

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Coyote Creek Mining Company, L.L.C
Permit NACC-1301
Application

Case No. RC-13-268

PERMIT TO ENGAGE IN
SURFACE COAL MINING AND RECLAMATION OPERATIONS

March 12, 2014

Based on the application for **Surface Coal Mining Permit Number NACC-1301** submitted by Coyote Creek Mining Company, L.L.C. for the Coyote Creek Mine on May 31, 2013, and as revised through March 6, 2014, and all information and documentation contained therein, the North Dakota Public Service Commission (Commission) finds that the application meets all applicable requirements of Chapter 38-14.1 of the North Dakota Century Code (NDCC) and Article 69-05.2 of the North Dakota Administrative Code (NDAC). On the basis of the information set forth in the application or from that otherwise available and known by the applicant, the Commission finds that:

Finding No. 1. The permit application is accurate and complete and complies with the requirements of NDCC Chapter 38-14.1 and NDAC Article 69-05.2 [NDCC 38-14.1-21(3)(a)].

The applicant verified that all information included in the permit application is true and correct to the best of their knowledge. The permit area contains 84.24 acres with surface interests that are privately owned and it does not include any federally owned coal. No actual coal mining will occur on these lands but will be used for shop/office, dragline erection site and related support disturbances for the Coyote Creek Mine. Reclamation plans are provided for the lands that will be disturbed by mining related activities. Commission staff conducted completeness and technical reviews to ensure that the required information was provided and the mining and reclamation plans meet all applicable requirements. The Reclamation Division sent completeness and technical review letters to the applicant on June 25, 2013, September 18, 2013, November 6, 2013, and January 27, 2014. Responses to each letter were received and appropriate changes were made to the application to address the concerns that were noted. The applicant provided leases and other documents showing that they have the right to disturb the surface of lands in the permit area. The Commission concludes that the application is now accurate and complete.

The applicant published the required notices in the Hazen Star, Beulah Beacon, and The Bismarck Tribune and the Commission sent notices to all surface owners that will be affected by Permit NACC-1301 and to numerous local, state and federal agencies. In addition, advisory committee members were provided copies of the application for their review and comment. No objections or requests for an informal conference were received on this application and no major issues were raised during the review of this application.

Finding No. 2. The applicant has demonstrated that reclamation as required by NDCC Chapter 38-14.1 and NDAC Article 69-05.2 can be accomplished under the reclamation plan contained in the permit application [NDCC 38-14.1-21(3)(b)].

The total acreage in Permit NACC-1301 is 84.24 acres. Land disturbances are planned to construct the Coyote Creek Mine's shop/office facility, a pad to erect a dragline, a sedimentation pond, and other support features including soil stockpiles, diversions and access road. The facilities will support the actual mining activities proposed in Permit Application NACC-1302 until the expected completion of mining in 2040. Reclamation of disturbed areas will be carried out using reclamation procedures that have been successful in the past at similar surface mines that satisfy the requirements of the North Dakota laws and rules.

The applicant has demonstrated that sufficient soil materials are available to meet the soil redistribution requirements of NDAC 69-05.2-15 and the revegetation requirements of NDAC 69-05.2-22. The post-mining topography proposed by the applicant meets the requirements of NDCC 38-14.1-24(3) and NDAC 69-05.2-21-02. Coal will not be mined in this permit and the postmining topography of the reclaimed associated disturbance areas will be very similar to the pre-mine topography. The reclaimed land will be capable of supporting the pre-mine uses, or higher or better uses, that existed prior to mining. The predominant pre-mining land uses in the entire permit area are cropland (about 29.4 acres or 34.9 percent of the permit) and native grassland (about 52.7 acres or 62.5 percent). Most of the pre-mine cropland has been identified as prime farmland by the Natural Resource Conservation Service and those areas must be returned to cropland after mining. The reclamation plan proposes to return all land in the permit to the pre-mine land uses.

Finding No. 3. Based on the assessment of the probable cumulative impacts of all anticipated mining in the area, the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area [NDCC 38-14.1-21(3)(c)].

An assessment of the probable cumulative hydrologic impacts of all anticipated mining in the area has been made as required by NDCC 38-14.1-14(1)(o). The Commission finds that the proposed operation has been designed to maintain the quantity, quality, and hydrologic regime of surface and ground water systems in the area. The cumulative effects of all existing and proposed mining operations should not damage the hydrologic balance outside the permit area. The detailed cumulative hydrologic impact assessment is on file with Permit NACC-1301 in the Commission's offices.

Finding No. 4. Lands within the permit area are not within an area designated unsuitable for surface coal mining operations, nor within areas under study or administrative proceedings under a petition to have an area designated as unsuitable for surface coal mining operations [NDCC 38-14.1-21(3)(d)].

None of the lands in Permit NACC-1301 have been designated unsuitable for surface coal mining operations pursuant to NDCC 38-14.1-05, nor are they within an area under study or administrative proceedings under a petition to have an area designated as unsuitable for surface coal mining operations.

Finding No. 5. The proposed mining operations will not interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally sub-irrigated or materially damage the quantity or quality of water in surface or underground water systems that supply these alluvial valley floors [NDCC 38-14.1-21(3)(e)].

Based on an examination of the geologic and geomorphic characteristics, soils, land use, and the water quality and quantity of streams occurring within or adjacent to the permit area, it has been determined that there are no alluvial valley floors within or adjacent to the permit area. In addition, portions of Coyote Creek near the permit area were previously evaluated for alluvial valley floor potential and Commission staff determined that this creek does not have the characteristics to be considered an alluvial valley floor. Detailed alluvial valley floor investigation reports and determinations are on file with the Commission.

Finding No. 6. In cases where the mineral estate has been severed from the surface estate, the applicant complied with the requirements of NDCC 38-18 [NDCC 38-14.1-21(3)(f)].

The applicant included copies of coal leases and other documents in the permit application demonstrating compliance with the North Dakota Surface Owner Protection Act, North Dakota Century Code Chapter 38-18. This documentation included copies of notice that was given to the apparent surface owners before the application was filed with the Commission. However, during the permit review process the Reclamation Division became aware of that the 4.54 acre tract in Section 31, T143N, R88W, is subject to a contract for deed and that the sellers under that contract had not been provided a notice showing the planned land disturbances as required by North Dakota Century Code Section 38-18-06. This notice needs to be given to all persons having valid title to the surface of the land, but the applicant had only notified the buyers under the contract for deed. The applicant then sent notices to the sellers listed in the contract for deed showing the planned disturbances while the application was under staff review. In addition, after a thirty-day period elapsed following the applicant's notice, the Reclamation Division sent letters by certified mail to those individuals given them an additional thirty days to file any comments, objections, or requests for an informal conference on the application. The Commission did not receive any comments, objections or other responses to these letters.

Finding No. 7. Lands within the permit area are not subject to the prohibitions or limitations of NDCC 38-14.1-07 except for areas that receive specific approvals after complying the applicable review procedures of NDAC Chapter 69-05.2-04 [NDAC 69-05.2-10-03(6)(a)].

Lands in the permit area are:

- a) Not on any lands within the boundaries of units of the North Dakota Park System, the National Park System, the National Wildlife Refuge Systems, the National System of Trails, the National Wilderness Preservation System, the National Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act, and national recreation areas.
- b) Not on any federal lands within the boundaries of any national forest.
- c) Not within 300 feet of any publicly owned park or places included in the State Historic Sites Registry or the National Register of Historic Places. A cultural resource survey and inventory of the area being permitted was conducted. All sites that were identified have been properly tested and evaluated. Two prehistoric sites were identified and one was determined to be eligible for listing on the National Register of Historic Places. The field work for mitigation of the eligible site, 32ME2350, was completed in 2013 and the mitigation report has been accepted by the State Historical Society. The State Historical Society has cleared this site for disturbance. The applicant has committed to reporting, testing and mitigating, if necessary, any previously unrecorded archeological, cultural, or historical materials that may be discovered as a result mining related activities.
- d) Within 100 feet of the outside right-of-way line of public roads. However, the applicant has stated that no disturbance will occur within 100 feet of the outside edge of the existing public road right-of-ways until the appropriate road authority approves mining disturbance within 100 feet of the right-of-way or until the road authority closes the roads.

The Commission is attaching Special Condition No. 1 to the permit to require the applicant to submit copies of the road authority approval documents to the Commission before conducting any mine related activities within 100 feet of the outside right-of-way of any public road within or adjacent to the permit area. This is to ensure that the approval process used by the road authority (Mercer County) will provide protection to the interests of the landowners and public similar to provisions under NDCC 38-14.1-07(4) and NDAC 69-05.2-04-01.3(3). If a road authority's approval process does not provide for public notice, an opportunity for hearing, and written findings, the Commission must do so before allowing mining related activities within 100 feet of the public road right-of-way.

- e) Not within 500 feet of any occupied dwelling, nor within 500 feet of any farm building.

- f) Not within 300 feet of any public building, school, church, community, or institutional building.
- g) Not within 100 feet of any cemetery.

Finding No. 8. With respect to prime farmland within the permit area, the post-mining land use for the pre-mining prime farmland will be cropland, the reclamation plan was reviewed by the Natural Resources Conservation Service (NRCS) and their suggestions were considered, operations will be conducted in compliance with NDAC 69-05.2-26 and NDCC 38-14.1, and the applicant has the technological capability to restore the productivity on reclaimed lands [NDAC 69-05.2-10-03(6)(c) and NDCC 38-14.1-21(6)].

The applicant included a prime farmland reclamation plan with the submittal of the original permit that satisfies the requirements of NDAC 69-05.2-09-15 and the performance standards of NDAC Chapter 69-05.2-26. The postmining land use for the prime farmlands that will be disturbed is cropland. The prime farmland areas in the permit area will only be affected by associated disturbance not actual mining. Based on the type of disturbances no separate handling for soils from prime areas is planned. The NRCS provided review comments on the application and did not object to mixing prime and nonprime soils in this permit area provided the selective handling plan for soil material as outlined in the application is followed. The selective soils handling plan in the permit application identifies soils and soil depths suitable for salvage and use in reclamation. The prime farmland areas will be reclaimed in the same location, with the same topography that existed prior to disturbance. The applicant is responsible for replacing soil materials and managing reclaimed lands as necessary to meet productivity standards. The reclamation methods that will be used by the applicant for associated disturbance areas have been proven to be successful in the past; therefore, the Commission finds the technological capability exists to restore the productivity of reclaimed land to a level that is equal to or greater than non-disturbed prime farmland in the surrounding area under equivalent management practices.

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)].

Surface coal mining and reclamation activities will not affect the continued existence of threatened or endangered species or result in the destruction or adverse modification of their critical habitats. No federal threatened or endangered species or designated critical habitats were observed within or contiguous to the proposed permit area.

The permit area is located in the primary whooping crane (a listed species) migration corridor where most sightings are made; however, there are no wetlands within proposed permit area. Linear wetlands are present in drainages adjacent to the permit but these types of wetlands are not desirable whooping crane habitat. The U.S. Fish and Wildlife Service was consulted and they concluded that there appeared to be limited suitable habitat for whooping cranes in the permit area and adjacent wildlife study area (Refer to the comment in the U.S. Fish and Wildlife Service's July 16, 2012 letter regarding the applicant's pre-mine fish and wildlife inventory plan.) Based on this, the

Commission finds that there is no suitable stop-over habitat for whooping cranes within or adjacent to the permit area.

The permit and adjacent area do not contain habitat for other listed species including the Black-footed ferret, Pallid Sturgeon, Least Tern, Piping Plover or Western Prairie Fringed Orchid. The Gray Wolf could conceivably be an occasional migrant visitor to North Dakota and the permit area.

Specific surveys were completed during baseline wildlife inventory for the Dakota skipper butterfly and Sprague's pipit. These are Candidate species under the Endangered Species Act. Sprague's pipit was observed during the baseline wildlife surveys on land about 1000 feet south east of the permit boundary and the Dakota skipper was not sighted on or near the permit area.

Finding No. 10. The applicant will be required to pay all reclamation fees required by 30 CFR subchapter R [NDAC 69-05.2-10-03(6)(e)].

Since no mining has occurred at the Coyote Creek Mine, the applicant has not yet been required to pay the reclamation fees required by 30 CFR subchapter R. However, a condition is attached to the permit that will require the payment of these fees when coal is mined. The Office of Surface Mining's Applicant Violator System office in Lexington, Kentucky, was queried to verify that all fees have been paid by mining companies affiliated with the applicant.

Finding No. 11. The applicant has satisfied requirements for approving cropland as a post-mining land use [NDAC 69-05.2-10-03(6)(f)].

The applicant has satisfied the requirements for approval of a cropland post-mining land use under NDAC 69-05.2-22-01. Areas reclaimed to cropland will either be seeded directly to crops commonly grown in the area or to a tame grass/legume pre-cropland mixture. The post-mining topography and soils are suitable for cropland in the areas that will be cropped.

Finding No. 12. No existing structures will be used to support mining activities within the permit area and the requirements of NDAC 69-05.2-09-04 do not apply to the permit area [NDAC 69-05.2-10-04].

No existing structures in the permit area will be used to support mining activities.

Finding No. 13. No drill holes, boreholes or wells will be retained for other uses [NDAC 69-05.2-14-03].

The applicant has not proposed to retain any drill hole, borehole, or well for other uses.

Finding No. 14. No spoil in the permit area is known to cause toxic mine drainage [NDAC 69-05.2-16-11].

The permit area will be used for support facilities and no mining activities are planned that would result in the exposure of materials that would be considered toxic.

Finding No. 15. The applicant will not conduct mining activities within or near perennial and intermittent stream channels that violate applicable water quality standards or adversely affect the quantity and quality of the water and other environmental resources of the stream [NDAC 69-05.2-16-20].

The permit area is not within 100 feet of an intermittent or perennial stream.

Finding No. 16. The applicant does not propose to use any experimental practices in the federal coal tract area [NDAC 69-05.2-27-02].

There are no plans included in the application to use any experimental practices that may be allowed under NDAC 69-05.2-27-02.

Finding No. 17. The applicant does not control and has not controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations [NDAC 69-05.2-10-03(4)].

Commission records, and those in the Office of Surface Mining's Applicant Violator System, do not show that the applicant, nor any affiliated company, controls and has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of NDCC 38-14.1 or of other states' laws that are based on P.L. 95-87 (the Federal Surface Mining Control and Reclamation Act), of such nature, duration, and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of these laws.

Finding No. 18. Neither the applicant, nor any affiliated companies, have unabated violations or unpaid civil penalties [NDAC 69-05.2-10-03(1)].

Commission records, and those in the Office of Surface Mining's Applicant Violator System, do not indicate that the applicant, nor any affiliated companies, have any unpaid civil penalties or unabated violations of NDCC 38-14.1 or any other federal or state laws, rules, or regulations pertaining to air or water environmental protection. Staff at the North Dakota Department of Health also verified that the applicant has no unabated violations with regard to air and water environmental protection standards.

Finding No. 19. A performance bond in the amount of \$666,171 is sufficient for the proposed surface coal mining operations in the area included in this permit [NDAC 69-05.2-12-07].

The Commission has determined that a performance bond in the amount of \$666,171 is sufficient at this time to cover the required reclamation, restoration, and abatement work for the disturbances proposed in Permit NACC-1301. A surety bond in the amount of \$800,000 for the Coyote Creek Mine has been filed with the Commission for this permit.

Subject to the right of any person with an interest that is or may be adversely affected to request a formal hearing under NDCC 38-14.1-30, **Surface Coal Mining Permit Number NACC-1301** is hereby granted to **Coyote Creek Mining Company, L.L.C.** to engage in surface coal mining and reclamation operations, on the following described areas subject to

the applicable requirements of the original permit and conditions, Chapter 38-14.1 of the North Dakota Century Code, and the rules promulgated there under. (Attached is a copy of the metes and bounds description of lands included in the permit area.)

MINE	ADDRESS	ACRES	LOCATION			
			Sections	Township	Range	County
Coyote Creek	Beulah, ND	84.24	30, 31	143N	88W	Mercer

PUBLIC SERVICE COMMISSION

 _____ Randy Christmann Commissioner	 _____ Brian P. Kalk Chairman	 _____ Julie Fedorchak Commissioner
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Section 1.2.2 – Metes and Bounds Description for Entire Permit Area

A tract of land for a mining permit being the east 1/2 of the southeast 1/4 of Section 30 and a part of the northeast 1/4 of the northeast 1/4 Section 31, all in T143N, R88W, of the 5th P.M., Mercer County, North Dakota. All bearings and distances are based on the North Dakota State Plane Coordinate System, South Zone, NAD 83. All bound calls supersede any metes within this description. Described as follows:

Beginning at the southeast corner of said Section 30; thence N 00°54'16" E a distance of 2639.62', to the east 1/4 corner of said Section 30; thence N 89°08'33" W a distance of 1314.85', to the C-E 1/16 corner of said Section 30; thence S 00°56'14" W a distance of 2638.32', to the E 1/16 corner on the south line of said Section 30; thence S 00°51'39" W a distance of 150.00', on the 1/16 line of said Section 31; thence S 89°05'10" E a distance of 1316.25', on a line parallel with the north line to the east line of said Section 31; thence N00°54'16" E a distance of 150.00', on the east line to the northeast corner of said Section 31, being the point of beginning.

Said tract of land contains 84.24 acres.