

July 16, 2021

Via Electronic Mail

Mr. Steve Kahl
Executive Director
North Dakota Public Service Commission
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480
ndpsc@nd.gov

In re: Reply to Comments Submitted by Casey and Julie Voigt
dated June 21, 2021
Coyote Creek Mining Company, L.L.C.
Case No. RC-21-045
Our File No. 021919-000024

Dear Mr. Kahl:

Coyote Creek Mining Company, L.L.C. (“CCMC”) respectfully submits this reply to comments submitted by Casey and Julie Voigt (“Voigts”) on June 21, 2021 for Case No. RC-21-45 relating to Revision 11 to Surface Mining Permit NACC-1302. The Voigts specifically stated no authorization, permission or relief was being requested at this time. CCMC agrees with the conclusion and asks the Commission to include this letter from CCMC in the filing for this case to provide additional context to the assertions made by the Voigts. Due to the Voigts comments and the factually inaccurate and misleading nature of those comments, CCMC is forced into the unfortunate position of having to submit this response.

The Commission is well-apprised on the issues raised in the letter submitted by the Voigts. In 2010, the Voigts, with the assistance of legal counsel, negotiated a lease covering approximately 3,508.96 acres to an affiliate company of CCMC for surface coal mining. This lease was recorded in Mercer County, North Dakota as Document No. 196024. “The lease addresses CCMC’s right to mine coal on the Voigt’s property, compensation for damages to crops and livestock, and repair and replacement of roadways. Administration of the lease agreement between the Voigts and CCMC is not within the jurisdiction of the PSC”, despite the Voigts repeated attempts over several years to make it a PSC issue (Case No. RC-19-189 Docket No. 60, ¶ 12 of Findings, Case No. RC-19-190 Docket No. 68, ¶ 12 of Findings.) The lease fully sets forth the rights and obligations of both CCMC and the Voigts.

On November 1, 2013, CCMC submitted a permit application in Case No. RC-13-850, seeking a permit to engage in surface coal mining and reclamation operations on approximately 8,091.511 acres in Mercer County, North Dakota. Case No. RC-13-850 Docket No.1. On November 24, 2014, Casey Voigt requested a formal hearing on the permit application. Case No. RC-13-850 Docket No. 35. After three days of formal hearing, the Commission approved CCMC's application, subject to certain additional conditions, and issued permit NACC-1302. Case No. RC-13-850 Docket No. 125.

The Voigts appealed the Commission's conclusions in RC-13-850 to the state district court pursuant to N.D.C.C. § 28-32-42, claiming the Commission had improperly identified and not protected alluvial valley floors allegedly on the property. Case No. 08-2015-CV-01056. The district court affirmed the Commission's decision, concluding the weight of the evidence supported the Commission's decision that no alluvial valley floor existed. Case No. 08-2015-CV-01056, Docket No. 188. The Voigts further appealed, and the North Dakota Supreme Court again affirmed that alluvial valley floor determination. *Voigt v. N.D. Public Serv. Comm'n.*, 2017 ND 76, 892 N.W.2d 149.

Despite the Supreme Court upholding the Commission's determination of no alluvial valley floor, the Voigts again asserted the presence of an alleged alluvial valley floor in their filings in Case Nos. RC 19-189 and RC-19-190, and CCMC again was forced to devote time and resources to an already decided issue. In both cases the Commission concluded yet again no existence of an alluvial valley floor. Upheld in that same case were Commission decisions that CCMC is not in violation of the law or conditions to the permit on multiple items, including reclamation and dust mitigation practices.

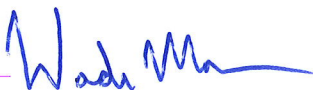
The Voigts have repeatedly attempted to have the Commission consider issues that have already been decided. They also continue to push issues that are clearly not within the Commission's jurisdiction, including road access and air quality issues. Case No. RC-13-850 Docket No. 125 concluded the "closure of county roads in the vicinity of the CCMC Mine is under the jurisdiction of the Mercer County Commission, not the Public Service Commission." Case No. RC-14-846 Docket Nos. 38, 56 concluded the Department of Health, now the Department of Environmental Quality, "has the exclusive jurisdiction over permitting of air quality in North Dakota." The Voigts did not appeal these conclusions but have pursued claims, and lost, on these issues in numerous court proceedings. Despite the clear jurisdictional guidance articulated by the Commission, similar accusations were made in Case No. RC-19-189 by the Voigts and the Commission reached the same independent conclusion as the previous case. As noted above, similar conclusions have been made in multiple courts of law in proceedings involving the Voigts, and yet, the Voigts refuse to accept adverse determinations. Ignoring precedent, they continually raise already decided issues in an attempt to get the result they want.

This history and pattern of behavior demonstrates that the Voigts have participated in the application process for permit renewals and revisions in bad faith and to harass or embarrass CCMC. Consistent with this pattern, the issues raised by the Voigts in this proceeding are issues that have been exhaustively discussed or previously litigated. CCMC's effort to recoup the unnecessary costs and expenses CCMC incurred in connection with Case Nos. RC 19-189 and

RC-19-190 is not baseless. CCMC has been forced to defend its lawful actions in various court and agency proceedings for more than half a decade. Defending itself against baseless accusations with a request for reimbursement of attorney's fees is not an act of retribution, but a lawful action sought after years of unnecessary proceedings and litigation on duplicative issues. CCMC has willingly responded in good faith to the multitude of challenges at various agencies, county commissions, federal agencies, the PSC and multiple courts. But at some point, enough is enough. When the same accusations are repeatedly made numerous times over more than half a decade, often times in venues without jurisdiction, there is a time when CCMC must ask for relief afforded to it under the law.

CCMC is committed to its steadfast position it has been and is always open to dialogue and conversation with the Voigts in an attempt to better coexist on a daily basis. CCMC maintains its door is always open and it will continue to do everything it can to openly communicate with the Voigts to work toward alleviating their concerns and allow the parties to work together.

Sincerely,



Wade C. Mann

WCM/lh

cc: Dean Moos (via email)
Jeremy Eckroth (via email)