



January 28, 2025

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

RE: Revision 44 to Permit BNCR-9702

Dear Mr. Emmer,

This submittal contains a response to your technical review letter to us dated January 6, 2025. In this letter you listed technical deficiencies that must be addressed before the Revision 44 application to BNCR-9702 can be approved. Below is a listing of the deficiencies followed by our response:

*Section 1.0 Legal and Financial Section was revised to update the BNI Coal, Ltd. and BNI Energy, Inc. corporate officers and board of directors and the ALLETE corporate officers listing. The renewal and expiration dates for the Air Pollution Control Permit and the Stormwater Permit were also updated.*

**Section 4.5 – Transportation Plan**

1. Culvert ID #51 in Appendix 4.5-2 (Culvert Information Sheet) is listed as being located in Section 4, T141N, R84W; however, Plate 4.5-1 (Permit Boundary and Overall Road Plan) appears to depict Culvert ID #51 on the section line between Section 28 and Section 21, T142N, R84W. Please revise the location information for Culvert ID #51 in Appendix 4.5-2 to the correct location. (BSM)

*Culvert information sheet was corrected to say Section 28, T142, R84W. The culvert will be just south of the section line between Sections 21/28.*

2. Culvert ID #52 in Appendix 4.5-2 (Culvert Information Sheet) is listed as a corrugated metal pipe, but Plate 4.5-35 (Haul Road Section A) depicts Culvert ID #52 as "CORR PE PIPE." Please review and update as necessary so that Appendix 4.5-2 correlates with Plate 4.5-35 for Culvert ID #52. (BSM)

*Plate 4.5-35 was corrected to CMP. No changes necessary to Appendix 4.5-2.*

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

3. As stated in the Reclamation Division's December 18, 2024 response letter regarding the construction of Diversion 20-4, please revise the necessary design information on Plate 4.6-53 in Appendix 4.6-53 (Diversion 20-4 Design Details) to reflect the substitution of riprap for flexamat placed on topsoil as the erosion control measure for the outlet. Also, please review and update as necessary the narrative for Diversion 20-4 under the New Construction subsection in Section 4.6 (Surface Water Management Plan). (BSM/JAR)

*Appendix 4.6-53 was updated to concrete block erosion control mat. Updated hydroCAD calculations, diversion info sheet, and the narrative to reflect this change.*

### **Section 4.10 – Backfilling and Regrading**

4. Plate 4.10-2 (Post-Mining Slope Analysis) indicates slopes exceeding 9 percent are planned on an area to be reclaimed to cropland in the N $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 21. The 2023 Annual Mine Map and 2024 NAIP aerial photography indicates this area has not been disturbed by mining activities. Please review the disturbance boundary along the northern portion of NW $\frac{1}{4}$  of Section 21 to ensure that it is accurately depicted. (GAW)

*The mining disturbance boundary was reviewed for accuracy and agree that this isn't an accurate depiction of the intended mining disturbance in that area. The boundary was modified in the area described. This boundary was also updated in the other pertinent plates that reference the mining disturbance boundary. After adjustment of the boundary we reviewed the slopes in the questioned areas and made some minor changes in the topography to lessen slopes where we could. Plate 4.10-1 was updated as well and a boundary where the changes were completed was also depicted in the plate for reference.*

### **Section 4.12 – Post Mining Land Use**

5. Please review the cropland and hayland land-use boundary along the north end of the NW $\frac{1}{4}$  of Section 21 on Plate 4.12-1 (Post Mining Land Use) to ensure the land use boundary is correct. Grassland not disturbed by mining activities should not be converted to cropland or hayland. Even though the pre-mine land use map depicts a portion of this area as cropland, NAIP, Google Earth aerial imagery, and Plate 3.5-1D (Pre-Mine Landuse) suggest otherwise. (GAW)

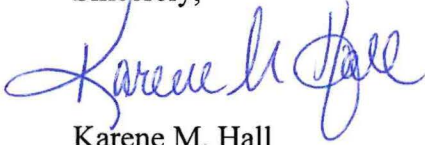
*The area described is approximately 2 acres after the associated disturbance is accounted for. Therefore BNI believes that such a small tract should be absorbed by the surrounding landuse (Cropland). This is especially true for a small tract designated as native grassland next to a right of way.*

6. Please review the land use boundary between cropland and native grassland in the N $\frac{1}{2}$  of Section 20 on Plate 4.12-1 (Post Mining Land Use). It appears some cropland is being converted to native grassland in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ , and it is not clear what the purple polyline through the N $\frac{1}{2}$ NE $\frac{1}{4}$  is representing. The surface owner preference statement provides the preference for cropland. (GAW)

*The native grassland that was originally cropland was designated as such by the prior landowner of section 20. Now that the land has changed ownership, we have changed some of that native grassland back to cropland where the slope allows for it.*

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  
Sr. Regulatory Compliance Specialist

cc: Greg Petrick  
Jonathan Rudnick  
PSCrecfilings@nd.gov