

**PUBLIC SERVICE COMMISSION
Reclamation Division**

MEMORANDUM

TO: Commissioners Kalk, Christmann, and Fedorchak
Darrell Nitschke and Illona Jeffcoat-Sacco

FROM:  DKM BB
Jim Deutsch, Dean Moos and Bruce Beechie

DATE: August 27, 2014

SUBJECT: Revision No. 33 to Permit NAFK-8405 held by the Falkirk Mining Company,
Case No. RC-14-50

Summary - On February 3, 2014, the Falkirk Mining Company submitted the application for Revision No. 33 to Surface Coal Mining Permit NAFK-8405 for its mine near Underwood, ND. This revision proposes to change the postmining land use on 238 acres in the permit from agricultural and other uses to recreational use as part of the Coal Lake Recreation Area. This revision also updates mining and reclamation plans in response to our recent midterm permit review and some changes were later added to the water management plan for active mining areas in this permit. The Reclamation Division has completed its review of this revision and respectfully recommends that it be approved.

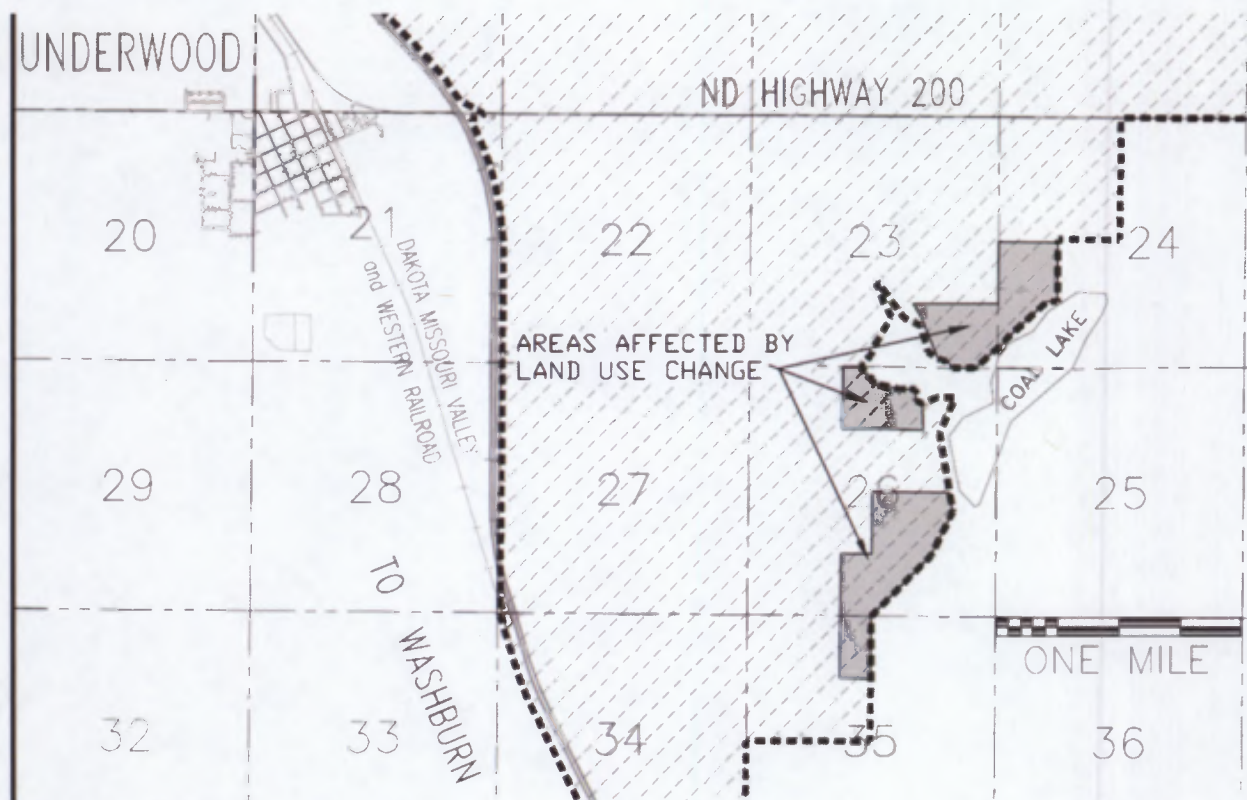
Discussion - With Revision 33, Falkirk is proposing to change the postmining land use of 238 acres located in the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 23, the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 24, several parcels in Section 26, and the E $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 35, all in T146N, R82W, within Permit NAFK-8405, located to the southeast of Underwood. All of these tracts in Permit NAFK-8405 are located on the west side of Coal Lake, a natural feature that was not mined.

The postmine land use change on the 238 acres is being requested because these lands are part of an agreement where Falkirk and Great River Energy have agreed to transfer land to the North Dakota Department of Transportation (NDDOT) to mitigate "No Mow" restrictions on the rights-of-way of highways in McLean County. Legislation was enacted in 2003 that authorizes the NDDOT to acquire lands to eliminate No-Mow areas on highway rights-of-way.

The Coal Lake Recreation Area will consist of a total of 730 acres of land that will be transferred to the NDDOT. This land will then be managed by the ND Game and Fish Department as a public use recreational area to facilitate the mitigation of 1,217 acres of No-Mow highway right-of-way in McLean County. Of the 730-acre Coal Lake Recreation Area, 238 acres will have a recreational use as proposed by Revision 33 to Permit NAFK-8405, 428 acres were previously approved for recreational land use in 2010 when the Commission's approved Revision No. 13 to Permit NAFK-9601 (primarily on the east side of Coal Lake), and 64 acres were never permitted for mining activities. Of the entire Coal Lake Recreation Area, only 200 acres (approximately 68 acres in Permit NAFK-8405 and 132 acres in Permit NAFK-9601) were affected by Falkirk's

mining activities and all of this acreage has been reclaimed for many years. The areas in Permit NAFK-8405 were mined in the late 1980's.

While Revision 33 to Permit NAFK-8405 proposes to change the land use on 238 acres, only 68.2 acres were actually disturbed by mining and the remaining acres were undisturbed. The predominant pre-mine land uses on the 238 acres was primarily native grassland (123 acres), woodlands (44 acres) and cropland (40 acres) with lesser amounts of wetlands, a small portion of Coal Lake, public roads and trails, and industrial/commercial (previously mined area). Under the previously approved reclamation plan, the post-mining land uses of the 68.2 acres disturbed by mining were cropland (31.8 acres), native grassland (22.1 acres), public roads and trails (2.2 acres), fish and wildlife habitat - wetlands (6 acres), and industrial/commercial for a previously mined area (6.1 acres). The map below depicts the areas in Permit NACT-8405 that are affected by this land use change.



Falkirk is currently the surface owner of the 238 acres affected by the Revision 33 land use change, but this land will be soon transferred to NDDOT. As noted above, the North Dakota Game and Fish Department will then manage these lands for recreational purposes. This recreational area will allow free public access for canoeing, camping, hiking, bird-watching and hunting, and will also serve as a wildlife production area. McLean County changed the zoning on these lands from agricultural and industrial to primitive recreational use on July 1, 2008. Lands zoned as primitive recreational use cannot be developed for private purposes. In addition, the lands within the Coal Lake Recreational Area will be assessed and valued the same as other lands in the area for tax purposes and the Game and Fish Department will make those payments to McLean County.

The Commission may approve an alternative postmining land use if the criteria of N.D. Administrative Code 69-05.2-23-03 are met. These include: 1) there is reasonable likelihood the use will be achieved; 2) the use does not present an actual or probable hazard to public health or safety, or threat of water diminution or pollution; and 3) the use is not impractical, inconsistent with applicable land use policies or plans, involve unreasonable delay in implementation, and it will not cause or contribute to violation of state, federal or local law. The Reclamation Division finds that these criteria have been met for the alternative land use change proposed by Falkirk.

However, a condition is being attached to the approval of Revision 33 to state that the recreational postmining land use on the 238 acres will not become effective until Falkirk submits a certified copy of the deed transferring ownership of these lands to the NDDOT. The land transfer is scheduled to occur on September 18, 2014. These lands will then be eligible for final bond release as recreational use.

Revision No. 33 also updates several sections of the permit including legal and financial, geology, operations, reclamation and monitoring plans, and other information in response to the Commission's midterm permit review. Falkirk also added some changes to the water management plans for active mining areas during the revision review period.

Revision No. 33 was deemed a significant permit revision to Permit NAFK-8405 due to the land use changes and was subject to the public notice requirements. Falkirk submitted affidavits of publication showing that the newspaper notice was published in the McLean County Independent and the Bismarck Tribune for four consecutive weeks in both newspapers on April 3rd, 10th, 17th and 24th, 2014. We also notified the appropriate agencies and advisory committee members. No objections to this revision application were received.

Attached for your consideration at the September 2, 2014 Commission meeting are the proposed motion, revision approval form, permit condition, and revision approval notice that we must publish in the appropriate newspapers.

Attachments

Minedata/Falkirk/Permits/NAFK-8405/Revisions/No.33/Rev33_apprvl_memo_8-27-14