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PUBLIC SERVICE COMMISSION



June ²⁸~~12~~, 2023

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

RE: Response to Initial Review of Bond Release #2 BNCR-9702

Dear Ms. Brinkman,

This submittal contains a response to your Initial Review letter to us dated December 6, 2022. In this letter you listed deficiencies that must be addressed before the Bond Release 2 application to BNCR-9702 can be approved. Below is a listing of the deficiencies followed by our response:

General

1. Final Bond Release Application No. 2 currently consists of a 182-page pdf in an unacceptable format. Please provide a table of contents that is divided and organized into bookmarked sections and subsections so that the information provided is presented in a clear and concise manner as required by NDAC 69-05.2-05-02(6). (GAW/PJR/BSM/MLJ/MJF/ZAB)
Added bookmarks into PDF
2. Please review/revise all footers throughout the document so they accurately reflect the correct attachment. Some of the footer errors are listed in the following deficiency items. (MLJ)
Updated all footers to appropriate Attachments.

Application for Final Bond Release (SFN 19813)

3. The application references the bond release area as "Exception 03". This is not an appropriate description for the bond release tract. The bond release tract should be a stand-alone area considered solely by itself. Please change the "Exception 03" area to an appropriate tract number and revise the Application and all references in the Attachments accordingly. (BSM/ZAB)
Updated name to "Bond Release 2"
4. Worst-case bonding language on page 1 of the Application should be revised to clarify that Permit BNCR-9702 is part of a consolidated bond area that includes BNCR-9702, BNCR-8106, BNCR-8202, and BNCR-8602. The bond amount for the consolidated bond area is based on the worst-case reclamation cost estimate; therefore, no monetary reduction is requested with this bond release application. (ZAB/MJF)
Updated bonding language as requested.

5. Please include a narrative within *SFN 19813* regarding the stage(s) of bond release being requested with Bond Release No. 2 and provide the acreage associated with each stage. (BSM/GAW/PJR/ZAB)
Requesting bond release stage 4 for the whole tract.

Attachments I – Legal Description

6. Attachment II is the map of Permit BNCR-9702 which is not required, and depicting the bond release tract as an exclusion area. Please provide a map that depicts only Bond Release No. 2. The footer on Attachment I is incorrectly labeled Attachment III. (BSM/ZAB)
Updated footer. Exclusion Area renamed Bond Release No.2 and zoomed in from whole extent of BNCR 9702 to just Section 34.

Attachment II – Metes and Bounds

7. Attachment II is the metes and bounds description of Permit BNCR-9702 and this information is not required in the Application for Bond Release No. 2. Revise Attachment II to include only the metes and bounds description of Bond Release No. 2. The footer on Attachment II is incorrectly labeled Attachment III. (BSM/ZAB)
Updated footer. Removed all metes and bounds changes from BNCR 9702 to just include description of Bond Release No. 2

Attachment III – Advertisement (Legal Notice)

8. The legal notice states that the bond release tract is 196.64 acres while the application form states that the bond release tract is 196.91 acres. Please address this discrepancy. (MLJ/BSM/ZAB)
Changed to 196.91
9. Please revise the legal notice to include the total amount of the worst-case bond covering the consolidated bond area as required by NDCC 38-14.1-17(1)(a)(3). (PJR)
Included worst-case bond as of March 2023.
10. A sentence in the first paragraph of the legal notice should be revised to clarify that the bond amount is based on the worst-case reclamation condition that covers Permit BNCR-9702 **“and other permits”** at the Center Mine. (ZAB/GAW)
Updated text as requested.
11. The last sentence of the first paragraph of the legal notice indicates that there is more than one bond release tract. Please revise the sentence to indicate that the bond release application is for a single tract. (MLJ/BSM/ZAB)
Updated text as requested
12. Please revise the first paragraph to clarify that the N½ of Section 34 is in Township 142 North and Range 84 West in Oliver County. The township and range listing may be abbreviated as customarily accepted. (GAW)
Added township and range to description
13. Please revise the second paragraph of the legal notice to include the appropriate information to satisfy NDCC 38-14.1-17(1)(a)(4). This would include the type and approximate dates reclamation work performed and a description of the results achieved. Also, list the acreage of

each post-mine land use and provide a timeline for coal removal, backfilling and grading, and revegetation seeding dates. Also note, the second paragraph states that the tract was mined between 1992 and 2022. Based on the Annual Mine Maps, the Bond Release No. 2 tract was mined between 1992 and 2002. (MLJ/PJR/MJF/BSM)

Revised paragraph to provide more detail similar to the tract history provided in Section 6

14. The “request and supporting documents” wording in the first sentence of the third paragraph should be replaced with the word “application”. The sentence should state that copies of the bond release application are on file at the Oliver County Auditor’s Office in Center... and the Reclamation Division... (ZAB)

Updated text as requested

15. Please revise the Bond Release label in Section 34 on the public notice map to include the bond release number. (MLJ/ZAB/MJF)

Changed label to “Bond Release No. 2”

16. Please revise the public notice map to include the township and range. (PJR)

Added “T142N,R84W” to map.

17. Please list the total acres of Final Bond Release No. 2 on the public notice map. (PJR)

Added text box referring to size of bond release.

18. Revise the font size of the bond release tract and street labels so they are legible at newsprint scale. (ZAB)

Increased text sizes.

Attachment IV – List of Government Agencies and Landowners, and Sample Notification Letter

19. John Paczkowski of the North Dakota Department of Water Resources is the State Engineer. Please remove “Interim” from his title. Please update the North Dakota Water Commission to Department of Water Resources and its address to 1200 Memorial Highway, Dept 770 Bismarck, ND 58504. Also, please update the NDDEQ address to 4201 Normandy Street, Bismarck, ND 58503-1324. (BSM/MJF)

Updated list of contacts

20. The issues identified with the public notice also apply to the agency and landowner notification letter. Please update the agency/landowner notification letter to address the items listed for the public notice in Attachment III above. (GAW)

Updated agency notification letter with the bonding and tract history items that were requested in deficiency 13 above.

Attachment V – Aerial Photo Map (Pre-mine Soils Map)

21. The footer on Attachment V is incorrectly labeled Attachment III. Please correct. (BSM)

Updated footer

22. Please revise the map to the appropriate aerial photo-based map as described at the top of page 2 of the application form. This should include a general outline with the total acres. The soils map should be included later as described in the addendum to the application and it should include labels within all soil mapping unit boundaries. (PJR/MLJ)

Removed soils from the map. Soils map added as ATTACHMENT VI

Attachment VI – Tract History, Vegetation Data, Bond Release Standards

23. The footer on Attachment VI is incorrectly labeled Attachment III. Please correct. (BSM)
Updated footer

24. Several locations on page 1 of Attachment VI, state that the bond release tract is 196.64 acres while the application form states the bond release tract is 196.91 acres. Please address this discrepancy. (MLJ/BSM)

Revised to 196.91 acres.

25. Page 1 of Attachment VI states that only final bond release is being requested and implies that first, second, and third stage bond release has already been achieved. Please correct this error. (GAW)

Revised to all stages.

26. Please include a sentence in Attachment VI that indicates if coal ownership within the bond release tract is private, state, or federal. Identify any portions of the tract where coal was federally owned. We would like you to include this information in all future bond release applications, so it is clear to OSMRE if the bond release application requires their concurrence. (ZAB, MJF)

Statement that portion of bond release was federal coal.

27. Please include the types, rates, and dates of herbicide application. (MJF)

Under management included herbicide and years of application along with targeted species.

28. Please consider changing the heading **Previous Management** to **Management** as it describes BNI's post-mining management of the land. (MJF)

Changed to management

29. The narrative in the letters to interested parties states that a rural water cattle irrigation system was installed. However, under the management section of the tract, it states that supplemental irrigation was not used on this tract. Please clarify. (MJF)

Statement that irrigation was for cattle not crops.

30. The seed mix table at the top of page 2 of Attachment VI does not include a unit of measurement so it is not clear if the values represent pounds per acre, a relative percentage, or something else. Please modify to provide clarity. (GAW)

Added label of lbs/acre

31. The third paragraph on page 2 of Attachment VI states that the unadjusted standard was incorporated into the permit and is listed in Table 1, and the fourth paragraph states that the standard was developed with the PSC in 2019. The unadjusted standard cannot be found in Permit BNCR-9702. Please provide justification for developing the native grassland revegetation success standard using soils that existed on the cropland portion of the bond release tract rather than from soils that existed on pre-mine native grassland in Section 34 and provide information in the bond release application why it is acceptable to demonstrate revegetation success using the pre-mine soils of the bond release tract. This would include an evaluation of the productivity of the entire area owned by BNI Coal within Section 34, an evaluation of the productivity of the non-cropland agricultural lands in Section 34, and an evaluation of the productivity of the pre-mine soils within the bond release tract. The methodology used to determine productivity with

this bond release application will need to be applied to future bond releases in Section 34 so this evaluation will need to be included in Permit BNCR-9702. (GAW)
Statement on page 3 referencing standard development and revegetation guide. Table 1 included with native grassland standard out Section 34 overall.

32. Please clarify in Attachment VI which version of the Revegetation Success Standard document is being used to demonstrate native grassland revegetation success. (GAW)

Statement that utilizing the newest version from 2022

33. The third paragraph on page 2 of Attachment VI states that data from the south silty reference area was used to calculate a climatic correction factor. Please provide clarification why the north silty reference area was not also used to calculate the climatic correction factor, discuss whether the silty reference area properly represents the pre- and post-mining range or ecological sites, and provide ecological condition information of the silty reference areas. Please also clarify if the reference area(s) and reclaimed land have been managed similarly during the responsibility period. (GAW)

Statement on page 2 clarifying info about reference site selection info.

34. Table 1 on page 3 of Attachment VI indicates that the unadjusted standard is 1.228334 tons/acre which is equivalent to 2,456.7 lbs/acre but the unadjusted standard in Table 2 on page 4 is listed at 2,165.63 lbs/acre. In addition, narrative on page 2 indicates that the correction factor was derived by dividing the production on the reference area by 2000 lbs/acre but the expected yield of the soils on the reference area is 2,330 according to Table 1. Please review and correct as necessary. (GAW)

Table updated to 2,872 lbs/acre based on Standard development.

35. Narrative on page 3 of Attachment VI indicates the reclaimed native grassland was hand sampled. Please provide the name(s) and information about the qualifications of the individuals who collected the data. (GAW)

Narrative about Kelly on page 3.

36. Please include the reclaimed native grassland ground cover and productivity sampling date in the bond release application that demonstrates revegetation success. Narrative on page 4 indicates that this information is included in Appendix A, but Appendix A was not provided. (GAW)

Added into Attachment VIII.

37. Please include the reference area ground cover and productivity sampling date in the bond release application that demonstrates revegetation success. (GAW)

Noted hand sampling and date range.

38. Table 3 appears to show that the diversity standard has not been met since 2015 and Attachment VI does not address whether at least one native cool season species and two native warm season species were present in sufficient quantities during the years being used to demonstrate revegetation success. (GAW)

Added narrative discussing very close on vegetation composition and when you look at what species are present moving a frame a little bit could possibly change the % of hits of certain native grasses that are present at site but aren't always reflected in transects.

39. Please include the reclaimed wetland information required for the third and fourth stage bond release as set forth in subsection II-H of our Revegetation Success Standards document. This would include aerial photography delineating wetland basins and contiguous land uses, a narrative describing plugging, seeding and practices used to establish vegetation, evidence of wetland zone development, a description of the wetland's designed classification, surface water quality of the wetland, a postmining topography map that delineates the entire watershed of the wetland basin, and documentation that the reclaimed wetland exhibits appropriate vegetation characteristics for which it was designed. The wetland narrative on page 29 of the pdf indicates some of this information can be found in Appendix B, but Appendix B was not provided. (GAW)
Updated narrative about wetland development/construction. Also updated reference to vegetation and wetland assessment to Attachment IX. Attachment IX also includes the postmine contours present in the watershed and an aerial photograph for the background.

40. Please revise the Wildlife Assessment narrative to provide information specific to the bond release tract. This should include information about the pre-and post-mining habitats or land uses of the ownership tract (Section 34) and enhancement features or facilities installed on the tract as required by NDAC 69-05.2-09-17. The information currently provided appears to be information taken directly from the biennial wildlife report. (GAW)

Updated to be site specific information.

41. Attachment VIII appears to show four sample locations outside of the bond release tract. Attachment VI should explain why it is appropriate to include sampling data from areas outside of the bond release tract or perhaps data from these sites might need to be omitted when determining revegetation success. Moreover, please provide information about how the sample sites were selected and why some of the seeding years are not represented in the sampling data. (GAW)

Updated narrative on page 5.

42. The Section 34 Post Mine Land Use Map found within Attachment VI lists the areas of each land use. The acres add up to 196.64 acres while the application form states that the bond release tract is 196.91 acres. Please address this discrepancy. (MLJ)

Revised to 196.91 across document

43. The Section 34 Post Mine Land Use Map found within Attachment VI lists the areas of each land use, however, no units of measurement are provided. Please specify that the numbers listed below the land use text are acres. (MLJ)

Added acre label

44. Please remove the unnecessary cropland, hayland, and shelterbelt layers from the legend on the Section 34 Post Mine Land Use Map found within Attachment VI. (MLJ/MJF)

Updated Legend

45. Please revise the species list on page 33 of the pdf to include the name of the individual(s) who collected the data and provide the date(s) the information was collected. (GAW)

Added reference to collector and date range. A range was used a vegetation species list was collected during vegetation sampling for yields but also concurrent with grassland bird counts, pheasant surveys, grouse leks searches, and wetland classification.

Attachment VII – Grade Approvals

46. Please provide an aerial photo-based map showing all individual grade approval boundaries within Bond Release No. 2. The map should be labeled with each grade approval identification as well as the differing topsoil and subsoil thicknesses throughout. (MLJ/MJF)

Updated grade approval map with years and GA labels

47. Attachment VII contains 145 pages of correspondence between BNI Coal and Reclamation Division staff regarding grade approvals on the bond release tract. This correspondence provides information regarding planned topsoil and subsoil respread depths, and it will be useful when probing to confirm SPGM respread depths. Please revise to provide the information as an addendum to the application and clarify how the information provided can be connected to a map in the bond release application. (GAW/MLJ)

Organized grade approvals into years and book marked.

Attachment VIII – Seeding Dates and Sampling Locations

48. Please label the Seeding Dates and Sampling Locations Map as Attachment VIII. (GAW)

Updated map

49. The footer on Attachment VIII is incorrectly labeled Attachment III. Please correct this error. (GAW)

Updated footer

Attachment IX – Postmine Contours Map

50. As required by NDAC 69-05.2-12-12(4), please delineate the boundary of Bond Release No. 2 on Attachment IX, Plate 4.10-1 Post-Mining Topographic Contours. (BSM/MJF)

Updated to surveyed contours and bond release 2 boundary

51. The Post-mine Contours Map is labeled Post-Mining Topographic Contours in the legend, and it appears to be a map copied directly from Permit BNCR-9702. Please provide consistent language regarding this map and revise to provide an actual as-built contour map of the bond release tract. Please also note that Item No. 39 requires a post-mining topographic map of the entire watershed of the reclaimed wetland so BNI might choose to provide the watershed information in Attachment IX. (GAW/BSM)

Updated to surveyed contours and bond release 2 boundary

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

Sincerely,



Gregory Petrick
SR Compliance/Land Management Specialist