

**PUBLIC SERVICE COMMISSION**  
**Reclamation Division**  
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**MEMORANDUM**

TO: Commissioners Christmann, Haugen-Hoffart, and Kringstad  
Steve Kahl, Executive Director  
Brian Johnson, Special Assistant Attorney General

FROM: <sup>JE</sup> Jonathan Emmer, <sup>MT</sup> Monty Johnson, <sup>JR</sup> Jeff Roerick, and <sup>AC</sup> Alexis Craig

DATE: July 2, 2025

SUBJECT: Application for Revision 45 to Permit BNCR-9702 held by BNI Coal, Ltd. for the Center Mine, Case No. RC-25-149

On March 25, 2025, the Reclamation Division received BNI Coal, Ltd.'s (BNI) application for Revision 45 to Surface Coal Mining Permit BNCR-9702 at the Center Mine. This revision identifies the next five-year coal removal areas and addresses items that were identified as requiring updating or modification by the Reclamation Division during a pre-renewal review of the permit. Revision 45 updates the legal and financial section, extended mine plan, operations plan, blasting plan, post-mine topography, reclamation schedule, ground water information, surface water management, fish and wildlife resource protection, revegetation and post mining land use, and the worst-case bond estimate for the next five-year permit term. The Reclamation Division has completed its review of this revision application and respectfully recommends it be approved.

BNI applied for this revision and the corresponding Renewal 5 to this permit since mining and reclamation operations will continue in the existing permit area. BNI estimates that mining within the permit area will conclude in 2028, with reclamation activities expected to be completed by 2032. BNI plans to disturb about 300 acres in Section 20, T142N, R84W during the next permit term in order to complete mining operations in the permit. Section 20 contains federal coal tracts within the NE $\frac{1}{4}$ , E $\frac{1}{2}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ , and the SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ . BNI obtained a lease from the US Department of the Interior, Bureau of Land Management in 2021, and federal mine plan approval to mine the leased federal coal in Section 20 was received by BNI from the Office of Surface Mining Reclamation and Enforcement in 2023. Mining will continue to progress from east to west through Section 20 until a final pit is created in the western half.

Revision 45 also updates the post-mine topography to reflect updates needed to prepare for the final pit planned in the west half of Section 20. Updates to post-mine land uses, reference areas, and conservation grassed waterways were also included in this revision.

Special Condition No. 2 to Permit BNCR-9702, attached to the initial permit issuance, stated: *"The Commission is approving requests for variances from the three-year contemporaneous*

*reclamation requirement for areas associated with the temporary cessation of mining; however, BNI Coal, Ltd. must make available other lands or otherwise compensate the surface owners whose land is not reclaimed through the initial seeding within three years of the completion of surface coal mining activities. The acreage of other lands made available to each surface owner affected by the temporary cessation of mining must, at a minimum, equal the acreage of mined land that will not be graded, re-soiled and seeded within three years of the completion of mining. Another form of compensation may be an annual rental payment that is based on the acreage affected by the temporary cessation of mining and cropland and pastureland rental rates that are common in the area.”*

Special Condition No. 2 was issued as a result of an informal conference requested by the surface owners of Sections 28 and 33, T142N, R84W, during the initial permit application process (Case No. RC-822-98-56). Since BNI has purchased Sections 28 and 33, Special Condition No. 2 is no longer necessary. Furthermore, NDCC § 38-18-07 provides compensation to surface owners for loss of agricultural production caused by mining activity. Therefore, Special Condition No. 2 is being revoked from Permit BNCR-9702.

Revision 45 was considered a significant revision application and was subject to the public notice requirements. BNI has submitted affidavits of publication showing that the notice was published in the Center Republican and the Bismarck Tribune for four consecutive weeks in both newspapers. We notified the appropriate agencies, affected landowners, and the advisory committee members. We received comments from three advisory committee members and the North Dakota Department of Transportation. No objections or requests for informal conferences were received regarding this revision application.

Revision 45 updated the worst-case bond estimate for the consolidated bond area at the Center Mine that consists of Permits BNCR-9702, BNCR-8106, BNCR-8602, and BNCR-8202. BNI's existing surety bond in the amount of \$49,472,113 exceeds the minimum bond amount of \$45,269,107 proposed under Revision 45 and is therefore considered adequate.

Attached for your consideration at the July 16, 2025 Commission meeting are the proposed motion, revision approval form, and the revision approval notice that we must publish following revision approval in the appropriate newspapers.

Attachments