



# Public Service Commission

## State of North Dakota

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February 24, 2016

Mr. Jason Frye  
Environmental Specialist  
Falkirk Mining Company  
P.O. Box 1087  
Underwood, ND 58576-1087

Dear Mr. Frye:

The Reclamation Division has completed its review of Falkirk's February 1, 2016 response to our January 11, 2016 technical review letter for Revision No. 35 and Renewal No. 6 to Surface Coal Mining Permit NAFK-8405. The following items will need to be satisfactorily addressed before approval of Revision No. 35 and Renewal No. 6 can be granted:

### **Section 2.4.2 – Fish and Wildlife Management Plan**

1. Follow-up to Item No. 5: The new sentence at the top of page 7 of Section 2.4.2 states that cottonwoods are likely attractive to Northern Long-Eared Bats because of the cavities and loose bark often associated with mature and **dead** trees. (Please also provide a citation substantiating the claim that cottonwood groves along the Missouri River are "prime habitat".) Please revise this statement if necessary and also revise the habitat narrative to mention if the permit and adjacent area contains any underground mines, tunnels, bridges or buildings that could be suitable hibernacula. (GAW)
2. Follow-up to Item No. 6: The Dakota Skipper narratives on page 6 of Section 2.4.2 and page 7 of Section 2.4.3, Wildlife Monitoring Plan, was revised with the February 1, 2016 version of the revision to state that monitoring will occur in Sections 7 and 11 of T144N, R83W and Section 36 of T146N, R84W. It appears that monitoring is planned in Section 11 of T144N, **R84W** rather than **R83W**. Please review and correct this error in Sections 2.4.2 and 2.4.3. (GAW)
3. Follow-up to Item No. 6: Duplicate Dakota Skipper narrative information is being provided in Sections 2.4.2 and 2.4.3 of the permit. It is not clear why the exact same information for this species is being provided in both Sections 2.4.2 and 2.4.3 when one section is the management plan and the other is the monitoring plan. Please revise the narrative to clarify if Permit NAFK-8405 and its adjacent area have any potentially suitable habitat for the Dakota Skipper, and if any habitat is present, discuss the proximity of this habitat to planned mining operations. Please also update the narrative to include current information regarding the two Dakota Skipper Habitat Types as discussed in the Interagency Cooperative Agreement dated February 2015 and the proximity of the permit area to designate critical habitat for this species as outlined in the October 1, 2015 Final Rule. Although

the narrative information included from Butterflies of North Dakota by Ronald Alan Royer is noteworthy, it appears this is not the most current information for the species. The narrative mentions McCabe (1981), Scott, (1986) and “Dana” (personal communication) but these references are not fully cited to explain their source. Please provide clear, concise and current background information for this species with appropriate references to technical and other written materials as required by NDAD 69-05.2-05-02, and update the management and monitoring plans accordingly. (GAW)

4. Follow-up to Items 5 and 6: New language is being added in the duplicate Dakota Skipper narrative in Sections 2.4.2 and 2.4.3 which states that Falkirk will manage reclaimed native grasslands with rotational grazing to reduce the intensity of grazing and encroachment of native species. This narrative suggests that reclaimed native grassland may be suitable habitat for this species; however, the Federal Register listing states that “these butterflies are not likely to inhabit reconstructed prairies” (page 59253) and that the species is an obligate resident of remnant (untilled) high-quality prairies habitats that are dominated by native grasses that contain a high diversity of native forbs (page 59268). Please revise the narrative to explain how managing reclaimed native grasslands is relevant to this species and explain how Falkirk will manage undisturbed native grassland that it owns or controls that contains habitat potentially suitable for this species. (GAW)

### **Section 3.1 – Operations Plan - General**

5. Follow-up to Item No. 9: Section 3.1.6 – Extended Mine Plan Map. Highway 200 is still depicted in two places on the Extended Mine Plan Map as a U.S. highway along the stretch of Highway 200 that goes to the City of Riverdale. Please update the map. (BEB)

### **Section 3.5 – Operations – Transportation Facilities**

6. Follow up to Item No. 11 - Section 3.5. Please provide more detail regarding the future use and/or reclamation of the cable belt conveyor in Section 3.5.40. Please state the approximate cost of diesel fuel and cost of trucks that would make rebuilding of the cable belt a viable coal haulage alternative. Please also include in the narrative the likely location where Falkirk would build the crushing facility north of Highway 200 if the cable belt were used, and also the future date of mining where mining has progressed to the point where it would no longer be advantageous to rebuild and use the cable belt. Please also discuss the current applicability of the assumptions used in the worst-case reclamation cost estimate for the removal and reclamation of areas affected by the conveyor. (BAJ)

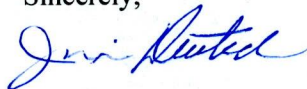
### **Section 4.2.2 – Post-Mining Land Use Narrative**

7. Follow-up to Item No. 13: The last paragraph on page 2 of Section 4.1.1 has been revised to state that there are presently 300 foot set-backs around the business and farmsteads owned by Portra and Weisz families, which are considered occupied buildings. The narrative goes on to clarify that an agreement is in place to stockpile soil within 300 feet of the Weisz occupied building but there is no discussion about whether or not an agreement is in place to conduct operations within 300 feet of the Portra business. Please be reminded that NDCC 38-14.1-07 prohibits surface coal mining operations from being conducted 500 feet of any occupied dwelling and revise the statements accordingly. The Pit Layout and Facilities Map, Section 3.1.5, shows a 500 foot set-back from the Portra business. Please review and revise to provide clarity regarding the required set-back distances from occupied dwellings, especially the Portra business. (GAW)

Mr. Jason Frye  
February 24, 2016  
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If you have any questions, please contact this office.

Sincerely,

A handwritten signature in blue ink, appearing to read "James R. Deutsch".

James R. Deutsch  
Director  
Reclamation Division

cc: McLean County Auditor

Minedata/Falkirk/Permits/NAFK-8405/Revisions/No.35/Rev35\_Ren6\_Tech2\_rvw\_ltr\_2-24-16.docx