

PUBLIC SERVICE COMMISSION

Reclamation Division

MEMORANDUM

TO: Commissioners Christmann, Haugen-Hoffart, and Kringstad
Brian Johnson, Executive Director
Chris Martens, General Counsel
JE *MJ*

FROM: Jonathan Emmer, Monty Johnson, and Brandon Myran

DATE: September 28, 2026

SUBJECT: Approval for Revision 13 to Permit BNCR-1101 held by BNI Coal, Ltd., Case No. RC-25-258

On August 29, 2025, BNI Coal, Ltd. (BNI) filed the application for Revision 13 to Surface Coal Mining Permit BNCR-1101 at the Center Mine. The revision updates the transportation, surface water management, and reclamation plans in response to the Oliver County Commission's approval of the overpass design plans for 37th Ave SW between Section 13 and Section 14, T141N, R84W. This overpass allows mine access west of 37th Avenue SW; therefore, further clarifications have been made regarding haul road alignments, drainage features, and surface water control structures associated with access routes and road crossings. The revision also updates the introductory, surface water, operations plan, existing county road infrastructure, reclamation schedule, and the worst-case bond estimate sections of the permit. The updated reclamation schedule includes the addition of two reclamation variance areas in portions of the W½ of Section 17 and Section 21, T141N, R83W, respectively. The 37th Ave SW overpass and proposed reclamation variance areas are depicted in **Figure 1**. The Reclamation Division has completed its review of this revision application and respectfully recommends it be approved.

Permit BNCR-1101 currently contains approved variances from the contemporaneous reclamation rules that normally require rough grading to be completed within 180 days of coal removal, the four spoil peak grading requirement, and that initial revegetation be completed within three years of the completion of coal mining operations. With Revision 13, BNI requested a variance for two new variance areas. Variance Area 9, within the W½ of Section 17, T141N, R83W, will receive spoil from initial spoil piles from a previously approved variance area to grade this area to the post-mine topography. Based on the large quantity of spoil material needed for this area, a variance from the reclamation requirements was requested. Variance Area 10, located in Section 21, T141N, R83W, contains an initial boxcut from the 8200 dragline, and the 736 dragline is planning to dig a new initial boxcut pit to the northeast of this area in 2026. The spoil from the new boxcut will be used to backfill the initial boxcut from the 8200 dragline. Additional spoil material in this variance area will need to be relocated in order to lower the grade to the post-mine topography. Based on the large quantity of spoil that needs to be relocated from this area, variances from the reclamation requirements were requested. BNI's requests for Variance Area 9 and Variance Area 10 have been justified.

Revision 13 was deemed a significant revision to Permit BNCR-1101 and was subject to the public notice requirements. BNI submitted affidavits of publication of the newspaper notices showing that the newspaper notice was published in the Center Republican and 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 the North Dakota Department of Water Resources, the United States Fish and Wildlife Service, and the North Dakota Department of Environmental Quality (NDDEQ). No objections to this revision application were received.

BNI is currently mining federal coal in the NE¼ of Section 18, T141N, R83W, and they obtained federal mine plan approval on June 25, 2024, to mine additional federal coal in Section 14, T141N, R84W for which mining is scheduled to commence in 2028. Revision 13 does not propose any changes to the approved mining plan for Section 14, and the Office of Surface Mining Reclamation and Enforcement determined that Revision 13 does not constitute a mine plan modification.

No monetary bond adjustment is necessary due to this revision. The Reclamation Division reviewed the worst-case reclamation cost estimate submitted with Revision 13 and made the determination that the minimum bond amount of \$48,013,984 proposed with the revision is sufficient. Pursuant to NDAC 69-05.2-12-07, the Commission has determined that the current performance bond in the amount of \$48,860,773 that covers Permit BNCR-1101 is sufficient for the proposed operations in Permit BNCR-1101. Evidence of adequate performance bond and liability insurance is currently on file.

Attached for your consideration at the October 6, 2026, Commission meeting is the proposed motion, revision approval form, and the revision approval notice that we must publish following revision approval.

Attachments

Center Mine\Permits\BNCR - 1101\Revisions & Renewals\No. 13\Rev13_apprvl_memo_9-28-26

Revision 13 Affected Area

