

Jeffcoat-Sacco, Illona

From: Derrick Braaten <derrick@baumstarkbraaten.com>
Sent: Tuesday, March 03, 2015 10:34 AM
To: Mann, Wade C.
Cc: Brian R. Bjella; Jeffcoat-Sacco, Illona; jj@baumstarkbraaten.com
Subject: Coyote Creek Mine Permit Number NACC-1302 - OAH Case No. 20140505

Judge Mann:

Casey Voigt, Coyote Creek, and the PSC have now filed affidavits in response to three late-filed exhibits as allowed by your order on late-filed exhibits dated February 13, 2015. After reviewing Coyote Creek's response affidavit, the Voigts object to the content of paragraphs 7 and 12 of Mr. Bickel's affidavit. These paragraphs are well outside of the scope of testimony allowed under your order.

Specifically, paragraph 7 introduces substantial new information describing the information that Mr. Bickel relied upon for his AVF study. Mr. Bickel's AVF study, however, is not at issue because it is not one of the three late-filed exhibits that this affidavit was allowed to discuss. Additionally, paragraph 12 introduces new information describing the role of "climate" and "soil type" in upland vs. lowland agricultural production. This too, is not responsive to either the two late-filed infrared photographs or the late-filed PSC field study from 2013. The Voigts therefore object to these two paragraphs and request that they be stricken from the official record of this proceeding.

Because all three parties have objected to the content of Mr. Bickel's and Mr. Norris's affidavits, we are requesting an evidentiary ruling on these issues, and a telephone conference if you feel it is necessary or would be helpful. Our findings of fact and conclusions of law must be filed by 5:00 p.m. this Friday. Therefore, we respectfully request that this ruling be made as soon as possible.

Thank you,

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