



# Public Service Commission

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Mr. Luke Toso  
U.S. Fish and Wildlife Service  
3425 Miriam Avenue  
Bismarck, ND 58501-7926  
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Dear Mr. Toso:

The Reclamation Division is reviewing Coyote Creek Mining Company, L.L.C.'s (CCMC) applications for Renewal No. 2 and Revision No. 13 to Surface Coal Mining Permit NACC-1302 at the Coyote Creek Mine. Revision No. 13 updates mining and reclamation plans for the next five-year term of the permit, October 22, 2024 through October 22, 2029. Prior to permit renewal, the Reclamation Division and the USFWS are required to make findings regarding impacts to threatened and endangered species, designated critical habitat, and habitat and species proposed for listing for the next term of the permit.

Enclosed is a flash drive containing Revision No. 13 to Permit NACC-1302 and our draft threatened and endangered species finding that the Reclamation Division must make prior to the revision approval. This revision application contains baseline environmental resource information, and updated mining and reclamation plans for the next five-year term of the permit. Section 3.1.3 (Pit Layout and Facilities Map) of the permit identifies areas to be mined and affected during the next permit term. Pre-mining land use and vegetation information is in Section 2.4 and baseline fish and wildlife resource information is in Section 2.7 of the permit. Native grassland ecological sites and species composition information are provided in Section 2.4.7 of the permit.

Baseline Dakota skipper habitat and survey information is provided in Section 2.7.2, and additional surveys have been conducted in recent years in accordance with USFWS protocol. The results of the 2022 and 2023 Dakota skipper survey were included in CCMC's 2022-2023 Biennial Wildlife Report.

Please review the enclosed flash drive of Revision No. 13 to Permit NACC-1302 and provide us with comments by August 26, 2024.

If you have any questions, please contact this office.

Sincerely,

Jonathan Emmer  
Director  
Reclamation Division

Enclosure

Coyote Creek Mine\Permits\NACC - 1302\Revisions & Renewals\No. 13 Ren 2\Rev13\_Ren2\_Advsry\_rvw\_rqst\_ltr\_7-8-24

**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 to the permit.

The U.S. Fish and Wildlife Service (USFWS) Information for Planning and Consultation (IPaC) identifies five threatened or endangered species and designated piping plover critical habitat in Mercer County, North Dakota. The Piping Plover, Rufa Red Knot, and Dakota skipper are listed Threatened and the Whooping Crane and Northern Long-eared Bat are listed Endangered. The Monarch Butterfly is a Candidate species.

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 effect" to the continued existence of whooping crane.

There is no suitable habitat for the piping plover within or adjacent to 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 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. The current range of the species corresponds with major river systems in North Dakota, including the Knife River and Coyote Creek floodplains. 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 has been listed Endangered 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 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 and there is no wintertime hibernacula present. The permitted portion of the Coyote Creek floodplain supports only a few scattered trees along the stream channel and no additional mining related disturbance is planned within the Coyote Creek and Knife River floodplains during the next term of the permit. Coyote Creek Mining Company (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 effect" 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 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 occupancy surveys in 2022 and 2023 in areas determined to have the most suitable habitat and no Dakota skippers were found. CCMC continues to conduct occupancy surveys on known suitable habitats ahead of active mining in accordance with the most current Dakota skipper protocol and in consultation with the USFWS and the Commission. Additional surveys are being conducted in 2024.

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 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 effects 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 Rufa Red Knot. The Commission finds that the proposed mining and reclamation activities will have "no effect" to the continued existence of this 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.