

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:
Technical Review
Revision 42 to NAFK-
8405
Falkirk Mining

January 5, 2023

Ms. Zanna Brinkman
Director, Reclamation Division
North Dakota Public Service Commission
600 East Boulevard, Department 408
Bismarck, North Dakota 58505-0480

Dear Ms. Brinkman:

Thank you for the request for a technical review of revision application dated December 20, 2022, for comments regarding permit NAFK-8405 for the Falkirk Mine located near Underwood, North Dakota.

The PSC has requested U.S. Fish and Wildlife Service (FWS) concurrence with the determination that the mining permit revision “may affect, but not likely to adversely affect” the endangered whooping crane (*Grus Americana*). In accordance with section 7(c) of the Endangered Species Act (ESA), as amended, 16 U.S.C. 1531 et seq., the FWS concurs with the “may affect, but not likely to adversely affect” determination for the above-described species.

The PSC has also determined that there will be "no effect" to the threatened piping plover (*Charadrius melodus*) and designated critical habitat, rufa red knot (*Calidris canutus rufa*) and Dakota skipper (*Hesperia dacotae*). 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 action agency. We recommend the action agency document the "no effect" determinations and retain the documentation in the decisional record for this federal action.

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

The FWS appreciates the opportunity to provide comments as part of the technical review to the PSC and Falkirk Mining Company. 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
North Dakota Field Office Supervisor