



# United States Department of the Interior



## FISH AND WILDLIFE SERVICE

North Dakota Ecological Services

3425 Miriam Avenue

Bismarck, North Dakota 58501-7926

(701) 250-4481, [ndfieldoffice@fws.gov](mailto:ndfieldoffice@fws.gov)

IN REPLY REFER  
TO:  
PSC Falkirk Mine  
NAFK 9503 Rev39  
Rew 6

November 24, 2025

Mr. Jonathan Emmer  
Director, Abandoned Mines Division  
North Dakota Public Service Commission  
600 East Boulevard Avenue, Dept. 408  
Bismarck, North Dakota 58505-0480

Dear Mr. Emmer:

Thank you for the email and letter communication dated November 20, 2025, requesting concurrence with effects determinations from the North Dakota Public Service Commission (PSC) regarding Revision 39 to Surface Coal Mining Permit NAFK-9503 held by the Falkirk Mining Company for the Falkirk Mine in McLean County, North Dakota. The revision updates various sections of the permit for the next 5-year permit term.

Section 7(a) (2) of the Endangered Species Act as amended, (16 USC 1531 et seq., [Act]) requires that each Federal agency, in consultation with the Secretary, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. In fulfilling these requirements, each agency is to use the best scientific and commercial data available to assess the impacts of their action and make an effects determination. In this case, the PSC is acting as an agent for the Office of Surface Mining Reclamation and Enforcement (OSMRE) for the purposes of this consultation.

In accordance with section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) (Act), you requested U.S. Fish and Wildlife Service (FWS) concurrence of your “may effect but is not likely to adversely affect” determinations for the Endangered Whooping crane (*Gus americana*), Northern long-eared bat (*Myotis septentrionalis*) and Threatened Piping plover (*Charadrius melanotos*). We concur with these determinations. Bat surveys may be warranted in areas with timber removal planned.

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 the “no effect” determinations for Rufa red knot (*Calidris canutus rufa*) and Dakota skipper (*Hesperia dacotae*) remain with the PSC. Accordingly, we recommend the PSC retain the documentation in your decisional record for these federal actions. Suitable Dakota skipper habitat should be surveyed prior to land stripping by a USFWS permitted surveyor since the last surveys were completed in 2019.

The PSC may request conferencing on a voluntary basis for proposed species, which includes the Monarch (*Danaus plexippus*), Western regal fritillary (*Argynnis idalia occidentalis*) butterflies and Suckley's Cuckoo bumble bee (*Bombus suckleyi*). We understand the PSC has made no effect determinations for these species and have not requested conferencing. At this time, we generally recommend that habitat within the project area be evaluated for these species prior to construction.

Pursuant to the implementing regulations of the Act (50 CFR 402.13), this letter concludes informal consultation. This consultation should be re-initiated if: (1) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not considered in this consultation; (2) the action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in this consultation; or (3) a new species is listed or critical habitat is designated that may be affected by this action.

Outside of Section 7 requirements, we recommend that Section 2.4.3- Mine Monitoring Plan should be updated to reflect current monitoring protocols, species listings under ESA and recommended conservation measures for each listed species.

We appreciate your efforts to ensure the conservation of listed and proposed species as part of our joint responsibilities under the Act. 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.

Sincerely,

Luke Toso, Acting Field Office Supervisor