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August 31, 2021

Mr. Dean Moos, Director  
Reclamation Division, NDPSC  
Department 408  
600 East Boulevard Avenue  
Bismarck, ND 58505-0480

RE: Revision 9 to Permit BNCR-1101

Dear Mr. Moos,

This submittal contains a response to your Completeness Review 1 letter to us dated August 6, 2021. In this letter you listed completeness deficiencies that must be addressed before the Revision 9 application to BNCR-1101 can be deemed complete. Below is a listing of the deficiencies followed by our response:

**Revision No. 9 Application (SFN 10562)**

1. Please revise page 1 of the Revision No. 9 application form to insert the two acre parcel being added to the permit in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 18 with the revision. Please also add a revised application date header to page 1. (WTG/PJR)

*The 2 acre addition has been added to the application. A revised date has been added to the upper right corner.*

2. Please revise the Revision No. 9 application attachment to begin the narrative with the proposed mining sequence change that requires public notice and blend it with the existing narrative as necessary. We suggest the following, or similar, wording: "Revision No. 9 revises the mining sequence for 345 acres in Sections 20 and 21 planned for mining in 2031 through 2037, by advancing mining in the area to 2021 through 2032 with the revision." (WTG)

*The application attachment has been reworded to include a more detailed description of the mining sequence change.*

**Appendix 1.5-1 – Notice of Publication**

3. Please revise the first paragraph of Appendix 1.5-1 (Notice of Publication) for Revision No. 9 to begin the permit revision narrative with the proposed mining sequence change

that requires public notice and blend it with the existing narrative as necessary. We suggest the following, or similar, wording: "Revision No. 9 revises the mining sequence for 345 acres in Sections 20 and 21 planned for mining in 2031 through 2037, by advancing mining in the area to 2021 through 2032 with the revision." (WTG)

*The first paragraph of the Notice of Publication has been reworded to include a more detailed description for the change in mining sequence.*

4. The Commission deems the addition of two acres to the permit an incidental boundary change that, by itself, would not have made the revision application a significant alteration of the approved permit. The additional acreage is therefore not subject to a designation of land unsuitable for mining. Please remove the reference to the designation from the third paragraph of Appendix 1.5-1 (Notice of Publication) for Revision No. 9. (WTG)

*The third paragraph of the Notice of Publication has been updated to remove the references to land unsuitable for mining.*

5. Please revise the fourth paragraph of Appendix 1.5-1 (Notice of Publication) for Revision No. 9 with the following, or similar, wording: "The legal description and names of surface and coal owners in Sections 20 and 21 affected by the proposed mining sequence change follow:" Please also limit the legal description, surface owner(s), and coal owner(s) list in the notice to the NE $\frac{1}{4}$ , SE $\frac{1}{4}$ , and the S $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 20, and the NW $\frac{1}{4}$ , NE $\frac{1}{4}$ , SE $\frac{1}{4}$ , and the SW $\frac{1}{4}$  of Section 21. (WTG/JWE/JAR)

*The fourth paragraph has been updated to include only those sections affected by the mining sequence change.*

6. Please define the boundary of the mining sequence change proposed in Sections 20 and 21 on the Notice of Publication map of Appendix 1.5-1 (Notice of Publication) for Revision No. 9. Please also remove the arrows that are remnants of a previous revision's federal coal labels. Please also increase the font size for the two vertical township and range labels to ensure newspaper print legibility. (WTG/JAR/PJR)

*Updated the Publication map with suggested edits*

### **Section 1.7 – Business Entity Information**

7. Please revise Section 1.7.2 (Controlling Officers of BNI Coal, Ltd., BNI Energy, Inc., and ALLETE) to recognize the recent change with BNI Coal, Ltd. and BNI Energy, Inc.'s officers and directors. (WTG/JAR)

*Pat Cutshall has been named President and Michael Heger has been named as General Manager. The only other changes that have occurred at this time are Al Hodnik retiring and Wade Boeshans resigning. Board approval is necessary to replace the board of directors. The next board meeting is in October.*

## **Section 1.8 – Metes and Bounds Description of Permit Area**

8. Please vacate Plate 1.8-1 (Permit Boundary BNCR-1101) in the Revision No. 9 permit application because it depicts the proposed Revision No. 8 application permit boundary. (WTG/JWE)

*Plate 1.8-1 has been removed and the web page updated to "VACANT".*

9. Please consider removing the metes and bounds on pages 1-11 to 1-13. It is not necessary to retain both sets of metes and bounds when the only change is the removal of the exception area. (PJR)

*The initial metes and bounds on the above referenced pages has been removed.*

## **Plate 1.9-1 – Ownership Map**

10. Plate 1.9-1 (Surface and Coal Ownership) submitted with the Revision No. 9 application appears to be unchanged from Plate 1.9-1 contained in the complete application of Revision No. 8. Please make the following necessary corrections to Plate 1.9-1 for the Revision No. 9 application. Please also make the necessary corrections in the plate's legend and title box.

*The revised pdf for Plate 1.9-1 was not included with the original submittal. It has been updated with this submittal to address items a., b. and c. Additionally, Plate 1.9-1 was updated to transfer mineral ownership in Sections 17 and 19 T141N R83W from Florence Porsborg to Central Dakota Humane Society*

- a. Remove all depictions and labels for the Revision No. 8 additional acreage. (WTG/JWE)
- b. Remove the permit boundary in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 18 and label BNI's ownership of the two acre parcel proposed for addition to the permit to be consistent with surface ownership listed in Appendix 1.9-1 (Ownership Information (within Permit Boundary)). (WTG/JWE/PJR/JAR)
- c. Revise the surface ownership for the SE $\frac{1}{4}$  of Section 20 and the SW $\frac{1}{4}$  of Section 21 to be consistent with surface ownership listed in Appendix 1.5-1 (Notice of Publication) and Appendix 1.9-1 (Ownership Information (within Permit Boundary)). (WTG/JWE)

## **Section 1.10 – Areas Unsuitable for Mining**

11. Please review the last paragraph of Section 1.10, Areas Unsuitable for Mining, and update the cemetery narrative if appropriate. This revision may need to be conditionally approved to prohibit mining within 100 feet of the cemetery prior to cemetery relocation. (GAW)

*The last paragraph of section 1.10 was revised to illustrate BNI has purchased a two acre tract of land which consists of site 32OL561 or an unincorporated cemetery. BNI is currently working with BLM, OSMRE, SHPO and the next of kin on a burial relocation plan.*

### **Section 1.12 – Other Licenses and Permits**

12. Please review and update the address listed for the Environmental Protection Agency in item 2 in Section 1.12. The EPA website lists the address as: EPA – Region VIII, 1595 Wynkoop St., Denver CO 80202-1129. (JAR)

*The address for EPA has been updated.*

13. Item 6 in Section 1.12 states the Section 404 Clean Water Act Permit NOW-1997-61932-BIS expired on 08-31-2017, and the Individual Permit application was submitted and is under review by the USACE. The timeframe for the USACE review seems excessive; please review and update the permit status as necessary. (JAR)

*BNI has been issued a Nationwide 21 Permit that expires on March 14, 2026. Section 1.12 has been updated to include the permit and expiration.*

### **Section 1.15 – List of Consultants Furnishing Technical Data**

14. Please revise “Soils Study” to state “Soil Survey for the Permit Area” for the Prairie Soil Consulting, LLC listing in Section 1.15 (List of Consultants). Please also remove the “owner” description and add M. G. Ulmer as a Professional Soil Classifier. (WTG)

*Prairie Soil Consulting has been updated and MG Ulmer has been added as a Professional Soil Classifier.*

### **Appendix 1-1 - Revision Summary and List of Changes**

15. Please revise the Revision 09 Summary to BNCR-1101 in Appendix 1-1 (Revision Summary and List of Changes) to begin the narrative with the proposed mining sequence change that requires public notice and blend it with the existing narrative as necessary. We suggest the following, or similar, wording: “Revision No. 9 revises the mining sequence for 345 acres in Sections 20 and 21 planned for mining in 2031 through 2037, by advancing mining in the area to 2021 through 2032 with the revision.” (WTG)

*The beginning narrative for Revision 9 has been updated to include a more detailed description of the change in mining sequence.*

### **Appendix 1-2 - Certified Copies of Leases and Assignment Documents, Article of Amendment to Articles of Incorporation**

16. Lease information for the C1 addition area (submitted with Revision No. 8) is included in Appendix 1-2. Please remove the lease information for the C1 addition area. (JWE)

*The C1 addition lease information has not been removed since right of entry requires permit approval before access is granted. Also, removing all of the C1 addition leases will require many bookmarks and links to be removed and redone.*

17. It does not appear that the Revision No. 9 application contains right of entry documentation for the two acre parcel proposed for addition to the permit in

SE<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub> of Section 18. Please add the documentation or explain where it is located in the revision application. (WTG/JWE)

*The warranty deed for BNI's purchase of the 2 acre parcel in Section 18 is included with this submittal.*

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

18. Revise Plate 3.12-1 (Cultural Resources Location Map) to exclude the C1 addition area and show the correct permit boundary for BNCR-1101. (JWE)

*Reverted back to Revision 4 version of Plate 3.12-1*

19. BNI updated the Pit Layout and Facilities Map, Plate 4.1-1, to show mining through St. Lucas cemetery in the southeast corner of the NE<sup>1</sup>/<sub>4</sub> of Section 18. Please update the Cultural and Historic Resources and Protection section of the permit to discuss the planned relocation of the cemetery, approvals needed, etc. NDCC 38-14.1-07 prohibits mining within 100 feet of a cemetery; however, the prohibition of mining near a cemetery does not apply if the cemetery is relocated in accordance with all applicable laws and rules [NDAC 69-05.2-04-01.1(5)]. (GAW)

*BNI is currently in discussion with NDSHPO, NDDEQ and BLM to determine primacy for regarding the St. Lucas cemetery. Once a decision has been reached by those parties BNI will develop and implement the appropriate relocation/reinternment plan. The plan will be added to the permit once primacy has been established.*

### **Section 4.2 – Existing Structures**

20. Please update the narrative about the St. Lucas Cemetery in Section 4.2 that states the cemetery is not within the permit boundary and will not be disturbed. Move the updated narrative into the *Occupied dwellings, unoccupied buildings, and cemeteries within the permit boundary* narrative. (JWE)

*The text was moved as suggested.*

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

21. Table 4.6-1 lists Diversion D-21-1 as “Diversion D-21-3”. Revise the table to list the correct diversion. (JWE)

*The table has been corrected to show Appendix 4.6-33 as Diversion D-21-1.*

22. Diversion D-21-1 is labeled twice on Plate 4.6-1 (Surface Water Management Plan) and diversion D-21-4 is labeled as D-21-1. Please revise Plate 4.6-1 by correcting the labels. (JWE)

*The Plate was updated to correctly label Diversion D-21-4 which diverts water into Pond P-21-4.*

**Plate 4.12-1 – Post Mining Land Use Map**

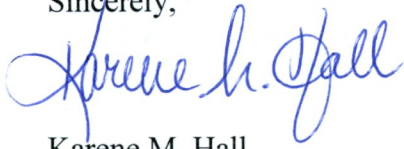
23. Remove the last page (page 8) of Plate 4.12-1, Post Mining Land Use Map, because it depicts the C1 addition area that is not included in Revision No. 9. (JWE)

*Removed Page 8 of Plate 4.12-1 Post Mining Land Use Map as requested.*

*Appendix 1.9-1 Ownership Information was updated to transfer mineral ownership in Sections 17 and 19 T141N R83W from Florence Porsborg to Central Dakota Humane Society.*

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