



Public Service Commission

Sheri Haugen-Hoffart

Randy Christmann

Jill Kringstad

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

sent via email and regular mail

October 29, 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 45 and Renewal 8 to Surface Coal Mining Permit NAFK-8405 for the Falkirk Mine. The five-year permit renewal will allow Falkirk to continue to operate within the existing permit area until April 15, 2031. Revision 45 identifies the coal removal subareas that will be mined during the next five-year permit term. The revision also updates the introductory information, legal information, compliance information, surface and coal interest and ownership, geology, fish and wildlife resources, operation plans, extended mining plans, transportation facilities, surface water management, reclamation plan, and reclamation schedule in the permit.

Permit NAFK-8405 contains tracts of federal coal that were leased on October 10, 2025, in the SE $\frac{1}{4}$ and NE $\frac{1}{4}$ of Section 3 and the NW $\frac{1}{4}$ of Section 2, T146N, R82W, which consist of privately owned surface. However, the federal coal leases have not been added to the permit at this time. Associated disturbance is planned for these tracts to accommodate mining of privately owned coal in adjacent areas, but no mining is proposed on the federal coal tracts. 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. All updates to the permit are listed in Section 1.1.3 (Revision Lists of Changes). Section 3.1.5 (Pit Layout and Facilities Map) has been updated to identify the coal removal areas for the next permit term.

We would appreciate any comments on the revision application by December 15, 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 - 8405\Revisions\Rev45_Ren8\Rev45_Advsry_rvw_rqst_ltr_10-29-25



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ndpsc@nd.gov

sent via email and regular mail

October 29, 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 45 and Renewal 8 to Surface Coal Mining Permit NAFK-8405 for the Falkirk Mine. The five-year permit renewal will allow Falkirk to continue to operate within the existing permit area until April 15, 2031. Revision 45 identifies the coal removal subareas that will be mined during the next five-year permit term. The revision also updates the introductory information, legal information, compliance information, surface and coal interest and ownership, geology, fish and wildlife resources, operation plans, extended mining plans, transportation facilities, surface water management, reclamation plan, and reclamation schedule in the permit.

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Sincerely,

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Jonathan Emmer
Director
Reclamation Division

Enclosure

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

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October 29, 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 45 and Renewal 8 to Surface Coal Mining Permit NAFK-8405 for the Falkirk Mine. The five-year permit renewal will allow Falkirk to continue to operate within the existing permit area until April 15, 2031. Revision 45 identifies the coal removal subareas that will be mined during the next five-year permit term. The revision also updates the introductory information, legal information, compliance information, surface and coal interest and ownership, geology, fish and wildlife resources, operation plans, extended mining plans, transportation facilities, surface water management, reclamation plan, and reclamation schedule in the permit.

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Director
Reclamation Division

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600 East Boulevard Ave
Dept. 408
Bismarck, ND 58505-0480
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October 29, 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 45 and Renewal 8 to Surface Coal Mining Permit NAFK-8405 for the Falkirk Mine. The five-year permit renewal will allow Falkirk to continue to operate within the existing permit area until April 15, 2031. Revision 45 identifies the coal removal subareas that will be mined during the next five-year permit term. The revision also updates the introductory information, legal information, compliance information, surface and coal interest and ownership, geology, fish and wildlife resources, operation plans, extended mining plans, transportation facilities, surface water management, reclamation plan, and reclamation schedule in the permit.

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October 29, 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:

Enclosed in a flash drive containing the permit application for Revision 45 to Surface Coal Mining Permit NAFK-8405 held by the Falkirk Mining Company for the Falkirk Mine. Revision 45 identifies the coal removal subareas that will be mined during the next five-year permit term. The revision also updates the introductory information, legal information, compliance information, surface and coal interest and ownership, geology, fish and wildlife resources, operation plans, extended mining plans, transportation facilities, surface water management, and reclamation plans and schedule in the permit. All updates to the permit are listed in Section 1.1.3 (Revision Lists of Changes).

Please review the revision application with regard to your agency's areas of responsibility and technical expertise, and for compliance with NDAC 69-05.2-16-02. Please provide any revision application review comments by December 15, 2025 in accordance with NDAC 69-05.2-10-01(2).

If you have any questions, please contact this office.

Sincerely,

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Jonathan Emmer
Director
Reclamation Division

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Dept. 408
Bismarck, ND 58505-0480
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ndpsc@nd.gov

sent via email and inside mail

October 29, 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:

Enclosed in a flash drive containing the permit application for Revision 45 to Surface Coal Mining Permit NAFK-8405 held by the Falkirk Mining Company for the Falkirk Mine. Revision 45 identifies the coal removal subareas that will be mined during the next five-year permit term. The revision also updates the introductory information, legal information, compliance information, surface and coal interest and ownership, geology, fish and wildlife resources, operation plans, extended mining plans, transportation facilities, surface water management, and reclamation plans and schedule in the permit. All updates to the permit are listed in Section 1.1.3 (Revision Lists of Changes).

Please review the revision application with regard to your agency's areas of responsibility and technical expertise, and for compliance with NDAC 69-05.2-16-03. Please provide any revision application review comments by December 15, 2025 in accordance with NDAC 69-05.2-10-01(2).

If you have any questions, please contact this office.

Sincerely,

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Jonathan Emmer
Director
Reclamation Division

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Dept. 408
Bismarck, ND 58505-0480
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ndpsc@nd.gov

sent via email and inside mail

October 29, 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 flash drive containing the permit application for Revision 45 to Surface Coal Mining Permit NAFK-8405 held by the Falkirk Mining Company for the Falkirk Mine. Revision 45 updates various sections of the permit for the next 5-year permit term. All updates to the permit are listed in Section 1.1.3 (Revision Lists of Changes).

The USFWS Information for Planning and Consultation (IPaC) website indicates that seven listed or proposed species have the potential to exist in Permit NAFK-8405. 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 December 15, 2025 in accordance with NDAC 69-05.2-10-01(2).

If you have any questions, please contact this office.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jonathan Emmer".

Jonathan Emmer
Director
Reclamation Division

Enclosures

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STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Revisions No. 45 and Renewal No. 8 to NAFK-8405 - 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)].

Whooping Crane – Endangered

McLean County and the permit area are within the principal migration route of the Whooping Crane. The Audubon National Wildlife Refuge, located approximately 2.5 miles northwest of the northernmost boundary of Permit NAFK-8405, is occasionally used by migrating Whooping Cranes, with the most recent sighting occurring in the spring of 1992. The permit area does contain temporary, seasonal, and semi-permanent wetlands 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 Commission concludes that mining and reclamation activities proposed with Revision No. 45 and Renewal No. 8 “**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. The Commission and USFWS are to be notified when Piping Plovers are sighted at the mine.

The Commission concludes the area to be affected during the next term of the permit does not contain designated, suitable, or potential habitat for this species and the mining and reclamation activities proposed with Revision No. 45 and Renewal No. 8 “**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 the 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. 45 and Renewal No. 8 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 Coteau 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.

Permit NAFK-8405 contains 13,150 acres of land which includes 1,817.9 acres of native grassland (13.8 percent). The only native grassland to be disturbed by mining during the next term of the permit is in the southwestern portion of Section 36, T147N, R82W. Mining is limited to the southwest corner of Section 36, but sediment ponds are to be constructed in other portions of the tract. In 2019 the Falkirk Mine hired KDK Consulting to assess the native grassland in all permits 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 native grassland in permitted lands at the Falkirk Mine did not contain any potentially suitable habitat for the Dakota skipper. Moreover, the report concluded that the S½ of Section 36, T147N, R82W did not contain plant communities suitable for the Dakota skipper.

In May of 2021 SWCA Environmental Consultants prepared a biological assessment for federal coal lease NDM 111489 which included 800 acres of federal coal at the Falkirk Mine. The project included federal coal in the NW¼ of Section 2 and E½ of Section 3, T146N, R82W. These tracts are in the northern portion of Permit NAFK-8405 where mining is planned during the next term of the permit. The biological assessment action area included the SW¼ of Section 36, T147N, R82W. The Bureau of Land Management (BLM) and Office of Surface Mining Reclamation and Enforcement (OSMRE) determined that the project will have no effect on the Dakota skipper. Likewise, the Commission finds the mining and reclamation activities proposed with Revision No. 45 and Renewal No. 8 will have “**no effect**” on 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 Commission finds that the planned mining and reclamation activities proposed within Revision No. 45 and Renewal No. 8 “**may affect but is not likely to jeopardize**” the continued existence of the Monarch

Butterfly, provided Falkirk follows guidance from the USFWS.

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 Commission finds that the planned mining and reclamation activities proposed within Revision No. 45 and Renewal No. 8 “**may affect but is not likely to jeopardize**” the continued existence of the Western Regal Fritillary, provided Falkirk follows guidance from the USFWS.

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 have 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 and is considered functionally extirpated from North Dakota by the North Dakota Outdoor Heritage Data Base Partnership (OHDB).

The Commission finds the planned mining and reclamation activities proposed within Revision No. 45 and Renewal No. 8 “**may affect but is not likely to jeopardize**” the continued existence of the Suckley’s Cuckoo Bumble Bee.



Public Service Commission

Sheri Haugen-Hoffart

Randy Christmann

Jill Kringstad

600 East Boulevard Ave
Dept. 408
Bismarck, ND 58505-0480
701-328-2400
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October 29, 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 flash drive containing the permit application for Revision 45 to Surface Coal Mining Permit NAFK-8405 held by the Falkirk Mining Company for the Falkirk Mine. Revision 45 updates various sections of the permit for the next 5-year permit term. All updates to the permit are listed in Section 1.1.3 (Revision Lists of Changes).

The USFWS Information for Planning and Consultation (IPaC) website indicates that seven listed or proposed species have the potential to exist in Permit NAFK-8405. 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. We would appreciate any comments on the revision and renewal applications and on the attached threatened and endangered species finding by December 15, 2025.

If you have any questions, please contact this office.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jonathan Emmer".

Jonathan Emmer
Director
Reclamation Division

Enclosures

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

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STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

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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. The Commission and USFWS are to be notified when Piping Plovers are sighted at the mine.

The Commission concludes the area to be affected during the next term of the permit does not contain designated, suitable, or potential habitat for this species and the mining and reclamation activities proposed with Revision No. 45 and Renewal No. 8 “**may affect but is not likely to adversely affect**” the continued existence of the Piping Plover.

Rufa Red Knot – Threatened

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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 Coteau 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.

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The Commission finds that the planned mining and reclamation activities proposed within Revision No. 45 and Renewal No. 8 “**may affect but is not likely to jeopardize**” the continued existence of the Monarch

Butterfly, provided Falkirk follows guidance from the USFWS.

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 Commission finds that the planned mining and reclamation activities proposed within Revision No. 45 and Renewal No. 8 “**may affect but is not likely to jeopardize**” the continued existence of the Western Regal Fritillary, provided Falkirk follows guidance from the USFWS.

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 have 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 and is considered functionally extirpated from North Dakota by the North Dakota Outdoor Heritage Data Base Partnership (OHDB).

The Commission finds the planned mining and reclamation activities proposed within Revision No. 45 and Renewal No. 8 “**may affect but is not likely to jeopardize**” the continued existence of the Suckley’s Cuckoo Bumble Bee.