



**PUBLIC SERVICE COMMISSION**  
**Reclamation Division**  
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**Memorandum**

**TO:** Commissioners Kalk, Christmann and Fedorchak  
Darrell Nitschke, Executive Secretary  
Illona Jeffcoat-Sacco, General Counsel

**FROM:** *JH* Jim Deutsch, *DKM* Dean Moos and *RK* Randy Kowalski

**DATE:** October 20, 2014

**SUBJECT:** Application for Permit No. NACC-1302, Coyote Creek Mining Company, Case No. RC-13-850

On November 1, 2013, Coyote Creek Mining Company, L.L.C. filed the application for Surface Coal Mining Permit NACC-1302 to permit 8,091.511 acres for the proposed Coyote Creek Mine. The proposed permit area is shown on Figure 1. The permit application provides the required baseline information and the operation and reclamation plans for mining activity disturbances in the permit area. The Reclamation Division has completed its review of this permit application and respectfully recommends that it be conditionally approved.

The Coyote Creek Mine is a new permit area located about 10 miles southwest of Beulah, North Dakota in Mercer County. The Coyote Creek Mine is scheduled to begin delivering coal to the Coyote Station in May 2016. (Dakota Westmoreland's coal contract for the Coyote Station will end at that time.) Construction began at the mine's shop/office site earlier this year following the Commission's approval of Permit NACC-1301 that covers 84 acres. The NACC-1301 permit area is included in Permit NACC-1302 and all information relevant to the initial area has been incorporated into NACC-1302. Coal mine related activities will begin in the northeast portion of Permit NACC-1302 this fall with the installation of utilities and continued construction of shop/office facilities. The construction of sedimentation ponds, haul roads, and a shop/office access road will occur in 2015 along with topsoil and subsoil removal and stockpiling for the initial dragline pits. Actual mining will begin in 2016 with the opening of dragline boxcut pits.

Coal will be mined from the Upper Beulah seam on about 4,530 acres of the permit area. The coal cropline for the Upper Beulah seam in the permit area is shown (dashed black line) on Figure 1. The average annual coal production will be about 2.5 million tons per year with a projected first year production of 1.7 million tons. Much of the remaining acreage will be disturbed for soil and overburden stockpiles, access and haul roads, and water management structures used in support of mining activities. Mining will progress across the permit area from east to west with pits orientated north-south in the north half of the area; and northwesterly-southeasterly in the south half of the permit area. Coal removal from this permit is expected to continue until 2040.



The predominant premining land uses in the permit area are native grassland (6,572 acres) and cropland (198 acres for annual crops and 816 acres for hay crops). Lesser amounts are used for shelterbelts, fish and wildlife habitat (wetlands), woodlands, developed water resources, and roads. The acreage of each postmining land use will be somewhat similar to the premine conditions; however, the cropland acreage will increase by about 430 acres, while hayland will decrease by about 48 acres and the native grassland acreage will decrease by about 405 acres. The average postmining slope (8.0%) proposed for the mining disturbance area is lower than the average pre-mine slope (11.6%) in this area.

Also, premine lands that are not currently being used for cropland were evaluated to identify areas with soils, slopes and size suitable to be considered potential cropland to ensure that the premine capability of the reclaimed lands is restored. The only potential cropland area identified in the permit area was found in Section 36, T143N, R89W. An equivalent sized area of potential cropland has been delineated on the postmining land use map within the same section of land that will be returned to native rangeland. The soil respread depth for the potential cropland area will be determined in the soils handling plan in a manner to ensure the premine capabilities are restored.

The permit area contains federal coal tracts that have not been leased. Coyote Creek Mining Company has obtained the appropriate leases to disturb the surface of the federal coal tracts to the extent necessary for conducting mining operations on adjoining tracts where the coal is privately or State owned. Coyote Creek Mining Company intends to mine portions of these federal coal tracts following issuance of a federal coal lease by the Bureau of Land Management. The federal coal lease must be issued and the Department of the Interior must approve the mine plan covering federal coal tracts prior to removing overburden and coal on any of the federal coal tracts. Special Condition No. 1 attached to the Commission's approval of Permit NACC-1302 will prohibit any overburden or coal removal from the federal coal tracts until the applicant receives the coal lease and the Secretary of the Interior approves the federal mine plan. Until that mining plan is approved, surface disturbances on the federal coal tracts will be limited to those activities necessary for carrying out mining on the adjoining tracts where the coal interests are privately owned. In addition, the Bureau of Land Management required Coyote Creek to add plans for protecting exposed federal coal in the highwall from oxidation and degradation while the adjacent coal is mined.

There is one occupied farmstead located in the permit area. At this time Coyote Creek does not propose to disturb the farmstead or to conduct mining operations within 500 feet of any farm building. The road leading to the farmstead in the E½ of Section 31 T143N, R88W is not scheduled for disturbance. Alternative access will be provided to the land for owners/tenants.

Coyote Creek Mining Company obtained approval from Mercer County to close the section line right-of-way between Sections 30 and 31, T143N, R88W to construct the shop/office facilities. Coyote Creek Mining Company will request additional right-of-way closures in the future. Special Condition No. 2 will be attached to the permit requiring Coyote Creek Mining Company to provide the Commission with copies of the road authority's approval documents within 30 days of the approval date and include the written findings made by the road authority. North Dakota Administrative Code Section 69-05.2-04-01.3 requires the Commission to make a written finding on protecting the interests of the public and affected landowners if this is not included in the road authority's approval process.

With regard to the reclamation schedule for the first five year permit term, the applicant has requested variances from the contemporaneous reclamation requirements that normally require rough grading to be completed within 180 days of coal removal, NDAC 69-05.2-21-01(2), and that all reclamation efforts through the initial seeding be completed within three years of completion of mining activities, NDCC 38-14.1-24(14). The requested variances described in the application are related to the backfill area required to accommodate pre-benching operations and to incorporate the boxcut spoils into the postmining topography within the first five years of mining. The requested variances from the 180 day grading and three-year seeding requirements are justified and we recommend approval by Commission as allowed by NDAC 69-05.2-21-01(2) and NDCC 38-14.1-24(14).

Coyote Creek Mining Company published the permit application notice in the Hazen Star, Beulah Beacon and Bismarck Tribune newspapers in March and April of 2014. The last publication date was April 17, 2014. We notified the appropriate agencies, affected landowners, and advisory committee members of the revision application. No objections or requests for informal conference were received on the application.

A surety bond has been submitted for the first increment area (2,088.8 acres) described in Permit Application NACC-1302. About 535 acres will be disturbed in the increment area for utilities, shop/office area, access roads, sedimentation ponds, diversions, and stockpiles. The Reclamation Division has determined that a bond in the amount of \$4,648,285 is sufficient at this time to cover the required reclamation, restoration, and abatement work for these disturbances. The surety bond filed by Coyote Creek Mining Company is in the amount of \$5,000,000.

Also attached for your consideration at the October 22, 2014, Commission meeting are the proposed motion, permit approval form that includes the required findings, permit conditions, and the newspaper notice that we must publish.

#### Attachments