



# Public Service Commission

## State of North Dakota

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September 18, 2013

Mr. Donn Steffen  
Environmental Manager  
Coyote Creek Mining Company  
204 County Rd. 15  
Beulah, ND 58523

Dear Mr. Steffen:

The Reclamation Division has conducted a technical review of Coyote Creek Mining Company's application for Surface Coal Mining Permit NACC-1301 for the proposed Coyote Creek Mine in Mercer County, North Dakota. The following items must be satisfactorily addressed before the Reclamation Division will recommend Commission action on this application.

### **Section 1.2 – Legal Information**

1. If Mercer County Conditional Use approval documents have been acquired, please incorporate copies into Section 1.2.7. (BEB)
2. If Mercer County Section Line Right-of-Way Closure and Setback Waiver documents have been acquired, please incorporate copies into Section 1.2.8 to show compliance with NDAC 69-05.2-04-01.3. (BEB)

### **Section 1.3 – Business Entity/Compliance Information**

3. Please update Section 1.3.5, Other Licenses and Permits, if any of the listed applications or submittals has resulted in the receipt of any of the licenses or permits. Also, please indicate if any other permits or licenses are need for this application. (BEB/RLK)

### **Section 1.5 – Identification of Interests and Rights of Entry**

4. Please insert a hyperlink to access Section 1.5.3 - Surface and Coal Ownership Map from the Section 1.5 home page because it is only accessible through Windows Explorer as currently formatted. (WTG/BEB)

### **Section 2.1 - Geology**

5. To be consistent with the most recent North Dakota Stratigraphic Column as published by the North Dakota Geological Survey (Murphy, et.al; 2009); we recommend the following stratigraphic reference changes to portions of both the General and Site Specific Geology Narratives in Sections 2.1.1 and 2.1.2: (BEB)
  - a) Provide Formation status for the described Sentinel Butte and Tongue River Members,
  - b) Revise the age of the Cambrian Period from 488 to 542 million years ago,
  - c) Provide Group status for the described Fort Union Formation, and
  - d) Revise the age of the glacial Pleistocene Epoch/Series to range from 10,000 to 2.6 MYA.
6. The first paragraph on page 2 of Section 2.1.1 describes that the Knife River and Square Butte Creek are adjusting their profiles to the Missouri River base level and perhaps the intent was to describe the Knife River and Coyote Creek, since these are the major drainages nearest the permit area that are tributary to the Missouri River. (BEB)
7. Continuing narrative in Section 2.1.1 describes that “*undrained depressions, called sloughs or prairie potholes are common*” and perhaps this narrative should be revised or eliminated as it appears that few, if any true potholes (kettles) which are typical in other more glaciated areas of the state are located in either the NACC-1301 permit area or the future larger permit area. Please revise the narrative. (BEB)

### **Section 2.2 – Surface Water Hydrology**

8. In the table of contents for Section 2.2, Surface Water Hydrology, please revise the title for Section 2.2.3.1, Surface Water Quantity, since it appears to be is mislabeled as Surface Water Quality. (RLK)

#### **Section 2.2.2 – Surface Water Features Map**

9. Please label or otherwise identify streams shown on the Surface Water Features Map provided in Section 2.2.2 as perennial, intermittent and ephemeral as required by NDAC 69-05.2-08-07(1). (RLK)

#### **Section 2.2.3 – Surface Water Features and Water Quality Data Narrative**

10. In Section 2.2.3.3, Pre-mining Water Quality of Streams, the last sentence describes the location of surface water monitoring site MS-CC1 as being located 3.3 miles south and downstream of the permit area. Please correct the narrative to indicate that the site is upstream of the permit area. (RLK)
11. In the third paragraph of Section 2.2.3.3, a sentence states that for SAR the lowest 25<sup>th</sup> percentile value of 5.09 occurs in the Knife River but in Table 2-2.2 the 25<sup>th</sup> percentile SAR for the Brush Creek site is 4.94. Please review and revise as appropriate. (RLK)
12. In the third paragraph of Section 2.2.3.3, please correct the measurement units provided for specific conductivity. It appears the intended units would be “µmhos/cm” for micromhos per centimeter. (RLK)

#### **Section 2.2.4 – Surface Water Hydrologic Reclamation Plan and Probable Hydrologic Consequences**

13. In Section 2.2.4, it appears that the first sentence in the second to last paragraph on page 3 should begin with “*Overall, after reviewing the table...*” and a space is missing between “CC-01” and “post-mining”

near the end of the sentence. The last paragraph of the narrative on page 3 of Section 2.2.4 states that the peak flow for CC-02 decreased by 13.4% to 14.3% but the table in Section 2.2.4.3 indicates the 25 year/24 hour storm peak flow from CC-02 will decrease by 13.2%. (RLK)

### **Section 2.2.5 – Surface Water Monitoring Plan**

14. Please confirm data acquisition from a National Weather Service (NWS) weather station described as two miles northwest of Beulah on page one of Section 2.2.5.1 because a weather station near Beulah is not included in the 16 North Dakota weather stations for which observations are available from a NWS website. Furthermore, the current conditions and three day history at the Garrison NWS weather station are retrieved from a NWS search for the Beulah local forecast. We recommend that you reference the NDAWN weather station located two miles west of Hazen or the NWS Garrison weather station as sources of supplemental precipitation data if the NWS weather station described as two miles northwest of Beulah is no longer in operation. (WTG)
15. In the third paragraph of Section 2.2.5.1, discussing site MS-CC2 it appears that “of” is missing from the following sentence: *It serves to monitor quality and quantity of Coyote Creek water after leaving the Coyote Creek mine Area.* Also in Section 2.2.5.1, it is not clear what is meant by “(Similar)” appearing after the fourth paragraph. In the second to last paragraph of Section 2.2.5.1, it appears that “in” is missing in the end of the last sentence “... parameters analyzed will be noted in revisions to the approved plan.” Please revise as appropriate. (RLK)
16. In Section 2.2.5.2, Surface Water Monitoring Stations and Monitoring Schedule, the first sentence in the narrative states that adequate baseline monitoring of Coyote Creek exists and is summarized in Table 2-2.5 but Table 2-2.5 could not be found in the surface water section of the permit. Please review and revise as appropriate. (RLK)
17. Please show the planned recording rain gauge locations on the Surface Water Monitoring Map, Section 2.2.5.3, as indicated on page 2 of the Section 2.2.5.1 narrative. (RLK)

### **Section 2.3 – Ground Water Hydrology**

18. Narrative on page 4 of Section 2.3.1 states that “*And, ground water discharge from bedrock aquifers is not a significant factor (missing words) in the regime of the smaller surface water drainages.*” If additional narrative is intended for the parenthesized (*missing words*) of the sentence, please update. If not, the phrase (*missing words*) should be removed. (BEB)

### **Section 2.4 – Pre-Mining Land Use and Vegetation**

#### **Section 2.4.1 – Methods**

19. A sentence in the Wetlands narrative near the top of page 2 of Section 2.4.1 states that “Hydrophytic vegetation was the primary criterion used to assess contiguity along with evidence of hydric soils and wetland hydrology”. It is not clear what is meant by this statement or the terminology “to assess contiguity”. Please revise to provide clarity. NDAC 69-05.2-05-02. (GAW)
20. The last sentence of wetland narrative near the top of page 3 of Section 2.4.1 states that NWI did not identify any wetlands within the permit boundary either. The NWI GIS file available from ND HUB

identifies the drainage at the north end of the permit as a PEMC linear wetland. Please review and update to clarify why this area was not considered wetland. (GAW)

#### **Section 2.4.2 – Narrative**

21. The last paragraph of the native grassland discussion on page 3 of Section 2.4.2 provides an assessment of the pre-mine yield for some of the dominant ecological sites in the permit and study area compared to NRCS average representative yield values. Please discuss in the narrative whether the native grassland inventory work was completed during a year with average, below average or above average precipitation. You may wish to consider comparing the pre-mining actual yields to the NRCS's low annual production values listed for the ecological sites rather than the average year representative values due to the drought conditions at the time of sampling. (GAW)
22. Please include a map that identifies the soil mapping units of each tract of cropland as required by NDAC 69-05.2-08-08(1)(a), and include a table that identifies the acreage of each soil mapping unit of each tract of cropland as required by NDAC 69-05.2-08-08(1)(c)(1)&(2). This is needed to provide an assessment of the pre-mine productivity capabilities of the cropland and as supporting data to language on page 5 of Section 2.4.2 that indicates that the PI value is approximately 90%. (GAW)
23. The grazing narrative on page 4 of Section 2.4.2 states that the tract has been fall grazed at moderate levels of intensity, but the Section 30 narrative on page 5 of Section 2.4.2 states that it appears the tract had a history of intense late-season use that resulted in a dominance of short grasses and mid-grasses that are unpalatable late in the growing season. Please review and clarify if the tract has been grazed at a moderate or high level of intensity and revise the sentence that suggests that blue grama is unpalatable to livestock late in the growing season. (GAW)
24. Please include a discussion about the absence or relative abundance of low shrubs not considered woodlands in the tracts of native grassland. Western snowberry is not listed in the Sands similarity index nor is it mentioned in the other ecological site discussion, but if the species is present on this tract, it should be noted and discussed as required by NDAC 69-05.2-08-08(1)(d). (GAW)

#### **Section 2.4.5 - Plant Species List**

25. Section 2.4.5, Plant Species List, incorrectly identifies *Convolvulus arvensis*, field bindweed, as a noxious weed and *Euphorbia esula*, leafy spurge, is not identified as a noxious weed. Please review the list and update to identify the State listed noxious weeds, if that is what the term "noxious" is referring to in this list. The list includes *Agropyron smithii* and *Koeleria pyramidata* but these species are now identified as *Pascopyrum smithii* and *Koeleria macrantha* by most sources. Please identify the source of the nomenclature used for the species scientific names. (GAW)

#### **Section 2.4.6 - Productivity by Soil Map Unit and Land Use**

26. The Section 2.4.6 table, Productivity by Soil Map Unit and Land Use, includes native grassland ecological site yield (lbs/ac) soil productivity values different than what is listed in Pre- and Postmining Vegetation Standards document and a note at the bottom of the table indicates that the value are from the Revegetation Success Standards document dated 2003. For example, the Williams and Telfer soil mapping units are listed as having yields of 2400 and 2500 lbs/acre, respectively but Table 1 in the Native Grassland section of the Revegetation Success document have values of 2000 and 2100 lbs/ac for these soils. The third paragraph on page 3 of Section 2.4.2 states that the values listed on that page

are based on NRCS ecological site estimates. Please review and revise accordingly to clarify the source of the soils mapping unit native grassland yield values and clarify why the ecological site “representative value” (RV) was used rather than the low value if the area was suffering from moderate to extreme drought conditions as stated on page 25 of Section 2.7.2. (GAW)

#### **Section 2.4.7 – Native Grassland Data**

27. The values listed in Section 2.4.7.2, Ecosite Production Summary, were derived using NRCS ecological site yield data rather than the PSC Pre- and Postmining Vegetation Assessments document. Please clearly state that this is the case in the Table in Section 2.4.7.2 and clarify why NRCS values were used rather than native grassland yield data for each soils mapping unit as provided in the PSC Vegetation Assessments document. (GAW)
28. Section 2.4.7.2, is entitled Ecological Site Production Table in the Table of Contents (TOC) in Section 2.4, but the table is labeled Ecosite Production Summary when it is opened. Likewise, Section 2.4.7.1 is entitled the Ecological Site Acreage Table in the TOC but as the Ecosite Acreage Summary when opened. Please title these tables in a consistent manner. (GAW)
29. Please include bookmarks for each Ecological Site in Section 2.4.7.4, Ecological Site Descriptions so that information for each site can be found in this 172 page document. (GAW)
30. The narrative in the third paragraph on page 3 of Section 2.4.2 states that the native grassland inventory was completed after a season of grazing and that samples were adjusted for grazing intensity, growth curve and moisture content using NRCS information. Please provide specifics to clarify how the data included in Section 2.4.7.3 was adjusted for these factors and include the necessary charts and information used to compute/determine peak primary production. (GAW)

#### **Section 2.6 – Alluvial Valley Floors**

31. Please provide the correct acronym description for SMCRA in the second paragraph of Section 2.6.1, Alluvial Valley Floor Determination. (BEB)

#### **Section 2.7 – Fish and Wildlife Resources**

##### **Section 2.7.1 – Introduction to the Fish and Wildlife Report**

32. The first sentence of the Native Grassland narrative states that late season grazing has shifted the vegetation composition to early season, less palatable species; however, the similarity index worksheet, Section 2.4.7.3, shows that this tract is dominated with blue grama (53% of the composition), which is a warm season species that is very palatable. Please revise the narrative to provide clarity. (GAW)
33. Peregrine falcon is mentioned in the Threatened or Endangered Species narrative on page 3 of Section 2.7.1. Please clarify why this species is mentioned in the Threatened and Endangered Species discussion since it is not a listed species. (GAW)
34. Please revise the last sentence of the Candidate Species, Dakota Skipper, narrative on page 3 of Section 2.7.1 as it is not clear what is meant with this sentence. It reads “None of the locations within the study area that were identified as having prime Dakota skipper habitat and a high presence of other skipper species occurred in the permit area”. Please clarify where the prime Dakota skipper habitat exists in the

study area and where these areas are in relation to this permit area and clarify if there is an increased likelihood of Dakota skippers being present if other skippers were observed. (GAW)

**Section 2.7.2 – Fish and Wildlife Report**

35. The last paragraph of the first page of the Fish and Wildlife Report states that the report essentially includes one year of study results. Please review and revise as necessary if any pertinent information for the proposed permit area was found during inventory work that was completed since March of 2013. (GAW)
36. Please revise the Fish and Wildlife Habitat report, Section 2.7.2, and associated habitat maps as necessary, Sections 2.7.2.1, to clearly discuss and distinguish hayland separately from annually tilled cropland since cropland and hayland are distinct and different habitat types. (GAW)
37. Please revise the wetland narrative(s) in Section 2.7.2 and the Wildlife Habitat Maps, as necessary to clarify if temporary wetlands are considered “wetland habitat”. Clearly temporary wetland should be distinguished as a separate habitat type if not included in the wetland habitat type. (GAW)
38. Sentences in the third paragraph on page 11 of Section 2.7.2 states that “The native grassland habitat fragmentation within the embedded cropland is allowing for an increased rate of invasive species to replace native species” and “this was also seen on the new proposed reference areas which should make for good long-term comparisons of range health”. Please clarify if the cropland is embedding the native grassland or vice versa, and how an increased rate of invasive species on native grassland reference areas can make for good long-term comparisons of range health. (GAW)
39. Please revise the native grassland narrative to discuss the relative abundance of low shrubs in grassland communities that are not considered woodland. Low shrub communities should be considered a distinct wildlife habitat type and its value as wildlife habitat should be thoroughly discussed. (GAW)
40. The third paragraph on page 7 of Section 2.7.2 mentioned that transects were walked through suitable habitat during the Dakota skipper surveys. Please show the transect locations that were walked on the Dakota Skipper Survey Maps, Sheets 1 and 2 of Section 2.7.2.1.a. (GAW)
41. The second paragraph on page 20 of the Fish and Wildlife Report, Section 2.7.2, states that the USFWS once listed both the bald eagle and piping plover as threatened species. Section 2.7.2.8 indicates that the piping plover is a Threatened species. Please review and revise to clarify what is meant with the statement that the piping plover was once listed as a threatened species. NDAC 69-05.2-05-02. (GAW)
42. Please revise the Threatened and Endangered Species discussion that begins on page 19 of Section 2.7.2 to include a discussion about the potential presence of all Threatened and Endangered species in the permit area not just some of them. The narrative should include a discussion about whether the proposed permit and study area has the potential to support any of the listed species and there should be a discussion about whether or not the USFWS has classified any areas in the proposed permit area or study areas as designated critical habitat for any of the listed species. (GAW)
43. The Wildlife habitat study map, Section 2.7.2.1, shows that all of the Sprague’s pipit sightings were located in areas not too far from woodlands. Please discuss if there is a correlation with Sprague’s pipit

sightings and various woodland community sites or the low shrub communities that are not considered as woodlands. (GAW)

44. The table at the top of page 29 identifies a number of NDNHI significant ecological communities that appear to have the potential to exist in the study area, for example, the Western Wheatgrass Prairie, the Needlegrass Wheatgrass Prairie and the Needle and thread Mixed Grass Prairie. Please discuss how it was determined that each of these communities do not exist in the study area and explain the meaning of the State Ranking S1 through S4 designations. NDAC 69-05.2-05-02. (GAW)
45. Please revise Section 2.7.2.3, Grouse Survey Results to include data from all of the survey dates not just one table that shows the greatest numbers observed at each of the lek sites. NDAC 69-05.2-05-02. (GAW)
46. Please include a table that summarizes the results of the Sprague's pipit sightings. The table should include the habitat type where the sighting occurred, the legal description of the sighting, the size of the habitat type, distance to other habitat types, habitat type ecological site if applicable, estimated ecological condition of the site, utilization levels of the site and if cattle were occupying the tract at the time of the sighting. (GAW)
47. Please revise Sheets 1 and 2 of Section 2.7.2.1 to include aerial photography on all of the study area as required by NDAC 69-0-5.2-08-15(2).
48. The wildlife study area map clearly shows mining disturbance in the Sections 17, 18, 19 and 20 of T143N, R88W. However, this is not mentioned in the wildlife report nor is all of the area depicted as such on the maps. Please review and revise as necessary to accurately discuss and depict these areas. (GAW)
49. Please label the named creeks on the wildlife study area maps, Sheets 1 and 2 of Section 2.7.2.1 so that the location of the discussed creeks and streams can be determined. Page 12 of the report also mentions that a feature called Medicine butte is located at the south end of the study area. Please also identify this feature on the maps. (GAW)
50. Please revise the wildlife study area map, Sheet 2 of Section 2.7.2.1 to distinguish between the tall shrub and deciduous woodland habitat types. These community types may be considered woodlands for the purposes of land use but they are different habitat types and should be identified as such accordingly. Presently, it is not possible to determine which breeding bird survey is representing the tall shrub community and which is representing the deciduous woodland community on the wildlife studies map, Section 2.7.2.1. (GAW)
51. Please revise the Wildlife Study Area Map, Section 2.7.2.1, to depict the Silver Sage – Western Wheatgrass scrub, a significant ecological community that was identified by the NDNHI, and show each location where the samples listed on page 30 of Section 2.7.2 were taken within the community. Please also explain why this community type is not listed as a distinct wildlife habitat type. (GAW)
52. Please revise Sheets 1 and 2, Section 2.7.2.1 a, Dakota Skipper Survey Maps, to clearly identify the high potential habitat areas in the study area. The legend on these maps shows that the areas are depicted with a thick solid blue line but the thick blue line on the maps is broken. Please review and revise to clarify as necessary. (GAW)

### **Section 2.7.3 – Mining Impacts**

53. Please revise the Protection, Enhancement and Management Plans narrative in Section 2.7.3, Mining Impacts, to discuss how Coyote Creek Mining Company plans to reclaim or avoid disturbance to the high value woodland habitats that is to be disturbed during the initial construction phase of the facilities area for compliance with NDAC 69-05.2-13-08(6)(d). Not replacing disturbed woodlands on this area for life-of-mine does not comply with NDAC 69-05.2 09-17 which states that the operator will minimize adverse impacts to fish and wildlife and related environmental values and enhance these resources where practical. Please revise to show replacing the value of this habitat within a few years of initial disturbance. Similar changes will also be needed to the Postmining Land Use Plans, Section 4.1. (GAW)

### **Section 2.7.4 – Wildlife Monitoring Plan**

54. Please revise Section 2.7.4 to discuss compliance with NDAC 69-05.2-09-17(1)(e) which requires the applicant to consult with the Commission and State Game and Fish Department before selecting wildlife monitoring indicator species. (GAW)

### **2.9 – Climatological Data**

55. Please review the Fahrenheit to Celsius conversion calculation in the first paragraph of Section 2.9.1, Climatological Information, because 181<sup>0</sup> F should convert to about 83<sup>0</sup> C. (BEB)
56. In Section 2.9.1, please clarify the sentence “*Wind direction at Bismarck varies from WNW to NW with a WNW direction characterizing January through June.*” It appears that the referenced wind directions are the prevailing wind directions. (RLK)

### **Section 3.1 - Operations - General**

57. Reclamation costs include demolition of 39,000 sq. ft. of building structure. However, no mention is made of the demolition costs of the floor of the structure, nor is the demolition and disposal costs of the dragline erection pad included (both the floor and pad are assumed to be made of concrete with rebar). Please include demolition and disposal costs for the concrete floor and dragline pad, as well as disposal costs for the shop/office structure. Also include any other miscellaneous costs such as gravel surfacing disposal, security fencing, etc. (BAJ)
58. Please make the following corrections to Section 3.1.3: relocate the arrow and label that apparently identify the improved and extended county road leading into the shop/office site but are partially hidden by the title block; and, add section, township, and range labels to the map. (WTG)
59. Please revise the Pit Layout and Facilities Map, Section 3.1.3 to show the whole permit area. The north boundary of the permit area is not depicted on the map. (GAW)
60. Please revise the Pit Layout and Facilities Map, Section 3.1.3 to show an access trail between the Facilities site and the SPGM stockpiles. The Topsoil Disturbance Area Map, Section 3.1.1.8.7 shows this access trail but the Pit Layout and Facilities Map shows a clean water field engineered diversion in the drainage way between the stockpiles and the facilities site. (Please discuss reclaiming this access trail after SPGM has been removed so that a stripped area does not exist through the clean water

diversion.) Also, clarify if the “clean water diversion” is actually going to be a grassed waterway that will route runoff around the north side of the pond embankment. The diversion discussion on page 5 of Section 3.3.1, Surface Water Management, states that diversion channels and ditches will be constructed in subsoil but in this instance it would seem that the “clean water diversion” will need to be respread with topsoil and seeded and that it will not be designed as indicated in Section 3.3.5, Field Engineered Diversions. Please review and revise as necessary. (GAW)

61. Please include information in the operations section, or other section of the permit as may be preferred by CCMC, regarding the installation of the required signs and markers in the permit area. The minimum requirements for signs and markers within areas where a performance bond has been posted are outlined in NDAC 69-05.2-13-04. (RLK)

### **3.2.1 – Transportation Facilities Narrative**

62. Please review Section 3.2.1, Transportation Facilities Narrative, since portions of the narrative pertain to roads in other permits held by the North American Freedom mine. Please remove the portions of narrative that do not apply to Permit Application NACC-1301. (BAJ/FSE)

### **Section 3.3 – Surface Water Management**

63. The Typical Embankment cross-section for sedimentation ponds in Section 3.3.1.1 depicts the principal/emergency spillway elevation and the permanent pool elevation levels of the pond design on the downstream/outfall side of the pond embankment. Although these simulated elevation locations can be logically extrapolated through the embankment to their correct location on the upstream side of the embankment, it would seem to make more sense to show these theoretical elevations on the correct side of the embankment. Other North American Coal permits contain this same generic schematic and updating this is only a suggestion. (BEB)
64. Please correct the title block for Section 3.3.2 that is incorrectly titled as Section 3.1.3 - Pit Layout and Facilities Map. (WTG)
65. Please review and correct as necessary the watershed area listed for Pond P-30-01 in Section 3.3.4. It appears that the area should be listed as 25.5 acres rather than 28.1 acres. (WTG)
66. Design narrative of sediment pond P-30-01 in the second paragraph of Section 3.3.7 describes that the receiving waters of the pond will be the Heart River via Coyote Creek, and it appears the intended receiving waters should be listed as the Knife River via Coyote Creek. Please review and revise as necessary. (BEB)

### **4.1 – Post-Mining Land Use Plans**

67. If received, please incorporate the Landowner Postmining Preference Statement from Casey and Julie Voigt into Section 4.1.4. (BEB)
68. Narrative in the last paragraph on page 2 of Section 4.1.1 discusses proposed minor land use changes but no land use changes are being proposed. Please review and revise to clarify if any land use changes are being proposed. (GAW)

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69. Please revise the native grassland seed mixture listed in Section 4.2.2, Seed Mixtures, to include native forb species. NDAC 69-05.2-13-05 requires the utilization of the best technology currently available. (GAW)


**Section 4.2.3 – Trees and Shrubs**

70. Please revise the native tree and shrub woodland narrative to clarify that the actual planting rate and species stocking rates will be added to the permit after the woodland has been planted so that the revegetation performance standard can be developed. (GAW)

As of today, 25 days remain of the Commission's 120 day review period specified in NDAC 69-5.2-05-01(3). Also, attached are copies of comments that we have received from Advisory Committee members to date.

If you have any questions, please contact this office.

Sincerely,



James R. Deutsch  
Director  
Reclamation Division

cc: Mercer County Auditor