



Public Service Commission

State of North Dakota

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May 19, 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 May 14, 2014 responses to our May 9, 2014 technical 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 will recommend Commission approval of the permit application. Items are in follow-up to items as numbered in our May 9, 2014 letter.

Appendix 1-2 Certified Copies of Leases and Assignment Documents

1. Follow-up to item No. 4: BNI's May 14, 2014 response to item No. 4 requiring inclusion of a certified copy of a surface lease executed by Kasper and Donna Kraft for the SW $\frac{1}{4}$ of Section 16, T141N, R83W, indicates that BNI will provide the Commission with a copy of the lease prior to Commission application approval, and include a certified copy of the lease in the approved permit. Please be reminded that NDAC 69-05.2-06-03(1) requires a "certified copy" of the lease and that must be provided to the Commission prior to application approval. As previously stated we prefer that it be included in the permit application with BNI's response to this letter. (WTG/DKM/JRD)

Section 3.8 Soil Resources

2. Follow-up to item No. 8: Please label the Straw loam (SwA) prime farmland soil map unit in the N $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 12, T141N, R84W that was added to Plate 3.8-1 (Soils Map). (WTG)

Appendix 4.5-1 Section Line Closures, Rights of Ways, and Detour Corridors

3. Follow-up item to No. 13a: Thank you for adding the full page copy of the April 3, 2014 agreement in consideration for granting the December 9, 2013 petition to Appendix

4.5-1. However, please reorder its location so that it follows, rather than splits, the March 6, 2014 Oliver County Commission proceedings published April 10, 2014 on pages 12 and 13 of the Center Republican. (WTG)

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

4. Follow-up to item No. 18: Please revise plans to show replacement plans for the pre-mine developed water resources that are to be destroyed in the S $\frac{1}{2}$ of the SW $\frac{1}{4}$ of Section 8. There are two pre-mine spring fed stockponds in this area and they must be replaced as required by NDAC 69-05.2-16-17. BNI's proposal to replace these ponds in the S $\frac{1}{2}$ of Section 17, which is a separate management unit, does not meet the requirements of said regulation and of NDCC 38-14.1-24(9). The shallow seasonal reclaimed wetlands that will be reclaimed where these ponds existed are not adequate replacement for pre-mine spring fed dugouts. Please revise plans in the permit accordingly. Table 3.4-2 (Potential Effects on Developed Water Resources) must be revised to indicate that these developed water resources will be replaced. It's possible a well with electricity to the site will be needed to replace the water quantity and quality that existed prior to mining. (GAW)

5. Follow-up to item No. 18: Please revise Table 3.4-2 (Potential Effects on Developed Water Resources) so that replacement information for each pre-mine feature is clear. It is not clear what is meant with statements such as "*combined with another landowner tract*" in the replacement column in the table. Please also revise the last paragraph on page 13 of Section 3.4 (Surface Water) to meet the requirements of NDCC 38-14.1-24(9) which requires that each pre-mine developed water resource be replaced with postmine water resources equivalent in quality and quantity to that which existed prior to mining. Please change the current language suggesting that postmine stockponds dependent on just surface water runoff will be adequate replacement for pre-mine springs and spring fed stockponds that existed prior to mining on each tract where such features existed. We believe that springs and spring fed developed water resources need to be replaced with functioning wells (or similar system) to meet the requirements of NDCC 38-14.1-24(9). (GAW/RLK)

Please contact this office if you have any questions.

Sincerely,



James R. Deutsch
Director
Reclamation Division

cc: Oliver County Auditor