

PUBLIC SERVICE COMMISSION
Reclamation Division

Memorandum

TO: Commissioners Fedorchak, Christmann and Kalk
Darrell Nitschke, Executive Secretary
Illona Jeffcoat-Sacco, General Counsel

FROM: Jim  Deutsch, Dean  Moos and Randy  Kowalski

DATE: June 16, 2015

SUBJECT: Application for Revision No. 1 to Permit No. NACC-1302, Case No. RC-14-846

On December 17, 2014, Coyote Creek Mining Company, L.L.C. filed the application for Revision No. 1 to Permit NACC-1302 to add 352.105 acres to this permit for the Coyote Creek Mine. The added acreage is located in portions of Sections 7, 8, 9, 10, and 18, T143N, R88W. The permit application provides the required baseline information and the operation and reclamation plans for additional area. The Reclamation Division has completed its review of this revision application and the Hearing Officer has issued a Recommended Order for the Informal Conference that was held on this application. We respectfully recommend that the Commission adopt the Recommended Informal Conference Order and conditionally approve Revision No. 1.

The area being added to the permit extends to the north and east of the existing permit area. The addition will be used to construct a haul road to transport coal from the existing permit area to the Coyote Power Station. A truck dump and coal handling facility will be located at the east side of the area being added in the SE¼ of Section 10, just west of the power plant. The current permit area and revision area are shown in attached Figure 1.

No coal mining is proposed in the revision area. The planned haul road and other support facilities will be reclaimed when mining is completed. The revision includes design and reclamation plans for the facilities to be built on the area being added and updates other sections of the permit as appropriate. The applicant plans to have these support facilities operational in time to begin coal delivery in May of 2016. The mine production is projected to be 1.7 million tons in 2016 and 2.5 million tons per year thereafter. Coal removal and haul road operation is expected to continue until 2040.

The Revision 1 addition area contains 320.3 acres of native grassland, 21.9 acres of tame pastureland, 6.1 acres of woodland, 2.9 acres wetland/creek and 1.0 acre of roadway. The postmining land use acreages in the added area will be the same as the premine conditions. The proposed postmining topography and slopes will also be the same as premine conditions.

The proposed mining activities should not adversely affect the continued existence of threatened or endangered species or result in the destruction or adverse modification of their critical habitats. This includes the Northern Long Eared Bat, a recently listed threatened species, which may occasionally use some habitat in the area being added with this revision. Some woodlands

in the added area contain trees that could be suitable summer and roost habitat for this bat species. However, the U.S. Fish and Wildlife Service (USFWS) has not yet issued specific protection measures for the Northern Long-Eared Bat. Therefore a condition is being attached to the approval of revision to prevent Coyote Creek Mining Company from disturbing mixed deciduous woodlands before August 1, 2015 unless approved by USFWS, or until the USFWS issues specific protection measures for the Northern Long-Eared Bat indicating it would be acceptable to disturb these woodlands prior to that date.

The area being added to the permit contains federal coal tracts that have not been leased. Coyote Creek Mining Company has obtained the appropriate leases to disturb the surface of the federal coal tracts to the extent necessary to build mine related facilities. Coyote Creek Mining Company does not intend to mine coal on these federal coal tracts. The Bureau of Land Management determined that there would not be any substantial or adverse effects to the federal coal mineral estate in Sections 10 and 18, T143N, R88W, by activities proposed by this revision.

Coyote Creek Mining Company obtained approval from Mercer County to conduct operations within 100 feet of the outside right-of-way of County Road 12 and to build a grade separation structure that will route mine traffic under County Road 12. Coyote Creek Mining Company has also obtained approval to close the right-of-way of several section lines in the area being added to facilitate construction of the proposed haul road and mining-related facilities. Copies of the Mercer County approval documents for the right-of-way closures in the area being added are included in this revision.

Coyote Creek Mining Company published the permit revision notice in the Hazen Star, Beulah Beacon and Bismarck Tribune newspapers in March and April of 2015. The last publication date was April 9, 2015. We notified the appropriate agencies, affected landowners, and advisory committee members of the revision application. The Commission received requests for an Informal Conference on this application from the Dakota Resource Council and Casey Voigt with concerns about air quality and fugitive dust emissions from the proposed haul road and coal handling facilities. The informal conference was conducted on June 2, 2015 and the Hearing Officer issued the Informal Conference Findings and Recommended Order on June 15, 2015 ruling that the air quality issues raised during the informal conference are outside of the jurisdiction of the Commission and that the application for Revision No. 1 to Permit NACC-1302 satisfies all permit revision standards under the reclamation law and rules.

Coyote Creek Mining Company has filed a stipulation of surety bond increase to increase the bond area and amount of the bond for Increment No. 1. The bond area was increased to include the area being added with Revision No. 1 and some land already in the permit. The Reclamation Division determined that a bond amount of \$7,371,459 is sufficient at this time to cover the required reclamation, restoration, and abatement work for the proposed disturbances in the first bond increment. However, the stipulation of surety bond increase filed by Coyote Creek increases the bond amount to \$8,000,000.00.

Also attached for your consideration at the June 17th Commission meeting is an Order to adopt the Hearing Officer's Recommend Findings and Ruling, proposed motion, revision approval form that includes the required findings, the condition and newspaper notice that we will publish.

Attachments

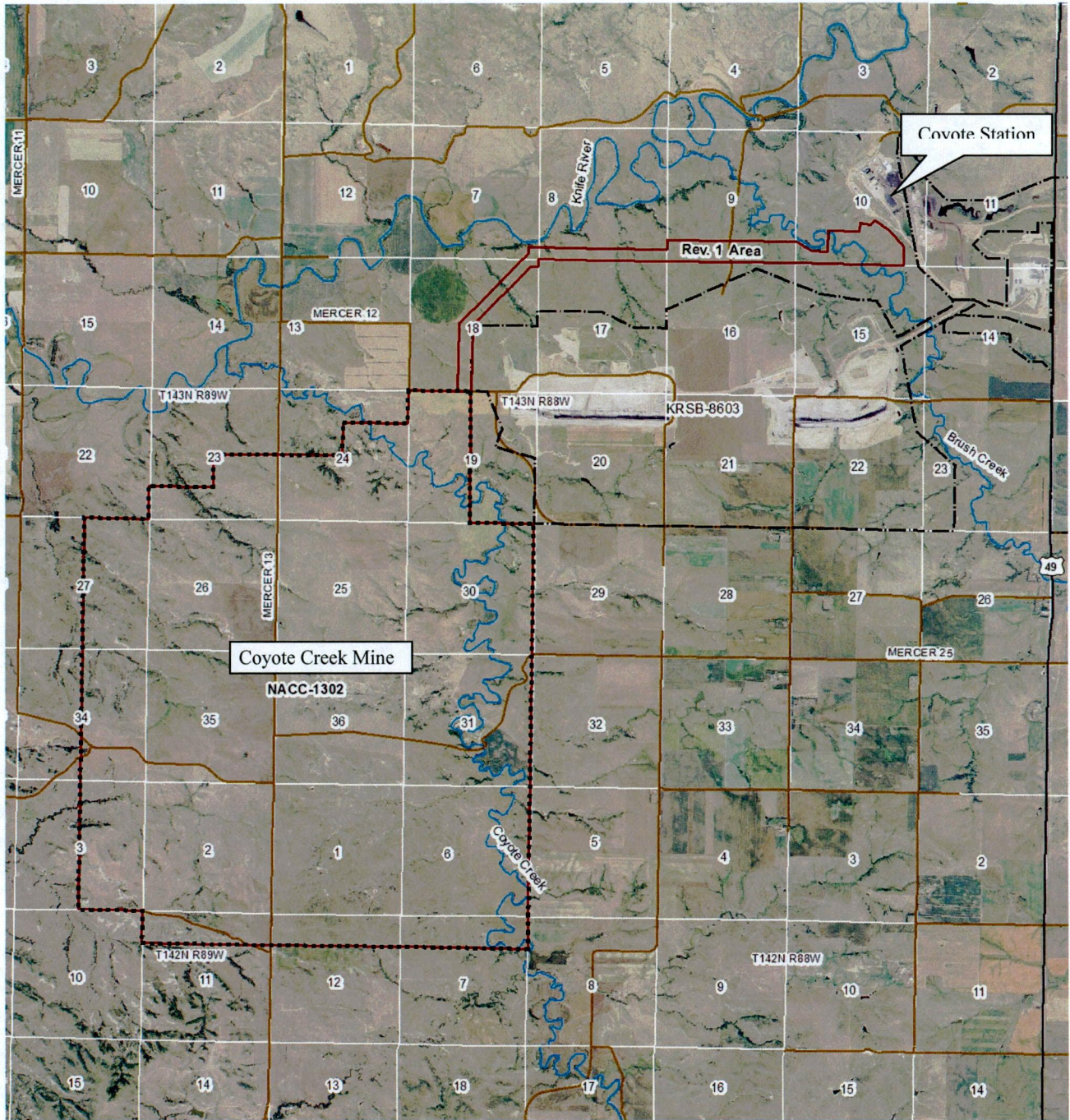


Figure 1. Coyote Creek Mining Company, L.L.C. Revision No. 1 to Permit No. NACC-1302