



Public Service Commission

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October 7, 2026

Mr. Jason Frye
Environmental Specialist
Falkirk Mining Company
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Dear Mr. Frye:

The Reclamation Division has conducted a technical review of the application for Revision 41 to Surface Coal Mining Permit NAFK-9503 at the Falkirk Mine. The following items must be adequately addressed before the application can be approved.

Section 2.4 – Fish and Wildlife Resources

1. Please update the appropriate subsection(s) of Section 2.4 (Fish and Wildlife Resources) to discuss whether the Revision addition area (SW¼ of Section 32) contains potentially suitable habitat for any listed or proposed threatened or endangered species. The USFWS Information for Planning and Consultation (IPaC) site should be used for this evaluation. Email correspondence submitted to the Reclamation Division on August 5, 2026, includes native grassland ecological information suggesting adjacent native grassland in the SE¼ of Section 32 may contain potentially suitable habitat for the Dakota skipper, and 2008 thin loamy similarity index information on page 663 of Appendix V of Section 2.7.3 (Appendices I – VI) suggests native grassland in the SW¼ of Section 32 has potentially suitable habitat for the Dakota skipper. Please provide information in the permit that affirmatively demonstrates that the proposed operations in the SW¼ of Section 32 will not adversely affect the continued existence of the Dakota skipper or the northern long-eared bat. NDAC 69-05.2-10-03(6)(d) states that “no permit or permit significant revision will be approved, unless the application affirmatively demonstrates and the commission finds, in writing, on the basis of information in the application or otherwise available... that the operations will not affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitats.” (GAW)

Section 2.6.5 – Surface Water Probable Hydrologic Consequences

2. The Control Point R38 narrative on page 14 of Section 2.6.5 (Surface Water Probable Hydrologic Consequences) states that there will be increases in peak discharge and runoff volumes, but no determination is stated if these increases will have adverse impacts on the receiving stream. For consistency, please state the determination Falkirk made with regard to the surface water probable hydrological consequences for Control Point R38. (JAR/PJR)

Section 2.6.9a – Post-Mining Drainages Map

3. It appears that a map layer is obscuring some Section Numbers and the Drainage Total Watershed and Drainage Critical Watershed boundary lines in Section 2.6.9a (Post-Mining Drainages Map). Please update Section 2.6.9a to depict the post-mining drainage boundaries and section numbers. (JAR)

Section 3.5.20 - Road Relocation and Closing Plan Narrative

4. The third sentence in the last paragraph starting on page 3 of Section 3.5.20 (Road Relocation and Closing Plan Narrative) was revised and no longer reads correctly following the addition of the word “was”. Please review and revise to correct this error. (BSM)
5. The Phase 4 paragraph on page 4 of Section 3.5.20 (Road Relocation and Closing Plan Narrative) can be revised to mention the most recent McLean County Commission resolution, dated September 15, 2026, regarding temporary county road closure. Furthermore, please attach the signed resolution at the end of Section 3.5.20. (BSM)

Section 3.6 – Operations – Surface Water Management

6. The Cross-Section A-A’ and Plan View on Section 3.6.38b (Details of Post-Mine Pond Series P-R01-01 and P-R01-04R) appear to have a discrepancy regarding the embankment toe of the P-R01-04R and its connection to the P-R01-01 As-Built Grade. Please review the cross section and plan view to verify that the proposed grades are accurately depicted. Currently, the proposed grades below Point Nos. 3 and 5 show a steep drop to the beginning of the P-R01-01 As-Built Grade, which may present a potential for water erosion. Please review and revise Section 3.6.38b as necessary, or include additional narrative within Section 3.6.38 regarding protecting this area below Points Nos. 3 and 5. (BSM)
7. Diversion D-R32-01 appears to be associated with sediment pond P-R32-04; however, the diversion is labeled as D-R32-04 in the electronic permit table of contents. To avoid confusion, please label this diversion as D-R32-04 in all applicable sections of the permit. The name of this diversion is labeled as D-R32-01 in Sections 3.6.55 (Design of Sediment Pond P-R32-04), 3.6.1a (Total Water Management Plan Map), and 3.6.1d (Pond and Diversion Construction and Reclamation Schedule). (BSM)
8. Cross sections A-A’ and B-B’ on Section 3.6.55b (Details of Diversion D-R32-04) do not appear to correlate with the Plan View. Please review and revise Section 3.6.55b to verify the cross sections accurately correspond with the Plan View. Also, the map (BSM)
9. Please revise the narrative in Section 3.6.60 (Groundwater Management Plan) to include a cross reference to applicable groundwater monitoring sections and such narrative as “Groundwater levels and quality associated with dewatering activities, spring-flow enhancement, and groundwater discharge facilities will be monitored in accordance with the Annual Groundwater Monitoring Plan” and that “Potential effects on downstream flow quantity and water quality will be evaluated through [specific monitoring/analysis], and spring enhancement will be modified or discontinued if monitoring indicates an adverse effect.” Finally, please consider revising the sentence on page 3 regarding discharge to an intermittent stream to something similar to “Direct discharge to the intermittent stream will occur only where authorized by the applicable North

Dakota Department of Environmental Quality permit and when monitoring demonstrates compliance with applicable effluent limitations and water-quality standards.” (PJR)

10. Please review the total design capacity for Pitwater Pond PW-R06-05 in Section 3.6.60 (Groundwater Management Plan). With the addition of Cell #4, page 10 of Section 3.6.60 appears to indicate that the total design capacity is 78.2 acre-feet for all four cells. However, the as-built design specifications provided on page 8 indicate larger capacities for Cells 2 and 3 than those identified in the original design specifications on page 7 and the as-built capacities within the pond certifications. Please verify that the stated total design capacity accurately reflects the capacities identified for each cell and revise the design specifications as necessary. (PJR)
11. Please update the narrative in Section 3.6.60 (Groundwater Management Plan) to change all proposed language to the actual status. For example, narrative such as “will be constructed in 2015” should be updated to “was constructed in [year]” throughout the entirety of Section 3.6.60 since many areas appear not to be updated. Also, any existing facility should no longer be referenced as “proposed.” (PJR)

Section 4.0 – Reclamation Plans

12. Narrative on page 11 of Section 4.1.1 (Post-Mining Land Use Narrative) indicates that Falkirk intends to remove 15.1 acres of seasonal wetlands from Section 34 and replace those acres in Sections 1 (3.2 acres), Section 12 (8.0 acres), and Section 29 (3.9 acres). However, Section 4.1.3 (Land Use Acreage Comparison Table) shows Section 29, T145N, R83W increasing by 2.8 acres. Please review this discrepancy and make the necessary changes to Section 4.1.1 and/or Section 4.1.3. (WWS/BSM)
13. Please review the area of deciduous trees that will be disturbed in the S½ of Section 32. Section 4.1.2 (Post-Mining Land Use Map) indicates that Falkirk intends to replace 0.1 acres of woodlands in the SW¼ of Section 32, but the total area of deciduous trees that will be disturbed appears to be higher. (WWS)
14. Rainbow Energy and HC 333 LLC provided post-mining landowner preference statements indicating that they do not want the pre-mining shelterbelt acreage in the S½ of Section 32 replaced, as stated in Section 4.1.1 (Post-Mining Land Use Narrative). Please further evaluate and explain how the proposed elimination of this pre-mining shelterbelt acreage is consistent with the post-mining land use and fish and wildlife protection and enhancement requirements of NDAC 69-05.2-09-17.

In particular, please address how the post-mining reclamation plan will replace or otherwise mitigate the wildlife habitat functions and values provided by the pre-mining shelterbelts and demonstrate how fish and wildlife resources will be protected and enhanced where practicable. If replacement of the shelterbelt acreage is not proposed, please provide the basis for concluding that replacement or other comparable enhancement measures are not practicable.

As an alternative, please consider replacing the pre-mining shelterbelt acreage in the SE¼ of Section 32 on Rainbow Energy or Falkirk-owned lands within Permit NAFK-9503. Because the landowners have indicated that restoration of the shelterbelt at its pre-mining location is not desired, an appropriately located conservation tree planting may provide a means of replacing the habitat functions and values of the pre-mining shelterbelt while accommodating the stated post-mining landowner preferences. (GAW)

15. The last sentence of the second paragraph on page 11 of Section 4.1.1 (Post-Mining Land Use Narrative) states that there will be a decrease of 5.4 acres of shelterbelts in the S½ of Section 32, T145N, R83W; however, Section 4.1.3 (Pre- and Post-Mining Land Use Acreage Comparison) identifies only a 4.3-acre decrease in shelterbelts in Section 32. Please review this discrepancy and make the necessary changes to Section 4.1.1 and/or Section 4.1.3. It is recognized that additional changes may be required after addressing Item No. 14 above. (BSM)
16. The cropland acreage for Section 32, T145N, R83W in Section 4.1.3 (Pre- and Post-Mining Land Use Acreage Comparison) was increased by 21.0 acres; however, only 7.2 acres of native grassland, 5.4 acres of shelterbelt, and 5.9 acres of residential farmstead, totaling 18.5 acres, are identified as being replaced by cropland. Please review and revise as necessary to account for the remaining 2.5-acre discrepancy in Section 32, T145N, R83W of Section 4.1.3. (BSM)

Section 4.2 – Reclamation - General

17. With Revision 41, Falkirk is proposing gradients on privately owned cropland in the W½NW¼ of Section 32 steeper than those that existed prior to mining while significantly reducing slope steepness on grassland in the SW¼ of Section 32. To the extent feasible, please revise the Post-Mining Topography to eliminate slopes exceeding 6 percent on cropland in the NW¼ of Section 32. Sections 4.2.6b (Post-Mining Contour Map), 4.2.7b (Post-Mining Area Slope Map), and 4.1.2 (Post-Mining Land Use Map) will need to be revised to address this issue. (GAW)
18. Please update and submit the stand-alone worst case cost estimate, which was most recently approved on April 2, 2026, to account for the changes proposed with Revision 41 to NAFK-9503. [NDAC 69-05.2-12-07] (BSM)

If you have any questions, please contact this office.

Sincerely,

Jonathan Emmer

Digitally signed by Jonathan
Emmer
DN: C=US, E=jemmer@nd.gov,
O=North Dakota Public Service
Commission, CN=Jonathan
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Jonathan Emmer
Director
Reclamation Division

cc via email only: Steve Burke (steve.burke@nacoal.com)
Tara Voigt (tara.voigt@nacoal.com)