



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

November 20, 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 39 and Renewal 6 to Surface Coal Mining Permit NAFK-9503 for the Falkirk Mine. The five-year permit renewal will allow Falkirk to continue to operate within the existing permit area until April 17, 2031. Revision 39 identifies the coal removal subareas that will be mined during the next five-year permit term. The revision also updates the introductory, legal, compliance, surface and coal interest and ownership, ground water hydrology, fish and wildlife resources, surface water information and monitoring plan, operation plans, blasting plans, extended mining plans, transportation facilities and surface water management information in the permit.

Permit NAFK-9503 contains tracts of unleased federal coal which consist of privately owned surface. Associated disturbance is planned for portions of these tracts to accommodate mining of privately owned coal in adjacent areas, but no mining is proposed on the federal coal tracts. Prior revisions to Permit NAFK-9503 approved these associated disturbance areas; however, Revision 39 proposes the addition of an SPGM storage area above the federal coal tract in the NE $\frac{1}{4}$ of Section 2, T144N, R84W, and the addition of a dragline deadhead route in the NW $\frac{1}{4}$ of Section 12, T144N, R84W. According to N.D.A.C. 69-05.2-10-06, the Commission may approve these disturbances if we consult with OSM to ensure that actions are not taken which would substantially and adversely affect the federal mineral estate.

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 **January 5, 2026**. 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)

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Revision 39 Advisory Review Request Letter

Public Service Commission
Jonathan Emmer



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November 20, 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 39 and Renewal 6 to Surface Coal Mining Permit NAFK-9503 for the Falkirk Mine. The five-year permit renewal will allow Falkirk to continue to operate within the existing permit area until April 17, 2031. Revision 39 identifies the coal removal subareas that will be mined during the next five-year permit term. The revision also updates the introductory, legal, compliance, surface and coal interest and ownership, ground water hydrology, fish and wildlife resources, surface water information and monitoring plan, operation plans, blasting plans, extended mining plans, transportation facilities and surface water management information in the permit.

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Sincerely,

A blue ink signature of Jonathan Emmer, written in a cursive style.

Jonathan Emmer
Director
Reclamation Division

Enclosure

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

Falkirk Mine\Permits\NAFK - 9503\Revisions\Rev39_Ren6\Rev39_Advsry_rvw_rqst_ltr_11-20-25



Public Service Commission

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Randy Christmann

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

sent via email and inside mail

November 20, 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 is a flash drive containing the permit application for Revision 39 to Surface Coal Mining Permit NAFK-9503 held by the Falkirk Mining Company for the Falkirk Mine. Revision 39 identifies the coal removal subareas that will be mined during the next five-year permit term. The revision also updates the introductory, legal, compliance, surface and coal interest and ownership, ground water hydrology, fish and wildlife resources, surface water information and monitoring plan, operation plans, blasting plans, extended mining plans, transportation facilities and surface water management information 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 **January 5, 2026** in accordance with NDAC 69-05.2-10-01(2).

If you have any questions, please contact this office.

Sincerely,

A blue ink signature of Jonathan Emmer, written in a cursive style.

Jonathan Emmer
Director
Reclamation Division

Enclosure

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Dept. 408
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November 20, 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 is a flash drive containing the permit application for Revision 39 to Surface Coal Mining Permit NAFK-9503 held by the Falkirk Mining Company for the Falkirk Mine. Revision 39 identifies the coal removal subareas that will be mined during the next five-year permit term. The revision also updates the introductory, legal, compliance, surface and coal interest and ownership, ground water hydrology, fish and wildlife resources, surface water information and monitoring plan, operation plans, blasting plans, extended mining plans, transportation facilities and surface water management information 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 **January 5, 2026** 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, reading "Jonathan Emmer", is positioned above the printed name.

Jonathan Emmer
Director
Reclamation Division

Enclosure

Falkirk Mine\Permits\NAFK - 9503\Revisions\Rev39_Ren6\Rev39_Advsry_rvw_rqst_ltr_11-20-25



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600 East Boulevard Ave
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November 20, 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 39 to Surface Coal Mining Permit NAFK-9503 held by the Falkirk Mining Company for the Falkirk Mine. Revision 39 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 eight listed or proposed species have the potential to exist in Permit NAFK-9503. No designated or proposed critical habitat is within or immediately adjacent to the permit. The listed species include the Northern Long-eared bat, 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 **January 5, 2026** in accordance with NDAC 69-05.2-10-01(2).

If you have any questions, please contact this office.

Sincerely,

A blue ink signature of Jonathan Emmer, written in a cursive style.

Jonathan Emmer
Director
Reclamation Division

Enclosures

Falkirk Mine\Permits\NAFK - 9503\Revisions\Rev39_Ren6\Rev39_Advsry_rvw_rqst_ltr_11-20-25



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November 20, 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 39 to Surface Coal Mining Permit NAFK-9503 held by the Falkirk Mining Company for the Falkirk Mine. Revision 39 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 eight listed or proposed species have the potential to exist in Permit NAFK-9503. No designated or proposed critical habitat is within or immediately adjacent to the permit. The listed species include the Northern Long-eared bat, 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 **January 5, 2026** in accordance with N.D.A.C. 69-05.2-10-01(2).

If you have any questions, please contact this office.

Sincerely,

A handwritten signature in blue ink, reading "Jonathan Emmer".

Jonathan Emmer
Director
Reclamation Division

Enclosures

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

Falkirk Mine\Permits\NAFK - 9503\Revisions\Rev39_Ren6\Rev39_Advsry_rvw_rqst_ltr_11-20-25

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Revisions No. 39 and Renewal No. 6 to NAFK-9503 - 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)].

Northern Long-eared Bat – Endangered

Although the range for the Northern Long-eared Bat (NLEB) includes North Dakota, its primary range is limited to the Turtle Mountains and riparian corridors associated with the Missouri and Little Missouri Rivers which include the Badlands. The NLEB is considered rare in North Dakota according to the North Dakota Game and Fish Department. Suitable summer habitat includes forest, woodlots, fence rows, riparian forest, and other wooded corridors. Suitable winter habitat includes caves, abandoned mines, and to a lesser extent, abandoned railroad tunnels. NLEB roost in cavities, underneath bark, crevices, or hollows of both live and dead trees. They have also occasionally been found roosting in structures like buildings, sheds, houses, and bridges. No NLEB hibernacula or occupied maternity roost trees are known in North Dakota.

The southwest corner of Surface Coal Mining Permit NAFK-9503 approaches the Missouri River valley, so wooded draws in the southwest corner of the permit could provide potential habitat. There are no known maternity roost trees or hibernacula within the permit area. Although not required, Falkirk will attempt to remove trees for mining activities prior to June 1 and after July 31, which is the NLEB pup season. The Commission concludes mining and reclamation activities proposed within Revision No. 39 and Renewal No. 6 “**may affect but is not likely to adversely affect**” the continued existence of Northern Long-eared Bats.

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 10 miles northeast of the northernmost boundary of Permit NAFK-9503, 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 mining and reclamation activities proposed with Revision No. 39 and Renewal No. 6 “**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 is believed to be limited due to its restricted habitat preferences, nesting requirements, and the lack of suitable habitats within the area. Lake Audubon is the closest critical habitat to the permit area. The southern reaches of this habitat are approximately 12 miles to the north. Sedimentation ponds within Falkirk permitted areas can periodically provide the desired habitat for piping plovers. These areas are monitored during the Piping Plover migrating and breeding period. Falkirk will continue to monitor the permit area for piping plovers, and sightings will be

reported to the Commission.

The Commission 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. 39 and Renewal No. 6 “**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. 39 and Renewal No. 6 will have “**no effect**” on the continued existence of the Rufa Red Knot.

Dakota Skipper – Threatened

The USFWS listed the Dakota Skipper 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 with bluestem grasses, needlegrasses, and desirable native forbs such as purple coneflower. In the Missouri Couteau region of North Dakota, on the western edge on 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.

It is unlikely suitable habitat for the Dakota Skipper exists within the permit or buffer area as defined by the 2024 Dakota Skipper North Dakota Survey Protocol, and areas that contain ecological sites associated with the lifecycle needs for the Dakota Skipper found in the permit area are generally in low to fair ecological condition. The most suitable habitat for Dakota Skipper in the permitted area is in the NE¼ of Section 7, T144N, R83W, SE¼ of Section 11, T144N, R84W, and the SW¼ of Section 36, T146N, R84W according to information provided in the Wildlife Monitoring Plan in the Permit.

In 2019, KDK Consulting conducted native grassland vegetation assessments for Dakota Skipper habitat in and around Falkirk’s mining permits. The surveys were conducted on thirty-one native grassland sites following the USFWS 2018 Dakota Skipper North Dakota Survey Protocol. KDK Consulting determined that none of the thirty-one sites met the criteria to be considered as suitable habitat. The native grassland with the highest potentially suitable habitat is in the southwest corner of the permit area (the NE¼ of Section 7, T144N, R83W and SE¼ of Section 11, T144N, R84W) and are outside of the planned mining disturbance boundary. The potentially suitable habitat in the SW¼ of Section 36, T146N, R84W, is scheduled to be mined beginning in 2031. The Commission finds the planned mining and reclamation activities proposed with Revision No. 39 and Renewal No. 6 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 several pollinator plots near reclaimed wetland buffer areas and may include milkweed in future pollinator plots.

The Commission finds the planned mining and reclamation activities proposed within Revision No. 39 and Renewal No. 6 **“may affect but is not likely to jeopardize”** the continued existence of the Monarch Butterfly provided Falkirk follows future 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.

The Commission finds the planned mining and reclamation activities proposed within Revision No. 39 and Renewal No. 6 **“may affect but is not likely to jeopardize”** the continued existence of the Western Regal Fritillary provided Falkirk follows future 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 are 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 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. 39 and Renewal No. 6 **“may affect but is not likely to jeopardize”** the continued existence of the Suckley's Cuckoo Bumble Bee.