Public Service Commission

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sent via email only

August 4, 2026

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 in the process of reviewing Revision 13 to Surface Coal Mining Permit BNCR-1101 at the BNI Center Mine. Revision 13 updates various sections of the permit regarding plans for an overpass and haul road on 37th Ave SW between Sections 13 and 14, T141N, R84W. It also updates the transportation and surface water plans.

The USFWS Information for Planning and Consultation (IPaC) website indicates that eight listed or proposed species have the potential to exist in Permit BNCR-1101. No designated or proposed critical habit is within or immediately adjacent to the permit. The listed species include the piping plover, rufa red knot, whooping crane, northern long-eared bat, and Dakota skipper, and the proposed species are the monarch butterfly, western regal fritillary and Suckley's cuckoo bumble bee.

The Reclamation Division anticipates approval of Revision 13 this fall and has prepared the attached draft threatened, endangered, and proposed species findings for your review. Your office previously reviewed our findings during our review of Revision 11 and Renewal 2 to Permit BNCR-1101, and we received notification from you on April 25, 2024, stating that the USFWS has no comments or concerns with the findings. No changes have been made to those findings with the exception of adding the new proposed species. No new disturbances that would impact species are found in this revision submittal.

The most recent submittal of Revision 13 will be shared with you via a Microsoft OneDrive link emailed with this letter. All updates to the permit are listed in Section 1, Appendix 1-1 (Revision Summary and List of Changes). We would appreciate any comments on the revision application by September 18, 2026. If you have any questions, please contact this office.

Sincerely,

Jonathan Emmer

Digitally signed by Jonathan Emmer
DN: C=US, E=jemmer@nd.gov, O=North Dakota Public Service Commission, CN=Jonathan Emmer
Date: 2026.08.04 10:33:55-05'00'

Jonathan Emmer
Director
Reclamation Division

Enclosure

cc via email only w/o enclosure: Jerry Reinisch (jerry_reinisch@fws.gov)

Center Mine\Permits\BNCR - 1101\Revisions & Renewals\No. 13\Rev 13_USFWS_Draft_Findings_ltr_8-4-26

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Revision 13 to BNCR-1101 - 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)].

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 BNCR-1101, and there are no proposed or designated critical habitats in or adjacent to the permit.

USFWS Information for Planning and Consultation (IPaC) identifies five threatened or endangered species, three proposed species, and designated piping plover critical habitat in Oliver County, ND. The **whooping crane and northern long-eared bat** are listed as endangered; the **piping plover, red knot, and Dakota skipper** are listed as threatened; and the **monarch butterfly, western regal fritillary, and Suckley's cuckoo bumble bee** are a proposed species for listing in Oliver County.

Whooping Crane – Endangered

There is no suitable whooping crane stopover habitat in Permit BNCR-1101, 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 at the mine, but this is unlikely given the absence of suitable wetland habitat in the permit and anthropogenic activities in the mine area. Therefore, the Commission finds that the proposed mining and reclamation activities will have **"no effect"** to the continued existence of the whooping crane.

Northern Long-eared Bat – Endangered

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 species range is limited to the major waterways in Oliver County, including Square Butte Creek and the lower reach of Hagel Creek, which are in or adjacent to Permit BNCR-1101. This species spends its winters in caves and underground mines called hibernacula. There are no known hibernacula in North Dakota, according to the federal register final rule listing. During the summer, northern long-eared bats roost singly or in colonies underneath bark, in cavities, or crevices of both live and dead trees.

Permit BNCR-1101 contains a limited amount of woodland acreage which consists of primarily isolated patches of tall shrub species such as buffalo berry and chokecherry. The permit does contain farmstead shelterbelts with trees that could potentially provide suitable habitat for the northern long-eared bat. There are very few trees along Hagel Creek and trees in the permit associated with Square Butte Creek are limited to wooded draws in the upper reaches of secondary drainages. A mine road crosses Hagel Creek south of the BNI shop office complex; otherwise, no mining related disturbance is planned in the permit on areas depicted as northern long-eared bat suitable habitat (range) along Hagel Creek or Square Butte Creek. BNI has language in the 2022-2023 wildlife monitoring report stating that they will limit their impact to trees during the northern long-eared bat maternity period from June 1 through July 31.

The northern long-eared bat is rare in North Dakota according to Dr. Erin Gillam, Professor of Biological Science, NDSU. In December 2021, Ms. Gillam prepared a report entitled *Distribution and Roosting Ecology of the Federally Threatened Northern Long-Eared Bat, Myotis septentrionalis, and the Little*

Brown Bat, Myotis lucifugus, in North Dakota. The report concludes that the northern long-eared bat is not common in North Dakota and recommended that the range of the species be modified to only include badlands habitats of extreme western North Dakota. 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.

Piping Plover – Threatened

There is no suitable habitat for the piping plover within or adjacent to the permit, 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 16 miles from the permit. The balance of the designated critical habitat is located north and east of the Missouri River. Mining activities may create sparsely vegetated habitat, but such habitats have only been used when the species' natural shoreline habitat is adversely affected by high water. There is limited wetland acreage with sparsely vegetated shorelines in or adjacent to the permit revision addition area and the Commission finds that the proposed mining and reclamation activities will have **"no effect"** to the continued existence of the piping plover.

Rufa Red Knot - Threatened

Rufa red knot is a robin-sized shorebird that migrates from south to north every spring and repeats the trip in reverse every fall from far-flung sites throughout the Western Hemisphere. This species is one of the longest-distance migrants in the animal kingdom. Rufa red knots begin their life cycle in the Artic tundra and undertake their first migration on their own. Migration and wintering habitats include both high-energy ocean or bay front areas as well as tidal flats in more sheltered bays and lagoons. Available information suggests that rufa red knots use inland saline lakes as stopover habitat in the Northern Great Plains. The species range map includes portions of central North Dakota. In July of 2021, the USFWS proposed to designate critical habitat for the rufa red knot in areas outside of North Dakota. The permit area does not contain habitat for the rufa red knot and the Commission finds that the proposed mining and reclamation activities will have **"no effect"** on the continued existence of rufa red knot species.

Dakota Skipper – Threatened

The Dakota skipper is a small butterfly that requires high-quality mixed or tallgrass prairie. Two habitat types have been identified as suitable for this species. Suitable habitat consists of 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. Oliver County was added to the list of counties in North Dakota where this species is believed to exist.

The permit does 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. In 2019, BNI hired KDK Consulting to evaluate, document, and determine if any potential suitable Dakota skipper habitat was present in the Revision 8 addition area and other areas at the BNI mine. The report provided an assessment of the forb component in areas of potentially suitable habitat according to the USFWS 2018 Dakota Skipper North Dakota Survey Protocol. The report determined that the native grassland at the mine and Revision 8 addition area provided no suitable habitat for the Dakota skipper. The 2018 Dakota Skipper North Dakota Survey Protocol has been updated and replaced with the 2022 Dakota Skipper Survey Protocol. The 2022 Dakota Skipper Survey Protocol provides information to decide how, where, and when surveys may be warranted and clarifies that Type B habitat in North Dakota typically contains an association of little bluestem, big bluestem, needlegrasses, and western wheatgrass that is often invaded by Kentucky bluegrass. The updated survey protocol includes a species range map for North Dakota and a determination flow chart, Appendix C.

In March of 2019, the Bureau of Land Management finalized an Environmental Assessment for a federal coal lease by application (NDM-105513) that included lands Permit BNCR-1101. The Environmental Assessment made a finding of no significant impact, Center Mine DOI-BLM-MT-C030-2017-0088-EA. The EA states that the USFWS was consulted during the EA process and that no threatened, endangered, or candidate plant species or critical habitats were identified, and that the proposed action was not expected to have any significant effects on fish or wildlife resources. The Reclamation Division has determined that previous native grassland species composition changes are not likely to have changed since previous vegetation assessments were completed and the Commission finds that the proposed mining and reclamation activities will have **"no effect"** on the continued existence of the Dakota skipper provided that BNI Coal continues to have qualified third-party consultants conduct surveys ahead of mining disturbance.

Monarch Butterfly – Proposed Threatened

The monarch butterfly is a proposed threatened species. The monarch requires habitat with milkweed as a larval host plant and floral nectar sources for adults. Monarchs found in North Dakota are comprised of the eastern range monarchs, found east of the Rocky Mountains. These monarchs overwinter in central Mexico and then migrate and disperse throughout North America. No designated critical habitat is currently proposed for the eastern range monarchs.

In 2024 and 2025, Meadowlark Environmental, LLC, Carson, ND performed butterfly surveys focused on observing Dakota skippers in the BNI Mine's permitted areas. During the 2024 survey, no monarch butterflies were observed. During the 2025 survey, one monarch butterfly was observed. BNI will continue to work with the USFWS as new guidance and protocols become available.

The Reclamation Division finds the planned mining and reclamation activities proposed within Revision No. 13 "**may affect but is not likely to jeopardize**" the continued existence of the monarch butterfly provided that BNI follows future guidance from the USFWS as indicated in Section 4.13 (Fish and Wildlife Resource Protection, Enhancement, and Monitoring Plan) of Permit BNCR-1101.

Western Regal Fritillary – Proposed Threatened

The western regal fritillary is a proposed threatened species. The western regal fritillary prefers tallgrass prairie and other sunny, open locations such as damp meadows, marshes, wet fields, and mountain pastures. Regal fritillary butterflies depend on three main habitat components: violet hostplants for larvae, nectar plants for adults, and native warm-season bunch grasses that provide protective sites for all life stages. No designated critical habitat is currently proposed for the western regal fritillary.

In 2024 and 2025, Meadowlark Environmental, LLC, Carson, ND performed butterfly surveys focused on observing Dakota skippers in the BNI Mine's permitted areas. During this survey, 12 western regal fritillary were observed throughout the permitted mine areas. During the 2025 survey, 65 western regal fritillary were observed between the two survey dates. BNI will continue to work with the USFWS as new guidance and protocols become available.

The Reclamation Division finds the planned mining and reclamation activities proposed within Revision No. 13 "**may affect but is not likely to jeopardize**" the continued existence of the western regal fritillary provided that BNI follows future guidance from the USFWS as indicated in Section 4.13 (Fish and Wildlife Resource Protection, Enhancement, and Monitoring Plan) of Permit BNCR-1101.

Suckley's Cuckoo Bumble Bee – Proposed Endangered

The Suckley's cuckoo bumble bee is a proposed endangered species. The Suckley's cuckoo bumble bee is an obligate social parasite and is entirely dependent on social bumble bee hosts to collect pollen and rear their young. Since they are entirely dependent on host bumble bee colonies, host colony availability is critical for the species' survival and overall viability. The species has a broad historical range and has been found in various habitat types including prairies, grasslands, meadows, urban and agricultural areas, and woodlands. The last confirmed sighting in the United States of the Suckley's cuckoo bumble bee was in 2016 in Oregon.

The Reclamation Division finds the planned mining and reclamation activities proposed within Revision No. 13 will have "**no effect**" on the continued existence of the Suckley's cuckoo bumble bee.