

NORTH
Dakota | Water Resources
Be Legendary.

Dec 5, 2025

Mr. Jonathan Emmer

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

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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 Revision 45 to Surface Coal Mining Permit NAFK-8405 by Falkirk Mining Company for Falkirk Mine.

The proposed project has been reviewed by Department of Water Resources (DWR), and the following comments are provided:

- The DWR Regulatory Division's Engineering and Permitting Section reviewed the project location and determined no drainage permits, or construction permits for dikes, diversions, or restorations are likely required so long as no watercourses, as defined under N.D.C.C. § 61-01-06, are modified (i.e., deepened, widened, rerouted, etc.). Please consult Jennifer Martin 701-328-1347 for any questions.
- 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. Tyler Spomer, NFIP Coordinator, 701-328-2452, tispomer@nd.gov.
- 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.
- Projects that take place within the ordinary high water mark of a North Dakota navigable waterbody (as outlined in North Dakota Century Code ch. 61-33) require prior authorization to construct from DWR. The Project(s), as described, does not appear to take place within a currently identified navigable waterbody, and does not require a North Dakota state sovereign land permit. For further information, contact Amy Winkelman, State Sovereign Land Manager, at awinkelman@nd.gov, 701-328-4935 or Travis Thyberg, State Sovereign Land Specialist, at tbthyberg@nd.gov 701-328-4988.

- 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-feet with a high or medium hazard potential, may require 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 that reads "Kyle Yrkoski".

Kyle Yrkoski
Planner III

KY:mg/1570