

PUBLIC SERVICE COMMISSION
Reclamation Division

Memorandum

TO: Commissioners Fedorchak, Christmann, and Haugen-Hoffart
Steven Kahl, Executive Director
John Schuh, General Counsel

FROM: ^{ZAB} Zanna Brinkman, ^{JE} Jonathan Emmer, and ^{JAR} Jeff Roerick

DATE: April 13, 2022

SUBJECT: Bond Release No. 3 for Permit NAFK-8405 held by the Falkirk Mining Company, Case No. RC-21-221

Summary

On June 1, 2021, The Falkirk Mining Company filed the application for Bond Release No. 3 to Surface Coal Mining Permit NAFK-8405 for 92.3 acres at the Falkirk Mine. Bond Release 3 includes 22.5 acres affected by mining and 70.0 acres of undisturbed land. The 22.5 acres affected by mining are subject to our current reclamation law and rules, and Falkirk has demonstrated that the reclaimed lands have met all applicable final bond release performance standards. The Reclamation Division has completed its review of the bond release application and we recommend that it be approved.

Discussion

Bond Release No. 3 to Permit NAFK-8405 includes 92.3 acres located in portions of Sections 23 and 24, T146N, R82W of McLean County. The tract is located two and a half miles east and a half-mile south of Underwood, North Dakota, just south of Highway 200. The approved post-mining land use within the bond release area is recreational. The 22.5 acres affected by mining were reclaimed to 11.7 acres of native grassland, 4.0 acres of cropland, and 6.6 acres of industrial/commercial (previously disturbed abandoned mine land). The remaining 70.0 acres were not disturbed by mining and includes native grasslands, woodlands and previously disturbed abandoned mine land.

The bond release tract is owned by the North Dakota Department of Transportation (NDDOT) and it is part of a larger land transfer agreement known as the "Coal Lake Transfer". Falkirk entered into an agreement in 2009 to donate 729.40 acres of land bordering Coal Lake to the Department of Transportation. The transfer allowed the establishment of the Coal Lake Wildlife Management Area to mitigate No-Mow/Managed-Mow acres within the rights-of-way of the state highway system in McLean County. A zoning change from agricultural and industrial zone to recreational zone for primitive recreational use was granted by the McLean County Board of County Commissioners in 2008 for the lands described in the transfer. On September 18, 2014, Falkirk entered into a warranty deed with the State of North Dakota, by and through the North Dakota Department of Transportation (NDDOT). About 575 permitted acres located in the Coal Lake Wildlife Management Area were bond released in 2017. The 92.3 acres included in Bond Release 3 to Permit NAFK-8405 is the only permitted acreage remaining in the Coal Lake Wildlife Management Area. The Coal Lake Wildlife Management Area is operated by the North Dakota Game and Fish Department.

Mining and/or mining disturbance within Bond Release No. 3 was initiated in 1994. Approximately (~24%) of the area was affected by mining, used for spoil placement, or associated disturbances such as stockpiles, a pond, diversion, and access trail. Final grading to post-mining contour was completed in 2018, and suitable plant growth material (SPGM) respread and initial seeding was completed in 1995, 1997, 2015, and 2018. The acreage disturbed by mining was respread with approximately 10 inches of topsoil over 14 inches of subsoil, and these soil depths were field verified during the bond release inspection on September 8, 2021 by Reclamation Division staff. The reclaimed area was managed mainly with haying from 2000 through 2019. The tract was idle a couple of those years when the tract was reseeded, and a portion of the tract was lightly grazed in 2020.

Revegetation Success Standards

The 22.5 acres affected by mining or associated disturbance was reclaimed to the approved post-mine land use of recreational and was subject to the vegetation performance standards for recreational land use. A revegetation liability period of fewer than ten years for recreational areas is allowed by North Dakota Administrative Code 69-05.2-12-09(2). The revegetation success performance standard for recreation land is ground cover not less than that required to control erosion, which is defined as at least 73% total cover (live + litter) based on basal hits. In 2020, the absolute ground cover based on basal hits measured 95.5% in Section 23 and 91.5% in Section 24, which exceeds the cover standard of 73% total cover based on basal hits.

General Information

The formal bond release inspection was conducted on September 8, 2021. Reclamation Division staff, Falkirk Mining Company staff, and one representative from the North Dakota Game and Fish Department participated in the bond release inspection. Others were invited to participate in the inspection including the landowners (NDDOT), McLean County Commissioners, and the North Dakota Soil Conservation Committee; however, they did not attend the inspection. The inspection report and photographs taken of the bond release tract are on file with the Reclamation Division. No concerns were noted during the inspection.

There have been no previous bond releases on this tract. Falkirk has requested the release of all stages of bond release, including first stage (backfilling and grading), second stage (soil respread), third stage (vegetation establishment), and fourth stage (demonstration of revegetation success) for the 92.3-acre tract.

Notice of the final bond release application was published in the official county newspaper, the McLean County Independent and in the Bismarck Tribune for four consecutive weeks, on September 2nd, 9th, 16th, and 23rd, 2021. No objections or concerns were received regarding this bond release application.

Falkirk did not request any reduction in the bond amount for Bond Release No. 3 to NAFK-8405 since this area is currently covered by a worst-case reclamation condition that still exists at the Falkirk Mine. This permit is part of a consolidated bond area that includes other permits at the Falkirk Mine.

If approved, the bond release will become effective May 13, 2022, unless a formal hearing is requested.

Attached are the motion and award form for consideration at the April 13, 2022 Commission meeting.

Final Bond Release No. 3 to Permit NAFK-8405 in Sections 23 and 24, T146N, R82W

