

U.S. DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT
FINDING OF NO SIGNIFICANT IMPACT
Center Mine
Federal Coal Lease Serial Number: NDM-105513
Federal Mining Plan – Revision 42 to Permit BNCR-9702

A. Introduction

BNI Coal, Ltd. (BNI) owns and operates the Center Mine, which is located in Oliver County, North Dakota, approximately 5 miles southeast of Center, North Dakota. BNI proposed a lease by application (LBA) for Federal coal resources underlying private surface lands in Oliver County, North Dakota. The lease area (referred to herein as LBA Tracts, serial number NDM-105513) consists of approximately 630 acres of private surface lands and Federal minerals managed by the Bureau of Land Management (BLM) in the following locations:

- S ½ NE ¼ NE ¼ Section 8, Township 141N, Range 83W (20.22 acres)
- E ½ NE ¼, S ¼ SW ¼, and SE ¼ Section 14, Township 141N, Range 84W (319.27 acres)
- NE ¼, E ½ SW ¼, SE ¼ NW ¼, and SE ¼ NE ¼ NW ¼ Section 20, Township 142N, Range 84W (287.62 acres)

BNI's final LBA was submitted to the BLM on February 14, 2017. BNI currently operates the Center Mine under the following permits approved by the North Dakota Public Service Commission (PSC) Permits:

- BNCR-8106
- BNCR-8202
- BNCR-8602
- BNCR-9401
- BNCR-9702
- BNCR-1101

Among other things, BNI proposes mining activities that will affect LBA Tracts in Section 20, which is within the permit area of the Center Mine that was approved by the PSC under Permit BNCR-9702.

Approximately 98 percent of coal from the Center Mine is supplied to the Milton R. Young Station coal-fired power plant located adjacent to the northeast corner of the permit area. Minnkota Power Cooperative, Inc. owns and operates the Milton R. Young Station that consists of two generating units. BNI is under contract to supply coal to the Milton R. Young Station through 2037. The proposed mining plan would not change production levels at the Milton R. Young Station or require changes to its current regulatory permits. If the mining plan is rejected, the Milton R. Young Station would continue to operate and be supplied with coal from other Center Mine production areas. The Milton R. Young Station would operate, as needed, independent of the coal in the LBA Tracts. Although the Milton R. Young Station is not considered a connected action, operating data from the power plant were evaluated to provide context and to assist with analyzing the reasonably foreseeable future action of combustion of coal sourced from the LBA Tracts.

In accordance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321 *et seq.*, the Office of Surface Mining Reclamation and Enforcement (OSMRE) prepared the accompanying *BNI Coal Ltd. Federal Coal Lease-by-Application, Serial Number: NDM-105513* supplemental environmental assessment (hereafter, the supplemental EA) to address proposed mining activities affecting LBA Tracts in Sections 8, 14, and 20 at the Center Mine. The supplemental EA details the potential social cost of greenhouse gases and potential mercury, and selenium deposition impacts to Federally listed threatened and endangered species that would be associated with the approval of the Federal mining plan, i.e., the Proposed Action Alternative, or selection of the No Action Alternative. The supplemental EA includes a Biological Assessment (BA) for Federally listed threatened and endangered species and/or critical habitat potentially present in the area of the LBA Tracts. The environmental consequences were analyzed, including the effects when combined with reasonably foreseeable future actions and environmental trends. The supplemental EA incorporates by reference the analyses included in the *Center Mine Lease-by-Application Serial Number: NDM-105513* (hereafter 2020 BLM EA) (BLM 2020).

B. Statement of Environmental Significance of the Proposed Action

This Finding of No Significant Impact (FONSI) is issued in conjunction with OSMRE's review of Revision 42 to Permit BNCR 9702, in light of the assessment of the proposed activities and impacts described and considered in the supplemental EA. Concurrent with this FONSI, and pursuant to 30 C.F.R. part 746, the OSMRE is recommending selection and approval of the Proposed Action as it pertains to Section 20 of the LBA Tracts, for the reasons described in section C, below. The undersigned person determined that approval of a Federal mining plan for Revision 42 that authorizes continuation of mining operations and recovery of the Federal coal would not have a significant impact on the quality of the human or natural environment under NEPA Section 102(2)(C), 42 U.S.C. § 4332(2)(C); therefore, an environmental impact statement (EIS) is not required.

C. Reasons for a Finding of No Significant Impact

In response to proposed mining activities that BNI has proposed for LBA Tracts 8 and 20, as well as mining activities that BNI is expected to formally propose in the near future for LBA Tract 14, OSMRE prepared the supplemental EA to satisfy its requirements under NEPA. The supplemental EA evaluates the Proposed Action and No Action's potential for direct effects to Federally listed threatened and endangered species and/or critical habitat, as well as indirect environmental effects associated with greenhouse gas emissions including the social cost of greenhouse gases and screening-level estimate of mercury and selenium deposition (potential effects to Federally listed threatened and endangered species) resulting from mining the LBA Tracts. The EA was prepared pursuant to the requirements of NEPA; the Council on Environmental Quality (CEQ), Department of the Interior (DOI), and the OSMRE regulations; and guidance regarding implementing NEPA. As part of the evaluation process, OSMRE will make a recommendation to the Assistant Secretary of Land and Minerals Management (ASLMM) on a new decision to approve, disapprove, or approve with conditions the Federal mining plan for BNCR-9702 (Revision 42).

OSMRE is the lead Federal agency responsible for development of this supplemental EA because, under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and Mineral Leasing Act (MLA), OSMRE will prepare a mining plan decision document (MPDD) in support of its recommendation to the ASLMM regarding Federal mining plans or mining plan modifications to either approve, approve with conditions, or deny the proposed mining plan and preparation of a

MPDD cannot be delegated to a State under SMCRA. The ASLMM will decide whether the mining plan is approved, approved with conditions, or disapproved. The supplemental EA analyzed the potential impacts associated with the Proposed Action and No Action Alternative. The Proposed Action would authorize mining of approximately 6.13 million tons of Federal coal. If the 6.13 million tons of Federal coal from the LBA Tracts is mined in a continuous manner, it would represent approximately 16 months of coal production at the Center Mine at the maximum mining rate of 4.6 million tons per year. The projected mine life and operating plans of the Center Mine, whether the ASLMM approves the Federal mining plans for the LBA Tracts or not, are anticipated to extend through the year 2037. Therefore, the Proposed Action is a continuation of current surface mining.

The supplemental EA also analyzed the impacts of the No Action Alternative. Under the No Action Alternative, OSMRE would not recommend and the ASLMM would not approve the proposed mining plans. However, mining would continue at the Center Mine under existing permits and coal would continue to be provided to the Milton R. Young Station per existing contracts.

The attached supplemental EA discloses the potential environmental effects of the Proposed Action and provides sufficient evidence and support for this FONSI. The supplemental EA was prepared by a third-party consulting firm at the direction of OSMRE. During the development of the supplemental EA, the OSMRE independently reviewed the document to ensure compliance with 43 C.F.R. part 46, Subpart D and all relevant provisions of CEQ regulations, and other program requirements. This independent review included OSMRE's evaluation of all environmental issues disclosed in the supplemental EA and also those identified in comments received from the public. OSMRE takes full responsibility for the accuracy, scope, and the content of this document.

The undersigned has determined that, per CEQ, DOI, and OSMRE regulations and guidance, the public involvement requirements have been met. OSMRE conducted a 30-day public comment period for the supplemental EA and unsigned FONSI from January 26, 2023, to February 25, 2023. All substantive public comments received to date have been fully considered in the supplemental EA and in reaching this FONSI. Appendix B of the supplemental EA includes the public comments received and OSMRE's responses.

This FONSI is based on the potentially affected environment and degree of the effects of the Proposed Action, in accordance with 40 C.F.R. § 1501.3(b).

1. The affected area (national, regional, or local) and its resources, such as listed species and designated critical habitat under the Endangered Species Act:

The potential to affect threatened or endangered species, as well as proposed and final designated critical habitat that may occur within the designated analysis areas, was evaluated by preparing a BA to fulfill the requirements of the U.S. Fish and Wildlife Service (FWS) under section 7(c) of the Endangered Species Act of 1973 (ESA). OSMRE made the following effects determinations to threatened and endangered species or critical habitat as a result of the Proposed Action.

Finding of No Significant Impact

Species or Critical Habitat	Scientific Name	Species Listing	Effect Determination
Dakota skipper	<i>Hesperia dacotae</i>	Threatened	May affect, but not likely to adversely affect
Northern long-eared bat	<i>Myotis septentrionalis</i>	Threatened ^[1]	May affect, but not likely to adversely affect
Pallid sturgeon	<i>Scaphirhynchus albus</i>	Endangered	May affect, but not likely to adversely affect
Piping plover	<i>Charadrius melodus</i>	Threatened	May affect, but not likely to adversely affect
Piping plover critical habitat	Not applicable	Not applicable	May affect, but not likely to adversely affect
Rufa red knot	<i>Calidris canutus rufa</i>	Threatened	May affect, but not likely to adversely affect
Whooping crane	<i>Grus americana</i>	Endangered	May affect, but not likely to adversely affect

[1] On November 29, 2022 the FWS published a final rule to reclassify the Northern long-eared bat as endangered under the ESA. The FWS extended the effective date of the listing reclassification from January 30, 2023 to March 31, 2023.

The BA was submitted to the FWS on February 10, 2022, for review and concurrence. The FWS provided informal comments to OSMRE on April 14, 2022. OSMRE then submitted an updated BA to the FWS to address the FWS informal comments on January 6, 2023. The FWS concurred with OSMRE’s effects determinations on January 31, 2023.

2. Short- and Long-term Effects

OSMRE evaluated the possible issues in the context of reasonably foreseeable activities including the combustion of the Federal coal at the Milton R. Young Station and the associated greenhouse gas emissions and potential deposition of mercury and selenium within 50 kilometers of the station (including pallid sturgeon habitat in the Missouri River and whooping crane wetland habitat).

The supplemental EA determined that disapproving the Proposed Action would not reduce global emissions in any meaningful way because the No Action Alternative has a similar but not perfectly identical emissions profile. Under both the Proposed Action and the No Action Alternative, the same amount of coal is expected to be mined annually, at the same rate, until 2037 when the Center Mine is expected to close. Mining the Federal coal under the Proposed Action would allow BNI to pursue a more cost-effective mining sequence but is not anticipated to create an incentive or opportunity to mine additional coal. Any non-Federal coal not mined under the Proposed Action is not expected to be mined at a later time, such as after 2037 when the mine is slated for closure. Therefore, while climate change does significantly impact the environment and the Proposed Action would produce climate changing emissions, there is no indication that the amount of greenhouse gas emissions from the Proposed Action as compared to the No Action Alternative would have a significant impact on climate change.

The supplemental EA analyzed the effects of mercury and selenium deposition for the Proposed Action, as discussed in sections 3.4.1, and 3.5.1, and determined it may affect, but is not likely to adversely affect, the Dakota skipper, northern long-eared bat, pallid sturgeon, piping plover, rufa red knot and whooping crane.

The Proposed Action is consistent with previous approvals of Federal mining plans and mining plan modifications that have been made in the area for several decades. No other anticipated effects have been identified that are scientifically controversial. Overall, there were no significant effects identified for the Proposed Action.

3. Beneficial and Adverse Effects

Beneficial and adverse impacts of the Proposed Action are described in the attached supplemental EA. As compared to the No Action alternative, the Proposed Action does not extend the life of the Center Mine or change the rate of mining; therefore, the overall annual amount of direct emissions is also not anticipated to increase from current levels with the Proposed Action. The Proposed Action would indirectly contribute to greenhouse gas, mercury, and selenium emissions through the combustion of coal at the Milton R. Young Station located adjacent to the Center Mine. Emissions from the burning of LBA Tracts coal would not change the total annual emissions at the Milton R. Young Station because that coal will be similar to coal already being delivered, power production will be within permitted limits, and the amount of coal produced at the BNI Center Mine and delivered to the station would be essentially unchanged from current production levels already permitted under the No Action Alternative.

The social cost of greenhouse gases emitted from the Milton R. Young Station under the Proposed Action is estimated to range from \$129.5 million to \$1.34 billion based on the Interagency Working Group's (IWG) *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide: Interim Estimates under Executive Order 13990* (IWG Interim SCC Report) published in February 2021. The IWG Interim SCC Report updated previous guidance from 2016. For Federal agencies, the best currently available estimates of the social cost of greenhouse gases are the interim estimates of the social cost of carbon dioxide, methane, and nitrous oxide contained in the IWG Interim SCC Report. The estimated social cost of greenhouse gases for the Proposed Action are the same as estimated for the No Action Alternative because the Proposed Action does not increase the coal mining rate, does not require additional mining equipment, does not extend the Life of Mine, and does not increase coal combustion by the M.R. Young Station. In other words, the Proposed Action does not cause an incremental increase in greenhouse gas emissions or potential associated social costs. Accordingly, emissions under the Proposed Action and any associated effects, monetized or otherwise, would not by definition produce any significant effects relative to the No Action Alternative. In any event, the OSMRE currently lacks peer reviewed science or a similarly robust management tool allowing the agency to establish thresholds to determine the significance of quantifiable greenhouse gas emissions or social cost of an action in terms of the action's propensity to affect the climate, incrementally or otherwise.

That said, OSMRE acknowledges that all greenhouse gases contribute incrementally to climate change and cumulatively climate change significantly impacts the environment. However, disapproving the Proposed Action would not reduce global emissions in any meaningful way because the No Action Alternative has a very similar emissions profile. Therefore, while climate change does significantly impact the environment and the Proposed Action would produce climate changing emissions, there is no indication that the amount of greenhouse gas emissions from the Proposed Action would have a significant impact on climate change when compared to the No Action Alternative.

None of the environmental effects discussed in the supplemental EA are considered to be significant.

4. Effects on Public Health and Safety

The 2020 BLM EA evaluated emissions and effluent limits from the Proposed Action and confirmed that they are within approved standards, as required by state permits, thereby limiting potential impacts to public health. Potential risks to public health and safety would be negligible and would occur over limited, brief periods. After full reclamation occurs, no public health or safety concerns are expected.

5. Effects that Would Violate Federal, State, Tribal, or Local Law Protecting the Environment

The Proposed Action's effects would not violate Federal, state, tribal, or local laws protecting the environment. The Proposed Action is consistent with applicable plans, policies, and programs. As described in section 1.3 of the supplemental EA, the Proposed Action is compliant with known Federal, state, tribal or local laws. The public, as well as state, tribal, and local stakeholders were given the opportunity to comment on the draft supplemental EA. OSMRE sent tribal consultation letters to the governments of the following 18 Native American Nations that could be affected by the Proposed Action, inviting the Tribes to consult on the Proposed Action.

- Cheyenne River Sioux Tribe
- Crow Creek Sioux Tribe
- Crow Tribe
- Flandreau Santee Sioux Tribe
- Fort Belknap Indian Community
- Fort Peck Assiniboine and Sioux Tribes
- Lower Brule Sioux Tribe
- Lower Sioux Indian Community
- Mandan, Hidatsa and Arikara Nation
- Northern Cheyenne Tribe
- Oglala Sioux Tribe
- Rosebud Sioux Tribe
- Santee Sioux Nation
- Sisseton-Wahpeton Oyate
- Spirit Lake Tribe
- Standing Rock Sioux Tribe
- Turtle Mountain Band of Chippewa
- Yankton Sioux Tribe

The Director of the Tribal Historic Preservation Office for the Northern Cheyenne Tribe requested to review the Cultural Resources Reports for the project area and OSMRE supplied the reports on February 10, 2022. No further comments were received from the Northern Cheyenne Tribe. OSMRE received an email from the Section 106 Review contact for the Fort Peck Assiniboine and Sioux Tribes on February 9, 2023, asking the OSMRE to resubmit the consultation letter with an additional addressee. Accordingly, the OSMRE mailed a second letter on February 14, 2023, as requested in the email. No other Native American Tribes responded.

Marcelo Calle, Manager

Date

Program Support Division
Unified Regions 5, 7, 8, 9, 10 and 11
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