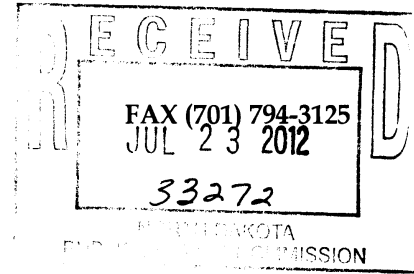


PHONE (701) 794-8734



AN ALLETE COMPANY

2360 35TH AVENUE SW CENTER, ND 58530-9499
MINING LIGNITE AT THE CENTER MINE SINCE 1970

July 20, 2012

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

RE: Revision 12 to Permit BNCR-9401

Dear Mr. Deutsch,

This submittal contains a response to your letter to us dated June 6, 2012. In this letter you listed technical deficiencies that must be addressed before the permit revision application for BNCR-9401 can be deemed complete. Below is a listing of the deficiencies followed by our response:

General

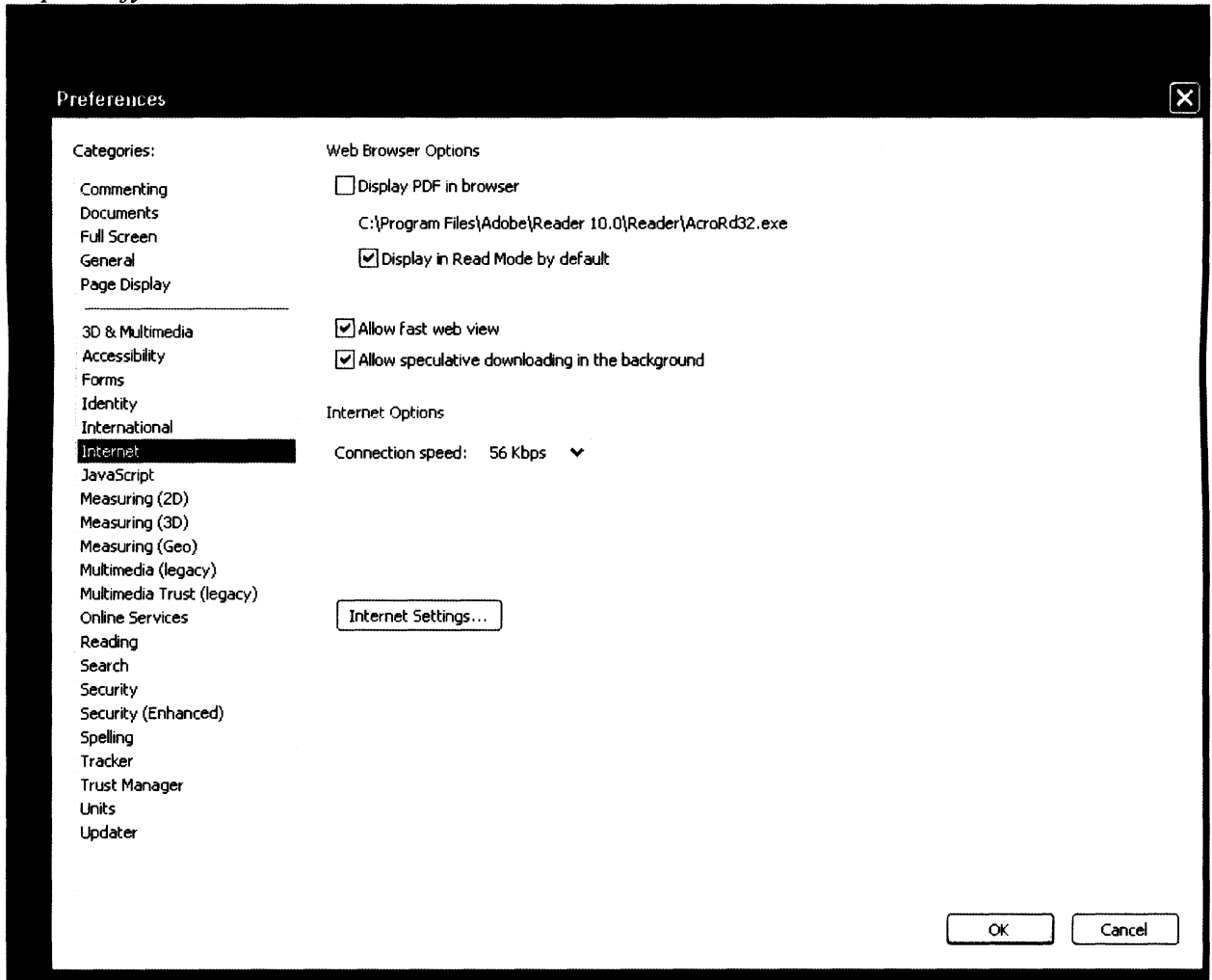
1. For every map included in this permit application, please provide the scale at which the map should be printed so that the information on the map and legend is clearly legible. In addition, the legends of many of the maps contain unnecessary information, such as other permit boundary areas. BNI may choose to revise the legends accordingly when the print scale is listed on the maps. (GAW)

Legends have been updated and "unnecessary" information has been removed. Print scales have been included. To plot any of the maps with the correct scale, go into the print menu and change the plotter to a large plotter and the print size in the preview will change to the correct print size.

1. LEGAL AND FINANCIAL INFORMATION

2. It does not appear that the hyperlinks in the Legal and Financial Information section are functional. Please repair the links so they are operable as intended. (GAW/BEB)

This same issue occurred in the electronic BNCR-9702 and seemed to be resolved when the following steps were taken with Adobe Reader and/or Acrobat Pro so that the links work properly. Open Adobe/Acrobat Pro software, click Edit, Preferences, under the Categories column on the left, click on Internet. At the top of the Internet tab UNCHECK the box by "Display PDF in Browser, click OK. The following is an illustration of the Internet tab to help clarify what it should look like.



Permit Application (SFN 10562) and Appendix 1-5

3. As required by NDCC 38-14.1-14(1)(a), please submit a revised page 1 of SFN 10562 to accurately describe the land proposed for addition to BNCR-9401 with Revision 12. Please revise the revision summary to add Section 5, T141N, R83W to the land description. Please also revise the tabular entries to accurately describe the added acreage as follows:
(WTG/GAW)
 - a. 27.17 acres in Section 5, T141N, R83W;
 - b. 139.09 acres in Section 8, T141N, R83W; and,
 - c. 13.87 acres in Section 32, T142N, R83W.

Page 1 of the application has been revised as requested.

Appendix 1.5-1 Notice of Publication (Newspaper Advertisement)

4. Please rephrase the first sentence of the public notice because the first sentence could give the reader the impression that Revision No. 12 was approved by the PSC on August 16, 1995 (date of the original permit approval). Also, the second sentence should be rephrased because it could give the reader the impression that the revision area is 434.83 acres in size (this is the acreage of the entire permit area). The amount of acres proposed to be added to the permit with this revision as well as the total acres of the permit should be clearly stated in the notice narrative. (BEB)

The first paragraph of the Notice of Publication has been revised.

5. In the last sentence of the first paragraph, please indicate that the baseline environmental resource information sections of the permit are being updated to reflect the area being added to the permit with this revision as well as the other sections of the permit. (GAW)

The Notice of Publication has been revised to state that the baseline environmental resource information sections have been updated.

6. As required by NDCC 38-14.1-18(1), please add a statement to the notice that any person with an interest which is or may be adversely affected may file a petition to designate an area as unsuitable for surface coal mining operations for the area being added to the permit area within thirty days of the last publication of the notice. (GAW/WTG)

The Notice of Publication has been revised as requested.

7. As required by NDCC 38-14.1-18(1), please add Section 5 to the legal description of 180.13 acres proposed for addition to the permit in the last sentence in the first paragraph of page 1. (GAW/WTG)

Section 5 has been added to the legal description.

8. As required by NDAC 69-05.2-10-01(1)(d), please add a statement describing any section line right of way or public road where surface coal mine operations will be conducted within 100 feet of the outside right of way, or if it will be closed. (GAW/WTG)

Section line closures and right of way work has been added to the Notice of Publication.

9. Please remove legal descriptions and surface and coal ownership listings for the S½ of Section 8, T141N, R83W (Five D's and Great River Energy), and the less 74.4 acres in the S½ of Section 32, T142N, R83W (BNI Coal, Ltd.), because these parcels are not within the permit boundary. NDAC 69-05.2-10-01(1)(b)(4) requires that the surface and coal ownership be provided in the public notice for only the permit area and not the adjacent area. (WTG/GAW)

The legal descriptions have been updated as requested.

10. As required by NDAC 69-05.2-10-01(1)(b)(1), please add the locations and labels for the Milton R. Young Station and Square Butte Creek to the Notice of Publication map to allow local residents to readily identify the permit area. (WTG/GAW)

The Notice of Publication map has been updated to show the location of the MRY Station.

Section 1.7 Business Entity Information

11. As required by NDAC 69-05.2-06-01(1)(e) and 69-05.2-05-02(1), please update subsections 1.7.3, 1.7.4, and insert 1.7.5 to reflect the most recent additions or changes to these subsections as submitted with the permit application for BNCR-1101. (WTG)

The above listed sections have been revised as requested.

Section 1.9 Surface and Coal Ownership

12. As required by NDAC 69.05.2-05-02(1), please revise the first paragraph of Section 1.9 as necessary to clearly explain that the names and addresses of surface and coal ownership within the permit boundary (required by NDCC 38-14.1-14(1)(2)) and contiguous to the permit area extending one-fourth mile from the permit boundary (required by NDAC 69-05.2-06-01(1)(a)) are listed in Table 1.9-1 and shown on Plate 1.9-1. As currently presented, the narrative incorrectly combines the reference to surface and coal ownership contiguous to the permit area extending one-fourth mile from the permit boundary (required by NDAC 69-05.2-06-01(1)(a)) with a statement of interest, options, or pending bids by the applicant on those lands as required by NDAC 69-05.2-06-01(1)(c). Also, clearly separate Table 1.9-1 with subheadings to list surface and coal ownership within the permit boundary first, followed by the list of surface and coal ownership contiguous to the permit area extending one-fourth mile from the permit boundary. As currently presented in Table 1.9, surface and coal ownership within the permit boundary is mixed with that contiguous to the permit area extending one-fourth mile from the permit boundary (Minnkota Power Cooperative ownership in Section 32 within the permit boundary follows two pages of ownership listings lying outside of the permit boundary). Please note that some surface and coal ownerships, such as those in Section 5 and the NW¹/₄ of Section 8 T141N, R83W, will need to be listed as both within the permit boundary and contiguous to the permit area extending one-fourth mile from the permit boundary. (WTG)

Section 1.9 Surface and Coal Ownerships have been reorganized and updated as requested.

13. As required by NDAC 69-05.2-06-01(1)(a), please correct the legal description in Table 1.9-1 for Five D's ownership in the NE¹/₄SE¹/₄ less Lot A of Section 8, T141N, R83W, that is currently described as the NE¹/₄NE¹/₄ less Lot A. (WTG)

The above listed ownership has been revised as requested.

Section 1.10 Areas Unsuitable for Mining

14. As required by NDAC 69-05.2-06-05(1) and 69.05.2-05-02(1), please expand the narrative on areas designated unsuitable for mining to address all areas where surface coal mining operations are prohibited or limited. We recommend that you insert the narrative similar to

that in Section 1.10 of the BNCR-1101 permit application. Please also describe BNI Coal, Ltd.'s intentions to comply with NDAC 69-05.2-04-01.3(2), or approvals received, for closure of section lines common to Sections 8 and 9, T141N, R83W, and Section 5, T141N, R83W and Section 32, T142N, R83W. A reference to the BNCR-1101 permit application under review for closure of the section line common to Sections 8 and 9, T141N, R83W is acceptable, but documentation for approval to close the section line common to Section 5, T141N, R83W and Section 32, T142N, R83W should be added to the permit. Please also reference and hyperlink Appendix 1-7 Approval Documents as the location for section line closure approval documentation. (WTG)

Section 1.10 Areas Unsuitable for Mining has been revised as requested.

Appendix 1-2 Certified Copies of Leases and Assignment Documents

15. Please revise the Appendix 1-2 Table of Contents to delete the listing for item XII Plate 1-2 Ownership Map because it has been removed and is replaced by Plate 1.9-1. (WTG)

The Table of Contents for Appendix 1-2 has been revised to remove the listing for the Ownership plate 1-2.

16. As required by NDAC 69.05.2-05-02(1), please provide a certified copy of the surface ownership lease with Larry and Virginia Schmidt for the NW¼ of Section 8, T141N, R83W (No. 4049). It was noted that an updated lease (to replace the original lease signed with Frank and Isabella Schmidt in 1971) for the portion of this tract located in Permit BNCR-1101 was included in the permit application for BNCR-1101. (WTG)

The surface lease for Larry and Virginia Schmidt has been included with this submittal.

17. As required by NDAC 69.05.2-06-03(1), please provide a certified copy of the surface and coal ownership lease with Minnkota Power Cooperative for the NE¼ of Section 8, T141N, R83W. It appears that the original lease (1971) with Peter and Rose Erhardt has expired and is no longer valid. If BNI is basing its right to enter on the 1971 lease, then please provide proof that the lease has been extended. (WTG)

This area was leased by the 5D's in 2004 (surface and coal lease attached) and Minnkota bought the surface and coal in 2010 (warranty deed attached).

18. As required by NDAC 69-05.2-06-03(1), please provide a certified copy of the surface ownership lease with Minnkota Power Cooperative for the SE¼ of Section 32, T142N, R83W. (WTG)

The area in section 32 was an oversight by BNI and has notified Minnkota Power, the agreement is in the process of being signed.

2. EXTENDED MINE PLAN

Plate 2-1 Extended Mine Plan

19. As required by NDAC 69.05.2-05-02(1), please rotate Plate 2-1 so that it opens in the landscape orientation and is properly oriented. (MSK)

The correction has been made.

3. ENVIRONMENTAL RESOURCES

Plate 3.1-2 Pre-Mining Area Slope Map

20. Please revise Plate 3.1-2 to depict the area slope for all areas within the permit area. NDAC 69-05.2-08-02(3)(b) (GAW/MSK)

The plate was revised to depict all areas within the permit area.

Section 3.2 Geology

21. NDAC 69-05.2-08-05(e) requires sufficient cross-sections to show the major subsurface variations within the permit area down through the deeper of either the stratum immediately below the lowest coal seam to be mined or any lower aquifer which may be adversely affected by mining, in particular to assess pit suitability for disposal of refuse, ash and other residue from coal utilization processes. Presently, the cross-section that is provided in the permit depicts the elevations of surface topography and the Hagel seam. Considering that a major component contributing to this revision application is the addition or expansion of coal processing disposal facilities, please supplement the data provided on the cross-section map by depicting and labeling the strata overlying and underlying the Hagel bed to include the full thickness of the stratigraphic column including the overburden, underburden and lower aquifer(s). Considering that there is currently over 200 feet of vertical relief represented on this map, a separate, larger map more appropriately scaled to accurately display the requested information should be considered. The geologic cross-sections provided in Permit BNCR-9702 are an excellent example of the type of information we are requesting to be included with this application. (BEB)

Plate 3.2-1A was added from Minnkota Power's Facility Impact Study showing a more diverse cross section.

Section 3.3 Groundwater

22. Section 3.3 provides narrative from the original permit that describes that no springs or seeps exist in or immediately adjacent to the permit area; however, this portion of the narrative needs to be expanded now to account for the addition of land north and south of the existing permit area. If springs are identified in the Revision 12 addition area, they will need to be described in the narrative, assessed as required in the rules and depicted on Plate 3.3-1. It appears the wooded draws leading to Hagel Creek in the NE¼ of Section 5 may likely contain seeps and/or springs. Please address. (BEB)

A spring/seep inventory was conducted on June 16, 2012. A response to the findings was supplied in the narrative.

23. It appears that the last paragraph in the Ground Water narrative, Section 3.3, describes a nominal amount of information regarding the probable hydrologic consequences associated with mining and reclamation of the permit area. It is recommended that the PHC portion of this narrative be specifically labeled as such, with expanded narrative regarding the addition of new land with this revision and a follow-up hydrologic reclamation plan (HRP) included in the narrative. The HRP is required to provide, at a minimum, a description of alternate water sources available to the permit area after mining and reclamation is complete, should the postmine land use require it. Please address. (BEB)

The section was expanded to address the HRP, and expand the PHC.

Plate 3.3-1 Current Well Monitoring Location Map/Active Piezometer Nests

24. Please depict and label the locations of the BNI, Minnkota Power Cooperative, and Minnie Reinke production wells on Plate 3.3-1 as required by NDAC 69-05.2-08-02(1)(f) and 69-05.2-08-06(1)(b). Please use a unique symbol to depict the production wells differently from the monitoring wells, and consider changing the plate name to *Monitoring Well and Production Well Location Map*. (BEB)

The plate was updated to show the production wells.

Section 3.4 Surface Water

25. In Section 3.4.2, Permit Area Surface Water Resources, please revise the link to Plate 3.5-2 in the first paragraph to take the reader to Plate 3.5-1, the pre-mining land use map that includes the area being added with this revision, rather than the original permit area. NDAC 69-05.2-08-07(1) (RLK)

The link was corrected.

26. The first paragraph of Section 3.4.2, Permit Area Surface Water Resources, states that “several small wetlands are found mainly in Section 5” but only two wetlands are depicted in the entire permit area on the Pre-Mining Land Use map, Plate 3.5-1 and described in wetland information provided in Appendix 3.6-1. Please revise the narrative to refer to wetlands delineated in the permit area if those are the only wetlands in the permit area or expand the narrative and wetland information to describe the additional wetlands if additional wetlands are present. (RLK)

The narrative was updated to depict just 2 wetlands located in section 5.

Section 3.5 Pre-Mine Land Use

27. Please include a discussion in Section 3.5 that explains what the pre-mine land use “Reclaimed Grassland” and “DL/Industrial Land” are actually representing. It is not clear if reclaimed grassland is land that was permitted and reclaimed under our surface coal mining regulations, or if this acreage is former cropland that was seeded to grassland species, or if

this area was subject to disturbance and reclamation under some other agency's permitting and reclamation standards. Likewise, it is not clear what the DL/Industrial land actually represents. Please thoroughly discuss what these land uses are representing and how they are being used. NDAC 69-05.2-08-08 (GAW)

Areas labeled as Reclaimed Grassland have been changed to Tame Pasture. A discussion about Tame Pasture and disturbed land/industrial land uses has been added to Section 3.5 Pre-mine land use.

28. Please retain original Plate 3.5-1, Pre-mining Land Use and Range Sites, which shows the land uses and range sites of the original permit area. This map also clearly shows the woodlands. This map may need to be also placed in Section 3.6, Pre-mining Vegetation, since that is where the range site and woodland sampling data is located in the permit. It is not acceptable to change the range sites on this area to ecological sites since the sampling data refers to range sites not ecological sites. Ecological sites should only be shown on the native grassland areas being added to the permit with this revision. NDAC 69-05.2-08-08 (GAW)

The original Plate 3.5-1 has been put into the electronic permit. This map will show the range sites within the permit area prior to Rev. 12.

A new plate 3.5-2 Pre-mine Land Use Revision 12 has been put into the permit. This is a drawing of ONLY pre-mine land uses of acres being added in Rev. 12.

Plate 3.6-1 has been revised to ONLY show the ecological sites and sample locations within the proposed additional acres. A link has also been added within the Section 3.6 Vegetation Section to direct you to Plate 3.5-1 to view range sites.

Plate 3.5-1A has also been added to the permit, which is the supplemental map (part of the approved permit) that was completed in 2004.

29. The Pre-mine Land Use (Historical) map, Plate 3.5-2, is labeled as Plate 3.5-1A in the permit and it only shows the permit area as it existed in 2004. Obviously this plate was to be used as a supplement to Plate 3.5-1 and is not the Historical premine land use map as it is labeled. This map shows a portion of the permit area as being bond released. Please revise to retain the original baseline pre-mine land use map of the area and clarify what this map represents in the permit. NDAC 69-05.2-08-08 (GAW)

Plate 3.5-1 has been added to the permit and has been labeled "Historical". The Supplement 3.5-1A has been kept in the permit as well and labeled "Historical". The pre-mine land uses for the additional proposed acres are found on Plate 3.5-2 Premine Land Use (Rev. 12).

30. Please review and update Table 3.5-1, Premine Land Use Acres, to be consistent with Plate 3.5-1 for the area in Section 32. Plate 3.5-1 depicts industrial, reclaimed grassland, woodlands and native grasslands in Section 32; however, Table 3.5-1 only lists native range and industrial land uses. Please review and make the appropriate corrections. Depending on the changes made to the land use acreages for Section 5, changes may be necessary to the land use acreages in Section 32. (ZAT)

The appropriate changes have been made to Table 3.5-1, and this information is now consistent with what is depicted on Plate 3.5-1.

Plate 3.5-1 Pre-Mine Land Use

31. Please revise Plate 3.5-1 so that the information is presented clearly, and identify the map print scale so that all information is legible when printed. The permit boundary is not legible, due in part because other permit boundaries are shown, the legend in the map is not legible when printed on an 11 x 17 scale and the land uses cannot be distinguished because colored polygons are being used on the air photo background. The woodland numbers are not legible when printed on an 11 x 17 inch scale and it appears the Id. numbers are on top of the polygon identifying the woodland area. Areas outside of the permit boundary are shaded as if the area is part of the permit which is confusing. (GAW/ZAT)

The colored polygons have all been changed to a thin black line, as to not obscure view of the aerial photo. The bond released areas (previously part of the permit but now outside the permit area) were shown on this map for historical reference, but have been removed as per the request in this deficiency. A print scale is now on this plate, in order to print at the appropriate size. The woodland ID number labels have also been moved and made smaller to make the woodlands more visible. Other permit boundaries are being shown on this map to give reference to BNI's permitted areas adjacent /touching this permit area. The boundary line for 9401 has been made thicker and other permits have been made thinner in order to make them legible. Permit boundaries that are not within the adjacent area have been removed from the legend.

Section 3.6 Pre-Mine Vegetation

32. Please include a detailed discussion about the nature and variability of the native grassland and woodlands being added to the permit as required by NDAC 69-05.2-08-08(1)(d). In addition there should be some discussion about what is growing on the "Reclaimed Grassland" and "DL/Industrial" land if these areas are vegetated. (GAW)

Section 3.6 has been revised to include discussions about the nature and variability of vegetation on native grasslands and woodlands. A discussion about vegetation on Reclaimed Grasslands and DL/Industrial land has also been added to this section.

33. Please include a comprehensive species list for each land use being added to the permit as required by NDAC 69-05.2-08-08(1)(b). (GAW)

A species list by land use for proposed additional acres has been added to the permit (Appendix 3.6-5)

34. Please include a map that depicts the woodland mapping units (trees, tall shrubs and low shrubs) as required by NDAC 69-05.2-08-08(1)(c). (GAW/ZAT)

A Plate 3.6-3 Rev. 12 Woodlands has been added to the permit as requested. This map depicts woodland mapping units found within additional proposed acres.

35. Please retain the Range Site Descriptions that were used for the original permit area. It is not appropriate to change range sites in the original permit area to ecological sites without correlating the range site sampling data to ecological sites. This original permit information must be retained in its present format. (GAW)

Range Site Descriptions have been included in the permit. All parts of Appendix 3.6-1 of the original permit have been retained. Ecological Site Descriptions and sampling points for all new acres of native rangeland depicted on Plate 3.6-1. The associated data for these sampling points are included in Appendix 3.6-2 and 3.6-4. A discussion about ecological sites on native rangeland tracts can also be found in Appendix 4.12-3 Pre/Post-mine Land Use Discussions.

36. Plate 3.6-1, Ecological (Range) Sites Map, shows two ecological site sampling locations in the NE¹/₄ of Section 5 but no data or information is included for these sites and no information is provided for the native grassland being added in Section 8. Please include sampling data or other information sufficient to meet the requirements of NDAC 69-05.2-08-08 (1)(c)(3) for the native grassland. (GAW)

The Similarity index sheets for the one sampling point found within Section 5 were included in Appendix 3.6-4 Range Similarity Index Sheets. A sampling point of a SwSy ecosite from native rangelands in Section 8 and Section 21 found within the proposed adjacent BNCR 1101 permit are representative of the native rangelands in NE⁴ of Section 8. A correlation between these sample sites due to their proximity, as well as condition observed during field reconnaissance. The similarity index sheet for this sampling point has now been included in the permit. See [Plate 4.12-3] Pre/Postmine Land Use Discussions.

37. Please include a map that shows where the woodlands were sampled. Section 3.5 of the permit identifies the woodland communities as No. 1 through 17 but the sampling data identifies them as something totally different (5-Haulroad East & West, and 5-Haulroad). Please revise the woodland data in Appendix 3.6-3, Woodland Density and Cover Data, to be consistent with what is shown on Plate 3.5-1. (GAW/ZAT)

A [Plate 3.6-3] Woodlands, has been included in the permit. The woodlands were numbered on the original pre-mine land use maps (Plate 3.5-1). Additional woodlands were continued to be labeled in this fashion. All numbers correspond to the "ID Numbers" column in Tables 3.5-7 & 3.5-7a (within the narrative of Section 3.5). The woodland sampling points (shown on plate 3.6-3,) correlate to the data found in Appendix 3.6-3 woodland density and cover data. The sampling points have been labeled appropriately. Appendix 3.6-3 has been revised.

38. The link to Appendix 3.6-4, Range Similarity Index Sheets, does not work but the information is present. The original land use and range sites map, Plate 3.5-1, shows the area represented by similarity Index Section 5 - Haul road was cropland in 1992 but this area is now considered native grassland. There is no discussion indicating that this is go-back land or cropland seeded to grassland so the information as presently presented is unclear. Please provide a detailed discussion about this Loamy site and that it obviously only represents the loamy site on the former cropland field and does not represent other loamy ecological sites on undisturbed native grassland. Please provide complete, current, clear and concise detailed information as required by NDAC 69-05.2-05-02(1). (GAW)

The link for Appendix 3.6-4 has been fixed. The area in Section 5 shown on the original 3.5 pre-mine land use map as cropland is partially within BNI's 9401 approved permit boundary and partially outside the permit boundary. This area must have been being used as cropland at the time of the original permit. The land outside the approved boundary, now within the proposed additional acres is clearly not presently being used as cropland. The area should have labeled TP-Tame Pastureland instead of NR-Native rangeland, as it may have been disturbed at one time (i.e. cropland). This area was either seeded to a native grassland mix or left idle prior to at least 10 years ago. (See the air photo on Plate 3.5-1A which was taken no later than 2004) Therefore, this is why the current land use of the area found within proposed acres is labeled as TP and not Cropland. Plant species found on TP have been included in Appendix 3.6-5. A qualitative discussion about each proposed additional tract has been included in Appendix 4.12-4 Pre/Post mine Land Use Discussions. The Ecological Reference Site that was located within this tract has been removed.

39. Appendix 3.6-3 Woodland Density and Cover Data is a summary of woodland sample data. As required by NDAC 69-05.2-05-02(2) and (3), please provide documentation of data collection techniques, identify who collected the data, and provide copies of the original field data sheets. Please also provide a detailed description/narrative of the number and arrangement of trees and shrubs, probable age of trees, height of trees and characteristics of the understory vegetation as required by NDAC 69-05.2-08-08(1)(c)(4) and NDAC 69-05.2-08-08(1)(c)(7). (ZAT)

A narrative has been included in Appendix 3.6-3 discussing the characteristics and sampling methods of woodlands within additional proposed acres. This narrative also includes the information about who collected the data and when.

Section 3.7 Prime Farmlands

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

Table 3.7-1 has been added to Section 3.7. This table includes the information requested for all prime farmland soil map units in Oliver County.

41. The narrative in the first three paragraphs on page 3.7-1 is copied from the original permit and the additional area is discussed separately in the fourth paragraph. We suggest combining all of the prime farmland narrative into a single discussion and map to avoid confusion. We also recommend eliminating Plate 3.5-2 (Prime Farmland – Historical). The exempt tracts in the original permit area should be depicted on Plate 3.7-1 similar to the exempt tracts in the revision area. The prime farmland tract numbering should be consistent between the narrative and map. The exempt tracts do not need be numbered but should be depicted in some fashion on the map. In addition, the prime farmland map unit ArA should be extended to the north section line of Section 8 as that portion of Section 8 in the original permit area is cropland and therefore subject to the prime farmland standards. It appears that the prime farmland in Section 8 will eventually be disturbed by mining activities (see extended mine plan map). Prior to the disturbance of the prime farmland in Section 8, BNI will need to submit a reclamation plan for the prime farmland in Section 8. If the Section 8

area is eventually zoned industrial, any prime farmland disturbed by mining activities will need to be accounted for in some manner (i.e., changing the land use of the prime farmland tracts to industrial will not relieve BNI of its obligation to reclaim the prime farmland even if it involves reclaiming the prime farmland in another permit area). Lastly, we noted that the west permit boundary and pending Permit BNCR-1101 permit boundary in Section 5 do not properly align on Plate 3.7-1. (ZAT)

1. *The narrative has been revised / combined, and Plate 3.7-2 has been removed as requested.*
 2. *Labels on the map and within the narrative are consistent.*
 3. *The boundary of the prime farmland tract in Section 8 has been corrected.*
 4. *Exempt tracts are depicted as yellow polygons on the map. The exempt portion of tract 3 falls right on the permit boundary line, and has now been moved to the top layer of the drawing.*
 5. *BNI recognizes that a reclamation plan for the prime farmland in Section 8 if disturbed by mining activities (including those within industrial zoned tracts) will need to be submitted prior to disturbance. Prime farmland respreads areas have been depicted on Plate 4.10-1*
 6. *The permit boundary has been corrected on Plate 3.7-1 has also been corrected.*
42. As required by NDAC 69-05.2-09-15(4), please provide a reference and hyperlink to Plate 4.10-1 Post-Mining Topography in the narrative for depiction of prime farmland re-spread areas. (WTG)

A reference and link have been included in the Section 3.7 narrative.

Section 3.10 Fish and Wildlife Resources

43. The new paragraph on page 2 of Section 3.10 indicates that wildlife studies were performed by KDK Consulting in 2009 through 2011. Please include a copy of the approved fish and wildlife study plan for acquiring fish and wildlife information for the revision addition area as required by NDAC 69-05.2-08-15, and include correspondence showing that the plan was approved. (GAW)

The approved plan and accompanying correspondence have been included in the permit application. These can now be found in Appendix 3.10-3 & 3.10-4, which include the 1980 and 1977 studies by Western Technology Wildlife Study and Wildlife Study (Mastel). The Wildlife Study BNCR 1101 (2010) has also been added in Appendix 3.10-2, as this study included the 9401 permit area. A comprehensive map showing the BNI wildlife study boundaries has been included as Appendix 3.10-7.

44. As required by NDAC 69-05.2-08-15, please include site specific wildlife resource information for the proposed addition area and adjacent areas that properly characterizes the value of the existing wildlife habitat. Specifically state whether there is any high value wildlife habitat or habitat suitable for listed or proposed endangered or threatened plant or animal species or designated critical habitat listed by the USFWS in the proposed addition and adjacent areas as required by NDAC 69-05.2-13-08. (GAW)

This information is discussed in the approved wildlife plan, which has been added to the permit (Appendix 3.10-3 & Appendix 3.10-4)

45. Please include a narrative that analyzes and discusses of the results of the studies completed for acquiring baseline fish and wildlife information of the permit and adjacent area. NDAC 69-05.2-08-15 and NDAC 69-05.2-09-17 (GAW)

This information has been included in the permit (Appendix 3.10-6)

46. Please include the names of all persons or organizations that collected and analyzed the fish and wildlife information, the qualifications of those persons, the dates when information was collected and a description of the methodology used as required by NDAC 69-05.2-05-02(2). (GAW)

This information has been included in the Wildlife Study Report and Associated Correspondence found in Appendix 3.10-3, Appendix 3.10-4, & Appendix 3.10-2.

47. Please provide the name, address and position of officials of each private or academic research organization or governmental agency consulted in preparing information on fish and wildlife resources as required by NDAC 69-05.2-05-02(3). Correspondence from the ND Parks and Recreation Department, USFWS and NDGFD should be included. (GAW)

Correspondences from all organizations, regarding the fish and wildlife study (2010) have been included in Appendix 3.10-2. These correspondences include names and addresses of organizations. The time period when the study was conducted, as well as who conducted it is also included in the report.

48. Please include a copy of original wildlife study that was completed in the area by Jerome Mastel, Western Technology and Engineering, Inc. of Helena, MT. Language in the permit references permits BNCR-8901 and BNCR-8704 which are no longer valid permits and it is not clear if any of the land being added to this permit was included in the original study area. (GAW)

The original Wildlife Study Report from Western Technology and Engineering, Inc. (1980) has been included in the permit as Appendix 3.10-3. The Wildlife Resource Survey report conducted by Jerome Mastel in 1977 has also been included as Appendix 3.10-4.

Plate 3.10-1 Wildlife Study Area Map

49. Please revise Plate 3.10-1 to include only baseline wildlife habitat information. Presently the legend incorrectly indicates that all of the surface coal mining permits at the Center Mine are depicted and only three woodland mapping units are listed under "Landuse" in the legend. The legend indicates that Breeding Bird study/reference area information for deciduous, native rangeland and tall shrub sites is shown but this information cannot be found on the map. Please revise the map by removing the irrelevant information from this map and include the baseline wildlife habitats in the proposed permit area and adjacent area as required by NDAC 69-05.2-08-15. (GAW)

Revisions have been made as requested.

4. OPERATIONS

50. Most of the hyperlinks (to appendices and plates) in the text of Sections 4.1 and 4.2 do not open. Please repair the links as necessary. (BEB)

See the response for Deficiency #2.

Section 4.1 Operation Plan

51. As required by NDAC-69-05.2-09-01, please provide additional detail in the Operation Plan narrative regarding the current mine and operations plan for BNCR-9401. While a general construction schedule is provided, the narrative does not indicate that successive pits will be mined and developed as ash disposal cells. There is no discussion (other than the construction schedule) of the third cell and what we assume will eventually be the fourth cell. The Pit Layout and Facilities Map (Plate 4.1-1) and the Extended Mine Plan Map (Plate 2.1) do not depict the third cell. Please include a general discussion that a portion of the permit area will be used to construct a main haulroad into Permit BNCR-1101. (MSK)

All aspects of this deficiency have been addressed. Section 4.1 has been modified and the requested changes to Plates 4.1-1 and 2.1 have been completed

Plate 4.1-1 Pit Layout and Facilities Map

52. Please use a color/line weight that is easily distinguishable for the BNCR-9401 permit boundary on Plate 4.1-1. (MSK)

The line weight has been thickened and moved to the front.

53. As noted in a similar deficiency in Section 4.9, the Section 4.9 Reclamation Schedule narrative mentions ash disposal sites being constructed and reclaimed in 2012/2013, 2019/2020 and 2026/2027 but the Pit Layout and Facilities Map does not depict any of these pits. The Pit Layout and Facilities Map and Section 4.9 should depict and discuss the complete history of the permit area, including the area that has been released from bond and is now outside of the permit boundary. Please revise to provide complete and accurate information throughout the permitted period. (GAW)

The locations of the ash cells and the area that has been bond released have been added to the map and Section 4.9 has been updated.

Plate 4.2-1 General Mine Plan Map

54. Plate 4.2-1 was updated to depict the new permit boundary for BNCR-9401, but no additional information is shown. If the Pit Layout and Facilities Map (Plate 4.1-1) is intended to replace this map, please denote as necessary, or make all necessary changes to this map to reflect BNI Coal Ltd.'s current plans in BNCR-9401 (e.g., depict the haulroad into the BNCR-1101 area, the third cell mining and ash pit development, etc.). (MSK)

Plate 4.1-1 is to replace 4.2-1. The addition of the third ash cell and proposed haul road to BNCR 1101 has been added to 4.1-1.

Section 4.4 Blasting Plan

55. The Blasting Plan schedule and notice does not include the area in Permit BNCR-9401, only areas in Permit BNCR-9702. If BNI intends to conduct blasting operations in Permit BNCR-9401, the necessary updates will need to be made. If blasting operations are not planned for this permit area, then the narrative should be revised accordingly. (MSK)

Section 5 and 8 T141N, R83W has been added to the blasting schedule.

Section 4.6 Surface Water Management Plan

56. The hyperlink to Appendix 4.6-1 on page 4.6-2 opens to Plate 4.6-1. Please correct. (MSK)

The hyperlink has been updated.

57. Please correct the hyperlink to Appendix 4.6-1 provided in the narrative for MSHA Pond 5-6 on page 3 of Section 4.6 that takes the reader to Appendix 4.6-2, Design of Sedimentation Pond 5-7. (RLK)

The hyperlink has been updated.

58. As required by NDAC 69.05.2-05-02(1), please correct the Section 4.6 narrative contained in the Revision 12 submittal. It appears that portions of the Section 4.6 narrative do not reflect the most recent changes to this section of the permit approved with Revision 10 on April 28, 2011. This revision modified the design plans for Diversion 5-1 and added design plans for Diversion 5-2 for the expansion of ash cell 3. It appears that Section 4.6 narrative changes proposed with Revision 12 may have been erroneously added to the narrative approved with Revision 6 in 2008 instead of adding them to the Revision 10 permit narrative approved in 2011. (WTG/MSK)

Section 4.6 narrative was corrected to reflect previous approved revisions.

59. As required by NDAC 69.05.2-05-02(1), please delete Plate 4.6-7 (Diversion 5-1 and 5-2) from the permit and replace it with the Plate 4.6-7, Diversion 5-1, dated 4-15-11 that modified Diversion 5-1 design plans approved with Revision 10 for expansion of ash cell 3. Please also update the permit Table of Contents and the permit's Section 4.0 Home Page to reflect the change. (WTG/MSK)

Plate 4.6-7 updated to replace the previous version of the plate as requested. The Table of Contents was updated.

60. As required by NDAC 69.05.2-05-02(1), please add Plate 4.6-8 (Diversion 5-2, dated 3-4-11) to the permit that added Diversion 5-2 design plans approved with Revision 10 for expansion of ash cell 3. Please also update the permit Table of Contents and the permit's Section 4.0 Home Page to reflect the addition. (WTG/MSK)

Plate 4.6-8 was added and the Table of Contents was updated.

61. As required by NDAC 69-05.2-09-09 and 69-05.2-9-12, please provide a map that depicts the pre-mine watersheds and one that depicts the post-mine watersheds. (MSK)

Plates 3.4-2 and 3.4-3 were added to Section 3.4 to depict the pre-mine and post-mine watersheds.

Plate 4.6-1 Surface Water Management Plan

62. Currently the southern portion of the area in the NE¼ of Section 8 that is being added to the permit is not included on the map. As required in part by NDAC 69.05.2-08-02(1)(b), please depict all of the area being added to the permit on this map, label Section 8, T141N, R83W, and depict the eastern section line for Section 32, T142N, R83W on Plate 4.6-1. Please also label the township boundary between T141N and T142N and label R83W. Please depict the entire BNCR-9401 permit boundary and depict the existing and proposed addition to the permit area as one polygon, rather than depicting the existing and proposed addition separately. Please also edit the plate title or the Table of Contents to describe the plate consistently. (WTG)

These corrections were made to Plate 4.6-1 and the Table of Contents and the map are described consistently.

63. Please add the watershed boundary for Pond 5-1 to Plate 4.6-1. NDAC 69-05.2-09-09(1) (RLK)

The watershed boundary of Pond 5-1 has been added.

Section 4.9 Reclamation Schedule

64. As noted in a similar deficiency for Plate 4.1-1, the Section 4.9 Reclamation Schedule narrative mentions ash disposal sites being constructed and reclaimed in 2012/2013, 2019/2020 and 2026/2027 but the Pit Layout and Facilities Map, Plate 4.1-1, does not depict any of these pits. The Pit Layout and Facilities Map and Section 4.9 should depict and discuss the complete history of the permit area, including the area that has been released from bond and is now outside of the permit boundary. Please revise to provide complete and accurate information throughout the permitted period. (GAW)

Section 4.9 has been modified per your request. The referenced plates have also been modified.

65. Please update Section 4.9 to include the reclamation schedule for haulroads and any other associated disturbance areas. (MSK)

Section 4.9 has been modified as requested.

Plate 4.10-1 Post-Mining Topography

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

Section 3.7 narrative was updated. Plate 4.10-1 was updated to reflect potential prime farmland respread areas. The post-mine topography of the ash cells was also updated to reflect the topography at the time of bond release.

Section 4.11 SPGM Removal and Replacement

67. Please update the information provided in Table 4.11-1 to reflect the volume of topsoil and subsoil available by ownership in the areas to be disturbed in the area being added to the permit. NDAC 69-05.2-09-11(5) (RLK/MSK/WTG)

Table 4.11-1 was updated within the section 4.11 narrative.

Section 4.12 Revegetation and Post-Mine Land Use

68. In Section 4.12-1, Revegetation Methods, please include a narrative on the revegetation methods for woodlands that will be disturbed and reclaimed in the area being added with this permit revision. NDAC 69-05.2-09-11(6) (RLK)

A discussion about re-vegetation methods for woodlands that will be disturbed and reclaimed within additional acres has been included in Section 4.12-1

69. In Section 4.12-2, Determining Reclamation Success, please include a narrative on the methods for determining reclamation success for woodlands that will be disturbed and reclaimed in the area being added with this permit revision. NDAC 69-05.2-09-11(6) (RLK)

A narrative has been included in Section 4.12-2 discussing woodlands that will be disturbed within proposed additional acres.

70. BNI has moved the general land use information that is currently in Section 4.12, Revegetation and Postmining Land Use, of the approved permit to Section 4.12-3. This information needs to be retained at the beginning of Section 4.12 since it forms the basis for the remainder of the reclamation and revegetation plans. Please retain the original format so that the information meets the requirements of NDAC 69-05.2-05-02(1). (GAW/ZAT)

This section has been moved back to Section 4.12. Original format has been retained.

71. It appears that BNI is proposing to change the currently approved postmine land use of industrial land back to agricultural land uses in the NE $\frac{1}{4}$, SE $\frac{1}{4}$, and SW $\frac{1}{4}$ of Section 5 but there is no mention of these proposed land use changes in the Revision 12 application description or in the postmine narrative discussion of Section 5 in Section 4.12-3. To the contrary, the narrative under Section 5, paragraph two states the NE $\frac{1}{4}$, SE $\frac{1}{4}$, and SW $\frac{1}{4}$ will be reclaimed as industrial land use. However, this is not what is shown on the Post Mining

Land Use Map, Plate 4.12-1, or on Table 4.12-1, Post Mine Land Use Acres. Please clarify post mine land use and correct the narrative, Table 4.12-1 and Plate 4.12-1 as necessary. Also we assume that BNI is not proposing a land use change to industrial for the area in the NE¼ of Section 8 at this time. If such a proposal were being made at this time, the public notice would need to address this and the appropriate justification would need to be provided in the revision application. (GAW/ZAT/MSK)

Post mining Land Use was not correct within the approved permit. Corrections have been made to this plate. Post mining Land Use is depicted on on Plate 4.12-1 Post-mine Land Use. The Post mining land use acres table in 4.12-1 has been appropriately updated as well.

72. As required by NDAC 69-05.2-05-02(1) and 69-05.2-09-13(1), please provide a discussion of the postmine land use for the portion of the area in Section 32 that is being added to the permit in Section 4.12-3. (ZAT)

A discussion about section 32 has been added to this Section (which has not been changed from 4.12-3 to 4.12, as requested in another deficiency.

73. Table 4.12-1 of Section 4.12-3 shows a net loss of 2.72 acres of woodlands. Please revise to show replacement of this important habitat and include a detailed revegetation plan for replacing the woodland acreage that has been or will be destroyed by mining activities as required by NDAC 69-05.2-09-11. Pre-mine woodlands No. 4, 5 and 6 and a pre-mine wetland have been destroyed by construction of the third cell for the ash pit. (GAW)

Acreages in Table 4.12-1 in Section 4.12-3 have been revised. Woodland acres reflect the acres of woodlands within proposed additional acres (2.79) acres plus (0.50) acres of woodlands that were not mitigated by 1992 shelterbelt planting. (See Section 4.12-2)

74. It appears that the wetland located in the southeast corner of Section 5 has been disturbed by Diversion D-5-1. Please include replacement plans for this wetland, if necessary. It is labeled as a seasonal wetland on the new pre-mine land use map, Plate 3.5-1, but was identified as a class II wetland on the original pre-mine land use map. Table 4.12-1 also shows 0.03 acres of wetland in Section 8, but there were no pre-mine wetlands in Section 8 and there are no replacement design plans for this wetland nor is it shown on the Postmine Land Use Map, Plate 4.12-1. Please update this section as necessary. (GAW)

This wetland was inadvertently labeled as a Seasonal Wetland. The pre-mine land use for the approved permit has been removed from this plate (Now Plate 3.5-2). Plate 3.5-1 has been included in the permit (Approved pre-mine land use map), which depicts this wetland as a Class II. The wetland acreages have been corrected in the post mining land use table.

75. Please retain the native grassland reference area Tables in Appendix 4.12-2, Tables SO1 South Silty Reference area and B13 North Silty Reference Area, and the NRCS Silty Range Table. These tables should be updated with more recent information and there should be a discussion about which ecological site type these reference areas represent since land is being added using ecological sites rather than range sites. (GAW)

Tables in Appendix 4.12-2 have been retained and updated with most recent data.

76. Please revise Appendix 4.12-2 to demonstrate that the existing native grassland reference areas properly represent the native grassland being added to the permit as required by NDAC 69-05.2-08-08 (2). (GAW)

The two reference areas represent range sites within the approved permit area. There are multiple reference areas located in the adjacent BNCR 1101 that will represent native rangeland tracts found within the Rev. 12 additional acres. As observed and noted within [Appendix 4.12-3] native rangeland tracts are not managed and are dominated by non-native species (i.e. Kentucky bluegrass, smooth brome), and are very fragmented by industrial and croplands, which does not allow quality habitat for wildlife.

77. Appendix 4.12-2 contains unsigned undated landowner preference statements with no cover letter or explanation what these forms represent. It is not clear if these are forms that BNI Coal, Ltd. plans to send to the surface owners or if the forms have been mailed. As required by NDAC 69-05.2-09-13(3), please include copies of the landowner preference statements received by BNI Coal, Ltd. from the surface owners of the land being added to the permit with Revision 12. Appendix 4.12-1 contains an old surface owner preference statement. It is not clear why the preference statements would not be organized in one location in the permit. Please revise to present this information clearly and concisely as required by NDAC 69-05.2-05-02(1). (GAW/WTG/ZAT)

These un-signed copies of the landowner preference statements have been removed. Landowner Preference Statements have been sent to landowners; however BNI has not received any of them back. The one landowner preference statement from Rose Erhardt signed in 1993 has been moved from Appendix 4.12-1 and will now be included in Appendix 4.12-2 Landowner Preference Statements. This preference statement was not moved, in order to keep the approved documents intact. A new section was created so that it is easy to find in the electronic permit, and not buried within an appendix, as it was in the paper permit format. A cover letter has also been added to this Appendix to make it clear what section this represents.

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

78. Please update Section 4.13 to specifically state how BNI Coal, Ltd. will minimize disturbances and adverse impacts on fish and wildlife and related environmental values, and the best technology techniques that will be used as required by NDAC 69-05.2-09-17(1). In addition, please discuss how enhancement of these resources will be achieved as required by regulation. Please discuss if disturbance will be limited to high value habitats and include a map showing these areas as required by NDAC 69-05.2-09-02 (11). The plan must include enhancement measures to develop aquatic and terrestrial habitat as required by NDAC 69-05.2-09-17(1)(d). (GAW)

This section has been updated to include current information and discussions about wildlife protection and enhancement. Plate 4.13-1 Wildlife Monitoring Map has been added to the permit.

79. Please revise the Fish & Wildlife Resources Protection and Enhancement Plan to include current and relevant information while retaining historic information. For example, the

discussion incorrectly mentions that the western burrowing owl is a candidate species for the Threatened and Endangered species list and that Golden and Bald Eagles are threatened and endangered species. Another sentence indicates that critical habitat may suddenly be found on the permit area. The plan incorrectly states that the reclaimed lands will be left idle to benefit wildlife and that a buffer zone will be created that includes some wetlands but these wetlands are not depicted on the postmine land use map. Another sentence states that there is no high value wildlife habitat in the area where structures, such as haulroads or sediment ponds, will be located but a haulroad and Sediment Pond 5-7 is now planned in a hardwood draw. Please revise to meet the requirements of NDAC 69-05.2-09-17(1)(d) and NDAC 69-05.2-13-08. NDAC 69-05.2-13-08 (6) (a) specifically states that the permittee shall, to the extent possible, using the best technology currently available, locate haulroads to avoid or minimize impacts to important fish and wildlife habitats. Please explain and justify the proposed disturbance of the hardwood draw located in the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 5 and provide a discussion of other alternatives considered. (GAW)

Information has been updated to include the most recent and accurate information about wildlife protection and enhancement plans. A discussion about location of the haul road in the W2 of Section five has been included, and discussions about post mining land use enhancements have been added to this narrative.

Preliminary Technical Review Items

The following preliminary technical review items were noted during our completeness review and are provided below. They are provided for your information and they can be addressed in your completeness response if you so desire or can be addressed during the technical review.

1. Please label Section 32, T142N, R83W on the following maps: Plates 3.1-1, 3.1-2, 3.2-1, 3.2-2, 3.2-3, 3.3-1, 3.4-1, 4.4-1A, 3.5-1, 3.6-1, 3.7-1, 3.8-1, 3.10-1, 4.2-1, 4.10-1, 4.10-2, 4.12-1, and 4.14-1. (WTG)

Plates 3.2-1 and 3.3-1 have been updated to include a label for Section 32.

2. Please consider rephrasing the last statement in the Business Entity Information narrative of Section 1.7 because those persons that own and/or control BNI Coal, Ltd. and Allete obviously do have an interest in a surface coal mine, namely the Center Mine. (BEB)

The last statement in Section 1.7 of the Legal and Financial Section has been removed.

3. As required by NDAC 69-05.2-05-02(3), please add Prairie Soil Consulting, LLC to Section 1.15, as well as others not currently listed who were consulted in characterizing land proposed for addition to BNCR-9401 with Revision 12. (WTG)

The list of Consultants in Section 1.15 has been updated.

4. The surface and coal ownerships for Minnkota Power Cooperative are used interchangeably with Minnkota Power in Table 1.9-1 (see Section 32). As required by NDAC 69.05.2-05-02(1), please use Minnkota Power Cooperative consistently for these ownerships throughout this table because there are no space limitations. (WTG)

Table 1.9-1 has been revised as requested.

5. The surface and coal ownerships for Minnkota Power Cooperative are used interchangeably with Minnkota Power on Plate 1.9-1 (see Section 5). As required by NDAC 69.05.2-05-02(1), please use one of the names consistently for these ownerships. Minnkota Power is acceptable because of space limitations. (WTG)

The ownership labels have been corrected to read Minnkota Power Cooperative on Plate 1.9-1.

6. As required in part by NDAC 69.05.2-08-02(1)(b), please label Section 6 and show the complete label for Section 31 on Plate 1.9-1. (WTG)

The labels on Plate 1.9-1 have been corrected

7. Please add the BNCR-1101 permit application to Table 1.11-1. Also it appears that the word “ever” should be changed to “never” to meet the requirement of NDAC 69-05.2-06-02(1) in the third sentence of Section 1.11. (WTG)

BNCR-1101 has been added to Table 1.11-1.

8. In the first paragraph of Section 3.4.2, Permit Area Surface Water Resources, please provide the complete legal location (section number, township and range) for the seep noted in the last sentence. (RLK)
9. On page 3.4-4, the narrative on discharge limitations indicates a copy of the NDPDES permit is included in Section 1.12, but a copy of the permit was not found in the section only a listing with the permit number. Please revise the narrative to indicate that the NDPDES permit number and effective dates are included in Section 1.12 or identify the permit in the narrative. (RLK)

10. Please provide the appropriate narrative and depict all Class I-VII wetlands in the area being added to the permit with Revision 12 on a map or aerial photograph (scale 1:4800). Page one, paragraph one, sentence two of Section 3.5 reads: “Several small wetlands are located in the west ½ of Section 5, and a small group of wetlands in the northeast ¼ of Section 8” but these features are not depicted on any map nor are they addressed in the narrative. NDAC 69-05.2-08-08(1)(a)(5)(b) (ZAT)

This was text that was part of the original permit. This statement has been removed from the Section 3.5 narrative as it was referring to areas outside the permit boundary. (See Plate 3.5-1 (Historical)). There are NO wetland acres being added in Revision 12.

11. Please note in the narrative if the CLASS III wetland will remain undisturbed in the current permit revision. If the CLASS III wetland will be disturbed, please add narrative about the replacement plan in Section 4.12. (ZAT)

The CLASS III wetland will remain undisturbed. The narrative stating this has been left in this section. A statement that no wetland acres are being added in Rev.12 has been added.

12. As required by NDAC 69.05.2-05-02(1), please review and revise the third paragraph on page 1 of Section 3.8 as necessary to accurately describe the locations and acreage proposed for addition with Revision 12: it appears that 139.09 acres are added in the NE $\frac{1}{4}$ of Section 8; it appears that 27.17 acres are added in the N $\frac{1}{2}$ N $\frac{1}{2}$ of Section 5 (primarily the NW $\frac{1}{4}$ NE $\frac{1}{4}$); and it appears that 13.87 acres added in the S $\frac{1}{2}$ S $\frac{1}{2}$ of Section 32 (primarily the S $\frac{1}{2}$ SE $\frac{1}{4}$). Please also describe the location of the soil survey report dated February 2011 as the NE $\frac{1}{4}$ of Section 8. (WTG)

Revisions to Section 3.8 have been made as requested.

13. As required in part by NDAC 69.05.2-08-02(1)(b), please depict the northern and eastern section lines for Section 32, T142N, R83W on Plate 2-1. (WTG)

The Section lines have been added to Plate 2-1.

14. As required in part by NDAC 69.05.2-08-02(1)(b), please depict and label Section 8, T141N, R83W that may require moving the map title box. Please also depict the boundary for Section 32, T142N, R83W, and that of adjoining Section 31 as well while updating Plate 4.1-1. (WTG)

All section boundaries and labels are now shown on the map.

15. Please update the narrative for Section 4.2 to convey an accurate description of the area for BNCR-9401. (MSK)

NDAC 69.05.2-01-02 defines "Existing Structure" as follows: "a structure or facility used in connection with or to facilitate surface coal mining operations for which construction began prior to August 1, 1980." Section 4.2 has been modified to address all such structures that meet this definition as well as providing the information required in NDAC 69-05.2-09-03.

16. Per NDAC 69-05.2-16-08, please indicate in the Transportation Plan narrative that BNI Coal, Ltd. will implement the best technology currently available to reduce the velocity of runoff exiting the culverts or will stabilize the outfalls accordingly. (MSK)

The transportation narrative reflects what is stated in NDAC 69-05.2-24-03.5b. The following language has been added to the Transportation Plan, "Culverts will be designed to safely pass a ten-year, six hour precipitation event, or greater as specified by the commission. Best management practices will be used to prevent and control erosion at inlets and outlets of culverts".

17. As required in part by NDAC 69.05.2-08-02(1)(b), please depict the eastern section line for Section 32, T142N, R83W, and label R83W on Plate 4.5-1. Please also depict the

existing and proposed addition to the permit area as one polygon, rather than depicting the existing and proposed addition separately. (WTG)

The changes have been made to Plate 4.5-1.

18. The map legend for Plate 4.6-1 provides a green dashed line symbol for “Drainage Ways”; however, this symbol appears to be used for watershed boundaries on the map. Please review and update as appropriate. (RLK/MSK)

The legend has been changed to reflect the watershed boundary.

19. On page 1 of Section 4.12-2, Determining Reclamation Success, the notation “Error! Not a valid link” appears to be in place of a topic heading. (RLK)

This error has been corrected

20. The narrative of Section 4.12-3, page 4.12-1 under Section 5, sentence seven states: “The facility is not inconsistent with applicable land use...” Please change to: “The facility is consistent with applicable land use policies or plans as developed and approved by the Oliver County Zoning Commission.” (ZAT)

This change has been made to Section 4.12. (previously 4.12-3)

21. Please add “Section 5” to the description of “S½NW¼” on page 4.12-1, paragraph six of Section 4.12-4, Potential for Reclamation Success. Please also add narrative for Section 32 which is zoned industrial. Section 8 has no documentation of industrial zoning, so please add narrative on zoning, pre and post mine land use and reclamation for the proposed added acreage. (ZAT)

Updates have been made to Section 4.12-3 (previously 4.12-4). “Section 5” has been added to this text, a description of Section 8’s pre-mine zoning has been included.

22. Please include Diversion 5-2 on Plate 4.14-1 and include the diversion in the calculations. (MSK)

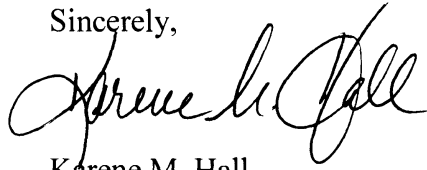
We intend to reclaim this diversion following the construction of Pond 5-6 in Permit Area BNCR-1101. This is projected to take place prior to the worst case bond condition.

23. Plate 4.14-1 depicts a pond identified as Pond 5-8 with a subsoil embankment; however, this is the only place that this pond is mentioned in the permit. Please make the appropriate changes. (MSK)

Pond 5-8 is no longer part of our future surface water management plans. It was included in the bond calculations by mistake and has been removed. Pond 5-8 has never been included in the worst case bond calculations. Therefore no changes to Appendix 4.14-1 are necessary.

Thank you for your consideration of this matter. If you have any questions regarding this submittal, please contact me at the Center office.

Sincerely,

A handwritten signature in black ink, appearing to read "Karene M. Hall". The signature is written in a cursive style with a large, stylized initial "K".

Karene M. Hall
Permit Coordinator