



Public Service Commission

State of North Dakota

COMMISSIONERS

Julie Fedorchak
Randy Christmann
Brian Kroshus

600 East Boulevard, Dept. 408
Bismarck, North Dakota 58505-0480
Web: www.psc.nd.gov
E-mail: ndpsc@nd.gov
Phone: 701-328-2400
ND Toll Free: 1-877-245-6685
Fax: 701-328-2410
TDD: 800-366-6888 or 711

August 10, 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 Revision 17 to Surface Coal Mining permit BNCR-9401 at the BNI Center Mine. Revision No. 17 proposes to mine 20 acres federal and private coal in the S1/2NE1/4NE1/4 of Section 8, T141N, R83W, Oliver County. Minnkota Power Cooperative is planning to construct Ash Cell No. 5 in the area where the coal is to be removed.

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 September 3, 2021.

If you have any questions, please contact this office.

Sincerely,

Dean K. Moos
Director
Reclamation Division

Enclosures: Thumb Drive and Proposed Finding No. 9

cc w/Finding No. 9: Scott Peterson, NDGF

Center Mine\Permits\BNCR-9401\Revisions\No. 17\USFWS_TE_Finding_8-10-21

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 BNCR-9401, and there are no proposed or designated critical habitats in or adjacent the permit.

US Fish and Wildlife Service (USFWS) Information for Planning and Consultation (IPaC) identifies five threatened or endangered species and designated piping plover critical habitat in Oliver County, North Dakota. The Northern Long-Eared Bat, Piping Plover, Red Knot and Dakota skipper are listed Threatened and the Whooping Crane is 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 BNCR-9401 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 11 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 does not contain any wooded draws and field windbreaks that could potentially provide habitat and there is no wintertime hibernacula present. BNI 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 is listed Threatened in Oliver County. There is no designated critical habitat for the Dakota skipper in Oliver 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. The 20 acres of federal coal proposed to be mined with Revision No. 17 is in the S1/2NE1/4NE1/4 of Section 8. This tract is comprised of cropland and native grassland. The native grassland is located on hills that are surrounded by cropland. The soil survey indicates that the native grassland is comprised of loamy, thin loamy and loamy overflow ecological sites which are not conducive to supporting little bluestem and purple coneflower. This native grassland has been idle during the growing season for decades due to proximity to cropland and non-native invasive grasses, namely Kentucky bluegrass and smooth brome grass displaces native species when idled during the growing season. The permit states that this native grassland is in poor ecological condition and that it is dominated with Kentucky bluegrass and smooth brome grass. BNI conducted a survey of the permitted native grassland in 2019 to determine if any potential suitable habitat for Dakota skippers was present. None of the native grassland in Section 8 was determined to be suitable habitat for the Dakota skipper. Therefore, the Commission finds that the proposed mining and reclamation activities will have "no affect" on the continued existence of the Dakota skipper.

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

The Bureau of Land Management (BLM) prepared an environmental assessment (EA) for federal coal Lease-by-Application (LBA) in 2019 [Center Mine DOI-BLM-MT-C030-2012-0088-EA] and made a finding of No Significant Impacts. The finding states that the USFWS was consulted February 13, 2019, and that the proposed action, mining 630 acres of federal coal which included the 20 acres associated with Revision 17, was not expected to have any significant effects on fish or wildlife resources.

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.