



Public Service Commission

State of North Dakota

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July 29, 2021

Mr. Drew Becker
U.S. Fish and Wildlife Service
3425 Miriam Avenue
Bismarck, ND 58501-7926

Dear Mr. Becker:

The Reclamation Division is reviewing Coyote Creek Mining Company's (CCMC) Revision Application No. 11 to Surface Coal Mining Permit NACC-1302 at the Coyote Creek Mine. Revision No. 11 proposes to mine federal coal in the SW1/4 of Section 24 and the SE1/4 of Section 26, T143N, R89W and additional private coal in the SE1/4 of Section 23, T143N, R89W. The revision also includes plans for constructing sedimentation ponds for these additional areas where mining is proposed and includes other updates to the permit. A thumb drive containing Revision 11 is enclosed for your review.

Prior to approval of this significant permit revision, the Reclamation Division must make written findings regarding the impacts of mine plan changes to threatened, endangered, and proposed species and designated and proposed critical habitats. Please review the attached finding and provide us your comments and/or concurrence that the proposed operations will not jeopardize the continued existence of listed species or destroy or adversely modify designated critical habitats. Please provide your comments by August 17, 2021.

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

Sincerely,

A handwritten signature in black ink that reads "Dean K. Moos".

Dean K. Moos
Director, Reclamation Division

Enclosures: Thumb Drive and Proposed Finding No. 9

Coyote Creek Mine\Permits\NACC - 1302\Revisions & Renewals\No. 11\USFWS_Finding9_Ltr_7-29-21

Finding No. 9. The operations will not affect the continued existence of any threatened, endangered or proposed species or result in the destruction or adverse modification of proposed or designated critical habitats [NDAC 69-05.2-10-03(6)(d)].

Surface coal mining and reclamation activities will not jeopardize or adversely affect any proposed, threatened or endangered species or proposed or designated critical habitat. No federal threatened, endangered or proposed species have been observed within or adjacent to Permit NACC-1302, and there are no proposed or designated critical habitats in or adjacent the permit.

USFWS Information for Planning and Consultation (IPaC) identifies six threatened or endangered species and designated piping plover critical habitat in Mercer County, North Dakota. The Northern Long-Eared Bat, Piping Plover, Red Knot and Dakota skipper are listed Threatened and the Whooping Crane and Pallid Sturgeon are listed Endangered.

The permit area does not contain suitable whooping crane stopover habitat and the permit is not within the whooping crane breeding or wintering ranges. It is conceivable that whooping cranes could fly over the permit and that they could utilize the upland native grassland and cropland sites, but this is unlikely given the absence of suitable wetland habitat in the permit area. Therefore, the Commission finds that the proposed mining and reclamation activities in Permit NACC-1302 will have "no affect" to the continued existence of whooping crane.

There is no suitable habitat for the piping plover within or adjacent the permit area, which is generally characterized as sparsely vegetated shorelines usually associated with alkaline wetlands and sandbars and shorelines associated with major river systems. The Missouri River and Lake Sakakawea, designated piping plover critical habitat, are located at least 17 miles from the permit and the balance of the designated critical habitat is located north and east of the Missouri River. There are no wetlands with sparsely vegetated shorelines in or adjacent to the permit and the Commission finds that the proposed mining and reclamation activities will have "no affect" to the continued existence of the piping plover.

The Northern Long-Eared Bat 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 underground 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 termed White-Nose Syndrome (WNS). If this disease had not emerged, 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 that Incidental take resulting from tree removal is prohibited if it: (1) Occurs within a 0.25 mile (0.4 kilometer) radius of known Northern Long-Eared Bat hibernacula; or (2) cuts or destroys known occupied maternity roost trees, or any other trees within a 150-foot (45-meter) radius from the known maternity tree during the pup season (June 1 through July 31). The entire state of North Dakota was outside of the WNS zone in January of 2016, but the updated map created July 26, 2020 shows that WNS was found in Mercer County,

North Dakota. The permit area contains wooded draws and field windbreaks with trees that could potentially provide habitat but very few acres of deciduous woodlands are to be disturbed during the current term of the permit and there is no wintertime hibernacula present. CCMC has included language in the permit stating that they will limit their impact to trees during the maternity period from June 1 through July 31. Therefore, it is highly unlikely that mining will have any effect on the Northern Long-Eared Bat and the Commission finds that 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.

The Dakota skipper was recently listed Threatened in Mercer County. There is no designated critical habitat for the Dakota skipper in Mercer County. The Dakota skipper is a small butterfly that requires high quality mixed or tallgrass prairie. Two habitat types have been identified as suitable habitat for this species. 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. The permit and adjacent area do not contain any moist lowland bluestem prairie habitat and the dry upland sites are generally in reduced ecological condition according to native grassland sampling data in the permit. Most of the native grassland in the permit had an NRCS Range Similarity Index value less than 50%, which is its departure from the established Historic Climax Plant Community. One exception to this was a shallow loamy site in the NW1/4 of Section 7 that had a similarity index of 62.6%. CCMC completed Dakota skipper surveys for several years in two areas determined to have the most suitable habitat and no Dakota skippers were found. Additional surveys were conducted in 2019 for a federal coal lease.

The Bureau of Land Management (BLM) and the Office of Surface Mining Reclamation and Enforcement (OSMRE) jointly prepared an environmental assessment (EA) for which informal Section 7 consultation with the U.S. Fish and Wildlife Service (USFWS) was initiated. A biological assessment and biological opinion for the federal coal lease were published and Dakota skipper adult occupancy surveys were conducted in 2019. The adult occupancy surveys followed the USFWS 2018 Dakota Skipper Survey Protocol. No Dakota skippers were observed during any of the three rounds of adult occupancy surveys completed on the 840-acre study area. The final Biological Assessment dated January 2019, for the federal coal that is to be mined with Revision No. 11, states that BLM and OSMRE, in coordination with the USFWS, concludes that the proposed action (mining federal coal) "May affect, but is not likely to adversely affect" the Dakota skipper. "No effect" determinations were made for all other listed species. CCMC has updated the permit to include protective measures to avoid and minimize adverse effect to the Dakota skipper and its habitat. Therefore, the Commission finds that the proposed mining and reclamation activities "May affect, but not likely to adversely affect" the Dakota skipper.

The permit area does not contain habitat for the Pallid Sturgeon and Rufa Red Knot. The Commission finds that the proposed mining and reclamation activities will have "no affect" to the continued existence of these species.

NDAC 69-05.2-13-08(2) requires the permittee to promptly report to the Commission the presence in the permit area of any state listed or federally listed threatened or endangered species of which the permittee becomes aware. Upon notification, the Commission will then consult with the USFWS and North Dakota Game and Fish Department and the operator, and then decide whether, and under what conditions, the operator may proceed.

Therefore, this action will not jeopardize or adversely affect listed or proposed species or any proposed or designated critical habitat.

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