)

### **3. ENVIRONMENTAL RESOURCES**

#### **Section 3.2 Geology**

39. Follow-up to item No. 78: Please address the lack of drilling information in the NE¼ of Section 18, of which most of this quarter is planned to be mined. Additionally, the original (December 12, 2011) Pit Layout and Facilities Map showed no mining in the SW¼ of Section 24; however, the revised (February 9, 2012) map now shows virtually the entire quarter being mined-through with the exception of a small area in the southwest corner of the section. Please provide the required lithologic, geophysical, overburden analysis and attendant information for the NE¼ of Section 18 and the SW¼ of Section 24. (BEB)
40. Follow-up to item No. 80: Since being updated, Appendix 3.2-2 is now unable to be displayed through Internet Explorer. We are able to access the appendix through the root directory, but not by using a web browser. The requested “2011” overburden drillholes have been incorporated into this section; however, we now ask that you repair the link. (BEB)

#### **Plate 3.2-1 Drill Hole Location Map**

41. Follow-up to item No. 83: As required by NDAC 69.05.2-08-05(2)(g), please define the continuous coal crop line for the entire permit area on Plate 3.2-1. (WTG/MSK)
42. NDAC 69-05.2-08-02(1)(d) requires the application include a map that shows the locations and elevations of drillholes used for collecting geologic, ground water, and overburden information. Please incorporate the elevations of each drillhole into the Drill Hole Location Map, Plate 3.2-1. (BEB)

#### **Plate 3.2-2 Geologic Cross Section Map**

43. Follow-up to item No. 85: As required by NDAC 69.05.2-08-05(2)(g), please define the continuous coal crop line for the entire permit area on Plate 3.2-2. (WTG)

#### **Section 3.3 Groundwater**

44. Follow-up to item No. 89: Except for the addition of water quality Piper Plots to the permit, no changes or updates were noted in Appendix 3.3-6. Please incorporate the required baseline water quality data for wells C8-1 and C10-1 into the appendix. If monitoring wells C11-1 and C11-2 are dry wells and have an insufficient volume of water available in the column to sample, that information needs to be noted in the appendix. If any additional water quality analyses have been obtained from permit monitoring wells since July 2011, please incorporate that new data into the appendix as well. As a suggestion, instead of individual Piper Plots for each monitoring well, combined water quality data from all of the Hagel Seam wells could be placed on one

plot and the combined water quality data from the Sheet Sand wells could be placed on another plot, thereby reducing the amount of plots but also demonstrating the water quality similarities between the same monitored hydrostratigraphic units, while also demonstrating the water quality differences between the Hagel Seam and Sheet Sand. (BEB)

45. Follow-up to item No. 90: Please add to Appendix 3.3-7 or on a different spreadsheet all of the baseline water level data for the new monitoring wells being activated for this permit application. Based on the water level hydrographs provided in this same section, it appears that five individual measurements were obtained on the new wells beginning in February 2011, and all of those measurements for each individual new well need to be provided on the spreadsheet to provide the required baseline information. As a follow-up to the original deficiency, water level hydrographs were incorporated into the permit; however, the information provided on the water level hydrographs and information provided in the water level data of Appendix 3.3-7 do not match. In fact, opposite trends are shown when comparing the measured water level elevations and to those provided on the hydrographs (compare previous water elevations data with current water level elevations data and the change from previous columns). Please provide all of the measurement information and dates of water level measurements of the new monitoring wells (C6-series through C11-series) in the spreadsheet of Appendix 3.3-7 or a separate spreadsheet and address the discrepancies between the measured water level elevations in the spreadsheet and water level elevations depicted on the hydrographs. (BEB)
46. Follow-up to item No. 91: The geophysical log for ground water monitoring well C7-1 that was placed in this new section is a blank log sheet with no information. In addition, although a log sheet and bookmark are provided for monitoring well C9-1, the log sheet does not have an identifying monitoring well number, drillhole number, or any other type of identifier to indicate the location that the geophysical data was obtained from. Please address both issues. (BEB)
47. The monitoring well completion reports in Appendix 3.3-3 incorporate the lithologic logs for the permit monitoring wells with the exception of monitoring wells C3-1 and C3-2. The Well Drillers Report forms are accounted for and provide the completion details, but are lacking the lithologic information. Please address. (BEB)

### **Section 3.4 Surface Water**

48. Follow-up to item No. 97: The PHC should include a narrative on the potential impact the mining activity may have on intermittent streams in the permit and adjacent area and the replacement or enhancement of water features that may be affected by mining activities. A reference in this part of the narrative to the wetlands inventory and wetland reclamation information in the permit would be helpful in determining potential effects on water quality and availability in the intermittent stream segments. (RLK)

49. Follow-up to item No. 98: For the surface water stream flow measurement sites planned for the intermittent stream segments, please add quality measurements on the same schedule provided for other surface water monitoring sites. If the intent is to use water quality data for developed water resources and wetlands in the intermittent streams as part of the baseline assessment, please identify the sites in the narrative in Section 3.4. (RLK)
50. Follow-up to item No. 100: Please indicate in the Surface Water Quantity portion of Section 3.4 that the collection of baseline flow data for SWS 100 and SWS 103 will begin with the 2012 monitoring season. (RLK)
51. Please include bookmarks in Appendix 3.4-8, Springs Photos and Vegetation Species List/DWR Photos, so that the information is more easily accessible and useable. Please also attach a title sheet listing the appendix number and name. NDAC 69.05.2-05-02 (GAW)

#### **Plate 3.4-5 Linear Surface Wetland and DWR Locations**

52. Please depict the correct BNCR-1101 permit boundary on Plate 3.4-5. As depicted on the February 9, 2012 completeness response version, the 110.15 acres owned by Minnkota Power Cooperative, Inc. in the W½ of Section 5, T141N, R83W adjoining the western boundary of Permit BNCR-9401 have been inadvertently removed from the permit. Please also edit the horizontal label for R83W on the top right portion of the plate to correctly label T142N, R83W as T142R83 rather than T142R84. (WTG)

#### **Section 3.5 Pre-mine Land Use**

53. General Organization of Baseline Information: (GAW)
  - a. In its present format, it is difficult to review and logically comprehend the baseline land use, vegetation and wildlife information included in the permit. The information is scattered in several different sections and oftentimes unrelated information is combined. This results in a very confusing permit that requires a reader or reviewer to spend a significant amount of time trying to understand how the permit is organized and locate information within the permit. Please reorganize the baseline vegetation data found in Sections 3.5, 3.6 and 4.12 in a logical manner and at the beginning of each of these sections provide an overview of what is found in each of these sections. All of the baseline vegetation data should be found in Section 3.6, given that this section is titled "Pre-mining Vegetation", but this section only has two subsections, ND Natural Heritage Inventory: Species of Concern and Species List Review. The Shelterbelt and Wetland baseline vegetation inventory data is in the Land Use Section, Section 3.5, which is counter-intuitive, and the woodland baseline sampling data is an appendix under Fish and Wildlife Resource Protection, Enhancement and Monitoring, Section 4.13. The wetland sampling location map is found in Section

3.4, Surface Water, in a plate titled Linear Surface Water Wetland and DWR Locations. One would expect the main sections of Section 3.6 and 3.10, Pre-Mining Vegetation and Fish and Wildlife, respectively, to contain an overview of the study areas and an analysis of the results of the surveys. Instead, this important information is included as appendices (3.6-5 - Native Rangeland Data and 3.10-3 - Fish and Wildlife Report (KDK Consulting)). The baseline land use, vegetation and wildlife information must be reorganized so that the information is clearly and logically presented as required by NDAC 69-05.2-05-02.

- b. The second sentence of page 1 of Section 3.5, Pre-mine Land Use, indicates that this section discusses nature and variability of the vegetation of each mapping unit and land use category, but this information is not included. The appendices in Section 3.6 are generally just summary tables, site descriptions or species list. However, Appendix 3.6-5, Native Range Land Data, is a standalone narrative description that (1) references itself (Section 3.6-5) as a summary of the results of the data sample from the ecological sites (which it doesn't do); (2) provides information about proposed native grassland reference areas; (3) discusses ecological sites; and, (4) briefly discusses the methodology used to inventory the native grassland. The information in Appendix 3.6-5 should be included in Section 3.6. Appendices, by definition, are supplementary information, and overall summary results should not be buried in standalone appendices. Section 3.10, Fish and Wildlife Resources, is essentially just a discussion about Threatened, Endangered Candidate Species and Species of Concern while Appendices 3.10-3 and 3.10-4 are really the results of the baseline work. This is confusing. A sentence in the second paragraph on page 1 of Section 3.10 references readers to Section 4.12-2 for information about pre-mine conditions. Pre-mine land use and vegetation data should be included in Section 3.5, Pre-Mining Land Use, and Section 3.6, Pre-Mining Vegetation. Likewise, there is more baseline discussion and analysis of the Fish and Wildlife Resources in the proposed permit area in Section 4.13, Fish and Wildlife Resources Protection, Enhancement and Monitoring Plan (which has been renamed Appendix 4.13 with the latest changes) than there is in Section 3.10 Fish and Wildlife Resources. The information in its present condition is not presented clearly enough to expect a reasonable review by other agencies or in a format that allows the Reclamation Division to make the necessary findings.

54. Please include a narrative that discusses the nature and variability of the shelterbelts as required by NDAC 69-05.2-08-08(1)(d). In other words, discuss the variability in the types of shelterbelts present (single and multiple row field windbreaks, multi-row farmstead shelterbelts, etc.), and variability in the approximate age of the plantings, species composition and general condition. (GAW)

55. Follow-up to item No. 109: Please distinguish the wetlands associated with stream channels from those associated with ground water discharges (springs & seeps) and clarify if there are any lentic wetlands in the permit area. There are numerous references

to prairie pothole type wetlands in the permit but it is not clear if there are actually any prairie pothole wetlands in the proposed permit area. All of the wetlands in the proposed permit area must be characterized in terms of their hydrology system, i.e., stream, seep, prairie pothole wetlands. Intermittent stream channels with obligate and facultative wetland species must be classified as wetlands. Please update Sections 3.5, Pre-Mining Land Use, 3.6, Pre-Mining Vegetation, and 4.12, Revegetation and Post Mining Land Use Narratives accordingly. (GAW)

56. Follow-up to item No. 110: Please include a narrative discussing the results of the wetland water quality analysis as required by Section II-H-7 of the PSC Pre- and Post-Mining Vegetation Assessments Document. This must include an evaluation of the water quality's effects or limitations on the vegetation established on the wetland. (GAW)

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

57. Please depict the correct BNCR-1101 permit boundary on Plate 3.5-1. As depicted on the February 9, 2012 completeness response version, the 110.15 acres owned by Minnkota Power Cooperative, Inc. in the W½ of Section 5, T141N, R83W adjoining the western boundary of Permit BNCR-9401 have been inadvertently removed from the permit. Please also edit the horizontal label for R83W on the top right portion of the plate to correctly label T142N, R83W as T142R83 rather than T142R84. (WTG)

#### **Plate 3.5 -2 Pre-Mining Land Use**

58. Please depict the correct BNCR-1101 permit boundary on Plate 3.5-2. As depicted on the February 9, 2012 completeness response version, the 110.15 acres owned by Minnkota Power Cooperative, Inc. in the W½ of Section 5, T141N, R83W adjoining the western boundary of Permit BNCR-9401 have been inadvertently removed from the permit. Please also edit the horizontal label for R83W on the top right portion of the plate to correctly label T142N, R83W as T142R83 rather than T142R84. (WTG)

#### **Section 3.6 Pre-mine Vegetation**

59. Follow-up to item No. 115: Please include a detailed discussion about the nature and variability of the vegetation of each woodland, native grassland, hayland and wetland mapping unit within the permit area as required by NDAC 69-05.2-08-08(1)(d). The mapping unit sampling information must be analyzed and discussed along with vegetation information obtained from the thorough reconnaissance and qualitative evaluation observed on the mapping units not sampled. (GAW)

#### **Plate 3.6-1 Ecological Sites and Ecosite Sample Locations**

60. Please depict the correct BNCR-1101 permit boundary on Plate 3.6-1. As depicted on the February 9, 2012 completeness response version, the 110.15 acres owned by Minnkota Power Cooperative, Inc. in the W½ of Section 5, T141N, R83W adjoining the western

boundary of Permit BNCR-9401 have been inadvertently removed from the permit. Please also edit the horizontal label for R83W on the top right portion of the plate to correctly label T142N, R83W as T142R83 rather than T142R84. (WTG)

### **Plate 3.6-2 Ecological Site and Sample Locations**

61. Please depict the correct BNCR-1101 permit boundary on Plate 3.6-2. As depicted on the February 9, 2012 completeness response version, the 110.15 acres owned by Minnkota Power Cooperative, Inc. in the W½ of Section 5, T141N, R83W adjoining the western boundary of Permit BNCR-9401 have been inadvertently removed from the permit. Please also edit the horizontal label for R83W on the top right portion of the plate to correctly label T142N, R83W as T142R83 rather than T142R84. (WTG)

### **Appendix 3.6-5 Native Rangeland Vegetation Data for BNCR-1101**

62. It is not clear why this section is included as Appendix 3.6-5. The name or title of the appendix is not descriptive of the material that it contains. The general information in this appendix should be included in Section 3.6 Pre-mine Vegetation. (GAW)
63. A sentence on page 2 of Appendix 3.6-5 states that “By synthesizing all data across the tracts along with information in the qualitative assessments, one can recognize the gradient of native rangeland conditions across the BNCR-1101 Permit Addition which is dependent upon the grazing timing, duration and intensity. This type of approach provides information relevant for a particular situation (i.e. permit addition) and not a “canned” description of range sites within MLRA 54”. Please include the qualitative assessment information in the permit, then synthesize the information as mentioned on page 2 of Appendix 3.6-5 by including a narrative description of the results as required by NDAC 69-05.2-08-08(1)(d). (GAW)

### **Plate 3.7-1 Prime Farmland Soils**

64. Please depict the correct BNCR-1101 permit boundary on Plate 3.7-1. As depicted on the February 9, 2012 completeness response version, the 110.15 acres owned by Minnkota Power Cooperative, Inc. in the W½ of Section 5, T141N, R83W adjoining the western boundary of Permit BNCR-9401 have been inadvertently removed from the permit. Please also edit the horizontal label for R83W on the top right portion of the plate to correctly label T142N, R83W as T142R83 rather than T142R84. (WTG)

### **Plate 3.7-2 Prime Farmland Soils Subsoil Chemical Data**

65. Please depict the correct BNCR-1101 permit boundary on Plate 3.7-2. As depicted on the February 9, 2012 completeness response version, the 110.15 acres owned by Minnkota Power Cooperative, Inc. in the W½ of Section 5, T141N, R83W adjoining the western boundary of Permit BNCR-9401 have been inadvertently removed from the permit.

Please also edit the horizontal label for R83W on the top right portion of the plate to correctly label T142N, R83W as T142R83 rather than T142R84. (WTG)

### **Plate 3.8-1 Soil Map Units (Aerial Photography)**

66. Please depict the correct BNCR-1101 permit boundary on Plate 3.8-1. As depicted on the February 9, 2012 completeness response version, the 110.15 acres owned by Minnkota Power Cooperative, Inc. in the W<sup>1</sup>/<sub>2</sub> of Section 5, T141N, R83W adjoining the western boundary of Permit BNCR-9401 have been inadvertently removed from the permit. Please also edit the horizontal label for R83W on the top right portion of the plate to correctly label T142N, R83W as T142R83 rather than T142R84. (WTG)

### **Plate 3.8-2 Soil Map Units**

67. Please depict the correct BNCR-1101 permit boundary on Plate 3.8-2. As depicted on the February 9, 2012 completeness response version, the 110.15 acres owned by Minnkota Power Cooperative, Inc. in the W<sup>1</sup>/<sub>2</sub> of Section 5, T141N, R83W adjoining the western boundary of Permit BNCR-9401 have been inadvertently removed from the permit. Please also edit the horizontal label for R83W on the top right portion of the plate to correctly label T142N, R83W as T142R83 rather than T142R84. (WTG)
68. Please restore the soil map unit legend to Plate 3.8-2 that appears to have been inadvertently deleted from the February 9, 2012 version. (WTG)

### **Section 3.10 Fish and Wildlife**

69. Follow-up to item No. 126: Please revise Plate 3.10-1, Wildlife Study Area Map, to include aerial photography for the whole approved study area as required by NDAC 69-05.2-08-15. The study area shown on the Wildlife Study Area Map in Appendix 3.10-3, does not accurately show the approved study area boundary (see map included with BNI's August 31, 2010 correspondence). The habitats must be shown on 100 percent of the approved study area, and the narratives, tables, appendices and reports must include information for the whole approved study area as indicated would be done in the approved plan. (GAW)
70. Please update the Wildlife Study Area Map, Plate 3.10-1, to depict all miscellaneous habitats located within the various land uses in the approved study area. This should include natural and constructed grassed waterways, rock piles and field borders, other areas consisting of perennial vegetation included in the cropland land use category, rock quarries, old farmstead sites not depicted as abandoned farmsteads on the land use map, former cropland fields and reclaimed areas seeded to native vegetation, constructed access roads not on statutory right of ways in the native grassland land use category, and all other miscellaneous features not depicted or identified as a separate land use, such as intermittent and perennial streams. NDAC 69-05.2-08-15 (GAW)

71. Please identify all of the Conservation Reserve Program (CRP) acres in the proposed permit area, discuss the vegetation established on each tract, and how it is being managed and its value to various species of wildlife. (GAW)

**Plate 3.10-1 Wildlife Study Area Map**

72. Please depict the correct BNCR-1101 permit boundary on Plate 3.10-1. As depicted on the February 9, 2012 completeness response version, the 110.15 acres owned by Minnkota Power Cooperative, Inc. in the W½ of Section 5, T141N, R83W adjoining the western boundary of Permit BNCR-9401 have been inadvertently removed from the permit. Please also edit the horizontal label for R83W on the top right portion of the plate to correctly label T142N, R83W as T142R83 rather than T142R84. (WTG)

**Plate 3.12-1 Cultural Resource Location Map**

73. We apologize for overlooking this issue during the first completeness review, but as required by NDAC 69.05.2-05-02(1), please clarify the BNCR-1101 permit boundary on Plate 3.12-1 with a specific prominent line type to improve the permit boundary clarity, and label the township boundary between T141N and T142N. (WTG)

**4. OPERATIONS**

**Section 4.1 Operations Plan**

74. Follow-up to item No. 128: BNI responded to this item by including a narrative that states that BNI will not disturb areas within 100 feet of intermittent and perennial streams pursuant to the requirements of NDAC 69-05.2-16-20(2). However, the Pit Layout and Facilities Map shows that the primary haul road will be crossing Hagel Creek which is a perennial stream, and sediment ponds P-12-1, P-16-1, one of the two ponds labeled P-21-2, and P-21-3 are located in intermittent streams. Please identify all areas where mining activities will occur within 100 feet of intermittent and perennial streams to comply with NDAC 69.05.2-16-20. (GAW/MSK)

**Plate 4.1-1 Pit Layout and Facilities Map**

75. Follow-up to item No. 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. Please also adjust the labels of overburden stockpiles, areas unsuitable for mining, and what appears to be the 100 foot buffer zone for roads. (MSK)
76. Follow-up to item No. 131: Please revise Plate 4.1-1 to show no coal removal (pits) over unleased Federal coal and no mining related activities within 100 feet of County Road 35<sup>th</sup> Avenue SW between Sections 19 and 20 for compliance with NDAC 69-05.2-09-02

and NDCC 38.14.1. This county road will not be closed according to the public advertisement and it is a planned relocation route. (GAW)

**Plate 4.2-1 Existing Structures**

77. Follow-up to item No. 133: Please include a map that shows 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(e). Simply showing 500 feet set-backs from occupied farmsteads does not fulfill this requirement. (GAW)

**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:**

78. Follow-up to item No. 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)
79. Follow-up to item No. 136: As required by NDAC 69-05.2-08-02(1)(e), please depict buildings at the following additional locations on Plate 4.2-1: the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 9, T141N, R83W; the NE $\frac{1}{4}$ NE $\frac{1}{4}$  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, R84W; the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 26, T141N, R84W; the SE $\frac{1}{4}$ SE $\frac{1}{4}$  Section 26, T141N, R84W; and the SW $\frac{1}{4}$ SW $\frac{1}{4}$  Section 30, T141N, R83W. Please also add the updated building features and required setbacks to all other applicable plates on which buildings are depicted. (WTG)
80. Follow-up to item No. 138: As required by NDAC 69-05.2-08-02(1)(f), please depict the Great River Energy tower in the N $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 8, T141N, R83W boundary on Plate 4.2-1. (WTG)
81. Follow-up to item No. 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)

**Section 4.5-1 Transportation Narrative**

82. Follow-up to item No. 142: The narrative for Section 4.5-1 should indicate BNI needs to obtain a 404 Permit from the Corps of Engineers before any activities take place near the Hagel Creek crossing. (MSK)

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

83. Please depict the correct BNCR-1101 permit boundary on Plate 4.5-3. As depicted on the February 9, 2012 completeness response version, the 110.15 acres owned by Minnkota Power Cooperative, Inc. in the W½ of Section 5, T141N, R83W adjoining the western boundary of Permit BNCR-9401 have been inadvertently removed from the permit. Please also edit the horizontal label for R83W on the top right portion of the plate to correctly label T142N, R83W as T142R83 rather than T142R84. (WTG)
84. Please label east-west 29<sup>th</sup> Street SW and north-south 31<sup>st</sup> Avenue SW on Plate 4.5-3 because these roads are identified as the county road relocation corridor of east-west 27<sup>th</sup> Street SW and north-south 35<sup>th</sup> Avenue SW. (WTG)
85. Please identify the two mile segment of east-west 27<sup>th</sup> Street SW between 37<sup>th</sup> Avenue SW and 35<sup>th</sup> Avenue SW, and the two mile segment of north-south 35<sup>th</sup> Avenue SW between 27<sup>th</sup> Street SW and 29<sup>th</sup> Street SW with green border and white hatching to signify that the segments are included in the county road relocation corridor. (WTG)
86. Please label all of the section numbers on Plate 4.5-3 within townships T141N - R83W, T141N - R84W, T142N - R83W, and T142N - R84W. Several section numbers described in the proposed county road relocation in the Newspaper Advertisement are not labeled on Plate 4.5-3. (WTG)
87. While other changes are being made to Plate 4.5-3 during the completeness review, please also correct the aerial photograph attribution footnote above the legend to display the correct source and date. The correct source is the USDA National Agriculture Imagery Program (NAIP) rather than the NRCS, and the photograph is dated 2005 rather than 2007. (WTG)

**Section 4.7 Water Monitoring and Drill Hole Reclamation Plans**

88. Follow-up to item No. 152: Please add a statement in the Surface Water Monitoring Plan in Section 4.7 to indicate where the stage-flow curve information will be located in the permit and add the curve information to the permit as appropriate. (RLK)

**Section 4.9 Reclamation Schedule**

89. Follow-up to item No. 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, does not show these areas. 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. Variances from the contemporaneous reclamation requirements will not be granted without the areas being accurately depicted on a map and with proper justification. Stating that it is not

possible to determine the locations where variances are needed is an unacceptable response. (GAW)

#### **Section 4.10 Backfilling & Grading**

90. Follow-up to item No. 154: In Section 4.10, the link in the wetland design paragraph intended to take the reader to a list of wetlands that will be mined through continues to take the reader to Pre-mine Land Use, Section 3.5. (RLK)
91. Please include preliminary wetland design plans for every wetland that is going to be created. This must include premine wetlands affect by associated disturbance. Preliminary information should include the created wetland identification number, created wetland class, the planned size of the created wetland and a list of the premine wetlands being replaced with each created wetland. All created wetlands must be shown and labeled on the Postmine Land Use Map, Plate 4.12-1. Please also include a discussion about how premine linear and slope (spring seeps) wetland are going to be replaced. (GAW)

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

92. Follow-up to item No. 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 as required by NDCC 38.14-14(2)(e). The changes that were reportedly made to address this requirement could not be found. Please indicate which sections of the permit were revised to address this requirement. (GAW)
93. Follow-up to item No. 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). Including average expected yield values of the soil mapping units in the permit area by land use category does not address this issue. Please include pre-mining soil depth information and planned post-mining soil respread depths by land use category and pre- and post-mining topographic changes. Discuss if adequate topsoil and subsoil is available to convert non-cropland to cropland as proposed. (GAW)
94. Follow-up to item No. 171: Please include a planned species density rate for the woodland mixtures in the perennial seed mixtures table in Section 4.12-1 and either remove the language in the woodland narrative that states that species and planting plans will vary for each landowner or provide the specific species and planting plans for each landowner as required by NDAC 69-05.2-09-11(6). It may be acceptable to state that species and planting design plans may be re-evaluated and changed based on Soil Conservation District and NRCS recommendations in the future, but it must be clear that planting information will be updated by permit revision prior to planting. Please clarify

if disturbed woodlands will be reclaimed to similar pre-mine communities (i.e. low shrub, tall shrub or deciduous communities), or if all affected woodlands will be replaced with a single diverse mixture of low and tall shrubs and deciduous trees. Please include details regarding woodland site preparation and management during the responsibility period as required by NDAC 69-05.2-09-11(6). (GAW)

95. Follow-up to item No. 173: BNI is proposing to convert native grassland to cropland within several sections of land and make other land use changes. 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. This requires a demonstration that the soil and topography is suitable for every land use change proposed for each surface owner. (GAW)

#### **Plate 4.12-1 Post-Mine Land Use**

96. Please depict the correct BNCR-1101 permit boundary on Plate 4.12-1. As depicted on the February 9, 2012 completeness response version, the 110.15 acres owned by Minnkota Power Cooperative, Inc. in the W $\frac{1}{2}$  of Section 5, T141N, R83W adjoining the western boundary of Permit BNCR-9401 have been inadvertently removed from the permit. Please also edit the horizontal label for R83W on the top right portion of the plate to correctly label T142N, R83W as T142R83 rather than T142R84. (WTG)
97. Follow-up to item No. 177: Please distinguish all of the reclaimed wetlands, woodlands, developed water resources and shelterbelts from those wetlands, woodlands, developed water resources and shelterbelts that will remain undisturbed. This must include all areas affected by planned associated disturbance. (GAW)

#### **Plate 4.12-2 Ecological Site Reference Area Locations**

98. Please depict the correct BNCR-1101 permit boundary on Plate 4.12-2. As depicted on the February 9, 2012 completeness response version, the 110.15 acres owned by Minnkota Power Cooperative, Inc. in the W $\frac{1}{2}$  of Section 5, T141N, R83W adjoining the western boundary of Permit BNCR-9401 have been inadvertently removed from the permit. Please also edit the horizontal label for R83W on the top right portion of the plate to correctly label T142N, R83W as T142R83 rather than T142R84. (WTG)

#### **Appendix 4.12-1 Landowner Preference Statements**

99. Follow-up to item No. 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, NE $\frac{1}{4}$  of Section 20, NW $\frac{1}{4}$  and SE $\frac{1}{4}$  of Section 21, NE $\frac{1}{4}$  and S $\frac{1}{2}$  Section 31. Gary Leinius preference statements were

not added as indicated in your initial response to this item. NDAC 69-05.2-09-13(3)  
(BEB/GAW)

**Plate 4.13-1 Wildlife Monitoring Map**

100. Please depict the correct BNCR-1101 permit boundary on Plate 4.13-1. As depicted on the February 9, 2012 completeness response version, the 110.15 acres owned by Minnkota Power Cooperative, Inc. in the W½ of Section 5, T141N, R83W adjoining the western boundary of Permit BNCR-9401 have been inadvertently removed from the permit. Please also edit the horizontal label for R83W on the top right portion of the plate to correctly label T142N, R83W as T142R83 rather than T142R84. (WTG)

**Section 4.14 Reclamation Cost Estimate**

101. Follow-up to item No. 183: If BNI intends to use an incremental bond for this then the following additional information will be needed: (MSK)
- a. A description and explanation of the incremental bond should be included in the narrative along with the total number of acres to be disturbed within the incremental bonding boundary and an estimate of the overburden associated with the box cut development.
  - b. Legal description of the area to be bonded in the first increment which must include the initial development activities as well as a sufficient amount of area to accommodate at least two years of mining activities. This can be a metes and bounds survey or by legal description (to the nearest quarter-section). No disturbance for any reason can take place outside of the bonded area.

**Plate 4.14-1 Worst Case Bond Map**

102. Follow-up to item No. 183: There appears to be only one spoil pile in the NW¼ of Section 8; please address. Also, please explain how MSHA Pond 5-6 will be bonded since a portion of the pond area and the diversion is located inside BNCR-9401. (MSK)
103. A revision to BNCR-9401 will need to address the plans and bonding instruments associated with the portion of the haul road that will be built in Section 5 and with the portion of MSHA Pond 5-6 that falls within BNCR-9401. (MSK)

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

1. Follow-up to technical deficiency No. 8: BNI did not provide a response to this item in your February 9, 2012 letter to the Reclamation Division and we were unable to locate specific location coordinates of permit overburden drillholes within the application. To provide this data a spreadsheet should be constructed and placed in the application that provides at a minimum, the drillhole number, location information

(Township/Range/Section/Part Section and State Plane coordinates) and ground surface elevation. If it is your intention to address this item at this time, please do so. If not, please convey that intention in your response to this review item. (BEB)

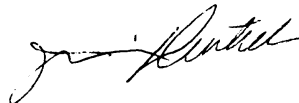
2. The extended mine plan in Sections 24, 25, 19, and 20 indicate that mining will abruptly end at the permit boundary. NDAC 69-05.2-07-01 clearly states that the extended mining plan should identify all lands subject to surface coal mining over the estimated life of the operation. (MSK)
3. The hayland narrative in Section 3.5 states that the hayland/CRP consists of “soils that are in poor condition” and that the “degraded condition” is a result of the CRP program. Please explain what is meant by these statements and how it was determined that the soils are in poor condition. The hayland narrative in Section 3.6, Pre-mine Vegetation, makes no mention of CRP. Please include information that properly characterizes and describes the nature and variability of the vegetation of each hayland/CRP area as required by NDAC 69-05.2-08-08(1)(d). (GAW)
4. Please discuss the PLOTS land within the proposed permit area and ND Game and Fish Department’s interests in this property. Discuss if the property is being managed in any manner through the PLOTS Program and the value of the habitat on this property. Discuss if there are any other wildlife or conservation easements on any property located within the proposed permit area. (GAW)

Since BNI’s February 9<sup>th</sup> response did not address all completeness deficiencies, the Commission’s 120 day review period remains suspended. Please submit three copies of the permit application DVD with your second completeness review (and all subsequent) responses. The additional DVD’s are requested for desktop computer access to the permit application in the event of computer network access problems.

We believe it will be beneficial to schedule a meeting to discuss many of the above items before responding to this letter. This may help avoid the possibility of another completeness deficiency letter before deeming the application complete.

If you have any questions, please contact this office.

Sincerely,



James R. Deusch  
Director  
Reclamation Division