



Public Service Commission

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sent via email only

September 16, 2026

Mr. Luke Toso
Ecological Services Supervisor
U.S. Fish and Wildlife Service
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Dear Mr. Toso:

The Reclamation Division is reviewing Falkirk Mining Company's application for Revision 41 to Surface Coal Mining Permit NAFK-9503 at the Falkirk Mine. Revision 41 adds mining plans for the W½ of the NW¼ of Section 32, T145N, R83W, adds additional mining plans for the SE¼ of Section 32, T145N, R83W, and adds the SW¼ of Section 32, T145N, R83W back into the permit with plans for surface disturbance only. The SW¼ of Section 32 was previously removed from the permit in 2023. The post-mine topography was also revised across portions of mined and unmined areas of the permit to achieve permit-wide mass balance and to reflect current mining conditions and the mine plan. The revision also updates the permit's introductory, legal, compliance, surface and coal ownership, pre-mining land use and vegetation, operations plans, blasting, existing structures, extended mine plan, transportation facilities, surface water management, post-mining land use and revegetation, reclamation plans and schedules, and wetland information.

Prior to approval of this significant permit revision, the Reclamation Division must make written findings regarding the impacts of mine plan changes to threatened, endangered, and proposed species and designated and proposed critical habitats. 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.

Please review the attached findings and provide us your comments and/or concurrence that the proposed operations will not jeopardize the continued existence of listed species or destroy or adversely modify designated critical habitats. A USB flash drive containing Revision 41 is not enclosed with this request but can be sent to you upon request. Please provide your comments by **November 2, 2026**.

The attached findings were most recently updated on June 3, 2026, with the approval of Revision 40 to Permit NAFK-9503. Your office responded to our draft findings for Revision 40 in a letter dated June 4, 2026. The only update to the attached findings for Revision 41 is additional narrative regarding Dakota skipper potential suitable habitat surveys recently conducted by KDK Consulting.

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If you have any questions, please contact this office.

Sincerely,



Jonathan Emmer
Director
Reclamation Division

Enclosure

cc via email only: Jerry Reinisch (jerry_reinisch@fws.gov)

Falkirk Mine\Permits\NAFK - 9503\Revisions\No. 41\Rev41_USFWS_concurrence_rqst_ltr_9-16-26

Finding No. 9. The operations will not affect the continued existence of threatened or endangered species or result in the destruction or adverse modification of their 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. 41 **“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. 41 **“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. 41 **“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. 41 “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, cone-flowers, 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 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.

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 a Special Condition 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. KDK Consulting conducted Dakota skipper potential suitable habitat surveys following the USFWS 2024 Dakota Skipper Survey Protocol on July 13th, 2026. They surveyed the sites listed above, along with Sections 5, 6, 7, & 32, T145N, R83W and Sections 31 & 32, T146N, R83W. The survey results report is still under review by the Commission. If any suitable habitat is determined present from these results, Dakota skipper occupancy surveys will be conducted following the USFWS 2024

Dakota Skipper Survey Protocol by the Falkirk Mine. There is no native grassland in or immediately adjacent to the federal coal tract in the NW¼ of Section 12, T144N, R84W.

The Commission finds the planned mining and reclamation activities proposed with Revision No. 41 **“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. 41 **“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. 41 **“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. 41 **“may affect but is not likely to jeopardize”** the continued existence of the Suckley’s cuckoo bumble bee.