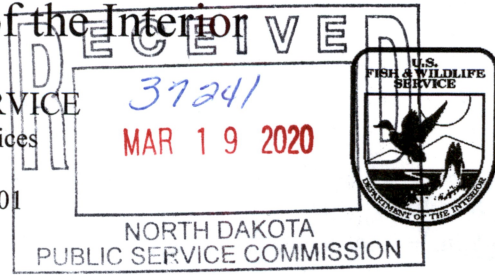


# United States Department of the Interior



## FISH AND WILDLIFE SERVICE

North Dakota Ecological Services  
3425 Miriam Avenue  
Bismarck, North Dakota 58501



IN REPLY REFER TO:  
2019-CPA-0118

March 11, 2019

Mr. Dean Moos  
Director, Reclamation Division  
North Dakota Public Service Commission  
600 East Boulevard, Department 408  
Bismarck, North Dakota 58505-0480

Dear Mr. Moos:

This letter is in response to your request dated February 19, 2020, for comments regarding the renewal and revision of the Surface Coal Mining Permit BNCR-9702 for BNI Coal, Ltd Center Mine located near Center, North Dakota.

The revised Threatened and Endangered Species list dated July 2019 includes the following species for Oliver County, North Dakota: Endangered; Interior Least Tern, Whooping crane, Pallid sturgeon, Threatened; Dakota skipper, Piping plover and its critical habitat, Rufus red Knot and Northern long-eared bat.

Information defining suitable habitat for Dakota skippers is included in the 2018 Dakota skipper Survey Protocol. The United States Fish and Wildlife Service (Service) recommends that habitat surveys be conducted. Areas of suitable habitat then could be surveyed by permitted surveyors for Dakota skipper occupancy, prior to surface disturbance in the areas of concern covered by the revision of Permit BNCR-9702. In a September 18, 2018 letter from Service to the PSC, after review of BNI Mine Wildlife Management Plan, it was emphasized that the Dakota skipper butterfly may not have been adequately addressed in the earlier baseline studies completed at the BNI Mine.

During the review of the BNI Mine's Wildlife Monitoring Report (2018-CPA-0129) it was also recommended by the Service to increase awareness of endangered species by continuing surveys and monitoring of suitable habitat. In addition, it was suggested that occupancy surveys be completed for eagles within the Permit boundaries.

Bald and Golden Eagles are federally protected under the Bald and Golden Eagle Protection Act (BGEPA). The BGEPA prohibits anyone without a permit issued by the Secretary of the Interior from taking bald eagles (*Haliaeetus leucocephalus*) or golden eagles (*Aquila chrysaetos*),

including their parts, nests, or eggs. The BGEPA provides criminal and civil penalties for persons who take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import, at any time or any manner, any bald or golden eagle, alive or dead, or any part, nest, or egg thereof. The BGEPA defines take as pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb. "Disturb" means to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available: 1) injury to an eagle, 2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or 3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior. In addition to immediate impacts, this definition also covers impacts that result from human-induced alterations initiated around a previously used nest site during a time when eagles are not present, if, upon the eagles return, such alterations agitate or bother an eagle to a degree that injures an eagle or substantially interferes with normal breeding, feeding, or sheltering habits and causes, or is likely to cause, a loss of productivity or nest abandonment.

A number of bald eagle nests have been recorded along the Missouri River corridor. We recommend following the Service's May 2007, *National Bald Eagle Management Guidelines*, which contains detailed information on protecting bald eagles from disturbance due to human activity. To avoid/minimize impacts to nesting bald eagles from construction activities, the Service recommends: (1) keeping a minimum 660-foot buffer between the activity and any bald eagle nest if no landscape buffer exists; (2) keeping a minimum 330-foot buffer and maintaining a landscape buffer or natural areas between the activity and around nest trees; and (3) avoiding activities during the bald eagle breeding season (February 1 – July 15). The buffer areas serve to minimize visual and auditory impacts associated with human activities near nest sites. Ideally, buffers would be large enough to protect existing nest sites and provide for alternative or replacement nest sites.

It is unlawful to take or disturb eagles without first obtaining a permit for non-purposeful take of eagles. However, no permit would be available unless an applicant has first taken all practicable steps to avoid take of eagles. The guidelines can be accessed on the Service's website at: <http://www.fws.gov/migratorybirds/CurrentBirdIssues/Management/BaldEagle/NationalBaldEagleManagementGuidelines.pdf>.

The 2019 White Nose Syndrome distribution map now includes all of the counties in North Dakota. We encourage that if any tree removal is necessary by the project, that such tree removal occur outside the northern long-eared bat active season. The active season in North Dakota is likely mid-April through mid-October and if tree removal cannot be avoided during that time we encourage that trees not be removed during the maternity season for northern long-eared bats, particularly June and July.

If changes are made in the project plans or operating criteria, or if additional information becomes available, the Service should be informed so that the above comments can be reconsidered.

Mr. Dean Moos

3

The Service appreciates the opportunity to provide comments. If you have any questions on these comments, please contact Jerry Reinisch of my staff at 701-333-0267 or me at (701) 355-8512.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Becker', with a stylized flourish at the end.

Drew Becker  
ND Ecological Services Supervisor

cc: Greg Link, North Dakota State Game and Fish Department  
Tim Zachmeier, BLM, Dickinson ND