

**PUBLIC SERVICE COMMISSION**

Reclamation Division

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Memorandum

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

FROM: Jonathan Emmer, <sup>AS</sup>Monty Johnson and Warren Swenson <sup>WS</sup>

DATE: August 17, 2026

SUBJECT: Variance request to the performance bond responsibility period for an area in Permit NAFK-8405 held by The Falkirk Mining Company, Case No. RC-26-242

On June 30, 2026, July 31, 2026, and August 12, 2026, the Falkirk Mining Company (Falkirk) filed a request for a variance from the 10-year revegetation responsibility period for 1.5 acres of reclaimed native grassland owned by Chad and Jennifer Berg in Permit NAFK-8405 at the Falkirk Mine. This acreage is in the SE¼ of Section 23, T146N, R82W, McLean County. A variance from the 10-year revegetation responsibility period will allow an access road to pit water pond P-E24-01 to be bond released with the adjacent lands that were reclaimed from 1995 through 2016. The 1.5 acres were fully reclaimed in 2018, which makes 2026 the ninth year of revegetation. The Reclamation Division has completed its review of the request and respectfully recommends approval for the 1.5 acres as allowed by Policy Memorandum No. 20.

Policy Memorandum No. 20 allows the Commission to grant variances to the 10-year revegetation responsibility period for water management features such as sediment ponds, and other features such as access trails and soil stockpile sites that could not be reclaimed at the same time as the surrounding reclamation tract, and for reclamation repair work following the initial seeding of the reclamation tract. Variances must be small in size when compared to the entire reclamation tract and the affected land must meet the reclamation success standards when final bond release is requested. Small in size is generally defined in Policy Memorandum No. 20 as comprising not more than approximately 20% of a reclamation tract. The permittee must affirmatively demonstrate that reclamation of the area will provide equal or greater protection to the environment and to public health and safety. Reclamation procedures used on variance areas need to provide the same protections as those used on surrounding reclaimed tracts.

The 1.5-acre variance request area is part of a larger tract containing 19.5 acres located in the SE¼ of Section 23. The 1.5 acres contained a pond access road that was not able to be reclaimed at the same time as the surrounding area. The variance area would comprise approximately 7.7% of the surrounding land. The 7.7% meets the definition of small in size, as defined in Policy Memorandum 20.

The variance area is planned to be a part of a larger bond release with multiple areas in Permit NAFK-8405. The variance request area and surrounding tract were mined from 1994 to 1995. Approval of this variance request will allow Falkirk to pursue final bond release one year earlier than otherwise allowed. Productivity and diversity data for the variance area and the surrounding tract was provided as a part of this request. The information provided for the SE¼ of Section 23 indicated that the productivity and diversity has been restored and meets the applicable standards.

A map of the variance areas and the adjacent reclaimed native grassland is attached (**Figure 1**). The proposed variance area was inspected on August 14, 2026, and the variance area appeared to be in very similar condition to the surrounding native grassland tract. Based on the field inspection and the information contained in the variance request, the Reclamation Division recommends approval of this request for a variance from the 10-year performance bond responsibility period for 1.5 acres of reclaimed land in Section 23 of Permit NAFK-8405.

A motion and an approval form are attached for your consideration at the August 26, 2026, Commission meeting.

**Figure 1: Variance Areas in the SE¼ of Section 23 in Permit NAFK-8405**

