

PUBLIC SERVICE COMMISSION

Reclamation Division

Memorandum

TO: Commissioners Christmann, Haugen-Hoffart, and Kringstad
FROM: Jonathan Emmer, Monty Johnson, Jeff Roerick, and Warren Swenson
DATE: May 5, 2025
SUBJECT: Bond Release No. 6 to Surface Coal Mining Permit NAFK-9601 held by the Falkirk Mining Company, Case No. RC-24-346

Summary

On September 25, 2024, the Falkirk Mining Company (Falkirk) filed the application for Final Bond Release No. 6 to Surface Coal Mining Permit NAFK-9601, requesting release of all reclamation liabilities on 394.2 acres of land located in portions of the SE¼ of Section 30 and the S½ of Section 31, T146N, R81W in McLean County, North Dakota, at the Falkirk Mine (**Figure 1**). The bond release tracts contain approximately 276.9 acres of land that was affected by mining activities and 117.3 acres of land that was not disturbed by mining activities. The reclaimed lands are subject to our current reclamation law and rules and Falkirk has demonstrated that the reclaimed lands have met all applicable bond release performance standards. The Reclamation Division recommends approval of this bond release application based on the findings discussed below.

Discussion

The bond release area is entirely owned by Falkirk. The ND Hwy 200A right-of-way located on the east side of the bond release tract in Section 31 was not disturbed. The reclaimed mine area contains approximately 273.3 acres of cropland, one seasonal wetland consisting of 1.55 acres, four temporary wetlands totaling 0.76 acres, and 1.2 acres of section line trail. This bond release has been split up into two tracts, 6A and 6B. Tract 6A encompasses the bond release area in Section 30 and Tract 6B encompasses the bond release area in Section 31.

Tract 6A contains 93.9 acres of disturbed land. The reclaimed area contains 92.61 acres of cropland, 0.09 acres of temporary wetland, and 1.2 acres of section line trail. Coal removal occurred from 1999 to 2003. Backfilling, grading, SPGM respread, and initial seeding were completed in 2006. Partial bond release (first and second stage bond releases) was granted on 92.4 acres previously with partial Bond Release No. 2 in 2005 and partial Bond Release No. 3 in 2009. Falkirk is requesting third stage (vegetation establishment) and fourth stage (demonstration of revegetation success) bond release for 92.4 acres. Falkirk is requesting first stage (backfilling and

grading), second stage (soil respread), third stage (vegetation establishment), and fourth stage (demonstration of revegetation success) bond release for the remaining 1.5 acres in Tract 6A.

Tract 6B contains 183 acres of disturbed land. The reclaimed area contains 180.78 acres of cropland, 1.55 acres of seasonal wetland, and 0.67 acres of temporary wetlands. 117.3 acres of land were not disturbed by mining. Coal removal occurred from 1996 to 1998. Backfilling and grading were completed in 2006. SPGM respread and initial seeding was completed in 2007. Partial bond release (first and second stage bond releases) was granted on 183 acres previously with partial Bond Release No. 2 in 2005 and partial Bond Release No. 3 in 2009. Falkirk is requesting third stage (vegetation establishment) and fourth stage (demonstration of revegetation success) bond release for the 183 acres of disturbed land. The remaining 117.3 acres in Tract 6B were not disturbed by mining.

The reclaimed areas in Bond Release 6 to NAFK-9601 were soil probed to verify topsoil and subsoil respread thickness for partial Bond Release No. 2 and partial Bond Release No. 3 that were approved on January 26, 2005 and December 10, 2009, respectively.

Reclaimed Cropland

All reclaimed cropland in the bond release application is being managed with annually seeded crops. All reclaimed cropland was initially planted to a pre-crop grass seed mixture and managed as hayland prior to beginning annual crop production. Portions of the reclaimed cropland have been cropped since 2006, but all reclaimed cropland has been continuously cropped since 2016.

The revegetation performance standards for third and fourth stage bond release of cropland is simply yield or productivity. The cropland productivity or yield standard is developed from the pre-mine productivity values of the soils that existed prior to mining. The annual yield obtained from a control area or the annual county yield data published in *North Dakota Agricultural Statistics* (NDAS) is used to adjust the yield standard to account for annual climatic variability. The prime farmland standards do not apply to this bond release tract since there was no pre-mining prime farmland, thus only two years of yield data are needed to demonstrate success. The yield data used to demonstrate revegetation success must be obtained after year six of the 10-year revegetation responsibility period. Productivity data is summarized in the tables below.

Section 30 (Tract 6A)

Year	Crop	Reclaimed Yield (bu/acre)	Productivity Standard (bu/acre)	Achieved?
2017	Wheat	31.6	30.9	Yes
2021	Wheat	25.2	23.8	Yes

Section 31 (Tract 6B)

Year	Crop	Reclaimed Yield (bu/acre)	Productivity Standard (bu/acre)	Achieved?
2019	Weighted Average of Wheat and Soybeans	263.45	261.66	Yes
2023	Soybeans	50.0	39.7	Yes

Reclaimed Wetlands and Water Resources

Section 30 (Tract 6A) contains one reclaimed temporary wetland for approximately 0.09 acres, and Section 31 (Tract 6B) contains three reclaimed temporary wetlands for approximately 0.67 acres. The temporary wetlands may hold water in the early part of the growing season but have been cropped every year.

Reclaimed seasonal wetland SE31-1 located in the SE $\frac{1}{4}$ of Section 31 (Tract 6B) is approximately 1.55 acres. The bond release application contains three years of wetland data including aerial photography showing the size of wetland and vegetative zones. A completed list of vegetation established, and water quality analysis are included for the past three years. This wetland meets the performance standards for a reclaimed wetland habitat.

Falkirk completed a surface and ground water post-mine hydrologic assessment for this bond release request. No pre-mine water supplies were affected by mining related activities and the Reclamation Division concludes that there was no material damage to the hydrologic balance off-permit due to the mining and reclamation activities on these tracts. All monitoring wells in Permit NAFK-9601 have either been destroyed by mining or properly decommissioned prior to this bond release. The post-mining hydrologic assessment has been previously completed and approved as well for this permit area.

General Information

The formal bond release inspection was conducted on November 26, 2024. Participants of the bond release inspection included Reclamation Division staff, Falkirk Mining Company staff, and staff from the USFWS. The McLean County Commissioners, McLean County NRCS District Conservationist, NRCS State Office, OSMRE Casper Field Office, ND Game and Fish Department, North Dakota Department of Environmental Quality, and US West Communications were invited to participate in the bond release inspection but declined the offer.

The Reclamation Division conducted a second inspection with John Sieving from the OSMRE Casper Field Office on April 8, 2025. No additional concerns were noted during the inspection and the Reclamation Division received a letter of concurrence from OSMRE on April 15, 2025.

The bond release application contains correspondence from the McLean County Superintendent of Highways, James A. Grey, indicating that the reclaimed section line trail between Section 30 and 31, T146N, R81W was reconstructed to a township road standard to provide public travel and agricultural use.

The public notice for this bond release application was published in the official county newspaper, the McLean County Independent, for four consecutive weeks on November 21 and 28, and December 5 and 12, 2024. No objections or concerns were received regarding this bond release application.

Permit NAFK-9601 is covered by Collateral Bond No. CB-9601-1 specific to the reclamation liabilities for land within this permit area. Falkirk is requesting a reduction in the bond amount for

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Bond Release No. 6 to NAFK-9601 in the amount of \$353,998.73. \$2,477,808.93 will remain to cover any liabilities for the remaining acreage in this permit area. If approved, the bond release will become effective June 18, 2025 unless a formal hearing is requested.

Attached for your consideration are the proposed motion and award forms.

Falkirk Mine\Permits\NAFK - 9601\Bond Release\Bond Release 6\BR6_apprvl_memo_5-5-25

Figure 1: Final Bond Release No. 6 to Permit NAFK-9601.

