



United States Department of the Interior
OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
Regions 5, 7-11
P.O. Box 25065, 1 Denver Federal Center, Bldg #41
Lakewood, CO 80225



February 11, 2026

ND-009

Jonathan Emmer
Director Reclamation & AML Divisions
North Dakota Public Service Commission
600 E Boulevard Ave Dept 408
Bismarck, ND 58505

Re: The Office of Surface Mining Reclamation and Enforcement's Mining Plan Modification Determination for Falkirk Mine, State Permit NAFK-9503, Mining Federal Coal in New Federal Coal Lease NDM 111489

Mr. Emmer-

On January 22, 2026, the North Dakota Public Service Commission (PSC) requested OSMRE's decision on whether Falkirk's Revision 40 constitutes a mining plan modification requiring ASLM approval. The Office of Surface Mining Reclamation and Enforcement (OSMRE) determines that Falkirk Mining Company's proposed permit revision to North Dakota State Permit NAFK-9503 at Falkirk Mine to mine the NW ¼ of Section 12, T144N, R84W *does* constitute a mine plan modification requiring approval from the Assistant Secretary for Land and Minerals Management (ASLM).

Proposed Action

Revision 40 to NAFK-9503 adds mining plans for the NW¼ of Section 12, T144N, R84W. A Federal Coal Lease was awarded to Falkirk in September of 2025 to facilitate Federal Coal mining in this quarter. As a result of this permit revision, Falkirk updated the introductory, legal, surface and coal interest ownership, geology, operations plans, transportation facilities and reclamation plans.

Determination Criteria and Decision

Based on OSMRE's review of the materials submitted by the Falkirk Mining Company, OSMRE has determined that the proposed action *does* constitute a mining plan modification requiring approval by the ASLM. The OSMRE has considered the criteria described in the Federal regulations at 30 CFR 746.18(d)(1) through (d)(6) defining when a permit revision constitutes a mining plan modification:

1. *Any change in the mining plan which would affect the conditions of its approval pursuant to Federal law or regulation other than SMCRA.*

The proposed change does not affect the conditions of mining permit approval pursuant to Federal law or regulations other than SMCRA.

2. *Any change which would adversely affect the level of protection afforded any land, facility, or place designated unsuitable for mining.*

The proposed change area does not include any land, facility, or place designated unsuitable for mining.

3. *Any change in the location or amount of coal to be mined, except where such change is the result of: (i) A minor change in the amount of coal actually available for mining from the amount estimated; or (ii) An incidental boundary change¹.*

The proposed change *does* change the location or amount of coal to be mined.

4. *Any change which would extend coal mining and reclamation operations onto leased Federal coal lands for the first time.*

The proposed change *does* extend coal mining and reclamation operations onto leased Federal coal lands for the first time.

5. *Any change which requires the preparation of an environmental impact statement under the National Environmental Policy Act or 1969, 42 U.S.C. 4321 et seq.*

The proposed change is not a major action normally requiring the preparation of an Environmental Impact Statement².

6. *Any change in the mining operations and reclamation plan that would result in a change in the postmining land use where the surface is federally-owned.*

The proposed change would not result in a change in the postmining land use where the surface is federally-owned.

Consultation

The Federal Regulation at 30 CFR 740.13(d)(2) requires that the OSMRE “shall review each permit revision in consultation with the Bureau of Land Management and the appropriate Federal land management agency to determine whether the permit revision constitutes a mining plan modification requiring the Secretary’s approval under § 746.18 of this chapter.”

The Federal Regulation at 30 CFR 740.13(d)(3) requires that the “regulatory authority shall consult with the Federal land management agency to determine whether any permit revision will adversely affect Federal resources other than coal and whether the revision is consistent with that agency's land use plans for other Federal laws, regulations, and executive orders for which it is responsible.”

On February 9, 2026, OSMRE consulted with BLM about the proposed action. On February 9, 2026, BLM responded via email that they concur with OSMRE’s determination that the proposed change of the Falkirk Revision 40, *does* constitute a mining plan modification requiring approval by the ASLM.

OSMRE's decision does not relieve North Dakota PSC from any further coordination with other Federal agencies for compliance as necessary.

Please contact Federal Lands Coordinator Erica Trent at etrent@osmre.gov with any questions.

Sincerely,

**MARCELO
CALLE**

Marcelo Calle,
Acting Regional Director

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Date: 2026.02.11 12:51:47
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cc: Stephen Burke – Falkirk Mining Company
Tessa Wallace – Montana-Dakotas State Office, Bureau of Land Management
Jeffrey Fleischman – Denver Field Division, OSMRE

¹ OSMRE Directive REG-19 establishes the agency-wide policy for determining when an extension of the area covered by a Federal permit constitutes an incidental boundary revision.

² Major actions requiring the preparation of an EIS are described in the DOI Department Manual, Managing the NEPA Process – Office of Surface Mining (516 DM 13).