

June 22, 2023

Zanna Brinkman
ND Public Service Commission
600 East Boulevard, Dept 408
Bismarck, ND 58505-0480

Dear Ms. Brinkman:

This is in response to your request for a review of the environmental impacts associated with the Falkirk Mining Company's – Revision 35 to Surface Coal Mining Permit No. NAFK-9503. The proposed project has been reviewed by Department of Water Resources, and the following comments are provided:

- There are no FEMA National Flood Insurance Program (NFIP) floodplains identified or mapped where the proposed project is to take place. No permit relative to the NFIP are likely required based on the current effective Flood Insurance Rate Map and State minimum standards. However, flood risk has been identified through the North Dakota Risk Assessment Mapservice and Base Level Engineering (BLE) (ndram.dwr.nd.gov). In the absence of FEMA NFIP data, BLE is often considered best available data and is recommended to be considered in the design process. The State of North Dakota has no formal NFIP permitting authority as all NFIP permitting decisions are considered by impacted NFIP participating communities, the community with zoning authority for the area in question. Please work directly with the local floodplain administrators of the zoning authorities impacted.
- The Missouri River is considered navigable and therefore sovereign to the state of North Dakota. Any project which falls below, under or over the navigable water bodies in North Dakota require authorization from the Department of Water Resources. If there is any impact to the Ordinary High-Water Mark, a permit will be required. The application process requires the completion of the attached permit application, submittal of a map, and simple diagram of what the project may involve. There is no fee for the permit and we recommend about 90 days for processing. The permit lasts for the life of the project including repairs within the original footprint. If you have any questions, please reach out to Tia Dolechek at 701-328-4988, tdolechek@nd.gov or Jerry Heiser at 701-328-4935 or email gheiser@nd.gov.

Thank you for the opportunity to provide review comments. Should you have further questions, please contact me at 701-328-4970 or stevebest@nd.gov.

Sincerely,



Steven Best
Planner III

SB:dm/1570

3 RC-23-217 Filed 06/22/2023 Pages: 6
Response to Advisory Request Letter
North Dakota Department of Water Resources (DWR)
Steven Best



AUTHORIZATION TO CONSTRUCT A PROJECT WITHIN SOVEREIGN LANDS OF NORTH DAKOTA

OFFICE OF THE STATE ENGINEER
REGULATORY DIVISION
SFN 61408 (10/2019)

No. S

(OSE USE ONLY)

Project Number **1625**

This application must be submitted to the North Dakota Office of the State Engineer by mail to 900 E Boulevard Ave, Dept. 770, Bismarck, ND 58505-0850, by fax to (701) 328-3696, or by email to sovereignlands@nd.gov. To be complete, this application must include the additional information listed in the instructions on page 3.

If you need any assistance, please contact the Regulatory Division at (701) 328-2752.

OFFICE OF THE STATE ENGINEER
USE ONLY

**** Additional Sheets May Be Attached If Necessary. ****

Project Will Be Located In Which Water Resource District?

LOCATION DESCRIPTION TO THE NEAREST 40-ACRE TRACT

¼	¼	Section	Township	Range
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Is This Application For Modification Of An Existing Project? <input type="checkbox"/> Yes <input type="checkbox"/> No	If So, What Year Was Project Constructed?
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By Whom?

Proposed Project Involves

<input type="checkbox"/> Bank Stabilization	<input type="checkbox"/> Pipeline Crossing	<input type="checkbox"/> Temporary Water Intake
<input type="checkbox"/> Boat Ramp	<input type="checkbox"/> Recreation	<input type="checkbox"/> Perennial Water Intake
<input type="checkbox"/> Bridge Construction	<input type="checkbox"/> Utility Line Crossing	<input type="checkbox"/> Permanent Water Intake Structure
<input type="checkbox"/> Fish And Wildlife	<input type="checkbox"/> Vegetation Control	<input type="checkbox"/> Dredge, Volume _____
<input type="checkbox"/> Geotechnical Work	<input type="checkbox"/> Water Outfall	<input type="checkbox"/> Fill, Volume _____
<input type="checkbox"/> Levee/Dike Or Dam	<input type="checkbox"/> Waste Lagoon	
<input type="checkbox"/> Other, Explain _____		

If Proposed Project Involves A Standard Dock (see Supplemental Measurements Sheet For Standard Docks)

Standard Dock Dimension Shape

A	B	C	D
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About Water Body

Water Body On Which Project Will Be Located

Purpose

Project Description

Contractor (if known)

Anticipated Construction Start Date	Completion Date
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APPLICANT'S CERTIFICATION

I, the undersigned, am applying for authorization as required under North Dakota Century Code (N.D.C.C.) ch. 61-33 from the Office of the State Engineer. I understand that I must comply with N.D.C.C. ch. 61-33 and North Dakota Administrative Code ch. 89-10-01, and that I must adhere to any conditions required by the State Engineer. I acknowledge that my project is accurately described and depicted in this application as I intend to construct it. My signature below acknowledges that I have read and agree to these statements.

PROJECT OWNER

Name of Project Owner			
Address	City	State	ZIP Code
Home Telephone Number	Cell Number		
Email Address			
Signature of Project Owner or Applicant			Date

IF DIFFERENT FROM PROJECT OWNER

Name of Applicant			
Address	City	State	ZIP Code
Home Telephone Number	Cell Number		
Email Address			
Signature of Project Owner or Applicant			Date

INSTRUCTIONS FOR COMPLETING AN AUTHORIZATION TO CONSTRUCT A PROJECT WITHIN SOVEREIGN LANDS OF NORTH DAKOTA UNDER NORTH DAKOTA ADMINISTRATIVE CODE § 89-10-01-04

A person seeking to construct a project within Sovereign Lands of North Dakota requires authorization from the State Engineer before construction or operation of the project. "Sovereign Lands" means those areas, including the beds and islands, lying within the ordinary high water mark of navigable lake and streams.¹ (N.D.C.C. § 61-33-01). The "ordinary high water mark" is that line on navigable waters below which the action of the water prevents the growth of vegetation, or to restrict its growth to predominantly wetland species.

To be complete, the application must include all information listed below:

1. A completed "Application to Construct a Project within Sovereign Lands of North Dakota" form.
2. A detailed map or drawing of the projects location on an aerial photo.
 - i. Size of map must be 8 ½ by 11 inches,
 - ii. Map shall have a north arrow and approximate scale, and
 - iii. Map shall indicate the proposed work on the drawing.
3. If applying for the installation of a standard dock in which the total length of the dock over the surface of the water does exceed twenty-five feet on a river and fifty feet on a lake, please include measurements requested on "Supplemental Measurements Sheet for Standard Docks".
4. If applying for the installation of a standard dock in which the total length of the dock over the surface of the water does not exceed twenty-five feet AND is located on the Missouri River between the Oliver and Morton County line and Lake Oahe wildlife management area, the project only requires registration with the State Engineer. Please complete the "Registration for Placement of a Dock Under 25 Feet-Long on Specified Waters" form (SFN 61441).
5. If applying for the installation or modification (including change in transported liquid) of a pipeline which transports crude oil, natural gas liquids, or any other hazardous liquid, as determined by the State Engineer, the Applicant must first conduct a scour analysis specific to the proposed crossing for project design purposes.²
6. If applying for the installation of riprap or other bank stabilizations, please include a cross sectional drawing of the proposed work which includes the existing and proposed grade and the present location of the water surface.

Further Sovereign Land Permit Guidance:

1. A permit would be required if any portion of the project would occur within, under, or over a navigable water of North Dakota.
2. A permit would be required if any portion of the project would occur below the ordinary high water mark.
3. The permit applicant is responsible for obtaining any other local, state, or federal permits or permissions that may be necessary prior to construction of a project on Sovereign Land.
4. There is no fee administered for a Sovereign Land Permit.
5. Please allow at least 90 days for Sovereign Land Permit processing.
6. Please notify the Office of the State Engineer of project completion at sovereignlands@nd.gov.
7. Unless specified, there is no expiration date on an obtained Sovereign Land Permit.

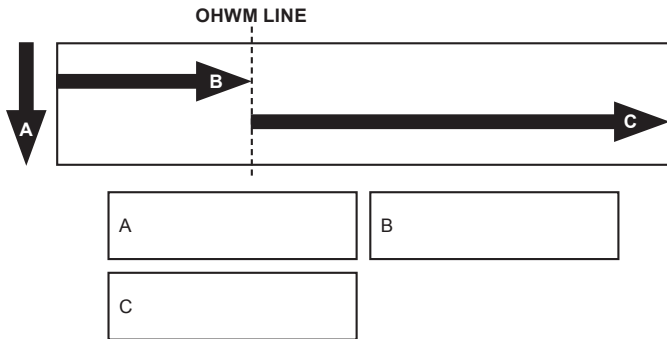
¹ North Dakota's Navigable Waters as of 2018: Missouri River, James River, Sheyenne River, Pembina River, Mouse River, Red River of the North, Bois De Sioux, Knife River, Heart River, Cannonball River, Yellowstone River, Devils Lake, Lake Metigoshe, Painted Woods Lake, Sweetwater Lake, Upper Des Lacs Lake, and Long Lake(Bottineau County). List subject to change.

² The minimum depth-of-burial for pipelines transporting crude oil, natural gas liquids, or any other hazardous liquid as determined by the state engineer must be total calculated scour plus four feet from the bed of the river to top-of-pipe for pipelines crossing the state's navigable rivers. (N.D.C.C. ch.61-63).

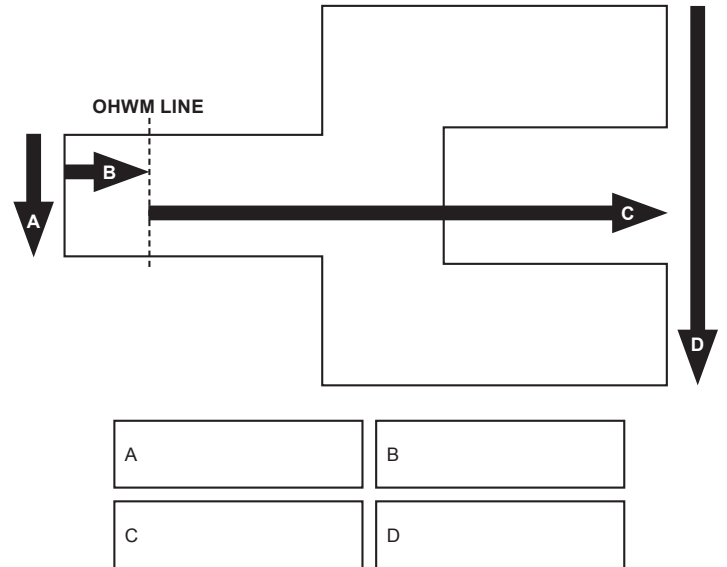
SUPPLEMENTAL MEASUREMENT SHEET FOR STANDARD DOCKS

OHWM = Ordinary High Water Mark

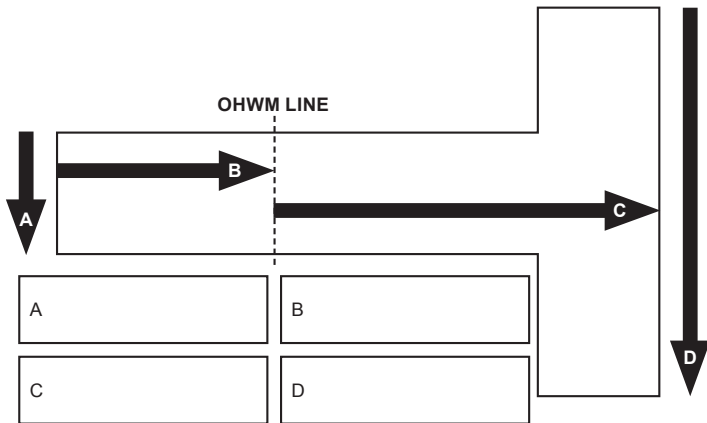
1. STRAIGHT DOCK DIMENSIONS (feet)



4. Y-SHAPE DOCK DIMENSIONS (feet)



2. T-SHAPE DOCK DIMENSIONS (feet)

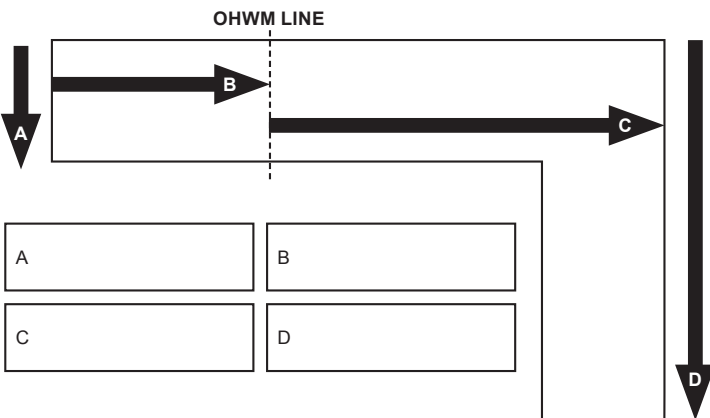


5. OTHER DOCK SIZE AND DIMENSIONS (feet)

DRAW IMAGE HERE ALONG WITH OHWM LINE

A	B
C	D

3. L-SHAPE DOCK DIMENSIONS (feet)



STANDARD DOCK CONDITIONS

The following standard conditions will be included on all docks requiring a sovereign land permit.

1. Total length of the dock over the surface of the water **does** exceed twenty-five feet on a river and fifty feet on a lake. Please include measurements requested on "Supplemental Measurement Sheet for Standard Docks";
2. The dock is owned and operated by the riparian owner or the riparian owner's lessee for the riparian owners or lessee's personal use;
3. The dock is used only for embarkation, debarkation, moorage of boats, water intakes, or recreation;
4. There is no unreasonable interference with navigation or access to an adjacent riparian land owner's property,
5. The dock is connected to a point above the ordinary high watermark by a boardwalk that does not exceed twenty-five (7.6 meters) in length, and is removed from below the ordinary high watermark each fall, and
6. Upon abandonment, the grantee restores the bank as closely as practicable to its original condition.