

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Coyote Creek Mining Company, L.L.C. : Case No.  
Permit NACC-1302 : RC-13-850  
Application :

TRANSCRIPT OF  
FORMAL HEARING  
VOLUME I - (Pages 1 - 148)

Taken At  
State Capitol  
Bismarck, North Dakota  
December 19, 2014

BEFORE JANET DEMARAIS SEAWORTH  
-- ADMINISTRATIVE LAW JUDGE --

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COMMISSIONERS PRESENT:

COMMISSIONER BRIAN P. KALK  
COMMISSIONER JULIE FEDORCHAK  
COMMISSIONER RANDY CHRISTMANN

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FOR THE COMMISSION.

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1           (The following proceedings were had and  
2 made of record herein, commencing at 11:02 a.m.,  
3 Friday, the 19th day of December, 2014:)

4           JUDGE SEAWORTH: Good morning, everyone.  
5 I think we're ready to start. It's just after  
6 11 o'clock, and so I would ask for some quiet here  
7 while we begin.

8           My name is Janet Seaworth. I'm the  
9 administrative law judge, and I've been designated  
10 by the Office of Administrative Hearings to preside  
11 this morning upon the request of the Public Service  
12 Commission, and I serve as the procedural hearing  
13 officer for this hearing. And this is OAH Case  
14 Number 20140505, and this is the North Dakota  
15 Public Service Commission Case Number RC-13-850.

16           This is the hearing on the application of  
17 the Coyote Creek Mining Company, L.L.C., for a  
18 surface coal mining permit on 8,091.51 acres of  
19 land located in Mercer County.

20           The PSC conditionally approved the permit,  
21 and that's Permit Number NACC-1302, on October 22,  
22 2014, and they did provide notice that any person  
23 with an interest, which is or may be adversely  
24 affected by the permit approval, may request a  
25 formal hearing with the Commission. Casey Voigt

1 objected and on November 24, 2014, he requested a  
2 formal hearing.

3 On November 25, 2014, the PSC issued a  
4 notice of formal hearing setting the hearing for  
5 11 a.m. central standard time on December 19, 2014,  
6 in the PSC hearing room, and that's where we are  
7 today for the hearing.

8 The notice of hearing issued -- or noted  
9 that Mr. Voigt had concerns with regard to the size  
10 of the permit area, the reclamation practices to be  
11 used and his loss of agricultural production.

12 It's now just a little past 11 a.m.  
13 central standard time on December 19, 2014. We are  
14 in the PSC hearing room on the 12th floor of the  
15 State Capitol in Bismarck, North Dakota, and this  
16 is the time and date and place that was set in the  
17 notice of formal hearing issued by the PSC on  
18 November 25, 2014.

19 On November 1, 2013, Coyote Creek Mining  
20 Company, L.L.C., filed an application for a surface  
21 coal mining permit for a new mine ten miles  
22 southwest of Beulah, North Dakota. The application  
23 and the request are set forth in the notice of  
24 filing and the notice of hearing, and the proposed  
25 location is shown by a map which is part of the

1 notice.

2 The notice of hearing that was sent on  
3 November 25, 2014, specified several issues for  
4 hearing and consideration. Those three are the  
5 appropriate size of the permit area, the  
6 reclamation practices that would be used on land to  
7 be mined and Mr. Voigt's loss of agricultural  
8 production.

9 On December 16, 2014, just a couple days  
10 ago, the parties did appear for a prehearing  
11 conference and they agreed on the order of  
12 procedure that we'll have today, and they also  
13 agreed that witnesses may appear by telephone.  
14 Yesterday I did confirm that telephone witnesses  
15 would be allowed and I also asked that the parties  
16 identify as soon as they knew which witnesses would  
17 appear by telephone.

18 I would ask at this time that the parties  
19 please state their appearance for the record, and  
20 let me know who you have with you. Mr. Braaten.

21 MR. BRAATEN: Derrick Braaten from  
22 Baumstark Braaten Law Partners in Bismarck, North  
23 Dakota, and I have with me Casey Voigt, the  
24 gentleman who requested the hearing. I will also  
25 have with me another attorney in my office named

1 J.J. England, who is continuing to get our exhibits  
2 together for the hearing but should be here  
3 shortly.

4 JUDGE SEAWORTH: Thank you.

5 Mr. Bjella.

6 MR. BJELLA: Yes, Your Honor. My name is  
7 Brian Bjella. I'm with the law firm of Crowley  
8 Fleck in Bismarck, North Dakota, representing  
9 Coyote Creek Mining Company, L.L.C. Along with me  
10 is Blaine Johnson, an attorney with our firm, and  
11 of course we have numerous people with Coyote Creek  
12 as well.

13 JUDGE SEAWORTH: All right. Thank you.

14 And PSC counsel.

15 MS. JEFFCOAT-SACCO: My name is Ilonna  
16 Jeffcoat-Sacco. I'm general counsel at the  
17 Commission. I do have with me today Jim Deutsch,  
18 he's the director of the reclamation division; Dean  
19 Moos, who is the assistant director; and Guy Welch,  
20 who is an environmental scientist.

21 I would like to at this time ask  
22 permission for those three people to possibly have  
23 the opportunity to ask questions of the witnesses  
24 instead of me asking questions. I may have some,  
25 but there will probably be substantial technical

1 areas that it would be better if they could ask the  
2 question directly themselves.

3 JUDGE SEAWORTH: Mr. Braaten, do you have  
4 any objection to PSC staff asking questions?

5 MR. BRAATEN: Would it be possible to  
6 reserve any objections until the actual point where  
7 they are doing the questioning?

8 JUDGE SEAWORTH: You may.

9 MR. BRAATEN: Okay.

10 JUDGE SEAWORTH: Yeah.

11 Mr. Bjella, any objection?

12 MR. BJELLA: No, Your Honor.

13 MR. BRAATEN: Your Honor.

14 JUDGE SEAWORTH: Mr. Braaten.

15 MR. BRAATEN: I should also mention -- I  
16 didn't mention it -- but I also have with me here  
17 Mark Anderson as one of the witnesses who will be  
18 testifying on our behalf and Lance Loken is one of  
19 our consultants. And I spoke with Mr. Bjella. He  
20 was okay with Mr. Loken joining us up here. And  
21 obviously Mr. Voigt has a lot of friends in the  
22 room as well.

23 JUDGE SEAWORTH: All right. Thank you.

24 There was mention of a sign-up sheet going  
25 around. And what I'd like to know is if there's

1 anyone present who is either a proponent of the  
2 application or opposed to the application that  
3 would like to participate in the hearing by  
4 offering testimony. If you'd like to do that  
5 during the public portion of the testimony, would  
6 you raise your hand so I have an indication.

7 MR. REINHILLER: What's the question?

8 JUDGE SEAWORTH: The question is if there  
9 is anybody who would like to offer testimony and  
10 participate in the hearing during the public  
11 portion of the hearing. If there is, would you  
12 raise your hand.

13 MR. REINHILLER: Excuse me. If you have a  
14 question, not necessarily testimony, but a question  
15 about regulations or whatever?

16 JUDGE SEAWORTH: If you'd like to do that  
17 during the public portion of the hearing for input,  
18 yes, I would ask that you raise your hand, and also  
19 indicate whether you'd like to participate on the  
20 sign-up sheet that's going around.

21 Okay. All right. The public portion of  
22 the testimony occurs later in the hearing, but I  
23 just wanted to get an idea of how many people that  
24 I might be anticipating would be -- would be  
25 participating.

1           At this time what I'd like to do is  
2 introduce the Commission. We have the Public  
3 Service Commission members here today. And to my  
4 left we have Chairman Commissioner Brian Kalk. To  
5 my immediate left we have Commissioner Randy  
6 Christmann. And to my far left we have  
7 Commissioner Julie Fedorchak.

8           COMMISSIONER FEDORCHAK: Morning.

9           JUDGE SEAWORTH: And at this time I would  
10 like to ask if they have any opening comments that  
11 they would like to make. Commissioner Kalk.

12           COMMISSIONER KALK: Well, thank you, Your  
13 Honor. Just -- welcome everyone for coming out  
14 here today. I'll give you kind of the -- I guess  
15 my view of how these things kind of run.

16           For those of you who have never been to a  
17 PSC hearing, there's a lot of formality around it,  
18 and that's good because everything we do is based  
19 on a record developed hearing testimony that's --  
20 we've already received and we may hear today. So  
21 the judge will swear in whoever comes in and does  
22 their testimony. It's a very formal process.

23           A little background, too, on -- when we  
24 received the letter from -- from Casey basically  
25 on -- what was it, November 24? The way it lays

1 out is we have 30 days to have a hearing and so  
2 that's why it happened this way. And it's very  
3 challenging when -- when hearings come in for the  
4 Commission and the staff and everyone else to find  
5 the time to make everything work when you're given  
6 that kind of 30-day window. So that's why we kind  
7 of developed the schedule the way it's set up. I  
8 know the attorneys went through this, but for the  
9 rest of the crowd, that -- basically we're starting  
10 today at 11 and we're going to go till 3 o'clock  
11 today. We'll even take a break to use the rest  
12 room, and if people need to come and go, please do  
13 that, but then we've already got it scheduled for  
14 8:30 on December 23 to continue because we figure  
15 by starting at 11 o'clock, we're just not going to  
16 get through everything today. That's just the way  
17 it is.

18 And, also, we don't want to be rushing  
19 everyone. We want to make sure everybody has the  
20 full time. We want to make sure we can ask all of  
21 our questions and so that's why it's set up that  
22 way.

23 So that's the format that we'll follow.  
24 And then we have roughly 30 days after the hearing  
25 closes on the 23rd for us to make a decision. And

1 so this thing will, I think, move along very  
2 quickly. But the big thing for me today is just be  
3 patient with us. The company -- I'm sorry, Derrick  
4 and his crowd will make their case first. That may  
5 finish today, it may not. When they're done, then  
6 I think Mr. Bjella and their crowd will make their  
7 case and our folks will ask a lot of questions too.  
8 We're going to have a lot of questions.

9           The technical part of it I think is where  
10 this comes down to. There's a lot of technical  
11 issues here. The Commission has already voted on  
12 this and approved it. And we've thoroughly  
13 reviewed at that time and heard all the technical  
14 issues we thought were answered. So if there's  
15 something that perhaps you don't think we answered,  
16 that's what this is all about today.

17           And so that's where I will say that the  
18 jurisdiction of the Public Service Commission is  
19 limited to a few issues. How much someone gets  
20 paid for an easement, that's not jurisdictional to  
21 us. And so that doesn't mean that it's not an  
22 issue for you, but it just means that we don't set  
23 those.

24           We see that a lot in wind farms where we  
25 may agree with the final location, but if the

1 landowner has some questions about what they're  
2 getting paid, that's a separate venue to work that  
3 out.

4           And so the judge will help me out on that,  
5 as well as our general counsel. If there's  
6 questions on that, you know, we'll do our best to  
7 walk through it, but that's one thing that, you  
8 know, our jurisdiction is limited to a certain area  
9 and that's what we're really going to try to focus  
10 our questions on, and if all of you could help on  
11 that area as well. The attorneys, you know what  
12 our jurisdiction is and isn't, so if you're asking  
13 witnesses questions that you know isn't our  
14 jurisdiction, just -- I would say why.

15           So that's the only questions that I have.  
16 Just -- thank everyone for coming. Like I said,  
17 there are a lot of people here today. The rest  
18 rooms, if you need to come and go, please do that.  
19 There's a lot of people here, too, and we're  
20 recording it, so if you can, just try to keep it  
21 quiet out there. And for our court reporter,  
22 sorry, I will try to slow down.

23           Thank you.

24           JUDGE SEAWORTH: Thank you.

25           Commissioner Christmann.

1           COMMISSIONER CHRISTMANN:  Brian covered  
2  it.  One little detail that he didn't cover, but it  
3  can be pretty important when it comes to rest  
4  rooms, if you go out in the hallway by the  
5  elevator, there's a ladies' rest room here; and for  
6  the men, you can go up one floor to the 13th or I  
7  believe one down to the 11th and there's a men's  
8  rest room in the same place, so it's every other  
9  floor.

10           Brian talked about the jurisdictional  
11  aspect of our decision-making and it's an important  
12  thing, and so I just want to reemphasize that  
13  oftentimes, you know, the public can -- can make --  
14  make their opinions based on just what they want to  
15  happen.  We will make our opinion based on the  
16  jurisdictional aspects of the case, and so that's  
17  very important.

18           Lastly, I want to point out, you know,  
19  it's no secret that I believe that we currently  
20  have and have for a long time had a very good  
21  reclamation and siting program at this Commission,  
22  and I'm very proud to be -- of that fact, but I  
23  think one of the things that has for a long time  
24  made it a very good program is the openness to the  
25  public.  And that's not unique to -- to our

1 reclamation and siting program. I think that's one  
2 of the good things about North Dakota government in  
3 general is that we're very open to the public and  
4 citizens have these opportunities for hearings and  
5 this sort of thing.

6 And so we're here today and I expect we'll  
7 be here Tuesday and getting all of the information  
8 so that we can make the best decision possible  
9 based on our jurisdiction. And I think it's a good  
10 thing and a good example of North Dakota government  
11 in action.

12 JUDGE SEAWORTH: Thank you.

13 Commissioner Fedorchak.

14 COMMISSIONER FEDORCHAK: Well, Randy  
15 stated that very well and I just want to echo some  
16 of your comments. First, I want to say sorry for  
17 such tight quarters. It's not usual for there to  
18 be standing room only for a PSC hearing. Normally  
19 we're not that popular, but sorry about that.

20 We don't necessarily know when we set  
21 these hearings in the locations how big the crowd  
22 is going to be, so hopefully those of you who are  
23 out in the hall are able to hear and get what you  
24 need from this process, because we want you here  
25 and we want you to be part of it.

1           Along the lines of what Randy said, this  
2           is what makes government great in our country is  
3           having the opportunity for public hearings like  
4           this where people who have issues have an  
5           opportunity to express them. And my goal is that  
6           in the end we can have a good, open discussion  
7           about some of your concerns, Mr. Voigt, and  
8           hopefully find a way to resolve them in the end and  
9           end up with a better product when we're done with  
10          this hearing process.

11           So thank you for being here. We look  
12          forward to a good discussion today and a good, fair  
13          hearing in the next couple of days, however long it  
14          takes.

15           JUDGE SEAWORTH: All right. Thank you,  
16          Commissioner.

17           I just want to talk a little bit about the  
18          hearing procedure that we'll use this morning. The  
19          parties did talk about the hearing procedure at a  
20          prehearing conference earlier this week and agreed  
21          Mr. Voigt would first be given an opportunity to  
22          present his case. And any witness that is called  
23          by Mr. Voigt will be subject to questioning by the  
24          other parties, by Coyote Creek and also PSC counsel  
25          and staff.

1           And then upon completion of Mr. Voigt's  
2 case, then Coyote Creek will have an opportunity to  
3 present its case, and its witnesses will also be  
4 subject to questioning.

5           Upon the completion of Coyote Creek's  
6 case, then there is an opportunity for public  
7 testimony. Now, if we run into a situation where  
8 someone is here from the public, you know, maybe we  
9 can take that out of order. That's something  
10 that -- that we can assess as we go along today.  
11 But I'll call on those people who wish to provide  
12 information to the Commission for public testimony  
13 at that time. All public testimony is made under  
14 oath. This is an administrative proceeding, just  
15 so everybody is clear about that.

16           Also, according to North Dakota Century  
17 Code Section 28-32-06, an administrative agency  
18 must specifically state at the hearing whether it's  
19 applying the North Dakota Rules of Evidence to the  
20 hearing or whether they are waived, and so I would  
21 ask PSC counsel if the Rules of Evidence apply  
22 today.

23           MS. JEFFCOAT-SACCO: I think that the  
24 general answer would be yes, they do apply, but if  
25 there is a specific request on a case-by-case basis

1 to waive a rule with the basis for it, then you or  
2 the Commission can make that decision at the time.

3 JUDGE SEAWORTH: Okay. So in the absence  
4 of any particular request that they be waived, they  
5 apply. All right.

6 Are there any questions about the  
7 procedures that we'll use this morning?  
8 Mr. Braaten?

9 MR. BRAATEN: No, Your Honor.

10 JUDGE SEAWORTH: Mr. Bjella?

11 MR. BJELLA: Yes, Your Honor. At the  
12 prehearing conference we discussed that the Public  
13 Service Commission reclamation division would  
14 present its case third. Is that -- I want to  
15 clarify if that is going to happen.

16 JUDGE SEAWORTH: Yes, that is. I'm sorry  
17 if I neglected to discuss that. Yes, it is.

18 MR. BJELLA: Thank you, Your Honor.

19 MS. JEFFCOAT-SACCO: Your Honor?

20 JUDGE SEAWORTH: Yes.

21 MS. JEFFCOAT-SACCO: I had one  
22 additional -- addition to what you described as the  
23 procedure, and that would be the questioning -- in  
24 addition to the questioning by the parties, the  
25 questioning by the commissioners.

1 JUDGE SEAWORTH: Absolutely.

2 MS. JEFFCOAT-SACCO: Thank you.

3 JUDGE SEAWORTH: We always give an  
4 opportunity for opening statements. And so,  
5 Mr. Braaten, if you'd like to make an opening  
6 statement.

7 MR. BRAATEN: Thank you, Your Honor, I  
8 would. I want to just start by thanking the  
9 Commission and the Commission staff for being so  
10 flexible. This was certainly difficult in the  
11 short time frame we had to pull this together, and  
12 I appreciate the flexibility, both scheduling it  
13 today and finding another date so that we could  
14 finish it and have enough time for the hearing. I  
15 know that Mr. Voigt appreciates that and I think  
16 all the parties do.

17 I appreciate all the folks -- Casey is  
18 apparently a popular guy and has a lot of  
19 friends -- and I appreciate all the folks coming  
20 out today.

21 As -- as the judge pointed out, there are  
22 a couple concerns, and what we intend to do is put  
23 Mr. Voigt on the stand first so that he can just  
24 start out by explaining what his concerns are, why  
25 he's asked for this hearing and give you some of

1 the context and background for that.

2 And we -- we had the prehearing  
3 conference, and because of the abbreviated nature  
4 of this, it was difficult even at that time for us  
5 to know how long we were going to go. I am hoping  
6 that we'll be able to finish today, even  
7 potentially a little bit early. But after  
8 Mr. Voigt we're calling a gentleman, Charles  
9 Norris. He is a hydrogeologist and does go by  
10 Chuck.

11 COMMISSIONER KALK: Chuck Norris is  
12 testifying today?

13 MR. BRAATEN: Yes. Yes, he is. And he's  
14 going to be primarily discussing the alluvial  
15 valley floor determination. And we will then call  
16 Steven Merrill. And some of the folks at the PSC  
17 might know Mr. Merrill, but he worked at the Mandan  
18 Agricultural Research Station. And he was one of  
19 the scientists who conducted some of the Zap wedge  
20 experiments and some of the other studies that  
21 actually form the basis for some of the Public  
22 Service Commission's regulations with respect to  
23 reclamation. And he was active for several decades  
24 doing that kind of research on reclamation and soil  
25 health. And so we're going to have him testify and

1 explain some of his experience with all of that  
2 research, what he's learned over the years and in  
3 recent years.

4 And I have with me behind me a gentleman  
5 named Mark Anderson. Mark is an expert in soils as  
6 well as rangeland conservation. And he worked with  
7 the Natural Resource Conservation Service on  
8 various issues for a number of decades. And he'll  
9 be testifying about some issues related to  
10 vegetation and soils and will be discussing soil  
11 health as well.

12 During the prehearing, we talked a little  
13 bit about the potential for calling rebuttal  
14 witnesses on Tuesday, and so that's a possibility.

15 But other than that, it will primarily be  
16 Mr. Voigt explaining his concerns and then we'll  
17 have our three experts discussing some of those  
18 issues more specifically.

19 And so, once again, I just appreciate the  
20 opportunity and thank everyone for being here.

21 JUDGE SEAWORTH: Thank you.

22 Mr. Bjella.

23 MR. BJELLA: Yes, Your Honor. Just want  
24 to thank everyone also for their working with us to  
25 get this done in a timely manner and yet complying

1 with the law. So thank you very much.

2 JUDGE SEAWORTH: Ms. Jeffcoat-Sacco.

3 MS. JEFFCOAT-SACCO: I have no opening  
4 statement. Thank you.

5 JUDGE SEAWORTH: Thank you.

6 Mr. Voigt, you may call your first  
7 witness -- I'm sorry, Mr. Braaten.

8 MR. BRAATEN: And we'd call Casey Voigt.

9 JUDGE SEAWORTH: Mr. Voigt, before we  
10 begin your testimony, I need to advise you on the  
11 penalties for perjury in North Dakota. The  
12 penalties for perjury is a maximum -- is a Class C  
13 felony punishable by a maximum \$10,000 fine, a  
14 maximum five years imprisonment or both.

15 (Witness sworn.)

16 JUDGE SEAWORTH: Thank you.

17 Mr. Braaten.

18 MR. BRAATEN: Thank you, Your Honor.

19 **CASEY VOIGT,**

20 having been first duly sworn, was examined and  
21 testified as follows:

22 **EXAMINATION**

23 **BY MR. BRAATEN:**

24 Q. Mr. Voigt, can you start by just stating  
25 your full name and your address for us?

1           A.     Casey Lee Voigt, 6571 17th Street  
2 Southwest, Zap, North Dakota.

3           Q.     Okay. And can you just give us a little  
4 bit of personal history, just kind of tell us who  
5 you are, where you've worked, what you've been  
6 doing over the years.

7           A.     I guess my family moved to our current  
8 ranch in 1971. I was a young child at that time  
9 and attended Beulah Public School. Graduated from  
10 Beulah Public School in 1982. Went on to Dickinson  
11 State College, attended some chemistry technology  
12 classes. Later came back home because that's where  
13 my passion truly was.

14                     Spent several years working at the  
15 elevator business in Beulah and eventually got on  
16 with a contractor doing some blasting work with the  
17 coal mines, and that led to contract work at  
18 basically all four of the active mines in the state  
19 at this time. Eventually got on as an employee  
20 with Knife River Coal south of Beulah. Worked for  
21 them for 12 years until I was able to retire from  
22 mining and ranch full-time.

23                     As far as my family, married my wife,  
24 Julie, in 1994. And we have two children. My  
25 daughter, Leah, was born in 1996. My son, Lane,

1 was born in 2004. And my daughter has graduated  
2 from Beulah now and is going to college in  
3 University of Minnesota. And my son, Lane, is  
4 attending school at Beulah.

5 Q. Can you tell me how many years was it that  
6 you were working with the coal mines?

7 A. I did about six years of contract work  
8 with the blasting company, ICI, Imperial Chemicals,  
9 Incorporated, and then I did a little over 12 years  
10 with the Knife River mine that eventually sold out  
11 to Dakota Westmoreland.

12 Q. Okay. And you mentioned that you came  
13 home to start ranching. Is the land you're  
14 ranching now a ranch that's been in your family?

15 A. Yes. Actually, our family purchased it in  
16 1971, but prior to us purchasing it, the Keogh  
17 brothers actually homesteaded there in 1896. Tom  
18 Keogh actually built the house for the headquarters  
19 in 1908, which is where we still currently live, in  
20 the original house, a Sears and Roebuck mail order  
21 house that was very well built.

22 As time proceeded, one of the Keogh  
23 brothers' hired men, Ralph Murray, purchased the  
24 ranch from them in 1948. And later on in '71, due  
25 to some health issues, decided to sell it. And my

1       dad actually was doing some business in Minot. He  
2       had leased some property in the White Shield area.  
3       And he talked to Doc Balas from Hazen, and Doc  
4       Balas informed him that he knew of a really good  
5       guy with a really nice place that he thought was  
6       for sale. Sorry.

7             Q.     That's all right.

8             A.     Anyway, my dad fortunately got ahold of  
9       Ralph Murray and talked to him and thought that he  
10      was a genuine good guy, which we all -- anybody  
11      that knows Ralph -- knew Ralph, knew that he was  
12      one of the best people ever. My dad always  
13      referred to that day in March of 1971. Signing the  
14      papers with John Richardson, that was one of his  
15      best days ever. My mom always argued that June 28,  
16      1954, was better, but --

17            Q.     So -- so the ranch has been in your family  
18      for some time. Can you give us just a little bit  
19      of history of the operation and how the land has  
20      been ranched since the time your dad bought it?

21            A.     Yeah. And even prior to us owning it, it  
22      was under very similar management practices because  
23      the land itself has strategically placed state  
24      lands within its boundaries to where it has been  
25      worked as a single unit since the early 1900s. And

1 it basically is some nice rolling hills with  
2 abundant water. I believe there's like ten  
3 different stock dams that are all spring fed that  
4 supply abundant water. I have several alfalfa  
5 fields that are subirrigated.

6 After I kind of took over from my dad,  
7 Scott Ressler with the Stockmen's Association  
8 worked with me on some improvements. We put in a  
9 couple of water pipelines and probably about five  
10 miles of pipeline and I think like 15 water tanks  
11 and -- oh, we did lots of cross fencing and some  
12 tree plantings and just went to a rotational  
13 grazing system where -- you know, originally when  
14 the ranch was started in the 1900s, it was -- you  
15 just stocked it up and let them take care of  
16 themselves, where modern technology and  
17 advancements have definitely increased not only  
18 stocking but also production.

19 Q. And can you tell us -- I mean it sounds  
20 like you obviously think highly of the land and  
21 obviously one of the indicators of that would be  
22 your cattle. Can you tell us a little bit about  
23 your cattle and the weights and how your cattle  
24 generally compare -- or how your ranch compares to  
25 other ranches?

1           A.     Yeah.  Originally, I started out with some  
2     of my dad's original cows and then eventually  
3     bought replacement heifers from Dr. Wayne Boland,  
4     who was our state vet, and started with a  
5     tremendous maternal base to my cows.  And then  
6     since then, I've spent a lot of time and effort  
7     focusing on the genetics to continue improving  
8     those maternal bases.  And now I've actually  
9     implemented some Hereford cross-breeding to those  
10    Angus genetics to try and further the quality of  
11    the cattle.

12          Q.     And you're still ranching the land today;  
13    right?

14          A.     Yes.  And my son would sure like to  
15    continue in the future.

16          Q.     Okay.  At some point you did sign a coal  
17    lease on the land; is that right?

18          A.     Unfortunately, yes.

19          Q.     Okay.  And you understood at that time  
20    that that would result in the ranch and the land on  
21    the ranch being mined for coal?

22          A.     Yeah.  That gets to be a lot more  
23    complicated than it just sounds on the surface.  
24    Prior to any leases being signed, my parents had  
25    actually had a lease that was not very well put

1 together or however you want to say that.

2 Before that lease had expired, our family  
3 was approached by North American to do an  
4 extension. So at that point in time, I guess, with  
5 different family meetings and whatnot, I was  
6 appointed to represent not only my own personal  
7 interests, but also all my siblings' interests in  
8 the mineral reserves. And actually they have  
9 contract for deeds on the surface, so they actually  
10 did have some rights to the surface also.

11 Along with my family, also Calvin and  
12 Patience Sayler from -- Ralph Murray's daughter,  
13 were also mineral owners and they asked me all to  
14 represent them in their interests along with my  
15 personal interest.

16 So leading into the coal signing, we went  
17 through several different meetings. Most of them  
18 were involving meeting with Jim Melchoir from North  
19 American. And Jim made a lot of promises and  
20 misrepresented what I thought the lease -- what  
21 eventually turned out to be the lease says.

22 I have a letter actually from him that  
23 specifically points out some misleading information  
24 that I was given prior to that. And at that point,  
25 I guess, I was led to believe that what he was

1     telling me was true.  So on those pretenses, I did  
2     what I thought was the best for all parties  
3     involved and went ahead with signing the lease.

4           Q.     And so what was your understanding of how  
5     the mining process would affect your land at that  
6     time?

7           A.     I had worked in the mines so I definitely  
8     had an understanding of how the land is moved and  
9     how the coal is removed and the land is supposed to  
10    be replaced.  I had, I guess, an impression in my  
11    mind and I think I had brought these questions and  
12    concerns up with Jim Melchoir about what the land  
13    would be like when it was done being mined, and I  
14    was always told that it would be as good or better  
15    than it was before.  That is ultimately the goal of  
16    the reclamation laws, not only of the State of  
17    North Dakota, but also the federal regulations.

18          Q.     And so at the time you were signing the  
19    coal lease, that was, you know, what had been  
20    represented to you and what you believed?

21          A.     Yes.  I -- like I say, I have a letter  
22    where I was told I would be reimbursed of all  
23    losses, and I believe the actual letter states,  
24    "North American's commitment to restoring Casey's  
25    ranch to its premining condition should mining

1 operations" --

2 Q. And since that time, do you have a  
3 different impression or understanding of what your  
4 land is going to be like after it's been mined?

5 A. Yes. Unfortunately, I had heard some  
6 grumblings prior to the leasing. I thought maybe  
7 they were just possibly some landowners  
8 overexaggerating the true problems. You drive by  
9 mined land, it looks green, it looks good from a  
10 distance. It's not really until you get into it  
11 and see what the actual production and the lay of  
12 the land is before you truly understand what the  
13 reclamation is truly like.

14 Q. So what specific problems did you hear  
15 about that gave you concern about what was going to  
16 happen to your land?

17 A. I guess some of the original comments that  
18 I started taking a little more serious was from a  
19 guy that rents my land, John Weinand, and I look at  
20 him as being one of the best farmers in Mercer  
21 County. And he uses very good new technology for  
22 all of his farming practices, and he was struggling  
23 to get the production that he felt he should be  
24 able to accomplish with his practices.

25 So then from that point I started asking

1 more questions to Donn Steffen and Sarah Flath.

2 Q. And who are they?

3 A. I believe they're supposed to be  
4 representing Coyote Creek with the environmental  
5 side of the development.

6 Q. Okay. And what questions were you asking  
7 them?

8 A. Originally, I just was trying to ask them,  
9 you know, what the basic knowledge was they had of  
10 the reclamation, what practices they use. And a  
11 lot of it they tried to talk over my head or around  
12 me to where I didn't get a clear answer. So then I  
13 rephrased my question at different times and I was  
14 more direct at what -- why do you have so much  
15 problems with the reclaiming at Coteau. And I  
16 think at times I even referenced John Weinand's  
17 problems and production records.

18 They continued to try and explain to me  
19 that they -- they understood there was problems  
20 with their cropland reclamation, but they felt that  
21 their grassland reclamation was better, and that I  
22 believe at one time Sarah Flath commented to me  
23 that, Well, you have a different soil type so  
24 you're not going to have the problems that they  
25 have at Coteau.

1           So when I kept trying -- when I kept  
2 feeling like I was getting misled from the truth,  
3 then I started trying to make other phone calls to  
4 more landowners and even renters of the reclaimed  
5 land. And the more I talked -- the more people I  
6 talked to, the more problems I found.

7           To date, I would have to say I've probably  
8 talked to 50 different landowners on different  
9 reclamation issues, and I have not found one  
10 positive, supporting evidence of someone that was  
11 truly happy with the reclamation result. And I  
12 believe those are truly a resemblance of the  
13 reclamation practices.

14          Q.     And I won't ask you to name names, but are  
15 any of those folks here today?

16          A.     Yes, there are several of them present.

17          Q.     And do you have any understanding of why  
18 they're not testifying with you today?

19          A.     Various reasons for --

20                 MR. BJELLA: I'm going to have to object,  
21 Your Honor. That's very much hearsay.

22                 JUDGE SEAWORTH: Sustained.

23          Q.     (MR. BRAATEN CONTINUING) Did you speak to  
24 anyone else other than landowners about issues with  
25 reclamation? And I know you spoke about the folks

1 at Coyote Creek, but beyond that did you speak with  
2 anyone about issues?

3 A. Yes. I had actually tried contacting the  
4 Public Service Commission on several different  
5 occasions. Most cases I was referred to Jim  
6 Deutsch, who I believe is supposed to be the head  
7 of the reclamation department. I don't know, Jim  
8 maybe would have better records, but I suppose  
9 we've spoken 10 or 12 times on the phone?

10 Do you think that would be accurate, Jim?

11 MR. DEUTSCH: I'm thinking four or five.

12 Q. (MR. BRAATEN CONTINUING) How about you  
13 had mentioned that you worked within the coal  
14 industry and at the coal mines for a number of  
15 years. Did you have any friends at the coal mines  
16 that you talked to about the issues?

17 A. Yeah, I guess over the years. I know one  
18 individual in particular that works for Dakota  
19 Westmoreland, you know, and their reclamation  
20 practices. Granted, they were not perfect, but all  
21 in all, I think hindsight, they are definitely  
22 better than North American's practices.

23 Q. Okay.

24 A. In and amongst North American, I've talked  
25 with several of their reclamation people, either at

1 Coteau mine or at the Falkirk mine, and the general  
2 consensus I get from them is within their  
3 reclamation departments they would like to do  
4 things differently, but their corporate people are  
5 not allowing them the freedom to do all they would  
6 like to do.

7 Q. Okay. And we -- you know, we've covered  
8 some of this, obviously, but what I would like to  
9 do at this point is, you know, just give you an  
10 opportunity to explain what your concerns are. And  
11 so you've obviously talked about the sufficiency of  
12 reclamation, but maybe with respect to that you can  
13 talk about your land and what your specific  
14 concerns are on your land with respect to, you  
15 know, the reclamation process.

16 A. Well, aside from 40- and 50-year-old trees  
17 that obviously will never be replaced, I think we  
18 can get into just the general contouring being  
19 more, like I had mentioned earlier, rolling hills  
20 with numerous springs. I think to just put back  
21 lifts with the dragline at 50 to a hundred feet at  
22 a time, it doesn't do the surface any justice by  
23 the time you get back to the subsoil or the  
24 topsoil. I think the true problems lie deeper than  
25 just the surface.

1           Along with that, a lot of what I own is  
2 native grasses, and it's very, very difficult to  
3 get native grasses established at the rates that I  
4 have. I believe according to the PSC records,  
5 they're showing approximately 92 percent native  
6 grass and eight different desirable native species.

7           That not only in itself is a good  
8 environment for the cattle, but it's also a good  
9 colony for the plants to actually help the soil  
10 health and help each of the plant species grow in  
11 harmony.

12           Q.    And do you have concerns, then, about the  
13 productivity of either the grassland or the cattle  
14 grazing on it?

15           A.    Oh, yes, definitely. Like I said, to have  
16 that high of native grass, it is almost -- it's  
17 hard enough just to get native seed of that  
18 percentage and then to get it established and get  
19 it to grow as a unison colony, it's very difficult.

20           As far as the cattle, I know when we  
21 first -- I do two-pass grazing, so when we first  
22 move cattle to a new pasture, they spend a lot of  
23 their time nosing around all the taller grasses and  
24 looking for the shorter native grasses because  
25 that's what they prefer. And I think there's been

1 some NDSU studies that show that cattle actually  
2 gain better on the native grasses because of the  
3 nutritional value of the native grasses and of the  
4 extended season that they're allowed to graze on  
5 that.

6 JUDGE SEAWORTH: I'm sorry, I need to  
7 interrupt. Whoever has their cell phone, would you  
8 please turn off your cell phone or mute it. Thank  
9 you.

10 Please continue.

11 Q. (MR. BRAATEN CONTINUING) And we also  
12 talked a little bit about other -- other concerns,  
13 but I'd just like to give you the opportunity to  
14 talk about any other concerns that led you to ask  
15 for the hearing today.

16 A. Well, yeah. Like I said, you know, it  
17 kind of started out as just a lot of questions, and  
18 then when those questions weren't getting answered,  
19 then I thought I was probably asking the wrong  
20 people the right questions. So if you can't change  
21 the question, you've got to change the people  
22 you're talking to, I guess.

23 So after I wasn't getting the answers I  
24 felt I should from Donn and Sarah, I started making  
25 some phone calls and I found a John Kempenich in

1 Dickinson that was a soil scientist that had done a  
2 Coteau profile number five. And I visited with him  
3 for quite a while, and he sent me his study that he  
4 had done on the reclamation lands at Coteau. And  
5 he told me on the phone that his general opinion  
6 was that even just by --

7 MR. BJELLA: Your Honor, this is hearsay.

8 JUDGE SEAWORTH: Sustained.

9 THE WITNESS: It's in his profile.

10 MR. BRAATEN: Your Honor, may I respond?

11 JUDGE SEAWORTH: Yes.

12 MR. BRAATEN: I think that hearsay is used  
13 to prove the truth of the matter. We're not trying  
14 to prove the truth of what he said. We're just  
15 giving an idea of what Mr. Voigt's frame of mind is  
16 and why he's asking for the hearing and where his  
17 concerns come from.

18 JUDGE SEAWORTH: If you can explain your  
19 own understanding, that's acceptable, but I can't  
20 have you tell me what someone else said to you --

21 THE WITNESS: All right.

22 JUDGE SEAWORTH: -- outside of this  
23 proceeding.

24 THE WITNESS: John actually sent me  
25 pictures. And then in those pictures it appeared

1 to me that the roots did not penetrate very far  
2 into the subsoil. And I believe that is an  
3 underlying cause, like I said earlier, about how  
4 the surface is just what we see. It is -- the  
5 entire overlay of the land is what needs to be  
6 addressed and to have a -- a better reclamation  
7 practice.

8 So as far as John's survey that he did at  
9 Coteau then, I'll probably just not get into that  
10 in detail. And --

11 Q. (MR. BRAATEN CONTINUING) Sure.

12 A. -- another one that I ended up talking to,  
13 then, John gave me the name of a Perry Sullivan  
14 that works here in the Bismarck office, another  
15 soil scientist, and he did a production study on  
16 the Falkirk mine. And his feelings and his study  
17 are also public record, and he also believed that  
18 there was too much compaction and that was causing  
19 a lack of production, not only for cropland but  
20 also for grassland.

21 I believe that was in August, then, that I  
22 would have talked to Jim Deutsch and I tried to  
23 pass that information on to him, but he acted like  
24 he hadn't heard of either one of those -- or no, I  
25 take that back. He had heard of Perry's study, but

1 he hadn't heard of John's study.

2 Q. And moving on from some of the reclamation  
3 issues that we've been discussing, is there  
4 anything else you would like to -- to mention with  
5 respect to concerns you had, problems you had,  
6 things that you want to say on the record that led  
7 to you asking for this hearing?

8 A. I guess just in general, communications  
9 with North American employees, you know, they --  
10 they come along and big smiling face and want to  
11 tell you how they want to be a good neighbor and  
12 how they're trying to do what's right for you and  
13 your land and different things like that, but from  
14 what I've learned from dealing with them, I really  
15 don't think they know what a good neighbor is.

16 I live in a community where we have some  
17 of the best neighbors in the world, and it's  
18 obvious here because they're here to support not  
19 only me but my cause. They also will be affected  
20 by what goes on with the mine.

21 Like I say, there was a lot of misleading  
22 information directed -- directly from Jim Melchoir.  
23 I know when I tried to discuss this matter with  
24 Donn Steffen -- and, in fact, even Brian can  
25 testify to the fact of last week we had a meeting

1 at Derrick's office and I brought up the fact at  
2 one point last spring Jim brought a scoria lease to  
3 me and was offering to pay me like a dollar a ton  
4 for the scoria, which is about 20 cents on the  
5 dollar of what the market value is. And then he  
6 was trying to explain to me that it was a  
7 ten-year-term lease. And beings I've had some past  
8 dealings with Jim, I figured there was more to the  
9 story than what he was trying to tell me. So in  
10 reading further through the terms of the contract,  
11 it said in there "unless actively mining," which in  
12 the essence makes it a perpetual lease. But he  
13 distinctly told me and my wife, Julie, that it was  
14 a ten-year lease and at the ten years we would --  
15 at the end of ten years we would be able to  
16 renegotiate the price of the scoria. Well, that is  
17 not the case and that was never intended to be the  
18 case.

19 When I brought this to the attention of  
20 Donn Steffen and Brian Bjella, they both said,  
21 Well, that doesn't matter. You never signed the  
22 lease. And when I reiterated my concerns, they  
23 repeated theirs. It don't matter, you never signed  
24 the lease. But in reality what I was trying to  
25 show is the character of Jim Melchoir and how he

1 goes about obtaining these leases under false  
2 pretense and misleads the landowners into signing  
3 papers that they don't truly understand.

4 Q. Okay. And, Mr. Voigt, I don't have much  
5 more. I just want to give you one more opportunity  
6 if there's anything else you want to say or express  
7 about your concerns before we close your testimony.

8 A. I guess it would kind of go more to the  
9 fact of I just, you know, hope we can do justice to  
10 the concerns, I think, of not only myself but a lot  
11 of landowners that are affected by reclamation. I  
12 know here we're only addressing reclamation from  
13 coal mines, but I believe there's a lot of land  
14 being reclaimed in North Dakota not only from the  
15 coal mines.

16 I realize that, you know, the PSC probably  
17 has the records to confirm that the coal mining  
18 industry definitely affects more surface land than  
19 any other industry. I believe the records show  
20 approximately a hundred thousand acres of disturbed  
21 land, and yet I think to date there's only been a  
22 couple thousand actually released from bond.

23 That in itself, I think, shows that there  
24 should be some concerns for the reclamation  
25 practices because part of the bond release

1 requirements is that it needs to meet production  
2 requirements.

3 MR. BJELLA: Your Honor?

4 JUDGE SEAWORTH: Yes.

5 MR. BJELLA: I guess to the extent that  
6 bond release on lands and other mines is -- if that  
7 is becoming an issue in this proceeding by the  
8 statement that Mr. Voigt just made, we would object  
9 to that. What is before this Commission is this  
10 permit. This permit does not deal or have anything  
11 to do with bond releases at other mines and was not  
12 part of the permit process. Those parties aren't  
13 at this proceeding today to defend themselves.

14 So I'm not sure where this is going, but I  
15 just felt that if the fact -- if they are  
16 attempting to put into this proceeding a critique,  
17 for lack of a better word, of bond release at other  
18 mines, we would object. That is not part of this  
19 proceeding and that should not be allowed to be a  
20 part of this proceeding.

21 THE WITNESS: It's not.

22 MR. BRAATEN: I'd like to respond to that.

23 JUDGE SEAWORTH: Yes, Mr. Braaten.

24 MR. BRAATEN: It is a part of this  
25 proceeding to some extent because what Mr. Voigt is

1 explaining is that he is concerned about  
2 reclamation on his land. And so some of these  
3 concerns, and you'll hear this from some of our  
4 experts, relate to the reclamation process, and  
5 that reclamation process as used by the PSC is used  
6 throughout North Dakota.

7 And so one of the things that Mr. Voigt is  
8 concerned about is, is this process obtaining  
9 successful bond release, is it obtaining successful  
10 reclamation, and if not, then I'm really concerned  
11 about what's going to happen to my land and that's  
12 why I'm here today.

13 And so to that end it is relevant simply  
14 to show that, yes, this is a concern, it's a  
15 legitimate concern. And as our experts will say  
16 and as Mr. Voigt has testified, there is concern  
17 about the specific processes and regulations being  
18 used and whether they are achieving successful  
19 reclamation. And I think that that very much goes  
20 to the question here of whether a mine permit  
21 should be issued with -- with an objection that is  
22 based on the idea that reclamation won't be  
23 successful.

24 MR. BJELLA: If I may, Your Honor.

25 JUDGE SEAWORTH: Mr. Bjella.

1           MR. BJELLA: Certainly reclamation is a  
2 concern of Mr. Voigt and is why we're here today,  
3 and we very much understand that issue and -- and  
4 understand that will be part of this proceeding.  
5 It's the reclamation that is going to be done on  
6 his land and the reclamation as -- in essence I  
7 perceive what's going on here is this is  
8 essentially a criticism of the Public Service  
9 Commission's reclamation plan and division.

10           And so -- but, yes, reclamation is a  
11 legitimate issue for this discussion at this  
12 hearing, but bond release at other mines is not.  
13 That was not part of this permit. It's not part of  
14 this proceeding. Those companies are not here to  
15 defend themselves to explain why or why not there's  
16 a release from bond.

17           THE WITNESS: Could I -- could I make a  
18 statement?

19           MR. BJELLA: If I might --

20           JUDGE SEAWORTH: Not yet.

21           MR. BJELLA: -- state, about four years  
22 ago we had a hearing where Mr. Braaten represented  
23 the Dakota Resource Council against Falkirk when  
24 they had a revision that they wanted to put into  
25 place for what became Coal Lake, and at that

1 hearing as well they attempted to bring up bond  
2 release at other lands and other mines. And we  
3 objected and this Commission sustained my objection  
4 and didn't allow it.

5 And I think the same holds true here.  
6 Bond release at other mines is not part of this  
7 hearing, not part of this permit process, and that  
8 testimony should not be allowed.

9 Thank you.

10 JUDGE SEAWORTH: Mr. Braaten.

11 MR. BRAATEN: First, I would say that the  
12 Coal Lake hearing was limited to a very specific  
13 issue with respect to a post-mine use land change  
14 on 86 acres of land. We're talking about the  
15 issuance of a permit and a rancher with thousands  
16 of acres that are going to be mined who is  
17 concerned about the success of reclamation on his  
18 land.

19 And the bond release from other  
20 companies -- I mean a lot of these companies are  
21 operations of North American Coal, including Coyote  
22 Creek. Some of these mines are right near  
23 Mr. Voigt's ranch, and bond release is very much an  
24 issue because reclamation is complete -- or when  
25 reclamation is complete, the land is released from

1 bond. And so the fact that the land largely across  
2 the state has not been released from bond indicates  
3 that it hasn't been successfully reclaimed. And  
4 we're talking about 2,000 acres or so being  
5 released from bond, meaning it's been successfully  
6 reclaimed, in the entire history of coal mining in  
7 North Dakota.

8           And I don't -- I mean I would agree with  
9 Mr. Bjella that it's not a front-and-center issue,  
10 it's not a major issue, but it is an indication of  
11 the problems with reclamation and it does go  
12 straight to Mr. Voigt's concerns about reclamation  
13 and how it's going to go on his land, because while  
14 these are other mines, they are all subject to the  
15 same regulations from the Public Service  
16 Commission. And those same regulations, and even  
17 more importantly than the regulations, the  
18 practices used to get land to comply with those  
19 regulations are the same at these different mines.

20           And so it is a very stark indicator of  
21 exactly what Mr. Voigt's concern is.

22           MR. BJELLA: May I, Your Honor?

23           JUDGE SEAWORTH: Yes, you may, Mr. Bjella.

24           MR. BJELLA: Again, reclamation to  
25 Mr. Voigt is a concern to him and we are fully

1 prepared to discuss it. There are other mines --  
2 yes, there's at least two other mines that are not  
3 North American mines. They're not here today.  
4 They have no chance to defend themselves and what  
5 they are going to -- they're going to put on the  
6 table here with respect to bond release.

7 It's just not an issue. It was not an  
8 issue in the permit. If some entity or group wants  
9 to make an issue of bond release at other mines, I  
10 assume they can petition this Public Service  
11 Commission to have an open forum on that issue, on  
12 bond release, and let those companies come in and  
13 defend themselves. But they're not even here today  
14 to defend what is apparently going to be coming  
15 from their expert witnesses. It's just not part of  
16 the permit, it's not part of the proceeding and  
17 that testimony should just not be allowed.

18 Thank you.

19 JUDGE SEAWORTH: I note that under  
20 Administrative Rule 69-02-05-01, evidence may be  
21 received subject to later ruling by the Commission.  
22 And so that is my ruling. I will allow the  
23 evidence subject to the later ruling by the  
24 Commission on this issue.

25 COMMISSIONER KALK: Can you break that

1 down for me a little bit, Judge, what you just  
2 said?

3 JUDGE SEAWORTH: Sure. Because I'm a  
4 procedural hearing officer, my ruling -- that's --  
5 it involves some substance, and so that is why I  
6 will allow the evidence to come in during the  
7 proceeding. That doesn't mean it's automatically  
8 admitted into the proceeding. The ruling is  
9 subject to the Commission's ruling at a later time.

10 COMMISSIONER KALK: So the three of us  
11 will decide what weight we put on that?

12 JUDGE SEAWORTH: That's correct.

13 COMMISSIONER KALK: Okay. That's what I  
14 thought. I wanted to --

15 JUDGE SEAWORTH: Mr. Bjella --

16 COMMISSIONER FEDORCHAK: Judge, may I just  
17 follow up?

18 JUDGE SEAWORTH: Yes.

19 COMMISSIONER FEDORCHAK: We will decide on  
20 that specific matter or we will decide in our own  
21 working through the issue whether we think it  
22 should be allowed or not? Do we have to make a  
23 specific ruling on that issue?

24 JUDGE SEAWORTH: You will make a ruling on  
25 whether you receive that evidence.

1                   COMMISSIONER FEDORCHAK: Okay.

2                   MR. BJELLA: Your Honor, just a point of  
3 order question. In the prior proceeding that I  
4 mentioned, if my memory serves me correct, the  
5 commissioners were asked to vote and they voted to  
6 not allow that testimony. Is that something that  
7 could be done today or do you --

8                   JUDGE SEAWORTH: You know, the  
9 administrative rule just says later. It doesn't  
10 say whether it's, you know, during this proceeding  
11 or later upon review of the evidence.

12                   Ms. Jeffcoat-Sacco.

13                   MS. JEFFCOAT-SACCO: I have the least  
14 experience here with this issue, but I think that  
15 either party can always ask for the Commission to  
16 make a ruling to decide whether to confirm or  
17 reject the ruling of the administrative law judge,  
18 and I guess I see three possible answers here:  
19 Deny admission. Admit it subject to a later --  
20 maybe four answers -- later decision by the  
21 Commission whether to admit. Admit it subject to  
22 the Commission giving it what weight it -- the  
23 Commission thinks it deserved, which is what  
24 usually happens -- I think what Commissioner Kalk  
25 was getting to. And, fourthly, a party asking for

1 the issue to go up for a Commission vote right now.

2 MR. BJELLA: If I might --

3 JUDGE SEAWORTH: Mr. Braaten. I'm sorry,  
4 Mr. Braaten.

5 MR. BRAATEN: And along the lines of what  
6 Ms. Jeffcoat-Sacco is saying, I guess I have made  
7 it clear why we think this is relevant and  
8 important, and what I would point out is that this  
9 information comes -- is readily available to the  
10 Public Service Commission. The information is held  
11 by the Public Service Commission, and I personally  
12 would trust the commissioners. They have access to  
13 this information anyway, so it does explain  
14 Mr. Voigt's concerns.

15 And so what I'm asking is we can -- we can  
16 get into the evidence, and if the commissioners  
17 think it's irrelevant or shouldn't have any weight,  
18 then it won't go into the record or they won't give  
19 it any weight, but at least Mr. Voigt has had the  
20 opportunity to put on his entire case.

21 JUDGE SEAWORTH: Mr. Bjella.

22 MR. BJELLA: Your Honor, we would ask that  
23 the Commission make a ruling on this matter at this  
24 time.

25 THE WITNESS: May I clarify my comments

1 before they make that ruling?

2 JUDGE SEAWORTH: Not unless you talk to  
3 your attorney first. Mr. Braaten, would you like  
4 to take a quick break here?

5 MR. BRAATEN: Yeah, if you don't mind.

6 JUDGE SEAWORTH: Let's do that. Let's  
7 take about ten minutes and we'll address this issue  
8 when we come back.

9 (Recessed at 12:02 p.m. and reconvened at  
10 12:17 p.m.)

11 JUDGE SEAWORTH: Let's go back on the  
12 record. And before we took our break, we had had  
13 some discussion about the introduction of evidence  
14 related to bond releases from other companies. Is  
15 that correct, Mr. Bjella?

16 MR. BJELLA: Yes. Essentially bond  
17 releases at other mines and companies.

18 JUDGE SEAWORTH: All right. I -- there  
19 was an objection Mr. Bjella made to the  
20 introduction of that evidence, and I allowed the  
21 evidence subject to a later ruling by the  
22 Commission. And Mr. Bjella has asked for a ruling  
23 from the Commission. Is that correct, Mr. Bjella?

24 MR. BJELLA: Yes, Your Honor.

25 JUDGE SEAWORTH: All right. I would ask,

1 then, for the Commission to respond to that request  
2 for a ruling.

3 COMMISSIONER KALK: All right. Thank you,  
4 Your Honor. This is Commissioner Christmann's  
5 portfolio, so I will give him the opportunity or  
6 the responsibility to do the motion.

7 COMMISSIONER CHRISTMANN: Well, Mr. Chair,  
8 I move the Commission admit the landowner's  
9 evidence of bond release success in North Dakota  
10 subject to the Commission determining in its  
11 decision what weight to give that evidence.

12 COMMISSIONER FEDORCHAK: Second.

13 COMMISSIONER CHRISTMANN: And,  
14 Mr. Chairman, if we can have some discussion.

15 COMMISSIONER KALK: Absolutely.

16 COMMISSIONER CHRISTMANN: You know, I  
17 think it's already been brought up and, you know, I  
18 don't think it should be a major point necessarily  
19 in this whole hearing, but I do think there's a  
20 story to be told. And I would look forward to  
21 hearing from either the company or the PSC  
22 reclamation people the story of bond release in the  
23 state and -- as one factor of many and I think we  
24 should hear it.

25 COMMISSIONER FEDORCHAK: For me, I don't

1 need to hear hours upon hours of testimony on  
2 what's happened in other mines. I think Mr. Bjella  
3 makes a point that that's not what we're talking  
4 here, but to the extent that what has happened has  
5 brought you here and helps direct your request for  
6 what you seek to have changed with this permit,  
7 then I think it's relevant. And so I hope that you  
8 focus on that and how this evidence has helped you  
9 ask for whatever it is you're asking for here and  
10 how it can help improve on the permit or provide  
11 whatever needs to change to meet Mr. Voigt's  
12 concerns.

13 So to that extent, I think that it's, you  
14 know, a relevant part of the conversation and the  
15 evidence, I should say.

16 COMMISSIONER KALK: And I would -- I agree  
17 with both my colleagues. I intend to vote for  
18 Commissioner Christmann's motion. Just as some  
19 background, we've had a lot of contested hearings  
20 over the years at the PSC, whether it's wind farms  
21 or pipelines or power lines -- and I will slow  
22 down.

23 COMMISSIONER FEDORCHAK: You're the only  
24 person who can make Commissioner Kalk turn red.

25 COMMISSIONER KALK: I haven't learned

1 after six and a half years, so --

2 The -- but the point is it's always been  
3 my rule of thumb that you allow the evidence,  
4 because if you don't now allow the evidence, you  
5 set the stage to be more antagonistic, you set the  
6 stage for an appeal. You do all kinds of things  
7 that I don't think make -- are worthwhile. But I  
8 also say the same counsel that Commissioner  
9 Fedorchak did. We -- we know this program very  
10 well. I think there's a story to tell, but I think  
11 it's a good story on reclamation.

12 So I look forward to the discussion with  
13 the witnesses, but I'll say we need to focus on the  
14 case.

15 So with that, I would -- would you like to  
16 call for the vote, Your Honor, or should I?

17 JUDGE SEAWORTH: Please do, Chairman.

18 COMMISSIONER KALK: I'll call for the vote  
19 on Commissioner Christmann's motion. I will vote  
20 first. I vote aye. Commissioner Christmann.

21 COMMISSIONER CHRISTMANN: Aye.

22 COMMISSIONER KALK: Commissioner  
23 Fedorchak.

24 COMMISSIONER FEDORCHAK: Aye.

25 COMMISSIONER KALK: Motion carries.

1                   JUDGE SEAWORTH: Thank you very much.

2                   Mr. Braaten.

3                   Q.     (MR. BRAATEN CONTINUING) Okay.

4                   Mr. Voigt, I think my last question was just if --  
5                   if you wanted to express any other concerns with  
6                   respect to the mine permit and just give you that  
7                   opportunity to finish expressing any concerns  
8                   before we move on, and so I'd do that now.

9                   A.     So this is when we go back to my  
10                  testimony?

11                  Q.     Yes.

12                  A.     Okay. I think we're all supposed to  
13                  appreciate Brian Bjella's attempt to distract us  
14                  from the facts, but my point, if you would have let  
15                  me finish speaking, would have been that with this  
16                  short amount of time to prepare for this hearing,  
17                  we did not have time to go through all the Public  
18                  Service Commission records to determine how much of  
19                  those hundred thousand acres were indeed mined and  
20                  reclaimed by North American Coal, nor do we know  
21                  how much of those 2,000 acres were released from  
22                  bond by North American Coal. But I'm glad that the  
23                  commissioners are willing to look at these facts  
24                  because they can make a determination of how many  
25                  acres were mined by North American Coal and how

1 many acres were released from bond by North  
2 American Coal. I am not passing judgment on any of  
3 the other mines.

4 Q. Okay. And let's move on from that now.  
5 And before we close your testimony, you know,  
6 putting aside the bond release issue, putting aside  
7 reclamation, I just want to give you an opportunity  
8 to express any other concerns you have with respect  
9 to the mine permits.

10 A. I guess my next part was to try and  
11 summarize my letter that I requested and just kind  
12 of go through and touch on exactly what some of  
13 those issues were.

14 I know Jim Deutsch had asked me on the  
15 phone once, you know, that the comments were kind  
16 of vague and not clearly understood, so I thought  
17 maybe I could just shed a little light on each  
18 individual reason that I had commented on those.

19 First of all, with my request for the  
20 formal hearing on the Coyote Creek mining permit, I  
21 was concerned about the size of the permit,  
22 8,091 acres. That I would say again, back to  
23 Public Service Commission records, has to be one of  
24 the largest permits ever awarded for a coal mine,  
25 and yet according to the Public Service records of

1 applying for the permit on November 27, 2013, and  
2 being approved on October 22 of 2014, that is  
3 probably also one of the shortest time periods of  
4 approving a coal mining permit. So those two raise  
5 concerns for me.

6           Within that 8,091 acres, there's two  
7 county roads that have open public access. I know  
8 there's Commissioner Bill Tveit here with concerns  
9 as far as the Mercer County Commission is  
10 concerned. And some of those concerns are those  
11 roads someday will not only be closed, but  
12 eventually someday they will be reopened over  
13 reclaimed land. And the county has had problems  
14 and that would be a county record of road failures  
15 over reclaimed land.

16           Along with the county's concerns,  
17 currently those roads are signed and they imply  
18 that that is the property of Coyote Creek Mining  
19 Company and that the bottom, I believe, says, No  
20 trespassers allowed. Violators will be prosecuted.

21           So I don't think if they have any  
22 intentions of mining that area for 12 years, I  
23 believe, I see no reason for those public accesses  
24 to be involved in the original permit, especially  
25 considering that Coyote Creek at this time is only

1 willing to put up 20 percent of their bond for the  
2 8,000 acres.

3 So if they're going to do it on a  
4 five-year increment, they could actually go through  
5 another five-year bond period without ever reaching  
6 County Road 13, which would be the first county  
7 road that they would involve in the mining process.

8 Moving on to my second issue and my main  
9 concern, and that's why we have spent so much time  
10 on it and we will continue to spend a lot of time  
11 on it, is the reclamation practices. North  
12 American, you know, in their defense is going to  
13 say that they're following the regulations put in  
14 front of them, but yet their employees have  
15 addressed -- or brought forth concerns about the  
16 production of the reclamation.

17 If we go back in time, Art Link was our  
18 governor in 1969 when he started trying to  
19 implement some reclamation laws, and originally it  
20 took a long time to get to where they are today.  
21 But even with those reclamation laws in place,  
22 North American refused to follow them. And it was  
23 at that point that some of our United Mine Workers  
24 had to come to the Public Service Commission in  
25 1976 and notify the Public Service Commission that

1 not only were North American not following those  
2 practices, but there was no subjective penalties  
3 for not following those reclamation practices.

4 One of those original seven coal miners  
5 was Dan Neurohr, and he's with us today, and he  
6 would, I'm sure, like to see us follow up on what  
7 he helped get started and that's reclaiming North  
8 Dakota back to its original full potential  
9 production.

10 Along with that, I went along and -- and  
11 tried to find more evidence, so not only talking to  
12 numerous landowners, which had told -- I'm sorry,  
13 Brian, I can't say told because they're real people  
14 with real stories. Landowners have complained to  
15 North American before. It has not had much weight.  
16 Employees have voiced their concern with their  
17 reclamation practices. There again, has not  
18 carried much weight. Even with all those concerns  
19 brought forward, nothing has ever changed.

20 Perry Sullivan is one of them that did a  
21 survey on the Falkirk. Perry went to school  
22 40 years ago. In his schooling they looked at the  
23 soils as a chemical makeup to provide forage. Now,  
24 40 years later, they look at it as a biological  
25 makeup of the soil to provide forages. If the

1 scientists have done a 180 change in the way they  
2 look at soils, I think we need to make at least  
3 some changes in the way we look at reclamation.

4           Tying in with the reclamation comes my  
5 loss of agricultural production. Not only do I  
6 lose surface lands that will force me to reduce my  
7 cow herd and reduce my income initially, but my  
8 children and hopefully my grandchildren someday  
9 will manage this land. And if it is less  
10 productive because of inadequate reclamation  
11 practices, my family will continue to lose money  
12 into the future.

13           And it's just an economical fact if they  
14 continue to lose income, no matter how much North  
15 American thinks they've paid us initially, in  
16 history sometimes inevitably the losses will  
17 surpass the compensation, and that is not the  
18 intention of the federal regulations.

19           I guess I kind of went a little off  
20 course, I was told. There again, I had not a lot  
21 of time to prepare a request and not a lot of  
22 guidance since I didn't have a lawyer at that time,  
23 and that's probably apparent in my letter, I guess.  
24 But along with that, I would like to discuss North  
25 American's current leasing practices. They --

1           MR. BJELLA: I'm going to object, Your  
2 Honor. North American's leasing practices is not a  
3 subject to which this Commission has jurisdiction.

4           JUDGE SEAWORTH: Mr. Braaten.

5           MR. BRAATEN: I understand the Commission  
6 doesn't have jurisdiction. I agree with that.  
7 Mr. -- I invited Mr. Voigt to explain all of his  
8 concerns and the reasons he has for the hearing and  
9 that's what he's doing.

10          JUDGE SEAWORTH: Mr. Bjella.

11          MR. BJELLA: Well, you can ask the  
12 question, but it has to be a legitimate question  
13 which can be the subject of this hearing. And he  
14 can discuss his leasing concerns, which he has  
15 done, but to open this up as to a -- what I  
16 perceive is going to be an attack on North American  
17 Coal's leasing practices is totally outside  
18 again -- once again the realm of the scope of this  
19 hearing. This is the hearing on this permit only  
20 and that's all this hearing is about.

21                 If he wants to have a -- if someone wants  
22 to have a hearing on North American's leasing  
23 practices, I don't know that this -- this  
24 Commission is the place to do it. It's probably a  
25 court of law where those landowners can challenge

1 their leases. But this is certainly not the time  
2 or place to have a -- any kind of a discussion on  
3 North American's leasing practices with private  
4 parties.

5 JUDGE SEAWORTH: I agree. I'll sustain  
6 the objection. I note that the notice of formal  
7 hearing does not give notice that leasing  
8 procedures are part of this proceeding.

9 Q. (MR. BRAATEN CONTINUING) Mr. Voigt, we're  
10 going to move on from that subject, but putting  
11 that subject aside, I just want to make sure that  
12 you've had a chance to explain all of your  
13 concerns. So putting aside the leasing practices,  
14 can you tell me if you have any other concerns that  
15 you'd like to have on record today?

16 A. Well, again, I'd like to thank Brian for  
17 his distraction, but North American's current  
18 leasing is -- referring to my lease, most of North  
19 American leases are 50- and 60-year-old documents  
20 that are obviously outdated.

21 So we will move on and not discuss the  
22 rest of the lies and stuff that lead up to their  
23 leases.

24 COMMISSIONER KALK: Your Honor, if I  
25 could --

1           MR. BJELLA:  Objection to that statement,  
2   Your Honor.  I'd like it struck.

3           THE WITNESS:  I have --

4           JUDGE SEAWORTH:  Sustained.

5           THE WITNESS:  I have a written letter from  
6   Jim Melchoir proving --

7           COMMISSIONER KALK:  This is my thought to  
8   the whole crowd here, and I'm taking the chairman  
9   authority here or whatever here.  We all have ideas  
10  and things we want to get across, but let's not get  
11  personal.  Okay.  Say things -- what your opinion  
12  is, please do, but both sides.  I've been in  
13  hearings -- I go back to Cooperstown, the wind  
14  farm, before long we had neighbors arguing and  
15  screaming in the hallway.  Let's have proper  
16  decorum, say your piece, all do it, and we'll make  
17  a good, clean decision, but let's not get personal,  
18  okay, both sides.

19          Q.   (MR. BRAATEN CONTINUING)  So, Mr. Voigt,  
20  let's move on from leasing practices.  And like I  
21  said before, outside of that, if there's anything  
22  else you want to get down or you want to express,  
23  I'm going to give you a chance to do that.

24          A.   I guess if we can't discuss that, we  
25  probably can't discuss newspaper articles or

1 anything like that that have been published,  
2 either?

3 Q. No. I think what I'd like is just to give  
4 you an opportunity if there's anything else that,  
5 you know, caused you to request a hearing. If you  
6 were concerned about something to request a  
7 hearing -- and I understand that, you know, leasing  
8 practices was part of that. But what I think we're  
9 asking is that, you know, putting that aside, what  
10 else was there? And so I guess I can't say if  
11 newspaper articles are or are not, but if they're  
12 about leasing practices, then no.

13 A. No. I think one of them that ties back to  
14 this issue is how the newspaper stated in there  
15 that Otter Tail Power made the decision to change  
16 coal suppliers based on the promise that North  
17 American would deliver cheaper coal. I know they  
18 are not delivering coal so there is no factual  
19 evidence to it, but I think the Commission needs to  
20 put this in the back of their minds so that two  
21 years from now when their competition is  
22 eliminated, that they are held to those standards  
23 of providing cheaper coal for Otter Tail so that  
24 those savings can be passed on to consumers and not  
25 having North American's profits be passed on to the

1 consumers.

2 Q. Okay. Do you have anything in closing  
3 that you'd like to share?

4 A. Well, I'm still not done with my letter.

5 Q. Okay.

6 A. I know earlier we discussed the bond  
7 release issue probably more than necessary, but  
8 getting back to, you know, weighing in on the  
9 Commission, hoping that they give it more serious  
10 weight, that was one of the main reasons for me  
11 questioning the reclamation is the excess  
12 landownership by North American Coal.

13 I think it is twofold. I think part of it  
14 is the reclaimed land does not meet the required  
15 production to get released from bond.

16 MR. BJELLA: I'm going to object. He's  
17 testifying as an expert witness as to what is --  
18 has or has not been effective reclamation. He's  
19 not an expert in this regard. And, again, the  
20 issue in this case is not North American's owned  
21 lands and other mines and what they're doing. It  
22 wasn't part of the permit. It's not part of the  
23 permit appeal. It shouldn't be a part of this  
24 case.

25 Thank you.

1 JUDGE SEAWORTH: Mr. Braaten.

2 MR. BRAATEN: With respect to the issue of  
3 bond release, I'm not changing my position, but if  
4 Mr. Voigt, I think -- I agree that we should move  
5 on from bond release, from coal leasing and move on  
6 from those issues at this point.

7 JUDGE SEAWORTH: I think that's a good  
8 idea. I'll sustain the objection.

9 THE WITNESS: I guess if I can only tell  
10 part of the story, I will try to wrap it up then.

11 I guess I would just like to make some  
12 closing comments. One thing the late Will Rogers  
13 quoted was the definition of insanity is when we do  
14 the same thing over and over again and yet we  
15 expect different results.

16 Along with that, as far as the reclamation  
17 goes, I think a huge problem with the reclamation  
18 is the size of the equipment used in the mining  
19 practices, and I think that is evident sitting by  
20 my land right now. There is some 777 end dump  
21 trucks that have been brought in to start working  
22 at the mine, and before they were even put into  
23 service, they put extensions on the box -- boxes,  
24 multiple extensions, multiple boxes, and I guess  
25 that's to improve compaction or something that way.



1 by an attorney?

2 A. Yeah. I believe you have the document  
3 from Jim Melchoir that was sent to Patrick Donovan.  
4 And that was where Jim's misleading information  
5 coerced me into making a wrong decision of signing  
6 the lease.

7 Q. But you were represented by counsel when  
8 you signed that lease; is that correct?

9 A. I believe he was misled in the letter  
10 also.

11 Q. Please answer the question. Were you  
12 represented by counsel?

13 A. I already told you I was.

14 Q. Now, as far as mines in North Dakota, when  
15 it comes to reclamation standards, you are aware,  
16 of course, that these are not the reclamation  
17 standards published by a coal company. They are  
18 the Public Service Commission's reclamation  
19 standards. You are aware of that?

20 A. Yes.

21 Q. And you had indicated you previously  
22 worked at a number of coal mines, including you  
23 worked at Knife River Coal mine, I believe; is that  
24 correct?

25 A. Yes.

1 Q. And how far is that from your home?

2 A. About ten miles.

3 Q. Okay. And the current mine that's  
4 operating there, how far is that from your home?

5 A. About 3200 feet.

6 Q. I mean the Dakota Westmoreland mine, how  
7 far is that from your home?

8 A. It's the same office. They bought it from  
9 Knife River.

10 Q. Okay. When you worked at those mines, you  
11 must have had occasion to see and observe reclaimed  
12 lands; is that correct?

13 A. Yes, that is true. I actually hay some of  
14 the reclaimed land from Dakota Westmoreland.

15 Q. Well, given your experience in mining and  
16 the concerns you've raised today about reclamation  
17 in Mercer County, why did you sign the coal lease?

18 A. Because the information that I have  
19 received since then shows for -- bearing that  
20 Dakota Westmoreland's reclamation is more  
21 productive than North American Coal's reclamation.

22 MR. BJELLA: I have no further questions.

23 JUDGE SEAWORTH: Ms. Jeffcoat-Sacco, do  
24 you have questions?

25 MS. JEFFCOAT-SACCO: Well, the first

1 question is whether you are offering Exhibit 1.

2 MR. BJELLA: We are offering Exhibit 1.

3 MS. JEFFCOAT-SACCO: And is it supposed to  
4 have these -- does the lease have the bar charts on  
5 the back? There's bar charts on the back of mine.

6 MR. BJELLA: No. There's -- no. That  
7 should not be there.

8 MS. JEFFCOAT-SACCO: Ah-hah.

9 MR. BJELLA: I apologize.

10 MS. JEFFCOAT-SACCO: Do you want them  
11 back?

12 MR. BJELLA: Yes. I'll take them back.

13 THE WITNESS: I didn't sign those pages.

14 MR. BJELLA: I apologize.

15 MS. JEFFCOAT-SACCO: Fancy lease.

16 So we're offering and --

17 MR. BJELLA: The lease itself, not --

18 MS. JEFFCOAT-SACCO: Just the lease, yes.

19 JUDGE SEAWORTH: I have before me the  
20 Coyote Creek's Exhibit 1, and what I have is pages  
21 one through ten; is that correct, Mr. Bjella?

22 MR. BJELLA: Yes, Your Honor.

23 JUDGE SEAWORTH: Any objection,  
24 Mr. Braaten?

25 MR. BRAATEN: No, Your Honor.

1 JUDGE SEAWORTH: Ms. Jeffcoat-Sacco?

2 MS. JEFFCOAT-SACCO: No.

3 JUDGE SEAWORTH: Exhibit 1 is admitted.

4 Do you have any further questions,  
5 Ms. Jeffcoat-Sacco?

6 MS. JEFFCOAT-SACCO: Yeah, and a comment.  
7 Regarding the limited general North Dakota bond  
8 release statistics, even though it's available to  
9 the Public Service Commission, it isn't in the  
10 record at the moment. But Mr. Deutsch has offered,  
11 when it's his turn to testify, to produce an  
12 exhibit that will show how much of the mined acres  
13 are North American acres and how much of the  
14 released acres are North American acres. So I just  
15 want -- because I don't think you have that  
16 available at this time, do you, Derrick?

17 MR. BRAATEN: No, I don't.

18 MS. JEFFCOAT-SACCO: All right. So we  
19 will have an exhibit to answer that question  
20 specifically when it's staff's time to testify.

21 THE WITNESS: Thank you.

22 **EXAMINATION**

23 **BY MS. JEFFCOAT-SACCO:**

24 Q. And I did have just one very -- hopefully  
25 not oversimplifying here, but I would just like

1 your position on this question. Is your problem  
2 with the permit what the reclamation requirements  
3 are in the permit or is your problem that whatever  
4 they are, they're impossible to meet?

5 A. Probably with the current reclamation  
6 practices, they may be impossible. I'm not a soil  
7 scientist so I don't know that for certain, but I  
8 think with some more research and knowledge  
9 obtained, we could possibly reach those production  
10 goals that the landowners are led to believe will  
11 be achievable.

12 Q. And then if that information becomes  
13 available, are you asking that that additional  
14 information and resulting standards be incorporated  
15 into the permit?

16 MR. BRAATEN: I'm going to just object to  
17 the extent that the question is calling for legal  
18 conclusions. I'm okay with Mr. Voigt answering,  
19 but I just want to preserve that in case the  
20 lawyers and the client view the law differently.

21 JUDGE SEAWORTH: Understood. You may  
22 answer the question.

23 THE WITNESS: Yeah. And I guess without,  
24 you know, further research and knowledge, it would  
25 be truly hard to determine where we could go, you

1 know. I guess in our meetings with North American,  
2 I've clearly stated I am not trying to stop the  
3 progress of mining. I'm just trying to change the  
4 process and the way they do it.

5 MS. JEFFCOAT-SACCO: And I just want to --  
6 by way of explanation, I was not trying to get at  
7 any legal conclusions, but I was trying to get at  
8 what are we asking of the Commission in this  
9 hearing. Are we asking to change requirements in  
10 the permit or not? That's what I'm trying to get  
11 at.

12 Okay. Thank you. That's all I have.

13 JUDGE SEAWORTH: Thank you.

14 Any questions from your staff,  
15 Ms. Jeffcoat-Sacco?

16 MS. JEFFCOAT-SACCO: No. And thank you  
17 for the opportunity.

18 JUDGE SEAWORTH: You're welcome.

19 I'd ask now if the commissioners have  
20 questions for the witness. Chairman Kalk.

21 COMMISSIONER KALK: Thank you, Your Honor.  
22 Actually, I'll defer to Commissioner Christmann.  
23 It's his portfolio, so we always start out with the  
24 portfolio holder first.

25 JUDGE SEAWORTH: Thank you for doing that.



1 it's 92 percent native; is that correct?

2 A. That is the information that was given to  
3 us, I believe, by Donn Steffen.

4 Q. Okay. And then you said a number of  
5 different native species, but I didn't write fast  
6 enough.

7 A. Eight of them in general.

8 Q. And jumping ahead to when you talked about  
9 some soil scientists, and you said they've done a  
10 hundred -- you said more before this, and then so  
11 you said since then they've done a 180-degree turn  
12 about in how they assess that, but can you kind of  
13 repeat that for me? I did not get it down.

14 A. I believe what you're referring to is  
15 Perry Sullivan's comment about when he was in  
16 school, you know, getting his education on soil  
17 science, he was led to believe that -- or what they  
18 studied was the chemical development of the soil to  
19 make the forages grow. Where now it has evolved  
20 enough to where they look at the biological makeup  
21 of the soils to make the forages grow. So that is  
22 what I consider a 180-degree turn. They're looking  
23 at soil health completely different.

24 Q. And how does that affect the reclaimed  
25 land or does that mean that we should be requiring

1 more subsoil or more topsoil or different  
2 compaction levels, or the fact that soil scientists  
3 would look at things differently now than they did  
4 40 years ago, what does that mean for us as far as  
5 reclamation and getting good grass and crop  
6 production?

7 A. I probably should defer to the witness --  
8 expert witnesses that are -- have a better  
9 understanding of it, but my understanding of what I  
10 have obtained in the short time is, you know, that  
11 the current standards require 12 inches topsoil,  
12 36 inches subsoil. I think that's a general -- I  
13 don't think it's a decline. But native grasses,  
14 though they may be short on the surface, have  
15 seven-, eight-foot root depths. So the compaction  
16 below the subsoil doesn't allow for proper root  
17 penetration to get to subsoil moistures and subsoil  
18 nutrients.

19 Q. Okay. And --

20 A. Or should I say subsurface? Sorry.

21 Q. And Perry -- what was the last name of the  
22 person you were referencing?

23 A. Sullivan.

24 COMMISSIONER CHRISTMANN: Is that one of  
25 the witnesses?

1 MR. BRAATEN: No.

2 Q. (COMMISSIONER CHRISTMANN CONTINUING)

3 Okay. In response to Ms. Jeffcoat-Sacco's  
4 question, you said you don't want to stop the mine,  
5 trying to change the way it's done or the way it's  
6 reclaimed.

7 A. That is correct.

8 Q. So are you -- do you have something  
9 specific that you're looking for, some level of  
10 compaction or some amount of subsoil be spread  
11 different than what is normally done or some  
12 different amount of topsoil, or what would you  
13 consider a better program in short? I mean there  
14 are long, long processes in figuring out how to  
15 reclaim land, but very generally.

16 A. Yes. And we probably won't, you know, get  
17 the perfect answer in the near future, but, you  
18 know, going back to Will Rogers' quote, you know,  
19 we have to start trying to make changes or we're  
20 never going to make any progress in this  
21 department -- as far as the reclamation, I'm sorry.

22 So, yeah, I don't have all the answers,  
23 but I do know compaction of the overburden, the  
24 material below the subsoil, is a major issue in the  
25 croplands that the landowners have expressed to me

1 and to North American. And then -- so the depth of  
2 the subsoil, I think, should be conducive to  
3 pre-mining depths -- I'm sorry, consistent with  
4 pre-mining depths.

5 Q. So the topsoil I'm not hearing much of an  
6 issue with. It's more the subsoil and the  
7 compaction?

8 A. I believe the way the current practices  
9 are now, we are checking topsoil for the chemical  
10 makeup of the topsoil, but we're not doing much  
11 subsurface as far as the subsoil or the compaction  
12 of the overburden below the surface. It's -- it's  
13 more of hurry up and contour the land and then try  
14 and fix it later.

15 Q. Okay. And then I thought I had marked it  
16 in here, but at one point early in your  
17 testimony -- maybe I'll find it again -- the -- you  
18 talked about kind of forming the hills and you  
19 mentioned three things at one point, the rolling  
20 hills and the 40- to 50-year-old trees and the  
21 native grass production. To elaborate on the issue  
22 with the rolling hills, do you -- do you feel that  
23 they're not going to get put back in -- in as rough  
24 of a terrain as what it is now or that it will be  
25 too rough? I didn't really follow you, what the

1 issue was there.

2 A. Yes. I think it is twofold, but there  
3 again, it is coming from what Brian would consider  
4 hearsay. But evidence that reclamation personnel  
5 have given me of they can only reclaim land to a  
6 certain degree of slope, so the natural hills that  
7 are there now, some exceed the slope. So in order  
8 to make the contour fit, you have to take away from  
9 some of the level lands to make your slopes.

10 COMMISSIONER CHRISTMANN: Okay. I don't  
11 have any other questions right now.

12 JUDGE SEAWORTH: Thank you.

13 Chairman Kalk.

14 COMMISSIONER CHRISTMANN: But thank you,  
15 Casey.

16 COMMISSIONER KALK: Thank you, Your Honor.

17 **EXAMINATION**

18 **BY COMMISSIONER KALK:**

19 Q. Thank you, Casey, for your testimony.  
20 It's been almost two years you've been up there.  
21 It's a -- and I will slow down here.

22 I just -- if Mr. Braaten and Mr. Bjella  
23 wouldn't mind, I had our staff print up a map.  
24 What I'd like to do is give that to Casey and have  
25 him show the Commission directly where -- exactly

1 where his property is at and put that into some  
2 kind of exhibit, if that would be all right with  
3 everybody.

4 COMMISSIONER KALK: Do you mind if I give  
5 this to Casey?

6 MR. BRAATEN: No.

7 THE WITNESS: I guess I need to talk in  
8 the mike and rather just directly to you, but would  
9 it be okay if I just showed my management area  
10 rather than my deeded land?

11 Q. (COMMISSIONER KALK CONTINUING) Sure.

12 A. That would be simpler. If you have a  
13 highlighter, I could sure -- thank you, Julie. Oh,  
14 I'm having a hard time determining what's what.  
15 Oh, okay. I think I have my bearings now.

16 (Witness complies.) I guess this map doesn't cover  
17 all my lands. I don't know, should I --

18 Q. That's good for now.

19 A. Okay. It kind of goes over here a ways.

20 COMMISSIONER FEDORCHAK: Brian, can you  
21 tell us what this map is? I mean what is -- isn't  
22 it the permit area?

23 COMMISSIONER KALK: Let me get back on the  
24 microphone. That didn't quite work out like I  
25 planned. The -- I think what I'd like to do is

1 when -- Ilonna, when our -- Jim gets up there, can  
2 we have a detailed exhibit that shows exactly where  
3 Casey's property is at? Because while we have it  
4 in many documents, I'd like to have it in one  
5 document that is part of the record for this  
6 hearing.

7 Q. (COMMISSIONER KALK CONTINUING) So that  
8 will -- Casey, if you don't mind, we can address  
9 that later. You've given me a general idea, I  
10 guess, of what -- the question I wanted to lead  
11 into.

12 The -- the question I have, Casey, is that  
13 you talked many times about how you wish you  
14 wouldn't have signed this lease, and I know we got  
15 in a lot of discussion today about the Commission's  
16 role on leasing, but if North American came to you  
17 and said they ripped the lease up, would that be  
18 acceptable to you, just to say I'm out of this?

19 A. I guess if we could go back to a meeting  
20 that I had with North American Coal on I believe it  
21 was August 27 of 2013, Donn Steffen, Jim Melchoir  
22 and my neighbors, the Unhuh Cattle Company were  
23 present, and at that point in time I had offered to  
24 buy out the lease from Jim Melchoir -- or from  
25 North American Coal.

1           Q.     Okay.  Just -- and that's a separate  
2 discussion outside of our jurisdiction.  I just  
3 wanted to -- to see what your answer was to that  
4 question.

5           A.     Yes.  I was willing to not only reimburse  
6 the money they had paid me but also any members of  
7 my family or the Saylers that have mineral  
8 interests.

9           Q.     And as you've heard both counsel talk  
10 about it today, that's a separate proceeding and if  
11 you -- I will tell you the same thing is if you  
12 feel you've been wronged by something, you should  
13 look into that.  So that's a separate jurisdiction  
14 of this Commission, but that's part of the way this  
15 system works, the legal system, so --

16          A.     Thank you for your advice.

17          Q.     I don't give legal advice.  I'm just -- as  
18 a citizen, that's -- if one body doesn't give you  
19 what you're looking for, there's other bodies  
20 available.

21                    But I'll focus back to what -- I guess  
22 what we do here.  The -- I just had a couple basic  
23 questions.  The -- when you talked about talking  
24 with our staff, particularly Mr. Deutsch, what was  
25 it you were trying to get from him specifically?

1           A.     Well, when I felt I wasn't getting  
2     straight answers from either Donn Steffen or Sarah  
3     Flath, then I was asking some of them same  
4     reclamation questions to Jim Deutsch.  And I  
5     believe one of his comments in July was, You're the  
6     first landowner to complain about the reclamation.

7           Q.     You were trying to get to specific  
8     questions about what reclamation was exactly going  
9     to happen?

10          A.     No.  The production of the land after  
11     reclamation is what I was looking for.

12          Q.     For the standards that we hold the groups  
13     to?  Is that what you're looking for?

14          A.     Well, I -- I'm not a soil scientist or  
15     nothing like that, so I'm not definite that the  
16     standards were the problem.  I just was looking at  
17     the end result as not being sufficient.

18          Q.     Well, and that's what I'm trying to figure  
19     out is how this unfolded where -- you had a  
20     question with -- about what the land would look  
21     like when it was done, and so you asked Mr. Deutsch  
22     what -- or questioned what those standards were.  
23     I'm just trying to figure out what it is you want  
24     the standards to be.  What is it you exactly don't  
25     like about the current standards?  Take aside all

1 the North American discussion. But there's  
2 standards that have been in place for many years.  
3 And I agree that we should always be looking at  
4 standards with new technologies, but back to  
5 Ilonna Jeffcoat's question, what is it you  
6 specifically want from us to change?

7 A. Yeah. I think that's a very good  
8 question. Actually, if -- if it was up to me to  
9 start trying to make it better, I guess where I  
10 would start is far below the surface. You know,  
11 rather than putting overburden back at 50 or a  
12 hundred foot lifts at a time, maybe break it down  
13 into smaller benches or lifts so that that soil can  
14 be adequately dispersed and compacted uniformly  
15 rather --

16 Q. And you talked with Commissioner  
17 Christmann about that as far as the native prairie,  
18 I know those grasses go way down deep. Dr. Jimmy  
19 was one of my instructors in soil science as well.  
20 So that's maybe -- and I'm just kind of talking  
21 this through a little bit, but as this hearing  
22 unfolds, typically when we go somewhere, a  
23 landowner comes in with a piece of paper that says,  
24 This is what I want, this is what I don't like  
25 about it. I'm trying to envision the three of us

1 sitting in a work session going, Okay, we have a  
2 landowner that doesn't like this, but he hasn't  
3 given us specifically what he wants changed. And  
4 it's -- I don't know how we would even begin that  
5 work session, because there's no, 6 should become  
6 10, 10 should become 15. I can envision your  
7 discussion, but it's very hard to envision an  
8 outcome when I don't know exactly what you want.  
9 Just being frank with you, sir.

10 A. Yes. And I appreciate that. I guess it's  
11 my understanding that you will have another 30 days  
12 to make a determination on some of this, and I  
13 would like to maybe suggest not only me having  
14 input during those 30 days of what we could  
15 possibly try for a starter, but also some of the  
16 expert witnesses that know a lot more about soil  
17 health and hydrology than I ever will.

18 But, yeah, I think back to the overburden,  
19 if we can lay it in in lifts and have a more  
20 focused understanding of not just going to one  
21 level and doing all the work from one spot,  
22 creating excess compaction below the subsoil and  
23 then from there up, you know, having adequate  
24 subsoil depth which is consistent with pre-mining  
25 condition rather than just a benchmark standard of

1 one and three feet, maybe, you know, if there's  
2 areas where there's seven or eight feet of subsoil,  
3 maybe we could, you know, look at following what  
4 the pre-mining condition is.

5 COMMISSIONER KALK: Well, and thank you,  
6 Casey, for your thoughts on that. I think this  
7 will evolve as the discussion continues with all  
8 the experts, if you will. But I will say that  
9 it -- it puts us in an interesting scenario -- us  
10 being the Commission and me in particular -- where  
11 not knowing exactly what you want, we could have  
12 our staff do the best effort and it still wouldn't  
13 be exactly perfect and this could just continue on  
14 and on and on.

15 And so I guess we'll just have to go  
16 through that, but I'll go back to Mr. Braaten as  
17 this thing wraps up. The specific question asked  
18 that Ilonna brought up and you said you don't want  
19 to draw legal conclusions. That's the  
20 practicality, I think, of this hearing.

21 So that would be all the questions that I  
22 had, but I guess if Mr. Braaten wants to --

23 MR. BRAATEN: Well, I know I'm out of  
24 order, but I think it might just clarify. I mean  
25 we had some of the questions about what do you want

1 in terms of the science. He's hired a team of  
2 experts to answer some of those questions. And as  
3 far as what do you want from you guys specifically,  
4 he's hired lawyers, and so we're planning to do  
5 posthearing briefing. And so it may be things like  
6 we'd like an additional condition on the permit,  
7 we'd like this, and that's something we intend to  
8 get to you as the hearing wraps up and after we  
9 close the evidence.

10 COMMISSIONER KALK: Okay. And that's, I  
11 guess, the lead-in to then -- that we can ask  
12 specific questions about if he says six and we say  
13 why six and we'll walk all that, just so you're  
14 going to make that very clear to us, specifically  
15 what it is Casey wants on his property.

16 MR. BRAATEN: (Nods head.)

17 COMMISSIONER KALK: Okay. Thank you.  
18 That was the only questions. Thank you.

19 JUDGE SEAWORTH: Thank you.

20 Commissioner Fedorchak.

21 **EXAMINATION**

22 **BY COMMISSIONER FEDORCHAK:**

23 Q. Sure. Casey, thanks for being here. And  
24 I'll -- I'm going to have to backtrack a little bit  
25 to better understand sort of how this all evolved

1 and how we got to here today. But I appreciate  
2 having the lease here. So you signed this lease,  
3 you and your wife, in 2010. This --

4 A. All except the last couple pages.

5 Q. Okay. When you signed this -- signed this  
6 lease, was it with the understanding that there was  
7 going to be a coal mine there? Was Coyote Creek  
8 already envisioned and they were talking  
9 specifically about that mine?

10 A. No, they were not. They were just talking  
11 about needing to have documentation on record of  
12 coal reserves to have the potential to bid a  
13 contract at the Coyote Station, which was currently  
14 being supplied by an established mine at the Dakota  
15 Westmoreland location.

16 Q. But coal reserves to bid a contract would  
17 have to be mined, so there would have to be a mine  
18 there in order to have a contract for delivering  
19 coal; right? So you knew that they were using this  
20 land to bid a contract to deliver coal someplace?

21 A. I didn't have a clear understanding of  
22 their business practices, but as an economic  
23 viewpoint, I was under the impression that it would  
24 be economically infeasible to produce a new mine  
25 and to be competitive with an existing mine.

1           Q.     Okay.  So what would the purpose of a  
2 contract be, then, the easement?  Just -- why would  
3 they -- I mean the easement was for the coal on the  
4 land.  What would be the purpose of the easement  
5 if -- if it wasn't to mine the coal?

6           A.     The lease is what you're talking about;  
7 right?

8           Q.     Yeah.  The lease.  Sorry.  Yep.

9           A.     Yes.  That would be -- I guess actually if  
10 you want to get further into my thoughts, my  
11 thought was they needed that land to get the  
12 contract, and if for some unforeseeable reason they  
13 would actually get the contract, there again, going  
14 back to my economic side, would be -- the most  
15 economical way to provide coal to the Coyote  
16 Station would be to buy out the existing mine and  
17 take over those lands and mine those lands that are  
18 much closer to the existing power plant.

19          Q.     But when you signed this, you clearly knew  
20 that they might mine that land for coal someday?

21          A.     Yes.  And I thought even early on when  
22 they had obtained the contract, probably like in  
23 2012, Donn Steffen had brought mine plans to me at  
24 that time and they were showing that they were  
25 going to not put the mine office where it is now in

1 clear view of my kitchen window and it also showed  
2 that they were going to start mining on the north  
3 end of the mine property and mine the pits going  
4 east and west. And it would be like 12 years  
5 before they ever got near where our farmstead is.

6 Q. And 12 years is, you know, a significant  
7 difference because you're --

8 A. Because of my age. And then it would have  
9 given us more time to adjust to the mining  
10 activities, rather than now the mining plans that  
11 were shown to me last winter by Sarah Flath  
12 indicate that they're going to, you know, not only  
13 build the office in view of my house but also start  
14 mining within about a half a mile from my house to  
15 the north and then work their way around to the  
16 west side and then come back to the south. So  
17 basically in the first couple years, they'll  
18 horseshoe or encompass my farmstead.

19 Q. And then you said you'd -- you'd heard  
20 some grumblings about the reclamation, getting to  
21 the point of today's hearing as your complaint with  
22 the reclamation results really. When did you start  
23 hearing these grumblings?

24 A. I think what I was trying to say earlier  
25 was that I had heard some prior to signing the

1 lease, and I felt that maybe some of those  
2 landowners were actually exaggerating their loss of  
3 production. But after signing the lease and not  
4 getting straight answers that I was asking -- to  
5 the questions that I was asking, then I started  
6 talking to more landowners and getting more  
7 information, and then I realized that they were not  
8 exaggerated comments.

9 Q. Okay. And then your discussions with the  
10 North American Coal folks, Donn and Sarah, that  
11 happened before or after signing the lease?

12 A. I never talked, to my knowledge, to Donn  
13 or Sarah before signing the lease.

14 Q. Okay. You've talked a little bit about --  
15 okay. So you got to -- you started having a sense  
16 that you might not be satisfied with the  
17 reclamation processes of the company. I'm looking  
18 at -- it strikes me that we're at a point in  
19 discussing some things that should have happened a  
20 year ago and there were opportunities for this kind  
21 of a discussion and a give and a take. I mean here  
22 we're kind of locked into a very formal legal  
23 proceeding with evidence and, you know, time  
24 periods and all kinds of cumbersome, not very  
25 effective tools to deal with some of the issues

1 that you have that could very likely be real  
2 legitimate and could have been productive along the  
3 way. There was, you know, several notices  
4 published. I'm looking at our permit in some of  
5 the memos that I got in relation to it. There was,  
6 you know, publications in the *Hazen Star*, the  
7 *Beulah Beacon*, *The Bismarck Tribune* in March and  
8 April of this year and no objections or requests  
9 for informal conferences were received. Why didn't  
10 you engage then with some of this information?

11 A. Hindsight, it would have been the right  
12 time. I guess to explain how things got led  
13 astray, one thing that came about was, like I said,  
14 last winter the mine plan changed dramatically.  
15 And then at that point I had started thinking,  
16 Well, this is going to affect my farmstead more  
17 immediately and more dramatically than originally.

18 So back to your question of why I didn't  
19 request an informal hearing last spring, that  
20 overlapped with a time period when I was dealing  
21 with Jim Melchoir thinking that they were possibly  
22 going to do a land swap and relocate me. But the  
23 way that all turned out, I think that was just  
24 somewhat of a distraction to get me away from  
25 requesting an informal hearing at that time.

1           Referring back to -- clarifying why I feel  
2 that was a distraction at that time is last week in  
3 our meeting with North American, Chris Friez, who  
4 is with us, is their land agent, and he clearly  
5 stated that this lease does not cover any  
6 relocation or extra land for me to operate my  
7 business on. But yet I was led to believe last  
8 spring that they were looking at doing a land swap  
9 with me.

10           Q.    Okay. So you've talked a bit about the  
11 economic losses that you're expecting based on  
12 their reclamation history. Can you speak to any --  
13 and maybe there will be an expert witness that can  
14 talk to this, but have you done some calculations  
15 based on some economic -- you mentioned economic  
16 facts, so I'm interested in what are the economic  
17 facts that you're basing this -- this belief that  
18 you've got that you're going to have these economic  
19 losses? And do you have any of that to offer to us  
20 in terms of what you predict your losses might be  
21 based on the reclamation history?

22           A.    Yeah, I do have some of those numbers, but  
23 there again, they're just projections. They're not  
24 facts of what is going to happen in the future.

25           Q.    What did you base them on?

1           A.     I'm basing those off of some records that  
2     I had requested at the August 27 meeting of 2013,  
3     and then it would have been, I believe, towards the  
4     end of March that Sarah Flath gave me some  
5     documents showing the actual surface disturbance  
6     year by year.   So then I took those calculations  
7     and calculated how many cows I would have to reduce  
8     from my cow herd to sustain -- to have a  
9     sustainable herd on what acres I had left to  
10    manage.   Then I took those loss of numbers for my  
11    cows and calculated last spring of what I felt the  
12    current calf market was.   Well, as we all know now,  
13    hindsight, the 11- or 12-hundred-dollar calf market  
14    last spring has now gone to 16 or 18 hundred  
15    dollars apiece.

16                 So my numbers last spring showed that it  
17    was going to be a closer -- you know, I could have  
18    easily miscalculated it and it could have been a  
19    small profit or I could have had a small loss.   It  
20    was hard to determine.   But now with the increase  
21    in the market, it's a lot easier to determine that  
22    there would be a substantial loss by reducing  
23    potentially my cow herd by about 150 cows.

24                 COMMISSIONER FEDORCHAK:   All right.   Well  
25    I -- that concludes my comments.   I appreciate you

1 being here. I do have empathy for citizens trying  
2 to follow these legal processes and understanding  
3 when to engage and when not to engage, and it's  
4 complicated and it's not always real user friendly.

5 So I -- we'll do our best to accommodate  
6 your concerns at this stage in the process with,  
7 you know, what we're able to do. But I will echo  
8 some of my colleagues' comments, too, we're focused  
9 on this permit and what happens inside this permit  
10 and what we can change in this permit to deal with  
11 your issues. Some of your -- a lot of your other  
12 issues need to be handled in a court of law outside  
13 of us, and we can't -- you know, even if we wanted  
14 to, we couldn't deal with them.

15 So I thank you for being here and we'll do  
16 our best.

17 THE WITNESS: Maybe if I could touch on  
18 those other issues just a little bit. My main  
19 issue of bringing those up was so that you were  
20 aware of I do have other options. I just have  
21 chose not to pursue those at this time. I would  
22 like to rather make some changes for a starting  
23 point in the reclamation and proceed from there  
24 rather than going through the legal process of  
25 trying to stop the mining process.

1 JUDGE SEAWORTH: Commissioner Christmann.

2 **FURTHER EXAMINATION**

3 **BY COMMISSIONER CHRISTMANN:**

4 Q. You mentioned that you thought that it  
5 would be better if smaller lifts of returning the  
6 overburden in would be an improvement and -- as  
7 opposed to the large lifts that are possible with  
8 large equipment. Would you agree that that does  
9 make the process probably less efficient then?

10 A. Not exactly. I think, you know, I've  
11 worked with the mines enough and I think where that  
12 large lift is handled is with the draglines. And  
13 what we see there a lot of times, being a former  
14 employee of mines, is with the draglines trying to  
15 maximize their pit widths, which creates the spoil  
16 piles being much higher than the contour of the  
17 land that they're mining, then they have trouble  
18 reclaiming all the coal.

19 So I think if they went and narrowed their  
20 pits that they're stripping with the draglines,  
21 that would reduce the height of the overburden and  
22 improve their recovery ratings on their coal.

23 Q. Okay. And I'll try and get into that some  
24 with them and their experts, but I'm kind of  
25 presuming something, that they probably will say

1 that that reduces efficiency to work in smaller  
2 lifts. And if that is the case, your subsequent  
3 comment about kind of holding them accountable for  
4 the statement that was made about a cheaper source  
5 of coal to the power plant, if we do something here  
6 that adds -- to accommodate your wishes that adds  
7 to their costs, then it would really be us that's  
8 accountable if it turns out that the price is not  
9 less or is substantially more than them. Do you  
10 agree with that?

11 A. I agree that they could look at it that  
12 way, but in reality when they bid the contract,  
13 they had none of the current equipment that is at  
14 the Coyote Creek mine today.

15 Q. Okay. And then now I'm jumping to a  
16 different subject. I think as I recall you said  
17 that -- that other mineral owners kind of had you  
18 do the negotiating on their behalf; is that  
19 correct?

20 A. Yes, that is true. I kept them abreast of  
21 different meetings that led up to leasing -- the  
22 lease being signed, but ultimately they left the  
23 decision up to me.

24 Q. And so did they, like, make you power of  
25 attorney so you signed the whole deal with North

1 American or did you just kind of negotiate it and  
2 then each one signed on their own?

3 A. Yeah. There again, it goes back to being  
4 just good neighbors. There was no power of  
5 attorney contracts or no signed negotiations. It  
6 was just them, you know, agreeing to give me the  
7 go-ahead to see things through and then me  
8 reporting back to them on what was presented to me  
9 and then they signed their leases off of what I  
10 told them.

11 Q. Both your family and the other --

12 A. Calvin and Patience Sayler.

13 Q. And are they opposing this, too, or are  
14 you still speaking on their behalf or are you  
15 speaking on just your behalf now?

16 A. My siblings do have a contracted deed that  
17 ties them to the surface but this is more of a  
18 surface issue, but they are supporting me in what  
19 decisions I make at this point as they did support  
20 me when I gave them my opinion of the lease.

21 COMMISSIONER CHRISTMANN: Okay. Thank  
22 you.

23 JUDGE SEAWORTH: Chairman Kalk.

24 COMMISSIONER KALK: Thank you, Your Honor.  
25 Thank you, Casey.

**FURTHER EXAMINATION**

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**BY COMMISSIONER KALK:**

Q. Just one question follow-up to Commissioner Fedorchak's line of questioning, which brought out something I've never heard before. So now, of course, the process is you say your piece, then North American will say their piece, then we'll say our piece. So they'll have their chance to counter what you're saying, of course, if they so agree to. But tell me about this land swap that was, quote/unquote, promised to you and it didn't happen.

A. I guess I don't know how much of the details you would like, but --

Q. Just in general.

A. -- the property in general was at Braddock, North Dakota, and it was listed under the realtor Prairie Rose and the ranch was the Graham Ranch. And a friend of mine that lives in that area told me that he knew Vance Graham and he knew the place and it was a nice place. At first even when my friend told me of the property, I didn't give it much thought, but fortunately there was some rain and some weather issues so I had some more time to think about life. And I thought,

1 Well, why not at least look at it.

2           So I brought that to the attention of Jim  
3 Melchoir who was, I believe, acting as a land agent  
4 and Coyote Creek president at that time. And he  
5 said that they would be interested and they would  
6 look into it. I guess actually he said it would be  
7 easier if I looked into it. So I got a realtor and  
8 my family and we went to Braddock and spent a day  
9 touring the ranch. I guess our impression on the  
10 way home that day was it wasn't as nice as the  
11 ranch that we own, but it was a nice enough ranch  
12 to where we wouldn't have to be faced with the  
13 mining process every day.

14           Q.     So I'm trying to make sure I understand  
15 exactly what you told me. So you and your family  
16 were willing, if they could come to some agreement,  
17 to basically relocate your family down to the  
18 Braddock area and let the mine do what they needed  
19 to do on the property that was -- so you still  
20 would own some property up there or would it be  
21 a --

22           A.     I believe my comment to Jim Melchoir at  
23 that time is I would do an even swap. According  
24 to, there again, my economic calculations, which  
25 aren't scientific, they were projections, it looked

1 like it would be an even trade, no extra benefit to  
2 us. But I wanted to obtain an option to re-buy our  
3 current ranch after the mining process was  
4 complete.

5 Q. Would you still be interested if that came  
6 your way?

7 A. It would be a lot harder to swallow now  
8 with the way I've been treated.

9 COMMISSIONER KALK: Fair enough. Thank  
10 you.

11 JUDGE SEAWORTH: Commissioner Fedorchak.

12 COMMISSIONER FEDORCHAK: Just one  
13 follow-up to that, then.

14 **FURTHER EXAMINATION**

15 **BY COMMISSIONER FEDORCHAK:**

16 Q. Did -- what you just described sounded to  
17 me like it was a process that you initiated with  
18 the land swap?

19 A. At our meeting on August 27 of 2013, they  
20 told me to, you know, kind of keep my eye out and  
21 if there was some land that I was interested in,  
22 that they'd be willing to work with me.

23 Q. But then -- and then it came up in the  
24 spring about the same time as the informal meetings  
25 where, you know, those time frames for requesting

1 that was happening and then you initiated it with  
2 them because you found this land, then?

3 A. Well, what led me up into initiating it  
4 was the change of the mine plans in January. You  
5 know, then all of a sudden it was going to be a  
6 more direct effect and more immediate rather than a  
7 lesser effect 12 years or so down the road.

8 Q. Right. But it was something that you kind  
9 of -- you found the -- the timing coinciding with  
10 the informal hearing was just -- that's just how it  
11 landed because that's when you discovered this  
12 potential property of interest?

13 A. Yeah. Yes. I guess where the -- I feel  
14 the misleading information came from is when Jim  
15 said that they were willing to do a land swap and  
16 then last week when we were meeting with North  
17 American, Chris Friez clearly said this lease does  
18 not cover that. We can't do that.

19 Q. So when did you -- so what happened with  
20 that whole Braddock property? Did -- did you --  
21 did it just fizzle out or what happened with that?

22 A. There wasn't a lot of fizzling. They, I  
23 believe, were to go to Fargo and meet with the  
24 Coyote partners, the different owners of the Coyote  
25 Station, and they were to get back to me after the

1 meeting on what they learned from the partners.  
2 And it was approximately a couple of months later  
3 before Sarah came, and I talked to her and told her  
4 that I was very disappointed that nobody ever got  
5 back to me on what had gone on with the meeting in  
6 regards to the land swap.

7 COMMISSIONER FEDORCHAK: Okay. I was  
8 just -- I'm trying to better understand. You had  
9 kind of characterized it as an intentional effort  
10 by the company to distract you from requesting an  
11 informal hearing, so I was trying to better  
12 understand the circumstances around that because  
13 that would have, you know, been the appropriate  
14 time to have the discussion on the reclamation  
15 issues that you are bringing to us now. So,  
16 anyway, thank you for clarifying that.

17 THE WITNESS: Yes. And I wish I would  
18 have brought them up last spring.

19 JUDGE SEAWORTH: Anything further from the  
20 Commission members?

21 COMMISSIONER KALK: One thing I would add,  
22 Your Honor, is if we do happen to take our next  
23 break, I think our attorneys and you should get  
24 together and plan a third day. So I just -- we're  
25 not going to finish in two days.

1 JUDGE SEAWORTH: Right. Thank you.

2 Mr. Braaten, any redirect?

3 MR. BRAATEN: Nothing further, Your Honor.

4 JUDGE SEAWORTH: Thank you.

5 Mr. Bjella, any -- any further questions?

6 MR. BJELLA: No, Your Honor.

7 JUDGE SEAWORTH: All right.

8 Ms. Jeffcoat-Sacco?

9 MS. JEFFCOAT-SACCO: Nothing.

10 JUDGE SEAWORTH: All right. Thank you.

11 Thank you for your testimony.

12 THE WITNESS: Thank you all for your time.

13 JUDGE SEAWORTH: Yes. Mr. Chairman, would  
14 you like to take a five-minute break?

15 COMMISSIONER KALK: I would. And I think  
16 the commissioners, we could look at a third day  
17 really quick.

18 JUDGE SEAWORTH: All right. Thank you.

19 Five minutes.

20 (Recessed at 1:26 p.m. and reconvened at  
21 1:48 p.m.)

22 JUDGE SEAWORTH: I think we're ready to go  
23 back on the record, so if we could have everybody  
24 take your seats, please.

25 Thank you very much. Generally at this

1 point in the proceedings, Mr. Voigt's counsel would  
2 be calling his next witness. However, it is ten to  
3 two and we had indicated we would go to three  
4 today. And so we are going to take the  
5 presentation of evidence out of order, and at this  
6 time I'm going to call for public testimony.

7 The Commission certainly values the input  
8 of the citizens, and we know that there are quite a  
9 number here who have probably traveled a ways to be  
10 here. And so we'd like to proceed with that.

11 I have several names who have indicated  
12 that they would like to testify today. You'll  
13 recall we passed around a sign-up sheet and several  
14 people have signed that. If you haven't had a  
15 chance to sign the sign-up sheet, let me know, but  
16 I will read off the individuals who had indicated  
17 that they would like to testify to see if they're  
18 still here and they would like to do that.

19 I'd also remind you that all public  
20 testimony is under oath. This is an administrative  
21 proceeding. And so I would certainly encourage you  
22 to take this opportunity to tell the commissioners  
23 anything that you think the Commission should know  
24 about this matter or anything that you may have to  
25 offer for the commissioners' decision.

1           And I will call your name and ask if you  
2 would like to present testimony, and I'll have you  
3 come up and sit in the witness chair, and then I  
4 will administer the oath to you, remind you about  
5 the penalties for perjury in North Dakota and then  
6 we will take your testimony.

7           So I have before me the sign-up sheets. I  
8 have a Mr. Dean Moos who had indicated he may want  
9 to testify. Is Mr. Moos still in the room?

10           MS. JEFFCOAT-SACCO: Dean Moos is with the  
11 staff and he will probably testify at the end.

12           JUDGE SEAWORTH: Okay. Thank you.

13           MS. JEFFCOAT-SACCO: Sorry.

14           JUDGE SEAWORTH: That's all right.

15           Scott Ressler? That's a no. Sarah -- if  
16 I mispronounce your name, please forgive me --  
17 Flath.

18           MS. FLATH: That's correct.

19           JUDGE SEAWORTH: Are you with any of the  
20 parties or are you independent?

21           MS. FLATH: Yes. I'm with North American  
22 Coal, Coyote Creek mine.

23           JUDGE SEAWORTH: All right. Mr. Bjella, I  
24 assume that she'll be testifying in your case in  
25 chief; is that correct?

1 MR. BJELLA: Yes, she will, Your Honor.

2 JUDGE SEAWORTH: Thank you.

3 A Mardee Reich.

4 MR. VOIGT: She's left already.

5 JUDGE SEAWORTH: She has left. Okay.

6 Keith Kessler.

7 MR. KESSLER: Right here.

8 JUDGE SEAWORTH: Mr. Kessler, would you  
9 like to offer your testimony?

10 MR. KESSLER: Not right at the moment.

11 Maybe later on --

12 JUDGE SEAWORTH: Is there --

13 MR. KESSLER: -- or is this the only time?

14 JUDGE SEAWORTH: This is the time that  
15 we're allowing right now for public testimony.

16 COMMISSIONER KALK: And we will at the  
17 very end too. We'll be able to go up till three  
18 now, but at the very end of the hearing, we'll  
19 bring up more. We just wanted -- some of you have  
20 things that maybe you can't do on Tuesday morning,  
21 so this is an hour we pulled aside to --

22 MR. KESSLER: I don't know if it's so much  
23 testimony, but I could offer a couple comments, I  
24 guess.

25 JUDGE SEAWORTH: Please have a seat.

1 MR. KESSLER: Is that okay, Casey?

2 MR. VOIGT: Ask the expert.

3 MR. BRAATEN: Yeah.

4 JUDGE SEAWORTH: Okay. Mr. Kessler,  
5 before we begin, I just need to advise you, as I  
6 would advise any of the witnesses appearing before  
7 this body, about the penalties for perjury in North  
8 Dakota. The maximum penalty is a \$10,000 fine, a  
9 maximum five years imprisonment, or both.

10 (Witness sworn.)

11 JUDGE SEAWORTH: Would you state your name  
12 for the record, please.

13 MR. KESSLER: Keith Gustaf Kessler.

14 JUDGE SEAWORTH: And would you spell your  
15 last name.

16 MR. KESSLER: K-e-s-s-l-e-r.

17 JUDGE SEAWORTH: Thank you. You may begin  
18 your comments.

19 **KEITH G. KESSLER,**  
20 having been first duly sworn, was examined and  
21 testified as follows:

22 **STATEMENT**

23 **BY MR. KESSLER:**

24 MR. KESSLER: As far as the permit and all  
25 that and I know Casey's testimony today, the only

1 thing that I would like to throw in there -- and  
2 I'm not directly related with the coal mine, but  
3 I've dealt with other utilities, and in relation to  
4 reclamation, soil compaction, stuff like that, I  
5 believe that production is one of Casey's key  
6 points here definitely. Production should be --  
7 after the reclamation or any process, mining,  
8 whether it's -- any type of drilling, wind farms,  
9 whatever the utility is, that production should be  
10 the same after as it is before. That's a key  
11 topic.

12           And water is also an issue. If there's  
13 abundant water before, there should be abundant  
14 water afterwards. It shouldn't be lopsided. It  
15 should be one for one. Everything should go hand  
16 in hand. And that's one thing that I would -- my  
17 key point was there.

18           Other than that, I don't really have a lot  
19 of points other than that.

20           But -- and the other point is with  
21 utilities coming around with leases and promises,  
22 there's a lot of false promises out there. And I  
23 feel Casey's issues because I -- we're dealing with  
24 kind of the same thing and we have that -- they  
25 make everything look like it's all flowers and

1 roses and at the end you've got a lump of clay.  
2 And I don't think it's right. It's not fair to  
3 anybody, any landowner that has pride in their --  
4 their way of life. It should be treated with a  
5 little bit more respect.

6 JUDGE SEAWORTH: Thank you. Mr. Kessler,  
7 I neglected to ask you to state your address for  
8 the record.

9 MR. KESSLER: It's 6001 26th Street  
10 Southwest, Glen Ullin, North Dakota.

11 JUDGE SEAWORTH: Thank you.

12 MR. KESSLER: You're welcome.

13 JUDGE SEAWORTH: Mr. Braaten, do you have  
14 any questions for the witness?

15 MR. BRAATEN: No, I don't.

16 JUDGE SEAWORTH: Mr. Bjella?

17 MR. BJELLA: No, Your Honor.

18 JUDGE SEAWORTH: Ms. Jeffcoat-Sacco?

19 MS. JEFFCOAT-SACCO: No, Your Honor.

20 Thank you.

21 JUDGE SEAWORTH: Yes.

22 And the commissioners. Commissioner  
23 Christmann.

24

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**EXAMINATION**

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**BY COMMISSIONER CHRISTMANN:**

Q. You mentioned personal comparable situations with utilities. Did it involve North American or other utilities?

A. Other utilities.

Q. And in those situations is it like lack of water or crop and grass production?

A. A lot of it's grass production, lack of respect with -- what they tell you up front what they're going to do and when they're going to do it and how they're going to do it, and then when they go after it, it's a total different situation.

Q. Do you think that the problems that you have are a result of like poor seeding or does it have to do with compaction or is it kind of a general area that you think is the crux of the problem?

A. I think it's a combination of both.

Q. In your own personal situations, were those utility situations like a mine or something where there's a bond and a waiting period or was it more of, you know, like a power line or a telecommunications line getting dug through and the regrowth just without a bonded situation?



1 some of these situations, it's -- and I know a lot  
2 of people that deal with reclaimed land and they  
3 have issues with water. And a natural spring, how  
4 do you replace it?

5 COMMISSIONER KALK: Okay. Thank you.

6 MR. KESSLER: You're welcome.

7 JUDGE SEAWORTH: Commissioner Fedorchak.

8 **EXAMINATION**

9 **BY COMMISSIONER FEDORCHAK:**

10 Q. Thank you, Keith, for coming today and  
11 listening this morning and for the last couple of  
12 hours as well.

13 I share your belief that landowners should  
14 be treated with respect and held accountable to --  
15 and the companies need to be held accountable for  
16 that. And to the extent that we can enforce that  
17 here, we do.

18 One of the reasons we have doubled down on  
19 efforts to inform the public and other ways through  
20 news releases and different types of notices is so  
21 people know ahead of time what their opportunities  
22 are for getting engaged, because it is a  
23 complicated legal process and it doesn't always  
24 catch people's eyes. So to the extent you have  
25 ideas for improving that, I'd love to hear them

1 moving forward.

2 In terms of your comments on the  
3 production and the water, you know, I -- our  
4 permits require that. It states it right in clear  
5 language that the production should be, you know,  
6 equal. I think the issue is time periods.

7 Do you have a sense as a landowner what's  
8 a reasonable time period for achieving that kind  
9 of -- you know, bringing the land back to the  
10 productive -- the same production level as it was  
11 prior to, in this instance, mining?

12 A. I don't know if there is a key number to  
13 that and I wouldn't know that because I'm a  
14 rancher. I mean that's what I do, but I don't know  
15 if there is a key number there where you can put,  
16 you know, four or five, ten years on there. I  
17 don't know that number. But I know some of the  
18 instances with some of the other utilities, they  
19 think in -- they'll pay you for two years' loss of  
20 production. Well, you go in and destroy native  
21 grasses, two years, you don't even have a good  
22 reseeding germination probably rate at that point.  
23 So that -- I can't put a number on it if you're  
24 asking for that. It takes several years.

25 COMMISSIONER FEDORCHAK: Okay. I don't

1 have any other questions for you. Thanks.

2 MR. KESSLER: Thank you.

3 JUDGE SEAWORTH: Thank you very much for  
4 your testimony.

5 The next name that I have is a Lincoln  
6 Reinhiller. Mr. Reinhiller, would you like to take  
7 a seat up front.

8 COMMISSIONER KALK: Just like bingo, huh?

9 JUDGE SEAWORTH: Mr. Reinhiller, were you  
10 present when I advised the witnesses about the  
11 penalties for perjury in North Dakota?

12 MR. REINHILLER: I think maybe I heard.  
13 You know, if I was here right away when it started  
14 and you said something, I'll have to say that I was  
15 present.

16 JUDGE SEAWORTH: Okay.

17 MR. REINHILLER: Knowing what you said,  
18 though, I -- you know, probably didn't have the  
19 volume turned up.

20 JUDGE SEAWORTH: Fair enough. Well, I  
21 will repeat that. All right?

22 MR. REINHILLER: Okay.

23 JUDGE SEAWORTH: The penalties for perjury  
24 in North Dakota are a Class C felony, punishable by  
25 a maximum \$10,000 fine, a maximum five years

1 imprisonment or both.

2 MR. REINHILLER: I heard that.

3 JUDGE SEAWORTH: Okay. Very good. Would  
4 you --

5 MR. REINHILLER: And just following up on  
6 that, the other day headlines in *The Bismarck*  
7 *Tribune*, "Link pleads not guilty," but importantly  
8 they had a picture of the person. So I will now  
9 use my full name, Lincoln.

10 JUDGE SEAWORTH: Would you raise your  
11 right hand, please.

12 (Witness sworn.)

13 JUDGE SEAWORTH: Thank you.

14 Would you state your full name and tell us  
15 where you live.

16 **LINCOLN REINHILLER,**

17 having been first duly sworn, was examined and  
18 testified as follows:

19 **STATEMENT**

20 **BY MR. REINHILLER:**

21 MR. REINHILLER: Okay. Lincoln  
22 Reinhiller, and, of course, my land is not  
23 associated with the project that's going on, but I  
24 do have land that was six feet apart from a coal  
25 mine that Westmoreland has. And I'll just speak

1 about my experience with them several years ago and  
2 another experience that we had 30-some years ago  
3 dealing with a utility company.

4 And -- but I -- this story here to -- many  
5 years ago I was testifying and this fellow by the  
6 name of Leo Reinbold was on the Commission. And,  
7 you know, when I was introduced, he says, Well, are  
8 you that fellow that was that star running back at  
9 Dickinson State, the old Savages? Well, you know,  
10 I took the oath saying that I would tell the truth,  
11 and I couldn't say anything but yes.

12 Okay. Number one, in my situation -- and  
13 I think it would be something -- landowners, it  
14 would be helpful to be aware of, although you might  
15 not be involved in the mining operation but you  
16 would have land that is right next to a mining  
17 operation and if -- knowing some of the  
18 responsibilities that that mine has for people that  
19 do not have leases with them.

20 In my -- our case, we had pastureland and  
21 we were having water problems, more dust coming up  
22 than moisture. And I wanted to know what we could  
23 do to get that -- you know, get some water coming  
24 into our pastures so those cows would feel happy.  
25 And so what I did, I did make a call to that ornery

1     guy, Mr. Deutsch, talked to him first, and Jim  
2     explained to me the obligations that mining  
3     companies do have, whether it's on their land -- or  
4     land that they've leased or on neighboring land.

5             And Jim, you know, said that -- and then  
6     we went out and looked at the situation. And, you  
7     know, we could see that the mining operation with  
8     their -- to protect, say, us and keep water from  
9     running all over the place, you know, they had  
10    holding ponds. And so saying yes, we can get --  
11    it's our obligation to get water into your pasture.  
12    So we came up with a deal that they would get water  
13    into our pasture.

14            I had two choices. Number one, I could go  
15    and find out where the water was. I've got that  
16    ability also. And -- or the other thing is going  
17    with a pipeline. And, you know, so we got that  
18    installed and Westmoreland -- or at the time we got  
19    an agreement made and they did furnish -- we got  
20    the water there. So I'm much more happy today --  
21    well, we had a good deal going.

22            But the key to that was to approach the  
23    Public Service Commission first rather than going  
24    to the coal mine and pounding on the table, because  
25    they, again, said through -- with Jim there said --

1 they explained to me their obligation and went over  
2 it with the mining people and so the deal was done.

3           The other thing working with leases, now,  
4 I -- I know that with coal leases it can be a whole  
5 different story. But, again, 30-some years ago, we  
6 had this power line that went from the Coyote  
7 Station south of Beulah over to the station at  
8 Center. And when us landowners became aware of  
9 that, we got together and organized. And I have to  
10 give MDU credit. When they heard that landowners  
11 were organizing, they said, When you guys get your  
12 ideas together, let us know and we'll talk about  
13 it.

14           And there were like 42 landowners in this  
15 operation, and we -- us landowners met and  
16 organized and went over our -- our ideas. And when  
17 we got -- and we also then -- the other thing that  
18 you needed to do was to hire an attorney to  
19 represent you because then that attorney does the  
20 bargaining. We give him the ideas.

21           And so we got together and went over what  
22 we were looking for. Number one, when we started  
23 to talk, we told the MDU people -- they were  
24 talking about the easement of having a power  
25 line -- two power lines about a hundred yards

1     apart. Us landowners said, You know, if it's  
2     looking at protecting yourself from weather  
3     problems, a hundred yards isn't going to make that  
4     much difference. You know, you're right. Then the  
5     other thing we said, You know, we're not used to  
6     looking at those steel towers. Do you think we  
7     could use the wood poles? Yeah. And then the last  
8     thing and probably the most important thing of that  
9     agreement as landowners, of the 42 of us, 36 of us  
10    said, How about an annual payment on the lease, and  
11    there were six, say, older landowners, you know,  
12    that wanted their money up front. So we -- we got  
13    a deal made where the -- in that -- in that utility  
14    line of the -- running from south of Beulah to  
15    Center, 36 of us landowners are getting an annual  
16    payment. That started in 1978.

17                 How is the value of the yearly payment  
18    made? Each year you've got your ag statistic  
19    service that does survey of land values. That's  
20    one part of the formula. The other part is looking  
21    at the PCA or production -- it used to be Federal  
22    Land Bank, what is their interest rate that they're  
23    charging on long-term loans every year. That's the  
24    other part of the formula. So using that and the  
25    land values, your payment is adjusted every year.

1           And, you know, I know with the -- my point  
2 here is when you -- and right now, yeah, the -- the  
3 leases are pretty well signed and so on, but in the  
4 future or when you've got something else coming up,  
5 if landowners become aware of something like this  
6 going on, to try to get together amongst themselves  
7 and talk about what they would be looking for and  
8 then as a group you're talking to the industry.  
9 And, you know, it evens -- it evens out the  
10 bargaining power.

11           JUDGE SEAWORTH: Thank you very much.  
12 Thank you. If you'll wait just a moment --  
13 Mr. Reinhiller, if you'll wait just a moment, there  
14 might be questions for you. We'll see.

15           MR. REINHILLER: Oh, okay. You want more  
16 stories, in other words.

17           JUDGE SEAWORTH: Well, we'll see. We'll  
18 see.

19           Mr. Braaten, any questions for the  
20 witness?

21           MR. BRAATEN: No, Your Honor.

22           JUDGE SEAWORTH: Mr. Bjella?

23           MR. BJELLA: No, Your Honor.

24           JUDGE SEAWORTH: Ms. Jeffcoat-Sacco?

25           MS. JEFFCOAT-SACCO: No.

1           JUDGE SEAWORTH:   And the commissioners.  
2 Commissioner Christmann?

3           COMMISSIONER CHRISTMANN:   I do not.

4           JUDGE SEAWORTH:   Commissioner Kalk?

5           COMMISSIONER KALK:   No.  No, thank you.

6           JUDGE SEAWORTH:   Commissioner Fedorchak?

7           COMMISSIONER FEDORCHAK:   Thanks for being  
8 here and providing some levity too.

9           JUDGE SEAWORTH:   Thank you very much.

10          MR. REINHILLER:   Of course, that fellow  
11 way over there was just about this high when --

12          COMMISSIONER CHRISTMANN:   And only this  
13 wide.

14          MR. REINHILLER:   I can go now?

15          JUDGE SEAWORTH:   Yes, you can.

16          Beverly Peterson.  Ms. Peterson, did you  
17 hear me talk to the other witnesses about the  
18 penalties for perjury in North Dakota?

19          MS. PETERSON:   I did, Your Honor.

20          JUDGE SEAWORTH:   All right.  Thank you.

21          MS. PETERSON:   Thank you.  I'll try and be  
22 brief, more brief than Link was.

23          JUDGE SEAWORTH:   Would you -- just before  
24 we begin, would you state your name for the record,  
25 please.

1 MS. PETERSON: Beverly Peterson, 3959  
2 Seventh Street Southwest, Washburn.

3 JUDGE SEAWORTH: And would you spell  
4 Peterson for us.

5 MS. PETERSON: Sure. P-e-t-e-r-s-o-n.

6 JUDGE SEAWORTH: Would you raise your  
7 right hand, please.

8 (Witness sworn.)

9 JUDGE SEAWORTH: Thank you very much. You  
10 may begin.

11 **BEVERLY PETERSON,**

12 having been first duly sworn, was examined and  
13 testified as follows:

14 **STATEMENT**

15 **BY MS. PETERSON:**

16 MS. PETERSON: I'll be brief. I know you  
17 guys are busy and are tired, but this might be my  
18 only chance to let you know that this reclamation  
19 problem isn't just in Casey's neighborhood, but  
20 it's also across the river. On the east side of  
21 the river we have Falkirk mining surrounding us and  
22 doing some strong-arm tactics to more or less get  
23 us out of the area. It's easier for them to buy us  
24 out and they try to do this land swap with us, too,  
25 and then they'll come back later on and do things

1 like that.

2 But I just want to let you know that it's  
3 not just Casey's area, even though it's very  
4 pertinent. It's a widespread, horrible reclamation  
5 ruse that we're under that what these mines are  
6 doing is wonderful, because if it were, they would  
7 be coming out of bond release.

8 Falkirk encapsulates, as you know,  
9 thousands of acres. A hundred acres has then come  
10 out of bond release. That's got to tell you  
11 something is not working.

12 The other point I'd like to make while I  
13 have a minute is the fact that kids like Leah and  
14 Lane are suffering from something my grandparents  
15 signed off, and I know they're still alive and I  
16 think if I had enough money, I would get a court  
17 case in a court of law to say they were -- they  
18 were misled just like we're being misled and you're  
19 being misled into thinking that reclamation is  
20 actually working.

21 I have graduate degrees in horticulture  
22 and agronomy. I can guarantee you I'm not a  
23 specialist in this. People like Casey and all  
24 these men that farm and ranch, that is not hearsay.  
25 That's the truth. They are the experts in this.

1 They can tell you it is not working. The soil is  
2 not the way it was, the way God made it.

3 Can it be? I think it can. Do I want to  
4 get rid of the coal mines? No. They're my  
5 neighbors. They provide jobs for my relatives.  
6 But they have misled and they have lied and cheated  
7 their way out of my land. My grandparents would  
8 say they were told the same thing, You'll never see  
9 the day when we'll mine your land. Well, guess  
10 what. It's here. It's now. And why should those  
11 kids have to stay under that lease, under that  
12 guise that it's all going to be okay and great in  
13 what they're going to get left of the land? The  
14 soil is not being treated carefully or properly.

15 And I've tried my best to do this through  
16 Deutsch and -- excuse me, Mr. Deutsch and through  
17 the PSC, and it falls on deaf ears. I think  
18 they're just as hand-tied as we are as to what to  
19 do.

20 So I think this is an incredible  
21 opportunity for us to make a change in our  
22 programs.

23 Thank you.

24 JUDGE SEAWORTH: Thank you.

25 Mr. Braaten, any questions?

1 MR. BRAATEN: No, Your Honor.

2 JUDGE SEAWORTH: Mr. Bjella?

3 MR. BJELLA: No, Your Honor.

4 JUDGE SEAWORTH: Ms. Jeffcoat-Sacco?

5 MS. JEFFCOAT-SACCO: No, Your Honor.

6 JUDGE SEAWORTH: Thank you.

7 Commissioners.

8 **EXAMINATION**

9 **BY COMMISSIONER CHRISTMANN:**

10 Q. I suppose I could ask any of numerous  
11 people this, but you mentioned signing a lease but  
12 being told that they'll never mine it?

13 A. Right.

14 Q. Why do you suppose they would pay you if  
15 they didn't --

16 A. Well, when you're hungry --

17 Q. -- intend to possibly mine it?

18 A. -- and you haven't got food and you need  
19 to feed your children, any money looks really good.  
20 And that's what they did. They hit us at a time in  
21 the '30s, in the '40s and the '50s and said, You're  
22 going to get some free money here. You just have  
23 to sign it and don't ever have to worry about it  
24 ever coming into compilation. It's not going to  
25 happen. You'll be okay. They really trusted.

1 They thought they were dealing with honest people.  
2 And maybe those land people did believe that it  
3 would never come to fruition, but it did, and now  
4 our kids are suffering because of that.

5 My kids want to farm. They want to ranch.  
6 Where are you going to get this land? They aren't  
7 in the swapping business, so what are we supposed  
8 to do?

9 Q. So your land leases that you're talking  
10 about and when you were assured that it wouldn't be  
11 mined was like '30s and '40s era?

12 A. Right.

13 Q. Okay.

14 A. But some of those people that were told  
15 that are still alive and they would be able to  
16 testify to the fact that they did not have proper  
17 representation and they were lied to, obviously,  
18 because now they -- those leases are coming into  
19 permitting processes. So was it fair? No. Is it  
20 legal? Yeah, it is.

21 COMMISSIONER CHRISTMANN: Thank you for  
22 being here.

23 MS. PETERSON: You bet.

24 JUDGE SEAWORTH: Commissioner Kalk.

25 COMMISSIONER KALK: Thank you, Your Honor.

**EXAMINATION**

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**BY COMMISSIONER KALK:**

Q. Thank you, Beverly, for waiting here today and testifying.

Just a couple of thoughts and maybe you'll share your perspective on it. The -- you're concerned about making sure the land is productive before it comes back out of bond release. That's why a lot of times the bond release -- I think we've done a good job putting land back into production, but we don't do that until the standards are where they were when it started, so it's a good program. But I will share the same concern you have that there's a lot of things that happen with pipelines or power lines that are non-jurisdictional to us. Maybe the standards aren't there. So as a state we're still trying to leverage as much as we can to improve the reclamation standards on everything.

But the -- I guess the question to get to is once you take apart native grasslands, that's kind of the end of it, though, getting it back to native grasslands. That's -- but that's just kind of the way it is, or do you think it can get back that way?

1           A.     I always had a problem with these guys  
2     that would show up from North American and Falkirk,  
3     and this is a little different than Casey's  
4     situation, but where they would say, It's going to  
5     be great. I grew up on a farm. You're going to  
6     like this reclaimed land. It's going to be okay.

7                     Well, they're not making their living at  
8     farming and ranching like we are, and so they can  
9     get by with those statements saying it's better  
10    because they haven't had to pick the rocks after  
11    it's supposedly farmable. We're still picking  
12    rocks. We're still dealing with pools of water in  
13    every field that's reclaimed. There's a lot of  
14    things that they're not doing to get it even okay.  
15    Obviously it's not even reaching your standards.

16                    So my point, I guess, to address you,  
17    Mr. Kalk, is that I think it's time for a change in  
18    those standards in measuring how our soil is  
19    composed and how it should be farmed. Because  
20    obviously they're miners. They're not farmers.  
21    They do the best that their bosses tell them.

22            Q.     So that's your -- I guess you probably  
23    have -- the testimony we're going to hear on next  
24    Tuesday about what's specifically the  
25    recommendation from the experts, you agree with

1 what they're going to present?

2 A. I think so. From what Casey has stated  
3 just today, because I haven't talked to him about  
4 it beforehand, but it sounds very positive. From a  
5 biological point of view rather than a chemical  
6 point of view, I agree.

7 COMMISSIONER KALK: Thank you.

8 MS. PETERSON: You bet.

9 JUDGE SEAWORTH: Commissioner Fedorchak.

10 COMMISSIONER FEDORCHAK: I don't have any  
11 questions. Thank you for being here, Beverly.

12 MS. PETERSON: Thanks for your time.

13 JUDGE SEAWORTH: Oh, if you'll wait just a  
14 minute, I believe Commissioner Christmann has a  
15 question for you.

16 **FURTHER EXAMINATION**

17 **BY COMMISSIONER CHRISTMANN:**

18 Q. Your response to Commissioner Kalk  
19 reminded me of something. You said there's less  
20 than a hundred acres at Falkirk that's been bond  
21 released?

22 A. Right.

23 Q. And you have some land -- some of that is  
24 yours where you're continuing to pick rocks and  
25 have excess water problems?

1           A.     It has nothing to do with that hundred  
2 acres that's coming out -- that has come out back  
3 to public sale. That's up by the Underwood area  
4 and that was land, I think, that the mine didn't  
5 even want to mine, so that's why it came out of  
6 bond release is because it never got mined.

7                     What we have is the -- we're in a position  
8 where they're trying to buy us out. They're trying  
9 to buy our land. We've already lost some or sold  
10 some, however you want to look at it, and so they  
11 let us farm some of the land that they're trying to  
12 reach bond release on. We're allowed to hay it,  
13 crop it and we continue to pick rocks on it. We  
14 continue to tell them about sinkholes. We tell  
15 them about the compaction problems. Every -- I  
16 would say on a monthly basis we remind them, Hey,  
17 you've got a sinkhole here. Oh, by the way, our  
18 combine almost fell in that hole over there. You  
19 don't give us approaches. You don't give us  
20 anything but crossing guards for things like that.

21                     So, yeah, we -- I would say yes, we are  
22 continually dealing with reclamation processes.

23           Q.     But if someone wants to find the positive  
24 in the reclamation program --

25           A.     Okay.

1           Q.    -- might you say that the fact that you're  
2 still unhappy with it at this point that there's  
3 settling or excess rocks or excess pooling or  
4 whatever the issue is, the fact that we haven't  
5 bond released it, wouldn't that suggest that, you  
6 know, that's part of why we haven't bond released  
7 it, because it's not to where it needs to be?

8           A.    Absolutely.

9           Q.    So that part seems like it's kind of  
10 working, doesn't it?

11          A.    Oh, I would say it's not working at all.

12          Q.    I mean on the one hand we want the land  
13 almost bond released immediately, but on the other  
14 hand --

15          A.    Yeah, but see, if it got out of bond  
16 release, then let us farm it so we can maybe get it  
17 back to where it should be. Let it come back to  
18 us. The miners don't know what they're doing. The  
19 reclamation miner guys are just wanting it to get  
20 out of their hands, but they can't because it's not  
21 reaching the standards necessary.

22          Q.    Last question. If -- if we bond release  
23 it, do you see how then we can no longer leverage  
24 the mine to do things that we want them to if we  
25 bond release it?

1           A.    Yes.  I see your point.  Absolutely.

2           COMMISSIONER CHRISTMANN:  Okay.  Thank  
3 you.

4           MS. PETERSON:  Thank you.

5           JUDGE SEAWORTH:  Any further questions  
6 from the commissioners?

7           COMMISSIONER KALK:  No.  Thank you.

8           COMMISSIONER FEDORCHAK:  No.

9           JUDGE SEAWORTH:  Thank you very much.

10          MS. PETERSON:  Thank you for your time.

11          JUDGE SEAWORTH:  Is there anybody that  
12 wants to provide public testimony?

13          MR. NEUROHR:  Yes, Your Honor, I would  
14 like to say something.

15          JUDGE SEAWORTH:  Please come up.

16          Sir, would you tell us your name.

17          MR. NEUROHR:  My name is Daniel Neurohr,  
18 Dodge, North Dakota.

19          JUDGE SEAWORTH:  Would you spell your last  
20 name for us.

21          MR. NEUROHR:  N-e-u-r-o-h-r.

22          JUDGE SEAWORTH:  And were you in the room  
23 when I advised --

24          MR. NEUROHR:  Yes.

25          JUDGE SEAWORTH:  -- the -- about the

1 penalties for perjury?

2 MR. NEUROHR: Yes.

3 JUDGE SEAWORTH: All right. Would you  
4 raise your right hand, please.

5 (Witness sworn.)

6 JUDGE SEAWORTH: Thank you. You may  
7 begin.

8 DANIEL NEUROHR,  
9 having been first duly sworn, was examined and  
10 testified as follows:

11 STATEMENT

12 BY MR. NEUROHR:

13 MR. NEUROHR: Yes. I am an active coal  
14 miner. Been doing it for 40 years. Spent 20 years  
15 on the dragline, but I've been in the reclamation  
16 end of it for 20 years now, and that's what I'm  
17 currently doing.

18 And sometimes you have to -- how would I  
19 say -- put a little extra effort into it to make  
20 things better, because at the mine I work at, which  
21 is Dakota Westmoreland, they even tell us, When  
22 you're reclamating it, do it like you own it, like  
23 you want it to be if you owned it. So we try.

24 And what Casey's point is on the  
25 production end of it, we try and do things and it

1 takes a little bit extra effort. Does it cost  
2 more? Maybe it does, maybe it doesn't. But we  
3 do -- how would -- how would I want to say this --  
4 put the extra effort into it right away.

5           You know, and I heard about bond release  
6 and to get it back to where the original production  
7 was. If the topsoil and subsoil is already put  
8 back in and you don't get the original production  
9 anymore, you're not going to get it. The harm's  
10 already been done. Either you do it right right  
11 away or you're not going to get what you want, is  
12 what I'm saying.

13           But I do know that with subsidence and all  
14 that -- there was about 30 acres out there this  
15 spring, I went over it again. Called the trucks  
16 in, they brought me the dirt. I run a GPS in my  
17 dozer, fixed it all up. Some of it was three- and  
18 five-foot subsidence. Come back a month later,  
19 same thing. Not quite as bad. Had to go over that  
20 area three times to make it decent. So you're  
21 always going to have subsidence, but you're going  
22 to have to deal with it right away. And like I  
23 said, if you don't do it right the first time,  
24 you're not going to get the second chance. Once  
25 the subsoil and topsoil is put back on, that's it.

1           And as for their farming it -- how would I  
2 say it? I don't know what they're going to do to  
3 the soil to make it better. I really don't. But  
4 if you don't do it right the first time, it's not  
5 going to be. That's my estimation anyway.

6           JUDGE SEAWORTH: Thank you very much.

7           Mr. Braaten, any questions?

8           MR. BRAATEN: No, Your Honor.

9           JUDGE SEAWORTH: Mr. Bjella?

10          MR. BJELLA: No, Your Honor.

11          JUDGE SEAWORTH: Ms. Jeffcoat-Sacco?

12          MS. JEFFCOAT-SACCO: No, Your Honor.

13          JUDGE SEAWORTH: Commissioner Christmann.

14          COMMISSIONER CHRISTMANN: Not a question,  
15 but I don't get to Dodge much anymore so I just  
16 have to say this: About 25 or 30 years ago I had a  
17 business dealing with your dad and he was just one  
18 of the all-time classic, fun individuals to work  
19 with.

20          MR. NEUROHR: Yeah.

21          COMMISSIONER CHRISTMANN: I still think of  
22 him often. He's a good man.

23          JUDGE SEAWORTH: Commissioner Kalk.

24          COMMISSIONER KALK: Thank you, Your Honor.

25

**EXAMINATION**

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**BY COMMISSIONER KALK:**

Q. Thank you very much for your testimony, sir.

The -- you've worked the soils out there for many years, and thank you for your work with the company. The -- Westmoreland is a good company.

The -- the work that you've done, I mean the soil structure out there, it's a lot different than the valley, obviously. That's why it's ranchland instead of farmland. Is some of it just that we've got a tough soil mix out there that once you bust it up, it's really hard to do anything with that? That's why it's grazing land. Is that some of the challenges you deal with?

A. No. I guess our challenges that we deal with is different soil types. There's so many different types of soil, and then --

Q. So you can't really put it back together. It's the different horizons that lay out and it's hard to get it exactly the way it was?

A. Yes and no. What we do a lot of times -- because a lot of times the overburden is too thick for our dragline, we pre-strip with trucks and

1 shovels, and what we pre-strip right off the top,  
2 we make an effort to put that right above the  
3 overburden that's been already leveled so that it's  
4 just like you're putting down say ten foot of  
5 subsoil. Because a lot of that land between the  
6 subsoil and the next 20 feet, they're pretty much  
7 the same dirt. So if we make the effort to put  
8 that on top, which we do, it seems to help.

9 COMMISSIONER KALK: All right. Thank you,  
10 sir.

11 JUDGE SEAWORTH: Commissioner Fedorchak.

12 **EXAMINATION**

13 **BY COMMISSIONER FEDORCHAK:**

14 Q. Yeah. Just one question since you've got  
15 so much experience mining yourself. Can you offer  
16 your perspective -- we've heard, you know, multiple  
17 times today about the concern that there's so much  
18 land that hasn't been bond released and then -- and  
19 that being an indication that the reclamation isn't  
20 working. So share your perspectives on that. How  
21 do those two tie together --

22 A. Well --

23 Q. -- and what's the answer to that?

24 A. -- the way I understand the law reads it  
25 has to be equal or better production; is that

1 correct?

2 Q. Yep. There's standards for -- that they  
3 have to meet to -- to release the land from bond.

4 A. Well, to me, that tells me that they don't  
5 even want to try and make the production records  
6 available or have them, and which they probably  
7 have, because they can't meet the standards.  
8 That's what it tells me. Is that what you're  
9 trying to ask me?

10 Q. Yeah. So the lack of the bond release is  
11 indication that the -- the reclamation isn't  
12 working. But surely the answer to that isn't to --  
13 to bond release it early?

14 A. No, it's not the answer to bond release --  
15 no, not to early release it. No.

16 Q. Your solution would be what in your  
17 company?

18 A. Well, I guess I don't know how much my  
19 company has released, but I'm assuming that they  
20 released quite a bit of it from bond because a lot  
21 of it's being farmed. The local farmers are  
22 cutting hay off of it because it's all into hay  
23 ground. I know Casey farms some of it -- or hays  
24 some of it. But what you're asking --

25 Q. Your reclamation standards are -- you

1 know, you're meeting the same standards that the  
2 other companies are. The standards are the same  
3 for everybody.

4 A. Correct.

5 Q. So do you believe that there needs to be a  
6 wholesale redevelopment of the reclamation process?

7 A. I think it could be tweaked. Yes, I  
8 really do. Because, you know, a lot of things that  
9 I do and I know the other crews do it, too, that we  
10 try and go over and aboveboard what it calls for,  
11 let's put it that way, you know, to make the final  
12 product as good as possible. So we take pride in  
13 it, you know, and a lot of us are landowners that  
14 work at that mine too.

15 And as for what to do to improve it to get  
16 it from -- that I can't honestly tell you because  
17 once it's got topsoil and subsoil put back on, it's  
18 pretty hard to do anything with it.

19 COMMISSIONER FEDORCHAK: Okay. Thank you  
20 for being here and sharing your wisdom.

21 JUDGE SEAWORTH: Thank you for your  
22 testimony.

23 MR. NEUROHR: Yep.

24 JUDGE SEAWORTH: Is there anybody else who  
25 would like to offer testimony?

1 All right. Thank you.

2 Mr. Braaten, we've got about 25 minutes  
3 left and I know you released your witness; is that  
4 correct?

5 MR. BRAATEN: I did, yes.

6 JUDGE SEAWORTH: All right. Is there  
7 anything further that we want to discuss before we  
8 adjourn for today? I know we talked about going  
9 until three o'clock. Mr. Braaten has several  
10 expert witnesses to present.

11 Our intent at this point is to proceed on  
12 Tuesday at 8:30 in the morning, and that's  
13 December 23, if my calendar is correct.

14 COMMISSIONER KALK: Right.

15 JUDGE SEAWORTH: So, Mr. Braaten, is there  
16 anything that we need to address before we adjourn  
17 just for today?

18 MR. BRAATEN: I don't know that we need to  
19 address it before we adjourn, but I know  
20 Commissioner Kalk had mentioned the idea of finding  
21 an additional day and maybe that's something the  
22 attorneys should do before we leave today. Other  
23 than that, no.

24 JUDGE SEAWORTH: Thank you.

25 Mr. Bjella, anything to address?

1 MR. BJELLA: I think that would be it,  
2 Your Honor.

3 JUDGE SEAWORTH: Okay. And  
4 Ms. Jeffcoat-Sacco?

5 MS. JEFFCOAT-SACCO: That's the issue, but  
6 commissioners' schedules are right up there with,  
7 you know, the attorneys. So if they have dates --  
8 optional dates before the attorneys talk, we could  
9 get them.

10 JUDGE SEAWORTH: All right. I would ask  
11 the commissioners for any comments that -- anything  
12 we need to address before we adjourn today?  
13 Commissioner Christmann.

14 COMMISSIONER CHRISTMANN: Well, based on  
15 the fact -- you know, always one of the big things  
16 that's hard to predict in setting these hearing  
17 times is how much public testimony there's going to  
18 be. Assuming that there probably won't be a lot of  
19 testimony that will come on Tuesday or a subsequent  
20 day, has anything changed now the fact that after  
21 day one we'll have public testimony probably  
22 completely finished? Do we still believe we need  
23 two more days or might Tuesday be sufficient?

24 JUDGE SEAWORTH: I would ask counsel.  
25 Mr. Braaten?

1           MR. BRAATEN: I'll be as specific as I  
2 can. I think that my direct of the experts I'm  
3 putting on could go two to three hours. I don't  
4 know how long cross-examination would go or mine of  
5 them or how many witnesses the others are putting  
6 on. I'll let them speak to that. I would just add  
7 the caveat that I thought my first witness today  
8 was going to go a half an hour, so --

9           JUDGE SEAWORTH: I appreciate that. We  
10 never quite know how it's going to work out, but --

11           Mr. Bjella, any thoughts on scheduling?

12           MR. BJELLA: Well, potentially, if we get  
13 through his witnesses in three -- you're talking  
14 just direct for three hours?

15           MR. BRAATEN: Yeah.

16           MR. BJELLA: Well, then it's going to be  
17 tough. Do you know, Your Honor -- you had  
18 expressed that you have to leave. Do you know  
19 what --

20           JUDGE SEAWORTH: I do. I'm scheduled to  
21 leave the state. I should be out of here by three  
22 o'clock on Tuesday, so --

23           COMMISSIONER KALK: We also have  
24 constraints at three o'clock with other meetings.  
25 We have one we're going to do later today too.

1 It's just the way the schedules bode.

2 JUDGE SEAWORTH: So, unfortunately, at  
3 least with regard to my schedule, if we cannot  
4 finish on Tuesday, we will need another day.

5 MR. BJELLA: I guess if he's -- if  
6 Derrick's going to talk three weeks -- excuse me,  
7 three hours just for his witnesses on direct --

8 MR. BRAATEN: Two to three, just to be  
9 clear.

10 MR. BJELLA: Two to three. Okay. Well,  
11 if it -- I don't -- I don't anticipate our  
12 cross-exam is going to be extensive, maybe done in  
13 three with his. We have three witnesses, the first  
14 one -- the first two will be quite short. Hard to  
15 know about cross. You know, probably just an hour  
16 and a half to two hours -- hour and a half to  
17 present our case on direct.

18 COMMISSIONER CHRISTMANN: Your Honor --

19 MR. BJELLA: It's going to be really  
20 tight.

21 JUDGE SEAWORTH: Sure.

22 COMMISSIONER CHRISTMANN: Your Honor, it  
23 sounds like we better plan another day, and if we  
24 don't need it, fine, but it sounds like we better  
25 plan one.



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CERTIFICATE OF COURT REPORTER

I, Stephanie A. Smith, a Registered Professional Reporter,

DO HEREBY CERTIFY that I recorded in shorthand the foregoing proceedings had and made of record at the time and place hereinbefore indicated.

I DO HEREBY FURTHER CERTIFY that the foregoing typewritten pages contain an accurate transcript of my shorthand notes then and there taken.

Dated at Bismarck, North Dakota, this 6th day of February, 2015.

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Stephanie A. Smith  
Registered Professional Reporter

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