



# Public Service Commission

## State of North Dakota

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December 11, 2019

Casey Voigt  
PO Box 454  
Beulah, ND 58523

Dear Mr. Voigt:

This letter is in follow-up to the November 21, 2019 joint inspection (inspection report attached) in which you expressed frustration with the access Coyote Creek Mining Company (CCMC) has provided you for lands owned or leased by you and permitted by CCMC.

The Reclamation Division has re-reviewed Surface Coal Mining Permit NACC-1302, Surface Coal Mining and Reclamation Laws and Rules and the Surface Owner Protection Act to ensure compliance with all protections afforded to surface owners by rule and law.

North Dakota Century Code (NDCC) 38-14.1-14(1)(k) requires a surface coal mining permit application to include a copy of the document(s) that provides the permit applicant the legal right to enter and commence surface coal mining operations on property in a permit area. The Surface Owner Protection Act (NDCC 38-18) states that the PSC may not issue a permit to surface mine land unless the permit application is accompanied by statements of consent, executed by each surface owner whose land is included within the permit area, to have surface mining conducted upon the surface owners land.

It further states that a certified copy of a mineral lease executed by the surface owner in favor of the mineral developer satisfies this requirement. Certified right of entry and consent documents (Surface and Coal Lease Agreement No. 02537) for your property are included in Section 1.5.1 of Surface Coal Mining Permit NACC-1302. The Surface Owner Protection Act also requires that a mining company provide written notification to landowners of the type of land disturbance that can be expected prior to permit issuance. Compliance with this requirement is in Section 1.4 of Permit NACC-1302. CCMC has complied with the surface owner consent and notification requirement.

The surface and coal lease agreement in Section 1.5 of Permit NACC-1302 that you and Julie signed give CCMC right of entry to your property. Access to your property while trying to maintain your ranching operation is a lease contractual issue between you and CCMC. Compliance with the terms and conditions of your lease agreement is outside the jurisdiction of the Reclamation Division.

NDCC 38-14.1-07(4) prohibits mining operations within 100 feet of the outside right of way of any public road or section line right of way. North Dakota Administrative Code (NDAC) 69-05.2 sets forth procedures to allow mining within 100 feet and through a county road or section line right-of-way and the county road authority, Mercer County, has authorized mining through roads and section lines affected by mining to date. The Mercer County road closure and section line right of way set back waiver documents

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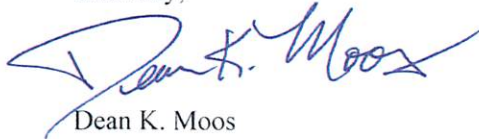
are in Section 1.2.8 of Permit NACC-1302. Section 1.2.6.1 of the permit includes a map showing that CCMC intends to request Mercer County approval to temporary close additional section line right-of-ways at the south end of the mine over the next 5 years.

Revision No. 9 to Permit NACC-1302 advances mining in Section 6 several years sooner than previously approved and CCMC will need Mercer County approval prior to mining within 100 feet of section lines adjacent the south and west sides of Section 6. NDAC 69-05.2-04-01.1 requires that the interest of the public and affected landowners be protected prior to authorizing temporary section line road closure.

Finding No. 7 to Permit NACC-1302 and Special Condition No. 2 to the original permit requires CCMC to provide the Commission with copies of the road authority's approval documents within 30 days of the approval date and written findings made by the road authority will remain in effect. NDAC 69-05.2-04-01.3 requires the Commission to make a written finding on protecting the interests of the public and affected landowners if this is not included in the road authority's approval process. Mercer County's road closure resolutions for the Coyote Creek mine fulfill the requirements of NDAC 69-05.2-04-01.3 and the resolutions include language about protecting the interest of the public and affected landowners.

If you have any questions, please contact this office.

Sincerely,



Dean K. Moos  
Director  
Reclamation Division

cc: Jessica Unruh

Attachment: November 21, 2019 Inspection Report