



North Dakota State Water Commission

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July 18, 2018

Darrell Nitschke, Executive Secretary
ND Public Service Commission
600 East Boulevard, Dept. 408
Bismarck, ND 58505-0480



Dear Mr. Nitschke:

This is in response to your request for a review of the environmental impacts associated with the application for the Revision No. 38 to Surface Coal Mining Permit No. NAFK-8705 at the Falkirk Mine.

The proposed project has been reviewed by State Water Commission staff, and the following comments are provided:

- Through the National Flood Insurance Program, a floodplain development permit is required for all development that takes place within a Special Flood Hazard Area, as identified by FEMA. Please work with the local floodplain administrator(s) for additional information and permit requirements. The floodplain administrator for McLean County is Les Korgel, 701-462-8541, lkorgel@nd.gov.
- The Office of the State Engineer (OSE) Engineering and Permitting Section reviewed the project route and determined that the project route traverses over or through surface water resources.

According to the cover letter sent with the application for Revision No. 38 to Surface Coal Mining Permit No. NAFK-8705 at the Falkirk Mine, the revision addresses a new reclamation plan and land use change to parts of Section 23 and 26, T146N, R83W, McLean County. The revision revises the permit's environmental resource information, operations and reclamation plans. Only the project area described in the cover letter sent with the application (Sections 23 and 26, T146N, R83W, McLean County), was reviewed.

According to the application it appears there are proposed post-mining wetlands (retention ponds), located in the S ½ S ½ S ½ of Section 23 and N ½ of Section 26, that will be constructed or modified. **R-26-01, total storage volume 29.3 ac-ft and R-26-02 (contingency pond), total storage volume 29.01 ac-ft.**

These retention ponds are considered to act as dams according to N.D.A.C. § 89-08-01, given they act as a barrier constructed across a watercourse, or an area that drains naturally, to impound or attenuate the flow of water. The construction of a dam capable of retaining, obstructing, or diverting more than fifty acre-feet of water, or twenty-five acre-feet of water for a medium-hazard or high-hazard dam, would require a construction permit according to N.D.C.C § 61-16.1-38.

According to the application it appears there are wetlands (i.e. ponds, sloughs, lakes, or any series thereof) that are being drained with a contributing watershed area greater than 80 acres, but according to N.D.A.C § 89-02-01-05(2.f) they likely do not require a drainage permit through the OSE Engineering and Permitting Section.

The OSE requests to be notified regarding the proposed project's impacts, if any, to water resources such as watercourses (i.e. streams or rivers), agricultural drains, and wetlands (i.e. ponds, sloughs, lakes, or any series thereof) as any alterations, modifications, improvements, or impacts to those water resources may require a construction permit(s) from the OSE. If you have questions for the Engineering and Permitting Section, please contact us at 701-328-4288.

Thank you for the opportunity to provide review comments. If you have any questions, please call me at 701-328-4967.

Sincerely,



Jared Huibregtse
Water Resource Planner IV

JH:dm/1570