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A BNI ENERGY COMPANY

February 21, 2022

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

NORTH DAKOTA
PUBLIC SERVICE COMMISSION

RE: Revision 9 to Permit BNCR-1101

Dear Ms. Brinkman,

This submittal contains a response to your Technical Review 2 letter to us dated February 16, 2022. In this letter you listed technical deficiencies that must be addressed before the Revision 9 application to BNCR-1101 can be approved. Below is a listing of the deficiencies followed by our response:

Section 1 – Legal and Financial

1. Follow-up to Items No. 4, 6, and 8: Please include a bookmark for document #84332 in Appendix 1-2 (Certified Copies of Leases and Assignment Documents, Articles of Amendment to Articles of Incorporation). (JWE/MJF)

The bookmark has been added in Appendix 1-2.

2. Update Appendix 1-1 (Revision Summary and List of Changes) to account for the intermittent stream buffer zone narrative for MSHA Pond P-21-5, which was added to page 4.1-4 in Section 4.1 (Operations Plan). (JWE)

Appendix 1-1 was updated to include the change to Section 4.1 in technical review 1.

Section 4.0 – Operations

3. Follow-up to Item No. 15: Diversion 20-3 is labeled as Diversion 20-4 in Plate 4.1-1 (Pit Layout and Facilities Map). Please change the label to Diversion 20-3. (JWE/MJF)

The label has been changed.

4. Follow-up to Item No. 33: Please revise the second paragraph on page 4.1-4 in Section 4.1 (Operations Plan) to make it past tense. The current version sounds like disturbance

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within the intermittent stream buffer zone is being requested, but it has already been approved and completed. (JWE)

The paragraph was updated to reflect that disturbance has been completed.

Section 4.6 – Surface Water Management Plan

5. Please depict Diversion D-21-1 as a “Proposed Diversion” instead of an “Existing Diversion” in Plate 4.6-1 (Surface Water Management Plan) and Plate 4-1.1 (Pit Layout and Facilities Map) since it has not been approved yet. (JWE)

The two maps have been changed.

6. Please change the “Completion Date” for Diversion D-21-1 from 2021 to 2022 in Table 4.6-1 on page 4.6-6 in Section 4.6 (Surface Water Management Plan) and remove Diversion D-21-4 from Table 4.6-1. (JWE)

The date has been changed to 2022 and D-21-4 removed.

Section 4.14 – Reclamation Cost Estimate for Bonding Purposes

7. The review of Section 4.14 is being conducted separately from this correspondence. Once that review is finalized, Section 4.14 will be updated for Revision No. 9

Updates for Section 4.14 are not included with this submittal.

Midterm Review Items

Section 1 – Legal and Financial

8. Update Appendix 1-1 (Revision Summary and List of Changes) to account for the narrative changes in Section 4.5 (Transportation Plan) and describe the changes that were made. (JWE)

List of changes has been updated.

9. Follow-up to Item No. 5: Please update the NDDEQ address to: 4201 Normandy Street, Bismarck, ND 58503-1324. Also, please update the Region 8 EPA address to: 1595 Wynkoop Street, Denver, CO 80202-1129. (JAR)

The above listed addresses have been updated in the Legal and Financial Section 1.12.

Section 4.0 – Operations

10. Follow-up to Item No. 14: Please include SPGM stockpiles NE20T01-PF and SE17T01-PF in the SE1/4 of Section 17 in Permit BNCR-1101 in Plate 4.1-1 (Pit Layout and Facilities Map) if those stockpiles have been constructed. (JWE/MJF)

The two stockpiles have been added.

11. Follow-up to Item No. 14: Please update Plate 4.1-1 (Pit Layout and Facilities Map) to depict the Schmidt farmstead debris disposal location in the NW1/4NW1/4 of Section 17. (JWE)

The area is shown and labeled on the map.

Section 4.5 – Transportation Plan

12. Review Section 4.5 to ensure compliance with the rules outlined in NDAC 69-05.2-24 and Policy Memorandum No. 23. Specifically, review the rules related to the definition and certification of primary roads. (JWE)

BNI will review haul road certifications in 1101 to ensure that all roads are certified that are used to haul coal or spoil in accordance with Policy Memorandum No. 23 and NDAC 69-05.2-24. Certified roads will be shown in the legend separate from proposed/future roads.

13. Haul Road Section B is displayed as an “Undisturbed Proposed Haul Road” according to the legend in Plate 4.5-1. Please depict the appropriate sections of the road as being an existing haul road, undisturbed proposed haul road, or a proposed haul road/temporary ramp as depicted in the legend. (JWE)

Haul Road B is depicted as an existing haul road.

14. Haul Road Section A is displayed as an “Undisturbed Proposed Haul Road” according to the legend in Plate 4.5-1. Please depict the haul road as an existing haul road because it was certified in 2014. (JWE)

Haul Road A is now depicted as an existing haul road.

15. The designation for Haul Road Section E, as shown in Plate 4.5-1, is not depicted in the legend. Please revise the layer/line type of the haul road to appropriately describe the road. I am assuming that this road should be designated as a proposed haul road/temporary ramp since it has not been certified. (JWE)

Haul road Section E is shown as proposed road/temporary ramp in the legend.

16. Haul Road Section F is displayed as an “Undisturbed Proposed Haul Road” according to the legend in Plate 4.5-1. However, portions of the haul road will be constructed in disturbed areas once mining begins in Section 9. Please revise the layer/linetype for portions of this haul road to appropriately describe the road. (JWE)

The haul roads are now depicted as either existing or future with existing being certified. Haul road F is now show as proposed road/temporary ramp

17. Update the narrative on page 4.5-4 in Section 4.5 (Transportation Plan) to describe when Haul Road Section F will become a certified haul road since portions of it will be constructed on undisturbed lands and it will be used to haul coal. (JWE)

The narrative has been updated to reflect the road being built in 2022.

18. The designation for Haul Road Section D as shown in Plate 4.5-1 is not depicted in the legend. Please revise the layer/linetype of the haul road to appropriately describe the road. I am assuming that this road should be designated as a proposed haul road / temporary ramp since it has not been certified. (JWE)

Haul Road Section D is shown as proposed road/temporary ramp.

19. Table 4.5-1 on page 4.5-5 in Section 4.5 (Transportation Plan) states that Haul Road Section D will be constructed in 2019, but the narrative on page 4.5-4 states that the haul road will be constructed in 2027. Please update the table with the correct construction date. (JWE)

The table has been updated to reflect construction in 2027.

20. The narrative for Haul Road Section E on page 4.5-4 in Section 4.5 (Transportation Plan) does not state when the haul road will be constructed, and it does not state when the road will become certified (if it will be a certified haul road). Additionally, the overall narrative is incomplete and has incomplete sentences. Please revise the narrative as necessary. (JWE)

The narrative has been updated to reflect the road being constructed in sections once the final spoil grade is achieved within and surrounding the road corridor.

Section 4.6 – Surface Water Management Plan

21. Follow-up to Item No. 18: Please remove the design details for sediment ponds P-9-1, P-9-2, P-9-3, P-9-4, and diversion D-9-3 (Appendix 4.6-51, 52, 53, 54, and 55). Additionally, update Plate 4.6-1 (Surface Water Management Plan) and Plate 4-1.1 (Pit Layout and Facilities Map) to depict these ponds as “Future Sediment Ponds” instead of “Proposed Sediment Ponds”. If these ponds are retained in the permit, the appropriate advisory committee members must review the revision and they will have 45 days to respond. (JWE)

The design details were removed from this permit revision.

22. Follow-up to Item No. 18: Remove sediment ponds P-9-1, P-9-2, P-9-3, P-9-4, and diversion D-9-3 from Table 4.6-1 on page 4.6-6 in Section 4.6 (Surface Water Management Plan) and include narrative that the design details for the mentioned surface water management features will be addressed in a future revision. (JWE)

A sentence was added to the first paragraph of 4.6-2 stating the Future Sediment Ponds designs will be submitted in future permit revisions.

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

23. Follow-up to Item No. 21: The Federal Threatened, Endangered and Candidate Species listed in the table on the last page of Section 4.13 includes three species that are not listed as threatened, endangered or candidate in ND according to the USFWS IPaC web site. This would include the Black-footed ferret, Gray Wolf and Rusty Patched Bumble Bee. In addition, IPaC lists the Monarch Butterfly as a Candidate species but this species is not included in the table on the last page of Section 4.13. Please review the Table to ensure

the information provided is accurate and clarify the source used to develop the table.
(GAW)

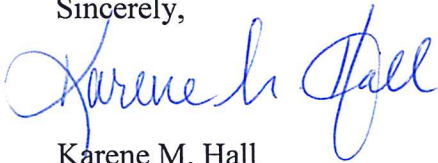
Updated table based on a February 17, 2022 review of ND IPaC

24. Follow-up to Item No. 21: The second sentence at the top of the last page of Section 4.13 indicates the website used to develop the table was updated September 25, 2012. This sentence should be updated with a current date and the source used to obtain the updated information should be cited. The last page of Section 4.13 is labeled page 17 but the Section 4.13 pdf contains 18 pages. (GAW)

Updated citation to February 17, 2022 IPaC review.

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

Sincerely,



Karene M. Hall
Permit Coordinator