



Public Service Commission

Sheri Haugen-Hoffart

Randy Christmann

Jill Kringstad

sent via email and regular mail

600 East Boulevard Ave
Dept. 408
Bismarck, ND 58505-0480
701-328-2400
ndpsc@nd.gov

August 8, 2025

Mr. Jeffrey Fleischman, Chief
Denver Field Division
Office of Surface Mining
PO Box 11018
150 East B Street
Casper, WY 82601-7032
jfleischman@osmre.gov

Dear Mr. Fleischman:

The Falkirk Mining Company has filed an application for Revision No. 42 to Surface Coal Mining Permit NAFK-8705 for the Falkirk Mine. This revision changes the timing of mining and revises the post-mining topography for a large portion of the unmined areas within the permit. The revision updates the following sections of the permit: introductory, legal, financial, compliance, surface and coal ownership information, fish and wildlife resources, surface water information and monitoring plan, probable hydrological consequences, surface water management, ground water management plan, operation plans, extended mining plan, existing structures, blasting map, transportation facilities, reclamation plans and schedules, post-mining topography, post-mining land use and revegetation, and wetland sections. The stand-alone Consolidating Bonding and Underwood Ground Water Hydrology sections have also been updated with this revision.

Permit NAFK-8705 contains a tract of unleased federal coal in the SE $\frac{1}{4}$ of Section 24, T146N, R83W that consists of privately owned surface. Associated disturbance is planned for this tract to accommodate mining of privately owned coal on adjacent areas, but no mining is proposed on the federal coal tract. The Office of Surface Mining must make the determination if this revision constitutes a mine plan modification with the changes proposed. Enclosed is a flash drive containing the permit application, including the stand-alone Consolidating Bonding and Underwood Ground Water Hydrology sections for Revision No. 42. All updates to the permit are listed in Section 1.1.3 (Revision Instruction Lists). Section 3.1.5 (Pit Layout and Facilities Map) has been updated to identify coal removal areas.

Please provide any written comments on the revision application by **September 22, 2025**. If you have any questions, please contact this office.

Sincerely,

Jonathan Emmer
Director
Reclamation Division

Enclosure

cc via email only w/o enclosure: John Sieving (jsieving@osmre.gov)

Falkirk Mine\Permits\NAFK - 8705\Revisions & Renewals\No. 42\Rev42_Advsry_rvw_rqst_ltr_8-8-25

15 RC-25-184 Filed 08/08/2025 Pages: 13
Revision 42 Advisory Review Request Letter

Public Service Commission
Jonathan Emmer



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August 8, 2025

Ms. Erica Trent
Natural Resources Specialist
Office of Surface Mining
PO Box 25065
Lakewood, CO 80225
etrent@osmre.gov

Dear Ms. Trent:

The Falkirk Mining Company has filed an application for Revision No. 42 to Surface Coal Mining Permit NAFK-8705 for the Falkirk Mine. This revision changes the timing of mining and revises the post-mining topography for a large portion of the unmined areas within the permit. The revision updates the following sections of the permit: introductory, legal, financial, compliance, surface and coal ownership information, fish and wildlife resources, surface water information and monitoring plan, probable hydrological consequences, surface water management, ground water management plan, operation plans, extended mining plan, existing structures, blasting map, transportation facilities, reclamation plans and schedules, post-mining topography, post-mining land use and revegetation, and wetland sections. The stand-alone Consolidating Bonding and Underwood Ground Water Hydrology sections have also been updated with this revision.

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Sincerely,

Jonathan Emmer
Director
Reclamation Division

Enclosure

cc via email only w/o enclosure: Marcelo Calle (mcalle@osmre.gov)

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August 8, 2025

Josh Alexander
Bureau of Land Management
Billings Field Office
Eastern Montana Dakotas District Office
Department of Interior
5001 Southgate Dr.
Billings, MT 59101
jalexand@blm.gov

Dear Mr. Alexander:

The Falkirk Mining Company has filed an application for Revision No. 42 to Surface Coal Mining Permit NAFK-8705 for the Falkirk Mine. This revision changes the timing of mining and revises the post-mining topography for a large portion of the unmined areas within the permit. The revision updates the following sections of the permit: introductory, legal, financial, compliance, surface and coal ownership information, fish and wildlife resources, surface water information and monitoring plan, probable hydrological consequences, surface water management, ground water management plan, operation plans, extended mining plan, existing structures, blasting map, transportation facilities, reclamation plans and schedules, post-mining topography, post-mining land use and revegetation, and wetland sections. The stand-alone Consolidating Bonding and Underwood Ground Water Hydrology sections have also been updated with this revision.

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Jonathan Emmer
Director
Reclamation Division

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600 East Boulevard Ave
Dept. 408
Bismarck, ND 58505-0480
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August 8, 2025

Mr. Edward Kraft
Field Office Manager
Bureau of Land Management
ND Field Office
99 23rd Avenue West, Suite A
Dickinson, ND 58601
ekraft@blm.gov

Dear Mr. Kraft:

The Falkirk Mining Company has filed an application for Revision No. 42 to Surface Coal Mining Permit NAFK-8705 for the Falkirk Mine. This revision changes the timing of mining and revises the post-mining topography for a large portion of the unmined areas within the permit. The revision updates the following sections of the permit: introductory, legal, financial, compliance, surface and coal ownership information, fish and wildlife resources, surface water information and monitoring plan, probable hydrological consequences, surface water management, ground water management plan, operation plans, extended mining plan, existing structures, blasting map, transportation facilities, reclamation plans and schedules, post-mining topography, post-mining land use and revegetation, and wetland sections. The stand-alone Consolidating Bonding and Underwood Ground Water Hydrology sections have also been updated with this revision.

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Jonathan Emmer
Director
Reclamation Division

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August 8, 2025

Mr. David Glatt, P.E.
Director
North Dakota Department of Environmental Quality
4201 Normandy Street
Bismarck, ND 58503-1324
dglatt@nd.gov

Dear Mr. Glatt:

The Falkirk Mining Company has filed an application for Revision No. 42 to Surface Coal Mining Permit NAFK-8705 for the Falkirk Mine. This revision changes the timing of mining and revises the post-mining topography for a large portion of the unmined areas within the permit. The revision updates the following sections of the permit: introductory, legal, financial, compliance, surface and coal ownership information, fish and wildlife resources, surface water information and monitoring plan, probable hydrological consequences, surface water management, ground water management plan, operation plans, extended mining plan, existing structures, blasting map, transportation facilities, reclamation plans and schedules, post-mining topography, post-mining land use and revegetation, and wetland sections. The stand-alone Consolidating Bonding and Underwood Ground Water Hydrology sections have also been updated with this revision.

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If you have any questions, please contact this office.

Sincerely,

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Jonathan Emmer
Director
Reclamation Division

Enclosure

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Dept. 408
Bismarck, ND 58505-0480
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August 8, 2025

North Dakota Department of Water Resources
C/O Project Review
1200 Memorial Highway, Dept 770
Bismarck, ND 58504
dwrprojectreview@nd.gov

Dear Project Review Team:

The Falkirk Mining Company has filed an application for Revision No. 42 to Surface Coal Mining Permit NAFK-8705 for the Falkirk Mine. This revision changes the timing of mining and revises the post-mining topography for a large portion of the unmined areas within the permit. The revision updates the following sections of the permit: introductory, legal, financial, compliance, surface and coal ownership information, fish and wildlife resources, surface water information and monitoring plan, probable hydrological consequences, surface water management, ground water management plan, operation plans, extended mining plan, existing structures, blasting map, transportation facilities, reclamation plans and schedules, post-mining topography, post-mining land use and revegetation, and wetland sections. The stand-alone Consolidating Bonding and Underwood Ground Water Hydrology sections have also been updated with this revision.

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If you have any questions, please contact this office.

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Jonathan Emmer
Director
Reclamation Division

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600 East Boulevard Ave
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Bismarck, ND 58505-0480
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August 8, 2025

Mr. Jeb Williams, Director
North Dakota Game and Fish Department
100 North Bismarck Expressway
Bismarck, ND 58501-5095
jwilliam@nd.gov

Dear Mr. Williams:

Enclosed is a USB flash drive containing Revision No. 42 to Surface Coal Mining Permit NAFK-8705, held by the Falkirk Mining Company for the Falkirk Mine. This revision changes the timing of mining and revises the post-mining topography for a large portion of the unmined areas within the permit. In addition, Section 2.4 (Fish and Wildlife Resources) has been updated. A complete list of all updates to the permit is provided in Section 1.1.3 (Revision Instruction Lists) of the permit.

The USFWS Information for Planning and Consultation (IPaC) website indicates that seven listed or proposed species have the potential to exist in Permit NAFK-8705. No designated or proposed critical habitat is within or immediately adjacent to the permit. The listed species include the Whooping Crane, Piping Plover, Rufa Red Knot, and Dakota Skipper. The proposed species are the Monarch Butterfly, Western Regal Fritillary, and Suckley's Cuckoo Bumble Bee.

The Reclamation Division has prepared a draft threatened, endangered, and proposed species finding attached for your review. Please provide any revision application review comments and/or comments on the attached threatened and endangered species finding by **September 22, 2025**, in accordance with NDAC 69-05.2-10-01(2).

If you have any questions, please contact this office.

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Jonathan Emmer
Director
Reclamation Division

Enclosures

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August 8, 2025

Mr. Luke Toso
U.S. Fish and Wildlife Service
3425 Miriam Avenue
Bismarck, North Dakota 58501-7926
luke_toso@fws.gov

Dear Mr. Toso:

Enclosed is a USB flash drive containing Revision No. 42 to Surface Coal Mining Permit NAFK-8705, held by the Falkirk Mining Company for the Falkirk Mine. This revision changes the timing of mining and revises the post-mining topography for a large portion of the unmined areas within the permit. In addition, Section 2.4 (Fish and Wildlife Resources) has been updated. A complete list of all updates to the permit is provided in Section 1.1.3 (Revision Instruction Lists) of the permit.

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Jonathan Emmer
Director
Reclamation Division

Enclosures

cc via email only w/o enclosure: Jerry Reinisch (jerry_reinisch@fws.gov)

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Revision No. 42 to NAFK-8705 – Species Specific Effects Finding

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

Permit NAFK-8705 for the Falkirk Mine consists of approximately 9,843.4 acres, most of which has previously been disturbed by mining and reclamation activities. Mining operations in this permit area ceased in 2010, leaving the northern portion undisturbed. Due to several factors including power plant coal demands, federal coal lease approval, and ongoing mining operations in the other permitted areas, mining activities in Permit NAFK-8705 are now scheduled to resume in 2025, significantly earlier than the previously projected date of 2040.

Given the extent of previous disturbance, most threatened and endangered species “**may be affected but are not likely to be adversely affected**” by renewed mining and reclamation activities proposed in Revision No. 42. More detailed species-specific information can be found below. **Figure 1** is also provided to assist in visualizing the location of the Permit NAFK-8705.

Whooping Crane – Endangered

McLean County and the permit area are within the principal migration route of the Whooping Crane, and the Audubon National Wildlife Refuge. The Audubon Refuge is occasionally used by migrating Whooping Cranes, with the most recent sighting occurring in the spring of 1992. The area does contain temporary, seasonal, and semi-permanent wetlands throughout the permitted area, which may provide stopover habitat for the Whooping Crane; however, no Whooping Cranes have been observed within the direct vicinity of the Falkirk Mine since wildlife monitoring was initiated. The Reclamation Division concludes that mining and reclamation activities proposed with Revision No. 42 “**may affect but is not likely to adversely affect**” the continued existence of Whooping Cranes.

Piping Plover – Threatened

The Piping Plover is a migratory bird that can occur 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 and sandbars and shorelines associated with major river systems. In McLean County, North Dakota, this species can be found along the Missouri River. Piping Plovers have been observed periodically within Falkirk’s active permitted areas; however, the possibility for them to be present is believed to be limited due to their restricted habitat preferences, nesting requirements, and the lack of suitable habitats within the area. However, suitable habitat may be created by mining activities as Piping Plovers have been found to nest on inactive areas of graded spoil in other permitted areas at the mine. Inactive barren spoil areas are not expected to exist during the current term of the permit. Falkirk will continue to monitor the permit area for piping plovers, and sightings will be reported to the Reclamation Division. The Reclamation Division concludes the permit area does not contain designated, suitable, or potential habitat for this species and the mining and reclamation activities proposed with Revision No. 42 “**may affect but is not likely to adversely affect**” the continued existence of the Piping Plover.

Rufa Red Knot – Threatened

The Rufa Red Knot is a medium sized shorebird that migrates annually between its breeding grounds in the central Canadian Arctic and several wintering regions, including the Southeast United States and Northeast Gulf of Mexico. This species could potentially migrate over North Dakota. Available information indicates this species may use inland saline lakes as stopover habitat during its migration. There are no saline lakes in

the permit area or adjacent to the permit area. Therefore, the mining and reclamation activities proposed with Revision No. 42 will have “**no effect**” on the continued existence of the Rufa Red Knot.

Dakota Skipper – Threatened

The USFWS listed the Dakota Skipper as threatened on October 26, 2014, and the final rule became effective on November 24, 2014. The Dakota Skipper is a small butterfly that requires high quality mixed or tallgrass prairie. According to the 2024 Dakota Skipper North Dakota Survey Protocol there are two habitat types, Type A Habitat and Type B Habitat. Type A Habitat consists of moist lowland mesic prairie habitat type with prairie lily, bluebell bellflower, and mountain deathcamas or smooth camas species. Type B Habitat consists of a relatively dry upland prairie habitat type found on ridges and hillsides dominated by bluestem grasses, needlegrasses, and desirable native forbs such as purple coneflower. In the Missouri Couteau region of North Dakota, on the western edge of the known ranges of the species, Dakota Skippers inhabit a variant of Type B habitats. These habitats typically contain an association of little bluestem, big bluestem, and needlegrasses that is often invaded by Kentucky bluegrass. These prairies also typically contain prairie lily, bluebell bellflower, coneflowers, and aster species.

There is no undisturbed native grassland within Permit NAFK-8705. Therefore, there is no suitable habitat for the Dakota Skipper. The Reclamation Division finds that the planned mining and reclamation activities proposed within Revision No. 42 will have “**no effect**” to the continued existence of the Dakota Skipper.

Monarch Butterfly – Proposed Threatened

The Monarch Butterfly is a proposed threatened species. The Monarch requires habitat with Milkweed as a larval host plant and floral nectar sources for adults. Monarchs found in North Dakota are comprised of the eastern range Monarchs, found east of the Rocky Mountains. These Monarchs overwinter in central Mexico and then migrate and disperse throughout North America. No designated critical habitat is currently proposed for the eastern range Monarchs. The Monarch Butterfly could potentially be in and around Falkirk’s mining permits during the migration. Falkirk has planted a number of pollinator plots near reclaimed wetland buffer areas and may include milkweed in future pollinator plots.

The Reclamation Division finds the planned mining and reclamation activities proposed within Revision No. 42 “**may affect but is not likely to jeopardize**” the continued existence of the Monarch Butterfly provided that Falkirk follows future guidance from the USFWS as indicated in Section 2.4.3 (Wildlife Monitoring Plan) of Permit NAFK-8705.

Western Regal Fritillary – Proposed Threatened

The Western Regal Fritillary is a proposed threatened species. The Western Regal Fritillary prefers tallgrass prairie and other sunny, open locations such as damp meadows, marshes, wet fields, and mountain pastures. Regal Fritillary butterflies depend on three main habitat components: violet hostplants for larvae, nectar plants for adults, and native warm-season bunch grasses that provide protective sites for all life stages. No designated critical habitat is currently proposed for the Western Regal Fritillary. Based on the habitat requirements of the Western Regal Fritillary, it appears unlikely that the species will be present in the permit area.

The Reclamation Division finds the planned mining and reclamation activities proposed within Revision No. 42 “**may affect but is not likely to jeopardize**” the continued existence of the Western Regal Fritillary provided that Falkirk follows future guidance from the USFWS as indicated in Section 2.4.3 (Wildlife

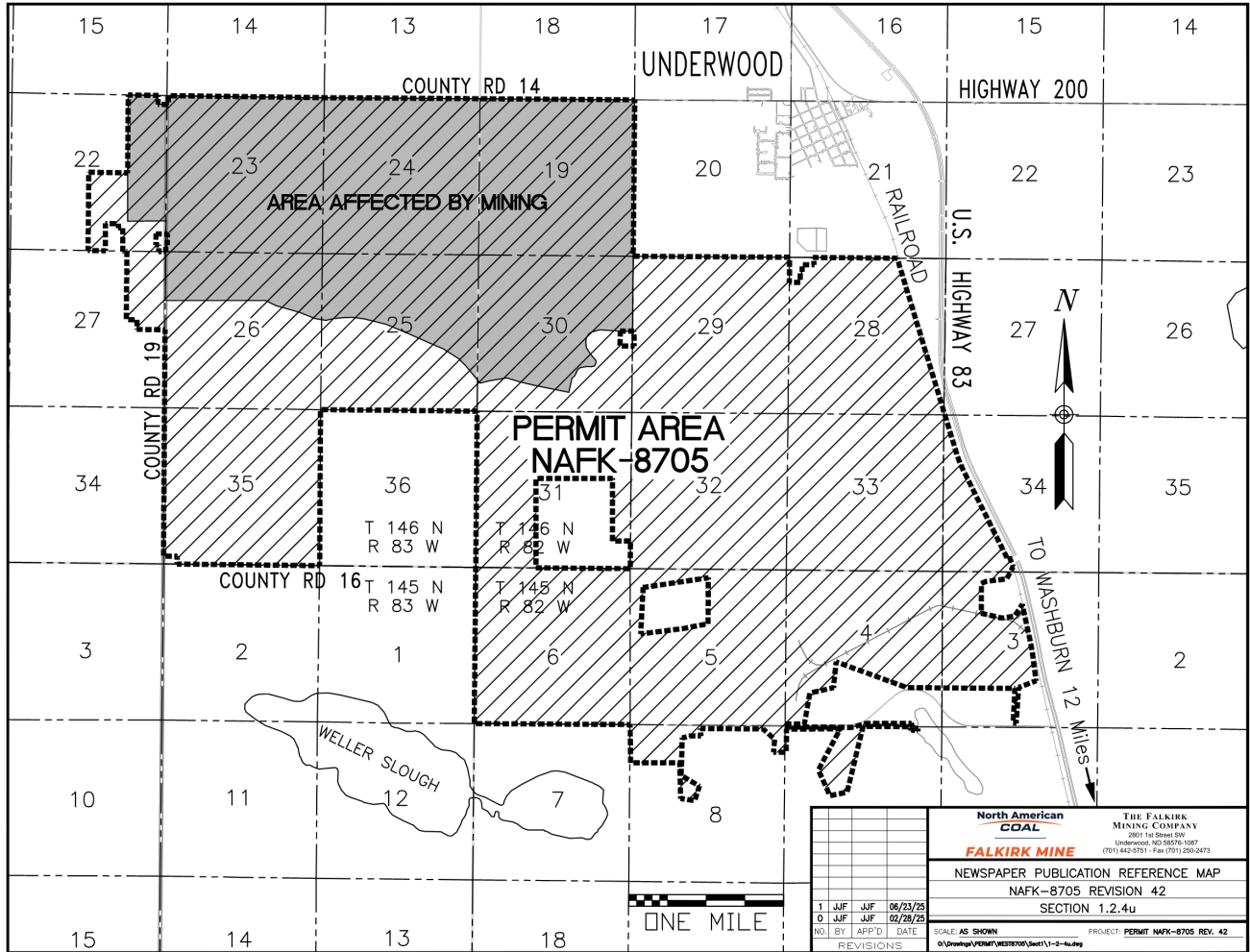
Monitoring Plan) of Permit NAFK-8705.

Suckley's Cuckoo Bumble Bee – Proposed Endangered

The Suckley's Cuckoo Bumble Bee is a proposed endangered species. The Suckley's Cuckoo Bumble Bee is an obligate social parasite and is entirely dependent on social bumble bee hosts to collect pollen and rear their young. Since they are entirely dependent on host bumble bee colonies, host colony availability is critical for the species' survival and overall viability. The species has a broad historical range and has been found in various habitat types including prairies, grasslands, meadows, urban and agricultural areas, and woodlands. The last confirmed sighting in the United States of the Suckley's Cuckoo Bumble Bee was in 2016 in Oregon.

The Reclamation Division finds the planned mining and reclamation activities proposed within Revision No. 42 **“may affect but is not likely to jeopardize”** the continued existence of the Suckley's Cuckoo Bumble Bee.

Figure 1: Falkirk Mine Permit NAFK-8705





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Sheri Haugen-Hoffart

Randy Christmann

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600 East Boulevard Ave
Dept. 408
Bismarck, ND 58505-0480
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August 8, 2025

Mr. Bill Peterson
State Historical Society of North Dakota
612 East Boulevard Avenue
Bismarck, ND 58505
billpeterson@nd.gov

Dear Mr. Peterson:

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Please review the revision application with regard to your agency's areas of responsibility and technical expertise. Please provide any revision application review comments by **September 22, 2025**, in accordance with NDAC 69-05.2-10-01(2).

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