



Public Service Commission

State of North Dakota

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July 14, 2015

Jay M. Volk, Ph. D
Environmental Manager
BNI Coal, Ltd.
2360 35th Avenue SW
Center, ND 58530-9499

Dear Mr. Volk:

The Reclamation Division has reviewed BNI Coal, Ltd.'s July 8, 2015 responses to our June 26, 2015 technical review letter for BNI's application of Revision No. 38 for Renewal No. 3 to Permit BNCR-9702 at the Center Mine. The following items must be satisfactorily addressed before the Reclamation Division will recommend Commission action on Revision No. 38 and Renewal No. 3 applications at the July 29th Commission meeting. Please respond to this letter **by July 20th** in the event that additional follow-up items are necessary prior to the Commission meeting. The current term for Permit BNCR-9702 expires August 2, 2015. Please note that all items are in follow-up to numbered items in our June 26, 2015 technical review letter.

Section 1.9 and Plate 1-2 Surface and Coal Ownership

1. Follow-up to item 3(a): Please correct the agency and address for USA at the end of Table 1.9-1. The correct agency and address for federal coal is listed in Permit BNCR-1101. (ZAB)
2. Follow-up to items 3(b), 3(e), and 3(g): It appears changes to these three items were not saved since BNI responded that Plate 1-2 had been updated as requested. Please address the following: (ZAB)
 - a. Coal ownership in Section 10 is listed as Walter Reinke in Table 1.9-1 but as Walter and Beatrice Reinke on the ownership map. Revise as appropriate.
 - b. Correct the spelling of Eleanor Boehm in the SW1/4SW1/4 of Section 2 on the ownership map.
 - c. Revise the coal ownership in the SE1/4 of Section 30, T142N, R84W, on Plate 1-2 to be consistent with the coal ownership listed in Table 1.9-1.

Appendix 1-2 Certified Copies of Leases and Assignment Documents, Article of Amendment to Articles of Incorporation

3. Follow-up to item No. 6(b): Please revise the 20 percent surface leased listings that total 80 percent on page 8-22 for Calvin Mosbrucker, Dean Mosbrucker, Brian Mosbrucker, and Lorie Makelke ownership for the N½NE¼ of Section 8, T141N, R84W. It appears that each of the four surface owners should be listed as 25 percent leased to total 100 percent. (WTG)

Plate 4.1-1 Pit Layout and Facilities Map

4. Follow-up to item No. 16: Plate 4.6-1 (Surface Water Management Plan) was updated in response to item No. 16 to remove Pond 28-4 and diversions D-28-4 and D-28-5 because they were never constructed and have been removed from the water management plan. Please update Plate 4.1-1 as well, to remove Pond 28-4 and diversions D-28-4 and D-28-5. (RLK)

Section 4.9 Reclamation Schedule and Plate 4.9-1 Reclamation Variance Areas

5. Follow-up to item No. 18: The link to Plate 4.9-1 in the first paragraph on page 4.9-1 was changed to Plate 4.1-1 as requested; however, the link still opens Plate 4.9-1. Please correct the link. (ZAB)
6. Follow-up to item No. 20: Please review the following statement on page 4.9-3 in the narrative for the year 2020: "*In other mine areas rough spoil grading will be completed into the 2018 mining block areas.*" It appears that the narrative should reference 2019 for rough spoil grading in the previous year's mining block rather than 2018. Please review and revise as appropriate. (ZAB)
7. Follow-up to item No. 26: This item was not addressed. Please revise the narrative for Variance Area 8 as follows: include a projected time line; indicate where BNI plans to get the 1,000,000 cubic yards of material needed to fill the ash pit; clarify where BNI is at in the regulatory process by stating if or when a request was submitted; and, reference portions of the permit, such as Section 4.11, that contain additional information. (ZAB)

Section 4.13 Fish and Wildlife Resource Protections & Enhancement Plan & Fish and Wildlife Monitoring Plan

8. Follow-up to item No. 35: BNI has revised the second paragraph on page 4.13-1 to state that suitable habitat for the Northern Long Eared Pat does not exist within the wildlife monitoring area. Please clarify what is meant by this statement given that the entire state of North Dakota is included in the range of this species, and also that trees, abandoned building, bridges and underground mines are considered hibernacula. Please either revise the statement or provide correspondence from the USFWS that supports BNI's claim that

no suitable habitat exist for the Northern Long-Eared Bat within the wildlife monitoring area. (GAW)

9. Follow-up to item No. 35: A sentence in the sixth paragraph on page 4.13-1 states that there is no suitable undisturbed land for Sprague's pipit. This species has been identified on undisturbed native grassland in the wildlife monitoring area, and the approved monitoring plan depicts where monitoring is to continue for this species on undisturbed native grassland. Please revise this misleading or incorrect statement. Please also revise the sentence in the third paragraph on page 4.13-6 that reads as follows: "*First native rangelands areas are broadly throughout the, both reclaimed and undisturbed during annual wildlife monitoring surveys.*" This sentence is unintelligible. Please revise it to provide clarity. (GAW)

Plate 4.13-1 Wildlife Monitoring Map (Minewide)

10. Follow-up to item No. 36: Please revise Plate 4.13-1 to show that the Wildlife Monitoring Area includes a buffer zone at least one-half mile around the perimeter of all existing permit areas. A buffer zone around the permit area is required during baseline studies and a buffer zone must be included with the annual wildlife monitoring plan. The habitat types within this buffer zone must be shown on the Wildlife Monitoring Area map and important or habitats of unusually high value for fish and wildlife must be identified. (NDAC 69-05.1-08-15, NDAC 69-05.2-09-17, and NDAC 69-05.2-13-08) (GAW)

Please contact this office if you have any questions.

Sincerely,



James R. Deutsch
Director
Reclamation Division

cc: Oliver County Auditor