



Public Service Commission

State of North Dakota

COMMISSIONERS

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sent via email only

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Mr. Drew Becker
U.S. Fish and Wildlife Service
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Drew_Becker@fws.gov

Dear Mr. Becker:

The Reclamation Division is nearing completion of its review of Revision No. 8 to Surface Coal Mining Permit BNCR-1101 at the BNI Mine near Center, ND. We are anticipating revision approval later this fall. Please review the proposed draft threatened and endangered species finding that Reclamation Division must make prior to the revision approval and let us know if your office concurs with our finding.

Revision No. 8 to BNCR-1101 proposes to add 2,661.04 acres in all or portions of Sections 11, 14, 15, 16, 22, and 23 of T141N, R84W. **Figure 1** depicts the revision addition area on 2021 NAIP aerial photography. The Revision 8 addition area consists of private and state-owned lands that contain 320 acres of federal coal in the E $\frac{1}{2}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$ of Section 14. Your office participated in a March 2019 BLM Finding of No Significant Impacts (FONSI) for the federal coal lease NDM-105513 which contains this tract and others at the Center Mine. The Reclamation Division sent you a copy of BNI's plan for acquiring baseline fish and wildlife resource information on the revision addition area in May of 2017.

If you have any questions, please contact Guy Welch at 701-328-2298.

Sincerely,

Zanna A. Brinkman
Director
Reclamation Division

Attachments

cc via email only w/ attachment: Jerry Reinisch (Jerry_Reinisch@fws.gov)

Center Mine\Permits\BNCR - 1101\Revisions & Renewals\No. 8\USFWS_Concurrence_Itr_10-5-22

Revision 8 to BNCR-1101 Species Specific Effects Finding

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 were observed within or adjacent to the Revision No. 8 addition area to Permit BNCR-1101, and there are no proposed or designated critical habitats in or adjacent to the permit.

USFWS Information for Planning and Consultation (IPaC) identifies five threatened or endangered species, one candidate species, and designated piping plover critical habitat in Oliver County ND. The **northern long-eared bat, piping plover, red knot, and Dakota skipper** are listed threatened; the **whooping crane** is listed endangered; and the **monarch butterfly** is a candidate species for listing in Oliver County.

The Revision No. 8 addition area does not contain suitable **whooping crane** stopover habitat and it is not within the whooping crane breeding or wintering ranges. It is conceivable that whooping cranes could fly over the permit and revision addition areas and that they could utilize the upland native grassland and cropland sites at the mine, but this is unlikely given the absence of suitable wetland habitat in the permit area and anthropogenic activities in the mine area. Therefore, the Commission finds that the proposed mining and reclamation activities in the Revision No. 8 addition area will have “**no effect**” to the continued existence of the whooping crane.

There is no suitable habitat for the **piping plover** within or adjacent to the permit addition 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, is located at least 16 miles from the permit. The balance of the designated critical habitat is located north and east of the Missouri River. Mining activities may create sparsely vegetated habitat, but such habitats have only been used when the species’ natural shoreline habitat is adversely affected by high water. There is limited wetland acreage with sparsely vegetated shorelines in or adjacent to the permit revision addition area and the Commission finds that the proposed mining and reclamation activities will have “**no effect**” 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. 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 northern long-eared bat is in the process of being up-listed to endangered status which would remove its species specific 4(d) rule. USFWS IPaC indicates that this species is likely to become endangered within the foreseeable future throughout all or a significant portion of its range. There is no proposed or listed designated critical habitat for the northern long-eared bat in North Dakota.

The Revision No. 8 permit addition area contains a very limited amount of woodland acreage which consists of primarily isolated patches of tall shrub species such as buffalo berry and chokecherry. The

Revision 8 addition area does contain farmstead shelterbelts with trees that could potentially provide suitable habitat for the northern long-eared bat. There are no known wintertime hibernacula present within or adjacent to the revision addition area. BNI has language in the 2020-2021 wildlife monitoring report stating that they will limit their impact to trees during the maternity period from June 1 through July 31.

The northern long-eared bat is rare in North Dakota according to Dr. Erin Gillam, Professor of Biological Science, NDSU. In December 2021, Ms. Gillam prepared a report entitled *Distribution and Roosting Ecology of the Federally Threatened Northern Long-Eared Bat, Myotis septentrionalis, and the Little Brown Bat, Myotis lucifugus, in North Dakota*. The report concludes that the northern long-eared bat is not common in North Dakota and recommends that the range of the species be modified to only include badlands habitats of extreme western North Dakota. 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 effect**” on the continued existence of the northern long-eared bat.

Rufa red knot is a robin-sized shorebird that migrates from south to north every spring and repeats the trip in reverse every fall from far-flung sites throughout the Western Hemisphere. This species is one of the longest-distance migrants in the animal kingdom. Rufa red knots begin their life cycle in the Arctic tundra and undertake their first migration on their own. Migration and wintering habitats include both high-energy ocean or bay front areas as well as tidal flats in more sheltered bays and lagoons. Available information suggests that rufa red knots use inland saline lakes as stopover habitat in the Northern Great Plains. The species range map includes portions of central North Dakota. In July of 2021, the USFWS has proposed to designate critical habitat for the rufa red knot in areas outside of North Dakota. The Revision No. 8 addition area does not contain habitat for the rufa red knot and the Commission finds that the proposed mining and reclamation activities will have “**no effect**” on the continued existence of rufa red knot species.

The **Dakota skipper** is a small butterfly that requires high-quality mixed or tallgrass prairie. Two habitat types have been identified as suitable for this species. Suitable habitat consists of 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. Oliver County was added to the list of counties in North Dakota where this species is believed to exist.

The permit revision addition and adjacent areas 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. In 2019, BNI hired KDK Consulting to evaluate, document, and determine if any potential suitable Dakota skipper habitat was present in the Revision 8 addition area and other areas at the BNI mine. The report provided an assessment of the forb component in areas of potentially suitable habitat according to the USFWS 2018 Dakota Skipper North Dakota Survey Protocol. The report determined that the native grassland at the mine and Revision 8 addition area provided no suitable habitat for the Dakota skipper. The 2018 Dakota Skipper North Dakota Survey Protocol has been updated and replaced with the 2022 Dakota Skipper Survey Protocol. The 2022 Dakota Skipper Survey Protocol provides information to decide how, where, and when surveys may be warranted and clarifies that Type B habitat in North Dakota typically contains an association of little bluestem, big bluestem, needlegrasses, and western wheatgrass that is often invaded by Kentucky bluegrass. The updated survey protocol includes a species range map for North Dakota and a determination flow chart, Appendix C.

In March of 2019, the Bureau of Land Management finalized an Environmental Assessment for a federal coal lease by application (NDM-105513) that included lands in Section 8, T141N, R83W, Section 14, T141N, R84W (Revision 8 addition area), and Section 20, T142N, R84W. The Environmental Assessment made a finding of no significant impact, Center Mine DOI-BLM-MT-C030-2017-0088-EA. The EA states that the USFWS was consulted during the EA process and that no threatened, endangered, or candidate plant species or critical habitats were identified, and that the proposed action was not expected to have any significant effects on fish or wildlife resources. The Reclamation Division has determined that previous native grassland species composition changes are not likely to have changed since previous vegetation assessments were completed and the Commission finds that the proposed mining and reclamation activities will have “**no effect**” on the continued existence of the Dakota skipper.

On December 15, 2020, the US Fish and Wildlife Service found that adding the monarch butterfly to the list of threatened and endangered species is warranted but precluded by work on higher-priority listing actions. This decision made the monarch butterfly a candidate for listing under the Endangered Species Act (ESA). The monarch butterfly is not listed or proposed for listing, so it is currently not provided protection by the ESA.

Figure 1: Revision 8 to BNCR-1101 Addition Area

