

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
Renewal No.2, Revision
No.13 to NACC-1302
Coyote Creek Mining

July 17, 2024

RECEIVED

JUL 18 2024

NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Mr. Jonathan Emmer
Director, Reclamation Division
North Dakota Public Service Commission
600 East Boulevard, Department 408
Bismarck, North Dakota 58505-0480

Dear Mr. Emmer:

Thank you for the request for a technical review of revision application dated July 8, 2024, for comments regarding permit NACC-1302 for the Coyote Creek Mine located near Beulah, North Dakota.

The PSC, as a designated non-federal representative, 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 Dakota skipper (*Hesperia dacotae*). 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*), endangered whooping crane (*Grus Americana*) and Northern Long-eared bat (*Myotis septentrionalis*). 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.

The project area should be entered into USFWS-IPAC system for analysis and to create a current threatened and endangered species list that can be used for determinations, consultation and mitigation.

A separate section should be included in each mine’s report for ESA species and the associated tables should be updated to reflect the current data for each mine. The Dakota skipper survey protocol has been revised. The 2024 version should be implemented when surveying suitable Dakota skipper habitat for occupancy.¹³

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 Coyote Creek Mining Company. If you have any questions on these comments, please contact Jerry Reinisch of my staff at 701-425-2133 or me at (720) 793-6797 or luke_toso@fws.gov.

Sincerely,

LUKE TOSO

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Luke Toso
North Dakota Field Office Deputy Supervisor