



# United States Department of the Interior

## OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

Regions 5 & 7-11  
P.O. Box 25065  
Lakewood, CO 80225-0065



March 21, 2024

ND-0010

Mr. Jonathan Emmer  
Director, Reclamation Division  
600 East Boulevard, Dept. 408  
Bismarck, ND 58505-0480

Re: The Office of Surface Mining Reclamation and Enforcement's Mine Plan Determination for BNI Center Mine, North Dakota State Permit No. BNCR-1101, Revision No. 11 and Renewal No. 2, Federal Coal Lease NDM - 102083.

Mr. Emmer,

The Office of Surface Mining Reclamation and Enforcement (OSMRE) determines that BNI Coal, Ltd.'s (BNI) proposed revision to Permit No. BNCR-1101, Revision No. 11 and Renewal No. 2 at Center Mine *does not* constitute a mine plan modification requiring approval from the Assistant Secretary for Land and Minerals Management (ASLM).

### **Proposed Action**

BNI's Revision No. 11 proposes to update various sections of the permit for the next 5-year permit term including the legal and financial section, operations, reclamation, ground water, surface water management, transportation, post-mining land uses, wildlife monitoring plan, and the worst-case bond estimate. Revision No. 11 also plans to make adjustments to mining sequences to account for unforeseen mechanical outages that caused slight delays to the mining schedule originally proposed in Revision 8. This minor sequence alteration does not propose any change in the amount of Federal coal to be mined, only a change in schedule to mine the previously-approved Federal coal in the NE¼ of Section 18, T141N, R83W. Lastly, Revision No. 11 proposes to delay the mining of Federal coal in Section 14 by approximately one year.

### **Determination Criteria and Decision**

Based on OSMRE's review of the materials submitted by BNI and by the North Dakota Public Service Commission (PSC), OSMRE determines that the proposed Revision No. 11 and Renewal No. 2 *does not* constitute a mining plan modification requiring approval by the ASLM. The OSMRE has considered the criteria described in the Federal regulations at 30 CFR 746.18(d)(1) through (d)(6) defining when a permit revision constitutes a mining plan modification:

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

Revision No. 11 does not change the mining plan that would affect the conditions of its approval pursuant to Federal law or regulation.

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

Revision No. 11 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<sup>1</sup>.*

Revision No. 11 does not propose any change in location or amount of coal to be mined.

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

Revision No. 11 would not extend coal mining and reclamation operations onto leased 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 of 1969, 42 U.S.C. 4321 et seq.*

Revision No. 11 is not a major action<sup>2</sup> normally requiring the preparation of an Environmental Impact

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 federally-owned.*

Revision No. 11 does not propose any change in the post-mining land use where the surface is federally-owned.

### **Consultations**

The Federal Regulation at 30 CFR 740.13(d)(2) requires that the OSMRE shall review each permit revision in consultation with the Bureau of Land Management and the appropriate Federal land management agency to determine whether the permit revision constitutes a mining plan modification requiring the Secretary's approval under § 746.18 of this chapter.

On February 28, 2024, OSMRE consulted with the Bureau of Land Management (BLM) about this determination. On March 20, 2024, BLM responded via email that they concur with OSMRE's determination that Revision No. 11 *does not* constitute a mining plan modification requiring approval by the ASLM.

The OSMRE's decision does not relieve PSC from coordinating with other Federal agencies as required.

---

<sup>1</sup> 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.

<sup>2</sup> 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).

Please contact Federal Lands Coordinator Charlie Kwak at [ckwak@osmre.gov](mailto:ckwak@osmre.gov) for any questions.

Sincerely,

Elizabeth Shaeffer  
Field Operations Branch Manager

cc:

Tessa Wallace – BLM

Gregory Fesko – BLM

Jeff Fleischman – OSMRE

Karene Hall – BNI Coal