

**NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Coyote Creek Mining Company, L.L.C.**  
**Renewal No. 1, Permit NACC-1302**  
**Revision No. 9, Permit NACC-1302**  
**Applications**

**Case No. RC-19-189**  
**Case No. RC-19-190**

**MOTION TO CONTINUE FORMAL HEARING**

**December 6, 2019**

Casey and Julie Voigt, by and through the undersigned counsel, hereby move to continue the formal hearing in the above-noted matter, currently scheduled for Monday, December 16, 2019. The Voigts request this matter be rescheduled for December 19, 2019, or December 20, 2019, or at some later date if those dates are unavailable. The undersigned counsel for the Voigts are in trial in LaMoure County District Court from Monday, December 9 through Thursday, December 12, 2019 and are in need of additional time to adequately prepare for the formal hearing. This Motion is supported by the Declaration of Derrick Braaten.

Coyote Creek Mine (“CCM”) encompasses much of the Voigts’ property, home, and ranch. The Voigts continue to operate a ranch directly upon and adjacent to CCM, almost entirely within the geographic limits of mine permit NACC-1302. The Public Service Commission issued mine permit NACC-1302 to Coyote Creek Mining Company, LLC (CCMC) on October 22, 2014.

On May 20, 2019, CCMC requested both a five-year renewal and a significant revision of NACC-1302. The Voigts objected to both the renewal and revision on August 26, 2019, and an informal conference was held on October 8, 2019. The presiding judicial officer, Judge Timothy Dawson, issued Recommended Findings and Ruling and Recommended Order on October 21, 2019. The Public Service Commission adopted Judge Dawson’s findings—with an added

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condition regarding dust control—and renewed the permit on October 21, 2019. The Voigts requested a formal hearing on November 20, 2019, and notice of the formal hearing was issued on November 21, 2019.

Under North Dakota law, a hearing “must be held within thirty (30) days of a request for formal hearing.” N.D.C.C. § 38-14.1-30(3)(a). As such, North Dakota law requires this matter be heard on or before Friday, December 20, 2019. The Voigts are requesting this matter be rescheduled from December 16, 2019, to either December 19, 2019, or December 20, 2019, due to scheduling conflicts that make it impossible for the Voigts’ counsel to adequately prepare for the formal hearing. This would reduce the prejudice to the Voigts while still complying with North Dakota law.

Counsel for the Voigts are scheduled to begin a four-day jury trial on Monday, December 9, 2019, in LaMoure County District Court. *See Lamp v. Edwards*, 23-2018-CV-00017. Notice of trial in *Lamp* was issued on August 20, 2018. *See Id.* at Index # 26. Jury trials are unpredictable by nature; however, counsel believes that the *Lamp* trial will take at least four full days. Jury deliberations could extend trial beyond the four days currently allotted. Additionally, counsel will be out of town for the duration of the *Lamp* trial, given its venue in LaMoure, North Dakota. At best, counsel for the Voigts will have Friday, December 13, Saturday, December 14, and Sunday, December 15, for preparation in this matter. This simply is not enough time to adequately protect the Voigts’ interests before the Public Service Commission.

Counsel for the Voigts were unable to avoid this scheduling conflict, given the fact that the deadlines in this matter were entirely beyond the control of the Voigts. CCMC’s application for renewal was filed many months after trial was scheduled in *Lamp*. The Voigts could not have predicted upon receipt of notice of CCMC’s request for renewal of NACC 1302 that it would

follow nearly back-to-back with the trial in *Lamp*, which has been on the District Court's calendar for nineteen months.

Under North Dakota law, the Public Service Commission's procedures and rules must afford the Voigts a fair hearing. N.D.C.C. § 28-32-46(4). To deny the Voigts a continuance based upon the rules and procedure of the administrative agency and require a hearing within thirty (30) days is to deny them their right to a fair hearing. Without a continuance, the Voigts and their counsel will require new counsel, attorney Carey Goetz of Braaten Law Firm, to come up to speed on this matter within a week's time. The issues in this matter are complex and the procedural history is lengthy, dating back to 2014. Both Attorney Braaten and Attorney England have been working with the Voigts since CCM's application for the initial mine permit and have been involved in a myriad of issues before the Public Service Commission and between the Voigts and CCMC. It is simply unfair to ask the Voigts to rely on new counsel, who only joined Braaten Law Firm in October of this year, to shoulder the task of preparing for the formal hearing.

The Voigts are not seeking an unreasonable amount of time to prepare for the formal hearing. They are simply requesting this matter be continued for three or four days to allow for adequate preparation. The Voigts respectfully request this matter be rescheduled until either December 19, 2019, or December 20, 2019. If it is not possible or the Public Service Commission to hear this matter within that time frame, the Voigts are requesting the matter be rescheduled at the soonest available date thereafter.

Dated this 6<sup>th</sup> day of December, 2019.

**BRAATEN LAW FIRM**

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