



United States Department of the Interior



FISH AND WILDLIFE SERVICE
North Dakota Ecological Services
3425 Miriam Avenue
Bismarck, North Dakota 58501-7926
(701) 250-4481, ndfieldoffice@fws.gov

IN REPLY REFER
TO:
PSC, Revision #8
BNI Mine Center,
ND

October 12, 2022

Ms. Zanna Brinkman
PSC Director, Reclamation Division
600 East Boulevard, Dept. 408
Bismarck, North Dakota 58505-0480

Dear Ms. Brinkman:

Thank you for the email communication dated October 5, 2022 requesting environmental comments and concurrence with effects determinations from the Public Service Commission (PSC) regarding the above named project. The project is related to Revision #8 to Surface Coal Mining Permit BNCR-1101 in Oliver County, North Dakota.

Section 7(a) (2) of the Endangered Species Act as amended, (16 USC 1531 et seq., [Act]) requires that each Federal agency, in consultation with the Secretary, insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. In fulfilling these requirements, each agency is to use the best scientific and commercial data available to assess the impacts of their action and make an effects determination. In this case, PSC is the designated federal action agency that has the responsibility of making effects determinations under 7(a)(2) of the Act.

There is no requirement under the implementing regulations of the Act (50 CFR Part 402) for action agencies to receive FWS concurrence with “no effect” determinations, therefore the responsibility for “no effect” determinations remains with the PSC. Accordingly, we recommend the PSC retain the documentation for the threatened Rufa red knot (*Calidris cantus rufa*), Dakota skipper (*Hesperia dacotae*), northern long-eared bat (*Myotis septentrionalis*), piping plover and designated habitat (*Charadrius melodus*) and endangered whooping crane (*Grus americana*) in your decisional record for this federal action.

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. If you have any questions on these comments, please contact Jerry Reinisch of my staff at (701) 425-2133 or me at 701-319-0127.

Sincerely,

Drew N. Becker
ND Field Office Supervisor