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June 3, 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 May 21, 2025. In this letter you listed technical deficiencies that must be addressed before the Renewal 5 Revision 45 application to BNCR-9702 can be approved. Below is a listing of the deficiencies followed by our response:

Section 1 - Legal and Financial Information

1. The Reclamation Division received an updated mailing address for Thomas and Kathleen Lipp from the U.S. Postal Service when ownership notification letters were mailed. Please update the mailing address in Appendix 1.9-1 (Ownership Information) for Thomas and Kathleen Lipp to: 1746 Capistrano Walk, Redding, CA 96003-8274. (JAR)

Appendix 1.9-1 updated for Thomas and Kathleen Lipp, Vivian (Keith) Dahl, Nathan Skager, and Howard Skager. Plate 1.9 updated to reflect changes to Lipp and Dahl ownership as Thomas and Keith have both passed away.

Plate 2.1 - Extended Mine Plan

2. Please update Plate 2.1 (Extended Mine Plan Map) with the most recent version provided with pending Revision No. 12 to Permit BNCR-1101. (JAR/GAW)

Plate 2.1 was updated to reflect the most recent version submitted with pending Revision 19 to BNCR-9401 to show proposed future mining for the current planned life of mine. The version in Pending Revision 12 to BNCR-1101 appears to reference the extended mine plan submitted in January, 2024 as part of the annual update requirement to the Reclamation Division. The version submitted in BNCR-9702 with Technical Review 1 matches the January, 2025 submittal.

BNI COAL, LTD.
2360 35TH AVENUE SW, CENTER, ND 58530-9499

Section 3.3 - Groundwater

3. Due to the high number of destroyed monitoring wells, please ensure that appropriate coverage of well density is being monitored in Permit BNCR-9702 in accordance with NDAC 69-05.2-08-06(1)(d). The Reclamation Division believes that an additional monitoring well nest may be appropriate near the corner where Sections 29, 28, and 33 meet. (PJR)

Dialogue addressing well density and replacement was added to 4.7 Water Monitoring and Drill Hole Reclamation Plans.

Section 4.4 - Blasting Plan

4. It appears that the Notice of Blasting Schedule on Page 4.4-3 in Section 4.4 (Blasting Plan) requires further updates to remove locations that are no longer applicable for blasting due to the completion of overburden and coal removal. Please update Page 4.4-3 in Section 4.4 to reflect the removal of these blasting areas, ensuring the information is current with the permit term. (BSM)

Updated the notice of blasting schedule areas to remove the portions of section 21, 28, and 29 leaving only section 20 in the blasting schedule

Section 4.5 – Transportation Plan

5. The Haulroad Reclamation Schedule subsection on Page 11 of Section 4.5-1 (Transportation Plan Narrative) is not ordered sequentially based on the progression of reclamation activities. While sequential ordering is not strictly required, reorganizing the rows to reflect the logical order of reclamation may improve clarity for operational planning in terms of reclamation. Additionally, the schedule does not appear to account for the reclamation schedule of surface water management features identified in Table 4.6-1 of Section 4.6 (Surface Water Management Plan). Please review and verify that the schedule on Page 11 of Section 4.5-1 is consistent with the schedule presented in Section 4.6. (BSM)

Haul road reclamation schedule has been updated. Table 4.5-1 was created within the narrative to mirror the reclamation table in Section 4.6. The reclamation dates for haul roads were reviewed in conjunction with the surface water management structures and updated according to anticipated final pit closure and reclamation activities.

6. It appears the access road in the SW¼ of Section 20 on Plate 4.5-1 (Permit Boundary and Overall Transportation Plan) may be outdated. The inclusion of Culvert ID #49 in this location contradicts Plate 4.5-38 (SPGM Stockpile Access Road) and Section 4.5-2 (Culvert Information), which identify Culvert ID #49 as being located in Section 4 instead of Section 20. Please review and revise accordingly. (BSM)

Plate 4.5-1 has been updated to remove the access road shown in the SW ¼ of section 20, and updated to include the existing dragline access road in the NE ¼ of Section 20. It appears the Section 20 access road shown that was shown in the SW ¼ of Section 20 was an old version and was never corrected to reflect the proposed access road updated in Revision 42/43. This correction

to the Section 20 access road also corrects the contradictions in the Culvert ID's. These updates to the map match the culvert information sheets and what is existing in the field. Culvert 48 within the permit is the accurate culvert sheet for the correct access road location, Plate 4.5-37. Culverts 49 and 50 are correct and located on the SPGM Access Road, Plate 4.5-38.

7. Please update Plate 4.5-1 (Permit Boundary and Overall Transportation Plan) to delineate the future SPGM stockpile access road alignment as shown in Plate 4.5-38 (SPGM Stockpile Access Road), including the associated culverts required for surface water management. Furthermore, please verify that this haul road and its reclamation schedule are accurately reflected in the Haulroad Reclamation Schedule subsection on Page 11 of Section 4.5-1 (Transportation Plan Narrative). (BSM)

The proposed SPGM stockpile access road has been added to Plate 4.5-1.

Section 4.6 - Surface Water Management Plan

8. The Supplementary Water Management Features subsection on page 4.6-14 in Section 4.6 (Surface Water Management Plan) identifies catch basins CB-20-5 and CB-20-4 that are also included in Table 4.6-1 (surface water control structures utilized in BNCR-9702). However, catch basins CB-5-1, CB-21-5, CB-28-5, and CB-33-1 are listed in the Supplementary Water Management Features subsection, but they are not listed in Table 4.6-1. For consistency, please list, with all applicable information, all of the supplementary water management features utilized in BNCR-9702 in Table 4.6-1. (JAR)

Catch basins CB-5-1, CB-21-5, CB-28-5, and CB-33-1 are listed in Table 4.6-1. Appendices including design details are also listed in this table for CB-5-1 and CB-28-5.

9. The Supplementary Water Management Features subsection on page 4.6-14 in Section 4.6 (Surface Water Management Plan) contains a typographical error in reference to Catch Basin CB-21-5. Please correct "Cath" to "Catch" for Catch Basin CB-21-5. (JAR)

This spelling error has been corrected.

10. Design details are not provided as appendices for catch basins CB-21-5 and CB-33-1 as specified in the Supplementary Water Management Features subsection on page 4.6-14 in Section 4.6 (Surface Water Management Plan). Please provide the design details for both catch basins as appendices to Section 4.6 and specify the appropriate appendix number in the Supplementary Water Management Features subsection. (JAR)

Design details do not exist for these structures. CB 33-1 is a sump created out of a final pit and functions as a sediment trap but does not contain a specifically designed storm. CB 21-5 is a sediment trap that was created in an aggressive ditch clean out and does not hold a specific design storm. Approximate construction dates were added based on aerial imagery and reclamation dates are also included in Table 4.6-1.

11. Provided that mining in Section 20 is scheduled to end within the upcoming permit term, it may be beneficial to restructure Table 4.6-1 in Section 4.6 (Surface Water Management Plan) based on the "Reclamation Date" column. For example, reordering the entries – starting with "Not Built,"

followed by “Permanent,” “Removed by Mining” (by completion date), and then year-specific entries – could improve the clarity and aid in aligning reclamation efforts with other schedules, such as the Haulroad Reclamation Schedule subsection on Page 11 of Section 4.5-1 (Transportation Plan Narrative). (BSM)

Table 4.6-1 has been rearranged in your suggested format. Reclamation dates within the table were also reviewed and updated with current plans and in conjunction with updates to the Haul Road reclamation schedule in Section 4.5.

Section 4.12 - Revegetation and Post Mining Land Use

12. Plate 4.12-1 (Post Mining Land Use) has a “33” label in the SE¼ of Section 31, T142N, R84W. This label appears to be an incorrect tract section number. In addition, the section number labels for Sections 28 and 29 are obscured. Please correct the “33” labeling error, revise the Section 28 and 29 label legibility, and include township and range public land survey information in Plate 4.12-1. (GAW)

Revised the section numbers and added the Township/Range label.

13. Please consider labeling the reclaimed wetland in the SW¼ of Section 5 and the developed water resources in Plate 4.12 (Post Mining Land Use Map). The map legend’s land use symbols might also be revised to clarify the difference between DWR and SP, and the various types of wetlands, including reclaimed wetlands. The symbol for reclaimed wetlands does not appear to be used on the map, even though several reclaimed wetlands are depicted. (GAW)

The legend was clarified and cleaned up to better illustrate the different wetland colors. Reclaimed wetlands are the wetlands that are numbered. SP was a formatting error and has been resolved. There were also multiple legend values turned on in the last plate, this has been addressed. The 4.12-1 plate legend and symbology should look more simplified and clear.

14. Follow-up to Item No. 26 of the November 8, 2024 pre-renewal review letter: The rangeland similarity index information presented on page 13 of Section 4.12-4 (Determining Reclamation Success) indicates a thin loamy ecological site was sampled in 2019, but pages 10 and 11 identify mapping unit 36E as a shallow loam ecological site rather than a thin loamy ecological site. Please review and revise to provide clarity. (GAW)

Revised the rangeland similarity index sheet to reflect the present soil type of shallow loam (pg 13).

15. Please provide clarity regarding the total acres changed for Sections 27, 32, and 33 in Section 4.12-2 (Pre-Mine and Post-Mine Land Use Discussions). The Total Acres column on each section breakdown should not change based on shifting post-mine land use changes. (WWS)

Section 27 had tree rows that overlapped the cropland in the same area. This was addressed therefor reducing cropland acres.

Section 32 the premine was incorrect and did not show acres. This was addressed and acres now match.

Section 33 had a doubled up wetland polygon that was addressed.

Section 20 had corrections to premine acres and postmine acres to reflect current conditions. Revised Fish and Wildlife habitat to Conservation Grassed Waters in corridors where BNI expects potential erosion but no water feature is defined in the post mine land use for Sections 5, 20, 32, 33.

16. Please ensure that any changes made in Section 4.12-2 (Pre-Mine and Post-Mine Land Use Discussions) are accurately reflected in Section 4.12-1 (Post-Mine Land Use Acreages). (WWS)

Section 4.12-1 narrative and table updated to reflect changes in Section 4.12-2.

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

17. Follow-up to Item No. 27 of the November 8, 2024 pre-renewal review letter: With Revision No. 45, BNI reorganized and updated Section 4.13 (Fish and Wildlife Resource Protection and Enhancement Plan, & Fish and Wildlife Monitoring Plan). However, outdated surface ownership information is being retained in the narrative beginning at the bottom of page 4.13-2, which makes interpretation difficult. Please revise the narrative to include current surface ownership information or tract legal description information for the J. Gullickson and Margret Hagerott tracts so the information provided is current. The narrative at the top of page 4.13-3 should also be revised to clarify that the previous landowner requested 275 acres of native grassland be reclaimed to cropland, if that is the case. Furthermore, the narrative suggesting that 17.2 acres of fish and wildlife habitat buffer surrounds a series of linear wetlands is not supported by Plate 4.12-1 (Post Mining Land Use Map). Please review and revise as necessary. (GAW)

Revised narrative to discuss legal descriptions rather than ownership as the tracts have changed owners through permitting process. Revised narrative to change fish and wildlife habitat to conservation grassed waterway. Updated Plate 4.12 to reflect change of fish and wildlife habitat to conservation grassed waterway in areas of cropland where erosion is likely but not identified as a water feature (i.e. wetland).

Section 4.14 – Reclamation Cost Estimate for Bonding Purposes

18. On Page 2 of Appendix 4.14-1 (Worst Case Bond Estimate), the column labeled “777D Fleet” and “992 Loader” appear at the bottom of the page but seem intended for the following page. Please revise to place these labels correctly on the corresponding table on Page 3 of Appendix 4.14-1. Additionally, the second-to-last page of Appendix 4.14-1 contains an unexplained “330” located to the right of the subtotal for Native Grassland Revegetation Cost. Please clarify the significance of this number or remove it if it is not relevant. (BSM)

The column labels for “777D Fleet” and “992 Loader” were corrected and moved to the following page. Additional column labels were added similarly to subsequent tables for better clarity. It was found that there were a mix of labels referencing “992” and “993” loaders. These were all updated to reference the “993 Loader”. Equipment labels for “777D Fleet” were updated to remove the model series D and only reference “777 Fleet”. The second to the last page in the appendix contained an unexplained “330” located to the right of the subtotal for Native Grassland

Revegetation Cost. This number was not relevant to the spreadsheet and was removed. There was also a number "265" located to the right of the subtotal for Cropland Revegetation Costs. This also was not relevant to the spreadsheet and was removed.

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

Sincerely,

Greg Petrick
Environmental Supervisor

cc: Jonathan Rudnick
PSCrecfilings@nd.gov