

PSC - 11

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A BNI ENERGY COMPANY

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April 28, 2022

RECEIVED

APR 29 2022

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

NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Dear Ms. Brinkman,

This submittal contains a response to your Technical Review 2 letter to us dated February 18, 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:

*Please make sure that you are opening the electronic permit with the Internet Explorer browser ONLY to ensure that the permit works properly.*

*All of the plates in the Technical Review 2 response submittal have been updated to include the permit boundary change from Revision 9 and the boundary change from the bond release in BNCR-9401.*

### **Section 1.15 - List of Consultants**

1. Follow-up to item No. 2: Please also update Section 1.15 (List of Consultants) to recognize that D&L Enterprises is apparently no longer in business following the death of Dennis Foss, and that Braun Intertec has relocated to 1502 Grumman Lane, Bismarck ND 58504. Two outdated addresses for Braun Intertec are currently listed in Section 1.15. (WTG/JAR)

*BNI does not consider this list as one that needs continuous updating. The addresses listed are the locations of the consultant at the time when the work was performed. There are two address for Braun Intertec because they were utilized as a consultant for two different applications, the initial application for BNCR-1101 and then again for the C1 addition to BNCR-1101. "Deceased" has been added behind Dennis Foss's name.*

### **Section 3.1 - Topographic Information**

2. Follow-up to item No. 3: Please revise the label for the C1 addition area on Plate 3.1-1 (Pre-mining Topography) and Plate 3.1-2 (Pre-mining Area slope map), and other plates as necessary to "C1 Addition in 2022" or "C1 Addition". (PJR)

BNI COAL, LTD.  
2360 35<sup>TH</sup> AVENUE SW, CENTER, ND 58

94 RC-20-438 Filed: 8/22/2023 Pages: 14  
Exhibit PSC11 - BNI Response to Technical Review 2  
(04/28/22)

*Removed call outs for C1 Addition. Updated 9401 boundary and removed Cemetery boundary for 1101.*

### **Section 3.3 - Ground Water**

3. Follow-up to item No. 9: Please consider adding another ground water monitoring well near the section line between Section 10 and Section 15 in the C1 addition area to assist in accurately describing all characteristics of present aquifers and to ensure there are no negative impacts to the area. NDAC 69-05.2-08-06, 69.05.2-09-12 & 69.05.2-16-14. (PJR)

*A discussion with the landowner in Section 15 was had and an agreement on location of a well nest was approved. When a well driller will be available is another question?*

4. Please add section numbers to Plate 3.3-1, Ground Water Monitoring Map. Also, please increase the size of text for the elevation on all ground water monitoring wells, so they are clearly visible. (PJR)

*Both request were updated on the Plate. Section numbers were added and elevation text was enlarged to appear larger.*

### **Section 3.4 - Surface Water**

5. Please review the Surface Water Management Plan map, Plate 4.6-1, to ensure that intermittent streams in Sections 10 and 16 of the addition area are properly depicted as areas unsuitable for mining and clarify if disturbance is planned within 100 feet of these intermittent streams. Segments of drainages in these tracts are identified as intermittent streams but they are not hatched unsuitable for mining. (GAW)

*Updated hatching for Sections 10 and 16 intermittent stream. Updated legend, updated labels of completed Surface Water Management structures.*

### **Plate 3.4-5 - Lentic Wetlands, Lotic Wetlands and DWR Locations**

6. Follow-up to item No. 24: Please revise Plate 3.4.5, Lentic Wetlands, Lotic Wetlands and DWR Locations, so that the label identifying spring SPG-NE23-16-141-84 is not on top of the label identifying SPG-NE23-14-141-84. NDAC 69-05.2-05-02(1). (GAW/MLJ/JAR)

*Shifted for 14 to the south so all are identifiable.*

### **Section 3.7 - Prime Farmlands**

7. For purposes of Section 3.7 (Prime Farmlands), the permit applicant must clearly indicate the prime farmland acreage to be mined that is subject to NDAC 69-05.2-26 (Performance Standards - Prime Farmland) as required by NDAC 69-05.2-05-02(1). Inconsistent prime farmland mining disturbance acreages appear to be presented throughout Section 3.7 narrative and tables. Please use acreages from Table 2a of approved Revision No. 7, and Table 2a of the latest version of the Revision No. 8 application (assuming that it is accurate), to indicate in the narrative that 118.03 acres of

prime farmland acreage will be mined within the original permit boundary, and 43.83 acres of prime farmland acreage will be mined within the Revision No. 8 acreage addition, for the total of 161.86 acres presented in Table 2a. (WTG/MLJ)

*Revised narrative to match Table 2a. Additionally Tables 3a and b were updated to include the Revision 8 addition area rather than using Tables 3c and d. Final values were 285.14 total prime farmland acres within BNCR1101 were standards do apply with 175.53 planned to be disturbed with 161.86 acres being mining disturbance.*

8. Follow-up to item No. 43: Please retain and clarify the reference to “Revision 8 addition” on page 1 of Section 3.7 by explaining how Section 3.7 is being revised to recognize the Revision No. 8 acreage addition to the permit as required by NDAC 69-05.2-05-02(1). The Prime Farmland Soil Physical and Chemical Properties Comparison subsection references the original permit boundary and the Revision No. 8 acreage in the narrative and tables. (WTG/MLJ)

*Narrative revised to state that Revision 8 adds 2,661 acres into the permit with 74.23 acres were prime standards apply with 51.93 of those planned to be disturbed.*

9. Follow-up to item No. 49: Please clarify the “... there are 285.14 acres of prime farmland acres where standards do apply within disturbance boundaries, and therefore will be reclaimed.” narrative reference on page 6 of Section 3.7 because the acreage is incorrect. Table 2a totals indicate that 161.86 acres of prime farmland will be mined. (WTG/MLJ)

*Updated narrative stating 285.14 acres where standards apply but only 175.53 will be disturbed (mining and associated disturbance and will be reclaimed as Prime farmlands.*

10. Please revise Table 3c to present the dominant first order map units within the Revision No. 8 mining disturbance boundary by descending order of mining disturbance percentage similar to Table 3a as required by NDAC 69-05.2-05-02(1). (WTG/MLJ)

*Removed table and combined data with 3a*

11. Please revise Table 3d to present the dominant first order map units within NRCS-designated prime farmlands within in the Revision No. 8 mining disturbance boundary by descending order of NRCS prime areas percentage similar to Table 3b as required by NDAC 69-05.2-05-02(1). (WTG/MLJ)

*Removed table and combined data with 3b*

12. Follow-up to item No. 57: Please add narrative to the Prime Farmland Soil Physical and Chemical Properties Comparison subsection of Section 3.7 indicating that BNI is using the mining disturbance boundary in the Revision No. 8 acreage addition (2,661.04 acres) to make the demonstration for mixing prime and non-prime subsoil in the Revision No. 8 acreage addition required by NDCC 38-14.1-24(6)(b) and NDAC 69-05.2-09-15(5). BNI appears to be using only the Revision No. 8 acreage addition (2,661.04 acres) to make the demonstration for mixing prime and non-prime subsoil in the Revision No. 8 acreage addition based on the addition of Tables 3c and 3d, as well as Tables 6 and 7. Please rearrange Tables 3a and 3b to place them behind what should be retained as the approved Revision No. 7 narrative of Section 3.7 addressing the dominant Order 1 soils within the

original mining disturbance boundary. The second paragraph of page 12 should be revised to address only the dominant Order 1 soils within the Revision No. 8 acreage addition. Section 3.7 narrative and table titles should be revised as necessary throughout to clearly identify distinctions between the original permit area and the Revision No. 8 acreage addition. (WTG/MLJ)

*Revised tables and narrative to reference addition of 2,661 acres and added them in the existing acreage tables rather than keeping as a stand-alone table.*

13. Please review the total of 32.04 acres for prime farmland mined in the Revision No. 8 acreage addition listed in Table 3d. It appears that the acreage should total 43.83 acres. (WTG/MLJ)

*Table removed*

14. Follow-up to item No. 58: Please reference Table 3d, Table 6, and Table 7 in the second paragraph of the Prime Farmland Soil Physical and Chemical Properties Comparison subsection on page 14 regarding the dominant first order map units within the Revision No. 8 mining disturbance boundary, and the dominant first order map units within NRCS-designated prime farmlands within the Revision No. 8 mining disturbance boundary. (WTG/MLJ)

*Tables removed and incorporated into 3b, 4, and 5.*

15. Follow-up to item No. 58: Please revise Table 6 to round the analytical data numbers consistent with Table 7. (WTG/MLJ)

*Removed table*

16. Follow-up to item No. 58: Please revise Table 7 to add analytical data for Savage and Vebar soil map units that should be included in the table. (WTG/MLJ)

*Removed table*

17. NDAC 69-05.2-26-04 states that the minimum thickness of suitable plant growth material (SPGM) reconstructed for prime farmland must be 48 inches, or a thickness which is equal to the depth of the original soil profile up to a subsurface horizon which inhibits root penetration, whichever is shallower. NDAC 69-05.2-26-04 explains that soil horizons are considered as inhibiting root penetration if their densities, chemical properties, or water supplying capacities restrict or prevent penetration by roots of plants common to the vicinity of the permit area and have little or no beneficial effect on soil productive capacity. The Parshall fine sandy loam and Vebar fine sandy loam soil map units presented in Table 3d each constitute 12 percent of the dominant first order map units within NRCS-designated prime farmlands within the Revision No. 8 mining disturbance boundary. Subsoil salvage depths for the Parshall fine sandy loam and Vebar fine sandy loam soil map units are limited by sandy parent material as indicated in Table 3 of the 2018 high intensity soil survey for the Revision No. 8 acreage addition. The 48 inch depth required for reconstructed prime farmland, or a thickness which is equal to the depth of the original soil profile up to a subsurface horizon which inhibits root penetration, whichever is shallower, exempts BNI from supplementing subsoil for the Parshall fine sandy loam and Vebar fine sandy loam soil map units. We believe,

however, that BNI will be unencumbered by committing in Section 3.7 to reconstruct prime farmland in the Revision No. 8 acreage addition with 48 inches of SPGM considering the subsoil surplus, the SPGM mixing agreements, and the approval to mix prime and non-prime subsoil currently existing in the original permit area, and potentially existing in the Revision No. 8 acreage addition. Please revise Section 7 to explain the limited salvage depths for the Parshall fine sandy loam and Vebar fine sandy loam soil map units in the Revision No. 8 acreage addition. Please also revise Section 3.7 at BNI's discretion with its commitment to reconstruct prime farmland in the Revision No. 8 acreage addition with 48 inches of SPGM. (WTG/MLJ)

*Combined Revision 8 addition acres with existing BNCR1101 for dominant soil orders. Based on this 11 soil series were identified and Table 3a reflects that. Additionally the dominant order soils designated as prime farmland was combined between the original permit area and Revision 8 acres. Four soil units were identified with this combination and Vebar and Parshall were not identified as dominant prime soils, however Vebar was a dominant soil looking across mine wide and was largely attributed to more of it identified in the Revision 8 addition area. Thus a statement was added to page 13 with BNI's continued commitment to salvage 48" of prime farmland to the extent possible with continuing to pursue prime farmland soil swaps as they are identified in the field. Based on a quick review there will be likely approximately 10 acres of Vebar and Parshall soils in the Revision 8 addition area that are designated as Prime that will likely be swapped with some adjacent tracks of Williams and/or Arnegard soils.*

18. Please revise Section 3.7 to delete duplicate Table 3c on page 16. (WTG/MLJ)

*Removed Table*

19. Follow-up to item No. 63: Please revise Plate 3.7-2 (Dominant Order 1 Soils and NRCS Designated Prime Farmland Map Units withing Mining Disturbance) to include the dominant Order 1 soil map units found within the Revision No. 8 acreage addition mining disturbance boundary (new Table 3c in Section 3.7), and the dominant Order 1 soil map units found within the areas designated as NCRS prime farmland within the Revision No. 8 acreage addition mining disturbance boundary (new Table 3d in Section 3.7). As noted in a related item, BNI must indicate if it is using the mining disturbance boundary in the entire permit acreage (11,021.76 acres), or only the Revision No. 8 acreage addition (2,661.04 acres), to make the demonstration for mixing prime and non-prime subsoil in the Revision No. 8 acreage addition required by NDCC 38-14.1-24(6)(b) and NDAC 69-05.2-09-15(5). As currently presented, Plate 3.7-2 erroneously indicates that the dominant Order 1 soil map units found within the original BNCR-1101 permit boundary mining disturbance boundary (Table 3a in Section 3.7) are identical to the dominant Order 1 soil map units found within the Revision No. 8 acreage addition mining disturbance boundary (new Table 3c in Section 3.7). Please also revise the plate's legend to recognize the extensive soil map unit changes necessary with Revision No. 8. Two soil map unit legends are required for Plate 3.7-2: (1) the existing legend for the original permit area, and (2) a new legend for the Revision No. 8 acreage addition. (WTG/MLJ)

*Revised map to depict the 11 dominant soil series identified after recalculating with the Rev. 8 addition. The Dominant Prime soils did not change.*

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

20. Follow-up to item No. 68: Please edit the first sentence of the Pheasant Crow Count subsection on page 13 of Appendix 3.10-8, Baseline Fish and Wildlife Inventory Plan – Revision 8, to clarify that no “stops” were added to the existing 35- stop route if that is what is intended or otherwise revise the sentence to provide clarity. (GAW)

*Added “Stops” to sentence for clarity.*

### **Section 3.12 - Cultural and Historical Resources and Protection**

21. Follow-up to item No. 71: It appears that label symbology has been applied to archeological site status indicating eligible, ineligible, and avoidance as requested; however, several polygon fill colors representing inventory and testing survey dates were deleted on the most recent submittal, thereby diminishing the information that was previously available. Please review and revise Plate 3.12-1 to reinstate previous polygon fill colors, or use fill patterns, as necessary to clearly represent inventory and testing survey dates. Polygon outline color symbology does not appear to be suitable for Plate 3.12-1. (BEB/WTG/JAR)

*Reverted back to previous shading to represent different survey efforts*

### **Section 4.1 - Operations Plan**

22. Please review the Abandoned Mines subsection on page 4.1.5 of Section 4.1, Operations Plan, to ensure the narrative accurately reflects the current mine plan. The second sentence which states that “None of the abandoned lignite mines are located in areas where further disturbances are planned” is inconsistent with the Pit Layout and Facilities Map, Section 4.1-1 which shows mining near the abandoned coal mine in the N1/2 of Section 24 and an abandoned coal mine is depicted in or immediately adjacent the pool area of sediment pond P-13-6. Please review and update the Abandoned Mine subsection for compliance with NDAC 69-05.2-09-10 and NDAC 69-05.2-13-06 which requires avoidance to within 500 feet unless the activities result in improved resource recovery, abatement of water pollution or elimination of hazards to public health and safety. (GAW)

*Updated narrative to address disturbances for the improvement of resource recovery for the abandoned mine in the N ½ of Section 24.*

### **Plate 4.1-1 - Pit Layout and Facilities Map**

23. Sedimentation Pond P-9-2 is labeled as “P-9-1” in Plate 4.1-1 (Pit Layout and Facilities Map). Please correct the label for P-9-2. (JWE)

*Label has been updated.*

24. Follow-up to item No. 74: The location of the dragline boxcut spoils for 2027-757 pit in the C1 addition area are shown to be placed within the initial pit boundary. Please revise the location and extent of the boxcut spoils so they are not placed within the pit boundary. (JWE)

*The first pit will require the dragline to place the spoils behind or in the direction of mining. The spoils will then be spread out and incorporated into the next 3 pits and ultimately end up in the first pit being dug. The result is that the spoils are all within the mineral removal area.*

25. Please review the Pit Layout and Facilities Map, Plate 4.1-1, to ensure all intermittent streams are depicted as areas unsuitable for mining for compliance with NDAC 69-05.2-16-20. It is not clear if sediment ponds P-16-04 and P15-02 will be constructed within 100 feet of intermittent streams. (GAW)

*Hatching around the intermittent stream in Sections 16 and 10 has been updated. Both P-16-4 and P-15-2 are outside of the 100' offset from intermittent streams, they are both within ephemeral stream boundaries which do not require the same 100' offset.*

26. Please depict and label each farmstead in the permit or within ½ mile of the permit boundary on the Pit Layout and Facilities Map, Plate 4.1-1, as either an occupied or unoccupied farmstead. Occupied farmsteads that BNI has secured written consent to operate within 500 feet of should be depicted differently than those where arrangements have not been secured with the consenting surface owner. The prohibition on surface coal mining activities within 500 feet of a farmstead only applies to occupied dwellings so it is unclear why 500 foot buffer zones are placed around unoccupied farmsteads. Please revise the Pit Layout and Facilities Map so that one can easily determine where surface coal mining is prohibited by NDCC 69-05.2-04-01.1(4). (GAW)

*Setbacks around farmsteads within ½ mile of the permit have been updated. The current permit term (2025) does not have any disturbances within the 500' setbacks. Prior to any future disturbance within these depicted disturbances BNI will evaluate and pursue appropriate access agreements with the landowners.*

27. Please review the 500-foot setback around farm buildings and residences on the Pit Layout and Facilities Map and update to ensure that the information provided is current, accurate and consistent with what is stated in the Existing Structures narrative in Section 4.2. Narrative on page 4 of Section 4.2 states there is a 500-foot setback around the Lackman residence in the E1/2 of Section 14 but a setback boundary is not depicted around this farmstead on the Pit Layout and Facilities Map. (GAW)

*Section 13's unoccupied farmstead setback has been removed from the map and Lackman's setback was added. The setback for BNI's farmstead in Section 13 has been updated to 100' for historical features.*

28. The Burton and Etheleen Hoovestal abandoned farmstead in the NW1/4 of Section 22, T141N, R84W is not depicted on the Pit Layout and Facilities Map, Section 4.1-1 whereas other abandoned farmsteads are depicted. Please establish a consistent protocol for abandoned farmsteads and depict and label them in a consistent manner on the Pit Layout and Facilities Map. (GAW)

*The abandoned farmstead has been added to Section 4.1-1 and the setback has been removed from Section 4.2.*

## **Section 4.2 - Existing Structures**

29. Please update Section 4.2, Existing Structures, to clarify if any mining activities will occur within 500 feet of an underground mine for compliance with NDAC 69-05.2-09-10. NDAC 69-05.2-13-06 states that mining activities may not be conducted within 500 feet of an underground mine unless the activities result in improved resource recover, abatement of water pollution or elimination of hazards to public health and safety. Sediment pond P-13-6 is clearly within 500 feet of an underground mine, and mining is planned near the abandoned coal mine in the N1/2 of Section 24. It is not clear if mining activities are planned within 500 feet of the Historic Nelson Mine and Spring Valley Coal Mine. (GAW)

*Disturbance of abandoned mines in Section 13 and 24 have been detailed in the Abandoned Mine narrative of Section 4.1.*

30. The Brian Dresser farmstead narrative on page 3 of Section 4.2, Existing Structures, states that BNI does not intend disturbance within 500 feet of the farmstead, but sediment pond P-11-1 is located within 500 feet of the Brian Dresser farmstead according to the Pit Layout and Facilities Map, Section 4.1-1. Please review and revise the narrative or move the pond for compliance with NDCC 38-14.1-07 (5) which prohibits mining activities within 500 feet of any occupied dwelling unless approved by the owner. (GAW)

*Updated narrative to state BNI has planned disturbance and will require a landowner agreement.*

31. Please revise the BNI Coal/Margaret Erhardt farmstead narrative on page 3 of Section 4.2, Existing Structures, to clarify what has transpired regarding this farmstead. BNI Coal has been added in front of Margaret Erhardt's name, but the narrative was not updated to provide clarity regarding the prohibition from mining within 500 feet of an occupied farmstead. (GAW)

*Updated narrative to remove pervious landowner. Set back has been updated to 100' for historical features located on the farmstead.*

32. The Jesse Lackman residence narrative on page 4 of Section 4.2 states that there is a 500 foot setback from an unoccupied dwelling and an out-building but mining activities are planned within 500 feet of these structures. Please revise the narrative to provide clarity. It is not clear why a building is termed a residence if it is unoccupied. (GAW)

*Updated narrative to state BNI has planned disturbance and will require a landowner agreement.*

33. Follow-up to item No. 82: As requested, the Darrin and Bruce Hoyer abandoned farmstead located in the SW<sup>1</sup>/<sub>4</sub> of Section 23 is now listed on page 1 in Section 4.2 as being outside the permit boundary; however, the number (20) label for the abandoned farmstead depicted in the SW<sup>1</sup>/<sub>4</sub> of Section 23 on Plate 4.2-1 (Existing Structures) no longer matches that of the number (4) listing for the abandoned farmstead on page 1 of the Section 4.2 narrative. Rearranging the Section 4.2 narrative has caused a mismatch between the number listing in the Section 4.2 narrative, and corresponding number label on Plate 4.2-1, for numerous structures. Considering that adequate descriptive labeling is presented for structures on Plate 4.2-1, BNI may wish to discontinue using a number

listing in the Section 4.2 narrative and corresponding number label on Plate 4.2-1, or to use an identifier system based on location that will not change. (WTG/GAW)

*Number labels have been removed.*

34. Please include a description of County Road 37<sup>th</sup> Ave SW in the Existing Structures narrative in Section 4.2 and discuss if BNI is planning to close or relocate this road. If this road is not going to be closed, then the narrative should provide an explanation about how BNI is planning to construct a haul road through the right of way and other mining activities that may come within 100 feet of the public road. (GAW)

*Narrative updated to include tentative future plans for the haul road crossing of County Road 37<sup>th</sup> Ave SW. Construction timeframe falls within BNCR 1101's next permit term.*

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

35. Follow up to item 96: Please label the 36" culvert to be placed underneath 37<sup>th</sup> Ave SW for Sedimentation Pond P-11-1 on Plate 4.5-1 (General Transportation Plan) and update Appendix 4.5-2 (Culvert Information Sheets) to include the design information for the culvert. (JWE)

*The culvert information sheets now included this culvert and it is depicted on the map.*

36. Follow up to item 97: Please label the 48" culvert to be placed underneath 37<sup>th</sup> Ave SW for Sedimentation Pond P-14-1 on Plate 4.5-1 (General Transportation Plan) and update Appendix 4.5-2 (Culvert Information Sheets) to include the design information for the culvert. (JWE)

*The culvert is shown on the map and is included in the culvert information sheets of Appendix 4.5-2*

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

37. Follow-up to item No. 96: The HydroCAD calculations use a 10 year – 6 hour design storm event for the watershed for Pond P-11-1 in order to determine the correct culvert size underneath 37<sup>th</sup> Ave SW but a 10 year – 24 hour design storm event should be used. The 10 year – 6 hour design storm event is acceptable to determine the runoff for the 10.92 acre watershed above the culvert as stated in NDAC 69-05.2-24-03. Additionally, the 50 year – 6 hour storm event HydroCAD calculations for the emergency spillway is missing from the culvert design. Please redesign the culvert using a 10 year – 24 hour storm event for P-11-1, a 50 year – 6 hour storm event for the emergency spillway, and a 10 year – 6 hour storm event for the additional watershed above the culvert. (JWE)

*The routing for the downstream culvert was the result of the 50 year-6 hour event through the emergency spillway and a 15 year-24 hour event through the remainder of the culvert watershed. The resulting culvert size is a 40" CMP.*

38. Follow-up to item No. 97: The HydroCAD calculations for the design of the culvert under 37<sup>th</sup> Ave SW use a 10 year – 24 hour storm event for the emergency spillway and the watershed above the culvert. Please redesign the culvert using a 50 year – 6 hour storm event for the emergency spillway and a 10 year – 6 hour storm event for additional

watershed above the culvert. Lastly, the HydroCAD calculations use an average watershed slope above sedimentation pond P-14-1 of 2.68%, but the *Pond Design Information Sheet* lists the average watershed as 7.8% and no watershed slope was assigned to the culvert watershed in the HydroCAD calculations. Please revise the HydroCAD calculations using an average watershed slope of 7.8% and assign a watershed slope for the culvert watershed. (JWE)

*HydroCAD does not allow different storm events for different nodes, therefore a 50 year-6 hour event was used for the entire watershed. The land slope of 2.68% represents the flow path used to determine the time of concentration. The total runoff volume is determined from the Cn factor and land area.*

39. Follow up to item No. 102: The watershed acreage of 30.7 for Sedimentation Pond P-13-8 has not been updated in the HydroCAD section in Appendix 4.6-42 (Design Details – Sedimentation Pond P-13-8). Please update the correct acreage in the HydroCAD calculations. (JWE)

*The corrections has been made to 30.7 acres.*

40. Follow-up to item No. 103: Sedimentation pond design details located in Appendices 4.6-51, 4.6-52 and 4.6-55 state that NDPDES points will be requested from the NDDOH. Please change the agency to the ND DEQ. (JAR)

*The change to ND DEQ has been made in the 3 appendices.*

41. Please remove the “303 Acres” large font label adjacent to Section 21 in the southeast corner of Plate 4.6-1 – Surface Water Management Plan Map. (JAR)

*The 303 Acres have been removed.*

42. Plate 4.6-1 (Surface Water Management Plan) labels sedimentation Pond P-9-2 as “P-9-1”. Please correct the label for P-9-2. (JWE)

*The label has been corrected.*

43. Plate 4.6-1 (Surface Water Management Plan) shows the embankment for sedimentation pond P-13-8 within the stream buffer zone. Please revise the design of the sedimentation pond so no disturbance will take place within the stream buffer zone as required by NDAC 69-05.2-16-20. Additionally, please update all other plates which depict the sedimentation pond. (JWE)

*The pond has been modified to avoid the stream buffer zone.*

#### **Section 4.9 - Reclamation Schedule**

44. The narrative for Variance Area No. 7 on page 4.9-4 states that the variance area that will be mined beginning in 2026 but the Pit Layout and Facilities Map, Plate 4.1-1, does not show mining occurring until 2027. The variance narrative also refers to “spoil piles” that are not depicted on the Pit Layout and Facilities Map. Perhaps the term “spoil piles” should be replaced with “spoil ridges” or simply “spoil”. Please revise the narrative to

provide clarity and include an estimate of the acreage associated with Variance Area No. 7 in the narrative. (GAW)

*Narrative has been updated: corrected mineral removal dates, added acreage, boxcut spoil clarification. Plate has also been updated with 1101 permit boundary.*

#### **Section 4.10 - Regrading Plan**

45. Follow-up to item No. 107: BNI's October 28, 2021 technical review response revised Plate 4.10-1 (Post-Mining Topography) as requested for proposed prime farmland reclamation in the NE $\frac{1}{4}$  in Section 13. The revised topography increased the acreage of postmine topographic changes in the existing permit proposed with Revision No. 8. Please update the previous acreage (1,211 acres) listed in the second paragraph on page 1 of Section 4.10 (Backfilling and Grading) to recognize the increased acreage of postmine topographic changes in the existing permit proposed with Revision No. 8. (WTG/GAW/JAR)

*Updated acreage to include additional 10 acres in the NE  $\frac{1}{4}$  of Section 13.*

46. Follow-up to item No. 107: BNI's October 28, 2021 technical review response revised Plate 4.10-1 (Post-Mining Topography) as requested for proposed prime farmland reclamation in the NE $\frac{1}{4}$  of Section 13 of the existing permit area. It also revised Plate 4.10-1 to resolve potential concern with postmine changes proposed for the HC-14 and HC-15 watersheds in Sections 11 and 14. These two areas of postmine topographic changes are depicted on Plate 4.10-1 but it is not necessary to depict postmine topographic changes proposed in the Revision No. 8 addition area. Please remove the polygon depicting the postmine topographic changes proposed in the Revision No. 8 addition area on Plate 4.10-1. The polygon depicting the postmine topographic changes proposed in the NE $\frac{1}{4}$  of Section 13 should be retained on Plate 4.10-1, but as currently presented the area of proposed topographic change overlays the postmine topographic contours. Please reorder the plate's layers so that the elevation contours are visible. It may be may be necessary to revise one of the layer's color as well. (WTG/GAW/JAR)

*Removed hatching in C1 and general layer management to help with map clarity.*

47. Follow-up to item No. 107: The postmine topography was revised on Plate 4.10-1 (Post-Mining Topography) for proposed prime farmland reclamation in the NE $\frac{1}{4}$  in Section 13 as requested with the October 28, 2021 technical review response. It appears, however, that postmine topographic changes in the NE $\frac{1}{4}$  in Section 13 have not been updated on Plate 3.4-3 (Post-Mining Watersheds). Please review and revise Plate 3.4-3 as necessary. Please also review and revise the pre-mine and post-mine watershed comparison tables in Section 3.4 if the topographic changes in the NE $\frac{1}{4}$  in Section 13 resulted in any changes to the pre-mine and post-mine watershed comparisons for watersheds HC-5 and HC-6. (WTG/JAR/GAW)

*Prime farmland hatch was updated and contours changed to reflect the postmine topo. The watershed boundary wasn't affected.*

48. Follow-up to item No. 109: The linetype and/or linetype scale for the "5 FOOT EXISTING CONTOUR" has not been corrected in Plate 4.10-1 (Post Mining Topography). (JWE)

*Linetype generation has been enabled.*

**Section 4.12 - Revegetation Plans, Post Mining Land Use, and Determining Reclamation Success**

49. Follow-up to item Nos. 119 through 130: Please review Section 4.12 to ensure updated narrative, plates and appendices in Section 4.12 were included in the October 28, 2021 version of the permit. Although BNI responded that the permit was updated in response to Items 119 through 130, the changes are not apparent. Please use highlighting on all word changes and include Revision 8-time stamps on all altered documents. (GAW)

*Updated plates resubmitted. Based on comments 51-53 unintended previous version was reviewed. Updated one submitted.*

50. Follow-up to item No. 120: Please revise the postmining land use discussions in Appendix 4.12-2 (Pre-mine and Post-mine Land Use Discussions) for the Lee Dresser property (S½ of Section 11 and a portion of the N½ of Section 14) to explain why the surface owner's request for additional woodlands, wetlands, and shelterbelts cannot be provided in accordance with the requirements of NDAC 69-05.2-23-03, or update the postmining land uses of this property to comply with the landowner's postmining preference statements in Appendix 4.12-1. We understand that BNI is in the process of obtaining an updated landowner preference statement from Lee Dresser and that BNI will address this item accordingly. (GAW)

*Narrative in Appendix 4.12-2 revised to reflect that original preference statement was from Lee's brother Brian prior to their mothers (Mary) estate being settled. Lee has since inherited the land and BNI is still attempting to get a preference statement back. At this time BNI is planning to return land uses back to pre-mine setting but plans to still get a new preference statement from Lee prior to disturbance.*

51. Follow-up to item Nos. 122 and 123: BNI states they are planning hayland around the reclaimed wetlands in the SE1/4 and NE1/4 of Section 15 and that they updated the permit accordingly but Plate 4.12, Post Mine Land Use Map, continues to depict the wetland buffer areas as native grassland. Please change the land use label and shading of the wetland buffer area to hayland. (GAW)

*Land use changed to hayland*

52. Follow-up to item No. 125: Please depict wetland 11-1 on Plate 4.12-1, Post Mine Land Use. (GAW)

*Wetland 11-1 label placed*

53. Follow-up to item No. 126: Please provide an identification label for each reclaimed wetland, woodland, and shelterbelt on Plate 4.12-1 (Post Mine Land Use). (GAW)

*Placed labels on plate accordingly*

54. Follow-up to items No. 129: Section 11 of T141N, R84W, is not listed or labeled in the section column of Appendix 4.12-6 (Post Mine Land Use Acreage Table). Please correct this error. (GAW)

*Updated appendix with changes in red*

55. Follow-up to item No. 130: Please label the final **column** in Appendix 4.12-6, Postmine-land use Acreage table, to show that these are total acres for each parcel. (PJR)

*Added column and highlighted red*

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

56. Follow-up to item No. 132: Please consider providing bookmark links to the 19 pages associated with Plate 4.13, Wildlife Monitoring Map. (GAW)

*Links bookmarked*

57. Follow-up to item No. 133: Please remove Appendix 4.13-1, PSC Letter of Approval of Wildlife Plan, from the table of contents if this information has been moved to Appendix 3.10-8 as stated has been done. (GAW)

*Removed Appendix 4.13-1 from TOC.*

#### **Section 4.14 - Reclamation Cost Estimate for Bonding Purposes**

58. Please replace Section 4.14 (Reclamation Cost Estimate for Bonding Purposes) with the approved version from Revision No. 7. The reclamation cost estimate will be reviewed in Revision No. 9 instead of Revision No. 8. (JWE)

*The cost estimate for the year 2022 was reviewed in Revision 9 and approved at \$42,449,183. For Revision 8 Tech Review 2, the cost estimate was completed for the end of the permit term of 2024. The starting point for the 2024 bond was the approved Revision 9 bond map, and calculations. A map, cross sections and associated cost estimate was put together for 2024 and resulted in a cost estimate of \$37,736,726. The lower costs reflects the pits being in lower cover and more of the boxcut spoils present in 2022 have been moved and respread into the post mine topography. The 2024 estimate took into account the Section 9 pit being active, Section 7 ponds being reclaimed, and the longer haul distances of existing stockpiles to the active 8200 pit and idled Section 13 736 pit. In comparison, 2022 pit fill volume was 15.8 MCY while 2024 is 11.9 MCY. Disturbed acres is essentially the same, while SPGM stockpiles went up from 9 MCY in 2022 to 9.4 MCY in 2024.*

#### **Section 4.15 -Signs and Markers, Socioeconomic Impacts, etc.**

59. Follow-up to item No. 146: Please repair the hyperlink to Section 4.13 at the bottom of page 2 in Section 4.15 so that it connects to its intended source. (PJR)

*The hyperlink opens the correct document in our copy. Please make sure that you are opening the electronic permit with the Internet Explorer browser only to ensure that it works properly.*

Thank you for your consideration of this matter. If you have any questions regarding this submittal, please contact me at the Center office.

Sincerely,

A handwritten signature in blue ink, appearing to read "Karene M. Hall". The signature is cursive and somewhat stylized.

Karene M. Hall  
Permit Coordinator