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A BNI ENERGY COMPANY

November 7, 2025

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

Dear Mr. Emmer,

This submittal contains a response to your Completeness Review 1 letter to us dated September 25, 2025. In this letter you listed technical deficiencies that must be addressed before the Revision 13 application to BNCR-1101 can be deemed complete. Below is a listing of the deficiency followed by our response:

**Section 1.0 – Legal and Financial**

1. Please revise the Revision No. 13 application form (SFN 10562) in Appendix 1-5 (Applications) to include a concise description of the surface coal mining and reclamation operations being updated. Providing a simple list of the updated permit sections does not adequately describe the proposed changes to the approved surface coal mining and reclamation operations. (GAW)

*Updated narrative on application form describing the proposed changes to the permit.*

2. According to NDAC 69-05.2-11-02(5)(a), Revision 13 to Permit BNCR-1101 has been deemed a significant revision. Please update Appendix 1.5-1 (Notice of Publication) to include a public notice and map that satisfies NDAC 69-05.2-10-01 and requirements of NDAC 69-05.2-04-01.3. The public notice should mention if BNI has Oliver County approval to conduct operations within one hundred feet of the outside right of way of a public road, close a public road, or relocate a road where mining is prohibited according to NDCC 38-14.1-07. (JWE, GAW, BSM, PJR, JAR)

*Updated Appendix 1.5-1 to include a Public Notice and map that describes the significant revisions being made during this revision.*

3. The public notice in Appendix 1.5-1 (Notice of Publication) must include a concise statement describing the road, the particular part to be relocated, where the relocation is to occur, and its duration, as required by NDAC 69-05.2-10-01(1)(d). (JWE, BSM, GAW)

*Appendix 1.5-1 describes the proposed overpass and detours associated with construction activities. Additionally the Publication map also depicts the location of temporary road closure and temporary detour during construction activities.*

**BNI COAL, LTD.**  
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Revision 13 Completeness Response Letter

BNI Coal, Ltd.  
Greg Petrick

4. On May 2, 2025, Mr. Petrick sent an email to the Reclamation Division that included Oliver County approval documents regarding road closures that were executed at the end of 2024. Please include this road closure information in the public notice in Appendix 1.5-1 (Notice of Publication) for Revision No. 13 as required by NDAC 69-05.2-10-01(1)(d). (JWE, BSM)

*Appendix 1.5-1 includes all road closures and ROW approvals that have been granted by the Oliver County Board of Commissioners.*

5. BNI is requesting two new reclamation variance areas with Revision 13 that involve delayed reclamation on several hundred acres of private property in the W<sup>1</sup>/<sub>2</sub> of Section 17 and portions of Section 21. Please ensure that Appendix 1.5-1 (Notice of Publication) includes public notice of these delayed reclamation requests and that the proposed variance areas are clearly depicted on the public notice map. (GAW, JWE, BSM)

*Appendix 1.5-1 narrative includes discussion of reclamation variances areas proposed to be added in Revision 13 along with depicting them on the Publication Map.*

6. Page 4 of Section 4.5-1 (Transportation Plan) states that Oliver County has approved BNI's plans for moving a dragline over County Road 37<sup>th</sup> Ave SW, with details to be submitted in a future permit revision. If this activity is not included in the Revision No. 13 public notice, this activity will need to be noticed to the public in a separate significant revision. (GAW, BSM)

*The temporary bypass road location over 37<sup>th</sup> Ave to move dragline into the Revision 8 addition area details are described in Section 4.5-1 and depicted on PLATE.*

7. Please update Section 1.12 (Other Licenses and Permits) to list the U.S. Army Corps of Engineers (USACE) permit for the intermittent stream crossing described in Section 4.5 (Transportation Plan), as required by NDAC 69-05.2-06-04. (JWE, BSM, AAC)

*Section 1.12 updated to list the U.S. Army Corps of Engineer permit for fill within the intermittent stream crossing in Section 13.*

8. The Certificate of Liability Insurance in Appendix 1.14-1 (Proof of Liability Insurance) expired on November 15, 2024. Please update Appendix 1.14-1 to include the current certificate and its endorsement as required by NDCC 38-14.1-14(3) and NDAC 69-05.2-12-20. (BSM, PRJ, AAC, JAR)

*Current Certificate of Liability Insurance included. Has expiration of 11/15/25 and therefore will provide newer copy when November 15<sup>th</sup> is reached.*

9. The second sentence of the Revision 13 Summary in Appendix 1-1 (Revision Summary and List of Changes) incorrectly states that the overpass on 37<sup>th</sup> Ave SW and haul road design is between 27<sup>th</sup> and 28<sup>th</sup> St. SW. Please revise this to reference the location as between Sections 11 and 12 and Sections 13 and 14. (BSM)

*Revision Appendix 1-1 description of where overpass location on 37<sup>th</sup> Ave SW will be located.*

## **Section 2.0 – Extended Mine Plan**

10. Please revise the boundary to Permit BNCR-1101 in Plate 2.1 (Extended Mine Plan), to be a single contiguous boundary. The addition area has been approved for some time, and the permit boundary should be depicted in a single color to prevent confusion for interested parties. (PJR)

*Plate 2.1 was updated to correct the permit boundary to one contiguous boundary as it exists. The extended mine plan map was updated to reflect the 2025 submitted version.*

#### **Section 4.2 – Existing Structures**

11. A pink dashed line is used in the legend of Plate 4.2-1 (Existing Structures Map) to describe the “Proposed Permit Area (BNCR-1101).” Please update the legend of Plate 4.2-1 to read “Permit Area (BNCR-1101)”. (JAR)

*The legend was updated as requested.*

#### **Section 4.5 – Transportation Plan**

12. The “Motion Approving Construction Plans, Development Agreement, and Road Use Agreement for the County Road 37 Overpass” in Appendix 4.5-1 (Section Line Closures, ROWs and Detour Corridors) is neither signed nor dated, and it does not include a written finding as to whether the interests of the public and affected landowners will be protected as required by NDAC. 69-05.2-04-01.3(3)(c). Please update Appendix 4.5-1 accordingly to address these items. (JWE, BSM, AAC)

*Appendix 4.5-1 updated to include the signed minutes and motion from the approval by the Oliver County Board of Commissioners. Page 3 of the minutes in paragraph 9 cites the Commissions findings on affects to the Public.*

13. In accordance with Special Condition No. 5 (added to Permit BNCR-1101 with Revision No. 8), BNI shall “provide haul road design plans to access the Revision No. 8 addition area and plans for any roads that may be necessary to transport mining equipment over 37<sup>th</sup> Ave SW.” Please update Section 4.5 (Transportation Plan) to include these design plans. Additionally, please review and verify the design plans for the haul road under 37<sup>th</sup> Ave SW fulfill the requirements of NDAC 69-05.2-24-03. (BSM, JWE, GAW)

*Appendix 4.5-10 has been added to provide design details for the haul road to transport mining equipment over 37<sup>th</sup> Ave SW. An additional page for Appendix 4.5-4 has been included to provide details along the intermittent stream crossing.*

14. Please provide detailed design plans for the proposed Temporary County Road 37<sup>th</sup> Ave SW Bypass that is depicted on Plate 4.1-1 (Pit Layout and Facilities Map) in the NE¼ of Section 14. (GAW, BSM)

*Appendix 4.5-11 includes design details from Moore Engineering about the temporary 37<sup>th</sup> Ave SW bypass.*

15. Page 4 of Section 4.5 (Transportation Plan) currently provides the only descriptive narrative in the permit detailing the construction of the Temporary County Road 37<sup>th</sup> Ave SW Bypass, the Proposed County Road Overpass Structure, and the Haul Road Section B extension beneath the overpass. However, this narrative is convoluted and does not present a clear, easy-to-follow general construction sequence or general timeline. To improve clarity, please revise the subsection “Haul Road Section B” in Section 4.5 to either: (a) include an additional subsection detailing the phased construction sequence for the Proposed County Road Overpass Structure, or (b) reference a new appendix that provides this information. Please ensure that the narrative also incorporates SPGM handling, surface water management features (including but not limited to sedimentation ponds P-13-8 and P-13-9), and details regarding the proposed Temporary County Road 37<sup>th</sup> Ave SW Bypass, as these activities coincide with the overpass project. If BNI seeks guidance on how to improve clarity in this narrative, the Reclamation Division can provide an example from similar construction projects at other North Dakota mines. (BSM)

*The Section 4.5 narrative for Haul Road Section B was updated to provide better clarity around the various phases of haul road extension, the overpass structure, county road bypass, and BNI bridge bypass. The narrative also discusses further details around short and long term surface water management, SPGM handling, and construction. Appendix 4.5-2 was updated with additional culverts needed to control runoff from Haul Road Section B east and west of the intermittent stream crossing and downstream of pond P-13-9. Additional explanation was added in the response to deficiency no. 17.*

16. Please update Appendix 4.5-1 (Section Line Closures, ROWs and Detour Corridors) to include the “Overpass Development Agreement” and “Road Use Agreement” as referenced on page 49 of Appendix 4.5-1. (JWE, BSM)

*Appendix 4.5-1 reference to Road use agreement removed as it will be developed with Oliver County following contractor selection. The Overpass Development Agreement has been added to Appendix 4.5-1.*

17. Plate 4.5-1 (Transportation Plan) has been updated to depict the construction locations of the Proposed County Road Overpass Structure and the Proposed Temporary County Road 37<sup>th</sup> Ave SW Bypass. Please review and verify that the Culvert Information Sheets (Appendix 4.5-2) for Culvert IDs 34 and 35 have been updated accordingly and correspond with the design plans for the overpass. (BSM)

*The designs for culverts 34 and 35 were reviewed and updated to the most current information. Culvert 34 design was updated to reflect the relocation of Pond P-13-8 to its upstream location. The culvert was modeled with the pond upstream and with the pond in a post-mine topography scenario as well to determine the maximum peak runoff. This worst case peak was determined to occur with the pond in place.*

*Additional culvert designs were added to the appendix. Culverts 37, 38, 39 and 40 were added. These culverts address runoff from Haul Road Section B through the overpass intersection and into pond P-13-9. This was to maximize the amount of control for the pond and minimize the runoff toward the stream crossing on Haul Road B. Culvert design for culvert 41 was added for culverts needed downstream of Pond P-13-9. Culvert designs were added for culverts 42 and 43. These culverts address drainage in the haul road east of the stream crossing to maximize the amount controlled by pond P-13-1 and minimize the amount that goes toward the intermittent stream crossing.*

18. Page 4 of Section 4.5 (Transportation Plan) states: “The permit from the USACE and correspondence from North Dakota Department of Water Resources has been provided to the PSC through email correspondence.” However, the Reclamation Division has not received the USACE permit. Please provide this information to the Reclamation Division in order to satisfy Special Condition No. 6 to the permit. (JWE, BSM, AAC)

*USACE supplied to NDPSC via email on October 2<sup>nd</sup>, 2025.*

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

19. Please include a detailed surface water management plan for the haul road passing through the N½ of Section 13, under County Road 37<sup>th</sup> Ave SW, to the initial pit in the NE¼ of Section 14 to fulfill NDAC 69-05.2-16-04(1)(a). The plan should address water management measures for the haul road crossing of the Hugel Creek intermittent stream tributary and must demonstrate to the Commission that this activity will not cause or contribute to violations of applicable state or federal water quality standards, nor adversely affect the water quantity, quality, or other environmental

resources of the stream. The plan will also be subject to review by North Dakota State Engineer (Water Resource Department) and Department of Environmental Quality. (GAW)

*Section 4.6 narrative, specifically pages 5 and 6, contain a section discussing the Haul Road Section B Intermittent Stream Crossing & 37<sup>th</sup> Avenue SW Bridge Bypass for BNI's dragline. Further details around the intermittent stream crossing design and dragline bridge bypass are discussed in the Section 4.5 narrative for haul road section B and a more detailed plan and profile of the two features were added to Appendix 4.5-4 as a second page and a new Appendix 4.5-10.*

20. Please include a detailed surface water management plan for the County Road 37<sup>th</sup> Ave SW Overpass Structure and proposed Temporary County Road 37<sup>th</sup> Ave SW Bypass that is depicted on the Pit Layout and Facilities Map in the NE¼ of Section 14. (GAW, BSM, JAR)

*An additional page for Appendix 4.5-4 has been included to provide additional Surface water management details beneath the County Road 37<sup>th</sup> Ave SW overpass structure.*

21. Plate 4.1-1 (Pit Layout and Facilities Map) depicts the proposed footprint of the County Road 37<sup>th</sup> Ave SW Overpass Structure. Both proposed embankments for the overpass appear to encroach on sedimentation ponds P-13-8 and P-13-9. The design details for sedimentation pond P-13-9 (Appendix 4.6-43) appear to have been updated in Revision 13, but P-13-8 (Appendix 4.6-42) has not. Please review and update Appendix 4.6-42 to reflect the design plans associated with the overpass. (BSM)

*Pond 13-8 has been redesigned onto the west side of the county road in Section 14 as shown in Appendix 4.6-42*

#### **Section 4.9 – Reclamation Schedule**

22. Please add additional narrative to variance area 10 to describe the exact year the area will be reclaimed. Currently, the narrative only states what year this area would start to be reclaimed, NDAC 69-05.2-09-11. (PJR)

*Additional narrative was added to variance area 10 with exact year of projected reclamation along with additional description into why delayed timeframe is needed to reclaim variance area.*

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  
Manager Environmental and Technical Services