



Public Service Commission

State of North Dakota

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April 6, 2018

Mr. Kevin Shelley
U.S. Fish and Wildlife Service
3425 Miriam Avenue
Bismarck, North Dakota 58501-7926

Dear Mr. Shelley:

The Reclamation Division is conducting technical reviews of the applications for Revision No. 37 and No. 38 to Surface Coal Mining Permit NAFK-8405 for the Falkirk Mine. Revision No. 37 adds plans to mine a federal coal tract in the SE1/4 of Section 10, T146N, R82W, McLean County and Revision No. 38 proposes to add 1,680.1 acres to the permit including a federal coal tract located in the NE1/4 of Section 10, T146N, R82W that is also proposed to be mined. The mining of the federal coal tracts proposed with both revisions will require mine plan approval/modification. The surface of the entire area being added with Revision No. 38 and the lands proposed to be affected with Revision No. 37 are privately owned.

Falkirk obtained the federal coal lease for the E1/2 of Section 10, T146N, R82W on January 1, 2018 (Federal Coal Lease NDM 107039). The Bureau of Land Management (BLM) completed an Environmental Assessment (EA) dated December 19, 2016 for the federal coal lease to ensure compliance with the National Environmental Policy Act (NEPA). Section 4.10 of the EA includes an effects determination for threatened, endangered, proposed and candidate species.

The Reclamation Division must make a finding about whether mining activities may affect proposed, threatened or endangered species, or proposed or designated critical habitat. We believe the proposed surface coal mining and reclamation operations will not jeopardize or adversely affect the continued existence of any currently listed threatened or endangered species or species proposed for listing, or any proposed or designated critical habitat. A species-specific effect determination is attached which explains how we arrived at our preliminary finding. Figure 1 of the attachment depicts planned mining related disturbance in relation to tracts containing federal and non-federal coal.

DVD's of the revision applications are enclosed for your review. The mining plan in Revision No. 38 includes mining activities planned with Revision No. 37 so you may choose to focus your review on the Revision No. 38 application. The mine plan is depicted on the Pit Layout and

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Facilities Map, Section 3.1.5, and the Fish and Wildlife Resource information is located in Section 2.4 of the permit.

Please review the proposed mining/reclamation plans and let us know by **May 10, 2018** if your office concurs with our effects finding, or if any species-specific protection measures should be included in the permit.

If you have any questions, please contact Guy Welch at 701-328-2298 or gwelch@nd.gov.

Sincerely,



Dean K. Moos
Director
Reclamation Division

cc: Terry Steinwand, Director, NDGF/w enclosure Revisions 37 and 38 to NAFK-8405 Species-Specific Effects Finding

Enclosures: DVD's of Revisions 37 and 38 to NAFK-8405
Revisions 37 and 38 to NAFK-8405 Species-Specific Effects Finding

Minedata/Falkirk/Permits/NAFK-8405/Revisions/No.37 No.38/USFWS_Advsry_rvw_rqst_ltr_4-6-18

Revisions No. 37 and No. 38 to NAFK-8405 Species-Specific Effects Finding

Revision No. 37 includes mine plan changes to Falkirk Mining Company Permit NAFK-8405 to mine coal in the S1/2 of Sections 8, 9, and 10 of T146N, R82W, McLean County. Revision No. 38 adds 1,680.1 acres to the permit and includes plans to mine coal in the N1/2 of Sections 8, 9, and 10 and the S1/2 of Sections 3, 4, and 5 of T146N, R82W, McLean County. The federal coal located in the SE1/4 of Section 3 is not leased and the mining plans do not show any disturbance on this property. The surface of all of the acreage involved is privately owned. The E1/2 of Section 10 includes federal coal and Falkirk obtained a federal coal lease for this acreage on January 1, 2018 (Federal Coal Lease NDM 107039). The Bureau of Land Management completed an Environmental Assessment dated December 19, 2016 for the federal coal lease to ensure compliance with the National Environmental Policy Act (NEPA). The NEPA analysis concluded there would be no effect to the Gray Wolf, Interior Least Tern, Pallid Sturgeon, Piping Plover, Rufa Red Knot, Dakota Skipper or Northern Long-Eared Bat and leasing the federal coal for mining may affect, but not likely adversely affect the Whooping Crane.

Revision No. 37 includes mine plan changes to mine all of the federal coal in the SE1/4 of Section 10 and Revision No. 38 includes plans to mine approximately 65 acres of the federal coal in the NE1/4 of Section 10. Mining activities in and adjacent to the E1/2 of Section 10 may result in surface disturbance to the entire half-section. The pit layout and facilities map depicts a large soil stockpile in the NE1/4 of Section 10 where federal coal is not going to be mined. **Figure 1** depicts the Revision No. 37 and Revision No. 38 areas that will be affected by mining activities.

The acreage being added to the permit with Revision No. 38 includes 1,348.2 acres of cropland, 130.7 acres of hayland, 36.6 acres of native grassland, 46.7 acres of roads, 13.9 acres of shelterbelt, 85.7 acres of wetlands and 18.2 acres of farm facilities. The wetland acreage includes 20 seasonal wetlands (57.8 acres) and 49 smaller temporary wetlands (27.9 acres) that are typically cultivated since most are located in cropland fields. Approximately 2.2 acres of temporary wetlands are not located in cropland fields. The native grassland is located primarily in the SW1/4SW1/4 of Section 3 adjacent to a farmstead and approximately 4 acres of this 36-acre tract will be affected by mining activities. This tract is managed as a horse pasture and portions are periodically hayed. The hayed portion is overwhelmingly dominated with smooth brome grass and Kentucky bluegrass while native species persist on the thin loamy ecological site where grazing regularly occurs. Approximately 7.2 acres of shelterbelts will be disturbed by mining activities; the shelterbelts in the SW1/4 of Section 8 and SW1/4 of Section 3 will not be disturbed. All disturbed wetland, shelterbelt and native grassland acreage will be replaced.

The USFWS IPaC, Information for Planning and Consultation, internet service program identifies eight threatened or endangered species potentially occurring in the Revision No. 38 addition area and although McLean County contains designated critical habitat for the Piping Plover, none is listed as occurring in the Revision 38 addition area or the area to be affected by mining with Revision No. 37. The IPaC site does not identify any species proposed for listing in the revision addition area. The species listed includes the Gray Wolf, Northern Long-Eared Bat, Interior Least Tern, Piping Plover, Rufa Red Knot, Whooping Crane, Pallid Sturgeon and Dakota Skipper. The Black footed Ferret, Poweshiek Skippling, Western Prairie Fringed Orchid and Rusty Patched Bumblebee are listed species in North Dakota but excluded from the IPaC list. Although additional species have been petitioned for listing in North Dakota, currently no species are proposed for listing nor is there any proposed critical habitat. Sprague's Pipit was considered a Candidate for listing but the USFWS determined on April 5, 2016 that species listing was not warranted. Following is the Reclamation Divisions preliminary finding regarding proposed surface coal mining activities in the Revision No. 37 area and Revision No. 38 addition area and its effects on threatened, endangered and proposed species and proposed and designated critical habitat.

Gray Wolf

The gray wolf has been extirpated from North Dakota but it could be an occasional migrant through McLean County and the proposed permit addition area. The permit and adjacent area does not contain habitat suitable for this species to sustain itself in the area. Therefore, the Reclamation Division concludes that the mining and reclamation activities proposed with Revisions 37 and 38 will have “no affect” to the continued existence of the gray wolf.

Northern Long-Eared Bat

The Northern Long-Eared Bat (NLEB) is a medium-sized bat that is not common in North Dakota. Its historic range includes essentially all of North Dakota and it has been documented in the Little Missouri Badlands, Missouri River Valley and the Turtle Mountains. There is no known hibernacula in North Dakota, according to the federal register final rule listing. This species spends its winters in caves and mines called hibernacula and during the summer it roosts singly or in colonies underneath bark, in cavities or crevices of both live and dead trees. This species was listed as threatened because of its decline due to a disease, white-nose syndrome (WNS). If this disease had not become prevalent, it is unlikely the Northern Long-Eared Bat would be listed. The 4(d) rule for the Northern Long-Eared Bat, published January of 2016 and effective February of 2016, states incidental take resulting from otherwise lawful activities will not be prohibited in areas not yet affected by WNS. The entire state of North Dakota was outside of the WNS zone in January of 2016 but a June 30, 2017 map now depicts the eastern portion of North Dakota in the WNS zone. McLean County, ND is outside of the WNS zone. The Revision 37 and 38 areas do not contain any woodland acreage, but they do contain some farmstead shelterbelts that will be affected by mining activities. There is no known wintertime hibernacula present in or adjacent to the addition area. Although incidental take is authorized by the 4(d) rule, language in the permit states Falkirk will attempt to remove trees before June 1 or after July 31, which is the pupping season for the NLEB. It is highly unlikely that mining will have any effect on the Northern Long-Eared Bat and the Reclamation Division finds the proposed mining and reclamation activities will have “no affect” on the continued existence of the Northern Long-Eared Bat. There is no proposed or listed designated critical habitat for the Northern Long-Eared Bat in North Dakota.

Interior Least Tern

The proposed permit addition and adjacent areas do not contain habitat for the Interior Least Tern. This species utilizes sparsely vegetated sandbars on the Missouri and Yellowstone Rivers in North Dakota and the proposed permit addition area is about 6 miles from Lake Sakakawea. Mining and reclamation activities in the Revision 37 and 38 areas will have “no affect” to the continued existence of the Interior Least Tern.

Piping Plover

The piping plover is a migratory bird that may be present in North Dakota from mid-April through August. Suitable habitat for the Northern Great Plains population is generally characterized as sparsely vegetated shorelines usually associated with alkaline wetlands and sandbars and shorelines associated with major river systems. In McLean County North Dakota, this species can be found along the Missouri River and Lake Sakakawea, which are areas designated as critical habitat. The designated critical habitat at Lake Audubon is about 3.5 miles north of the area being added to the permit with Revision No. 38 and

the designated critical habitat near Turtle Lake is located approximately 5 miles to the northeast. There are no wetlands with barren shorelines in the area to be affected by Revision No. 37 and the Revision No. 38 addition area or in adjacent areas. It is conceivable that piping plover habitat could be created by activities associated with mining and reclamation. During years when water in Lake Sakakawea was high, this species was found nesting on graded overburden at the Falkirk Mine. Nest sites are protected from mining activities when found and the Reclamation Division and USFWS are notified. The Reclamation Division concludes that the area to be mined with Revision No. 37 and the area being added to the permit with Revision No. 38, and the adjacent areas do not contain designated, suitable or potential habitat for this species and the proposed mining and reclamation activities will have “no affect” on the continued existence of the piping plover.

Rufa Red Knot

The Rufa Red Knot is a medium sized shorebird that migrates annually between its breeding grounds in the central Canadian Arctic and several wintering regions, including the Southeast United States and Northeast Gulf of Mexico. This species could potentially migrate over North Dakota and available information indicates this species may use inland saline lakes as stopover habitat during its migration. There are no saline lakes in the proposed permit addition area or the adjacent areas. Therefore, the proposed mining and reclamation activities associated with Revisions No. 37 and No. 38 will have “no affect” on the continued existence of the Rufa Red Knot.

Whooping Crane

The permit area lies within the principal migration route of the whooping crane and is only a few miles from the Audubon National Wildlife Refuge. The Audubon refuge is occasionally used by migrating whooping cranes. Although suitable wetland stopover habitat may exist in the permit area, the likelihood of whooping cranes occurring in the area is low. It has been well documented that whooping cranes avoid human disturbances. The city of Underwood and Highway 83 are located west of the permit area and Highway 200 passes through Permit NAFK-8405. The undisturbed lands in the permit and adjacent areas are used intensively for agricultural purposes and active mining operations are occurring in this permit area. The Reclamation Division concludes the mining and reclamation activities proposed with Revision No. 37 and in the Revision No. 38 addition area will have “no affect” on the continued existence of whooping crane.

Pallid Sturgeon

Pallid sturgeon are found in large rivers with high turbidity and natural flow. Only the Missouri and Yellowstone river systems in North Dakota meet these habitat requirements. The Missouri river is about 12 miles from the proposed permit addition area and there is no potential habitat for the Pallid sturgeon in the permit area, the proposed permit addition area or adjacent areas. The planned mining and reclamation activities will have “no affect” on the continued existence of pallid sturgeon.

Dakota Skipper

The Dakota skipper is a small butterfly that requires high quality mixed or tallgrass prairie. The two types of prairies suitable for this species are a moist lowland bluestem prairie habitat type with wood lily, harebell and smooth camas and a relatively dry upland prairie habitat type found on ridges and hillsides

dominated with bluestem grasses, needlegrasses and desirable native forbs such as purple coneflower. Although there is no designated critical habitat for Dakota skippers in McLean County, McLean County is included on the list of counties where this species could exist in North Dakota according to the 2015 USFWS County occurrence list. It is highly unlikely the Revision No. 38 addition area contains habitat suitable for this species. The 36 acres of native grassland being added with Revision No. 38 do not contain any moist lowland bluestem prairie and the upland native grassland sites are in poor ecological condition. The Reclamation Division concludes the proposed mining and reclamation activities proposed with Revisions No. 37 and No. 38 will have “no affect” on the continued existence of the Dakota skipper.

Black-Footed Ferret

The black-footed ferret is always closely associated with prairie dog towns and there are no prairie dog towns in or adjacent to Permit NAFK-8405 or the Revision No. 38 addition area. The mining and reclamation activities proposed with Revisions No. 37 and No. 38 will have “no affect” on the continued existence of the black-footed ferret.

Poweshiek Skipperling

The Poweshiek skipperling is a butterfly that requires high quality tallgrass prairies. It is believed this species may have been extirpated from North Dakota. The tallgrass prairie ecosystem exists only in southeast North Dakota and McLean County is outside of the tallgrass prairie ecoregion. There is no potential habitat or designated critical habitat for the Poweshiek skipperling in McLean County ND. The proposed mining and reclamation activities proposed with Revisions No. 37 and No. 38 will have “no affect” on the continued existence of Poweshiek skipperling.

Western Prairie Fringed Orchid

The western prairie fringed orchid grows in moist tallgrass prairies and sedge meadows. In North Dakota, it may be found in the southeast corner of the state near the Sheyenne National Grasslands. McLean County is not believed to contain habitat suitable for this species. Therefore, mining and reclamation activities proposed with Revisions No. 37 and No. 38 will have “no affect” on the continued existence of the western prairie fringed orchid.

Rusty Patched Bumblebee

The Rusty Patched Bumblebee was listed as an endangered species effective February 10, 2017. This species occupied grasslands and tallgrass prairies in the Upper Midwest into the eastern edge of North Dakota. McLean County is not believed to contain habitat suitable for this species. The existing permit area and the area being added with Revision No. 38 does not contain habitat suitable for this species. The mining and reclamation activities proposed with Revisions No. 37 and No. 38 will have “no affect” on the continued existence of the Rusty Patched Bumblebee.

Figure 1. Revision No. 38 addition area and Revisions No. 37 and 38 coal removal areas in relation to Federal Coal Lease

