Public Service Commission
State of North Dakota

COMMISSIONERS
Julie Fedorchak
Randy Christmann
Brian P. Kalk

Executive Secretary
Darrell Nitschke

600 East Boulevard, Dept. 408
Bismarck, North Dakota 58505-0480
Web: www.psc.nd.gov
E-mail: ndpsc@nd.gov
Phone: 701-328-2400
ND Toll Free: 1-877-245-6685
Fax: 701-328-2410
TDD: 800-366-6888 or 711

May 7, 2015

Mr. Donn Steffen
Environmental Manager
Coyote Creek Mining Company
6502 17th St. SW
Zap, ND 58580

Dear Mr. Steffen:

The Reclamation Division has conducted a technical review of Coyote Creek Mining Company's application for Revision No. 1 to Surface Coal Mining Permit NACC-1302. The following items must be satisfactorily addressed before the Reclamation Division will recommend Commission action on this revision application.

Section 1.2 – Legal Information

1. Please add the county approval documents for the Revision 1 area to Section 1.2.8 Mercer County Section Line Right-of-Way Closure and Setback Waiver Documents. Temporary road closures, approval to work within 100 feet of a right-of-way and the approval documents for the Mercer County Road 12 crossing should be added to the permit. (NDAC 69-05.2-04-01.3(2) & (3)) (ZAB/GAW)

2. Please update Section 1.2.9, Filing with County Auditor, with the appropriate information regarding Revision 1 to NACC-1302. (NDAC 69-05.2-10-01(4)) (GAW)

Section 1.3 – Business Entity/Compliance Information

3. Please review Section 1.3.5, Other Licenses and Permits, and make additions or updates to the listing as necessary to reflect any recent license or permit acquisitions. (BEB)

Section 2.2 – Surface Water Hydrology

4. Please show the labels for ephemeral drains and other features that are provided on the approved permit version of the Post-Mine Ephemeral Drain Map, Section 2.2.4.4. The map provided in Revision 1 no longer identifies the drains listed in the Ephemeral Drain Summary provided in Table 4, Section 2.2.4.5. (RLK)

5. In Section 2.2.5, please provide a monitoring site for Brush Creek or an explanation of how Coyote Creek Mine's activity may affect the existing DWC surface water monitoring site located downstream of the coal handling facility and/or the use of information from the site in the future. (NDAC 69-05.2-16-05) (RLK)

6. Please update Section 2.2.5 to describe any monitoring for the drainages receiving water from the haul road culverts including any monitoring that may be done as part of the storm water permit requirements for erosion or sediment control at the road culverts. (NDAC 69-05.2-16-05) (RLK)

Section 2.3 – Ground Water Hydrology

7. Although unrelated to the specifics of Revision No. 1, issues regarding the installation of proposed ground water monitoring wells CM12-21 C, D, E (Coyote Creek Alluvium) and CM12-23 A, B, and C (Knife River Alluvium) have not been resolved in the permit and need to be addressed at this time. Permit information regarding these proposed well locations states that landowner agreement is required prior to installation of the wells. Please provide an update to the status of this situation and, if landowner agreement for installation of the wells has been denied or remains unlikely, the Reclamation Division would be amenable to a substitute location to replace at least one of the proposed alluvial monitoring well nests. Alluvial monitoring well(s) located along Coyote Creek down gradient of planned mining operations in Section 24 would be considered an acceptable replacement and if that is not possible, an alternate satisfactory location would be in the SW1/4 of Section 19, west of the haulroad and nearest to proposed coal removal operations. Please update all relevant sections of the permit regarding the original planned monitoring well installations, landowner relations regarding the original proposed locations, and/or alternative locations for monitoring well installations if required and as described above. (BEB)

8. Recent water supply replacement drilling by a contractor for Dakota Westmoreland Corporation resulted in the installation of a stock water supply well in the NE1/4 of Section 16, T143N, R88W, only about 1100 feet south of that portion of the CCMC haulroad corridor located in the S1/2 of Section 9. Surface elevation at the well head is approximately 1950 ft. AMSL and the aquifer screened was a 2-foot thick fractured coal seam at a depth of 25-27 feet below surface. It was deemed the only viable water replacement zone available, even after drilling dry holes to a depth of 300 feet below surface on nearby reclaimed land. Static water level of the confined aquifer was measured at 20 feet below surface by the Reclamation Division and significant flow from the well was documented during well development and completion work with a yield of 12 GPM and calculated specific capacity of 1.2. Please corroborate with DWC or view the State Water Commission web site regarding the specifics of this well and update the Summary of Certified Wells and Springs table of Section 2.3.2.1, and update information provided in the Ground Water Probable Hydrologic Consequences in Section 2.3.3 regarding potential impacts to this well. (BEB)

9. The Don Schwalbe stock well is a DWC water supply replacement well located in the NW1/4 of Section 17, T143N, R88W, approximately 1200 feet south of the proposed haul road corridor running along the S1/2 of Section 8. Although no impacts to this deep well are anticipated, please acknowledge and document this feature in Section 2.3.2.1 of the permit. (BEB)

Section 2.4.2 – Narrative (*Pre-Mining Land Use and Vegetation*)

10. The NRCS yield values in the table at the bottom of page 14 of Section 2.4.2 includes values for the Thin Loamy, Clayey, Sandy and Thin Claypan sites from 2003 ecological site description. Current

NRCS ecological site descriptions for these sites have HPCP representative yield values (1900, 2300, 2500 and 1000 pounds per acre, respectively). Please revise to clarify that the values listed are HPCP representative values from 2003 ecological site descriptions rather than current NRCS ecological site descriptions and discuss why Section 2.4.7.5 contains 2003 NRCS ecological site descriptions rather than the more current approved versions.)NDAC 69-05.2-08-08(1)(c)(2)) (GAW)

11. Page 14 of Section 2.4.2 states that 2012 was a dry year but that the season started with an ample supply of soil moisture and that 2013 was a wet year. However, expected high yield values from the ecological site descriptions were used to determine ecological condition in the rangeland similarity index sheets for both years. Please explain why the similarity index values were not computed using the low expected yield values or even the site's representative yield value in 2012. It appears that using the high expected yield values to establish a similarity index or condition rating during a dry year, such as 2012, will result in an artificially low similarity index. Please revise the narrative on page 12 of Section 2.4.2 to explain this issue and point out that the similarity index values listed may be artificially low given the methodology used. (NDAC 69-05.2-08-08 (1)(c)(3)) (GAW)

12. The Dakota skipper butterfly is described as a Candidate species in the Qualitative Assessment narrative being added with Revision 1. However, this species and Poweshiek skipperling were officially listed as Threatened under the Endangered Species Act last fall and critical habitat has been proposed. Please revise all language that incorrectly indicates that this species is still a Candidate or Proposed species. In addition, the sentence "Because of poor grazing distribution and season of use issues, the resulting plant communities often have invasive species present and appear to be of too low quality to support Dakota skipper populations" has been included in the narrative for each tract of land being added with Revision 1. However, it is not clear if potential suitable habitat even exists in each of these tracts. Please revise to clarify if each tract has ecological sites that might be considered potential suitable habitat and if present then revise to discuss the ecological condition of only those sites. (NDAC 69-05.2-05-02) (GAW)

13. The Section 8 narrative the begins on page 51 of Section 2.4.2 includes a statement highlighted in yellow that suggests the native plant community is invaded by invasive species but the sampling data for this tract on page 35 of Section 2.4.7.4 does not support this claim as no non-native species are listed as being present. Please revise to clarify this statement and provide documentation or describe the species composition of the dominant ecological site on this tract which is a Sands ecological site. (NDAC 69-05.2-05-02) (GAW)

14. The Section 18 narrative discussion on page 54 of Section 2.4.2 states that portions of the N1/2 of Section 18 were previously cultivated, is dominated with crested wheatgrass and smooth bromegrass, and that the species composition is similar to other tracts of land where non-native species comprised of over 87% of the plant composition. Clearly, these formerly cultivated areas that are dominated with these introduced species should be classified as tame pastureland rather than native grassland. Please revise all relevant sections of Section 2.4 to properly classify these areas as tame pastureland rather than native grassland. (NDAC 69-05.2-05-02) (GAW)

15. No wetlands in the Revision 1 addition area were sampled. Page II-H-6 of our Guidelines document requires that wetland sampling be conducted based on numbers, distribution and variability. Please include a discussion and justification why it was not necessary to sample Brush Creek or any of the other seasonal wetlands in the Revision 1 addition area to document vegetation characteristics or water quality. (NDAC 69-05.2-05-02) (GAW)

16. None of the woodlands sampled in the Revision 1 addition area are going to be disturbed according to the mine plan and nine of the ten samples were taken outside of the proposed revision addition area. Please clarify why the woodlands that will be disturbed were not sampled and discuss whether the sampling data actually represents the woodlands that are to be disturbed. (NDAC 69-05.2-05-02) (GAW)

Section 2.4.7.1 – Ecosite Map

17. It is very difficult to see the ecological site labels on the blue shaded polygons on the Ecosite Map, Section 2.4.7.1. For example, it is not clear what ecological sites are present on the blue shaded polygons located in Sections 9 and 10 of the Revision 1 addition area even when zoomed 400% and the shading appears different than what is depicted in the legend. Please revise so that the information is clear. (NDAC 69-05.2-05-02) (GAW)

18. The Ecosite Map, Section 2.4.7.1, includes a black colored circle symbol for ecological site reference areas but it is very difficult to see these sites on the map. Please revise so that it is apparent where the proposed reference sites are located and please clarify on the map that these are "proposed" reference area sites. (NDAC 69-05.2-05-02) (GAW)

Section 2.5 Soil Resources

19. It appears that two soil map units that total more than 300 acres (42B Williams loam, 3 to 6 percent slopes and 142B Temvik silt loam, 3 to 6 percent slopes) were inadvertently removed from Table 4 (Numerical legend, topsoil and subsoil thicknesses, and acres) in Section 2.5.2 (Soils Report) as indicated by the two vacant table rows when it was updated to reflect soil map unit acreage added with Revision No. 1. It appears that 42B soil map unit acreage is being added to the permit in the SE¼ of Section 9 with Revision No. 1 but no 142B soil map unit acreage is being added to the permit with Revision No. 1. Please correct Table 4 to accurately list all of the soil map units and their respective acreages contained in the permit. (WTG)

Section 2.7 – Fish and Wildlife Resources

20. A sentence in the third paragraph on page 6 of Section 2.7.2 states that Section 2.7.2.8 contains a listing of all federal threatened, endangered and candidate species found in ND at the time when the surveys were completed. However, Section 2.7.2.8 was updated in June of 2014 while the survey work was completed in 2012 and 2013 which means that the above statement is incorrect. Please revise as necessary to clarify. (NDAC 69-05.2-05-02) (GAW)

21. There is no discussion about the Northern Long-Eared Bat, Poweshiek Skipperling, Rufa Red Knot or Greater Sage Grouse in the Fish and Wildlife Report, Section 2.7.2, even though these species were Proposed species for listing to the Endangered Species Act according to Section 2.7.2.8 when Revision 1 was filed. Please include a discussion about whether or not the permit including the Revision 1 addition area contains suitable habitat for these species and if it is otherwise likely any of these species may be present in the permit area. (NDAC 69-05.2-09-17) (GAW)

22. Please update the Threatened and Endangered Species subsection of Section 2.7.3, Mining Impacts, to clarify if mining will potentially affect the Northern Long-Eared Bat, Poweshiek Skipperling, Rufa Red Knot or Greater Sage Grouse or their habitat in the permit and adjacent area. The first sentence reasons that activities are not likely to jeopardize threatened or endangered species since none were

observed and that none are likely to be present based on habitat preference. However, this permit is in the range of some of the species listed above as well as the whooping crane, and it appears that suitable stopover or other habitat for whooping cranes may be present in the permit area. Please revise this sentence to provide clarity and include species specific language commensurate with the likelihood of the species potential presence based upon available suitable habitat type. The second sentence states that the Dakota skipper is likely to be present in the permit area but the USFWS does not show this species being present in Mercer County. Please revise to thoroughly review this issue to provide clarity. (NDAC 69-05.2-09-17) (GAW)

23. Please update Section 2.7.3, Mining Impacts, to clarify the following: (GAW)
    a. The beginning of a sentence in the first paragraph states that "wildlife will be lost"..... Please clarify if this means "taking" of any threatened, endangered or candidate or species protected by the Migratory Bird Treaty Act.
    b. A sentence in the second paragraph states that "Wildlife species that use these habitats are still considered abundant".... Certainly all wildlife species that use these habitats are not considered abundant. Please revise to provide clarity.
    c. The first sentence of the second paragraph on page 2 states that "Except for the Sprague's pipit, mining will not affect any known federally listed threatened, endangered, or candidate species.... Please elaborate to justify this statement with regard to the Northern Long-Eared Bat.
    d. Please revise the Voluntary Plantings subsection to include a discussion about mitigating the temporary loss of woodlands that will be disturbed by long-term mining and associated disturbance features, such as haul roads and water management features.
    e. Two sentences in the Habitat Avoidance subsection states the "Ponds and stockpiles are located close to coal removal". However, the pit layout and facilities map shows a number of ponds, such as P30-02, P30-03 and P31-01, are located at least ¼ mile from coal removal. Please review and revise the permit as necessary so that these statements are not misleading. Consideration should be given to moving ponds P30-02 and P30-03 to the west side of the haul road as is being done with the stockpiles and perhaps the pond locations should be changed if federal coal is no longer planning to be mined in Section 30.
    f. A sentence in the Habitat Avoidance subsection incorrectly states that Coyote Creek is the only intermittent or perennial stream in the permit area. Please revise to address Brush Creek and other intermittent streams.

24. Please update Section 2.7.3, Mining Impacts, to include a section that discusses how mining related activities will be conducted to ensure compliance with the Migratory Bird Treaty Act (MBTA). (GAW)

25. Please update the Threatened and Endangered Species subsection at the top of page 3 of Section 2.7.4, Monitoring Plan, to address recent changes to the threatened and endangered species list. The first sentence incorrectly states that there are only five endangered and two threatened species, and that the Dakota skipper is a Proposed Species. Please also revise this subsection to discuss whether or not the permit, the revision addition area and area adjacent the permit area contains habitat suitable for the Northern Long-Eared Bat and discuss if surveys will be conducted for this listed species. (NDAC 69-05.2-09-17) (GAW)

26. Please revise the Northern Long-Eared Bat narrative at the top of Page 4 of Section 2.7.4, Monitoring Plan, to discuss that a species specific protection and enhancement plan will be developed and included in the permit. We suggest using the Northern Long-Eared Bat Interim Conference and Planning Guidance document dated January 6, 2014, or other guidance recommended by the USFWS.

The protection and enhancement plan should provide an assessment about whether or not the permit and adjacent area contains habitat suitable for the Northern Long-Eared Bat and include plans for conducting surveys if recommended by the USFWS. The plan should also discuss the likelihood of species presence, whether any suitable habitat is going to be impacted that could result in a "taking" of the species and the protective measures that will be implemented to reduce the chance of a "taking" and destruction or adverse modification of suitable habitat. Verbal and written communications with state and federal wildlife agencies regarding this issue should be documented and included in the permit. (NDAC 69-05.2-09-17) (GAW)

27. Table 1 on page 4 of Section 2.7.4 contains a Threatened and Endangered species listing that needs to be updated. Please update as necessary. (NDAC 69-05.2-05-02) (GAW)

Section 2.8 – Cultural Resources

28. Section 2.8.4, Site Descriptions (for eligible sites) includes site 32ME2526 inferring that it is eligible for listing; however, Section 2.8.2 and the December 17, 2014 letter from SHPO in Section 2.8.5 indicate that site 32ME2526 is not eligible for listing. Please correct this inconsistency. (DKM)

Section 3.1.1 – Operations/Reclamation Narrative

29. Section 2.2.4, Surface Water Hydrologic Reclamation Plan and Probable Hydrologic Consequences, indicates that the haulroad corridor will be reclaimed to the premine topography; however, this is not discussed in the operations/reclamation sections other than no changes are shown on the postmine topography map. In the second full paragraph on page 2 of Section 3.2.8, it states that the "Reclamation of the haulroad will progress with the cut/fill balance reclaiming the haulroad to the post mining topography" implying that haulroad may be reclaimed to some other postmine topography. Please clarify. (DKM)

30. The last paragraph in Section 3.1.1 states that Coyote Creek is requesting authorization from the PSC, State Water Commission and Department of Health to conduct operation within 100 feet of Coyote Creek but a Brush Creek crossing is planned and operations will affect an unnamed intermittent stream in SW1/4 of Section 10. Please revise the request to include all intermittent and perennial stream crossing activities. (NDAC 69-05.2-16-20) (GAW)

31. NDAC 69-05.2-24-03(4) prohibits fords of perennial or intermittent streams by primary haulroads unless specifically approved by the Commission as temporary routes during periods of construction. Please clarify if fords of perennial or intermittent streams are planned during construction of haulroads. (GAW)

Section 3.1.1.1 – Soils Handling

32. Revised narrative on Page 2 of Section 3.1.1.1 indicates that roads constructed with subsoil will be compacted during construction (Section 3.2.8 indicates subsoil will be compacted up to 25% by volume) and that normal handling (loading and respread) will relieve the compaction. Considering the degree of compaction in the subsoil fills, it is very unlikely that normal handling operations will adequately relieve the subsoil compaction. Please address all measures that will be taken to alleviate compaction of the subsoil used in the haulroad construction. (DKM)

Section 3.1.1.6 – Landowner and Public Access

33. Please update Section 3.1.1.6, Landowner and Public Access, to clarify how landowners will access their undisturbed property that is cut off by the proposed haulroad located in the Revision 1 addition area. For example, the haul road will bisect the NE1/4 of Section 18 in such a manner that the southeast portion of the NE1/4 will be isolated and perhaps inaccessible from the remainder of the tract. It also appears that the prairie trail Casey Voight used to access his property located in section 19 and 30 from his farmstead will be blocked by a haulroad and it is not clear if Winkler's property located in the S1/2N1/2 in Section 7 will be accessible if the section line is closed. Please review and revise to provide clarity in each of these instances. (GAW)

Section 3.1.1.8 – Reclamation Costs

34. Please update the General Location Map and Topsoil and Subsoil Disturbance Area Maps. (Sections 3.1.1.8.6, 3.1.1.8.7 and 3.1.1.8.8) to account for changes discussed during an April 9, 2015 meeting. This includes a change in the location of the haulroad in Section 19, SPGM stockpile locations in Sections 19 and 30 and additional disturbance for parking south of the shop/office facilities area. (NDAC 69-05.2-09) (GAW)

35. According to the narrative in Section 3.1.1.8, the acreage being added with Revision 1 will be included in the first bond increment and this should be depicted on the maps. Please remove the red line between the NW1/4 of Section 19 and the SW1/4 of Section 18, T143N, R88W on the maps in Sections 3.1.1.8.6, 3.1.1.8.7, and 3.1.1.8.8. Also, it seems a second bond increment needs to be described as a result of the Revision No. 1 addition. (ZAB)

36. The breaker boxes/electrical substation pads in the SW1/4 of Section 24 and the SW1/4 of Section 25, T143N, R89W and in the NW1/4 of Section 1, T142N, R89W should be depicted as topsoil disturbance areas on the Topsoil Disturbance Map 3.1.1.8.7 because topsoil was or will be removed from these areas. (ZAB)

37. On the General Location Map and Topsoil and Subsoil Disturbance Area Maps (Sections 3.1.1.8.6, 3.1.1.8.7 and 3.1.1.8.8), please identify in the legend the red dashed line located in the SW1/4 of Section 24 and in several sections west of County Road 13 that appears to be the associated disturbance boundary. (ZAB)

38. In Section 3.1.1.8 - Reclamation Costs - Assumptions and Conditions, Item 2d, an assumption is made that overburden will be compacted by 10%. Please explain this assumption as overburden is typically swelled 10 to 15%. (BAJ)

39. In Section 3.1.1.8 - Reclamation Costs - Assumptions and Conditions, Item 3c, an assumption is made that the subsoil respread thicknesses for the Haulroad North of County Road 12 will be reduced by 10% to account for compaction. The Reclamation Division believes that the subsoil respread thicknesses or volumes should not be reduced, and that this assumption should be removed from the narrative. (BAJ)

40. In Section 3.1.1.8.2 – Overburden Equipment Hours, Haulroad North of County Road 12 - Road surfacing is calculated for an 80 foot road and 12 inches thick. This should be calculated for an 84 foot design width. Please correct. (BAJ)

Section 3.1.3 – Pit Layout and Facilities Map

41. On April 9th Coyote Creek personnel indicated that the location of the haulroad corridor in Section 19 may be altered to accommodate the crossing of County Road 12. Please review and update if necessary. (NDAC 69-05.2-09) (GAW)

42. Please update the Pit Layout and Facilities Map, Section 3.1.3, to show the approved relocation areas for SPGM stockpiles now depicted east of the north-south haulroad in Section 30 to recently approved areas west of the haulroad to accommodate a surface owner's request. Other updates to SPGM stockpile locations around the shop and office complex should also be made at this time. [NDAC 69-05.2-09] (BEB/GAW)

43. Please update the Pit Layout and Facilities Map to extend the contractor parking lot at the shop/office complex further to the east as previously approved and now constructed. (BEB)

44. Please depict the location of topsoil stockpile TS-5 that is located in the SW1/4 of Section 24 on the Pit Layout and Facilities Map, Section 3.1.3. (BEB)

45. Please depict on the Pit Layout and Facilities Map the location of the proposed multi-plate haulroad crossing of County Road 12 between Sections 18 and 19, T143N, R88W, update the narrative in Section 3.2.8 and provide the design details of the structure in that section of the permit. (BEB)

46. Section 3.1.3, Pit Layout and Facilities Map, and Section 3.3.2, Surface Water Management Plan map, depict culverts for the Coyote Creek crossings that are not consistent with the narrative and design sheets in Section 3.2.1, Transportation Facilities. The PLFM and the SWMP depict a 60" culvert for the shop-access Coyote Creek crossing at station 6+00 and a 48" culvert for the north-south haul road crossing at station 40+00 while the Transportation narrative and map discuss/depict 36" proposed culverts for both stations. Please update the maps in Sections 3.1, 3.2, and 3.3 to depict the culvert size and location that was installed at the shop-access haul road Coyote Creek crossing and to depict a consistent culvert size for the north-south haul road crossing. In addition, if the location or orientation of the future box culverts is going to be modified, please address that at this time as well. (ZAB/BEB)

Section 3.1.4 – Extended Mining Plan Map

47. If the federal coal in the W1/2 of Section 30 will not be mined, then please revise Section 3.1.4, Extended Mining Plan Map. (ZAB)

Section 3.2.1 – Transportation Facilities Narrative

48. Based upon a comparison of information provided in the Geology and Transportation sections of the permit, it appears likely that a couple of thin lignite seams will be encountered during excavation of portions of the haulroad(s). Please update the Transportation Facilities Narrative in Section 3.2.1 to describe Coyote Creek's plan to utilize, dispose, or otherwise manage coal seams that will likely be encountered and/or excavated in areas of deep cut during construction of the haulroads. (BEB)

49. As described in a previous ground water technical item, it appears possible that thin, unminable coal seams may be encountered during haulroad construction that may produce significant volumes of ground water when excavated, in particular because any water-bearing coal seams encountered along

the haulroad corridor will likely be located within a discharge zone. Please address how CCMC plans to handle ground water management in the transportation facilities narrative in Section 3.2.1 should this situation arise. (BEB)

Section 3.2.4 – North-South Haulroad

50. Please revise Section 3.2.4.1, Sheet 1 of 5, with County Road 12 Crossing plans approved by Mercer County. (NDAC 69-05.2-24) (GAW)

Section 3.2.5 – Haulroad Box Culvert - Diversion Channel

51. The narrative provided in Section 3.2.5, Haulroad Box Culvert – Diversion Channel, describes the use of rip-rap for erosion control at culvert inlets and outlet channels but the design plans provided in Sections 3.2.5.1, 3.2.5.2 and 3.2.5.3 depict the use of cable concrete. Please review and revise as appropriate. (RLK)

Section 3.2.8 – Haulroad North of County Road 12

52. Please revise the narrative in Section 3.2.8, Haul Road North of County Road 12, if plans have changed for an at-grade crossing. (NDAC 69-05.2-24-01(3)) (GAW)

53. As required by NDAC 69-05.2-09-06(1)(h), please expand the narrative for haulroad fill subsoil stockpile recovery to reclaim the Haulroad North of County Road 12 on page 1 of Section 3.2.8 to address compliance with NDAC 69-05.2-15-04(4)(b). Among the Coyote Creek Mine haulroads, only the Haulroad North of County Road 12 will be constructed in part with subsoil. A loss of 392 cubic yards of subsoil from a six inch subsoil stockpile-overburden fill comingling interface is projected on haulroad profile drawings; however, given the large equipment that will be used to emplace and recover the haulroad fill subsoil stockpiles, a comingling interface loss of several feet or more may be more realistic. Additional subsoil loss would also be expected when haulroad surfacing material is removed during haulroad reclamation. Please expand the Section 3.2.8 narrative, and update plan and profile drawings as well, to include projected subsoil yardage loss from subsoil-overburden comingling and surfacing material removal. Please also state that projected haulroad subsoil losses for haulroad reclamation will be offset with subsoil or other suitable strata salvaged and stockpiled elsewhere on the mine to be described in soil removal plans. Please also state that as-built surveys of the haulroad fill subsoil stockpiles will be added to the permit by a future revision. (WTG)

Section 3.3 – Surface Water Management

54. Please revise the narrative discussing plans to control runoff from the haulroad north of County Road 12 if these plans have changed as discussed during an April 9th meeting. During this meeting it was mentioned that down-pipes may be used to transport runoff from the haulroad ditches along the larger drainage ways along the haulroad corridor. (NDAC 69-05.2-16-08) (GAW)

55. On April 9th, Coyote Creek personnel stated that they were no longer planning to mine the federal coal in Section 30 and suggested that mine plan changes may be made for the initial pit opening in Section 25. Given these changes and the request and approval of moving the SPGM stockpiles located on the east side of the haul road to the west side of the haul road in Section 30, to accommodate the landowner's wishes, please re-evaluate the approved locations of sediment ponds

P30-02 and P30-03, and consider re-locating the ponds as close to the coal removal boundary as possible to minimize mining related impacts. (GAW)

56. Ponds P10-01 and P10-02 have been designed without principal or emergency spillways as required by NDAC 69-05.2-16-09.(9). For protection of the two structures, an appropriate combination of principal and emergency spillways or a single spillway must be provided to safely discharge the runoff from the design precipitation event. (BAJ)

Section 4.1 – Post Mining Land Use Plans

57. Please update Section 4.1.1, Narrative, to discuss reclaiming the Brush Creek and the two Coyote Creek crossings for compliance with NDAC 69-05.2-16-07(4). (GAW)

58. If any additional Landowner Post-Mining Preference Statements have been received then please place those signed statements in Section 4.1.4 of the permit. (BEB)

59. The Surface Water Features Map in Section 2.2.2 depicts premine dugout DWR-NW31-1-143-88 in the NW1/4 of Section 31 and the Pit Layout and Facilities Map shows sediment pond P31-01 will be situated in this same location. However, the Post-Mining Topography and Land Use Map in Section 4.1.2, depicts this same area/feature as Undisturbed Developed Water Resource (stockpond) post-mining. Since it appears this pre-mine dugout location will be used during mining as a sediment pond and reclaimed postmine as a dugout, it would seem reasonable that the Post-Mining Land Use Map should be revised to reflect this, and that Surface Water Management Plan narrative in Section 3.3.1 also be revised because it states that all sediment ponds proposed for this permit area are temporary impoundments. Please review and update if necessary. If the embankment of sediment pond P31-01 will be located upstream of the existing dugout and/or this pre-mine feature will be unaffected by mining operations, then please disregard this item. (BEB)

60. The Post-Mining Topography and Land Use Map, Section 4.1.2, and the Pre- and Post-Mining Land Use Comparison Table, Section 4.1.3, show that native grassland is going to be reclaimed in the NE1/4 of Section 18 in areas that are presently dominated with crested wheatgrass and smooth bromegrass. Reclaiming a narrow strip of native grassland through an area that is dominated with introduced species will result in a tract of land that is not manageable or practical. Please review and revise as necessary to create a tract of reclaimed land that does not have management issues and is consistent with the adjacent land use. (NDAC 69-05.2-09-13) (GAW)

Section 4.2 – Revegetation Procedures, Establishment, and Management

61. Please update Section 4.2.1, Narrative, to more fully address how non-native invasive grass species will be kept from invading reclaimed native grassland and Coyote Creek's control plans when invasive species become established on reclaimed native grassland. This discussion should also clarify control efforts in instances where invasive introduced species are present on topsoil that is to be directly respread. (NDAC 69-05.2-09-13(1)) (GAW)

62. Please clarify if the seed mixture that will be used for topsoil and subsoil stockpiles, diversions, pond slopes, etc. will also be used to stabilize haul road side slopes and ditches, and consider revising to include only a mixture of native species. Although pubescent wheatgrass is not known to invade undisturbed native grassland, it may be prudent to not seed this non-native species on topsoil piles

that are located on undisturbed native grassland and that are to be respread on areas to be reclaimed to native grassland. (NDAC 69-05.2-09-11) (GAW)

Section 4.3 – Vegetation Assessment and Success Standards

63. The table on page 2 of Section 4.3.1, Vegetation Success Standards, suggests that ecological sites sampled for baseline range condition might be utilized as native grassland reference areas. However, the sandy sites located in Section 23 and the loamy site located in Section 12 are dominated with Kentucky bluegrass. Please revise to propose native grassland reference areas sites that are not dominated with Kentucky bluegrass or other invasive species, and that more accurately represent the ecological condition of the sites according to the baseline data. (NDAC 69-05.2-08-08(2)) (GAW)

64. The table on page 2 of Section 4.3.1, Vegetation Success Standards, includes a thin claypan site located in Section 3, but there is no rangeland similarity index sheet for this thin claypan in Section 2.4.7.4. Please review and revise as necessary. (NDAC 69-05.2-09-13) (GAW)

Section 4.4 – Post-Mining Wetlands

65. A sentence in the "Reclamation of Creek Crossings" narrative on page 3 of Section 4.4.1, Post-Mine Wetland Narrative, states that the portion of pre-mining stream channel that was used in low flow scenarios will be restored to its natural meandering shape… The low flow channel is no longer going to be constructed in the original channel as originally proposed. Please revise this statement to provide clarity. (NDAC 69-05.2-09-13) (GAW)

As of May 7, 49 days remain of the Commission's 120 day review period specified in NDAC 69-5.2-05-01(3). If you have any questions, please contact this office.

Sincerely,

James R. Deutsch
Director
Reclamation Division

cc: Mercer County Auditor

Minedata/CoyoteCreek/Permits/NACC-1302/Revisions/No.1/Rev1_Tech_rvw_ltr_5-7-15