

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

BNI Coal, Ltd.
Revision 13, Permit BNCR-1101
Application

Case No. RC-25-258

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

October 6, 2026

Based on the application for **Revision Number 13 to Permit Number BNCR-1101 received August 29, 2025**, and all information and documentation contained therein, the North Dakota Public Service Commission finds that:

1. The revision application received on August 29, 2025, is complete and accurate and the applicant has complied with the requirements of Chapter 38-14.1 of the North Dakota Century Code and Article 69 05.2 of the North Dakota Administrative Code.
2. Two reclamation variance areas from the three-year revegetation requirement, N.D.C.C. 38-14.1-24(14), and the 180-day rough grading requirement, N.D.A.C. 69-05.2-21-01(2), in portions of the W½ of Section 17 and Section 21, T141N, R83W were requested with Revision 13. 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, within Section 21, T141N, R83W, contains an initial boxcut from the 8200 dragline, and the 736 dragline is planned 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, a variance from the reclamation requirements was requested.

Based on the information provided, a variance from the three-year revegetation requirement, N.D.C.C. 38-14.1-24(14), and the 180-day rough grading requirement, N.D.A.C. 69-05.2-21-01(2), have been justified and the Commission is approving them as allowed by NDCC 38-14.1-24(14). Additional variances from the reclamation requirements, which have been previously justified and approved, exist in the permit area of Permit BNCR-1101.

3. A special condition was attached to the approval of Revision 8 to BNCR-1101, which stated "BNI Coal, Ltd. shall provide haul road design plans to access the Revision No. 8 addition area and plans for any other roads that may be necessary to transport mining equipment over 37th Ave SW. BNI must also document the condition of the existing county road infrastructure in the addition area during the summer of 2024 and submit a revision to

incorporate the information into the Existing County Road Infrastructure sections of the permit and the haul road designs.”

BNI Coal, Ltd. provided the design plans to access the Revision 8 addition area and included documentation to provide the condition of the existing county road infrastructure for the addition area with Revision 13.

4. Operations are within 100 feet of the outside right-of-way line of public roads. Mining is prohibited within 100 feet of the outside right-of-way line of public roads, except that the Commission with the approval of the proper authority may permit such roads to be relocated or the area affected to lie within 100 feet of such road, if after public notice and the opportunity for public hearing in the locality a written finding is made by the proper authority that the interests of the public and the landowners affected thereby will be protected (N.D.C.C. 38-14.1-07(4)).

Revision 13 adds overpass design plans for 37th Ave SW between Sections 13 and 14, T141N, R84W. BNI Coal, Ltd. has received approval from the proper road authority, the Oliver County Commission, to conduct operations within 100 feet of the outside right-of-way line of 37th Ave SW and to temporarily close and relocate 37th Ave SW to construct the overpass.

5. Threatened and endangered species findings were updated and reviewed in consultation with the USFWS North Dakota Field Office, and it was determined that surface coal mining and reclamation activities proposed with Revision 13 will not jeopardize or adversely affect any proposed, threatened, or endangered species or proposed or designated critical habitat.
6. A special condition was attached to the approval of Revision 8 to BNCR-1101, which stated, “No disturbance shall occur within the one-hundred-foot stream buffer zone in the NW1/4 of Section 13, T141N, R84W until BNI Coal, Ltd. obtains the appropriate approvals to work within the stream buffer zone and BNI submits, and the Commission approves the design plan for the haul road crossing of the intermittent stream.”

According to N.D.A.C. 69-05.2-16-20, the operator may not disturb land within one hundred feet of an intermittent or perennial stream unless the Commission, after consulting the state engineer and the department of environmental quality, specifically authorizes surface mining activities closer to or through the stream and finds that the surface mining activities will not cause or contribute to a violation of applicable state or federal water quality standards and will not adversely affect the water quantity, water quality, or other environmental resources of the stream.

With Revision 13, BNI Coal, Ltd. provided the design plan for the haul road crossing of the intermittent stream in the NW¼ of Section 13, T141N, R84W. As required by N.D.A.C. 69-05.2-16-20(1), the Commission sent a copy of Revision 13 to the North Dakota Department of Environmental Quality and the North Dakota Department of Water Resources on July 28, 2026, to specifically review the intermittent stream crossing in Section 13, T141N, R84W and to consult with the state engineer in order to determine that the proposed intermittent stream crossing will not cause or contribute to the violation of applicable state or federal water quality standards and will not adversely affect the water quantity and quality or other environmental resources of the stream.

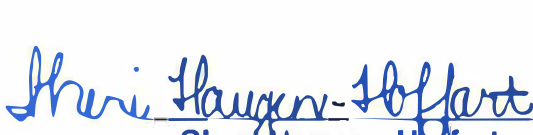
The Commission finds that the proposed disturbances will not cause or contribute to the violation of applicable state and federal water quality standards and will not adversely affect the water quality of the intermittent stream. All runoff from disturbances planned within one hundred feet of the intermittent stream will be controlled through the use of water management structures and best management practices. BNI Coal, Ltd. has made a commitment to properly mark the designated stream buffer zones that will not be disturbed to exclude mining related disturbance as required by NDAC 69-05.2-16-20(2).

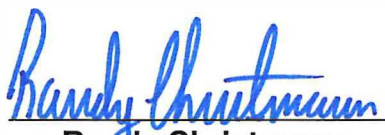
7. A performance bond in the amount of \$48,860,773 is sufficient for the proposed mining and reclamation operations in the bond area of Permit BNCR-1101.
8. The Commission's other findings made when the permit was issued and updated with subsequent permit revisions remain applicable to the revised operation and reclamation plans.

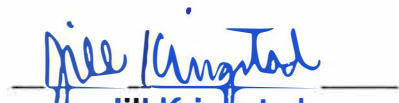
Revision 13 to Permit Number BNCR-1101 is hereby granted to BNI Coal, Ltd. Revision 13 revises the transportation, surface water management, and reclamation plans in response to the Oliver County Commission's approval of the overpass design plans for 37th Ave SW between Section 13 and Section 14, T141N, R84W. The revision also updates the introductory, surface water, operations plan, existing county road infrastructure, and the reclamation schedule, and the worst-case bond estimate sections of the permit as described in the revision application received August 29, 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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