

February 6, 2015



*Via email only to wmann@nd.gov*

Honorable Wade Mann  
2911 North 14<sup>th</sup> Street  
Suite 303  
Bismarck, ND 58503

**Re: Coyote Creek Mine Permit Number NACC-1302**  
**PSC Docket No.: RC-13-850**  
**OAH Case No. 20140505**

Dear Judge Mann:

On the final day of the formal hearing in this matter, we were informed through the testimony of Bruce Beechie, staff member of the PSC, that we had not received several important documents which were part of the PSC staff's review and recommendation. These documents included two aerial infrared photographs of the permit area that are used for alluvial valley floor reconnaissance, as well as the PSC's May 16<sup>th</sup>, 2013 Coyote Creek Alluvial Valley Floor ("AVF") Study Investigation Report.

This was the report of the actual investigation conducted by the PSC for purposes of the AVF determination for Coyote Creek Mine Permit Number NACC-1302. Additionally, the photographs are a primary tool used to identify alluvial valley floors, and are centered directly over the AVF study area relevant to this permit. Because the AVF determination is one of the primary points of contention in this proceeding, these are crucial documents that counsel for Voigt had no opportunity to review before the hearing and Mr. Beechie's testimony. We had requested these documents prior to the hearing through an open records request, and had noted in that request that "access to these documents is essential for the representation of our client, Casey Voigt, at the upcoming hearing." See Attachment 1, Request for Records."

We recognize that the rushed nature of this proceeding increases the likelihood of errors such as incomplete responses to record requests. Nonetheless, the end result is that we were unable to knowledgeably cross-examine the PSC witness on issues related to these crucial documents. Our inability to cross-examine on this information has a material effect on our case.

We have explained the situation to the other parties and have outlined a path to them which we believe is fair and preserves our client's procedural due process rights: (1) that these three items be admitted as late-filed exhibits; (2) that we be allowed the opportunity to submit affidavits as rebuttal since we did not have a reasonable opportunity to respond or have our

Honorable Wade Mann

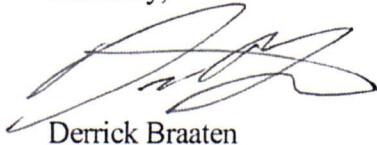
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experts review the documents at the hearing; (3) that other parties be allowed to cross-examine if they wish after we have submitted rebuttal affidavits. The rebuttal evidence we submit would be considered "information not presented at a hearing" as per N.D.C.C. § 28-32-15, and the PSC would give notice of that pursuant to that section. If the PSC or Coyote Creek decide they want to question the affiants, then we would have additional hearing time for that, or allow the examination to proceed via a deposition.

Although our understanding is that counsel for the PSC and Coyote Creek agree to the pictures and report being admitted as late-filed exhibits, Coyote Creek does not agree to the second or third items. For the foregoing reasons, we are now respectfully making this request to you. If you would prefer a formal motion and memorandum on the issue, we can file that as well. Thank you for your consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Derrick Braaten", with a stylized flourish at the end.

Derrick Braaten

Copy: Brian Bjella (via email: [bbjella@crowleyfleck.com](mailto:bbjella@crowleyfleck.com))  
Illona Jeffcoat-Sacco (via email: [ijs@nd.gov](mailto:ijs@nd.gov))  
Client

December 10, 2014

Public Service Commission  
Attention: Jim Deutsch  
600 East Boulevard Avenue, Dept. 480  
Bismarck, ND 58505-0480

**Re: Request for all documentation forming foundation of approval for Permit  
Number NACC-1302**

Dear Mr. Deutsch:

To date we have requested several items from your office in relation to the upcoming formal hearing for permit number NACC-1302. These items include: Coyote Creek Mining Company's permit application, Coyote Creek Mining Company's consolidated legal information report, information forming the foundation of PSC's alluvial valley floor determination, and PSC's cumulative hydrological impact assessment. The reason we have requested these items is because they form the foundation of PSC's permit approval.

Please consider this our request for any and all other documents that we have not yet requested that form the foundation of your approval of permit # NACC-1302. This includes any items that could be reasonably construed as forming a part or foundation of Coyote Creek Mining Company's permit application or portion thereof, as well as any other PSC determinations (and the foundation thereof) relating to this permit approval. Access to these documents is essential for the representation of our client, Casey Voigt, at the upcoming hearing.

We request that you please respond to this letter either by (1) informing us that we have received all documents described above or (2) informing us of the additional documents that you will be providing to us.

Thank you,



Derrick Braaten