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January 21, 2014

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

Dear Dr. Volk:

The Reclamation Division has reviewed BNI Coal, Ltd.'s November 20, 2013 responses to our August 15, 2013 technical review letter for BNI's application for Surface Coal Mining Permit No. BNCR-1101 for the Center Mine. The response also included changes to the pit sequence and mining schedule. The following items must be satisfactorily addressed before the Reclamation Division will recommend Commission action on the permit application. Please note that most items are in follow-up to numbered items in our August 15, 2013 letter, although there are numerous new items that result from permit application changes made with the November 20, 2013 response.

General

1. It was noted that a number of maps and plates (Blasting Map, Reclamation Variance Areas, etc.) were not updated to reflect the latest revised mine plan for the permit. Please update all the affected maps and plates accordingly. Please also consider using a consistent method for indicating changes made in the permit. Whether the method is underscoring or color for new text, strikethrough of deleted text, or a combination of line and color, it should be consistent throughout the permit to avoid confusion and improve clarity. (FSE)

Plate 1.9-1 Surface and Coal Ownership

2. Follow-up to item No. 3: As required by NDAC 69.05.2-08-02(1)(a), and as noted in similar deficiencies for Appendix 1.9-1 (Ownership Information (within Permit Boundary)) and Appendix 1-2 (Certified Copies of Leases and Assignment

Documents), please update Plate 1.9-1 when BNI has resolved the undetermined coal ownership that currently totals 200 percent interest in the NE¼ of Section 20, T141N, R83W, on Plate 1.9-1. (WTG)

Appendix 1.9-1 Ownership Information (within Permit Boundary)

3. Follow-up to item No. 6: 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 1-2 (Certified Copies of Leases and Assignment Documents), please update Appendix 1.9-1 when BNI has resolved the undetermined coal ownership that currently totals 200 percent interest for the NE¼ of Section 20, T141N, R83W, on page 43 of Appendix 1.9-1 and provide addresses for all of the coal owners of record. (WTG)

Appendix 1-2 Certified Copies of Leases and Assignment Documents

4. Follow-up to item No. 7: As required by NDAC 69-05.2-06-03(1), a certified copy of the coal lease with Great Northern Properties for Section 7, T141N, R83W, should be included in the application prior to permit approval or submitted separately with a trade secret request as discussed between your attorney and the Commission's general counsel. (WTG/DKM)
5. Follow-up to item No. 10: As required by NDAC 69-05.2-06-03(1), please provide either a certified copy of a surface lease executed by Kasper and Donna Kraft for the SW¼ of Section 16, T141N, R83W, or court order issued pursuant to the Surface Owners Protection Act authorizing the Commission to issue a mining permit. This parcel will need to be removed from the permit application prior to Commission action if neither instrument conveying right of entry is obtained. (WTG/DKM/JRD)
6. Follow-up to item No. 11: As required by NDAC 69-05.2-06-03(1), 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 update Appendix 1-2 when BNI has resolved the undetermined coal ownership that currently totals 200 percent interest in the NE¼ of Section 20, T141N, R83W, and provide certified copies of coal ownership leases with the coal owners of record. (WTG)
7. Follow-up to item No. 12: As required by NDAC 69-05.2-06-03(1), please provide a certified copy of the surface lease with Robert Reinke for the E½SE¼ of Section 31, T142N, R83W. Although we agreed to accept the purchase option agreement executed by Mr. Reinke for completeness approval purposes, Commission approval of the permit application cannot occur until a certified copy of a consent statement executed by Mr. Reinke is provided in the application. Alternately, if the actual purchase by BNI Coal has been completed, the necessary documents can be provided showing that BNI Coal is the owner. (WTG/DKM/JRD)

Appendix 1.5-2 Landowner Notification Letters

8. Please resend landowner notification letters to all surface owners who will be affected by the proposed new mine plan and schedule. The Landowner Notification Map (Plate 1.5-2) that was originally mailed with the notification letters depicted coal removal in the west mine area occurring from 2018 through 2032 but the revised pit layout and facilities map now depicts this area to be mined from 2015 through 2020. Likewise, no disturbance was depicted in Section 9 or the northwest corner of Section 16 but the revised mine plan now depicts coal removal in these areas from 2020 through 2024. Proposed Haul Road B was not depicted on the original map so disturbance associated with this corridor was not depicted. Please resend notification letters that include a map depicting the types and approximate timeframes of disturbance planned as required by NDCC 38-18-06. (GAW/FSE)

Appendix 1-7 Approval Documents

9. Follow-up to item No. 124: I now available, please insert documentation in Appendix 1-7 indicating that the Oliver County Board of County Commissioners has approved BNI's plans to close roads and section line trails, and has also approved the alternative relocation route. (GAW)

Plate 1.8-1 Permit Boundary BNCR-1101

10. Please revise Plate 1.8-1 to clearly depict the permit boundary around the Great River Energy tower in Section 8 and the cemetery in Section 18 in a manner similar to the remainder of the permit boundary. The permit boundary is identified around the perimeter of the proposed permit area with a dark blue line so this same line color should be shown around these features. (GAW)

Plate 3.1-1 Pre-Mining Topography

11. Please increase the line width or use a more contrasting color for the mining disturbance boundary on Plate 3.1-1 to make the line more distinguishable from the contour lines shown on the map. (RLK)

Section 3.3 Groundwater

12. Follow-up to item No. 22: The updated response provided projected pit water inflow volumes for both the Hagel coal seam and the underlying Sheet Sand hydrostratigraphic unit; however, only information was requested for the Hagel coal seam because, based on BNI's coal removal plan in the permit area, the Sheet Sand aquifer should not be intercepted or excavated during planned mining and reclamation operations. Unless BNI is projecting upward gradient flow into the pit bottom from ground water derived from the Sheet Sand aquifer, the pit water inflow volumes calculated for the Sheet Sand aquifer below depth of mining can be eliminated from the narrative. (BEB)

13. Follow-up to item No. 25: In addition to the examples provided of higher concentrations of some chemical constituents in the base of spoils saturated zone in Permit BNCR-9702 compared with pre-mine Hagel seam water quality, it is recommended that BNI provide additional examples of reclaimed spoils water quality from BNCR-9702 that has stabilized or improved over time. Providing additional examples of where higher initial concentrations of TDS, sulfate and other chemical constituents have improved since the initial flush of recharge water to the spoils saturated zone will support other PHC predictions of minimal changes to water quality off-permit and minimal changes to water quality within the reclaimed spoils blocks inside the permit area over time. (BEB)
14. The first paragraph in the narrative of Section 3.3 describes the conveyance of Square Butte Creek and Hagel Creek at Nelson Lake. It may be more appropriate in this particular context to use the word confluence instead of conveyance. Please review and revise as appropriate. (BEB)
15. Narrative in the second paragraph on page 1-2 describes springs and seeps in the permit area and also provides a link to Plate 3.3-4 which the narrative describes as being the Spring and Seep Map. However, Plate 3.3-4 is the Certified Well Location Map, so please re-direct the link to Plate 3.4-4, which is the Spring/Seep & Surface Water Monitoring Location map. (BEB)
16. Please describe in the ground water narrative BNI's methods and procedures for decommissioning ground water monitoring wells and abandoned water supply wells for those wells that will be mined-through and are screened below depth of mining, i.e., below the base of the Hagel coal seam. (BEB)

Section 3.4 Surface Water

17. Follow-up to item No. 32: Plate 3.4-1 (General Drainage Map) shows that portion of the watershed of Hagel Creek and SCS Dam No. 5 Creek within the permit and adjacent area. Please clarify the second paragraph on page 2 of Section 3.4 to indicate the drainage areas are shown for the permit area. The current narrative tends to imply that the entire watersheds are depicted. (RLK)
18. Follow-up to item No. 33: The first sentence of the Surface Water Quality narrative does not seem necessary as a result of the text added as the second sentence. Please consider removing the first sentence for clarity. (RLK)
19. In the second and third paragraphs of the Surface Water Quality narrative beginning on page 4 of Section 3.4, the water quality data presented in the narrative does not agree with the information in Appendix 3.4-1. Please update the discussion of baseline data to include additional sample events at the respective sites as appropriate. Also consider

stating in the text what years of sample data are being summarized in the narrative.
(RLK)

20. Follow-up to item No. 36: Please revise the last paragraph in the surface water narrative for clarity. It would be more correct to refer to the livestock water quality criteria published by the NDSU Extension Service as recommendations or guidelines for livestock water supplies rather than standards. Also, please cite the NDSU publication by title and publication number. (RLK)
21. Follow-up to item No. 37: In the last sentence of the third paragraph of the water quantity narrative, please correct the word “reducedd”. Also, the first sentence should be corrected to state that the stream flows in March and April coincide or are in response to spring runoff events. The sentence added regarding the monthly mean flow for April 2011 should be clarified by revising the sentence to note that the monthly mean flow recorded for April 2011 and April 2009 are the two highest on record for the Square Butte Creek gauging station. It is not clear what is meant by the sentence “The same applies for reduced flows during freeze up conditions.” In the second to last sentence the phrase “...due to springs and seep feeds...” is unclear and perhaps “...due to springs and seeps...” would be more clear. (RLK)
22. Follow-up to item No. 38: Please review and revise the Usable Pre-mining Water Supplies narrative to be more clear and logical. Please move the sentences related to reclamation and landowner preference (first, second, and fourth sentences) from the first paragraph to the fourth paragraph where the discussion seems to relate to preference statements and leads in to Table 3.4-2. Also, the first sentence needs to be revised to clarify that landowners have an opportunity to request land use changes for consideration during reclamation such as converting some pre-mine pastureland acres to cropland in the post-mine setting. The second sentence informing the reader that the landowner preference statements describe the land use changes requested and the water features within a land tract needs to be revised for clarity. The fifth sentence does not appear relevant to the first paragraph. (RLK)
23. Follow-up to item No. 38: Please revise the second paragraph of the Usable Pre-mining Water Supplies narrative for clarity. The purpose, evaluation and examples used to describe the pre-mine use of the springs and seeps cannot be reasonably discerned from the narrative. Please reinsert the first sentence that has been struck-out and revise as appropriate for clarity. The paragraph makes little sense without identifying that the springs and seeps shown on plate 3.4-4 were evaluated for their potential to provide a water supply or contribute to downstream water features on a variable and seasonal basis. The reference to Appendix 3/6-5, Wetland Drawings/Methodology seems out of context in the second sentence. The narrative in the appendix appears to be focused on the influence of groundwater seeps on wetlands rather than developed water resources. References are made in the paragraph to “these springs” and “this stream” without clearly identifying the feature(s) in the preceding narrative. The apparent conclusion or summary statement added as the last sentence is not supported by the information

presented in the narrative. Perhaps the paragraph could make a summary about the current utilization of springs and seeps such as the number of developed springs, the typical flow rate and identify any with particularly higher observed flow rates. (RLK)

24. Follow-up to item No. 38: A sentence in the third paragraph states that “BNI will not be mining through any of the intermittent stream channels, therefore no effects will be seen in functionality of these streams in concern of pre-mine usages such as livestock watering.” This statement is an oversimplification of the potential effects the planned mining and associated disturbance will have on intermittent streams particularly in regard to the springs/seeps that contribute to the intermittent flow and linear wetlands occupying such channels. In addition, the conclusion that there will be no effects on the functionality without some post mine enhancements contradicts statements made in the Probable Hydrologic Consequences narrative. (RLK)
25. Follow-up to item No. 39: In the first paragraph of the Usable Pre-mining Water Supplies narrative, a sentence indicates Hagel Creek is classified as an intermittent stream but Plate 3.4-1, General Drainage Map, identifies the Hagel Creek segment near the permit area as perennial. Also, the flow records provided in Appendices 3.4-3 and 3.4-4 appear to support a perennial flow classification. Please review and revise as appropriate. Also, please clarify the sentence in regard to Hagel Creek (identified as an intermittent stream) as being a water source used by Minnkota’s generating facility for cooling water and other industrial purposes. (RLK)
26. Follow-up to item No. 40: Please revise the first full paragraph on page 3 of Section 3.4, Surface Water. The first sentence does not make sense. It appears that the beginning of the sentence is identifying to the reader that the investigation and classification for streams in the permit area is discussed in Appendix 3.4-9. After the sentence identifying the classifications being used, it would be helpful to explain that the classifications assigned to the streams were based on field investigations conducted during 2012 following several years with high precipitation and a corresponding high water table, or other appropriate wording. The narrative could go on to say that the initial surveys that began in 2009 indicated less extensive intermittent stream flow. The Administrative Code citation added to the second to last sentence seems to contradict what is said in the first part of the sentence. It would be helpful if the sentence was completed by indicating that the appendix describes the current (2012) condition and the long term flow classification that is anticipated under near normal precipitation patterns. (RLK)
27. There appears to be two versions of Table 3.4-2 (Potential Effect on Developed Water Resources) on pages 7 and 8 of Section 3.4. Please remove the outdated version of the table. (RLK)
28. Follow-up to item No. 41: Please revise the second paragraph in the probable hydrologic consequence narrative to clearly and accurately describe the information that is actually in the permit application as it relates to the contribution of spring/seep flow

to other water features. A sentence in the second paragraph states: “These water features were looked at from their spring/seep input as to what contribution these springs/seeps play in the functionality of the water feature.” Information on the contribution of springs and seeps to the functionality of individual water features is not readily found in the permit. The next sentence in the paragraph appears to say that the estimated flow rates from the springs and seeps are listed in Appendix 3.4-7. (RLK)

29. Follow-up to item No. 42: A sentence in the third paragraph of the probable hydrologic consequences section states as follows: “The contribution to wetlands from any water source is tough” For this narrative it would be appropriate to indicate that the pre-mine springs/seeps would be eliminated in the area where coal is removed and possibly nearby adjacent areas. As such, the replacement features would need to be designed based on expected surface flows. Please revise the paragraph for clarity. (RLK)
30. Follow-up to item No. 45: Please correct the overlapping text that appears in the legend on Plate 3.4-5. Also, please either retitile the plate or edit the permit’s Table of Contents and Section 3 home page as necessary so the plate’s title and reference are accurate and consistent. (RLK/ZAB/WTG)
31. Follow-up to item No. 52: The “Avg. Sulfates” column is blank on pages 6 to 9 of the wetland, springs and surface water tables in Appendix 3.4-1. Please revise as appropriate. (RLK)

Section 3.5 Pre-Mine Land Use

32. Follow-up to item No. 57: The first paragraph on page 14 of Section 3.5 states that results for samples taken from DWR’s are recorded in Table 3.4-1, but the table contains information on physical features of DWR’s in the permit area. The reference and link apparently should be to Appendix 3.4-1. Please correct as necessary. (RLK)
33. Follow-up to item No. 57: In the Developed Water Resource narrative in Section 3.5, please include a brief narrative and reference to Table 3.4-1 (Pre-Mining Developed Water Resource Conditions) that provides detailed information on the size and condition of the pre-mine developed water resources in the permit area. (RLK)
34. Follow-up to item No. 61: Please correct the recent revision in the first paragraph of the Gravel/Scoria Pits narrative in Section 3.5 which states the scoria pits are in Section 4. The Gravel/Scoria pits are in Section 24. (ZAB)
35. Follow-up to item No. 64 and 71: Please correct the second sentence in the second paragraph on page 8 of Section 3.5 which incorrectly identifies linear wetlands as lentic and depressional wetlands as lotic. (ZAB)

36. Follow-up to item No. 80: Please add SB5B to the shelterbelt ID for the W1/2NW1/4 of Section 5 on Table 3.5-2 in Section 3.5 to clarify that a portion of this shelterbelt is in the NW1/4. (ZAB)
37. Follow-up to item No. 80: The following two errors were noted on Table 3.5-2 in Section 3.5 while reviewing revisions to Appendix 3.6-7. Please change SB19Q acreage from 0.2 to 0.02 and change SB24R acreage from 0.93 to 1.11 to be consistent with the acreages listed in Appendix 3.6-7 and on Table 3.5-1. (ZAB)

Section 3.6 Pre-Mine Vegetation

38. Follow-up to item No. 73: The first sentence of the third paragraph on page 12 of Section 3.6 states that one depressional wetland was sampled but the last sentence in this paragraph indicates that two (2) wetlands were sampled. Please review and correct this discrepancy. (GAW)
39. Follow-up to item No. 73: Please revise the fourth paragraph on page 12 of Section 3.6 so that the information is specific to the depressional wetlands in the permit area. A sentence in this paragraph states that there were only three plant species that had a floristics score of 5 or greater. However, wetland sampling data in Appendix 3.6-5, shows only three species present in the wetland that was sampled and only one has a C-value score greater than 5. (GAW)
40. Follow-up to item No. 74: The fourth paragraph on page 4 of Section 3.6 has been revised to state that western snowberry makes up approximately 1.6% of the composition of vegetation species on native grasslands within BNCR-1101. Please revise to clarify what is meant by this statement and clarify how it was determined that western snowberry comprises 1.6% of the composition. As stated in the original item, please provide an assessment of the spatial frequency or relative abundance of low shrubs not considered woodlands in each tract of native grassland. NDAC 69-05.2-08-08(1)(d) (GAW)
41. Follow up to item No. 75: The legend of Plate 3.6-2 includes a disturbance boundary line that is not shown on the map. Please remove this disturbance boundary line symbol from the legend to avoid confusion. (GAW)

Appendix 3.6-5 Wetland Drawings/Methodology

42. Follow-up to item No. 79: Appendix 3.6-5 is identified as Wetland Drawings/Methodology in the bookmark section of Appendix 3.6-5 but the document is entitled Appendix 3.6-5 - Pre-Mining Wetlands at the top of page 1 of the document. Please revise so the title of the document is the same in both instances. (GAW)

43. Follow-up to item No. 76: Please revise the third paragraph on page 1 of Appendix 3.6-5 to clarify that Class II wetlands are classified as temporary rather than seasonal wetlands. (GAW)
44. Follow-up to item No. 76: A sentence in the third paragraph on page 1 of Appendix 3.6-5 states that Class I, Class II and Class III wetlands sometimes occur as isolated potholes ... but the wetland table on page 12 of Section 3.6 indicates that there are only temporary depressional wetlands in the permit area. Please revise to provide clarity. (GAW)
45. Follow-up to item No. 76: A sentence in the first paragraph on page 5 of Appendix 3.6-5 states that 3 depressional (2 temporary and one seasonal) were selected to be added to the wetland monitoring. Page 12 of Section 3.6 indicates that only one depressional temporary wetland was sampled. Please review and revise for consistency. (GAW)

Appendix 3.6-7 Shelterbelt Drawings/Descriptions

46. Follow-up to item No. 80: Please add a quarter line to the drawing of shelterbelts SB5A and SB5B in Appendix 3.6-7 to clarify that a portion of SB5B is located in the NW1/4 of Section 5. The landowner maps in Appendix 3.5-3 are presented by quarter and Tables 3.5-1 and 3.5-2 list acreages by quarter, therefore the shelterbelt diagram should depict the quarter line for clarity and consistency. (ZAB)
47. Follow-up to item No. 80: The diagram for shelterbelts SB24S, SB24T and SB24U is not in sequential order in Appendix 3.6-7, please place the diagram after the appropriate narrative. (ZAB/GAW)
48. Follow-up to item No. 80: The diagram for shelterbelts SB24R, SB24P and SB24Q is not in sequential order in Appendix 3.6-7, please place the diagram after the appropriate narrative. (ZAB)
49. Follow-up to item No. 80: The diagram for shelterbelt SB13A and the diagram for shelterbelts SB13B through SB13F are not in sequential order in Appendix 3.6-7, please place the diagrams after the appropriate narratives. (ZAB)
50. Follow-up to item No. 80: Please check the acreage of SB24H in Appendix 3.6-7 which is listed as 0.24 acres and results in a total of 9.38 acres for the E1/2 of Section 24. However, this is not consistent with the total of 9.51 acres given on the first page of the parcel description. It appears the correct acreage for SB24H may be 0.37 acres, which is the acreage listed on Table 3.5-2. Table 3.5-1 and Table 3.5-2 both list the total acreage for the E1/2 as 13.91 acres, which would be consistent with the total for the E1/2 and NE1/4 in Appendix 3.6-7. Please review and revise as appropriate. (ZAB)
51. Follow-up to item No. 81: The bookmark table of contents indicates that the Section 19 shelterbelt survey forms are located in an order consisting of the NW1/4, SE1/4 and

SW1/4 but the shelterbelt information for the SW1/4 is located preceding the information for the other two quarters. In other words, if one scrolls through document starting with the NW1/4 the information for the SW1/4 is not found. Please revise the bookmarks in Appendix 3.6-7 to show the information in the order it is presented in the document. Please also note that numerous bookmarks in Appendix 3.6-7 open incorrectly or in the middle of a section. Please review all bookmarks in Appendix 3.6-7 after moving the diagram pages requested in other deficiencies and correct as appropriate. (GAW/ZAB)

Section 3.7 Prime Farmlands

52. Follow-up to item No. 84a: Please revise the following items in the Potential for Vegetation Productivity on Prime Farmland narrative in Section 3.7 as follows: (WTG)
 - a. The Agricultural Research Service is located at the Northern Great Plains Research Center rather than being a separate entity as indicated in paragraph two.
 - b. Paragraph three requires grammar and spelling corrections (sentence two and “replaiced”).
 - c. Research conducted by Power, Ries, and Sandoval was published in 1978 rather than being conducted in 1978 (paragraph three).
 - d. The reference for Power, et al, should be 1978 rather than 1981 (paragraph three).
 - e. The fourth paragraph should be corrected to describe an average projected SPGM respread depth of 43 inches for acres disturbed by mining (please reference Table 4.11-1) with prime farmland respread at 48 inches.
 - f. The phrase “which is much more than the needed 30 inches” should be deleted from paragraph four.

53. Please revise pages 8 through 10 of the Prime Farmland Soil Physical and Chemical Properties Comparison narrative in Section 3.7 as requested below in order to maintain a narrative structure consistent with that which began on the last paragraph on page 7 to aid the reader in understanding the comparisons. A reference to the dominant Order 1 soil map units in the mining disturbance boundary should be listed first and a reference to the dominant Order 1 soil map units within prime farmland soil map units in the mining disturbance boundary should be listed second throughout the comparison. (WTG)
 - a. The second paragraph of page 8 should be rearranged to begin with the reference to the dominant Order 1 soil map units in the mining disturbance boundary (please also reference Table 3a) followed by the reference to dominant Order 1 soil map units within prime farmland soil map units in the mining disturbance boundary (please also reference Table 3b).
 - b. The phrase “a comparison” in reference to Table 4 in the second paragraph of page 8 should be deleted because Table 4 is not a comparison but rather a table of soil properties originating from the Oliver County Soil Survey for both the dominant Order 1 soil map units in the mining disturbance boundary and the dominant Order 1 soil map units within prime farmland soil map units in the mining disturbance boundary. Table 4 should be retitled to indicate as such.

- c. The titles for Tables 5 and 6 should be reversed and the last two sentences in the second paragraph of page 8 should be reversed as well (list a reference to the dominant Order 1 soil map units in the mining disturbance boundary first and list a reference to the dominant Order 1 soil map units within prime farmland soil map units in the mining disturbance boundary second). The references to Tables 5 and 6 on page 9 should also be reversed to match the new table titles.
 - d. Please correct the spelling of Sodium Adsorption Ratio in current Table 5.
 - e. Please rearrange the listing order for soil map units in current Table 6 to be consistent with the listing order in Table 4 and current Table 5 (Arnegard, Williams, Belfield, and Regent).
 - f. Please clarify the second paragraph on page 10. We suggest removing the phrase “this data,” to clarify the conclusion.
 - g. Please delete the last sentence of the narrative regarding selective soil handling because it is out of context in the prime farmland comparison narrative.
54. Please revise the white font for soil map unit labels on Plate 3.7-2 to improve legibility as necessary because the white font is not legible on the yellow fill color. (WTG)

Section 3.10 Baseline Fish and Wildlife Resources

55. Follow-up to item No. 103: The Wildlife Map 2010 included in Appendix 3.10-3 is different than the one reviewed and approved by the Commission in September of 2010. Please include the map that was approved in August of 2010 rather than the one submitted in January of 2010. As you recall, approximately three sections of land were added to the study area. Please also include section numbers on the map. (GAW)
56. Follow-up to item No. 103: Plate 3.10-2 (Sprague’s Pipit Sightings and Dakota Skipper Survey Areas) shows Dakota Skipper surveys areas completed in 2009 and then in 2010 and 2011 in the proposed permit and buffer area. The map indicates that all ecological sites in the buffer area that were determined to have habitat suitable for Dakota skipper were surveyed in 2009. However, BNI initially stated that they only had access to the buffer areas along the public roads in 2009 but that language has been changed to state that full access was granted in 2009. Please further explain how the buffer area was accessed to complete surveys in 2009, and revise to show where surveys were actually conducted in the buffer area in 2009. Also, please provide an explanation of why only two Sprague’s pipit sightings were made in the whole buffer area if the areas were intensively surveyed as indicated. The original wildlife inventory plan submitted in January of 2010 didn’t even mention Dakota skipper surveys and the plan wasn’t revised and approved until September of 2010. The first paragraph of the methodology section of Appendix 3-10-2 states that the studies included two seasons of sampling beginning in April of 2010. Please provide documentation, including dates, when detailed Dakota skipper and Sprague pipit surveys were conducted in 2009, 2010 and 2011. The chronological sequence of events does not match what is stated. (GAW)

57. The original permit application identified the native grassland and tall shrub breeding bird study areas in the NE1/4 of Section 16 and SE1/4 of Section 16, respectively, on Plate 3.10-1, but the map has been revised to show that these studies were conducted in the SW1/4 of Section 9. Please revise Plate 3.10-1 to show the breeding bird study area where it actually occurred, and label the survey sites as study areas rather than reference areas. The reference area language should be limited to the annual wildlife monitoring map. (GAW)
58. Please revise Appendix 3.10-6 (Breeding Bird Data Table) to include the specific location of the study site. (GAW)

Section 3.12 Cultural and Historical Resources and Protection

59. If BNI has acquired any new cultural resource evaluation reports describing site specific testing or site mitigation that may have been conducted, please incorporate that information into applicable portions of the permit. Also, any new correspondence that may have been received from the State Historical Society regarding updated cultural resource evaluation review, recommendations or approvals should also be placed in the permit at this time. (BEB)

Section 4.1 Operations Plan

60. The last sentence of the first paragraph of the Perennial and Intermittent Streams discussion states that Pond 21-4 will be located within the 100 foot buffer zone of a stream but this does not appear to be the case according to Plate 4.1-1 (Pit Layout and Facilities Map). Please correct this discrepancy. (GAW)
61. Please revise the Perennial and Intermittent Stream discussion on page 4.1-2 to clarify which section of the permit can be used to determine the type, extent and duration of disturbance planned to each segment of perennial and intermediate streams. The general statement on page 4.1-2 does not provide enough detail and Plate 4.1-1 (Pit Layout and Facilities Map) does not show the extent of the disturbance planned. The disturbance planned in each segment of intermittent and perennial stream must be discussed in detail and include justification as to why it is necessary to disturb the stream and/or buffer area. Sufficient information regarding the type and duration of disturbance planned is needed since we must consult with the State Department of Health and State Engineers office regarding the planned disturbances. Please also discuss compliance with NDAC 69-05.2-16-20(2) which require that areas not to be disturbed be marked according to NDAC 69-05.2-13-04. (GAW)
62. Please discuss the method and location of disposing or stockpiling the initial boxcut spoil from the 2015 pits located in Sections 7 and 8 in the Section 4.1, Boxcut Operations narrative. It appears that BNI has not allotted enough area for storage of boxcut spoil from the 2015 pits. Please also discuss boxcut spoil stockpiling/disposal for the year 2020 pit located in Section 9. These disposal/stockpile locations must be

shown on Plate 4.1-1 (Pit Layout and Facilities Map) and must comply with the requirements of NDCC 38-14.1-24-19. Please also clarify where SPGM is going to be placed when the first pits are opened in Section 9. (BAJ/GAW)

63. Please provide details in Section 4.1 for opening the box cut for the 2018 pit located in the NE1/4 of Section 17; i.e., whether BNI intends to stockpile or to dispose of the boxcut spoil. On the northeast side of, and adjacent to, the 2018 pit is a pit scheduled to be mined in 2024. Include in the discussion the reclamation of the final pit in the 2024 block of mining and if this area (the 2018 pit and last pit in the 2024 block) will require a variance from NDCC 38-14.1-24.14. (BAJ)
64. Please include narrative in Section 4.1 Operations Plan - Waste Disposal that BNI will dispose of waste in compliance with NDAC 69-05.2-19-04 (Disposal of Noncoal Wastes). (BAJ)

Plate 4.1-1 Pit Layout and Facilities Map

65. Please revise Plate 4.1-1, to place all labelling on top of the lines and/or fill patterns being used to distinguish features identified in the legend. In many instances it is not possible to read what is written on the feature. For example, stockpile numbers and volume text for the stockpiles in Sections 7, 8 and 16 are difficult to read. (GAW/BEB)
66. The symbols for “surface disturbance only” and “areas unsuitable for mining” in the legend of the Pit Layout and Facilities Map should be cross-hatched to match the symbology that is provided on the map (currently they are a solid fill color in the legend but are a cross-hatched color pattern on the map). Please correct the symbols in the legend so that map interpretation is plainly evident based on the information provided in the legend. (BEB)
67. The use of the thin, solid green border to symbolize unleased federal coal tracts gets lost on the map amongst all of the other colored border lines that are provided (including other shades of green for several county roads and the Hagel Coal Seam outcrop line). We recommend that the unleased federal coal tracts be cross-hatched on the map, similar to what has been provided on the map for surface disturbance in portions of Sections 12, 16, and 28. Please consider this request. (BEB)
68. There are two solid green lines (one is dark green and the other is light green) generally following each other along the Hagel crop line, but with separation of the two lines throughout its extent and then complete separation in the NW1/4 of Section 28. If both green lines are intended to represent the Hagel cropline and one of the lines is simply an earlier version that was not deleted from the map, please eliminate one or the other to eliminate confusion. If one of the lines was intended to represent something else other than the Hagel cropline, please provide the symbol and description for what it is supposed to represent in the legend of the map. (BEB)

69. Please clearly show the permit boundary around the Great River Energy tower in Section 8 and the cemetery in Section 18 on the Plate 4.1-1. The legend on this map indicates that a broken magenta colored line is being used but a solid line is shown around the outside perimeter of the permit area. Also, please consider using a color other than magenta for the permit boundary since this same color is being used to distinguish overburden pile locations and intermittent streams. (GAW)
70. Please label MSHA pond P-5-6 and the sediment ponds located in Section 9 on Plate 4.1-1. Please also note that the map shows the ponds in Section 9 being constructed in 2035 well after mining is completed in this area. Please make the necessary corrections. (GAW/FSE)
71. Follow-up to item No. 108: Please revise Plate 4.1-1 to clearly show the diversions that will be used to protect the drainages above the pool areas of planned sediment ponds P-16-1 and P-12-2, as discussed during our September 20, 2013 meeting. It is not clear how runoff from Section 9 is going to be routed around the intermittent streams located above Pond 16-1 or how the runoff will be directed to Pond 12-1 without affecting the intermittent stream located above this pond where coal is not going to be removed. As mentioned during our meeting, the drainages above these ponds should be left undisturbed and protected from surface mining impacts with the runoff being routed around them to the pool areas of these ponds. NDAC 69-05.2-13-05 (GAW)
72. As noted in related deficiencies in Section 4.1, please revise Plate 4.1-1 to depict adequately sized stockpiling locations for boxcut spoil from the pits in Sections 7, 8, and 17. (BAJ/GAW)
73. As noted in a related deficiency in Section 4.1, please revise Plate 4.1-1 to depict where the boxcut spoil and SPGM is going to be placed when the first pit is opened in Section 9 in 2020. (BAJ/GAW)
74. Please consider moving the location of the pond that is proposed in the N1/2 of Section 9 on Plate 4.1-1 to avoid the woodlands in this area. We recommend constructing three small ponds further upstream rather than a single pond located downstream in a heavily wooded area. (GAW)
75. Please revise Plate 4.1-1 to show all planned associated disturbance (e.g., areas of SPGM disturbance beyond the pit disturbance boundaries) as required by NDAC 69-05.2-09-02(2) and (3). (GAW)
76. As previously requested, please revise Plate 4.1-1 to distinguish between those portions of the intermittent streams that are going to be disturbed and those sections that are going to be avoided, and areas that will be disturbed within the 100 foot intermittent stream buffer zone. (GAW)

77. As previously requested, please revise Plate 4.1-1 to show how runoff will pass through the large box cut spoil pile located in the drainage in the SW1/4 of Section 8. (GAW)
78. Section 4.1 (Operations Plan) narrative mentions that two draglines are intended to mine the proposed permit area. Please identify which pits are proposed to be mined with the Bucyrus 8200 dragline and which pits are proposed to be mined with the Page 736 dragline on Plate 4.1. (BAJ)
79. Please depict all planned haulroads on Plate 4-1.1. (e.g., haulroad Sections 6 and H and portions of haulroad Section B are not depicted on the map). (BAJ)

Section 4.2 Existing Structures

80. Follow-up to item No. 116: Although we appreciate the inclusion of the links to photos of the existing roads on Plate 4.2-2, we suggest a map be developed that shows the location of the roads with details on the width, ditch outlopes, surfacing and any other pertinent information. (BAJ)

Section 4.5 Transportation Plan

81. Follow-up to item No. 123: Please expand the Subsoil as a Road Building Material narrative in Section 4.5 to indicate that BNI will update the permit with a future revision to clearly identify road segments where subsoil has been used for construction of haul roads. Also, BNI will need to demonstrate, based on stockpile volumes and other projections/calculations, that this method will not cause a deficit of the material. In addition, BNI needs to address the measures used to alleviate compaction when reclaiming roads built with subsoil. (FSE)
82. Please clarify in Section 4.5 how access will be obtained to the pits in Section 9 and depict the route on both Plate 4.1-1 (Pit Layout and Facilities Map) and Plate 4.5-1 (Transportation Plan). It appears that constructing a haul road through the NE1/4 of Section 8 in Permit BNCR-9401 may be the best alternative to minimize disturbance to lands where coal will not be removed and to avoid the intermittent stream located in the southwest corner of Section 9. (GAW/BAJ/FSE)
83. The second paragraph of the Dragline Walkway Corridor narrative on page 5 of Section 4.5 states in part as follows: "During the next construction season the corridor will be modified to a typical road cross section of 80 ft and profile of Haul Road Section C shown in [Appendix 4.5-6] and remain as a permanent access road between the two active mining areas for the life of the mine." It is unclear what the intent of this sentence is. Please revise and clarify the construction and modification for the dragline walkway corridor and the road in the Dragline Walkway Corridor and the Access Road Section C narratives on pages 4 through 6. (FSE)

84. Please review and revise as necessary the Section 4.5 narrative, Plate 4.5-1 (General Transportation Plan), and all Section 4.5 appendices (including bookmarks) with regard to the naming convention for what will apparently be identified as Access Road Section C following dragline relocations to Permit BNCR-1101. The segment is variously named Access Road Section C, Haul Road Section C, and Haul Road Area C but it should apparently be identified as Access Road Section C consistently throughout the permit. (WTG)
85. Please bring all labels to the front (or top) on Plate 4.5-1 because some labels are obscured by lines; e.g., the culvert labels in Section 31. (WTG)
86. Culvert ID 15 is depicted on Plate 4.5-1 (General Transportation Plan) near station 0+00 for Haul Road Area C - Dragline Walkway; however, a culvert is not depicted on Appendix 4.5-5. Please review and correct as necessary. (BAJ)

Section 4.5 Appendices (various)

87. Please label or otherwise indicate what the lines represent in the profiles in Appendices 4.5-5, 4.5-6, and 4.5-7. (FSE)

Section 4.6 Surface Water Management Plan

88. Table 4.6-1 that is located on the last page of the Surface Water Management Plan lists MSHA sediment pond 12-1 as being an MSAH class pond. Please correct the typographical error of this acronym. (BEB)
89. As required by NDAC 69-05.2-24-01(2), please describe specific best management practices that will be used to control runoff for the W1/2 of Section 5, particularly along the dragline walkway corridor/road and other disturbances. (FSE)
90. Plate 4.6-1 depicts two ponds labeled P-16-3 in the NW1/4 of Section 16. One is to be constructed in 2017 and the other in 2022. Please revise so there are not two ponds with the same identification label. (GAW/BAJ)
91. Please revise Plate 4.6-1 to clearly show the diversions that will be used to protect the drainages above the pool areas of all planned sediment ponds, especially proposed sediment ponds 16-1 and 12-2, as discussed during our September 20, 2013 meeting. It is not clear how runoff is going to be routed to the pool area of Pond 16-1 from the disturbance planned in Section 9 or how the runoff will be directed to Pond 12-1 without affecting the intermittent drainage way above this pond where coal is not going to be removed. As discussed during our meeting, the drainages above these ponds should be left undisturbed and protected from surface mining impacts so runoff needs to be routed around them to the pool areas of these ponds. (GAW)

92. Please revise Plate 4.6-1 to clearly identify the location of intermittent and perennial streams. (GAW)
93. Please revise Plate 4.6-1 to label intermittent and perennial streams within the permit area and to distinguish between those portions of the intermittent streams that are going to be disturbed by mining activities and those sections that are going to be avoided, and those areas where disturbance will be within the 100 foot intermittent stream. Please also discuss how intermittent streams buffer zones will be marked in the field as required by NDAC 69-05.2-16-20(2). (GAW)
94. Please label the pond identification numbers for the ponds located in Section 9 on Plate 4.6-1. Please also use distinctive colors and line weights to differentiate between watershed boundaries and diversions. As presented, it is difficult to distinguish between watershed boundaries and diversions because both use identical colors and similar line weights. (BAJ/FSE)
95. Plate 4.6-1 has construction dates next to the Pond ID text. It appears that several of the dates are incorrect. Please review and correct as necessary. (BAJ)

Section 4.6 Appendices (various)

96. Please review hydrologic information item (7) on page 3 for all sedimentation pond design information sheets. Item (7) spillway information has the design storm event listed as a 50 year 6 hour event but the rainfall event following has the rainfall from a 25 year 6 hour storm at 3.31 inches that is actually the amount of rainfall from a 50 year 6 hour event. Please correct. (BAJ)
97. Please review diversion plan views (plates) in all diversion designs and revise as necessary to ensure that all station labels are brought to the front (or top) and north arrows are present on each plan view. (FSE)
98. The narrative for pond P-21-2 describes a construction date of 2015 but Plate 4.6-1 (Surface Water Management Plan) shows a date of 2018. Please correct as necessary. (BAJ)
99. Please review the design of MSHA pond P-16-1 and revise as necessary. The design for this pond does not show that pond P-16-3 is upstream of P-16-1 and no mention is found of pond P-16-3 in the design narrative or plan sheets of the MSHA pond. Also, the routing of MSHA Pond P-16-1 does not include the effects of the stored water in pond P-16-3. MSHA rules require that impoundments in series be evaluated for the cumulative storage capacity of the ponds in series and if the failure of the upstream impoundment could result in the failure of the downstream impoundment. As noted in a related deficiency for Plate 4.6-1 (Surface Water Management Plan), another pond is identified as pond P-16-3 located approximately 1100 feet to the north-northeast of pond P-16-3 (proposed to be constructed in 2017) with a construction date of 2022.

Please clarify the purpose of the second pond identified as P-16-3 with a construction date of 2022, and include narrative and details for its effect on MSHA pond P-16-1 as necessary. (BAJ/FSE)

Section 4.9 Reclamation Schedule

100. Please update the Reclamation Schedule Table in Section 4.9 to agree with the mining pits/dates depicted on Plate 4-1.1 (Pit Layout and Facilities Map). (BAJ/GAW)
101. Please correct the date of the initial boxcut construction on the top of page 4.9-2. It currently states the year of boxcut construction in 2014. (BAJ)
102. Please update Plate 4.9-1 to account for recent proposed changes to the mine plan. (GAW)

Section 4.12 Revegetation, Post Mining Land Use and Reclamation Success Narrative

103. Follow-up to item Nos. 131, 132, 133, and 135: Tract narratives in Section 4.12-1 (Reclamation Plans) and Appendix 4.12-2 (Pre- and Post-Mine Land Use Discussions) mention land use changes in the SW $\frac{1}{4}$ of Section 16, the S $\frac{1}{2}$ of Section 8, and the W $\frac{1}{2}$ of Section 7 that are not accurately depicted on Plate 4.12-1 (Post Mine Land Use). No cropland is depicted in the SW $\frac{1}{4}$ of Section 16 but the narratives state that about 21 acres of native grassland will be converted. Narratives for the S $\frac{1}{2}$ of Section 8 state that 8.15 acres of native grassland will be converted to cropland, but a field about 84 acres in size is depicted which is about 10 acres less than what existed premining. The narratives for the W $\frac{1}{2}$ of Section 7 state that about 99 acres of native grassland will be converted, but the postmine land use map depicts a field about 31 acres in size. These acreages are also incorrect in Appendix 4.12-6 (Post Mine Land Use Acreage Table). Please revise Plate 4.12-1 and Appendix 4.12-6 as necessary to accurately and consistently depict and list the postmine land use acreages that are described in the Section 4.12-1 and Appendix 4.12-2 narratives. (RLK/GAW)
104. A sentence in the second paragraph on page 3 of Section 4.12 states that "Being that the distribution of habitat types is relatively consistent across the landscape (acres within this tract, the permit area and areas adjacent to the permit area) will provide for native rangeland habitat." Please clarify what is meant with this statement. (GAW)
105. Follow-up to item No. 137: BNI is proposing to convert about 40 acres of premine cropland to native grassland in the E $\frac{1}{2}$ of Section 17 even though the surface owner is requesting more cropland. BNI reasons that the pre and postmine topography is too steep to accommodate the premine land use. Please consider revising the postmine topography so that additional premine cropland acreage can be replaced and that the premine capabilities of the cropland are being restored as required by NDAC 69-05.2-22-01. (It appears that only slight topographic changes will need to be made to obtain an additional 40 acres of land that has slopes less than 9 percent and the soils handling

plan indicates that 18 inches of topsoil is available for respread on this tract. Please also revise the postmine discussion for the E1/2 of Section 17 accordingly. (GAW)

106. BNI is proposing to replace 1.5 acres of pre-mine seasonal wetlands that were located in the E1/2 of Section 17 to the S1/2 of Section 8. The pre-mine wetlands in Section 17 were surrounded by a large tract of native grassland that typically remained idle during the growing season because of the adjacent cropland. Creating three wetland basins relatively close together in the S1/2 of Section 8 may reduce the habitat value of the area compared to the pre-mine state. Please consider placing some of the premining wetland acreage in the E1/2 of Section 17 rather than all in the S1/2 of Section 8. (GAW)
107. Follow-up to item No. 138: A sentence in the last paragraph on page 6 of Section 4.12 discussing the Opp Limited Partnership land in the NW1/4 of Section 18 states that “The similar distribution of land uses throughout the landscape will provide numerous opportunities for native grassland habitat.” Please revise to clarify how similar distribution of land uses provides opportunities for native grassland habitat. (GAW)
108. Follow-up to item No. 139: A statement in the first paragraph on page 9 of Section 4.12 states as follows: “BNI believes that even though there will be some changes in land use, that the condition of post mine landscape will be equal or better than that which existed in pre-mine. For example the reduction of introduced species by the establishment of native species, rejuvenation of soils, and/or the implementation of conservational features all will be an added benefit to the landscape; which have been observed by BNI and at other mines throughout ND.” First, clarify how the “condition” of the landscape is being measured to determine that it will be improved and provide documentation that there is a reduction of introduced species on reclaimed native grassland compared to undisturbed native grassland. Please also clarify how soils are rejuvenated by mining disturbance and reference where in the permit one can find out which conservation features will be added to the landscape. (GAW)
109. Follow-up to item No 140: Please include revising the native grass seed mixture listed in Table 3, Perennial Seed Mixtures, to include several native forb species and a greater number of grass species as recommended by NRCS Range Planting, Conservation Practice 550 specifications. NDAC 69-05.2-13-05 (GAW)
110. Follow-up to item No 140: Please review the pure live seed (PLS) pound per acre values and the species percentage of the mix listings in Table 3, Perennial Seed Mixtures, to ensure they are correct and include a reference used to calculate the seeding rates. The third paragraph on page 10 of Section 4.12 states that 40 pure live seeds per square foot will be seeded, but the seeding rates and percentages of the mix do not support this seed density. In other words, the values listed for the species seeding rates and percentages of the mix are not consistent with the values provided in Table 1, of NRCS’s Herbaceous Vegetation Establishment Guide. For example, Table 1 of the Herbaceous Vegetation Establishment Guide shows that intermediate wheatgrass has a

full seeding rate of 8.5 lbs per acre in MLRA 54 which amounts to 17 seeds per square foot, therefore 10 lbs of PLS would be need to be seeded if this species were planted at 50% of the mix with a designed seeding rate of 40 PLS per square foot. Likewise, 4.4 lbs of alfalfa would be needed if it was 50% of the mix at the designed seeding rate of 40 seeds per square foot. Table 3, Perennial Seed Mixtures incorrectly indicates that 5 lbs of PLS of intermediate wheatgrass and 2.2 lbs of PLS of alfalfa each comprise 50% of the mix at the designed seeding rate. The values listed for the other grass mixtures are also incorrect. Please revise and include a reference of the methodology (species seeds per pound values) used to calculate the seeding rates. (GAW)

111. Follow-up to item No 140: Please revise the Perennial Seed Mixtures, Table 3, so that the information is legible at the print scale. The notation listed below the Woodland mix is not legible when the page is printed. (GAW)
112. Follow-up to item No. 145: Please clarify how the woodland species seeding rates were calculated. Language at the top of page 12 states that the planting rates were established using page 10 of NRCS's Tree/Shrub Establishment Conservation Practice (CP) 612, but it is not clear what the tree spacing is or the established density. Table 3 indicates that 1700 trees will be planted, presumably per acre, but this density rate is not listed in Table 1 of NRCS's Conservation Practice 612. A sentence on page 13 of Section 3.5 states that species and planting densities will mimic what was conducted at the Glenharold Mine, but this discussion states otherwise. Please revise to clarify. (GAW)
113. Follow-up to item No. 145: Please revise Table 3 to clarify if the tree planting values listed are species density numbers per acre and include a total value for the column that can be used to determine the woodland density standard. (GAW)
114. Follow-up to item No. 145: Table 3 states that tall shrubs will comprise 80% of the mix and that low shrubs and trees comprise 10% of the mix but values listed show that tall shrubs actually comprise 40% of the mix, low shrubs 36% of the mix, and trees 24% of the mix. In addition, the percentages listed for each species are not consistent with the density planting rates. For example, 154 silverberry is listed as being 50% of the low shrub mix but 227 snowberry is listed as comprising 25% of the mix. Please revise to provide clarity and clarify if the density values listed in Table 3 are densities per acre. (GAW)
115. Follow-up to item No. 145: A new sentence near the top of page 12 states that the tree planting densities found in Table 3 are based on stocking rates listed in Table 1 of CP-612 for each species. Table 1 of CP-612 does not provide a stocking rate for each species. Please revise to clarify. (GAW)
116. Follow-up to item No. 146: Please explain in detail how pre-mine wetlands that formed as the result of ground water seeps and springs are going to be replaced if the coal seam which created the ground water seep is destroyed by mining. In other words, clarify

that these features will be replaced by features that are dependent on surface water runoff. (GAW)

117. Follow-up to item No. 146: A new sentence in the wetland narrative on page 12 of Section 4.12 states as follows: “The size and shapes of the reclaimed wetlands are expected to remain the same as pre-mine”. Please revise to clarify if this sentence is only referring to reclaimed wetlands affected by associated disturbance. (GAW)

Appendix 4.12-2 Pre-mine and Post Mine Land Use Discussions

118. For clarity as required by NDAC 69-05.2-05-02(1), please add “Appendix 4.12-2” to the appendix title on page one, rename the first bookmark for the appendix as “Appendix 4.12-2 Pre-mine and Post-mine ...” and edit the page footer to read “Appendix 4.12-2”. (WTG)
119. New language in the first paragraph on page 4 of Appendix 4.12-2 states that there was no difference in the vegetation species composition of the area previously tilled in the SW1/4 of Section 7 compared to the native rangelands surrounding them. The sampled representative ecological site for this tract indicates that the thin loamy site consists of 58% little bluestem, 10% needle and thread, 5% plains muhly, 8% sideoats grama, approximately 5% upland sedges and less than 10% Kentucky bluegrass. The site also contains a number of desirable native forbs. The Reclamation Division questions the validity of the following statement: “There were no observed differences in vegetation or management of the areas previously tilled in the SW4 of Section 7 and the native rangelands that they are found adjacent to.” Desirable native forbs and upland sedges are usually absent in formerly tilled areas. Please review and revise to accurately describe nature and variability of the previously tilled area as required by NDAC 69-05.2-08-08(1)(d). (GAW)
120. The first sentence of the third paragraph on page 23 of Appendix 4.12-2 states that the postmine land use will include hayland, the second sentence says the amount will depend on soils and topography and the third sentence says there are no plans to include hayland on this tract. Please revise to provide clarity. (GAW)
121. Follow-up to item No. 138: Please discuss in the pre-and post-mine land use narratives that a waterway will be constructed in the NE1/4 of the NW1/4 of Section 18 where premine native grassland is being converted to cropland, and depict this grassed waterway on Plate 4.12-1 (Post Mine Land Use). (GAW)
122. Please revise the Pre and Postmine Land Use narrative for the S1/2 of Section 8 to discuss the land that was previously tilled but was considered native grassland in the pre-mine section of the permit. It is not clear if the premine capabilities are being restored in this instance. NDAC 69-05.2-08-08(1)(d) (GAW)

123. The pre- and postmine land use discussion for the SW1/4 of Section 17 states that the property is owned by Karen Shulz but the land use preference statement section of the permit includes preference statements from Karen and two other people, all of whom state that the pre-mine land uses should be replaced. BNI is proposing to move 2.6 acres of wetlands from this tract to the NW1/4 of Section 19 which is owned by five individuals. Please include correspondence from the surface owners of both tracts that indicates their concurrence with BNI's proposal to move this wetland acreage and update the narratives in Section 4.12-2 accordingly. Otherwise the 2.6 acres of premine wetlands in the SW1/4 of Section 17 should be replaced on that tract. (GAW)
124. The first sentence of discussing the SW1/4 of Section 17 states that the property is owned by Karen Shulz but Section 1.9-1, Surface Ownership Map, indicates it is owned by Wayne and Jerry Reuther. Please correct as necessary and review all other tract narratives to ensure ownership is listed correctly in Appendix 4.12-2. (GAW)
125. Please revise the pre and postmine land use discussion for the NW1/4 of Section 16 to clarify surface ownership. The first sentence states the tract is owned by "Larry & Schmidt". Please also clarify the last sentence that states "Approximately 0.38 additional acres are being planned for this tract as was requested by the landowner" to explain how additional acreage is going to be created. And finally, please clarify why BNI is proposing to replace the pre-mine wetland acreage from this tract in the E1/2 of Section 18. According to the Pit Layout and Facilities Map all of the disturbed wetland acreage will be affected by associated disturbance and the wetland narrative in Section 4.12 states that "The size and shapes of the reclaimed wetlands are expected to remain the same as pre-mining". We believe that the wetlands disturbed in this tract should be replaced where they existed prior to mining. (GAW)
126. A new sentence on page 10 of Appendix 4.12-2 states that 20.77 acres of native grassland in the SW1/4 of Section 16 will be converted to cropland, wetlands and DWR's. The landowner requested that the land be leveled as feasible and planted to alfalfa and grass. Please explain/justify why BNI is planning to convert native grassland to cropland, wetlands and DWR's when the landowner is requesting hayland. (GAW)
127. Follow-up to item No. 65: As required by NDAC 69-05.2-08-08(1)(d), please revise the Section 31 discussion to describe the species composition of the land in the SE1/4 that was previously disturbed and identify the disturbed areas on the ecological site map, Plate 3.6-1. A sentence at the end of the first paragraph states that "As noted above, there may have been portions of this tract previously disturbed". Previous disturbance is not mentioned in the preceding narrative. Please revise to provide clarity. (GAW)

Plate 4.12-1 Post Mine Land Use

128. Follow-up to item No. 157: Please revise Plate 4.12-1 to show a replacement developed water resource on the native grassland in the SW1/4 of Section 8. It appears that two spring fed developed water resources will be disturbed by mining activities and a replacement feature should be shown. (GAW)
129. Follow-up to item No. 162: Larry and Ginger Schmidt requested that additional trees be planted in the NW1/4 of Section 8 and the NW1/4 of Section 16 to improve wildlife habitat. Please include planting plans for tree plantings of sufficient size to be worthwhile for wildlife, such as 3 acre tree plantings in each tract. (GAW)
130. Reclaimed wetland 19-2 is identified and labeled in the SW1/4 of the SE1/4 of Section 19 but the design plans and Plate 4.10-1 (Post-Mining Topography) indicate that this wetland is going to be constructed in the SE1/4 of the SE1/4 of Section 19. Please review and revise as necessary. Otherwise, please explain what consideration was given to this request and why BNI is not going to plant the trees as requested by the landowners. (GAW)
131. Please label reclaimed wetland 25-1 appropriately on Plate 4.12-1. (GAW)
132. Please revise Plate 4.12-1 to show more realistic replacement plans for the woodlands that are going to be disturbed by mining activities. The map presently shows the woodlands being replaced in identical location as the pre-mine woodlands, including many of which are less than one tenth of an acre in size. (GAW)

Plate 4.12-2 Ecological Site Reference Area Locations

133. Mine plan changes now indicate that the proposed native grassland reference areas will be disturbed much sooner than previously planned. Please consider proposing new locations for these sites at this time. It does not appear that the proposed Shallow Sandy reference area site will be able to be managed properly given its proximity to the main haul road and mining activities that will begin in 2015. (GAW)

Section 4.13 Fish and Wildlife Protection and Enhancement and Monitoring Plan

134. Follow-up to item No. 164: Please revise the new language on pages 3 or 4 of Section 4.13 to reference a new or existing map that clearly identifies specific areas that BNI will be avoiding to minimize impacts to fish and wildlife habitat as required by NDAC 69-05.2-09-02(11). (GAW)
135. Follow-up to item No. 165: BNI is proposing to replace small beaded depressional wetlands in linear drainages that are often associated with ground water discharges with a few larger basins that are dependent upon surface runoff as shown on the Post Mine

Land Use map. Please discuss the wildlife values of these pre-mine wetlands compared to the planned postmining wetlands. (GAW)

136. Follow-up to item No. 167: Please reference the appropriate Wildlife Monitoring Map, Plate 4.13-1 or 4.13-2, in the new language discussing monitoring for Threatened, Endangered and Candidate Species, that shows where Dakota Skipper and Sprague's Pipit surveys will be conducted. (GAW)
137. Follow-up to item No. 167: A new sentence in the first paragraph under Threatened, Endangered and Candidate Species states that the area will be monitored for Piping Plover. Please clarify why this species and not others, such as Whooping Crane, is specifically mentioned. It appears that BNI expects that habitats may be created during mining that might attract this species. Please clarify. (GAW)
138. Please clarify in the first paragraph of page 10 (Fish and Wildlife Monitoring Plan) of Section 4.13 if BNI has a single mine-wide wildlife monitoring plan or if there are separate monitoring plans for each permit area. The plan is written as if BNI has a mine-wide wildlife monitoring plan but sometimes Plate 4.13-1 is referenced which is specific to Permit BNCR-1101 and in other instances Plate 4.13-2 is referenced which is a mine-wide monitoring plan map. Please revise to provide clarity why it is necessary to have two Wildlife Monitoring Maps and to consistently refer to the correct map as necessary. (GAW)
139. Follow-up to a previous item: The first paragraph on page 6 of Section 4.13 states that the semi-permanent and larger seasonal wetlands located within suitable habitat are usually inundated until early to mid-summer, which provides attractive brood habitat and molting areas. Please revise this narrative to clarify what suitable habitat means in this sentence and clarify if the semi-permanent wetlands and larger seasonal wetlands, which are limited to Hagel Creek and another un-named intermittent or perennial stream, are usually inundated until early to mid-summer draw down period. This paragraph as written appears to be more applicable to the prairie pothole wetlands rather than stream corridors and areas seasonally saturated due to ground water. Please revise so the information is specific to this permit area. (GAW)

Plates 4.13-1 Wildlife Monitoring Map and 4.13-2 Wildlife Monitoring Map Minewide

140. Please label the bookmark for Plate 4.13-1 as such so that it is clear that this is Plate 4.13-1 rather than Plate 4.13-2. (GAW)
141. The legend of Plate 4.13-1 includes language that gives an impression that the map is the baseline wildlife study area map rather than an annual wildlife monitoring map. For example, wording at the top of the legend states "Wildlife Study Area Map" and notations at the bottom of the legend mentions "Intensive Study Area = BNCR-1101 Permit Boundary" and "Wildlife Buffer Area". Please review and revise as necessary to clarify why two wildlife monitoring maps are necessary. (GAW)

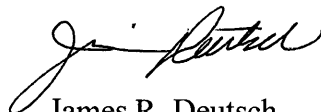
142. Follow-up to item No. 167: Please revise as appropriate either Plate 4.13-1 or Plate 4.13-2 to show where Dakota Skipper and Sprague's Pipit surveys will be conducted. Obviously, the Dakota Skipper surveys should be conducted in areas that have habitat with greatest potential for them to exist and the Sprague Pipit surveys should be conducted on all areas where they were detected during the baseline surveys. (GAW)
143. Plates 4.13-1 and 4.13-2 show two breeding bird reference sites in the SE1/4 of Section 16 but Plate 3.10-1 (Baseline Wildlife Study Area Map) shows these sites in different locations. It appears that the reference sites were moved in response to a previous deficiency but the change was made on the wrong map. Please review and revise as necessary to keep a clear distinction between the Permit BNCR-1101 study area map and the annual mine-wide wildlife monitoring area map. (GAW)

Section 4.14 Reclamation Cost Estimate for Bonding Purposes

144. Follow-up to item No. 171: BNI has changed the date of the worst case condition for bonding to 2015; however, the recent changes to the mine plan were not considered and incorporated into the worst case reclamation estimate. The Reclamation Division believes the worst case condition will now occur at the end of the first permit term, at the end of year 2019. Please update Section 4.14 to reflect that the worst case condition occurs at the end of year 2019. Please also update Plate 4.14-1 (Worst Case Plan View), Plate 4.14-2 (Worst Case Bond Cross-Sections), and Appendix 4.14-1 (Worst Case Bond Calculations). (BAJ/FSE)

Please contact this office if you have any questions.

Sincerely,



James R. Deutsch
Director
Reclamation Division

cc: Oliver County Auditor