

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Falkirk Mining Company
Revision 42, Permit NAFK-8405
Application

Case No. RC-22-144

REVISION OF PERMIT TO ENGAGE IN SURFACE COAL
MINING AND RECLAMATION OPERATIONS

June 6, 2023

Based on the application for **Revision No. 42 to Permit Number NAFK-8405** submitted by Falkirk Mining Company for the Falkirk Mine on March 4, 2022, and as revised through April 14, 2023, and all information and documentation contained therein, the North Dakota Public Service Commission (Commission) finds that the application meets all applicable requirements of Chapter 38-14.1 of the North Dakota Century Code (NDCC) and Article 69-05.2 of the North Dakota Administrative Code (NDAC). On the basis of the information set forth in the application or from that otherwise available and known by the applicant, the Commission finds that:

Finding No. 1. The permit revision application is accurate and complete and complies with the requirements of NDCC Chapter 38-14.1 and NDAC Article 69-05.2 [NDCC 38-14.1-21(3)(a)].

Revision No. 42 adds 3,359.7 acres in all or portions of Sections 1, 2, 3, and 5 of T146N, R82W and Sections 33, 34, 35, and 36 of T147N, R82W, McLean County to Permit NAFK-8405, revises mining and reclamation plans, and updates nearly all other sections of the permit with information for the added area. With the added acreage, Permit No. NAFK-8405 will total 13,150 acres. The surface acreage being added to the permit with Revision 42 is private and state owned. The acreage being added to the permit is a northern extension of the current permit boundary that is located on the north side of State Highway 200 and approximately two miles northeast of Underwood, North Dakota. Coal removal will occur from portions of the added acreage and other areas will be used for soil stockpiles, sedimentation ponds, pit water ponds, haul roads, and other associated disturbances.

The applicant verified that all information included in the application is true and correct to the best of their knowledge. Commission staff conducted completeness and technical reviews to ensure that the required information was provided, and mining and reclamation plans meet all applicable requirements. The Reclamation Division sent completeness and technical review letters to the applicant on May 5, 2022, October 4, 2022, December 20, 2022, and January 20, 2023. Responses to each letter were reviewed and changes to the application were made to address the concerns that were noted. The Commission concludes that this significant revision application is now accurate and complete. The applicant published the required notices in newspapers and the Commission sent notices to all surface owners of the lands being added to the permit area and to numerous local, state, and federal agencies. Advisory committee members also reviewed relevant portions

of the application and comments were received from several agencies. No objections or requests for an informal conference were received on this application.

Revision No. 42 to Permit NAFK-8405 adds federally owned coal in the NE¼ of Section 2 and the NE¼ of Section 3 of T146N, R82W. The surface over the federal coal is state and private ownership. Revision 42 does not include plans to mine the Federal coal tracts. Falkirk's current mining plans indicate sediment ponds are to be constructed on portions of the federal coal.

Finding No. 2. The applicant has demonstrated that reclamation as required by NDCC Chapter 38-14.1 and NDAC Article 69-05.2 can be accomplished under the reclamation plan contained in the revised permit application [NDCC 38-14.1-21(3)(b)].

Revision No. 42 adds 3,359.7 acres to the existing permit and provides detailed mining and reclamation plans for the entire permit, and it updates other sections of the permit accordingly. Coal removal will take place from portions of the area being added to the permit and other areas will be used for support activities including soil and overburden stockpiles, water management structures, haulroads, and other associated disturbances. Reclamation of disturbed areas will be carried out using reclamation procedures that have been successful in the past and satisfy the requirements of the North Dakota laws and rules. The proposed postmining topography meets the grading requirements and the applicant has demonstrated that sufficient soil materials are available to meet the soil redistribution requirements of NDAC 69-05.2-15 and the revegetation requirements of NDAC 69-05.2-22.

The reclaimed lands will be capable of supporting the premine uses, or higher or better uses, than existed prior to mining. The predominant pre-mining land use in the permit area is agricultural (including cropland and hayland), native grassland, industrial/commercial, residential, woodlands, developed water resources, wetlands, roads, and fish and wildlife habitat. The predominant pre-mining land use in the Revision No. 42 addition area is cropland, hayland, native grassland, county roads and trails, shelterbelt, temporary and seasonal wetlands, and residential/farmstead. The permit area was previously zoned for agricultural use by McLean County. Falkirk has obtained a conditional use permit from the McLean County Commission for coal mining and associated disturbances. The postmining land uses will be similar to the premine conditions.

Of the approximately 13,150 total acres in Permit NAFK-8405, the applicant intends to remove coal from approximately 7,000 acres over the life of the permit and much of the remaining acreage will be disturbed by haulroads, overburden and soil stockpiles, sedimentation ponds, and other associated disturbance. Of the 3,359.7 acres being added to the permit with Revision 42, approximately 157 acres will be mined with portions of the remaining areas being used for associated disturbances. The coal removal area presently approved is limited to what will be mined in this permit term that ends April 15, 2026. The federal coal within the permit addition area is currently not proposed to be mined. Reclamation of the disturbed acreage will follow normal reclamation procedures and the practices that the applicant utilizes to reclaim disturbed acreage satisfies the requirements of the North Dakota Program. The applicant's reclamation practices have proven effective in the past.

With regard to the reclamation schedule, Falkirk has demonstrated the need for a variance from the requirement to rough grade the area within 180-days of coal removal and the four spoil peak requirements of NDAC 69-05.2-21-01 for an insignificant portion of the Revision 42 addition area. The variance request has been justified and the Commission approved the

variance as allowed by NDAC 69-05.2-21-01(2) and NDCC 38-14.1.1-24(14). Prior to this Revision other variances have been justified and approved by the Commission as allowed by NDAC 69-05.2-21-01(2) and NDCC 38-14.1.1-24(14).

Six (6) standard conditions and fifteen (15) special conditions were attached to the original permit approval and subsequent revisions. All six of the standard conditions and two special conditions remain in effect. A special condition will be added for Revision 42.

Finding No. 3. Based on the assessment of the probable cumulative impact of all anticipated mining in the area, the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area [NDCC 38-14.1-21(3)(c)].

An assessment of the probable cumulative hydrologic impact of all anticipated mining in the area has been made as required by NDCC 38-14.1-14(1)(o). The Commission finds that the proposed operation has been designed to maintain the quantity, quality, and hydrologic regime of surface and ground water systems in the area. The cumulative effects of all existing and proposed mining operations should not damage the hydrologic balance and water availability within or adjacent to the permit area. The original cumulative hydrologic impact assessment (CHIA) for Permit NAFK-8405 was completed in February 1986 and significant updates to the CHIA were incorporated into the document in August 2007 with approval of Revision No. 23 to the permit and October 2018 with the approval of Revision No. 38. Additional updates to the CHIA were provided for small addition areas to the permit and other significant revisions. The CHIA was again updated in April 2023 to reflect the addition of 3,359.7 acres being added to the permit with Revision No. 42 and is on file with the Reclamation Division. The acreage added is contiguous to and directly north of the current mining operations in Permit NAFK-8405 at Falkirk Mine.

Finding No. 4. Lands being added to the permit area are not within an area designated unsuitable for surface coal mining operations, nor within areas under study or administrative proceedings under a petition to have an area designated as unsuitable for surface coal mining operations [NDCC 38-14.1-21(3)(d)].

None of the land being added to the permit area has been designated unsuitable for surface coal mining operations pursuant to NDCC 38-14.1-05, nor are they within an area under study or administrative proceedings under a petition to have an area designated as unsuitable for surface coal mining operations.

Finding No. 5. The proposed mining operation will not interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated or materially damage the quantity or quality of water in surface or underground water systems that supply these alluvial valley floors [NDCC 38-14.1-21(3)(e)].

Based on an examination of the geologic and geomorphic characteristics, soils, vegetation, landuse, irrigation potential, and the water quality and quantity of streams occurring within and adjacent to the lands being added to the permit area, it has been determined that no alluvial valley floors exist within or adjacent to this area.

Finding No. 6. In cases where the mineral estate has been severed from the surface estate, the applicant complied with the requirements of NDCC 38-18 [NDCC 38-14.1-21(3)(f)].

For the area affected by Revision No. 42 to Permit NAFK-8405, the applicant included leases and other documents in the permit application demonstrating compliance with the North Dakota Surface Owners Protection Act, NDCC 38-18. This documentation included the initial notice that was given to all surface owners within the permit area prior to issuance of the permit and subsequent notices to affected surface owners for changes proposed with permit revisions including Revision No. 42.

Finding No. 7. Lands being added to the permit area are not within areas subject to the prohibitions or limitations of NDCC 38-14.1-07 unless such areas meet the application review procedures of NDAC 69-05.2-04-01[NDAC 69-05.2-10-03(6)(a)].

Lands being added to the permit area are:

- a. Not within the boundaries of units of the North Dakota Park System, the National Park System, the National Wildlife Refuge Systems, the National System of Trails, the National Wilderness Preservation System, the National Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act, and national recreation areas.
- b. Not federal lands within the boundaries of any national forest.
- c. Not within 300 feet of any publicly owned park or places included in the State Historic Sites Registry or the National Register of Historic Places. Permit-wide, several cultural resource surveys and inventories of the NAFK-8405 permit area were completed between the mid-1970s and 2022. A Class III cultural resource survey of all the lands being added with the Revision No. 42 Addition Area was surveyed by Ethnoscience in 2020 and investigated further in 2021. There were 10 historical sites and 13 isolated finds identified in the addition area. State Historical Preservation Officer (SHPO) correspondence dated July 10, 2020 regarding the prehistoric archeologic site requested additional investigation and further documentation. After further investigation, SHPO correspondence finds the report acceptable and concurred on all but two sites. Further testing on the two sites were requested as they were determined unevaluated. Also, four sites were determined to be avoided or evaluated. All of these sites that need to be avoided or evaluated are outside mining disturbance and will not be affected with this permit revision.

The proposed surface coal mining operations will not adversely affect any significant historic, archaeological, or paleontological sites. Correspondence received to date from the North Dakota SHPO regarding cultural resource sites in Permit NAFK-8405 are located in the permit. Falkirk has committed to testing and mitigating, if necessary, any previously unrecorded archeological, cultural, or historical materials that may be discovered as a result of mining related activities.

- d. Not within one hundred feet of the outside right-of-way line of any public road. Several public roads, section line roads, and trails are located within the permit area and around the perimeter of the Revision No. 42 Addition Area. However, McLean County has approved several requests made by Falkirk to close a number of public roads and/or granted approval to operate within one hundred feet of the outside right-of-way of county and section line roads within the vicinity of active mining operations. Falkirk has included a list of the county approvals and a schedule of section line closings and a map showing the road closings in Permit NAFK-8405 as updated with Revision No. 42. McLean County's approval processes include public notices with the opportunity for public hearing and written findings that the interests of the public and affected landowners will

be protected. The county approval processes meet the requirements of NDAC 69-05.2-04-01.3. NDAC 69-05.2-04-01.3 requires that copies of the road authority's approval documents, including the written findings, be provided to the Commission. Special Condition No. 1 to Revision No. 22 of Permit NAFK-8405 requires Falkirk to provide these documents to the Commission within thirty days from the road authority's approval date. Permit NAFK-8405 includes plans that show the section line rights-of-way that will be closed in the future to accommodate the mining activities that are planned within the permit and with the Revision No. 42 changes.

- e. Not within three hundred feet of any public building, school, church, community, or institutional building. The Revision No. 42 area contains or is within five hundred feet of several occupied dwellings; however, the applicant has committed not to conduct any mining activities within five hundred feet of these dwellings unless approved by the owner of the dwelling. Coal removal within other areas of the permit revision area will come within five hundred feet of occupied farm buildings; however, Falkirk Mine has purchased the property and surface rights and plans to remove the farm buildings prior to mining.
- f. Not within one hundred feet of any cemeteries as none exist within or adjacent to the permit area. Therefore, the applicant will not conduct any mining activities within one hundred feet of any cemeteries in accordance with NDCC 38-14.1-07.

Finding No. 8. With respect to prime farmland, the post-mining land use of the reclaimed prime farmland will be cropland, the reclamation plan was reviewed by the Natural Resources Conservation Service and their suggestions were considered, and operations will be conducted in compliance with NDAC 69-05.2-26 and NDCC 38-14.1. The applicant has the technological capability to restore the productivity on reclaimed prime farmlands [NDAC 69-05.2-10-03(6)(c) and NDCC 38-14.1-21(6)].

The applicant has included a prime farmland reclamation plan that satisfies the requirements of NDAC Article 69-05.2-09-15 and the performance standards of NDAC Article 69-05.2-26. The reclamation methods that will be used by the applicant have been proven to be successful in the past; therefore, the Commission finds that the applicant has the technological capability to restore the productivity of reclaimed land to a level that is equal to or greater than nonmined prime farmland in the surrounding area under equivalent management practices. Each landowner in the permit will receive the same acreage of reclaimed prime farmland as was present prior to mining and the post mine land use of the reclaimed prime farmland will be cropland.

Nominal acreages of prime farmland were identified in the permit area based on the McLean County Soil Survey, but an additional 38.7 acres of prime farmland will be added to the permit by Revision 42. Mining is planned to occur on less than half of the additional prime farmland acreage. Prime farmland performance standards include only those areas that have been historically used for cropland and does not include areas of native grassland, shelterbelts, and farmsteads. Topsoil from prime farmland areas will be removed, stockpiled, and respread separately from the non-prime topsoil. Prime farmland subsoil will be mixed with non-prime subsoil. All reclaimed prime farmlands will be subject to the appropriate revegetation success standards. The Natural Resources Conservation Service has reviewed the prime farmland reclamation plan and determined that no deficiencies were evident.

Finding No. 9. The operations will not affect the continued existence of threatened or endangered species or result in the destruction of adverse modification of their critical habitats [NDAC 69-05.2-10-03(6)(d)].

Revision No. 42 proposes to add 3,359.7 acres in all or portions of Sections 1, 2, 3, and 5 of T146N, R82W and Sections 33, 34, 35, and 36 of T147N, R82W, McLean County to Permit NAFK-8405. This revision includes plans to mine coal in the N½ of Section 1 of T146N, R82W. Falkirk is in the process of securing the coal leases and authorization to mine federal coal in the NW¼ of Section 2 and the E½ of Section 3 of T146N, R82W. Revision 42 does not include plans to mine the federal coal tracts. Current mining plans indicate sediment ponds are to be constructed on portions of the federal coal but mining cannot occur until coal leases have been secured and mine plan approval is authorized by the Secretary of Interior. The surface acreage being added to the permit with Revision 42 is private and state owned. The Bureau of Land Management (BLM) and Office of Surface Mining (OSM) completed an Environmental Assessment in May of 2021 to lease the federal coal in Sections 2 and 3 and other tracts at the Falkirk Mine for compliance with the National Environmental Policy Act (NEPA). The NEPA analysis concluded that there would be no effect to the Dakota skipper, Rufa Red Knot, Piping Plover, or the Piping Plover designated critical habitat and that leasing the federal coal may affect, but not likely to adversely affect the Northern Long-Eared Bat, whooping crane, and pallid sturgeon.

The acreage being added to the permit with Revision No. 42 includes 2,413.9 acres of cropland, 213.9 acres of hayland, 62.9 acres of conservation reserve program (CRP) cropland, 311.1 acres of native grassland, 106.3 acres of roads, 24.6 acres of shelterbelt, 182.4 acres of wetlands, 1.3 acres of woodlands, 0.6 acres of industrial land, and 43.0 acres of farm facilities. The wetland acreage includes 3 semi-permanent wetlands (47.8 acres), 40 seasonal wetlands (78.4 acres), and 197 smaller temporary wetlands (56.2 acres) that may be cultivated since most are in cropland fields. The native grassland is located primarily in the S½ of Section 36, T147N, R82W adjacent to a farmstead and most of this area will not be affected by mining activities. The Reclamation Division requires that all disturbed wetlands be replaced on an acre-for-acre basis and Falkirk usually attempts to replace the pre-mining acreage of shelterbelt and native grassland acreage.

The USFWS IPaC, Information for Planning and Consultation, website identifies four threatened or endangered species potentially occurring in the Revision No. 42 addition area. These species are the Piping Plover, Rufu Red Knot, Whooping Crane, and Dakota Skipper. The IPaC site does not identify any species proposed for listing in the revision addition area but the Monarch Butterfly is a Candidate species. McLean County contains designated critical habitat for the Piping Plover, but it is not identified in the Revision 42 addition area. Likewise, IPaC identifies two additional species, the Northern Long Eared Bat and Pallid sturgeon, in McLean County but neither of these species are potentially present in the Revision No. 42 addition area according to IPaC, February 15, 2023.

The following is the Reclamation Divisions' finding regarding surface coal mining activities in the Revision No. 42 addition area and its effects on threatened, endangered, and proposed species and proposed and designated critical habitat.

Piping Plover

The Piping Plover is a migratory bird that may be present in North Dakota from mid-April through August. Suitable habitat for the Northern Great Plains population is generally characterized as sparsely vegetated shorelines usually associated with alkaline wetlands, sandbars, and shorelines associated with major river systems. In McLean County North Dakota, this species can be found along the Missouri River and Lake Sakakawea, which are areas designated as critical habitat. The designated critical habitat at Lake Audubon and near Turtle Lake is only a few miles from the area being added to the permit with Revision No. 42. There are no wetlands with barren shorelines in or adjacent to the Revision No. 42 addition area. Wetland classification and sampling data in the permit indicates that the semi-permanent wetlands are palustrine emergent freshwater basins with water chemistry in the slight to moderately brackish range. It is conceivable that Piping Plover habitat could be created by activities associated with mining and reclamation. During years when water in Lake Sakakawea was high, this species was found nesting on barren graded overburden at the Falkirk Mine. Nest sites are protected from mining activities when found and the Reclamation Division and USFWS are notified. The Reclamation Division concludes that the Revision No. 42, and the adjacent areas do not contain designated, suitable, or potential habitat for this species, and the proposed mining and reclamation activities will have “**no effect**” on the continued existence of the Piping Plover and “**no effect**” on Piping Plover designated critical habitat.

Rufa Red Knot

The Rufa Red Knot is a robin-sized shorebird that migrates from south to north every spring and repeats the trip in reverse every fall from far-flung sites throughout the Western Hemisphere. This species is one of the longest-distance migrants in the animal kingdom. Rufa Red Knots begin their life cycle in the Arctic tundra and undertake their first migration on their own. Migration and wintering habitats include both high-energy ocean or bay front areas as well as tidal flats in more sheltered bays and lagoons. Available information suggests that Rufa Red Knots use inland saline lakes as stopover habitat in the Northern Great Plains. The species range map includes portions of central North Dakota. In July of 2021, the USFWS proposed to designate critical habitat for the Rufa Red Knot in areas outside of North Dakota. The Revision No. 42 addition area does not contain habitat for the Rufa Red Knot, and the Commission finds that the proposed mining and reclamation activities will have “**no effect**” on the continued existence of Rufa Red Knot species.

Dakota Skipper

The Dakota skipper is a small butterfly that requires high quality mixed or tallgrass prairie communities. The two types of prairies provide suitable habitat for this species. A moist lowland bluestem prairie habitat type with wood lily, harebell, and smooth camas and a relatively dry upland prairie habitat type found on ridges and hillsides that are dominated with bluestem grasses, needlegrasses and desirable native forbs, such as purple coneflower. Although there is no designated critical habitat for Dakota skippers in McLean County, McLean County is included on the list of counties where this species could exist in North Dakota according to the USFWS. The 311.1 acres of native grassland being added to the permit with Revision No. 42 are in the southwest corner of the NE¼ of Section 33 (14.5 acres) and the S½ of Section 36, T147N, R82W (296.5 acres). The grassland in Section 33 is isolated idle land that has not been managed with haying or grazing in recent

years. Smooth brome grass and crested wheatgrass have displaced the native grass species on a significant portion of this tract. The loamy ecological site was sampled in 2019 and these invasive grass species comprised 91 percent of the composition by weight. The thin sands ecological site on this tract, 3.8 acres, supports needle and thread grass, little bluestem, and native forbs but given the size and isolated nature of this tract, it is not considered suitable Dakota skipper habitat. The native grassland in the S½ of Section 36 is surrounded by cropland and hayland. The tract is dominated by loamy (131.4 acres), thin loamy (56.8 acres), and loamy overflow (51.6 acres) ecological sites. This tract is owned by the ND Department of Trust Lands and is managed with cell grazing. Production sampling data from 2019 indicates that this native grassland is in fair or poor ecological condition. Kentucky bluegrass comprised approximately 65 percent of the species composition by weight on the loamy and loamy overflow ecological sites and over 43 percent of the yield on the thin loamy site. Little bluestem was not listed as present in the productivity sampling data. In 2019 the Falkirk Mine hired KDK Consulting to assess the native grassland in this revision addition area, and other permitted lands at the Falkirk Mine, to determine if any areas contained habitat capable of supporting the Dakota skipper. The results of the assessment were provided in the 2018-2019 Wildlife Monitoring Report for the Falkirk Mine. The report concluded that the native grassland in the S½ of Section 36, T147N, R82W did not contain plant communities suitable for the Dakota skipper. The only native grassland bordering the Revision No. 42 addition area is in the SW¼ of Section 28, T147N, R82W. The Reclamation Division concludes that mining and reclamation activities in the Revision No. 42 addition area will have “**no effect**” on the continued existence of the Dakota skipper.

Whooping Crane

The permit area lies within the principal migration route of the whooping crane and the revision addition area is only a few miles from Audubon National Wildlife Refuge. The Audubon National Wildlife Refuge is reportedly occasionally used by migrating whooping cranes and areas around the refuge could potentially be used as stop-over and foraging purposes. The Revision 42 addition area and the adjacent area contains semi-permanent, seasonal wetlands, and temporary wetlands that could potentially be used by migrating whooping cranes but the likelihood of whooping cranes occurring in the area is low. Whooping cranes have not been observed flying over or utilizing lands near the Falkirk Mine. All wetlands affected by mining activities are replaced on an acre-for-acre basis and they are designed to function as they did prior to mining. It has been well documented that whooping cranes avoid human disturbances. The city of Underwood and Highway 83 are located west of the permit area and Highway 200 passes through Permit NAFK-8405. Reclaimed and undisturbed lands in the permit and adjacent areas are used intensively for agricultural purposes and active mining operations are occurring south of the Revision No. 42 addition area. The Reclamation Division conservatively concludes the mining and reclamation activities in the Revision No. 42 addition area **may affect, but not likely to adversely affect** the whooping crane.

Drew Becker, USFWS North Dakota Field Office Supervisor, concurred with this finding January 5, 2023.

Finding No. 10. The applicant has submitted proof that all reclamation fees required by 30 CFR subchapter R [NDAC 69-05.2-10-03(6)(e)].

Falkirk has paid all reclamation fees required by 30 CFR subchapter R. Records maintained by the Office of Surface Mining's Applicant Violator System show that all fees have been paid.

Finding No. 11. The applicant has satisfied requirements for approving cropland as a post-mining land use [NDAC 69-05.2-10-03(6)(f)].

The applicant has satisfied the requirements for approval of a cropland postmining land use under NDAC 69-05.2-22-01. Areas reclaimed to cropland will either be seeded directly to crops commonly grown in the area, a tame grass/legume pre-cropland mixture or a cocktail mixture of species designed to improve soil health. The postmining topography and soils are suitable for cropland in the areas that will be cropped.

Finding No. 12. All existing structures that will be used to support mining activities within the permit area comply with the application requirements of NDCC 38-14.1-24 and NDAC Article 69-05.2 [NDAC 69-05.2-10-04].

No existing structures within the revision area will be used to support mining activities. However, some haul roads, sedimentation ponds, and other facilities that are presently located within Permit NAFK-8405 will support mining in the permit revision area. These previously permitted structures have been found to meet the applicable design and performance standards of NDCC 38-14.1-24 and NDAC 69-05.2.

Finding No. 13. No drill holes, boreholes or wells will be retained for other uses [NDAC 69-05.2-14-03].

The applicant has not proposed to retain any drill hole, borehole, or well for other uses.

Finding No. 14. No spoil in the permit area is known to cause toxic mine drainage [NDAC 69-05.2-16-11].

The chemical characteristics of the overburden materials in the areas being added to the permit are such that they do not produce toxic mine drainage. The analysis of overburden samples included in the permit application do not reveal any substances that would cause any chemical reactions or physical effects that are likely to kill, injure, or impair biota commonly present in the area.

Finding No. 15. The applicant will not conduct mining activities within or near intermittent or perennial stream channels within the Revision No. 42 application area. [NDAC 69-05.2-16-20].

There are no intermittent or perennial stream channels within the revision area. Much of the drainage within the revision area is essentially an internal/closed basin system composed of several dozen temporary and seasonal wetlands. However, within the Revision No. 42 addition area, seven sediment ponds are scheduled for construction along the north and east boundaries of the permit addition area.

Finding No. 16. The applicant does not propose to use any experimental practices in the permit area [NDAC 69-05.2-27-02].

There are no plans included in the revision application to use any experimental practices that may be allowed under NDAC 69-05.2-27-02.

Finding No. 17. The applicant does not control and has not controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations [NDAC 69-05.2-10-03(4)].

Commission records, and those in the Office of Surface Mining's Applicant Violator System (AVS), do not show that the applicant controls and has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of NDCC 38-14.1 or of other states' laws which are based on P.L. 95-87 (the Federal Surface Mining Control and Reclamation Act), of such nature, duration, and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of these laws.

Finding No. 18. Neither the applicant, nor any affiliated companies, have unabated violations or unpaid civil penalties [NDAC 69-05.2-10-03(1)].

Commission records, and those in the Office of Surface Mining's Applicant Violator System, do not indicate that the applicant, nor any affiliated companies, have any unpaid civil penalties or unabated violations of NDCC 38-14.1 or any other federal or state laws, rules, or regulations pertaining to air or water environmental protection. Staff at the North Dakota Department of Environmental Quality also verified that the applicant has no unabated violations with regard to air and water environmental protection standards.

Finding No. 19. Performance bonds totaling \$114,823,633 are sufficient for the proposed surface coal mining operations in the consolidated area that includes this permit [NDAC 69-05.2-12-07].

The Commission has determined, pursuant to NDAC 69-05.2-12-07, that the existing collateral bonds totaling \$114,823,633 is sufficient for the proposed operations in Permit NAFK-8405 and others at the Falkirk Mine. The worst-case reclamation cost estimate was required to be updated as a part of Revision No. 42. It should be noted that, if the annual update of variable costs in the Commission's policy for calculating reclamation cost estimates for setting bond amounts results in a significant increase in the existing cost estimate, permittees are required to update their reclamation cost estimates and increase bond amounts accordingly.

Subject to the right of any person with an interest that is or may be adversely affected to request a formal hearing under NDCC 38-14.1-30, **Revision No. 42 to Permit Number NAFK-8405** is hereby granted to **Falkirk Mining Company** to engage in surface coal mining and reclamation operations, on the following described areas subject to the applicable requirements of the original permit and conditions, Chapter 38-14.1 of the North Dakota Century Code, and the rules promulgated there under. (Attached is a copy of the metes and bounds description of lands being added to the permit area (two areas) and a general location map of the permit area and the Revision No. 42 Addition Area.)

LOCATION

MINE	ADDRESS	ACRES	Sec.	Twp.	Range	County
Falkirk	Underwood, ND	3359.7	1, 2, 3 & 5 33, 34, 35 & 36	146N 147N	82W 82W	McLean Mclean

3359.7 acres – Total Area Added

PUBLIC SERVICE COMMISSION



Sheri Haugen-Hoffart
Commissioner



Randy Christmann
Chair



Julie Fedorchak
Commissioner

Falkirk Mine\Permits\NAFK - 8405\Revisions\No. 42\Rev42_apprvl_award_findings_6-6-23

Revision 42 to Permit NAFK-8405 – Metes and Bounds Description

A tract of land situated in Sections 1, 2, 3 & 5, T.146N, R.82W and Sections 33, 34, 35 & 36, T.147N, R.82W of the 5th P.M, McLean County, North Dakota, being more particularly described as follows (two areas):

An area of land located in Section 5, T146N, R82W of the Fifth Principal Meridian, McLean County, North Dakota having the bearings and distances based on the North Dakota State Plane Coordinate System, North Zone, 1927 N.A.D.

Described as follows:

Beginning at the northwest corner of Section 5, T146N, R82W;
thence South $89^{\circ}35'27''$ East a distance of 2,645.89 feet to the north $\frac{1}{4}$ corner of said Section;
thence South $89^{\circ}35'13''$ East a distance of 2,645.97 feet to the northeast corner of said Section;
thence South $00^{\circ}28'49''$ West a distance of 2,632.19 feet to the east $\frac{1}{4}$ corner of said Section;
thence North $89^{\circ}47'59''$ West a distance of 2,646.48 feet to the center $\frac{1}{4}$ corner of said Section;
thence South $00^{\circ}29'27''$ West a distance of 2,633.01 feet to the south $\frac{1}{4}$ corner of said Section;
thence North $89^{\circ}29'05''$ West a distance of 1,989.57 feet on the south line of said Section to the easterly Right-Of-Way line of U.S. Highway 83; said point being 158 feet easterly of said U.S. Highway 83 alignment;
thence North $27^{\circ}34'37''$ West a distance of 1,396.73 feet on said easterly Right-Of-Way line to the west line of said Section;
thence North $00^{\circ}30'09''$ East a distance of 1,386.28 feet to the west $\frac{1}{4}$ corner of said Section;
thence North $00^{\circ}30'12''$ East a distance of 2,651.66 feet to the northwest corner of said Section being also the Point of Beginning.

Said area of land contains 471.23 acres.

An area of land located in T146N, R82W and T147N, R82W of the Fifth Principal Meridian, McLean County, North Dakota having the bearings and distances based on the North Dakota State Plane Coordinate System, North Zone, 1927 N.A.D. Described as follows:

Beginning at the East $\frac{1}{4}$ corner of Section 1, T146N, R82W;
thence North $89^{\circ}24'01''$ West a distance of 5,275.95 feet to the west $\frac{1}{4}$ corner of said Section;
thence North $89^{\circ}47'23''$ West a distance of 5,299.03 feet to the west $\frac{1}{4}$ corner of Section 2, T146N, R82W;
thence North $89^{\circ}26'29''$ West a distance of 5,298.55 feet to the west $\frac{1}{4}$ corner of Section 3, T146N, R82W;
thence North $00^{\circ}30'48''$ East a distance of 2,632.61 feet to southeast corner of Section 33, T147N, R82W;
thence North $89^{\circ}35'29''$ West a distance of 2,646.00 feet to the south $\frac{1}{4}$ corner of said Section;
thence North $00^{\circ}24'05''$ East a distance of 5,288.90 feet to the north $\frac{1}{4}$ corner of said Section;
thence South $89^{\circ}34'18''$ East a distance of 2,650.89 feet to the northeast corner of said Section,
thence South $00^{\circ}27'17''$ West a distance of 2,643.96 feet to the east $\frac{1}{4}$ corner of said Section;
thence South $89^{\circ}33'30''$ East a distance of 5,291.38 feet to the east $\frac{1}{4}$ corner of Section 34, T147N, R82W;
thence North $00^{\circ}10'51''$ East a distance of 2,640.82 feet to the northeast corner of said Section,
thence South $89^{\circ}39'41''$ East a distance of 2,657.16 feet to the north $\frac{1}{4}$ corner of Section 35, T147N, R82W;
thence South $89^{\circ}39'32''$ East a distance of 2,657.18 feet to the northeast corner of said Section;
thence South $89^{\circ}33'21''$ East a distance of 2,637.36 feet to the north $\frac{1}{4}$ corner of Section 36, T147N, R82W;
thence South $89^{\circ}33'19''$ East a distance of 2,637.46 feet to the northeast corner of said Section;
thence South $00^{\circ}19'29''$ West a distance of 2,643.64 feet to the east $\frac{1}{4}$ corner of said Section;
thence South $00^{\circ}19'35''$ West a distance of 2,643.57 feet to the southeast corner of said Section;
thence South $00^{\circ}39'03''$ West a distance of 2,643.42 feet to the east $\frac{1}{4}$ corner of Section 1, T146N, R82W being also the Point of Beginning.

Said area of land contains 2,888.50 acres.

General location map of Permit NAFK-8405
Revision No. 42 area is labeled as "Addition Area" on the map

