

NORTH
Dakota | Water Resources
Be Legendary.

Sept 17, 2025

Mr. Jonathan Emmer

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

RECEIVED

SEP 23 2025

NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Dear Mr. Emmer,

This is in response to your request for a review of the environmental impacts associated with the Falkirk Mining Company's application for Revision No. 42 to Surface Coal Mining Permit NAFK-8705 for the Falkirk Mine.

The proposed project has been reviewed by Department of Water Resources (DWR), 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 permits relative to the NFIP are likely required based on the current 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 DWR Regulatory Division's Engineering and Permitting Section reviewed the information provided and determined that no drainage permits, or construction permits for dikes, diversions, or restorations are required for the proposed changes in Revision 42. However, Sections 3.6.2 and 3.6.3e state that the 10-year, 24-hour precipitations event is used to calculate design peak flow for diversions and to determine if a diversion will be submitted for review prior to construction. Under N.D.C.C. § 61-16.1-38, a construction permit is required when more than 50 acre-feet of water is diverted, and N.D.A.C. § 89-08-02-01 states that diverting capacity is calculated based upon runoff resulting from the NOAA Atlas 14 25-year, 24-hour precipitation event.

- If surface water or groundwater will be diverted for construction or operation of the project, or water will be put to a beneficial use other than solely for the purpose of sedimentation control during mining activities, a water permit is required per North Dakota Century Code § 61-04-02. Please consult with the Water Appropriations Division of the Department of Water Resources at (701) 328-2754 or appropinfo@nd.gov if you have any questions.

- Per North Dakota Century Code §61-16.1-38, any new construction of or construction modifications to dams, ponds, or other devices, which are capable of retaining, obstructing, or diverting more than 50 acre-feet at top of dam, or 25 acre-

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North Dakota Department of Water Resources (DWR)
Kyle Yrkoski

feet with a high or medium hazard potential, requires a construction permit. Please contact the DWR Regulatory Division at 701-328-4956 if you have any questions.

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Kyle Yrkoski".

Kyle Yrkoski
Planner III

KY:mg/1570