

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

BNI Coal, Ltd.
Revision 19, Permit BNCR-9401
Application

Case No. RC-25-80

REVISION OF PERMIT TO ENGAGE IN
SURFACE COAL MINING AND RECLAMATION OPERATIONS

July 16, 2025

Based on the application for **Revision No. 19 to Surface Coal Mining Permit BNCR-9401**, submitted by BNI Coal, Ltd. (BNI) for the Center Mine on February 26, 2025, and as revised through May 22, 2025, and all information and documentation contained therein, the North Dakota Public Service Commission (Commission) finds that the application meets applicable requirements of Chapter 38-14.1 of the North Dakota Century Code (NDCC) and Article 69-05.2 of the North Dakota Administrative Code (NDAC). On the basis of the information set forth in the application, or from that otherwise available and known by the applicant, the Commission finds that:

Finding No. 1. The permit revision application is accurate and complete and complies with the requirements of NDCC Chapter 38-14.1 and NDAC Article 69-05.2 [NDCC 38-14.1-21(3)(a)].

The applicant verified that all information included in the revision application is true and correct to the best of their knowledge. Permit BNCR-9401 will allow surface coal mining and reclamation operations on 338.28 acres of land for the Center Mine in Oliver County, North Dakota. Revision No. 19 was submitted in conjunction with Renewal No. 6. The revision identifies the next five-year coal removal area and updates other information in the permit, including the legal and financial section, extended mine plan, environmental resources, and the operation plans. Specific updates include coal removal and waste disposal cells, pit layout and facilities map, equipment list, blasting plan, surface water management, water monitoring and drill hole reclamation, post-mining land use, fish and wildlife resource protection and enhancement/monitoring plan, and the worst-case bond estimate.

Commission staff conducted completeness and technical reviews to ensure that the required information was provided and that mining and reclamation plans met all applicable requirements. The Reclamation Division sent completeness and technical review letters to the applicant on March 12, 2025 and May 8, 2025. Responses to each letter were received and changes to the revision application were made to address the deficient items. The applicant provided leases and other documents showing that they have the right to mine the lands where coal removal is proposed and to disturb the surface of other lands in the permit area. The Commission concludes that this significant revision application is now accurate and complete.

From April 10, 2025 through May 1, 2025, the applicant published the required notices of permit revision application in the Center Republican and the Bismarck Tribune newspapers. The Commission sent the notice of the revision and renewal applications

to the surface owners of land being affected by the proposed revision in the permit area. The notice of the revision and renewal applications was sent to numerous local, state, and federal agencies. Applicable advisory committee members received the revision application and comments were received from the United States Fish and Wildlife Service. No objections or requests for an informal conference were received on this application during the public comment period.

Federal Coal Lease No. NDM 105513 was issued to BNI by the Department of Interior, Bureau of Land Management (BLM) effective January 1, 2021. This lease covers approximately 630 acres of federal coal in three separate tracts and includes the 20-acre federal coal tract in the S½NE¼NE¼ of Section 8 in Permit BNCR-9401 that consists of privately owned surface. Mine plan approval for Federal Coal Lease No. NDM 105513 was issued to BNI by the United States Department of the Interior on May 11, 2023. BNI completed coal removal from the federal coal tract in Permit BNCR-9401 in 2023.

Finding No. 2. The applicant has demonstrated that reclamation as required by NDCC Chapter 38-14.1 and NDAC Article 69-05.2 can be accomplished under the reclamation plan contained in the revised permit application [NDCC 38-14.1-21(3)(b)].

Mining is being conducted in Permit BNCR-9401 solely to remove available lignite prior to the construction of disposal cells for flue gas desulfurization sludge from Minnkota Power Cooperative Inc.'s Milton R. Young Station. The North Dakota Department of Environmental Quality (NDDEQ), previously known as the Department of Health, Environmental Section, issued Solid Waste Disposal Permit 0159 to Minnkota Power Cooperative Inc. for the disposal facility effective June 14, 1995, and last renewed the permit for another ten-year term on October 13, 2015. The Commission approved an industrial post-mining land use for the areas in Sections 5 and 8 used for, or in support of, the disposal facility that is regulated by the NDDEQ. Oliver County has zoned most of the permit area industrial. To date, five disposal cells have been constructed, with Ash cell 5 most recently completed in 2023. Ash cells 1, 2, 3 and 4 have been under the sole jurisdiction of the DEQ since they received final bond release as post-mine industrial land. Ash cells 1 and 2 have been closed, ash cell 3 is undergoing closure, and ash cell 4 is close to reaching ash capacity. Upon reaching capacity, the cells are capped with compacted clay, subsoil, and topsoil thicknesses necessary to meet the NDDEQ disposal facility closure requirements.

Post-mine land uses for the 338.28 acres currently in Permit BNCR-9401 include approximately 281 acres of industrial, 16 acres of cropland, 25 acres of native grassland, 16 acres of tame pastureland, and small acreages of stock ponds, woodlands, wetlands, and other land uses. The applicant has demonstrated that sufficient soil materials are available to meet the soil redistribution requirements of NDAC 69-05.2-15 and the revegetation requirements of NDAC 69-05.2-22 for non-industrial land uses. Suitable plant growth material removed prior to mining in preparation of disposal cell construction is dedicated to disposal cell reclamation as required by the NDDEQ. The post-mining topography proposed in areas not affected by the disposal activities is similar to the pre-mine topography and complies with the requirements of NDCC 38-14.1-24(3) and NDAC 69-05.2-21-02. The reclaimed land will be capable of supporting the pre-mine uses, or higher or better uses, that existed prior to mining.

The application for Permit BNCR-9401 was approved by the Commission on August 16, 1995, and the permit area included ten acres of Federal coal in the NE¼NE¼ of Section 8, T141N, R83W. BNI applied for a Lease by Application (LBA) for three Federal coal tracts, including the 40-acre tract of Federal coal in the NE¼NE¼ of Section 8, T141N, R83W, on March 2, 2011. On May 4, 2012, BNI submitted Revision No. 12 to add 181.54

acres to the permit, including 30 acres of Federal coal in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 8, T141N, R83W. Article V, Section B.7 of North Dakota's Cooperative Agreement with the Department of the Interior gives the Commission authority to issue permit revisions allowing surface disturbances on land containing unleased federal coal after consultation with the Bureau of Land Management (BLM) through the Office of Surface Mining (OSM). This consultation ensures that actions taken by the Commission do not result in substantial or adverse effects to the federal mineral estate. On November 25, 2013, the Commission requested a determination from BLM that the proposed permitting of the 40-acre Federal coal tract would not adversely affect the federal mineral estate. BLM stated in a response dated January 13, 2014, that the proposed permitting of the 40-acre tract will not adversely affect the federal mineral estate. The Commission conditionally approved Revision No. 12 to Permit BNCR-9401 on April 9, 2014. The condition attached to the approval of Revision No. 12 prohibited overburden and coal removal on the federal coal tract until a lease was acquired and federal mine plan approval was granted; however, the condition allowed soil removal and other activities on this tract to the extent that surface disturbances support mining operations on adjacent nonfederal lands.

About 12 acres of ash cell 4, and a diversion extension, were constructed on 15.24 acres of unleased federal coal in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 8 unaffected by mining disturbance that were deleted from the permit with Revision No. 14. The federal coal was included in a Lease by Application being processed by the Bureau of Land Management (BLM). BNI intended to mine the federal coal in the ash cell 4 area but did not obtain a lease before it was necessary to begin ash cell 4 construction. BNI received approval for surface disturbance on land containing unleased federal coal after the Commission consulted with the BLM and the Office of Surface Mining (OSM) but bypassing the federal coal reduced the capacity of ash cell 4 and required development of a 23-acre construction borrow area located within the footprint of ash cell 5. The majority of the borrow area was located on the 20-acre federal coal tract in the S $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 8, T141N, R83W.

BNI added the Federal coal lease for the 20-acre federal coal tract in the S $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 8, T141N, R83W, with Revision No. 17. Federal mine plan approval for Federal Coal Lease No. NDM 105513 was issued to BNI by the United States Department of the Interior on May 11, 2023. BNI completed coal removal from the federal coal tract in Permit BNCR-9401 in 2023 during the construction of ash cell 5.

Finding No. 3. Based on the assessment of the probable cumulative impact of all anticipated mining in the area, the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area [NDCC 38-14.1-21(3)(c)].

The Reclamation Division has made an assessment of the probable cumulative hydrologic impacts of all anticipated mining in the area of Permit BNCR-9401 as required by NDCC 38-14.1-21(3)(c) and the Commission finds that additional operations proposed with Revision No. 19 to BNCR-9401 have been designed to maintain the quantity, quality and hydrologic regime of surface and ground water systems within the cumulative impact area. Although the cumulative effects of all existing lignite mining and reclamation operations proposed in Permit BNCR-9401 should not damage the hydrologic balance and water availability within or near the permit areas, mining is being conducted in Permit BNCR-9401 solely to remove available lignite during construction of impoundment cells for a desulfurization sludge disposal facility that is operated by Minnkota Power Cooperative. Minnkota Power Cooperative had previously applied for and received a permit to construct and operate the facility from the North Dakota Department of Health in the early 1990s. Questions were raised by various state agencies about the facility's potential for surface and ground water contamination resulting from impoundment leakage at that time. The

Reclamation Division, while not having regulatory authority over the design of waste disposal facilities, investigated the suitability of the proposed operation as an alternative post-mining land use. Minnkota Power Cooperative provided sufficient data and analysis to the Reclamation Division and Department of Health at the time of permit application to indicate that the facility design, geohydrologic setting and proposed monitoring of ground water and surface water resources are adequate to minimize the risk of ground or surface water pollution. Several phases of the multi-celled facility have been constructed, utilized, and are in various stages of post-closure or reclamation and there is no evidence or indication of ground water contamination. Any instances of contamination or evidence of increased risk of ground or surface water pollution will continue to be evaluated by the Reclamation Division and the Department of Environmental Quality in the future as part of permit renewals, midterm permit reviews and revision applications to ensure continued suitability of the facility as an alternative post-mining land use. A more detailed hydrologic impact assessment is on file with Permit BNCR-9401 at the Commission's offices.

Finding No. 4. Lands within the permit area are not within an area designated unsuitable for surface coal mining operations, nor within areas under study or administrative proceedings under a petition to have an area designated as unsuitable for surface coal mining operations [NDCC 38-14.1-21(3)(d)].

None of the lands in permit BNCR-9401 have been designated unsuitable for surface coal mining operations pursuant to NDCC 38-14.1-05, nor are they within an area under study or administrative proceedings under a petition to have an area designated as unsuitable for surface coal mining operations.

Finding No. 5. The proposed mining operation will not interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated; or materially damage the quantity or quality of water in surface or underground water systems that supply these alluvial valley floors [NDCC 38-14.1-21(3)(e)].

The original permit finding stated that, based on an examination of the geologic and geomorphic characteristics, soils, land use, and the water quality and quantity of streams occurring within or adjacent to the permit area, it was determined that there are no alluvial valley floors within or adjacent to the permit area. The original permit finding has been further validated by an alluvial valley floor study completed in 2011 for BNI prior to filing Permit Application BNCR-1101 that is contiguous to Permit BNCR-9401 in Sections 5, 8, and 9. It has been determined from the 2011 study that those areas along Square Butte Creek and Hagle Creek adjacent to the permit area do not constitute an alluvial valley floor. Detailed alluvial valley floor investigation reports and determinations are on file with the Commission.

Finding No. 6. In cases where the mineral estate has been severed from the surface estate, the applicant complied with the requirements of NDCC Chapter 38-18 [NDCC 38-14.1-21(3)(f)].

The applicant included copies of the necessary leases and other documents in the permit application demonstrating compliance with the North Dakota Surface Owner Protection Act, North Dakota Century Code Chapter 38-18. This documentation included copies of the notice that were given to the surface owners before the application was filed with the Commission.

Finding No. 7. Lands within the permit area are not subject to the prohibitions or limitations of NDCC 38-14.1-07 except for areas that receive specific approvals after

complying with the applicable review procedures of NDAC 69-05.2-04 [NDAC 69-05.2-10-03(6)(a)].

Lands in the permit area are:

- a. Not on any lands within the boundaries of units of the North Dakota Park System, the National Park System, the National Wildlife Refuge Systems, the National System of Trails, the National Wilderness Preservation System, the National Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act, and national recreation areas.
- b. Not on any federal lands within the boundaries of any national forest.
- c. Not within 300 feet of any publicly owned park or places included in the State Historic Sites Registry or the National Register of Historic Places. A cultural resource survey and inventory of the original permit area was completed in 1992. Six cultural sites were identified within the original permit area, but none of these were determined to be significant by the State Historical Society. Cultural resource surveys and inventories of the areas being added to the permit with Revision 12 were conducted in 2008 and 2012. No additional cultural sites were identified with these areas.
- d. Not within 100 feet of the outside right-of-way line of public roads. The section line right of ways common to Sections 4 and 5 and Sections 5 and 8 have been closed by Oliver County.
- e. Not within 500 feet of any occupied dwelling, nor within 500 feet of any farm building.
- f. Not within 300 feet of any public building, school, church, community, or institutional building.
- g. Not within 100 feet of a cemetery.

Finding No. 8. With respect to prime farmland, the post-mining land use will be predominantly cropland, the reclamation plan was reviewed by the Natural Resource Conservation Service and any of their suggestions were considered. Operations will be conducted in compliance with NDAC 69-05.2-26 and NDCC 38-14.1, and the applicant has the technological capability to restore the productivity on reclaimed lands [NDAC 69-05.2-10-03(6)(c) and NDCC 38-14.1-21(6)].

The applicant has included a prime farmland reclamation plan with the submittal of the original permit and with Revision No. 12 that satisfies the requirements of NDAC 69-05.2-09-15 and the performance standards of NDAC Chapter 69-05.2-26. The Natural Resource Conservation Service reviewed the prime farmland reclamation plan when the original permit was submitted, and again with the Revision No. 12, and determined that it is adequate to restore the productivity of the prime farmland. The area that was added to the permit with Revision No. 12 contains prime farmland that is subject to the prime farmland standards. Prime farmland performance standards apply to approximately 29 acres within the permit area. The industrial post-mine land use acreage within the permit limits the potential prime farmland respread areas. BNI has therefore proposed to reclaim about 9 acres of prime farmland in Section 5 of the permit, while reclaiming the remaining 20 acres of prime farmland in adjacent Permit BNCR-1101. Each landowner will receive the same acreage of reclaimed prime farmland as was present prior to mining. The

applicant will segregate prime and non-prime farmland topsoil and subsoil for stockpiling or immediate redistribution. The reclamation methods that will be used by the applicant have been proven to be successful in the past; therefore, the Commission finds that BNI has the technological capability to restore the productivity of reclaimed land to a level that is equal to or greater than non-mined prime farmland in the surrounding area under equivalent management practices.

Finding No. 9. The operations will not affect the continued existence of any threatened, endangered, or proposed species or result in the destruction or adverse modification of proposed or designated critical habitats [NDAC 69-05.2-10-03(6)(d)].

Permit BNCR-9401 for the BNI Center Mine consists of 338.28 acres, all of which have previously been disturbed for mining activities and activities related to Minnkota Power's Milton R. Young Power Plant Station. Due to the previous disturbance, most threatened and endangered species "**may be affected but are not likely to be adversely affected**" by the mining and reclamation activities proposed within Revision No. 19 and Renewal No. 6. More detailed species-specific information can be found below.

The USFWS Information for Planning and Consultation (IPaC) website indicates that seven listed or proposed species have the potential to exist in Permit BNCR-9401. No designated or proposed critical habitat is within or immediately adjacent to the permit. The listed species include the Whooping Crane, Piping Plover, Rufa Red Knot, and Dakota Skipper. The proposed species are the Monarch Butterfly, Western Regal Fritillary, and Suckley's Cuckoo Bumble Bee.

Whooping Crane – Endangered

Oliver County and the permit area are within the principal migration route of the Whooping Crane. The likelihood of Whooping Cranes occurring in the area is very low because desirable stop-over roosting habitat does not exist in the area and Whooping Crane feeding sites are often found adjacent to roosting sites. It has been well documented that Whooping Cranes avoid human disturbances. Wetlands in and adjacent to the permit area are primarily associated with springs and seeps in linear drainages where the horizontal line-of-sight distance is limited due to topography. The permit area does not contain any large seasonal or more permanent wetlands that have an open water zone suitable as Whooping Crane stopover habitat. The Milton R. Young Power Plant is located adjacent to the permit area. The Reclamation Division concludes mining and reclamation activities proposed with Revision No. 19 and Renewal No. 6 "**may affect but is not likely to adversely affect**" the continued existence of Whooping Cranes.

Piping Plover – Threatened

The Piping Plover is a migratory bird that can occur in North Dakota from mid-April through August. Suitable habitat for the Northern Great Plains Population is generally characterized as sparsely vegetated shorelines usually associated with alkaline wetlands and sandbars and shorelines associated with major river systems. In Oliver County, North Dakota, this species can be found along the Missouri River. The possibility for substantial Piping Plover populations to occur within the permit area is limited due to restricted habitat preferences, nesting requirements, and the lack of suitable habitats within the permit area. A Piping Plover was recorded at the mine in the late 1970s on Pond 31-1, which is approximately two miles from Permit BNCR-9401. Sedimentation ponds within BNI permitted areas can provide the desired habitat for Piping Plovers for a limited period of time. These areas are observed by the mine throughout the Piping Plover migratory and breeding periods. The Reclamation Division and USFWS are to be notified when Piping

Plovers are sighted at the mine. The Reclamation Division concludes the permit area does not contain designated, suitable, or potential habitat for this species and the mining and reclamation activities proposed with Revision No. 19 and Renewal No. 6 “**may affect but is not likely to adversely affect**” the continued existence of the Piping Plover.

Rufa Red Knot – Threatened

The Rufa Red Knot is a medium sized shorebird that migrates annually between its breeding grounds in the central Canadian Arctic and several wintering regions, including the Southeast United States and Northeast Gulf of Mexico. This species could potentially migrate over North Dakota. Available information indicates this species may use inland saline lakes as stopover habitat during its migration. There are no saline lakes in the permit area or adjacent to the permit area. Therefore, the mining and reclamation activities proposed with Revision No. 19 and Renewal No. 6 will have “**no effect**” on the continued existence of the Rufa Red Knot.

Dakota Skipper – Threatened

The USFWS listed the Dakota Skipper threatened on October 26, 2014, and the final rule became effective on November 24, 2014. The Dakota Skipper is a small butterfly that requires high quality mixed or tallgrass prairie. According to the 2024 Dakota Skipper North Dakota Survey Protocol there are two habitat types, Type A Habitat and Type B Habitat. Type A Habitat consists of moist lowland mesic prairie habitat type with prairie lily, bluebell bellflower, and mountain deathcamas or smooth camas species. Type B Habitat consists of a relatively dry upland prairie habitat type found on ridges and hillsides dominated with bluestem grasses, needlegrasses, and desirable native forbs such as purple coneflower. In the Missouri Couteau region of North Dakota, on the western edge on the known ranges of the species, Dakota Skippers inhabit a variant of Type B habitats. These habitats typically contain an association of little bluestem, big bluestem, and needlegrasses that are often invaded by Kentucky bluegrass. These prairies also typically contain prairie lily, bluebell bellflower, coneflowers, and aster species. There is no designated critical habitat for Dakota Skippers in Oliver County according to the USFWS IPaC site. Only one Dakota Skipper has been recorded in Oliver County. The butterfly was recorded at the Cross Ranch State Park, approximately 20 miles away from the permitted area.

There is no suitable habitat for the Dakota Skipper within the permit or buffer area as defined by the 2024 Dakota Skipper North Dakota Survey Protocol, and areas that contain ecological sites associated with the lifecycle needs for the Dakota Skipper found within the permit area are low to fair quality, as there is no undisturbed native grassland present in the permit area. BNI is committed to having properly certified consultants conduct Dakota Skipper habitat assessments and occupancy surveys in the permit area prior to mining related disturbance. Kelly Krabbenhoft conducted Dakota Skipper habitat surveys along with the annual wildlife surveys for the mine. Meadowlark Environmental, LLC, Carson, ND performed the Dakota Skipper survey starting in 2024. The 2024 survey yielded no identified Dakota Skippers. Meadowlark Environmental will continue the survey in 2025. The Reclamation Division finds the planned mining and reclamation activities proposed within Revision No. 19 and Renewal No. 6 “**may affect but is not likely to adversely affect**” the continued existence of the Dakota Skipper.

Monarch Butterfly – Proposed Threatened

The Monarch Butterfly is a proposed threatened species. The Monarch requires habitat with Milkweed as a larval host plant and floral nectar sources for adults. Monarchs found in North Dakota are comprised of the eastern range Monarchs, found east of the Rocky

Mountains. These Monarchs overwinter in central Mexico and then migrate and disperse throughout North America. No designated critical habitat is currently proposed for the eastern range Monarchs.

In July of 2024, Meadowlark Environmental, LLC, Carson, ND performed a butterfly survey focused on observing Dakota Skippers in the BNI Mine's permitted areas. During this survey, no Monarch Butterflies were observed. Meadowlark Environmental will continue the Dakota Skipper survey in 2025, and any Monarch Butterfly observed will be documented. BNI will continue to work with the USFWS as new guidance and protocols become available.

The Reclamation Division finds the planned mining and reclamation activities proposed within Revision No. 19 and Renewal No. 6 **"may affect but is not likely to jeopardize"** the continued existence of the Monarch Butterfly provided that BNI follows future guidance from the USFWS as indicated in Section 4.13 (Fish and Wildlife Resource Protection, Enhancement, and Monitoring Plan) of Permit BNCR-9401.

Western Regal Fritillary – Proposed Threatened

The Western Regal Fritillary is a proposed threatened species. The Western Regal Fritillary prefers tallgrass prairie and other sunny, open locations such as damp meadows, marshes, wet fields, and mountain pastures. Regal Fritillary butterflies depend on three main habitat components: violet hostplants for larvae, nectar plants for adults, and native warm-season bunch grasses that provide protective sites for all life stages. No designated critical habitat is currently proposed for the Western Regal Fritillary.

In July of 2024, Meadowlark Environmental, LLC, Carson, ND performed a butterfly survey focused on observing Dakota Skippers in the BNI Mine's permitted areas. During this survey, 12 Western Regal Fritillaries were observed throughout the mine. Meadowlark Environmental will continue the Dakota Skipper survey in 2025, and any Western Regal Fritillary will be documented. BNI will continue to work with the USFWS as new guidance and protocols become available.

The Reclamation Division finds the planned mining and reclamation activities proposed within Revision No. 19 and Renewal No. 6 **"may affect but is not likely to jeopardize"** the continued existence of the Western Regal Fritillary provided that BNI follow future guidance from the USFWS as indicated in Section 4.13 (Fish and Wildlife Resource Protection, Enhancement, and Monitoring Plan) of Permit BNCR-9401.

Suckley's Cuckoo Bumble Bee – Proposed Endangered

The Suckley's Cuckoo Bumble Bee is a proposed endangered species. The Suckley's Cuckoo Bumble Bee is an obligate social parasite and is entirely dependent on social bumble bee hosts to collect pollen and rear their young. Since they are entirely dependent on host bumble bee colonies, host colony availability is critical for the species' survival and overall viability. The species has a broad historical range and has been found in various habitat types including prairies, grasslands, meadows, urban and agricultural areas, and woodlands. The last confirmed sighting in the United States of the Suckley's Cuckoo Bumble Bee was in 2016 in Oregon.

The Reclamation Division finds the planned mining and reclamation activities proposed within Revision No. 19 and Renewal No. 6 will have **"may affect but is not likely to jeopardize"** the continued existence of the Suckley's Cuckoo Bumble Bee.

In a letter dated May 13, 2025, the USFWS concurred with the findings outlined above. NDAC 69-05.2-13-08(2) requires the permittee to promptly report to the Commission the presence in the permit area of any state listed or federally listed threatened or endangered species of which the permittee becomes aware. Upon notification, the Commission will then consult with the USFWS and North Dakota Game and Fish Department and the operator, and then decide whether, and under what conditions, the operator may proceed.

Therefore, this action may affect but is not likely to jeopardize or may affect but is not likely to adversely affect listed or proposed species or any proposed or designated critical habitat.

Finding No. 10. The applicant has paid all reclamation fees required by 30 CFR subchapter R [NDAC 69-05.2-10-03(6)(e)].

The applicant has paid all reclamation fees required by 30 CFR subchapter R. Records maintained by the Office of Surface Mining's Applicant Violator System show that all fees have been paid.

Finding No. 11. The applicant has satisfied requirements for approving cropland as a post-mining land use [NDAC 69-05.2-10-03(6)(f)].

The applicant has satisfied the requirements for approval of a cropland post-mining land use under NDAC 69-05.2-22-01. Areas reclaimed to cropland will either be seeded directly to crops commonly grown in the area or to a tame grass/legume pre-cropland mixture. The post-mining topography and soils are suitable for cropland in the areas that will be cropped.

Finding No. 12. All existing structures that will be used to support mining activities within the permit area comply with the application requirements of NDCC 38-14.1-24 and NDAC Article 69-05.2 [NDAC 69-05.2-10-04].

No new structures are being added with Revision No. 19. Permit BNCR-9401 includes a short segment of haul road that is on land occupied by Minnkota Power Cooperative Inc.'s Milton R. Young Station. This segment of road is the continuation of the current haul road in Permit BNCR-8106 that terminates at the mine-mouth power plant. Approved design plans for this road are included in Permit BNCR-8106. Sedimentation ponds, another haul road, and other facilities that are presently in adjoining Permit BNCR-8106 and original Permit BNCR-9401 will support mining activities in this and other permit areas. These previously permitted structures have been found to meet the applicable design and performance standards. All permitted structures have been found to meet the applicable design and performance standards of NDCC Section 38-14.1-24 and NDAC Article 69-05.2.

Finding No. 13. No drill holes, boreholes or wells will be retained for other uses [NDAC 69-05.2-14-03].

The applicant has not proposed to retain any drill hole, borehole, or well for other uses.

Finding No. 14. No spoil in the permit area is known to cause toxic mine drainage [NDAC 69-05.2-16-11].

The chemical characteristics of the overburden materials in the permit area are such that they do not produce toxic mine drainage. The analysis of overburden samples included

in the permit application do not reveal any substances that would cause any chemical reactions or physical effects that are likely to kill, injure, or impair biota commonly present in the area.

Finding No. 15. The applicant will not conduct mining activities within or near perennial and intermittent stream channels that violate applicable water quality standards or adversely affect the quantity and quality of the water and other environmental resources of the stream [NDAC 69-05.2-16-20].

The activities proposed in Revision No. 19 will not disturb any areas within 100 feet of a perennial or intermittent stream.

Finding No. 16. The applicant does not propose to use any experimental practices in the permit area [NDAC 69-05.2-27-02].

There are no plans included in the revision application to use any experimental practices that may be allowed under NDAC 69-05.2-27-02.

Finding No. 17. The applicant does not control and has not controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations [NDAC 69-05.2-10-03(4)].

Commission records, and those in the Office of Surface Mining's Applicant Violator System, indicate that the applicant does not control, and has not controlled, surface coal mining and reclamation operations with a demonstrated pattern of willful violations of NDCC 38-14.1 or of other states' laws which are based on P.L. 95-87 (the Federal Surface Mining Control and Reclamation Act), of such nature, duration, and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of these laws.

Finding No. 18. Neither the applicant, nor any affiliated companies, have unabated violations or unpaid civil penalties [NDAC 69-05.2-10-03(1)].

Commission records, and those in the Office of Surface Mining's Applicant Violator System, indicate that neither the applicant, nor any affiliated companies, have any unpaid civil penalties or unabated violations of NDCC 38-14.1 or any other federal or state laws, rules, or regulations pertaining to air or water environmental protection. Staff at the North Dakota Department of Environmental Quality also verified that the applicant has no unabated violations with regard to air and water environmental protection standards.

Finding No. 19. A performance bond in the amount of \$1,404,271 is sufficient for the proposed surface coal mining operations in this permit area [NDAC 69-05.2-12-07].

An updated worst-case reclamation cost estimate of \$1,026,271 for Permit BNCR-9401 at the Center Mine is sufficient to cover the required reclamation, restoration, and abatement work for the disturbances proposed in Permit BNCR-9401. It should be noted that, if the annual update of variable costs in the Commission's policy for calculating reclamation cost estimates for setting bond amounts results in a significant increase in the existing cost estimate, permittees are required to update their reclamation cost estimates and increase bond amounts accordingly.

Revision Number 19 to Permit Number BNCR-9401 is hereby granted to BNI Coal, Ltd. to identify the next five-year coal removal subarea and to update the legal and financial section, extended mine plan, environmental resources, operation plans, coal removal and waste disposal cells, pit layout and facilities map, equipment list, blasting plan, surface water management, water monitoring and drill hole reclamation, post-mining land use, fish and wildlife resource protection and enhancement/monitoring plan, and the worst-case bond estimate for the next five-year permit term as described in the permit revision application received on February 26, 2025.

The approved revision is subject to the requirements of Chapter 38-14.1 of the North Dakota Century Code, Article 69-05.2 of the North Dakota Administrative Code, the conditions of the approved permit, and any additional or revised permit conditions listed on attached PSC Reclamation Form - 3. Pursuant to Section 38-14.1-23 of the North Dakota Century Code and Article 69-05.2 of the North Dakota Administrative Code, this revision was found to be a significant alteration to the previously approved permit.

PUBLIC SERVICE COMMISSION



Sheri Haugen-Hoffart
Commissioner



Randy Christmann
Chair



Jill Kringstad
Commissioner

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