

Congress of the United States
Washington, DC 20515

March 14, 2016

The Honorable Sally Jewell
Secretary
Department of the Interior
1849 C Street, N.W.
Washington DC 20240

Dear Secretary Jewell:

We write regarding the U.S. Department of Interior's January 15, 2016, Order No. 3388, the "Discretionary Programmatic Environmental Impact Statement to Modernize the Federal Coal Program," and its potential impact on BNI Coal, based in Bismarck, North Dakota. We want to bring your attention to the attached letter that BNI sent to the Bureau of Land Management (BLM) on February 23, 2016, and we urge you to give full consideration to their requests and use your authority under the Federal Emergency Bypass provisions to complete their pending lease applications.

BNI Coal has two pending lease applications at the BLM, one submitted in 2011 and the other submitted in 2012. In their "Status of Currently Pending Leases" document released in January 2016, the BLM listed one of BNI's leases in "Table 1: Projects Potentially Covered by One of the Pause Exceptions" and one in "Table 2: Projects Potentially Subject to the Temporary Pause." These two pending leases have similar characteristics and both face imminent bypass situations, so it is unclear why they are classified in two different categories.

We request that the lease package listed on Table 2 be recognized as an emergency lease scenario and bypass potential and be moved to Table 1, giving it the potential to be covered by one of the pause exceptions. BNI's letter to the BLM provides, in great detail, the rationale for why these two lease applications should be treated under the emergency leasing exemption outlined in Section 6 of the Order.

While most coal mined in North Dakota is on private lands, there are pockets of federally-owned coal assets that are interspersed throughout existing mining operations. If these two lease applications are not processed in a timely fashion, the federal coal will be bypassed. Bypassing this coal will not only create operational issues for BNI Coal and unnecessarily increase costs to electric consumers, but it will also permanently strand the federal coal and deprive the U.S. taxpayer of the royalties on this valuable resource. All of these outcomes are contrary to the Department's mission which is, in part, to provide for the "safe and responsible development of our energy resources."

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Because of the time sensitivity of these mining operations, we also request that the Table 1 leases, covered by a pause exception, continue in a timely fashion even while the BLM determines how the moratorium will proceed. BNI's pending leases are not "new" leases, as the BLM has had the lease requests for quite some time. At the Senate Energy and Natural Resources hearing on February 23, 2016, you told Senator Hoeven, regarding leases listed in Table 1, that: "If they were on the BLM's list which we published on the website as being grandfathered then the BLM has every intention of going through that and so do I." As such, we look forward to seeing these leases proceed in a timely manner.

Finally, we are also concerned about reports that BLM headquarters is not communicating with the state offices that process these lease applications and leasing activities have appeared to come to a standstill. We request the BLM ensure their state offices have the direction and clarification needed to proceed with Table 1 leases, Table 2 leases, and future submitted leases. In BNI's case, they have already waited years and spent hundreds of thousands of dollars in cost recovery and contractor fees to process these leases. The BLM owes these lease applicants timely responses and processing of these applications.

We respectfully request the BLM expeditiously complete the processing of these two leases. This will ensure that BNI Coal's mining operations will not be disrupted and that the federal coal leases will not be bypassed. We trust that you and your staff will give this issue your utmost consideration, and we look forward to receiving your response.

Sincerely,



JOHN HOEVEN
U.S. Senator



HEIDI HEITKAMP
U.S. Senator



KEVIN CRAMER
U.S. Congressman

Enclosure



2-23-2016

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Dear Mr. Leverette and Mr. Perlewitz,

I am writing to you today concerning Order No. 3338: *Discretionary Programmatic Environmental Impact Statement to Modernize the Federal Coal Program* issued by Secretary Jewell on January 15, 2016. BNI Coal has two existing federal coal lease applications that warrant your immediate attention. While BNI Coal has several questions regarding the federal coal moratorium itself, our immediate concern centers on two existing federal coal lease applications and their treatment under Order 3338.

BNI Coal's operations in North Dakota are primarily on private lands, with small parcels of federal coal reserves managed by the BLM (approximately 5-8%), interspersed within the mining operation of vastly private and to a lesser extent state reserves. We have thoroughly reviewed the secretarial order, other relevant postings on BLM's website (<http://www.blm.gov/wo/st/en.html>), and specifically BLM's "Status of Currently Pending Leases (Updated 1-20-2016)" report. Our conclusion is that BNI Coal's two pending federal lease applications warrant consideration under the Federal Emergency Bypass provisions within (43 CFR 3425.1-4(a) (ii)). Failure to do so will affect efficient mine operation, not affect environmental impacts whatsoever, and strand the existing federal coal reserves forever, depriving the BLM and the American people the lease revenues from these lands that the BLM is entrusted to manage.

One of our pending applications, NDM 102083, illustrated on Table 1 of the Lease Status Report is potentially covered by one of the pause exceptions as a potential bypass. Our other lease application, NDM 105513, is listed within Table 2 which would be subject to the temporary lease pause. This designation deeply concerns BNI Coal.

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The inappropriate designation of lease NDM 105513, whether BLM's based it on the acreage size of the application, misconceptions of the leasing process delays our application experienced, lack of coordination between BLM and the State Office, or not understanding the bypass potential of these tracts is contrary to the goals of the Emergency Leasing provision. It also is contrary to BLM's management of coal leases. Without reconsideration of this lease's designation, three of the five tracts within the application will be bypassed. For these reasons we believe further review and explanation by the BLM of its placement on Table 2 is warranted.

BNI Coal provides the following information which illustrates why our Center Mine (BNI) NDM 105513 lease application should be designated as an Emergency Bypass Provision and warrants being covered by a pause exception.

The following five points illustrate the Emergency Bypass Provision of lease NDM 105513.

1. The LBA submittal dates by BNI Coal and BLM's delays in processing
2. The historic timeframes to receive federal leases and the BLM delays that could not have been foreseen
3. BNI Coals mining sequence revisions to meet anticipated timeframes
4. Four of the six federal tracts are pending bypass
5. The difference in federal coal leases with respect to the characteristic of lignite and North Dakota laws and ownerships

1. Initial mining proposed dates and federal lease application submittals

BNI Coal submitted to the State Office two applications to lease federal coal ownerships within North Dakota in 2011 and 2012 respectively. The initial 3-2-2011 submittal was for 720 acres of federal coal consisting of five federal coal tracts, all within a newly proposed mining area of about 8,500 acres. Within this application it was discussed that Tract 2 would be bypassed if we could not achieve a federal coal lease within a three year timeframe. In addition to the Tract 2 immediate need, it was illustrated to the BLM State Office that Tract 3 in this submittal would have mining initiated in 2016 as well as Tract 1 in 2017. Tracts 4 and 5 within this submittal were projected further out for mining initiation. BNI Coal received a cost recovery estimate with regarding this application on 4-8-2011 and was labeled Federal Lease NDM 102083. Following the cost recovery return with payment, no further work or correspondence was done on this application for the next year. However, BLM did request replacement of the previously submitted application, indicating that it had somehow been lost or misplaced.

On 6-28-2012 BNI Coal submitted a second federal lease package consisting of 480 acres of federal coal ownership adjacent to our active mine. This application was done under the provision that the production from this tract would be used to supply coal for contracts signed prior to July 19, 1979. This lease tract had mining disturbance projected in 2017. Multiple conversations progressed with the BLM State Office regarding this lease application and the lease application NDM 102083 previously submitted in 2011, and the potential of combining all

tracts into one application and EIS (Environmental Impact Statement). During these same conversations, the BLM requested BNI to modify the existing section 20 lease application to take into consideration the existing Highway 25 right of way and existing powerline offset. Per the BLM's request, BNI Coal resubmitted this application on 12-28-2012 and removed 40 acres affected by the right of way and powerlines resulting in the package being reduced to 440 acres instead of 480 acres. In addition to changing the right of way, BLM asked BNI to address an alluvial valley floor designation and a flood plain designation that the resource management plan had illustrated as un-minable do to the specific criterion. BNI complied with this request and submitted on 4-4-2013 the criterion response back to the BLM.

Likewise, in the same time frame, BNI's conversations continued with the BLM's State office which was now two years into the first five tract application submittal of NDM 102083, with no progress being made. Per these conversations BLM recommended that we modify the existing 720 acre lease application to under 640 acres since one of the tracts was further out in the mining sequence and could be added at a later date. This modification would then put this application under the 640 acre threshold which would be processed under an EA instead of an EIS. This is an important consideration due to the timeframe since mining was projected to occur in 2015. On 4-16-2013, BNI Coal removed Section 14 or 320 acres from the 2011 lease application resulting in a four-tract 400 acre application. Again, following this revised LBA application multiple conversations progressed with the BLM State Office over the course of the next year, yet there was no movement in the lease applications. Following these conversations with the BLM, BNI Coal again revised on 8-4-2014, the lease package to add back in the 320 acres that were removed on 4-16-2013 and reverted back to the original application submitted on 3-2-2011. This put us now 3 ½ years after the initial lease submittal to BLM.

Following this submittal the BLM office requested in October 2014 that BNI convert all maps in the LBA from AutoCAD to GIS format to save time in their staff reviewing the material and their lack of GIS positions to achieve this. In addition, the BLM requested that BNI revise the LBA packages again and rearrange the existing tracts from both applications so that the Section 18 tract would be a stand-alone application which would be reviewed as a EA and the other five tracts be moved to the other LBA application which would require a EIS to be performed. On 11-7-2014, BNI Coal again resubmitted NDM 102083 to include only Section 18, which is how the application stands today. Likewise, on 2-24-2015, BNI Coal resubmitted NDM 105513 to include four of the original LBA tracts and moved section 20 to this application. It was not until 8-5-2015, nearly 5 months later, that the BLM State Office sent two separate letters of notice to the ND governor stating that BNI was applying for federal leases NDM 102083 and NDM 105513 under federal leasing provision 3425 or the broader emergency leasing provision. The governor's letter of notification now being over four years after the original lease submittals in which the proposed lease tracts have not changed.

In summary, in 2011 and 2012, BNI submitted two lease packages consisting of 6 federal coal tracts. Since that time, BNI has responded to numerous requests by the BLM that resulted in changes to these applications - only to be changed back to the original submittals. Today, the

same 6 federal coal tracts and acreages are still applied for with “estimated” lease sale dates late in 2017 and 2019 respectfully. This timeframe represents a 7-9 year federal coal leasing timeline, recognizing that these projections were issued prior to the federal coal lease moratorium going into effect

2. The timeframes needed to receive federal leases and BLM’s delays related to these two leases could not have been foreseen

BNI Coal is mining two federal coal parcels within our active mining operation. The first tract is a 360 acre federal parcel located in section 28-142-84 and the other is a 160 acre parcel which is located within section 32-142-84. BNI has historically submitted federal lease applications to the BLM 2 – 3 years prior to predicted commencement of mining operations. During these previous submittals the BLM self-performed the respective EA’s and achieved the leasing within 18 – 24 months. However, that was before the BLM began to outsource its NEPA analysis to third party contractors. Our recent experiences with the BLM suggest we are now on a 7 year plus timeframe for similar analysis.

Taking into consideration timeframes BNI had previously associated with federal coal leasing, giving ourselves what we thought was ample “slack” in the schedule, and based on conversations we had with the State BLM Office, BNI Coal submitted our first application on 3-2-2011, with commencement of mining proposed late in 2014. Our second application assumed an even more generous timeframe for BLM application processing. That application was submitted on 6-28-2012 with commencement of mining proposed in 2017. Hence, BNI Coal submitted the respective leases 4-5 years in advance of anticipated mining -- which was three years longer than BNI’s history of receiving federal leasing approvals.

Given knowledge only available today, even if one assumes that BLM’s internal projected timeframe for approval of these two federal leases (before the federal moratorium was enacted) is in the range of 7 – 9 years from the date of application, the work on both of these lease applications should have been substantially complete. This illustrates BNI Coal’s due diligence in budgeting 5 years to obtain these federal leases, and further illustrates the leasing timeframes today could not have been foreseen within the leasing guidelines at the time of application submittals in 2011 and 2012.

Beyond the circumstances previously explained, BNI had numerous conversations with the State and Field offices regarding progression of these leases. Numerous responses were given, ranging from the increased workload related oil activity in the area, staffing issues, budget constraints, and the priority focused on oil and not on coal. Additionally, it is understood that the agencies were struggling to retain, hire, and train staff to fill positions due to the oil activity, shortage of labor forces and housing costs. All reasons undoubtedly contributed to the unforeseen leasing timeframes associated with these lease applications. BNI believes it submitted these applications allowing more than reasonable timeframe prior to mining. Delays in the BLM’s ability to process leases in a timely fashion that have resulted in four out of our six federal lease tracts now pending bypass.

3. Mining sequence revisions to meet anticipated timeframes

BNI Coal has been transparent with the BLM's State Office in our mining plans since the start of this leasing process in 2011. Throughout the course of time, BNI has continued to be transparent with the BLM and has expressed concern over the possibility of bypass, and the mine plan modifications BNI has been implementing, to avoid federal bypass. BNI has undertaken the following major mine plan modifications to avoid bypassing the federal coal.

- 1) BNI continued mining in our BNCR-9702 permit one year longer than planned to slow production within our BNCR-1101 mining permit.
- 2) BNI relocated by 8 miles, at considerable expense, 2 of its 3 draglines to modify pit sequence (NDM 105513).
- 3) BNI modified the exiting new mine area box cut in a manner that would delay federal development. This modification now stranded additional federal and private coal development (NDM 105513).
- 4) BNI is modifying its most recent mine plan in BNCR-1101 to avoid section 18 (NDM 102083). This is causing BNI to develop new infrastructure to the southwest of this tract. This modification was not sequenced at this time and has significant dollar impacts and soil volume impacts to our operations and reclamation schedules.
- 5) BNI continues expanding its BNCR-9702 sequence into uneconomical strip ratios to try and avoid bypassing the federal parcel in section 20. This is causing increased reclamation costs with the exceptionally deep overburden and increased operational costs as additional use of mobile stripping fleets is needed for production.

To summarize, BNI's mine plan modifications have come at a significant cost to our mining operation in an effort to avoid federal bypass. As it stands today, 4 of our 6 federal tracts are pending bypass.

4. Four of the six federal tracts will be bypassed and stranded if not mined at this time

NDM 102083

NE4 Section 18-141-83

Mining has progressed up to the section line bordering this tract. Through our state mining permits and the privately held surface BNI has disturbed a portion of the surface to support the adjoining mining operation. To avoid bypass BNI delayed dragline operations in this area, revised the box cut digging sequence, and is now planning in 2016 to develop infrastructure to the south east of this tract in order to mine around this tract. This federal resource will be bypassed and stranded if our application continues to be delayed. The surface area is partially disturbed today and it will continue to be disturbed regardless of disposition of the federal coal in order to support the development of the adjoining fee coal.

NDM 105513

NE4NE4 Section 8-141-83

The surface of this tract is privately owned and is slated for mining in 2017. The mining relative to this tract is not the same as within our other tracts which are normally mined by draglines. This tract is being mined to remove the coal, after which an ash landfill cell for an adjacent power plant will be developed. Current plans are being developed to mine the adjoining fee coal and leave the federal coal in place. This will leave the federal coal stranded and a permanent ash landfill cell above the federal coal. This federal resource will be bypassed and stranded if not mined at this time.

SW4SE4 Section 8-141-83

Again, the surface of this tract is privately owned and mining disturbance is occurring on a portion of this tract to support coal removal from adjoining fee coal. This tract will be bypassed unless developed in relation to the new infrastructure build in 2016. BNI modified its existing box cut area to avoid bypassing this entire tract and has since modified our sequence to potentially salvage a portion of the federal coal as we develop to the south east. This federal resource will be bypassed and stranded if not mined at this time.

NE4, W2 of Section 20-142-84

This tract was scheduled to have mining disturbance in 2017. We have since modified the mine plans on two occasions to allow more time in receiving the federal lease. Our current mine plan has delayed mining until 2018 at which time we will need to begin the mining sequence or will need to relocate the dragline to another area. Extending the mining sequence into 2018 will push mining into very high strip ratios and result in significant mobile equipment pre-strip costs and high reclamation costs due to the depth of overburden. A second option is to move this dragline to our BNCR-1101 permit, which will strand the federal coal assets in section 20. This federal resource will be bypassed and stranded if mining disturbance is not possible by 2018.

5. The difference in federal coal leases with respect to the characteristic of lignite and North Dakota laws and ownerships

It should also be recognized that the BNI Coal's federal portion of our minable reserve is between 5-8% of our total tonnages. Federal ownerships are sporadically located throughout our reserve and equally important, the surface is privately owned. With that being said, mining companies can illustrate the need to disturb the private surface above federally owned coal in support of mining the vast reserves of private coal that adjoins the federal tracts. Even if BNI Coal does not mine the federal coal beneath these tracts the surface areas will be disturbed because of adjacent mining operations, just as two of the pending federal coal tracts already are, and all tracts eventually will be disturbed. It should also be noted that North Dakota lignite seams are thin, typically from 7' – 9' thick which inherently results in minimal tonnages associated with these federal coal ownerships. While the total tonnage associated with BNI's

federal tracts are relatively small part of our overall mining operation, on a national level these Federal Reserve's represent only a fractional percentage of the pending federal leases today. Whether these federal coal tracts are developed or bypassed, it will not impact the future deliveries to our customers as over 90% of our reserves are State or private fee coal. However, it will impact mining efficiency and effectiveness if the federal tracts are stranded; costs that are unnecessarily passed through to the electric consumer while leaving stranded public revenues within un-mined federal mineral islands.

As Secretary Jewell pointed out in the January 15, 2016 Order; "The Department of the Interior (Department) is entrusted with overseeing Federal land and resources for the benefit of current and future generations. This responsibility includes advancing the safe and responsible development of our energy resources, while also promoting the conservation of our Federal lands and the protection of their scientific, historic, and environmental values for generations to come." We believe the timely processing of these two existing lease packages is in keeping with the mission and directive of the Department of Interior and the Bureau of Land Management as articulated in the Order.

In conclusion, BNI Coal believes both of our lease packages warrant leasing under the Emergency Leasing Provisions and should be covered by a pause exception relevant to the immediate bypass situation, lease submittal timeframe of 2011 and 2012, and delays related to the BLM's timely processing of these leases. We therefore request the BLM to expeditiously consider and approve of our NDM 102083 lease application, and reconsider and revise the status of our LBA NDM 105513 lease application.

I look forward to further discussions with you and the BLM State Office regarding BNI Coal's two federal coal lease applications.

Sincerely,



Jay M. Volk, PhD
Environmental Manager
BNI Coal

Cc: Aden Seidlitz (Acting State Director (MT, SD, ND))
North Dakota Senator John Hoeven
North Dakota Senator Heidi Heitkamp
North Dakota Congressman Kevin Cramer