



United States Department of the Interior



BUREAU OF LAND MANAGEMENT
Montana/Dakotas State Office
5001 Southgate Drive
Billings, Montana 59101
<http://www.blm.gov/montana-dakotas>

April 28, 2021

DECISION

Mr. Jay Volk Ph.D.
BNI Coal
2360 35th Avenue SW
Center, North Dakota 58530

Resource Recovery and Protection Plan Approved

On September 4, 2020, the Bureau of Land Management (BLM) received a Resource Recovery and Protection Plan (R2P2) from BNI Coal, Ltd. (BNI) for Federal coal lease NDM 105513. Following the review of the R2P2 application, the BLM found it to be complete and in conformance with the requirements of the Minerals Leasing Act of 1920, as amended, and the applicable regulations at 43 CFR 3480. It is my decision that this R2P2 is complete, effective April 21, 2021.

Federal coal lease NDM 105513 consists of three tracts comprising 630 acres. The tracts contain an estimated 7,963,782 short tons of minable Federal coal resources. When the mining of Federal coal is initiated within any one of the lease tracts, to remain in compliance with the continued operations (CO) production requirement, BNI must produce commercial quantities of coal from this lease during the continued operations year, or request to pay advance royalty in lieu of production, or submit a Logical Mine Unit (LMU) application.

The CO requirement for a Federal coal lease is equivalent to the annual production of one percent of the estimated minable coal resource contained within the lease. For Federal coal lease NDM 105513, the CO requirement for the lease is as follows:

Lease Serial Number	Minable Coal Resource	Commercial Operations Requirement
NDM 105513	7,963,782 short tons	79,638 short tons

If you have any questions regarding this Decision, please contact Greg Fesko at 406.896.5080.

Appeal Information

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board pursuant to Part 4, Subpart B, 4.21 of Title 43, Code of Federal Regulations, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

Sincerely,



Nathaniel L. Arave
Chief, Branch of Solid Minerals

Attachment:

1-Appeal Information Instructions (4pgs)

cc:

Mr. Dean K. Moos
Director, Reclamation and AML Divisions
North Dakota Public Service Commission
600 E. Boulevard Avenue
Bismarck, North Dakota 58505-0480

Ms. Erica Trent
Natural Resources Specialist
Office of Surface Mine Reclamation and Enforcement
1999 Broadway, Suite 3320
Denver, Colorado 80202-3050

Mr. John Sieving
Physical Scientist
Office of Surface Mining Reclamation and Enforcement
Casper Area Office
150 East "B" St.
Casper, WY 82601

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

INFORMATION ON TAKING APPEALS TO THE INTERIOR BOARD OF LAND APPEALS

DO NOT APPEAL UNLESS

1. This decision is adverse to you,
AND
2. You believe it is incorrect

IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED

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| 1. NOTICE OF APPEAL..... | A person who wishes to appeal to the Interior Board of Land Appeals must file in the office of the officer who made the decision (not the Interior Board of Land Appeals) a notice that he wishes to appeal. A person served with the decision being appealed must transmit the <i>Notice of Appeal</i> in time for it to be filed in the office where it is required to be filed within 30 days after the date of service. If a decision is published in the FEDERAL REGISTER, a person not served with the decision must transmit a <i>Notice of Appeal</i> in time for it to be filed within 30 days after the date of publication (43 CFR 4.411 and 4.413). |
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| 2. WHERE TO FILE | |
| NOTICE OF APPEAL..... | Montana State Office, Bureau of Land Management, 5001 Southgate Drive, Billings MT 59101 |
| WITH COPY TO SOLICITOR... | Office of the Solicitor, Rocky Mountain Region, Department of the Interior, 2021 4th Ave N, Ste 112 Billings MT 59101 |
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| 3. STATEMENT OF REASONS | Within 30 days after filing the <i>Notice of Appeal</i> , file a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. If you fully stated your reasons for appealing when filing the <i>Notice of Appeal</i> , no additional statement is necessary (43 CFR 4.412 and 4.413). |
| WITH COPY TO SOLICITOR..... | Office of the Solicitor, Rocky Mountain Region, Department of the Interior, 2012 4th Ave N, Ste 112 Billings MT 59101 |
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| 4. ADVERSE PARTIES..... | Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose must be served with a copy of: (a) the <i>Notice of Appeal</i> , (b) the Statement of Reasons, and (c) any other documents filed (43 CFR 4.413). |
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| 5. PROOF OF SERVICE..... | Within 15 days after any document is served on an adverse party, file proof of that service with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (43 CFR 4.401(c)). |
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| 6. REQUEST FOR STAY..... | Except where program-specific regulations place this decision in full force and effect or provide for an automatic stay, the decision becomes effective upon the expiration of the time allowed for filing an appeal unless a petition for a stay is timely filed together with a <i>Notice of Appeal</i> (43 CFR 4.21). If you wish to file a petition for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Interior Board of Land Appeals, the petition for a stay must accompany your <i>Notice of Appeal</i> (43 CFR 4.21 or 43 CFR 2801.10 or 43 CFR 2881.10). A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the <i>Notice of Appeal</i> and Petition for a Stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay. Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards: (1) the relative harm to the parties if the stay is granted or denied, (2) the likelihood of the appellant's success on the merits, (3) the likelihood of immediate and irreparable harm if the stay is not granted, and (4) whether the public interest favors granting the stay. |
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Unless these procedures are followed, your appeal will be subject to dismissal (43 CFR 4.402). Be certain that all communications are identified by serial number of the case being appealed.

NOTE: A document is not filed until it is actually received in the proper office (43 CFR 4.401(a)). See 43 CFR Part 4, Subpart B for general rules relating to procedures and practice involving appeals.

43 CFR SUBPART 1821--GENERAL INFORMATION

Sec. 1821.10 Where are BLM offices located? (a) In addition to the Headquarters Office in Washington, D.C. and seven national level support and service centers, BLM operates 12 State Offices each having several subsidiary offices called Field Offices. The addresses of the State Offices can be found in the most recent edition of 43 CFR 1821.10. The State Office geographical areas of jurisdiction are as follows:

STATE OFFICES AND AREAS OF JURISDICTION:

Alaska State Office -----Alaska
Arizona State Office----- Arizona
California State Office -----California
Colorado State Office -----Colorado
Eastern States Office -----Arkansas, Iowa, Louisiana, Minnesota, Missouri
and, all States east of the Mississippi River
Idaho State Office-----Idaho
Montana State Office-----Montana, North Dakota and South Dakota
Nevada State Office -----Nevada
New Mexico State Office-----New Mexico, Kansas, Oklahoma and Texas
Oregon State Office-----Oregon and Washington
Utah State Office-----Utah
Wyoming State Office-----Wyoming and Nebraska

(b) A list of the names, addresses, and geographical areas of jurisdiction of all Field Offices of the Bureau of Land Management can be obtained at the above addresses or any office of the Bureau of Land Management, including the Washington Office, Bureau of Land Management, 1849 C Street, NW, Washington, DC 20240.

§ 4.20 Purpose.

In the interest of establishing and maintaining uniformity to the extent feasible, this subpart sets forth general rules applicable to all types of proceedings before the Hearings Division and the several Appeal Boards of the Office of Hearings and Appeals.

§ 4.21 General provisions.

(a) *Effect of decision pending appeal.* Except as otherwise provided by law or other pertinent regulation:

(1) A decision will not be effective during the time in which a person adversely affected may file a notice of appeal; when the public interest requires, however, the Director of an Appeals Board may provide that a decision, or any part of a decision, shall be in full force and effective immediately;

(2) A decision will become effective on the day after the expiration of the time during which person adversely affected may file a notice of appeal unless a petition for a stay pending appeal is filed together with a timely notice of appeal; a petition for a stay may be filed only by a party who may properly maintain an appeal;

(3) A decision, or that portion of a decision, for which a stay is not granted will become effective immediately after the Director or an Appeals Board denies or partially denies the petition for a stay, or fails to act on the petition within the time specified in paragraph (b) (4) of this section.

(b) *Standards and procedures for obtaining a stay.* Except as otherwise provided by law or other pertinent regulation:

(1) A petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

(i) The relative harm to the parties if the stay is granted or denied,
(ii) The likelihood of the appellant's success on the merits,
(iii) The likelihood of immediate and irreparable harm if the stay is not granted, and

(iv) Whether the public interest favors granting the stay;

(2) The appellant requesting the stay bears the burden of proof to demonstrate that a stay should be granted;

(3) The appellant shall serve a copy of its notice of appeal and petition for a stay on each party named in the decision from which the appeal is taken, and on the Director or the Appeals Board to which the appeal is taken, at the same time such documents are served on the appropriate officer of the Department; any party, including the officer who made the decision being appealed, may file a response to the stay petition within 10 days after service; failure to file a response shall not result in a default on the question of whether a stay should be granted; service shall be made by delivering copies personally or by sending them by registered or certified mail, return receipt requested;

(4) The Director or an Appeals Board shall grant or deny a petition for a stay pending appeal, either in whole or in part, on the basis of the factors listed in paragraph (b) (1) of this section within 45 calendar days of the expiration of the time for filing a notice of appeal;

(c) *Exhaustion of administrative remedies.* No decision which at the time of its rendition is subject to appeal to the Director or an Appeals Board shall be considered final so as to be agency action subject to judicial review under 5 U.S.C. 704, unless a petition for a stay of decision has been timely filed and the decision being appealed has been made effective in the manner provided in paragraphs (a) (3) or (b) (4) of this section or a decision has been made effective pending appeal pursuant to paragraph (a) (1) of this section or pursuant to other pertinent regulation.

(d) *Finality of decision.* No further appeal will lie in the Department from a decision of the Director or an Appeals Board of the Office of Hearings and Appeals. Unless otherwise provided by regulation, reconsideration of a decision may be granted only in extraordinary circumstances where, in the judgment of the Director or an Appeals Board sufficient reason appears therefore. Requests for reconsideration must be filed promptly, or within the time required by the regulations relating to the particular type of proceeding

concerned, and must state with particularity the error claimed. The filing and pendency of a request for reconsideration shall not operate to stay the effectiveness of the decision involved unless so ordered by the Director or an Appeals Board. A request for reconsideration need not be filed to exhaust administrative remedies.

(36 FR 7186, Apr. 15, 1971, as amended at 58 FR 4942, Jan. 19, 1993)