



# Public Service Commission

## State of North Dakota

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*sent via email only*

October 4, 2022

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Dear Ms. Hall:

The Reclamation Division has reviewed BNI Coal, Ltd.'s (BNI) July 26, 2022 responses to our July 13, 2022 technical review letter for the Revision No. 8 application to Permit BNCR-1101 at the Center Mine. Revision No. 8 proposes to add 2,661.04 acres to the permit in Sections 11, 14, 15, 16, 22, and 23 of Township 141N, Range 84W. The revision also proposes to revise the postmining topography for portions of the existing permit area. The following items must be adequately addressed before the Reclamation Division will recommend Commission action on the Revision No. 8 application. Please note that follow-up items reference the item as numbered in the July 13, 2022 technical review letter.

### **General**

1. Please incorporate the changes from Revision No. 10 into Revision No. 8. (JWE)

### **Section 3.3 – Ground Water**

2. Please review the narrative in Section 3.3. It appears that multiple wells will be mined through. Please revise the new narrative on page 10 and in other sections as necessary to thoroughly discuss all groundwater wells that will be destroyed by mining and how they will be replaced. (NDAC 69-05.2-16-17) (PJR)

### **Section 3.4 – Surface Water**

3. The narrative for Watershed HC-2 specifies that this watershed will experience an increase in peak runoff due to a slight decrease in the time of concentration, which results from an increase in average land slope. However, both design event tables (10 year and 25 year) in Section 3.4, Surface Water - Pre-mine/Post-Mine Watershed Comparisons, specify a decrease in peak runoff and runoff volume. Please review and revise accordingly. (JAR)
4. The 10 year – 24-hour design event in the Pre-Mine/Post-Mine Watershed Comparison table specifies that peak runoff for watershed HC-14 increases by 129.83 cfs (58.93% change) from the pre-mine conditions. However, there is no Probable Hydrologic Consequences determination made for this increase to peak runoff for watershed HC-14. Please review the calculations for watershed HC-14 and provide a determination, if necessary, addressing potential adverse effects for this increase in peak runoff for watershed HC-14. (JAR)
5. The narrative at the top of page 6 of Section 3.4, Surface Water, states that the location of all developed water resources and wetlands can be seen in Plate 3.4-5, but a livestock water tank in the

northeast corner of Section 14 is not depicted on this map. Likewise, the narrative at the bottom of Page 7 of Section 3.4 states that all developed water resources are characterized in Table 3.4-1 but the livestock water tank in the northeast corner of Section 14 is not listed in this table. Also, the narrative on page 34 of Appendix 4.12-2 mentions pipelines and tanks that are not accounted for in Section 3.4. Please include livestock pipeline water delivery systems and tanks in Plate 3.4-5, Table 3.4-1, and revise the narrative at the top of page 6 of Section 3.4 to clarify where livestock pipeline water delivery systems and tanks are discussed in the Probable Hydrologic Consequences (PHC) section of the permit. Please also clarify compliance with NDCC 38-14.1-14(2)(i)(3) which requires BNI to provide surface owners an alternative source of water in instances where protection of quantity cannot be assured during mining and reclamation activities. (GAW)

6. The Probable Hydrologic Consequences (PHC) for the Revision 8 addition area includes watersheds that have more than one discharge/control point at the disturbance boundary. This would include Watersheds HC-14 and HC-10. Please update the PHC to provide justification why it is appropriate to analyze watersheds that have sub-watershed discharge/control points or revise the PHC to provide a pre- and post-mining analysis of each sub-watershed in the Revision 8 addition area. For example, three sediment ponds are needed to control runoff from sub-watersheds within Watershed HC-14 and three sub-watersheds are depicted on the Post-Mine Watershed Map, Plate 3.4-3. Thus, the PHC should include a pre- and post-mining analysis for each of the three sub-watersheds in Watershed HC-14. Likewise, several sediment ponds are needed in Watershed HC-10, and each will have its own discharge/control point or outfall so the probable hydrologic consequences of each of these sub-watersheds should be provided in the PHC as required by NDAC 69-05.2-09-12(2) which states that the determination required by subdivision o of subsection 1 of NDCC 38-14.1-14 must include a hydrologic reclamation plan that specifically addresses any potential adverse impacts identified in the PHC determination and contains preventive and remedial measures for those impacts. (GAW/JAR)
7. The Pre-Mine and Post-Mine Watershed Comparison table on page 14 of Section 3.4 indicates that significant hydraulic impacts are anticipated for watershed HC-19. Please provide an analysis of the expected on- and off-site impacts and provide remedial measures to reduce those impacts, if necessary. NDAC 69-05.2-09-12(2). (GAW)
8. The post-mining watershed size for the 10-year and 25-year events (4.6 cfs and 6 cfs, respectively) are different for watershed HC-19 on the comparison tables on pages 13 and 14 in Section 3.4 - Surface Water. Please review and revise accordingly. (JAR)
9. The watershed identification labels are difficult to interpret on the Post Mine Watershed Map, Plate 3.4-3, as they are placed under the contour lines and elevation labels. Please revise to improve watershed identification legibility. (GAW)

### **Section 3.5 – Pre-Mine Land Use**

10. The Revision 8 pre-mining land uses are depicted using line colors other than those indicated in the legend of the Pre-Mine Land Use Map, Plate 3.5-1. Please update the map so that the land use line colors are consistent with the legend and the balance of the land in Permit BNCR-1101. (GAW)
11. Please update the Pre-Mine Land Use Map, Plate 3.5-1, by providing a label for each tree planting in the Revision 8 addition area as has been done in the existing permit area. (GAW)
12. Please update the Pre-Mine Land Use Map, Plate 3.5-1, by providing a label and properly depicting areas classified as pre-mining woodland acreage in the Revision 8 addition area. The land use label and line color should be consistent with the legend and labels/line color used for other land in Permit BNCR-1101. (GAW)

### **Section 3.10 – Baseline Fish and Wildlife Resources**

13. The first page of Appendix 3.10-8, Baseline Fish and Wildlife Inventory Plan – Revision 8, includes a letter dated September 10, 2010 that does not pertain to the Revision 8 addition area. Please remove this letter from Appendix 3.10-8. (GAW)
14. Page 12 of Appendix 3.10-8 includes correspondence regarding acquiring baseline wetland inventory information for the Revision 8 addition area. It seems this information should be in the pre-mine wetland section or elsewhere in the permit rather than in the Fish and Wildlife section. Please review and update as necessary to provide clarity. (GAW)

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

15. Please revise Plate 4.5-1 (Transportation Plan) to depict all the culverts that will either be installed or replaced under 37<sup>th</sup> Avenue SW based on the comments in Section 4.6 below. (JWE/BSM)

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

16. It appears that diversions will be needed around the north and west sides of the subsoil stockpile in the NE1/4 of Section 11 to direct surface water runoff to sediment pond P-12-03. Please update the Surface Water Management Map, Plate 4.6-1, to show field engineered diversions around this pile or update the Surface Water Management Plan to clarify how runoff will be managed around this pile. (GAW)
17. Follow-up to Item No. 10: According to Plate 4.6-42A in Appendix 4.6-42 (Design Details – Sediment Pond P-13-8), it appears that a culvert will be placed underneath 37th Avenue SW to direct water to P-13-8, but no culvert designs are included. Please revise Appendix 4.6-42 to include design details and narrative to include the culvert; and update Plate 4.5-1 (Transportation Plan Map) and Appendix 4.5-2 (Culvert Information Sheets). (JWE/BSM)
18. Follow-up to Item No. 10: According to Plate 4.6-43A in Appendix 4.6-43 (Design Details – Sediment Pond P-13-9), it appears that a culvert will need to be placed underneath 37th Avenue SW to direct water to P-13-9, but no culvert designs are included. Please revise Appendix 4.6-42 to include design details and narrative to include the culvert; and update Plate 4.5-1 (Transportation Plan Map) and Appendix 4.5-2 (Culvert Information Sheets). (JWE/BSM)
19. Follow-up to Item No. 10: According to Plate 4.6-44A in Appendix 4.6-44 (Design Details – Sediment Pond P-13-10), it appears that a culvert is needed underneath 37th Avenue SW to direct water to P-13-10, but no culvert designs are included. Please revise Appendix 4.6-44 to include design details and narrative to include the culvert; and update Plate 4.5-1 (Transportation Plan Map) and Appendix 4.5-2 (Culvert Information Sheets). (JWE/BSM)
20. Follow-up to Item No. 10: The HydroCAD calculations were not updated to include the average watershed slope of 8.21% as stated in pond design information sheet in Appendix 4.6-44 (Design Details – Sediment Pond P-13-10). The HydroCAD calculations used an average watershed slope of 4.41%. (JWE/BSM)
21. Follow-up to Item No. 10: According to Plate 4.6-44A in Appendix 4.6-44 (Design Details – Sediment Pond P-13-10), the construction date is listed as 2024. The construction date is listed as 2025 in Table 4.6-1 in Section 4.6 (Surface Water Management Plan) and 2025 in Plate 4.6-1 (Surface Water Management Plan). Please revise Plate 4.6-44A, Table 4.6-1, and/or Plate 4.6-1 to list the correct construction date for sediment pond P-13-10. (JWE/BSM)

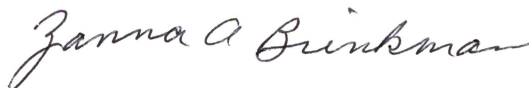
22. Follow-up to Item No. 10: As discussed with Ms. Kolden on July 28, 2022, it appears that runoff will bypass sediment pond P-11-1 southeast of the pond and flow into an intermittent stream. Please revise the pond design in Appendix 4.6-41 so all runoff from the watershed flows into the pond. (JWE/BSM)
23. Follow-up to Item No. 10: The narrative in Appendix 4.6-41 (Design Details – Sediment Pond P-11-1) states that the existing 24-inch culvert will be replaced with a 36 in culvert, but the culvert information sheet in Appendix 4.6-41 and Appendix 4.5-2 (Culvert Information Sheets) states that a 40-inch culvert is required. Please update the narrative in Appendix 4.6-41 once the design of sediment pond P-11-1 is finalized and the correct culvert size is determined. (JWE/BSM)
24. Follow-up to Item No. 10: Please revise the culvert information sheet for Culvert ID 30 in Appendix 4.6-41 (Design Details – Sediment Pond P-11-1) and update Appendix 4.5-2 (Culvert Information Sheets) accordingly. According to the culvert information sheet in Appendix 4.6-41, item number 4 lists the peak runoff for P-11-1's emergency spillway as 80.2 cfs and 2.42 inches of rainfall for a 50 year – 6-hour event. Please revise the peak runoff to 81.56 cfs for a 3.62 inch rainfall event as stated previously in Appendix 4.6-41 and revise the calculations for the culvert. (JWE/BSM)
25. Follow-up to Item No. 10: Appendix 4.6-43 (Design Details - Sediment Pond P-13-9) was not updated to include the average watershed slope in the HydroCAD calculations. An average watershed slope of 4.46% was used instead of 8.8%. Please revise Appendix 4.6-43 to include the updated HydroCAD calculations. (JWE/BSM)
26. Follow-up to Item No. 10: On pages 15 and 25 in Appendix 4.6-45 (Design Details - Sediment Pond P-14-1), the storage description is listed as P-13-10 Stage-Storage instead of P-14-1 Stage-Storage. Please correct this typographical error and ensure that the correct stage-storage information is listed for sediment Pond P-14-1. (JWE/BSM)
27. Follow-up to Item No. 10: According to Plate 4.6-45A in Appendix 4.6-45 (Design Details – Sediment Pond P-14-1), the construction date is listed as 2025. The construction date is listed as 2026 in Table 4.6-1 in Section 4.6 (Surface Water Management Plan) and 2026 in Plate 4.6-1 (Surface Water Management Plan). Please revise Plate 4.6-45A, Table 4.6-1, and/or Plate 4.6-1 to list the correct construction date for sediment pond P-14-1. (JWE/BSM)
28. Follow-up to Item No. 10: According to Plate 4.6-50A in Appendix 4.6-50 (Design Details – Sediment Pond P-12-3), it appears that a culvert will be placed underneath 37th Avenue SW to direct water to P-12-3, but no culvert designs are included. Please revise Appendix 4.6-50 to include design details and narrative to include the culvert; and update Plate 4.5-1 (Transportation Plan Map) and Appendix 4.5-2 (Culvert Information Sheets). (JWE/BSM)
29. Follow-up to Item No. 10: According to Plate 4.6-50A in Appendix 4.6-50 (Design Details – Sediment Pond P-12-3), the construction date is listed as 2024. The construction date is listed as 2025 in Table 4.6-1 in Section 4.6 (Surface Water Management Plan) and 2026 in Plate 4.6-1 (Surface Water Management Plan). Please revise Plate 4.6-50A, Table 4.6-1, and/or Plate 4.6-1 to list the correct construction date for sediment pond P-12-3. (JWE/BSM)
30. Follow-up to Item No. 10: The pond design information sheet in Appendix 4.6-50 (Design Details – Sediment Pond P-12-3) lists the average watershed slope as 5.1%, but a slope of 4.29% is used in the hydroCAD calculations. Please revise the pond design information sheet or the hydroCAD calculations to include the correct watershed slope. (JWE/BSM)

**Section 4.12 – Revegetation, Post Mining Land Use and Reclamation Success Narrative**

31. Please include section line boundaries on lands surrounding the Revision 8 addition area on Plate 4.12-1, Post Mining Land Use, as has been done on lands surrounding the existing permit area. (GAW)
32. Please apply the post mine land use color codes on areas disturbed by sediment ponds P-12-03, P-13-08, P-13-09, and P-13-10 on the Post Mining Land Use Map, Plate 4.12-1. (GAW)
33. Wetland 16-1 is depicted and labeled on the Post Mining Land Use Map, Plate 4.12-1, in T141N, R84W, but the design for this wetland is listed as Wetland 16-3 in Plate 4.10-20 in Section 4.10, Regrading Plan. Please review and revise so that a distinction is made between wetlands in Sections 16 of Range 84 West and Range 83 West. (GAW)
34. The Post Mining Land Use map, Plate 4.12-1, is showing cropland being converted to native grassland in the S1/2 of Section 11, but the surface owner did not request this land use conversion. It appears the reclaimed wetland, wetland 11-1, should be placed near the disturbance boundary to minimize impacts to cropland, and perhaps a buffer zone around the wetland should be classified as hayland as is being done in Section 15. Please review and revise as necessary to comply with the surface owner's request. (GAW)
35. A very small triangle shaped tract of native grassland is depicted in the northeast corner of the SE1/4 of Section 11. Reclaiming this small tract of native grassland seems impractical. Please review and revise as appropriate. (GAW)
36. Jesse Lackman's landowner preference statement is not included in Appendix 4.12-1, Landowner Preference Statements but the narrative on page 35 of Appendix 4.12-2 references a post mining preference statement. Please include a copy of Mr. Lackman's landowner preference statement in Appendix 4.12-1 to provide clarity as to why native grassland is being reclaimed as hayland. (GAW)
37. The post mining land use acreages for Jesse Lackman's property in Section 14 are not the same in the table in Appendix 4.12-6 and the table at the bottom of page 35 of Appendix 4.12-2. The table at the bottom of page 35 of Appendix 4.12-2 indicates an increase of woodland acreage not listed in Appendix 4.12-6 or depicted on the Post Mine Land Use Map, Plate 4.12-1. Please review and update as appropriate. (GAW)

Please contact us with any questions.

Sincerely,



Zanna A. Brinkman  
Director  
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