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April 7, 2025

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

NORTH DAKOTA
PUBLIC SERVICE COMMISSION

RE: Revision 45 to Permit BNCR-9702

Dear Mr. Emmer,

This submittal contains a response to your completeness review letter to us dated April 3, 2025. In this letter you listed completeness deficiencies that must be addressed before the Renewal 5 Revision 45 application to BNCR-9702 can be deemed complete. Below is a listing of the deficiencies followed by our response:

Section 1 – Legal and Financial

1. Appendix 1-1 (Revision Summary and List of Changes) states that the Table of Contents has been removed. Please clarify the removal of the Table of Contents. (JAR/PJR)

Table of Contents has been added back to Permit.

2. Please replace “Renewal No. 4” with “Renewal No. 5” in the fourth sentence of the first paragraph of Appendix 1.5-1 (Notice of Publication). (JAR/WWS/BSM/AAC/PJR)

Corrected typo to Renewal No. 5

3. Please add the “blasting plan” to the list of revision updates in the last sentence of the first paragraph of Appendix 1.5-1 (Notice of Publication). (WWS/PJR)

Added “blasting plan” into list of items updated during Renewal.

4. Appendix 1-2 (Certified Copies of Leases and Assignment Documents, Article of Amendment to Articles of Incorporation) lists Laverne Huck as a coal owner for the NE¼ of Section 6 and the N½NE¼ of Section 8, T141N, R84W. The Laverne Huck Life Estate with remaindermen: Rachelle Markel, Raynee Morrell, Rayette Fasching, Raydene Zimmerman, and Raylynn Huck are listed as coal owners in Appendix 1.5-1 (Notice of Publication) and Plate 1.9-1 (Ownership)

BNI COAL, LTD.

2360 35TH AVENUE SW, CENTER, ND 58530-9499

Map). Please review this discrepancy and update Appendix 1.5-1, Appendix 1-2, and/or Plate 1.9-1 as necessary. (AAC)

Appendix 1-2 updated to reflect Life Estate and Remaindermen changes as properly indicated in Appendix 1.5-1 and Plate 1.9-1. Transfer deeds also updated in Appendix 1-2.

5. Appendix 1.5-1 (Notice of Publication) identifies Kenneth Barnhardt, Helen Pflieger, and Dennis Barnhardt as surface owners in the SE $\frac{1}{4}$ of Section 31, T142N, R84W. However, Steven and Marlene Fricke are identified as surface owners in Appendix 1-2 (Certified Copies of Leases and Assignment Documents, Articles of Amendment to Articles of Incorporation) and on Plate 1.9-1 (Ownership Map). Please review this discrepancy and update Appendix 1.5-1, Appendix 1-2, and/or Plate 1.9-1 as necessary. (JAR/BSM/AAC)

Appendix 1.5-1 updated to reflect surface ownership change to Steven and Marlene Fricke as properly indicated in Appendix 1-2 and Plate 1.9-1.

6. Appendix 1.5-1 (Notice of Publication) identifies Marion Reinke Life Estate with a remainderman of Adele M. Barrett under surface and coal ownership in the NW $\frac{1}{4}$ of Section 9, T141N, R84W. However, Jeff Reinke is identified as the surface and coal owner in Appendix 1-2 (Certified Copies of Leases and Assignment Documents, Articles of Amendment to Articles of Incorporation) and on Plate 1.9-1 (Ownership Map). Please review this discrepancy and update Appendix 1.5-1, Appendix 1-2, and/or Plate 1.9-1 as necessary. (JAR/AAC)

Appendix 1.5-1 updated to reflect Jeff Reinke ownership as properly indicated in Appendix 1-2 and Plate 1.9-1.

7. Daryl Yantzer is listed as a surface and coal owner for the SW $\frac{1}{4}$ of Section 29, T142N, R84W and as a surface owner for the N $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, and NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 32, T142N, R84W in Appendix 1.5-1 (Notice of Publication). However, Appendix 1-2 (Certified Copies of Leases and Assignment Documents, Article of Amendment to Articles of Incorporation) and Plate 1.9-1 (Ownership Map) lists the Daryl Yantzer LE as a coal and/or surface owner of these tracts. Please review this discrepancy and update Appendix 1.5-1, Appendix 1-2, and/or Plate 1.9-1 as necessary. (AAC)

Appendix 1.5-1 updated to reflect addition of Life Estate to Daryl Yantzer as properly indicated in Appendix 1-2 and Plate 1.9-1.

8. Betty Vandenburg is listed as a surface and coal owner for the N $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, and NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 32, T142N, R84W, and she is listed as a coal owner for the NE $\frac{1}{4}$ of Section 32, T142N, R84W in Appendix 1-2 (Certified Copies of Leases and Assignment Documents, Article of Amendment to Articles of Incorporation). However, she is not listed as a surface and/or coal owner for these Section 32 tracts in Appendix 1.5-1 (Notice of Publication) and Plate 1.9-1 (Ownership Map). Please review this discrepancy and update Appendix 1.5-1, Appendix 1-2, and/or Plate 1.9-1 as necessary. (AAC)

Appendix 1-2 updated to remove Betty Vandenburg from ownership as properly indicated in Appendix 1.5-1 and Plate 1.9-1. Appendix 1-2 also updated with transfer deed.

9. Kenneth Barnhardt, Helen Pflieger, Dennis Barnhardt, Joanne Trinkle, and Karen O. Van Amburg are listed as the coal owners for the SE $\frac{1}{4}$ of Section 31, T142N, R84W in Appendix 1.5-1 (Notice of Publication). Appendix 1-2 (Certified Copies of Leases and Assignment Documents, Article of Amendment to Articles of Incorporation) lists Kenneth Barnhardt, Helen Pflieger, Dennis Barnhardt, Virginia Spurgin Gaines et al, and the State of ND as the coal owners for the SE $\frac{1}{4}$ of Section 31. Plate 1.9-1 (Ownership Map) lists Kenneth Barnhardt, Helen Pflieger, Dennis

Barnhardt, Joanne V. Trinkle, Karen O. Van Amburg Revocable Trust, and the State of ND? as the coal owners for the SE¼ of Section 31. Please review these discrepancies and update Appendix 1.5-1, Appendix 1-2, and/or Plate 1.9-1 as necessary. (AAC)

Plate 1.9-1 and Appendix 1-2 amended to indicate proper ownership as indicated in Appendix 1.5-1.

10. The first sentence of the second paragraph in Appendix 1.5-1 (the Publication Notice) appears to contain a typographical error. Please change the word “is” to “are” in the following narrative of the Publication Notice: “The renewal application and the application for revision of the surface coal mining permit is (**are**) available for public inspection at the offices...” (GAW)

Corrected grammatical error.

Section 4.6 – Surface Water Management Plan

11. Follow-up to Item No. 17 of the November 8, 2024 pre-renewal letter: Please review and update Plate 4.6-1 (Surface Water Management Plan) to reflect any changes with the status or presence of water management structures that may have occurred since the map was last updated with Revision No. 44 as required in part by NDAC 69-05.2-09-02 and NDAC 69-05.2-09-09. For example, but not limited to, several spoil drainages appear to be missing within Section 28 and Section 29 that are associated with recent grade approved areas that depicted stripped drainages that will not be respread with SPGM until contributing watersheds are reclaimed. (BSM)

Plate 4.6-1 (Surface Water Management Plan) was reviewed and updated with the current location of stripped/un-respread drainages with the permit area. Plate 4.6-1 was also updated to depict an existing sediment trap in line with a current stripped drainage upstream of pond 22-5. This sediment trap was labeled as Catch Basin 21-5. Section 4.6, page 4.6-14, was also updated to include reference to this catch basin and describe it's purpose. During review it was found that the plate was not reflecting the current post-mine topography proposed in this revision. The post-mine topographic contours were updated accordingly.

Section 4.12-2 - Pre-Mine and Post-Mine Land Use Discussions

12. Acreage tables in Section 4.12-2 (Pre-Mine and Post-Mine Land Use Discussions) were updated, but no red lines are present. Please revise Section 4.12-2 by adding red lines to indicate what changes were made. (WWS)

Addressed. Now underlined in red

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

13. Please revise the following sentence in the Piping Plover subsection in Section 4.13 (Fish and Wildlife Resource Protection and Enhancement Plan, & Fish and Wildlife Monitoring Plan) to address the apparent typo: “One piping plover was recorded on pond in the late 1970s 31-1 which is...”. (WWS)

Removed the repeated sentence and made the context more clear.

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

Sincerely,

A handwritten signature in blue ink, appearing to read "Greg Petrick", with a stylized flourish at the end.

Greg Petrick
Environmental Supervisor

cc: Greg Petrick
Jonathan Rudnick
PSCrecfilings@nd.gov