

April 28, 2026

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 2 letter to us dated December 2, 2025. In this letter you listed 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 1.5 – Public Notice

1. Appendix 1.5-1 (Notice of Publication) contains duplicate information on pages 45 and 46. Please include a single copy of the public notice BNI intends to publish. (GAW/BSM/JAR)

Notice of Publication revised and included on page 45-57. Majority of text in Notice of Publication reworked for clarity.

2. Please consider removing all references to Special Condition No. 5 and No. 6 from Appendix 1.5-1 (Notice of Publication) for Revision 13 and revising the notice to instead provide a clear summary of the mining and reclamation changes being proposed with Revision 13. (GAW)

Notice of Publication revised to include only references to Revision 13.

3. The second sentence on pages 45 and 46 (duplicate) of Appendix 1.5-1 (Notice of Publication) states the approved permit includes 11,021.76 acres; however, based on the current metes and bounds, the approved permit area is 11,023.76 acres. Please correct this discrepancy. (BSM)

Notice of Publication revised with proper acreage (11,023.76)

4. The fifth sentence on page 46 and the first sentence on page 47 of Appendix 1.5-1 (Notice of Publication) contain the term “temporarily closing” and “temporary closing”, respectively. Please revise the wording in both instances to replace “closing” with “relocating,” which more accurately conveys to the public that 37th Ave SW will remain open to the public through the utilization of a temporary bypass road. (BSM)

Notice of Publication revised with relocating and that road will remain open.

5. Follow-up to Item No. 6: The narrative on page 6 of Section 4.5 (Transportation Narrative) has been updated and includes details under the 37th Avenue SW Bridge Bypass subsection regarding the dragline crossing; however, the narrative and publication map in Appendix 1.5-1 (Notice of Publication) for Revision 13 notice do not reference or depict this dragline crossing. Please update both the narrative and publication map to include this information. (BSM)

Notice of Publication narrative and map revised to reference temporary dragline bypass crossing of 37th Ave SW.

6. The second paragraph on page 47 of Appendix 1.5-1 (Notice of Publication) states, “A USB flash drive copy of the revision application may be requested by contacting the Public Service Commission at (701) 328-2400 or ndpsc@nd.gov, or by sending a written request.” Please remove this sentence from Appendix 1.5-1. (JWE)

Notice of Publication revised to remove sentence.

7. Ellen M. Emley is listed as a coal owner in the N½SE¼ of Section 18 in Appendix 1.5-1 (Notice of Publication), but Appendix 1.9-1 (Ownership Information) lists the owner as M. Ellen Emley. Please review and revise as necessary so the owner’s name is depicted correctly and consistently between documents. (JAR)

Typographical error on name revised

8. The “BNCR 1101 Permit Boundary” depicted on the publication map in Appendix 1.5-1 (Notice of Publication) includes the NE¼ of Section 29, T141N, R83W; however, neither the notice nor the permit indicates that Revision 13 proposes to add this quarter-section to the permit. Please revise the publication map by removing the NE¼ of Section 29, T141N, R83W from the “BNCR 1101 Permit Boundary.” (BSM)

Permit boundary corrected on publication map to remove NE1/4 of Section 29, T141N, R83W.

9. The publication map in Appendix 1.5-1 (Notice of Publication) labels all sections within Permit BNCR-1101, except for Section 16, T141N, R84W. Please update the Publication Map to label Section 16, T141N, R84W. (BSM)

Publication map updated to include label for Section 16, T141N, R84W.

10. The legend of the publication map in Appendix 1.5-1 (Notice of Publication) references variance area changes with Revision 13, which suggests that boundaries of existing variance areas are being altered. Please revise the legend’s wording to clarify that these are new variance areas proposed with Revision 13. Revising the legend to read “Variance Areas Proposed in Revision 13” would provide clearer context. (GAW)

The legend language has been changed to the suggested wording.

11. After addressing Item No. 10 above, please revise the “Variance Areas Changed in Revision 13” polygon format in the legend of the publication map in Appendix 1.5-1 (Notice of Publication). The polygon format in the legend does not match the polygon format depicted in the map. (MLJ)

The legend and polygon formats have been corrected to match.

12. For improved visual context and comprehension of real-world distances, please consider revising the scale bar in the legend of the publication map in Appendix 1.5-1 (Notice of Publication) from feet to miles. (GAW)

The scale bar has been changed to the unit of miles.

Section 1.9 – Surface and Coal Ownership

13. The permit boundary for BNCR-1101 in Plate 1.9-1 (Ownership Map) includes the NE¼ of Section 29, T141N, R83W, even though it is recognized that the area is correctly labeled as an area “Adjacent to Permit Boundary.” Please revise the permit boundary in Plate 1.9-1 to exclude this area. (MLJ)

The permit boundary has been updated to exclude the NE ¼ of Section 29.

Appendix 1.14-1 – Proof of Liability Insurance

14. Follow-up to Item No. 8: The Certificate of Liability Insurance found in Appendix 1.14-1 (Proof of Liability Insurance) expired on November 15, 2025. Please update Appendix 1.14-1 with an updated Certificate of Liability Insurance. (AAC/JAR)

Newest Certificate of Liability Insurance updated in Appendix 1.14-1.

Section 4.5 – Transportation Plan

15. The current engineering certification letter for Section 4.5 – Transportation Plan of Permit BNCR-1101 is dated October 21, 2020. Since that time, several design updates to the primary roads have been made, including revisions to the alignment and profile of portions of Haul Road Section B and its extension to the C1 Addition area, as well as updated design details for the 37th Avenue SW crossing. In accordance with NDAC 69-05.2-09-06(2), please provide an updated engineering certification letter for Permit BNCR-1101. (BSM)

The certification letter was updated as noted.

16. Follow-up to Item No. 12: Paragraph 9 on page 51 of Appendix 4.5-1 (Section Line Closures, Right of Ways, and Detour Corridors), states “WHEREAS, the Commission finds that the overpass project will improve public safety, traffic flow, and transportation infrastructure for the County while permitting BNI Coal LTD to continue its coal mining activities;”. This statement does not meet the requirements of NDAC 69-05.2-04-01.3(3)(c), which requires a written finding as to whether the interests of the public and affected landowners will be protected. Please work with the county to include their written finding as required by NDAC 69-05.2-04-01.3(3) and update Appendix 4.5-1 accordingly. If requested, the Reclamation Division can provide an example of this finding from another county. (JWE)

Added pages starting at page 55 of written findings from Oliver County with revised language specifically pertaining to affected public and landowners being protected.

17. Follow-up to Item No. 12: The approved and signed “Overpass Construction and Maintenance Agreement by and between Oliver County and BNI Coal, Ltd.” was not included in Appendix

4.5-1 (Section Line Closures, Right of Ways, and Detour Corridors). Please update this section to include the signed “Overpass Construction and Maintenance Agreement by and between Oliver County and BNI Coal, Ltd.” (AAC)

Document is signed through the county approval and written findings from page 56 of the April 14, 2026 meeting.

18. Follow-up to Item No. 13: Appendix 4.5-10 (37th Avenue SW Bridge Bypass-Dragline Relocation) has been added and provides clarification for the surface water management for the dragline bridge bypass area. However, no additional design/construction plans for the County Road 37 overpass were included for review. For clarification, please provide the project specific construction plans for the County Road 37 overpass. These should be the plans that were reviewed and recommended for approval by the County Engineer, and subsequently approved by the Board of Oliver County Commissioners on August 12, 2025. If the file size of the approved construction plans is too large to include in the permit, the plans may be submitted as a stand-alone document and incorporated by reference within the permit. (BSM)

Design/construction plans for the County Road 37 overpass are included in Appendix 4.5-5. These are the exhibits used by the Oliver County Commissioners to approve of the design. A signed planset of the entire project is on file with the Oliver County Engineer and is noted as such in Section 4.5-Haul Road Section B-Phase 3 Extension – 37th Ave SW Intersection and Temporary county Road Bypass.

19. Follow-up to Item No. 14: BNI’s response to Item No. 14 states that Appendix 4.5-11 was added to the permit, which provides design details from Moore Engineering about the temporary 37th Ave SW bypass. However, Appendix 4.5-11 doesn’t appear to be included in the recent submittal. Please review and include Appendix 4.5-11 for review. (BSM)

The response to No. 14 incorrectly indicated 4.5-11 instead of 4.5-5. Appendix 4.5-5 is where the design details on the temporary 37th Ave SW bypass reside.

20. The permit boundary for BNCR-1101 on Plate 4.5-3 (Proposed Section Line Closures, Right of Way Variances, and Detour Corridors) depicts the NE¼ of Section 29, T141N, R83W within the permit, but Revision 13 does not appear to propose to add the NE¼ of Section 29, T141N, R83W, to the permit. Please revise the BNCR-1101 permit boundary on Plate 4.5-3, excluding the NE¼ of Section 29, T141N, R83W. (BSM)

The permit boundary has been reverted to exclude the NE ¼ of Section 29, T141N, R83W.

Section 4.14 – Reclamation Cost Estimate

21. Please review and verify that the narrative in Section 4.14 (Reclamation Cost Estimate) and the calculations in Appendix 4.14-1 (Worst Case Bond Estimate) account for the County Road 37th Ave SW overpass demolition and any surface water management updates. (BSM)

Plate 4.14-1 was updated to reflect the changes around the 37th Avenue Overpass and water management structure changes. The worst case scenario was reviewed and no final pit changes were made. The SPGM disturbance was reviewed and updated to reflect more current disturbance and reclamation plans.

Section 4.14 narrative was reviewed and updates were made to the date of the worst case scenario and to quantities discussed in the narrative relating to SPGM. A line was added to discuss the 37th Ave SW overpass and demolition.

Appendix 4.14 Worst Case Bond Cost Estimate was updated to reflect disturbance boundary changes made in Plate 4.14. The overpass demolition and road reconstruction was added. The variable costs were updated to reflect the costs listed in the 2025 update to Policy Memorandum No. 16.

General

22. As noted in several deficiencies above, several maps in the permit were found to depict the NE¼ of Section 29, T141N, R83W as being within the permit boundary for BNCR-1101. Please review other maps applicable to Revision 13 to ensure the correct permit boundaries are depicted. (MLJ/BSM)

Publication map (1.5-1), ownership map (1.9-1) and Section line closures (4.5-2) map all updated to reflect Revision 13 permit boundary.

Additional Clarifications

Section 4.2 – Existing Structures

- *Plate 4.2-1 Existing Structures Map was updated to improve legibility and to update utility alignments along 37th Ave SW and 27th St SW with more accurate information from the Overpass design project.*

Section 4.6 – Surface Water Management Plan

- *The certification letter was updated.*

If you have any questions, please contact me.

Sincerely,



Greg Petrick
BNI Coal
Manager Environmental and Technical Services

cc via email only: Jonathan Rudnick (jrudnick@bnicoal.com)
BNI Coal Efiling (BNIefiling@bnicoal.com)