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File USEW-5-15-08-rvw (30870)



DIRECTOR - RECLAMATION DIV.

United States Department of the Interior



5-27-08

FISH AND WILDLIFE SERVICE

Ecological Services

3425 Miriam Avenue

Bismarck, North Dakota 58501

Info. Only: _____

Info & File: Permit NACT-0401

MAY 15 2008

RECEIVED

MAY 19 2008

#30870

PUBLIC SERVICE COMMISSION

Public Service Commission
600 East Boulevard Ave. Dept. 408
Bismarck, North Dakota 58505-0480

Re: Coteau Properties Company Revision No. 7,
Permit NACT-0401, Mercer Co, ND

Dear Sir or Madam:

This letter is in regard to Coteau Properties Company's application for Revision No. 7 to Surface Coal Mining Permit NACT-0401 to add approximately 360.2 acres to the permit. We offer the following comments under the authority of and in accordance with the Migratory Bird Treaty Act (16 U.S.C. 703 et seq.), and the Endangered Species Act (ESA) (16 U.S.C. 1531 et seq.).

High Value Habitat Avoidance

Our review of the National Wetland Inventory (NWI) maps and photographs indicates the proposed planning areas include numerous wetland basins. If construction routes intersect wetlands, streams, or rivers, the Corps of Engineers (Corps) may require a Department of the Army permit for the placement of dredge or fill material into waters of the U.S., including wetlands, or other impacts to navigable waters. I suggest you contact Mr. Daniel Cimarosti, Regulatory Office, Corps of Engineers, 1513 South 12th Street, Bismarck, North Dakota 58504 (701-255-0015), to determine the Corps' permit requirements.

To minimize disturbance to fish and wildlife resources in the project area, the Fish and Wildlife Service (Service) provides the following recommendations:

- Schedule construction for late summer or fall/early winter so as not to disrupt waterfowl or other wildlife during the breeding season (February 1 to July 15). If work is proposed to take place during the breeding season or at any other time which may result in the take of migratory birds, eggs, or active nests, the Service recommends that the project proponent arrange to have a qualified biologist conduct a field survey of the affected habitats to determine the absence or presence of nesting migratory birds. If nesting migratory birds are found, we request you contact this office, suspend construction, or take other measures, such as maintaining adequate buffers, to protect the birds until the young have fledged. The Service further recommends that field surveys for nesting birds, along with information regarding the qualification of the biologist(s) performing the surveys, and any avoidance measures implemented at the project site, be thoroughly documented and that such documentation be shared with the Service and maintained on file by the project.

- Make no stream channel alterations or changes in drainage patterns.
- Locate construction to avoid placement of fill in wetlands along the route.
- Replace unavoidable loss of wetland habitat with functionally equivalent wetlands.
- Replant trees in naturally forested areas or riparian zones at a ratio of two trees planted for every one removed.
- Install and maintain appropriate erosion control measures to reduce sediment transport to adjacent wetlands and stream channels.
- Reseed disturbed areas with a mixture of native grass and forb species.

Migratory Birds

To minimize the electrocution hazard to birds, the Service, with support from the Rural Utilities Service, recommends that new or updated overhead power lines be constructed in accordance with the current guidelines for preventing bird electrocutions. The recommended guidelines can be found in "2006 Suggested Practices for Avian Protection on Power Lines". To increase power line visibility and reduce bird fatalities resulting from collisions with power lines, the Service recommends power lines in the major whooping crane migration zone as well as power lines that cross or run adjacent to rivers or large wetlands be modified according to "Mitigating Bird Collisions with Power Lines: The State of the Art in 1994". Both publications can be obtained by writing or calling the Edison Electric Institute, P.O. Box 266, Waldorf, Maryland, 20604-0266, (1-800-334-5453) or visiting their website at www.eei.org.

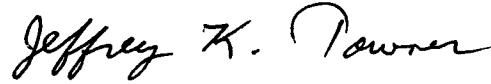
Threatened and Endangered Species

A list of federally endangered and threatened species that may be present within the proposed project's area of influence is enclosed. This list fulfills requirements of the Service under Section 7 of the Endangered Species Act. This list remains valid for 90-days.

If a Federal agency authorizes, funds, or carries out a proposed action, the responsible Federal agency, or its delegated agent, is required to evaluate whether the action "may affect" listed species. If the Federal agency or its delegated agent determines the action may likely adversely affect listed species, then the responsible Federal agency shall request formal section 7 consultation with this office, or work with this office to remove the likely adverse affects before proceeding. Your determination of effects to listed species and concurrence by the Service should be completed prior to making any irretrievable or irreversible commitments with regard to your project. If the evaluation shows a "no effect" determination to listed species, further consultation is not necessary.

Thank you for the opportunity to comment on this proposal. If you require further information or the project plans change, please have your staff contact Carol Aron of my staff at (701) 250-4481, or contact me at (701) 250-4402 or at the letterhead address above.

Sincerely,

A handwritten signature in cursive script that reads "Jeffrey K. Towner".

Jeffrey K. Towner
Field Supervisor
North Dakota Field Office

Enclosure

FEDERAL THREATENED, ENDANGERED, AND CANDIDATE SPECIES
AND DESIGNATED CRITICAL HABITAT FOUND IN
MERCER COUNTY, NORTH DAKOTA

ENDANGERED SPECIES

Birds

Interior least tern (*Sterna antillarum*): Nests along midstream sandbars of the Missouri and Yellowstone Rivers.

Whooping crane (*Grus Americana*): Migrates through west and central counties during spring and fall. Prefers to roost on wetlands and stockdams with good visibility. Young adult summered in North Dakota in 1989, 1990, and 1993. Total population 140-150 birds.

Fish

Pallid sturgeon (*Scaphirhynchus albus*): Known only from the Missouri and Yellowstone Rivers. No reproduction has been documented in 15 years.

Mammals

Black-footed ferret (*Mustela nigripes*): Exclusively associated with prairie dog towns. No records of occurrence in recent years, although there is potential for reintroduction in the future.

Gray wolf (*Canis lupus*): Occasional visitor in North Dakota. Most frequently observed in the Turtle Mountains area.

THREATENED SPECIES

Birds

Piping plover (*Charadrius melodus*): Nests on midstream sandbars of the Missouri and Yellowstone Rivers and along shorelines of saline wetlands. More nest in North Dakota than any other state.

DESIGNATED CRITICAL HABITAT

Birds

Piping Plover - Alkali Lakes and Wetlands - Critical habitat includes: (1) shallow, seasonally to permanently flooded, mixosaline to hypersaline wetlands with sandy to gravelly, sparsely vegetated beaches, salt-encrusted mud flats, and/or gravelly salt flats; (2) springs and fens along edges of alkali lakes and wetlands; and (3) adjacent uplands 200 feet (61 meters) above the high water mark of the alkali lake or wetland.