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July 26, 2022

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NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Ms. Zanna Brinkman, Director
Reclamation Division, NDPSC
Department 408
600 East Boulevard Avenue
Bismarck, ND 58505-0480

Dear Ms. Brinkman,

This submittal contains a response to your Technical Review 3 letter to us dated July 13, 2022. In this letter you listed technical deficiencies that must be addressed before the Revision 8 application to BNCR-1101 can be approved. Below is a listing of the deficiency followed by our response:

General

1. Please incorporate the changes from Revision No. 9 into Revision No. 8. (JWE/JAR)

The changes approved in Revision 9 were incorporated into Revision 8 with BNI's response to the Technical Review 2 updates.

Section 3.7 - Prime Farmlands

2. Follow-up to item No. 19: BNI appears to have revised Plate 3.7-2 (Dominant Order 1 Soils and NRCS Designated Prime Farmland Map Units within Mining Disturbance) by adding the four Vebar fine sandy loam map units to the dominant order 1 soils within the mining disturbance boundary. However, the soil map units are no longer labeled on the map, and the map legend label for the blue map units (dominant order 1 soils in mining disturbance) was changed to Map Unit. Please revise Plate 3.7-2 so the soil map units are labeled on the map and revise the map legend so the blue map units are labeled as "Dominant Order 1 Soils in Mining Disturbance", as they were shown on previous versions of the map. (MLJ)

Added map unit labels to dominant order 1 soils in mining disturbance and updated legend

Section 3.10 - Baseline Fish and Wildlife Resources

3. Figure 2 of the narrative on page 3 in Section 3.10 – Baseline Fish and Wildlife Resources, contains a cemetery land use for 2 acres. Please update the 2 acres of

cemetery land use that was changed to the surrounding native rangeland with the approval of Revision No. 9 to BNCR-1101. (JAR)

Updated page 3 to reflect no cemetery and moved the 2 acres to native grassland

Section 4.1 – Operations Plan

4. Follow-up to Item No. 22: Please include the updated version of Section 4.1 that addresses disturbances to the abandoned mine in the N½ of Section 24. The updated version of Section 4.1 was not added to the April 28, 2022 version of the permit. A copy of the revised language in Section 4.1 was provided by BNI to Reclamation Division staff via email on June 7, 2022. (GAW/JAR)

Section 4.1 has been added to the electronic permit.

Section 4.1-1 – Pit Layout and Facilities Map

5. Follow-up to Item No. 26: Please update the pit layout and facilities map to not show any mining within 500 feet of occupied farmsteads that BNI has not secured written consent from the surface owner. Occupied farmsteads that BNI has not secured consent agreements must be depicted as areas unsuitable for mining on the Pit Layout and Facilities Map. This would include farmsteads where mining activities are not planned beyond the current term of the permit. NDAC 69-05.2-04-01.1(4). (GAW)

Farmsteads within the planned mining disturbance have been hatched as unsuitable for mining until such time that consent agreements are obtained.

Section 4.2 - Existing Structures

6. Follow-up to Items No. 29 through 34: Please include the updated version of Section 4.2 that addresses Items No. 29 through 34 of our technical review letter dated February 18, 2022. The updated version of Section 4.2 was not added to the April 28, 2022 version of the permit. A copy of the revised language in Section 4.2 was provided by BNI to Reclamation Division staff via email on June 7, 2022. (JAR/GAW)

Section 4.2 has been added to the electronic permit.

7. The county road numbers (i.e. 37th Avenue SW) are not correctly aligned with the corresponding county roads on Plate 4.2-2 (Existing County Road Infrastructure Photos). Please correct this alignment error. (JAR)

Moved 35th, 37th Ave to proper placement along with 27th and 28th St.

Section 4.5 - Transportation Plan

8. Follow-up to Item No. 34: Please revise the Transportation Narrative to describe how BNI plans to cross 37th Avenue SW with mining equipment prior to constructing the overpass over the haul road in the NW¼ of Section 13. It appears an equipment access road or a dragline corridor will be needed to transport equipment across 37th Avenue SW for mining activities planned prior to the construction of the overpass. Please clarify if BNI's excavators will be able to pass under the 37th Avenue SW overpass and how a

dragline will be transported across 37th Avenue SW. Please provide design plans for an equipment access road across 37th Avenue SW, if necessary, and update the Pit Layout and Facilities Map, Plate 4.1-1, and Transportation Plan map, Plate 4.5-1, accordingly. (GAW/JAR)

The detailed crossing designs for Hagel Creek and 37th Ave SW will be included in a future revision. BNI plans to construct an at grade crossing until the dragline has crossed over 37th Ave SW and then construct an overpass. A bypass may be necessary to mitigate disturbance of Oliver County road traffic. Similar to existing overpasses, the excavators will be unloaded from the lowboy and track beneath the overpass to be reloaded. BNI will work in conjunction with Oliver County for these construction projects and bypass plans. Similarly to BNCR 8106's permit, we plan to get permission to utilize the section line periodically.

9. Please include a statement in the third paragraph on page 4.5-1 in Section 4.5 (Transportation Plan) stating that the necessary approval documents will be submitted to the PSC before installing or replacing any culverts under a county road if the road is not closed. (JWE)

Statement has been added about culvert replacements on open county roads.

Section 4.6 - Surface Water Management Plan

10. Please review and revise all sediment pond designs and/or culvert designs submitted with Revision No. 8 to ensure the average watershed slope is used in the HydroCAD calculations instead of the average slope of the flow line. Please refer to Jodey Houn's email sent on May 27, 2022 to Reclamation Division staff for further clarification. Lastly, please submit a list that outlines which sediment ponds and culverts were redesigned. (JWE)

Sediment pond hydrology was modified for the following ponds: Appendix 4.6-41 P-11-1, Appendix 4.6-42 P-13-8, Appendix 4.6-44 P-13-10 Appendix 4.6-45 P-14-1 and Culvert 31. Appendix 4.6-46 P-11-2 Appendix 4.6-47 P-11-3, Appendix 4.6-50 P-12-3. The resulting change in peak discharge was minimal and did not result in significant changes to the ponds. There was a mistake in the modeling of P-14-1 and Culvert 31 that was corrected.

11. Follow-up to item 38: Please revise the HydroCAD calculations for sediment pond P-14-1 (Appendix 4.6-45) using the average watershed slope of 7.8% instead of the average slope of 2.68%. Please refer to Jodey Houn's email sent on May 27, 2022 to Reclamation Division staff for further clarification. Additionally, please revise the culvert information sheet for culvert 31 as appropriate. (JWE)

Appendix 4.6-45 P-14-1 and Culvert 31 modeling was updated.

12. Follow-up to Item No. 39: Please update the reference to the NDDOH to the NDDEQ in the narrative of Appendix 4.6-42 – Design of Sedimentation Pond P-13-8. (JAR)

The reference to the NDDEQ has been corrected.

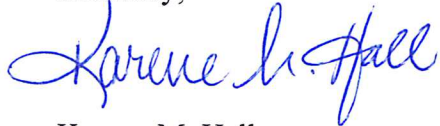
Section 4.14 – Reclamation Cost Estimate for Bonding Purposes

13. The subsoil respread area is not hatched as depicted in the legend for Plate 4.14-1 (Worst Case Bond Plan View). Please revise the map so the subsoil respread area is hatched. (JWE)

The subsoil has been hatched.

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