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MINING LIGNITE AT THE CENTER MINE SINCE 1970

January 3, 2014

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 December 27, 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

Plate 4.1-1 Pit Layout and Facilities Map

1. Please update the construction date for MSHA Pond 5-6 (currently listed as 2013) and label Diversion 5-2 as reclaimed in 2013 on Plate 4.1-1. (FSE)

   The construction date of MSHA Pond 5-6 has been changed to 2014 and Diversion 5-2 reclamation date of 2013 has been added to the plate.

Section 4.5 Transportation Plan

2. Please provide more details regarding the relocation and purpose of the Minnkota Access Road. The access road ends at Station 14+00 as currently shown on Plate 4.5-1, General Transportation Plan, rather than tying into the haulroad. (FSE)

   The narrative has been updated and discusses the purpose of the new road since the old road will be removed by the main coal haulage road. The chosen alignment allows for an

acceptable grade on the new access road and for the best visibility at the approach to the intersection with the coal haul road. The access road will be built out to the permit boundary at station 14+46. The road will intersect the existing north south road to Minnkota's ash cells at this point. The plate has been updated to show the short extension from 14+00.

Section 4.5 Appendices

3. Please label or otherwise indicate what the lines represent in the profiles (existing CL, proposed CL, etc.) on Plate 4-5.3A, Haul Road Section A-1, and Plate 4-5.4A, Minnkota Access Road. Please also label or explain the figure in the lower center of Plate 4.5-4A (appears to be a cross section). (FSE)

   The profiles of the centerlines of 4.5-3A and 4.5-4A have been labeled either design or existing subsoil floor. The figure on Plate 4.5-4A is the typical cross section for the access road and has been labeled as such.

Plate 4.6-1 Surface Water Management Plan

4. It appears that the "proposed haul road" is depicted as an "existing haul road" and the Minnkota Access Road is not depicted on Plate 4.6-1. Please review and revise as necessary. (FSE)

   The outline of the existing haul road has remained the same while the new haul road, including the section of the existing haul road that is to be widened is depicted as a red dashed line. Also the Minnkota Access Road has been added to the map and legend.

Section 4.12-1 Revegetation Methods

5. Follow-up to item No. 11: Please include language in Section 4.12-1 stating that BNI will consider including a small percentage of desirable native forbs in the native grassland seed mixture in accordance with NRCS recommendations and will revise the mix as necessary in the future to ensure that the best technology currently available is being used. (GAW)

   A statement has been added to the 3rd paragraph on page 1 of Section 4.12-1 Re-vegetation Methods that states that BNI will consider including a small percentage of forbs in its native grassland mix as recommended by NRCS.

6. Follow-up to item No 11: Please review the pure live seed (PLS) pound per acre values and the species percentage of the mix listings in Table 4.12-1, Perennial Grassland and Pastureland Seed Mixtures, to ensure they are correct and include a reference of the methodology used to calculate the seeding rates. The third paragraph on page 1 of Section 4.12-1 states that 40 pure live seeds per square foot will be seeded, but the seeding rates and percentages of the mix do not support this seed density. In other words, the values listed for the species seeding rates and percentages of the mix are not consistent with the values provided in Table 1 of NRCS's Herbaceous Vegetation Establishment Guide. For example, Table 1 of the Herbaceous Vegetation Establishment

Guide shows that intermediate wheatgrass has a full seeding rate of 8.5 lbs per acre in MLRA 54 that amounts to 17 seeds per square foot; therefore, 10 lbs of PLS would be need to be seeded if this species were planted at 50 percent of the mix with a designed seeding rate of 40 PLS per square foot. Likewise, 4.4 lbs of alfalfa would be needed if it was 50 percent of the mix at the designed seeding rate of 40 seeds per square foot. Table 4.12-1, Perennial Grassland and Pasture Seed Mixtures incorrectly indicates that 5 lbs of PLS of intermediate wheatgrass and 2.2 lbs of PLS of alfalfa each comprise 50 percent of the mix at the designed seeding rate. The values listed for the native grassland mix are also incorrect. Please revise the Perennial Grassland and Pastureland Seed Mixtures so the information listed is correct and include a reference to the methodology (species seeds per pound values) used to calculate the seeding rates. (GAW)

The Perennial Grassland and Pastureland Seed Mixes have been revised. A reference to the NRCS's Field Office Technical Guide for Oliver County, Section I-Reference Subject-Plant Materials-Herbaceous Vegetation Establishment Guide has been added to the bottom of each of these tables. The methodology used has been referenced, and the lbs/ac PLS has been updated accordingly.

7. Follow-up to item No. 11: Please clarify how the woodland species seeding rates listed in Figure 1 were calculated. Narrative above this figure states that 2700 trees/shrubs will be planted per acre but the numbers in Figure 1 total 1769 rather than 2700. A sentence on page 2 of Section 4.12-1 states that the woodland mix is made up of 30 percent tall shrubs and 70 percent deciduous trees but Figure 1 indicates that the mix is 80 percent tall shrubs, 10 percent low shrubs and 10 percent trees. Please revise to provide clarity. (GAW)

   The woodland species seeding rate will be 2700 trees/shrubs per acre. The narrative on page 2 of Section 4.12-1 Re-vegetation Methods has been revised to correctly list that the woodland mix is comprised of 70% Deciduous, 20% Tall Shrub, and 10% Low Shrub. Number of trees/shrubs listed in Figure 1 on page 3 has been revised to reflect these numbers. They now total 2700 per acre.

8. Follow-up to item No. 11: Please revise Figure 1 to clarify if the tree planting values listed are species numbers per acre and include a total value for the column that can be used to determine the density standard. (GAW)

   A total has been added to Figure 1 on page 3 of Section 4.12-1. The column has been labeled to clarify that the values listed are numbers of trees/shrubs per acre.

9. Follow-up to item No. 11: Figure 1 states that tall shrubs will comprise 80 percent of the mix and that low shrubs and trees will each comprise 10 percent of the mix but values listed show tall shrubs actually comprising 40 percent of the mix, low shrubs 36 percent of the mix and trees 24 percent of the mix. In addition, the percentages listed for each species are not consistent with the density planting rates. For example, 154 silverberry are listed as being 50 percent of the low shrub mix but 227 snowberry are listed as comprising 25 percent of the mix. Please revise to provide clarity and clarify if the density values listed in Figure 1 are densities per acre. (GAW)

*The values in the narrative on page 2 and Figure 1 on page 3 of Section 4.12-1 Re-vegetation Methods have been revised. They now both state that the woodland mix will be comprised of 70% deciduous tree species, 20% tall shrub species, and 10% low shrub species. The values for each species listed have also been revised and clarified. For example, Silverberry will make up 50% of the Low shrub mix. The low shrub mix is 10% of the total Woodland mix. Being that the woodland mix will be seeded at a density of 2700 trees/shrubs per acre there will be 135 silverberry per acre (10% of 2700=**270** and 50% of 270=**135**).*

Plate 4.12-1 Post Mining Land Use

10. Follow-up to item No. 12: Please label the conservation woodland planting on Plate 4.12-1 and revise the symbol so that the planting is properly depicted. The legend represents this planting as a white area outlined in purple but the planting is depicted as being hollow on the map with the aerial photo background. (GAW)

    The conservational woodland on Plate 4.12-1 has been labeled with text. Also the symbol for conservational woodland has been moved to be listed along with all of the other woodland symbols. The symbol depicted for conservational woodlands in the legend (polygon outlined in purple), did not suggest that the conservation woodland should be colored in a white fill. The background color to the legend is white, therefore when you show the symbol for an outlined polygon it shows white behind it. This was true for all of the woodland symbols. All symbols for the woodlands in the legend have been changed to a colored line symbol corresponding to each woodland type.

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

11. Please revise Plate 4.13-2, Wildlife Monitoring Map (Minewide), to depict Permit BNCR-1101 as a pending permit area and clarify that the monitoring listed for this area has not been approved. Please revise to only depict the pheasant crow count route and sharp-tailed grouse leks in this pending permit area and remove the breeding bird surveys from this map because these sites have not been approved. Please also remove the language from the map that reads "Proposed BNCR-9401 Addition". (GAW)

    Plate 4.13-2 has been revised to depict the BNCR 1101 as "Pending", and a note has been added to clarify that the monitoring for this area has not been approved. The "Proposed Addition" language for BNCR 9401 has been removed. The pheasant crow count route and the sharp-tailed grouse leks, have not been changed. As per our conversations with PSC staff, it was agreed that we could list the data for stops and leks Minewide in Appendix 3.10-9, and just highlight and separate the totals for the BNCR 9401 area. If we list the data for stops minewide, we feel it is necessary to depict these stops somewhere. Therefore, Plate 3.10-1 depicts the leks, crow count loactions, and land uses that are only for BNCR 9401, and Plate 3.10-2 depicts the minewide monitoring plan. The breeding bird sites found within BNCR 1101 (WD4, WD5, and GR4) have been labeled "Proposed".

It was noted that a number of maps (e.g., Plates 4.4-1 and 4.5-1) show the mining sequence in a portion of the adjacent proposed permit area (BNCR-1101); however, these maps were not updated to reflect the revised mine plan for this proposed permit area (as revised in the latest submittal). Please consider updating the affected maps accordingly.

Plate 4.4-1 was updated with the revised mine plan.
Plate 4.5-1 was updated. The line work showing the revised mining sequence was removed from this plate.

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

Sincerely,

Karene M. Hall
Permit Coordinator