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December 12, 2022

Karene M. Hall
Permit Coordinator
BNI Coal, Ltd.
2360 35th Avenue SW
Center, ND 58530-9499
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Dear Ms. Hall:

The Reclamation Division has reviewed BNI Coal, Ltd.'s (BNI) October 28, 2022 responses, which were subsequently revised on November 7, 2022, to our October 4, 2022 technical review letter (fourth technical review) 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 October 4, 2022 technical review letter.

General

1. Follow-up to Item No. 1: Final bond release No. 5 to BNCR-9401 is not depicted in Plate 4.1-1 (Pit Layout and Facilities Map). Please update Plate 4.1-1 to include this bond release. (JWE)

2. Please update the worst-case bond estimate using the 2022 variable cost update or submit another revision by March 1, 2023 to include the updated variable costs. (JWE)

Section 3.3 – Ground Water

3. Follow-up to Item No. 2: Please edit the new narrative in the first sentence of the fourth paragraph on page 1-10 in Section 3.3 (Ground Water) to define if there "will be" or "could be" mining disturbance. Also, correct the typo in the second sentence of the narrative; "wells" should be singular, and the fourth sentence should begin with "thirdly" since it is the third well discussed in the narrative. (JAR)

Section 3.4 – Surface Water

4. Follow-up to Item No. 3: Please clarify the second sentence in the Watershed HC-2 narrative as it is not clear how the watershed area that was lost to HC-4 impacts the Watershed HC-2 area. Also, please correct the typographical error in the last sentence of the narrative for Watershed HC-2. (JAR)

5. Follow-up to Item No. 5: Please update Table 3.4-2 (Potential Effects on Developed Water Resources) to incorporate all the DWRs in the C1 Addition Area that potentially could be impacted by mining activity. (JAR)

6. Follow-up to Item No. 5: Narrative in the second paragraph on page six of Section 3.4 incorrectly implies that the Lackman pipeline livestock water delivery system pertains primarily to the SW¼ of Section 14, which is described as one of three tracts in the C1 Addition Area with developed water resources. However, only one of the five tanks associated with the Lackman pipeline system is in the SW¼ of Section 14, according to Plate 3.4-5 (Lentic Wetlands, Lotic Wetlands and DWR Locations) but the narrative in Section 3.4 states that two tanks will be replaced in the SW¼ which is confusing. Please revise to provide clarity regarding the pre-mine water supplies. (GAW)

7. Follow-up to Item No. 5: Please revise the narrative in the second paragraph on page six of Section 3.4 (Surface Water) to clarify where the three pre-mine developed water resources are located in the Revision 8 Addition Area. (GAW)

8. Follow-up to Item No. 5: Narrative on page 35 of Appendix 4.12-2 (Pre- and Post-Mine Land Use Discussions) states that water is supplied to the Lee Dresser native grassland in portions of the N½ of Section 14 by a newer tank near the center of the tract, and it mentions a historic water development. Please update the Usable Pre-Mining Water Supplies narrative on page 6 of Section 3.4 (Surface Water) to characterize these developed water resources and provide appropriate replacement plans for these resources, if necessary. (GAW)

9. Follow-up to Item No. 5: After describing developed water resources within the C1 Addition Area, the last sentence of the second paragraph on page six of Section 3.4 (Surface Water) states that there are no known cases where developed water resources were used for agricultural purposes within or near the permit area. Please revise to provide clarity. (GAW)

10. Follow-up to Item No. 5: The Lackman livestock water delivery system is depicted on Plate 3.4-5 (Lentic Wetlands, Lotic Wetlands and DWR Locations) map, but this delivery system is not depicted on the C1 Addition Area map that provides a scale of 1 to 4,800. Please correct this error. (GAW)

11. Follow-up to Item No. 5: The last row in Table 3.4-1 (Pre-Mining Developed Water Resource Assessments in Area C: BNCR-1101) incorrectly indicates that the Lackman livestock water delivery system only pertains to one tank in the W½ of Section 14. Four of the five tanks associated with this system are located in the E½ of Section 14. Please revise the table to address the entire water delivery system. (GAW)

12. Follow-up to Item No. 5: Please update Table 3.4-1 (Pre-Mining Developed Water Resource Assessments in Area C: BNCR-1101) to include the developed water resources on Lee Dresser's native grassland in Section 14. (GAW)

Section 3.5 – Pre-Mine Land Use

13. Please edit the plate labels for the seven larger tile maps attached to the Pre-Mine Land Use Map on Plate 3.5-1. Plate 3.5-1 indicates that the seven subsequent larger tiles of the map are labeled as Plate 3.5-1A-Plate 3.5-1G; however, all the larger tile maps are labeled as Plate 3.5-1. (MLJ)

Section 4.1 – Operations Plan

14. Plate 4.1-1 (Pit Layout and Facilities Map) submitted does not depict the Mining Disturbance Boundary and Watersheds as described in the legend. Please revise the map accordingly to include the Mining Disturbance Boundary and Watersheds. (JWE)

Section 4.6 – Surface Water Management Plan

15. The Pond Design Information Sheet in Appendix 4.6-43 (Design Details – Sedimentation Pond P-13-9) lists the emergency spillway flow depth as 1.09 feet with 1.41 feet of freeboard. However, the HydroCAD calculations lists the design depth of the emergency spillway as 3.5 feet. Please revise the Pond Design Information Sheet and/or the HydroCAD calculations appropriately. (JWE)

16. Please revise the Pond Design Information Sheets for the ponds proposed with Revision No. 8 to list the top of the embankment elevation as "After Settlement" instead of "Before Settlement" to indicate that the embankments will be constructed to account for potential settlement. As stated in NDAC 69-05.2-16-09(11), "The constructed height of the dam must be increased a minimum of five percent over the design height to allow for settlement, unless it has been demonstrated to the commission that the material used and the design will ensure against settlement." (JWE)

17. The Pond Design Information Sheet in Appendix 4.6-42 (Design Details – Sedimentation Pond P-13-8) lists the emergency spillway flow depth as 1.15 feet with 1.05 feet of freeboard. However, the HydroCAD calculations lists the design depth of the emergency spillway as 1.8 feet. Please revise the Pond Design Information Sheet and/or the HydroCAD calculations appropriately. (JWE)

18. Follow-up to Item No. 17: According to the culvert information sheet in Appendix 4.6-42 (Design Details – Sedimentation Pond P-13-8), the headwater elevation for Culvert ID 34 is 2,037 feet but the top of the county road appears to be at an elevation of approximately 2,035 feet. Please review the elevation of the county road and culvert design to ensure that water will not overtop the county road during the design storm event. (JWE)

19. Follow-up to Item No. 17: Appendix 4.5-2 (Culvert Information Sheets) that was submitted on November 7, 2022 as an addendum to BNI's October 28, 2022 response no longer includes labels for numbered culverts within the bookmarks. Please revise Appendix 4.5-2 (Culvert Information Sheets) to include numbered culverts within the bookmarks. (BSM)

20. Follow-up to Item No. 22: Plate 4.6-41A in Appendix 4.6-41 (Design Details – Sedimentation Pond P-11-1) does not include the C to C' label above the emergency spillway cross section. Please revise the cross section with the C to C' labels. (JWE)

21. Follow-up to Item No. 24: The culvert information sheet for Culvert ID 30 in Appendix 4.6-41 (Design Details – Sedimentation Pond P-11-1) states the headwater elevation is 2,021 feet, but it appears that the county road is at an elevation of 2,020 feet where the culvert crosses the road. Please review the county road elevation where the culvert will be placed to ensure that water will not overtop the road. (JWE)

22. Follow-up to Item No. 27: Plate 4.6-45A in Appendix 4.6-45 (Design Details – Sediment Pond P-14-1) depicts the culvert size crossing 37th Ave SW as 54 inches, but the HydroCAD calculations use a 48 inch round culvert on pages 45 and 46. Furthermore, the culvert

information sheet also lists the culvert size as 48 inches. Please revise Appendix 4.6-45 (Design Details – Sediment Pond P-14-1) so the culvert information and Plate 4.6-45A are consistent. (BSM)

23. Follow-up to Item No. 28: The Pond Design Information Sheet in Appendix 4.6-50 (Design Details – Sedimentation Pond P-12-3) lists the emergency spillway flow depth during peak flow as 1.88 feet with 1.02 feet of freeboard. However, the HydroCAD calculations lists the design depth of the emergency spillway as 1.8 feet. Please revise the Pond Design Information Sheet and/or the HydroCAD calculations appropriately. (JWE)

24. Follow-up to Item No. 28: Plate 4.6-50A in Appendix 4.6-50 (Design Details – Sediment Pond P-12-3) depicts High Water Elevation as 2,002.4 feet but it is displayed above contour elevation of 2,005 feet. Please revise Plate 4.6-50A in Appendix 4.6-50 (Design Details – Sediment Pond P-12-3) to accurately depict the high-water elevation. (BSM)

25. Follow-up to Item No. 28: Please review your response and revise accordingly. It appears that your response was for Culvert ID 31 and not Culvert ID 33 in Appendix 4.6-41 (Design Details – Sedimentation Pond P-12-3). (JWE)

26. Follow-up to Item No. 28: The culvert information sheet for Culvert ID 33 in Appendix 4.6-50 (Design Details – Sedimentation Pond P-12-3) has a headwater elevation of 2,018 feet, but it appears that the county road elevation at this location is approximately 2,015 feet. Please review/revise the culvert design to ensure that water will not overtop the road. Furthermore, the pre-mine contours depicted in Plate 4.6-1 (Surface Water Management Plan) depict the county road at an elevation of approximately 2,015 feet, but Plate 4.5-1 (Transportation Plan) depicts different pre-mine contours at this location. Please review the pre-mine contours in Plate 4.6-1 and Plate 4.5-1 to ensure they are consistent and accurate. (JWE)

27. Follow-up to Item No. 30: Appendix 4.6-50 (Design Details – Sedimentation Pond P-12-3), page 7 of the HydroCAD calculations (page 11 of the pdf), incorrectly lists **Watershed P-13-8 Tc** of 17.3 minutes for Subcatchment 6S: P-12-3 Watershed. Please update the HydroCAD calculations using the correct Tc for the Pond P-12-3 Watershed in Appendix 4.6-50 (Design Details – Sedimentation Pond P-12-3). (BSM)

Section 4.11 – SPGM Removal and Replacement

28. Please update Plate 4.11-1 (Propose SPGM Respread Depths – Method A) to include the latest drill hole locations and corresponding proposed SPGM respread depths, if necessary, in Section 14. (MLJ)

29. The "unleased federal coal tracts" delineations on Plate 4.11-1 appeared to have changed according to Plate 4-1.1 (Pit Layout and Facilities Map). Please address this discrepancy. (MLJ)

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

30. Please update the Lee Dresser pre- and post-mine narrative on page 35 of Appendix 4.12-2 (Pre- and Post-Mine Land Use Discussions) to describe how the developed water resources will be replaced on the native grassland in the N½ of Section 14. (GAW)

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

31. Please revise Section 4.13 (Fish and Wildlife Resource Protection, Enhancement, and Monitoring Plan) such that the information is current and includes the Revision 8 Addition Area. Revise the Threatened and Endangered Species subsection in the Fish and Wildlife Protection and Enhancement Plan to include a current list of threatened, endangered and proposed species that could potentially occur in the permit area according to the USFWS IPaC site. Please also indicate if IPaC identifies any designated critical habitat for threatened and endangered species in the permit area. The proximity of designated critical habitat should be discussed in relation to the permit area. The fish and wildlife protection and enhancement plan should include language about the likely hood of any of IPaC identified species being present in the permit area. Please provide a species-specific protection and enhancement plan (PEP) that includes measures that will be taken to avoid take of any species that could potentially be found in the permit area. For example, if IPaC indicates that the Northern Long-Eared Bat could potentially exist in the permit area, the protection and enhancement plan should specifically state that trees will not be removed during time periods when the species might be adversely affected. NDAC 69-05.2-10-03(6)(d) requires the application affirmatively demonstrate that operations will not affect the continued existence of endangered or threatened species or result in adverse modification of their critical habitats. (GAW)

Please contact us with any questions.

Sincerely,

Zanna A Brinkman

Zanna A. Brinkman
Director
Reclamation Division

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Center Mine\Permits\BNCR - 1101\Revisions & Renewals\No. 8\Rev8_tech5_rvw_ltr_12-12-22