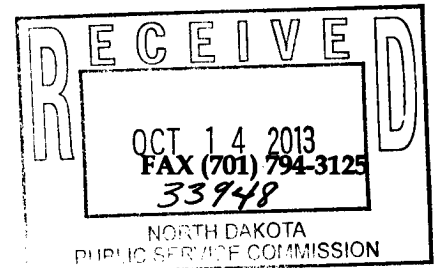


PHONE (701) 794-8734



AN ALLETE COMPANY

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

October 14, 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 September 10, 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:

**Section 3.3 Groundwater**

1. Follow-up to item No. 3: The June 13, 2013 deficiency requested that the General Drainage Map (Plate 3.4-1) be linked with the provided text regarding Hagel Coal Seam depth compared with topographic elevations of Hagel Creek and Square Butte Creek; however, a link to Appendix 3.4-1 was requested in the deficiency which was incorrect and is our mistake. Please re-direct the Appendix 3.4-1 link that was added to the text to Plate 3.4-1, which is the correct location of the General Drainage Map. (BEB)

*The appendix notation was changed to reflect back to Plate 3.4-1 located on the 2<sup>nd</sup> page, 4<sup>th</sup> paragraph.*

**Section 3.4 Surface Water**

2. Follow-up to item No. 8 (original item No. 50): The last sentence added to the narrative in Section 3.4.3 regarding potential changes in post mine runoff quantities needs to be revised because it provides no indication of how the landfill may influence the post mine runoff from the permit area. (RLK)

*The last sentence of the narrative in Section 3.4.3 was expanded to address the potential changes in the post-mine runoff quantity.*

### **Section 3.5 Pre-mining Land Use**

3. Follow-up to item No. 9: In the introductory sentence to the Revision 12 Acreage table on page 3.5-2, please change Section NE4 5-141-83 to NE4 Section 5-141-83 for better clarity. (ZAT)

*This change to the sentence on page 3.5-2 has been revised as requested.*

4. Follow-up to item No. 15: In Table 3.5-3 the cropland acres listed for Section 8 Minnkota under the Norde Lunde Survey tabulation exceeds the total number of acres originally permitted in Section 8 and acreage provided in Appendix 4.12-3. Also the Section 5 Minnkota acreage appears to be substantially less than the cropland acres remaining in Section 5 and the acreage provided in Appendix 4.12-3. Please review and revise as appropriate. (RLK)

*The headings for Minnkota Power's Section 5 and Section 8 acres under the Norde Lunde Survey were inadvertently switched.*

*Total pre-mine acres for section 8 include: 94.53 from the high intensity survey added with Rev. 12, and 2.5 (Schmidt), and 6.7 (Minnkota) from the Norde Lunde survey for a total of 103.73.*

*The total pre-mine cropland in Section 5 from the Norde Lunde survey is 44.1 acres.*

5. Follow-up to item No. 20: Please revise Table 3.5-6 to include the woodland types of Woodlands 1-7. The N/A description in the table states that the woodland types of these woodlands were not specified but the species information in Appendix 3.6-1 clearly shows that Woodlands 1, 2 and 6 are deciduous woodland communities, while woodlands 3, 4, 5 and 7 are tall shrub communities. Please update Table 3.5-6 accordingly so that information for the permit area is consolidated and complete as required by NDAC 69-05.2-05-02. (GAW)

*The woodland types for Woodlands 1-7 in Table 3.5-6 have been updated accordingly.*

6. Follow-up to item No. 23: Since low shrubs have been added to Table 3.5-6, please add low shrub to the second sentence on page 3.5-9, paragraph three. The sentence should read similar to, "These are classified as low shrub, tall shrub, or deciduous vegetation communities." (ZAT)

*"low shrub" has been added to the second sentence on page 3.5-9 of Section 3.5.*

7. Follow-up to item No. 27: As a result of changes made to the Revision 12 acres and Table 3.5-1 (adding woodlands), Table 3.5-8 on page 3.5-12 needs to be adjusted. The Section 5 total acreage should be 18.58 and the Total Acreage should be 19.21 to be consistent with the totals on the pre-mine land use table. Also, please change the range

number from 84 to 83 in the land descriptions for Sections 5 and 32 in the first sentence of the tame pasture narrative on page 3.5-12. (ZAT)

*The woodland acreage in Table 3.5-8 on page 3.5-12 has been revised. The range numbers in the first sentence of the tame pasture narrative have also been revised as requested.*

#### **Plate 3.5-1 Pre-Mine Land Use**

8. Woodlands #17 - #23 that were added in the latest submittal need to be depicted and labeled on Plate 3.5-1, Pre-Mine Land Use. (ZAT)

*Woodlands #17-#23 have been depicted and labeled on Plate 3.5-1 as requested.*

#### **Section 3.6 Pre-mining Vegetation**

9. Follow-up to item No. 42: The second paragraph on page 10 of Section 3.6, Pre-Mine Vegetation, states that woodland plant density and herbaceous understory samples were taken in 2010 and 2011 but data is included in Appendix 3.6-3 showing that additional sampling occurred in 2013. Please review and update as necessary. (GAW)

*The statements in the second paragraph on pg. 10 of Section 3.6 have been updated to state that low shrub plant density and herbaceous understory samples occurred in 2013.*

#### **Plate 3.6-1 Ecological Sites Map**

10. Follow-up to Item No. 46: Please revise Plate 3.6-1 to delineate the mapping unit boundaries of each ecological site listed on the map. This includes the sampled sites in NW¼ of Section 8, NW¼ of Section 5, and the sites in Figure 2 embedded within Plate 3.6-1. (GAW)

*The ecological site polygons for the sampled sites in the NW1/4 of Section 8, the NW1/4 of Section 5, and the sites that are pictured in Figure 2 on Plate 3.6-1 have been depicted.*

#### **Plate 3.6-2 Woodlands**

11. It appears that woodlands 18 and 19 are labeled incorrectly on Plate 3.6.2 as this plate identifies woodland 18 as a small tall shrub community and 19 as a larger low shrub community but Table 3.5-6 indicates that woodland 18 is a low shrub community (0.1 acres in size) and woodland 19 as a tall shrub community (0.01 acres in size). Please review and correct as necessary. (GAW)

*We have corrected the acreages in Table 3.5-6. It appears the acreages listed for Woodlands #18 (.01) and #19 (.10) were transposed.*

12. Please revise Plate 3.6-2, Woodlands, to clarify where woodland samples were taken. It appears that the colored circles may depict sample locations but this symbol is not identified in the map legend. Please review and revise accordingly. (GAW)

*The legend on this plate has been corrected. The legend location was incorrect and was obscuring the portion of it where these symbols were identified.*

13. Please revise Plate 3.6-2, Woodlands, to depict Woodland No. 3 on the map. A red font "No. 3" is shown on the map but the woodland location is not depicted. (GAW)

*Woodland #3 has been depicted on Plate 3.6-2*

14. Please revise Plate 3.6-2 to depict the location of the stockpond that is labeled east of the butterfly ash pit. (GAW)

*The stockpond in the NE1/4 of Section 5 has been depicted on Plate 3.6-2.*

15. A partial sentence at the bottom of Plate 3.6-2 states "found in [Appendix 3.6-1] and #8 - #16 can be found in [Appendix 3.6-3]". Please clarify what is meant by this incomplete sentence. (GAW)

*This has been corrected. The mis-placed legend was obscuring the first portion of this sentence. The sentence has been revised however to state that data for Woodlands #8-#23 can be found in Appendix 3.6-3.*

#### **Appendix 3.6-3 Woodland Density and Cover Data**

16. Follow-up to item No. 44: Please provide an assessment of the relative abundance of low shrub species not considered woodlands in the native grassland and tame pastureland land uses. No low shrub species are listed in the native grassland similarity index sheets in Appendix 3.6-4 but the Reclamation Division is aware that western snowberry is quite prevalent in the native grassland being added with Revision 12. Please revise as necessary to fulfill the requirements of NDAC 69-05.2-08-08(1)(d). (GAW)

*The first paragraph on page 2 of Appendix 3.6-3 has been revised to discuss the special distribution of low shrub species (western snowberry) across the BNCR9401 rev 12 native grassland acres.*

17. A sentence in the first paragraph of Appendix 3.6.3 states that there are two woodland community types but all three community types are listed. Please correct this inconsistency. (GAW)

*The sentence in the first paragraph of Appendix 3.6-3 has been revised to state that there are three woodland types.*

18. The Low Shrub Vegetation Type, Table 1 of Appendix 3.6-3, states that a 2 meter by 2 meter quadrant was used but the species density calculations indicate that a 4 meter by 4 meter quadrant was used (16 m<sup>2</sup>). Please review and revise accordingly. (GAW)

*The Low Shrub density table (Table 1) of Appendix 3.6-3 has been revised.*

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

19. Follow-up to item No. 62: Appendix 3-10-2 is entitled “Baseline Wildlife Inventory/Monitoring Plan, Map, and Correspondence, KDK Fish and Wildlife Study Report (2010), Minnesota Power Whooping Crane Study (2008)”. Please consider entitling this Appendix as the Fish and Wildlife Resources Report (2010) as listed at the top of page 1 of Section 3.10-2 and include bookmarks for the various sections within this appendix. (GAW)

*The title of this section has been revised to Appendix 3.10-2 Baseline Fish and Wildlife Inventory Plan. The bookmarks for each section that is found within it are listed on the table of contents page of the electronic permit. The bookmarks, title page, and document have been updated accordingly.*

20. Follow-up to item No. 62: Please change the wording “Wildlife Monitoring Plan” from the bookmark section of Appendix 3.10-2 to “Baseline Wildlife Inventory Plan” to avoid confusion with BNI’s Wildlife Monitoring Plan which is in Section 4.13 of the permit. (GAW)

*The bookmark in Appendix 3.10-2 has been updated accordingly.*

21. Follow-up to item No. 69: Please revise the Significant Ecological Communities discussion that begins on page 21 of Appendix 3.10-2 to clarify if the deciduous woodland in the Revision 12 addition area is a “Significant” Green Ash Upland Woodland Ecological Community according to NDNHI. (GAW)

*The NDNHI inventory discussion on pgs 21-23 of Appendix 3.10-2 has been revised. These paragraphs have been revised to clarify that one plant species was identified, but no other animal or Significant Ecological Communities were identified by NDNHI as stated in the May 7<sup>th</sup>, 2010 letter. In this discussion, BNI does recognize that there are communities within the study area that have similarities to those identified by NDNHI.*

22. Follow-up to item No. 69: Please revise the last full sentence on page 21 of Appendix 3.10-2 to clarify whether or not any buckbrush communities in the study area meet the height requirements to achieve the Significant Ecological Community status. (GAW)

*This paragraph has been removed from this Appendix. The NDNHI inventory discussion on pgs 21-23 of Appendix 3.10-2 has been revised. These paragraphs have been revised to clarify that one plant species was identified, but no other animal or Significant Ecological Communities were identified by NDNHI as stated in the May 7<sup>th</sup>, 2010 letter. In this discussion, BNI does recognize that there are communities within the study area that have similarities to those identified by NDNHI.*

23. Follow-up to item No. 69: Please revise the sentence in the third paragraph on page 23 of Appendix 3.10-2 that states “The current mining plan appears to minimize any disturbance in these communities”. Significant Ecological Communities should be avoided and NDAC 69-05.2-09-17(1) and NDAC 69-05.2-13-05 requires minimizing disturbance and using the best technology currently available. Please review the current

mining plan and make a definitive assessment on BNI's plans to minimize disturbances to significant ecological communities. (GAW)

*This statement has been removed from the appendix. The last sentence of the first paragraph of the NDNHI discussion on page 21 of Appendix 3.10-2 states that the location of the sighting of the one plant species that is identified by the NDNHI will not be disturbed/impacted by mining operations. There are no other plant, animal, or significant ecological community found within the study area according the NDNHI. To the best of our ability BNI, makes an effort to minimize disturbance, and add enhancement features where possible such as conservational plantings.*

#### **Appendix 3.10-9 Grouse and Pheasant Data Tables**

24. Follow-up to Items 72, 73 and 74: Please revise Tables 1, 2, 3 and 4 to include average observation values for the approved study area. Refer to Appendix 3.10-2 to determine the area that the approved study area encompasses. (GAW)

*Tables 1 & 2 have been revised, and now include averages for the study area.*

#### **Plate 4.1-1 Pit Layout and Facilities Map**

25. Plate 4.1-1, Pit Layout and Facilities Map, depicts two parallel pink lines that appear to be a road passing through the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 5 but this feature is not identified in the legend. Please review and clarify what this feature is representing. (GAW)

*The lines are depicting the new access road that will be built to accommodate plant access from the west. A label has been added to the map.*

#### **Section 4.5 Transportation Plan**

26. Follow-up to item No. 81: Please remove any references to using subsoil for haul road construction in Section 4.5 because the Reclamation Division has determined that it is not appropriate to use subsoil for haul road construction in BNCR-9401 for the following reasons: (WTG/FSE)
- a. Option 1 of Policy Memorandum No. 17 (salvage and respread all available suitable plant growth material) is the method that will be used for SPGM removal and redistribution in BNCR-9401.
  - b. Subsoil loss is predictable as spoil and subsoil are comingled during haul road construction and road surfacing material is removed from the subsoil stockpile during haul road reclamation.

*The technical staff of BNI would like to thank the reclamation division for the opportunity to discuss this issue with you at our meeting on 9/24/13. As a follow-up to that meeting we have made revisions to Section 4.5. Section 4.5 now clearly states that all currently designed haulroads in Permit BNCR-9401 will be built out of spoil. It also outlines specific criteria by which BNI may potentially construct future haulroads out of subsoil if it is advantageous to do so and can be done responsibly.*

## **Section 4.6 Surface Water Management Plan**

27. Follow-up to item No. 79: Pond 5-7 is proposed in a wooded draw within 100 feet of an intermittent stream. Please provide justification for the location and need for this pond. The Pit Layout and Facilities Map and the Surface Water Management Plan map indicate that the only new mining related disturbance planned in the 35.9 acre watershed is a haul road. NDAC 69-05.2-16-04(1)(d) clarifies that the disturbed area (requiring control with a sedimentation pond) shall not include areas in which only diversion ditches, sediment ponds or roads are installed ... and the upstream area is not otherwise disturbed by the operator. Furthermore, sufficient justification has not been provided to affect lands within 100 feet of an intermittent stream (NDAC 69-05.2-16-20). The requirements of NDAC 69-05.2-09-17(1) and NDAC 69-05.2-13-05 also require minimizing disturbance to important habitat and the use of the best technology currently available. We do not believe BNI has demonstrated a need for the pond, nor has there been a showing that the referenced requirements are being met. Please review and revise the fifth paragraph on page 4.6-1 accordingly. (GAW)

*The Surface Water Management Plan has been revised to remove Pond 5-7. The current disturbed areas within the watershed are being controlled using best management practices. BNI intends to build a coal haulage road and an access road to Minnkota from the west within the drainage area. These disturbances are allowed to be controlled using best management practices and that is what BNI intends to do at this time. Should the need arise stemming from additional disturbance within the watershed by either Minnkota or BNI or a prolonged delay in reclamation of already disturbed areas, BNI may choose to permit a sediment control pond within the deep draw previously occupied by Pond 5.7 at a later date.*

28. Follow-up to item No. 79: Please revise the sentence in the fourth paragraph on page 1 of Section 4.6, Surface Water Management Plan, to clarify how many acres in the watershed above proposed Pond 5-7 are already disturbed and how surface water runoff is presently being controlled from this area. Please indicate that a portion of this watershed is outside of the permit area (butterfly ash cell) and if water management for this area is controlled inside or outside of the existing permit area. Please revise the Surface Water Management Plan map, Plate 4.6-1, to depict the water management features for this existing disturbed area. (GAW)

*An additional fifth paragraph has been added explaining the previously disturbed areas and how they are controlled. Plate 4.6-1 has been modified to depict these areas and the BMPs which control them. The paragraph states BNI's plans to build a haul road and access road to Minnkota and our intentions to control sediment from runoff of these areas using BMPs. The language also states that should factors change which make managing this area with BMPs difficult BNI would permit a pond to control sediment within the drainage area.*

## **Plate 4.6 Surface Water Management Plan**

29. Please revise Plate 4.6-1, Surface Water Management Plan to show the surface topography of the area located west of the permit boundary in Section 5 and the whole

watershed of proposed Pond 5-6 as required by NDAC 69-05.2-09-09(1)(a)(1). Please also show the ephemeral or intermittent stream route above and below Pond 5-6. (GAW)

*The surface topography has been added. The ephemeral and intermittent stream routes have been shown. The entire watershed boundary of 5-6 is also depicted on the map.*

#### **Plate 4.10-1 Post Mining Topography**

30. Plate 4.10-1, Post Mining Topography map, depicts prime farmland being reclaimed on land that was not disturbed according to the 2012 Center Mine Annual Map or that is not projected to be disturbed in the future. Please revise to depict reclaiming prime farmland on areas that were disturbed. (GAW)

*Plate 4.10-1 Post-Mining Topography and Plate 4.10-2 Post-Mining Area Slope Map were updated to reflect changes to the proposed prime farmland respread area. The boundary was changed to reflect the proposed disturbance by the future Haul Road Section A-1. The prime farmland disturbed by the construction of permanent pond 5-3 is not shown on the plate, since this acreage is planned to be reclaimed within Section 9, T141N, R83W of Permit BNCR 1101. The narrative within Section 4.12 Re-vegetation and Post-Mining Land Use was updated to reflect the same information, specifically in the last paragraph on page 1.*

#### **Section 4.12 Revegetation and Post Mining Land Use**

31. New language in the second paragraph of page 1 of Section 4.12 states that all sediment ponds will be retained as permanent structures except for Pond 5-7. MSHA Pond 5-6 is not shown on the Post-Mining Land Use Map, Plate 4.12-1, and a portion of this pond impacts this permit. Please revise the sentence to clarify that Pond 5-6 will also be removed. (GAW)

*The end of the second paragraph on page 4.12-1 of Section 4.12 has been revised. It has been revised to clarify that pond 5-6 from 1101 is temporary, and will not be retained as a permanent structure. Pond 5-7 has been removed from the plans.*

32. The second sentence in the third paragraph on page 1 of Section 4.12 has been revised to past tense. It now reads that there was reasonable likelihood the land use would be achieved which implies that something has changed and that it is no longer likely that the proposed land use will be achieved. In addition, the sentence is incomplete. Please revise as necessary. (GAW)

*The sentence in the third paragraph on page 1 of Section 4.12 has been revised. The changes in this sentence to past tense were a mistake. This paragraph has been revised to state that "There is reasonable likelihood the land use will be achieved. The landowner requested the change with the Oliver County Zoning Commission and it was approved."*

33. New language at the end of the second paragraph on page 4.12-1 states that five sediment ponds will be left as post-mine ponds, but only four are listed and shown on the Post-Mine Land Use Map. Please review and revise as necessary. (GAW)

*This statement in the end of the second paragraph of page 4.12-1 of Section 4.12 has been corrected to state that there are only four sediment ponds that will be left as permanent post-mine structures (5-1, 5-3, 5-4, and 5-5.)*

34. The last sentence on page 1 of Section 4.12 states that management of the cropland in this permit is classified as average. Please clarify how the management of the cropland can be classified as average if the cropland is not yet reclaimed. This sentence appears to be referring to the management of the pre-mine cropland. (GAW)

*The sentence has been revised to clarify that the management on the croplands pre-mine were classified as average.*

35. The first sentence of the last paragraph on page 1 of Section 4.12 states that prime farmland will be reclaimed in its original location if possible. Plate 4.10-1, Post-Mining Topography map shows that prime farmland is to be reclaimed on land that was not disturbed according to the 2012 Center Mine Annual Map or that is not projected to be disturbed in the future. Please revise to show reclaiming this acreage where it was disturbed as written and account for Pond 5-3 which is located on an area where prime farmland was disturbed. (GAW)

*Plate 4.10-1 Post-Mining Topography and Plate 4.10-2 Post-Mining Area Slope Map were updated to reflect changes to the proposed prime farmland respread area. The boundary was changed to reflect the proposed disturbance by the future Haul Road Section A-1. The prime farmland disturbed by the construction of permanent pond 5-3 is not shown on the plate, since this acreage is planned to be reclaimed within Section 9, T141N, R83W of Permit BNCR 1101. The narrative within Section 4.12 Re-vegetation and Post-Mining Land Use was updated to reflect the same information, specifically in the last paragraph on page 1.*

36. Follow-up to Item No. 88: Please revise the location of the conservation woody planting because Pond 5-7 may not be constructed (see related deficiency listed as the first item under Section 4.6), and additional land (native grassland) should not be disturbed for a conservation tree planting. The Reclamation Division is not opposed to converting tame pastureland acreage that was previously disturbed to a conservation tree planting. (GAW)

*As per our Oct. 2<sup>nd</sup> meeting with reclamation staff, the conservational planting in 9401 has been moved to the southern side of premine woodland #9. This is within tame pastureland No unnecessary disturbance to pre-mine native grasslands is being proposed by BNI. We believe this is location will allow for the planting to be implemented sooner than any other location within the permit area, while enhancing the post-mine landscape and functions for wildlife.*

37. Follow-up to item No. 89: Please change the native grassland acreage to 46.51 and change the woodland acreage to 3.55 for Section 5 on Table 4.12-1 Post Mine Land Use. This will result in a native grassland total on the right of 100.5 acres and a woodlands total on the right of 3.58 acres. No other acreages or totals change. As noted on the table, 1.5 acres of woodlands were mitigated with a shelterbelt located outside of Section 5; therefore, the woodland acreage in Section 5 needs to be reduced. **Please note:** If you

choose to adjust this acreage with a different land use than native grassland, please be advised that we used the revised numbers above to review and reconcile acreages found in Appendix 4.12-3. Several deficiencies for those tables are included below along with specific acreage adjustments that will not be valid if this deficiency is resolved in a different manner than suggested. You may wish to review the deficiencies for Appendix 4.12-3 before revising Table 4.12-1. (ZAT)

*The acreage changes were made to Table 4.12-1 as suggested. One additional change that was made to Section 5 was the wetland acres were reduced to 0.2 acres and the industrial acres were increased to 295.47 because 0.1 acres of wetlands will be reclaimed in Section 34-84-142 of permit BNCR 9702.*

#### **Section 4.12-1 Revegetation Methods**

38. Follow-up to item No 90: Please revise the Perennial Grassland Seed Mixture, Table 4.12-1 to include native forbs pursuant to the requirements of NDAC 69-05.2-22-01, NDAC 69-05.2-13-05 and NDAC 69-05.2-13-08(6). BNI's comment that they feel forbs will re-establish through succession because of direct respreading is incorrect because no direct respreading operations are proposed in this permit. (GAW)

*BNI does not plan to revise grassland seed mixtures at this time. We will monitor grassland seedings, and the development of forbs on these tracts. We will continue to have conversations with the PSC and appropriate agencies regarding our seed mixtures, and will consider revisions to the grassland seed mixture in the future as needed.*

39. Follow-up to item No. 93: Please review paragraph one on page 3 of Section 4.12-1. (ZAT)

- a. Please combine the first sentence with the fragment that follows, similar to "...9401, which will be located...".

*The first sentence of paragraph one on page 3 of Section 4.12-1 was combined as requested.*

- b. Please revise the fourth sentence that reads, "Woodlands (#1, #7-#9, & #14-#23) in Section 5 are planned to be reclaimed as a large planting near the location of pre-mine woodland #9." This statement is inconsistent with the Post Mine Land Use Plate 4.12-1. We suggest revising this statement to be less restrictive and similar to, "Woodlands #1 and Woodlands #7 through #23 or any portions of them that are disturbed and reclaimed will be reclaimed in their original location or combined into a larger planting near the location of pre-mine woodland #9." Modifying this statement as indicated will make the narrative of Sections 3.5, 4.12, 4.12-1 and 4.12-2 very similar and consistent with Plate 4.12-1.

*The fourth sentence of the first paragraph on page 3 of Section 4.12-1 has been revised as suggested.*

## **Section 4.12-2 Determining Reclamation Success**

40. Follow-up to item No. 95: Please discuss how the existing native grassland range site reference areas are being managed to improve ecological condition. The condition of the two silty range site reference areas have deteriorated to such an extent that it is now questionable whether they should be used to demonstrate revegetation success. (GAW)

*The 1<sup>st</sup> paragraph on pg 3 of Section 4.12-2 has been revised to discuss management of these sites. BNI agrees that these sights have shifted and are dominated by cool season grasses. We are currently in the process of establishing ecological sites in the BNCR 1101 permit. One of these sites is a silty site, which can possibly be used to replace these deteriorated sites. We are continuing to collect data in these areas.*

41. Follow-up to item No. 95: Please clarify if the language at the bottom of the table on page 3 of Section 4.12-2 has something to do with the Table, B13 North Silty Reference Area. There are no spaces between the table and the verbiage but the information in the paragraph has nothing to do with the reference area. Please review and edit to clarify the intent of the wording at the bottom of the table. (GAW)

*The language in this paragraph on the bottom of pg 3 has been revised.*

## **Plate 4.12-1 Post Mining Land Use**

42. Follow-up to item No. 89: Table 4.12-1 indicates there are 0.3 acres of wetlands post mine. Narrative in the permit indicates the Class II wetland located in the SE $\frac{1}{4}$  of Section 5 will be destroyed by the construction of ash cell 4, and that it will be replaced in Section 5; please depict the location of this reclaimed wetland on Plate 4.12-1 Post Mine Land Use Map. (ZAT)

*Plate 4.12-1 has not been updated to show a location for the 0.1 acres of wetland that will be disturbed by Ash Cell #4, because this acreage will be reclaimed in 34-84-142 of permit BNCR 9702. Table 4.12-1 has been revised to show that 0.2 (Class III Wetland) acres of wetland and 295.47 acres of DL/Industrial land will be included in the post-mine. A footnote has been added to Table 4.12-1 to clarify this. The narrative in the second paragraph on page 2 of Section 4.12 has also been updated to clarify this as well.*

## **Appendix 4.12-3 Land Use Discussions**

43. Please number the pages to Appendix 4.12-3. (WTG)

*Page numbers have been added to Appendix 4.12-3.*

44. Follow-up to Item No. 102: 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, and that the flight time survey was for this species. It appears the words "Dakota Skipper" was added but then lined through rather than the word "potential". Please revise accordingly. (GAW)

*The third paragraph on page 2 of Appendix 4.12-3 has been revised. This paragraph now states that the Dakota Skipper is a candidate species to the threatened and Endangered Species Act, and states that surveys were/are conducted during appropriate flight times (mid-June) to (mid-July).*

45. Follow-up to Item No. 103: Please revise the new narrative on page 2 of Appendix 4.12-3 regarding Sprague's pipit to state whether suitable habitat for this species exists in the permit area. BNI states that this has been revised but it is not clear which paragraph was revised. (GAW)

*A discussion about suitable habitat for Sprague's pipit has been included in paragraph 5 on page 2 of Appendix 4.12-3.*

46. Follow-up to item No. 104: The response to this deficiency was not completed or the change was not saved. 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 and Historical Data. (ZAT)

*The corrections in Appendix 4.12-3 appear to not have been included in the last submittal. The name of Appendix 3.6-1 in the first paragraph of page 4 in Appendix 4.12-3 has been updated to Range Descriptions and Historical Data.*

Please note that deficiencies in the four follow-up to items No. 105 and No. 106 below are based on suggestions made to correct Table 4.12-1 Post Mine Land Use in follow-up to item No. 89 in Section 4.12 above. We suggest that BNI review that deficiency prior to preparing responses to the following four items.

47. Follow-up to item No. 105: Update the pre and post-mine land use acreages on the Section 5 original permit table in Appendix 4.12-3 to be consistent with acreage changes made to Table 3.5-1 Pre-Mine Land Use and Table 4.12-1 Post-Mine Land Use. (ZAT)
- a. Change the **pre-mine** native grassland acreage to 252.71; change the **pre-mine** woodland acreage to 2.0 acres; retain the other pre-mine acreages and the total should remain at 345.5 acres.

*The changes to the pre-mine land use acreage in the original permit table on page 4 of Appendix 4.12-3 were made as noted above. The postmine wetland acreage was changed to 0.2 and the industrial acreage was changed to 295.47 to be consistent with changes made in Table 4.12-1. See response to deficiency #37*

- b. Change the **post mine** woodland acreage to 0.5 (1.5 acres of woodlands were mitigated outside of Section 5 and this is discussed in the narrative). Change the **post mine** wetlands from zero to 0.3, to be consistent with the narrative and Plate 4.12-1. Change the **post mine** native grassland to 23.93 acres and change the **post mine** industrial acreage to 295.37 as shown on Table 4.12-1. Retain the other acreages as listed and the post mine total remains at 345.5 acres.

*The post-mine land use acreage table has been updated as appropriate. The postmine wetland acreage was changed to 0.2 and the industrial acreage was changed to 295.47 to be consistent with changes made in Table 4.12-1. See*

*response to deficiency #37. The total acreage in this table on page 4 of Appendix 4.12-3 remains 345.50.*

48. Follow-up to item No. 105: Update the pre and post-mine land use acreage on the Section 5 Revision 12 acreage table in Appendix 4.12-3 to be consistent with acreage changes made to Table 3.5-1 Pre-Mine Land Use, Table 4.12-1 Post-Mine Land Use and Plate 4.12-1, Post Mine Land Use. (ZAT)

- a. Change the **pre-mine** native grassland acreage to 4.57; change the **pre-mine** woodland acreage to 3.05; and change the **pre-mine** tame pasture acreage to 18.58. ROW remains at 0.94 and the pre-mine total remains at 27.14 acres.

*These acreages have been added to the table on page 4 of Appendix 4.12-3 titled acres added with Revision 12.*

- b. Add conservational planting as a land use heading, insert zero for pre-mine acres and 0.57 acres for post mine acres.

*These acreages have been added to the table on page 4 of Appendix 4.12-3 titled acres added with Revision 12.*

- c. Change the **post mine** woodland acreage to 3.05; change **post mine** tame pastureland acreage to zero; and change the **post mine** native grassland acreage to 22.58 to account for the conservational planting. ROW remains at 0.94 and the post mine total remains at 27.14 acres.

*These acreages have been added to the table on page 4 of Appendix 4.12-3 titled acres added with Revision 12.*

- d. Place all acreage tables for Section 5 together and label. Scrolling from page to page to review and calculate acreages is time consuming and inefficient. Place the Revision 12 acreage table at the beginning of the Revision 12 narrative, just below the original permit acreage table.

*The table has been moved to the next to the original permit acreage table on page 4 of Appendix 4.12-3 as requested.*

49. Follow-up to item No. 105: In Appendix 4.12-3, the following changes need to be made to the Section 8 acreage tables to be consistent with how information is listed in Table 4.12-1 Post Mine Land Use. (ZAT)

- a. Section 8, Minnkota Power: Change the **pre and post** mine cropland acreage to 7.0 acres and change the **pre and post** mine ROW acreage to 2.6 acres.

*These acreages have been updated as requested in the Table on page 7 of Appendix 4.12-3.*

- b. Section 8, Schmidt: Change the **post mine** cropland to 2.2 acres and the ROW to 0.3 acres.

*These acreages have been updated as requested in the Table on page 7 of Appendix 4.12-3.*

- c. Place all acreage tables for Section 8 together and label. Scrolling from page to page review and calculate acreages is time consuming and inefficient. Place the Revision 12 acreage table at the beginning of the Revision 12 narrative, just below the original permit acreage tables.

*The table has been moved to the next to the tables of original permit acreage tables on page 4 of Appendix 4.12-3 as requested.*

50. Follow-up to item No. 106: Update the **post-mine** land use acreage on the Section 32 table in Appendix 4.12-3 to be consistent with the new acreages on Table 4.12-1 Post-Mine Land Use. Change the tame pasture acreage to zero and change the native grassland acreage to 0.71. The other acreages and totals are correct. (ZAT)

*The acreages in this table are now consistent with the post mine land use Table 4.12-1.*

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

51. Follow-up to Item No. 110: Please revise the Fish and Wildlife Monitoring Plan to include a detailed protocol that will be used when conducting annual surveys for Sprague's pipit. (GAW)

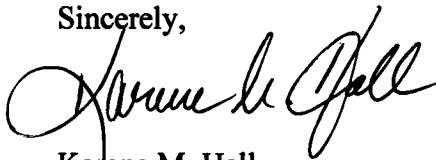
*A discussion about specific protocol for conducting annual Sprague's Pipit Surveys has been included in the 3<sup>rd</sup> paragraph on page 8 of Section 4.13.*

52. Follow-up to Item No. 111: 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)

*As per NDAC 69-05.2-09-17(1)(e), BNI has made attempts to contact the ND Fish and Game Department. We have not received a response. We have included our e-mail correspondence in the last page of Section 4.13.*

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

Sincerely,



Kayene M. Hall  
Permit Coordinator