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June 13, 2013

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 April 26, 2013 changes to Revision No. 12 to Permit BNCR-9401 at the Center Mine submitted in response to our February 27, 2013 technical review letter. The following items must be adequately addressed prior to the Commission's approval of Revision No. 12. Please note that most items are in follow-up to numbered items in our February 27, 2013 letter although some new items are included as well.

General

Although summary comments are provided for each deficiency response in the BNI cover letter, and a List of Changes marked with a review stage identifier is provided as Appendix 1-1, additional details regarding where or how the permit was changed to address the items listed in our review letters would be helpful. A common response to our previous items is "*updated as requested*" and that makes it a challenge to identify some changes in the permit. Please specifically describe how the permit was updated in response to our deficiency items by defining specific narrative page numbers or table, figure, plate, or appendix numbers as necessary.

Section 1.10 Areas Unsuitable for Mining

1. Follow-up to item No. 10: Please redirect the hyperlink from Appendix 1-7 to Appendix 1-6. (WTG)

Appendix 3.2-3 Coal Analysis

2. Follow-up to item No. 33: Drillhole M11-006 was added to *The Listing of Drill Holes with Coal Analyses* spreadsheet that is provided at the top of the Coal Analyses section; however, it appears that coal quality information is either not available or has not been provided for this drillhole. Please either add the coal quality information for drillhole M11-006 to the spreadsheet or eliminate that particular drillhole listing from the spreadsheet. (BEB)

Section 3.3 Groundwater

3. Follow-up to item No. 35: Updated narrative on page 3.3-2 describes the elevation differential between the base of the Hagel Coal Seam compared with Hagel Creek and Square Butte Creek and a hyperlink to Appendix 3.3-1 was added to the text to direct the reader to the water elevation of the discharge streams. Appendix 3.3-1 is the section that provides ground water level data and it appears the intent was to provide a hyperlink to Appendix 3.4-1 which is the General Drainage map which shows surface elevations of Hagel and Square Butte Creeks. Please redirect the added hyperlink from Appendix 3.3-1 to Appendix 3.4-1. (BEB)
4. Follow-up to item No. 36: NDAC 69-05.2-08-04(1) describes that information must be provided on the characteristics of all surface and ground waters within the permit and adjacent areas, and any water which will flow into or receive discharges from these areas. In reference to the "*historical spring/seep*" described in your response to this deficiency that is located in the SE1/4 of Section 5, please provide the required flow/discharge rate and water quality information, if attainable, for this spring and describe in the narrative the probable stratigraphic unit or probable source unit from which the spring is emanating. We also request that you specifically state in the narrative of Section 3.3 whether or not this particular spring is natural or developed as this will determine whether or not this spring should be included in the surface water monitoring plan. Please provide the requested information. (BEB)

Plate 3.3-2 Hagel Seam Potentiometric Surface Map

5. Follow-up to item No. 40: Thank you for updating the name of the map as suggested. To answer your question as posed in the deficiency response; yes, if an established flow gradient of the Hagel Seam is/was available during at least one point in time regardless of when, then that information should be shown on the map to support your permit narrative regarding ground water flow direction. Lacking a third point of reference to determine specific flow direction, it can be generally inferred that flow gradient can be determined and/or controlled by the nearest significant receiving surface water body or stream downgradient, in this case either Hagel or Square Butte Creek. Based on review of water level elevations, it appears that the 2nd quarter of 2011 provides the highest ground water elevation levels and that data could be used in construction of a potentiometric surface to determine flow direction. We understand there is minimal

data to work with but even a rudimentary display of a potentiometric surface during a wet period/cycle would be appreciated. We ask that you please attempt to construct a simple potentiometric surface map with collected historical data that is available. (BEB)

Plate 3.3-3 Sheet Sand Potentiometric Surface Map

6. It appears the potentiometric surface information (contour isopach lines) that were incorporated into the previously approved completeness version of the permit (November 29, 2012) were not included in this most recent version. Please restore the potentiometric surface grid lines, elevations, and flow direction arrows that were previously incorporated into this map. The current version only shows two arrows pointing in the general direction of each other. (BEB)

Section 3.4 Surface Water

7. Follow-up to item No. 46: Please revise the first paragraph to indicate what type of information regarding wetlands is provided by the referenced links. Also it would be appropriate to identify on which plate(s) the wetland locations are shown. The second to last sentence notes that the wetlands are not shown on Plate 3.4-1 with a hyperlink to the map. It would be more relevant to the reader and for future reference to indicate that the wetlands are not shown on the General Drainage Map (without the hyperlink) and go on to provide that the locations are shown on plate 3.5-1 and plate 3.5-1A (with the appropriate hyperlinks). (RLK)
8. Follow-up to item Nos. 47, 48, 49, 50: The updated narrative for this section appears to have been left out of the updated version of permit revision application. The section was not updated as indicated in the response letter. (RLK)

Section 3.5 Pre-mining Land Use

9. Follow-up to item No. 65: Please review the introductory sentence for the Revision 12 Acreage Table on page 3.5-2 and add a quarter or half section description to Section 5 as was done for Sections 8 and 32. (ZAT)
10. Follow-up to item No. 71d: Table 3.5-1 has been revised and is very much improved. As requested in our letter dated February 27, 2013, please change the acreage on Table 3.5-1 for Section 5 woodlands to 4.75 acres and change the total for the woodland acreage to 4.78 acres to be consistent with the Woodlands Table 6.5-6. To compensate for the woodland adjustment, we suggest adjusting the native grassland in Section 5 to 257.46 acres and the total native grassland to 310.82 acres because other revisions have been requested on the native range tables and the requested changes do not affect any other acreages or totals on Table 3.5-1. (ZAT)

11. Follow-up to item No. 71e: Please make the following updates to Table 3.5-5 to make the information consistent with Table 3.5-1.
 - a. Update the footnote on Table 3.5-5 to read 53.93 acres of native grassland were released from bond in Bond Release #1 and 16.62 acres were released from bond in Bond Release #2.
 - b. The Section 5 acreage should be 252.71 acres and the total acreage should be 263.31.
 - c. As a result of the changes above, the numbers in the first sentence of the native grasslands narrative also need to be updated and we suggest revising the entire sentence for clarity. You may wish to consider a statement similar to the following. *“A total of 310.82 acres of native grassland has been permitted within BNCR-9401. In Section 5, 70.55 acres were released from bond (53.93 acres with BR #1 and 16.62 acres with BR#2) and 240.27 acres of native grassland are currently permitted.”* (ZAT)
12. Follow-up to item No. 75: For clarity, please consider revising the first sentence of the cropland narrative on page 3.5-3 as follows: *“A total of 147.83 acres of cropland has been permitted within BNCR-9401. In Section 5, 18.36 acres of the prime cropland was released from bond (10.62 acres with BR #1 and 7.74 acres with BR#2) and 129.47 acres of cropland are currently permitted.”* (ZAT)
13. Follow-up to item No. 75: Please clarify the narrative on cropland acres released from bond in the Table 3.5-3 notes. We suggest adding the following to the narrative as indicated by the underscored words: *“10.32 acres of premine Cropland were released from bond in Section 5 (Bond Release #1); 7.74 acres of premine cropland were released from bond in Section 5 (Bond Release #2)”*. (ZAT)
14. Follow-up to item No. 75: Please clarify the soil mapping footnote narrative of Table 3.5-3 as follows. ***Soil mapping units in this table are part of the N. Lunde Soil Survey [Appendix 3.8-2] and the High Intensity Soil Survey [Appendix 3.8-3].* As indicated above, change the single asterisk in front of the soil survey footnote as the same symbol should not be used for both the bond release notes and the soil map footnote. (ZAT)
15. Follow-up to item No. 78: Please review, and revise as appropriate, the cropland acreages provided in the replaced version of Table 3.5.3, Cropland Acres Soil Mapping Unit by Landowner. For example, the cropland acreage listed for Minnkota Power in Section 5 does not appear to agree with the pre-mine and post-mine land use information in the permit. (RLK)
16. Follow-up to item No. 81: Please provide an assessment of the productivity of the pre-mine cropland as required by NDAC 69-05.2-08-08(1)(c)(2). Although Table 3.5-3 provides the cropland soil mapping unit acreage for each surface owner, and Table 3.6-6 provides the productivity index of each mapping unit, there is no assessment of the productivity of the pre-mine cropland. Please include an assessment of the productivity of the principal crops grown on the cropland within the permit areas. This evaluation

can be based on NRCS yield estimates, historical yield averages for the area or recent actual yields. This could be as simple as a further general description of describing the cropland as marginal, average or above average. See page II-C-2 of our Pre- and Post-Mine Vegetation Assessments document. (GAW)

17. Follow-up to item No. 82: Please review the footnote for the Hayland Table 6.5-4 on page 3.5-6. It appears the High Intensity Soil Survey results reference and link could be removed since the soils in this table (Section 5) are all included in the N. Lunde Soil Survey [Appendix 3.8-2]. (ZAT)
18. Follow-up to item No. 83: On page 3.5-5, please remove the last sentence of the hayland narrative that provides a link to Appendix 3.6-1, Range descriptions and Historical Data since no hayland data is included in this appendix. Please include a brief statement on the total hayland acres permitted, bond released acres and acres remaining in the permit, similar to what was added for cropland and native grassland. (ZAT)
19. Follow-up to item No. 87: In the last paragraph of the native grasslands narrative on page 3.5-6, please add SE4 to Section 32. (ZAT)
20. Follow-up to item No. 94: In narrative or table format, please provide the woodland mapping unit acreage by surface owner as required by NDAC 69-05.2-08-08(1)(c)(1). The woodland acreage by surface owner is provided in Table 3.5-6 but the woodland mapping unit information (i.e. deciduous, tall shrub or low shrub) is not provided in Sections 3.5 or Appendix 3.6-3. Please revise Table 3.5-6 by listing the woodland type (mapping unit) of each inventoried woodland. Plate 3.6-2 shows that only woodlands 15 and 16 are tall shrub communities and the balance of the woodlands being added with Revision 12 are mixed deciduous woodland communities. (GAW)
21. Follow-up to item No. 95: In the first sentence of the woodlands narrative on page 3.5-8, please change the word with to within the BNCR-9401 Permit. (ZAT)
22. Follow-up to item No. 95: Please remove the fourth paragraph of the woodland narrative on page 3.5-8 and replace it with a statement similar to the last paragraph on woodlands found in Appendix 3.6-1. (Please note that a deficiency has been written for the last paragraph on woodlands found in Appendix 3.6-1 that requests the same revision that is suggested below. The same statement will resolve both deficiencies.) The link to Appendix 3.6-1 is not necessary since the link and similar information is included in paragraph one. We suggest replacing paragraph four with a statement similar to, "*Woodland #1 (0.3 acres) has not been disturbed. Woodland #7 (0.2 acres) has been disturbed by the construction of Ash Cell #3. Woodland #7, and any acreage of woodland #1 that may be disturbed, will be reclaimed in the same manner as Woodlands #8-#16.*" (ZAT)

23. Follow-up to item No. 95: Please revise the last sentence on page 3.5-8. The total acreage is incorrect for woodlands #8-#16. Please change the acreage in parentheses from 2.41 acres to 2.78 acres, which is consistent with Table 3.5-6. (ZAT)
24. Follow-up to item No. 95: Please reorganize paragraphs two and three on page 3.5-9 for better clarity by moving one sentence, changing the beginning of the second paragraph, and removing woodlands #1 and #7 from the discussion, since this information was presented on the previous page. We suggest the following or a similar revision.

“Woodlands #8 - #16 have not been disturbed previously by mining or associated activities. They are found in woody draws, within tame pasture and native grasslands. Sample locations are shown on [Plate 3.6-2] Woodlands. Data describing the canopy, species and understory of the woodlands can be found in [Appendix 3.6-3] Woodland Density and Cover Data.

Woodland #9 will be disturbed by a haul road and construction of sedimentation Pond 5-7. Woodlands #13, #14, & #16 in the NE4 of Section 5 and the SE4 of Section 32 will also be disturbed by the haul road.

All disturbed woodlands will be reclaimed in concave areas on primarily east and north facing aspects, as they are found in natural habitats, to ensure high survival probabilities. Woodland species and planting densities will mimic what was conducted at the Glenharold Mine where woodlands have done well in the reclaimed landscape. Reclamation plans for woodlands can be found in [Section 4.12-1] Re-vegetation Methods.” (ZAT)

25. Follow-up to item No. 97e: The footnote of Table 3.5-6 incorrectly states Woodlands #1 - #6 have been mitigated. Please correct this to Woodlands #2 - #6 have been mitigated and include the permit number where the shelterbelt was mitigated. The revised sentence of the footnote should read similar to, *“Woodlands #2 through #6 (1.5 acres) have been mitigated with a shelterbelt planting in T142N, R84W, Section 36 of Permit BNCR-8106. (ZAT)*
26. Follow-up to item No. 102: Please correct the link in the revised text of the Industrial narrative on page 3.5-10 that states, *“See [Appendix 3.6-6] for the vegetation species found in these areas”*. Appendix 3.6-6 is the Productivity Index and it appears the correct link should be Appendix 3.6-5. (ZAT)
27. Follow-up to items No. 103 and 104: These deficiencies requested two changes in the Tame Pasture narrative. It is unclear why BNI would choose to insert narrative throughout the entire paragraph at this time. Please make the following corrections to the paragraph.

- a. Retain the first sentence of the revised tame pasture narrative which now gives quarter section land descriptions for the location of the tame pasture tracts as we requested.
 - b. Remove the revisions made in the body of the paragraph that were not requested or remove the phrases, "*they seem to have*" and use your sample data to write definitive statements such as, "*They do have a higher native component than the industrial tracts.*"
 - c. Please complete No. 104 requesting that BNI review the statement "*Tame pastureland acres that are disturbed by mining activities will be reclaimed as native grassland.*" This statement is not consistent with Section 4.12-1 that states "*Areas that have a pre-mine land use of tame pastureland found in the NW4 of the NE4 of Section 5 and the SE4 of Section 32 will be reclaimed using a tame pasture seed mix.*" Please note the Post Mine Land Use Plate 4.12-1 does not depict any tame pasture post mine land use. Please make the appropriate changes to the pre-mine land use narrative **or** to Section 4.12-1 to ensure that the 2 sections are consistent. (ZAT)
28. Follow-up to item No. 105: Please include a link to Plate 3.5-1A in the narrative added for stockponds on page 3.5-12. (ZAT)

Section 3.6 Pre-mining Vegetation

29. Follow-up to item No. 112: Please revise the first sentence in the Vegetation Variability narrative regarding cropland for clarity. Perhaps the sentence could start with "The vegetation on cropland varies depending..." (RLK)
30. A sentence in the fifth paragraph on page 3.6-2 refers to native grasslands in the SE1/4 of Section 8 and NE1/4 of Section 5 being surrounded by industrial use. There is no permitted acreage in the SE1/4 of Section 8. Please revise to correct this error. (GAW)
31. Follow-up to item No. 113: The revised narrative for cropland soils does not appear to correspond to information referred to in the permit. Historic production data which appeared to have been based on the map unit productivity indices is no longer provided in Appendix 3.6-1 and the appropriate productivity information is now provided in Appendix 3.6-6. Also the yields provided in the narrative do not appear to correspond to the soil types noted. Please review and revise as appropriate. (RLK)
32. Follow-up to item No. 120: A sentence in the second paragraph on page 3.6-10 states that BNI will reclaim all disturbed acres of woodlands to equal or better quality than pre-mine conditions. Please clarify how pre- and post-mine woodland quality has been and will be determined, using statistically valid sampling techniques. (GAW)
33. Follow-up to item No. 120: A sentence in the second paragraph on page 3.6-10 states "*Increased aerial extent of western snowberry can be seen on the permit area especially where grazing is light to excluded. However, the grazing patterns on many tracts are*

such that lower stem densities are present and thus reducing the effectiveness of western snowberry for wildlife use.” These statements appear to be contradictory as Section 3.5 of the permit indicates that the land within the proposed permit area has been idle for an extended period of time. Please revise to clarify what is meant by grazing patterns on many tracts and provide data or explanation how it was determined that western snowberry communities have lower stem densities than normal. (GAW)

34. Follow-up to item No. 120: A new sentence in paragraph six of page 3.6-10 states that western snowberry provided a minor fulfillment of habitat utilized by wildlife. Please discuss how this conclusion was reached and if sampling was conducted to conclude this to be the case. If sampling was conducted, please provide the results of the sampling. (GAW)
35. Follow-up to item No. 121: The first paragraph under the Tame Pastureland narrative on page 3.6-11 states that the five tracts of tame pastureland are 80% smooth brome, 15% alfalfa and 5% other species but the second paragraph states that Kentucky bluegrass is a dominant species established on the tame pastureland. Please correct these contradictory statements. The second paragraph also states that less than 10% of the native component is remaining on the tame pastureland but the first paragraph explains that tame pastureland was previously disturbed then seeded back to some grassland species or left idle. Please clarify that about 10% of the tame pastureland acreage continues to support native species and provide an accurate management history of these tracts. (GAW)
36. Follow-up to item No. 121: The first sentence of the Industrial land on page 3.6-11 appears to be two separate sentences that have been combined. Please revise to provide clarity. (GAW)
37. Follow-up to item No. 121: Please revise the last sentence of the first paragraph of the Industrial land use section so that the sentence is understandable. (GAW)
38. Follow-up to item No. 121: The last sentence of the second paragraph under the Industrial land discussion states that Section 3.6-5 provides species composition information for the Industrial Land. There is no assessment of species composition in Section 3.6-5. Please review and revise as necessary. (GAW)
39. Follow-up to item No. 121: The last paragraph of the Industrial land discussion talks about a shift from native species to invasive species due to management but the preceding paragraphs state that the Industrial land are previously disturbed areas that are sparsely established with introduced species. The discussion in the last paragraph about a shift from native species to introduced species is very confusing. Please review and revise to clarify. (GAW)

Plate 3.6-2 Woodlands

40. Follow-up to item No. 127: The tall shrub sample location is not associated with a tall shrub woodland on Plate 3.6-2. Please revise to identify the tall shrub woodland that was sampled. (GAW)

Appendix 3.6-1 Range Descriptions and Historical Data

41. The woodland portion of Appendix 3.6-1 was rewritten for the last submittal and requires a few minor changes.
 - a. The number of hawthorn was missed when the woodland #7 narrative was revised; please change hawthorn to eight hawthorn in the woodland #7 narrative.
 - b. Please add a page number and revision date at the bottom of the woodland page.
 - c. Please consider revising the last paragraph of the woodland narrative in Appendix 3.6-1 to emphasize that woodland #1 has not been disturbed. (Narrative at the top of the page states it will not be disturbed.) The following suggestion is quite similar to the current statement, but separates sentences for woodlands #1 and #7 to emphasize that one is disturbed and one is not. *“Woodland #1 (0.3 acres) has not been disturbed. Woodland #7 (0.2 acres) has been disturbed by the construction of Ash Cell #3. Woodland #7, and any acreage of woodland #1 that may be disturbed, will be reclaimed in the same manner as Woodlands #8-#16.”* (ZAT)

Appendix 3.6-3 Woodland Density and Cover Data

42. Follow-up to item Nos. 140 and 141: BNI responded to a request for clarification about low shrub woodland communities by simply removing reference to this woodland type. Please mention that there are three woodland types in the permit area and map areas of low shrub communities associated with tall shrub and mixed deciduous woodland communities. The third paragraph on page 1 of Appendix 3.6-3 states the where woodland community types were mixed, the dominant woodland type was mapped. However, NDAC 69-05.2-08-08 requires that all woodland types be depicted and characterized. The sampling data shows that the deciduous woodlands are actually mixed deciduous woodlands. (GAW)
43. Follow-up to item No. 141: A sentence in the first paragraph on page 2 of Appendix 3.6-3 states *“Increased aerial extent of western snowberry can be seen on the permit area especially where grazing is light to excluded. However, the grazing patterns on many tracts are such that lower stem densities are present ...”* These statements appear to be contradictory as Section 3.5 of the permit indicates that the land within the proposed permit area has been idle for an extended period of time. Please revise to clarify what is meant by grazing patterns on many tracts. (GAW)
44. Follow-up to item No. 120: Please revise the low shrub woodland narrative that begins on page 2 of Appendix 3.6 to provide documentation regarding the approximate aerial

extent (relative spatial abundance or acreage) of this woodland type. In other words, please provide some assessment of the relative abundance of this species on the native grassland, tame pastureland and other land uses and map this woodland type on Plate 3.6-2 as required by NDAC 69.05.2-08-08 (1) (a) (4). No low shrub species are listed in the Native Grassland Similarity Index Sheets in Appendix 3.6-4 and yet we are aware that this species is prevalent in the Revision 12 addition area. Please revise to fulfill the requirements as set forth by regulation. (GAW)

Appendix 3.6-4 Native Range Similarity Index Sheets

45. Follow-up to item No. 146: The similarity index sheet labeled NE1/4 of Section 5, T141N, R83W, SwLy, has a location label of NE1/4 of Section 8 but a pasture name/no as NE 5. Please review and clarify if this is sampling data from the NE1/4 of Section 5 or the NE1/4 of Section 8. (GAW)
46. Follow-up to item No. 146: Please include a map that shows the sampling location and ecological site mapping unit of each site included in Appendix 3.6-4, Native Rangeland Similarity Index Sheets. (GAW)

Section 3.7 Prime Farmlands

47. Follow-up to item No. 148: Please make the following corrections as necessary to page 1 of Section 3.7:
 - a. The second sentence of paragraph 1 should describe five tracts rather than three.
 - b. The sentence beginning with "*Four areas ...*" in paragraph 2 should list Tracts 2, 3, 4, and 5.
 - c. Remove the unnecessary phrase describing Commission approval in paragraph 2.
 - d. It appears that the reference to the NE $\frac{1}{4}$ of Section 8 for Tract 2 is more fully described by referencing the N $\frac{1}{2}$ of Section 8.
 - e. Reference Plate 3.7-1, Table 3.7-1, and Appendix 3.7-1 in each of the descriptions for Tracts 1, 2, and 3.
 - f. It appears that the last sentence on page 1 should reference Tracts 5 and 2 rather than 5 and 6. (WTG)

Appendix 3.7-1 Oliver County Soil Survey and Prime Farmland Correspondence

48. Follow-up to item No. 149: Please revise Appendix 3.7-1 as follows:
 - a. Include pages 9, 11, 24, and 25 from the Oliver County Soil Survey for the Arnegard and Grail series descriptions, and ArA, ArB, and GaB soil map unit descriptions.
 - b. Place the Oliver County Soil Survey pages in numerical order.
 - c. Remove the bookmark for the Grassna series because there are no Grassna soil map units in the permit area.
 - d. At your discretion, either renumber the appendix page numbers or remove them entirely. (WTG)

Section 3.8 Soil Resources

49. Follow-up to item No. 153: Please revise the phrase “...*reclaimed and filled with SPGM...*” which is inaccurate. The landfill cells will be capped once disposal is complete and SPGM will be used as final cover to the appropriate depths and standards. (RLK)

Plate 3.8-1 Soils Map

50. Follow-up to item No. 155: Plate 3.8-1 is labeled Plate 3.8-2 in the title block on the plate. Please correct this inconsistency. (GAW)

Section 3.8 Appendices 3.8-1 through 3.8-4

51. Follow-up to item No. 158: Please either retitle or remove the title page of Appendix 3.8-3 and the accompanying bookmark that both currently read Appendix 3.8-1 (titled as such in BNCR-1101). (WTG)
52. Follow-up to item No. 160: Please correct the legal description for Section 32 on page 3 of Appendix 3.8-4 to read T142 N rather than T141 N. (WTG)

Section 3.10 Fish and Wildlife Resources

53. The BNCR-9401 table in Figure 2, page 3 of Section 3.10, indicates that there are 113.51 acres of land use labeled “Released” and there is less cropland, hayland and native grassland listed in this table than the amounts listed in the Pre-Mine Land Use Table in Section 3.5. “Released” is not a habitat or land use type. Please revise to indicate the habitat types of the permit area at the time the wildlife survey was completed. It seems “released” land might be referring to bond released areas but the table indicates that 20.65 percent of the area is within the permit boundary of BNCR-9401 which is confusing. Please revise the table to provide clarity. The habitat types of the “released” land should be based on vegetation habitat type. (GAW)
54. A sentence in the second paragraph of page 5 of Section 3.10 states that “There has never been a recorded sighting of a Dakota skipper in Oliver County or any adjacent counties according to Butterflies of North Dakota – Ronald Alan Royer”. However, the USFWS County Occurrence of Endangered, Threatened and Candidate Species and Designated Critical Habitat in North Dakota, dated February 2012 shows this species in Oliver County and this species has been documented at the Cross Ranch Nature Conservancy in Oliver County (PSC personal communications). Please revise to clarify if other sources have documented that the Dakota skipper is or has been present in Oliver County. (GAW)

55. Follow-up to item No. 163: A sentence in the second paragraph on page 2 of Section 3.10 states that Hungarian partridge appear to be on the increase based on monitoring on the adjacent 36 square mile study area. Please revise to clarify when monitoring showed this to be the case. (GAW)
56. Follow-up to item No. 163: Please clarify if the first two sentences of the third paragraph on page 2 of Section 3.10 are applicable today or were statements made when the permit was initially issued. (GAW)
57. Follow-up to item No. 166: The third paragraph on page 4 and the second paragraph on page 5 of Section 3.10 state that suitable habitat for the Dakota skipper does not exist in the permit area. However, the rangeland similarity index sheet for the NE1/4 of Section 5 (location NE1/4 of Section 8) shows that the site is dominated with the species that have been identified as being appropriate habitat. (GAW)

Plate 3.10-2 Minewide Wildlife Monitoring Map

58. The name of the map is deceiving as this is not the Mine Wide Wildlife Monitoring Map. Please change the name to what the map actually represents, the baseline wildlife inventory map. (GAW)
59. Please include the habitats of the Revision 12 addition area on Plate 3.10-2 since this map is represents the whole study area. (GAW)
60. Please include the habitats on the buffer area surrounding the wildlife study area on Plate 3.10-2 since this information is required, and was to be included according to the approved monitoring plan. (GAW)

Appendix 3.10-2 Fish and Wildlife Monitoring Plan, Correspondence, KDK Wildlife Study Report (2010), and Minnesota Power Whooping Crane Study (2008)

61. The link to Appendix 3.10-2 does not work. Please fix this link so the appendix will open as planned. (GAW)
62. Follow-up to item No. 171: Appendix 3.10, the Wildlife Study, has been renamed “Fish and Wildlife Monitoring Plan, Map, Correspondence, KDK Study Report and Minnkota Power Whooping Crane Study (2008) in response to item no. 171. Entitling the baseline wildlife inventory plan as the Fish and Wildlife Monitoring Plan is confusing since this section is the baseline inventory study and Section 4.13 of the permit includes the Fish and Wildlife Monitoring Plan. Please properly revise the name of this section to avoid confusion. (GAW)
63. Follow-up to item No. 174: Plate 3.10-2 is identified as the Minewide Wildlife Monitoring Map rather than the Baseline Wildlife Inventory and Habitat map. This is

confusing as Plates 4.13-1 and 4.13-2 are the Wildlife Monitoring Maps. Please revise as necessary to provide clarity. (GAW)

64. Follow-up to item No. 179: The first sentence on Page 10 of Appendix 3-10-2 has been revised to include non-native species such as lilac, caragana and honeysuckle. Please clarify why these non-native species are considered woodlands. Given the variability of the woodland communities, please include a list of the dominant species present in each woodland or provide a reference where this information can be found in the permit. (GAW)
65. Follow-up to item No. 180: Please revise Appendix 3.10-2 to provide specific wildlife habitat information to for the Revision 12 addition area. The land being added with Revision 12 is not even mentioned in the report and the habitat types are not even depicted on Plate 3.10-2, Minewide Wildlife Monitoring Map, which is really the baseline Wildlife Habitat Map for KDK's Fish and Wildlife Report. Please revise to provide basic baseline wildlife information for the proposed Addition Area. (GAW)
66. Follow-up to item No. 182: BNI answered this deficiency by referencing the buffer area that was included in the study area. However, Plate 3.10-2, Minewide Wildlife Monitoring Map, does not show the habitats of the buffer area so the statements referring to large semi-permanent and larger seasonal wetlands are out of context in regard to this permit area and cannot be easily referenced. In addition, a sentence in the first paragraph of the results and discussion section of Appendix 3.10-2 states that the habitats of the buffer area are included on Plate 3.10-2. Please review and revise to correct as necessary. (GAW)
67. Follow-up to item No. 184: Please revise the last paragraph on page 14 of Appendix 3.10-2 to clearly state where designated critical habitat for the piping plover, and any other Threatened or Endangered species, is in relation to the proposed permit area. This issue was not addressed as reported. (GAW)
68. A new sentence on page 17 of Appendix 3.10-2 states that "There has never been a recorded sighting of Dakota Skipper in Oliver County or any of the adjacent counties according to Butterflies of North Dakota – Ronald Alan Royer". However, the USFWS County Occurrence of Endangered, Threatened and Candidate Species and Designated Critical Habitat in North Dakota, dated February 2012 shows this species in Oliver County and this species has been documented at the Cross Ranch Nature Conservancy in Oliver County (PSC personal communications). Please revise to clarify if other sources have documented that the Dakota skipper is or has been present in Oliver County. (GAW)
69. Follow-up to item No. 199: Please clarify with more detail how it was determined that each of the Significant Ecological Communities listed in the table at the top of page 21 (appendix 3.10-2) are not present in the Wildlife Study Area. For example, it is not clear how it was determined that the deciduous woodland in the Revision 12 area is not

a Green Ash Upland Woodland, which is a significant ecological community. Likewise, it is not clear how it was determined that the Saline Lowland ecological site in Section 12 that is dominated with the species listed for the Saltgrass Saline Meadow Community was not significant. In addition, it is not clear how the other grassland ecological sites that are dominated with the species listed for their respective ecological community were not considered Significant Ecological Communities. Please review each of these sites and update as necessary to clarify whether or not there are any Significant Ecological Communities in the study area. At a minimum, this needs to be done for the sites in the Revision 12 addition area. (GAW)

70. Follow-up to item No. 200: A new sentence in the conclusion narrative at the bottom of page 26 of Appendix 3.10-2 states that “*While there may be potential habitat for the Spragues pipit...*” This sentence is confusing as the wildlife study documented the presence of this species on numerous tracts of land within the study area. There is not just “potential” habitat for this species in the study area, but in fact there is known (documented) habitat suitable for this species. Please review and revise to as necessary. (GAW)
71. Follow-up to item No. 204: Please revise the Pheasant Crowing Count narrative on page 4 of Appendix 3.10-2 to discuss the results of the pheasant crowing count information for the Study Area only. Including crow count information for areas mined and reclaimed does not establish baseline information for the study area. Please revise and include summary information for the study area. (GAW)

Appendix 3.10-9 Grouse and Pheasant Data Tables

72. Follow-up to item No. 204: Please revise Tables 1 through 4 to include baseline information for only the study area. In other words, please exclude information for existing permit areas that include reclaimed land. The average values computed from these tables does not necessary represent baseline information for the study area. Revise so the information provided is specific to the study area. (GAW)
73. Follow-up to item No. 205: Please revise the grouse tables so that the information is specific to the study areas and provide an average number of observed displaying males on these leks. Including numerous old leks sites that have been disturbed by mining skews the data. Please revise to provide baseline data for only the study area. (GAW)
74. Follow-up to item No. 206: Please edit the notations at the bottom of the grouse and pheasant tables in Appendix 3.10-9 to include only information relevant to the study area. (GAW)

Section 3.12 Cultural and Historical Resources

75. Follow-up to item No. 207: We are unable to locate any cultural resource information regarding the approximately 12-acre tract of land in the SE1/4 of Section 32 that is

being added into the permit with this application. Please address what appears to be a lack of information; however, we realize that much of this area has been disturbed by other activities years ago and cultural resource information may not be available. Please update the permit with whatever information is available regarding this tract or otherwise indicate the status of cultural resource information for this tract. (BEB)

76. Appendix 3.12-1 contains two identical SHPO correspondence letters dated February 18, 1993. It appears that one of the duplicate letters could be deleted from the section. (BEB)

Section 4.1 Coal Removal

77. Follow-up to item No. 208: Please remove or clarify the phrase "*capped with solid waste*" in reference to the coal combustion waste cells in the fourth paragraph of Section 4.1 (appropriate changes were not completed as described). (WTG)
78. Follow-up to item No. 210: BNI is proposing a new coal haul road and a pond in the wooded draw located in the NW1/4 of the NE1/4 of Section 5. Please explain why BNI needs to disturb a portion of this draw in the narratives for Section 4.1 - Coal Removal, Section 4.5 - Transportation Plan, and Section 4.6 - Surface Water Management Plan. (GAW)
79. Follow-up to item No. 211: Pond 5-7 is shown to be within 100 feet of an intermittent stream. Please move this pond or provide justification for affecting lands within 100 feet of as required by NDAC 69-05.2-16-20. The response to the original deficiency indicates that justification was provided in Section 4.6; however, justification was not provided, only an indication that the pond would be constructed within 100 feet of an intermittent stream. (GAW)

Section 4.4 Blasting Plan

80. Follow-up to item No. 217: No changes have been made in response to the original item; please include the blasting map as previously requested. (FSE)

Section 4.5 Transportation Plan

81. Follow-up to item No. 218: Please remove the reference to leaving subsoil in fill segments of haul roads and using subsoil as haul road fill material in paragraph 1 of page 1 because Option 1 of Policy Memorandum No. 17 (save and respread all available SPGM) is the method that will be used for SPGM removal and redistribution in BNCR-9401 (changes were not completed as described). Please also correct the formatting for paragraph 1. (WTG/FSE)

Follow-up to item No. 219: Although the response letter indicates that the requested information has been provided, it does not appear that the requested information has

been incorporated into the revision. Please include the requested information for each segment of haul road. (FSE)

Appendix 4.5-2 Culvert Information Sheets

82. Follow-up to item No. 220: Although the response letter indicates that the requested information has been provided, it does not appear that the requested information has been incorporated into the revision. Please include the requested information for each culvert. (FSE)

Section 4.7 Water Monitoring and Drill Hole Reclamation Plans

83. Follow-up to item No. 230: Table 4.7-1 was incorporated into the permit as requested; however, this spreadsheet should be updated if required with current information, and (2012) which is listed at the top of the spreadsheet should be changed to **(2013)** to reflect that the information provided is the most recent information available with this revision. Also, there are two entries on Page 4.7-2 denoting *QUARTERLY GROUND WATER MONITORING* and one of them can obviously be deleted from the text. (BEB)

Section 4.12 Revegetation and Post Mining Land Use

84. Follow-up to item No. 243: Please retain the land use of woodlands in the first sentence for Section 5 on page 4.12-1. Woodland was added to the statement and then struck through; please remove the strike through and retain woodlands as a land use. (ZAT)
85. On page 4.12-2, paragraph 2, please review the 3.63 acres at pre-mine woodlands in Section 5. Our calculations indicate a total of 4.78 acres of woodlands within the permit and 1.5 acres of those woodlands have been mitigated, which leaves 3.28 acres of woodlands to be mitigated in the future. Please clarify the conservational planting acreage and correct the acreage of woodlands remaining to be mitigated for Section 5 and make appropriate changes to the Post Mine Land Use Table 4.12-1. (ZAT)
86. Follow-up to item No. 248: On page 4.12-1, in the narrative discussing industrial land use in Section 5 a sentence was revised to read “This land use change will not involve unreasonable delays in implementation since sediment ponds and SPGM removal began as soon as practicable after BNI received its mining permit from the PSC.” It appears the changes were made to update the narrative to indicate the land use change is being implemented rather than planned but the change in tense in the sentence is not complete. Perhaps “will not” should be “did not” at the beginning of the sentence and the word “will” appearing before “began” should be removed. Also, replacing “sediment ponds” with the phrase “sediment pond construction” would be more accurate. (RLK)
87. Follow-up to item No. 251: Please revise the woodland narrative in the second paragraph on page 2 of Section 4. 12 to keep the replacement and conservation

woodland plantings as separate and distinct land uses. In other words, it is not appropriate to indicate that a single planting is a combination of replacement and conservation planting. (GAW)

88. Follow-up to item No. 251: BNI is proposing to replace the woodlands in the wooded draw where Pond 5-7 and a haulroad is to be constructed. The woodlands in this drainage are proposed to be affected by the pond and a haulroad. BNI is proposing to replace these trees in their pre-mine location. However, the haulroad and pond are obviously life-of-mine facilities and the value of these woodlands will be lost for decades. Please discuss plans for replacing the value of this important woodland habitat immediately with other woodland plantings to meet the requirement of NDAC 69-05.2-09-17 and 69-05.2-13-08. (GAW)
89. Follow-up to item No. 258: Please make the following corrections to the Post Mine Land Use Table 4.12-1 to be consistent with acreage in Table 3.5-1 and information depicted on Plate 4.12-1.
 - a. Please adjust the acreages for Section 5. Increase industrial acreage to 296.72; increase woodland acreage to 3.25; and remove the 1.5 acres of mitigated shelterbelts since this shelterbelt is not in Section 5 (they were mitigated in 36-142-84). The land was released as industrial; therefore, the acreage should be added to the industrial total. Total acreage at the bottom of the Section 5 column is 372.64 acres.
 - b. Please adjust the Totals column on the right. It appears some totals were not updated and a few minor adjustments are required. The cropland total is 119.93; native grassland total should be 99.0; the industrial total should be 310.34; woodlands should be 3.28; right of way should be 11.96; and the 1.02 acres conservational planting needs to be added to the totals column. These adjustments bring the total acreage permitted to 549.73 acres that is consistent with the pre-mine land use table.
 - c. Please update the footnote on Bond Release #1 at the bottom of Table 4.12-1, to be consistent with changes made to Table 3.5-1. Please change 53.67 acres to 53.93 acres native grassland released with Bond Release #1. (ZAT)

Section 4.12-1 Revegetation Methods

90. Follow-up to item No. 260: Please revise the Perennial Grassland Seed Mixture, Table 4.12-1 to include native forbs to meet the requirements of NDAC 69-05.2-22-01 which requires the postmining vegetative cover to be a mixture of species of equal or superior utility compared to the vegetation prior to mining during each season of the year. (GAW)
91. Follow-up to item No. 261: Please revise the sentence in the second paragraph on page 2 of Section 4.12-1 that states that "*the woodland mix and species densities may be adjusted according to site conditions and species requirements*" and the sentence in the woodland species mix table, Figure 1, that states that the "*species and planting*

percentages are subject to change” to indicate that changes to the approved mixture must be approved by the Commission as required by NDAC 69-05.2-09-11. (GAW)

92. Follow-up to item Nos. 251 and 264: Please revise the woodland narrative in the second paragraph on page 3 of Section 4.12-1 to keep the replacement and conservation woodland planting as separate and distinct postmine land uses. In other words, it is not appropriate to indicate that a single planting is a combination of replacement and conservation planting. The replacement and conservation plantings will each be subject to different reclamation success standards. (GAW)
93. Follow-up to item No. 267: Please review the third sentence in the first paragraph on page 3 that begins, “*Woodlands (#1, portion of #2, and #4-#9) ...*”. Revise this statement to read similar to “*Woodlands (#1, #7-#16) and conservational acres in Section 5 are planned to be reclaimed as a large planting near the location of pre-mine woodland #9*”. Also, add a statement to clarify that the woodlands #2-#6 (1.5 acres) have been mitigated with a shelterbelt planting in Section 36, T142N, R84W (Permit BNCR-8106). (ZAT)
94. Follow-up to item No. 268: Previously we requested that BNI review the statement “*Tame pastureland acres that are disturbed by mining activities will be reclaimed as native grassland*” that is found in Section 3.5. This statement is not consistent with the narrative on page 3 of Section 4.12-1 that states “*Areas that have a pre-mine land use of tame pastureland found in the NW4 of the NE4 of Section 5 and the SE4 of Section 32 will be reclaimed using a tame pasture seed mix.*” Please note the Post Mine Land Use Plate 4.12-1 does not depict any tame pasture post mine land use. Please make the appropriate changes to the pre-mine land use narrative **or** to Section 4.12-1 so information presented is consistent. A similar deficiency was written for Section 3.5. (ZAT)

Section 4.12-2 Determining Reclamation Success

95. Follow-up to items No. 269 and 271: The silty native grassland reference areas information is in Section 4.12-2 of the permit while new information for proposed ecological sites is included in Appendix 4.12-4 of the permit. This is confusing. Please revise so that reference information and maps are organized in one location in the permit and clarify that the proposed ecological site reference areas are “Proposed” until such time as they can be field inspected and approved by the Reclamation Division. Please also clarify how the proposed shallow/loamy ecological site will be managed by BNI given its proximity to coal mining operations. In addition, please note that the other proposed ecological sites in the SW1/4 of Section 9 are scheduled to be mined in 2036 through 2039. (GAW)
96. Follow-up to item No. 273: Please review the second paragraph on woodlands in Section 4.12-2. Revise this statement to clarify that **woodlands #2- #6** (1.5 acres) have

been mitigated with the shelterbelt planting in Section 36, T142N, R84W (Permit BNCR-8106). (ZAT)

97. Follow-up to item No. 273: Please review the last paragraph on woodlands in Section 4.12-2. Change the beginning of the first sentence from, “*Woodlands #1, the remaining part of #2, & #4 - #16 will be evaluated*” ... to “***Woodlands #1 and woodlands #7- #16 or any portion disturbed and reclaimed will be evaluated***” ... (ZAT)

Plate 4.12-1 Post Mining Land Use

98. Follow-up to item No. 281: On Plate 4.12-1, please outline and label by number all woodlands that will not be disturbed and expected to remain in the post mine setting. Woodlands that will be disturbed do not need to be outlined nor labeled on the Post Mine Land Use Plate 4.12-1. (ZAT)

Appendix 4.12-1 SCS Sheets & Zoning Correspondence

99. Follow-up to item No. 286: Please remove the “Minnkota Postmine Land Use request letter 11-30-1992” from the bookmark section of Appendix 4.12-1 since it has been moved to Appendix 4.12-2. (ZAT)

Appendix 4.12-3 Land Use Discussions

100. Appendix 4.12-3 was renamed “Land Use Discussions” but the bookmark heading shown when this appendix is opened continues to show the old label “Pre/Postmine Land Use Discussions for Rev. 12 Acres”. Please correct this error. (GAW)
101. Follow-up to item No. 287: As previously requested, please use narrative that is consistent with changes made to Sections 3.5 and 3.6. Review and revise the fourth paragraph on page 1 of Appendix 4.12-3 to clarify that woodlands **#2 through #6** (1.5 acres) have been mitigated with a shelterbelt planted in 1992 in Section 36, T142N, R84W (Permit BNCR-8106). (ZAT)
102. Follow-up to item No. 293: Please revise the third paragraph on page 2 of Appendix 4.12-3 to clarify that the Dakota skipper is a Candidate species to the Threatened and Endangered Species Act (not a potential candidate species). The narrative discusses survey efforts during appropriate flight times but it is not clear which species was being surveyed. Please revise with clear and concise language. (GAW)
103. Follow-up to item No. 293: Please revise the new narrative regarding Sprague’s Pipit to state whether suitable habitat for this species exists in the permit area as requested in the original deficiency. (GAW)

104. Follow-up to item No. 295: Please revise the second to last paragraph on page 3 of Appendix 4.12-3 by updating the name of Appendix 3.6-1 to Range Descriptions & Historical Data. (ZAT)
105. Follow-up to item No. 296: Update the pre-mine and post-mine acreages on the Section 5 Tables in Appendix 4.12-3. Acreages should reflect changes made to Table 3.5-1 and Table 4.12-1. Please note that tame pasture is not depicted as a post mine land use on Plate 4.12-1. (ZAT)
106. Follow-up to item No. 298: Please update the post-mine land use acreages on the Section 32 Table in Appendix 4.12-3. All post mine land uses should be depicted on Plate 4.12-1. Please note that tame pasture is not depicted as a post mine land use on Plate 4.12-1. (ZAT)

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

107. A sentence in the last paragraph on page 2 of Section 4.13 states that the Dakota skipper has never been sighted in Oliver County according to Ronald Royer; however, the USFWS states that this species was identified at the Cross Ranch Nature Conservancy in Oliver County. Please revise accordingly. (GAW)
108. Follow-up to item Nos. 302-317: A heading “Threatened and Endangered Species” is listed on page 1 of Section 4.13 but by page 3 the discussion leads to much more than “Threatened and Endangered Species”. Please revise and reorganize so that the information is presented in a logical format. (GAW)
109. Follow-up to item No. 314: Please revise the incidental sighting monitoring techniques to clarify how the information will be obtained, organized and documented so that it is informative and worthwhile. (GAW)
110. Follow-up to item No. 316: Please revise the Fish and Wildlife Monitoring Plan to include the detailed protocol that will be used when conducting annual surveys for Dakota skipper and Sprague’s pipit. (GAW)
111. Follow-up to item No. 318: Please include a discussion about recent consultations with the Commission and State Game and Fish Department before selecting indicator species that will be monitored to assess the effects of surface mining on fish and wildlife resources. NDAC 69-05.2-09-17(1)(e). (GAW)

Appendix 4.14-1 Worst Case Bond Estimate

112. Follow-up to item No. 322: Please update Appendix 4.14-1 using data from the 2012 annual map. (FSE)

Jay M. Volk, Ph. D

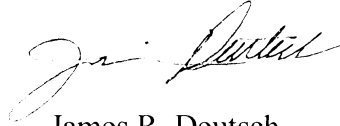
June 13, 2013

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As of today, June 13, 2013, 63 days remain of the Commission's second 120 day review period that is now suspended until the revision application deficiencies are corrected.

Please contact this office if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "James R. Deutsch". The signature is fluid and cursive, with a large initial "J" and "D".

James R. Deutsch
Director
Reclamation Division

cc: Oliver County Auditor

Minedata/Center/Permits/BNCR-9401/Revisions/Rev12/Rev12_tech2_rvw_ltr_6-13-13