

**Public Service Commission
Reclamation Division**

Memorandum

To: Commissioners Christmann, Haugen-Hoffart, and Kringstad
Brian Johnson, Executive Director
Chris Martens, General Counsel

From: Jonathan Emmer, Monty Johnson, and Jeff Roerick

Date: August 12, 2026

Subject: Application for Revision 40 to Permit NAFK-9503 held by Falkirk Mining Company,
Case No. RC-25-294

On November 17, 2025, Falkirk Mining Company (Falkirk) filed the application for Revision 40 to Surface Coal Mining Permit NAFK-9503 at the Falkirk Mine. On October 10, 2025, Falkirk obtained Federal Coal Lease NDM 111489 for approximately 800 acres throughout various tracts in Permits NAFK-8405, NAFK-8705, and NAFK-9503. Revision 40 to Permit NAFK-9503 adds mining plans for 160 acres of federal coal in the NW¼ of Section 12, T144N, R84W, which is included in Federal Coal Lease NDM 111489. The NW¼ of Section 12 was previously incorporated into the permit with Revision 20 that was approved by the Commission on July 27, 2011. As a result of the additional mining plans for the federal coal tract, the permit revision required updates to the permit's introductory, legal, surface and coal interest ownership, geology, operations plans, transportation facilities, and reclamation plans. The Reclamation Division has completed its review of this revision application and respectfully recommends that it be conditionally approved.

The 160 acres of federal coal to be mined in the NW¼ of Section 12 is located in the southern portion of the existing permit area as depicted on **Figure 1**, and the acreage associated with the permit area will remain unchanged at 28,432.1 acres. Several federal coal tracts were included in the original permit application and in the Revision 20 addition areas, but no mining of these tracts was proposed at that time. Mining and reclamation operations of the federal coal tract in the NW¼ of Section 12 will be similar to those presently approved in the permit. The surface of the federal coal tract in the NW¼ of Section 12 is privately owned and Falkirk has secured the necessary surface lease for that tract of land. Mining of the NW¼ of Section 12 is expected to occur between 2026 and 2029.

Leased federal coal cannot be mined until the Secretary of the Department of Interior approves the federal mine plan as required by 30 CFR 746.11. Special Condition No. 1 for Revision 40 is being added to Permit NAFK-9503, which states no overburden or coal removal may occur on the federal coal tract in the NW¼ of Section 12, T144N, R84W, until the mine plan for the federal coal is approved by the United States Department of the Interior as required by 30 CFR 746.11. Until the mine plan is approved, surface disturbances on the described federal coal tract must be limited to those activities that the Commission determines are necessary for carrying out mining on the adjoining tracts where Falkirk Mining Company has all of the rights necessary to mine the coal, and after the Commission consults with the Bureau of Land Management through the Office of Surface Mining Reclamation and Enforcement (OSMRE) in accordance with NDAC 69-05.2-10-06 and North Dakota's Cooperative Agreement with OSMRE.

On July 16, 2026, Falkirk submitted a request to the Reclamation Division to disturb overburden material over the federal coal tract in the NW¼ of Section 12, T144N, R84W of Permit NAFK-9503. The request

includes three separate phases of disturbance carried out over several months. Phases one and two would include removing overburden to a depth of approximately 26 to 48 feet above federal coal to create advanced working benches for the dragline to sit on and facilitate overburden removal from the non-federal coal tracts. Phase three would include removing overburden to a depth of approximately 5 to 10 feet above coal within the federal coal tract in addition to creating the dragline working bench. This would allow Falkirk to dig one continuous pit and prevent the dragline from stopping at the northern boundary of the federal coal tract. Furthermore, this overburden disturbance above leased federal coal would allow Falkirk to maximize resource recovery on adjacent lands north and south of the federal coal tract, where Falkirk holds the private coal leases. Phase three is anticipated to occur approximately 80 days after the completion of phase one.

The Reclamation Division submitted a request to OSMRE on July 16, 2026, in accordance with NDAC 69-05.2-10-06 and North Dakota's Cooperative Agreement with OSMRE, and the Reclamation Division requested that OSMRE review the request and send BLM a letter requesting concurrence that this overburden disturbance will not adversely affect the federal mineral estate. On August 3, 2026, OSMRE notified Falkirk of its decision that overburden removal above the federal coal in the NW¼ of Section 12 cannot be authorized until approval is granted by the Assistant Secretary for Land and Minerals Management. Furthermore, once Revision 40 is approved, the Reclamation Division will be submitting additional documents to OSMRE to be used as part of the federal mine plan approval process. Once OSMRE receives these documents, their mine plan approval review process will be initiated, and approval to mine the federal coal in the NW¼ of Section 12 is anticipated to be granted in the future.

Permit NAFK-9503 currently contains approved variances from the contemporaneous reclamation rules that normally require rough grading to be completed within 180 days of coal removal, the four spoil peak grading requirement, and that normally require initial planting to be completed within three years of the completion of coal mining operations. With Revision 40, Falkirk requested modifications to two existing variance areas. One area is within the federal coal tract in the NW¼ of Section 12, and the modification is necessary since the area represents the final highwall areas that will require delayed reclamation of approximately 5 to 6 spoil peaks until the coal is removed from the final pit. The other area requires modification since the mining sequence is being altered to accommodate mining plans in the NW ¼ of Section 12, which will require the temporary cessation of mining until adjacent mining blocks advance sufficiently to maintain a continuous pit configuration rather than a staggered pit. Falkirk's proposed modifications to these existing variance areas have been justified.

Revision 40 was deemed a significant revision to Permit NAFK-9503 and was subject to the public notice requirements. Falkirk submitted affidavits of publication of the required newspaper notices that were published for four consecutive weeks in the McLean County Independent and the Bismarck Tribune. We notified the appropriate agencies, affected landowners, and the advisory committee members. No technical deficiency comments from advisory committee members were received, and we received no objections or requests for informal conferences on this revision application.

As part of Revision 40 to Permit NAFK-9503 and another pending permit revision at the Falkirk Mine, the worst-case bond estimate was updated. On April 2, 2026, the Reclamation Division determined that Falkirk's proposed minimum bond amount of \$127,585,118 is adequate for the consolidated bond area, which includes Permits NAFK-8405, NAFK-8705, and NAFK-9503. On May 22, 2026, the Falkirk Mining Company submitted an application to increase its bond to \$130,000,000. The submittal included a third-party guarantor application to self-bond, guaranteed by REMC Assets, LP, in the amount of \$117,000,000 and a new cash deposit collateral bond in the amount of \$13,000,000 that will replace its existing cash

deposit collateral bond. Riders were also submitted to reduce the existing cash deposit collateral bond and the current Irrevocable Standby Letter of Credit issued by BNC National Bank on behalf of Rainbow Energy Center, LLC for the Falkirk Mining Company to zero dollars and zero acres. Falkirk's updated performance bond may be approved during the August 26, 2026, Commission meeting. Once the updated performance bond is approved, the Commission can approve Revision 40 to Permit NAFK-9503.

Attached for your consideration at the August 26, 2026, Commission meeting are the proposed motion, revision approval form, permit condition, and newspaper notice that we must publish following revision approval.

Attachments

Falkirk Mine\Permits\NAFK - 9503\Revisions\No. 40\Rev40_apprvl_memo_8-12-26

