



# Public Service Commission

## State of North Dakota

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August 9, 2019

Ms. Jessica Unruh  
Environmental Manager  
Coyote Creek Mining Company  
6502 17th St. SW  
Zap, ND 58580

Dear Ms. Unruh:

The Reclamation Division has conducted a technical review of the application for Revision No. 9 to Surface Coal Mining Permit NACC-1302 for the Coyote Creek Mine. The revision application, filed on May 20, 2019, contains updates for the next permit term and responses to our February 13, 2019 pre-renewal review letter. The following items must be adequately addressed prior to Commission approval of the revision and corresponding Renewal No. 1. Please respond to this letter promptly to ensure Commission action prior to the scheduled permit expiration.

### **Section 1.1 – Introductory Information**

1. Follow-up to pre-renewal review Item No. 1: The bookmark for Revision 5 in the Application Forms provided in Section 1.1.1 still does not work. Please review and repair the bookmark. (BEB)

### **Section 1.2.6 – Relation to Mining – Prohibited Areas and Areas Designated Unsuitable**

2. The Proposed Section Line and Road Closures and Setback Waivers Map, Section 1.2.6.1, depicts the section line between the SE1/4 of Section 30 and the SW1/4 of Section 29 of T143N, R88W as being closed, but relocated County Road No. 12 has been constructed within portions of this right-of-way. Please review and revise if the county reopened this right-of-way. (GAW)

### **Section 1.3 – Business Entity/Compliance Information**

3. Follow-up to pre-renewal review Item No. 6: All references to the North Dakota Department of Health in Section 1.3.5, Other Licenses and Permits, should be changed to the North Dakota Department of Environmental Quality. (BEB)
4. Follow-up to pre-renewal review Item No. 6: The Army Corps of Engineer's Regional General Permit expired in 2018 and the individual permit should have been issued. Please update the information on page 2 of Section 1.3.5. (PJR)

**Section 2.2.4 – Surface Water Hydrologic Reclamation Plan and Probable Hydrologic Consequences**

5. Please update the Post-Mine Ephemeral Drainage Map, Section 2.2.4.4, to account for the topographic changes proposed with Revision No. 9. This includes watersheds, land use boundaries and pond and wetland locations. (GAW)
6. Please update the Ephemeral Drain Summary information in Section 2.2.4.5, to account for topographical and land uses changes proposed with Revision No. 9. Surface water runoff peak flow velocity in each reconstructed drainage way should not exceed 5.00 ft/s, or a value greater than was previously approved. (GAW)
7. Please update the Ephemeral Drainage Profiles, Section 2.2.4.6, to account for topographic and land use changes proposed with Revision No. 9. (GAW)

**Section 2.7 – Fish and Wildlife Resources**

8. Follow-up to pre-renewal review Item No. 15: As previously requested, please update the Protection, Enhancement and Management Plans in Section 2.7.3 to describe the BLM exclusion area in the northeastern portion of the SW1/4 of Section 24 and depict this exclusion area on an appropriate map. (GAW)
9. Follow-up to pre-renewal review Items No. 16 and 17: We strongly encourage Coyote Creek to re-evaluate all lands to be disturbed during the next term of the permit, and an adjacent area, during the summer of 2019 to determine if any areas contain potentially suitable Dakota skipper habitat using the 2018 Dakota skipper survey protocol. The 2019 Dakota skipper habitat assessment survey can be completed by an experienced range scientist, ecologist or botanist and the results of this survey should be provided prior to permit renewal. The reason for requesting this information prior to permit renewal is because the January 2019 Biological Assessment (BA) for federal coal leases identifies potentially suitable habitat on all native grassland surrounding the SW1/4 of Section 24 and the SE1/4 of Section 26 in permit NACC-1302. We suggest a meeting between our offices to discuss this matter further. (GAW)
10. Follow-up to pre-renewal review Item No. 19: As previously requested, please revise Table 1 of Section 2.7.4, Federal Threatened, Endangered and Candidate Species in North Dakota, so that the information is current. The Rusty Patched Bumblebee is listed as an endangered species and its range includes North Dakota so this species must be added to the North Dakota list. CCMC is also proposing to remove the Black footed ferret and gray wolf from Table 1, but these species are still listed as endangered species in North Dakota. (PJR/GAW)

**Section 2.8 – Cultural Resources**

11. Based on recent correspondence between Coyote Creek Mine and the Reclamation Division regarding National Register of Historic Places (NRHP) eligible sites and completed mitigation efforts, please update the Cultural Resource Summary Table in Section 2.8.2 with current information. Updates to the cultural resources location map in Section 2.8.3 and any other information or correspondence updates in Section 2.8 should be made at this time. (BEB)

### **Section 3.1 – Operations Plans**

12. Most of the many hyperlinks provided between and including Section 3.1.1 through Section 3.1.1.6 do not work. Please activate these links so they connect to their intended sources. (BEB)

### **Section 3.1.1 – Soils Handling Narrative**

13. Please update Section 3.1.1.1 to include a commitment in the permit to document the actual measures used to minimize or alleviate soil compaction at the Coyote Creek Mine including areas respread to date. In addition, Section 3.1.1.1 states that vegetation production is to be measured within 3 years after revegetation but if seedings are delayed it is not clear how CCMC intends to promptly comply with the Commission's Order (Revision No. 2). (GAW)

### **Section 3.1.1.2 – Mining Methods Narrative**

14. Please update the Fugitive Dust Control Plan narrative that begins on page four of Section 3.1.1.2 to accurately describe all measures and methods that have been used and that will continue to be used to control fugitive dust during the next term of the permit. Details regarding the use of calcium chloride on haul roads as outlined in an email request dated January 16, 2017 should be included in the permit, and wind erosion control measures described in an email dated December 4, 2015 should be described in the permit. The fugitive dust plan narrative should clearly state that CCMC will continually use the best technology currently available to control dust during the next term of the permit. (GAW)
15. The hyperlinks provided in Section 3.2.1, Transportation Facilities Narrative, do not work. Please activate these links so they connect to their intended sources. (BEB)

### **Section 3.1.1.8 – Reclamation Costs**

16. Please update the paragraph under Worst Case Analysis in Section 3.1.1.8 where it states that "*the five year term, 2015 through 2019*", was reviewed in the estimated reclamation cost calculation. The sentence should be updated to state the years 2019 through 2024. (BAJ)
17. Please review and update the Haulroads & Ramps portion of Section 3.1.1.8.2 – Overburden Equipment Hours. The total length of haulroads and ramps listed by station is 62,300 feet. From the General Location Map in Section 3.1.1.8.6, the Reclamation Division calculates the length to be 66,132 feet. Some of the haulroads shown on the General Location Map may be in active mining areas and should not be shown, as the roads or ramps would be reclaimed during rough grading. Please review and correct if necessary. (BAJ)

### **Section 3.1.3 – Pit Layout and Facilities Map**

18. Follow-up to pre-renewal review Item No. 32: Please revise the Pit Layout and Facilities Map, Section 3.1.3, to depict each habitat area to be used to protect and enhance fish and wildlife habitat as required by NDAC 69-05.2-09-02(11). The woodlands in the northeast corner of the SW1/4 of Section 24 should be depicted as a tree avoidance area since BLM has classified this area as an exclusion area. (GAW)

19. Please place the discharge point identification numbers along the north haulroad back on the Pit Layout and Facilities Map. These discharge point identification numbers were included in approved Revision No. 8 and previous revisions to the permit, but were deleted from the permit with the application for Revision No. 9. (BEB)

#### **Section 3.1.5 – Post-Mining Topography Map**

20. CCMC is proposing topographic changes in the northeast corner of the SW1/4 of Section 24 where BLM identifies a woodland exclusion area. Please revise the map by removing the disturbance and topography changes depicted in the woodland exclusion area. (GAW)
21. The Post-Mining Topography Map depicts topographical changes in the wooded draws in the SE1/4 of Section 23, NE1/4 of Section 26, SW1/4 of Section 26 and SE1/4 of Section 27 where coal removal is not planned. Please remove the topographical changes depicted in areas of associated disturbance and identify these wooded draws as potential woodland avoidance areas on the Pit Layout and Facilities Map, Section 3.1.3. NDAC 69-05.2-13-05 (GAW)

#### **Section 3.2.1 – Transportation Facilities Narrative**

22. Please review the Reclaimed Public Road narrative on page 3 of Section 3.2.1 to clarify landowner requests regarding reconstructed section line rights-of-way. The ND Department of Trust Lands preference statement requests approaches off County Road No. 13 and section line ingress and egress access to their properties and it would seem that suitable road access should be provided along the north and south sides of Section 25 to facilitate equipment access to cropland/hayland fields. (GAW)

#### **Section 3.3 – Surface Water Management**

23. Please revise Section 3.3 to discuss if there are any culverts or bridges in drainages along trails used by surface owners or lessees that will be impacted by discharges from sediment ponds. (GAW)
24. Please revise the Surface Water Management Plan, Section 3.3.1, to explain how runoff from disturbance in the watershed above sediment pond P26-04 will be managed prior to the construction of sediment pond P26-04. The pond construction schedule indicates sediment pond P26-04 will be constructed in 2025 but mining is planned in the watershed in 2022. (GAW)

#### **Section 4.1 – Post-Mining Land Use Plans**

25. The hyperlinks provided in Section 4.1.1, Narrative, do not work. Please activate these links so they connect to their intended sources. (BEB)
26. Please revise Section 4.1.1 to clarify the type of roads that will be reconstructed on each section line right-of-way affected by mining activities. The ND Department of Trust Lands preference statement requests approaches off County Road No. 13 and section line ingress and egress access to their properties. Of particular interest is whether a permanent section line road will be constructed along the south or north sides of Section 36 to replace the “unauthorized” road that allowed public access between County Roads 13 and 25. Section 3.1.3.6 states that this road may

be replaced but the State does not want this road replaced on their property according to their preference statement. The Reclamation Division encourages CCMC to construct suitable roads along either the north or south side of Section 36 to replace the access that existed prior to mining. This may include a raised roadbed with culverts and approaches that are at least as good as that being provided during mining to replace the "unauthorized" road in Section 36. (GAW)

27. Follow-up to pre-renewal review Item No. 38: Please review the locations where woodlands are to be planted in Sections 30 and 31. It appears all five plantings are in areas impacted by long-term features or facilities, such as stockpiles and haul roads, and two woodlands in the SW1/4 of Section 31 are shown on slopes with a south-facing aspect. Please review to determine if some or all of these plantings could be moved to locations where reclamation will be contemporaneous on areas with suitable aspect. (GAW)
28. The Post Mining Topography and Land Use Map, Section 4.1.2, depicts three reclaimed woodlands in the SW1/4 of Section 24 and the Woodland Summary table on page 6 of Section 4.2.3, Trees and Shrubs, indicates that 4.22 acres of trees are to be reclaimed on this tract. BLM's Environmental Assessment identifies the woody draw on this tract as an exclusion area so perhaps 4.22 acres of woodland would not be disturbed. Please review and revise if necessary. Pre-Mining Woodlands within the woody exclusion area should be depicted as undisturbed woodlands on the Post Mining Topography and Land Use Map. (GAW)
29. Woodlands that have been disturbed are depicted as undisturbed woodland in the SW1/4 of Section 30 on the Post Mining Topography and Land Use Map, 4.1.2. Please correct this error. (GAW)
30. Woodlands that have been disturbed are depicted as undisturbed woodlands in the W1/2 of Section 31 on the Post Mining Topography and Land Use Map, 4.1.2. Please correct this error. (GAW)
31. CCMC is proposing topographic changes in the NW1/4 of Section 6 that include expanding a hill beyond the coal removal boundary. It appears CCMC is planning to place box cut spoil in this area. Topographic changes are also proposed west of this pile (south of created wetland CW-06-02) along a slope that appears less desirable than that currently approved. Please review and revise to minimize topographic changes to areas where coal is not being removed, and revise or retain the previously approved topography south of created wetland CW-06-02. (GAW)

#### **Section 4.2 – Revegetation Procedures, Establishment and Management**

32. Follow-up to pre-renewal review Item No. 37: NDAC 69-05.2-22-04 requires seeding and planting at the first normal period after topsoil has been respread. Please revise the permit to include a specific request for a variance from this requirement for each area where a perennial seeding delay is planned and include a map that identifies each area. Please also revise the narrative on page 2 of Section 4.3.1 to state that a perennial seed mixture will be planted on areas with slopes exceeding 9 percent and in drainage ways. The Reclamation Division will not approve managing areas to be reclaimed to native grassland with annual seedings in drainage ways or on areas with slopes exceeding 9 percent. Details of management plans must be provided for each area where a perennial seeding (including native grass seedings and woodland plantings) is to be delayed. (GAW)

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33. Follow-up to pre-renewal review Item No. 38: Please revise the tree and shrub planting procedures in Section 4.2.3, Trees and Shrubs, to include site-specific detailed procedural and management plans with timelines that will further ensure tree planting establishment success. This must include details about site preparation preceding planting, erosion control, weed control and timelines for planting and applications of wood chips, slough hay or other suitable materials. Perhaps the practices recommended by NRCS Conservation Practice Standard 612, Tree/Shrub Establishment and/or other sources should be used to help ensure planting success that is SMART (specific, measurable, achievable, relevant and time-bound). (GAW)

**Section 4.3 – Vegetation Assessment and Success Standards**

34. Follow-up to pre-renewal review Item No. 39: Please revise the third paragraph on page 1 of Section 4.3.1, Narrative, to state that native grassland reference areas will be established by the end of the second term of the permit (Renewal No. 1 expiration date). (GAW)

If you have any questions, please contact this office.

Sincerely,



Dean K. Moos  
Director  
Reclamation Division