

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Falkirk Mining Company
Revision 39, Permit NAFK-9503
Application

Case No. RC-25-254

**REVISION OF PERMIT TO ENGAGE IN SURFACE COAL
MINING AND RECLAMATION OPERATIONS**

April 1, 2026

Based on the application for **Revision No. 39 to Surface Coal Mining Permit NAFK-9503**, submitted by the Falkirk Mining Company on September 18, 2025, and as revised through February 25, 2026, and all information and documentation contained therein, the North Dakota Public Service Commission (Commission) finds that the application meets all applicable requirements of Chapter 38-14.1 of the North Dakota Century Code (NDCC) and Article 69-05.2 of the North Dakota Administrative Code (NDAC). On the basis of the information set forth in the application, or from that otherwise available and known by the applicant, the Commission finds that:

Finding No. 1. The revision application is accurate and complete and complies with the requirements of NDCC Chapter 38-14.1 and NDAC Article 69-05.2. [NDCC 38-14.1-21(3)(a)].

Revision No. 39 was submitted in conjunction with Renewal No. 6. The revision updates various sections of the permit for the next 5-year permit term including 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. Revision No. 39 and corresponding Renewal No. 6 will allow surface coal mining and reclamation operations to continue on 28,432.1 acres of land in Permit NAFK-9503 at the Falkirk Mine in McLean County, North Dakota.

The applicant verified that all information included in the revision application is true and correct to the best of their knowledge. Commission staff conducted completeness and technical reviews to ensure that the required information was provided, and the mining and reclamation plans met all applicable requirements. The Reclamation Division sent a completeness deficiency letter to the applicant on October 9, 2025, and technical deficiency letters were sent December 16, 2025, and February 11, 2026. Responses to each letter were reviewed and changes to the revision application were made to address the concerns that were noted. The applicant provided leases and other documents showing that they have the right to mine the lands where coal removal is proposed and to disturb the surface of other lands in the permit area. The Commission concludes that this significant revision application is now accurate and complete.

From November 20, 2025, through December 11, 2025, the applicant published the required notices of the permit revision application in the Bismarck Tribune and the McLean County Independent newspapers. The Commission sent the notice of revision application

to the surface owners affected by the proposed revision, and the notice was sent to numerous local, state, and federal agencies. Applicable advisory committee members received the revision application and comments were received from the United States Fish and Wildlife Service, North Dakota Parks and Recreation, North Dakota Department of Environmental Quality, and North Dakota Department of Water Resources.

On December 15, 2025, the Commission received a letter from an anonymous McLean County landowner/farmer objecting to the applications of Revision No. 39 and Renewal No. 6 and requesting an informal conference if the renewal application is not denied. The letter contained numerous allegations and statements as grounds for the request. The letter listed allegations that Falkirk Mining Company has demonstrated a long-standing pattern of noncompliance, with dozens of documented violations of its mining and reclamation plan that independently justify denial under North Dakota law; that the company has failed to post required additional financial assurance despite placing new subsurface burdens on reclaimed land through carbon sequestration agreements; that Falkirk's sole coal purchaser, Rainbow Energy Center, remains in material default on reclamation bonding obligations, and that Commission precedent prohibits renewing permits tied to such defaults. The anonymous letter asserts that beyond these statutory defects, critical deficiencies remain unresolved, including outdated landowner agreements, incomplete reclamation, inadequate hydrologic review, and unaddressed environmental and crop-loss impacts. The return address for the written objection was the Falkirk Mine. The anonymous letter did not provide any information indicating noncompliance with applicable statutes, rules, or permit conditions, nor did it identify an opposing party as required to meet the burden for denying a permit renewal. Because denial of a renewal requires a Commission order followed by a formal hearing—not an informal conference—and the anonymous nature of the letter prevented notice to all parties, an informal conference could not be scheduled. Accordingly, the Commission did not hold an informal conference on the complaint.

On January 15, 2026, the Commission received a letter from Jason Sauer, a landowner of the SE $\frac{1}{4}$ of Section 1, T144N, R88W in Permit NAFK-9503. The letter was a formal protest to the application of Revision No. 39 and a request for an informal conference. Mr. Sauer's letter stated that Revision No. 39 fails to demonstrate that reclamation can be accomplished as required by state law to restore the land to equal or better productivity; the proposed soil removal, storage, and reconstruction plans are inadequate to protect the topsoil resource of his agricultural property; the mining plan may adversely affect the hydrologic balance and water quality on and adjacent to his property; and the proposed operations will unduly interfere with his surface ownership rights and land use. The Commission sent the notice of the scheduled informal conference to Mr. Sauer and the Falkirk Mining Company. The Commission published the required notice of the scheduled informal conference in the Bismarck Tribune and the McLean County Independent newspapers on January 22, 2026. On January 31, 2026, the Commission and the Falkirk Mining Company received a notice of withdrawal of the protest to the application of Revision No. 39 and a request to cancel the scheduled informal conference from Mr. Sauer. Mr. Sauer's notice stated that the protest was withdrawn after the Sauer family and Falkirk Mining Company reached a preliminary agreement in principle regarding a land exchange that addressed his core concerns with the permit revision application. The scheduled informal conference was canceled, and the Administrative Law Judge closed the case on February 3, 2026.

Finding No. 2. The applicant has demonstrated that reclamation as required by NDCC Chapter 38-14.1 and NDAC Article 69-05.2 can be accomplished under the reclamation plan contained in the permit application. [NDCC 38-14.1-21(3)(b)].

Revision No. 39 provides detailed mining and reclamation plans for the next term of the permit, April 17, 2026, to April 17, 2031, and it updated other relevant sections of the permit accordingly. Revision No. 39 does not add any land to the Surface Coal Mining Permit NAFK-9503, and with the approval of this revision, the total acreage in the permit remains at 28,432.1 acres. Coal mining will continue to occur on much of this area and other areas of the permit will be used for support activities including haulroads, overburden and soil stockpiles, water management structures, and other associated disturbances. Reclamation of disturbed areas will be carried out using reclamation procedures that have been successful in the past and satisfy the requirements of North Dakota laws and rules. The post-mining topography proposed by the applicant meets the requirements of NDCC 38-14.1-24(3) and NDAC 69-05.2-21-02. The average proposed post-mining slope is less than the average pre-mine slope. No thin overburden exists within this permit area. The applicant has demonstrated sufficient soil materials are available to meet the soil redistribution requirements of NDAC 69-05.2-15 and the revegetation requirements of NDAC 69-05.2-22.

The reclaimed land will be capable of supporting pre-mine uses, or higher or better uses, than existed prior to mining. The predominant pre-mining land uses in the permit area are cropland (including hayland and land enrolled in the Conservation Reserve Program (CRP)) and native grassland. Other pre-mine land uses include tame pastureland, farmsteads, shelterbelts, woodlands, fish and wildlife habitat (wetlands), public roads, and industrial/commercial. The post-mining land uses will be similar to the pre-mine conditions. However, there will be some decreases in the following pre-mine land use acreages: tame pastureland (140 acres), shelterbelts (25 acres), farmsteads (132 acres), and most land enrolled in CRP is being converted to cropland (hayland).

The coal removal area presently approved is limited to what will be mined in this permit term that ends April 17, 2031. The federal coal tracts located in the S¹/₂ of Section 6, T144N, R83W; the NW¹/₄ of Section 12 and N¹/₂ of Section 2, T144N, R84W; the SE¹/₄ of Section 18, T145N, R83W; Section 12, T145N, R84W; and the SW¹/₄ of Section 32, T146N, R83W are currently not proposed to be mined. As required by the Cooperative Agreement between the Commission and the U.S. Department of the Interior, the Bureau of Land Management was consulted through OSMRE to ensure that mining and reclamation plans in this revision do not result in substantial or adverse effects to the federal mineral estate. Reclamation of the disturbed acreage will follow normal reclamation procedures, and the applicant's reclamation practices satisfy the requirements of the North Dakota Program. The applicant's reclamation practices have proven effective in the past.

With regard to the reclamation schedule, Falkirk has demonstrated the need for variances from the contemporaneous reclamation requirements that normally require rough grading to be completed within 180 days of coal removal and the four spoil peak requirements specified in NDAC 69-05.2-21-01(2), and that all reclamation efforts through the initial seeding be completed within three years of completion of mining activities, NDCC 38-14.1-24(14). The Revision No. 39 application did not request additional variances. Eleven variance areas remain active within Permit NAFK-9503. These variance requests had been appropriately justified, and the Commission approved the variances as allowed by NDAC 69-05.2-21-01(2) and NDCC 38-14.1-24(14).

Nine (9) standard conditions and four (4) special conditions were attached to the original permit approval and subsequent revisions. All nine of the standard conditions and two special conditions remain in effect.

Finding No. 3. Based on the assessment of the probable cumulative impact of all anticipated mining in the area, the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area. [NDCC 38-14.1-21(3)(c)].

An assessment of the probable cumulative hydrologic impact of all anticipated mining in the area has been made as required by NDCC 38-14.1-14(1)(o). The Commission finds that the proposed operation has been designed to maintain the quantity, quality, and hydrologic regime of surface and ground water systems in the area. The cumulative effects of all existing and proposed mining operations should not damage the hydrologic balance and water availability within or adjacent to the permit area. The detailed cumulative hydrologic impact assessment for Permit No. NAFK-9503 was last updated on July 19, 2011, when Revision No. 20 added 16,924.1 acres to the permit area and is on file with the Reclamation Division.

Finding No. 4. Lands within the permit are not within an area designated unsuitable for surface coal mining operations, nor within areas under study or administrative proceedings under a petition to have an area designated as unsuitable for surface coal mining operations. [NDCC 38-14.1-21(3)(d)].

None of the lands within the permit area have been designated unsuitable for surface coal mining operations pursuant to NDCC 38-14.1-05, nor are they within an area under study or administrative proceedings under a petition to have an area designated as unsuitable for surface coal mining operations.

Finding No. 5. The proposed mining operation will not interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally sub-irrigated or materially damage the quantity or quality of water in surface or underground water systems that supply these alluvial valley floors. [NDCC 38-14.1-21(3)(e)].

Based on an examination of the geologic and geomorphic characteristics, soils, land use, and the water quality and quantity of streams within or adjacent to the permit area, it has been determined that some areas identified as the Missouri River alluvial valley floor (AVF) are located near the permit area. None of these areas are within the permit area and the proposed mining activities are not expected to affect this AVF because surface water levels and corresponding ground water levels are controlled by releases from the Garrison Dam. However, the applicant has committed to conducting long-term monitoring of the AVF by use of aerial imagery or photography, periodic on the ground observations to check for land use practices or non-mining influences that may affect the AVF, and monitoring of landowner perceptions through their landowner relations program of conditions on the AVF. Should changes occur on the AVF that may be influenced by mining, the applicant is committed to taking additional monitoring and/or hydrologic reclamation steps as required to address any issues. Reporting of AVF monitoring results will continue to be submitted to the Commission on an annual basis in their annual Groundwater Monitoring Report.

Finding No. 6. In cases where the mineral estate has been severed from the surface estate, the applicant complied with the requirements of NDCC Chapter 38-18 [NDCC 38-14.1-21(3)(f)].

The applicant included leases and other documents in the revision application demonstrating compliance with the North Dakota Surface Owners Protection Act, NDCC 38-18. This documentation included the initial notice that was given to all surface owners within the permit area prior to issuance of the permit and subsequent notices to affected surface owners for changes proposed with permit revisions.

Finding No. 7. Lands within the permit area are not subject to the prohibitions or limitations of NDCC 38-14.1-07 except for areas that receive specific approvals after complying with the applicable review procedures of NDAC 69-05.2-04 [NDAC 69-05.2-10-03(6)(a)].

Lands within the Revision No. 39 application area are:

- a. Not within the boundaries of units of the North Dakota Park System, the National Park System, the National Wildlife Refuge Systems, the National System of Trails, the National Wilderness Preservation System, the National Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act, and national recreation areas.
- b. Not federal lands within the boundaries of any national forest.
- c. Not within 300 feet of any publicly owned park or places included in the State Historic Sites Registry or the National Register of Historic Places (NRHP). Cultural resource surveys and inventories have been conducted on lands within Permit No. NAFK-9503 for the initial permit application (Boughton and Brownell, 1993), and for lands subsequently added to the permit with Revision No. 1 (Peterson, 1995), Revision No. 5 (Walker-Kuntz, 1999), Revision No. 11 (Bales, Wagers, Gadd, and Fandrich, 2003), and Revision No. 20 (Boughton, Wagers, and Peterson, 2007, and James Strait, 2008). Reports of each survey contained detailed findings of historic and prehistoric sites with recommendations for site specific NRHP eligibility. All reports were reviewed by the North Dakota State Historic Preservations Officer (SHPO), who provided recommendations and/or concurrence with the findings of the reports. With the exception of site 32ML1064 in Section 32, T146N, R83W, all NRHP eligible sites within Permit NAFK-9503 have been properly tested and mitigated with concurrence from SHPO. Site 32ML1064, a prehistoric ring and cairn, has been tested, but data recovery is delayed until Falkirk obtains the federal coal lease surrounding this site. However, Falkirk currently does not have plans to disturb this site.

The proposed surface coal mining operations will not adversely affect any significant historic, archaeological, or paleontological sites. Correspondence received to date from the North Dakota SHPO regarding cultural resource sites in Permit NAFK-9503 are located in the permit. Falkirk has committed to testing and mitigating, if necessary, any previously unrecorded archeological, cultural, or historical materials that may be discovered as a result of mining related activities.

- d. Within 100 feet of the outside right-of-way line of a public road. However, the applicant has stated that no disturbance will occur within 100 feet of the outside edge of the existing public road rights-of-way until the appropriate road authority approves mining disturbance within 100 feet of the right-of-way or until the road authority closes the roads.

The applicant has committed to providing the Commission with documentation of additional McLean County approvals before any disturbance occurs within 100 feet of the outside edge of any public road right-of-way. The county approval process includes public notice with the opportunity for a hearing. The Commission finds that this approval process will provide for a mechanism for protecting the interests of the landowners and public similar to that provided by NDCC 38-14.1-07(4) and NDAC 69-05.2-04-01.3. In addition, the applicant plans to petition McLean County to close certain section line roads. The county road closure process also provides for public notice and opportunity for hearing and the applicant will forward copies of those documents to the Commission as well.

- e. Not within 300 feet of any public building, school, church, community, or institutional building. Permit NAFK-9503 contains or is within five hundred feet of several occupied dwellings; however, the applicant has committed not to conduct any mining activities within five hundred feet of these dwellings unless approved by the owner of the dwelling. In addition, the applicant states no mining activities will be conducted within 500 feet of any farm building that is currently being used. These 500-foot setback areas are depicted in Section 3.1.5 (Pit Layout and Facilities Map) of the permit and are considered as no disturbance areas. However, it is understood that the applicant may purchase the land where an occupied dwelling or active farm building is located or otherwise obtain a waiver from the owner of the structure.
- f. Not within 100 feet of any cemetery.

Finding No. 8. With respect to prime farmland, the post-mining land use of reclaimed prime farmland will be cropland, the reclamation plan was reviewed by the Natural Resource Conservation Service and any of their suggestions were considered. Operations will be conducted in compliance with NDAC 69-05.2-26 and NDCC 38-14.1, and the applicant has the technological capability to restore the productivity on reclaimed lands [NDAC 69-05.2-10-03(6)(c) and NDCC 38-14.1-21(6)].

The applicant has included a prime farmland reclamation plan that satisfies the requirements of NDAC Article 69-05.2-09-15 and the performance standards of NDAC Article 69-05.2-26. The post-mining land use of the reclaimed prime farmland will be cropland and the total prime farmland acreage will not be decreased from that which existed prior to mining based on the cooperative soil survey for McLean County. The Natural Resource Conservation Service has reviewed the prime farmland reclamation plan and has determined that it is adequate to restore the productivity of the prime farmland. The reclamation methods that will be used have been proven to be successful in the past and the Commission finds that the applicant has the technological capability to restore the productivity of reclaimed land to a level that is equal to or greater than non-mined prime farmland in the surrounding area under equivalent management practices.

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. The NLEB roosts 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 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 are often invaded by Kentucky bluegrass. These prairies also typically contain prairie lilies, bluebell bellflowers, 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 the Dakota Skipper in the permitted area is in the NE $\frac{1}{4}$ of Section 7, T144N, R83W, SE $\frac{1}{4}$ of Section 11, T144N, R84W, and the SW $\frac{1}{4}$ 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 NE $\frac{1}{4}$ of Section 7, T144N, R83W and SE $\frac{1}{4}$ of Section 11, T144N, R84W) and are outside of the planned mining disturbance boundary. The potentially suitable habitat in the SW $\frac{1}{4}$ of Section 36, T146N, R84W, is scheduled to be mined beginning in 2031. On November 24, 2025, the USFWS recommended suitable Dakota Skipper habitat be surveyed by a USFWS permitted surveyor prior to mining related disturbance. The Reclamation Division attached Special Condition No. 1 to Revision 39 which requires the Falkirk Mining Company to have a USFWS permitted surveyor evaluate the native grassland in Sections 1, 2 and 12 of T145N, R84W and Section 36, T146N, R84W to determine if suitable Dakota Skipper habitat is present and if occupancy surveys are warranted prior to surface disturbance.

The Commission finds the planned 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 Dakota Skipper.

Monarch Butterfly – Proposed Threatened

The Monarch Butterfly is a proposed threatened species. The Monarch Butterfly requires habitat with milkweed as a larval host plant and floral nectar sources for adults. Monarch Butterflies found in North Dakota are comprised of the eastern range Monarch Butterfly, found east of the Rocky Mountains. These Monarch Butterflies overwinter in central Mexico and then migrate and disperse throughout North America. No designated critical habitat is currently proposed for the eastern range Monarch Butterfly. 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 prairies 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. 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 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.

Finding No. 10. The applicant has submitted proof that all reclamation fees required by 30 CFR subchapter R have been paid. [NDAC 69-05.2-10-03(6)(e)].

Falkirk has paid all reclamation fees required by 30 CFR subchapter R. Records maintained by the Office of Surface Mining's Applicant Violator System show that all fees have been paid.

Finding No. 11. The applicant has satisfied requirements for approving cropland as a post-mining land use. [NDAC 69-05.2-10-03(6)(f)].

The applicant has satisfied the requirements for approval of a cropland post-mining land use under NDAC 69-05.2-22-01. Areas reclaimed to cropland will either be seeded directly to crops commonly grown in the area or to a tame grass/legume pre-cropland mixture. The post-mining topography and soils are suitable for cropland in the areas that will be cropped.

Finding No. 12. All existing structures that will be used to support mining activities within the permit area comply with the requirements of NDCC 38-14.1-24 and NDAC 69-05.2-09-04 [NDAC 69-05.2-10-04].

No existing structures, as defined by NDAC 69-05.2-01-02(31), will be used to support mining activities. Structures currently in the permit area (such as haulroads and sedimentation ponds) will be used to support mining activities. In addition, some haulroads, sedimentation ponds, coal handling facilities and other facilities which are within Permit NAFK-8705 will support mining in this permit area. These previously permitted structures have been found to meet the applicable design and performance standards of NDCC 38-14.1-24 and NDAC 69-05.2.

Finding No. 13. No drill holes, boreholes or wells will be retained for other uses. [NDAC 69-05.2-14-03].

The applicant has not proposed to retain any drill holes, boreholes, or wells for other uses.

Finding No. 14. No spoil in the permit area is known to cause toxic mine drainage. [NDAC 69-05.2-16-11].

The chemical characteristics of the overburden materials in the permit area are such that they do not produce toxic mine drainage. The analysis of overburden samples included in the permit application do not reveal any substances that would cause any chemical reactions or physical effects that are likely to kill, injure, or impair biota commonly present in the area.

Finding No. 15. The applicant will not conduct mining activities within or near perennial and intermittent stream channels that violate applicable water quality standards or adversely affect the quantity and quality of the water and other environmental resources of the stream. [NDAC 69-05.2-16-20].

There are several intermittent streams in the permit area. However, the applicant does not plan to conduct any mining related activities within 100 feet of any stream that has intermittent flow. The applicant will also mark the 100-foot buffer zone as required by NDAC 69-05.2-16-20 within one year of any mining related mining disturbances near an intermittent stream or before mining activities occur within one-half mile of the stream, whichever is sooner.

Finding No. 16. The applicant does not propose to use any experimental practices in the permit area. [NDAC 69-05.2-27-02].

There are no plans included in the permit application to use any experimental practices that may be allowed under NDAC 69-05.2-27-02.

Finding No. 17. The applicant does not control and has not controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations [NDAC 69-05.2-10-03(4)].

Commission records, and those in the Office of Surface Mining's Applicant Violator System, do not show that the applicant controls and has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of NDCC 38-14.1 or of other states' laws which are based on P.L. 95-87 (the Federal Surface Mining Control and Reclamation Act), of such nature, duration, and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of these laws.

Finding No. 18. Neither the applicant, nor any affiliated companies, have unabated violations or unpaid civil penalties. [NDAC 69-05.2-10-03(1)].

Commission records, and those in the Office of Surface Mining's Applicant Violator System, do not indicate that the applicant, nor any affiliated companies, have any unpaid civil penalties or unabated violations of NDCC 38-14.1 or any other federal or state laws, rules, or regulations pertaining to air or water environmental protection. Also, the North Dakota Department of Environmental Quality has not informed the Commission of any unabated violations that the applicant has with regard to air and water environmental protection standards.

Finding No. 19. Performance bonds in the amount of \$114,823,633 are sufficient for the proposed surface coal mining operations in the consolidated area that includes this permit [NDAC 69-05.2-12-07].

The Consolidated Worst-Case reclamation bond for the Falkirk Mining Company is under review with pending Revision No. 42 to Permit NAFK-8705. The Commission has determined, pursuant to NDAC 69-05.2-12-07, that the existing Consolidated Worst-Case reclamation bond is sufficient to cover the required reclamation, restoration, and abatement work in the consolidated bond area for the Falkirk Mine that includes Permit NAFK-9503.

It should be noted, if the annual update of variable costs in the Commission's policy for calculating reclamation cost estimates for setting bond amounts results in more than an insignificant increase on the existing cost estimate, permittees are required to update their reclamation cost estimates and increase bond amounts accordingly.

Revision No. 39 to Permit No. NAFK-9503 is hereby conditionally granted to the Falkirk Mining Company to identify the next five-year coal removal subarea and to update 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 as described in the permit revision application received on September 18, 2025.

The approved revision is subject to the requirements of Chapter 38-14.1 of the North Dakota Century Code, Article 69-05.2 of the North Dakota Administrative Code, the conditions of the approved permit, and any additional or revised permit conditions listed on attached PSC Reclamation Form - 3. Pursuant to Section 38-14.1-23 of the North Dakota Century Code and Article 69-05.2 of the North Dakota Administrative Code, this revision was found to be a significant alteration to the previously approved permit.

PUBLIC SERVICE COMMISSION



Sheri Haugen-Hoffart
Commissioner



Randy Christmann
Chair



Jill Kringstad
Commissioner

Falkirk Mine\Permits\NAFK - 9503\Revisions\Rev39_Ren6\Rev39_apprvl_award_4-1-26