



Public Service Commission

State of North Dakota

COMMISSIONERS

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April 28, 2020

Jay M. Volk, PhD, Manager
Health, Safety, and Environmental Services
BNI Coal, Ltd.
2360 35th Avenue SW
Center, ND 58530-9499

Dear Mr. Volk:

The Reclamation Division has conducted a technical review of BNI Coal, Ltd's (BNI) application of Revision No. 41 for Renewal No. 4 to Permit BNCR-9702 at the Center Mine. The following items must be satisfactorily addressed before the Reclamation Division will recommend Commission action on the Revision No. 41 and Renewal No. 4 applications on or before July 23, 2020. The current term for Permit BNCR-9702 expires August 2, 2020.

Table of Contents - BNCR - 9702

1. Please add a parenthetical descriptor to Appendix 4.1-1 (Minnkota Inert Waste Disposal Permits) indicating that the inert waste landfills have been closed. (WTG)

Section 1 - Legal and Financial Information

2. Please revise the BNI organizational chart in Section 1.7.2 for Jay Volk. Correspondence indicates that he is Manager of Health, Safety, and Environmental Services. (WTG)
3. The bookmark to Revision 41 - Renewal 4 in Appendix 1-1 (Revision Summary and List of Changes) does not work. Please repair the link so that it connects with its intended location. (BEB)

Plate 2.1 - Extended Mine Plan

4. The Permit BNCR-1101 C1 Addition area depicted on Plate 2.1 is labeled in the legend as "Permit Addition 2018." Furthermore, the C1 Addition area is depicted as bounded by a green line that is similar in color and line style to that of the Permit BNCR-8106 boundary. Please clearly label the C1 Addition area on the map, update the descriptive label in the legend, and choose a boundary line style and/or color for the C1 Addition area that is more easily distinguishable from other boundaries depicted. (JSP/BEB)
5. Plate 2.1 depicts a 500 foot setback in the NE¹/₄ of Section 18 of Permit BNCR-1101 surrounding the Larry and Virginia Schmidt farmstead. The farmstead was abandoned several years ago and

BNI plans to mine through the farmstead area in 2022. We realize that a portion of the farmstead is currently being used for the ANFO storage area, which will likely be relocated in the near future. However, with plans in place to mine through the farmstead area, the 500 foot setback designation could probably be eliminated from the plate. Please review and update if deemed necessary. (BEB)

6. Plate 2-1 color designations and mine plan years are not consistent between the map and the legend. Please revise the map and legend to ensure consistency between color designations and mine plan years. (JSP/PJR)
7. Please add a revision number and date to the Plate 2.1 title box to identify the most recent version. Please also verify that Plate 2.1 in the application is the most recent version. (PJR)

Section 3.1 - Topographic Information

8. The Topographic Information narrative in Section 3.1 describes human-related surface disturbances within the permit area, including a plugged and abandoned oil well in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 34. Please update the narrative in this section with a short description of the CarbonSAFE plugged and abandoned well previously located in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 27, also within Permit BNCR-9702. (BEB)

Section 3.4 - Surface Water

9. Please identify the change in the Section 3.4 narrative. It appears that a surface water sampling site was added, but there is no change to Plate 3.4-1A (Surface Water Sampling Site Location Map) or Appendix 3.4-1 (Surface Water Analyses). If the addition of a surface water sampling site is a previous error being corrected, simply state that in Appendix 1-1 (Revision Summary and List of Changes), or provide some elaboration to the surface water sampling site. (PJR)

Section 4 - Operations

10. Please add a parenthetical descriptor to Appendix 4.1-1 (Minnkota Inert Waste Disposal Permits) on the Section 4 - Operations permit home page indicating that the inert waste landfills have been closed. (WTG)

Section 4.1 - Operations Plan

11. If lands within Permit BNCR-9702 were drilled to accommodate seismograph testing associated with the CarbonSAFE project, please provide a short narrative regarding that in the operations narrative in Section 4.1, and describe the drillhole backfilling procedures that were utilized after the work was completed. (BEB)
12. The Waste Disposal narrative under item B on page 4.1-3 describes the various disposal areas within the Center Mine including Section 5, Section 34, and Section 3, and only one of those disposal areas is provided with a township-range designation and none of those includes the permit area location. Please add the township-range designation to the listed section numbers in this narrative, and include the various permit areas in which they are located. (BEB)

13. Since Plate 4.1-1 (Pit Layout and Facilities Map) shows mining and reclamation features and facilities (including SPGM stockpiles) for all of BNI's permit areas except for BNCR-1101, please depict and label subsoil stockpile NW36S01 in the NW¼ of Section 36 in Permit BNCR-8106. (BEB)
14. Please depict and label on Plate 4.1-1 (Pit Layout and Facilities Map) the recently completed CarbonSAFE well pad that is located in the NW¼NE¼ of Section 27 in Permit BNCR-9702, and include any SPGM stockpiles on the map that may be associated with the well pad construction. (BEB)
15. Please depict and label the topsoil and subsoil stockpiles associated with Pond 29-1 and Diversion 29-1 on Plate 4.1-1 (Pit Layout and Facilities Map). (WTG)
16. Please label topsoil stockpile B04T02 on Plate 4.1-1 (Pit Layout and Facilities Map). (WTG)
17. Please depict and label catch basins CB-5-1 and CB-33-1 on Plate 4.1-1 (Pit Layout and Facilities Map). (WTG)
18. The five-year coal removal subarea for the next permit term depicted on Plate 4.1-1 (Pit Layout and Facilities Map) extends about 1,000 feet westward beyond the Revision No. 40 western pit boundary in the W½ of Section 20. The pit layout for the five-year coal removal subarea was revised on Plate 2-1 (Extended Mine Plan) and Plate 4.6-1 (Surface Water Management Plan), but the pit layout, or the mining disturbance boundary for the highwall backslope area, should be revised on additional plates in the Revision No. 41 application. Please revise the pit layout or mining disturbance boundary as applicable on the following plates: Plate 3.1-1 (Pre-Mining Topographic Contours); Plate 3.1-2 (Pre-Mining Slope Analysis); Plate 4.2-1 (Existing Structures); Plate 4.4-1 (Blasting Map); Plate 4.9-1 (Reclamation Variance Areas); Plate 4.10-1 (Post-Mining Topographic Contours); Plate 4.10-2 (Post-Mining Slope Analysis); Plate 4.12-1 (Post Mining Land Use); and, Plate 4.14-1 (Worst Case Bond Calculations). WTG

Section 4.4 - Blasting Plan

19. Please update Section 4.4 with the most recent "Notice of Blasting Schedule for BNI Coal Ltd., Center" published on December 12, 2019 that includes Section 20 added with Revision No. 40. (WTG)

Section 4.6 - Surface Water Management Plan

20. Although depicted on Plate 4.1-1 (Pit Layout and Facilities Map) and Plate 4.6-1 (Surface Water Management Plan), Diversion 20-4 is not included in the Section 4.6 narrative or Table 4.6-1. Please revise Section 4.6 to add information for Diversion 20-4. (JSP/GAW)
21. Please include a bookmark for Diversion 20-4 in Section 4.6. (GAW)
22. Design details for some ponds are provided as plates in Section 4.6, although others are provided as appendices. Please revise the Section 4.6 narrative to explain why some pond designs are provided as plates, while others are provided as appendices, or otherwise revise Section 4.6 to provide pond design information in a consistent manner. (GAW)

Section 4.7 - Water Monitoring and Drill Hole Reclamation Plans

23. Appendix 1-1 (Revision Summary and List of Changes) states that the monitoring and drill hole reclamation plans were updated. There are no changes identified in the actual plans; however, on page 2 the ND Health Department is changed to the Department of Environmental Quality. If that is the only change, please revise Appendix 1-1 for this section to clarify the change, or identify any changes that were made to the reclamation plans. (PJR)

Section 4.9 - Reclamation Schedule

24. Although the narrative for 2019 on page 2 of Section 4.9 includes a statement regarding water control structure construction for that year, no similar statement is included in the narrative for years 2020 and 2021. Please review the narrative and revise if necessary. (JSP)

Section 4.10 - Backfilling and Regrading

25. Please update the post-mine grade approved area boundary on Plate 4.10-1 (Post-Mining Topographic Contours) to indicate 2018 and 2019 grade approvals in Sections 32 and 33. (WTG)

Section 4.12 - Revegetation and Post Mining Land Use

26. Please update Section 4.12 to include BNI's revised tree planting plans in Section 32 as described in correspondence dated February 11, 2020. These updates may include Section 4.12-1 (Postmine Land Use Acreages), Section 4.12-2 (Premine and Postmine Land Use Discussions), Section 4.12-3 (Reclamation Information), and Plate 4.12-1 (Post Mining Land Use). (GAW)
27. Language on page 4.12.3-1 of Section 4.12-3 (Reclamation Information) stating that a minimum of three forbs will be included in the native grass seed mixture is being removed with Revision No. 41. Please revise Section 4.12-3 to further clarify BNI's plans for establishing forbs on reclaimed native grassland. (GAW)
28. Please revise Section 4.12-3 (Reclamation Information) to add the pollinator plot information contained in the fourth paragraph on page 2 of Section 4.12 (Re-vegetation Plans, Post Mining Land Use, and Determining Reclamation Success) in Permit BNCR-1101 if pollinator plot practices will be consistent across the Center Mine. (GAW/WTG)
29. Appendix 1-1 (Revision Summary and List of Changes) states that Section 4.12-3 (Reclamation Information) was updated to include the replacement shelterbelt and woodland acres in Section 20, and shelterbelt planting information was added. The only changes noted in Section 4.12-3, however, were the addition of small tract cropland seeding for the first year, and changes to the stockpile and cover crop seeding mixtures. Please revise Appendix 1-1 as appropriate and highlight any changes to the shelterbelt and woodland reclamation information. (PJR)
30. Please consider depicting installed pollinator plots on Plate 4.12-1 (Post Mine Land Use Map). (GAW)

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

31. Please update Section 4.13 to address the recommendations listed in the U.S. Fish and Wildlife Service (USFWS) enclosed letter erroneously dated March 11, 2019 (received March 19, 2020) by clarifying what BNI has done, or is planning to do, to ensure for the protection of the species identified in the USFWS letter during the next term of the permit. This would include clarifying if Dakota skipper habitat assessment surveys have been conducted on lands included in the permit area; if any potentially suitable Dakota skipper habitat exists in the permit or adjacent area; if occupancy surveys are being conducted for eagles; the measures that will be used to avoid/minimize impacts to nesting bald eagles; and, measures employed to ensure for the protection of the Northern Long-Eared Bat. (GAW)

We requested Advisory Committee review and comment on the Revision No. 41 application from the State Water Commission and the North Dakota Department of Environmental Quality. We received the enclosed comments from the respective agencies. We also received the enclosed comments from the U.S. Fish and Wildlife Service. No comments, objections, or requests for an informal conference on the Revision No. 41 and Renewal No. 4 applications were received during the public comment period that ended April 13, 2020.

Please contact us with any questions.

Sincerely,



Dean K. Moos
Director
Reclamation Division

cc: Karene Hall
Oliver County Auditor

Enclosures

March 20, 2020

Dean Moos
ND Public Service Commission
Inside Mail

Dear Mr. Moos:

This is in response to your request for a review of the environmental impacts associated with the Revision No. 7 to Surface Coaling Mining Permit BNCR-1101 and Revision No. 41 to Permit BNCR-9702 both located at the Center Mine.

The proposed project has been reviewed by State Water Commission staff, and the following comments are provided:

- There may be floodplains identified and/or mapped where this proposed project is to take place. North Dakota has no formal 'permitting' authority as a state entity in NFIP identified floodplain areas. The permitting is always done by the local entity, which has jurisdiction in the area in question. Please work closely with the local Floodplain Administrator.

On March 19, 2020 Matthew Lindsey from our Regulatory Division provided his comments to you via email regarding these two permits.

Thank you for the opportunity to provide review comments. Should you have further questions, please contact me at 701-328-4970 or stevebest@nd.gov.

Sincerely,



Steven Best
Planner III

SB:dm/1570



Public Service Commission
State of North Dakota

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FEB 21 2020

STATE WATER COMMISSION

COMMISSIONERS

Brian Kroshus
Julie Fedorchak
Randy Christmann

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TDD: 800-366-6888 or 711

February 20, 2020

Garland Erbele, P.E., State Engineer
North Dakota State Water Commission
900 East Boulevard Avenue Dept 770
Bismarck, ND 58505-0850

Dear Mr. Erbele:

BNI Coal, Ltd. has filed an application for Revision No. 41 to Permit BNCR-9702 at the Center Mine to revise the permit for the next five-year permit term through August 2, 2025. The revision application makes routine updates throughout the permit in response to our pre-renewal permit review.

A DVD of the permit revision application is enclosed for your agency's evaluation as an Advisory Committee member as required by NDAC 69-05.2-11-02(5)(b). A permit Table of Contents is accessible from the Home page. Please refer to pages 53 and 54 of Appendix 1-1 (Revision Summary and List of Changes) on the Section 1 home page for a list of Revision No. 41 proposed changes. Please review the revision application with regard to your agency's areas of responsibility and technical expertise, and for compliance with NDAC 69-05.2-16-03. Please provide any revision application review comments by March 20, 2020.

Please contact us with any questions.

Sincerely,

Dean K. Moos
Director
Reclamation Division

Enclosure



Public Service Commission
State of North Dakota

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FEB 27 2020

STATE WATER COMMISSION

COMMISSIONERS

Brian Kroshus
Julie Fedorchak
Randy Christmann

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February 26, 2020

Mr. Garland Erbele
State Engineer
North Dakota State Water Commission
900 East Boulevard, Dept. 770
Bismarck, ND 58505-0850

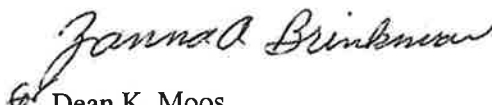
Dear Mr. Erbele:

BNI Coal, Ltd. has filed an application for Revision No. 7 to Surface Coal Mining Permit BNCR-1101 held by BNI Coal, Ltd. for the Center Mine. The revision adds design plans for MSHA Pond 21-5, and updates the Operations Plan and the Surface Water Management Plan sections of the permit accordingly.

A DVD of the permit revision application is enclosed for your agency's evaluation as an Advisory Committee member as required by NDAC 69-05.2-11-02(5)(b). A Permit Table of Contents is accessible from the Home page. Please refer to page 29 of Appendix 1-1 (Revision Summary and List of Changes) on the Section 1 home page for a list of Revision No. 7 proposed changes. Please review the revision application with regard to your agency's area of responsibility and technical expertise, and for compliance with NDAC 69-05.2-16-02.

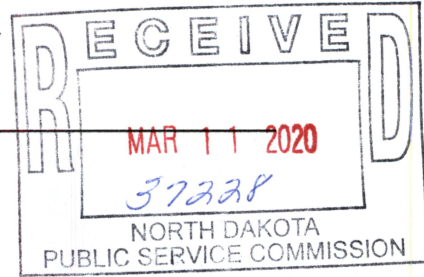
Please reply with any comments on the revision application by March 25, 2020. Please contact us with any questions.

Sincerely,


for Dean K. Moos
Director
Reclamation Division

Enclosure

Minedata/Center/Permits/BNCR-1101/Revisions/No.7/Rev7_Advsry_rvw_rqst_ltr_2-26-2020



March 10, 2020

Mr. Dean Moos
Reclamation Division
Public Service Commission
600 East Boulevard Avenue
Bismarck, ND 58505

RE: Revision 41 to Permit BNCR-9702

Dear Mr. Moos:

We have reviewed BNI Coal, Ltd.'s application for revision number 41 to Surface Coal Mining Permit BNCR-9702. We have no objection to the revision which makes routine updates throughout the permit in response to the Public Service Commission's pre-renewal permit review. The department recommends updating the narrative in section 4.6 to reference the "North Dakota Department of Environmental Quality" instead of the "North Dakota Department of Health"

At this time, the department has no further comments regarding this revision.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dallas Grossman".

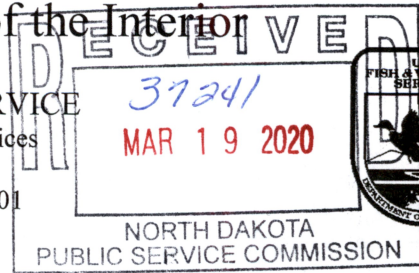
Dallas Grossman
Environmental Engineer
Division of Water Quality

United States Department of the Interior



FISH AND WILDLIFE SERVICE

North Dakota Ecological Services
3425 Miriam Avenue
Bismarck, North Dakota 58501



IN REPLY REFER TO:
2019-CPA-0118

March 11, 2019

Mr. Dean Moos
Director, Reclamation Division
North Dakota Public Service Commission
600 East Boulevard, Department 408
Bismarck, North Dakota 58505-0480

Dear Mr. Moos:

This letter is in response to your request dated February 19, 2020, for comments regarding the renewal and revision of the Surface Coal Mining Permit BNCR-9702 for BNI Coal, Ltd Center Mine located near Center, North Dakota.

The revised Threatened and Endangered Species list dated July 2019 includes the following species for Oliver County, North Dakota: Endangered; Interior Least Tern, Whooping crane, Pallid sturgeon, Threatened; Dakota skipper, Piping plover and its critical habitat, Rufus red Knot and Northern long-eared bat.

Information defining suitable habitat for Dakota skippers is included in the 2018 Dakota skipper Survey Protocol. The United States Fish and Wildlife Service (Service) recommends that habitat surveys be conducted. Areas of suitable habitat then could be surveyed by permitted surveyors for Dakota skipper occupancy, prior to surface disturbance in the areas of concern covered by the revision of Permit BNCR-9702. In a September 18, 2018 letter from Service to the PSC, after review of BNI Mine Wildlife Management Plan, it was emphasized that the Dakota skipper butterfly may not have been adequately addressed in the earlier baseline studies completed at the BNI Mine.

During the review of the BNI Mine's Wildlife Monitoring Report (2018-CPA-0129) it was also recommended by the Service to increase awareness of endangered species by continuing surveys and monitoring of suitable habitat. In addition, it was suggested that occupancy surveys be completed for eagles within the Permit boundaries.

Bald and Golden Eagles are federally protected under the Bald and Golden Eagle Protection Act (BGEPA). The BGEPA prohibits anyone without a permit issued by the Secretary of the Interior from taking bald eagles (*Haliaeetus leucocephalus*) or golden eagles (*Aquila chrysaetos*),

including their parts, nests, or eggs. The BGEPA provides criminal and civil penalties for persons who take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import, at any time or any manner, any bald or golden eagle, alive or dead, or any part, nest, or egg thereof. The BGEPA defines take as pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb. "Disturb" means to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available: 1) injury to an eagle, 2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or 3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior. In addition to immediate impacts, this definition also covers impacts that result from human-induced alterations initiated around a previously used nest site during a time when eagles are not present, if, upon the eagles return, such alterations agitate or bother an eagle to a degree that injures an eagle or substantially interferes with normal breeding, feeding, or sheltering habits and causes, or is likely to cause, a loss of productivity or nest abandonment.

A number of bald eagle nests have been recorded along the Missouri River corridor. We recommend following the Service's May 2007, *National Bald Eagle Management Guidelines*, which contains detailed information on protecting bald eagles from disturbance due to human activity. To avoid/minimize impacts to nesting bald eagles from construction activities, the Service recommends: (1) keeping a minimum 660-foot buffer between the activity and any bald eagle nest if no landscape buffer exists; (2) keeping a minimum 330-foot buffer and maintaining a landscape buffer or natural areas between the activity and around nest trees; and (3) avoiding activities during the bald eagle breeding season (February 1 – July 15). The buffer areas serve to minimize visual and auditory impacts associated with human activities near nest sites. Ideally, buffers would be large enough to protect existing nest sites and provide for alternative or replacement nest sites.

It is unlawful to take or disturb eagles without first obtaining a permit for non-purposeful take of eagles. However, no permit would be available unless an applicant has first taken all practicable steps to avoid take of eagles. The guidelines can be accessed on the Service's website at: <http://www.fws.gov/migratorybirds/CurrentBirdIssues/Management/BaldEagle/NationalBaldEagleManagementGuidelines.pdf>.

The 2019 White Nose Syndrome distribution map now includes all of the counties in North Dakota. We encourage that if any tree removal is necessary by the project, that such tree removal occur outside the northern long-eared bat active season. The active season in North Dakota is likely mid-April through mid-October and if tree removal cannot be avoided during that time we encourage that trees not be removed during the maternity season for northern long-eared bats, particularly June and July.

If changes are made in the project plans or operating criteria, or if additional information becomes available, the Service should be informed so that the above comments can be reconsidered.

Mr. Dean Moos

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The Service appreciates the opportunity to provide comments. If you have any questions on these comments, please contact Jerry Reinisch of my staff at 701-333-0267 or me at (701) 355-8512.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Becker', with a stylized flourish at the end.

Drew Becker
ND Ecological Services Supervisor

cc: Greg Link, North Dakota State Game and Fish Department
Tim Zachmeier, BLM, Dickinson ND