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MINING LIGNITE AT THE CENTER MINE SINCE 1970

July 8, 2013

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 13, 2013. In this letter you listed technical deficiencies that must be addressed before the permit revision application for BNCR-9401 can be approved. Below is a listing of the deficiencies followed by our response:

**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)

*The link was revised to direct it to Appendix 1-6.*

### **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)

*Drillhole was removed from the list due to no quality was available (pg.2, line 25 removed)*

### **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)

*Narrative and hyperlink were updated and redirected from Appendix 3.3-1 to Appendix 3.4-1.*

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)

*Historical spring/seep is described on pg 3.3-3/4 along with quality/flow information from contractor.*

### **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 2<sup>nd</sup> 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)

*Water elevations were used from 2<sup>nd</sup> Qtr 2011 as directed to construct a potentiometric surface map. Construction of the surface map was less than 1' change between well heads. The average elevation was 2042.14, therefore only a couple of isopach lines show up.*

### **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)

*Plate 3.3-3 was re-constructed using 5' contour intervals, along with BNCR-9401 wells. Elevations isopachs were installed back onto the map, but only two flow directions were used.*

### **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)

*The paragraph was updated to show which plate the reader should be indicated.*

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)

*This section was updated on Tech Review 1, but was never pdf with current up-load. The response was correct, but narrative was not.*

### 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)

*The description has been added to this sentence as requested*

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)

*The woodlands acreage has been revised. The numbers have been revised to account for newly delineated low shrub woodlands in section 5. All acreage tables have been updated accordingly to account for the 5.08 total woodland acres in BNCR 9401(5.05 acres within Section 5).*

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)

*The footnote on the bottom reads that 53.93 NG acres were released in Bond Release #1 and 16.62 acres in Bond Release #2. The acreages listed in table 3.5-5 & 3.5-5a equal the total amount of acres that have been permitted. (252.78+47.33= 310.71 acres)*

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)

*This statement has been revised, similar to what was requested.*

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)

*Revised as requested.*

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)

*Revised as requested*

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)

*A total column has been added to the Norde Lunde Survey Information to clarify acreages (94.53 acres + 53.30 acres = 147.83 acres).*

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)

*An assessment, including a discussion about the productivity found on pre-mine croplands has been included in Section 3.6 Pre-mine Vegetation. The last sentence of the first paragraph on page 3.5-5 has been revised to include a reference to this section.*

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)

*This link has been removed as requested. As noted, this table does only contain soils from the Norde Lunde Survey. The link mistakenly was not changed from a previous version.*

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)

*The link to Appendix 3.6-1 has been removed. A statement has been added to this narrative that states that 22.60 acres of hayland has been permitted, and 11.95 acres have been bond released.*

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)

*The paragraph has been revised as requested.*

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)

*Table 3.5-6 has been revised to include a woodland type column. This lists if each woodland is a low shrub, a tall shrub, or a deciduous community.*

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)

*The sentence has been revised as requested.*

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)

*The paragraph has been revised as suggested above.*

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)

*The acreage in this paragraph has been revised to state that Woodlands #8-#23 contain (3.15 acres), as woodlands #17-#23 have been added.*

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)*

*These paragraphs have been reorganized as suggested.*

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)

*Corrections have been made, and the footnote was revised as suggested.*

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)

*The link has been corrected as requested.*

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.
- 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.
  - 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.*”
  - 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)

*These corrections have been made as requested. The first sentence has been retained (a). The statements in the body of the paragraph have been revised to be more definitive (b). Section 4.12-1 tame pastureland section has been revised to be consistent with Section 3.5 (c)*

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)

*The link has been added as requested.*

### **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)

*This sentence has been revised to provide clarity.*

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)

*This paragraph has been corrected to list the NE4 of Section 8 and the NE4 of Section 5.*

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)

*This paragraph has been revised. The productivity numbers for the tracts in Section 5 have been updated. The statement about historical information being found in Appendix 3.6-1 has been removed.*

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)

*This statement has been revised to say that woodlands will be reclaimed according to ND PSC Reclamation Division's Re-vegetation Guidelines II-F-3, and is now consistent with the statements in post mine sections.*

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)

*This paragraph has been revised. The statements were revised to clarify that typically there is an increase in aerial extent of western snowberry in areas that are not grazed. However, this is not the case in BNCR9401. The statement was also revised to state that these observations were made during the baseline vegetation and wildlife surveys.*

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)

*This paragraph has been removed. A reference is made to Appendix 3.6-3 where this information can be found. It was observed throughout the vegetation and wildlife surveys that were conducted by KDK Consulting that the western snowberry communities found within the permit were not being utilized by wildlife.*

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)

*The paragraph has been revised to remove Kentucky bluegrass from this list. The native component is 5% or less on these tracts. To the best of our knowledge, the description of the management on these tracts is accurate.*

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)

*This paragraph has been revised to provide clarity as requested.*

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)

*This sentence has been revised, and is understandable.*

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)

*This link has been revised to list Appendix 3.6-5. This sentence does not state that an assessment is found in this appendix; rather, it states that species recorded in 2012 are found in this appendix. This paragraph in Section 3.6 provides an assessment of the industrial lands, stating that there was an estimated 2400#/acre with 75% smooth brome, 15% Kentucky bluegrass, and 10% of other species.*

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)

*This paragraph has been revised to provide more clarity.*

### **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)

*The tall shrub woodland is now depicted underneath the tall shrub sample location on Plate 3.6-2*

### **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.
- The number of hawthorn was missed when the woodland #7 narrative was revised; please change hawthorn to eight hawthorn in the woodland #7 narrative.
  - Please add a page number and revision date at the bottom of the woodland page.
  - 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)

*The narrative for woodland #7 has been revised. A page number and a revision date have been added at the bottom of the page. The last paragraph has been revised as suggested.*

### **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)

*The woodlands narrative has been revised. All woodland types (low shrub, tall shrub, and deciduous) have been depicted and characterized. Woodlands 17-23 have been added. These woodlands include 2 low shrub communities.*

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)

*This paragraph has been revised to provide clarity. There is no grazing within BNCR 9401.*

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)

*A low shrub sample has been taken within low shrub woodland #18 that has been added. The sampling location is depicted on Plate 3.6-2 woodlands. Sampling data has been included in Appendix 3.6-3. The narrative of Appendix 3.6-3 has also been revised to include more discussion about data found within sampling. Western snowberry and silverberry are listed as species that were identified on NG, as listed on the vegetation species list found in Appendix 3.6-5.*

#### **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)

*The label has been corrected. This similarity index sheet is for the NE4 of Section 5 as the pasture name was labeled.*

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)

*The ecological site sample locations are found on Plate 3.6-1 Ecological Sites Map.*

#### **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:
- The second sentence of paragraph 1 should describe five tracts rather than three.
  - The sentence beginning with “*Four areas ...*” in paragraph 2 should list Tracts 2, 3, 4, and 5.
  - Remove the unnecessary phrase describing Commission approval in paragraph 2.
  - It appears that the reference to the NE¼ of Section 8 for Tract 2 is more fully described by referencing the N½ of Section 8.
  - 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.
  - It appears that the last sentence on page 1 should reference Tracts 5 and 2 rather than 5 and 6. (WTG)

*These corrections have been made as requested.*

### **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:
- 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.
  - Place the Oliver County Soil Survey pages in numerical order.
  - Remove the bookmark for the Grassna series because there are no Grassna soil map units in the permit area.
  - At your discretion, either renumber the appendix page numbers or remove them entirely. (WTG)

*The pages listed in item (a) have been included. These pages are in numerical order. The Grassna bookmark has been removed. The page numbers within this appendix have been revised.*

### **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)

*This statement has been revised as requested.*

### **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)

*This has been corrected as requested*

### **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)

*The title page and bookmark of this has been corrected.*

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)

*This has been corrected as requested*

### **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)

*The table has been revised. The 113.51 acres consisted of the acreage that has been bond released from the permit. All of these acres are now in an Industrial land use so these acres have been incorporated into the IND/Dist. Category.*

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)

*The paragraph has been revised to discuss the sighting at Cross Ranch and the reference has been added. To our knowledge there have been no other sightings within Oliver Co. or any of the surrounding counties.*

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)

*This was a statement that was from when the area was first permitted. This paragraph has been revised to clarify this.*

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)

*These statements were from the original permit. The paragraph has been revised to clarify.*

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)

*This paragraph has been revised to clarify that there are areas that contain ecological sites that may be potential habitat for the Dakota Skipper. A link to Attachment I of Appendix 3.10-3 has also been included which depicts areas in the permit and buffer areas that have the potential to be habitat for Dakota Skipper.*

### **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)

*The title of this map has been changed to Baseline Wildlife Inventory and Habitat Map (Minewide) in the Table of Contents and the Title Block.*

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)

*The habitats have been included as requested. Plate 3.10-1 also depicts the habitats within BNCR 9401.*

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)

*The habitats found in the buffer area have been included on this map as requested. This information is also included on Plate 3.10-1.*

### **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)

*The link in our version of the permit appeared to be working. The link was deleted and recreated.*

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)

*The name of this appendix has been revised to Baseline Wildlife Inventory/Monitoring Plan, Map, and Correspondence, KDK Fish and Wildlife Study Report (2010), and Minnesota Power Whooping Crane Study (2008).*

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)

*Plate 3.10-2 has been re-named as Baseline Wildlife Inventory and Habitat Map (Minewide).*

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)

*This paragraph has been revised include a statement about woodland communities specifically within BNCR9401, and differentiates between what was found in the study area as a whole vs. just the areas within the BNCR9401 permit. Samples of each woodland type have been taken. The sampling methodology and the data are found in Appendix 3.6-3. Appendix 3.6-5 includes a vegetation species list which includes all species recorded in woodland areas in BNCR 9401.*

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)

*The acres being added within revision 12 are part of what was titled the southern mining area. The narrative has been revised in some cases to clarify information specifically for BNCR 9401. Plate 3.10-2 has been revised. Both Plates 3.10-1 and Plate 3.10-2 depicts habitat types for BNCR 9401.*

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)

*Plate 3.10-2 has been revised to depict these areas. Plate 3.10-2 and Plate 3.10-1 depict buffer areas to BNCR 9401.*

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)

*This paragraph has been revised. This information was included throughout the narratives on each species that was discussed. However, as requested statements have been added to this paragraph as well as on pg. 13, where T&E species found in ND are initially discussed.*

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)

*The paragraph has been revised to discuss the sighting at Cross Ranch and the reference has been added. To our knowledge there have been no other sightings within Oliver Co. or any of the surrounding counties.*

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)

*A paragraph has been added to this section to describe this further. The saline lowland site description found in Section 3.6 has been revised to clarify that the species that were listed, were the species that you would expect to find on a Saline Lowland Site. We did revise this paragraph to list species that are found on the SL site within the permit. We have done detailed vegetation surveys, ecological site sampling, and woodland sampling, and are confident that all vegetation communities have been identified.*

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)

*The statement has been revised, and the term potential has been removed. Although there were a number of sightings throughout the study area, the purpose of the statement is to state that there were not as many as would have been expected given the extent of the habitat that was identified by the GAP report. There were no sightings within BNCR 9401, as depicted on Attachment I of Appendix 3.10-2*

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)

*The Pheasant Crowing Count results specifically for the permit area have been included in this narrative. We agree that it is necessary to summarize the information directly relating to the permit, we have however, retained the information that summarizes all 35 stops throughout our survey area. We believe that this information is important. These stops are surveyed as part of a mine-wide survey that represents different types of habitats (undisturbed, mining, and reclaimed).*

#### **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)

*The tables have been revised to highlight and summarize the data for the permit area. We have however retained data from all pheasant stops and grouse lek locations as these sites were inventoried/are monitored minewide. The baseline information for this permit area is presented in these tables and highlighted to make this more apparent. The data that is collected minewide during the baseline surveys for BNCR 9401 is relevant and can be used to understand the pheasant and grouse populations during these years.*

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)

*The leks that are found within or adjacent to the BNCR9401 permit area have been highlighted, and a footnote has been added. These include 2 Leks that are found within the buffer area of the permit (approximately 1 mile). All leks listed on this table are surveyed, and are not insignificant. The data for all lek locations, whether they are*

*found on undisturbed or reclaimed land can be used to understand the baseline condition of grouse populations. The data has not been skewed in any way, as the data presented are totals for each lek location.*

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)

*The notations have not been removed, and all data has been retained in these tables. As discussed above #72 & #73, this data is relevant to baseline data. The pheasant stops and lek locations directly associated to BNCR 9401 have been highlighted and noted within these tables to make this information more clear.*

### **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)

*Because of the cultural resource studies conducted within the area including the 1992 study, the 2012 study, and the BNCR 8106 study (haul road area), we are confident that all areas were accounted for. Areas located in section 32 (haul road and parking lot areas) were disturbed prior or during the construction of the power plant in the early 1960s prior to mining laws.*

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)

*The last "page 2" was deleted as requested.*

### **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)

*The requested corrections can be found on page 1 of Section 4.1. We apologize for not including them in the previous response.*

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)

*We have responded to this question on Page 2 of Section 4.5 and Page 1 of Section 4.6. We don't believe that this information needs to be presented a third time in Section 4.1. As such we have not modified Section 4.1 in response to this deficiency.*

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)

*Our response to this deficiency can be found on Page 1 of Section 4.6.*

#### **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)

*The listing and link for Plates 4.4-1 Blasting Map and 4.4-2 Blasting Design have been included with this submittal.*

#### **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)

*Paragraph one now states that at this time all roads within BNCR 9401 will be constructed of overburden material. However, it leaves open the option to construct roads of subsoil in the future.*

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)

*The information was added to the narrative for the Minnkota access road and the coal haulage road.*

#### **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)

*Discussion on the types of erosion control and conditions under which erosion control measures will be deployed at the culvert outlets has been added to Section 4.5 Transportation Plan narrative.*

#### **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)

*This has been updated as requested.*

#### **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)

*This has been corrected as requested.*

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)

*These acreages have been revised as appropriate with changes pre-mine woodlands. The paragraph has been revised to clearly state that the reclaimed woodland acres and the conservational woodland acres are separate plantings. Plate 4.12-1 has been revised as well as Table 4.12-1 as appropriate.*

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)

*This sentence has been revised as suggested above.*

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)

*The narrative has been revised, as well as Plate 4.12-1 to describe and depict the reclaimed woodlands and conservational planting separate.*

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)

*BNI chose this location for the woodlands, as a majority of the permit area will be disturbed for a long period of time. During the completeness review we were considering alternative locations for these woodlands, however, we will reclaim these woodlands on areas that have been disturbed by mining activities, and will not disturb any additional acres for woodland or tree replacement as per deficiency #281. This deficiency is listed below:*

*Deficiency #281 of Completeness 3: "Plate 4.12-1 identifies what is labeled as a "Possible Woodland Planting Locations". Please revise to definitively identify the post mine land uses. BNI is advised to plant trees on lands that have been disturbed by mining activities and not disturb additional lands for replacement tree plantings. NDAC 69-05.2-13-05. (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)

*The post-mine land uses have been updated accordingly, and have been adjusted to account for the additional pre-mine woodland acres, and conservational planting acres. The mitigate shelterbelt row has been removed. The totals column was updated accordingly. The foot note at the bottom of this table was updated as requested.*

#### **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)

*Our current Grassland Seed mixture contains a mixture contains a mixture of native warm and cool season grasses that are superior to what exists pre-mine. We have successfully bond released Native Grasslands as recent as 2010. Based on this are confident that we are meeting the reclamation requirements. We feel that after the establishment of native grass species, forb species will re-establish through succession because of direct re-spread. We will consider coming back in with a forb mixture if forb densities are not establishing.*

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)

*A sentence has been added following these statements that any changes will need to submitted for approval by the commission.*

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)

*The narrative in Section 4.12-1 has been revised to indicate that conservational acres will be reclaimed separately from the woodland acres that are disturbed in Section 5.*

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)

*This statement has been revised. The woodlands listed are the woodlands that are found in Section 5 (#1, #7-#9, & #14-23), as woodlands #10-#13 are found in Section 32. A statement has been added to this paragraph describing reclamation for the woodlands in Section 32.*

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)

*The narrative in Section 4.12-1 has been revised. Areas with a pre-mine land use of Tame Pasture that are disturbed will be reclaimed as native grassland.*

#### **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)

*The information for the reference areas that represent the acres of the original permit have been retained in this section. The information for the acres being added to BNCR9401 will remain in Appendix 4.12-4, which is referenced within the discussion and titled (Native Grasslands (SE4 of Section 32, NE4 of Section 5, and NE4 of Section 8)) in Section 4.12-2. We feel this is the best way to keep the information for these proposed reference areas together, and that by providing a reference to the information within the narrative, it should not be confusing. If the information from Appendix 4.12-4 was included in Section 4.12-1 it would become cluttered. Plate 4.12-2 (also referenced within this discussion), has been included under the Plates heading for this section, as is done for every other section in the permit. The discussion about the proposed sites has been revised to include statements about management of these sites.*

*The narrative in Section 4.12-2, Plate 4.12-1, and Appendix 4.12-4 has been revised to describe these areas as proposed sites.*

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)

*This has been revised as requested.*

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)

*This has been revised as requested.*

#### **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)

*The post mining map has been revised to outline and number the woodlands where we do not anticipate to be disturbed in yellow with black numbers. The woodlands that will be reclaimed are outlined in red. The conservational acres of woodlands that are planned are depicted as a being outlined in purple area. The legend has been updated accordingly.*

#### **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)

*The bookmark has been removed as requested.*

#### **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)

*The bookmark heading has been revised.*

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)

*This has been revised as requested.*

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)

*This paragraph has been revised, and it has been stated that the Dakota Skipper is a candidate species for the Threatened and Endangered Species List.*

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)

*The paragraph has been revised to state that there are areas of potential habitat found in the within permit and buffer areas.*

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)

*This has been updated as requested.*

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)

*The tables for Section 5 have been updated accordingly.*

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)

*The tables for Section 32 have been updated accordingly. The tame pasture land will be reclaimed as native grassland post mine. This has been reflected in the table.*

#### **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)

*This paragraph has been revised accordingly to state that there was one sighting at Oliver County at Cross Ranch Nature Conservancy. A reference have been included.*

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)

*The information has been retained in mostly in the same order; however titles have been added throughout the section to make the discussion more clear.*

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)

*This information has been revised to clarify that sightings will record habitat types and will define reclaimed, undisturbed, or actively mined areas.*

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)

*The Threatened and Endangered Species paragraph has been revised to provide details about survey protocol for the Dakota Skipper.*

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)

*We are currently awaiting response from the ND Fish and Game Department. Any requests or comments will be addressed as we receive them. The paragraph has been revised to include a statement about this.*

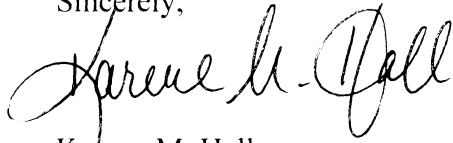
#### **Appendix 4.14-1 Worst Case Bond Estimate**

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

*In a phone conversation on 7/1/13 the intent of this deficiency was clarified to us. The reviewer is asking that the SPGM stockpile volumes used to calculate the worst case bond estimate be reconciled with the volumes currently on file with the Reclamation Division. This has been done as requested, and a new worst case bond estimate has been provided. Please note that the worst case bond condition occurs after the construction of the haulroad and the additional ponds. Estimates for the SPGM that will be stockpiled during these operations has been added to the existing stockpile volumes.*

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