



# Public Service Commission

## State of North Dakota

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### COMMISSIONERS

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*sent via email only*

August 25, 2023

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Mr. Doug Scheetz  
Environmental Manager  
BNI Coal, Ltd.  
2360 35th Ave. SW  
Center, ND 58530-9499  
[dscheetz@bnicoal.com](mailto:dscheetz@bnicoal.com)

Dear Mr. Scheetz:

The Reclamation Division has completed a partial review of BNI's June 28, 2023 response to our initial review of Final Bond Release Application No. 2 to BNCR-9702. The following issues need to be addressed prior to publishing the newspaper notice and notifying landowners and governmental agencies.

The reclaimed native grassland vegetation sampling data included in this final bond release application do **not** demonstrate revegetation success. The native grassland revegetation success standards have not been achieved during any two years after year six (2012) of the revegetation responsibility period. It appears that revegetation success may have been achieved in 2013, although the productivity standard was not calculated correctly so this is uncertain. All parameters except seasonality (15% warm season composition) may have been achieved in 2014, but the species diversity performance standard has not been achieved since 2014. It is unlikely that the Reclamation Division will recommend final bond release approval using nine years of trend data that is not showing improved species diversity. The 2021 and 2022 yield data showed that over 80% of the composition by weight is comprised of non-native introduced species and the cover data shows a similar high percentage of non-native species.

### General:

1. The bookmark table of contents lists Attachments with titles and names different than those provided in Attachments I through XI and the Application Form. Please revise as necessary to provide the information in a clear and consistent format. (GAW)
  - a. Attachment I is titled "Permit 9702 Rev 02 Boundary Map 032923.pdf" in the table of contents, but the Application Form indicates Attachment I is a map that delineates the bond release tract.
  - b. Page 2 of Attachment II is labeled subsection "1.8" and the associated map is labeled Plate 1.8 rather than Attachment II.
  - c. Attachment III is entitled "Legal Notice Papers and Cover Letter.pdf" in the bookmarked table of contents while Attachment III is labeled as "Advertisement" at the top of page 1 of Attachment III. The Application Form indicates that Attachment III is a copy of the proposed legal advertisement.
  - d. Attachment IV is entitled "addresses for notice letters.pdf" in the bookmark table of contents but the Application Form indicates that Attachment IV is a copy of landowner and agency notification letters.
  - e. Attachment V is not labeled Attachment V.
  - f. Attachment VI is titled "Attachment VI.pdf".
  - g. Attachment VIII is titled "Attachment VIII Cover".
  - h. The word "cover" is listed behind the name of Attachments in the table of contents, which provides no meaningful information.

2. Please add the first four pages of the initial submittal to the Bond Release Application. The cover page and application sheets need to be included with the application. (PJR)
3. The bond amount is listed as \$38,534,432 in the legal notice and the letters to parties whereas page 24 lists the bond amount as \$50,375,409. Please review the bond amount throughout the bond release application and revise as necessary. (PJR)
4. Please provide a hydrologic assessment of the ground and surface water resources in accordance with NDCC 38-14.1-24, NDAC 69-05.2-12, NDAC 69-05.2-14, and NDAC 69-05.2-16. (PJR)

#### **Attachment II – Metes and Bounds**

5. The metes and bounds description of the bond release tract in Attachments II must be signed by a North Dakota registered land surveyor. Please include a signed version of the metes and bounds description in the bond release application or provide a hard copy with signatures. (PJR)

#### **Attachment III – Advertisement (Legal Notice)**

6. Please include the permit boundary of BNCR-9702 on the newspaper publication map. (PJR)

#### **Attachment VI - Tract History, Vegetation Data, Bond Release Standards**

7. Page 2 of Attachment VI mentions that a rural water system has been installed on the tract to facilitate grazing, but it is not clear if this water delivery system is replacing a pre-mine water supply. NDAC 69-05.2-01-02(90) requires the public notice for a final bond release to clearly state that the permittee does not intend to replace a pre-mine water delivery system. Please review the pre- and post-mine water delivery systems on this tract and clarify if the rural water system is replacing a pre-mine water delivery system. If BNI is **not** replacing a pre-mine water system, then the newspaper notice and letters sent to property owners and governmental agencies will need to be updated for compliance with NDAC 69-05.2-01-02 (90). (GAW)
8. The unadjusted standard in Table 1 on page 3 of Attachment VI was developed using the Historic Climax Plant Community (HCPC) representative values rather than the Grass/Forb representative values. The unadjusted standard may be calculated using the Grass/Forb expected yields value which excludes the trees, shrub, and vine component of the HCPC. (GAW)
9. The pro-rated mean value in Table 1 on page 3 of Attachment VI is mistakenly listed as tons per acre rather than pounds per acre. Please correct this error. (GAW)
10. Narrative on page 4 of Attachment VI states that sampling points 3 and 7 are located outside of the bond release area and were excluded from the analysis, but the reclaimed yields listed in Table 2 do not support this claim. Please review and update as necessary. It seems unlikely that frames 3 and 7 were collected beyond the fenced perimeter of the reclaimed native grassland and that the location of the sample points are simply misrepresented in Attachment VIII. (GAW)
11. The correction factors listed in Table 2 on page 4 of Attachment VI were derived by dividing the reference area actual yield by 2000 lbs. The correction factor should be calculated by dividing the reference area actual yield by the NRCS ecological site expected yield as listed in Table 2 of the 2022 Revegetation Success Standards document. Please correct this error. (GAW)
12. The ground cover diversity value listed in Table 3 of Attachment VI incorrectly indicates that five native species comprised greater than 3% of the relative composition. Please correct this error. (GAW)

13. Please include cover and productivity sampling data for the silty reference area that is being used to develop the revegetation performance standard. (GAW)
14. The pre-mine soils map, Attachment VI, mistakenly includes a post-mine wetland and the pre-mine soil mapping units are not provided for the post-mine wetland area. Please revise to depict and label all pre-mine soils on the bond release tract. The map on page 26 of the bond release application should be used as the Pre-Mine Soils Map since areas outside of the bond release tract in Section 34 were used to develop the productivity standard. This map should be properly named and labeled to provide clarity. The map should have a legend, section lines, scale bar, and all other necessary information to make the map understandable. (PJR)

#### **Attachment VIII – Seeding Dates and Sampling Locations**

15. Please remove Kentucky bluegrass from the native column on pages 183 through 221 and from the vegetation composition table at the end of Attachment VIII. As stated on page 182, Kentucky bluegrass is an introduced species. (PJR/GAW)

#### **Attachment IX – Postmine Contours Map**

16. Please update the bond release application to include information to demonstrate third and fourth stage wetland revegetation success as required by the 2022 Revegetation Success Standards document. Provide a brief description of the wetland design, including the design class and documentation that the reclaimed wetland exhibits characteristics of the wetland class for which it was designed to become. Provide low altitude aerial photography that delineates the reclaimed wetland basin(s) and a map that delineates each vegetation zone or plant community during the last year of the revegetation responsibility period. Provide a species list that ranks species abundance in each vegetative zone and a descriptive narrative that characterizes each vegetation zone or plant community. Provide measurements of surface water quality for the last three years of the revegetation responsibility period and an analysis of the results of the water quality data as required by the 2022 Revegetation Success Standards document. The second paragraph on page 7 of Attachment VI indicates that yearly vegetative sampling data can be found in Attachment IX but only summary floristic quality information is being provided. (GAW)

If you have any questions, please contact this office.

Sincerely,



Zanna A. Brinkman  
Director  
Reclamation Division

cc via email only: Karene Hall (khal@bnicoal.com)  
Gregory Petrick (gpetrick@bnicoal.com)  
BNI Regulatory & Compliance (BNIefiling@bnicoal.com)