Public Service Commission
State of North Dakota

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2 March 2015

Darrell Nitschke
Executive Secretary
North Dakota Public Service Commission
600 E. Blvd. Ave. Dept. 408
Bismarck, ND 58505-0480

Re: Coyote Creek Mining Company, LLC RC-13-850
Permit No. NACC-1302
Application

Dear Mr. Nitschke:

Enclosed for filing as a late-filed exhibit in the captioned case is the Second Affidavit of Bruce Beechie.

By copy of this letter and enclosure to Wade Mann, Administrative Law Judge, we request the affidavit be admitted and that Judge Mann assign it an exhibit number.

By the same, we also object to the admission of the new infrared photos attached to the affidavit of Charles Norris and the corresponding paragraphs 24 through 30 of the affidavit itself, as outside the scope of the filing permitted by the Judge Mann's 12 February 2015 Order regarding same. If the objection is granted, the corresponding references in, and the attachment to, the Affidavit of Dave Bickel should also be excluded from the record.

Thank you.

Best regards,

Illona A. Jeffcoat-Sacco

Illona A. Jeffcoat-Sacco
General Counsel

c w/encl. by electronic mail only:
Wade Mann (wmann@nd.gov)
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STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Coyote Creek Mining Company, L.L.C. **Permit NACC-1302** **Application**	)	**Case No. RC-13-850**
	)	**SECOND AFFIDAVIT OF BRUCE E. BEECHIE**

STATE OF NORTH DAKOTA)
)ss
COUNTY OF BURLEIGH)

Bruce E. Beechie being duly sworn states as follows:

1. That he is a citizen of the United States of America, of legal age, residing at Mandan, North Dakota.

2. That he is employed by the North Dakota Public Service Commission as a Geologist and Hydrologist in the Reclamation Division and that he's been employed here in this capacity since 2007.

3. That during the 2009 AVF field investigation conducted by several members of the Reclamation Division, the largest cropland tract that is located along Coyote Creek valley was specifically investigated. This cropland tract consists of approximately 100 acres located in portions of Sections 19 and 30 owned by Casey Voigt and represent the last cropland/hayland tract in the AVF assessment area as well as along Coyote Creek proper before Coyote Creek confluences with the Knife River approximately 2 miles to the north. This

cropland tract is approximately ¾ miles directly north of the furthest north Voigt hayfield in Section 31 and approximately three stream miles downstream.

4. That subirrigation, if present, would have been more likely in the Section 19/30 cropland tract rather than in Section 31 or any upstream areas to the south due to increased surface water contribution from two large drainages supplying surface water to Coyote Creek in the middle of Section 30. One of the drainages is located on the east side of Coyote Creek and the other drainage is located on the west side of Coyote Creek. Additionally, ground water contribution to the base flow of Coyote Creek would also be increased the further one travels downstream along Coyote Creek to the north. Both surface water and ground water contributions to Coyote Creek between the Section 31 alfalfa fields to the south and the Section 19/30 cropland tract to the north would increase the alluvial ground water levels downgradient (to the north) thereby significantly increasing the chances that subirrigation is occurring within the valley.

5. That based on the Reclamation Division's specific examination of vegetation and soils in the Section 19/30 field, subirrigation was not occurring.

6. That the 1978 OSM infrared remote imagery, specifically Casey Voigt Exhibit No. 18, encompassing Coyote Creek (photograph 291) depicts relative moisture content of vegetative growth within areas along Coyote Creek in addition to other adjacent upland areas, specifically the S1/2 of Section 29 and the NE1/4 of Section 32 which are approximately 130-150 feet above the elevation of Coyote Creek valley. These areas are readily observable on the exhibit and are located on uplands between one-half to one mile east of the Voigt alfalfa fields in Section

31. Cropland in the S1/2 of Section 29 and the NE1/4 of Section 32 are not underlain by alluvial soils and therefore cannot be subirrigated, and neither are the other upland areas on the map showing red coloration. Areas depicted as pink or red on the infrared imagery do not specifically depict areas of subirrigation.

7. That additional satellite imagery submitted by both Mr. Norris and Dr. Bickel in their affidavits, if allowed as evidence, clearly shows a significant amount of upland cropland areas with actively growing vegetation (red colored areas) at the same time as the areas along Coyote Creek.

8. That page 1 of the 1985 OSM Guidelines - *Reconnaissance Maps to Assist in Identifying Alluvial Valley Floors*, Casey Voigt Exhibit No. 2, states that the objective of the study was *"to develop an understanding, from a regional perspective, of the types of stream valleys that may be studied further for consideration as alluvial valley floors."* Continuing narrative on page 1 of the guidelines states that *"These maps represent only a reconnaissance-level effort in identification of areas which are likely to meet this definition, and these areas, therefore, are called potential alluvial valley floors."* Further narrative on page 1 states that *"Because reconnaissance level data have been used in this study, it is recognized that detailed data collected for any specific area may more conclusively prove or disprove the alluvial valley floor findings made in this report."*

9. That the detailed data collected and reviewed by environmental consultants and the Reclamation Division staff produced no discernible or defensible evidence that the valley of Coyote Creek is an AVF.

Dated this 2nd day of March 2015

Bruce Beechie

Bruce E. Beechie

Subscribed and sworn before me
this 2ND day of March, 2015.

JOHN G. HAMRE
Notary Public
State of North Dakota
My Commission Expires July 04, 2020

John G. Hamre

Notary Public