

U.S. DEPARTMENT OF THE INTERIOR
OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT
(OSMRE)

FINDING OF NO SIGNIFICANT IMPACT (FONSI)

FOR

½ Section 10, Falkirk Mine, Mining Plan

Introduction

The Falkirk Mining Company, operator of the Falkirk Mine in North Dakota, submitted a permit application package (PAP) to the North Dakota Public Service Commission (PSC) on November 9, 2017 and January 18, 2018, to add the federal coal included in the east ½ of Section 10. Pursuant to Section 503 of SMCRA, which grants states the right to assume jurisdiction over the regulation of surface coal mining of non-federal coal, the PSC developed a permanent regulatory program. In August 1983, pursuant to § 523(c) of the Surface Mining Control and Reclamation Act (SMCRA), the PSC entered into a cooperative agreement with the Secretary of the Interior to assume that jurisdiction. The PSC maintains primacy to enforce performance standards and permit requirements and has authority during environmental emergencies while the Office of Surface Mining Reclamation and Enforcement (OSMRE) retains oversight of this enforcement. The OSMRE is required to evaluate the PAP before Falkirk Mine may conduct mining and reclamation operations to develop the east ½ of Section 10. Additionally, OSMRE is the agency responsible for making a recommendation to the United States Department of the Interior Assistant Secretary for Land and Minerals Management (ASLM) to approve, disapprove, or approve with conditions the proposed mining plan.

The Bureau of Land Management (BLM) North Dakota Field Office completed an Environmental Assessment (EA) in March 2017, hereafter referred to as the BLM Coal Lease EA. The BLM Coal Lease EA analyzed the environmental impacts of a federal coal lease proposed by the Falkirk Mining Company (Falkirk) located in the east ½ of Section 10, Township 146 North, Range 82 West, McLean County, North Dakota.). The United States (US) Department of the Interior (DOI), Office of Surface Mining Reclamation and Enforcement (OSMRE), Western Region Office and PSC cooperated in the preparation of the BLM EA (BLM, 2017).

The Falkirk Mine is located near Underwood, North Dakota. It was first incorporated in 1974, with initial construction starting in 1977, and coal production starting in 1978. Currently, the mine produces approximately 8.0 - 8.5 million tons of coal per year. Coal produced at the Falkirk Mine is transported from the pit in bottom-dump haul trucks to the truck dump/crushing facility. From that location, the coal is conveyed on a 5,300-foot-long conveyor to the Great River Energy's Coal Creek Station, which is located approximately 6 miles south of Underwood, North Dakota. Coal Creek Station generates 1,200 megawatts (MW) (2 - 600 Megawatt Units) of power, which is transmitted to 28 power cooperatives that serve approximately two-thirds of rural Minnesota. Coal Creek Station also ships approximately 300,000 tons of dried Falkirk coal to Spiritwood Station, which generates 99 MW of power and is located near Jamestown, North Dakota.

The proposed Section 10 lease tract, which encompasses the east ½ of Section 10, is part of the Falkirk Mine's current and extended Mine Plan with the south ½ of the Section 10 lease tract already permitted through the PSC for mining activities. The southeast ¼ of Section 10, NDM-107039 lease tract, is contained within the Falkirk Mine's permit, Permit No. NAFK-8405, issued by the North Dakota Public Service Commission (PSC) for mining activities; however, no actual mining of the federal coal tract can occur until the mining plan is approved by the Secretary of the Interior. Revision 37 to Permit NAFK-8405, submitted to the North Dakota PSC on November 9, 2017, incorporates plans for mining the south-east ¼ of Section 10 NDM-107039 lease tract. The Falkirk Mine submitted a mining plan modification application, revision

38 to Permit NAFK-8405, to the North Dakota PSC on January 18, 2018 that adds 1680 acres to Permit NAFK-8405 including mining activities in the north-east ¼ of Section 10 (approximately 160 acres), NDM-107039 lease tract. Secretarial approval of the mining plan and mining plan modification would authorize mining of 2.2 million tons of federal coal, approximately four months of production at the Falkirk Mine. Mining the entire Section 10 lease tract would result in approximately seven months of production at the Falkirk Mine. Currently, the mine produces approximately 8.0 to 8.5 million tons of coal per year. (BLM, 2017). Based on new information provided in the PAP and by the Falkirk Mining Company, the OSMRE prepared the accompanying 1/2 Section 10 Mining Plan Supplemental Environmental Assessment (hereafter, the Supplemental EA), which details additional environmental effects of this Project. This Supplemental EA is tiered to the BLM Coal Lease EA. The ND PSC is reviewing Falkirk Mine's permit amendment, and submitted the Falkirk Mining Company PAP for the mining plan to the OSMRE for review, in accordance with its responsibilities under the SMCRA.

The OSMRE is required to evaluate the PAP before Falkirk Mining Company may conduct surface mining and reclamation operations to develop the ½ Section 10 Tract. OSMRE is the agency responsible for making a recommendation to the ASLM to approve, disapprove, or approve with conditions the proposed mining plan. Pursuant to the Mineral Leasing Act of 1920, the ASLM will decide whether the mining plan is approved, disapproved, or approved with conditions.

In cooperating with the BLM Coal Lease EA and conducting the Supplemental EA, the OSMRE reviewed the environmental impacts of the Proposed Action (approving a mining plan for the east ½ of Section 10) and the No Action (disapprove the mining plan).

If OSMRE determines that this Project would have significant effects following the analysis in the Environmental Assessment (EA), then an Environmental Impact Statement (EIS) would be prepared for the Project. If the potential effects are not determined to be "significant", a "Finding of No Significant Impact" (FONSI) statement would document the reason(s) why implementation of the selected alternative would not result in significant environmental effects. An EA provides evidence for determining whether to prepare an EIS or a FONSI statement.

The OSMRE has prepared the Supplemental EA based on the previously completed BLM Coal Lease EA and PAP, and reached a FONSI.

Statement of Environmental Significance of the Proposed Action

Pursuant to 30 CFR Part 746, OSMRE is recommending selection and approval of the Proposed Action. The undersigned person has determined that approval of a federal mining plan authorizing the continuation of mining operations to recover the federal and private coal for approximately seven months in the Section 10 Lease Tract would not have a significant impact on the quality of the human environment under section 102(2)(C) of the NEPA, 42 USC 4332(2)(C); therefore, an EIS is not required.

Reasons

OSMRE has evaluated the information presented within this Supplemental EA and the BLM Coal Lease EA and has determined that the Proposed Action would cause no significant adverse environmental effects, that have not already been analyzed in the BLM Coal Lease EA or that would not be mitigated in accordance with the eight standard permit conditions within the federal regulations at 30 CFR 944, and the standard permit terms and specifications of the PAP.

The attached Supplemental EA discusses the potential environmental effects of the Proposed Action and provides sufficient evidence and analysis for this FONSI.

Based upon OSMRE's review of the Supplemental EA and the supporting documents, OSMRE has determined, in accordance with 43 CFR 46.140, that the Proposed Action is not a major Federal action and

will have no significant effect on the quality of the human environment individually or cumulatively with other actions within the region, that has not already been analyzed in the BLM Coal Lease EA.

The purpose of the action (to make a recommendation to the ASLM to approve, disapprove, or approve with conditions the proposed mining plan) is established by the Mineral Leasing Act of 1920 and the SMCRA, which requires the evaluation of Falkirk Mining Company's PAP before they may conduct mining and reclamation operations to develop the ½ Section 10 Lease Tract 30 CFR Part 746: 30 United States Code (USC)/208(c). OSMRE is the agency responsible for making a recommendation to the ASLM to approve, disapprove, or approve with conditions, the proposed mining plan. The ASLM will decide whether the mining plan is approved, disapproved, or approved with conditions. If the ASLM approves this action, operations would continue at the Falkirk Mine for seven additional months. The need for the action is to allow Falkirk Mining Company the opportunity to exercise its valid rights granted under the ½ Section 10 Federal Coal Lease Tract to extract coal from their federal lease under the Mineral Leasing Act.

The Proposed Action would authorize mining a probable maximum of approximately 4.41 million tons of federal (2.2 million tons) and private coal. The Proposed Action would extend the mining at Falkirk Mine for approximately seven months.

Under the No Action Alternative, the mining decision document prepared by OSMRE would recommend that the ASLM not approve the mining plan. If ND PSC approves the permit associated with the Proposed Action, without ASLM approval, ND PSC's permit would revert to the previous permit. Under the previous permit, the Federal coal reserves in the ½ Section 10 Federal Coal Lease Tract would not be recovered and mining would continue until available coal reserves are mined out.

In conjunction with previously completed NEPA reviews, including the BLM Coal Lease EA, the attached Supplemental EA considers a reasonable range of alternatives and discloses the potential environmental effects. These reviews provide sufficient evidence and support for a FONSI.

The Supplemental EA was prepared by a third-party consulting firm at the direction of OSMRE. During the development of the Supplemental EA, OSMRE independently reviewed the document to ensure compliance with 43 CFR Part 46, Subpart D and all Council of Environmental Quality regulations implementing NEPA (40 CFR 1500-1508), and other program requirements. This independent review included OSMRE's evaluation of all environmental issues analyzed in the Supplemental EA. OSMRE takes full responsibility for the accuracy, scope, and the content of this document.

The undersigned has determined that the public involvement requirements of NEPA have been met. OSMRE released the Supplemental EA and unsigned FONSI for public review and comment for a 30-day period beginning on February 9, 2018. OSMRE notified the public of this comment period through a newspaper notice published in the McLean County Independent and Central McLean News-Journal, mailed public outreach letters, as well as mailed tribal consultation letters to 18 tribal leaders. The public comment period ended on March 12, 2018. OSMRE received two comment letters. One letter from the Bureau of Indian Affairs indicating they have "no environmental objections to the action as long as the project complies with all pertinent laws and regulations" and one letter from the North Dakota PSC requesting correction to the dates of the mining plan modification applications to the North Dakota PSC. These corrections have been made in the EA and FONSI.

This finding is based on determining the significance as defined by the context and intensity found in 40 CFR 1508.27 of effects from the Proposed Action.

- a) **Context.** This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

The Proposed Action would allow the continuation of mine operations at the Falkirk Mine for seven additional months:

- Securing a Federal mining plan approval authorizing mining of leased Federal coal; and,
- Continuing to mine (4.41 million tons of federal and private coal in the east ½ of Section 10), process, and ship coal to customers in need of coal.

Under the No Action Alternative, mining would continue until available coal reserves are mined out. The effects of both the Proposed Action and No Action have been analyzed at the local and regional scale.

- b) Intensity.** This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity.

The 10 Significance Criteria in the federal regulations at 40 CFR 1508.27 have been considered in evaluating the severity of impacts.

1. Impacts that may be both beneficial and adverse.

Beneficial and adverse impacts from the Proposed Action are described in the attached Supplemental EA And BLM Coal Lease EA. Particulate matter, criteria pollutants, and greenhouse gas emissions would be within the permitted limits and would not exceed the National Ambient Air Quality Standards; therefore, direct and indirect impacts would be minor and long-term (Supplemental EA Sections 4.2).

None of the analyzed environmental effects from the Proposed Action discussed in the Supplemental EA and BLM Coal Lease EA are considered to be significant.

2. The degree to which the Proposed Action affects public health or safety.

Air quality effects from the Proposed Action that could affect health and safety. Air impacts are analyzed in Section 4.2 of the Supplemental EA. Impacts on air quality would be minor and short term.

3. Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farm lands, wetlands, wild and scenic rivers, or ecologically critical areas.

There are no park lands, wild and scenic rivers, wetlands, or ecologically critical areas within the Project Area. There are no wilderness areas within or near the Project Area. There are approximately 170 acres of farmland of statewide importance within the ½ Section 10 lease tract as described in the BLM Coal Lease EA. Inventories of historic or cultural resources have been completed, which identified no eligible historic sites in the Project Area.

On December 18, 2017, the Office of Surface Mining Reclamation and Enforcement (OSMRE) requested concurrence with our “no historic properties affected” determination for the Falkirk mining plan decision document (MPDD). The letter was delivered on December 21, 2018. As of March 6, 2018, the North Dakota SHPO has not responded to the request for concurrence. Furthermore, pursuant to 36 CFR 800.4(d)(i), the SHPO has not objected within 30 days of receipt of the finding of no historic properties affected and the agency official’s responsibilities under section 106 are fulfilled.

4. The degree to which the impacts on the quality of the human environment are likely to be highly controversial.

As a factor for determining within the meaning of 40 CFR 1508.27(b)(4)—whether or not to prepare a detailed environmental impact statement—“controversy” is not equated with “the existence of opposition to a use.” *Northwest Environmental Defense Center v. Bonneville Power Administration*, 117 F.3d 1520, 1536 (9th Cir. 1997). The term ‘highly controversial’ refers to instances in which “a substantial dispute exists as to the size, nature, or effect of the major federal action rather than the mere existence of opposition to a use” *Hells Canyon Preservation Council v. Jacoby*, 9 F.Supp.2d 1216, 1242 (D. Or. 1998).

Approvals of Federal mining plans have been made for the Falkirk Mine since 1974. The lease stipulations and reclamation plan would reduce the effects on the environment.

5. The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

There are no direct, indirect, or cumulative effects on the human environment under the Proposed Action that are highly uncertain or involve unique or unknown risks. OSMRE has experience implementing similar actions in similar areas.

6. The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principal about future consideration.

This decision is not precedent setting. The issues considered in the Supplemental EA were developed by the interdisciplinary team within the context of past, present, and reasonably foreseeable actions. Significant cumulative impacts are not anticipated.

7. Whether the action is related to other actions with individually insignificant but cumulatively significant impacts – which include connected actions regardless of land ownership.

The interdisciplinary team evaluated the possible issues in context of past, present, and reasonably foreseeable actions, including the Falkirk Mine operation and other mining operations, the transport of coal from the mine, and the combustion of that coal in the cumulative effects analysis area. The indirect emissions from coal combustion mined annually from the Falkirk Mine were disclosed in the Supplemental EA (Section 4.2.2). There were no significant cumulative effects identified (Supplemental EA Section 5.2).

8. The degree to which the action may adversely affect districts, sites, highways, structures, or other objects listed in or eligible for listing in the National Register of Historic Places (NRHP) or may cause loss or destruction of significant scientific, cultural, or historical resources.

The Project Area was previously surveyed for cultural and historic resources. Inventories of historic or cultural resources have been completed, which identified no eligible historic sites in the Project Area.

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9. The degree to which an action may adversely affect a threatened or endangered species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

There would be no impacts on listed species because habitat does not exist in the Project Area (BLM, 2017).

10. Whether the action threatens a violation of a federal, state, local, or tribal law, regulation, or policy imposed for the protection of the environment, where non-federal requirements are consistent with federal requirements.

The Proposed Action would not violate any known Federal, state, local, or tribal law or requirement imposed for the protection of the environment. OSMRE released the supplemental EA on February 9, 2018 for a 30-day public comment period. During this time, public and agency involvement for this Supplemental EA, state, local, and tribal interests were given the opportunity to participate in the environmental analysis process as well as BLM the cooperating agency. The leaders of 18 individual tribes as well as other interested parties were notified of this proposed action. One comment of no environmental objection to the Proposed Action was received from the Bureau of Indian Affairs. The Proposed Action is consistent with applicable plans, policies, and programs.



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Date