



## United States Department of the Interior

OFFICE OF SURFACE MINING  
Reclamation and Enforcement  
Western Region Office  
1999 Broadway, Suite 3320  
Denver, CO 80202-3050



April 19, 2022

ND-0010

Zanna Brinkman  
Director, Reclamation and AML Divisions  
North Dakota Public Service Commission  
600 E. Boulevard, Dept 408  
Bismark, ND 58505-0480

Re: BNI Center Mine Revision 9 to Surface Coal Mining Permit No. BNCR-1101, Proposed Addition of 2 acres

Dear Mrs. Brinkman,

On March 30, 2022, the North Dakota Public Service Commission approved Revision 9 to BNI Center Mine Permit Number BNCR-1101, which proposes to change the mining sequence for 345 acres in Sections 20 and 21 of Township 141N, Range 83W planned for mining in 2031 through 2037 by advancing mining in the area to 2021 through 2032. The revision application also adds 2 acres to the permit boundary in Section 18, and various administrative changes.

BNI is currently mining Federal coal in Section 18, T141N, R83W in the existing permit area BNCR-1101 under Federal Coal Lease NDM-102083 for which BNI was granted Federal mining plan approval by the Assistant Secretary of Land and Minerals Management (ASLM) on October 27, 2020 to mine approximately 160 acres, removing 1.6 million tons (mt) of coal. The proposed 2-acre addition to this permit area is a cemetery that contains approximately 114,000 tons of Federal coal in Section 18. BNI recently purchased the 2-acre tract, consisting of grave sites (cemetery), from the next of kin with an agreed upon disinterment/reinternment plan. BNI plans to mine the Federal coal that underlies the cemetery.

The cemetery was initially evaluated during a Class III cultural resources study completed in May, 2008. Based on the recommendation of site eligibility and State Historic Preservation Office concurrence, the cemetery was not deemed eligible; however state and Federal protections restrict mining operations within 100' of a cemetery. This cemetery is a private family cemetery and not an incorporated cemetery. The mine has coordinated this effort with the appropriate entities and has received required approvals; all agree that this action to move the cemetery is allowable.

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 or not a mining plan approval from the ASLM is required for the BNI Center Mine permitting action for Revision 9, Permit BNCR-1101.

On April 7, 2022, OSMRE consulted with the Bureau of Land Management (BLM) about Revision 9. The BLM agrees with OSMRE's reasoning that Revision 9 does not constitute a mining plan modification requiring approval by the ASLM. The reasons are as follows:

1. There is no change in the mining plan that would affect the conditions of its approval pursuant to Federal law or regulation. *See* 30 C.F.R. Part 746.18(d)(1).
2. No change would occur that would affect the level of protection to land, facilities and places designated unsuitable for mining because the area is designated as suitable for mining. *See* 30 C.F.R. Part 746.18(d)(2).
3. The change in the amount of coal to be mined is minor compared to what was originally estimated. *See* C.F.R. Part 746.18(d)(3).
4. The permit revision would not extend mining and reclamation activities onto leased Federal coal for the first time. *See* 30 C.F.R. Part 746.18(d)(4).
5. The permit revision does not meet OSMRE's standards (516 DM 13.4) of a major Federal action normally requiring an Environmental Impact Statement. *See* 30 C.F.R. Part 746.18(d)(5)).
6. There is no change proposed to the mining operations and reclamation plan that would result in a change to the post mining land use of Federally owned surface land. *See* 30 C.F.R. § 746.18(d)(6).

Through discussions with and documentation provided by BNI and North Dakota Public Service Commission (NDPSC), OSMRE understands that approximately 114,000 tons of coal will be removed after the disinternment and reinternment process is complete. The OSMRE considers this an insignificant and minor change in the amount of coal to be mined, given that ASLM previously approved the mining of 1.6 mt of Federal coal in Permit BNCR-1101.

Therefore, a mining plan approval from the ASLM is not required for Revision 9. The OSMRE's decision is based upon consideration of BNI's permit revision (submitted to the NDPSC) and the requirements at 30 C.F.R. § Parts 740 and 746. Consequently, OSMRE's decision does not relieve NDPSC from coordinating its review and approval of this action and securing approval from other Federal agencies for compliance.

Sincerely,

Elizabeth Shaeffer, Manager  
Field Operations Branch

cc: Dorothy Van Oss, BLM Montana/Dakotas State Office  
John Zeise, BLM Montana/Dakotas State Office  
Gregory Petrick, BNI Coal  
Jeffrey Fleischman, OSMRE Denver Field Division