

INDEX OF DEPARTMENT OF TRANSPORTATION EXHIBITS

1. Testimony of Francis Ziegler in support of Falkirk permit revision
2. Attachment #1 – Senate Bill 2224 – Directing the Department of Transportation (DOT) to eliminate no-mow or managed mow areas adjacent to highways under DOT jurisdiction
3. Attachment #2 – House Bill 1012 – Authorizing and providing DOT appropriation to eliminate no-mow or managed mow areas adjacent to highways
4. Attachment #3 – October 2003 No-Mow Implementation Plan
5. Attachment #4 – December 2005 Amendment to No-Mow Implementation Plan
6. Attachment #5 – Draft Management Agreement between DOT and North Dakota Game & Fish Department
7. Attachment #6 – Map of Coal Lake Land Transfer
8. Attachment #7 – Draft Coal Lake Wildlife Management Area Management Plan
9. Attachment #8 – August 2009 Terry Steinwand letter to Falkirk re: Coal Lake Land Transfer
10. Attachment #9 – Memo re: November 2005 meeting with McLean County Commissioners, slides from presentation to McLean County
11. Attachment #10 – June 2009 Agreement for Falkirk land donation to DOT
12. Attachment #11 – Draft of Warranty Deed for Falkirk land donation to DOT



PUBLIC SERVICE COMMISSION TESTIMONY
On Falkirk Mining Company Permit Revision No. 13, Permit NAFK-9601
July 1, 2010
9:00 a.m. - PSC Hearing Room – State Capitol

North Dakota Department of Transportation
Francis G. Ziegler, P.E., Director

Good morning members of the Commission, I'm Francis Ziegler, Director of the North Dakota Department of Transportation (NDDOT). Thank you for the opportunity to speak in support of the revision that modifies the post-mining land use of the area known as Coal Lake.

History of No-Mow/Managed-Mow Program

We feel it's necessary to provide a little history of the No-Mow/Managed-Mow program.

Titles 23, 42, and 49 of the Code of Federal Regulations (CFR) require the mitigation of impacts to wetlands and natural wildlife habitat.

In the mid-to-late 1970's the NDDOT made commitments in the Environmental Impact Documents to have a controlled mowing program on various Rights-of-Way on the state highway system. These commitments were made because total replacement of impacted wetlands within the highway right-of-way was not possible and Federal Regulations at the time virtually prohibited off-site mitigation of wetlands. A total of 8,200 acres of highway right-of-way were declared No-Mow/Managed-Mow. This program was not well-received by the agricultural interests because they were previously able to cut the hay on the right-of-way for livestock feed.

Over the years there were a number of actions by the Governor's office, Legislature, and private landowners concerning the No-Mow areas.

In 1991, Governor Sinner directed that there would be no additional No-Mow areas.

The 1993 Legislative Assembly enacted legislation that there would be no increase in No-Mow.

The 1997 Legislative Assembly enacted legislation directing the DOT to work with the Wildlife agencies to transfer the No-Mow areas to the right-of-way of the Interstate Highway system. This did not work because of reduced biological value.

In 1998, private landowners went to court in an effort to have the right to mow the adjacent right-of-way for hay. They did not prevail.

Finally, in 2001, the Fifty-seventh Legislative Assembly enacted SB 2224 (Attachment 1) which directed the NDDOT to work with the appropriate state and federal agencies, and to prepare a plan to eliminate the 8,200 acres of No-Mow/Managed-Mow areas within the right-of-way of the state highway system and to submit said plan to the Fifty-eighth Legislative Assembly.

The NDDOT, working with the Federal Highway Administration (FHWA), United States Fish and Wildlife Service (USFWS), and the North Dakota Game and Fish (NDGF), prepared a plan to eliminate the No-Mow/Managed-Mow from within the right-of-way of the state highway system. The Implementation Plan was approved by the NDDOT, FHWA, USFWS, and NDGF.

In 2003, the Fifty-eighth Legislative Assembly approved the plan to eliminate the existing 8,200 acres of No-Mow, and enacted HB 1012 (Attachment 2) which authorized the NDDOT to acquire approximately 4,800 acres of land to eliminate No-Mow/Managed-Mow areas within the right-of-way of the state highway system. The land to be acquired was State School Land and therefore, we had to conduct public hearings and have the land appraised. Through this process some of the tracts were eliminated.

Implementation Plan

The Implementation Plan (Attachment 3) approved in November 2003 and amended (Attachment 4) in December 2005, provides that the NDDOT acquire 3,461 acres of land from the State Land Department, and acquire, by donation from Falkirk Mining and Great River Energy, approximately 740 acres known as Coal Lake, in McLean County, for a total of 4,201 acres.

The NDDOT has acquired all the acres from the State Land Department and is awaiting the transfer of 730 acres from the Falkirk Mining Company and Great River Energy. This will give us a total of 4,191 acres. All of these acres are used as mitigation for the elimination of the 8,200 acres of No-Mow areas within the rights-of-way of the state highway system. All of these acres will be managed, on behalf of the NDDOT, by the NDGF as Wildlife Management Areas (WMA) pursuant to Memorandums of Agreement for Management of Real Property (MOA). The MOA for the Coal Lake area is Attachment 5. It should be noted that the NDGF will make payments to McLean County in lieu of property taxes pursuant to State Law.

Falkirk Mining Company Donation

The acres of cropland in the Falkirk donation which are the subject of this hearing will be retained as cropland. There are four areas, (Attachment 6), ranging in size from approximately 10 to 32 acres, scattered throughout the site (sections 24, 25, and 35), which fits in well with the NDGF Draft Management Plan dated February 8, 2006 (Attachment 7). Their goal is to have 10% of this WMA in cropland and scattered throughout the WMA (item 6 under Appendix A of said Management Plan). This was further confirmed in a letter to Falkirk from the Director of the NDGF wherein he states, "our plan will be to produce row crops, small grains and alfalfa/grass hay on the agricultural land by working with the neighboring producers." (Attachment 8, page 2, 1st paragraph).

The acres of cropland are a part of the 4,201 acres in the No-Mow Implementation Plan, directed, approved, and authorized by the North Dakota Legislative Assembly, and approved by the NDDOT, USFWS, FHWA, and NDGF. If the acres of cropland were removed it would further reduce the mitigation from the original 4800 acres.

Benefits of Mitigation Plan

The process of mitigating the elimination of the No-Mow areas has been a win-win for all parties:

1. The agricultural community has gained significantly because they have been able to cut the 8,200 acres of right-of-way for livestock feed since July 2006. Of this total, 1,271 acres were located in McLean County. In their November 8, 2005 meeting with the McLean County Commissioners, Falkirk Mining and Great River Energy reported that the commissioners were really excited about the project, and offered their help. (Attachment 9)
2. The NDDOT is able to honor its Environmental Commitments of mitigating wetland impacts.
3. The mitigation acres will benefit the people of North Dakota as Wildlife Management Areas for public use.

Falkirk Mining Company and Great River Energy have generously agreed to transfer, by donation, the Coal Lake tract to the Department to be used, in perpetuity, as a Wildlife Management Area. This will be a real legacy to the people of North Dakota for future generations. (Attachments 10 and 11)

We strongly urge the Commission to uphold the approval of said Permit Revision.

Thank you.

**Fifty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 9, 2001**

SENATE BILL NO. 2224
(Senators Nichols, O'Connell, Solberg)
(Representatives Delzer, Onstad, Solberg)

AN ACT to create and enact a new section to chapter 24-01 of the North Dakota Century Code, relating to haying of no-mow areas; to provide for a report to the legislative assembly; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 24-01 of the North Dakota Century Code is created and enacted as follows:

Haying of no-mow areas. Notwithstanding any other provision of law, a person owning land adjacent to an area within the right of way of a highway which is designated as a no-mow or managed-mow area may hay the no-mow or managed-mow area after July fifteenth without any payment or penalty.

SECTION 2. NO-MOW AREAS - REPORT TO LEGISLATIVE ASSEMBLY. The director of the department of transportation shall work with the appropriate state and federal agencies to evaluate reasonable and appropriate environmental mitigation options and alternatives. The director shall submit a plan to the fifty-eighth legislative assembly to eliminate areas designated as no-mow or managed-mow areas from the right of way adjacent to highways under the department's jurisdiction.

SECTION 3. EFFECTIVE DATE. Section 1 of this Act becomes effective on January 1, 2004.

CHAPTER 12

HOUSE BILL NO. 1012
(Appropriations Committee)
(At the request of the Governor)

DEPARTMENT OF TRANSPORTATION

AN ACT to provide an appropriation for defraying the expenses of the various divisions under the supervision of the director of the department of transportation; to authorize the department of transportation to acquire lands; to amend and reenact sections 24-01-51, 24-02-44, and 39-04-19, and subdivisions f and g of subsection 1 of section 39-09-02 of the North Dakota Century Code and section 7 of chapter 331 of the 2001 Session Laws, relating to haying of no-mow areas, department of transportation authority for emergency borrowing from the Bank of North Dakota, motor vehicle registration fees, and speed limits; and to repeal section 10 of chapter 331 of the 2001 Session Laws, relating to registration fee allocation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated from special funds derived from federal funds and other income, to the various divisions under the supervision of the director of the department of transportation for the purpose of defraying the expenses of those divisions, for the biennium beginning July 1, 2003, and ending June 30, 2005, as follows:

Salaries and wages	\$105,222,404
Operating expenses	122,902,369
Capital assets	512,175,642
Grants	44,085,503
Total special funds appropriation	\$784,385,918

SECTION 2. ACQUIRING LAND IN NO-MOW AND MANAGED-MOW AREAS. The department of transportation may acquire land to eliminate no-mow and managed-mow areas adjacent to the state's roadways. If the department intends to acquire public land to eliminate no-mow and managed-mow areas, the department shall hold a public hearing in the county in which the land is located before the land is acquired.

SECTION 3. AMENDMENT. Section 24-01-51 of the North Dakota Century Code is amended and reenacted as follows:

24-01-51. (Effective January 1, 2004 ~~2006~~) Haying of no-mow areas. Notwithstanding any other provision of law, a person owning land adjacent to an area within the right of way of a highway which is designated as a no-mow or managed-mow area may hay the no-mow or managed-mow area after July fifteenth without any payment or penalty.

SECTION 4. AMENDMENT. Section 24-02-44 of the North Dakota Century Code is amended and reenacted as follows:

24-02- department of may borrow n relief funds (Pub. L. 105-4 this section ar the end of the interest is insu transportation from the state interest.

SECTI Code is amend

39-04- required to pay

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a.

Gross
Weights
Less than 3,200
3,200 - 4,499
4,500 - 4,999
5,000 - 5,999
6,000 - 6,999
7,000 - 7,999
8,000 - 8,999
9,000 and over

b.



North Dakota Department of Transportation

David A. Sprynczynatyk, P.E.
Director

John Hoeven
Governor



October 31, 2003

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PROJECT TIED TO			
ORIGIN	DIR	DATE	10/31/03
ITEM #	No Mow Imp Plan		

Mr. Allen Radliff
Division Administrator
Federal Highway Administration
1471 Interstate Loop
Bismarck, ND 58503-0567

NO-MOW IMPLEMENTATION PLAN

Enclosed is the Final Implementation Plan to eliminate no-mow/managed-mow along highway rights-of-way. Also included, is a copy of the Milestone activity and the completion dates for those milestone activities.

The NDDOT made its presentation to the Board of University and School Lands on October 30. The Board concurred in the Implementation Plan and indicated that we may proceed with the Plan.

The Final Plan has incorporated all inputs from your department into this document. We have also incorporated the language from the Memorandum of Agreement to release no-mow/managed-mow commitments on certain environmental documents into the Implementation Plan. Therefore, the MOA for the Release of Environmental Commitments is not needed.

Someone from Francis Ziegler's office will contact you next week to get your signature.

If you have any questions or concerns regarding this, please contact me or Francis Ziegler.

DAVID A SPRYNCZYNATYK, P.E., DIRECTOR

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Enclosures



North Dakota Department of Transportation

David A. Sprynczynatyk, P.E.
Director

John Hoeven
Governor

October 31, 2003

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PROJECT TIED TO			
ORIGIN	DIR	DATE	10/31/03
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Mr. Jeffrey K. Towner
U.S. Fish and Wildlife Service
3425 Miriam Avenue, E
Bismarck, ND 58501

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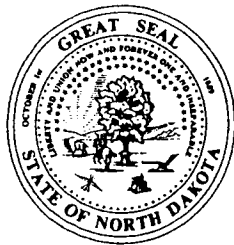
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DAVID A SPRYNCZYNATYK, P.E., DIRECTOR

57:fgz:js
Enclosures



North Dakota Department of Transportation

David A. Sprynczynatyk, P.E.
Director

John Hoeven
Governor

October 31, 2003

Mr. Dean Hildebrand
ND Game and Fish Department
100 Bismarck Expressway
Bismarck, ND 58501-5095

<input checked="" type="checkbox"/> New	<input type="checkbox"/> Prop.	<input type="checkbox"/> Cont.	<input type="checkbox"/> Library
PROJECT TIED TO			
ORIGIN	DIR	DATE	10/31/03
ITEM #	No Mow Imp Plan		

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DAVID A SPRYNCZYNATYK, P.E., DIRECTOR

57:fgz:js
Enclosures

**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
IMPLEMENTATION PLAN
TO ELIMINATE NO-MOW/MANAGED MOW ALONG HIGHWAY RIGHT-OF-WAY
October 29, 2003**

Introduction

In the mid- to late- 1970's, the North Dakota Department of Transportation (NDDOT) began making environmental commitments in highway project environmental documents to create no-mow and/or managed-mow areas on selected portions of highway rights-of-way. A total of approximately 363 miles (8,200 acres) of right-of-way, on a number of widely scattered projects located in various areas of the state, were declared no-mow or managed-mow areas. Within this mileage there was a net loss of 136 acres of wetlands that resulted from highway impacts. Figure 1 and Table 1.

These no-mow or managed-mow commitments were made because total replacement of the impacted wetlands was not possible within the highway right-of-way and Federal Regulations in effect at that time (regulations precedent to 23 CFR 777.2) virtually prohibited off site wetlands mitigation. The no-mow commitment was an effort to make the remaining wetlands more productive as research indicated higher waterfowl nesting success in areas of unmowed right-of-way.

The Fifty-Seventh Legislative Assembly passed SB 2224 (24-01-51 NDCC) which directed the NDDOT to submit a Plan to the Fifty-Eighth Legislative Assembly to eliminate areas designated as no-mow or managed-mow from the right-of-way adjacent to highways under the department's jurisdiction. The legislative action came about because the no-mow/managed mow program was not well received by many state residents, especially farmers and ranchers who formerly cut hay on the rights-of-way for livestock feed. Frequent violations occurred in some areas and enforcement was very difficult. Also, the commitments made in the environmental documents allowed mowing these rights-of way during drought emergencies declared by the Governor. The resource agencies felt that because of the frequency of the emergencies the no-mow/managed-mow didn't meet their expectations of "no-mowing for several years."

The Department submitted a draft plan to the resource agencies for review which resulted in a plan that was acceptable to all agencies. This Plan provided two concepts to replace the existing 8,200 acres of no-mow (See Attachment 1 - Parts A & B) . One concept included purchasing in fee title a single or multiple large tracts of privately owned land totaling approximately 5,000 acres. The second concept, proposed purchasing publically owned land from the North Dakota State Land Department (NDLSD) which may be available for sale. In 1998, the NDSLSD identified non-profitable school land, of which approximately 4,800 acres were determined by North Dakota Game and Fish (NDG&F) to have wildlife habitat value. With this concept, the NDDOT would propose to appraise and acquire approximately 4,800 acres of this land in fee title in accordance with NDCC 15-09, Table 2. The acquisition of this land will constitute complete mitigation for the 136-acre net loss of wetlands and the elimination of all of the 8,200 acres of existing no-mow/managed-mow acres. This land will be managed by the ND Game and Fish Department for fish and wildlife production and compatible public uses. The estimated cost of the plan is \$487,000; however, appraisals will be conducted to determine the value of these tracts.

The Plan proposed by the NDDOT and the Natural Resource Agencies, to replace the existing no-mow acres with 4,800 acres from the State Land Department was presented to the Fifty-Eighth Legislative Assembly.

House Bill 1012, passed by the Fifty-Eighth Legislative Assembly, authorized the acquisition of land to eliminate no-mow/managed-mow areas adjacent to the states's roadways. It also required public hearings in counties where the land is located if the land being purchased is public land. The land listed on Table 2 is public land; therefore, public hearings will be required in each county. The purpose of the hearings is to inform the public of the plan, receive comments, and address concerns they may have with the plan.

House Bill 1012 also extended the deadline for the elimination of no-mow to January 1, 2006, and allows a person owning land adjacent to an area within the right-of-way of a highway to hay the no-mow or managed-mow areas after July 15, 2006. Therefore, the acquisition of the mitigation tracts must be complete and in place prior to that date.

Implementation

The following is a list of proposed milestone activities that will be used to manage, coordinate, and monitor activities within the department, agencies, and the public to assure completion of the project.

1. Draft Implementation Plan
2. Draft Memorandum of Agreement (MOA) "Management of Real Property" - (Between North Dakota Department of Transportation (NDDOT) and North Dakota Game & Fish (NDG&F))
3. Interagency Coordination (Federal Highway Administration (FHWA), US Fish & Wildlife Service (USFWS), ND Game & Fish (NDG&F), and ND Department of Transportation (NDDOT), ND Board of University and School Lands, and US Army Corps of Engineers (Corps))
4. Presentation to the Board of University and School Lands
5. Final Implementation Plan
6. Scope of Activities and Milestone - (Develop detailed activities and anticipated completion dates)
7. Site Evaluation/Mapping, and Photography
8. Public Hearings
9. Summary of Public Hearings and Decision Document
 - a. Interagency Coordination Meeting
10. Right-of-Way Authorization
11. Property Appraisals
12. Review Appraisals
13. Submit Application for purchase of Board of University and School Lands (NDCC 15-09)
14. Right-of-Way Acquisition
15. Final Memorandum of Agreement (MOA) - "Management of Real Property"

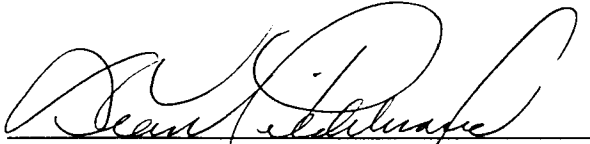
The anticipated completion date for the acquisition of lands and elimination of no-mow or managed

mow is December 31, 2004.

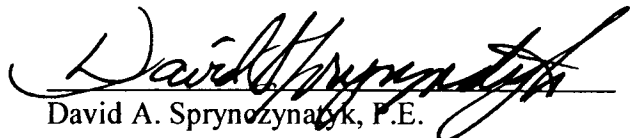
APPROVAL

The parties agree that upon NDDOT's purchase of the approximately 4,800 acres of land owned by the State Land Department and the completion of the items in this Implementation Plan, NDDOT and FHWA are released from the commitment to no-mow/managed-mow areas within North Dakota.

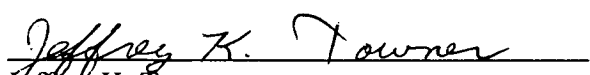
This Implementation Plan is hereby approved this 14th day of November, 2003.




Dean Hildebrand
North Dakota Game and Fish



David A. Sprynozynatyk, P.E.
North Dakota Department of Transportation



Jeffrey K. Towner
US Fish and Wildlife Service



Allen R. Radliff
Federal Highway Administration

APPROVED as to substance by:

Francis G. Ziegler, P.E., Director
Office of Project Development
DIVISION DIRECTOR (TYPE OR PRINT)



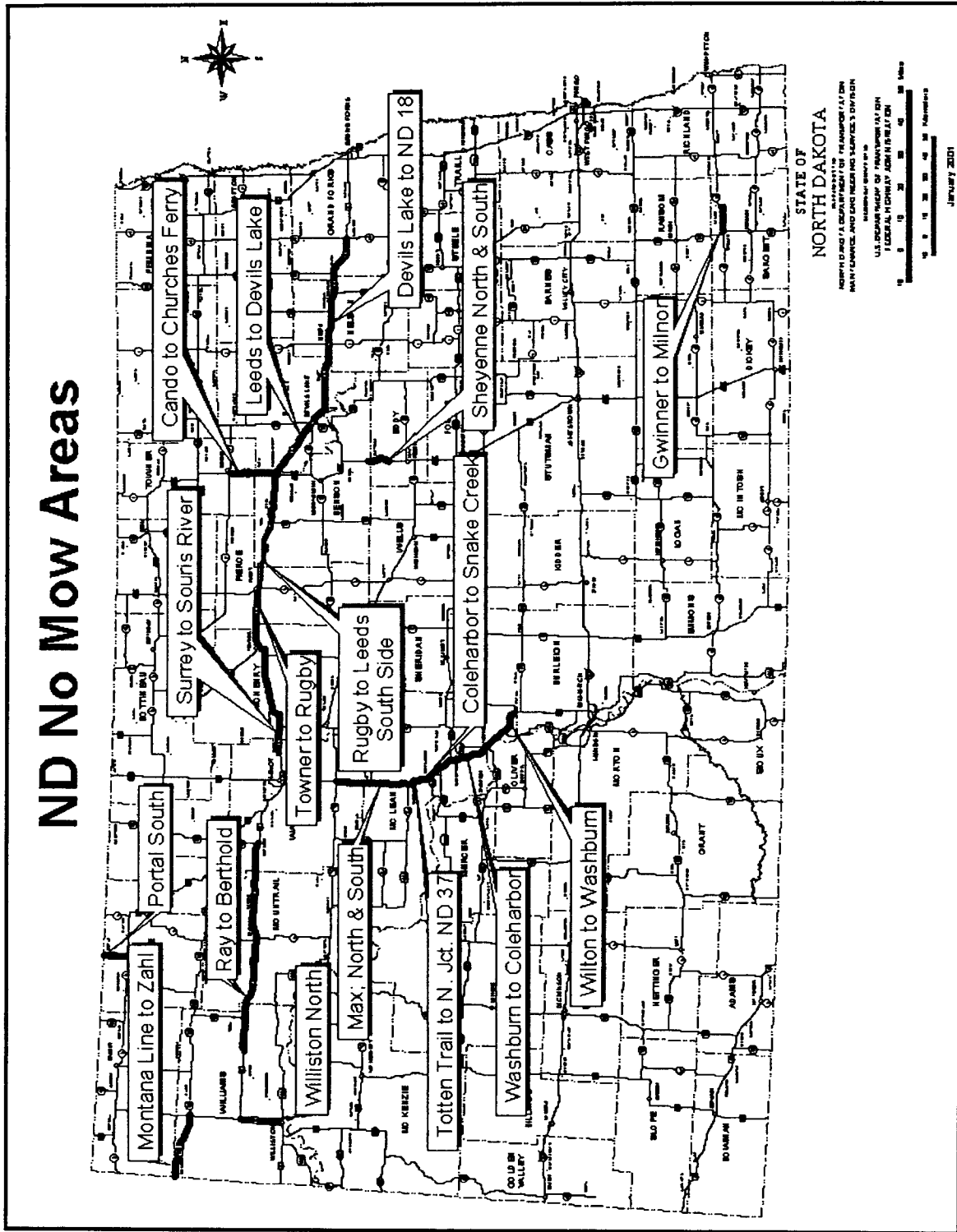
SIGNATURE

11/13/03

DATE

13th November 03
Drew Kautmann

Figure 1



Location of Existing No-Mow Acres

Table 1

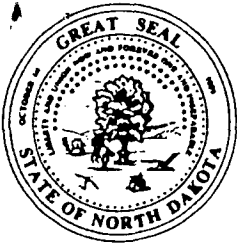
Highway/ Location	Length Miles *	No-Mow Acres	Non-Easmt Acres Filled	Wetland Acres Created
US 2 - Williston N	14	245	0	0
US 2 - Ray to Berthold	66	1393	55	15 **
US 2 - Surrey to Souris River	33	754	66.5	81.5
US 2 - Souris River to Towner	4	200	5.5	3 **
US 2 - Towner to Rugby	19	374	37	21 **
US 2 - Rugby to Leeds	24	475	38.5	0 **
US 2 - Leeds to Devils Lake	28	580	84	48 **
US 2 - Devils Lake to ND 18	58	1468	90.5	62 **
US 83 - Wilton to Washburn	16	350	7.5	3 **
US 83 - Washburn to Coleharbor	17	497	20	27.5
US 83 - Coleharbor to Jct 37	8	10	5	2 **
US 83 - Max N & S	23	730	76	69.5 **
ND 13 - Gwinner to Milnor	10	175	12	30
ND 50 - Montana Line to Zahl	17	447	2	2
US 52 - Portal S	7	135	10	8.5 **
US 281 - Sheyenne N & S	4	92	No Rec	No Rec
US 281 - Cando to Churchs Ferry	15	265	5	6
Totals	363	8189	514.5	379

* Approximate

** Areas where there was a net loss of wetlands

Table 2

Identification	Tract	County	Legal Description	Acres
A-1		Bottineau	NE-16-162-74	160
A-2	27	Bottineau	NW-16-162-74	160
A-3		Bottineau	SE-16-162-74	160
A-4		Bottineau	SW-16-162-74	160
B-1	58	Cavalier	SW-36-160-57	156.06
C-1	146	Ramsey	SW-36-155-61 (flooded)	160
D-1	150	Rolette	NE-16-163-73	155.9
D-2	151	Rolette	NW-16-163-73	155.9
D-3	152	Rolette	NESE Lots 1,4,5-16-163-74	131.2
D-4	153	Rolette	W2SW Lots 2,3,- 16-163-75	153.8
E-1	100	LaMoure	NE- 36-133-60	160
E-2	101	LaMoure	NW-36-133-60	160
F-1	75	Emmons	SW-36-130-75	159.87
G-1	81	Grant	SE-14-133-84	160
H-1	104	McHenry	NE-16-157-75	160
H-2	105	McHenry	NW-16-157-75	160
H-3	106	McHenry	SE-16-157-75	160
H-4	107	McHenry	SW-16-157-75	160
I-1	181	Ward	NE-16-156-84	160
J-1	112	McLean	E2NE-16-148-90	80
J-2	113	McLean	NE-18-148-90	160
K-1		Divide	NE-36-163-95	160
K-2	61	Divide	NW-36-163-95	160
L-1	24	Billings	SW-2-137-100	160
M-1	163	Slope	NE-16-133-105	160
M-2	164	Slope	NW-16-133-105	160
M-3		Slope	SE-16-133-105	160
M-4	165	Slope	SW-16-133-105	160
N-1		Dunn	16-148-95	469.5
Total Acres				4,822.2



North Dakota Department of Transportation

ATTACHMENT #4

David A. Sprynczynatyk, P.E.
Director

John Hoeven
Governor

December 15, 2005

Mr. Jeffrey K. Towner
U.S. Fish and Wildlife Service
3425 Marian Avenue E
Bismarck, ND 58501

AMENDMENT TO NO-MOW IMPLEMENTATION PLAN

Enclosed is a copy of the executed Amendment to the NO-Mow Implementation Plan for your records.

We want to take this opportunity to thank you for your excellent cooperation in this process and in particular Bill Bicknell who worked closely with us and the other agencies involved to effect the elimination of the No-Mow areas along the state highway right-of-way.

A handwritten signature in black ink, appearing to read "David A. Sprynczynatyk".

DAVID A SPRYNCZYNATYK, P.E., DIRECTOR

57:fgz:dkol
Enclosures



North Dakota Department of Transportation

David A. Sprynczynatyk, P.E.
Director

John Hoeven
Governor

December 15, 2005

Mr. Allen Radliff
Division Administrator
Federal Highway Administration
1471 Interstate Loop
Bismarck, ND 58503-0567

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57:fgz:dkol
Enclosures



North Dakota Department of Transportation

David A. Sprynczynatyk, P.E.
Director

John Hoeven
Governor

December 15, 2005

Mr. Dean Hildebrand, Director
North Dakota Game and Fish
100 Bismarck Expressway
Bismarck, ND 58501-5095

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We want to take this opportunity to thank you for your excellent cooperation in this process and special thanks to Randy Kreil and Steve Dyke for the time and effort they provided. They were most helpful during the hearings and were so positive through this long process.


DAVID A SPRYNCZYNATYK, P.E., DIRECTOR

57:fgz:dkol
Enclosures

**AMMENDMENT TO
NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
IMPLEMENTATION PLAN of OCTOBER 29, 2003
TO ELIMINATE NO-MOW/MANAGED MOW ALONG HIGHWAY RIGHT-OF-WAY**

WHEREAS, the North Dakota Department of Transportation (NDDOT), North Dakota Game and Fish (NDGF), Federal Highway Administration (FHWA), and US Fish and Wildlife Service (USFWS) approved the Implementation Plan on November 14, 2003, and

WHEREAS, the Plan provided for the NDDOT to purchase approximately 4,800 acres of land from the State Land Department (table 2 in Plan), and

WHEREAS, during the public hearing and appraisal process some of the tracts were eliminated because of public opposition or high price, and

WHEREAS, the State Land Department offered additional tracts for sale, and the NDDOT held public hearings on these tracts and the Land Department had them appraised, and

WHEREAS, the cost to purchase 4,800 acres was well beyond the budgeted amount, and

WHEREAS, the NDDOT, NDGF, FHWA, and USFWS held a series of meetings to review the tracts which resulted in eliminating some of the lower cost tracts and substituting some higher cost tracts that had much greater wildlife value, and

WHEREAS, on July 20, 2005 the NDDOT, NDGF, FHWA, and USFWS met and agreed that the NDDOT should purchase approximately 3,461 acres from the State Land Department and acquire approximately 600 acres of reclaimed mine land from Great River Energy for a total 4,074 acres, and

WHEREAS, the State Land Board has approved the sale of approximately 3,461 acres of land to the NDDOT, and Great River Energy has agreed to transfer approximately 740 acres of reclaimed mine land to the NDDOT (revised table 2 Attachment).

NOW THEREFORE IT IS AGREED TO BY THE PARTIES that the Implementation Plan dated October 29, 2003 and approved on November 14, 2003 be amended as follows:

Under APPROVAL, page 3, change to:

The parties agree that upon NDDOT's purchase of approximately 3,461 acres of land owned by the State Land Department and acquisition of approximately 740 acres of land from Great River Energy, and the completion of the items in this Implementation Plan, NDDOT and FHWA are released from the commitment to no-mow/managed-mow areas within North Dakota.

All other items and conditions of the above referenced Implementation Plan are incorporated herein by reference and remain in full force and effect.

EXECUTED the date last below signed

Dean Hildebrand Dec 9, 2005
Date
Dean Hildebrand
North Dakota Game and Fish

Jeffery K. Towner 12/9/05
Date
Jeffery K. Towner
US Fish and Wildlife Service

Allen Radliff 12/9/05
Date
Allen Radliff
Federal Highway Administration

David A. Sprynczynaytk P. E. 12-9-05
Date
David A. Sprynczynaytk P. E.
North Dakota Department of Transportation

APPROVED as to substance by:

Francis G. Ziegler, P.E., Director
Office of Project Development
Tim Horne for
SIGNATURE

12-9-05
DATE

APPROVED as to execution on
9th December 2005
Diana Kautzmann
SPECIAL AGENT IN CHARGE

ATTACHMENT

Table 2
Revised

County	Description	Acres
Billings	SW-2-137-100	155
Divide	NE&NW 36-163-95	320
Dunn	All of 16-148-95	469
Emmons	SW-36-130-75	160
Grand Forks	NW4-36-153-53	160
Grant	SE-14-133-84	160
McHenry	All of 16-157-75	640
McIntosh	SW4-16-131-70	160
Pierce	All 16-157-74	640
Rolette	NE4, NW4, NE4SE4, lots 1,4,5 & W2SW4, lots 2,3 - 16-163-73	597
	Sub Total	3,461
McLean	GRE reclaimed mine land	740
	Total	4,201

**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION
MEMORANDUM OF AGREEMENT
FOR
MANAGEMENT OF REAL PROPERTY**

This Agreement is entered into by and between the North Dakota Department of Transportation acting through its Director, 608 East Boulevard Avenue, Bismarck, North Dakota (NDDOT) and the North Dakota Game and Fish Department acting through its Director, 100 North Bismarck Expressway, Bismarck, North Dakota (NDGF)

WITNESS :

WHEREAS, the NDDOT made commitments in the Environmental Impact Documents to have a controlled mowing program on various Rights-of-Way on the state highway system, and described in the Implementation Plan noted hereinafter, and incorporated in this agreement by reference, and,

WHEREAS, the Fifty-seventh Legislative Assembly directed the NDDOT to prepare a plan to eliminate the No-Mow/Managed-Mow areas within the rights-of-way of the state highway system and to present said plan to the Fifty-eighth Legislative Assembly, and,

WHEREAS, the NDDOT prepared a plan to eliminate the No-Mow/Managed-Mow from within the rights-of-way of the state highway system, and

WHEREAS, the plan was approved by the Federal Highway Administration (FHWA), United States Fish and Wildlife Service (USFWS), and the North Dakota Game and Fish (NDGF), and

WHEREAS, the Fifty-eighth Legislative Assembly approved the plan to eliminate the existing 8,200 acres of no-mow and authorized the NDDOT to acquire approximately 4,800 acres of land to eliminate No-Mow/Managed-Mow areas within the rights-of-way of the state highway system, and

WHEREAS, pursuant to the Implementation Plan of October 29, 2003, approved on November 14, 2003, and as amended on December 9, 2005, the NDDOT has acquired, by donation from Falkirk Mining and Great River Energy, 729.40 acres, more or less, known as Coal Lake, in McLean County.

NOW THEREFORE IT IS MUTUALLY AGREED TO BY THE PARTIES that:

The NDDOT has acquired, in fee, 729.40 acres, more or less, of the following Lands located in Township 146 N, Range 82 W, McLean County, North Dakota:

Section 23: Outlot A in the S1/2SE1/4

Section 24: Outlot B in the SW1/4SE1/4, Government Lots 1 & 3, and the NW1/4SW1/4

Section 25: Government Lots 1 & 2, SE1/4NW1/4, NE1/4SW1/4, and the W1/2SW1/4

Section 26: Outlot A in the E1/2NE1/4NW1/4, Lot 2, Block 2 in the NW1/4NE1/4,

Government Lot 3, SE1/4SE1/4, W1/2SE1/4, and the E1/2SE1/4SW1/4

Section 35: N1/2NE1/4 and the E1/2NE1/4NW1/4

The NDDOT will hold these Lands in perpetuity as a Wildlife Management Area as mitigation for the elimination of the No-Mow/Managed Mow acres within the rights-of-way of the state highway system and

The NDGF, for and on behalf of the NDDOT, agrees to establish a Wildlife Management Area, known as **Coal Lake Wildlife Management Area**, on the Lands described herein, and manage the Lands pursuant to the laws of North Dakota, and

The cost for management of the Lands described herein will be the sole responsibility of the NDGF unless otherwise agreed to, in writing, by the parties hereto.

NDGF will make payments to McLean County in lieu of real estate taxes pursuant to Chapter 57-02.1 of the NDCC.

NDGF shall have a **No Center-Fire Rifle Restriction** on the Lands until such time as Falkirk Mining notifies NDDOT, in writing, that it is safe to do so (it's expected that this will be no later than the year 2015).

Falkirk Mining has reserved the right to discharge water into Coal Lake at the North end of the Lands.

Falkirk Mining has reserved the right of ingress and egress to the Lands to the extent and for the period of time necessary to complete reclamation operations of the Lands in accordance with the requirements of Falkirk's mining permits numbered NAFK-8405 and NAFK-9601 and applicable laws and regulations and obtain final bond release from the North Dakota Public Service Commission. NDGF shall not engage in any activity on the Lands that Falkirk Mining determines, in its absolute discretion, may interfere with the ability of Falkirk Mining to obtain the release of such bond.

Falkirk Mining has reserved the right, along with its designees, to enter the Lands with personnel and equipment for the purpose of conducting required environmental monitoring and surveying, and erecting a sign acknowledging the donation of the lands to the NDDOT.

This Agreement will become effective and continue for a period of ninety nine (99) years from the date last below signed, with the option of renewing.

Executed the date last below signed:

Terry Steinwand, Director
North Dakota Game and Fish

Francis G. Ziegler P.E. , Director
North Dakota Department of Transportation

Date

Date

Approved as to substance by:

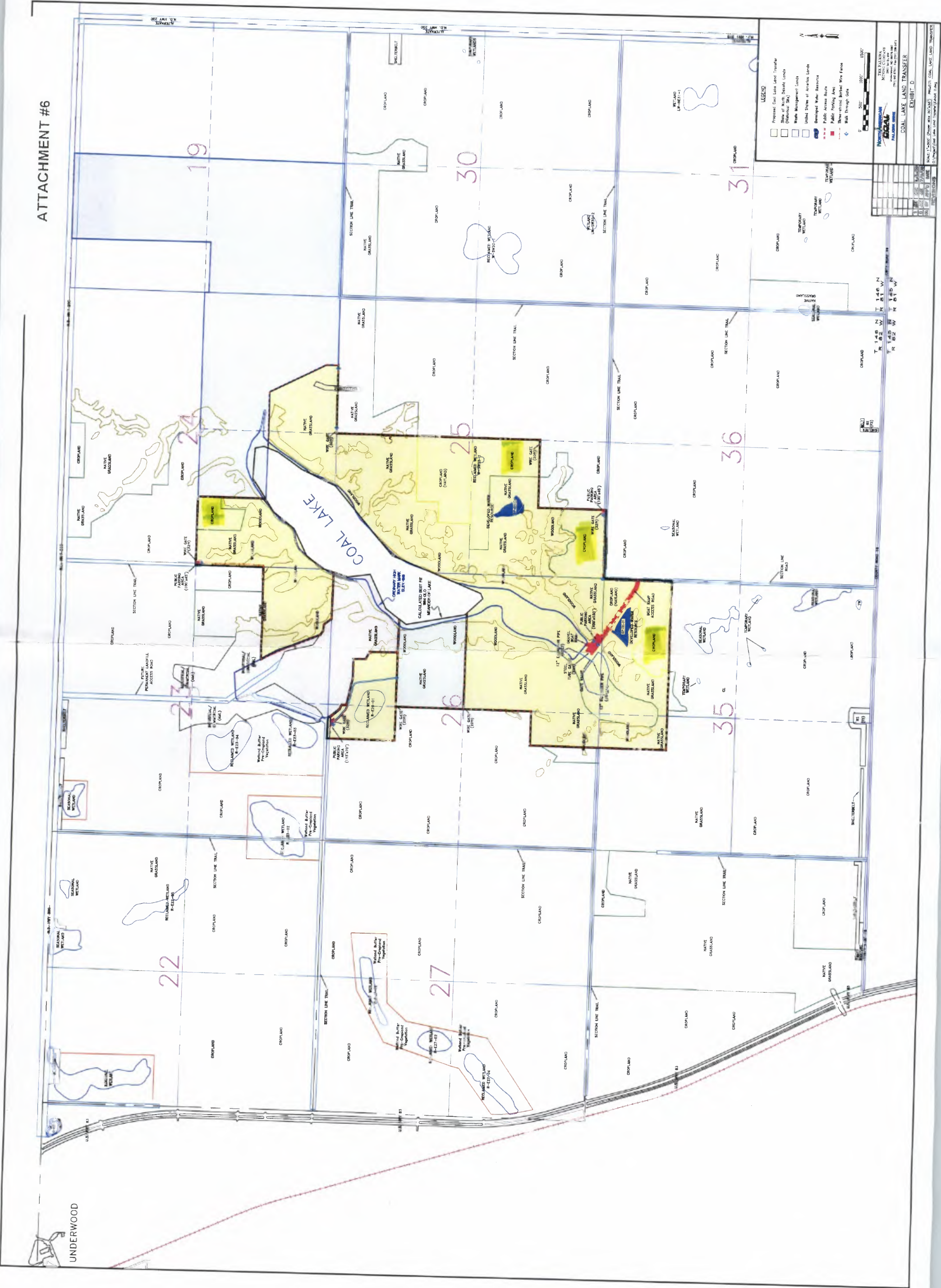
Ronald J. Henke, P.E. , Director
Office of Project Development

Signature

Date

June 22, 2009 DRAFT

ATTACHMENT #6



LEGEND

- Proposed Coal Lake Land Transfer
- State of North Dakota Lands (Historical Sh)
- Risk Management Lands
- United States of America Lands
- Developed Water Resources
- Public Access Road
- Non-enclosed Bordered Wet Area
- Well Through Gate

COAL LAKE LAND TRANSFER EXHIBIT D

THE FULTON GROUP
 300 S. 14TH ST. SUITE 100
 BISMARCK, ND 58103
 TEL: (701) 779-1111 FAX: (701) 779-1112
 WWW.FULTONGROUP.COM

DATE: 11/20/07 (FROM 08/20/07) PROJECT: COAL LAKE LAND TRANSFER
 DRAWN BY: J. H. HARRIS
 CHECKED BY: J. H. HARRIS
 DATE: 11/20/07



UNDERWOOD



Draft

COAL LAKE WILDLIFE MANAGEMENT AREA

MANAGEMENT PLAN



I. Introduction and Base Information

Interim Area Name: Coal Lake WMA

County: McLean

Location: 2 miles east, 1 mile south of Underwood

Acreage: 740.4

Physiographic Region: Missouri Plateau

Soils: See McLean County Soil Survey

II. Tract Description and Legal History

Legal Description:

Acquisition/Deed Information:

Comments: Managed by the North Dakota Game and Fish Department (NDGFD), leased from the North Dakota Department of Transportation. It is adjacent to Coal Lake Waterfowl Production Areas managed by the U.S. Fish and Wildlife Service. Much of the area (611.50 acres) was not disturbed by mining and is in native vegetation.

III. Cover Type and Acreage

Wetlands 2.80 ; Lake or Reservoir 142.90 ;
Grassland 308.80 ; Herb. Cover 46.20 ; Act. Cropland
93.70 ; Native Woody 125.30 ; Planted Woody 1.0 ; Other
19.70.

IV. Resources

Featured Wildlife Species: Ring-necked pheasant, waterfowl, and white-tailed deer.

Secondary Wildlife Species: Shore birds (including piping plover), furbearers, sharp-tailed grouse, huns, raptors, jackrabbits, cottontails, neotropic grassland and woodland migrants.

*No surveyed
siting by
Falkirk.*

Fisheries: Other than fathead minnows, no viable fisheries resources are available on Coal Lake due to shallow water conditions and low dissolved oxygen levels. It has been used as a source of fathead minnows for district fisheries needs.

V. Public Use Facilities

A primitive duck boat access site is being considered for the south end of the lake. Along with that, motor restrictions would be in place on the lake limiting boats to either non-motorized boats, electric motors only or no wake. Basic parking lots will be developed to facilitate recreational use of the area. (see map)

VI. Management Objectives

Maintain or improve present level of wildlife use, production and habitat. Encourage hunting and related outdoor recreation opportunities. Permit compatible outdoor recreation activities. Consider joint projects with U.S. Fish and Wildlife to improve waterfowl habitat on Coal Lake.

Our cropland objective for the WMA is for approximately 10% of the WMA to be in agricultural crop production. Diversity is very important to wildlife resource management, therefore the cropshare permittee should be encouraged to plant several different types of crops on the WMA. A cropland management plan has been developed and is attached (see Appendix A).

Grassland management should be accomplished using the best available methods for the particular site as determined by the District Biologist. All manipulations shall be on a rotational basis. A grassland management plan has been developed and is attached to this document (see Appendix B).

Vehicles are allowed only on trails established for public access to the parking lots and the duck boat access site (if developed). The majority of the WMA is closed to vehicle traffic to limit disturbance to wildlife and destruction of

habitat. NDGFD WMA regulations prohibit off-trail vehicle traffic.

VII. Management Activities

Maintain and improve facilities. Manage water levels on WMA wetlands using existing water control structures. Maintain about 5 miles of boundary fence, one duck boat access boat ramp and control noxious weeds.

VIII. Development Accomplishments

To be determined.

IX. Development Needs

Boundary fence needs to be established for entire perimeter. Falkirk Mine will remove excess roads and trails used by the mining operation. Development of nesting islands should be considered. Grazing, haying and burning of grassland should be used to manage grasslands. A water control structure could be installed in the embankment to allow some water level management in the Lake.

X. Management Constraints and Restrictions

Falkirk mine reserves the right to pump excess water into Coal Lake. Mineral rights have been reserved. Easements have been granted for telephone, power lines and highway right-of-way.

XI. Census/Monitoring Activities

Coal Lake WMA should be monitored regularly for wildlife habitat conditions, public use, encroachment and noxious weeds.

Prepared by: Dan Halstead Date: February 8, 2006

Appendix A:

WILDLIFE MANAGEMENT AREA GOALS - CROPLAND MANAGEMENT

DISTRICT V

NORTH DAKOTA GAME AND FISH DEPARTMENT

The mission of the North Dakota Game and Fish Department is to protect, conserve and enhance fish and wildlife populations and their habitat for sustained public consumptive and nonconsumptive use.

1. Diversify those portions of Wildlife Management Areas (WMAs) that have intensive cropland acres. Create a landscape that provides the following habitat requirements for common game species of wildlife. Consider habitat components in the surrounding landscape, including both public and private land. All wildlife plantings will be done on previously disturbed soils to avoid disturbance to native prairie.
 - Dense Nesting Cover
 - Alfalfa/Clover for Brood Cover
 - Warm Season Grasses for Roosting and Escape Cover
 - Native Shrub Clump Plantings for Loafing Cover
 - Woody Shrub Rows for Travel Lanes
 - Woody Block Plantings for Winter Cover
 - Wildlife Food Plots

2. Establish permanent or semi-permanent vegetation on agricultural fields within 100 to 150 feet of wetlands, rivers or lakes. Reduce the potential for pesticide runoff and erosion on fields adjacent to the water, especially those sloping toward the water. Improve conservation practices on WMA lands adjacent to wetlands, rivers or lakes.
 - Plant Alfalfa, Alfalfa/grass, DNC or grass mixtures desirable to Canada geese on fields near the water.
 - Establish permanent vegetation on areas of high erosion potential including HEL lands, steep slopes showing signs of erosion, areas with poor soil quality and poor crop yields, and areas with persistent noxious weed (Canada thistle) problems.

3. Wherever possible, establish permanent or semi-permanent vegetation along fences and field edges on the WMA=s. Eliminate fence-line to fence-line farming along property boundaries. Create travel lanes and escape routes for wildlife on the WMA=s.
 - Establish herbaceous cover and woody travel lanes along property boundaries to improve wildlife habitat and delineate public land boundaries.
 - Develop travel lanes across WMA lands to provide safe routes between different habitat components. Use both woody and herbaceous cover to develop travel lanes.
4. Provide wildlife food plots on WMA=s to provide food sources for wintering wildlife and to improve hunting opportunity on the areas.
 - Plant and maintain agricultural crops using permittees, contractors or agency personnel.
 - Locate food sources near winter cover plantings.
 - Work with permittees to plant the NDGFD=s share to high quality food sources for wildlife.
5. Reduce agricultural field size to increase Aedge effect@ and meet diversification goals.
 - Re-establish smaller fields that have been combined into one field over the years.
 - Use a goal of 20 acres as maximum field size.
6. Reach cropland objective of approximately 10% of the WMA to be in agricultural crop production. If quality agricultural lands are available, cropland fields should be scattered throughout the WMA.

Appendix B:

WILDLIFE MANAGEMENT AREA GOALS - GRASSLAND MANAGEMENT

DISTRICT V

NORTH DAKOTA GAME AND FISH DEPARTMENT

COAL LAKE WMA

Coal Lake WMA has approximately 355 acres of grassland and semi-permanent herbaceous cover and 125.3 acres of native woodlands that require management. Of this total, approximately 393.7 acres of grasslands and woodlands are undisturbed (were not mined).

Grassland management goals are to provide tall residual cover for upland game bird and waterfowl nesting, and to maximize hunting opportunities on the WMA. In order to maintain vegetation in a highly productive state, disturbance will be accomplished on a 3 - 10 year rotation as recommended by many grassland/wildlife studies for mixed-grass regions of the Northern Great Plains (Naugle, D.D., Higgins, K.F. and Bakker, K.K., 2000). Basic goals will be to reduce litter and rejuvenate existing grass plantings and native prairie thus producing tall, dense vegetation stands.

Prescribed burning is usually the management tool of choice since it most thoroughly reduces the amount of litter and takes the shortest time to apply. Spring burning allows for re-growth over the summer and thus does not significantly reduce fall hunting cover. Adjacent land use and terrain may preclude the NDGFD from using prescribed burning in some locations.

In areas where we are unable to apply prescribed burning, grazing or haying will be considered as alternatives for grassland management. The same timing frequency of once in 3 to 10 years will be used for these treatments. Experience from north-central North Dakota has shown excellent response by alfalfa in DNC plantings due to haying. Grazing can also be an effective tool and can also reduce litter accumulation by consumption of above ground biomass and hoof action on existing plant materials.

The following guidelines will be used in making grassland management decisions on Coal Lake and other District V WMAs.

1. Providing grasslands with tall residual cover for upland game bird nesting is a priority for public wildlife lands managed by the North Dakota Game and Fish Department in District V. Our goal is to maximize nesting habitat for upland game birds while maintaining fall hunting opportunities on public lands.
2. Annual livestock grazing for extended periods during summer months negatively impacts wildlife cover for fall hunting. Providing high quality cover on public wildlife lands for fall hunting opportunity is an important part of the mission for the North Dakota Game and Fish Department.

Whenever possible, short duration (usually 30 days), high intensity grazing will be used to rapidly manipulate the vegetation and allow for re-growth of cover for fall hunting opportunities. The District Wildlife Biologist will determine the stocking rate and grazing duration needed to accomplish the habitat manipulation desired for each area.

3. Haying may be used to manipulate grasslands when other methods are not available. Except when done for noxious weed control, haying or mowing shall not be conducted before July 15th. Since haying tends to result in the least amount of vegetative re-growth for fall hunting opportunity, preference should be given to spring burning or short duration grazing when possible.
4. Disturbance is important for maintaining species diversity and general vigor of grasslands. However, our priority is wildlife habitat management, and maintaining high quality wildlife habitat is our goal. Many wildlife research studies have shown the importance of idled areas to wildlife production. In many cases, the duration between treatments can be several years, yet wildlife production remains acceptable. Local conditions, such as temperature variations and yearly precipitation patterns, can influence frequency of treatments needed on WMA grasslands. The department will provide disturbance only when needed to rejuvenate wildlife habitat on both native and tame grasslands.

NORTH DAKOTA GAME & FISH DEPARTMENT

"Variety in Hunting and Fishing"

GOVERNOR, John Hoeven

DIRECTOR, Terry Steinwand

DEPUTY, Roger Rostvet

*100 North Bismarck Expressway
Bismarck, North Dakota 58501-5095*

Phone: (701) 328-6300

FAX: (701) 328-6352

August 17, 2009

D. Randall Crooke
Permit Manager
The Falkirk Mining Company
P.O. Box 1087
Underwood, ND 58576

Dear Mr.  Crooke:

As you are aware, the North Dakota Game and Fish Department (NDGFD) has been working with your company for a number of years concerning the pending transfer of 729.4 acres of land to the ND Department of Transportation (DOT). This parcel would become part of DOT's "no mow mitigation" as directed by the North Dakota State Legislature and would ultimately be managed by the NDGFD as a Wildlife Management Area. This tract would replace lands that were previously managed as "no mow" areas along the highway system in McLean County.

From the beginning of this process, the NDGFD has requested the existing ponds on the property remain in place to function as wetlands and wildlife habitat. The NDGFD annually spends thousands of dollars creating new wetlands and it made no sense to us for these areas to be removed.

In addition, we felt it was important to leave in place the existing trail (old haul road) which crosses the south portion of Coal Lake to provide the NDGFD access to the west side of the tract. In addition, we requested a pipe and water gate valve be installed in the embankment which would allow us to manage the area south of the former haul road as a separate wetland area. I believe this work has already been completed. The plan is to have a parking lot on the southeast end of the embankment and hopefully a place nearby to launch small boats into Coal Lake for hunting or recreational purposes. The trail across the embankment will be for management purposes only and not open to public vehicle traffic, but walking access would be allowed.

Finally, the NDGFD recognizes the importance of having agricultural lands on our WMAs to provide winter food sources for wildlife and to enhance hunting opportunity. We feel it is vitally important to have some agricultural lands on a 729.4 acre tract such as this. In District V (Riverdale area), our goal has been to have approximately 10% of the land base on a particular WMA in agricultural production. Therefore, with 86 acres of agricultural land on the Coal Lake tract, it fits ideally into our management strategy. Our plan will be to produce row crops, small grains and alfalfa/grass hay on the agricultural land by working with some of the neighboring producers.

The Coal Lake property is a spectacular area and we are thankful that your company has the foresight and vision to want this tract to become a public wildlife area which will be enjoyed by people for perpetuity.

Sincerely


A handwritten signature in cursive script that reads "Terry Steinwand". The signature is written in black ink and is positioned above the typed name.

Terry Steinwand
Director, North Dakota Game and Fish Department

cc: Randy Kreil ✓
Steve Dyke
Dan Halstead



November 10, 2005

Memorandum To: No-Mow file
From: David Lee 
Subject: Transfer of Reclaimed Mine from Great River Energy

Diane Stockdill of GRE called to brief us on the results of their meeting with the McLean County Commissioners which was held on November 8, 2005.

She reported that the Commissioners were really excited about the project and offered their help in effecting the transfer.

She stated that the next step is a meeting with the Public Service Commission, which mainly has to do with Falkirk Mining, to make the same presentation as was made to the county. They don't anticipate any problem with the PSC.

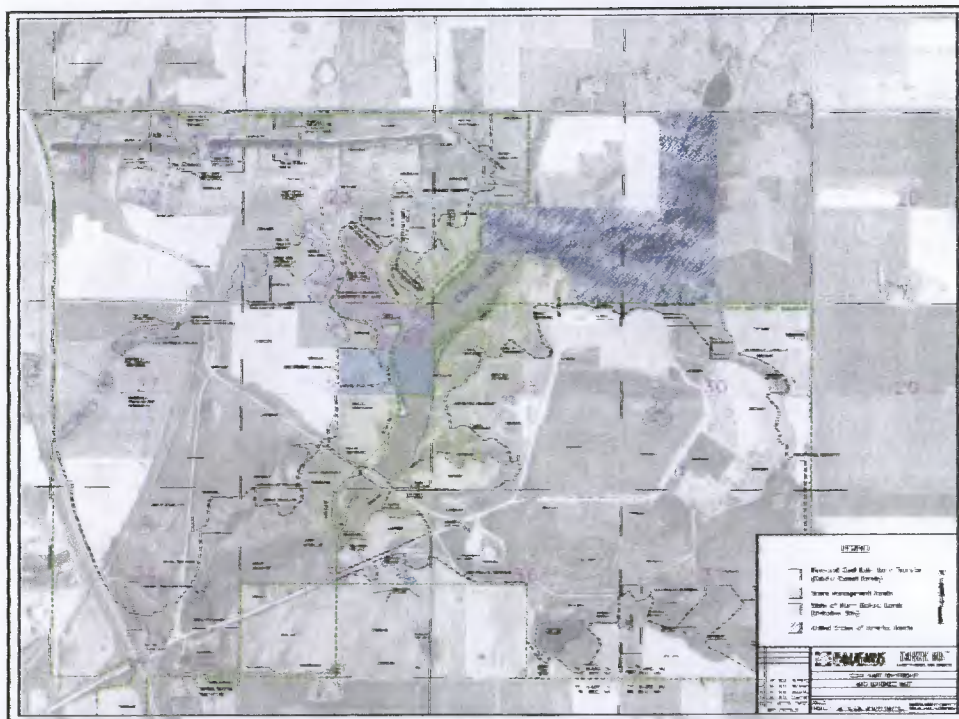
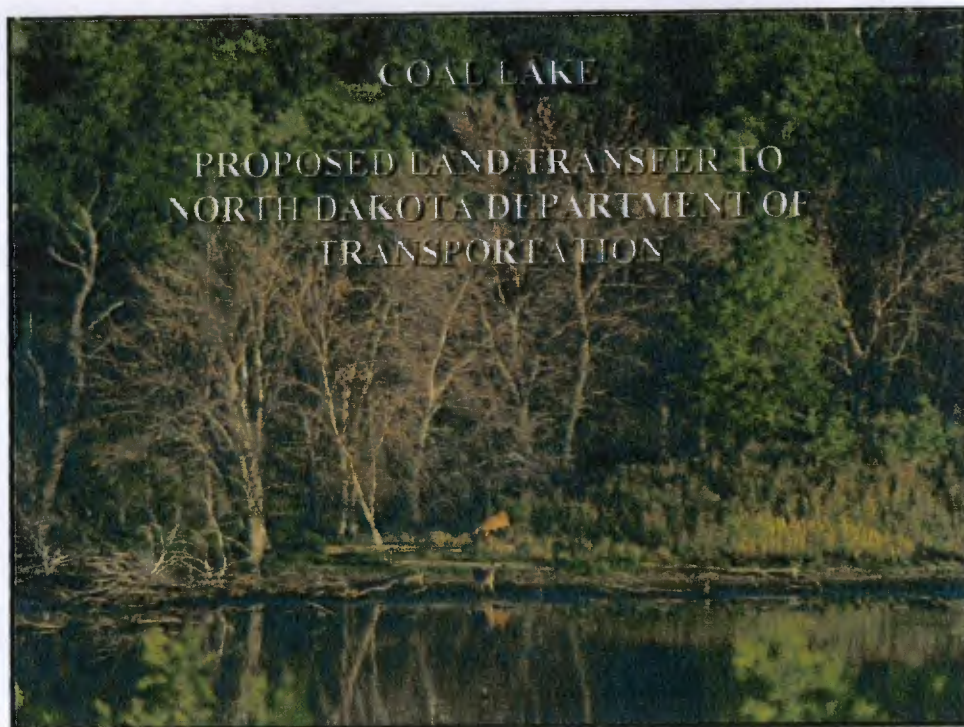
Following the meeting with the PSC they will contact us to begin working up an MOA. She thought this could begin the week of November 21, 2005.

She asked what timeline we have and I told her that the legislature set January 1, 2008 as the end of No-Mow.

Diane stated that they had informed the County Commissioners that this would be a donation.

She also stated that this transfer did not need Board approval.

November 8, 2005
Presentation to McLean Co. Commission



PROPOSED LAND TRANSFER LANDUSES

- 740 Total Acres (yellow hatch)
- 143 Water Acres (Coal Lake)
- 597 Land Acres
- 609 Acres Undisturbed
- 131 Acres Disturbed

	<u>Pre-Mine</u>	<u>Post-Mine</u>
Cropland	94	94
Native Grassland	309	309
Cropland/Hayland	46	46
County Roads & Trails	5	5
Woodlands	125	125
Shelterbelt	1	1
Wetlands	3	3
Coal Lake	143	143
Industrial	14	14
	740	740

PROPOSED LAND TRANSFER TIMELINE OF MINING AND RECLAMATION

- Suitable plant growth material (SPGM) removal began in 2000 and progressed through 2003
- Mining began in 2001 and was completed in 2003
- Area is completely backfilled and the majority has been respread with SPGM
- Area will be completely respread by the Fall of 2006 and seeded in 2007
- Falkirk projects bond release on the disturbed areas in 2018-2020

PROPOSED LAND TRANSFER GRE/FALKIRK

- 2000 – Falkirk/GRE began evaluating the lands adjacent to Coal Lake in relation to use and future disposal. Factors discussed included landuse, disturbance, local perception, and public use
- Falkirk/GRE opened discussions with the NDDOT and the NDGFD to use these lands to replace NO-Mow Areas in McLean County



NORTH DAKOTA DEPARTMENT OF TRANSPORTATION HISTORY OF NO-MOW AREAS

- No-Mow Areas established in 1970's
- Approximately 1,217 acres of No-Mow Areas currently exist in McLean County
- 1993 legislation passed that there would be no increase in No-Mow Areas
- Fifty-seventh Legislative Assembly in 2001 passed SB-2224, directing NDDOT to submit a plan to eliminate No-Mow/Managed-mow for right-of-ways adjacent to highways under the NDDOT's jurisdiction
- In 2003, the NDDOT working with the Federal Highway Administration, the Natural Resource Agencies, and the State Land Department (SLD) submitted a plan to the ND Legislative Assembly, whereby the NDDOT would replace certain No-Mow Areas with land purchased from the SLD and would enter into an agreement with the North Dakota Game and Fish Department (NDGFD) for management of such lands
- NDDOT is seeking additional land to replace the No-Mow Areas

Photo Date: June 2005



**NORTH DAKOTA
DEPARTMENT OF TRANSPORTATION
HISTORY OF NO-MOW AREAS**

- These lands would be managed by NDGFD primarily for recreational uses including wildlife production and compatible public uses.
- These lands will be assessed and valued the same as other lands for tax purposes, and the NDGFD will make full payment to the County, "In lieu of Real Estate Taxes," based on assessment and valuation. (57-02.1 NDCC)

Photo Date: July 2005



**PROPOSED LAND TRANSFER
SUMMARY**

- Fall Creek GRE are proposing to transfer approximately 740 acres adjoining Cozt Lake to the NDDOT to utilize a portion of the 1,247 No-Mow Areas within McLean County. Lands would be managed by the North Dakota Game and Fish Department. Land would be assessed and valued the same as other lands for tax purposes, and the NDGFD will make a full payment to the County.
- These acres are being reclaimed to the approved post-mining landuses.
- Normal agricultural land management practices will be used by NDGFD (i.e. cropping, grazing, haying, etc.)

Photo Date: November 2005

AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into as of the 29th day of June, 2009, by and between The Falkirk Mining Company, an Ohio corporation qualified to do business in North Dakota, whose address is 2000 Schafer Street, Suite D, Bismarck, North Dakota 58501-1204, hereinafter called "Falkirk", and the State of North Dakota acting by and through the North Dakota Department of Transportation acting through it's Director, whose address is 608 East Boulevard Avenue, Bismarck, North Dakota 58505, hereinafter called "NDDOT".

WITNESSETH:

WHEREAS, Falkirk is the owner of the following described lands located in McLean County, North Dakota, containing 729.40 acres, more or less, as shown on the map attached hereto as Exhibit A and made a part hereof, hereinafter called "Subject Lands":

Township 146 North, Range 82 West of the 5th Principal Meridian

Section 23: Outlot A in the S $\frac{1}{2}$ SE $\frac{1}{4}$

Section 24: Outlot B in the SW $\frac{1}{4}$ SE $\frac{1}{4}$, Government Lots 1, 3, NW $\frac{1}{4}$ SW $\frac{1}{4}$

Section 25: Government Lots 1, 2, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$

Section 26: Outlot A in the E $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, Lot 2, Block 2 in the NW $\frac{1}{4}$ NE $\frac{1}{4}$,
Government Lot 3, SE $\frac{1}{4}$ SE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$

Section 35: N $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$

WHEREAS, the Fifty-seventh Legislative Assembly directed the NDDOT to prepare a plan to eliminate the No-Mow/Managed-Mow areas within the rights-of-way of the state highway system and to present said plan to the Fifty-eighth Legislative Assembly;

WHEREAS, the Fifty-eighth Legislative Assembly approved NDDOT's plan to eliminate the existing 8,200 acres of No-Mow/Managed/Mow areas and authorized the NDDOT to acquire approximately 4,800 acres of land to eliminate No-Mow/Managed Mow areas within the rights-of-way of the state highway system;

WHEREAS, Falkirk desires to donate the Subject Lands to eliminate all of the No-Mow/Managed-Mow areas within the rights-of-way of the state highway system in McLean County, North Dakota under the terms and conditions set forth in this Agreement; and

WHEREAS, the NDDOT is willing to accept the donation of the Subject Lands and eliminate all of the No-Mow/Managed-Mow areas in the state highway system in McLean County, North Dakota under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Falkirk hereby agrees to donate the Subject Lands to the NDDOT and the NDDOT hereby agrees to accept such donation under the terms and conditions of this Agreement. Falkirk's donation of the Subject Lands to the NDDOT shall eliminate all of the No-Mow/Managed Mow areas within the rights-of-way of the state highway system in McLean County, North Dakota.

2. Falkirk shall, at its sole cost and expense, construct and install on the Subject Lands the features depicted in their entirety on the map attached hereto as Exhibit B and made a part hereof, including but not limited to, fences, gates, parking areas, roads, and ponds. The Subject Lands shall be managed in perpetuity as a wildlife management area open for public access and use and shall not be transferred or sold by the NDDOT for any other purpose. The wildlife management area shall be named the Coal Lake Wildlife Management Area and shall be managed in accordance with the Management Agreement between the NDDOT and the North Dakota Game and Fish Department, hereinafter called "NDGF", a draft copy of which is attached hereto as Exhibit C and made a part hereof.

3. The Subject Lands are currently included within Falkirk's mining permits numbered NAFK-8405 and NAFK-9601. Falkirk has submitted mining permit revisions to the North Dakota Public Service Commission, hereinafter called the "PSC", that provide for the post mining land use change of the Subject Lands to recreational land use under the North Dakota reclamation law. Falkirk anticipates PSC approval of these revisions in 2009.

4. The Closing of the transaction contemplated hereby shall occur within thirty (30) days after the PSC approves the post mining land use change revisions to Falkirk's mining permits numbered NAFK-8405 and NAFK-9601 at the offices of Falkirk in Bismarck, North Dakota, or at such other time and place agreed upon by Falkirk and the NDDOT. *days
Dakota
7-1-09*

5. At the time of Closing, Falkirk shall execute and deliver to the NDDOT a Special Warranty Deed, in the form attached hereto as Exhibit D and made a part hereof, conveying the Subject Lands free and clear of all title defects, liens, charges, reservations, and encumbrances created by Falkirk, but subject to the following:

- a. Valid prior mineral leases of record, if any;
- b. Valid prior mineral reservations and conveyances of record, if any;
- c. Valid prior easements and rights-of-way of record, if any;
- d. The reservation by Falkirk and its designees of the right of ingress and egress to the Subject Lands to the extent and for the period of time necessary to complete reclamation operations of the Subject Lands in accordance with the requirements of Falkirk's mining permits numbered NAFK-8405 and NAFK-9601 and applicable laws and regulations and obtain final bond release from the PSC. The NDDOT shall not engage in any activity on the Subject Lands that Falkirk determines, in its absolute discretion, may interfere with the ability of Falkirk to obtain the release of such bond and the NDDOT will execute all forms and do all

other things reasonably requested by Falkirk to assist in obtaining a release of the Subject Lands from the bond issued by Falkirk to the PSC to secure Falkirk's obligation to reclaim the Subject Lands;

- e. The reservation by Falkirk of the right for Falkirk and its designees to discharge water across the Subject Lands through the existing drainages into Coal Lake;
- f. The reservation by Falkirk of the right for Falkirk and its designees to enter onto the Subject Lands, with personnel and equipment for the purpose of (i) conducting required environmental monitoring and surveying and (ii) erecting a sign acknowledging the donation of the Subject Lands to the NDDOT;
- g. A covenant by the NDDOT that the Subject Lands will be managed in perpetuity as a wildlife management area open for public access and use and that the Subject lands will not be transferred or sold for any other purpose; and
- h. A covenant by the NDDOT that it will not allow the use of center-fire rifles on the Subject Lands until such time as Falkirk notifies the NDDOT in writing that it is safe to do so.

The term "prior" as used in this Paragraph 5 shall mean prior to the date of this Agreement.

6. All real estate taxes and special assessments levied against the Subject Lands for the year of the closing and prior years shall be paid in full by Falkirk. Annually thereafter the NDDOT shall require the NDGF to pay an in lieu of taxes payment to McLean County pursuant to Chapter 57-02.1 of the North Dakota Century Code.

7. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their nominees, successors and assigns.

8. This Agreement shall be governed by, construed, interpreted and enforced in accordance with the laws of the State of North Dakota. Any disputes arising from this Agreement shall be brought in the South Central District Court of the State of North Dakota.

9. This Agreement constitutes the entire agreement between the parties and supersedes all other prior negotiations, undertakings, notices, memoranda and agreements between the parties, whether oral or written, with respect to the subject matter hereof.

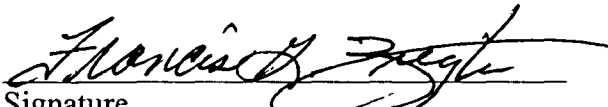
10. Any modification or amendment of the terms and provisions of this Agreement shall be valid and effective only if and when made in writing and duly executed on behalf of the parties hereto.

11. This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, but all of which shall collectively constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

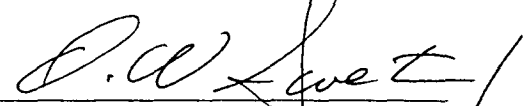
STATE OF NORTH DAKOTA ACTING BY
AND THROUGH THE NORTH DAKOTA
DEPARTMENT OF TRANSPORTATION

Francis G. Ziegler, P.E., Director


Signature

7/1/09
Date

THE FALKIRK MINING COMPANY

By: 
Dan W. Swetich, its President *J.F. Mabel 6/29/09*

JUNE 29, 2009
Date

Approved as to substance by:
Ronald J. Henke, P.E., Director
Office of Project Development


Signature

7/2/09
Date


APPROVED as to execution this
7th day of July 2009
ATTORNEY GENERAL
By 
SPECIAL ASST. ATTORNEY GENERAL

EXHIBIT D
TO
AGREEMENT
DATED JUNE 18, 2009

I certify that a report of the full consideration paid for
the property described in this deed has been filed
with the State Board of Equalization
Date _____

Grantee or Authorized Agent

SPECIAL WARRANTY DEED

THIS INDENTURE, made this _____ day of _____, 2009, by and between The Falkirk Mining Company, an Ohio corporation qualified to do business in North Dakota, whose address is 2000 Schafer Street, Suite D, Bismarck, North Dakota 58501-1204 ("Grantor"), and the State of North Dakota acting by and through the North Dakota Department of Transportation, whose address is 608 East Boulevard Avenue, Bismarck, North Dakota 58505 ("Grantee").

WITNESSETH:

That Grantor for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration to it in hand paid by Grantee, the receipt and sufficiency of which are hereby acknowledged, does hereby GRANT, BARGAIN, SELL and CONVEY unto Grantee, its successors and assigns, FOREVER, all the tracts and parcels of land lying and being in the County of McLean, State of North Dakota, and described as follows (hereinafter called "Subject Lands"):

Township 146 North, Range 82 West of the 5th Principal Meridian

Section 23: Outlot A in the S $\frac{1}{2}$ SE $\frac{1}{4}$

Section 24: Outlot B in the SW $\frac{1}{4}$ SE $\frac{1}{4}$, Government Lots 1, 3, NW $\frac{1}{4}$ SW $\frac{1}{4}$

Section 25: Government Lots 1, 2, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$

Section 26: Outlot A in the E $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, Lot 2, Block 2 in the NW $\frac{1}{4}$ NE $\frac{1}{4}$,
Government Lot 3, SE $\frac{1}{4}$ SE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$

Section 35: N $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$

TO HAVE AND TO HOLD THE SUBJECT LANDS, together with all the hereditaments and appurtenances thereunto belonging or in anywise appertaining, to Grantee, its successors and assigns, FOREVER. Grantor, for itself, its successors and assigns, does covenant with Grantee, its successors and assigns, that it is well seized in fee of the Subject Lands and has good right to sell and convey the Subject Lands in the manner and form aforesaid; and that the Subject Lands are free from all encumbrances except:

- a. Valid prior mineral leases of record, if any;
- b. Valid prior mineral reservations and conveyances of record, if any;
- c. Valid prior easements and rights-of-way of record, if any;

and Grantor will warrant and defend the Subjects Lands in the quiet and peaceable possession of Grantee, its successors and assigns, against all persons lawfully claiming or to claim the whole or any part thereof by, through, or under Grantor but not otherwise.

Grantor, for itself and its successors and assigns, does hereby reserve the following servitudes upon the Subject Lands:

- a. The right of ingress and egress to the Subject Lands to the extent and for the period of time necessary to complete reclamation operations of the Subject Lands in accordance with the requirements of Grantor's mining permits numbered NAFK-8405 and NAFK-9601 and applicable laws and regulations and obtain final bond release from the North Dakota Public Service Commission. Grantee shall not engage in any activity on the Subject Lands that Grantor determines, in its absolute discretion, may interfere with the ability of Grantor to obtain the release of such bond and Grantee will execute all forms and do all other things reasonably requested by Grantor to assist in obtaining a release of the Subject Lands from the bond issued by Grantor to the North Dakota Public Service Commission to secure Grantor's obligation to reclaim the Subject Lands;
- b. The right for Grantor and its designees to discharge water across the Subject Lands through the existing drainages into Coal Lake; and
- c. The right for Grantor and its designees to enter onto the Subject Lands with personnel and equipment for the purpose of conducting required environmental monitoring and surveying and erecting a sign acknowledging the donation of the Subject Lands to Grantee.

Grantee, for itself and its successors and assigns, does hereby covenant and agree:

- a. That the Subject Lands will be managed in perpetuity as a wildlife management area open for public access and use and that the Subject lands will not be transferred or sold for any other purpose; and
- b. That it will not allow the use of center-fire rifles on the Subject Lands until such time as Grantor notifies Grantee in writing that it is safe to do so.

IN WITNESS WHEREOF, the parties hereto have executed this Special Warranty Deed as of the date first above written.

GRANTOR:

THE FALKIRK MINING COMPANY

By: _____
Dan W. Swetich, its President

GRANTEE:

STATE OF NORTH DAKOTA ACTING
BY AND THROUGH THE NORTH
DAKOTA DEPARTMENT OF
TRANSPORTATION

Francis G. Ziegler, P.E., Director

Signature

Approved as to substance by:

Ronald J. Henke, P.E., Director
Office of Project Development

Signature

Date

STATE OF NORTH DAKOTA)
) ss:
COUNTY OF)

On this _____ day of _____, 2009, before me personally appeared Dan W. Swetich, known to me to be the President of The Falkirk Mining Company, the corporation that is described in and that executed the within instrument, and acknowledged to me that such corporation executed the same.

(S E A L)

Notary Public
My Commission Expires:

STATE OF NORTH DAKOTA)
) ss:
COUNTY OF)

On this _____ day of _____, 2009, before me personally appeared Francis G. Ziegler, P.E., known to me to be the Director of the North Dakota Department of Transportation, the entity that is described in and that executed the within instrument, and acknowledged to me that such entity executed the same.

(S E A L)

Notary Public
My Commission Expires: