

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

BNI Coal, Ltd.
Revision 45, Permit BNCR-9702
Application

Case No. RC-25-149

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

July 16, 2025

Based on the application for **Revision No. 45 to Surface Coal Mining Permit BNCR-9702**, submitted by BNI Coal, Ltd. (BNI) for the Center Mine on March 25, 2025, and as revised through June 19, 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-9702 will allow surface coal mining and reclamation operations on 7,655.1 acres of land for the Center Mine in Oliver County, North Dakota. Revision No. 45 was submitted in conjunction with Renewal No. 5. The revision updates various sections of the permit for the next 5-year permit term including the legal and financial section, extended mine plan, operations, blasting plan, post-mine topography, reclamation schedule, ground water, surface water management, fish and wildlife resource protection, revegetation and post mining land use, 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 April 3, 2025, April 10, 2025, May 21, 2025, and June 18, 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 24, 2025 through May 15, 2025, and from April 17, 2025 through May 8, 2025, the applicant published the required notices of permit revision application in the Center Republican and the Bismarck Tribune newspapers, respectively. The Commission sent the notice of revision application to the surface owners of land being affected by the proposed revision in the permit area. The notice of the revision application was sent to

numerous local, state, and federal agencies. Applicable advisory committee members received the revision application and comments were received from the North Dakota Department of Environmental Quality and 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.

BNI is currently mining federal coal in the NE¼ of Section 20, T142N, R84W in BNCR-9702 under federal coal lease NDM 105513 for which federal mine plan approval was granted by the United States Department of the Interior on July 26, 2023. The land in Federal Coal Lease NDM-105513 encompasses 287.62 acres in the NE¼, E½SW¼, SE¼NW¼, and SE¼NE¼NW¼ of Section 20, T142N, R84W. All federal coal tracts in Permit BNCR-9702 consist of privately owned surface. Westward mining of federal and privately owned coal in Section 20 is planned to continue through 2028, when mining is estimated to be completed in Permit BNCR-9702.

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)].

Areas planned for disturbance will be reclaimed using methods that have been successful in the past and satisfy the requirements of the North Dakota law and rules.

The proposed post-mining topography meets the approximate original contour requirements of NDCC 38-14.1-24(3) and NDAC 69-05.2-21-02. The average post-mining slopes of the land in Permit BNCR-9702 are less than those that existed prior to mining. 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. The reclaimed land will be capable of supporting the uses, or higher or better uses, that it was capable of supporting prior to mining. Cropland (4,572.8 post-mine acres) and native grassland (1,394.6 post-mine acres) are the predominant pre-mining and postmining land uses for the entire permit area. Other pre-mining and postmining land uses occurring in the permit area include hayland, tame pastureland, shelterbelts, wetlands, farm facilities, woodlands, developed water resources, industrial and commercial, trails, roads, and right-of-ways, conservation grassed waterways, and fish and wildlife habitat grassland. Although there are some acreage adjustments, all of these other pre-mining land uses, except conservation grassed waterways, are also proposed after mining.

With regard to the reclamation schedule, the applicant has demonstrated the need for variances from the contemporaneous reclamation requirements that normally require rough grading to be completed within 180 days of coal removal, NDAC 69-05.2-21-01(2), and that all reclamation efforts through the initial seeding be completed within three years of completion of mining activities, NDCC 38-14.1-24(14). Revision 45 did not request additional variances; however, three existing variance areas remain active. Existing Variance Area Number 12 is located primarily in the W½ of Section 21 and the NW¼ of Section 28 has been retained for the five-year pit cessation and revised post-mine topography in the area, and current projections anticipate final reclamation of Variance Area 12 to be completed by 2029. Existing Variance Area 16 is located in the S½ of Section 29 and the SW¼ of Section 28, and current projections anticipate final reclamation of Variance Area 16 to be completed in 2030. Existing Variance Area 17 includes areas in Section 20, and current projections anticipate final reclamation of Variance Area 17 to be completed in 2032. Variance Areas 16 and 17 encompass the final pit locations. Variances from the 180-day grading requirement were previously granted for portions of the permit area as allowed by NDAC 69-05.2-21-01(2) and NDCC 38-14.1-24(14).

Special Condition No. 2, 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 for 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.

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)].

An assessment of the probable cumulative hydrologic impact of all anticipated mining in the permit area has been made as required by NDCC 38-14.1-14(1)(o). The Commission found that the proposed operation has been designed to maintain the quantity, quality, and hydrologic regime of surface and ground water systems in the area. The cumulative effects of all existing and proposed mining operations should not damage the hydrologic balance and water availability within or adjacent to the permit area. The original cumulative hydrologic impact assessment for Permit BNCR-9702 was updated for land added to the permit with Revision No. 30 in 2011 and was most recently updated to reflect the addition of 636.58 acres to the permit area with Revision No. 40. The detailed cumulative hydrologic impact assessment completed for Revision No. 40 is on file with Permit BNCR-9702 in the Commission's office.

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-9702 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)].

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 has been determined that there are no alluvial valley floors within or adjacent to the permit area. 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. The applicant (BNI) contracted Ethnoscience, Inc. in 2007 to conduct a Class III cultural resource inventory of land being added to the permit area with Revision No. 40. A report titled "A Class III Cultural Resource Inventory of 640 Acres for BNI Coal, Oliver County, North Dakota" published in May 2008 identified two previously unrecorded historic sites consisting of a standing structure (Site 32OL495), and an abandoned homestead (Site 32OL511), that were recommended as ineligible for the National Register of Historic Places. The report also identified one previously unrecorded prehistoric site in the NE $\frac{1}{4}$ of Section 20 of federal coal ownership consisting of three stone rings and a cairn (Site 32OL510) that was recommended as potentially eligible for the National Register of Historic Places. The State Historic Preservation Officer (SHPO) concurred with the 2008 Ethnoscience, Inc. site eligibility recommendations in June 9, 2008 correspondence. BNI contracted Ethnoscience, Inc. in 2011 to test the features within Site 32OL510. The testing report titled "Testing and Evaluation of Site 32OL510, Oliver County, North Dakota" published in March 2012 recommended that Site 32OL510 was eligible for listing on the National Register of Historic Places. The report recommended site avoidance, but recommended site mitigation through data recovery prior to mining disturbance if site avoidance was not feasible. BNI determined that proposed sediment pond construction in support of mining activities of adjacent private coal ownership could affect the site. BNI contracted Ethnoscience, Inc. in 2018 to conduct

site data recovery and analyses as mitigation for effects to the site. Site mitigation was completed in 2018 with a “no adverse effect” determination from the Bureau of Land Management in correspondence dated October 10, 2018, and the SHPO stated its concurrence in correspondence dated October 22, 2018. The final report was issued in June 2019 and was titled “BNI Coal, Ltd.: Feature 2 Data Recovery at the Lackman Rings (32OL0510) Site Oliver County”. The SHPO sent a letter on September 9, 2019 stating they found the final report acceptable and concurred that site 32OL0510 is mitigated. With this mitigation and concurrence, site 32OL510 has now been mitigated, which allowed for disturbance. BNI has committed to informing the proper authorities in the event that any previously unrecorded archeological, cultural, or historic materials are discovered.

- d. Within 100 feet of the outside right-of-way line of public roads. However, no disturbances will occur within 100 feet of the outside right-of-way of any public road unless the road authority (Oliver County for county roads and section line trails and North Dakota Department of Transportation for ND Highway 25) has temporarily vacated the road right-of-way or granted permission to conduct mining operations within 100 feet of the road right-of-ways. The approvals previously obtained for public roads within the Permit BNCR-9702 area have been included in Permit BNCR-9702. The applicant is not proposing to request additional road right-of-way closures in the future.
- e. Not within 500 feet of any occupied dwellings unless the applicant exercises the option it has to purchase the dwelling before mining comes within 500 feet of each dwelling, or the applicant has established an agreement with the owner of the occupied dwelling that would allow mining disturbance within the 500-foot buffer zone. These options are part of leases that the applicant has obtained from the dwelling owners. The purchase option also applies to other farm buildings, and the applicant has stated no mining will occur within 500 feet of these buildings before providing the Commission with the appropriate written documentation.
- 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 included a prime farmland reclamation plan with the submittal of the original permit and subsequent revisions that satisfies the requirements of NDAC 69-05.2-09-15 and the performance standards of NDAC Chapter 69-05.2-26. The Natural Resources Conservation Service reviewed the prime farmland reclamation plan and determined that it is adequate to restore the productivity of the prime farmland. The reclamation methods that will be used by the applicant have been proven to be successful in the past; therefore, the Commission finds that the applicant 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. Prime farmland performance standards apply to about 186 acres of cropland that have been

identified as prime farmland by the Natural Resources Conservation Service soil survey for Oliver County, but not all of these acres will be mined. The applicant will segregate prime and non-prime farmland topsoil and subsoil for stockpiling or immediate redistribution. BNI may be granted approval by the Commission to mix prime and non-prime farmland subsoil if soil analysis illustrates no difference between prime and non-prime subsoil as allowed by NDAC 69-05.2-09-15(5). Each landowner will receive the same acreage of reclaimed prime farmland that was present prior to mining, and the post-mine land use of the reclaimed prime farmland will be cropland.

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-9702 for the BNI Center Mine consists of 7,655.1 acres, most of which have previously been disturbed for mining activities. 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 45 and Renewal 5. 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-9702. No designated or proposed critical habitat is within or immediately adjacent to the permit. The listed species include the Piping Plover, Rufa Red Knot, Whooping Crane, 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.

A study was conducted by Tetra Tech for Minnesota Power for a wind resource area in proximity to the mining area. The study found the habitat could possibly be used as foraging areas; however, more desirable habitat for Whooping Cranes exist along the Missouri River. The Reclamation Division concludes mining and reclamation activities proposed with Revision No. 45 and Renewal No. 5 “**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 1970's on Pond 31-1. 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. 45 and Renewal No. 5 **“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. 45 and Renewal No. 5 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. Meadowlark Environmental, LLC, Carson, ND performed a Dakota Skipper survey 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. 45 and Renewal No. 5 **“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. 45 and Renewal No. 5 **"may affect but is not likely to jeopardize"** the continued existence of the Monarch Butterfly provided that BNI follow future guidance from the USFWS as indicated in Section 4.13 (Fish and Wildlife Resource Protection and Enhancement Plan, & Fish and Wildlife Monitoring Plan) of Permit BNCR-9702.

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 Fritillary were observed throughout the permitted mine areas. 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. 45 and Renewal No. 5 **"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 and Enhancement Plan, & Fish and Wildlife Monitoring Plan) of Permit BNCR-9702.

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 are 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 45 and Renewal 5 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, a tame grass/legume pre-cropland mixture, or a mixture of species designed to improve soil health. 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 existing structures in the permit area will be used to support mining activities. Design information for the support structures constructed in Permit BNCR-9702 are available in the permit. 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].

Revision 45 does not propose additional mining related activities within 100 feet of any perennial or intermittent stream. However, BNI constructed a diversion and a catch basin within the 100 foot buffer zone of the intermittent stream in Section 20 of Permit BNCR-9702. Disturbance of the intermittent stream in Section 20 was necessitated by the construction of Catch Basin 20-4. Disturbance of the intermittent stream was reduced by changing the design to a catch basin from a valley pond, but that also necessitated the construction of Diversion 20-4 to redirect clean water away from the proposed structure. Both of these structures are temporary structures and will be reclaimed after their contributing watersheds have been reclaimed. Catch Basin 20-4 disturbance is outside of the stream bed and was limited to tying the northwest corner of the catch basin into the existing ground. Diversion 20-4 disturbance was for the installation of erosion control to help protect the existing stream bed from the diverted water flows.

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 \$49,472,113 is sufficient for the proposed surface coal mining operations in this permit area and for the Center Mine consolidated bond area [NDAC 69-05.2-12-07].

An updated worst-case reclamation cost estimate of \$45,269,107 for Permit BNCR-9702 at the Center Mine is sufficient to cover the required reclamation, restoration, and abatement work for the disturbances proposed in Permit BNCR-9702. 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.

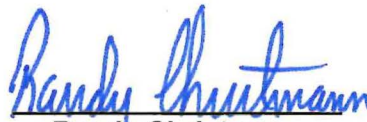
Revision Number 45 to Permit Number BNCR-9702 is hereby granted to BNI Coal, Ltd. to identify the next five-year coal removal subarea and to update the legal and financial section, extended mine plan, operations plan, blasting plan, post-mine topography, reclamation schedule, ground water, surface water 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 as described in the permit revision application received on March 25, 2025. Special Condition No. 2, attached to the initial permit issuance, is also being revoked from Permit Number BNCR-9702.

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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