

**Public Service Commission
Reclamation Division**

Memorandum

To: Commissioners Kalk, Christmann, and Fedorchak
Darrell Nitschke, Executive Secretary
Illona Jeffcoat-Sacco

From: *BG* *DKM* *JJ*
Bill Gunnerson, Dean Moos, and Jim Deutsch

Date: May 21, 2014

Subject: Application for Surface Coal Mining Permit No. BNCR-1101 from BNI Coal, Ltd., Case No. RC-11-700

On December 12, 2011, BNI Coal, Ltd. (BNI) filed the application for Surface Coal Mining Permit No. BNCR-1101 to permit 8,359.72 acres at the Center Mine. The permit application provides the required baseline information and the operation and reclamation plans for mining and associated disturbances in the permit area. The Reclamation Division has completed its review of this permit application and respectfully recommends that it be conditionally approved.

The BNCR-1101 permit area adjoins existing Center Mine Permits BNCR-8106 and BNCR-9401 and expands the Center Mine to about four miles south of the Milton R. Young Station as depicted on Figure 1. Mining activities will begin in the north-northwest portion of Permit BNCR-1101 in 2014 with construction of sedimentation ponds, haul roads, and a dragline walkway corridor that will be used to move two of BNI's three draglines into Permit BNCR-1101 in late 2014. Topsoil and subsoil removal and stockpiling followed by overburden removal and stockpiling from the initial pit areas will also begin in 2014. BNI plans to begin coal removal in 2015 with projected production of 2.5 million tons for the first year of production. The coal production schedule for Permit BNCR-1101 indicates this permit will provide between one-half to two-thirds of the Center Mine's 4.5 million tons of annual coal production during the first five-year permit term. Permit BNCR-9702 currently provides the entire Center Mine coal production.

Coal will be mined from the Hagel coal bed on about 5,100 acres of the permit area as outlined by the permit's mining disturbance boundary on Figure 1. A sizable portion of the remaining acreage will be disturbed for soil and overburden stockpiles, access and haul roads, and water management structures used in support of mining activities. The mining pits are oriented in a northwesterly-southeasterly direction. Mining will progress across the permit area ending in the southwest corner in Section 25 where the last pit is projected for mining in 2042.

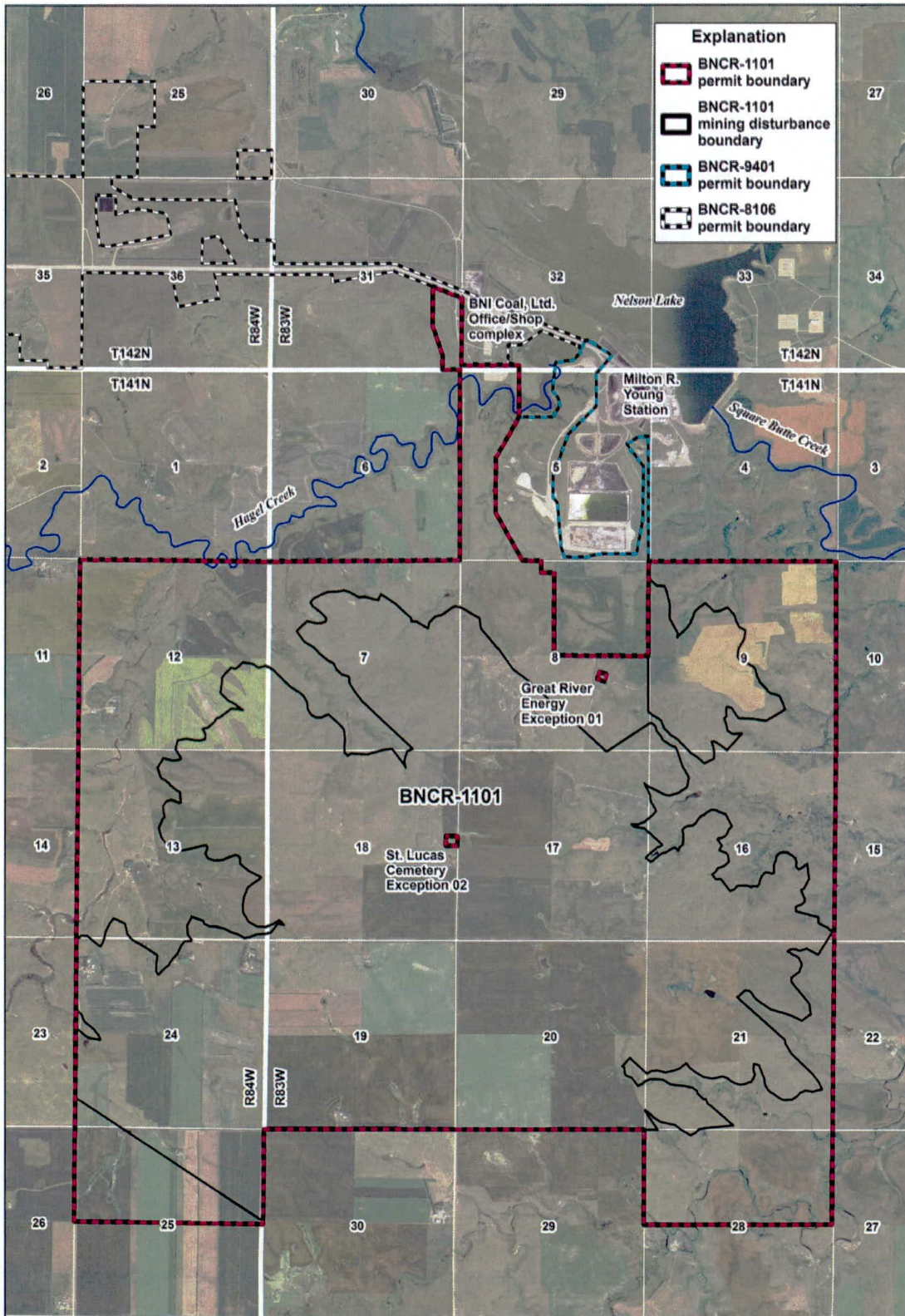


Figure 1. Permit Boundary of BNI Coal, Ltd. Surface Coal Mining Permit No. BNCR-1101 covering 8,359.72 acres at the Center Mine in relation to the Milton R. Young Station and existing permits BNCR-8106 and BNCR-9401.

0 1 2 Miles

Aerial photography courtesy of the USDA NAIP 2012

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The predominant premining land uses in the permit area are native grassland (4,108 acres) and cropland (3,221 acres). Lesser amounts are used for hayland, shelterbelts, fish and wildlife habitat (wetlands), woodlands, developed water resources, and roads. The acreage of each postmining land use will be somewhat similar to the premine conditions; however, the cropland acreage will increase by about six percent, while the native grassland acreage will decrease by about five percent. The average postmining slope proposed for the mining disturbance area will be slightly less than the average slope that exists for the area prior to mining. There are five occupied farmsteads located in the permit area and BNI proposes to eventually disturb four of these farmsteads as mining progresses across the permit area.

The permit area contains federal coal in 120 acres of the SE $\frac{1}{4}$ of Section 8, NE $\frac{1}{4}$ of Section 18, and SW $\frac{1}{4}$ of Section 24. BNI intends to mine portions of these federal coal tracts following issuance of a federal coal lease by the Bureau of Land Management. BNI has obtained the appropriate leases conveying the right to disturb the surface of the federal coal tracts to the extent necessary for conducting mining operations on adjoining tracts where the coal is privately owned. The federal coal lease must be issued and the Department of the Interior must approve the mine plan covering federal coal tracts prior to removing overburden and coal on any of the federal coal tracts. Special Condition No. 1 attached to the Commission's approval of Permit BNCR-1101 prohibits any overburden or coal removal from the federal coal tracts until BNI receives the coal lease and the Secretary of the Interior approves the federal mine plan. Until that mining plan is approved, surface disturbances on the federal coal tracts will be limited to those activities necessary for carrying out mining on the adjoining tracts where the coal interests are privately owned.

Special conditions are also attached to the approval of Permit BNCR-1101 for issues related to coal leases for two privately owned coal tracts in the permit area. In one instance, BNI has stated that it has a coal lease with Great Northern Properties Limited Partnership for Section 7 but it has not included it in the permit application for confidential reasons. The surface leases that BNI has with the two surface owners of Section 7 allow surface disturbances on Section 7 necessary for carrying out mining on the adjoining tracts. Special Condition No. 2 attached to the Commission's approval of Permit BNCR-1101 prohibits mining on this tract until BNI submits documents showing that it has the legal right to mine the coal. Until a copy of this coal lease is submitted or other documents are filed showing that BNI has the necessary rights to mine the coal, surface disturbances on Section 7 are limited to those activities necessary for carrying out mining on the adjoining tracts.

In the other instance, BNI has attempted to determine coal ownership for the NE $\frac{1}{4}$ of Section 20 during the application review period. A district court judge recently issued an order with a decree listing the coal owners and the percentage that each owns in this quarter section. Based on the court decree, BNI does not currently have coal leases for at least 75 percent of the coal rights as required by NDCC 38-18, but BNI does have a coal lease with 100 percent of the surface owners that allows surface disturbances necessary for carrying out mining on the adjoining tracts. Special Condition No. 3 attached to the Commission's approval of Permit BNCR-1101 prohibits mining on this tract until additional documents are submitted showing it has the legal right to mine the coal. Until BNI submits these documents, surface disturbances on

the NE¼ of Section 20 are limited to those activities necessary for carrying out mining on the adjoining tracts where BNI has all of the rights necessary to mine the coal.

On April 3, 2014, the Oliver County Board of Commissioners approved BNI's December 9, 2013 petition to the Commission for approval to temporarily close several section lines, permanently close a section line, and conduct mining operations within 100 feet of the outside right-of-way. Although some of the approvals necessary to conduct surface coal mining operations affecting public roads within or near Permit BNCR-1101 have been granted, BNI will request others in the future. Special Condition No. 4 will be attached to Permit BNCR-1101 requiring BNI to provide the Commission with copies of the road authority's approval documents within 30 days of the approval date and include the written findings made by the road authority. North Dakota Administrative Code Section 69-05.2-04-01.3 requires the Commission to make a written finding on protecting the interests of the public and affected landowners if this is not included in the road authority's approval process.

As depicted on Figure 1, two parcels excluded from the exterior boundaries of the BNCR-1101 permit area by exceptions to the metes and bounds description are labeled as Exception 01 (one acre in the SE¼ of Section 8) and Exception 02 (two acres in the NE¼ of Section 18). Mining is not projected to occur within several hundred feet of the Great River Energy communications tower in the SE¼ of Section 8 and the St. Lucas Cemetery in the NE¼ of Section 18 is also excluded from the permit area. The exclusion for the St. Lucas cemetery includes the required 100 foot setback from the cemetery.

BNI published the permit application notice in the Center Republican and Bismarck Tribune in December 2012 and January 2013 and the Commission sent notices to all surface owners that will be affected by the permit application, as well as to numerous local, state, and federal agencies. In addition, advisory committee members were provided copies of the permit application for their review and comment. No objections or requests for an informal conference were received on this permit application and no major issues were raised during the permit application review. However, it should be noted that BNI just recently (May 16th) executed a surface lease that was needed before the permit could be issued.

The Reclamation Division has determined that a bond in the amount of \$14,285,019 is sufficient to cover the required reclamation, restoration, and abatement work for the mining and associated disturbances proposed in the permit application. BNI filed Surety Bond Number 800006493 in the amount of \$15,000,000 for Permit BNCR-1101 on May 6, 2014. The bond was found to be properly executed and is approved with an effective date of May 27, 2014.

Attached for your consideration is the proposed motion for the May 28, 2014 Commission meeting to conditionally approve Permit No. BNCR-1101. Also attached are the proposed permit award form that includes the required findings, the permit conditions, and the newspaper notice that the Commission must publish following permit approval.

Attachments