



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



IN REPLY REFER
TO:
Phase III
Programmatic EA
Section 7 Concurrence

January 8, 2024

Ms. Ashley Persinger
Environmental Coordinator
Bureau of Reclamation -Dakotas Area Office
304 East Broadway Avenue
Bismarck, North Dakota 58501

Dear Ms. Persinger:

Thank you for the email communication dated January 2, 2024, requesting US Fish and Wildlife Service (FWS) concurrence with effects determinations from the Bureau of Reclamation (BOR) regarding the above-named project. The project is a programmatic EA for the Fort Berthold Indian Reservation Rural Water Development in North Dakota.

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, BOR is the federal action agency that has the responsibility of making effects determinations under 7(a)(2) of the Act.

In accordance with section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) (Act), you requested FWS concurrence of your “may affect, not likely to adversely affect” determination for the endangered pallid sturgeon (*Scaphirhynchus albus*), whooping crane (*Grus americana*), threatened Dakota skipper (*Hesperia dacotae*), piping plover (*Charadrius melodus*) and piping plover designated critical habitat. FWS concurs with these determinations. All sightings of whooping cranes should be reported to FWS immediately. If construction takes place during the piping plover breeding season, then surveys should be conducted following USFWS approved protocols and results presented to the USFWS for review.

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 remain with the BOR. Accordingly, we recommend the BOR retain the documentation for the threatened Rufa red knot (*Calidris cantus*

rufa), northern long-eared bat (*Myotis septentrionalis*) in your decisional record for this federal action.

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.

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 at (701) 425-2133 or me at (720) 793-6797.

Sincerely,

Luke Toso
ND Field Office Supervisor

Cc: Greg Link, North Dakota State Game and Fish Department

