



# United States Department of the Interior



FISH AND WILDLIFE SERVICE  
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IN REPLY REFER TO: 2018-TA-0196

APR 19 2018

Mr. Dean Moos  
Director, Reclamation Division  
State of North Dakota Public Service Commission  
600 East Boulevard, Department 408  
Bismarck, ND 58505

Dear Mr. Moos

This is in response to the State of North Dakota Public Service Commission's (NDPSC) request on behalf of the Office of Surface Mining. This request is pursuant to the 1996 National Programmatic Biological Opinion, for informal consultation on Revision 37 & 38 to Surface Coal Mining Permit NAFK-8405 at the Falkirk Mine (Case No. RC-18-20; Project). The proposed Project involves adding 1,680.1 acres to the existing permit. Your request for concurrence, dated April 6, 2018, and the accompanying DVDs of the permit revisions, were received on April 9, 2018.

In accordance with section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), you requested U.S. Fish and Wildlife Service (Service) evaluation of your "no effect" determinations for the endangered pallid sturgeon (*Scaphirhynchus albus*), gray wolf (*Canis lupus*), black-footed ferret (*Mustela nigripes*), whooping crane (*Grus americana*), powershiek skipperling (*Oarisma powershiek*), interior least tern (*Sterna antillarum*), and the threatened rufa red knot (*Calidris cantus rufa*), piping plover (*Charadrius melodus*) and designated piping plover critical habitat, Dakota skipper (*Hesperia dacotae*), northern long-eared bat (*Myotis septentrionalis*), and western prairie fringed orchid (*Plantantheera leucophaea*). Based upon the Project description and analysis of potential effects, the Service agrees with your determinations.

There is no requirement under the implementing regulations of the Act (50 CFR Part 402) for action agencies to receive Service concurrence with "no effect" determinations, therefore the responsibility for "no effect" determinations remains with the NDPSC. Accordingly, we recommend the NDPSC retain the documentation for these listed resources in your decisional record for this federal action.

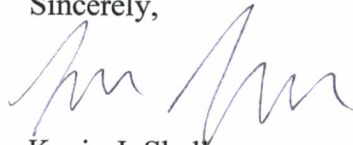
The NDPSC did address the rusty patched bumblebee (*Bombus affinis*). The final rule to list the rusty patched bumblebee as an endangered species was published in the Federal Register on

January 11, 2017, and became effective on February 10, 2017. The final rule lists the rusty patched bumblebee as an endangered species wherever found. The rusty patched bumblebee has not been found in North Dakota since 2000 and therefore there is no section 7 consultation requirement for this species at this time. If the rusty patched bumblebee is found to occur in North Dakota in the future, the Service and/or NDPSC may reinitiate consultation if needed and in accordance with the conditions for reinitiation described below.

Pursuant to the implementing regulations of the Act (50 CFR 402.13), this letter concludes informal consultation. This consultation should be re-initiated if: (1) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not considered in this consultation; (2) the action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in this consultation; or (3) a new species is listed or critical habitat is designated that may be affected by this action.

We appreciate your efforts to ensure the conservation of listed and proposed species as part of our joint responsibilities under the Act. For further information, please have your staff contact Jerry Reinisch of my staff at (701) 333-0267 or me directly at (701) 355-8512 or at the letterhead address.

Sincerely,



Kevin J. Shelley  
North Dakota State Supervisor  
Ecological Services

Acting

cc: Mr. Terry Steinwand, North Dakota Game and Fish Department, Bismarck, ND  
Mr. Greg Link, North Dakota Game and Fish Department, Bismarck, ND