



# Public Service Commission

## State of North Dakota

---

### COMMISSIONERS

Randy Christmann  
Sheri Haugen-Hoffart  
Julie Fedorchak

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

*sent via email only*

March 28, 2024

Mr. Luke Toso  
U.S. Fish and Wildlife Service  
3425 Miriam Avenue  
Bismarck, ND 58501-7926  
[luke\\_toso@fws.gov](mailto:luke_toso@fws.gov)

Dear Mr. Toso:

The Reclamation Division is in the process of preparing approval documents for Revision No. 28 and Renewal No. 4 to Surface Coal Mining Permit NACT-0201 at the Coteau Properties Company's Freedom Mine for the April 10, 2024 Commission meeting. We provided you with a copy of the revision application and informed you of our anticipated findings regarding endangered, threatened, and proposed species, and proposed and designated critical habitat in our January 29, 2024 letter. Our updated findings are attached for your review. Please provide us with any comments prior to the April 10, 2024 Commission meeting.

Revision No. 28 proposes to mine additional federal coal in BLM Lease NDM-91535 in the E½ of Section 4, T145N, R88W and the E½ of Section 12, T144N, R89W beginning in 2028. On February 29, 2024 the Office of Surface Mining Reclamation and Enforcement (OSMRE) determined that Revision No. 28 and Renewal No. 4 constitutes a mine plan modification requiring approval from the Assistant Secretary for Land and Mineral Management (ASLM). OSMRE and BLM will be completing an environmental review of these federal coal tracts prior to recommending ASLM approval.

If you have any questions, please contact this office.

Sincerely,

Jonathan Emmer  
Director  
Reclamation Division

Attachment

Freedom Mine\Permits\NACT - 0201\Revisions & Renewals\Rev 28 & Ren 4\Rev28\_Ren4\_USFWS\_concurrence\_rqst\_ltr\_3-28-24

## **Revision No. 28 and Renewal No. 4 to NACT-0201 – Species Specific Effects Finding**

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

### **Whooping Crane - Endangered**

Mercer County and the permit area are within the principal migration route of the Whooping Crane. The likelihood of Whooping Cranes occurring in the area is very low because desirable stop-over roosting habitat does not exist in the area and Whooping Crane feeding sites are often found adjacent to roosting sites. It has been well documented that Whooping Cranes avoid human disturbances. Wetlands in and adjacent to the permit area are primarily associated with springs and seeps in linear drainages where the horizontal line-of-sight distance is limited due to topography. The permit area does not contain any large seasonal or more permanent wetlands that have an open water zone suitable as Whooping Crane stopover habitat. The Dakota Gasification Plant, Antelope Valley Power Plant, and paved county roads are located adjacent to the permit area, and County Road 26 passes through the permit area. The undisturbed lands in and adjacent to the permit area are used for agricultural purposes and active mining operations are occurring in the northern and southern portions of the permit area. The Reclamation Division concludes mining and reclamation activities proposed with Revision No. 28 and Renewal No. 4 will have “no effect” on the continued existence of Whooping Cranes.

### **Piping Plover - Threatened**

The Piping Plover is a migratory bird that can occur in North Dakota from mid-April through August. Suitable habitat for the Northern Great Plains population is generally characterized as sparsely vegetated shorelines usually associated with alkaline wetlands and sandbars and shorelines associated with major river systems. In Mercer County North Dakota, this species can be found along the Missouri River and Lake Sakakawea, which are areas designated as critical habitat. The designated critical habitat at Lake Sakakawea is located about 2½ miles north of the permit area. There are no seasonal or more permanent prairie pothole wetlands with barren shorelines in the permit area. It is conceivable that Piping Plover habitat could be created by activities associated with surface mining and reclamation. Piping Plovers were sighted at the Freedom Mine in 2011 when Lake Sakakawea and Missouri River water levels were high. The Reclamation Division and USFWS are to be notified when Piping Plovers are sighted at the mine. The Reclamation Division concludes the area to be affected during the next term of the permit does not contain designated, suitable, or potential habitat for this species and the proposed mining and reclamation activities proposed with Revision No. 28 and Renewal No. 4 will have “no effect” to the continued existence of the Piping Plover.

### **Rufa Red Knot - Threatened**

The Rufa Red Knot is a medium sized shorebird that migrates annually between its breeding grounds in the central Canadian Arctic and several wintering regions, including the Southeast United States and Northeast Gulf of Mexico. This species could potentially migrate over North Dakota. Available information indicates this species may use inland saline lakes as stopover habitat during its migration. There are no saline lakes in the permit area or adjacent to the permit area. Therefore, the mining and reclamation activities proposed with Revisions No. 28 and Renewal No. 4 will have “no effect” on the continued existence of the Rufa Red Knot.

## **Dakota Skipper - Threatened**

The USFWS listed the Dakota Skipper threatened on October 24, 2014, and the final rule became effective on November 24, 2014. The Dakota Skipper is a small butterfly that requires high quality mixed or tallgrass prairie. According to the 2022 Dakota Skipper North Dakota Survey Protocol there are two habitat types, Type A Habitat and Type B Habitat, or types of prairies suitable for this species. Type A Habitat consists of a moist lowland mesic prairie habitat type with prairie lily, bluebell bellflower, and mountain deathcamas or smooth camas species. Type B Habitat consists of 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. In the Missouri Coteau region of North Dakota, on the western edge on the known range of the species, Dakota Skippers inhabit a variant of Type B habitats. These habitats typically contain an association of little bluestem, big bluestem, and needlegrasses that is often invaded by Kentucky bluegrass. These prairies also typically contain prairie lily, bluebell bellflower, coneflowers, and aster species. There is no designated critical habitat for Dakota Skippers in Mercer County according to the USFWS IPaC site. The 2022 Dakota Skipper North Dakota Survey Protocol indicates this species had not been observed in Mercer County through 2021.

The Coteau Properties Company is committed to having properly certified consultants conduct Dakota Skipper habitat assessments and occupancy surveys in the permit area prior to mining related disturbance. Meadowlark Environmental, LLC, Carson, ND, and KC Harvey, Sheridan, Wyoming conducted the Dakota Skipper habitat assessment and occupancy surveys in 2022 and 2023, respectively. The surveys were conducted in a three-step approach, which includes a desktop analysis, habitat surveys and adult occupancy surveys in accordance with USFWS guidelines. No Dakota Skippers were observed during these surveys. Copies of these reports are included in the 2022-2023 Biennial Wildlife Monitoring Report for the Freedom Mine.

The Reclamation Division finds the planned mining and reclamation activities proposed with Revision No. 28 and Renewal No. 4 will have “no effect” to the continued existence of the Dakota Skipper provided that Coteau continues to have qualified third-party consultants conduct surveys ahead of mining disturbance as indicated in Section 2.7.3 (Mining Impacts) of Permit NACT-0201.

## **Other North Dakota Listed Species**

Other species listed threatened, endangered, or proposed in North Dakota include the Gray Wolf, Northern Long-Eared Bat, Tricolored Bat, Pallid Sturgeon, and Western Prairie Fringed Orchid. None of these species or their designated critical habitat are potentially affected by mining activities in or immediately adjacent to Permit NACT-0201. The Reclamation Division finds the planned mining and reclamation activities proposed with Revision No. 28 and Renewal No. 4 will have “no effect” on these species’ continued existence or on their designated critical habitat.