

**PUBLIC SERVICE COMMISSION
Reclamation Division**

Memorandum

TO: Commissioners Christmann, Haugen-Hoffart, and Fedorchak
Steve Kahl, Executive Secretary
John Schuh, General Counsel

FROM: ^{ZB} Zanna Brinkman, ^{JE} Jonathan Emmer, ^{BSM} Brandon Myran, ^{BR} Preston Ripplinger, and
Guy Welch ^{GW}

DATE: September 14, 2023

SUBJECT: Informal Conference Recommended Findings of Fact, Ruling, and
Recommended Order for Revision No. 8 to Permit No. BNCR-1101 (Case No.
RC-20-438), BNI Coal, Ltd.

On October 28, 2020, BNI Coal, Ltd. (BNI) filed the application for Revision No. 8 to Surface Coal Mining Permit BNCR-1101. Revision No. 8 adds 2,661.04 acres in Sections 11, 14, 15, 16, 22, and 23, T141N, R84W to the existing permit, adds plans to mine the 320-acre federal coal tract in the E½NE¼, the S½SW¼, and the SE¼ of Section 14, T141N, R84W, and proposes to modify the postmining topography for 1,211 acres in the existing permit area. The revision updates nearly every section of the permit.

On May 5, 2021, the Public Service Commission (Commission) issued a Notice of Receipt of Revision Application for Revision No. 8 to Permit BNCR-1101 informing the public that written comments, objections, or requests for an informal conference must be filed with the Commission by July 6, 2021.

On June 8, 2023, the Commission issued a Re-Notification of Receipt of Revision Application for Revision No. 8 to Permit BNCR-1101 informing the public that BNI intends to mine federal coal in Section 14, T141N, R84W in Permit BNCR-1101, since this was not explicitly stated in the May 5, 2021 notice, and that written comments, objections, or requests for an informal conference must be filed with the Commission by July 31, 2023.

On July 18, 2023, Brian Dresser, filed comments, objections, and a request for an informal conference (Conference). Mr. Dresser expressed concerns about coal mining operations being conducted within five hundred feet of residences, the lack of design plans in the permit for the haul road crossing 37th Avenue SW, blasting damage to buildings, access to agricultural property, dust control, and lack of communication from BNI on past agreements and future mining plans.

On July 19, 2023, Dave and Debra Berger, filed comments, objections, and a request for an informal conference. The Bergers expressed concerns about the location and design of the haul road that will cross 37th Ave SW, dust, noise, blasting damage to wells and buildings, and lack of communication from BNI on past agreements and future mining plans.

The informal conference was held on August 17, 2023. The Hearing Officer issued the Informal Conference Findings and Ruling and Recommended Order on September 12, 2023 recommending that BNI Coal, Ltd. must: 1) provide haul road design plans to access the Revision No. 8 addition area and plans for any other roads that may be necessary to transport mining equipment over 37th Ave SW; 2) conduct seismic and air blast monitoring at or near all occupied dwellings within one mile from the nearest charged drill hole with advanced notice given to landowners so they may be present when the monitoring takes place; and 3) must revise Revision No. 8 to remove all mining disturbances within the five-hundred-foot setback from occupied dwellings, unless approved by the owners thereof in writing which will be incorporated into the permit, before approval is recommended. The Reclamation Division is recommending the Commission adopt the Hearing Officer's recommended order.

Attached is a motion to adopt the Hearing Officer's recommended findings, ruling, and order.

Center Mine\Permits\BNCR - 1101\Revisions & Renewals\No. 8\Informal Conference\Order_Memo_9-14-23