

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-102083
Federal Mining Plan

A. Introduction

BNI Coal, Ltd. (BNI) owns and operates the Center Mine, which is located in Oliver County, North Dakota, approximately 5 miles south east of Center, North Dakota. The Center Mine is currently producing coal from two federal leases (NDM-97633 and NDM-95104) within mining permit BNCR-9702 issued by the North Dakota Public Service Commission (PSC) in accordance with the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Since 1970, lower stripping ratios have facilitated the economic recovery of coal at the mine. However, the ratios have steadily increased and currently in areas exceed 10:1. With increasing stripping ratios, coal quality constraints, and the amount of coal needed to fulfill the existing contract, BNI determined that a second mining area (permit BNCR-1101, an 8,360.72-acre area that includes Tract 1 [NDM-102083]) was necessary.

On November 6, 2014, BNI submitted the lease by application (LBA) to the Bureau of Land Management (BLM) for the leasing of federal coal resources in Tract 1 (NDM-102083). The PSC approved the incorporation of Tract 1 (NDM-102083) within the permit area of the Center Mine in 2014 (Permit BNCR-1101). The BLM issued a federal coal lease for Tract 1 (NDM-102083) on January 1, 2019.

The accompanying *BNI Coal Ltd. Tract 1 Federal Coal Lease-by-Application* (hereafter, the EA) details the air quality effects of this Project. The EA incorporates by reference the analyses included in the *Environmental Assessment Tract 1 Federal Coal Lease-by-Application Serial Number: NDM-102083* (hereafter 2018 BLM EA) (BLM 2018).

As discussed in chapter 4 of this EA, environmental protection measures required by air quality permit number O79004 will offset/reduce potential resource impacts.

B. Statement of Environmental Significance of the Proposed Action

Pursuant to 30 CFR Part 746, Office of Surface Mining Reclamation and Enforcement (OSMRE) is recommending selection and approval of the Proposed Action (see section C). The undersigned person has determined that approval of a federal mining plan authorizing continuation of mining operations and recovery the federal coal would not have a significant impact on the quality of the human environment under Section 102(2)(C) of the National Environmental Policy Act (NEPA), 42 USC 4332(2)(C); therefore, an Environmental Impact Statement (EIS) is not required.

C. Reasons for a Finding of No Significant Impact

OSMRE prepared the EA to satisfy OSMRE's requirements under NEPA. OSMRE prepared this EA to re-evaluate the environmental effects resulting from the currently approved federal mining plan related to Tract 1 (NDM-102083), pursuant to the requirements of NEPA; the Council on Environmental Quality (CEQ), Department of the Interior (DOI), and OSMRE regulations; and guidance regarding implementing NEPA. As part of the re-evaluation process, OSMRE will make

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a recommendation to the Assistant Secretary of Land and Minerals Management (ASLM) on a new decision to approve, disapprove, or approve with conditions the federal mining plan.

OSMRE is the lead federal agency responsible for development of this EA because, under the SMCRA and Mineral Leasing Act (MLA), OSMRE will prepare a mining plan decision document (MPDD) in support of its recommendation to the ASLM regarding federal mining plans or mining plan modifications to either approve, approve with conditions, or deny the proposed mine plan. The ASLM will decide whether the mining plan is approved, disapproved, or approved with conditions. As such, this EA followed the CEQ's, DOI's, and OSMRE's regulations and guidance for implementing NEPA. The EA analyzed the potential impacts associated with the Proposed Action and No Action Alternative. The Proposed Action would authorize mining of approximately 2.43 million tons (Mt) and recovery of approximately 1.69 Mt of federal coal. If the 1.69 Mt are mined in a continuous manner, it would represent approximately 5 months of coal production at the Center Mine at a mining rate of 4.0 million tons per year. However, the planned recovery sequence for Tract 1 (NDM-102083) would take place over a 7-year period. The projected mine life and operating plans of the Center Mine, whether Tract 1 (NDM-102083) is mined or not, are anticipated to extend through the year 2037. Therefore, the Proposed Action is a continuation (rather than an increase) of current surface mining.

The EA also analyzed the impacts of the No Action Alternative. Under the No Action Alternative OSMRE would not recommend and the ASLM would not approve the proposed mining plan.

The attached EA considers the Proposed Action, discloses the potential environmental effects of the Proposed Action, and provides sufficient evidence and support for this Finding of No Significant Impacts (FONSI). The EA was prepared by a third-party consulting firm at the direction of OSMRE. During the development of the EA, OSMRE independently reviewed the document to ensure compliance with 43 CFR 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 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. The OSMRE conducted a 15-day public comment period for the EA and unsigned FONSI from June 18, 2020 to July 3, 2020. All substantive public comments received to date have been fully considered in the EA and in reaching this FONSI. Appendix B of the EA includes the public comments received and responses.

This finding is based on the context and intensity of the proposed federal mining plan that would be conducted under the Proposed Action, as described in the following paragraphs.

- a) Context: This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

BNI proposes to meet demand for coal and continue mine operations through approximately 2037 by

1. securing federal mining plan approval authorizing mining of leased federal coal within a previously authorized area (i.e., Tract 1 [NDM-102083]), and
2. continuing to mine, process, and transport coal from the Center Mine.

Approval of the Proposed Action is a site-specific action that would authorize mining of approximately 1.69 Mt of federal coal over a period of 7 years. The effects of the action have been analyzed at the local, state, regional, national, and global scales as deemed appropriate for each resource.

- b) Intensity: This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity.

OSMRE has considered the 10 Significance Criteria in the federal regulations at 40 CFR 1508.27 in evaluating the severity of impacts.

1. Impacts that may be both beneficial and adverse:

Beneficial and adverse impacts of the Proposed Action are described in the attached EA. The Proposed Action does not extend the life of the Center Mine; 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 criteria emissions and GHG emissions through the combustion of coal at the Milton R. Young Station located adjacent to the Center Mine. Emissions from the burning of Tract 1 (NDM-102083) coal would not change the total annual emissions at the Milton R. Young Station because the amount of coal produced at BNI Center Mine and delivered to the station would be essentially unchanged from current production levels.

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

2. The degree to which the Proposed Action affects public health or safety:

Emissions and effluent limits 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 has occurred, no public health or safety concerns are expected.

3. *Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farm lands, wetlands, wilderness, wild and scenic rivers, or ecologically critical areas:*

Per the 2018 BLM EA, there are no park lands, prime farmlands, wilderness, wild and scenic rivers, or ecologically critical areas within the EA project area. There are no jurisdictional wetlands (aquatic resources) within the tract boundary. Wetlands and cultural resources are present in the Proposed Action area; however, best management practices and environmental protection measures will be employed to reduce or eliminate any potential impacts to these resources. The best management practices and environmental protection measures are outlined in the 2018 BLM EA.

4. *The degree to which the impacts on the quality of the human environment are likely to be highly controversial:*

As a factor for determining within the meaning of 40 CFR 1508.27(b)(4) (whether or not to prepare a detailed EIS) “controversy” is not equated with “the existence of opposition to a use.” *Northwest Environmental Defense Center v. Bonneville Power Administration*, 117 F.3d 1520, 1536 (9th Cir. 1997). The term ‘highly controversial’ refers to instances in which “a substantial dispute exists as to the size, nature, or effect of the major federal action rather than the mere existence of opposition to a use” *Hells Canyon Preservation Council v. Jacoby*, 9 F.Supp.2d 1216, 1242 (D. Or. 1998).

The EA has analyzed the direct and indirect effects on and from greenhouse gases/climate change and, as discussed in section 4.2.2 of this EA, and determined the effects to be minor and short-term. Approvals of federal mining plans and mining plan modifications have been made in the area for several decades. Stipulations for the Tract 1 (NDM-102083) federal coal lease remain in effect and would be carried forward if the federal mining plan modification is approved by the ASLM. No other anticipated effects have been identified that are scientifically controversial.

5. *The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks:*

As discussed above, there are no effects on the human environment under the Proposed Action that are highly uncertain or involve unique or unknown risks. OSMRE has experience implementing similar actions in similar areas.

6. *The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principal about future considerations:*

This decision is not precedent setting. OSMRE developed the issues considered in the EA within the context of past, present, and reasonably foreseeable actions. Chapter 5 of the EA contains a discussion of potential cumulative impacts for each resource brought forward for analysis. Significant cumulative impacts are not anticipated.

7. Whether the action is related to other actions with individually insignificant but cumulatively significant impacts – which include connected actions regardless of land ownership:

OSMRE evaluated the possible issues in context of past, present, and reasonably foreseeable activities, including past, present, and reasonably foreseeable mining for the BNI Center Mine and other mining operations in the region, the combustion of that coal at coal-fired power plants, industrial activities, and agricultural activities in Oliver County and adjacent counties Burleigh County, Mercer County, McLean County, and Morton County.

Per section 5.2.1, both the indirect and cumulative effects of coal combustion were disclosed in the EA. There were no significant cumulative effects identified.

8. The degree to which the action may adversely affect districts, sites, highways, structures, or other objects listed in or eligible for listing in the National Register of Historic Places (NRHP) or may cause loss or destruction of significant scientific, cultural, or historical resources:

There are no cultural sites eligible for the NRHP located on or adjacent to the Proposed Action. Most of the BNCR-1101 permit area, which includes the Proposed Action, was surveyed for cultural resources in 2007, 2009, 2010, and 2013 by Ethnoscience (2008, 2010). Tract 1 is located in T. 141 N., R. 83 W., sec. 18, and was surveyed in 2007 by Ethnoscience (2008). Cultural resource inventories included literature searches, contacts with private landowners and other local experts, and intensive pedestrian surveys. In 2009, archaeological test excavations were conducted on two sites: 32OL507 and 32OL508 (Ethnoscience 2010). These test excavations supported a recommendation that these two sites were not eligible for the NRHP under Criterion D. Subsequently, 32OL508 has been destroyed through the placement of a topsoil stockpile on the lands overlying the tract. BNI has approval from North Dakota PSC to use the surface lands overlying the tract for adjacent mine operation, which effectively will destroy site 32OL507 as well. The North Dakota State Historic Preservation Officer concurred with BLM's finding of No Historic Properties Affected on February 7, 2017.

BLM consulted representatives of Native American tribes during the preparation of the 2018 BLM EA. In addition, OSMRE sent out Tribal consultation letters to Native American tribes that could be affected by the Proposed Action evaluated in this EA. No Native American tribes have responded to OSMRE's consultation request for the Proposed Action.

9. The degree to which an action may adversely affect a threatened or endangered species or its habitat that has been determined to be critical under the Endangered Species Act of 1973 (ESA):

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 utilizing the U.S. Fish and Wildlife Service's (USFWS) Information, Planning, and Conservation System (IPaC) consultation process. IPaC species assessments fulfill the requirements of the USFWS under section 7(c) of the Endangered Species Act of 1973. OSMRE has determined that there would be no effect to threatened and endangered species or critical habitat as a result of the Proposed Action.

10. Whether the action threatens a violation of a federal, state, local, or tribal law, regulation, or policy imposed for the protection of the environment, where non-federal requirements are consistent with federal requirements:

As described in section 1.3 of the EA, the Proposed Action is in compliance with known federal, state, local, or tribal laws or requirements imposed for the protection of the environment. During the public and agency involvement for this EA, state, local, and tribal interests were given the opportunity to participate in the EA process. The Proposed Action is consistent with applicable plans, policies, and programs.

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Unified Regions 5, 7, 8, 9, 10 and 11
OSMRE

Date