

**PUBLIC SERVICE COMMISSION**

Reclamation Division

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Memorandum

TO: Commissioners Christmann, Haugen-Hoffart, and Kringstad  
FROM: <sup>JE</sup> Jonathan Emmer, <sup>MJ</sup> Monty Johnson, <sup>WS</sup> Warren Swenson, and <sup>GW</sup> Guy Welch  
DATE: April 16, 2026  
SUBJECT: Bond Release No. 7 to Surface Coal Mining Permit NAFK-9601 held by the Falkirk Mining Company, Case No. RC-25-247

**Summary**

On September 4, 2025, the Falkirk Mining Company (Falkirk) filed the application for Final Bond Release No. 7 to Surface Coal Mining Permit NAFK-9601, requesting release of all reclamation liabilities on 285.28 acres of land located in portions of the NE¼ of Section 25 and the SE¼ of Section 36, T146N, R82W, and the SW¼ of Section 31, T146N, R81W, McLean County, North Dakota, at the Falkirk Mine (**Figure 1**). The bond release tracts contain approximately 229.59 acres of land that were affected by mining activities and 55.69 acres of land that were 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 reclaimed mine area contains approximately 189.57 acres of cropland, 12.76 acres of native grassland, 22.65 acres of seasonal wetland, four temporary wetlands totaling 0.40 acres, 1.12 acres of grass waterway, and 3.09 acres of section line trail. This bond release has been split up into three tracts, 7A, 7B, and 7C. Tract 7A encompasses the bond release area in Section 25, Tract 7B encompasses the bond release area in Section 36, and Tract 7C encompasses the bond release area in Section 31.

Tract 7A contains 107.04 acres of disturbed land and 0.02 acres of undisturbed land. The reclaimed area contains 105.14 acres of cropland, 0.4 acres of temporary wetland, and 1.5 acres of section line trail. Coal removal occurred in 2001 and 2002. Backfilling, grading, SPGM respread, and initial seeding were completed from 2001 through 2006. First and second stage bond releases (backfilling and grading, SPGM respread) were granted on the disturbed acreage of Tract 7A 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 107.04 acres of reclaimed land in Tract 7A.

Tract 7B contains 107.35 acres of disturbed land and 53.22 acres of undisturbed land. The reclaimed area contains 84.45 acres of cropland, 1.1 acres of a grassed waterway, 21.0 acres of seasonal wetland, and 0.8 acres of section line trail. No coal was removed from this tract, all disturbed areas are classified as associated disturbance, and the topography was altered on a few acres adjacent to the final pit. This reclaimed land was used for water management and stockpile storage areas to support mining that was occurring elsewhere. Final grading was completed in 2006 and 2013. SPGM respread and initial seeding was completed from 2007 through 2013. First and second stage bond release (backfilling and grading, SPGM respread) was previously granted on 29.31 acres with Partial Bond Release No. 3 in 2009. Falkirk is requesting third stage (vegetation establishment) and fourth stage (demonstration of revegetation success) bond release for 29.31 acres, and first stage (backfilling and grading), second stage (SPGM respread), third stage (vegetation establishment), and fourth stage (demonstration of revegetation success) on 78.04 of reclaimed land in Tract 7B.

Tract 7C contains 15.2 acres of disturbed land and 2.45 acres of undisturbed land. The reclaimed area contains 12.8 acres of native grassland, 1.6 acres of seasonal wetland and 0.8 acres of section line trail. Coal was removed from this tract from 1996 through 1997. Backfilling and grading were completed in 2006. SPGM respread and initial seeding were completed in 2007. First and second stage bond releases (backfilling and grading, SPGM respread) were previously granted on 15.17 acres 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 15.17 acres of disturbed land, and first stage (backfilling and grading), second stage (SPGM respread), third stage (vegetation establishment), and fourth stage (demonstration of revegetation success) on 0.03 acres of reclaimed land in Tract 7C.

Soil probing for assessing suitable plant growth material (SPGM) respread thicknesses in Sections 25, 31, and 36 of Bond Release No. 7 within Permit NAFK-9601 was completed in September of 2002, September and October of 2004, July of 2009, and October and November of 2025. The 2002, 2004, and 2009 SPGM thickness assessments were completed in conjunction with previous partial bond releases of Permit NAFK-9601. The 2025 SPGM thickness assessment was completed in the remaining areas not covered by previous assessments within Final Bond Release No. 7. The results of the SPGM thickness assessments were deemed adequate.

### **Reclaimed Cropland**

The reclaimed cropland was initially planted to a pre-crop grass-legume seed mixture and managed as hayland prior to beginning annual crop production. Reclaimed cropland in Tract 7A has been annually seeded to wheat and soybeans since 2018. A portion of reclaimed cropland in Tract 7B was annually seeded to wheat from 2012 to 2014, and all reclaimed cropland in Tract 7B has been annually seeded to wheat, yellow peas, pinto beans, soybeans, and corn since 2016.

The third stage bond release revegetation performance standards for non-prime cropland is successful vegetation establishment. Fourth stage bond release requires that yield or productivity be equal to or greater than an approved standard with ninety percent statistical confidence during any two years after year six of the revegetation responsibility period. Stage three and stage four

revegetation performance standards for prime farmland are the same; productivity must be equal to or greater than the approved standard with ninety percent statistical confidence during any three years of the revegetation responsibility period. Tract 7A does not contain any prime farmland whereas Tract 7B contains 2.8 acres of prime farmland. The expected yield of the prime farmland in Tract 7B is less than the adjacent non- prime farmland so a single yield standard for the entire tract has been established. Thus, Falkirk needs to demonstrate that productivity has been restored on Tract 7B during any three years after year six of the revegetation responsibility period.

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 annual county yield data from the North Dakota Agricultural Statistics (NDAS) or USDA Risk Management Agency (RMA) may be used to adjust the yield standard to account for annual climatic variability. The yield data used to demonstrate revegetation success must be obtained after year six of the 10-year revegetation responsibility period. The seventh year of 10-year revegetation period for Tract 7A is 2012 whereas the seventh year of the 10-year revegetation period for Tract 7B is 2019. Falkirk’s demonstration of stage three and four bond release revegetation success for the cropland in Tracts 7A and 7B is summarized in the tables below.

**Section 25 (Tract 7A)**

Year	Crop	Reclaimed Yield (bu/acre)	Productivity Standard (bu/acre)	Achieved
2021	Soybeans	23.9	14.1	Yes
2023	Wheat	65.8	57.0	Yes

**Section 36 (Tract 7B)**

Year	Crop	Reclaimed Yield (bu/acre)	Productivity Standard (bu/acre)	Achieved
2021	Wheat	35.9	19.9	Yes
2023	Soybeans	47.4	43.2	Yes
2024	Wheat	77.9	72.9	Yes

**Native Grassland**

Mining companies must demonstrate that reclaimed native grassland yields are as good as or better than pre-mine native grassland yields during any two years after year six of the ten-year revegetation responsibility period. The productivity standard is calculated using Natural Resources Conservation Service (NRCS) ecological site expected yields of the pre-mine native grassland, and these values are climatically adjusted annually using native grassland reference areas. The native grassland ground cover standard is developed using reference areas and a value that the Agriculture Research Service determined to be sufficient to control erosion. The native grassland species diversity and seasonality standards require at least five native grass species be present on the reclaimed tract using ground cover or production data. The relative composition of all warm-season grasses must be at least 15%. Four native grass species must each contribute at least 3% relative live basal cover or at least 5% by weight during the years sampling data is used to demonstrate revegetation success. Of these four species, at least two must be warm-season species and at least one must be a cool-season grass. For each sampling year that is used to prove

reclamation success, the permittee must show that a fifth native grass species is present, and a species list must show at least three native forbs species present.

The reclaimed grassland was seeded with six native species: western wheatgrass, green needlegrass, blue grama, sideoats grama, switchgrass, and big bluestem. Vegetation sampling data from 2017 and 2020 were used to demonstrate revegetation success as summarized in the tables below. Productivity and cover standards were developed from the pre-mine ecological sites of the disturbed native grassland in Tract 7C (Section 31).

**Production**

Year	Reclaimed Yield (lbs/acre)	Yield Standard (lbs/acre)	Achieved
2017	2,099	1,734	Yes
2020	2,698	2,150	Yes

**Ground Cover**

Year	Reclaimed Cover	Cover Standard	Achieved
2017	99.7%	94.1%	Yes
2020	99.9%	94.3%	Yes

**Diversity and Seasonality Standards**

Five native grass species must be present and four must each contribute at least 3% of the relative live basal cover or at least 5% of the relative composition by weight (production). Of these four species, at least two must be warm-season species and at least one must be a cool-season species. Cover or production data must show the relative composition of all warm-season species to be at least 15%. The sampling data or a species list must show that at least three native forbs are present.

Seasonality	Standard	2017	2020	Achieved
% Warm Season Composition	15	18	30	Yes
Number Cool Season Species >3%	1	2	1	Yes
Number Warm Season Species >3%	2	2	3	Yes

Diversity	Standard	2017	2020	Achieved
Total Number Species Present	5	6	5	Yes
Number Species >3% Composition	4	4	4	Yes
At least 3 native forbs*	3	Yes	Yes	Yes

A comprehensive species list in the bond release application documents the presence of at least three native forbs in the reclaimed native grassland. The three native forb requirement was not a

revegetation success performance standard for reclaimed native grassland prior to 2022. Thus, data from 2025 was obtained to fulfill this requirement.

The permanence standard is achieved by the established vegetation's continued persistence in the reclaimed area. This reclaimed native grassland has been managed as hayland during the revegetation responsibility period because of its size, 12.76 acres, and location.

### **Reclaimed Wetlands**

The reclaimed cropland in Tract 7A (Section 25) contains four temporary wetlands that comprise 0.4 acres. Temporary wetlands must be replaced on an acre-for-acre basis, but they are not considered a land use and there are no specific revegetation performance standards for temporary wetlands. The temporary wetlands in Tract 7A are replacing pre-mine temporary wetlands on Falkirk owned land in other areas at the Falkirk Mine. The temporary wetlands may hold water in the early part of the growing season and, in cropland, may be seeded through during years with normal spring precipitation.

Tract 7B (Section 36) contains a 21.0 acre reclaimed seasonal wetland, SE36-1. This was a pre-mine seasonal wetland that was used as a sediment pond and reconstructed. This reclaimed wetland has a buffer of perennial vegetation that is protecting the wetland from sediment deposition from the surrounding cropland and providing habitat for wildlife.

Tract 7C (Section 31) contains a 1.6 acre reclaimed seasonal wetland, LW-SW31-1. Like reclaimed wetland SE36-1, this wetland was not mined through but was affected by associated mining disturbance. This reclaimed wetland is surrounded by reclaimed native grassland.

The bond release application contains three years of wetland data for reclaimed wetland WE36-1 and LW-SW31-1. This includes aerial photography showing wetland configuration and vegetative zones. A completed list of the vegetation established, wetland vegetation zonation and water quality analysis are included for each wetland during the past three years. Falkirk has demonstrated that the reclaimed wetlands meet 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 for this permit area.

### **General Information**

The formal bond release inspection was conducted on November 6, 2025. Participants of the bond release inspection included Reclamation Division and Falkirk Mining Company staff. 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 Fish and Wildlife Service were invited to participate in the bond release inspection but declined the offer. Federal personnel were furloughed at the time of this inspection. This bond release does not contain federal coal; therefore, OSMRE concurrence is not required.

The Reclamation Division asked Falkirk to smooth surface irregularities on a few acres of cropland in Tract 7A (Section 25); otherwise, no concerns were observed during the inspection. As noted in the Reclamation Division's November 18, 2025, inspection report, Falkirk was repairing the areas in Tract 7A. Spring wheat and corn were grown on the cropland in Tracts 7A and 7B (Section 36), respectively, in 2025. The native grassland in Tract 7C (Section 31) had been hayed. The large seasonal wetland in Tract 7B was supporting a diverse mixture of unharvested vegetation that was providing excellent cover for wildlife.

The bond release application contains correspondence from the McLean County Superintendent of Highways, James A. Grey, indicating that the reclaimed section line trails between Section 25, T146N, R82W & Section 30, T146N, R81W and between Section 36, T146N, R82W and Section 31, T146N, R81W have been 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 October 23<sup>rd</sup> and 30<sup>th</sup>, and November 6<sup>th</sup> and 13<sup>th</sup>, 2025. 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 Bond Release No. 7 to NAFK-9601 in the amount of \$421,656.47. The remaining bond amount, \$2,056,152.46 will be retained to cover the acreage remaining in this permit area. If approved, the bond release will become effective May 29, 2026, unless a formal hearing is requested.

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

**Figure 1:** Final Bond Release No. 7 to Permit NAFK-9601.

