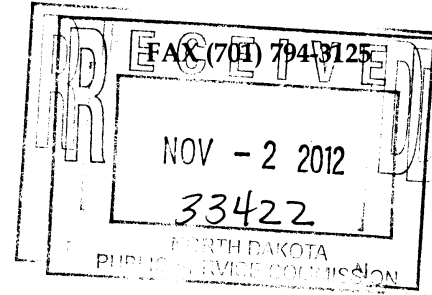


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November 1, 2012

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 October 23, 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:

Permit Application (SFN 10562)

1. Although a metes and bounds description and map for the **entire** permit area effective with Revision 12 are included with the permit revision, a metes and bounds description and map of **only the acres being added** to the permit with Revision 12 in Sections 5 and 8 of T141N, R83W and Section 32 of T142N, R83W (three parcels) are also required with the revision. Please note that a metes and bounds description for only the acreage added with Revision 12 will be required as an attachment to the Commission's revision approval document. We regret overlooking this during the first and second completeness reviews, but the minor permit boundary change effective with the second completeness response would have required a revised metes and bounds description for at least one parcel regardless. We suggest that BNI use the same method to include the metes and bounds description and map of acres being added with Revision 12 as was used to describe and depict Revision 30 acres added to Permit BNCR-9702 whereby tract numbers were assigned to each parcel added in Sections 21, 29, and 32. Please also review the acreages added for each section being added to the permit on the revision application form after the metes and bounds description is completed for each parcel

being added to the permit and revise any acreages if necessary. We noticed that the acreages added in Sections 5 and 8 were unchanged with the second completeness response, but when the 1.45 acre increase related to the permit boundary change in Section 32 is added to the 434.83 Revision 12 application acreage the total is 436.28 acres rather than the 436.26 acres as described in the current permit area metes and bounds description in the revision application. We also noticed what it appears to be a very small permit acreage reduction (0.02 acre) for the area in Section 5 when we compared the current permit area metes and bounds (Plate 1.8-1, BNCR-9401 Legal Description Map) to the second completeness response permit area metes and bounds description but there was no change in the permit boundary for the Section 5 tract. (WTG)

Copies of the metes and bounds description and map for the areas being added ONLY with Revision 12 are included with this submittal. There was a slight change to the boundary of BNCR 9401 permit which was found and corrected when area C was surveyed. The permit boundary lines did not intersect the section lines of Section 8, resulting in a change of acreage from 254.70 to 254.72. The first page of the application has been updated to reflect these minor acreage adjustments.

2. Please retain the \$1,801.30 entry on page 1 of the revision application form for revision application filing fees. (WTG)

The dollar amount has been written below the space provided. Would the PSC staff have someone check into having the entry box adjusted on the application form so that the dollar value will show all of the number instead of half of it, please?

Section 1.9 Surface and Coal Ownership

3. Follow-up to item No. 4: Please retain the listing for Minnkota Power Cooperative as an adjacent surface and coal owner for the S½ of Section 32, T142N, R83W, less 74.4 acres near the top of page 1-20 in Table 1.9-1 that has been edited with strikethrough. (WTG/ZAT)

Updated as requested.

Section 3.5 Pre-Mine Land Use

4. Follow-up to item No. 7: The revised Section 3.5 Pre-Mine Land Use appears more confusing than the previous submittal. The requirements of NDAC 69-05.2-08-08 have not been met. As previously stated in item No. 7, the original land use information must be retained. When Revision 12 is approved, the electronic version will replace the paper copy therefore the electronic version needs to be a stand-alone, defensible document that includes the original pre-mine land use information. The following suggestions and comments are not an all-inclusive list for revising the section. Completeness and technical items have been noted in an attempt to more clearly convey our concerns with the entire pre-mine land use section. These comments and suggestions are only intended to be used as a checklist or general guide to assist you in rewriting the entire Pre-Mine Land Use Section 3.5 to meet the requirements of NDAC 69-05.2-08-08(3)(a) that requires a map and supporting narrative of the pre-mine uses of the land existing at the

time the application is filed. If the pre-mining use of the land was changed within five years before the anticipated date of beginning the proposed operations, the historic use must also be described. (ZAT)

- a. Retain the original narrative. BNI has copied, pasted, deleted, and inserted narrative into the approved permit to explain the pre-mine land use of the area being added to the permit in Revision 12. In the process, narrative has been deleted that applies to the original permit area and the document has become disjointed with random word spacing, sentence fragments, inconsistent tables and narrative that jumps from past to present. Please use the current approved permit as a guide as it is clear, concise and consistent. Retain the original narrative, but feel free to update it as necessary. Add narrative for Revision 12 acres as appropriate. For example, the first paragraph of Section 3.5 discusses 18.2 acres of land Minnkota disturbed 15 years ago for the construction of the butterfly ponds. (You may wish to update the time frame.) The narrative goes on to discuss a tract of cropland that was an associated disturbance and that BNI plans to seed to native grass by 1998. (If this was done, update accordingly.) The current permit classifies this as cropland but it appears to be classified as native range with this Revision 12 application. An update to the original narrative would explain this apparent change in land use, but BNI has removed all of this narrative with the Revision 12 application. This information is pertinent because this tract extends north and is included with the area being added with Revision 12 and the land use has been changed from cropland to native range or tame pasture. In Revision 12, BNI has separated this cropland into two tracts with different land uses for the Revision 12 area and the area within the permit boundary. Please retain the original narrative and include an explanation for this apparent land use change.

The random word spacings were a result of an issue with Adobe when saving/printing to PDF documents. This has been resolved and is also addressed in #11. There has been confusion on what information was being requested in the pre-mine tables/maps/and narratives. Now tables, maps, and narratives include every acre of land that has ever been permitted under the BNCR 9401. The narratives have been updated as requested in this deficiency. A statement about the cropland tract in Section 5 has been included in the narrative to describe its status, and why the portion that is being added, is labeled Tame Pasture.

- b. Plate 3.5-1A must be accurate as it documents the baseline information. The narrative should support the map information as required by NDAC 69-05.2-08-08(3)(a).
 - (1) Identify and label every land use area in the original permit and the area being added with Revision 12. The current Plate 3.5-1A has unlabeled areas in Sections 8 and 5, including two in the approved permit just north of the prime farmland and two in the far northeast of the approved permit area adjacent to native range near pond 5-1.
Plate 3.5-1A has been updated accordingly. These labels inadvertently were not placed in these polygons. We apologize for not catching the incorrect layer being turned on, which caused these issues.

- (2) Rename Plate 3.5-1A (Supplement). This is not supplemental information, it is required and it will be the approved Pre-mine Land Use Map upon approval of Revision 12. As stated in staff's phone conversation on October 11, 2012, we suggest calling it Plate 3.5-1, Pre-Mine Land Use. We also suggested changing the Historical Pre-Mining Land Use and Range Sites plate from Plate 3.5-1 to Plate 3.5-1A Historical.

The Plate has not been renamed (Supplement) as the plate names of 3.5-1 and 3.5-1A have been changed as requested. Plate 3.5-1 contains the current and comprehensive pre-mine land use map and Plate 3.5-1A contains the "historical" pre-mine land use map.

- (3) As per the phone conversation on October 11, 2012, please also remove all permit boundaries except for Permit BNCR-9401 and label Section 32.

All permit boundaries with the exception of BNCR 9401 have been removed from this plate as well as from plates in the Soils, Wildlife, Prime Farmlands, Woodlands, Ecological Sites Map, and Post-mine sections. Other permit boundaries were included to provide a reference as to the locations of BNI's other permits. Section 32 has been labeled.

- (4) Please remove the unlabeled polygon running through the butterfly pond in Section 5.

This polygon has been kept on the plate as per requested by the PSC staff that all bond released areas be depicted on maps. (See Deficiency #6) The symbology and labels have however been changed and these areas have now been labeled.

c. Tables

- (1) Table 3.5-1 must include all the land uses and acreages depicted on Plate 3.5-1A, including, but not limited to, the 1.45 acres added to Section 32 for the haulroad and the missing industrial acreage in the approved permit area addressed in the follow up to item No. 9.

Table 3.5-1 has been changed to include the 1.45 acres for the haul road. We apologize for that oversight. This table also has been updated to include every acre that has ever been permitted within the BNCR 9401 permit area, as per requested by PSC staff. Plate 3.5-1 does reflect these changes.

- (2) Please rename Table 3.5-1 as it is named in the current approved permit (Pre-mine Land use Acres. Revised date).

Tables have been updated as per this request.

- (3) State the acreage in each land use category for the area being added with Revision 12 and state the acreage of land uses in the current permit. This

information is missing from Section 3.5. We suggest expanding Table 3.5-1 and listing current permit acres and Revision 12 acres in different columns (include total columns) or address this in narrative.

This issue has been addressed after clarification by the PSC staff. All acres are now included in the tables of Section 3.5.

- (4) Do not use the subtitle (*Total Acres = (Acres Approved Prior to Revision, 12 less Bond Released Acres) + Revision 12 Acres*) on Table 3.5-1. This table represents pre-mine land use and acreage that is depicted on Plate 3.5-1A. Since bond released areas are not depicted on this plate, the title of Table 3.5-1 should not include it either.

These labels have been removed/updated. Tables in the approved permit had no titles or labels. BNI has added titles and labels to each table to provide clarity to this section of the permit.

- (5) Remove the note section from Table 3.5-1A as this information should be in your narrative.

The note has been removed, as requested.

- (6) Remove the statement at the bottom of Table 3.5-1, “*A total of 113.5 acres have been bond released from these acres for a total of 254.7 currently approved in the BNCR-9401 Permit Boundary.*” This statement accompanied a table that has been removed from the permit and the current table does not include the 113.5 bond released acres.

This has been removed as requested as this is now described a portion of Table 3.5-1.

- d. Tables 3.5-2 through 3.5-8 should match acreages given in Table 3.5-1.

- (1) Please rename these tables. Please remove of the confusing descriptions of where the acres come from.

The acreages in these tables match what is now found in Table 3.5-1. The descriptions have been removed/updated as requested.

- (2) Please make a new Table 3.5-5 for native grasslands that does not include bond released acres, or include bond released acres on all plates, in all tables and in all narrative.

The native grasslands table has been left in the permit. This was because of a request to leave all acreages in the permit (new, permitted, and bond released). The rest of the land use tables in this section have been updated accordingly.

5. Follow-up to item No. 9: Currently Table 3.5-1 lists 0.19 acres of DL/Industrial land in Section 5 that is acreage being added to the permit with Revision 12 according to

narrative in Appendix 4.12-3. This acreage is depicted on Plate 3.5-1A abutting the south side of the section line common to Section 32 and Section 5. However, Plate 3.5-1A also depicts 5 to 7 acres of industrial land within the approved permit boundary that needs to be accounted for in Table 3.5-1. This parcel contains the access road to the ash ponds and abuts Revision 12 proposed additional acres in Section 5 on the north and it abuts Bond Release 3 on the south. Please review the acreage for Section 5 within the approved permit boundary and make the appropriate acreage adjustments to Table 3.5-1. (ZAT)

This has now been corrected. After clarification with PSC staff about how acreages should be addressed in this section, we believe these issues have been addressed. Acreages for every tract (bond released, approved, and proposed addition) are now included in this table. BNI has broken down acreages that have been bond released as well as a total acreage for areas that will be permitted as of Revision 12.

Section 3.6 Pre-Mine Vegetation

6. Follow-up to item No. 7: Existing baseline vegetation information must be retained in the permit in addition to the acreage being added to the permit. As previously mentioned, do not remove information from the narratives, maps or tables for areas that have been bond released or deleted from the permit. (GAW)

All information from the approved permit has been retained. The narrative and plate for Section 3.6 Pre-mine Vegetation have been revised.

7. Follow-up to item No. 10: Please provide an assessment of range condition or ecological condition of each native grassland mapping unit in the proposed addition area as required by NDAC 69-05.2-08-08 (1) (c) (3) and include a detailed narrative describing the nature and variability of the vegetation in each mapping unit based on a thorough reconnaissance and qualitative assessment as required by NDAC 69-05.2-08-08(1)(d). Smooth bromegrass is prevalent on the native grassland in the NE¼ of Section 8 and yet the similarity index information that BNI proposes to use to represent this area does not even have smooth bromegrass listed. Please revise to provide the information required by NDAC 69-05.2-08-08(1)(c)(3) and NDAC 69-05.2-08-08(1)(d) for the dominant ecological sites. (GAW)

This section has been updated. Information for the dominant ecological sites has been provided.

8. Follow-up to items No. 12 (Section 3.6 Pre-Mine Vegetation) and No. 18 (Section 4.12 Revegetation and Post-Mine Land Use): The information contained in the Tame Pasture & DL/Industrial narrative on page 3.6-4 of Section 3.6 does not meet the requirements of NDAC 69-05.2-08-08 and Section II-E-2 of our Pre- and Postmining Vegetation Assessments document. This rule requires a narrative that describes the pre-mine vegetation of each pastureland area, including dominant species and their relative proportions. Some baseline vegetation information is included in Section 4.12, Revegetation and Post Mining Land Use. It is acceptable to reiterate pre-mine land use and vegetation information in the Revegetation and Post Mining Land Use section of the permit, but detailed baseline information meeting the requirements of NDAC 69-05.2-08-

08 must be provided in the Premining Vegetation Section of the Permit which is Section 3.6 of the permit. (NDAC 69-05.2-05.2) (GAW)

This section has been revised. The information pertaining to pre-mine vegetation from Section 4.12-3 has been included in this section. Information is provided on a tract by tract basis, except in some cases where statements applied to all DL/Industrial tracts or Tame Pastureland. The dominant species and proportions for each tract is now provided in this section as well as 4.12-3.

Section 4.12 Revegetation and Post-Mine Land Use

9. Please include the approved post-mining land uses of the existing permit area on the Postmine Land Use map, Plate 4.12-1. This was listed as a completeness item during our initial completeness review and the issue was corrected in the July 20, 2012 submittal but those changes were not retained with the October 2, 2012 submittal. Technical deficiency items that BNI may choose to correct at this time includes removing all permits other than Permit BNCR-9401 from the map and the legend includes postmining land uses that are inconsistent with NDAC 69-05.2-23-02. For example, "reclaimed grassland" is listed as a land use in addition to tame pastureland and native grassland. Woodlands are identified in three ways on this map: as red outlined polygons, as pink polygons, and as polygons with a broken black line. (GAW)

Plate 4.12-1 has been updated. Post mining land uses for the approved permit are now depicted on this map. All other permits have been removed from this plate. The legend has been updated and all excess land uses have been removed. The fill under the woodlands has been removed so the only listing for woodlands land use is shown as a red outline. The broken black line remains on this plate. This represents the possible locations for a future conservation planting (as it was labeled in the legend).

10. In Appendix 4.12-3, please provide the land owner preference statement from Larry and Virginia Schmidt for a parcel in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 8 if it has been received. (ZAT)

We have not received a landowner preference statement from Larry and Virginia Schmidt.

General

There are a number of words in the narrative portions of Sections 3.5 and 3.6 with a space in the middle of the word that results in a word being broken into two words. For example, the first paragraph of page 3.5-1, includes words such as " i n", "cr opland", "s mall" and the second paragraph contains words such as "be en", "be ing", "curren tly". Please review and correct to ensure spaces are not changing the intended meaning. Likewise, there are a number of sentences that are not a sentence or that leave the reader questioning the intent of the statement. For example, a sentence in the second paragraph of Section 3.5 states that "*Tame pastureland acres are areas that have been disturbed previously by industrial use and have been replanted with a mix of native species.*" It is not clear why these areas would not be considered native grassland if they were seeded to native species. A number of maps (plates) in the pre- and post-mining land use sections

of the permit contain extraneous information such as permit boundaries for other permit areas and text with a font size and color that make the map hard to interpret. Please review the application and provide some quality control in an effort to reduce the number of future technical deficiencies. (GAW)

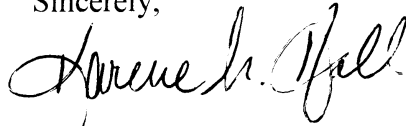
The spaces in the words are a quirk between Word and Adobe. Saving as a pdf results in the random spaces being added, whereas printing to Adobe resolves these issues.

The tame pastureland statements in Section 3.5 have been revised to address this issue.

There was some confusion about the information that was being requested in some Sections of the permit. With this confusion and therefore changing information, there were errors that did arise in these sections. We apologize for not sighting these errors. Now with clarification from the PSC staff, we believe many of these issues have been addressed.

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, prominent initial "K".

Karene M. Hall
Permit Coordinator