

**Public Service Commission
Reclamation Division**

Memorandum

To: Commissioners Fedorchak, Christmann, and Kroshus
John Schuh, General Counsel
Steve Kahl - Executive Director

From: ^{DKM} Dean Moos, ^{ZAB} Zanna Brinkman, ^{BR} Bruce Beechie & Preston Ripplinger

Date: September 1, 2021

Subject: Approval of Revision No. 11 to Permit No. NACC-1302 held by Coyote Creek Mining Company, L.L.C., Case No. RC-21-45

On January 25, 2021, Coyote Creek Mining Company, L.L.C. (Coyote Creek) filed the application for Revision No. 11 to Permit No. NACC-1302 to mine 320 acres of federal coal located in the SW $\frac{1}{4}$ of Section 24 and SE $\frac{1}{4}$ of Section 26 as well as 160 acres of private coal in the SE $\frac{1}{4}$ of Section 23, all in T143N, R89W at the Coyote Creek Mine. All of those tracts were previously incorporated into the permit with the original application for Permit NACC-1302 that was approved by the PSC on October 22, 2014. Coyote Creek obtained Federal Coal Lease NDM 110277 for the SW $\frac{1}{4}$ of Section 24 and SE $\frac{1}{4}$ of Section 26 in Permit NACC-1302 on November 1, 2020. The permit revision provides updated surface water management and other mining and reclamation plans for the tracts to be mined. The Reclamation Division has completed its review of this revision application and respectfully recommends that it be approved.

The 320 acres of federal coal and 160 acres of private coal to be mined are located in the northern portions of the existing permit area as depicted on **Figure 1**, and the permit acreage will remain unchanged at 8443.6 acres. Several federal coal tracts were included in the original permit application, but no mining of those tracts was proposed at that time. One hundred percent of coal interest in the SW $\frac{1}{4}$ of Section 24 and SE $\frac{1}{4}$ of Section 26 is owned by the federal government and one hundred percent of coal interests in the SE $\frac{1}{4}$ of Section 23 is owned by private interests. Mining and reclamation operations of the federal coal tracts will be similar to those presently approved in the permit. The surface of the federal coal tracts is privately owned and Coyote Creek has secured the necessary surface leases for those tracts of land. Coyote Creek has also secured the surface and coal lease of the private coal tract located in the SE $\frac{1}{4}$ of Section 23. The premining land uses of the federal coal tract that will be disturbed in the SW $\frac{1}{4}$ of Section 24 include native rangeland, woodlands, developed water resources (stockpond), seasonal wetlands and springs. The premining land uses of the federal coal tract that will be disturbed in the SE $\frac{1}{4}$ of Section 26 include hayland, native rangeland, shelterbelts, woodlands, seasonal wetlands, and springs. The postmining land uses of the federal coal tracts will be cropland, hayland, woodlands, developed water resources, and rangeland. The premining land uses of the private coal tract in the SE $\frac{1}{4}$ of Section 23 include native rangeland, woodlands, seasonal wetlands, and springs. The postmining land uses of the private coal tract in the SE $\frac{1}{4}$ of Section 23 include native rangeland, woodlands, and developed water resources (stockpond). Mining is expected to occur in the federal coal tracts between 2021-2035 and mining is expected to occur in the private coal tract located within the SE $\frac{1}{4}$ of Section 23 between 2027-2029.

Coyote Creek is requesting an extension to previously approved variances from the contemporaneous reclamation requirements. This includes a continuing general variance from the rule that requires rough grading be completed within 180 days of coal removal for most of the existing six variance areas to delay

reclamation until the trailing pits are reclaimed in existing Variance Areas 3, 4, 5, and 6. The variances include areas of temporary delay of native grassland seedings of small, fragmented tracts of reclaimed land so that seeding and maintenance of reclaimed native grassland tracts can be better managed as single, larger tracts. These requests have been adequately justified and the Reclamation Division recommends that the variances be approved as allowed by NDCC 38-14.1-24(14) and NDAC 69-05.2-21-01(2).

Eight Standard Conditions and five special conditions remain in effect for Permit NACC-1302. Special Condition No. 3 to Permit NACC-1302 prohibits overburden and coal removal on federal coal tracts until the mining plan is approved by the Secretary of the U.S. Department of the Interior as required by 30 CFR 746.11. Surface disturbance is allowed on these lands prior to Department of Interior approval only to the extent necessary for the mining of the adjacent private lands. We will be submitting the required Federal Lands Decision documents to the Office of Surface Mining providing them with the required information for the processing of the mine plan approval action. As noted earlier, Coyote Creek received Federal Coal Lease NDM 110277 for these tracts on November 1, 2020 from BLM, and mine plan approval from the Office of Surface Mining for these tracts is expected in the near future.

Revision No. 11 was deemed a significant revision to Permit No. NACC-1302 and was subject to the public notice requirements. Coyote Creek submitted affidavits of publication of the required newspaper notices. We notified the appropriate agencies, the permit area landowners and advisory committee members of the revision application. We received no objections or requests for informal conferences on this revision application. However, major landowners Casey and Julie Voigt submitted a letter on June 21, 2021 through their attorney, Derrick Braaten of Braaten Law Firm, summarizing the lease history of their property with North American Coal, and their continuing reclamation and dust generation concerns at the mine. The Voigts did not request a hearing or any action from the Commission regarding Revision No. 11.

No bond adjustment is required for approval of Revision No. 11. The Commission has determined, pursuant to NDAC 69-05.2-12-07, that the existing performance bond in the amount of \$23,300,000 is sufficient for the proposed operations in Permit NACC-1302.

Attached for your consideration at the September 1st Commission meeting are the proposed motion, revision approval form, and newspaper notice that we must publish following revision approval.

Attachments

Coyote Creek Mine\Permits\NACC - 1302\Revisions & Renewals\No. 11\Rev11_apprvl_memo_9-1-21

**Figure 1. General location map of Permit NACC-1302
Revision No. 11 area is labeled as "AFFECTED AREAS" on the map**

**Surface and coal in the SE¼ of Section 23 is private.
Federal coal tracts depicted in the SW¼ of Section 24 and SE¼ of Section 26**

