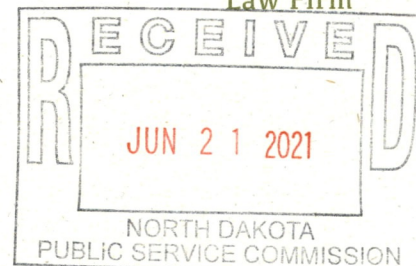




**BRAATEN**  
Law Firm



June 21, 2021

**Via Hand Delivery Only**

Executive Secretary  
Public Service Commission  
State Capitol  
Bismarck, North Dakota 58505-0480

**Re: PSC Case No. RC-21-45**

Dear Executive Secretary:

Enclosed are the comments of Casey and Julie Voigt in PSC Case No. RC-21-45. No authorization, permission, or relief is being requested at this time.

Sincerely,

Derrick Braaten

Enclosures: Comments Submitted by Casey and Julie Voigt

4 RC-21-45 Filed 06/21/2021 Pages: 4  
Comments Submitted by Casey and Julie Voigt  
Braaten Law Firm  
Derrick Braaten

**NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**Coyote Creek Mining Company, L.L.C.  
Renewal No. 11, Permit NACC-1302  
Application**

**Case No. RC-21-45**

**COMMENTS SUBMITTED BY CASEY AND JULIE VOIGT**

**June 21, 2021**

Introduction

As the Commission is aware, Casey and Julie Voigt live and ranch in the midst of the Coyote Creek Coal Mine. Their relationship with the mine has been one marked by contentiousness from day one of mining, but it is important to understand how the Voigts came to find themselves surrounded by a coal mine. While it has been suggested by the mine that the Voigts perhaps invited mining onto their ranch by signing a coal lease, the actual history of the coal leases on the property paint a very different picture.

At the last formal hearing for Revision 9 to Permit NACC-1302, the Voigts submitted a letter from Attorney Brian Bjella, who wrote to the Voigts' former attorney about an historic coal lease on the Voigt property. After the Voigts' attorney asserted that the old lease had terminated, the mine responded indicating "the Coal Lease remains in full force and effect. North American fully intends to defend its interest in the Coal Lease by all legal means." Faced with the prospect of litigation with North American Coal over a lease signed decades prior, the Voigts agreed to sign a new lease rather than litigate. North American agreed to a single change to the lease, and the Voigts were forced to take what they could get because it was either the new lease or litigation.

Since signing the new lease, the mine has been constructed and has been in operation now for five years. When Permit NACC-1302 was first issued, the Voigts requested a formal hearing and raised concerns about the ability to adequately reclaim their land. They also requested a formal hearing for Revision 9 and Renewal 1 in Case Nos. RC-19-189 & RC-19-190. Following that formal hearing, CCMC asked the Commission to award it attorneys' fees because it believes that the Voigts' prior exercise of their rights to voice their concerns were in bad faith, and solely to harass and annoy the mine. Unfortunately, it appears that the Commission is inclined to agree with that view. For that reason, the Voigts will forgo utilizing any of their available statutory processes such as requesting conferences or hearings as the inevitable reprisal may require them to reimburse the mine's attorneys' fees.

Although the mine's prior request for attorneys' fees presumably included a request to recover its fees for even having to respond to the Voigts comments in that prior proceeding, the Voigts are hopeful that the Commission will agree that they should, at the very least, be allowed to voice their concerns in writing without facing retribution and the risk of having to pay the mine's attorneys' fees.

## Reclamation

The Voigts remain concerned about the mine's ability to properly reclaim their land. To date, they have yet to see land returned to its pre-mining condition. While it is understandable that attempts to re-seed native grasses may not be successful on the first attempt, it is also common sense for any rancher that you do not let weeds go to seed. The fact that the mine let entire fields of land in reclamation not only grow primarily weeds, but then allowed those weeds to go to seed, indicates either a lack of concern or a lack of understanding regarding how persistent weed seed can be on a ranch. This is not a problem the Voigts had a couple years ago – it is a problem they will now have for years to come, and it can be traced to one failure to prevent weeds from going to seed.

This is being shared only as an example, however. The Voigts have explained in detail their concerns about reclamation at prior hearings. They have hired experts, and they have attempted to craft specific solutions and requests to address their concerns. Now they are making sure the record for this mine continues to indicate serious concern over reclamation. They invite any help the Commission is willing to provide in order to ensure they get their land back into their ranch operation in their lifetimes.

## Dust

The Voigts understand that the Commission believes it is not the proper agency with whom to raise their concerns about dust. They disagree. Putting aside the legal arguments they have made, they have been turned away no matter where they have asked for help. The Public Service Commission has told them they should bring their concerns to DEQ. The ND DEQ has been engaged in litigation against the Voigts for years and is certainly not willing to help address their concerns. The courts have told them to bring their concerns to the agencies. The agencies send to different agencies or back to the courts. Their complaints about the dust at the mine, described by the Commission's own inspector as some of the worst he's ever seen, have largely fallen on deaf and disinterested ears. The Voigts are not oblivious to the fact that the mine has attempted to address the issue in some ways. There are solutions that would resolve the problem such as dust monitors, but the mine is unwilling to consider these solutions. The mine also strategically located two large spoil piles just above the Voigt's home, and despite the incredible amounts of dust it deposited in their yard as a result, it has never made any attempt to move those piles away from the home. It is this kind of action and inaction that makes it difficult for the Voigts to believe that the dust is merely an unfortunate symptom of living in a coal mine. There are obvious ways it could have been and still could be mitigated, but no agency nor the mine is inclined to consider them. And so, the Voigts live with the dust.

## Conclusion

The Coyote Creek Coal Mine operates over top of the Voigt Ranch. Casey and Julie Voigt, contrary to numerous implications by the mine, never wanted a coal mine on their ranch and they are doing their best to ranch around it. They were faced with an impossible choice and they took the best they could get, and now they struggle to continue their way of life and continue operating their ranch. The mine was successful in the prior proceeding before the Commission in making it clear that it will not brook public criticism and it will seek to force the Voigts to pay its attorneys'

fees and expenses if they exercise any of their statutory rights in connection with its mine permit. Even submission of these comments is likely to draw reprisal from the mine given its position in the prior proceeding. For that reason, the Voigts are not requesting any kind of hearing or any action from the Commission.

Submitted this 21<sup>st</sup> day of June, 2021.

**BRAATEN LAW FIRM**

/s/ Derrick Braaten  
Derrick Braaten, ND Bar # 06394  
109 North 4<sup>th</sup> Street, Suite 100  
Bismarck, ND 58501  
Phone: 701-221-2911  
derrick@braatenlawfirm.com  
*Attorney for Casey and Julie Voigt*