



United States Department of the Interior
INTERNAL DRAFT DELIBERATIVE PROCESS ATTORNEY-CLIENT PRIVILEGE



OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT

Regions 5, 7-11
Denver Federal Center, Building 41
Lakewood, CO 80225-0065

September 16, 2022

Ms. Zanna Brinkman
Director, Reclamation and AML Divisions
North Dakota Public Service Commission
600 E Boulevard Ave. #408
Bismarck, ND 58505

Re: BNI Center Mine Rev. 8, adding modified Federal Coal Leases NDM-105513 to State Permit No. BNCR-1101

Dear Ms. Brinkman,

On December 14, 2021, your office informed the Office of Surface Mining Reclamation and Enforcement (OSMRE) of BNI Coal Ltd.'s intent to mine the Center Mine, new Federal Coal Lease NDM-105513. The application also proposes to amend the permit boundary for Permit BNCR-1101 to add 320 acres of Federal coal located in the E1/2 of the NE1/4, the S1/2 of the SW1/4, and the SE1/4 of Section 14, Township 141 N., Range 84 W. BNI is requesting the permit revision to facilitate orderly and continuous mining at the Center Mine.

Mining plan approvals by the Secretary of the Interior are required under the Mineral Leasing Act of 1920, 30 U.S.C. 181, *et seq.* before coal mining can occur on Federal lands. This letter serves to document OSMRE's determination whether a mining plan approval from the Assistant Secretary, Land and Minerals Management (ASLM) is required for the BNI Center Mine Revision 8 permitting action.

Based on OSMRE's review of the materials submitted by BNI, OSMRE has determined that the proposed amendment to the permit boundary incorporating the modified Federal Coal Lease NDM-105513, and the proposed mining activities, constitutes a mining plan modification requiring approval by the ASLM. The OSMRE based its determination on the criteria described in the Federal regulations at 30 CFR 746.18(d) which state that a permit revision constitutes a mining plan modification for the following reasons:

1. *Any change in the mining plan which would affect the conditions of its approval pursuant to Federal law or regulation other than SMCRA.*

Revision 8 has been reviewed with respect to applicable Federal laws, regulations, and executive orders, and the proposed changes would not affect the condition of the mining plan approval pursuant to Federal law or regulation other than SMCRA.

2. *Any change which would adversely affect the level of protection afforded any land, facility or place designated unsuitable for mining.*

The proposed Revision 8 does not include any land, facility or place designated unsuitable for mining.

3. *Any change in the location or amount of coal to be mined, except where such change is the result of: (i) A minor change in the amount of coal actually available for mining from the amount estimated; or (ii) An incidental boundary change.*

Revision 8 proposes to add approximately 2,661 surface acres to Permit BNCR-1101; 480 acres are Federal coal located in the E1/2 of the NE1/4, the S1/2 of the SW1/4, and the SE1/4 of Section 14. Of the 480 acres of Federal coal, 320 acres are proposed to be mined. Revision 8 proposes the extraction of approximately 2,000,000 tons of Federal coal. The amount of coal is not considered a minor change in the amount of coal actually available for mining from the amount estimated. Revision 8 does not constitute an incidental boundary change¹.

4. *Any change which would extend coal mining and reclamation operations onto leased Federal coal lands for the first time.*

There is an existing Federal mining plan approval for Federal Coal Lease NDM 105513. The proposed Revision 8 would not extend coal mining and reclamation operations onto permit BNCR-1101 Federal coal lands for the first time.

5. *Any change which requires the preparation of an environmental impact statement under the National Environmental Policy Act or 1969, 42 U.S.C. 4321 et seq.*

Revision 8 is not a major action normally requiring the preparation of an Environmental Impact Statement².

6. *Any change in the mining operations and reclamation plan that would result in a change in the postmining land use where the surface is owned.*

There will be no change in the postmining land use.

In summary, a mining plan modification approval from the ASLM *is* required for Revision 8. On September 9, 2022, OSMRE consulted with the Bureau of Land Management (BLM) about Revision

¹ OSMRE Directive REG-19 establishes the agency-wide policy for determining when an extension of the area covered by a Federal permit constitutes an incidental boundary revision.

² Major actions requiring the preparation of an EIS are described in the DOI Department Manual, Managing the NEPA Process – Office of Surface Mining (516 DM 13).

8. On September 14, 2022, the BLM concurred with OSMRE's finding that Revision 8 constitutes a mining plan modification requiring approval by the ASLM.

The OSMRE's decision does not relieve North Dakota Public Service Commission from coordinating its review and approval of this action and securing approval from other Federal agencies for compliance.

Should you have any questions please contact Erica Trent at etrent@osmre.gov.

Sincerely,

Elizabeth Shaeffer, Manager
Field Operations Branch
OSMRE Interior Regions 5, 7-11

cc: Fesko, Gregory, BLM Montana/Dakotas State Office
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