

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

BNI Coal, Ltd.
Revision No. 40, Permit BNCR-9702
Approval

Case No. RC-17-280

**REVISION OF PERMIT TO ENGAGE IN SURFACE COAL
MINING AND RECLAMATION OPERATIONS**

June 26, 2019

Based on the application for **Revision No. 40 to Permit Number BNCR-9702** submitted by BNI Coal, Ltd. (BNI) for the Center Mine on July 6, 2017, and as revised through April 24, 2019, and all information and documentation contained therein, the North Dakota Public Service Commission (Commission) finds that the application meets applicable requirements of Chapter 38-14.1 of the North Dakota Century Code (NDCC) and Article 69-05.2 of the North Dakota Administrative Code (NDAC). On the basis of the information set forth in the application, or from that otherwise available and known by the applicant, the Commission finds that:

Finding No. 1. The permit revision application is accurate and complete and complies with the requirements of NDCC Chapter 38-14.1 and NDAC Article 69-05.2 [NDCC 38-14.1-21(3)(a)].

Revision No. 40 adds 636.58 acres to Permit BNCR-9702, revises mining and reclamation plans, and updates nearly all other sections of the permit with information for the added land. With Revision No. 40 approval, Permit BNCR-9702 will total 7,655.11 acres located southwest of Center. The land being added to the permit in Section 20, Township 142 North, Range 84 West, expands the current permit boundary's northwest corner along the south side of North Dakota Highway 25. Coal removal and mining disturbance is planned for about 360 acres of land added with the revision. Associated disturbance for sedimentation ponds and their related diversions and stockpiles will disturb about 10 acres, while about 270 acres will remain undisturbed.

The applicant verified that all information included in the revision application is true and correct to the best of its knowledge. Commission staff conducted completeness and technical reviews to ensure that the required information was provided, and that mining and reclamation plans meet all applicable requirements. The Reclamation Division sent completeness and technical review letters to the applicant on August 4, 2017, November 7, 2017, December 6, 2017, March 6, 2018, October 9, 2018, January 14, 2019, March 21, 2019, and April 18, 2019. Responses to each letter were reviewed and changes to the revision application were made to address the deficient items. The Commission concludes that this significant revision application is now accurate and complete. The applicant published the required notice of permit revision application in two newspapers. The Commission sent the notice of revision application receipt to surface owners of land being added to the permit area and those affected by the proposed revised postmine topography. The notice of revision application receipt was also sent to numerous local,

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Approval of Revision No. 40 to Permit BNCR-9702

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Revision of Permit to Engage in Surface Coal Mining and Reclamation Operations
Public Service Commission

state and federal agencies. Advisory committee members reviewed portions of the revision application and comments were received from several agencies. No objections or requests for an informal conference were received on this revision application.

Three quarters of the coal reserves in Section 20 added with Revision No. 40, the N½ and SW¼, are federally owned. BNI has a lease application pending with the Bureau of Land Management (Lease-by-Application NDM-105513) for about 290 acres of the federal coal in Section 20. The applicant has the appropriate surface leases to conduct surface coal mining activities on these federal coal tracts and therefore has the legal 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. Prior to overburden and coal removal on the federal coal tracts, however, the federal coal lease must be issued and the Department of the Interior must approve the mine plan covering federal coal tracts that will be mined as required by 30 CFR 746.11. This section of federal regulations states that no person shall conduct surface coal mining and reclamation operations on lands containing leased federal coal until the Secretary has approved the mining plans. Special Condition No. 1 attached to Revision No. 40 approval 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 the federal mining plan is approved, the condition also limits surface disturbances on the federal coal tracts to those activities that are needed for carrying out mining on the adjoining tracts where the coal interests are privately owned.

Mining privately owned coal in the W½W½ of Section 21 of the current permit area is planned to resume in 2020 after a five-year temporary pit cessation, and following the construction of three sediment ponds in the E½ of Section 20 in 2019. Westward mining progression into Section 20 is planned to begin in 2021 and proceed through 2024 when mining will be completed in Permit BNCR-9702. The revision also proposes to revise the postmine topography within the current permit area in portions of Sections 21, 28, 29, 32, and 33 to reclaim the final pits in Sections 28 and 29. Revising the postmine topography in Section 21 will re-disturb about 65 acres of reclaimed land. A secondary postmine topography design for Sections 20 and 21 is presented in the revision application to reclaim a final pit along the west section line of Section 21 in the event that a federal coal lease for the N½ and the SW¼ of Section 20 is not acquired.

Finding No. 2. The applicant has demonstrated that reclamation as required by NDCC Chapter 38-14.1 and NDAC Article 69-05.2 can be accomplished under the reclamation plan contained in the revised permit application [NDCC 38-14.1-21(3)(b)].

Revision No. 40 adds 636.58 acres to the permit, revises mining and reclamation plans, and updates nearly all other sections of the permit accordingly. Areas planned for disturbance will be reclaimed using methods that have been successful in the past and satisfy the requirements of the North Dakota law and rules.

The proposed postmining topography meets the approximate original contour requirements of NDCC 38.1-14.1-24 (3) and NDAC 69-05.2-21-02. The average postmining slopes of the land added to the permit with Revision No. 40 are less than that which existed prior to mining. The applicant has demonstrated that sufficient soil materials are available to meet the soil redistribution requirements of NDAC 69-05.2-15 and the revegetation requirements of NDAC 69-05.2-22. The reclaimed land will be capable of supporting the uses, or higher or better uses, that it was capable of supporting prior to mining. Native grassland (371 acres) and cropland (220 acres) are the predominant premining and postmining land uses for land being added to the permit with Revision No.

40. Cropland and native grassland are the predominant premining and postmining land uses for the entire permit area. Other premining and postmining land uses occurring in the permit area include hayland, tame pastureland, farmsteads, roads, wetlands, shelterbelts, and developed water resources. Although there are some acreage adjustments, all of these other premining land uses are also proposed after mining.

The applicant did not request additional variances from the contemporaneous reclamation requirements that normally require rough grading to be completed within 180 days of coal removal (NDAC 69-05.2-21-01(2)), and that all reclamation efforts through the initial seeding be completed within three years of completion of mining activities (NDCC 38-14.1-24(14)). Existing Variance Area Number 12 located primarily in the W½ of Section 21 and the NW¼ of Section 28 that is valid through 2020 has been retained for the five-year pit cessation and revised postmine topography in the area. Variances from the 180 day grading requirement were previously granted for portions of the permit area as allowed by NDAC 69-05.2-21-01(2).

Finding No. 3. Based on the assessment of the probable cumulative impact of all anticipated mining in the area, the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area [NDCC 38-14.1-21(3)(c)].

An assessment of the probable cumulative hydrologic impact of all anticipated mining in land being added to the permit area with Revision No. 40 has been made as required by NDCC 38-14.1-14(1)(o). The Commission finds that the proposed operation has been designed to maintain the quantity, quality, and hydrologic regime of surface and ground water systems in the area. The cumulative effects of all existing and proposed mining operations should not damage the hydrologic balance and water availability within or adjacent the permit area. The original cumulative hydrologic impact assessment for Permit BNCR-9702 was updated for land added to the permit with Revision No. 30 in 2011, and was recently updated to reflect the addition of 636.58 acres to the permit area with Revision No. 40. This acreage is contiguous with, and directly west of, current mining operations at the Center Mine.

Finding No. 4. Land being added to the permit area is not within an area designated unsuitable for surface coal mining operations, nor within areas under study or administrative proceedings under a petition to have an area designated as unsuitable for surface coal mining operations [NDCC 38-14.1-21(3)(d)].

None of the land being added to the permit area with Revision No. 40 has been designated unsuitable for surface coal mining operations pursuant to NDCC 38-14.1-05, nor is it within an area under study or administrative proceedings under a petition to have an area designated as unsuitable for surface coal mining operations.

Finding No. 5. The proposed mining operation will not interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated or materially damage the quantity or quality of water in surface or underground water systems that supply these alluvial valley floors [NDCC 38-14.1-21(3)(e)].

Based on an examination of the geology, hydrology, soils, vegetation, irrigation history and potential, and land use along stream valleys located within and adjacent the land being added to the permit area with Revision No. 40, as described in BNI's Alluvial Valley Floor Evaluation Report for the Section 20 area, and a field inspection of the area on

October 8, 2013, the Reclamation Division determined that the stream valleys do not constitute an alluvial valley floor as defined in NDCC 38-14.1-02(1).

Finding No. 6. In cases where the mineral estate has been severed from the surface estate, the applicant complied with the requirements of NDCC Chapter 38-18 [NDCC 38-14.1-21(3)(f)].

The applicant included the necessary leases and other documents in the application demonstrating compliance with the Surface Owner Protection Act, NDCC Chapter 38-18. This documentation included the notice that was provided to all surface owners within the land being added to the permit area with Revision No. 40 at least 30 days prior to submitting the Revision No. 40 application.

Finding No. 7. Land being added to the permit area is not within areas subject to the prohibitions or limitations of NDCC 38-14.1-07 unless such areas meet the application review procedures of NDAC 69-05.2-04-01.1 [NDAC 69-05.2-10-03(6)(a)].

Land being added to the permit area is:

- a. Not on any lands within the boundaries of units of the North Dakota Park System, the National Park System, the National Wildlife Refuge Systems, the National System of Trails, the National Wilderness Preservation System, the National Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act, and national recreation areas.
- b. Not on any federal lands within the boundaries of any national forest.
- c. Not within 300 feet of any publicly owned park or places included in the State Historic Sites Registry or the National Register of Historic Places. The applicant (BNI) contracted Ethnoscience, Inc. in 2007 to conduct a Class III cultural resource inventory of land being added to the permit area with Revision No. 40. A report titled "*A Class III Cultural Resource Inventory of 640 Acres for BNI Coal, Oliver County, North Dakota*" published in May 2008 identified two previously unrecorded historic sites consisting of a standing structure (Site 32OL495), and an abandoned homestead (Site 32OL511), that were recommended as ineligible for the National Register of Historic Places. The report also identified one previously unrecorded prehistoric site in the NE¼ of Section 20 of federal coal ownership consisting of three stone rings and a carin (Site 32OL510) that was recommended as potentially eligible for the National Register of Historic Places. The State Historic Preservation Officer (SHPO) concurred with the 2008 Ethnoscience, Inc. site eligibility recommendations in June 9, 2008 correspondence. BNI contracted Ethnoscience, Inc. in 2011 to test the features within Site 32OL510. The testing report titled "*Testing and Evaluation of Site 32OL510, Oliver County, North Dakota*" published in March 2012 recommended that Site 32OL510 was eligible for listing on the National Register of Historic Places. The report recommended site avoidance, but recommended site mitigation through data recovery prior to mining disturbance if site avoidance was not feasible. BNI determined that proposed sediment pond construction in support of mining activities of adjacent private coal ownership could affect the site. BNI contracted Ethnoscience, Inc. in 2018 to conduct site data recovery as mitigation for effects to the site. Site mitigation was completed in 2018 with a "no adverse effect" determination from the Bureau of Land Management in correspondence dated October 10, 2018, and the SHPO stated its concurrence in correspondence dated October 22, 2018. BNI has committed to informing the proper

authorities in the event that any previously unrecorded archeological, cultural, or historic materials are discovered.

- d. Within 100 feet of the outside right-of-way line of public roads on the east and south section lines of land being added to the permit area with Revision No. 40. Surface coal mining is proposed through the north-south section line common to Section 20 and Section 21, T142N, R84W, in 2021 after obtaining the federal coal lease and receiving federal mine plan approval. Mining disturbance for privately owned coal may occur within 100 feet of the outside right-of-way line on the north side of the east-west section line coincident with the permit boundary common to the SE¼ of Section 20 and the NE¼ of Section 29, T142N, R84W, following Revision No. 40 approval. The Oliver County Commission approved temporary closure of the section line common to Section 20 and Section 21, T142N, R84W, on August 6, 2015 following public notice and opportunity for a public hearing. The Oliver County Commission approved temporary closure of the section line common to Section 20 and Section 29, T142N, R84W, on August 8, 2017 following public notice and opportunity for a public hearing. Surface coal mining and reclamation operations are not proposed within 100 feet of the outside right-of-way line of a public road on the north section line of land being added to the permit area with Revision No. 40 occupied by ND Highway 25, nor on the west section line of land being added occupied by 41st AVE SW.
- e. Not within 500 feet of any occupied dwelling.
- f. Not within 300 feet of any public building, school, church, community, or institutional building.
- g. Not within 100 feet of a cemetery.

Finding No. 8. With respect to prime farmland, the postmining land use for the premining prime farmland will be cropland, the reclamation plan was reviewed by the Natural Resource Conservation Service and their suggestions were considered, operations will be conducted in compliance with NDAC 69-05.2-26 and NDCC 38-14.1, and the applicant has the technological capability to restore the productivity on reclaimed lands [NDAC 69-05.2-10-03(6)(c) and NDCC 38-14.1-21(6)].

The applicant provided a prime farmland reclamation plan for land being added to the permit area with Revision No. 40. The plan satisfies the requirements of NDAC 69-05.2-09-15 and the performance standards of NDAC Chapter 69-05.2-26. The Natural Resources Conservation Service reviewed the prime farmland reclamation plan and determined that it is adequate to restore the productivity of the prime farmland. The reclamation methods that will be used by the applicant have been proven to be successful in the past; therefore, the Commission finds that the applicant has the technological capability to restore the productivity of reclaimed land to a level that is equal to or greater than non-mined prime farmland in the surrounding area under equivalent management practices. Prime farmland performance standards apply to about 31 acres of cropland that have been identified as prime farmland by the Natural Resources Conservation Service soil survey for Oliver County, but only a small portion of these acres will be mined. The applicant will segregate prime and non-prime farmland topsoil and subsoil for stockpiling or immediate redistribution. Each landowner will receive the same acreage of reclaimed prime farmland as was present prior to mining, and the postmine land use of the reclaimed prime farmland will be cropland.

Finding No. 9. The operations will not affect the continued existence of any threatened, endangered or proposed species or result in the destruction or adverse modification of proposed or designated critical habitats [NDAC 69-05.2-10-03(6)(d)].

Surface coal mining and reclamation activities will not jeopardize or adversely affect any proposed, threatened, or endangered species or proposed or designated critical habitat. No federal threatened, endangered, or proposed species were observed within or adjacent the land being added to the permit with Revision No. 40, and there are no proposed or designated critical habitats in or adjacent the area being added to the permit.

The USFWS IPaC, Information for Planning and Consultation, internet service program identifies seven threatened or endangered species potentially occurring in the Section 20 revision addition area. The IPaC site does not identify any species proposed for listing in the revision addition area. The species listed include the Northern Long-Eared Bat, Interior Least Tern, Piping Plover, Rufu Red Knot, Whooping Crane, Pallid Sturgeon and Dakota Skipper. The Gray Wolf, Black footed Ferret, Poweshiek Skippling, Western Prairie Fringed Orchid and Rusty Patched Bumblebee are listed species in ND but excluded from the IPaC list.

The permit addition area is not within the whooping crane breeding or wintering ranges and the addition area does not contain suitable whooping crane stopover habitat. It is conceivable that whooping cranes could fly over the proposed permit addition area and that they could utilize the upland native grassland and cropland sites in the addition area, but this is unlikely given the absence of suitable wetland habitat in the permit addition area and adjacent area. The Commission therefore finds that the proposed mining and reclamation activities in Section 20, T142N, R84W, will have "no affect" to the continued existence of whooping crane.

There is no suitable habitat for the piping plover within or adjacent the permit addition area that is generally characterized as sparsely vegetated shorelines usually associated with alkaline wetlands and sandbars and shorelines associated with major river systems. The Missouri River and Lake Sakakawea are piping plover designated critical habitat areas that are located at least 11 miles from the permit addition area, and the balance of the designated critical habitat is located north and east of the Missouri River. There are no wetlands with sparsely vegetated shorelines in or adjacent to the area being added to the permit. The Commission therefore finds that the proposed mining and reclamation activities will have "no affect" to the continued existence of the piping plover.

The Dakota skipper is a small butterfly that requires high quality mixed or tallgrass prairie. There are two types of prairies suitable for this species: (1), a moist lowland bluestem prairie habitat type with wood lily, harebell and smooth camas, and (2), a relatively dry upland prairie habitat type found on ridges and hillsides dominated with bluestem grasses, needlegrasses, and desirable native forbs such as purple coneflower. Oliver County is not listed as a county in North Dakota where this species is believed to exist, according to the U.S. Fish and Wildlife Service (USFWS), but it is conceivable that this species may exist in the county. The permit addition and adjacent area does not contain any moist lowland bluestem prairie habitat, and the dry upland sites are in reduced ecological condition. Old cropland field boundaries and rock piles provide evidence that a large percentage of the native grassland was tilled many years ago, and non-native species are now the dominate species established on this grassland. There is no designated critical habitat for the Dakota skipper in Oliver County. The Commission therefore finds that the

proposed mining and reclamation activities in Section 20 will have “no affect” on the continued existence of the Dakota skipper.

The Northern Long-Eared Bat is a medium sized bat that is not common in North Dakota. Its historic range includes essentially all of North Dakota and it has been documented in the Little Missouri badlands, Missouri River Valley, and the Turtle Mountains. There is no known hibernacula in North Dakota, according to the federal register final rule listing. This species spends its winters in caves and mines, called hibernacula, and during the summer it roosts singly or in colonies underneath bark, in cavities, or in crevices of both live and dead trees. This species was listed as threatened because of its decline from a disease termed White-Nose Syndrome (WNS). If this disease had not emerged, it is unlikely the Northern Long-Eared Bat would be listed. The 4(d) rule for the Northern Long-Eared Bat, published January of 2016 and effective February of 2016, states that incidental take resulting from otherwise lawful activities will not be prohibited in areas not yet affected by WNS. The entire state of North Dakota was outside of the WNS zone in January of 2016, but a May 31, 2019 map now depicts the eastern and southern portions of North Dakota within the WNS zone. Oliver County is outside of the WNS zone. The Revision No. 40 addition area contains 2.1 acres of woodland and 0.7 acres of shelterbelt containing trees that are potential roost habitat. Approximately 0.5 acres shelterbelt may be affected by mining activities but a habitat assessment of the revision addition area concluded that there is no wintertime hibernacula present. Although incidental take is authorized by the 4(d) rule, BNI has included language in the permit stating that they will limit their impact to trees during the maternity period from May through late July. It is therefore highly unlikely that mining will have any effect on the Northern Long-Eared Bat and the Commission finds that the proposed mining and reclamation activities will have “no affect” on the continued existence of the Northern Long-Eared Bat. There is no proposed or listed designated critical habitat for the Northern Long-Eared Bat in North Dakota.

The gray wolf could be an occasional migrant through Oliver County but the permit addition and adjacent area does not contain suitable habitat for this species to sustain itself in the area. The Commission therefore finds that the proposed mining and reclamation activities will have “no affect” to the continued existence of the gray wolf.

The permit addition and adjacent area does not contain habitat for the Interior Least Tern, Black-Footed Ferret, Pallid Sturgeon, Poweshiek Skipperling, Western Prairie Fringed Orchid, Rufa Red Knot, or Rusty Patched Bumblebee. The Commission finds that the proposed mining and reclamation activities will have “no affect” to the continued existence of any of these species.

The fish and wildlife monitoring plan in the permit includes continued surveys for threatened and endangered species. Also, NDAC 69-05.2-13-08(2) requires the permittee to promptly report the presence of any threatened and endangered species to the Commission which must then consult with the USFWS and North Dakota Game and Fish Department to decide whether, and under what conditions, the operator may proceed. This action will therefore not jeopardize or adversely affect listed or proposed species or any proposed or designated critical habitat. The Commission sent a preliminary “no-affect” findings letter to the USFWS, North Dakota Ecological Services Field Office, Bismarck, regarding Revision No. 40 to Permit BNCR-9702. This January 9, 2018 letter included a project description and an analysis of potential effects of this action to

threatened, endangered, and proposed species, and proposed and designated critical habitat. The USFWS did not respond to our preliminary findings.

The Bureau of Land Management has prepared a draft Environmental Assessment for BNI's federal coal lease (Lease-by-Application NDM-105513) that includes approximately 290 acres of federal coal in Section 20. The March 2019 EA (DOI-BLM-MT-C030-2017-0088) includes a Finding of No Significant Impact (FONSI). Item No. 9 of the FONSI discusses consultation with the USFWS and states that the proposed action is not expected to have any significant effects on fish and wildlife resources.

Finding No. 10. The applicant has paid all reclamation fees required by 30 CFR subchapter R [NDAC 69-05.2-10-03(6)(e)].

The applicant has paid all reclamation fees required by 30 CFR subchapter R. Records maintained by the Office of Surface Mining's Applicant Violator System indicate that all fees have been paid.

Finding No. 11. The applicant has satisfied requirements for approving cropland as a post-mining land use [NDAC 69-05.2-10-03(6)(f)].

The applicant has satisfied the requirements for approval of a cropland postmining land use under NDAC 69-05.2-22-01 for the land being added to the permit with Revision No. 40. Areas reclaimed to cropland will either be seeded directly to crops commonly grown in the area or to a tame grass/legume pre-cropland mixture that may include soil improving root crops. The postmining topography and soils are suitable for cropland in the areas that will be cropped.

Finding No. 12. All existing structures that will be used to support mining activities within the permit area comply with the application requirements of NDCC 38-14.1-24 and NDAC Article 69-05.2 [NDAC 69-05.2-10-04].

No existing structures in the land being added to the permit with Revision No. 40 will be used to support mining activities; however, haul roads and other facilities within previously permitted areas of Permit BNCR-9702 will support mining in the land being added to the permit. These previously permitted structures have been found to meet the applicable design and performance standards of NDCC Section 38-14.1-24 and NDAC Article 69-05.2.

Finding No. 13. No drill holes, boreholes or wells will be retained for other uses [NDAC 69-05.2-14-03].

The applicant has not proposed to retain any drill hole, borehole, or well for other uses.

Finding No. 14. No spoil in the permit area is known to cause toxic mine drainage [NDAC 69-05.2-16-11].

The chemical characteristics of the overburden materials in the land being added to the permit area with Revision No. 40 are such that they do not produce toxic mine drainage. The analysis of overburden samples included in the permit application do not reveal any substances that would cause any chemical reactions or physical effects that are likely to kill, injure, or impair biota commonly present in the area.

Finding No. 15. The applicant will not conduct mining activities within one hundred feet of any perennial stream [NDAC 69-05.2-16-20].

As proposed with Revision No. 40, the applicant does not plan to conduct any mining related activities within 100 feet of any perennial stream. A small tributary of Square Butte Creek passing through the northwest portion of land being added to the permit area with Revision No. 40 is classified as an intermittent stream. Although this stream may flow for only short periods in response to precipitation events and have other characteristics similar to ephemeral streams within the permit area, it appears that flow may be sufficient to meet the definition for intermittent. Also, the channel area is identified as a linear seasonal wetland with several pool areas that serve as water sources for livestock and wildlife. There is no mining disturbance planned within 100 feet of the intermittent stream.

Finding No. 16. The applicant does not propose to use any experimental practices in the permit area [NDAC 69-05.2-27-02].

There are no plans included in the revision application to use any experimental practices that may be allowed under NDAC 69-05.2-27-02.

Finding No. 17. The applicant does not control and has not controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations [NDAC 69-05.2-10-03(4)].

Commission records, and those in the Office of Surface Mining's Applicant Violator System, indicate that the applicant does not control, and has not controlled, surface coal mining and reclamation operations with a demonstrated pattern of willful violations of NDCC 38-14.1 or of other state's laws which are based on P.L. 95-87 (the Federal Surface Mining Control and Reclamation Act), of such nature, duration, and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of these laws.

Finding No. 18. Neither the applicant, nor any affiliated companies, have unabated violations or unpaid civil penalties [NDAC 69-05.2-10-03(1)].

Commission records, and those in the Office of Surface Mining's Applicant Violator System, indicate that neither the applicant, nor any affiliated companies, have any unpaid civil penalties or unabated violations of NDCC 38-14.1 or any other federal or state laws, rules, or regulations pertaining to air or water environmental protection. The ND Department of Environmental Quality has indicated its concurrence with this finding.

Finding No. 19. A performance bond in the amount of \$35,067,865 is sufficient for the proposed surface coal mining operations in this permit area and for the Center Mine consolidated bond area [NDAC 69-05.2-12-07].

An updated worst-case reclamation cost estimate of \$35,067,865 for the Center Mine consolidated bond area that includes Permits BNCR-9702, BNCR-8106, BNCR-8202, and BNCR-8602 was submitted with the Revision No. 40 application. The existing surety bonds for the Center Mine consolidated bond area total \$35,067,865 and are sufficient to cover the worst case reclamation cost estimate.

Subject to the right of any person with an interest that is or may be adversely affected to request a formal hearing under NDCC 38-14.1-30, **Revision No. 40 to Permit Number BNCR-9702** is hereby conditionally granted to **BNI Coal, Ltd.** to engage in surface coal mining and reclamation operations, on the following described area subject to the applicable requirements of the original permit and conditions, Chapter 38-14.1 of the North Dakota Century Code, and the rules promulgated there under. (Attached is a copy of the metes and bounds description of lands being added to the permit area.)

LOCATION

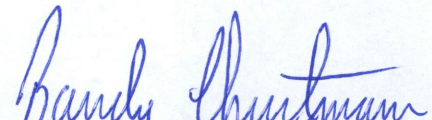
MINE	ADDRESS	ACRES	Section	Township	Range	County
Center	Center, ND	636.58	20	142N	84W	Oliver

636.58 acres - Total Area Added

PUBLIC SERVICE COMMISSION


Julie Fedorchak
Commissioner


Brian Kroshus
Chairman


Randy Christmann
Commissioner

Revision No. 40 to Permit BNCR-9702 - Metes and Bounds Description

TRACT 20

Section 20 of Township 142 North, Range 84 West Of The Fifth Principal Meridian, Oliver County, North Dakota Described As Follows:

Beginning at the Northeast Corner of Section 20, Township 142 North, Range 84 West; NAD 27 ND State Plane South Zone US Foot N: 527,950.2 E: 1,790,489.3;
Thence South 00°30'43" East, a Distance of 5267.71 Feet;
Thence North 89°23'16" West, a Distance of 5274.47 Feet;
Thence North 00°20'21" East, a Distance of 5267.35 Feet;
Thence South 89°23'32" East, a Distance of 5290.34 Feet to the Point of Beginning.

The Above Described Tract of Land Contains 638.78 Acres, More Or Less.

EXCEPTION 2

Beginning at the North Quarter Corner of Section 20, Township 142 North, Range 84 West of the Fifth Principal Meridian, Oliver County, North Dakota; NAD 27 ND State Plane South Zone US Foot N:527,978.3 E: 1,787,844.3;
Thence South 00°36'28" West, a Distance of 125.00 Feet to the True Point of Beginning.
Thence South 00°36'28" West, a Distance of 470.00 Feet;
Thence South 89°23'32" East, a Distance of 204.16 Feet;
Thence North 00°36'28" East, a Distance of 470.00 Feet;
Thence North 89°23'52" West, a Distance of 204.16 Feet to the True Point of Beginning.

The Above Described Tract of Land Contains 2.20 Acres More Or Less.

Permit BNCR 9702 Revision No. 40 Addition Acres Total = 636.58 Acres, More Or Less.